



# Anti-money laundering and counter-terrorist financing measures

# Zambia

## Mutual Evaluation Report

June 2019





The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

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## ACRONYMS

ACA	Anti-Corruption Act
ACC	Anti-Corruption Commission
AFU	Asset Forfeiture Unit
AG	Attorney General
AGO	Attorney General's Office
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Authority
AMLIU	Anti-Money Laundering Investigations Unit
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ARINSA	Asset Recovery Inter-Agency Network for Southern Africa
ATA	Anti Terrorism Act
AU	African Union
BFSA	Banking and Financial Services Act
BO	Beneficial Ownership
BoZ	Bank of Zambia
BNI	Bearer Negotiable Instrument
CBR	Correspondent Banking Relationship
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
COMESA	Common Market for Eastern and Southern Africa
CTR	Cash Transaction Reports
DEC	Drug Enforcement Commission
DFS	Digital Financial Services
DG	Director General
DNFBP	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
EDD	Enhanced Due Diligence
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EU	European Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FIC	Financial Intelligence Centre
FPCA	Forfeiture of Proceeds of Crime Act
GDP	Gross Domestic Product
GTS	Global Transaction System
ICRG	International Cooperation Review Group
IN	Interpretive Note
INTERPOL	International Criminal Police Organization
IOs	Immediate Outcomes
ZMW	Zambian Kwacha
KYC	Know Your Customer
LEAs	Law Enforcement Agencies
ME	Mutual Evaluation
MER	Mutual Evaluation Report
MFI	Micro-Finance Institution
ML	Money Laundering
MLA	Mutual Legal Assistance
MLACMA	Mutual Legal Assistance in Criminal Matters Act
MLRO	Money Laundering Reporting Officer
ML/TF	Money Laundering/Terrorist Financing

MoU	Memorandum of Understanding
MVTS	Money or Value Transfer Services
NGO	Non-Governmental Organization
NATC	National Anti-Terrorism Centre
NBFI	Non-Bank Financial Institution
NPA	National Prosecution Authority
NPO	Non-Profit Organisation
NPS	National Payment System
NRA	National Risk Assessment
NRC	National Registration Card
NTFSO	National Task Force of Senior Officials
PACRA	Patents and Companies Registration Agency
PEPs	Politically Exposed Persons
PF	Proliferation Financing
PIA	Pensions and Insurance Authority
PPMLA	Prohibition and Prevention of Money Laundering Act
RBA	Risk Based Approach
SADC	Southern Africa Development Community
SARPPCO	Southern African Regional Police Chiefs Cooperation Organization
SEC	Securities and Exchange Commission
SR	Special Recommendation
SRB	Self-Regulatory Body
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFCU	Tax and Financial Crime Unit
TFFFI	Terrorist Financing Fact Finding Initiative
TFS	Targeted Financial Sanctions
TPIN	Tax Payer Identification Number
UBO	Ultimate Beneficial Owner/ship
UN	United Nations
UNSCRS	United Nations Security Council Resolutions
ZICA	Zambia Institute of Chartered Accountants
ZIEA	Zambia Institute of Estate Agents
ZPS	Zambia Police Service
ZRA	Zambia Revenue Authority
ZSIS	Zambia Security Intelligence Service

## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in the Republic of Zambia as at the date of the on-site visit [25 June - 06 July 2018]. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Zambia's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

- a) The authorities in Zambia, have relatively a good understanding of the ML/TF risks which are faced by the country, informed by the results of the National Risk Assessment (NRA), and there is good cooperation and coordination both at policy and operational levels which include all relevant competent authorities. Zambia does not have a national AML/CFT Policy and Strategy in place but is in the process of developing one based on the results of its NRA.
- b) Zambia displayed a good understanding of its TF risk and has effectively detected, mitigated and disrupted TF incidences through well coordinated and collaborated joint operations. There are also reasonable steps which have been initiated to categorise the NPOs in terms of their vulnerability to TF risk though the inspection monitoring tool in use does not include components of risk exposure to TF. The authorities have however not ratified two of the protocols which are Annexes to the TF Convention.
- c) LEAs in Zambia effectively use financial intelligence from the FIC and other sources which have reasonably contributed to the investigation and prosecution of all types of ML and TF. The quality of FIC's financial intelligence and analysis reports is considered good and useful to effectively support the operational needs of LEAs.
- d) With the exception of the AMLIU and ACC, other investigative authorities did not demonstrate that they effectively investigate ML and carry out parallel financial investigations. As a result, the number of ML investigations and prosecutions relative to the predicate offences reported and processed, is low. AMLIU, ACC, TFCU and AFU have a low resources capacity which hinders them from effectively performing their mandate in general and in line with the country's risk profile.
- e) The sanctions imposed in successful ML cases are not effective, dissuasive, and proportionate. Further, no legal person has been prosecuted or sanctioned for ML, despite some of the cases prosecuted indicating involvement of legal entities in the commission of the ML offence.
- f) The number of confiscations of criminal proceeds, instrumentalities and property of corresponding value are low and is not done as a policy objective.
- g) FIs have a good understanding of the ML/TF risks facing the products and services they provide as well as their AML/CFT obligations, though at varying levels depending on size and level of sophistication of business operations. The DNFBPs, with the exception of large law firms and large dealers in precious stones who demonstrated good understanding of the risks and awareness of their AML/CFT obligations, have little understanding of the risks they face and their AML/CFT obligations.
- h) The suspicious transactions reporting obligation is overall well understood by reporting entities. A high number of STRs have been filed by commercial banks, distantly followed by MVTS and bureau de change. Notwithstanding, the number of STRs filed relating to TF

are low. The rest of the reporting entities either had negligible reports or had no reports filed at all.

- i) Supervisory authorities have not adopted a risk-based approach to supervision for AML/CFT. They have also not started issuing sanctions where AML/CFT laws and regulations are violated. The supervisors for DNFBPs are yet to commence their supervisory role and to apply a risk-based AML/CFT supervisory framework.
- j) Zambia's framework and implementation of targeted financial sanctions (TFS) against terrorist financing in terms of the United Nations Security Council Resolutions (UNSCRs) 1267 and 1373 (and its successor resolutions) is working fairly well. However, small to medium FIs and DNFBPs are yet to effectively implement their TFS obligations. Zambia has no specific legal or regulatory framework for implementing TFS relating to proliferation financing (PF) and this has negatively impacted on the level of awareness of TFS relating to PF by most of the competent authorities and the reporting entities.
- k) Zambia has recently enacted a new Companies Act which provides for obtaining of beneficial ownership information of legal persons at the time of registration but the implementing regulations have not yet been issued. There is no adequate legal and regulatory framework to obtain and maintain beneficial ownership information on legal arrangements neither has there been a comprehensive ML/TF risk assessment on all forms of legal persons.
- l) Zambia has in place a good legal and institutional framework to cooperate and exchange information with foreign counterparts in respect of mutual legal assistance (MLA) and other forms of international cooperation. However, the effectiveness of cooperation is hindered by lack of an effective case management system that enables effective monitoring and accounting for cases.

### ***Risks and General Situation***

2. The AML/CFT legal framework of Zambia has been improving since the previous mutual evaluation in 2007. Most of the FIs have taken reasonable steps to understand their ML/TF risks and their AML/CFT obligations, albeit, at varying levels. However, the DNFBPs sector (with the exception of large law firms and large dealers in precious stones and metals) has a low level of understanding of its ML/TF risk and implementation of mitigating controls.

3. Zambia conducted its first NRA and shared the results with stakeholders in September 2017. The NRA was updated in June 2018. The five highest proceeds generating predicate offences in Zambia are (i) corruption; (ii) tax evasion; (iii) theft; (iv) fraud; and (iv) drug trafficking. Corruption is generating the highest amount of criminal proceeds.

4. The channel most vulnerable to ML activity appears to be the banks based on materiality as they occupy 78 percent of the financial sector assets, the range and types of products they offer, the transaction volumes they handle, and the connection of the banking sector with the international financial system. The legal profession in Zambia is also vulnerable to misuse for ML risks mainly due to its involvement in activities exposed to a high ML risk (e.g. real estate transactions, creating legal persons and arrangements on behalf of clients). Other entities vulnerable to laundering of cash include casinos, precious stones and metal dealers, and second-hand motor vehicle dealers.



5. Zambia still faces a risk of the offences identified to be high risk as the investigations and prosecutions being done are not consistent with the high risk offences identified. The authorities have also not come up with policies and strategies to guide investigations and prosecution of the high risk offences and how provisional and confiscation measures relating to these illicitly generated proceeds should be prioritised as an objective. Added to this some of the proceeds generated from these offences are likely being missed as parallel financial investigations are not initiated in all cases. In the absence of proper policies being put in place to mitigate these high risk predicate offences, the AML/CFT systems of Zambia remain vulnerable to illicit proceeds generated from these offences being channelled through them. The above shortcomings are also compounded by inadequate resources available to the critical competent authorities dealing with AML/CFT issues.

6. The risks of terrorism and terrorism financing are well understood by the Zambian authorities. The authorities are of the view that the threat of TF or terrorism does not arise from the locals but from some of the foreign nationals whose origins are from high risk TF countries. Although the authorities have taken measures to limit the risk of terrorism and TF, Zambia still remains vulnerable to these threats due to it being more of a cash economy which result in most of the transactions being undocumented or processed through informal transmission mechanisms such as hawala, long porous land borders which might be abused by terrorists or terrorist financiers, being a transit country which increases the volume of people who come in and leave the country and volatility caused by the militant group Al-Shabbab in East and the Horn of Africa.

### ***Overall Level of Effectiveness and Technical Compliance***

7. Since its last mutual evaluation in 2007, Zambia has enacted new laws and strengthened its institutional framework to have a more robust and relatively effective AML/CFT system. The new laws have provided full criminalisation of the offence of ML, broadened the confiscation of proceeds and instrumentalities of crime to non-conviction and conviction based, provided for effective, proportionate and dissuasive sanctions including administrative sanctions for a selected competent authorities, introduced new requirements on obtaining and maintaining information on BO, improved on the CDD requirements and obligations of reporting entities, and provided for the establishment of the FIC. The new legal framework also came in with the creation and operationalization of the following institutions to implement some of the laws in preventing and combating both ML and TF: Financial Intelligence Centre (FIC), Anti-Money Laundering Investigations Unit (AMLIU), National Anti-Terrorism Centre (NATC), Tax and Financial Crimes Unit (TFCU), and the Asset Forfeiture Unit (AFU) in addition to the other already existing institutions. However, despite all these developments there were still shortcomings relating to technical compliance. These mainly involve having an adequate framework to implement targeted financial sanctions, oversight of NPOs which might be exposed to TF abuse, CDD and other preventive and supervisory measures applicable to both FIs and DNFBPs, transparency of legal persons and arrangements and measures pertaining to some aspects of international cooperation.

8. In terms of effectiveness, the FIC has been able to provide financial intelligence and other information which has assisted LEAs to carry out ML and TF investigations which have resulted in either successful prosecution or disruption of TF activities, although still to a limited extent. The newly created institutions to combat ML and TF have started to make relative progress in investigating, prosecuting and confiscating proceeds of crime but are not performing to their maximum capabilities due to lack of adequate resources which is further aggravated by

lack of AML/CFT policy and strategies. The provisions relating to obtaining of information of legal persons have not been fully realised as the implementing legal framework is not yet in place. The authorities are yet to fully implement effective risk-based supervision and compliance with preventive measures. The authorities have a good national coordination system but need to improve on handling of MLA matters, particularly relating to monitoring and accounting for requests.

*Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

9. Zambia generally demonstrated a fairly good understanding of its ML/TF risks and policy coordination. The results of the NRA heightened the existing understanding of ML/TF risks by the authorities. Zambia's AML/CFT coordination at the operational level is effective and inclusive of all relevant competent authorities. The Ministry of Finance provides policy direction and exercises oversight on AML/CFT policy. The Anti-Money Laundering Authority (AMLA) serves as the advisory body on AML/CFT matters for Government. The AML/CFT National Task Force of Senior Officials (Task Force) provides a forum for multi-agency coordination of strategies and the implementation of AML/CFT policy in Zambia. The Task Force is currently in the process of developing a National AML/CFT Strategy to mitigate the emerging and existing risks.

10. The completion of the NRA is one of the major achievements of the different coordination structures in Zambia. The exercise further strengthened stakeholder engagement between the public and private sectors. The authorities have identified (in that order) corruption, tax evasion, theft, fraud and drug trafficking as the predicate offences generating the most proceeds for laundering. Zambia is in the process of using the results of the NRA to coordinate an effective risk-based allocation of resources to mitigate the identified ML/TF risks through policies and programmes at a national level. The private sector demonstrated a varied understanding of ML/TF risks. Overall, the FIs demonstrated a higher understanding of ML/TF risks than the DNFBP sector.

11. National co-ordination and co-operation on AML/CFT matters has improved at policy and operational levels since the last assessment.

*Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

12. The FIC is the national financial intelligence unit (FIU) of Zambia which is responsible for receipt, request, analysis and evaluation of reports and dissemination of financial intelligence and other relevant information to the LEAs and other competent authorities. The FIC has autonomy and operational independence to perform its core functions and has access to a wide range of databases to augment its analysis of the different transaction reports it receives from reporting institutions. The FIC has reasonable capacity to discharge its core functions to assist LEAs to identify potential criminal proceeds and TF cases. The FIC is well structured and has a secured environment to safeguard its operations. There is need for the authorities to provide more resources to the FIC to enable it to strengthen its capacity to support the emerging focus on complex financial crime investigations by LEAs. The FIC has provided a number of financial intelligence reports and other information to support the operational needs of the investigative bodies in Zambia.

13. Zambia has a well established legal and institutional framework which allows LEAs to collect and use a wide variety of intelligence to investigate predicate and ML crimes as well as identification, tracing and confiscation of assets linked to ML. The country successfully identifies and investigates ML cases, on the basis of the financial intelligence but also including information supplied through ongoing investigation of predicate offences. However, with the exception of AMLIU and ACC, the majority of the LEAs have not demonstrated that they pursue parallel financial investigations and that they prioritize ML investigations. AMLIU which is currently receiving ML referrals from other LEAs for investigation, in addition to the cases it identifies on its own, is not adequately capacitated (human and technical resources) to effectively carry out its functions. Consequently, the number of ML investigations and prosecutions relative to the predicate offences reported, investigated and prosecuted is low (i.e. 124 prosecutions in the 5 year period under review) and not consistent with the identified ML risks. Notwithstanding, Zambia successfully prosecutes all types of ML offences, including cases of stand-alone, third party ML and self-ML. There are cases of successful conviction (26 cases) and sentencing of natural persons (none for legal persons). Sentencing for ML offences is, however, not considered effective, dissuasive, and proportionate (e.g. a case with very short sentence of 15 days imprisonment was noted).

14. Zambia established an administrative AFU within the NPA in order to target proceeds and instrumentalities of crime. However, the AFU is still in its infancy and is not adequately resourced. Although the number of confiscation of criminal proceeds, instrumentalities and property of corresponding value is low, the authorities successfully demonstrated that they use administrative, non-conviction and conviction based confiscations to effect confiscation of proceeds and instrumentalities of crime. At the time of the onsite visit the authorities had forfeited property, including real estate, luxury vehicles and funds. Confiscation of falsely and non-declared cross border currencies and bearer negotiable instruments is rarely done and hence sanctions are not adequately applied. There is also a need for the authorities to maintain comprehensive statistics relating to property frozen, seized, confiscated and forfeited.

#### *Terrorist Financing and Financing of Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

15. The Zambian authorities demonstrated a good understanding of the TF risks that the country is facing and the measures they have put in place to effectively detect, mitigate and where necessary, disrupt the TF activity. The legal provisions in Zambia adequately criminalise TF in line with the FATF Standards. The country demonstrated successful cases of TF disruptions resulting from well coordinated efforts by relevant agencies through joint operations. The NATC, ZSIS and other LEAs regularly exchange information, which contributes to investigation of TF activities. However, there has only been disruption of TF activities and no TF prosecution in Zambia.

16. Zambia has the legal and institutional framework to implement UNSCRs although the framework has some glaring limitations (e.g., it does not empower Zambia to propose a name for designation to relevant UNSC Committees). There is no legal framework for implementation of TFS relating to PF. Resultantly supervisory authorities are not monitoring compliance on implementation of TFS relating to PF. However, in practice the large domestic and foreign-owned/controlled FIs implement sanctions without delay, but the rest of the FIs and DNFBPs have limited awareness of their UNSCRs obligations.

17. While Zambia's competent authorities have provided a number of awareness workshops to the NPO sector and had just commenced gathering information to implement a risk-based approach to the NPO and societies sectors based on the results of the NRA, this had not yet gained much ground and no NPOs had yet been identified as being vulnerable to possible TF abuse.

*Preventive Measures (Chapter 5 - IO4; R.9-23)*

18. The FIC Act is the primary statute setting out AML/CFT obligations for FIs and DNFBPs in Zambia. The FIC Act requires FIs and DNFBPs to implement mitigating controls on a risk-sensitive basis. Generally, the FIs demonstrated a good understanding of the threats and vulnerable sectors in which they operate and the AML/CFT obligations that apply to them including measures for CDD, EDD, record-keeping and suspicious transactions reporting. The large domestic and foreign owned or controlled FIs demonstrated a more robust understanding of the ML/TF risks which they face compared to the smaller to medium FIs. This is mainly due to comprehensive ML/TF institutional risk assessments which the large domestic and foreign owned or controlled FIs have conducted. As a result, they were able to apply mitigating controls that were over and above those required by the regulators.

19. On the contrary, the DNFBP sector (with the exception of large law firms and dealers in precious stones and metals) have demonstrated little to no understanding of ML/TF risks and AML/CFT obligations that apply to them. This could be attributed, inter alia, to lack of adequate supervision including monitoring for compliance with AML/CFT obligations. The large law firms and large dealers in precious stones and metals have generally demonstrated a fairly good understanding of the ML/TF risks which they face and the AML/CFT obligations that apply to them.

20. As a general rule, all reporting entities in Zambia collect basic CDD information when establishing business relationships and conducting one-off transactions. The large domestic and foreign owned or controlled FIs go beyond the basic CDD information depending on the nature of the business relationship and transaction. Where a customer, a transaction or a delivery channel is determined to pose higher ML and/or TF risks, FIs take additional CDD measures to mitigate and manage the risk exposure. Although the large FIs, law firms and large dealers in precious stones and metals take reasonable steps to establish the identity of the ultimate beneficial owner, this cannot be said of the remaining FIs and DNFBPs which appear to limit their search only at PACRA (legal person) and Ministry of Lands (trusts) and not beyond, even if the information obtained thereof is insufficient to prove UBO identity.

21. The obligation to file STRs on grounds of suspicion that funds are the proceeds of a criminal activity or are related to TF is generally well understood across the sectors. However, assessors were concerned that, with the exception of banks, MVTS and bureau de change, filing of STRs by the other FIs and DNFBP sector is low.

*Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

22. Bank of Zambia (BoZ) and Securities Exchange Commission (SEC) have good market entry controls in place to prevent criminals and their associates from owning or controlling FIs. The BoZ and the SEC have good procedures and processes in respect of verification of sources of capital, fit and proper test, especially, for senior management and verification of

ultimate beneficial ownership information. However, the Pensions and Insurance Authority (PIA) requires improvements on its market entry requirements, especially, in relation to verification of ultimate beneficial ownership. In general, the supervisors for DNFBPs do not have powers and procedures to restrict market entry for AML/ CFT purposes.

23. The supervisory bodies for FIs and DNFBPs demonstrated a good understanding of the ML/TF risk in their sectors. Some FI supervisors use a variety of sources of information such as inspections to strengthen their understanding of ML/TF risks. While the risk profiles were yet to incorporate high risk areas such as PEPs, the supervisors relied on the results of the NRA to develop an understanding of the potential risks posed by the variables. The FIC Act formally introduced risk-based approach to AML/CFT in 2016. The FIC has issued a risk based supervision framework and guidance manual which is yet to be used by supervisory bodies to develop and apply an effective risk-based approach to AML/CFT supervision and monitoring of reporting entities. AML/CFT inspections for FIs are integrated into prudential supervision and therefore the schedule of inspections is largely informed by prudential rather than ML/TF risks. The scope and depth of AML/CFT inspections are considered inadequate as they do not consider a broad range of AML/CFT related factors. Supervisors of the DNFBPs have not yet started AML/CFT supervision and are yet to develop the necessary capacity to supervise or monitor their respective sectors for compliance with AML/CFT obligations on a risk sensitive basis.

24. The FIC (Amendment) Act, 2016 introduced a broad range of sanctions and it strengthened the enforcement powers of supervisors. While violations of the AML law have taken place which are sufficiently major to warrant a sanction to be issued, the FI supervisors are yet to issue any sanctions. The supervisors mainly opt for issuing recommendations, directions and, in few instances, suspension of licences. There has been neither remedial action nor sanctions issued by DNFBP supervisors owing to the lack of inspections.

25. The FIC and FI supervisors have provided a number of training and outreach programmes to reporting entities in order to improve the level of compliance. In addition, the FIC issues on an annual basis ML/TF trends and typologies reports which have been useful in enhancing understanding of ML/TF risks by the reporting entities.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

26. Basic information on the creation and types of legal persons and legal arrangements is available both to the public and competent authorities. At the time of the on-site visit Zambia had just enacted a new Companies Act which provides for obtaining of beneficial ownership information of a legal person at registration stage and maintaining of a BO register. There was, however, no similar requirement under the law administering trusts and societies.

27. Although the assessors observed that the ML/TF risks posed by legal persons had not been assessed during the NRA to understand the sectors' vulnerabilities and possibly prevent them from abuse, the large and foreign owned/controlled FIs, large law firms and large dealers in precious stones and metals had conducted comprehensive risk assessments and were taking reasonable steps to establish UBO in respect of a business relationship or a transaction. They maintain high quality information which supports a significant number of cases concerning legal persons required by the LEAs and other competent authorities. The rest of the FIs and DNFBPs do not generally take similar rigour as they only depend on the information available from the PACRA database, which has limitations regarding BO information particularly where complex



structures are involved. Zambia needs to ensure that the steps which it is currently taking to maintain a database and a BO register are speeded up to completion.

28. The authorities have imposed sanctions on legal persons where the provisions of the Companies Act have been contravened. However, the sanctions are not effective, proportionate and dissuasive. The Act governing trusts has no sanctions for any breaches.

29. There is need to ensure that the sanctioning regime in Zambia for both legal persons and arrangements is reviewed and strengthened and that the provisions of the recently enacted Companies Act are enforced. Zambia should also enhance the legal framework for legal arrangements to adequately provide for obtaining of information on beneficial ownership and other relevant information and that such provisions when enacted are enforced to ensure compliance.

#### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

30. Zambia has a legal and institutional framework in place to facilitate mutual legal assistance, extradition matters and other forms of cooperation. With the exception of two of the protocols which are Annexes to the TF Convention, Zambia has ratified all the other international instruments relevant to AML/CFT, which it has domesticated to support provision of international cooperation. There are also a number of bilateral and multilateral agreements which have been useful in facilitating exchange of information with foreign counterparts. The Attorney General (AG) is the Central Authority mandated to execute outgoing and incoming MLA requests.

31. Zambia is adequately using other forms of international cooperation through the various domestic agencies, namely; ACC, DEC FIC, ZPS, NATC, ZRA and PACRA who are able to exchange information with their foreign counterparts. However, the effectiveness of international cooperation is constrained by a general lack of comprehensive statistics as the country has no case management system in place to enable monitoring and accounting for MLA requests received, acceded to, declined, dispatched and quality of information received. In the absence of a case management system, it was difficult to determine the time within which the requests are handled, number of requests handled, feedback and the quality of information received. There is need for the authorities to set up a case management system to assist in tracking and monitoring the execution of requests. Zambia does not extradite its own nationals and where extradition is declined on such basis there was no information of what further action was taken by the authorities on the cases.

#### ***Priority Actions***

Zambia should implement the following priority actions to improve implementation of its AML/CFT system and raise the level of effectiveness:

- Expedite completion and implementation of a National AML/CFT Strategy involving both the public and private sector to address the key ML/TF risks identified in the NRA.
- Prioritise building of adequate resources to the AMLIU, ACC, TFCU and AFU in order to strengthen their operational capacity to investigate and prosecute ML and associated predicate offences. Further, authorities should ensure that the other LEAs have sustainable

capability to conduct parallel financial investigations when investigating predicate offences, consistent with the country's risk profile.

- Conduct an in-depth review of the NPO sector to better understand those that are exposed to TF abuse and continue outreach to NPOs to raise awareness of specific TF risks. Ratify the outstanding two protocols which are Annexes to the TF Convention.
- Ensure proportionate, dissuasive and effective sanctions are imposed in relation to successful ML cases, including effective ML prosecution and application of appropriate sanctions on legal persons, and for violations of AML/CFT obligations by reporting entities.
- Develop a national policy which ensures confiscations of criminal proceeds, instrumentalities and property of corresponding value are executed as a priority for the relevant law enforcement agencies and that efforts are focused on the predicate crimes which are identified as high risk in the national risk assessment, as well as cases where the proceeds of crime have moved to foreign countries. Such a policy should aim to significantly strengthen the asset recovery regime by, inter alia, granting more resources to the AFU and other relevant LEAs, developing a clear mechanism for the management of confiscated assets, improving ZRA's understanding of their powers under the FIC Act and ensuring that the AFU maintains comprehensive statistics pertaining to property frozen, seized or confiscated.
- Develop and implement mechanisms such as outreach activities to enhance ML/TF risk understanding by the DNFBP sector as well as their AML/CFT obligations, in particular, application of EDD, implementing TFS (UNSCRs), identification and verification of UBOs, STR reporting and application of a risk-based approach.
- Ensure that financial supervisors fully adopt and implement a risk-based approach to supervision. Supervision of the DNFBP sectors should commence as soon as possible, including issuance of AML/CFT regulations, the development of enforceable guidance, and the establishment of risk based inspection regimes.
- Establish a legal, regulatory, and institutional framework to monitor, supervise, and effectively implement TFS related to proliferation financing and ensure that reporting entities understand their PF obligations.
- Conduct comprehensive analysis of the ML/TF risks posed by legal persons and establish mechanisms to ensure adequate mitigating measures are put in place commensurate to the identified risks.
- Issue implementing regulations for the new Companies Act and strengthen the legal and institutional framework for legal arrangements.
- Establish an efficient case management system to enable monitoring and accounting for MLA requests received, acceded to, declined, dispatched and quality of information received.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings (High, Substantial, Moderate, Low)

<b>IO.1</b> Risk, policy and coordination	<b>IO.2</b> International cooperation	<b>IO.3</b> Supervision	<b>IO.4</b> Preventive measures	<b>IO.5</b> Legal persons and arrangements	<b>IO.6</b> Financial intelligence
<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	<b>Moderate</b>
<b>IO.7</b> ML investigation & prosecution	<b>IO.8</b> Confiscation	<b>IO.9</b> TF investigation & prosecution	<b>IO.10</b> TF preventive measures & financial sanctions	<b>IO.11</b> PF financial sanctions	
<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Low</b>	

Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

### AML/CFT Policies and coordination

### Money laundering and confiscation

<b>R.1</b> - assessing risk & applying riskbased approach	<b>R.2</b> - national cooperation and coordination	<b>R.3</b> - money laundering offence	<b>R.4</b> confiscation & Provisional measures
<b>LC</b>	<b>LC</b>	<b>C</b>	<b>C</b>

### Terrorist financing and financing of proliferation

<b>R.5</b> - terrorist financing offence	<b>R.6</b> - targeted financial sanctions - terrorism & terrorist financing	<b>R.7</b> - targeted financial sanctions - proliferation	<b>R.8</b> -non-profit organisations
<b>LC</b>	<b>PC</b>	<b>NC</b>	<b>PC</b>

### Preventive measures

<b>R.9</b> financial institution secrecy laws	<b>R.10</b> - Customer due diligence	<b>R.11</b> - Record keeping	<b>R.12</b> - Politically exposed persons	<b>R.13</b> - Correspondent banking	<b>R.14</b> - Money or value transfer services
<b>C</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>	<b>LC</b>
<b>R.15</b> -New technologies	<b>R.16</b> -Wire transfers	<b>R.17</b> - Reliance on third parties	<b>R.18</b> - Internal controls and foreign branches and subsidiaries	<b>R.19</b> - Higher-risk countries	<b>R.20</b> - Reporting of suspicious transactions
<b>PC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>

<b>R.21</b> – Tipping-off and confidentiality	<b>R.22</b> - DNFBPs: Customer due diligence	<b>R.23</b> – DNFBPs: Other measures
<b>C</b>	<b>PC</b>	<b>LC</b>

### Transparency and beneficial ownership of legal persons and arrangements

<b>R.24</b> – Transparency & BO of legal persons	<b>R.25</b> - Transparency & BO of legal arrangements
<b>PC</b>	<b>PC</b>

### Powers and responsibilities of competent authorities and other institutional measures

<b>R.26</b> – Regulation and supervision of financial institutions	<b>R.27</b> – Powers of supervisors	<b>R.28</b> – Regulation and supervision of DNFBPs	<b>R.29</b> – Financial intelligence units	<b>R.30</b> – Responsibilities of law enforcement and investigative authorities	<b>R.31</b> – Powers of law enforcement and investigative authorities
<b>PC</b>	<b>C</b>	<b>PC</b>	<b>C</b>	<b>LC</b>	<b>LC</b>
<b>R.32</b> – Cash couriers	<b>R.33</b> – Statistics	<b>R.34</b> – Guidance and feedback	<b>R.35</b> – Sanctions		
<b>C</b>	<b>C</b>	<b>C</b>	<b>PC</b>		

### International cooperation

<b>R.36</b> – International instruments	<b>R.37</b> – Mutual legal assistance	<b>R.38</b> – Mutual legal assistance: freezing and confiscation	<b>R.39</b> – Extradition	<b>R.40</b> – Other forms of international cooperation
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>

## MUTUAL EVALUATION REPORT

### *Preface*

32. This report summarises the AML/CFT measures in place in Zambia as at the date of the on-site visit. It analyses Zambia's level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

33. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Zambia, and information obtained by the evaluation team during its on-site visit to Zambia from 25 June - 06 July 2018. The evaluation was conducted by an assessment team consisting of:

#### ESAAMLG Secretariat

- Mr. John Muvavarirwa, Senior Financial Sector Expert (Team Leader);
- Mr. Joseph Jagada, Principal Expert;
- Mr. Phineas R Moloto: Technical Advisor;
- Mr. Tom Malikebu, Senior Financial Sector Expert

#### Assessment Team:

- Ms. Khumbo Mtalika, Financial Sector, Supervision, Reserve Bank of Malawi;
- Ms. Cynthia Dau, Financial Sector, Preventive Measures, South Africa Reserve Bank;
- Mr. Wonder Kapofu, Financial Intelligence Unit, FIU Zimbabwe;
- Mr. Mofokeng Ramakhala, Legal, Lesotho FIU;
- Mr. Simon Kajura, Law Enforcement, Inspectorate of Uganda; and
- Mr. Kristian Hamutenya, Financial Sector - Preventive Measures, Namibia FIU;

#### Observers

- Mr. Vincent Chipeta (Malawi Financial Intelligence Authority);
- Mr. Erivelto Teixeira Moreira Bastos (Angola Financial Intelligence Unit); and
- Ms. Mokgadi Bokaba (South African Police Service).

