REAL ESTATE ADVISORY COUNCIL

Botswana Money Laundering & Terrorist Financing Risk Assessment in the Real Estate Sector

Supplementary to the National Risk Assessment

Reference Committee

6/5/2019

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A report of money laundering and terrorist financing assessment within the real estate sector of Botswana.

Contents

ACRONYMS

AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
BPS	Botswana Police Service
BURS	Botswana Unified Revenue Service
DCEC	Directorate on Corruption and Economic Crime
DNFBPs	Designated Non-Financial Businesses and Professions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FI Act	Financial Intelligence Act
FI Act (Amend)	Financial Intelligence Act (Amendment)
FIA	Financial Intelligence Authority
FSRB	FATF-Style Regional Body
GDP	Gross Domestic Product
ICRG	International Cooperation Review Group
IFSC	International Financial Services Centre
MER	Mutual Evaluation Report
ML/TF	Money Laundering and Terrorist Financing
NRA	National Risk Assessment
PEPs	Politically Exposed Persons
RC	Reference Committee
REAC	Real Estate Advisory Council
REIB	Real Estate Institute of Botswana

ML/FT REAL ESTATE SECTOR RISK ASSESSMENT IN BOTSWANA

INTRODUCTION AND BACKGROUND

Money laundering and terrorist financing (ML/TF) compromise the integrity of the financial system and are a threat to global safety and security. Money laundering is the process used by criminals to conceal or disguise the origin of criminal proceeds to make them appear as if they originated from legitimate sources. Money laundering frequently benefits the most successful and profitable domestic and international criminals. Terrorist financing, in contrast, is the collection and provision of funds from legitimate or illegitimate sources for terrorist activity. It supports and sustains the activities of domestic and international terrorists that can result in terrorist attacks in Botswana or abroad causing loss of life and destruction.

Financial Action Task Force (FATF) is an independent inter-governmental body and a global standard setter and promoter of policies to prevent and combat money laundering and financing of terrorist and the proliferation of arms of mass destruction in order to protect the international financial system. In addition to setting global Anti-Money Laundering (AML), Counter-Financing of Terrorism and Proliferation (CFT), the FATF also ensures countries comply with the set standards and assesses compliance through Mutual Evaluation Reviews (MER). The FATF has developed the FATF Forty Recommendations that are recognized as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. FATF Recommendation 1, requires countries to identify, assess and understand the ML/TF risk and apply a risk-based approach (RBA) to ensure that measures to prevent/ mitigate ML/TF risks are commensurate with the risks identified.

Botswana is a member of the Financial Action Task Force (FATF) through her membership to the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a FATF-Style Regional Body (FSRB) which subscribes to Financial Action Task Force (FATF) Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) recommendations. The ESAAMLG members have committed themselves to the effective implementation and enforcement of the internationally recognized FATF Recommendations against money-laundering and the financing of terrorism.

Identifying, assessing, and understanding ML/TF risks is an essential part of the implementation and development of a national anti-money laundering / countering the financing of terrorism (AML/CFT) regime, which includes laws, regulations, enforcement and other measures to mitigate ML/TF risks. It assists in the prioritization and efficient allocation of resources by authorities. The results of a national risk assessment, whatever its scope, can also provide useful information to financial institutions and designated non-financial businesses and professions (DNFBPs) to support the conduct of their own risk assessments.

The Anti-Money Laundering (AML) and Counter Financing of Terrorism (CFT) National Risk Assessment (NRA)of the Republic of Botswana was officially launched on the 4th of March 2015 by the Permanent Secretary, Ministry of Finance and Development Planning. The NRA was a government-wide activity aiming to better understand the Money Laundering/Terrorism Financing (M/TF) risks faced by the country. The assessment was based on the Financial Action Task Force (FATF) Recommendations of

2012, and was conducted using the National Risk Assessment (NRA) Tool developed by the World Bank and covered a five-year period from 2010 to 2014. This is in compliance with Financial Action Task Force (FATF) Recommendation 1. At the time of carrying out the NRA a significant number of Designated Non-Financial Businesses & Professions (DNFBPs) did not provide responses to the questionnaires sent hence the sectors were not adequately assessed including the real estate sector. However, in accordance with the NRA, DNFBPs were rated high for vulnerability to ML/TF risks with the legal profession and businesses showing the highest level of vulnerability to ML.

Botswana underwent the 2nd Round of Mutual Evaluation by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 2016 for an assessment on the level of her effectiveness on the legal, regulatory and operational AML/CFT measures. ESAAMLG released its report on Botswana on May 2017 showing significant deficiencies in both the technical compliance (sufficiency of the laws) and effectiveness (implementation). The report provided a summary of measures in place for money laundering and analysis of level of compliance with the FATF 40 Recommendations and the level of effectiveness of Botswana's AML/CFT System. At the time of the on-site visit, Botswana was in the process of carrying out a National Risk Assessment (NRA) and the preliminary findings of the exercise were therefore not available for assessment. In relation to the Real Estate Sector, the MER report assessed the extent to which the sector is exposed to ML/TF risks and whether the ML/TF risks in the sector have been determined. The MER showed that due to most of the transactions in the sector taking place in cash, and AML supervision not having started in the sector, the sector was highly vulnerable to ML risks;

Based on the results of the Mutual Evaluation, Botswana met the criteria for ICRG review and was therefore given one year observation period in which she was expected to improve its technical compliance and effective implementation based on the deficiencies identified in the MER. During the one year observation period, Botswana made significant strides to improve its AML/CFT framework particularly through enacting several laws and improving co-ordination and cooperation between the relevant AML/CFT stakeholders. However, after reviewing the reports submitted by the Botswana Government, the ICRG concluded that, while Botswana had made progress towards increasing effectiveness in a number of areas, there were strategic deficiencies remaining which required further action. Following this review, the FATF working with the Botswana government developed an action plan to address the remaining deficiencies.

In line with the FATF Recommendations, the MER which showed that the real estate sector was highly vulnerable to ML risks and also in order to address the action plan by International Cooperation Review Group (ICRG) of the FATF, the real estate sector has undertaken sectoral self-assessment. Real Estate Advisory Council (REAC) as a Supervisory Authority as per section 2 and item 3 of the Second Schedule of Financial Intelligence Act (FI Act), is mandated to carry out the ML/TF risk vulnerability assessment of the real estate in Botswana.

OBJECTIVES & OUTPUTS

The goal is to identify, assess, understand and take effective action to mitigate the money laundering and terrorist financing risks through real estate in Botswana by April 2019 with the main objectives being to:

1. Identify, analyze and evaluate the vulnerability of the Botswana's real estate sector associated with Money Laundering and Terrorist Financing.

2. Identify if Botswana real estate sector is of high vulnerability.
3. Identify, on a needs basis, the products/services offered by the real estate sector with high ML vulnerability
4. Determine the weaknesses and gaps in the legal framework, devise strategies and prioritize action plans that will strengthen the AML/CTF controls and close the gaps in the real estate sector.

It is expected that at the end the Reference Committee will be able to produce:

i. Risk Assessment Results being the output of the assessment process which highlights the areas of higher medium and lower risks within the real estate sector.
ii. Risk Assessment Report documenting the assessment process, findings and evidences.
iii. Risk Based Action Plan which is basically an approach based on the risk assessment results detailing actions to be implemented to prevent and mitigate the identified ML/TF risks.

METHODOLOGY

The Real Estate Advisory Council appointed a Reference Committee (RC) composed of relevant stakeholders in real estate including those from the Government, Real Estate Institute of Botswana (REIB) and accountable institutions led by a Council member.

The Reference Committee in carrying out the exercise followed the three phased risk assessment process as per the World Bank's AML/CFT Risk Assessment Support comprising preparations, data collection & reporting drafting, and finalization of the risk assessment.