34. The report was reviewed by the FATF Secretariat and Mr. Bheki Khumalo (Financial Intelligence Unit, Eswatini).

35. Zambia previously underwent an ESAAMLG Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. Zambia's 2007 MER concluded that the country was Largely Compliant (LC) with 4 Recommendations, Partially Compliant (PC) with 15 Recommendations and Non-Compliant (NC) with 30 Recommendations. After the 2007 MER and its subsequent approval by the Council of Ministers in August 2008, Zambia entered into the follow-up process which it only exited in April 2018 with outstanding deficiencies on R.35 and SR.I (now R.36), SR.II (now R.5), SR.VII (now R.16) and SR.IX (now R.32). The reason for Zambia exiting the follow-up process was due to the country undergoing an assessment under the 2013 Methodology in June 2018. The 2007 mutual evaluation report was published and is available at [www.esaamlg.org](http://www.esaamlg.org)



## CHAPTER 1. ML/TF RISKS AND CONTEXT

36. Zambia got its independence from Great Britain on 24 October 1964. It is a land locked country measuring approximately 750,000 square kilometres. It has 8 neighbouring countries, namely; the Democratic Republic of Congo to the north (2332km), Tanzania to the north-east (353km), Malawi to the east (847km), Mozambique to the southeast (439km), Zimbabwe (768km) and Botswana (0.15km) to the south, Namibia to the southwest (244km), and Angola to the west (1065km). The capital city is Lusaka, situated in the south-central part of the country. It is a member to the African Union (AU), Common Market for Eastern and Southern Africa (COMESA), Southern Africa Development Community (SADC), Commonwealth of Nations and the UN, among others.

37. According to the last national census in 2010, the population was 13 million (estimated at 16 million as of 2016). The population is concentrated mainly around Lusaka in the south and the Copperbelt Province to the northwest, the core economic hubs of the country. It has 10 provinces, namely, Central Province, Copperbelt Province, Eastern Province, Luapula Province, Lusaka Province, Muchinga Province, Northwestern Province, Northern Province, Southern Province and Western Province.

38. The population comprises approximately 73 ethnic groups. Almost 90% of Zambians belong to the nine main ethnolinguistic groups, namely; the Nyanja-Chewa, Bemba, Tonga, Tumbuka, Lunda, Luvale, Kaonde, Nkoya and Lozi. The official language of Zambia is English, which is used to conduct official business and is the medium of instruction in schools. The main local language, especially in Lusaka, is Nyanja, followed by Bemba. In the Copperbelt, Bemba is the main language and Nyanja comes second. Zambia is officially a Christian nation according to the Constitution of Zambia Act, 1996.

39. Zambia had one of the world's fastest growing economies for the ten years up to 2014, with real GDP growth averaging approximately 6.7% per annum. Economic growth for the country slowed during the period 2015 to 2017, mainly due to falling copper prices, reduced power generation, and depreciation of the kwacha. The GDP per capita as of 2017 was US\$1,500. The Zambian economy has historically been based on the copper mining industry and hence makes it vulnerable to fluctuations in the world commodities market. Zambia uses the Kwacha as its currency, symbolised as ZMW.

40. The political system of Zambia is a multi-party democracy and its legal system is based on statute law enacted by its Parliament, English Law and Zambian Customary Law. The three arms of Government which operate independently comprise the Executive, the Legislature and the Judiciary. The Executive is made up of the President and his appointed cabinet. The President is elected by popular vote and holds office for a five year term and is both chief of state and head of government. Cabinet members are appointed from members of the National Assembly by the President. The Legislature is made up of the National Assembly comprising 156 members of Parliament elected by universal suffrage for a five-year term. In addition, the President has statutory powers to nominate an additional 8 members of Parliament. The Judiciary is headed by the Chief Justice. It comprises the Supreme Court, the Constitutional Court, Court of Appeal, the High Court, subordinate courts and local courts. Judges of the Supreme Court, the Constitutional Court, Court of Appeal and High Court are appointed by the President upon recommendation of the Judicial Service Commission. The magistrates and local court justices are appointed by the Judicial Service Commission.

41. The process of passing a law involves the sponsoring Ministry presenting the initial draft of the bill to the Cabinet Legislation Committee. The bill needs to be passed by the National Assembly. Thereafter, it must be assented to and signed by the President to become law. After the President's assent, a notice of commencement of the law must be published in the Government Gazette. Subsidiary legislation is passed under powers delegated by Parliament through primary legislation. Such subsidiary legislative powers are normally delegated to cabinet ministers or any other person or authority and are exercised through the passing of statutory instruments within the parameters set out by the primary legislation.

### ***ML/TF Risks and Scoping of Higher-Risk Issues***

#### *Overview of ML/TF Risks*

42. Zambia's first NRA report was completed in 2016 and the results were shared with all stakeholders in September 2017. In June 2018, the NRA report was updated through a Sectoral ML Threat Assessment Addendum in order to make it current. Both the initial NRA and the Addendum identify common predicate offences committed in Zambia and the five highest proceed generating predicate offences are corruption, tax evasion, theft, fraud and drug trafficking. According to the authorities, corruption generates the highest amount of criminal proceeds among all predicate offences and the resultant ML threat was rated very high.

43. The main conduits which are vulnerable to the proceeds being laundered are banks, bureau de-change, remittance agents and the DNFBPs including dealers in second hand motor vehicles. AML/CFT supervision of the DNFBPs sector is still very weak as none of the supervisors have yet started implementing their supervisory roles. Although ML/TF risks relating to this sector have been identified in the NRA, the sector has not started applying risk based approach.

44. Due to its geographical location (i.e. Zambia has eight<sup>1</sup> neighboring countries), the country is being used as a transit point by drug traffickers. Further, due to the porous nature of some of its borders, Zambia is also being used as a route for human trafficking and the smuggling of consumable goods.

45. According to the NRA, the high use of cash and relatively large informal economy significantly increase the risk that illicit proceeds may be rechanneled into the regulated formal economy. Majority of the financial transactions are carried out in cash, which due to the non-traceability of most of the transactions because of absence of adequate documentation poses a high ML/TF risk to some of the sectors, like the real estate sector.

46. Zambia does not face any immediate terrorist threats but the geopolitical situation in the Southern African Development Community (SADC), the Great Lakes sub region, and the broader East Africa region leaves all nations in the wider region open to terrorist and TF exploitation. Zambia also hosts foreigners from countries where there have been cases of terrorism, who might be sympathetic to organizations involved in terrorist activities. Porous borders provide for untracked movement of nationals from countries around the region and beyond. Monitoring cross-border capital movement remains a challenge for Zambia and with the

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<sup>1</sup> Angola, Botswana, R.D. Congo, Malawi, Mozambique, Namibia, Tanzania, Zimbabwe

emergence of mobile money, international remittances to many developing countries, including Zambia, continue to increase. Remittance transactions often have a high fee and this has contributed to the rise of informal transfer solutions, particularly for regional and domestic transfers. These informal solutions pose vulnerability to the country's ML/TF risk levels as it can lead to illicit financial flows that sometimes feed into more serious, nefarious activities such as corruption, rent-seeking, money laundering, and terrorist financing. Also noted in the NRA, was a growing number of money value transfer services offered in Zambia resulting in huge volumes of transactions recorded on a daily basis. The NRA assesses Zambia's risk to being susceptible to TF as medium low.

### *ML/TF vulnerabilities*

47.           Zambian banks offer a number of inherently vulnerable products and services to a very large client base, which includes a significant amount of high-risk clients and businesses. In addition, banks are exposed to high-risk jurisdictions that have weak AML/CFT regimes and significant ML/TF threats. There are reports that criminals open bank accounts in the names of legal entities with the intention to defraud unsuspecting foreign nationals. On the other hand, Zambian nationals are used to facilitate foreign currency purchases by opening accounts with local banks. The banking sector is mostly used to move proceeds of corruption due to the nature of products and services offered by the sector, in particular, current accounts, deposits of legal persons, private banking, electronic banking and domestic and international wire transfers. High use of cash further increases the ML risk. With the exception of the bureau de change and MVTs, vulnerabilities in other FIs was assessed to be low.

48.           The legal profession in Zambia is vulnerable to misuse for ML, notably due to its involvement in activities exposed to a high ML risk (e.g. real estate transactions, creating legal persons and arrangements on behalf of clients). There has been a notable growth in real estate development recorded in recent years in Zambia and law firms are highly attractive to individuals seeking to launder criminal proceeds through development and acquisition of real estate.

49.           Other entities vulnerable to laundering of cash include casinos, precious stones and metal dealers and second-hand motor vehicle dealers. The vulnerability is largely due to absence of AML/CFT compliance monitoring.

50.           Legal persons and legal arrangements are vulnerable to misuse for ML/TF purposes. There is a possibility that companies and trusts can be structured to conceal the beneficial owner and can be used to disguise and convert illicit proceeds. The identification, assessment and understanding of ML/TF risks relating to legal persons and arrangements is relatively low. The other identified deficiency which creates potential for abuse of trusts for ML/TF is that returns on changes of trustees, beneficiary or any other pertinent information to the trust are only supposed to be submitted to the Registry Office every five years which in practice hardly happens. The authorities have enacted a new Companies Act in 2017 which if effectively implemented will assist in curbing the misuse of legal persons for ML/TF purposes as it now provides for obtaining of beneficial ownership (BO) information at the time of registering a company with PACRA.

51.           Although the mobile money products are inherently vulnerable to ML/TF as they are widely accessible and exposed to clients in vulnerable businesses or occupations, and clients conducting activities in locations of concern, there are adequate safeguards to mitigate the ML/TF risk.

## *Country's risk assessment & Scoping of Higher Risk Issues*

52. Zambia conducted and completed a NRA in 2017, and updated the report in June 2018. The results of the NRA were shared with both the private and public sector to promote their understanding of ML/TF risks in Zambia. The process involved a wide-range of key public and private sector players. Zambia has identified five predicate offences generating the most proceeds for purposes of ML, namely, (in that order), corruption, tax evasion, theft, fraud and drug trafficking. Zambia has rated ML risk as medium/high.

53. Banks and MVTS face inherent risks mainly due to their global reach and the ease with which funds can be moved instantly. The ML risk for the banking sector, initially rated as medium in 2016, was revised in June 2018 to medium high due to threats and vulnerabilities arising from opening of accounts by Zambians with intention to defraud foreigners, corruption as well as transfer pricing and over/under invoicing of goods whose proceeds are channeled through the banking sector. BoZ considers domestic banks relatively inherently vulnerable than the foreign banks. Similarly, the bureau de change sector was rated medium high mainly due to inherent vulnerability to structured transactions and attractiveness of the sector to cross-border traders. The BoZ, banks and MVTS have worked together to improve information and transaction management structures and procedures which has significantly mitigated and managed the ML/TF risk concerns.

54. Zambia has taken significant steps to address the identified ML/TF risks it faces. There are still main areas of concern including uneven application of mitigating controls by FIs and DNFBPs as well as the need to increase the capability of LEAs and supervisors to pursue complex financial cases and apply a RBA to AML/CFT respectively.

55. Based on the information provided in the NRA and that received from third party sources on international cooperation, Zambia being a central country serving as a connecting route to countries in Southern, Central and East Africa faces the risk of being used as a transit point for illicit goods. The NRA made findings on TF related risks and rated TF medium low. The assessors, therefore, identified the following areas as posing higher ML/TF risks to Zambia and thus requiring particular attention.

### **i. Legal, criminalisation, confiscation and international cooperation.**

- a) Zambia has criminalised predicate offences consistent with those in the FATF Glossary. Since the offence of corruption was rated as posing the highest risk, it was important to determine the extent of remedial action taken by the authorities in terms of both prosecution and confiscation for corruption related activities.
- b) The offence of drug trafficking was rated medium risk but with the report acknowledging that Zambia is used as a transit point for such trafficking. Given the location and proximity of Zambia as a transit country for a number of countries, both neighbouring and from afar, it was important to discuss with the authorities how this risk rating was determined. The offence of wildlife trafficking was not assessed by the Zambian authorities in the NRA and as such, assessors wanted to determine the level of understanding of the country of the ML/TF risk related to this offence. Similar considerations needed to be made regarding risks posed by produce from illegal mining.

- c) The findings of the NRA were that forfeiture/confiscation was generally low due to limited: capacity and resources; integrity and independence of the courts; and domestic and international cooperation but again the basis for this finding, the risks and the limitations posed needed to be determined.
- d) The assessors needed more information in form of statistics or data which was used by the authorities to determine the risk rating of the offences including implementation of cross border currency controls at all ports of entry (bulk cash smuggling).
- e) The NRA had determined that TF risks which exist in Zambia might be due to different foreign nationals, some of whom might sympathise with terror groups; porous borders and heavy movement in border areas; and cash based economy which could be allowing amounts below the reporting thresholds to be moved in small amounts to support terrorism. Therefore they rated TF to be medium/low.

## **ii. Vulnerabilities in the financial and DNFBPs sectors**

- a) The results of the NRA report identified a number of weaknesses in the AML/CFT systems governing the financial and DNFBP sectors. Included in these were current accounts, deposits of legal persons, private banking, electronic banking and wire transfers which were said to be most vulnerable services/products in terms of banks' exposure to ML risks. The basis and whether the areas were ranked in terms of vulnerability to ML is not provided in analysis form in the report, therefore it would be important to unbundle the vulnerabilities to each specific area and then determine which of the areas are most vulnerable to ML risks, if at all, to enable proper guidance to be given on mitigating measures to be implemented.
- b) AML/CFT compliance within banks is affected by limited capacities and competencies which add to the vulnerability that financial institutions are already exposed to due to weak internal AML/CFT compliance systems. The level of risks these gaps create had to be properly determined and also explore with the authorities what mitigating measures are in place in the medium to long term.
- c) The NRA also identified challenges in suspicious activity monitoring and reporting, as well as access to beneficial ownership information which is linked to lack of reliable identification infrastructure and independent information sources for beneficial ownership. The vulnerability created by the absence of adequate or access to beneficial ownership information was to be determined as there were foreign players in Zambia's financial sector.
- d) In general the DNFBPs including real estate, lawyers, casinos, second hand motor vehicle dealers, precious stones and accountants have similar vulnerabilities. Most common of these were poor identification of clients and obtaining of beneficial ownership information, involvement of PEPs and foreigners in transactions, and establishing the source of income used in large cash transactions. The real estate and casino sectors had other specific vulnerabilities. There were unregistered and unlicensed agents practicing in the real estate sector. It was also necessary to establish what leads to such prevalence, whether it is cumbersome registration or capital requirements or other reasons, and whether there is capacity to deal with the problem. Casinos were doing on-line gambling which was not properly regulated nor properly understood by the regulator. Although the NRA report articulates these vulnerabilities, there were no supporting figures given in the



analysis to enable one to determine the nature and extent of the vulnerabilities based on specific statistical information, e.g. frequency of occurrence, large cash amounts received by some of the DNFBP agents, criminal cases reported, investigated and prosecuted and the nature of offences, etc.

- e) Financial Inclusion Products – Assessment of financial inclusion products undertaken indicated that there was no significant use of the products in the generation of proceeds of crime or any significant use to perpetrate terrorist activities in the country. As a result, the ML/TF risk of financial inclusion products was rated low. Assessors wanted to determine further whether the risk of cross-border transactions carried out through financial inclusion products, in particular, mobile money, were adequately addressed and understood by the authorities.

## **Materiality**

56. Zambia's Gross Domestic Product as at December 2017 was USD25.81 billion. The economy is predominantly driven by the primary sector comprising agriculture and mining industries. Zambia is a large producer of copper and the commodity is the country's largest export product followed by cobalt. The largest proportion of Zambia's exports are to Non-European Union Organization for Economic Cooperation and Development (Non-EU OECD) like Switzerland followed by Asia (China), SADC and COMESA. Switzerland and China are the main consumers of copper<sup>2</sup>.

57. The financial sector in Zambia is developing and dominated by the banking, distantly followed by pensions, micro-finance, insurance and capital markets. The financial sector provides a wide variety of financial instruments and constitute the more formal financial services. Informal financial services exist in the form of money lenders and savings groups. With a total assets base of USD 8.2 billion, the financial sector assets constitute about 30 percent of GDP. As at the end of 2017, banks dominated the financial sector with an asset size of USD 6.5 billion, representing 78 percent of the total financial sector assets. Of the 17 operating commercial banks, eight were subsidiaries of foreign banks, seven were locally-owned private banks and two were jointly owned by the Government and private interests.

58. As at December 2017, the total number of branches was 410 mainly concentrated in Lusaka and the Copperbelt Provinces. The two provinces accounted for two-thirds of the total banking industry branches. An analysis of market share in the banking sector showed that subsidiaries of foreign banks continued to hold the largest proportion of total assets, loans and deposits. The share pattern is similar with respect to profitability. Local private banks ranked second in profitability while banks partly owned by Government ranked second with regard to total assets, loans and deposits.

59. The non-bank financial institutions (NBFIs) sector is dominated by pension funds accounting for 8 percent of the total financial sector assets (USD 637.1 million). The insurance, microfinance institutions (MFIs), securities and other NBFIs each contribute a negligible share of the remaining financial sector assets.

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<sup>2</sup> BOZ Annual Report 2017

60. It is estimated that around 77 percent of Zambians have access to formal financial services, and 30 percent of those accessing the formal financial products do so through transactional and savings products of banks. Zambia has recorded rising financial inclusion figures, from 60 percent in 2011 to 77 percent in 2014, largely driven by mobile money services.

61. Zambia, like other countries in the region, has seen an increase in formal domestic money remittances due to high mobile money usage and other independent money or value service providers. As at May 2018, there were 42 MVTs with cumulative total remittances of 108 million transactions, of which 99 percent were domestic transactions. Recent data shows that digital financial services (DFS) uptake among Zambian adults has increased significantly from 8 percent in 2015 to 18 percent in 2016. The use of mobile money services is mostly dominated by sending and receiving of funds. The dominant platforms for providing mobile money service are telecommunications networks and banking sector, which rely on a large network of agents countrywide. The number of active users for mobile payments more than doubled to 1.5 million in 2017. This increase was partly driven by the sensitisation campaigns and the introduction of innovative products that were more appealing to customers of the mobile money operators such as provision of small loans. The Government launched the National Financial Sector Development (FSD) Policy and the National Financial Inclusion Strategy (NFIS) in November 2017. The National FSD Policy provides strategic guidance and an overall framework for developing the financial sector. The primary objective of the NFIS is to achieve universal access to and usage of a broad range of quality and affordable financial products and services.

62. Although a range of retail electronic payments is available, cash and cheques continue to remain the dominant means of payment in Zambia.

63. All DNFBPs, as defined by the FATF, provide financial services in Zambia. In addition, motor vehicle dealers are subject to the AML/CFT legal framework. The FIC Act requires the DNFBPs to comply with AML/CFT obligations when providing financial services to customers. In terms of the Zambian laws, the Minister is empowered to designate any business or profession where the risk of ML/TF exists.

### ***Structural Elements***

64. Zambia has key structural elements for implementation of AML/CFT obligations. There is political stability and a high level commitment to implement the AML/CFT requirements, accountability, the rule of law and an independent judiciary. Zambia recognises the need to improve provision of resources to the judiciary to strengthen capacity particularly in relation to financial crimes. The assessment team noted with concern the negative media comments made by some top government officials against the Financial Intelligence Centre's recently published Typologies Report.

### ***Background and other Contextual Factors***

65. Zambia started implementing its AML/CFT regime in 2001 when it first enacted the Prohibition and Prevention of Money Laundering Act (PPMLA). In 2007, Zambia underwent its first mutual evaluation assessment and the report was approved in August 2008. Following the ME, the country was put under regular post evaluation monitoring and submitted its first progress report in March 2010. In August 2012, the country was requested to report bi-annually due to lack of progress in addressing some of the key and core outstanding recommendations.

This was followed by a High Level Mission to Zambia in 2015 to express the concerns of the Council of Ministers of the ESAAMLG over the lack of sufficient progress in addressing the identified deficiencies in the MER and the potential ML/TF risks it posed to Zambia and the region at large.

66. In 2015, Zambia was identified by the FATF - ICRG Terrorist Financing Fact-Finding Initiative (TFFFI) as one of the four ESAAMLG countries which did not have powers to implement TFS under the UNSCR 1267 or pursuant to UNSCR 1373. The country exited the follow-up process in February 2017. All this increased the momentum for a high-level political commitment, resulting in Zambia strengthening its AML/CFT legal, institutional and operational framework, in particular with the passage of the Financial Intelligence Centre Act (FIC Act), subsequently reviewed in 2016 and the Anti-Terrorism (Implementation of the United Nations Security Council Resolutions on the Prevention and Suppression of Terrorism) Regulations, 2015, among other instruments.

67. Zambia completed and shared the findings of its NRA in 2017 with all stakeholders well before the on-site visit. Zambia is however yet to revise its AML/CFT strategy based on the identified risks. At present, Zambia has developed a National Action Plan based on the results of the NRA, but is yet to implement it. Furthermore, the supervisors developed a RBA to AML/CFT framework to promote shared understanding and application of supervisory actions. At the time of the on-site visit, the application of the framework was only emerging. From the discussions held with the authorities and the analysis of the NRA results, corruption, especially the misuse of public resources, is of serious concern. The authorities have taken significant steps to address the threat of corruption.

#### *Overview of AML/CFT strategy*

68. Since the 2000s, the AML/CFT system has been characterised by changes to legislative and institutional arrangements which were underpinned by AML/CFT Strategies and Policies. Part II of the Prohibition and Prevention of Money Laundering Act, No. 14 of 2001 (as amended by Act No.44 of 2010) establishes the AMLA which is the main AML/CFT policy making body in Zambia. AMLA provides general or specific policy directives to the Commissioner (person appointed as Commissioner under the Narcotic Drugs and Psychotropic Substances Act) and advises the Minister of measures required to prevent and detect money laundering in Zambia. The Authority can also make recommendations for legislative review relating to AML/CFT. Implementation and operationalization of AML/CFT policies are coordinated by the AML/CFT National Task Force of Senior officials.

69. Based on the results of the NRA, Zambia developed a National Action Plan to run for a three-year period with targets, time-lines and responsibilities to address the identified ML/TF risks. The authorities are in the process of finalising a National AML/CFT Policy and Strategy to drive implementation. The country has also developed the ML/TF Risk Based Framework and Manual although supervisors have not yet started implementing it.

70. It was noted during the on-site visit that the majority of public entities have not translated the national action plan into their specific sectors to address identified deficiencies that may expose the country to ML/TF risk. Agencies such as ACC, ZPS and NPA still do not have prioritization mechanism to investigate and prosecute crimes that have been identified to pose ML/TF risk.

## *Overview of the legal & institutional framework*

71. Since its last mutual evaluation in 2007, Zambia has taken major steps in strengthening both its legal and institutional framework on AML/CFT. This includes the amendments to the PPML Act in 2010, ATA in 2015, enactment and subsequent amendment of the Financial Intelligence Centre Act in 2010 and 2016, respectively, introduction of the Forfeiture and Proceeds of Crime Act (FPCA) in 2010, the repealing and enactment of new Anti-Corruption Act, 2012, Companies Act and the Banking and Financial Services Act in 2017, creation of Financial Intelligence Centre, Anti-Money Laundering Investigations Unit, and National Anti-Terrorism Centre in addition to the other already existing institutions. The PPMLA adequately criminalises the offence of ML consistent with the expectations under the international standard while the FPCA No. 19 of 2010 provides for seizure of proceeds of crime, civil and criminal forfeiture. The mandate to investigate and prosecute money laundering offences was originally granted to the AMLIU under the PPMLA, but with the enactment of the National Prosecution Authority Act in 2010, all prosecution powers in Zambia were consolidated in the NPA, headed by the Director of Public Prosecutions. At the time of the on-site visit the AMLIU was investigating ML offences and the Taxation and Financial Crimes Unit of the NPA prosecuting the ML cases. The assessors, however, noted that although the Anti-Terrorism Regulations of 2017 have provisions on Proliferation, there are no substantive provisions in both the ATA and subsequent amendments providing for proliferation or proliferation financing. As at the on-site date, Zambia had also not ratified two of the conventions which are Annexes to the TF Convention.

72. Several authorities play a key role in the AML/CFT framework of Zambia. The following are the primary ministries, agencies, and authorities responsible for formulating and implementing Zambia's AML/CFT policies:

- i. **Ministry of Finance** - provides direction on policy parameters that underpin AML/CFT legislation as provided under s. 6 (2)(a) of the FIC Act.
- ii. **Ministry of Home Affairs** – oversees the activities of the AMLA and their implementation as provided under s. 4(a)(b) of the PPML Act.
- iii. **Ministry of Justice**– responsible for portfolio functions including; Domestication of International Treaties and Conventions, Extradition and Policy, Judiciary, Law Revision and Reform, Legal Practitioners and Prosecution, among others. It has the responsibility of facilitating the administration of justice and promoting observance of the rule of law in Zambia.
- iv. **Ministry of Foreign Affairs** - is responsible for managing the country's diplomatic relations with other countries and international organizations. This mandate includes political, economic, and social/cultural relations. The Ministry shares information with relevant stakeholders on the UNSC sanctions list.
- v. **Ministry of Tourism and Arts** - among other things, the Ministry of Tourism through the Licensing Committee is responsible for licensing casinos.
- vi. **Ministry of Mines and Minerals Development** - is responsible for licensing the dealers in precious stones and metals.

- vii. **Attorney General's Office (AG)** – the AG's office is located in the Ministry of Justice. The AG serves as the chief legal advisor to government and as an ex-officio Member of Cabinet. All legal actions for and against the Government of Zambia are instituted by or against the AG in a representative capacity. The AG's Chambers has got four divisions with different functions namely: Civil Litigation and Debt Collection, International and Commercial, Corporate Service Law and Agreements, Administrator-General and Official Receiver and Legislative Drafting and Law Revision.
- viii. **Financial Intelligence Centre (FIC)** - is established under the FIC Act, 2010 as the central agency charged with the responsibility for receipt and analysis of suspicious transaction reports and any other information from reporting entities designated under the FIC Act and follows up on any other information relevant to the analysis before disseminating the results of the analysis to relevant competent authorities. The FIC also supervises and enforces compliance with regard to reporting entities that are either not regulated or supervised by a supervisory authority in terms of the FIC Act or any other law; or in circumstances where a supervisory authority fails or neglects to enforce compliance. The FIC commenced its operations in 2012 and the Director General is the Secretary of the AML/CFT National Task Force of Senior Officials. The FIC is governed by a non-executive board of directors appointed by the President. The primary purpose of the Board is to monitor and review the administrative performance of the Centre and provide policy direction as provided under s.8 of the FIC Act.
- ix. **Anti-Money Laundering Authority (AMLA)** - is the main AML/CFT policy making body in Zambia established under Part II of the Prohibition and Prevention of Money Laundering Act, No. 14 of 2001 (as amended by Act No.44 of 2010). The AMLA is chaired by the Attorney General, and the other members include; the Governor-Bank of Zambia, the Commissioner General of the Zambia Revenue Authority (ZRA), the Inspector General of Police, the Commissioner-Drug Enforcement Commission (DEC), the Director General-Anti-Corruption Commission (ACC) and two other persons currently, the AML/CFT National Task Force of Senior Officials Chairperson and Director General of the FIC. The mandate of AMLA is to provide general or specific policy directives and to advise Government on measures required to prevent and detect money laundering in Zambia.
- x. **Zambia Police Service (ZPS)** - Is mandated to investigate all crime and maintaining law and order in general. It has a Criminal Investigations Department comprising of 3 Units (C1, C2 and C3). Unit C2 consists of 4 sub-units, being Anti-Fraud, Interpol, Intellectual Property and Statistics. ML matters are handled by the Anti-Fraud Sub-Unit which also investigates all financial crimes. ZPS is also a member of the INTERPOL and SARPCCO.
- xi. **Anti-Money Laundering Investigation Unit (AMLIU)** - established under the PPML Act, 2001, is a specialised Unit empowered to conduct investigations of money laundering and other offences in terms of Part III of the PPML Act. The prosecution function which used to be done by the Unit on designated authority by the DPP has now been moved to NPA.
- xii. **National Prosecution Authority (NPA)** - established in terms of the NPA Act No. 34 of 2010 is a specialised unit empowered to prosecute criminal cases. NPA is the principal authority for all prosecutions in the country and it is headed by the Director of Public Prosecutions (DPP). All prosecutors in Zambia derive their authority to prosecute from the DPP pursuant to s.82 of the Criminal Procedure Code, Chapter 88.



- xiii. **Taxation and Financial Crimes Unit** – It is a Unit created administratively in the NPA with the mandate to prosecute financial crimes including ML.
- xiv. **Asset Forfeiture Unit** - It is a Unit, which is currently an administrative arrangement in the NPA created to handle asset forfeiture cases, including non-conviction based forfeiture.
- xv. **Drug Enforcement Commission (DEC)**, established under the Narcotic Drugs and Psychotropic Substances Act, is a Commission in the Ministry of Home Affairs and is under the control and supervision of the Minister responsible for Home Affairs. In addition to collecting, collating and disseminating information on narcotic drugs and psychotropic substances, the Commission also receives and investigates any complaint of alleged or suspected breach of the Act;
- xvi. **Anti-Corruption Commission (ACC)** - established under the Anti-Corruption Act, 2010, is the primary authority for the investigation and prosecution of corruption cases and any ML cases related to such corruption.
- xvii. **National Anti-Terrorism Centre (NATC)** - was set up in February 2017 under s.4 of the Anti-Terrorism (Amendment) Act, 2015. Its main function is to detect, respond to, mitigate and investigate terrorist incidents and threats to internal security. It also has a mandate to disseminate and enforce the United Nations Sanctions List in terms of Regulation 6 and 7 of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017.
- xviii. **Zambia Revenue Authority (ZRA)** – established under the Zambia Revenue Authority Act, is mandated to assess and collect tax and minimize as much as possible tax evasion. Further, ZRA is mandated to manage entry and exit points and the borders of Zambia and to facilitate trade. It has no mandate to investigate ML/TF offences, instead, such offences when encountered are referred to other Law Enforcement Agencies to investigate but it has delegated authority from the DPP to prosecute cases under its function as a customs and revenue authority.
- xix. **Department of Immigration** – established under the Immigration and Deportation Act, 2010, is a department under the Ministry of Home Affairs and is charged with controlling all Zambian borders by administering and regulating all ports of entry. It regulates the migration of people in and out of Zambia.
- xx. **Bank of Zambia** - is responsible for licensing, supervising and regulating AML/CFT and prudential activities undertaken by banks and other financial institutions under its administration (leasing companies, bureaux de change, micro finance institutions, building societies, the money transfer services providers, money value transfers, National Savings, and Credit Bank).
- xxi. **Law Association of Zambia** - established under the Law Association of Zambia Act –is responsible for licensing and supervising legal practitioners (lawyers, advocates, notaries, conveyancers and trusts and company service providers) for AML/CFT compliance.
- xxii. **Pensions and Insurance Authority (PIA)** - is in charge of licensing, supervising and regulating pensions and insurance companies for both prudential and AML/CFT.
- xxiii. **Securities and Exchange Commission (SEC)** - is in charge of licensing, supervising and regulating the securities market for both prudential and AML/CFT.

- xxiv. **Zambia Institute of Estate Agents (ZIEA)** - is responsible for registration and AML/CFT supervision of members of the Institute and persons qualified to be registered as estate agents and to maintain a register.
- xxv. **Zambia Institute of Chartered Accountants (ZICA)** - is responsible for licensing, registration and AML/CFT supervision of all accountants in Zambia.

#### *Overview of the financial sector and DNFBPs*

73. The financial sector in Zambia is developing and dominated by the banking, distantly followed by pensions, microfinance, insurance and capital markets. The sector provides a wide variety of financial instruments and constitutes the formal financial services, while informal financial services exist in the form of money lenders and savings groups. With a total asset base of USD 8.2 billion, the financial sector assets constitute about 30 percent of GDP.

74. Banking accounts for 78 percent of the total financial sector with assets at USD 7.1 billion followed by Pension Funds at 8 percent.

75. The banking sector comprises 17 commercial banks, of which eight (8) are foreign-owned, and nine (9) are locally owned. In terms of 2017 figures, foreign-majority owned banks occupy 73 percent of the total banking assets, 18 percent belongs to government owned banks and the remainder to locally owned banks.

76. The non-bank financial institution (NBFI) sector is dominated by pension funds (238) representing 8 percent of total financial sector assets (USD 637.1 million).

77. The insurance sector comprises reinsurance companies, general insurance companies, life insurance companies and intermediaries such as brokers, agents, claim agents, risk-surveyors, motor vehicle assessors and loss-adjusters. Both general insurance (22) and life insurance companies (13) are subjected to AML/CFT regulation.

78. There are 36 microfinance institutions (MFIs) accounting for 4 percent of total financial sector assets and primarily focused on payroll lending.

79. The main securities sector players consist of Brokers (7); Dealers (30); Investment Advisors (9); and Fund Managers (8). The capital markets players are involved in IPOs, buying and selling of shares on the stock exchange on behalf of clients, and brokerage.

80. In addition, the NBFIs sector also comprises of 8 leasing companies; 73 forex bureaus; 3 building societies; a development bank (Development Bank of Zambia); a Savings and Credit Institution (National Savings and Credit Bank). As at May 2018, there were 42 MVTs with cumulative total remittances volume of 108 million, 99 percent of which were domestic transactions. The MVTs are involved in wallet-to-wallet, local and international remittances and mobile money. The authorities reported that there are no illegal operators at the moment due to the nature of the MVTs operations, which require sophisticated systems.

**Table 1: Types of financial institutions in Zambia as at Dec 2017**

<b>STRUCTURE AND SIZE OF THE FINANCIAL SECTOR</b>				
<b>AS AT DECEMBER 2017</b>				
<b>Type of FI</b>	<b>No. Licensed</b>	<b>Total Assets (USDmln)</b>	<b>Locally Majority Owned</b>	<b>Foreign Majority Owned</b>
Banks	17	6,519.6	9	8
Leasing	8	57.8	4	4
Microfinance	36	350.9	28	8
MVTS	42			
Money changer	73	5.1	70	3
Life Insurance	13	134.3	6	7
General Insurance	22	156.1	15	7
Insurance brokers	41	-	39	2
Insurance agents	236	-	0	
Pension Funds	238	637.1	0	
Collective Portfolio management / Assets management*	8	42.8	5	3
Securities	3	0.6	1-Locally majority owned	1-Foreign majority owned
Investment dealers**	30	46.7	21	9
Investment Advisor	9	0.8	7	2
Safekeeping- (Custodian)	2	1.8	0	2
CIS Administrator/ Manager	8	34.0	5	3
Stock brokers	7	32.9	6	1
Building societies	3	104.2	1	2
Savings & Institutions	1	58.9	1	
Development Financial institutions	1	96.8	1	

\*The statistics relate to fund managers. SEC only authorizes fund managers.

\*\*The statistics relate to dealers. Dealers are also allowed to underwrite. Amount excludes banks and insurance Companies.

81. Zambia has presence of all DNFBP categories under the FATF Glossary, which are subjected to AML/CFT requirements and monitoring as prescribed under the FIC Act. However,

no DNFBPs have yet been subjected to AML/CFT inspection to check compliance with FIC Act requirements. All DNFBP sectors are either licensed or registered by a competent authority.

82. Casinos are licensed by the Licensing Committee under the Ministry of Tourism and Arts. As at on-site date, there were 46 casinos with 40 in operation and 6 in the process of setting up. With regard to online gambling, there is no provision for setting up and regulation of online casinos in the current legal framework, hence there are no licensed online casinos in Zambia. Nonetheless, the authorities indicated that online gambling was common in sports betting activities.

83. Real Estate Agents are registered by the Zambia Institute of Estate Agents. At the time of the onsite visit, the total number of registered estate agents was 453. Real estate agents are involved in property development, renting, property valuations, buying and selling of real estate.

84. Dealers in precious metals are licensed by the Ministry of Mines and Minerals Development. As of the on-site date, there were 192 Mineral Trading Permits that were issued by the Mines Development Department.

85. Legal professionals include lawyers, and notaries who also practice conveyancing and are licensed by the Law Association of Zambia. As at onsite visit, there were 1462 active members. They are involved in contentious (criminal and civil litigation) and non contentious (property and conveyancing, banking and financing, general advisory, and company creation) business.

86. Accountants are licensed and registered by the Zambia Institute of Chartered Accountants (ZICA). Before a fully qualified Accountant can be allowed to publicly practice accountancy, having passed examinations and acquired 3 years minimum relevant experience, he/she must pass Competence Practice Examination (CPE) to be conferred with either a full Audit license or Non-Audit license. As at December 2017, there were 138 Accountancy firms (i.e. 108 in Audit services and 29 in Non-audit services).

87. Motor Vehicle dealers are registered by Patents and Companies Registration Agency (PACRA) like any other company using the PACRA Registration Form. Motor vehicle dealers are supervised by the FIC as per legislation which stipulates that the FIC supervises and enforces compliance with regard to reporting entities that are either not regulated or supervised by a supervisory authority in terms of FIC Act or any other law. As at the on-site date, there were 31 Registered Motor Vehicle Dealers, comprising of 12 New Motor Vehicle Dealers, and 19 Second Hand Motor Vehicle Dealers.

**Table 2: Types, Composition and Size of DNFBP Sector in Zambia as at 31 December 2017**

Sector	Activity performed by	Supervisor	Size of Sector
Casinos	Registered Casinos in Zambia.	Ministry of Tourism & Arts Licensing Committee	46
Real Estate Agents	Real Estate Agents	Zambia Institute of Estate Agents	453
Dealers in precious metals	Licensed Mining Companies	Ministry of Mines and Minerals Development	264
Dealers in precious stones	Licensed Mining Companies	Ministry of Mines and Minerals Development	354
Legal professionals	Members of the Law Association of Zambia	Law Association of Zambia	1008
Accountants	Accountants in Audit and Non-audit services	ZICA	137
Motor Vehicle dealers	Motor vehicle dealers registered with PACRA	FIC	31

### *Overview of preventive measures*

88. The legal framework relevant to the preventive measures that apply to all reporting entities includes the FIC Act 2010 (amended) and relevant regulations issued by FIC in 2016. The FIC Act covers requirements relating to the preventive measures specified in the FATF Recommendations for both FIs and DNFBPs. The FIs laws including the BoZ Act, National Payments Systems Act, Banking and Financial Services Act, SEC Act and Insurance Act also have provisions that are relevant to AML/CFT preventive measures. Based on the FIC Act and other legislation mentioned above, FIC also issued guidelines on PEPs, FIC General Regulations, 2016, FIC (Prescribed Thresholds) Regulations, 2016, and a circular on High Risk Jurisdictions, 2015 that assist reporting entities to comply with AML/CFT requirements. Further, BoZ, PIA and SEC issued sector specific AML/CFT directives in 2017 that have stipulated sanctions for non-compliance. In addition, BoZ and PIA issued comprehensive guidelines that provide the criteria for determining the fitness and probity of persons proposed to be shareholders, board members and senior management in banks and insurance entities.

### *Overview of legal persons and arrangements*

89. In November 2017, Zambia repealed and replaced the Companies Act, 2017 which became effective in June 2018 and it provides among other requirements curbing of the misuse of legal persons for ML/TF purposes. The types of companies which can be registered in Zambia are: private limited by shares; private limited by guarantee; public companies; and unlimited companies. Registration of legal persons is done by the PACRA, a statutory body established in terms of the Patents and Companies Registration Agency Act No. 15 of 2010, administered by the

Ministry of Commerce, Trade and Industry. It is mandated to provide registration services relating to businesses and intellectual property. Registration of a company is formalised once the prospective company submits to the Registrar of Companies, its incorporation forms and articles of association. Successful applicants are issued with a certificate of incorporation by the Registrar. The current system, officially launched in 2016, allows for online registration of companies and allows for members of the public to verify the registration and compliance status of a business online. In addition to filing an annual return, companies are also required to maintain a register of members and shareholders which must be filed with the Registrar and also be kept at the company's registered office address.

90. The new Companies Act now provides for obtaining of BO information at the time of registering a company with PACRA. However, implementing regulations to this requirement had not been issued at the time of the on-site visit. In addition, reporting entities are required to obtain similar information when entering into a business relationship with a legal person as part of CDD. In terms of the Act, the BO information should be updated annually when submitting the annual return.

91. Registration of trusts (legal arrangements) is done by Lands & Deeds Registry established under the Lands (Succession & Perpetual) Act. Two types of trusts can be registered and these include; express trusts where a trust deed would be required; and trusts under the Societies Act. Societies are registered by the Ministry of Home Affairs (Registrar of Societies) and only register with Lands and Deeds Registry in cases where they want to become trusts. During the on-site visit, the authorities advised of a rising trend in the registration of trusts in Zambia, particularly complex ones where the settlor, trustee and beneficiary will all be legal persons, or where the settlor being a legal person is also the trustee or beneficiary of the trust. This was attributed to a number of factors including, the current trust law not having specific requirements relating to establishing of UBO; trusts not required to pay tax like corporate entities and also weak monitoring where trusts are only required to file returns to the Registry Office after every five years, which in practice hardly happens.

92. Zambia's laws enable members of the public to get information on the creation and types of legal persons and arrangements. For corporate entities, this information can be found in the Companies Act, 2017 and for Trusts and other legal arrangements in the Land (Perpetual Succession) Act. The members of the public can also obtain this information from the two registry offices' websites. It was however, noted that the Registrar of Companies has not yet identified the risks that apply to legal persons nor are legal persons and arrangements being properly supervised and monitored to ensure that they are not exposed to such ML/TF risks. In addition, the NRA did not extensively cover risk relating to legal persons and arrangements.

#### *Overview of supervisory arrangements*

93. In Zambia, financial regulation is shared by different supervisory agencies which include BoZ, PIA, and SEC. The FIC is the supervisor of last resort on AML/CFT. According to the amended FIC Act, 2016, FIC is empowered to supervise reporting entities that are not regulated or supervised by a supervisory authority or those reporting entities that have not been supervised or have been neglected by a supervisory authority.

94. BoZ licences, regulates and supervises banks and other financial institutions (leasing companies, bureaux de change, micro finance institutions, building societies, the money transfer



services providers, MVTTS, National Savings and Credit Bank) for both prudential and AML/CFT. BoZ implements an integrated/combined prudential and AML/CFT examination framework whereby AML/CFT assessments for banks and other FIs are included as part of general supervisory on-site inspections. Whereas there is no dedicated AML/CFT team, during the prudential examinations, a functional team is allocated to assess AML/CFT section, and this is reviewed under compliance risks.

95. On the other hand, PIA and SEC are responsible for licensing, regulating, and supervising the pensions and insurance companies, and the securities sector, respectively.

96. The three financial sector supervisors (BoZ, PIA and SEC), signed a tripartite MoU in 2003 to allow for the exchange of relevant information. This includes sharing of information on any matters agreed by the authorities from time to time, including AML/CFT matters. The scope of the MoUs provide for exchange of information that is necessary for the effective supervision of a reporting entity as and when required by counterparties. The MoUs with prudential regulators were established under the Basel Core Principles on Cross-border and Consolidated Supervision of Reporting Entities operating in Zambia. Further, the three financial sector regulators have resolved to co-ordinate their inspections so that inspections of entities that are regulated by more than one regulatory authority may be more streamlined.

97. The FIC, as the supervisor of last resort on AML/CFT, issued a risk based supervision framework and manual to guide supervisory agencies in the development of risk-based supervisory frameworks. The supervisors are yet to develop specific risk based approach to AML/CFT supervision frameworks. The FIC is in the process of setting up an inspectorate that will be responsible for ensuring compliance with the provisions of the FIC Act by all reporting entities.

98. Although the majority of the DNFBP supervisory authorities are aware of their responsibilities under the FIC Act, they have not yet started AML/CFT supervision to monitor for AML/CFT compliance. At the time of the on-site visit, none of the DNFBPs supervisory bodies had conducted inspections of the regulated entities under their purview for compliance with AML/CFT obligations.

#### *Overview of International co-operation*

99. Zambia has in place a legal and institutional framework to cooperate and exchange information with foreign counterparts. As of the on-site date, Zambia had received 7 requests for mutual legal assistance and 3 requests for extradition while it made 7 MLA requests relating to money laundering. Apart from MLAs, the FIC, ZPS, DEC, NATC, ZRA and PACRA have also been instrumental in sharing information with foreign counterparts and belong to both regional and international organisations which facilitate sharing of information. Zambia Revenue Authority has entered into MoUs with a number of countries to exchange information on tax related matters. Zambia has also signed Double Taxation Agreements in addition to the ZRA MoUs which also facilitate exchange of information on tax related matters.

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- a) The Zambian authorities have a good understanding of the country's main ML/TF risks informed by the results of the NRA which was shared to the relevant public and private sectors. The major risks have been identified and assessed, with the exception of legal persons and arrangements, illegal mining and illegal wildlife trafficking whose ML/TF risks are yet to be fully identified, assessed and understood.
- b) Zambia has not adequately assessed the TF risk relating to the NPO sector. The country has also not done a review of its TF risk since the completion of its NRA in 2016.
- c) Zambia has no legal provisions to regulate implementation of targeted financial sanctions relating to financing of proliferation, therefore, it was difficult to assess overall effectiveness.
- d) Zambia has adequate structures to enable efficient national coordination and cooperation on AML/CFT matters. The structures are working efficiently and have created a reasonably common understanding at both national and operational levels of the high ML/TF risks in Zambia. There is a shared appreciation of the ML/TF risks applying to Zambia among all the members of the AMLA, National Task Force of Senior Officials (NTFSO), and National Anti-Terrorism Committee.
- e) Zambia is yet to finalise and implement a National AML/CFT Policy and Strategy based on the findings and recommendations of the NRA. The priorities and objectives of the competent authorities are therefore not based on the risks identified and AML/CFT/PF Strategy and Policies.
- f) Large-sized domestic and foreign owned or controlled FIs, large law firms and dealers in precious stones and metals portrayed a more robust understanding of the ML/TF risks than the smaller FIs and the rest of the DNFBPs. Unlike the financial sector, awareness in the DNFBP sector is still low mainly because the sector is yet to be subjected to adequate supervisory action.

#### ***Recommended Actions***

Zambia should:

- a) Identify, assess and understand the vulnerabilities posed by legal persons and legal arrangements, illegal mining and wildlife trafficking.
- b) Consider undertaking a risk assessment of the NPO sector and thereafter to review its TF risk.
- c) Finalise and implement a National AML/CFT Policy and Strategy necessary to prioritise resource allocation and mitigation of risks. The National AML/CFT Policy and Strategy should include all AML/CFT stakeholders, set clear priority actions and timelines per actors, tying together prevention, detection and suppression actions, and providing for training and sensitization program for AML/CFT actors so as to increase AML/CFT understanding and implementation.

- d) Enact laws that will regulate implementation of targeted financial sanctions relating to PF. Subsequently, the authorities should provide more resources to NATC to enable it to adequately monitor the implementation of the PF regulatory framework.
- e) Provide competent authorities with adequate human resources to prioritise and mitigate identified higher risks particularly the FIC, AMLIU, ACC, TFCU and AFU.
- f) Enhance supervisory actions including issuance of guidance to sustain understanding of ML/TF risks and implementation of AML/CFT obligations, particularly by the DNFBP sector.

100. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

101. In general, Zambian authorities have a good understanding of the ML/TF risks, with some variance across institutions. However, the understanding of the ML/TF risks is varied. The general understanding has mainly been attributed to the development of the NRA in 2016 and the subsequent sectorial ML threat assessment undertaken by the authorities in June 2018 and widely shared with various stakeholders through different channels which include workshops, media, publications, and circulars. However, Zambia has not yet fully identified and assessed the ML/TF risks relating to legal persons and legal arrangements, as well as the ML/TF risks relating to the offences of wildlife trafficking and illegal mining. Nevertheless, the assessors noted that the authorities were taking steps to mitigate the ML/TF risks relating to wildlife trafficking and illegal mining such as conducting public auctions that are attended by ZRA and Ministry of Mines, continuous monitoring of sales, placing a ban on illegal wildlife harvesting, transportation and export of the hard wood product.

102. The authorities identified the threats from corruption, tax crimes, fraud, and theft for laundering purposes. Banking, real estate, casinos, precious stone and metal dealers and second hand motor vehicle dealers were identified as vulnerable sectors for ML. In terms of vulnerabilities of the DNFBP sector, the real estate and casinos pose a higher ML vulnerability as compared to precious stones and metal dealers, motor vehicle dealers, lawyers and accountants whose vulnerability is rated medium. The National Task Force is used as a platform for sharing information on ML/TF risks primarily in relation to different types of threats and vulnerabilities, as well as the nature, extent and underlying causes among the different stakeholders.

103. In addition to the NRA, the appreciation of the risks in the country has been enhanced by the typologies and trends reports produced by the FIC on an annual basis since 2014 and shared with both the public and private sectors. The reports highlighted the ML/TF trends and methods in and outside Zambia. The reports identified trends relating to large and unusual cash deposits, corruption, illegal small scale mining activities and tax evasion. These findings were later confirmed by the results of the ML/TF risk assessment of the country.

104. The FIs and DNFBPs met on-site demonstrated varying levels of understanding of ML/TF risk. There is a robust understanding of risk by large domestic and foreign-owned or

controlled FIs and large law firms and large dealers in precious stones and metals. This is mainly informed by the results of the NRA and comprehensive institutional risk assessments of the different types of threats and vulnerabilities of the sectors these entities face. Further, the categories of the entities have generally used the results of their assessments to risk profile their customers and products and to apply appropriate AML/CFT mitigating strategies. The understanding by the small to medium FIs was fair while it was low in the rest of the DNFBP sectors (see IO.4).

105. The authorities considered TF risk in the 2016 NRA, concluding that it is medium/low in Zambia. Subsequently, during the onsite in 2018, the authorities shared their understanding of TF threat to be medium in Zambia after taking into consideration factors such as the TF threats arising from volatile geo-political situation in the region, immigrants and refugees from high-risk countries, long stretching porous borders, high use of cash and informal remittances. Although the TF threat and vulnerability of the NPO sector had not been fully assessed, assessors noted that Zambia had provided a number of awareness workshops to the sector and the authorities had just commenced gathering information to implement RBA to the NPO sector based on the results of the NRA including profiling the NPOs according to the level of risk (see IO.10). In general, the assessors consider that, with the exception of the NPO sector where more detailed risk assessment is required to have a deeper understanding of the threats and vulnerabilities in the sector, the country has to some extent appropriately considered the key factors in determining the TF threats and vulnerabilities in Zambia. It is therefore the view of the assessors that the authorities generally have a good understanding of the TF risk, although this could be further developed and the understanding be more pronounced on the specific agencies mandated to investigate TF and terrorism. These agencies provided case examples of TF investigations (see IO.9).

#### *National policies to address identified ML/TF risks*

106. Zambia is in the process of developing its National AML/CFT Policy and Strategy to give direction for resources allocation and effective implementation mitigating controls. Zambia has taken several steps to show its effort to addressing the identified risks. These include the establishment of committee structures at national level to formulate and monitor implementation of measures to combat ML/TF risks. The AMLA is the main AML/CFT policy making body in Zambia established under the PPMLA and chaired by the AG. The AMLA provides general or specific policy directives and advises Government on measures required to combat ML/TF risk including legislative reviews. The National Task Force of Senior Officials is the operational arm of the AMLA. Zambia has also developed a three-year TF action plan with targets, timelines and responsibilities to address the identified TF risks, threats and vulnerabilities, although the action plan is yet to be fully implemented.

107. The country also commits itself to implementation of a Risk Based Approach to supervision and based on this, the ML/TF Risk Based Framework and Manual was developed and shared with all the supervisory bodies in Zambia though its implementation is still embryonic (see IO.3).

#### *Exemptions, enhanced and simplified measures*

108. Most of the FIs, large law firms and dealers in precious stones and metals conducted ML/TF institutional risk assessments which are used to inform application of AML/CFT

obligations. These institutions have used the findings of the assessments to risk profile their customers, transactions and delivery channels. Based on the risk ratings, they have managed to apply mitigating controls commensurate to the risk profiles (simplified and enhanced due diligence measures) in line with the requirements of the FIC Act and its Regulations.

109. FIs and some DNFBPs apply EDD measures when dealing with customers and transactions inherently regarded as high risk (e.g., PEPs, wire transfers, non-face to face customers, correspondent banking, high risk jurisdictions etc). Simplified due diligence is applied on low risk clients by requesting only basic CDD information and this is common with financial inclusion products offered mainly by mobile money operators.

There are no exemptions provided under the AML/CFT laws in Zambia, and therefore FIs and DNFBPs do not exempt customers from the AML/CFT obligations under the FIC Act.

#### *Objectives and activities of competent authorities*

110. Zambia is still in the process of finalising its National AML/CFT Policy and Strategy. As a result, some of the supervisory tools and frameworks of authorities responsible for AML/CFT supervision are not informed by AML/CFT policies or identified risks. The supervisors would generally benefit from having better supervisory tools that would provide them with comprehensive, timely, and consistent data on the nature and quantity of inherent risk at the level of individual institutions in their sectors. While the country has developed a ML/TF risk-based supervisory framework and manual, it is yet to be implemented by the supervisory authorities.

111. The objectives and activities of the LEAs are fairly in line with the ML/TF risks identified in the NRA. The types of ML cases investigated and prosecuted are generally consistent with the findings of the understanding of ML/TF risks, as most cases are related to the top proceeds generating offences identified in the NRA (e.g. theft/fraud, corruption, tax crimes). The authorities have demonstrated relatively positive actions to strengthen their AML detection and investigation, in particular, by establishing a specialised agency, AMLIU which receives ML related cases from other LEAs and also conducts parallel financial investigations. There has also been successful cases of prosecution. However, the authorities can sufficiently deliver their objectives if the allocation of human resources for both the AMLIU and the NPA is prioritised.

112. Zambia has also taken reasonable steps to counter the risk of terrorism and TF identified. This has been achieved by amending the ATA which established the NATC responsible for investigating terrorism, TF incidents and, although not properly provided for under the same law's regulations, PF. Zambia has also established ZSIS which is involved in gathering intelligence and investigating matters of counter-terrorism and TF. Although there has not been TF cases prosecuted in Zambia, there are a number of success stories of TF cases identified, investigated and disrupted (see IO.9). The authorities' objectives and activities can however be improved by strengthening the National CFT Strategy.

#### *National coordination and cooperation*

113. AML/CFT policy cooperation and coordination to address Zambia's ML/TF risks is adequate. Zambia has wide-ranging arrangements in place for AML/CFT coordination and

cooperation at both policy and operational levels, including with respect to information sharing (see R.2).

114. At policy level, Zambia has in place an AML/CFT policy making body (AMLA) whose membership is drawn from all relevant competent authorities. Its mandate, as set out in the PPMLA, is to provide general and specific policy directives, and to advise the Minister on the measures required to prevent and detect ML in Zambia. Its decisions are operationalized by the NTFSO whose members are appointed by the Secretary to the Cabinet and chaired by the Ministry of Finance with the FIC as the secretariat. Both AMLA and the NTFSO are multi-agency structures and have successfully coordinated the NRA exercise and are currently responsible for developing the National AML/CFT Policy and Strategy. The meetings are held quarterly to consider AML/CFT developments affecting the country.

115. Zambia has also established the National Anti-Terrorism Committee under the ATA whose mandate is to give general and specific policy directions to the Centre (NATC) regarding obligations and measures to be taken to detect, prevent and deter the commission of terrorist acts including implementation of UNSCRs on TF and PF. The Committee includes a variety of key agencies such as the ZPS, Zambian Army, Zambian Air Force, Zambian National Service, Immigration Department and the ZSIS. The Director General of the ZSIS is the chairperson and coordinator of the Committee.

116. At the supervisory level, BoZ, SEC, and PIA meet on a quarterly basis to share notes on their regulated entities. The three supervisors have signed an MoU to allow for the exchange and sharing of both prudential and AML/CFT related information necessary for the effective supervision of a reporting entity. This also includes consolidated supervision, although there have not been many such cases. There are however, cases where financial supervisors shared information with regard to the fit and properness of key persons and other market entry information. There is also good cooperation between supervisors and LEAs. All supervisors for FIs and DNFBPs indicated that when recruiting staff they cooperate with the LEAs for security vetting/screening.

117. Cooperation and coordination between the LEAs was also assessed to be satisfactory. There are clear cases of sharing of financial intelligence from the FIC to the LEAs for ML/TF investigations. The LEAs (DEC, ZPS, AMLIU, ZRA, ZSIS, NATC) have also demonstrated cases of successful joint operations, for example, joint operations between DEC, ZPS and AMLIU (trafficking of Mukula tree) and ZRA, DEC and other government institutions (diesel/petrol smuggling) - see IOs.6 -9 for detail. The NRA identified lack of proper coordination and communication amongst LEAs on AML/CFT matters<sup>3</sup>.

#### *Private sector's awareness of risks*

118. The results of the NRA were shared with the FIs and DNFBPs, as well as NPOs. There is generally awareness of the main ML/TF risks in their sectors and their particular business activities. The FIC and FI supervisors have undertaken initiatives to provide guidance to reporting

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<sup>3</sup> In order to enhance coordination among the LEAs, it was noted that Zambia is in the process of establishing an AML/CFT committee on investigations, prosecutions and asset forfeiture incorporating all LEAs, NPA, Ministry of Finance and Home Affairs.



entities and to generally raise awareness of ML/TF risks. Some of the initiatives, apart from sharing the results of the NRA, include, awareness workshops, seminars, publications, issuing of circulars and guidelines, development and dissemination of typologies reports. This has increased the understanding of FIs and DNFBPs.

119. With regards to the financial sector, generally all FIs have a good understanding of the ML risks in Zambia with the large FIs demonstrating a more robust understanding of the ML/TF risks than the smaller FIs. The FIs participated in the NRA process, and they consider some of the results to be consistent with the findings of their ML/TF institutional risk assessments. FIs also received trainings from the supervisory authorities and also conducted internal training in respect of ML/TF risks and application of AML/CFT obligations. The large FIs and those affiliated to international financial groups took advantage of the group training programmes of their parent companies.