The Reference Committee collected data through:

1. Questionnaire – sent and completed by key real estate stakeholders and practitioners.
2. Consultative Interviews – The Reference Committee divided into two teams and interviewed both the public and private sectors.
3. Use of published typologies by ESAAMLG
4. 2^{ND} Mutual Evaluation Report of Botswana by ESAAMLG May 2017
5. National Risk Assessment Report of The Republic of Botswana 2017
6. Administration of Module 7 Vulnerability of DNFBPs as administered using expertise of the Reference Committee.
7. Government Records obtained from Government departments.

This assignment was carried out amidst the following constraints:

a. Time constraint as the country had a deadline of April 2019 set by ICRG
b. Limited ML/TF knowledge by the Reference Committee and stakeholders which has to learn as they go hence resulting with a broad questionnaire administered and delayed and somewhat low response.
c. Late and lack of response to request for information from some interviewed entities as well as lack of honouring requests for interviews.
d. Late comprehension of the World Bank Tool resulting in late administration of the tool.

REAL ESTATE SECTOR OVERVIEW

Definitions

Real Estate is the physical **property** consisting of land, buildings, air rights above the land and underground rights below the land and an interest vested in these items of real property (Wikipedia). The business or practise of real estate in Botswana is therefore the profession of acquiring, developing, buying, investing in, managing, appraising, renting or selling/disposing land, immovable property, or interest thereon. The different property portfolios held mainly covers agricultural land, commercial, residential, industrial and tourism assets. **Estate management** therefore can be defined as an art of science of directing and supervising of one's interest in land or landed property in order to achieve some optimum returns which may not only be financial but service, political, social statute, prestige and other returns. The directing and supervising of one's interest covers forecasting, planning, organising, motivating, controlling, coordinating and communicating. As such there are various disciples practised in relation to real estate in Botswana which covers real estate asset management, land administration, property development, property management, facilities management, estate agency, auctioneering, appraisals, valuations and consultancies thereof.

Botswana Environment

The real estate practise in Botswana is partly statutorily regulated and self-regulated with regards to the following disciplines property management, estate agency, auctioneering and valuation through the Real Estate Professionals Act 2003. The real estate asset managers, collective investors, investment advisors, custodians, participants, leasing and management companies are also regulated through the Non-Bank Financial Institutions Regulatory Authority Act of 2016 which aims to amongst other things to foster safety and soundness of the non-bank sector; highest standard of conduct of business by non-bank financial institutions; stability of the financial system; and reduce and deter financial crime.

The land administration is done by mainly the Government through the Department of Land, Land Boards and Land Authorities as well as private landlords particularly for freehold. The Real Estate Institute of Botswana is the only registered society for real estate professionals. However it also came to light that there is Estate Agency Institute of Botswana which was registered in December 2016 by unqualified and unregistered practitioners with about 25 members. REAC only registers real estate professionals and does not regulate the real estate firms, which is a gap as for enforcement of any standards to be effective, estate firms which employ professionals should be taken on board. REAC therefore derives its mandate from the FI Act and FI (Amend) Act to supervise real estate firms as far as money laundering and terrorist financing is concerned.

There is activity in the residential market segments particularly the low to medium housing accommodation where there is shortage of services land around cities. The office sector is experiencing increasing vacancies particularly in the secondary office market whilst generally retail development is slowing down in the capital city whilst there is a move towards the major towns and villages.

Real Estate ML/TF Typologies

In 2013 ESAAMLG conducted a study and produced *Typologies Report on Money Laundering Through the Real Estate Sector* in the ESAAMLG Region. The typical common offences related to the real estate sector also applicable to Botswana were identified to include forgery, fraud, tax evasion, embezzlement and violation of specific real estate statutes. The channels of laundering money covered purchases of real estate using large cash amounts; use of third parties or gate keepers like conveyancers or fronts to purchase and lease immovable property; buying building materials with cash successively; acquiring of mortgage bonds and settlement of bonds using large cash amounts; and purposefully defaulting payment of mortgage instalments and later settling them off using lump sum amounts. Of noteworthy was the involvement of foreign politically exposed persons (PEPs) and nationals in real estate investing; foreign nationals using locals to acquire real estate, use of corporate structures to own real estate; the use of third parties like minors, trusts to register real estate mainly for tax evasion and the use of unregistered real estate agents who are not accountable to the regulators. Also the level of awareness in some of the countries where Real Estate Agencies are reporting institutions required to implement AML/CFT laws was non-existence or they were simply not complying with the law because the authorities were not enforcing it.

Botswana 2017 NRA Results

In 2017 the country through Financial Intelligence Agency produced the National Risk Assessment report. The overall ratings of the nine (9) assessed modules were summarized as follows;

i) **ML Threat Assessment**

The overall ML threat was **medium high**. Obtaining by false pretences, motor vehicle theft, tax evasion, corruption, poaching have been identified as the criminal offences that present a high level of money laundering risks. All these predicate offences pose high risks in terms of proceeds that arise from the commission of such offences.

ii) **National Vulnerability**

The NRA findings showed that crimes such as fraud/obtaining by false pretences, motor vehicle theft, corruption and tax evasion, are the most rampant. The overall vulnerability was rated as **high.** The low rating of the country's ability to combat ML is mainly due to the absence of clear policy direction and strategy in issues of ML. This is further compounded by the low incidences of money laundering investigations and prosecutions in the country.

iii) Banking Sector Vulnerability

The overall rating of **medium high** was due to large volumes of transactions and high levels of cash activity in the banking system. Although there were average controls in place to mitigate ML/TF risks, there was still a need to improve the controls in the sector towards the higher end of the rating scale.

iv) Securities Sector Vulnerability

The sector was rated **medium**. The rating was based on the assessment of four (4) sub-sectors being Asset Managers (rated medium high), IFSCs (rated high), Brokers (rated medium), and Investment Advisors (rated medium). The reason for the high vulnerability in the IFSCs segment was that the entities were foreign owned and there was absence of cross border supervision and monitoring. Of the four sub-sectors, Asset Managers dominated the sector, in terms of numbers.

v) Insurance Sector Vulnerability

The overall rating was **medium high** with higher vulnerability in the life insurance sector more especially with life endowment/investment policies.

vi) Other Financial Institutions Sector Vulnerability

The findings of the assessment show that in the category of Other Financial Institutions, the Retirement Funds, Micro Lenders, Bureaux de Change and Money Remitters were susceptible to ML/TF risks because of their cash intensive nature. The overall vulnerability rating was **high**.

vii) Financial Inclusion Sector Vulnerability

The findings of the assessment showed that in Botswana, a large segment of the population did not have bank accounts because of their low income status. However, there was an insignificant market share of the financial inclusion products. The products presented low risk with respect to possible use for ML/TF.

viii) DNFBPs (Designated Non-Financial Businesses and Professions) Sector Vulnerability

DNFBPs were rated **high** for vulnerability to ML/TF risks with the legal profession and businesses showing the highest level of vulnerability to ML. Precious & Semi Precious Stone Dealers and Accountants scored lowest at medium. The weak regulatory framework made the sector vulnerable to money laundering activities.

ix) Terrorist Financing Risk

Due to the fact that terrorism cannot be confined within the borders, porosity of our borders and the increasing numbers of illegal immigrants pose a risk for terrorism financing and/or for use of the country for terrorism planning. In light of this therefore, the rate is medium. Vigilance is necessary as a precaution given developments in the region.

The National Risk Assessment Report for the Republic of Botswana of 2017 did not include the real estate sector in the survey possibly on the basis that its market size contributed insignificantly to the Gross Domestic Product (GDP) and also due to lack of readily available information. Despite this it is important to note that tax evasion, obtaining by false pretences and corruption were rated medium threats of significance supporting the ESAAMLG study findings of 2013. The NRA showed the Banking Sector to be of high vulnerability and as such the ML/TF remained evident in many sectors of the economy probably due to general lack of knowledge of AML/CFT issues by supervisory bodies and reporting/accountable institutions and ineffective enforcement of laws. DNFBPs sectors assessed were rated of high vulnerability to ML/TF risks with the legal profession on the top.