120. The understanding of ML/TF risks within the DNFBP sectors is varied but, overall, is not as sound as within the financial sector. With the exception of large law firms and dealers in precious stones and metals who demonstrated a good understanding of the ML/TF risks, there has been less engagement by the authorities with the DNFBPs, and thus their understanding is limited. Unlike the financial sector, the DNFBP sector has not yet been subjected to any secondary legislation or guidelines to support the FIC Act.

#### *Overall Conclusions on Immediate Outcome 1*

**Zambia has achieved a Moderate Level of effectiveness for Immediate Outcome 1.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

### *Key Findings and Recommended Actions*

#### **Key Findings**

#### **IO.6 (Use of financial intelligence)**

- a) The FIC has reasonable capacity to discharge its core functions of receipt and analysis of transactions reports, and dissemination of financial intelligence and other information for use by LEAs in pursuit of criminal proceeds and TF. The FIC is well structured and in a secure environment to protect its operations.
- b) The FIC and the LEAs have a variety of sources of information held by public and private entities and are used to analyse and produce financial intelligence to support, to some extent, the operational needs of LEAs in Zambia.
- c) The FIC analyses and produces financial intelligence and other information from transactions reports filed mainly by commercial banks and distantly followed by MVTs. There is negligible filing of transactions reports by DNFBPs (real estate agents and casinos are high risk) and some non-bank FIs. However, it was noted that the FIC and the LEAs are able to request and obtain accurate and relevant information from the sectors to support their respective operational needs.
- d) The LEAs rated highly the quality and usefulness of the financial intelligence received from the FIC. To some extent, the LEAs have used the financial intelligence to investigate ML cases. The FIC and the LEAs use bilateral and group structures as mechanism to obtain feedback on the status of the disseminations made to the LEAs.
- e) The FIC has produced quality typologies/trends reports for over four years that focused on prevailing and emerging ML/TF risks in the country. Both the LEAs and the reporting institutions expressed usefulness of the reports in relation to understanding ML/TF risks and application of mitigating controls. For the LEAs, there is, to some extent, consideration of the nature of criminality identified in the typologies/trends report when designing annual operational objectives.

#### **IO.7 (ML investigation and prosecution)**

- a) Zambia has criminalized and identifies cases of ML. Although the number of ML cases which have been investigated and prosecuted is still low, the authorities through the AMLIU and ACC demonstrated that they are capable of pursuing ML cases.
- b) LEAs largely have all the powers to carry out financial investigations, however not all pursue such investigations with the commencement of investigation of every illicit proceed generating crime. At the stage of deciding on either a parallel financial or ML investigation, the other LEAs refer the cases to AMLIU, which is the designated ML investigations authority. Further, it actively pursues both financial and ML investigations with every predicate offence investigated. AMLIU has not been able to investigate ML to full capacity and produce good quality cases for prosecution due to inadequate staffing of investigating officers. The authorities demonstrated good cooperation in the investigation of complex crimes through sharing of information and formation of joint or multi-faceted teams.

- c) Investigations and prosecutions undertaken by the authorities are not prioritized according to identified risks. Although the authorities demonstrated that through the different types of ML cases investigated and prosecuted, they had the capacity to pursue such cases, the ML cases were still very low. The mere fact that the authorities prefer to use other options than charging the person with the offence of ML, even in circumstances where a ML offence could have been proven, has also contributed to the low number of ML cases investigated and prosecuted. The authorities had no cases where they had prosecuted a legal person for ML contrary to some of the cases presented which showed involvement of the legal person in the laundering but only the directors, management or employees of the company were charged. The authorities had also not investigated or prosecuted cases involving proceeds of foreign predicate offences laundered in Zambia and proceeds of local predicate offences laundered outside Zambia. The Tax and Financial Crimes Unit in the NPA which prosecutes ML cases and other financial crimes did not have adequate staffing.
- d) Sanctions meted against natural persons convicted of ML are inconsistent, ranging from non-custodial to seven-year terms of imprisonment. Therefore, in some cases they have been effective, proportionate and dissuasive, while in other cases they have not. Effectiveness of sanctions relating to legal persons could not be determined as Zambia had not prosecuted any legal person for ML.
- e) Zambia applies other criminal justice measures where ML investigations cannot result in successful prosecution, as demonstrated by a few cases where it had successfully pursued non-conviction based forfeiture and in some cases preferred a lesser offence.
- f) The authorities had not developed a national strategy or policy to guide them in addressing the ML risks identified in the NRA.

### **IO.8 (Confiscation)**

- a) Zambia has demonstrated ability to successfully identify tainted property which is subject to confiscation. However, such efforts are not guided by clear policies and strategies which set asset recovery as an objective. Although an administrative AFU has been operating since 2015, this has not been backed by adequate resources and internal policy/strategy to pursue its main function of asset recovery. The LEAs practice asset recovery as a matter of course in their investigations but are not guided by any policy setting it as an objective when an investigation commences.
- b) Levels of confiscation of proceeds and instrumentalities of crime by competent authorities were varying. The AFU in the NPA which has been mandated to deal with cases of confiscation for both conviction and non-conviction based cases, did not demonstrate that it had the full capacity to do this work resulting with it having handled only a few confiscation cases of proceeds and instrumentalities of crime. The ACC in some cases had pursued a few cases of administrative confiscation, whilst the majority of confiscations done by the ZRA were administrative based.
- c) The authorities had not made much success in confiscation of property of corresponding value, as there were only two cases provided. This was the case with property or proceeds of crime involving domestic and foreign predicate offences moved to other countries, which could only be demonstrated using one case where the authorities had repatriated proceeds of crime.
- d) The authorities do not have a clear mechanism of managing assets confiscated.

- e) Cross-border confiscation of currency or bearer negotiable instruments has not been pursued with the aim of making it as effective as to deter potential travellers from making false declarations or failing to make declarations at all. The cases are still very few and in the few cases where undeclared currency was detected by the exit and entry point authorities, the cases had not been properly handled in terms of the requirements of the law resulting with the seizures of the undeclared currencies being dismissed in the courts and the funds being returned to the alleged offenders.
- f) Although there has been a number of confiscations, the results do not necessarily reflect the assessed ML/TF risks. There had not been any confiscations emanating from some of the predicate offences such as corruption and tax evasion which had been identified as high risk for ML in the NRA report. The specific institutions (AMLIU and ACC) charged with the mandate of tracing and identifying laundered assets/proceeds to be frozen/seized arising from the two high risk predicate offences and their eventual confiscation (NPA) did not have clear policies in place prioritising such confiscations.

### ***Recommended Actions***

#### **IO.6 (Use of financial intelligence)**

- a) Zambia should provide additional funding to the FIC to enable it to enhance its analytical capability which is essential to support the pursuit of complex financial crimes, which is an emerging focus for LEAs in Zambia.
- b) Zambia should take necessary steps to ensure that the FIC receives and analyses transactions reports from DNFBPs and non-bank FIs to produce useful financial intelligence taking into account the risk profile of the reporting entities.
- c) Zambia should promote coordination and cooperation between the FIC and the LEAs to effectively combat ML and TF at a national level particularly in relation to complex financial crimes. In addition, Zambia should ensure that the LEAs improve capacity to use the financial intelligence from the FIC to pursue criminal proceeds and TF.

#### **IO.7 (ML investigation and prosecution)**

- a) The authorities should develop a national strategy or policies to provide appropriate guidance in addressing the ML risks identified in the NRA.
- b) In addition to AMLIU and ACC, all the other specified LEAs should build capacity to enable them to commence parallel financial investigations with every illicit proceed generating offence they investigate.
- c) The capacities of the AMLIU and Tax and Financial Crimes Unit in the NPA should be strengthened to enable both Units to adequately handle and improve the quality of ML cases which are investigated and eventually prosecuted.
- d) The authorities should prioritize cases for investigation and prosecution according to the risks identified during the NRA. Further, the authorities should use the discretion to pursue other cases other than ML in instances where a ML case cannot be proven.
- e) In deserving cases the authorities should prosecute legal persons for ML and pursue investigation and prosecution of cases involving proceeds of foreign predicate offences and where proceeds of local predicate offences are laundered beyond Zambia.

- f) There should be consistency in the sanctions applied to ML cases so that they are seen to be effective, proportionate and dissuasive.

## **IO.8 (Confiscation)**

Zambia should:

- a) Develop a comprehensive national policy on asset forfeiture, which should ensure the regime prioritises confiscations arising from identified high risk predicate offences as well as laundered assets, thereof. The policies and strategies should set clear national objectives in asset recovery for both the NPA (AFU), LEAs and other relevant competent authorities.
- b) Adequately resource the AFU, including provision of relevant training to enable it to realise its full capacity in handling asset forfeiture matters. This should also include enabling it to make the necessary recommendations in cases where tracing and identification of proceeds of crime should be done by LEAs.
- c) Make more efforts in identifying proceeds of crime, instrumentalities, property of equivalent value involving domestic and foreign predicate offences and proceeds moved to foreign countries with the aim of having them confiscated.
- d) Put in place a clear and better method of managing and disposing of confiscated assets where there has not been any guidance provided in confiscation orders issued by the courts.
- e) Ensure ZRA develops mechanisms to detect, seize and confiscate undeclared or falsely declared currency and BNIs at ports of entry or exit. Where its officers do so, they should properly follow the requirements prescribed in the FIC Act.

121. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

#### *a) Background information*

122. Zambia has an operational FIU known as the Financial Intelligence Centre. It is a statutorily established unit for receipt and analysis of transactional reports, and dissemination of financial intelligence and other information to authorised investigative agencies mandated to identify and investigate potential ML and TF cases. The FIC exercises its function independently under the oversight of a Board and the Ministry of Finance. The FIC is properly structured to perform its functions. The FIC has five directorates, namely; Monitoring and Analysis, Compliance and Prevention, Legal and Policy, with Information and Communication Technology and Finance and Administration providing support to the core directorates. The FIC is housed in a stand-alone building with adequate physical structure and security. At the time of the on-site visit, the FIC<sup>4</sup> was at an advanced stage of joining the Egmont Group of FIUs. The provision of resources by Government, on an incremental basis, has enabled the FIC to continue with the

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<sup>4</sup> The FIC became a member of the Egmont Group of FIUs in November 2018.

process of strengthening operational capacity and enhancing the effectiveness of its core functions.

*b) Use of financial intelligence and other information*

123. Competent authorities in Zambia have reasonable access to a number of sources of financial intelligence and other information, accessible through direct and indirect means for purposes of pursuing ML and TF cases. The investigative agencies and the FIC have exercised their statutory powers to access and obtain information held by, inter alia, reporting entities, as well as public and private databases. Further, the LEAs make requests to the FIC, albeit from a low scale, for information to support on-going cases including tracing the proceeds of crime. However, the number of these requests is low. During the period under review, there were only 31 such requests from Competent Authorities to the FIC. LEAs contributed 21, out of which 13 requests were from DEC. ZRA recovered significant amount (USD2.4 million) of money as a result of FIC dissemination. There were a number of cases that were still under investigation with anticipated recovery of assets.

124. The LEAs and the FIC demonstrated that they have adequate access through MoUs to records and other information held by the relevant public entities. Access to public databases include legal persons at PACRA (company registry) and legal arrangements at the Ministry of Lands, and tax information at ZRA, and criminal records information at the Police. Additionally, the LEAs and the FIC have access to transactions and customers information held by reporting entities using their respective legal powers to access the required records. The main source of transactions information is from reporting entities particularly the banking sector. Given the ML risks posed by some DNFBPs and non-bank FIs, the FIC is deprived of valuable information as it is receiving either negligible or no transactions reports from them (See IO.4 for details). It is the view of the assessment team that the diversity of databases are sufficient for useful financial intelligence and other information to investigate ML and TF as demonstrated in the number of cases disseminated to and investigated by LEAs.

125. The table below lists the other sources of information on financial intelligence for the FIC and their quantum

**Table 3: Sources of information of the FIC**

Source/Institution	Type of Information	Access
Patents & Company Registration	Company ownership Record	Electronic
Zambia Revenue Authority	Customs Record and Tax-related information	Electronic and Manual
Department of Immigration	Immigrant Status	Manual
Ministry Of Lands	Land Records and legal arrangements information	Manual
Road Traffic and Safety Agency	Vehicle ownership Record	Manual
Zambia Development Agency	Investment Permit	Manual

126. Several LEAs have dedicated linkages and units within their agencies for receipt of financial intelligence and other information reports from the FIC. The LEAs regard the quality



and usefulness of the intelligence reports and other information from the FIC as being helpful to identify and investigate ML/TF cases. However, the use of the quality reports from the FIC by the LEAs could further be improved overtime as the different LEAs strengthen their investigative capacity.

*c) STRs received and requested by competent authorities*

127. The FIC receives STRs and CTRs from reporting institutions. In addition, at the time of the on-site visit the FIC had started receiving Cross Border Currency Declaration Reports from the ZRA. The majority of the reports from Reporting Institutions are received electronically (secure internet portal) while a small number is received manually. The majority of the STRs are from the banks. There are concerns about the negligible or none reporting of STRs by the DNFBPs especially as some of them (e.g. lawyers, casinos and real estate agents) pose higher ML risks. While the FIC has demonstrated that it receives positive responses on requests for additional information relating to the DNFBPs, the absence of transactions reports from the sector deprives the FIC of valuable information in the analysis of financial information. The lack of filing of transactions reports by the sector is mainly attributed to absence or inadequate supervision or monitoring in relation to AML/CFT obligations in general and STR detection processes in particular (See IO.3 for details).

The table below lists the statistics on STR receipts by the FIC in the period 2013 to 2018.

**Table 4: STRs reported to the FIC from Jan 2013 to 2018**

<b>Year</b>	2013	2014	2015	2016	2017	2018
<b>No. of STRs</b>	88	365	714	661	969	360

128. The STRs received by the FIC from banks are relevant and accurate and the quality of STRs has improved greatly over the years. As noted above, there was a general positive trend in the receipt of STRs from banks over the five years. This improvement is attributed to heightened awareness and outreach campaigns by the FIC and monitoring activities by financial sector supervisory bodies.

129. The suspected predicate offences contained in the STRs filed to the FIC by reporting entities mainly involve corruption, (associated with procurement fraud), theft and tax crimes which mostly involve PEPs. This risk profile of STRs as received by the FIC is consistent with the findings of the NRA and interviews held with public and private sectors.

130. The FIC employs iBase and i2 Analyst Notebook for the receipt, analysis and storage of STRs and CTRs. The system automatically acknowledges receipt of the filed reports. The FIC gives feedback to or request further information on STRs to reporting institutions on a two-tier basis; firstly on specific case basis as determined by need; secondly on a quarterly basis for all cases that would have been disseminated to LEAs. After risk rating and prioritisation, the STRs are then sent to the analysts based on expertise.

131. The analysis process within the FIC involves requesting for additional information from reporting entities and accessing several administrative databases to further enrich the quality of analysis (see Box 1 below).

## **BOX 1: Electronic Receipt and Analysis Software in the FIC.**

### **RECIPT OF REPORTS**

Reporting Entities submit Suspicious Transaction Reports and Currency Transaction Reports to the FIC through an online Web Portal. The reports are then automatically uploaded onto the IBM I2 Analyst Note Book through integration services. For the Currency Transaction Reports, the Reporting Entities have an option of uploading bulk files, in addition to filling in the form online.

### **ANALYSIS OF REPORTS**

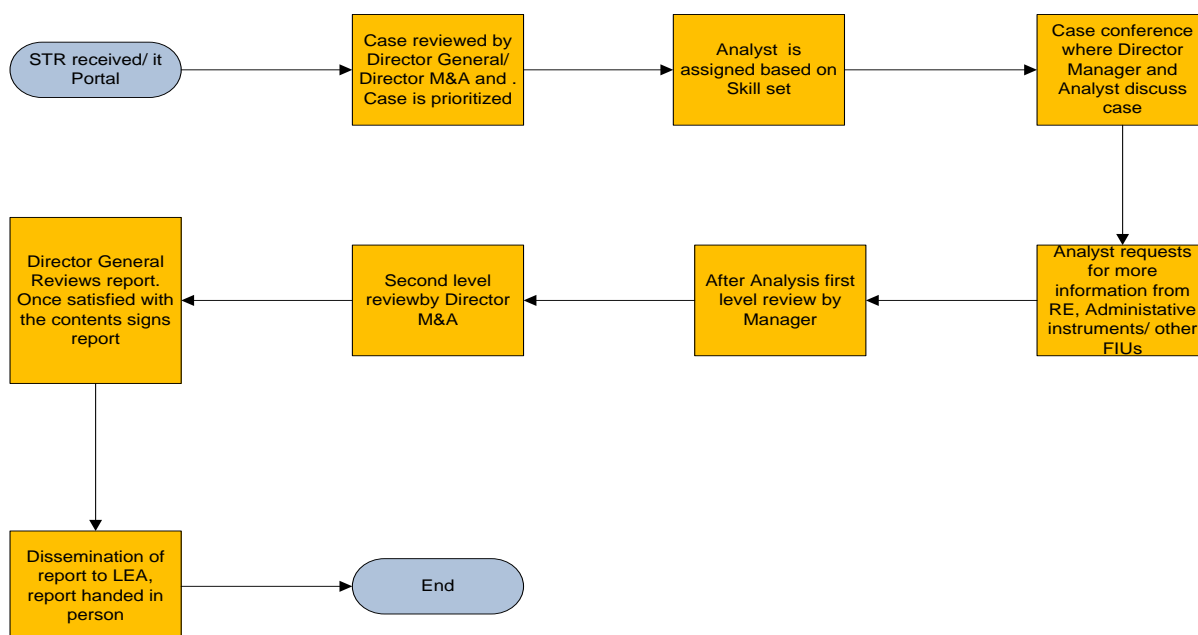
IBM I2 Analyst Notebook is the core software that is used for analysis and storage of all reports submitted to the FIC. It is composed of three software modules: i2 Analyst's Notebook, iBase and i2 Text Chart.

I2 Analyst's Notebook enables analysts to collate, analyze, and visualize data from disparate sources. It has different charting schemes that enable various types of visual analysis of the data. Association chart show the relationship or network between entities and Timeline chart depict the flow of data over a period of time with events automatically arranged in a chronological order. Features such as List Items, Find Connecting Networks, Find Matching Entities, Bar Charts, Histograms and Activity View enable analysis of the data. This enhances the determination of new targets and financial flows across the entities and associates.

iBase is a database application and a modelling and analysis tool. It enables storage of bulk analytical data and first level drill down of linked entities and associates. All reports: Suspicious Transaction Reports, Currency Transaction Reports, Cross Border Currency Declaration Reports and Daily Intelligence Reports; are stored in iBase. Capturing of data is done through various customizable datasheets and integration, thus making profiling easier. Features such as Wild Cards, data sets and queries enable analysts to conduct various analyses of the bulk data and establish trends.

I2 Text Chart is a user controlled entity-link extraction and visualization tool. It enables visualization of information in a document by presenting it in a chart. Through the Marking Up process, pieces of text in the document are highlighted and used to create entities or links on the chart. Thus, a visual image of the document is produced.

132. As a process of quality control after analysis, the financial intelligence report is reviewed at peer level, on a need-to-know-basis, before being passed on to the senior analyst for review. In turn, after accepting the report, it is forwarded to the Director M & A, first for quality control and then for dissemination through the office of the DG. Though the actual time frame for the process differs from report to report, the authorities were able to demonstrate that the average turn around for most reports is within a week or at most two, with complex reports or those in need of a wider range of databases requiring more time. This is explained in a diagrammatic form below:



133. The FIC was able to demonstrate through evidence and cases where LEAs were able to follow through with intelligence received into further investigations. The case in box 2 below shows the results of the process.

134. The LEAs have indicated that the quality of the financial intelligence reports disseminated to them by the FIC has been good to enable them to conduct financial investigations on ML and TF. However, it would appear to the assessors that the use of financial intelligence and other information from the FIC could be further enhanced by LEAs to actively identify and investigate potential ML cases. (see IO.7).

**Table 5: Value-chain of disseminations from the FIC**

YEAR	Disseminations to LEAs	No. of Disseminations to AMLIU	Investigations	Prosecutions	Confiscations
2014	41	11	11	1	0
2015	262	14	14	1	0
2016	87	19	19	1	0
2017	822	4	4	0	0
Total	1272	48	48	3	

135. The table above clearly indicates contrasting trends in respect of utilization rates of financial intelligence by the LEAs and the AMLIU. All cases received by AMLIU from the FIC are translated into investigation cases. However, the investigations have not resulted in significant numbers of prosecutions and confiscations. It is unclear to the assessment team as to the reasons

for the low number of investigations in 2017 given the huge amount of disseminations made to the LEAs. In general, it appears that there has been inconsistent use of financial intelligence by the LEAs other than the AMLIU to pursue ML cases (See IO.7 for details).

136. The FIC receives CTRs as part of the spontaneous disseminations from reporting institutions. The FIC has designated an officer responsible to review CTRs whenever they are received from reporting entities and intelligence obtained from CTRs has been helpful to conclude analysis of STRs, culminating in the production of intelligence reports which in turn are disseminated to the LEAs. Similarly, cross border currency declarations have only become part of information received by the FIC in the last half of the period under review.

*d) Operational needs supported by FIU analysis and dissemination*

137. The operational analysis incorporates all types of reports depending on the relevance and complexity of the subject matter. To this effect, the Centre has produced relevant operational intelligence which is then disseminated to LEAs depending on the type and nature of suspected criminal activity. Generally, the disseminations by the Centre are made based on the type of potential predicate offences. In this regard, reports having an element of corruption are referred to the ACC, those of a tax fraud nature to the ZRA, etc. In cases where a report can be of use to more than one LEA, the Centre disseminates the report to all the relevant recipients.

**BOX 2: Operational Analysis in the FIC**

**CASE I: Suspected Corruption and Money Laundering**

The FIC received information on a known politically exposed person who was suspected to have amassed wealth beyond known sources of income. The wealth in question included real estate, motor vehicles and cash. The FIC was able to verify through analysis the allegations that established the suspected proceeds of crime, identified the sources and individuals that were linked to the crime through facilitation and concealment of the same property. The suspects have since been arrested and some property restrained. At the time of the onsite, the prosecution was still on-going.

**CASE II: Suspected TF**

The FIC referred a financial intelligence report to the NATC arising from an STR filed by a bank on suspicion of fraud to access funds for purposes of terrorism. The report was used to conduct investigations and intelligence operations on the suspect who was confirmed to be on the radar of the authorities on suspicion of previous TF related concerns. The report assisted the NATC to disrupt a possible terrorism-related activity (See IO.9 for more details).

138. The Centre is also involved in conducting strategic analysis which culminates in the annual trends reports incorporating the major trends of ML/TF for the period under review. Only one other strategic report has been issued by the FIC in the period under review. The strategic reports highlight patterns of potential ML and predicate offences and are disseminated to LEAs. From the perspectives of LEAs the annual trends reports serve to confirm existing trends, without generally providing new information for the initiation and guidance of cases.

139. Despite the relative workable quality of the financial intelligence and information provided by the FIC, the follow up investigations directly emanating from these have been low as shown in Table 5 above.

140. The table below indicates the statistics on dissemination from the Centre in the period under review.

**Table 6: Dissemination per LEA, 2014 to June 2018.**

Agency	YEAR					
	2014	2015	2016	2017	Jun 2018	TOTALS
	<b>No. of reports disseminated.</b>					
<b>ACC</b>	2	5	10	398	4	419
<b>ZPS</b>	3	3	5	2	2	15
<b>ZRA</b>	23	228	51	417	33	752
<b>AMLIU</b>	11	14	15	4	9	53
<b>Immigration</b>	2	12	6	0	5	25
<b>NAC</b>	0	0	0	1	1	2
<b>Intelligence Services</b>	0	0	0	1	3	4
<b>TOTAL DISSEMINATIONS</b>	41	262	87	823	57	1270

141. The FIC attributes the spike for 2017 to an omnibus release by a reporting entity which led to a number of disseminations arising from the batch reports. . However, in general, the disseminations from the FIC are in line with the country's risk profile. (See table 7 below)

**Table 7: Disseminations by type of predicate offence from the FIC.**

Type of Predicate Offence	Dissemination by type of predicate offence					
	2013	2014	2015	2016	2017	2018
Suspected Corruption	0	2	5	10	398	4
Suspected Fraud and Theft	0	3	3	5	2	2
Suspected Tax Evasion	0	23	228	51	417	33
Suspected Money Laundering.	0	12	14	18	4	9
Suspected Illegal Immigrants	0	2	12	7	0	5
Suspected Terrorist Financing.	0	0	0	0	1	1

142. As one way of upgrading the level of analysis and quality of reports to be disseminated, the FIC has worked with some LEAs on investigations and operations. A case in point is demonstrated in box three below.

*e) Cooperation and exchange of information/financial intelligence*

*Domestic Cooperation*

143. Cooperation between the FIC and LEAs who are the primary recipients of intelligence disclosures is satisfactory. In general, the FIU meets quarterly with each respective LEA for a summarised progress report of cases disseminated. However, in instances where the FIC seeks to be abreast on ongoing investigations for specific cases, immediate follow up is made with the relevant agency on a more frequent basis.

144. The FIC in the period under review had made strides in contributing financial intelligence for ML investigations. However, use of such intelligence by the LEAs could be enhanced. (see IO 7). The FIC has a policy that governs security of information. There are procedures for handling information within FIC where members of staff have a username and password to access its network resources. Further, where FIC disseminations are done manually; the dissemination packs are protected by a seal that is broken by authorized recipient.

145. The case outlined below demonstrated domestic coordination on the part of the FIC.

**Box 3: Joint investigation operation of the FIC with local agencies.**

**CASE II. Operation GV (FIC, ZRA, ACC, NPA, and AMLIU)**

A newly incorporated legal entity and a politically exposed person were suspected of bribery, corruption, tax evasion, fraud and money laundering relating to the purchase of forty-two utility trucks with a purported value of forty two million USD by the Ministry of Local Government and Housing in 2015. The FIU requested and received further financial intelligence from an FIU in a European Union jurisdiction. The information was provided to ZRA, ACC and AMLIU which conducted the investigations including using formal and informal requests for information. The nature of assets frozen include a hotel, football club, television station, cash and 10 properties. The total value of the assets was USD 30 million. At the time of the on-site mission, AMLIU and the NPA were prosecuting the matter.

**CASE III: FIC and joint investigation with LEAs**

The FIC received a report from an anonymous informant, (Mr. X) who in turn claimed that he had received a call from a foreigner in another African country called Mr. Y, the subject. Mr. Y informed the informant that he comes from a very wealthy family back home and wanted to partner specifically with him to conduct business in Zambia. Subsequently, two weeks later a meeting was held at a local hotel in Zambia.

The subject claimed he had access to some substantial funds abroad which he needed assistance with. The subject was not comfortable with the deal and decided to refer the matter to the FIC. The FIC drew a plan to obtain more information as well as attempt to set an undercover operation and in doing so, conduct a joint operation with Law Enforcement Agencies.

A trap meeting was agreed on between the informant and the subject, where FIC officers and LEAs placed themselves in strategic positions to obtain more evidence as well as be able to effect arrest. As arranged the two met under a controlled operation of the FIC and LEAs and as planned an arrest was effected with the necessary evidence being acquired.



The allegations were confirmed in that the subject was in possession of counterfeit USD notes and was apprehended. The case was disseminated to the ZPS Service for the further action.

The outcome of the case was that the suspect was prosecuted and acquitted.

146. Between 2014 and 2017, thirty domestic requests were made to the FIC through MoUs and other exchange of information arrangement. It was also noted that the average response time is largely dependent on the nature of the requests, with the more complex ones taking about two months.

147. The LEAs were able to provide the FIC with assistance largely as the majority of the requests made to it were granted. The number of requests from LEAs to the FIC was significantly lower in comparison to outward requests.

148. The FIC has set up procedures, which include dedicated personnel, and the use of seals to protect the confidentiality of information as it is shared to and from the various agencies.

**Table 8: Domestic requests for information.**

Year	No. of requests from domestic institutions to FIC	No. of requests granted	No. of requests from FIC to other domestic institutions	No. of requests granted
2013	3	3	11	11
2014	1	1	113	100
2015	7	7	76	56
2016	12	12	45	20
2017	7	7	24	7

149. In terms of domestic cooperation the FIC has assisted other competent authorities to carry out investigations and operations. Such joint operations are conducted when either the LEAs require the expertise of the FIC on an ongoing basis or vice versa.

#### *International Cooperation.*

150. The FIC is involved in a wide range of exchange of information at international level (see IO. 2).

**Zambia has achieved a Moderate Level of effectiveness for Immediate Outcome 6.**

## *Immediate Outcome 7 (ML investigation and prosecution)*

### *a) ML identification and investigation*

151. The LEAs in Zambia aim at fighting all types of crime, including ML. In general, the legal framework to fight crime is well established and is supported to some extent by varying powers to enable identification and investigation of different crimes. Although some of the LEAs still lack specific powers or enabling procedures to carry out certain investigative techniques, e.g. access to computer systems<sup>5</sup>, this has little effect on the LEAs as the majority of them (as fully analysed in paragraphs below) are not investigating ML. The strength of most of the LEAs still lie in carrying out investigations and prosecutions on predicate offences compared to those of ML. However the LEAs, through provision of case examples, demonstrated that they are able to carry out good joint and multi-agency investigations when required. Also to address specific crimes, the authorities established specific Units and Commissions to investigate the offences, e.g. the ACC, DEC, and AMLIU. In 2015, the NPA had set up a specific Unit (TFCU) to prosecute financial crimes i.e. taxation and ML. Through these frameworks, Zambia has taken reasonable steps to deal with high risk predicate and ML offences but still more needs to be done to further strengthen its investigation and prosecution of these offences and encourage a culture of introducing parallel financial investigations with every high risk predicate offence investigation commenced.