Threat Assessment

The overall ML threat was **medium high** for the Country in 2017. Ever since the report was produced Directorate on Corruption and Economic Crime (DCEC), Botswana Police Service (BPS) and Botswana Unified Revenue Service (BURS) have developed the capacity and use of financial intelligence to identify and investigate ML cases. As such there are three money laundering cases at prosecution level (Kgori Capital Case, NPF Case and CMB Case with Kgori Capital judgement given) and several cases are being investigated. In the BPF case a real estate agent was involved.

The Lobatse High Court has ordered Kgori Capital and its Directors to reimburse government more than P10 million that it earned unlawfully from the National Petroleum Fund (NPF) in April 2019. The presiding judge, found that the asset management company, the Respondent Company (Kgori Capital) and its Directors have cheated public revenue contrary to section 33 of the Corruption and Economic

Crime (CECA); obtained money by false pretense contrary to section 308 of the Penal Code, laundered money contrary to section 47 of Proceeds and Instrument of Crime Act (PICA) by benefiting unlawfully from questionable NPF agreements.

In the NPF case P10, 525,786.67 was forfeited, over P100 million properties restrained, an MP and a Judge indicted inter alia for money laundering. There was also a land fraud Civil case, Mokgokong Case that started in 2009 involving a syndicate of over 30 people which included four (4) Government officers that was concluded in November 2018. The Judge presiding over the case found that all but two of the properties mentioned were proceeds of serious crime having been sold to the various buyers with their collusion to unlawfully cheat and deprive the State of the concerned pieces of land. The case involved over P2million worth of properties.

The above cases go to show that indeed there is medium high threats of money laundering in the country which also concerns and affects the real estate sector.

ANALYSIS

Literature Review & Consultative Interviews

Having fathomed that not all questions and data could be attained from the questionnaire, information requests, literature reviews, open sources and semi structured interviews were conducted with the identified key stakeholders to the real estate sector in an effort to clarify and get relevant information and data for the success of the survey. Due to paucity of time and non-availability of resource/authorized persons some of the stakeholders were not interviewed at the time of writing this report and others had not submitted requested information like Botswana Police Service and DCEC which would enable objective evaluation of the threats.

Gross Domestic Product Fourth Quarter of 2018 by Statistics Botswana shows that Botswana GDP has grown by 4.1% in the 4th Quarter of 2018 to P189 868.5 million. The increase is attributed to real value added by Mining, Transport and Telecommunication and Finance & Business Services of which increased by 13.9%, 7.1% and 4.9% respectively. The Finance & Business Services Industry contributed P26, 895.6 million being 14.2% of the GDP and this is value add of Business Services, Real Estate and Banks. At the time of writing, Statistics Botswana was to give a breakdown and indicate the contribution of real estate sales to the GDP.

As of April 2019 REAC had registered 205 real estate professionals according to the REPA 2003 of which 204 were estate agents, 102 valuers, 114 property managers and only 4 auctioneers. Few of the professionals were registered for all, whilst majority registered for 3 in exclusion of auctioneering. The Real Estate Institute of Botswana had indicated that they had 228 paid full members whilst 431 were probationers making the total 659 practitioners. It is estimated that there could be around 500 unregistered and/or unqualified practitioners in the market. REAC does not regulate the real estate businesses and as such data on these firms has not been kept.

The following 9 organisations which were identified as the key risk drivers within the real estate sector were interviewed being Land Board, Land Tribunal, Town Council, Department of Lands, and Deeds Registry all dealing with land allocation and administration; REIB and REAC as regulators of the industry; material supplier during development; and the Law Enforcement Authority responsible for investigating money laundering and terrorist financing; in a bid to establish their awareness and preparedness to deal with money laundering and terrorist financing. All the respondents indicated that they did not have risk **management policies for money laundering and terrorist financing**

activities. These policies are intended to provide a framework for the management of risk and also to increase overall awareness of risks throughout the organisation and to enable managers and those responsible for risk reporting, to better identify, assess and control risks within their businesses or professions.

Of the nine interviewed organisations, seven confirmed that they dealt with cash, 6 of whom indicated that they did not ask the source of funding for their customers and this included the materials supplier. And in the case of Government Department who asked for source of funds the reason was to assess capability of the customer to pay for the land and develop not for money laundering purposes. Only the material supplier had the machine to check if the notes received were genuine. The Town Council used to have and the Town Clerk immediately instructed his officers to replace it in order to eliminate the risk. This clearly indicates the culture prevalent in the country where there seem to be trust that those with money obtained it through clean means. This is critical for addressing money laundering and terrorist financing.

The material supplier, Town Council and REIB did not keep records on their customers. Only LEA and Deeds Registry trained their officers on money laundering whereas 77.8% were not. The material supplier indicated he was not aware of money laundering. Building material suppliers have a debtor's account facility for the customers but they do not collect proper Customer Due Diligence (CDD). They collect large amounts of cash without finding out the source of funding. In some instances they reported that some of the customers deposit more funds than they owe and then ask for a refund. This clearly indicates that the material supplier businesses are highly vulnerable to money laundering and terrorist financing. The level of awareness of FIA and expectations from these stakeholders was low at 33.3% clearly showing the need to raise awareness by FIA.

Land Authorities

From the interviews it was apparent that after the land is allocated, the Land Authorities were concerned only with the development of the land parcels within the terms and condition of allocation. However they did not establish who developed the land and how the development was financed. This is an opportunity for money laundering as significant sums of money is required to purchase and develop the land parcels. Where there is a condition of value attached the Land Authority does not value the development but just inspects and validates the purchase price. The implications then are that most developments are then undervalued when lodged at Deeds Registry and as such gets less transfer duty, hence threat of tax evasion. The Department had instances where in 3 cases of failure to pay and develop within the development covenant, the allocatees made large deposits and such transactions were reported to FIA. The Department indicated also that when they write to people that they have not paid and developed, the land allottee often engage the lawyers who makes an undertaking that their clients have deposited into the trust accounts for purposes of paying and developing the properties. These practices show vulnerabilities within the land administration and development for tax evasion and money laundering.

The Land Board indicated that they have had challenges with fake land certificates relating to 400 cases where some Land Board officers were implicated. The officers after falsifying the documents sold the plots on cash basis. This is where dirty money is made and laundered into the economy. In the case of change of land use, the unregistered property agents have found a loophole under section 38 of the Tribal Land Act and so they use Powers of Attorneys to represent clients even in simple matters. There are instances in a village where residential properties are used for commercial purposes but not paying commercial rentals to the Land Board. This affects lodges and grey car dealers who applied to the District Council. The Council in their adjudication did not request consent from the

Land Board. A lot of licenses it seems have been issued corruptly indicating the need for coordination when licensing businesses. Therefore this gives bedrock for grey car dealership which is predicate to money laundering.

The interview with the Town Clerk gave a preview on the mechanisms to money laundering. The local authority has been concerned about real estate sector and sky rocketing land prices in the market wondering where the money is coming from and if at all there was no monitoring of the prices. The Ministry of Lands Water and Sanitation Services gave the local authority mandate to allocate SHHA plots to low and middle income categories. Hardly a month after allocation most plots were developed with big houses some worth over a million. The Town Council does not trace who developed as the latest SHHA plots were converted to Fixed Period State Grant (FPSG). In some instance the old SHHA plots were redesigned and surveyed and some allocatees which were affected were compensated with new SHHA plots under FPSG. However those compensated with land instead of moving to the newly allocated plots they sold them, spent the proceeds and stayed in the old plots. The developers could not be identified even their source of funds for such developments. There is high demand for undeveloped parcels of land within the subject town which then fuels the increase of prices and it depends who has cash at hand.