152. The LEAs with the mandate to identify and investigate ML are: ZPS; Immigration Department (ID); DEC; AMLIU; ACC; and ZRA. Of these institutions, ZPS has the mandate to identify and investigate all criminal offences, while the other LEAs only have jurisdiction to identify and investigate offences specific to the mandate bestowed upon them by their establishing statutes and other offences linked to or arising from these specified offences. In that vein, the DEC investigates drug related offences and ML offences; ACC investigates corruption and ML offences arising from such offences; ZRA investigates tax crimes under the various statutes it administers. The AMLIU was specifically established under the law as a specialised Unit to investigate ML and predicate offences aligned to the ML offences.

153. Prior to the establishment of the NPA, all LEAs had the DPP's delegated authority to prosecute the respective predicate offences they were responsible for investigating and ML. Upon the establishment of the NPA in 2016, cases from ZPS, ID, DEC, and AMLIU are referred to the NPA for prosecution (although the prosecutors are posted and sit within the premises of other respective LEAs, they still remain officers of the NPA). The ACC and the ZRA retained their prosecution role, but it is still being done under the delegated authority and subject to the consent of the NPA.

154. In practice, cases of stand-alone ML are only being investigated and prosecuted by the AMLIU and NPA, respectively. However, where the AMLIU conducts an investigation and cannot establish the ML aspect of the offence, but gathers evidence of commission of a crime, it refers the matter to the relevant LEA to handle. In most of the other cases of ML that are pursued simultaneously with the investigation of a specific predicate offence (with the exception of corruption offences), AMLIU is investigating them jointly with the LEA that has the jurisdiction to investigate that particular offence or ZPS as it has the mandate to investigate all criminal

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<sup>5</sup> See R. 31

offences. In such cases, the AMLIU exclusively pursues the ML aspect of the case, while the respective LEA pursues the predicate offence. This usually occurs upon reference of the ML aspect of the case to the AMLIU by the respective LEA. The ACC identifies and investigates ML offences predicated on corruption, although occasionally calls upon the expertise of the AMLIU to carry out joint investigations and prosecutions of ML arising from corruption or related offences. This set up is in overall working but as described below (paragraphs 156, 157), is less effective where parallel financial investigations were concerned.

155. AMLIU is decentralized with offices in each of the Provinces of the country. At the time of the onsite, the Unit had a single officer in each of the Provinces, with the exception of Copperbelt Province (3) and Lusaka Province (18), to execute its mandate. AMLIU conducts investigations into suspected ML; liaises, coordinates and advises other LEAs on matters relating to ML; liaises and cooperates with LEAs in foreign jurisdictions responsible for ML; receives and utilizes disseminations from FIC to generate and investigate cases of ML; receives and investigates cases referred from other LEAs and non-LEA Government Offices; and receives and investigates reports of cases of suspected ML brought in by the general public. To execute this mandate, a compliment of 75 positions had been established for the Unit. However, at the time of the onsite only 30 of the 75 positions were filled. Therefore, the staffing levels of the Unit were inadequate to effectively implement the Unit's central role in investigating referrals received from other LEAs, identifying, investigation of its own ML cases and supporting of the ML cases referred for prosecution in Zambia.

156. The ACC plays an important complimentary role in the investigation and prosecution of ML, although that role is restricted to ML cases predicated on and jointly investigated or prosecuted with corruption or the other offences set out in the ACA<sup>6</sup>. The ACC has both an investigation and prosecution units. Investigations are carried out by the Directorate of Investigations Unit. At the time of the on-site, out of a staff establishment of 125 officers, the Unit had 100 officers and was being affected by high staff turnover as it was losing 4 to 5 officers per year due to different reasons. The Prosecution Directorate had a staff establishment of 25 of which 18 were prosecutors with 3 posts having been frozen. As the ACC is empowered to investigate ML offences, it receives and utilizes intelligence reports disseminated from the FIC and some of them, as described below, are effectively used to commence investigations. The ACC, during the period from 2014 to 2018 received referrals from ZRA to investigate its own (ZRA) employees for corruption related activities. The cases involved ZRA officers who had solicited for bribes, abused authority of their office, and committed theft. Whilst on one end the referrals confirm corruption being a problem as identified in the NRA, on the other end it shows how the other sectors of Government are committed to deal with it by ensuring that such matters are investigated and prosecuted. All other LEAs, as a matter of policy and practice, refer any ML matters discovered during the course of the investigations of their respective predicate offences to AMLIU. Consequentially, apart from AMLIU and ACC, none of other LEAs conducts parallel financial investigations as a matter of practice. The ACC only conducts parallel financial investigations when, during the course of its investigation, it uncovers evidence relating to commission of a money laundering offence or the possession of property or assets suspected to be proceeds of crime, which should be subject to confiscation or forfeiture. Therefore, apart from AMLIU, the other LEAs do not take steps to promptly identify ML or financial issues for

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<sup>6</sup> Part III of the ACA, 2012

investigation upon receipt of complaints or allegations relating to proceeds generating predicate offences. The concept of conducting parallel financial investigations is not well established within these LEAs as they refer all perceived ML matters to the AMLIU for investigations. This was done in all cases where if in the course of investigating their respective predicate offences they discover evidence of suspected ML or suspicion of possession of property suspected to be proceeds of crime.

157. The AMLIU carries out parallel financial investigations in all cases it handles. Where cases are firstly reported to other LEAs, and later referred to the AMLIU for financial or ML investigations, the investigation of the predicate offence by the originating LEA will often be at a more advanced stage than the financial or ML investigation. The AMLIU then conducts a financial investigation independent of the predicate offence. This delay in identifying proceeds associated with the offence raises concern of possible dissipation of illicit assets.

158. The AMLIU and ACC investigators have received domestic and international training on financial analysis and profiling, financial crimes investigative techniques, investigating ML cases relating to crypto currency, wildlife and environmental crimes as well as tax crimes. They have also been provided with training in investigating and tracing ML proceeds relating to human trafficking, money flows, intelligence analysis and other areas. The different types of training provided are relevant and have enhanced the officers' skills and capacity to conduct ML investigations. Prosecutors from the Taxation and Financial Crime as well as Asset Forfeiture Units of the NPA have also received training on money laundering, financial crime and asset forfeiture. At the time of the on-site visit, prosecutors from Asset Forfeiture Unit were benefiting from the prosecutor placement program in South Africa with 2 officers having already benefited from the program. Although, it was realised that the training received by the different institutions is important to their work they still need to use the training in strengthening the evidence of ML cases and properly assessing adequacy of the evidence in determining cases to be taken to court for trial. This would ensure appropriate use of the courts in handling ML cases and enhance the quality of ML cases prosecuted.

159. The capacity of the staff in the AMLIU to handle ML investigations is not adequate compared with the number of cases it handles as illustrated in Table 9 below. In addition to the high cases load, the 45 vacant positions at the time of the on-site visit were positions for investigators. Having more than half of the positions of investigators not filled has a negative impact on the Unit if one considers that from 2013 to 2017 there were only 26 ML cases with good quality evidence to secure convictions out of 1 203 cases (refer to paragraph 160 below). The performance of AMLIU can be further strengthened by recruitment of more investigators, which would mean more time being allocated in the investigation of each case with the likelihood of enhancing the quality of evidence gathered.

**Table 9: Cases Investigated and Convicted**

**Investigations**

Year	Concluded Within same year	Concluded From carryover cases	Arrests made	Stand Alone ML	Self - Laundering	Third Party	Theft , & ML	Fraud & ML	Theft Fraud	Corruption
2013	21	23	44	2	9	1	5	3	32	2

2014	28	21	49	2	4		9	8	30	<b>0</b>
2015	34	21	55	0			10	12	30	<b>3</b>
2016	27	4	31	3	7	3	7	8	13	0
2017	57	31	88	7	14		20	21	39	1
2018	6	4	10	1	4	2	4	3	3	0

#### Convictions

Year	Convictions Within same year with ML	Convictions Within same year without ML	Convictions Carryovers with ML	Convictions Carryovers without ML	TOTALS
2013	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>	3
2014	<b>2</b>	<b>5</b>	<b>6</b>	<b>10</b>	23
2015	<b>1</b>	<b>6</b>	<b>5</b>	<b>6</b>	18
2016	1	6	0	2	9
2017	4	2	7	4	17

160. The AMLIU, during the period of January 2013 – March 2018 received 1,203 complaints or referrals from other LEAs. Of the investigations conducted out of this number, there were 277 prosecutions, of which 124 were ML cases. The cases resulted in 70 convictions overall, with 26 being convictions for ML. From the 26 convictions, 11 were prosecuted by the AMLIU prosecutors before their prosecuting role was moved to the NPA, while the remaining 15 were later prosecuted by the NPA between the years of 2016-2018. As described above, the quality of evidence in ML cases investigated by AMLIU needs to be improved to ensure that only worthwhile cases are prosecuted. This would also assist in the allocation of resources to ML cases handled by both AMLIU and the prosecutors. Prosecuting 124 cases of ML and securing only 26 convictions over a stretch of five years does not illustrate an overall good level of evidence of the ML cases taken to court.

161. In the period of January 2014 - March 2018, the AMLIU received 48 financial intelligence reports disseminated from the FIC (some with more than one suspect involved making a total number of the individuals involved about 77) and it confirmed that the reports were of good quality and provided actionable intelligence that led to investigations. Of these investigations, 14 were closed or discontinued for lack of evidence; or on discovery that the funds were legitimate; or on account of reference to another LEA. At the time of the on-site visit there were 27 cases at different stages of investigation, 3 cases had been referred to ZRA for tax avoidance, one to Immigration Department and another one to ACC and 2 were under prosecution. The fact that all disseminations resulted in investigations is an indicator that the Unit adequately utilized the disseminated intelligence and the financial intelligence reports were of good quality.

162. However, despite other LEAs not conducting parallel financial investigations while investigating the predicate offences that fall under their mandate, there was evidence of constant and consistent cooperation between and amongst them for investigation purposes, extending to joint operations. Box 4 below, illustrates such cases.

## **Box 4: Joint Investigation Cases**

### **Cases demonstrating joint investigations.**

#### **Case I**

##### **DEALING IN PROHIBITED SUBSTANCE**

In September 2014, a joint operation was organised by the DEC and ZPS to address illegal cutting and trafficking of *Mukula Tree* in Serenje District of the Central Province of Zambia. When arrested, the case was handed over to AMLIU where the accused was charged with unlawful possession of property suspected to be proceeds of crime and Money Laundering.

On trial the accused was acquitted by the subordinate court, however the state appealed to the High Court. On appeal the High Court found the accused guilty on both charges and convicted him accordingly. He was fined a total of K51, 000.00 that was equivalent to the maximum penalty units at the time and a further, K79, 000.00 cash was forfeited to the state.

#### **Case II**

##### **DEC AND ZAMPOST (Control delivery)**

Operation Baby bag a control delivery operation by DEC and Zambia Postal Service. Information was received from Country 'A' through police to police corporation about a parcel destined for Zambia from Country 'B' travelling through 'C' airways. The team observed the parcel when it arrived at Lusaka International airport, the parcel was clandestinely picked from the clearing agent at the airport and delivered to ZAMPOST office hoping the owner would collect it.

With no one having collected the parcel, the team decided to deliver the parcel at the home address provided. On arrival at the address, it turned out to be a wrong address and the DEC officer who posed as the mail man decided to call the number provided. The parcel owner responded and requested to meet the DEC officer at a different address to get the parcel and offered him K 150.00 bribe for delivery of the parcel.

After agreeing on the new address to meet, then the DEC team arranged with the usual mailman from ZAMPOST who was known to the suspect to deliver the parcel and request the suspect to acknowledge receipt by completing the ZAMPOST mail delivery note. The owner of the parcel turned out to be a known Nigerian drug dealer who was apprehended and upon interview he confirmed that he gave the address of the house opposite as his decoy, in order to make sure that he would not be trapped by police during the delivery of the parcel.

The suspect was a repeated offender of drug trafficking who was found guilty and sentenced to a term of 18 months imprisonment with hard labour.

#### **Case III**

##### **COMPANY X LIMITED (2017)**

Information was received on a company smuggling diesel and petrol through one of the border posts. A joint operation was conducted by ZRA, Ministry of Energy, Energy Regulation Board (ERB), Drug Enforcement Commission (DEC), Road and Transport Safety Agency, and Office of the President.

The operation was successful and the company was sanctioned tax administrative returns amounting to **K2,302,066.59** and a fine penalty amounting to **K2,302,066.59** totalling **K 4,604,133.18**. Additionally, **12** trucks and tankers which were used to smuggle the subject fuel were seized and eventually forfeited to the state.

163. ML investigations in Zambia are low compared to predicate offences because of LEAs other than AMLIU not pursuing parallel financial investigations nor prioritizing ML



investigations when conducting investigations for predicate offences assessed and identified as proceeds generating. Even AMLIU, investigates more predicate offences than those where the ML offence is pursued either as a stand-alone offence or jointly with the predicate offence.

*b) Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies*

164. At the time of the on-site visit, Zambia had conducted and reviewed its NRA, but had not developed an AML/CFT policy or strategic plan guided by and to mitigate the risks identified by the NRA. The strategic plan was being developed by the various sectors and government agencies before being consolidated by the National Taskforce.

165. Although the authorities understand the risk of ML and at times used the AML regime’s interventions to disrupt criminal activities of proceeds generating offences such as drug smuggling, tax evasion and fraud (*such as the introduction and insistence by the ZRA on the use of TPINs for all transactions, introduction of scanners at border points, and use of joint operations*), ML investigations and prosecutions are not consistent with the threat and risk profile identified by the country. In the NRA (*and as also acknowledged by the authorities during the onsite*) the top three proceed generating predicate offences are corruption, tax evasion and theft/fraud. However, from the records and statistics availed, the authorities (AMLIU in particular) had not had any ML investigation or prosecution emanating from or linked to a corruption or tax evasion offence since 2013 as demonstrated in Table 10, below.

**Table 10: Statistics of Cases Investigated by the Anti-Money Laundering Investigations Unit (AMLIU)**

Year	Cases Received	Cases Arrested	Persons Arrested	ML	Theft, & ML	Fraud & ML	Theft Fraud	Corruption	Convicted Persons	Acquittals	Discharges	Referrals (ACC)	Referrals (ZRA)	Referrals (ZPS)
2013	248	44	76	1	5	2	34	2	5	4	2	2	1	0
2014	164	49	79	0	9	8	32	0	29	4	0	0	0	0
2015	149	55	77	1	10	11	30	3	18	6	0	1	0	8
2016	213	31	57	3	4	8	16	0	14	3	2	0	0	0
2017	305	88	134	7	20	14	46	1	28	6	1	0	0	4
2018	74	15	18	-	2	2	5		-	-	-	-	-	-

166. As illustrated in the table above, theft/fraud is the most prevalent predicate offence in the investigations conducted by the AMLIU but the value of the stolen property has not been computed for purposes of comparison with the values lost through corruption, and tax evasion, to ascertain the materiality of the predicate offences and thus gauge where to concentrate the AML efforts under a risk-based approach. Although the numbers of theft/fraud cases being investigated by AMLIU were on the high side, it was difficult to establish how many of this type of predicate offence formed the total number of convicted cases in court to enable a determination to be made on how effective the whole system is in dealing with theft/fraud as one of the high risk predicate offences in Zambia.

167. The ACC, in order to enhance its investigations and prosecution of corruption cases and ensure that there is appropriate allocation of resources, established the following Units in early 2018: Intelligence Unit to support investigations in big cases of corruption; Financial Investigations Unit to deal with cases of grand corruption; and the Asset Management Unit to deal with seized and forfeited assets. The main purpose of this approach was to effectively deal with cases of grand corruption. At the time of the on-site visit, it was still early to assess the results of this arrangement as it was still in its nascence stage. The authorities also acknowledged that this was not policy driven but was motivated by the need to have internal structures which meet the high levels of corruption as identified in the NRA report. However, these developments are not sufficiently adequate to mitigate the concern that not enough ML cases arising from corruption are being pursued by the ACC.

168. The NPA is responsible for all prosecutions. The Taxation and Financial Crimes Unit, which is the Unit responsible for prosecution of ML offences in the NPA is not decentralised to all provinces, therefore, does not have officers dedicated or specialised to prosecute predicate and ML cases at Provincial level. The prosecutors handle all prosecutions in the Province, in addition to ML prosecutions as their normal course of duty. The handling of ML cases at par with any other ordinary criminal offence indicates that ML threats and risks have not been accorded the due attention required in line with its national profile and prioritisation. Additionally, there is no evidence that the ML investigations are prosecutor-guided, as per the best practice. The investigators bring in the prosecutors into the investigation at a very late stage, in most cases when the investigations have been already finalised, which might explain why more concentration is made on predicate offences in cases where a more serious offence of ML could have been pursued. In addition, there are no specialized courts to handle financial crimes as has become best practice with most countries in the ESAAMLG Region. All ML trial cases are handled by the subordinate courts at the first instance. It is observed that this has potential to affect the timely execution of asset forfeiture and can result in seized assets depreciating in value before cases are determined as there will be limitations in prioritising the cases. The table below illustrates the number of ML cases prosecuted from 2013-2018 which is still relatively low.

**Table 11: Number of prosecutions, convictions and acquittals for money laundering**

Period	Number	Active	Discharge	Convictions	Acquittals
2013	12	7	1	2	0
2014	5	1	1	2	1
2015	6	2	1	2	1
2016	13	4	0	3	2
2017	25	15	1	5	0
2018	9	9	0	0	0
<b>TOTAL</b>	<b>70</b>	<b>38</b>	<b>4</b>	<b>14</b>	<b>4</b>

169. Table 11 depicts the efforts which have been made by the authorities to effectively prosecute ML cases but as already highlighted above, such prosecutions could be strengthened by ensuring that only ML cases with good quality evidence are prosecuted. This can be achieved by more consultations between AMLIU and the NPA during the course of investigations of such matters. The low staff levels in the Taxation and Financial Crimes Unit could also be impacting

negatively on the Unit. The authorities also need to come up with proper policies which would guide both AMLIU and Taxation and Financial Crimes Unit in prioritisation of investigations and prosecution of ML cases according to the risks identified.

*c) Types of ML cases pursued*

170. The authorities demonstrated an ability to prosecute different types of ML cases, categorized as standalone, third party and self-laundering. From the cases provided, the authorities have concentrated more on prosecution of self-laundering cases, although the statistics also show an increase in stand-alone money laundering cases in the year 2017 with the least being for third party laundering. The AMLIU and ACC, although the cases were small in number, demonstrated that they are able to investigate different types of ML. During the on-site visit, it was noted that statistics retained by both institutions did not categorise the ML cases according to the type of ML investigated. This was mainly due to the law not requiring such categorisation when someone is charged with the offence of ML. AMLIU which is the main LEA mandated to investigate ML had to go back to its files to determine the different types of ML it had investigated and referred for prosecution during the interaction with the assessors at the time of the on-site. However, it should be noted that the AMLIU officers were well aware of the different types of ML and could easily distinguish them which quickly led to the Unit categorising the ML cases it had dealt with into the different categories without much difficulty. Table 12, below sets out the types of ML cases investigated.

**Table 12: Types of ML cases pursued**

<b>Year</b>	<b>Concluded Within same year</b>	<b>Concluded From carryover cases</b>	<b>Cases Arrested</b>	<b>Stand Alone ML</b>	<b>Self - Laundering</b>	<b>Third Party Laundering</b>
2013	21	23	44	2	9	1
2014	28	21	49	2	4	-
2015	34	21	55	0	-	-
2016	27	4	31	3	7	3
2017	57	31	88	7	14	-
2018	6	4	10	1	4	2

171. The Authorities do not categorize the cases according to whether the predicate offence was a foreign or domestic predicate offence; whether the proceeds are laundered domestically or abroad, which is an important parameter for understanding ML risk, given the geo-position of Zambia as a transit country. Zambia serves as a major transit route for countries in East, Central and Southern Africa which increases the risk of proceeds of crime generated elsewhere either passing through or being laundered in Zambia. In addition, the Authorities indicated that there were no ML prosecutions of legal persons. This is not consistent with some of the cases prosecuted as in the sample cases provided, there were instances where the schemes were executed through the use of legal persons. In addition, PACRA, the agency charged with registration and regulation of legal persons indicated that they were aware of the risk posed by use of companies limited by shares to launder proceeds.

172. It is concluded, therefore that the authorities have not comprehensively identified and categorised the type of ML offences prevalent in Zambia according to elements of a foreign or

domestic predicate offence, and legal persons laundering illicit proceeds. The lack of such categorization could be detrimental to the authorities' understanding of Zambia's ML risk profile. As indicated under IO. 5, the fact that no legal persons have been investigated and prosecuted for ML is of concern as PACRA is of the view that the risk of ML is high in companies with limited shareholding due to their profit-driven nature.

*d) Effectiveness, proportionality and dissuasiveness of sanctions applied against legal or natural persons*

173. The records and statistics provided during the on-site visit indicate that no legal person has been prosecuted or convicted of any ML offence or any predicate offence linked to the offence of ML, even though in some of the sample cases provided by the authorities to the Assessors show involvement of legal persons in commission of some of the ML offences. This indicated less to no attention being paid to legal persons being used as vehicles to launder proceeds of crime or to commit other predicate offences.

174. Regarding sanctioning of natural persons; during the on-site visit the authorities, in particular LEAs expressed a general dissatisfaction with the sanctions meted out against persons convicted of money laundering offences, which they stated tend to be lenient. Prior to the NRA process, the average custodial sentence was about three (3) years imprisonment from a possible maximum term of ten (10) years imprisonment, while the longest sentence imposed had been seven (7) years. There were instances where convicts had been sentenced to as little as fifteen days in custody or suspended sentences. The authorities did not provide any sentencing guidelines or principles that the Magistrates refer to when issuing sentences and as mentioned earlier, as per best practice in the Region, there are no specialized courts for financial and economic crimes (including money laundering) to accord special consideration of ML cases and good practices on how to handle such cases. The above observations led to the conclusion that sentencing is left to the sole discretion of the Magistrates in the subordinate courts without necessary guidance to inform them of the sentence which might be appropriate for the different circumstances obtaining in different ML cases.

175. In the case of *The People vs Abigail Munkombwe and Another*, Case No. SSY/135/2016 the suspects in an earlier civil case had actually been awarded what was demonstrably proceeds of crime, but the authorities successfully brought criminal charges against them, resulting in their conviction and sentencing to imprisonment, and the forfeiture of the property. This case demonstrates the inconsistency of the courts' approach to proceeds of crime.

176. The authorities submitted that inappropriate sanctioning in ML matters is a problem in the subordinate courts, but the High Court issues more appropriate sanctions. In view of the fact that the High Court only exercises appellate or supervisory jurisdiction in matters of prosecution of ML and related predicate offences, if only there is an appeal by either side it means that whatever sentence will have been applied by the subordinate court will stand unless an appeal is preferred or the High Court conducts a review of the case and come to a different decision. Considering that almost all ML cases are being tried in the subordinate courts, with only a few of the cases being eventually taken to the High Court only in exceptional circumstances, sanctions applied in most of the ML cases on average are not effective, proportionate and dissuasive.

*e) Other criminal justice measures*

177. Zambia has made use of their civil asset forfeiture regime as an alternative criminal justice measure where a ML investigation and prosecution has not been successful or possible for justifiable reasons.

178. The Zambian authorities also possess, and have exercised the option of charging suspects with possession of property reasonably suspected of being proceeds of crime in terms of the FPCA<sup>7</sup>. However, the exercise of this option was not being used in some instances with the caution it deserves as it was the Assessors' observation that the provision has been used for cases where a charge of ML could have been easily preferred. The offence under this section being easier to prove, had been preferred instead. This effectively substitutes prosecution for the offence of ML, which is inconsistent with the requirement of the Standard as it diminishes the importance of the ML offence. A case in point is provided below.

**Box 5: Other criminal justice measures**

In 2016, an employee of the Road Traffic and Safety Agency (RTSA) which is an entity of Government and his co-accused were charged with Theft by Public Servant and Possession of Property Reasonably Suspected of being Proceeds of Crime contrary to Section 71 of the FPCA No. 19 of 2010 of the Laws of Zambia. The allegation being that RTSA employee had stolen security papers namely road toll receipts from RTSA which through third parties he later sold to unsuspecting motorists with the money being sent to him through money transfer services by one of the third parties. Having received the proceeds from the sale of the security papers, he used them to purchase 4 different types of vehicles which he later resold to different people. He and other two co-accused persons were charged with the above offences and appeared in the Subordinate Court. The trial commenced but after leading of evidence from witnesses, the accused absconded making efforts to continue trial for the other two a futile exercise. Efforts to locate the accused were in vain, forcing the Prosecution to lodge a civil forfeiture application to have the vehicles bought with the proceeds of crime forfeited to the State. The Prosecution was successful in obtaining the forfeiture order against 3 of the vehicles and they were forfeited to the State.

179. The circumstances of the above case, clearly demonstrate one of the cases where the persons could have been charged with an offence of ML with the evidence available making it easy to prove the offence but another charge was preferred instead.

*Conclusion on Immediate Outcome 7*

Zambia has achieved a **Moderate level of effectiveness for Immediate Outcome 7.**

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<sup>7</sup> S. 71 of the FPCA, 2010

## ***Immediate Outcome 8 (Confiscation)***

### ***a) Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective***

180. Zambia has been pursuing confiscation of proceeds and instrumentalities upon conviction where such assets are proved to be associated with the criminal offence. This was a general practice and not driven by a specific policy objective. In 2012 after the creation of the NPA, a unit called the AFU was established in the NPA to deal with all matters relating to asset forfeiture. However, the Unit was only operationalized in 2015 when it had a substantive head appointed. The main objective of coming up with the Unit by the Authorities was to implement the provisions of the FPCA which was enacted in 2010. The authorities indicated that this was a change in policy by Government realising the need to effectively pursue asset forfeiture. In enacting the FPCA, Government wanted to domesticate the provisions of the UN Convention Against Corruption and at the same time consolidate asset forfeiture provisions existing under different statutes. The enactment of the FPCA widened the scope of asset forfeiture in Zambia as it introduced non-conviction based forfeiture. Therefore, the enactment of the FPCA strengthened the asset forfeiture regime of Zambia and enabled the AFU to deal with both conviction and non-conviction based forfeitures. These developments were clear indications that the authorities had started to pursue proceeds of crime as a policy objective, although the setting up of the AFU was still an administrative arrangement. At the time of the on-site visit the AFU was inadequately resourced to fully carry out its functions. As there was no budget allocation, its structure had not been approved and only the position of the Unit Head had been approved and position filled. The absence of an approved structure and filled positions to institute non-conviction based forfeiture throughout Zambia was affecting performance of the AFU and hence only a few cases of forfeiture had been handled by the Unit at the time of the on-site visit.

181. At the time of the on-site visit, three (3) advocates were engaged by the AFU to handle forfeiture matters in the different provinces of Zambia. In addition to the advocates were four (4) prosecutors. The officers handling asset forfeiture have received training on asset forfeiture and some through the arrangement made by ARINSA have been attached to the South African Asset Forfeiture Unit under the Prosecutor Placement Program which has provided more exposure to them on handling asset forfeiture matters. However, the AFU being still in its infancy still needs more training. The authorities met were of the view that non-conviction based forfeiture applications are taking too long to be determined by the courts which presented challenges in quick disposal of the applications.

182. The enactment of the FPCA broadened the asset forfeiture regime of Zambia aided by some of the LEAs retaining their ability to pursue both provisional and confiscation measures through powers provided to them under the different Acts they administer. The ACC, AMLIU, DEC and ZRA demonstrated in addition to the non-conviction and conviction based forfeiture that they are also able to pursue administrative forfeiture through powers bestowed on them in terms of their respective statutes.

183. The authorities using the conviction based, non-conviction based and administrative forfeiture have confiscated assets varying from proceeds of crime, instrumentalities and in two cases, property of corresponding value. However, a culture of following the financial gains in broad terms needs to be one of the major objectives of all LEAs instead of waiting to refer such cases to AMLIU, as described under IO.7.



184. The enactment of provisions allowing non-conviction based forfeiture have been used by the authorities as an option to pursuing a conviction based forfeiture and also to demonstrate the effectiveness of the courts over such matters. Below is a case where the authorities ended up using both processes to have the proceeds of crime involved in the case forfeited.

**Box 6: Non - Conviction Based Forfeiture and Conviction Based Forfeiture**

The brief facts being that 1<sup>st</sup> Accused's late boyfriend used to work for one of the milling companies in Zambia. At the time of his death, the late boyfriend had informed his relatives that he had entrusted 1<sup>st</sup> Accused with K1 500 000 (USD150 000). Although, it later turned out that the late boyfriend of 1<sup>st</sup> Accused had defrauded the amounts involved from his place of employment and upon discovery of the fraud his employers had reported the case to the police who could not interrogate him at the time as he was very sick and never to recover. After burial, the deceased's relatives not aware of the circumstances surrounding the money approached 1<sup>st</sup> Accused over the said monies. However, 1<sup>st</sup> Accused proclaimed ignorance of the rest of the money only acknowledging being entrusted with about K80, 000.00 (USD8, 000.00), meanwhile her brother (2<sup>nd</sup> Accused) was buying a variety of new assets and when confronted by the relatives he could not explain the source of the funds. Aggrieved by both the conduct of 1<sup>st</sup> Accused and her brother, the relatives reported the matter to the Drug Enforcement Commission (DEC). The DEC investigated the matter and in the course of investigating it become aware of the earlier fraud reported by the late boyfriend's employer. The amount of USD46 000 and the assets purchased by the 2<sup>nd</sup> Accused were all seized by DEC. When the case was brought to the NPA, initially it tried to have the assets forfeited based on a non-conviction forfeiture application following a written disclaimer which had been made earlier by the 1<sup>st</sup> Accused. This resulted with the courts forfeiting the USD46 000 to the State but the other assets were re-instated to the 1<sup>st</sup> Accused. Dissatisfied by the decision of the courts, the NPA initiated the criminal trial of both accused persons charged with being in Possession of Property Reasonably Suspected of being proceeds of crime contrary to the FPCA but not ML in terms of the PPMLA which could have been justifiable under the circumstances of the case. DEC seized again the assets which had been ordered to be returned to the 1<sup>st</sup> Accused and the other persons involved in the civil forfeiture application. Both accused persons were eventually convicted, after which the NPA successfully applied for the K80 000, two minibuses, motor bike, toyota corolla vehicle, five herd of cattle, a hand hammer mill, TV set, dining room set and other small items, assets involved in the offence to be forfeited to the State

*b) Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

185. Zambia has a developed framework both institutional and legal to effectively implement forfeitures. The forfeiture system provides various forms of confiscation which include conviction based, non-conviction and administrative forfeiture. An assortment of assets can also be forfeited and this includes: proceeds and instrumentalities of crime, property of corresponding value involving domestic and foreign predicate offences and proceeds which have been moved to other countries. However, various agencies entrusted to implement these measures are at different levels of effectively pursuing the confiscation measures. This is due to different reasons including lack of adequate resources, skills and experience to be able to trace and identify assets to be confiscated and at times parallel financial investigations to *follow the money* not being instituted when investigating proceeds generating offences. In the period under review, the authorities managed to confiscate assets not necessarily according to the high risk predicate offences



identified but relating to all types of offences, including ML. Most of these confiscations were conviction based (see Table 13 below).

186. The following are areas where Zambia has not shown notable strides in effecting confiscation measures:

**Property of corresponding value.**

187. The NPA indicated that for the period 2013-2018 it had not handled any case involving property of corresponding value. The same goes with the ACC. ZRA demonstrated that it has various cases whose value and forfeiture was based on property of corresponding value. The AMLIU had one case on forfeiture of property of corresponding value.

**Repatriation**

188. The NPA in conjunction with AMLIU facilitated the enforcement of a confiscation order from Namibia after it had been registered in the Zambian Courts. The order related to funds stashed in one of the commercial banks in Zambia as proceeds of crime of an offence which had occurred in Namibia. ZRA was also able to repatriate property (mukula tree) to Tanzania. ACC had not made any repatriation of confiscated property from or to foreign countries.

**Sharing of property domestically or with foreign countries**

189. NPA could not categorically indicate whether from 2013 to 2014 there was any sharing undertaken based on property confiscated but it could be dissent from the processes followed in disposing of property confiscated that this is possible but the follow up on the same is not effectively done by this agency. On the other hand the ACC presented a case where after a successful administrative forfeiture order was granted it shared about 38 Bedford trucks with ZPS, DEC, and Zambia Prison Service and the ZRA presented cases that demonstrated how sharing of assets confiscated is handled.

**Restitutions**

190. All agencies indicated that following granting of forfeiture orders there had been instances where they had to make restitutions to the victims. In one of the cases of fraud investigated by AMLIU and eventually taken to court, a motor vehicle involved was forfeited and ordered by the court to be restituted to the complainant who had been prejudiced by the fraud.

**Proceeds moved to other countries**

191. With the exception of ZRA, the NPA, AMLIU, DEC, ACC had not confiscated proceeds involving foreign predicate offences or proceeds which had been moved to other countries.

192. Generally, authorities demonstrated during the on-site visit that, using different procedures which may be applied depending on the circumstances of each case they are able to use administrative, non-conviction and conviction based confiscations, to effect confiscation of proceeds and instrumentalities of crime as indicated in the table below.

**Table 13: Asset Forfeiture by Agency and Type between 2013 and 2018**

Agency	Type of forfeiture	Number of cases on seized assets	Number of cases on frozen accounts	Value of property seized or frozen	Number of forfeiture orders	Value of forfeited assets
NPA	Administrative	N/A	N/A	N/A	N/A	N/A
	Conviction	50	19		14	-
	Non-conviction	180	1		4	-
AMLIU	Administrative	-	-	-	-	-
	Conviction	40	23	K38,843,199.12	26	K974,700.00 - most of the properties forfeited were not valued
	Non-conviction	1	2 - involving 5 accounts	K155,000.	2	K2,480,000.00
ACC	Administrative	8	0	-	8	-
	conviction	18	0	-	18	-
	Non-conviction	-	-	-	-	-
ZRA	Administrative	310	163	1,263	103	119.9
	Conviction	-	-	-	-	-
	Non-conviction	-	-	-	-	-

193. The authorities demonstrated that from 2013 – 2018, they were able to have real estate, luxury vehicles, and funds either frozen or seized and eventually confiscated and forfeited. The FIC played an important role in some of the cases leading to tracing and identification of some of the assets by LEAs by identifying such assets and then temporarily freezing them before referring the cases to LEAs for investigation. During the period referred to above, the FIC took 33 freezing measures in cases which were eventually handed over to LEAs to investigate in that way becoming an important player in preventing dissipation of proceeds of crime.

194. The authorities also demonstrated that they do not only pursue property laundered, but also in certain cases pursue instrumentalities involved. Between 2015 and 2018, the NPA had 56 applications in different cases for forfeiture of instrumentalities. Unfortunately out of the 56 applications, NPA was only granted one of the applications involving 235 bicycles which were forfeited. During the on-site, judgments of four of the 55 cases were presented to the assessors where the authorities had applied to the courts to forfeit the four vehicles involved in conveying a total of about 10 000 bags of mealie meal as contraband. However, all the four applications had been declined by the courts as there were third parties who had claimed legitimate ownership of the vehicles and that the acts involved had not been sanctioned by them. The courts ended up

forfeiting only the mealie meal. Although the majority of the applications were declined, at least the NPA demonstrated that instrumentalities, if identified can also be forfeited.

195. The NPA, however, did not appear to have a proper mechanism in place to quantify and attach value to property which it would have moved the court to forfeit to the State. In its view, this was a matter to be handled by law enforcement agency that would have seized or frozen property subject to confiscation. A breakdown of such figures from the NPA could not be provided to enable quantification in terms of value of the forfeited assets.

196. AMLIU indicated that between 2013 and 2018 it had seized assets and had forfeiture orders granted for some of the cases it prosecuted before such powers were concentrated in the NPA after its establishment in 2012. AMLIU provided a value of assets it had seized to be USD460 000 for this period but what was not clear as whether it is in all seizures that it is able to assess the value of the assets subject to confiscation or it was only in cash seizures. This was also the same with the ACC where the value of assets which were not in cash could not be indicated with the exception of one case where the value of property subject to confiscation was determined in monetary terms.

197. Although ZRA indicated that it does not have the mandate to investigate and prosecute money laundering or terrorist financing cases, it succinctly indicated how it uses its tax system to seize property with the policy objective of having it confiscated. In this regards, from 2016 to 2018, ZRA had 170 seizures for smuggling or false declaration of goods and failure to pay taxes. K31,5 million involving the following commodities; Mukula tree, vehicles, alcoholic beverages, clothing, shoes, and bulbs was recovered. ZRA demonstrated where tax and penalties were recovered in a number of cases using tax assessment procedures.

198. At the time of the on-site visit, each LEA and the NPA had their own procedures of managing and disposing of forfeited assets. The NPA had not yet established the Forfeited Asset Fund as the regulations intended to operationalise it had not yet been promulgated. In practice what was obtaining was that if what had been forfeited is cash then it would be deposited into the NPA account awaiting further instructions from Secretary to Treasury who would have been informed about the forfeiture in writing by the NPA. This was the same method which was being used by the NPA to deal with other forfeited assets, like vehicles. As for the ACC, the process would almost be the same as having forfeited funds deposited in its Asset Forfeiture account and for other assets, it informs the Secretary to Treasury who constitutes a Board of Survey to determine the nature of disposal of the property which has often been through public auctions with the proceeds being deposited in the Central Treasury Account. Where there is a specific order from the courts on how to dispose the funds or property then the Board simply follows the order. In the case of ZRA, once the various processes such as publication of appropriate notices has been done and assets involved eventually forfeited, it has various ways of disposing such assets which include destruction, auctioning and donating. The processes of managing the disposal of assets particularly for both the NPA and ACC appear to take relatively long as an administrative process out of the control of both institutions is followed. At the time of the on-site, the NPA was in possession of a vehicle which had been forfeited but the formalities to actually determine what to do with it had taken so long and had still not been concluded at the time. The problem this creates is that with assets like vehicles, they depreciate and the institutions run the cost of maintaining them awaiting guidance on how to dispose the asset.

*c) Confiscation of falsely or undeclared cross-border transaction of currency/BNI*

199. Zambia follows a declaration system to regulate cross-border transportation of currency and BNIs. All persons entering or leaving Zambia are required to fill Form CE20 and make currency declaration of Zambia Kwacha exceeding US\$5,000 or equivalent in other currencies. Non-declaration or false declaration is a criminal offence.

200. Although during on-site visit the ZRA officials were aware that they are authorised to enforce the requirements of FIC Act relating to cross-border declaration of currency, at the time of the visit they had not undertaken any seizure involving cash. They reported that the responsibility was being handled by DEC, who are stationed at the ports of entry and exit.

201. The AMLIU officials had dealt with two cases where seizure of cash was done at Kenneth Kaunda International Airport. In both cases the cash had not been declared in accordance with the requirements of the law, but the ZRA did not detain or seize it as per their mandate in terms of the law to determine whether it was proceeds of crime or not, instead they handed the suspects to DEC for charges of being in possession of property reasonably suspected to be proceeds of crime (in terms of s. 71 of FPCA) to be considered. As the cash was not seized by ZRA who are the authorised officials mandated to do so in terms of the law (s. 38 of the FIC Act), the courts ruled in favour of the accused persons in both cases and the cash had to be returned to the owners and ultimately not considered for forfeiture.

202. From the information provided to the Assessors, the trend of cross-border cash movement (whether exported or imported) could not be ascertained as declarations are not investigated to determine if they are proceeds of predicate offences being laundered into Zambia or abroad.

203. Based on the above findings, implementation of declaration requirements on both currency and bearer negotiable instrument on entry and exit points was not effectively being done. Which also follows that no sanctions on violations of cross-border transportation of currency and BNIs had been applied to minimize and deter such practices from happening.

*d) Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.*

204. Zambia confiscation results did not demonstrate consistency with the money laundering or terrorist financing risks identified. At the time of the on-site visit Zambia had finalized and indicated to have started implementing the recommended actions from NRA Report which identified corruption, tax evasion and theft as the prevalent proceeds generating crime posing the risk of money laundering and terrorist financing. However, cases of money laundering upon which property was laundered emanating from these offences have been very low, if not negligible across all prosecuting agencies.

205. ZRA appeared as the outstanding agency in executing confiscation measures but its effort to confiscate property laundered appeared to be hindered by the fact that it is not mandated to prosecute money laundering or terrorist financing cases but has to refer these to relevant domestic counterparts.

206. The AFU, since its establishment in 2015 has not secured a confiscation centred on laundered assets. Added to this, the NPA does not have a clear strategy or confiscation framework which provides guidance on how to prioritise cases according to risk and invariably the approach to confiscation is also not guided in terms of risk prevalence.

207. The lack of national policy to guide all prosecuting agencies, including the judiciary impedes efforts to prioritise confiscation of assets according to ML/TF risk, particularly assets emanating from money laundering offences as TF was determined to be of low risk in terms of the NRA results.

208. The other difficulty faced by the authorities during the on-site was to reconcile statistics of cases where there was successful forfeiture and in some cases the value of the asset. In order to be able to effectively prioritise cases to be targeted for confiscation a more systematic case management system needs to be maintained at the NPA as it is ultimately responsible for all prosecutions and confiscations. Such statistics would enable it to easily develop guidelines based on changing trends relating to ML and appropriate prioritisation of allocation of resources when dealing with confiscation cases.

*Conclusion on Immediate Outcome 8*

**Zambia has achieved a Moderate Level of effectiveness for IO.8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### **IO.9 (TF investigation and prosecution)**

- a) Zambia has amended the ATA to criminalize TF and establish the NATC for the effective combating of TF.
- b) The authorities demonstrated good understanding of their TF risks and effective detection, mitigation and disruption of TF incidences when they occur.
- c) The authorities have adequately resolved, disrupted or handled reported incidences of TF on two occasions when prosecution could have posed evidential and logistical challenges.
- d) The authorities demonstrated good coordination and collaboration, both internationally and domestically, including exchange of information and joint operations, to disrupt potential TF incidents.

##### **IO.10 (TF preventive measures and financial sanctions)**

- a) Zambia has a legal framework to implement the UNSCRs in place, with the following limitations: it does not empower Zambia to propose a name for designation to relevant UNSC Committees; enable authorities to move ex parte in proposing designation to relevant UNSC Sanctions Committees; provide for authorities or the NATC to collect or solicit relevant information for designation; require financial institutions or DNFBPs to report to the NATC or competent authorities assets frozen or action taken in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions. Regulation 32(2) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations is inconsistent with the requirements of resolutions 1267/1999 in as far as it allows designated persons to appeal against their designation to the national courts.
- b) The implementation of the sanction lists is enforced by the NATC. The NATC ensures that the supervisors disseminate the updated list to reporting entities without delay, upon receiving it from the NATC by requiring that the email disseminating the updated list is copied to the NATC. In case of a positive match, the reporting entities report directly to the NATC.
- c) The NATC has issued guidelines to the supervisory bodies, reporting entities and other stakeholders, guiding them on how to implement the sanctions lists.
- d) Supervision of the NGO sector for TF is still lacking as the monitoring tool in use does not deal in general with TF issues nor does it incorporate a component for risk of exposure to TF, which the authorities had started developing at the time of the on-site.
- e) The authorities have developed measures which are consistent with Zambia's overall TF risk profile, in accordance with the results of the NRA.

**IO.11 (PF financial sanctions)**

- a) There is no legal or institutional framework in Zambia to enable implementation of targeted financial sanctions relating to financing of proliferation by reporting entities on AML/CFT.
- b) The supervisory authorities on AML/CFT have no legal mandate to monitor compliance by FIs or DNFBPs on implementation of the financial sanctions relating to PF and, therefore, do not monitor any of their supervised entities for compliance.
- c) The institutions designated as reporting entities have also on their own not taken the initiative to voluntarily implement the UNSCRs on proliferation financing.
- d) There is generally very little awareness on targeted financial sanctions relating to financing of proliferation by most of the competent authorities and the reporting entities.

**Recommended Actions****IO.9 (TF investigation and prosecution)**

- a) Zambia should develop a national TF strategic plan to further enhance the good work which is being done at institutional level.
- b) The full compliment of the establishment of the newly formed NATC (128 positions) should be filled, and adequate resources and support provided to it so that it is able to effectively execute its mandate.

**IO.10 (TF preventive measures and financial sanctions)**

- a) Zambia should enact legal provisions to empower the authorities to provide a mechanism for identification of domestic designations for 1267.
- b) The NATC should develop and implement mechanisms to ensure Supervisors disseminate the updated list to the reporting entities without delay after receiving it from the NATC and channels of feedback to it in the event of a positive match.
- c) The Authorities should do a detailed study of the NGO Sector to ascertain the vulnerability of the sector to TF risk, identify NGOs which might be most vulnerable to TF abuse and take appropriate measures to mitigate their exposure to the TF risk.

**IO.11 (PF financial sanctions)**

- a) Zambia should enact legislation to regulate implementation of targeted financial sanctions relating to financing of proliferation.
- b) In the meantime, the institutions designated as reporting entities should be encouraged to voluntarily implement the UNSCRs on proliferation financing.
- c) The Authorities should raise awareness on targeted financial sanctions relating to financing of proliferation.

209. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.



## ***Immediate Outcome 9 (TF investigation and prosecution)***

### *a) Background and Context*

210. The NATC became operational in February 2017 after the amendment of the ATA to statutorily create it. It is mandated to deal with TF matters in Zambia. It is headed by a Director, assisted by three Deputy Directors in charge of Intelligence, Operations and Research and Development Units. It has an establishment of 128 members of staff, but currently, only 18 of the positions are filled (including 2 of the 3 deputy director positions – Intelligence and Operations). Also involved in matters of TF is the ZSIS which has a specific Unit under one of its Directorates assigned to deal with counter-terrorism. The Unit gathers intelligence and looks into threats of terrorism, including TF.

211. The risk of TF in Zambia was assessed as part of the NRA that was conducted in 2016 and the risk was rated as medium low. The assessment of the risk of TF and its rating was more apparent with the ZSIS which placed it at medium and clearly explained the justification for such a rating as explained in the paragraph below.

212. The authorities demonstrated a good understanding of Zambia's TF risk profile, as assessed from the following parameters:

- That the threat of terrorism or terrorism financing activities from indigenous Zambians is very low to non-existent.
- That the main threat of TF has been identified to come from immigrants and settlers from jurisdictions deemed to pose a high risk of terrorist and terrorist financing activities, such as the Middle East countries and the horn of Africa.
- That these individuals are reluctant to integrate in indigenous Zambian communities and form secluded societies, which are hard to penetrate. However, they engage in legitimate business in Zambia.
- That the secluded, secretive nature of the communities is aided by the informal and cash-based nature of the economy, mobile money transactions prevalence; hawala systems; use of stores as fronts and transacting below the threshold when transacting in the formal financial sector, to avoid scrutiny of their financial transactions and dealings and use of relatives to visit and collect funds.
- As such, these persons can utilise these loopholes to support terrorist organisations or activities they are sympathetic to in foreign and in their own jurisdictions.

213. The Immigration Department collaborates with the ZSIS to thoroughly scrutinize visa applications received from nationals of countries deemed high-risk jurisdictions.

214. Competent authorities employ a coordinated approach with other LEAs both locally and abroad to access information and effect disruptive operations.

### *b) Prosecution/conviction of types of TF activity consistency with the country's risk-profile*

215. There has not been any prosecution for terrorism or TF activities in Zambia. The ZSIS utilizes the existing intelligence and information gathering machinery as well as information from foreign partner agencies to identify potential TF cases. This is in line with Zambia's risk profile, where the threat of terrorism or TF activities in indigenous Zambians is virtually non-existent and

limited to migrant communities that are under constant scrutiny and surveillance for terrorism and suspected TF activities.

216. At the time of the onsite, there had been five (5) disseminations from the FIC to the NATC relating to TF, of which only one resulted in a case where a suspected terrorist financier was deported. The authorities reported two suspected TF incidences, which were identified and disrupted in 2016 using other measures such as deportation and freezing of funds, with no ensuing prosecution. The authorities are also alive to reasonable national security and legal reasons when they come up with and implement measures in TF related cases preferred to prosecution (see the section under disruption below). The measures which had been taken by the authorities outside prosecution or convictions at the time of the on-site visit were consistent with the country's TF risk profile. The ZSIS clearly explained why in one of the cases deportation was preferred instead of domestic prosecution, although according to it there was adequate evidence to show the illegal TF activities which were being carried out by the persons (also see section on disruption below).

### *c) TF identification and investigation*

217. Terrorism and terrorism financing are identified as national security threats under the ATA, as amended.

218. The authorities demonstrated that they have identified, investigated and disrupted potential TF threats as illustrated in cases in the table below:

### **Box 7: TF Threats Cases Identified, Investigated and Disrupted**

#### **Case I**

The NATC received a STR from the FIC identifying a potential TF activity. The suspicious activity that triggered the report was an attempt by a person of interest to change the signing mandate on a bank account from a holder of a passport of one eastern Africa country to another. Upon scrutiny, the authorities discovered that the attempt was by a person that had been previously deported from Zambia to disrupt suspected TF activities. He had sneaked back in an attempt to access funds that had remained on an account he controlled and deposited earnings from legitimate businesses he was running in Zambia before the deportation, using a different identity of the said second passport. The funds on the account were frozen, but by then the suspect had already disappeared probably aided by the porous borders he had utilized to sneak back into the country, and is known to have returned to his home country.

#### **Case II**

The ZSIS received intelligence that a foreign national who was present in the country was a wanted terrorist suspect from another Jurisdiction where he was alleged to have committed terrorist acts with other persons based overseas. Monitoring and surveillance of the person revealed that when in Zambia, he was hosted by another foreign national that was conducting legitimate business in Zambia. Upon corroboration of the information with the foreign jurisdiction, it was established that the host was a known supporter and financier of terrorist suspects both in Zambia and the foreign jurisdiction. Meanwhile prior to the joint operation to arrest the suspect, the terror suspect sneaked out of the country at the assistance of the host. The host and other accomplices were arrested and handed over to the authorities of the foreign jurisdiction for prosecution or further appropriate action. The accounts of the host business man are under continued monitoring.

219. In the cases cited above, the authorities isolated the specific roles played by the potential or suspected terrorist financiers. In Case I, above, the disruption arose from an STR submitted to the FIC from a FI, and disseminated to the ZSIS. The FIs have reasonable TF risk understanding, but STRs relating to TF have been minimal, which is in line with the TF risk assessment. DNFBPs have not reported any TF related STRs or activities. This too is in line with

the TF risk assessment that the threat is limited to secluded, migrant communities from high-risk jurisdictions. The use of informal sector, cash-based transactions and informal transfers of funds may create TF vulnerability.

220. Both domestic and international cooperation and exchange of information was utilized to ascertain that though both suspected terrorist financiers were operating legitimate businesses in Zambia, there were grounds to reasonably suspect that they were supporting or financing terrorist activities or organisations in foreign jurisdictions.

221. The measures put in place to reduce the risk of TF and identify those involved include: categorising the sectors of the society that they consider vulnerable to TF risks and imposing stringent visa requirements and screening of visitors to Zambia from countries considered to be of high TF or terrorism risk. Where the authorities suspect an individual to be involved in TF or on the source of funds, they profile the sources of income of the suspected individual, monitor the movements of the individual, the financial sources and activities of the individual and where necessary take immediate action to address situations identified as TF or terrorism threatening to Zambia's national security.

222. However, these efforts at institutional level which seem to be effectively working for Zambia to combat TF are not supported by a National Strategy on TF as Zambia has not yet developed one.

*d) Extent to which investigations of TF integrated with and used to support National Counter-Terrorism strategies and investigations*

223. The authorities did not report any counter-terrorism investigations, as the perceived risk of domestic terrorism acts is assessed as low. All TF investigation activities reported were geared towards the disruption of TF activities being supported through legitimate business being conducted in Zambia, whose proceeds were being remitted or intended to be remitted to foreign jurisdictions to support terrorist activities or organisations in the foreign jurisdictions. To that extent, therefore, the TF investigations have been effectively used to support disruption of TF and not counter terrorism.

*e) Effectiveness, proportionality and dissuasiveness of sanctions*

224. The legal regime in Zambia provides for TF sanctions that are effective, proportional and dissuasive (see Rec 5). However, these have not been tested in practice, as there have not been any prosecutions and convictions for TF.

*f) Alternative measures used where TF conviction is not possible (e.g. disruption)*

225. The authorities provided cases as explained in Box 7, where the following measures were adopted to address suspected incidences of TF where prosecution was not pursued because it was not the best solution at the time.

226. Case II, relates to a wanted terrorist suspect who was a fugitive from justice in another jurisdiction and was residing in Zambia. Zambian LEAs were in the process of arresting the

terrorist suspect when he managed to sneak out of the country with the support of his host. Following the verification of the information with the foreign jurisdiction on the fugitive and his host, arrests were effected on the host that aided the terrorist suspect to sneak out of the country. During the collaboration with the foreign jurisdiction it was established that the host was a subject of monitoring and investigation of similar activities of terrorist financing in the foreign jurisdiction. Material facts gathered during the time of the operation resulted in Zambian authorities handing over the host to the authorities of the foreign jurisdiction.

227. The joint operations to disrupt the activities of the suspected terrorist financiers were executed by members of the NATC who are the responsible authority to deal with terrorist financing matters. The NATC team was supported by ZSIS who had worked on collecting intelligence and had been the agency that was communicating with the foreign jurisdiction that provided background information/intelligence leading to the operation, with ZPS being part of the team to effect arrest and that of the Immigration Department being to confirm the status of the suspected terrorist financiers.

228. The authorities also reported of successful joint operations involving the above LEAs and at times the FIC which resulted in:

- Deportation: the suspects were deported from Zambia to disrupt them from utilizing the legitimate proceeds from their business to support terrorists or terrorist organisations abroad.
- Freezing funds: the authorities froze the funds of a TF suspect that had sneaked into the country, after being deported, and attempted to access funds and change his own particulars to the account using a different identity document.
- Seizure and confiscation of property or records: in a case where a hawala operative was suspected of facilitating TF, all records including the journal of transactions and a computer system that were being used as the hawala operator's tools of trade were seized to disrupt their operations.
- Monitoring of accounts for suspicious activity to gather information to aid the execution or implementation of the alternative criminal justice measures to disrupt TF activities

229. The joint activities by the LEAs to carry out TF investigations or implement any other measures relating to TF as explained above reflected that the different LEAs involved had reasonable understanding of the risk of TF in Zambia.

#### *Conclusion on Immediate Outcome 9*

**Zambia has achieved a Moderate Level of effectiveness for Immediate Outcome 9.**

## *Immediate Outcome 10 (TF preventive measures and financial sanctions)*

### *a) Background and context*

230. The legal regime governing the implementation of freezing measures for targeted financial sanctions pursuant to the UN Security Council Resolutions in Zambia is the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017.

231. The NATC is mandated to implement the Regulations by managing the listing and de-listing of designated persons or entities, together with execution of all attendant processes such as receipt and dissemination of the sanctions lists to the supervisory bodies and reporting entities.

232. The FIs and DNFBPs have been provided with guidance on what course of action to take in case of a positive match.

### *b) Implementation of targeted financial sanctions for TF without delay*

233. In order to access the sanctions list and any updates without delay, the NATC has subscribed to the UN Sanctions Mailing List and receives instant notifications as soon as any updates are made to the list and communicated by the UN. Upon receipt of the mail updating the list, the NATC immediately disseminates the updated list to eleven (11) supervisory bodies. The email address to which the updated list is sent in the NATC is monitored and managed by the ICT Unit that forwards it to the Director in charge of Legal Services, who in turn disseminates it to the supervisory authorities. The authorities stated that this process usually takes about 30 minutes.

234. In May 2017, the NATC issued Guidelines on how to access and utilise the Sanctions List to supervisory bodies, reporting entities and other stakeholders. The supervisory bodies are meant to disseminate the list to their reporting entities without delay. The NATC requires the supervisory authorities to copy them in the email forwarding the updated lists to the reporting entities as a mechanism to ensure and enforce the prompt dissemination of the list to the respective reporting entities.

235. The list is not accessible on the NATC website. However, upon receipt of the updated sanctions list, the NATC sends it to the FIC, which uploads it onto its (FIC) website for any interested reporting entity to check. The reporting entities in the event of a positive match indicated that they would report the development to the FIC. At the time of the on-site visit the NATC had not yet put a mechanism in place for reports to be made direct to it.

### *c) Targeted approach, outreach and oversight of at-risk non-profit organisations*

236. NPOs in Zambia are registered by two registrars: the Registrar of NGOs under the NGO Act No. 16 of 2009 and the Registrar of Societies under the Societies Act, CAP 119. Before the enactment of the NGO Act in 2009, all NPOs were required to be registered under the Registrar of Societies in terms of the Societies Act, but after the enactment NGOs were required to migrate and register with the Registrar of NGOs. At the time of the on-site visit some NGOs were yet to migrate and register with the Registrar of NGOs.

237. At the time of the on-site visit, the Zambian authorities had just commenced implementing a risk-based approach to their NPO and societies sectors based on the results of the NRA. Although the TF risk for the NPO sector was rated medium in the NRA, the summary in the report does not reflect a detailed analysis and study of the sector's risks to determine which ones of the NPOs were vulnerable or had potential exposure to TF abuse. The Registrar of NGOs at the time of the on-site had only done a categorisation (May 2018) of the NPOs into high, medium and low level of TF risk. Five factors were used as determinants of the risk rating: i) sources of funding; ii) type of activity involved; iii) status of the organisation, whether local or international; iv) origin of the organisation, if foreign (which was compared with the list of high risk countries issued by the FATF); and v) size of the organisation. Out of this exercise 22 organisations had been categorised as high risk, 55 medium risk and 728 low risk. However, the NGO Registrar was only starting to develop standards and guidelines which would enable implementation of proportionate risk focused TF measures to the NGO sector. The NGO Registrar further highlighted that although they were carrying out inspections on the NGO sector, the inspection monitoring tool did not include components of risk exposure to TF and it was only being revised to now include TF components. Further, financial statements which were being filed with the Registrar were not being analysed with TF in mind. Therefore, at the time of the on-site no application of focused and proportionate measures had been done to NGOs identified as being vulnerable to TF abuse commensurate with the risk-based approach as the process of identification of such NGOs had just commenced.

238. The assessors noted that the Registrar of NGOs' Office together with the FIC towards the period of the on-site visit, had carried out a number of awareness workshops to the NGO sector to sensitize it of TF vulnerabilities associated with the sector, STR reporting and how they could protect themselves from TF abuse. The Registrar of NGOs also acknowledged the vulnerability of NGOs to TF abuse due to the huge movement of funds in and out of Zambia associated with the sector and that some of the board members were using their personal accounts to receive funds meant for the NGOs with one case already having been under investigation at the time of the on-site visit.

*d) Deprivation of TF assets and instrumentalities*

239. The competent authorities did not share with the assessors any specific approach they have adopted to target terrorist assets. The authorities have not yet used tracing of assets and provisional measures to complement targeting of terrorist assets. However, in the two cases that were used to illustrate the authorities' understanding of the TF risk and the measures taken to mitigate the risk, operations resulted in the confiscation of property (Journals, computer, etc) and freezing of funds, though these steps were taken in an attempt to collect evidence of TF, and not in execution or implementation of a strategy to deprive suspects of TF of their proceeds or instrumentalities. Zambia's dearth of cases of frozen terrorist or TF assets is consistent with the TF risk assessment which was rated as medium low.

*e) Consistency of measures with overall TF risk profile*

240. The paragraphs above highlight the TF risks that Zambia might be exposed to, as understood by the authorities. The measures taken like categorisation of countries by their TF and terrorism risks, applying certain conditions of visa requirements and monitoring of movement of persons from some of the categorised jurisdictions, reflect implementation of measures that are broadly in line with the TF risk profile. The interviews held with some of the LEAs confirmed a



good understanding and awareness of TF and the risks associated with it. Overall, the assessors determined that the measures being taken are consistent with the TF risks identified.