The government over the years has made calls for local authorities to look for other income generating streams so as to supplement existing subventions that they receive on an annual basis so as for them to play a bigger role in financially supporting their respective development programs. As a result some Town Councils have desperately made efforts to exploit their vast land resources so as to attract investors who will partner with them. This has also attracted unsolicited bids. One Town Council advertised its 44 ha site for partnership. An offer was received from investors who offered to develop a city within a city and give Town Council P44m as their corporate social responsibility. Fortunately this was not approved as it had all the hallmarks of money laundering and fraud.

Town Councils indicated that they don't ask those paying rates their source of funding as they are under pressure to collect arrears. Challenges have been experienced with Physical Planning Units where some foreign nationals will develop plots until they complete and just go to the Town Council to get their stamp of approval. However some Town Council Officers were found to be implicated in the scheme to circumvent the planning and building control procedures. They were found to be influenced by bribes which could possibly be from dirty money. Some transfer of land has occurred without the clearance of rates, as such these clearly shows the importance of land authorities as risk drivers within real estate sector and the need to put measures in place to ensure the environment is conducive and promotes financial system integrity and safety of the country. Despite the Town Councils having financial constraints, property rates have not been reviewed for ten (10) years while many developments have been done and property values have been going up and this disadvantages Local Authorities in augmenting their limited financial resources for programs. This ends up exposing the Town Councils to money laundering as already alluded to above.

It was noted that the Government Department interviewed did not have qualified people dealing with revenue collection and credit control. The Department has indicated that there have been numerous instances of overpaying for plots. This was not looked at from the perspective of cleaning laundered money. The lack of skilled personnel in accounting and overpayments for land parcels are indications of vulnerability to money laundering.

Deeds Registry transfer transactions received in the past three years have been on the decline as 3360, 2872 and 2442 for 2016, 2017 and 2018 respectively. Deeds Registry deals with conveyancers however where a valuation is required they ensure only registered valuers are engaged. Estate agents are dealt with by the conveyancers who also lodge other documents like the Rates Clearance Certificates to Deeds Registry. There is no requirement in the Deeds Registry Act for estate agents to declare a sale so that conveyancers can collect the declaration and submit for transfer. Therefore the amount of the transaction is not known and the source of funding is also not indicated. Shares transfer can happen without Deeds Registry knowing the sale value exchanged and changes in beneficial ownership in a transaction through Company Secretaries. <u>The Estate Agent declaration would indicate the source of funding and beneficial ownership.</u>

Estate agents are required to produce identification and confirmation is made that they are in the list of REAC. However unregistered estate agents befriend officers who then give them information. There are some transactions that come without bond which could clearly point to laundering of money. Deeds had a case of a driver who sought departmental transfer to Deeds but later posed as an estate agent and also a policeman. There are indications of property owners conniving with valuers so as to avoid taxation.

Questionnaire

A questionnaire was developed and links sent out to over 500 professionals comprising of 228 paid up full members of REIB, those working with Department of Lands, Housing and Land Boards as well as the Law Society of Botswana. Despite the many reminders and efforts made to explain the expectations with the questionnaire, only 95 responded to the questionnaire, resulting in a response rate of 19%. The questionnaire was divided into ten (10) sections, being: general questions, estate agency, property/facilities management, valuing, auctioneering, property developing, asset management, property investing, land authorities and conveyancing.

Responses from the questionnaire were collated, analyzed and this report presents a summary of the findings thereof.

The respondents came from both Government entities (44%) and the private sector (66%). Overall the majority of real estate firms are small-medium sized comprising of sole proprietors two-thirds of which have 1 -2 branches. Most (70%) organizations handle transactions on average of P1m or less per month. A sizeable 70% of participants carry out CDD however 62.2% participants do not keep records of CDD information. Effectively this means only 26.46% keep CDD records which is a problem. Just under half (44.4%) of participants do not carry out KYC which is a significant number. A noticeable 39.3% of participants do not request their customers to provide source of funding.

On AML/CFT training, two-thirds of the respondents indicated that they have not been trained confirming NRA findings that awareness levels were low even though majority indicated a medium – low level of determining suspicious transactions or customers. A whopping 94.4% had not reported suspicious transaction of customers or any matter to FIA. Of the 5 companies that reported, one stated that in 2018 they failed to notice that the payment for sale came from a company other than the one purchasing the property and this led to investigation by DCEC. In other cases buyers and tenants from outside the country showed interest in purchasing properties, however after offers have been made the funds did not materialize fueling suspicions that they could be using property to transfer their illegally obtained money into the country hence cleaning. A sizeable 56.8% do not operate a trust account and this could be skewed by government organizations which have no need of trust accounts. And those who do 65.2% do not audit the trust accounts using BICA registered auditors.

Most (69%) of the organizations do not have AML policy and also do (67.8%) not carry out ML risk assessments in their organizations and neither have a designated Compliance Officer (72.1%) responsible for AML issues.

From observation, even though the results seem to be of concern, it has to be noted that 44% of the respondents were from the Government which has a different way of operating from the private sector. In addition not all of the respondents are notifiable practitioners in terms of legislation. For future separate questionnaires should be prepared for the government and private sector.

Estate Agency

Almost two-thirds (67.4%)were respondents (64) who offer estate agency and half accepted cash payments with 21.9% having experienced clients paying cash payments of more than P10, 000.00. Majority (71.4%) of the estate agents know the beneficial owners of the properties for sale or renting which is impressive and can only be improved on. Over half of estate agents deal with foreign based sellers, buyers, landlords and tenants. A significant 82% of the estate agents have sold property through the sale of shares and they used lawyers for managing the transactions which is acceptable under the current legislation and effectively this avoid transfer duty, which is of concern. The fact that 21.9% of the estate agents receive cash transactions shows some level of risk that has to be managed.

Property Management

Of the 45 people that responded to property management questionnaire, 75.6% indicated that they know the beneficial owners of the property under their management. This information is sourced through ownership documents, identity cards and share certificates for both local and foreign based property owners. Only 13.1% respondents screen maintenance service providers through assessment of financial information whereas 86.9% do not screen maintenance service providers presenting possible door to money laundering. Most of the property managers 61.1% screen potential or existing tenants source of income for rental payments through assessment of bank statements, pay advice documents, bank guarantees, financial statements, references and credit checking whilst a significant 38.9% do not perform screening. Most respondents at 84.2% affirm to formalize tenant occupation agreements through signing off of Lease Agreements whereas 15.8% do not formalize tenant occupation agreements.

Asset Managers

Between 16-29 responded to questions on asset management against only 2 that indicated that they were into asset management, therefore the results of this survey on this subject cannot be depended on but will be taken to give an indication of what needs to be looked into.

The 29 respondents indicated that only 31% of the participating Asset Managers were registered with REAC while 69% did not have the registration. Regarding vetting of ownership of the property and source of funds for existing/proposed property development, 55% stated that they were not vetting. Likewise 71% indicated that they do not vet how tenants and their source of funding are screened In the event an investment is made towards a property asset to be acquired or developed and basically they leave it to the property manager. A large 75% of the respondents do not liaise or work with property managers for purpose of assuring compliance with AML whilst 25% participants liaise with property managers through KYC, Leasing, quarterly reports submissions and training. On the use of registered Estate Agents in sale, acquisition of stake or shares on a property owned under a shelf/limited company most of the respondents were using registered estate agents except for a few like parastatals that their estate agents were not registered. When selling property assets, 38% did not check how buyers sourced funds are screened which means they left it for property managers.

The low registration with REAC is worrisome as this area is the backbone of real estate management and it has not been made express in the Real Estate Professionals Act.

Pension Funds

A total of 19 responded to questions for pension funds a surprising figure since none of the total 95 respondents indicated they were from pension funds. The question of how they screen source of funds of their clients showed that only 1 of the 12 respondents' demands to know the source of income. Therefore not much can be concluded from this survey. From observation the challenge with pension funds is that when they acquire assets they don't ask how the property was/is developed.

Property Development

Most 80% of respondents do not screen clients source of funds; while 20% participants do assessment of clients bank statements and credit worthiness checks. All respondents do not screen main/sub construction contractors' source of funding. Almost all at 92.9% respondents do not perform any checks on payments made by main/sub-contractors. Only about 46.7% respondents carry out verification through examination of the Title deeds, whilst 53.3% participants do not carry out any verification. Mere 35.7% respondents do carry out screening of buyers sources of funds through assessments of financial references from banks. This clearly shows that property development is susceptible to money laundering.

Land Administrators

A significant 54% of the respondents were accepting cash payments which shows vulnerability to money laundering. All the respondents indicated that they do not check who develops the property and how such development was done and this is an open door for money laundering. When payment is made by the allottee for lease fees for undeveloped almost all 91% of the respondents indicated they did not request information on source of funds. A significant 70% of respondents most probably from Department of Lands requests for market value and selling price while 30% probably from land Board do not. Three quarters of the land administrators keep records forever whilst a quarter do not keep records.

Conveyancers

Only 55.6% participants ensure that a registered Estate agent is involved in transacting a sale of property; while 44.4% participants do not do such. Only 11.1% of conveyancers admitted to have been paid by property owners for estate agency while 88.9% participants have not received such payments. This shows weaknesses as unqualified estate agents who connive with money launders are then used.

Auctioneers

A noticeable 40% of respondents accepted cash payment after the auctioning process and 85.8% auctioneers do not check if bidders front for anyone else whilst half admitted to not setting the reserve price. Half of the auctioneers used market value for reserve, whilst a quarter used depreciated values and the rest did not use any. Still half the respondents answered that they advertised widely the properties for auctioning. Only 20% appoint REAC registered property auctioneers to carry out auctioneering process of property. All who do not use registered property auctioneers indicated that they do not screen customer's source of funds and have no mechanism of ensuring bidders are not fronting for other people. This area is also an open door for money laundering as cash transaction are high and also fronting.

Assessment of Real Estate Sector Vulnerability using World Bank NRA Tool

The World Bank National Risk Assessment Tool Module 7 was administered by the Reference Committee for analyzing the real estate sector AML Controls and inherent vulnerabilities and it was also applied to the six main products/services within the sector.

At first Excel file 7.A was administered by the Reference Committee collectively and the real estate sector vulnerability was determined at **0.77 being medium high risk.** This shows that the real estate sector is highly susceptible to money laundering basing on key inherent factors assessed in conjunction with the quality of AML controls.

Assessment of AML Control Input Variables

Table 1 below shows the assessment rating of the input variables which are designed to capture the main drivers of vulnerability within the real estate sector. This assessment was more about the quality, effectiveness and level of the variables considered. The higher the rating it shows that strong controls are in place. In the case of real estate sector the highest input variables were rated at medium. The rest were rated *medium low* to *does not exist* in the case of effectiveness of *Suspicious Activity Monitoring and Reporting*.

Table 1: Assessment Rating for General Input Variables

REAL ESTATESECTOR		
A. GENERAL INPUT VARIABLES/AML CONTROLS	**ASSESSMENT RATING**	
Comprehensiveness of AML Legal Framework	(0.5) Medium	0.5
Effectiveness of Supervision/Oversight Activities	(0.1) Close to Nothing	0.1
Availability and Enforcement of Administrative Sanctions	(0.1) Close to Nothing	0.1
Availability and Enforcement of Criminal Sanctions	(0.5) Medium	0.5
Availability and Effectiveness of Entry Controls	(0.3) Low	0.3
Integrity of Business/ Profession Staff	(0.4) Medium Low	0.4
AML Knowledge of Business/ Profession Staff	(0.3) Low	0.3
Effectiveness of Compliance Function (Organization)	(0.1) Close to Nothing	0.1
Effectiveness of Suspicious Activity Monitoring and Reporting	(0.0) Does Not Exist	0
Availability and Access to Beneficial Ownership information	(0.2) Very Low	0.2
Availability of Reliable Identification Infrastructure	(0.5) Medium	0.5
Availability of Independent Information Sources	(0.2) Very Low	0.2

As the Reference Committee assigned the ratings to each input variable, the justifications for the ratings above were recorded and are hereby summarized as below.

a. Comprehensiveness of AML Legal Framework

The Country has just amended and enacted about 25 statutory instruments dealing with AML/CFT prevention amongst them the FI Act and FI Act (Amendment) which addresses

- Specified parties obligation to identify customers through CDD (s.10), defines beneficial owners (s.3) and the new Companies Act makes it mandatory to indicate the beneficial owners of a company.
- Record keeping for at least 5 years (s.11 & 12).
- Enhanced due diligence on Politically Exposed Persons (PEPs) (s.10G)
- Suspicious Transaction Reporting (STR) (s.3 & 17) and defines suspicious transaction.
- Tipping-off and confidentiality (s.26 & 28)
- Internal controls including having compliance officers, foreign branches and subsidiaries (s.9 A-D, S. 27A)
- Supervision for AML compliance (s.27) which covers any legal entity registered or incorporated under any law.

The authority to register real estate professionals lies with REAC as per the Real Estate Professionals Act (s2, 15 & 20) however it covers only four disciplines of auctioneer, estate agent, property manager and valuer. Asset managers and property developers which are major players and the bedrock of the real estate industry are not covered. Furthermore the REPA does not regulate real estate companies which are legal entities within which the professionals practise. These two major gaps have been found to expose and weaken REAC's powers to regulate real estate market entry, ensure accountability to controls, adherence to ethics, proper governance and professional standards as well as establish minimum prudential supervisory standards and policies in respect to CDD, internal controls, verification of beneficial ownership, record keeping and reporting suspicious transactions.

For the above reasons, the RC rated AML Laws and Regulations for the real estate sector **medium at 0.5.**

b. Effectiveness of Supervision/Oversight Activities

REAC as a supervisory authority for real estate sector has been clearly identified in the FI Act as per Schedule II and s.27 which spells out the obligations of supervisory authorities. However, that been said, REAC is not effective because it has not been resourced for supervision in terms of trained personnel, finances, and technical capacity. Therefore, no supervisory work has been done hence the rating of *Close to Nothing*.

c. Availability and Enforcement of Administrative Sanctions

In terms of the FI Act there are monetary penalties for non-compliance with AML obligations. However, REAC has nothing in place. The REPA s.25 provides that if a registered professional is found to be guilty of an act or omission amounting to improper or disgraceful conduct as determined by the code of conduct of the Real Estate Institute of Botswana he/she shall be convicted of an offence and necessary sanctions taken. REAC may caution, censure or fine such professional; suspend the registration of the professional for such period as the Council may specify; or direct that his name be removed from the register. Despite this being in place in the REPA, REAC has never imposed these sanctions for non-compliance. And the sanctions do not necessarily relate to AML obligations therefore the RC rated this variable as *Close to Nothing*.

d. Availability and Enforcement of Criminal Sanctions

The FI Act and FI Act (Amendment) provides appropriate and dissuasive criminal sanctions for non-compliance. The Law Enforcement Agencies being Botswana Police Service, DCEC and DPP are busy and have developed capacity to investigate and prosecute money laundering and terrorist financing cases. However, there are challenges with criminal enforcement against real estate professional firms and staff with regard to other crimes such as fraud, obtaining by pretension as the REPA does not give the LEA warrant to search hence no criminal sanctions have been taken, hence a **medium** rating at **0.5**.