#### *Conclusion on Immediate outcome 10*

**Zambia has achieved a Moderate Level of effectiveness for Immediate Outcome 10.**

#### *Immediate Outcome 11 (PF financial sanctions)*

##### *a) Implementation of targeted financial sanctions related to proliferation financing without delay*

241. At the time of the on-site visit, there was no legal framework in place or institutional framework to monitor and supervise the implementation of targeted financial sanctions related to proliferation financing without delay in Zambia. The authorities could not rely on the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, as they were issued under the ATA as amended, which relates only to terrorism and terrorist financing, but does not cover combating the financing of proliferation of weapons of mass destruction.

242. None of the reporting entities in Zambia are guided by any framework to build internal measures allowing implementation of targeted financial sanctions related to proliferation financing. The reporting entities interviewed were not aware of proliferation financing related sanctions.

##### *b) Identification of assets and funds held by designated persons/entities and prohibitions*

243. The authorities had not yet put in place mechanisms to identify assets or funds held by designated persons, neither were there mechanisms in place for reporting entities to apply measures on identified assets and funds held by designated persons/entities and prohibitions. Due to the absence of a framework to identify assets or funds of designated persons, Zambia was vulnerable to proliferation financing.

244. The authorities were not aware of the need for identification of assets and funds held by designated persons or entities relating to proliferation financing and application of the appropriate measures.

##### *c) FIs and DNFBPs' understanding of and compliance with obligations*

245. The FIs and DNFBPs' understanding of, and compliance with PF obligations could not be determined as there was no legal framework or mechanisms to enable compliance with the implementation of targeted financial sanctions relating to PF. The DNFBPs had not taken any measures to comply with the UNSCRs relating to the combating of financing of proliferation.

##### *d) Competent authorities ensuring and monitoring compliance*

246. The legal and institutional framework to enable competent authorities to monitor compliance with implementation of targeted financial sanctions relating to financing of proliferation was not yet in place, therefore the competent authorities have no enabling mechanisms based on which they could monitor their implementation.

247. The authorities had not taken significant action to monitor and assess the exposure of Zambia's trade or possible financial links to proliferation related sanctions evasion. Coordination of actions to prevent proliferation sanction evasion by different agencies of Zambia had not taken place, which meant that there was no monitoring of compliance with the implementation of the financial sanctions. There were no links, or restrictive measures submitted by the authorities to the assessors connected to trading with countries on the UNSC sanctions list relating to proliferation financing.

*Conclusion on Immediate Outcome 11*

**Zambia has achieved a Low Level of effectiveness for Immediate Outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### *Key Findings and Recommended Actions*

#### **Key Findings**

- a) Large FIs have ML/TF risk assessment related to their business activities which informed the robust understanding of the risks and application of commensurate mitigating controls. The small-medium FIs demonstrated a reasonably good understanding of the ML/TF risks associated with their business activities.
- b) While large law firms and large dealers in precious stones and metals demonstrated a robust understanding of the ML/TF risks associated with their business activities and their AML/CFT obligations, this was not the case with the rest of the DNFBPs who showed a low level of ML/TF understanding and generally less developed application of the mitigating controls.
- c) Across the board, there is generally a reasonable appreciation and application of mitigating controls by large FIs, large law firms and large dealers in precious stones and metals compared to the small-medium FIs and the other DNFBPs.
- d) FIs generally demonstrated a good understanding of the CDD measures in respect of business relationships and transactions, whilst the application of CDD requirements amongst DNFBPs varied. More specifically, the large FIs, large law firms and large dealers in precious stones and metals demonstrated a robust application of UBO and enhanced due diligence measures on high risk customers and transactions supported by sophisticated Group CDD and transactions monitoring central databases. The remaining FIs and DNFBPs demonstrated either little or an emerging appreciation and application of EDD measures.
- e) Large commercial banks, mobile money transfers and bureaux de change have put in place adequate automated transactions detection and monitoring systems which have assisted the FIs to identify and file suspicious transaction reports to the FIC. As a result, banks have filed more than 90 percent of the STRs, distantly followed by mobile money providers and bureaux de change.

- f) Commercial banks, large law firms and large dealers in precious stones and metals have demonstrated a good understanding and application of systems and processes, including acquisition of commercially-owned databases, for implementation of UNSCRs on terrorist property. The rest of the FIs and DNFBPs are yet to appreciate and implement the UNSCRs targeted financial sanctions obligations.

**Recommended Actions:**

Zambia should ensure that:

- a) The smaller-medium NBFIs and DNFBPs sector conduct ML/TF risk assessments to assist them to understand their ML risks and apply commensurate mitigating controls.
- b) Reporting entities (other than commercial banks and MVTS) should put in place systems and procedures to detect and file STRs related to criminal proceeds and TF consistent with the risk profile of the products and financial services they offer.
- c) Small-medium FIs and DNFBPs (other than large law firms and large dealers in precious stones and metals) should improve understanding and application of UBO and EDD obligations on high risk clients including on PEPs.
- d) Small-medium FIs and DNFBPs should put in place systems and procedures to effectively implement UNSCRs on targeted financial sanctions on terrorist property.
- e) Small-medium FIs and DNFBPs should implement compliance functions including appointment of qualified compliance officers and staff training commensurate to the size and ML/TF risks of the entity.
- f) Large FIs, large law firms and large dealers in precious stones and metals should sustain the regular review and maintaining of ML/TF risks and adjusting mitigating controls.

248. The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

***Immediate Outcome 4 (Preventive Measures)***

*Understanding of ML/TF risks and AML/CTF obligations*

249. Under the FIC Act, FIs and DNFBPs are obliged to apply AML/CFT obligations and consider ML/TF risk profiles of customers when doing so, to mitigate and manage the risks posed by the business relationships and transactions. In general, the FIs have a better understanding of ML/TF risk and mitigating controls that apply to them than the DNFBPs. The understanding of the ML/TF risks and AML/CFT obligations varies based on size (i.e., big or small entity), ownership/control (i.e., local or foreign, or joint) and modernisation (i.e., low or high value) of the FIs and the DNFBPs. These factors are the determinants of the existing different levels of understanding of the ML/TF risks and application of the AML/CFT obligations in Zambia. The FIs generally considered the results of the NRA for their ML/TF risk assessment and application of a risk based approach to implementation of AML/CFT obligations. A few DNFBPs demonstrated a relatively good understanding of the ML/TF risk and AML/CFT obligation that apply to them.

250. The large-sized, foreign-owned or controlled and sophisticated FIs and DNFBNs demonstrated a robust understanding of ML/TF risks and application of appropriate mitigating controls. For instance, well-resourced and large FIs, lawyers and precious stone or metal dealers demonstrated a robust awareness and understanding of ML/TF risks and AML/CFT obligations that apply to them than the rest of the FIs and DNFBNs which demonstrated either little or an emerging understanding of ML/TF risks and implementation of AML/CFT obligations. Across the sector, all institutions interviewed perceived corruption to be the main proceeds generating offence, which is in line with the results of the NRA.

#### *Financial sector*

251. The FIs demonstrated a good understanding of the different types of threats and vulnerabilities of the sectors in which they operate guided by their own ML/TF institutional risk assessment. The FIs have generally taken reasonable steps to conduct comprehensive institutional ML/TF risk assessments in relation to the products and financial services they offer to their clients and have used the findings thereof for risk profiling and to implement appropriate AML/CFT obligations. In particular, the FIs understand the high-risk sectors associated with their business activities, albeit at varying levels. Both large domestic and foreign-owned or controlled FIs, which predominantly offer specialised financial services, interviewed during the on-site visit demonstrated a robust understanding of the inherent ML/TF risks and the application of the specific AML/CFT obligations that apply to them in any business relationship and transactions they engage in with their customers. For instance the FIs apply more stringent mitigating controls on customers (e.g. PEPs) and transactions (e.g. cross border wire transfers) that are considered high risk as posing high ML/TF risks.

252. The small-medium size FIs displayed a fairly reasonable understanding of ML/TF risks affecting them and the applicable AML/CFT obligations. The commercial banks have developed comprehensive group-wide risk assessments and implemented mitigating measures informed by a detailed consideration of all relevant risk factors (including lines of business, products, services, delivery channels, customer profiles). The understanding of ML/TF risks and obligations in this sector has penetrated to all oversight and operational levels such as boards and senior executive management and not just limited to the staff directly responsible for interfacing with customers on a daily basis.

253. The insurance and securities sectors in Zambia have a good level of understanding of the ML/TF risks facing their operations and AML/CFT obligations. Large insurance and securities companies demonstrated a robust appreciation of ML/TF risks. There is a fairly reasonable understanding of ML/TF risks and AML/CFT obligations in respect of business relationships and transactions by the small-medium size insurance and securities entities.

254. There is variance in the understanding and application of ML/TF obligations in the MVTN sector. For instance, the Money Remitters and Mobile Money Service Providers affiliated to globally licensed and recognised money transfer operators demonstrated a robust understanding of the ML/TF risks in the sector, including the specific risks associated with their own operations as well as the specific mitigating controls.

### *Designated Non-Financial Businesses and Professions*

255. Generally, the DNFBPs demonstrated a low level of understanding of ML/TF risks. However, there is an exception in that the large law firms and large dealers in precious stones and metals who demonstrated a fairly good understanding of the ML/TF risks and AML/CFT obligations that apply to them. The existing understanding shown by the sub-sectors can be attributed to the NRA findings and international links forged at group level or forged with foreign counterparts. In particular, local large law firms which conduct real estate transactions within contractual arrangement with the commercial banks demonstrated even stronger understanding of the ML/TF risks and application of AML/CFT obligations relevant to them due mainly to the strict requirements from the banks concerned. The small-medium sized law firms demonstrated emerging understanding of ML/TF risks, but little understanding on the application of AML/CFT obligations. The same applies in dealers in precious stones and metal derived from the results of NRA. The DNFBPs interviewed indicated that they would use the findings of the NRA to promote understanding of ML/TF risk and implement proportionate AML/CFT measures.

256. There is a low level of understanding of ML/TF risks and AML/CT obligations in the casinos industry. This is a major concern as casinos in Zambia are considered high-risk for ML.

257. The real estate agents demonstrated a fairly good understanding of ML/TF risk factors, namely; types of transactions (i.e., cash-intensive especially land transactions), customers (i.e., senior public sector officials and foreigners), location (i.e., inner urban against the periphery) and typology (i.e., construction of property for public officials as opposed to the usual transfer of monies). However, they demonstrated a low level of understanding of the AML/CFT obligations that apply to them.

258. The accountants' level of understanding of the ML/TF risks and understanding of AML/CFT obligations is low.

259. The general inadequate understanding of the ML/TF risks and the application of AML/CFT obligation in the DNFBP sector is largely attributable to the lack of AML/CFT compliance monitoring by designated supervisory bodies (see IO3 for further details).

### *Application of risk mitigating measures*

260. The FIs and all DNFBPs appreciate the obligations under the FIC Act to identify and assess ML/TF risks, and use the understanding to apply commensurate mitigating controls business relationships and transactions. For instance, the FIs and some DNFBPs understand that whilst there is risk-based approach in place, there are certain types of customers (e.g., PEPs), transactions (cross-border wire transfers), delivery channels (i.e., non-face-to face) and geographical location (high-risk jurisdictions) which require rigorous risk mitigating measures (e.g., normal, simplified, and enhanced CDD measures) due to their inherently high risk nature than others. Based on business size, ownership/control, and sophistication levels, FIs in particular, large law firms and dealers in precious stones and metals apply mitigating controls commensurate to the risk profiles. It was observed that the driving factor behind the differentiation is the fact that more FIs than DNFBPs have conducted institutional ML/TF risk assessments (and therefore have used it to promote ML/TF risk understanding) on the products and financial services they provide, with the former demonstrating more effective application than the latter. During the interviews, it was observed that, the large FIs including those affiliated to international financial groups had

robust application of mitigating controls on a risk-sensitive basis than the rest of the reporting entities. The measures in place include approved (group) AML/CFT policies and procedures, establishment of AML compliance function including the appointment of AML Compliance Officers, AML/CFT staff training programmes, application of CDD measures (simplified, normal and enhanced), transactions monitoring and reporting mechanisms and targeted financial sanctions screening. For the large law firms and large dealers in precious stones and metals, they have demonstrated a generally good application of the mitigating controls.

261. There is, however, a concern with the low level of application of mitigating controls on a risk sensitive basis by casinos and real estate agents especially as they are regarded as posing a higher AML/CFT risk.

#### *Financial Institutions*

262. The FIs with internal ML/TF risk assessments in place demonstrated a good application of the AML/CFT control measures than those without. The large and well-resourced FIs applied robust mitigating measures taking into account the risk profile of the customers and transactions than the small-medium sized entities. The measures applied, *inter alia*, include senior management approval and on-going monitoring, cross-border wire transfers (to detect illicit transfer of funds out of the country), non-face-to-face relationships, domestic PEPs, accounts of private sector executives (to detect the abuse of private accounts by individuals to conduct business transactions), correspondent banking relationships, foreign nationals, real estate operators and, casinos. For example, the FIs interviewed indicated that they were aware of the risks posed by company executives using their personal accounts to transact business transactions to evade paying taxes due to ZRA and therefore have been rated as high risk customers. To mitigate and manage the risk, the FIs have assigned specific relationship managers whom would manage the relationship including conducting site visits and having frequent engagement.

263. FIs have developed and implemented AML/CFT policies and procedures to identify and manage risks. Additionally, the FIs have also implemented specialised software's for UNSCRs sanctions screening and profiling of customers during on-boarding and thereafter. There are automated transactions monitoring systems in place which generates alerts which are subjected to further investigations by a specialised team. For clients rated as high risk, FIs apply enhanced CDD measures including requiring proof for source of funds and wealth, approvals by senior management committees and CBR signed agreements before a relationship is established.

#### *Designated Non-Financial Businesses and Professions*

264. Risk mitigation in the DNFBP sector is not applied evenly across the sectors. The large law firms and large precious stones and metal dealers apply appropriate mitigating controls informed by their understanding of ML/TF risks. The mitigating controls include maintaining internal policies and procedures which allow them to screen customers or transactions prior to approval and setting internal cash transactions limits to minimise the risk associated with cash transactions. The dealers in precious stones and metals interviewed do not deal with individual clients but only with reputable companies and by invitation only. The companies are before-hand subjected to a thorough vetting process by independent consulting assessors such as Dow Jones. They do not accept cash payments from buyers; instead, all transactions are done through bank transfers, which mitigates the potential ML/TF risk.

265. It is the view of the assessors that the low level of understanding of ML/TF risks by the DNFBPs (other than large law firms and dealers in precious stones and metals) and the lack of AML/CFT supervision are the main contributing factors.

#### *Application of enhanced or specific CDD and record keeping requirements*

##### *Application of CDD measures*

266. FIs have taken reasonable measures to comply with the CDD obligations set out in the FIC Act on a risk sensitive basis. This means that generally FIs apply CDD obligations on business relationships and transactions taking into account the specific ML/TF risks associated with each activity. In addition, the FIs conduct CDD process before and during on-boarding process, and also when conducting a one-off transaction. In particular, the large domestic and foreign-owned or controlled FIs, have demonstrated a robust application of CDD measures informed by ML/TF institutional risk assessments.

267. In general, FIs and DNFBPs interviewed confirmed that they obtained basic CDD documentation to establish the identity of the customer (whether establishing or conducting a transaction) in relation to the full name, date and place of birth, physical address of a natural person. In order to establish the true identity of a customer who is a natural person, the FIs and DNFBPs use, *inter alia*, driving licence, passport or national registration card bearing the individual's photo/image; a reference letter from the individual's employer (to determine source of income) or a professional or customary authority that has known that individual for at least a year; an original or certified true copy of the latest council or applicable rates, or utility bill receipt, information obtained through a credit reference agency search. For foreign (or non-Zambian) customers, references obtained from the individual's foreign bank, for valid residence or work permit are used to establish the identity of the customer.

268. The large and internationally affiliated FIs particularly banks and insurers apply risk-based models to categorise the customers or transactions and apply commensurate CDD measures. For low risk clients, simplified due diligence is applied by accepting the national registration card (NRC) only to capture basic CDD information. This was commonly applied by MVTS (especially mobile money operators) which offer low risk/ low value products.

269. In respect to legal persons, the CDD information obtained by FIs include certificate of incorporation to establish the identity of the legal persons including the ownership and control structure, memorandum of association, articles of association, tax payer identification number (TPIN) issued by the ZRA, board resolution. In case of trusts, the FIs interviewed obtained trust deed and constitution for societies. In terms of independent verification of legal persons, shareholders, directors, ultimate beneficial owners and company registration documents such as the certificate of incorporation, majority of the FIs make use of the PACRA. In cases where the information is not available at PACRA (legal persons) and Ministry of Lands (Trusts), the majority of the FIs take reasonable steps to establish the true identity of the entity including by using commercially available databases and use GroupWise CDD data warehouses held at their head office, where applicable.

270. The application of CDD requirements in the DNFBPs sector varied. It was observed that, in general, the DNFBP sector (i.e., real estate agents, casinos and accountants) apply basic CDD measures irrespective of the nature and extent of the ML/TF risk exposure by a customer or



a transaction. By contrast, large law firms and large dealers in precious stones and metals apply, in addition to basic CDD measures, different levels of CDD depending on the nature and level of a risk posed by a customer or transaction. The limited rigour of CDD measures applied by real estate agents and casinos is a concern, as these industries have been identified as posing higher ML/TF risk, particularly as they are considered cash-intensive. Furthermore, there is uneven application of CDD measures in the casino industry due to the fact some casinos accept customers who do not meet the CDD requirement and therefore customers frequent the casinos with less stringent CDD measures.

271. Unlike the DNFBP sector, all the FIs interviewed were aware and take appropriate decisions to refuse or terminate business relationships or transactions where CDD information is incomplete or the veracity thereof is questionable. Life insurance companies and brokers pointed out that they do not execute certain transactions neither do they pay out unless they have fully identified the beneficiary. However, only banks indicated that they consider filing suspicious transactions report to the FIC.

272. In terms of on-going transaction monitoring, the large FIs (mostly banks, bureau de changes and MVTs affiliated to banks and telecoms) met on-site indicated that they have in place robust automated transaction monitoring systems which detect and identify unusual patterns of transactions mostly where the client's profile has changed. The automated system flags the unusual behaviour and creates what was referred to as an alert. The alert would then be independently reviewed and investigated by an analyst to determine if the transaction(s) flagged is in line with the knowledge of the client. Otherwise, the transaction is reported to FIC as a suspicious transaction. The other FIs conduct their on-going transaction monitoring largely through manual processes.

273. Identification and verification of UBO was applied at varying degrees. The large FIs and foreign owned/controlled and large law firms and large dealers in precious stones and metals take reasonable steps to establish UBO in respect of a business relationship or a transaction. They indicated that they would request CDD information up to the ultimate natural person behind the customer and where complex structures are involved; their risk appetite would go as far as 10 percent shareholding threshold. The remaining FIs and DNFBPs do not generally take reasonable steps to identify and verify UBOs but conducts searches at PACRA (legal persons) and Ministry of Lands (trusts). They however, do not make any further efforts even in circumstances where the information obtained from PACRA and Ministry of Lands is insufficient to prove UBO. In most cases, it appears the concept of UBO is not well appreciated as often as it is mistaken to mean the shareholders, irrespective of whether or not a shareholder is not a natural person.

#### *Application of EDD measures*

274. Based on the understanding of ML/TF risks, FIs have demonstrated a good appreciation and discussed with the assessors practical application of EDD measures on high risk customers identified in their own institutional ML/TF risk assessments and prescribed by the AML/CFT legislation. For instance, while the majority of FIs have identified real estate transactions as posing higher ML risks, the FIC Regulations have identified PEPs, non-resident customers, private banking customers, as high risk category of customers upon which EDD measures must be applied by all FIs and DNFBPs. The majority of FIs with large business operations employ automated systems supported by highly trained personnel to apply EDD and on-going monitoring (e.g., transactions monitoring) on high risk customers and transactions

identified. In practice, the foreign-owned/controlled and large FIs have therefore invested in privately or commercial owned databases or rely on head office CDD repositories to strengthen the CDD measures relating to high risk customers and transactions. The combination of the commercial databases and financial group CDD repositories showed that relevant FIs take reasonable steps to apply EDD measures on high risk transactions and customers identified in the ML/TF risk assessments. Similar EDD measures are applied by this category of FIs in respect of transactions and business relationships emanating from high risk jurisdiction, either as identified by the FATF or own ML/TF risk assessments. The FIs interviewed showed that commensurate risk mitigation measures including senior management approvals and scrutiny of transactions by dedicated officers are applied where such customers or transactions are on-boarded.

275. FIs also indicated that they determine with greater scrutiny the source of funds and wealth for customers perceived to be high risk. Where the FIs conclude that the required EDD measures to mitigate and manage the identified risks is beyond their tolerance levels, the FIs reject the proposed transaction or relationship, or terminate the relationship.

276. The small-medium sized FIs have emerging application of EDD measures. However, it was observed that in terms of materiality and modernisation of financial services, the potential risks are mitigated by the fact that, in general, customers (e.g. high net worth customers) and transactions (e.g. cross-border wire transfers) who are considered as high risk have preference for the large and foreign-owned or controlled FIs due to the global reach these category of FIs have.

277. In respect of the DNFBP sector, the large law firms (in respect of real estate transactions mandated by commercial banks only) and large dealers in precious stones and metals apply EDD measures on transactions and business relationships considered as posing higher ML/TF risks. Of major concern is the lack of appreciation of the ML risks posed by real estate transactions (excluding those done by lawyers) and therefore there is absence of appropriate EDD measures on transactions handled by real estate agents to mitigate the risks.

### *On-going Due Diligence*

278. The FIs interviewed consider a number of factors which underpin the decision to apply on-going due diligence measures on transactions and business relationships. These include: high risk jurisdictions cited by the FATF or other jurisdictions, nature of transactions, size of business operations of a client, UNSCRs targeted sanctions entities and individuals, nature of industry, ML/TF risk profile of a country and open-source information such as adverse media report. They indicated that these risk factors are imbedded in the FIs institutional ML/TF risk assessments and form the basis for risk categorisation and therefore application of commensurate on-going due diligence measures.

279. It was observed that the on-going due diligence measures are subject to change on the basis of the changes in the trends of the relationships and transactions. The FIs shared experiences where certain types of customers (e.g. company executives and cash-intensive industries) and transactions (i.e. non-face-to-face transactions) are considered inherently high risk and are therefore continuously monitored more rigorously than others. Similarly, there are customers and business relationships whose risk level fluctuate depending on the risk factors specific thereto. For instance, a customer who is a PEP remains high risk and therefore subject to on-going due diligence measures even after leaving political office. By contrast, most FIs downgraded the risk profile of bureau de changes in the urban centres as opposed to those on the borderline (e.g.,

Democratic Republic of Congo) following the introduction of the transaction surveillance system (Global Transition System, commonly referred to as the GTS) by the BoZ. In this regard, the former were subjected to less intense on-going monitoring compared to the latter. In this case, it was therefore the geography rather than the nature of the industry which determined the appropriate on-going monitoring levels of the relationship and transactions.

280. The FIs apply advanced automated systems to monitor customer's transactional behaviour to detect unusual or suspicious patterns. Alerts are generated and analysed to feed into the risk factors databases, and determine the next course of action, depending on the findings of the analysis. For instance, a transaction which is inconsistent with the profile of a customer will generate an alert which will be investigated by a dedicated team and inform a decision on the transaction (e.g., file an STR) or the status of the relationship (e.g., terminate or downgrade the relationship). Therefore, FIs in Zambia conduct a review of the changes of the risk factors affecting the profile of a customer to determine if the customer is due for a reclassification or not. It was noted that while there is a general understanding that high risk customers are subject to on-going due diligence, the large and foreign-owned/controlled FIs had further disaggregated the high risk customers based on the specific risk factors grouped into sub-categories to apply more robust measures (e.g. frequency of monitoring). This has demonstrated that the application of on-going due diligence measures by the FIs is not a one-size-fits-all exercise as the risk level of a customer or transaction dictates the frequency and intensity of the EDD procedures.

281. The small-medium-sized FIs (mostly NBFIs) apply on-going due diligence on a lower scale than the big FIs, some use manual processes, which largely appear consistent with the size of the business activities, ML/TF risks and nature of transactions or customers.

282. Apart from the application of EDD measures by some DNFBPs, there was little understanding and application of on-going due diligence measures in respect of customers posing higher ML/TF risks. The major constraint in this regard was attributed to the low level of understanding of ML/TF risks that apply to them due to the absence of institutional ML/TF risk assessment by the DNFBPs.

#### *Record keeping measures*

283. FIs and DNFBPs generally appreciate and apply record-keeping obligations in respect of information/data generated through customer interaction, for instance, conducting of CDD and transactions, taking into account the importance of the duration and accessibility of the records kept. The FIs and DNFBPs interviewed keep records in electronic and hardcopy formats for at least 10 years from termination of the transaction or relationship with the customer.

284. In respect of third party or introduced businesses, brokers and agents in the insurance and securities industries obtain and keep CDD documents as required in the FIC Act and make the records available to the principal upon request. In addition, it was observed that the third party or introduced business providers do appreciate their record keeping duties and keep the records as part of their own obligation under the FIC Act. The insurers indicated to the assessors that they take ultimate responsibility to ensure that all the records are kept and maintained by brokers and third parties in line with the legal requirements. Competent authorities specifically LEAs and supervisors interviewed confirmed that they access and use records kept by the FIs and DNFBPs to conduct respective mandates. For instance, the FIC indicated that they receive additional information on time whenever a request is made to the FIs and DNFBPs for use in its analysis.

### *Application of EDD measures*

285. In general FIs and DNFBPs conduct EDD measures in business relationships and transactions depending on the size and ownership/control and ML/TF risk associated to the entity.

### *Politically Exposed Persons (PEPs)*

286. The FIs and DNFBPs understand the obligation placed on them by the AML/CFT legislation to treat PEPs as high risk customers. As a result, FIs and DNFBPs have put in place measures to identify and mitigate the risks posed by a customer who is a PEP. It was observed, however, that while the level of understanding of the ML risks associated with PEPs is generally common across the FIs and DNFBPs, the application of appropriate risk management systems varies within the FIs and DNFBPs and between the FIs and the DNFBPs. For instance, the large domestic and foreign-owned/controlled FIs have sophisticated CDD and transactions monitoring software and dedicated relationship management to identify and monitor PEPs as opposed to the small-medium entities. For instance, the former rely on centralised and sophisticated automated PEPs screening systems at a group level, while the latter generally rely on their own automated systems or manual system to mitigate and manage the risks posed by a customer who is a PEP. In the DNFBP sector it was observed that the large law firms particularly those contracted by commercial banks for real estate transactions and large dealers in precious stones and metals have put in place commensurate EDD measures to mitigate and manage risk.

287. Overall FIs and DNFBPs apply enhanced due diligence procedures for identifying and screening all types of PEPs (in particular, domestic PEPs who are considered high risk due to the high level of corruption in the public sector) at on-boarding stage, such as obtaining senior management approval (e.g., on-boarding and regular reviews to adjust mitigating controls, where necessary), and on-going monitoring of transactions and business relationships (e.g., automated or weekly manual process, for instance to fit into the risk matrix). Further, large FIs and some DNFBPs interviewed showed that they take reasonable steps to establish the true source of income and wealth of PEPs (e.g. bank statements and company ownership). There is also reliance on other sources of information such as publicly available information (mostly for domestic PEPs), as well as from external databases (e.g. Worldcheck) in the case of foreign PEPs.

288. It was noted that small to medium FIs and DNFBPs without electronic databases had challenges to establish the identity of family members and close associates of PEPs. Large FIs, large law firms and dealers in precious stones and metals take reasonable steps to establish a beneficial owner who is a PEP including family and close associates. The same could not be evidenced in respect of the small-medium sized FIs and the other DNFBPs. Other reporting entities would also not check whether the beneficial owner of a customer is a PEP. The absence of proper management systems in relation to all types of PEPs in most DNFBPs particularly in real estate agents, small to medium sized dealers in precious stones and metals and casinos have been identified as posing higher ML risks.

### *Correspondent Banking Relationships*

289. Banks with CBRs have adequate policies and procedures for conducting due diligence before on-boarding and approving a correspondent banking relationship as well as during the course of the relationship. In establishing any possible CBR, the banks interviewed take reasonable steps to maintain a relationship with a bank. The measures include country of origin,

any known or perceived ML/TF risks commentary/findings and approval of relationships by senior management prior to establishing the relationship. The CBRs are monitored and reviewed on an on-going basis or as and when there are material changes that may impact on the robustness of the measures applied on the relationship

290. The practice in the sector is that such relationships are reviewed periodically as and when the risk or circumstances dictate to continuously have reasonable assurance that AML/CFT controls remain effective on both ends. The banks met during the on-site visit further indicated that the agreements between the respondent and the correspondent bank should be in place and outline the parties' roles and responsibilities. The banks also complete the Wolfsberg correspondent banking questionnaire and review publicly available information from sources such as Banker's Almanac. The normal CDD information was also required in addition to the enhanced measures taken by the banks and all banks interviewed demonstrated this as not a challenge. In addition some banks go as far as conducting an on-site visit to the bank to verify the information submitted. All banks interviewed indicated that they do not allow payable-through or downstream accounts.

291. The larger international banks benefit from the CBR management systems at group level, which approves such relationships. Other non-banking FIs do not offer correspondent banking services.

### *New Technologies*

292. The National Payment Systems Directive on Electronic Money Issuance of 2015 sets the tone with regards to e-money products by requiring persons intending to issue e-money to apply to BoZ for authorization or designation. The applications for authorization include: a detailed product proposal; the risk management framework for the product or its operation; a description of the internal controls that the applicant has established to comply with its AML/CFT obligations and details of the risk management and control mechanisms to be implemented in respect of the e-money.