e. Availability and Effectiveness of Entry Controls

The responsibility for registering real estate professionals to practice in Botswana is exclusively conferred upon REAC in terms of REPA. However, this only covers four disciplines. The real estate legislation does not cover property developers and asset managers as well as all real estate firms. The REAC has unauthenticated understanding and appreciation for the ML risks in the industry. However, the framework for registration and licensing real estate businesses and professionals is not comprehensive as such presenting an open door to criminals. Even the disciplines covered by the Act do not have existing adequate AML compliance controls.

f. Integrity of Business/Profession Staff

The businesses within real estate sector do not vet their staff and being related to the construction industry which is generally corrupt the sector is susceptible. Most organizations do not have AML policies and some are not even aware they should have them. Those with some form of procedure it relates to anti-corruption and whistle blowing to report malicious acts. Incidences of integrity failure seem to be under reported within the sector. There are a noticeable number of cases related to AML at Land Boards and Department of Lands as per the interviews. This is all because these two manage a very valuable and scarce resource being 'LAND'. There are also cases within the general public which have not been reported particularly in property development. More awareness should be conducted on professional integrity hence **a medium low rating of 0.4.**

g. AML Knowledge of Business/Profession Staff

Basic awareness has been carried out during the course of the assessment however it was not enough as most professionals did not attend. There are no appropriate AML training programs and materials for professionals/staff. Professionals are not aware of the AML compliance and reporting procedures and obligations. Awareness of AML is average within businesses as it was only done to a handful members of REAC. Professionals do not understand the legal consequences of AML compliance breaches and do not have good knowledge of and are not regularly updated on domestic and transnational money laundering schemes and typologies. There is no requirement for real estate professionals and business staff to undergo training to ensure that their knowledge of AML laws, policies and procedures are appropriate and up-to-date. As such the rating was at **0.3 low**.

h. Effectiveness of Compliance Function

The firms within real estate sector have not carried out self-assessment on ML/TF risks and therefore most do not have internal compliance programs. The majority of firms do not have compliance officers let alone at senior management level as 71.8% indicated so. No AML audits are being carried out on staff. Therefore, the rating **is Close to Nothing at 0.1.**

i. Effectiveness of Suspicious Activity Monitoring and Reporting

Firms have manual and some computerized information systems for monitoring client transactions. KYC from the interviews done is at 55%. CDD stands at 75% however most professed to not keep records. No PEP screening is done and actually the firms still need guidance as to how they should do this. No reports have been done with REAC or FIA therefore effectiveness **does not exist hence 0** rating.

j. Availability of Access to Beneficial Ownership Information

Its only with the amended Companies Act that beneficial ownership of corporations, trusts or companies is required. Otherwise except where due diligence demanded such information to be availed. REAC did not have authority to request information on the structure, management, control and beneficial ownership of the businesses hence no record is kept hence rating of **low at 0.3**.

k. Availability of Reliable Identification Infrastructure

The country's identification infrastructure can be relied upon however the issue is its accessibility for verification hence rating of **medium at 0.5.**

l. Availability of Independent Information Sources

Independent and reliable financial information about clients are not available and cannot be easily accessed by AML regulated institutions hence rating of **Very Low at 0.2**.

Assessment of Inherent Vulnerability Variables

Subsequently an assessment of the inherent factors specific to the real estate sector was conducted and rated as per the table below. It was very difficult to do inherent vulnerability assessments as information is not kept central and hence not available in the industry as to the volume of business, client base profile, level of cash activity associated with the real estate sector and other factors such as ML typologies on the abuse of the profession and businesses. Even in terms of professionals it was difficult to estimate those practicing unregistered because they do not meet the requirements or they are not regulated.

The estimation is that there are more practicing professionals who are not registered. Out of about 1159 real estate professionals in the Country, only 205 are registered with REAC being 18% of the providers a case pointing to the inherent vulnerability of the industry. Real Estate Agents are 205, Valuers 102, Property Managers 114 and only 4 Auctioneers registered with REAC. There is an influx of estate agents as it requires only a qualification at certificate and hence most of the unregistered professionals are in estate agency. The size of the profession was therefore assessed as medium high. The client base is rated medium risk as it has a combination of resident and non-resident foreign businesses and personal interest. The level of cash activity is medium high in real estate sector as the use is permitted as evidenced from the questionnaire and interview results where 50% respondents affirmed. Mostly sale transactions on tribal land tenure happens in cash and it is not recorded anywhere.

The use of agents in the sector is medium high and anonymous use of the products is available. There is difficulty in tracing transactions and it is time consuming as some transactions are not recorded except for those done perhaps through registered professionals and agents. The use of real estate sector in fraud or tax evasion schemes exist and is significant. Money laundering typologies exist on the abuse of the real estate sector and there are cases before the courts as indicated above even abuse that occur as a result of no regulation of some disciplines in the industry or particularly the tribal land tenure not comprehensively regulated and administered.

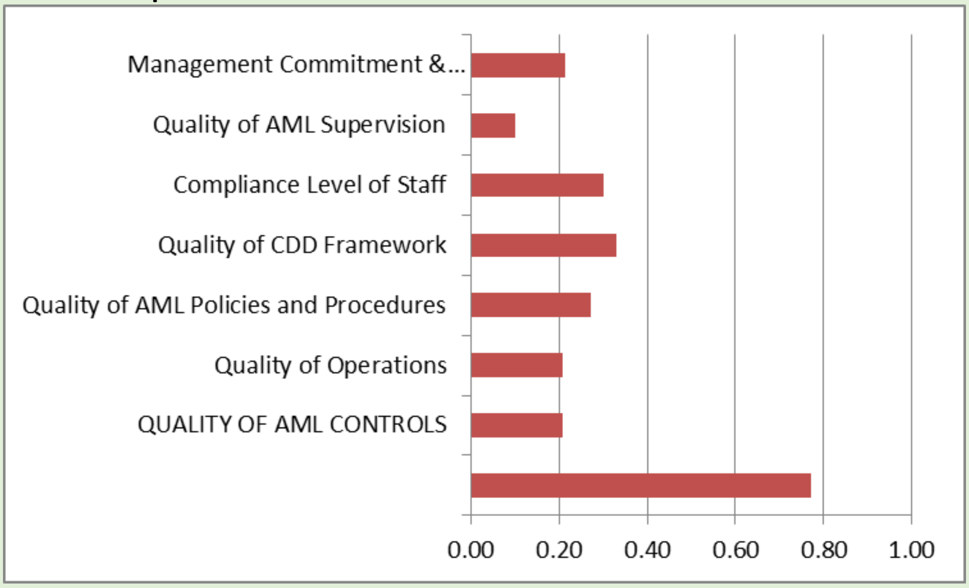
Table 2: Inherent Vulnerability Factors Assessment

B. INHERENT VULNERABILITY FACTORS (FOR THE BUSINESS/PROFESSION)	OVERALL ASSESSMENT FOR THE BUSINESS/PROFESSION
Total Size/ Volume of the business/profession	Medium High
Client Base Profile of the business/profession	Medium Risk
Level of Cash Activity in the business/profession	Medium High
Other Vulnerable Factors - Use of Agents in the business/profession	Medium High
Other Vulnerable Factors - Anonymous use of the product in the business/profession	Available
Other Vulnerable Factors - Difficulty in tracing the transaction records	Difficult/Time Consuming
Other Vulnerable Factors - Existence of ML typologies on the abuse of the business/profession	Exist and Significant
Other Vulnerable Factors - Use of the business/profession in fraud or tax evasion schemes	Exist
Other Vulnerable Factors - Non face to face use of the product in the business/profession	Available

Output Assessment for Real Estate AML Controls

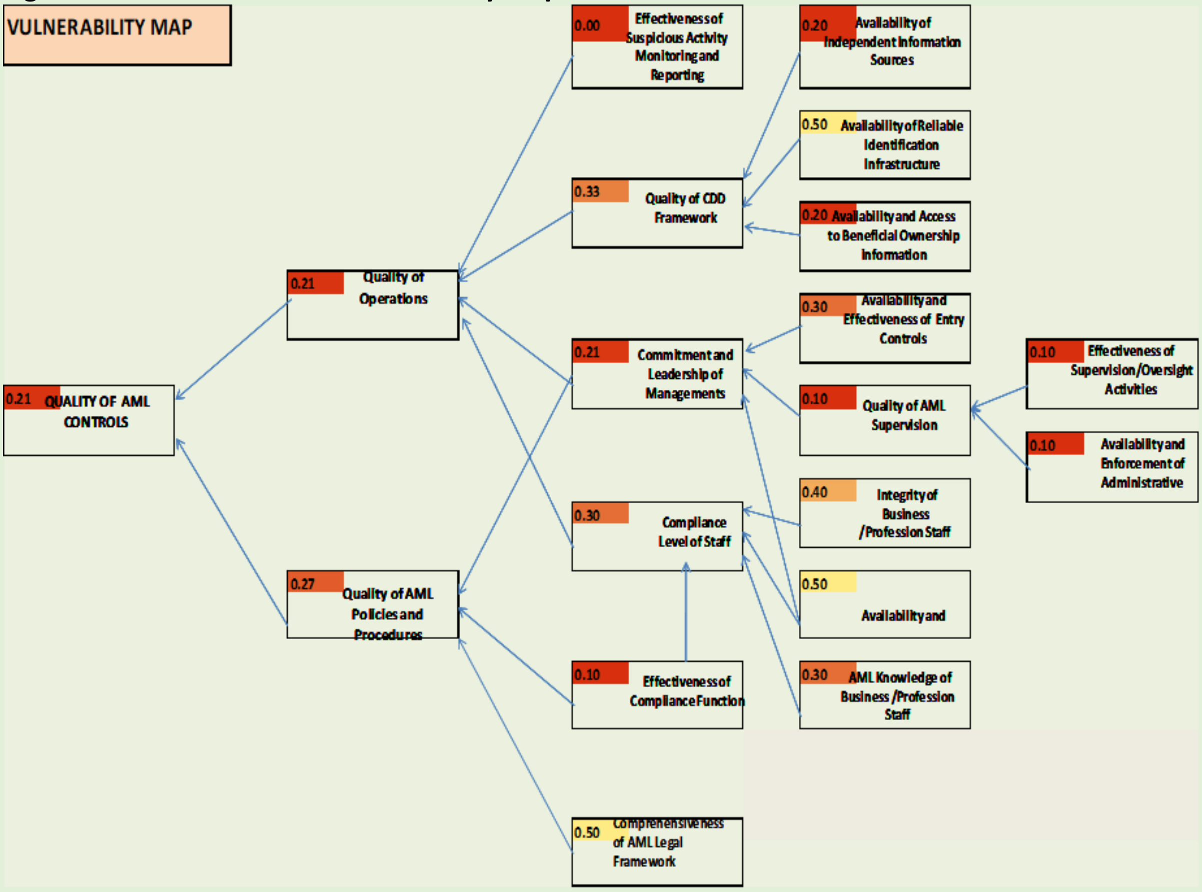
The Chart below shows the output assessment results for AML Control Intermediate Variables next to the unlabeled final real estate vulnerability rating at **0.77 medium High**, and clearly it will be desirable if the results were switched as high score in vulnerability shows the sector is more susceptible to money laundering and low output variables rating shows weaknesses in AML controls.

Chart 1: Output Assessment Results for Real Estate AML Control Intermediate Variables



The vulnerability map in Figure 1 below shows how the assessment inputs cause impact on the outputs reflected in Chart 1. And this network diagram gives insight as to the input variables to address in order to impact the AML controls. The results as presented in Chart 1 and Figure 1 show that the quality of AML Controls is very weak as signified by a low rating as can be seen from the red colour. This clearly is caused by the weak quality of operations and Quality of Internal AML Policies and Procedures. The medium low Compliance Level of Staff, non-existent Suspicious Activity Monitoring and Reporting Systems, low Commitment and Leadership of Management and medium low quality of CDD framework underpin the deficiencies in operations. Additionally, lack of Administration Sanctions and Supervisions Procedures and Practices are factors underlying low Quality of AML Supervision which in turn together with low Effectiveness of Entry Controls adversely impact Commitment and Leadership of Real Estate Sector Management.

Figure 1: Real Estate Sector Vulnerability Map



Real Estate Products Vulnerability Rating

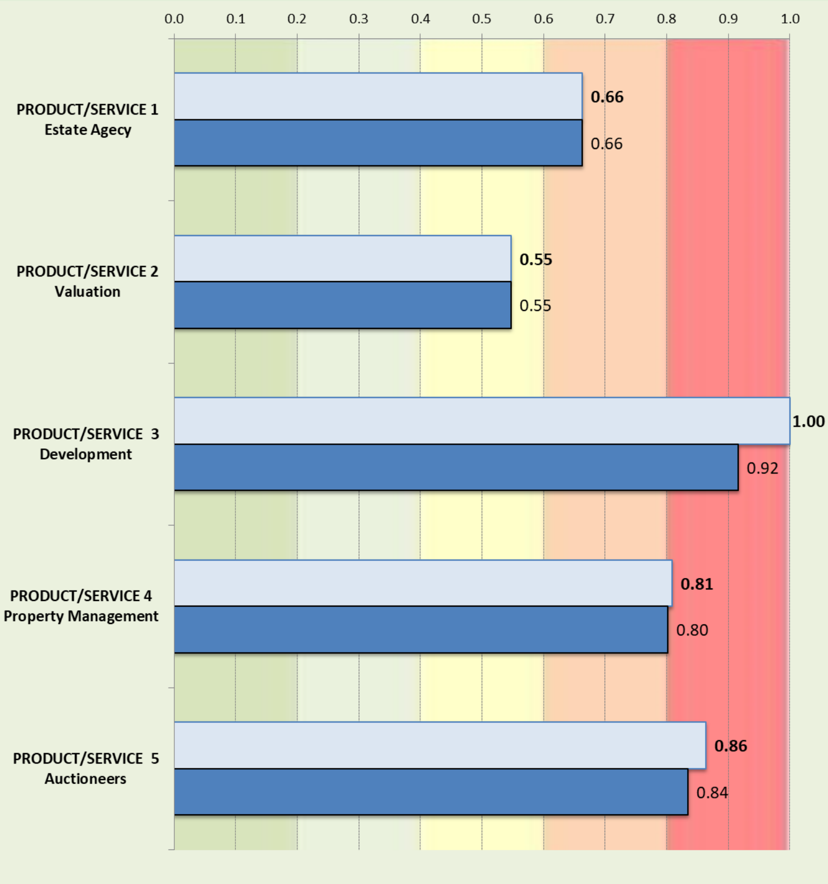
However the Reference Committee realized that there was need to look at the specific services as regulated and also those that are not regulated. Since the Excel File 7.B could only take up to five products, the fifth product was property development whereas asset management was done separately.

Property Development

This product final rating was at **0.92** being the **highest** within the sector. This is especially so when taking into account the fact that individuals in Botswana particularly foreigners have taken part as developers and sellers of newly built properties especially residential in urban areas. What is even more worrisome is that there is no data of such players kept anywhere due to the fact that there is nowhere the property gets into their hands. This is supported by interviews with the local and land authorities where low cost plots were allocated and built within a month and transferred. Unfortunately the conveyancers are deeply involved in these transactions and aid the transfers from such developers. This is also buttressed by the fact that the real estate construction industry carries an increased money laundering risk because payments for construction material and auction price may be made in cash as already seen from interview with auctioneers and a material supplier.

The high scoring is exacerbated by the fact that there are loopholes in the property sale and transaction law and also there is no legal regulation of the property development industry. This is worsened by the fact that 70% of the land is tribal where no questions are asked as to how the land was developed and by whom and where the funds were sourced. There is not even data on the number of players in the property development industry.

Chart 2: Real Estate Sector Products Vulnerability Rating



Asset Management

This discipline attained a rating of **high risk at 0.88** given that it is scantily regulated within the real estate sector and not much is known as to the source of funds particularly for private individual developments. Use of profession in fraud and tax evasion schemes is in existence. Properties are acquired fraudulently and some investors like funds do not check the source of funding for properties being acquired.

Auctioneering

Auctioneering is amongst the most vulnerable at **high risk** rating of **0.84**. In most cases property auctions are conducted by deputy sheriffs who are messengers of the Courts and do not have the requisite expertise to value and set reserve prices. Only 4 auctioneers are registered with REAC. There is more fronting in auctions with beneficial owners not known and deposits particularly are made using cash.

Property Management

This is an area also with high numbers of unqualified professionals in operation. This compromises integrity of the profession. Most organizations in the public and private sector employ unregistered and unqualified personnel for this function. The focus of professionals tends to be in ensuring that rentals due are collected and property kept in good condition and as such financial capability of contractors and tenants is key with not much attention paid to source of funding. Hence the final rating is **high risk at 0.80**.

Estate Agency

Estate agency at **medium high risk of 0.66** was found to be susceptible to money laundering as most of the practicing agents are not qualified and are attracted by making quick money from property sales. There is no requirement for agents to be disclosed and as such even conveyancers do provide estate agency hence aiding money launders.

Valuation

Valuation is the least vulnerable at **0.55 Medium risk**. The Vulnerability Map below shows a visual summary of how the assessments inputs cause impact on the outputs. The Deeds Registry and REAC indicated that there have come across instances of under or over valuing of properties by valuers suspected to be for tax evasions and to launder money.

KEY FINDINGS

Vulnerabilities within the real estate sector have been identified as:

a. Disintegrated approach by the Land Authorities responsible for allocation, development monitoring, transfer and licensing in the process giving room for money laundering.
b. In all residential developments that are occurring there is nowhere that the developer appears.
c. Some players in the sector not regulated such as property developers and real estate asset managers as well as businesses as only individuals are regulated. With no legal requirement for reporting suspicious activities the property developers may not volunteer to file any to REAC or FIA
d. REAC not capacitated to undertake supervisory functions hence weak AML supervision within the sector
e. The use of cash transactions in paying for materials, plots, etc.
f. There has not been effective implementation of laws relating to the real estate sector
g. Challenge of unregistered players in the industry, e.g. developers, estate agents.
h. Lack of visibility of registered estate agents hence the public resorting to using unqualified estate agents for transactions.
i. The role played by conveyancers and lack of integrity by some in using unqualified estate agents and also acting themselves as estate agents further exposing the sector to risk
j. Lack of awareness and alertness to ML/TF indicators arising out of most of the predicate offences. There is insufficient training on money laundering in the real estate sector. Most (2/3) of registered agents, property managers, auctioneers and valuers are unfamiliar with AML laws, typologies, risks and how they can be exploited in the real estate sector.
k. REPA lacks power of search hence incapacitating Law Enforcement Authorities like BPS
l. There is lack of identification on the source of funds as focus is on financial capacity of tenants, developers, investors, etc, that is, their ability to pay or develop a piece of land once allocated.

This also relate real estate investment from foreign investors, private investors or anonymous investors that are not accounted for during the due diligence process.

Likewise, there are some strengths identified within the sector being:

i. Regulation of the four professional streams in the sector of estate agency, valuation, property management and auctioneering.

ii. Adequate legal framework requirements for registration of properties

From the real estate sector Vulnerability assessment, the following have been identified as the critical priority areas to be addressed in order to enhance and strengthen AML Controls in order as number with AML knowledge of Business or Profession staff as the first followed by Effectiveness of Supervision then Effectiveness of Compliance Function, Effectiveness of Suspicious Activity Monitoring and Reporting then availability and enforcement of administrative sanctions and availability and effectiveness of entry controls. The other areas will follow in order and particular areas of need. So the recommendations should be in a position to address these variables as prioritized.

Table 3: Priority Ranking for AML Controls

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	8
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	5
Availability and Enforcement of Criminal Sanctions	9
Availability and Effectiveness of Entry Controls	5
Integrity of Business/ Profession Staff	7
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	4
Availability and Access to Beneficial Ownership information	10
Availability of Reliable Identification Infrastructure	11
Availability of Independent Information Sources	12

RECOMMENDTIONS FOR RISK-BASED APPROACH

As of priority to strengthen AML Controls within the real estate sector the following should be considered:

1. **Capacitate REAC:** The Regulator/supervising authority (REAC) should introduce AML/CFT compliance, supervision and monitoring function as per s.27 of FI Act. Such function should be capacitated with at least compliance and investigations officers whom should be fully trained to

acquire high level of technical competencies on AML/CFT regulations and real estate practices and eventually be accredited by BQA as trainers.

2. **Establish risk-based approach within REAC**: The Regulator should develop ML/CT supervisory regulations and manuals to improve legal and operational capabilities on supervisory function of all gatekeepers within the real estate sector. Such regulations should dictate the gatekeeper's requirements on ML/CT Risk Based Approach for self-assessment and Risk Plans, designate ML/CT Compliance Officers, and other issues needed for compliance with FIA Act and its regulations.
3. **Jointly Undertake Risk-Based Supervision with FIA**: The Regulator should commence and carry out a sample of inspections in the real estate sector as guided by the assessment outcome covering compliance audits on all gatekeepers to ensure that quality assurance programs concerning Know Your Customer, internal controls, Customer Due Diligence and Enhance Due Diligence programs are complied with. Such should be a combination of onsite and offsite audits.
4. **REAC to Conduct outreach programmes Real Estate Businesses Jointly with FIA to enhance application of AML/CFT obligations:** The Regulator should develop CPD/Training programmers to facilitate gatekeepers in acquiring adequate knowledge for understanding of, and responsibilities of gatekeepers as per FIA Act & Regulations. The regulator should ensure that all gatekeepers undergo CPD/ training Programmed. Such should be a requirement that must be met before registration or renewal thereof of the gate keepers and licensing business entities on which such gatekeepers operate through.
5. Improvement of the Real Estate Professionals Act: The Act should be enhanced to address the identified gaps and incorporate the following:
   - 5.1. Register all key gate keepers as identified within real estate sector which are estate agents, valuers, real estate managers, property managers, real estate auctioneers, asset managers (investment managers), real estate developers and Land Administrators to improve supervisory effectiveness.
   - 5.2. Register real estate businesses to cover reporting entities and be able to regulate them for compliance to FI Acts and Regulations.
   - 5.3. Establish Real Estate Advisory Agency with a management structure separate from the governing body, Real Estate Council to capacitate the supervisory function of professionals and businesses.
   - 5.4. Expectations for businesses and professionals in relation to conduct, operations, risk management to include trust accounts and their audits.
   - 5.5. Provide LEA and REAC with power to search to give effectiveness to criminal investigations and sanctions.
6. **Establish real estate transactions depository**: need to be improved to facilitate transaction testing. Transaction testing can enable auditing of real estate transactions anytime. In the current scenario, Deeds Registry is a depository of sales transactions mostly of state land, very less on tribal land. It doesn't capture sales transactions through sale of share nor lease transaction nor sales/valuation declarations by estate agents and valuers. Deeds Registry needs to be empowered through provisions in Deeds Registry Act for setting up of an adequate transaction depository that will record data rich transactions so that audits can be sufficiently conducted for purpose of detection of money laundering activities. This will also enhance access to information on transactions.
7. **Property Development Reporting**: Property development transaction structures, transaction values and disclosure of sources of funding should be submitted with the Land Authorities for compliance.