293. Although there is no specific obligation on FIs and the DNFbps to identify and assess ML/TF risk associated with new technologies, large domestic and foreign FIs conduct ML/TF risk assessment before introducing new technologies and products. Larger FIs assess the risks of their new products and mitigate the ML/TF risks (e.g. pre-paid cards). MVTS and commercial banks dominate provision of mobile money. In order to mitigate the abuse of the channel, the FIs offering product/financial services through technology platforms have put in place transactions thresholds to limit the value of transactions conducted by different types of customers. This has enabled the FIs to conduct daily and monthly aggregation of transactions to identify emerging risks and closely monitor the high risk transactions and customers identified and then apply appropriate CDD measures. For instance, FIs upgrade to a higher risk category transactions and customers identified as posing higher risk following the transactions analysis/review and are subject to enhanced due diligence measures; similarly, transactions or relationships downgraded to a lower risk category based on the results to the transactions analysis/review, are subjected to normal or simplified CDD measures.

## *Wire Transfers*

294. Wire transfer services are mainly offered by banks and MVTS for both domestic and cross-border transactions. All banks met indicated that they use SWIFT for conducting cross-border wire transfers and have a domestic payment system for domestic wire transfers. Banks and MVTS have measures in place to monitor on a continuous basis wire transfer transactions in order to verify whether they contain detailed information relating to originator and beneficiary such as customer identity, account number, or in the absence of an account number, a unique reference number, address or, in the absence of address, the NRC, date and place of birth. Where such information is incomplete, they indicated that they do not execute the wire transfer and where the transaction is suspicious they report it to the FIC. Some MVTS interviewed also advised that they have daily limits in place, for both domestic and cross-border transactions, for which an individual can be allowed to send above the limit but enhanced CDD measures will generally be applied.

## *Targeted financial sanctions relating to TF*

295. Zambia's UNSCRs legal and regulatory framework on targeted financial sanctions is at early stage of implementation (see IO.10 for further details). As a result, the sanctions lists are not being circulated to the FIs and DNFBPs in a timely manner as the National Anti-Terrorism Centre, the FIC and the supervisors are in the process of streamlining the mechanism.

296. The large domestic and foreign-owned/controlled FIs interviewed indicated that they have automated sanctions screening software which flags possible matches of individuals and entities on the UNSCRs Lists. For example, commercial banks and bureau de change have acquired sanctions screening software which enable them to regularly receive the UNSCRs Lists and run them against their own customer database and transactions for any possible match. The rest of the FIs and DNFBPs (except for real estate transactions by large law firms mandated by commercial banks and dealers in precious stones and metals) demonstrated little awareness of their UNSCRs obligations and therefore low levels of implementation. In fact, they expressed urgent need for timely receipt of the list from the authorities and get guidance to enable them to effectively implement the UNSCRs measures in a timely manner. The FIs and DNFBPs interviewed indicated that they had not had a match relating to the names of the individuals and entities on the sanctions lists.

## *Higher risk countries*

297. The FIC has provided guidance on the sources of information in relation to identification of high risk jurisdictions, including accessing the FATF ICRG list via the websites of the FIC or the FATF itself. Most FIs and some DNFBPs (e.g. large law firms and large dealers in precious stones and metals) have measures in place which enable them to take reasonable steps to identify high risk jurisdictions and have regard to transactions and relationships emanating from them, and implement appropriate mitigating measures. High risk jurisdictions is one of the risk factors considered by FIs and some DNFBPs on the extent of CDD and transactions monitoring measures which must be taken against transactions and customers from these jurisdictions. The rest of the DNFBPs (excluding large law firms and large dealers in precious stone and metals) do not appreciate the risks arising from high risk jurisdictions. This is attributed to the fact that they are yet to undertake institutional ML/TF risk assessments.

## Reporting obligations and tipping off

298. There is generally a good understanding of the obligation to file STRs on grounds of suspicion that the transactions contains funds generated through criminal means and may involve TF across the sectors, as opposed to the basis for filing threshold transactions, to the FIC and those pertaining to tipping off. However, with the exception of banks and MVTS, most of the sectors have either not filed or only filed one or two STRs over the four years under review. About 98 percent of the total STRs filed with FIC was from the FIs, with over 90 percent coming from the commercial banks for the period under review. Given the materiality and risk context in Zambia, it is to be expected that the majority of STRs would come from commercial banks, however these very high percentages indicate shortcomings in the STR approach of non-bank obliged entities and DNFBPs in particular.

299. It was observed that the FIs and the DNFBPs had a clear understanding of the basis for filing STRs related to TF as they indicated that such funds may be either from legitimate or illegitimate sources, or a mixture of both. They were further able to distinguish the STR reporting obligations with the obligations under the UNSCRs. It was observed that generally the commercial banks and MVTS providers have automated transactions screening systems in place which would enable these FIs to identify such transactions, if they were to arise, and file the STR to the FIC.

300. The DNFBPs (except large law firms and large dealers in precious stones and metals) have little to no capability to detect STRs in general and those related to TF in particular attributed mainly to lack of adequate supervision and enforcement of reporting obligations (through secondary legislation and guidance) by the responsible supervisory authorities. Generally, whilst the large law firms and large dealers in precious stones and metals understand the reporting obligations and have transactions monitoring systems in place, they just did not report. It is the view of the assessors that this could be related to lack of supervision including taking proportionate, dissuasive and effective remedial actions and sanctions to force them to comply.

301. It was observed that in terms of materiality and risk, the commercial banks and the MVTS providers appear to have a relatively higher exposure to the rest of the FIs and the DNFBPs. At the time of on-site visit, there were two STRs relating to TF that were filed to the FIC and referred to LEAs (see IO.6 and 7 for details). Table 16 below illustrates the number of STRs filed with the FIC for period 2014-2017.

**Table 14: Suspicious Transactions Reports (STR) Received**

Reporting entity	Number of STRs submitted per year			
	2014	2015	2016	2017
Banks	364	714	661	881
Insurance	0	1	0	9
Micro finance	0	0	0	7
MVTS and Bureau de Change	1	0	0	71
Accounting/Audit Firm	0	0	0	1
<b>Total</b>	<b>365</b>	<b>714</b>	<b>661</b>	<b>969</b>

302. Generally, there was a spike in STR reporting behaviour in 2017 by the FIs, compared to prior years where only the banking sector was reporting. This is attributed to the increased



compliance programmes by the supervisors as well as the outreach activities by the FIC following the amendments to the FIC Act. For instance, the spike in STRs filed by MVTS and Bureau de Changes is related to the implementation of the transactions screening automated system by the sector under the direction of the BoZ. Further, PIA issued STR guidelines which, amongst others, present red flags and triggers for potential reportable transactions (STRs). The reporting entities engaged by assessors understood triggers associated with suspicious transactions in the insurance sector and how to identify suspicious and unusual transactions that are reportable. However, STRs submitted to FIC is significantly low in the sector. It was further noted that the remediation of inspections findings in respect of transactions monitoring and reporting processes by some FIs have added to the rising trend on STRs filed ( See IO3 for details).

303. In addition, the law requires reporting entities to file a cash transaction report (CTR) to FIC for transactions equal to or above USD10, 000.

304. Generally, the FIs and some DNFBPs (large law firms and dealers in precious stones and metals) have a good understanding of tipping-off obligations included in their AML/CFT policies and procedures and they also provide training on tipping-off obligations to their employees. Further, staff are made aware of the consequences for breaching tipping-off rules in the procedures through training. The same was not evident in the rest of the DNFBP sector where the principle to prevent tipping-off is little to emerging, as very few have filed STRs.

#### *Internal controls and legal/regulatory requirements impending implementation*

305. FIs and DNFBPs have taken measures to implement AML/CFT compliance programmes commensurate to the size and nature of the business and the ML/TF risks. The majority of FIs have used institutional ML/TF risk assessments as the basis for establishing and implementing compliance functions. The scope of the AML/CFT policies include governance structures from board to appointment and functions of a compliance officer at a senior level; up-to-date ML/TF risk assessments; CDD and record keeping; transactions reporting obligations; appropriate on-going training programmes for the board, senior management and general staff; high risk customers and jurisdictions; and UNSCRs sanctions screening.

306. The extent of the risk management systems in place appears to be dictated by the size and complexity of business operations, ownership or control structure (e.g., local or foreign) of entity and types of products/financial services offered. Further, while the major FIs have in place internal and external audit procedures for AML/CFT policies and procedures, the small-medium FIs either have internal audit only or did not have any audit with board structures fulfilling such functions. The large and foreign-owned/controlled FIs demonstrated robust risk, compliance and management programmes commensurate with the materiality and risks they face. These include having three levels of risk management – first line of defence (frontline staff), second line of defence (compliance) and third line of defence (internal audit). Similarly, the internal control measures implemented by small-medium size entities appear consistent with their risk profile and size of operations.

307. In the DNFBP sector, the large law firms and large dealers in precious stones and metals have emerging internal controls. The rest of the DNFBPs have little to no internal controls in place.

308. FIs and DNFBPs conduct screening of both new and existing employees on a regular basis. Some of the entities reported that they seek past employment references, police clearance and publicly known databases and photographs as additional measures to ensure that they do not employ criminals. The screening of the employees varies depending of the nature of the position and responsibilities. For instance, it was observed that employees at senior positions are subjected to a more stringent vetting process than lower level staff.

309. The FIs interviewed have AML/CFT training programmes for their staff including new staff and the board regarding their AML/CFT obligations under the FIC Act including any new ML/TF risks, trends and methodologies. The training provided is tailor-made, depending on the size and nature of the business operation and is mostly provided by the compliance officers. It was observed that, for instance, the board members would receive a high-level training as opposed to operational staff who would receive more focused and in-depth training. The mode of training offered is either face-to-face or online, or a combination of both, and there are competency tests taken with a pass mark allocated. The scope of the training is tailored according to the ML/TF risks and the necessary mitigating controls.

#### *Conclusion on Immediate Outcome 4*

**Zambia has therefore achieved a Moderate Level of effectiveness for IO.4.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

##### *Financial Sector Supervisors*

- a) BOZ and SEC have in place sound market entry frameworks to prevent criminals and their associates from holding or being a beneficial owner of significant interest or holding a management function in a financial institution. While PIA conducts fit and proper assessments on shareholders, directors, and senior management, it does not have systems to identify and verify the true identity of ultimate beneficial owners.
- b) Although the FIC issued a risk based approach supervision framework and guidance manual to all supervisory bodies to assist in the development of risk-based supervisory frameworks, financial supervisors have not yet developed and implemented AML/CFT risk-based supervision and monitoring of FIs. AML/CFT supervision is integrated into the broader framework of prudential supervision and the supervisory inspection programme is not planned or undertaken according to the identified ML/TF risk levels of individual institutions.
- c) Financial sector supervisors demonstrated a reasonably good understanding of the ML/TF risks relevant to the sectors under their purview. They use a broad range of factors and sources of information to inform their understanding of ML/TF risks. The AML/CFT legal framework of Zambia has a broad range of sanctions. The sanctions applied by the BoZ on the banks and non-bank FIs included supervisory directives to remedy the deficiencies and suspension of licences. In relation to SEC, suspension of licences was applied against capital market players, not on the basis of severity of the breaches, but because that was the only

available option prior to the amendment of 2016 FIC Act. In addition, follow-up and supervisory action plans were only made by the BoZ on banks.

- d) Apart from the BoZ and FIC, there were few notable supervisory actions taken by the SEC and the PIA to impact positively on AML/CFT compliance by the regulated entities.

#### *DNFBP Supervisors*

- a) Majority of supervisors for DNFBPs do not have necessary measures and capacity to assess fitness and propriety of shareholders and individuals who own significant interest or hold management functions. The existing market entry controls focus more on compliance with professional standards.
- b) Supervisors displayed a generally low understanding of ML/TF risks of their individual regulated institutions. They have not identified and developed an understanding of firm-specific ML/TF risks within the sectors.
- c) Supervisors had not started conducting AML/CFT inspections and were yet to implement AML/CFT risk-based supervision. Most of them had no technical and financial resources for this.
- d) In view of the absence of supervisory activities, there were no breaches detected and sanctions imposed by the DNFBP supervisors. Hence, there is no basis to assess the severity and impact of sanctions.
- e) FIC carries out outreach programmes and various reports meant to promote understanding by DNFBPs of their obligations and ML/TF risks. However, it was not possible to assess the impact of DNFBP supervisors' actions on compliance of institutions under their purview since they had not yet started carrying out their respective responsibilities.

#### **Recommended Actions**

Zambia should take the following actions:

#### *Financial Sector Supervisors*

- a) PIA should strengthen market entry controls by obtaining particulars of beneficial owners and conducting due diligence on them.
- b) Supervisors should identify, assess and understand ML/TF risks to which the FIs are exposed, which will inform the development and implementation of AML/CFT risk-based supervision. In addition, they should develop appropriate tools to collect data/ information to use for updating the risk profiles so that they maintain an understanding of the risks, in addition to onsite examinations.
- c) Supervisors should apply dissuasive sanctions available in the legal framework such as monetary penalties against FIs, which fail to comply with AML/CFT obligations in order to promote compliance.
- d) Supervisors should consider maintaining statistics on the number and trends of their findings arising from offsite surveillance, onsite examinations and other interventions in order to monitor the impact of their activities.

### *DNFBP Supervisors*

- a) Supervisors should develop and implement robust licensing/registration market entry requirements, which incorporate AML/CFT issues. In addition, the legal framework governing operations of real estate agents should be enhanced so that all agents are subjected to registration requirements, including fit and proper assessment.
- b) Supervisors should develop and maintain an understanding of ML/TF risks at an institution level.
- c) On the basis of the assessed risks, they should develop and carry out an effective AML/CFT risk-based supervision. The supervisory activities such as off-site and onsite examinations and follow-up measures should be planned and undertaken according to the identified ML/TF firm-specific risk levels.
- d) The DNFBP supervisors should enhance outreach programmes to the respective entities and provide fit-for-purpose guidance in order to promote their understanding of AML/CFT obligations and ML/TF risks.
- e) Adequate resources should be provided to DNFBP supervisors to enable them develop capacity and effectively undertake AML/CFT supervisory responsibilities.

310. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

### ***Immediate Outcome 3 (Supervision)***

#### *Licensing, registration and controls preventing criminals and associates from entering the market*

311. Financial sector supervisors have effective frameworks and procedures for assessing suitability of shareholders, directors, and senior management at the market entry point as well as on an ongoing basis post authorisation. Except for PIA, BoZ and SEC have satisfactory procedures to prevent criminals from becoming beneficial owners. On the other hand, majority of DNFBP supervisors do not have necessary measures and capacity to assess fitness and propriety of shareholders and individuals who own significant interest or hold management functions. This is critical in the real estate sector where a significant number of operators/players are unlicensed.

#### *Bank of Zambia*

312. The BoZ has adequate legal and regulatory licensing framework in relation to banks, foreign currency changers and micro-finance institutions to prevent criminals and their associates from holding or becoming beneficial owners of a significant interest or holding management positions. This is carried out both at market entry level and on an ongoing basis post authorisation. The licensing process includes a pre-filing stage whereby BoZ meets prospective applicants prior to formal submission of an application to explain the requirements. The BoZ licensing officers conduct a preliminary review of the application documentation to determine whether or not the application documents are complete and the applicant meets the licensing requirements. This pre-filing process eliminates applications which do not meet the licensing requirements.

313. The fit and proper evaluation of significant shareholders (10 or more shareholding in a financial service provider) which are legal persons includes assessment of integrity, reputation competence, financial soundness, and the source of share capital. Individual shareholders submit official ID documents, references and source of capital. BoZ consults the FIC and LEAs such as Police, Intelligence agencies, ZRA and other relevant supervisory authorities to establish the criminal status of the shareholders. In case of foreign individual shareholders, BoZ obtains references from their foreign counterparts, official IDs, Interpol clearance report from the country of residence issued within the previous six months and tax clearance certificates (with a validity of not more than 12 months). Foreign companies are required to provide articles of association and certificates of incorporation; for foreign regulated entities a written clearance statement is obtained from a foreign supervisory authority as well as tax clearance certificates (with a validity of not more than 12 months). This information is reviewed to determine the suitability of the prospective shareholders.

314. In order to prevent criminals or their associates from being the BO of a financial service provider, BoZ subjects BOs to security screening that involves obtaining criminal background information from LEAs (ZPS, Interpol, ACC, ZSIS, DEC, and FIC) and other financial sector regulators (SEC and PIA). In case of a foreign BO, an enquiry is sent to the supervisory authority in the country of origin of the BO. The process is ongoing such that existing financial service providers are required to seek prior approval of the BoZ when changing shareholding. A similar fit and proper assessment is applied on proposed board members and senior management to determine their suitability. The assessment involves screening the individual's qualifications, qualities, competences, experiences, and criminal record. In relation to foreign nationals who have previously worked for a financial institution, a reference letter is obtained from the foreign supervisory authority. If the foreign national was working in unregulated entity, the BoZ obtains Oath of Declaration, then contact references for evidence and Interpol to establish the criminal status of an applicant.

315. The licensing process for forex bureaus is similar to the one for bank licensing where the shareholders, directors and senior management are vetted and licence granted. Entry requirements for MVTS providers are less rigorous as they are only required to be registered. Where the MVTS provider is not meeting all the requirements, BoZ grants a conditional approval for a specific period during which the institution is required to resolve all outstanding concerns. Licenses for forex bureaus and MVTS providers are subject to annual renewal wherein BoZ reassesses the licensing application depending on the nature of the risk profile of the licensee.

316. In the four years reported from 2013, there were no licence applications that were rejected by the BoZ. This is due to the licensing process adopted by BoZ, which includes preliminary meetings with the representatives of the applicants during which they are guided on the process. Therefore, when an application has been formally submitted, it is accompanied by most of the required documentation and information. The BoZ received 46 applications for NBFIs licences between 2013 and 2016, all of which were approved. Only one application for a banking licence was received and granted in 2016.

317. The BoZ is capable of detecting breaches of licensing requirements through ongoing monitoring by conducting offsite, onsite surveillance and targeted compliance checks. Any change in ownership structure and management requires prior approval by BoZ. AML/CFT compliance is a requirement during licensing process. Where the BoZ has been tipped by the

public or suspects unauthorised financial services, it carries out investigations jointly with LEAs. BoZ investigated one Ponzi scheme in 2013 and one unauthorised financial service provider in 2015 jointly with DEC. When it is established that unauthorised financial services are being conducted, the perpetrators are either fined or prosecuted, and in certain instances their bank accounts are frozen and assets seized. The public is warned through a notice.

#### *Pensions and Insurance Authority*

318. Entry into the pension and insurance sector is subject to licensing requirements, which involve vetting of the shareholders, directors and senior management. Assessment is conducted on significant shareholders (one that owns 15 percent or more voting rights in an insurance company), who must be financially sound, fit and proper persons. To ensure that only fit and proper shareholders are allowed, PIA requires submission of a police clearance certificate, which is independently verified, and also requests information from the FIC and other LEAs. In cases where the proposed shareholder is a foreign based financial institution, PIA consults the foreign supervisory authorities and Interpol on the suitability and criminal record, respectively. The above process is carried out for all categories of prospective licensees (pension funds managers, administrators, insurance companies, brokers, agents etc).

319. Senior management are vetted for fitness and probity that includes assessing an individual's professional, legal, employment history and ethical standing by obtaining references, police clearance certificates and confirmations from other regulators and LEAs. Due diligence for foreign based directors and executive management includes obtaining police clearance certificates from the country of origin. However, PIA does not require disclosure of a BO and therefore does not conduct fit and proper test on them.

320. PIA conducts on-going monitoring and requires insurance entities to seek prior approval when there is a change in management and ownership structure to ensure that shareholders, directors and senior management remain fit and proper. Licenses are renewable every year and from 2017 when the AML/CFT Directive was issued, PIA started incorporating some aspects of AML/CFT compliance such as existence of policies and procedures as part of licensing process.

#### *Securities and Exchange Commission*

321. SEC has procedures and processes for licensing of securities exchanges, clearing and settlement agencies, dealers, investment advisers, share transfer agents, credit rating agencies and representatives. SEC screens individual applicants using information on personal data and identification, occupation, previous employment and business activities in the last 10 years and criminal record. The majority of the shareholders are local individuals whose details can easily be obtained from domestic agencies. Legal persons are required to submit information such as certificate of incorporation, proof of business address and financial position. For foreign regulated shareholders, SEC obtains information from the stock exchanges of the foreign jurisdiction; and where the shareholder is unregulated entity, SEC consults fellow regulators and the company registry in the country of origin.

322. Applicants are required to provide particulars of beneficial owners, directors and management, which includes identification document, residential address, curriculum vitae, and names of traceable referees. As part of the fitness and probity process, SEC engages LEAs and

other regulators to verify and determine suitability of the individuals. As evidence of the effectiveness of the procedures, in 2014 SEC rejected a licence application of an entity on account of a proposed director who was not fit and proper due to a questionable background.

323. The SEC conducts on-going monitoring and receives notification in writing from licensees, of any change that may have occurred relating to the address in Zambia, at which the licensed person carries on business; or any information submitted in the application for a licence.

**Table 15: Applications received and number of licences granted and rejected by BoZ, PIA and SEC:**

Year	Number of Applications			Number of Applications			Number of Applications		
	BOZ			PIA			SEC		
	Received	Granted	Rejected	Received	Granted	Rejected	Received	Granted	Rejected
2013	13	13	0	313	306	7	74	74	0
2014	9	9	0	356	356	0	123	122	1
2015	15	15	0	352	318	34	129	129	0
2016	9	9	0	341	338	3	200	200	0

#### *Casinos Regulator*

324. Licensing of casinos was recently introduced, however, the licensing committee under the Ministry of Tourism and Arts does not conduct due diligence on casino applicants. The authority relies on information obtained by PACRA during registration. Thus, information collected on the application form is limited to gaming equipment and tokens, place of business, company registration information, and tax identification number. Information on related shareholders, directors, senior management and beneficial ownership is not collected. The supervisors rely on the fact that PACRA collects the information during company registration. While the rest of the information is held by PACRA, it was determined during the on-site that BO information is generally not obtained and kept. For this reason, the authorities do not have appropriate systems to prevent criminals from holding or being a BO of significant interest or holding a management function in a casino.

#### *Regulator for Dealers in Precious Stones and Metals*

325. The Ministry of Mines is responsible for licensing dealers in precious stones and metals. The Ministry obtains company registration documentation, which is verified by PACRA, and a list of shareholders and particulars of directors. However, the authorities do not carry out a fit and proper assessment of shareholders and directors and no due diligence is conducted on source of capital. The licensing process formally commenced in 2015 following the enactment of the Mines and Minerals Development Act, 2015. There are informal dealers operating in Zambia and the authorities are in the process of regularising them under the recent Act. Based on the foregoing, the authorities do not have appropriate systems to prevent criminals from holding or being a beneficial owner of significant interest or holding a management function.



### *Zambia Institute of Estate Agents (ZIEA)*

326. ZIEA is responsible for registration of real estate agents and carries out a fit and proper assessment of shareholders and directors of proposed real estate agents. In order to facilitate and determine suitability of shareholders, applicants are required to submit CV, police clearance, and reference from Registered Estate Agents. However, ZIEA does not take additional steps to verify the information received nor does it collect any other additional information. The ZIEA is aware of existence of a significant number of unregistered estate agents operating in Zambia, which they estimate to be more than those that are registered<sup>8</sup>. This increases the risk of having criminals or their associates operating in the real estate market since the unregistered players are not subject to any assessment.

### *Zambia Institute of Chartered Accountants (ZICA)*

327. ZICA is responsible for licensing and registering qualified accountants and the registration process includes consideration of an applicant's character and checking that the applicant had not been convicted of any offence involving dishonesty. The registered accountants undergo a three year International Standard on Quality Control (ISQC) compliance check, which is mainly a professional ethical standard. However, this process does include conducting due diligence in compliance with AML/CFT requirements and helps ensure that the fitness and propriety of members is maintained post-registration.

### *Law Association of Zambia*

328. LAZ regulates the legal practice profession in Zambia. The license is renewable annually. There is a statutory Disciplinary Committee that is responsible for conducting and checking the fitness and propriety of lawyers. Lawyers are required to submit CVs, NRC/passport, and accountants certificate executed by an external auditor. LAZ is yet to incorporate AML/CFT requirements during the registration process.

### *Patents and Companies Registration Agency (PACRA)*

329. Motor vehicles dealers are registered by PACRA like any other company and are registered as traders in motor vehicles. The authorities do not have appropriate systems to prevent criminals from holding or being a beneficial owner of significant interest or holding a management function in a motor dealer business.

### *Supervisors' understanding and identification of ML/TF risks.*

330. Overall, the financial sector AML/CFT supervisors in Zambia demonstrated a fairly good understanding of the ML/TF risk facing their respective entities. Unlike the PIA and the SEC, the understanding of ML/TF risks by the BOZ and the FIC was further strengthened by the results of the NRA. Relative to the rest of the AML/CFT supervisors, the BoZ demonstrated a

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<sup>8</sup> In order to solve this problem, Zambia is reviewing the legal framework with a view to make it mandatory for real estate agents to be licensed in Zambia, and thus make it an offence to operate without a valid license.

good understanding of the ML/TF risks facing not only the sectors it regulates but the different categories of the entities within the sectors. The BOZ identified MVTS providers and commercial banks at a higher risk of being abused for ML/TF.

331. The supervisors use a variety of sources of information such as inspections to strengthen its understanding of ML/TF risks. The findings are compared with the results of the NRA. At the time of the assessment, the PIA, the SEC and the BoZ were finalising sectoral risk assessments using the NRA as the basis. While the risk profiles were yet to specifically incorporate review of the PEPs, high risk jurisdictions, and sanction screening, the supervisors were conversant with the potential risks posed by these variables and relied on the findings of the NRA to feed into their understanding of the overall risks.

#### *Bank of Zambia*

332. BoZ has a good understanding of ML/TF risks of the sectors under its purview. BoZ understands the threats and the vulnerabilities in the banking, forex bureau, MFIs, leasing companies, building societies, savings and credit institutions, development bank and MVTS providers. It has also used the ML/TF Trends Report issued by the FIC from time to time to enhance its understanding. In addition, the BoZ considers a broad range of factors such as scale, diversity and complexity, products and services, customers, geographical locations, and delivery channels of the institutions. The following table highlights the risk levels in the financial sector based on the updated June 2018 NRA report.

**Table 16: Risk Levels in the Financial Sector**

<b>Sector</b>	<b>Risk Rating</b>
Banking	Medium High
Bureau de Change	Medium High
Leasing Companies	Medium Low
Microfinance Financial Institutions	Medium Low
MVTS Providers	Medium

333. The BoZ performs prudential institutional risk profiling of their regulated entities on an on-going basis to inform their understanding of the risks that are inherent in their regulated entities. The prudential risk profiling exercises is reviewed annually and incorporates elements of ML/TF risks. This approach has contributed significantly to BoZ consolidated view of the risks facing its regulated sectors.

#### *Pensions and Insurance Authority*

334. PIA relies on the NRA report as the main source of sectoral ML/TF risk information and indicated that life insurance is considered high risk due to the long term nature and type of customers who access the product. However, it has not identified ML/TF risks at individual institutional level. Therefore, in the absence of the firm-specific ML/TF risk assessment, understanding of risk at individual institutional level in the pensions and insurance sector is considered low.

### *Securities Exchange Commission*

335. SEC has fair understanding of ML/TF risk in the capital market sector based on the NRA report and outcome of the thematic review conducted in 2017. The thematic review was conducted in collaboration with FIC on eight (8) capital market players based on the entities past AML/CFT compliance. SEC considers the ML/TF risk in the securities sector to be low in view of low trading and limited transactions, the nascent stage of the stock market and low level of capital market players. SEC has not conducted ML/TF institutional risk assessment and therefore demonstrated limited understanding of risks existing in the individual institutions.

### *DNFBPs*

336. The supervisors of the DNFBPs demonstrated some understanding of the ML/TF risks in relation to their sectors. The NRA Report indicated that vulnerability of the entire DNFBP sectors was high largely because of lack of knowledge of the AML supervisory authorities, ineffectiveness of compliance functions and ineffectiveness of suspicious transaction monitoring and reporting. However, the analysis and conclusions did not benefit from the analysis of inherent risks within the sectors such as the nature and scope of products/ services, delivery channels etc. Nevertheless, majority of the supervisory authorities, which the assessors met acknowledged that these factors do justify the high risk classification. In addition, they also pointed out that other equally important factors include the level of informality; their exposure to cash-intensive transactions, delivery channels; the poor level of awareness of AML/CFT obligations, and prevalence of the unregistered market players.

337. All the DNFBP supervisors have not identified and assessed the ML/TF risks of their respective institutions. The individual DNFBPs were not classified into risk categories. As a matter of fact, they had not even developed capacity (including tools and methodology) to identify, assess and maintain understanding of the ML/TF risks facing their respective individual reporting entities. So, there is also a low understanding of ML/ TF risks at the level of individual reporting entities.

### *Risk-based supervision of compliance with AML/CTF requirements*

338. The financial sector AML/CFT supervisory bodies, DNFBP supervisory authorities and the FIC are yet to develop and implement an AML/CFT risk-based supervision. The financial sector supervisors use prudential risks to determine the frequency and choice of institution to be subjected to AML/CFT inspection. The FIC issued a framework for risk-based approach and guidance manual to all supervisory bodies. In addition, the FIC is in the process of setting up a statutory AML/CFT Inspectorate to enforce AML/CFT compliance by reporting entities. All supervisory bodies are therefore in the process of developing a RBA supervisory capacity.

### *Bank of Zambia*

339. The BoZ implements an integrated/combined prudential and AML/CFT supervisory approach whereby AML/CFT compliance monitoring for its regulated entities forms part of the prudential supervisory actions including on-site inspections. However, in some cases not all prudential onsite inspections incorporate AML/CFT matters (see Table 17 below). The onsite examination program and frequency of inspections are determined by the outcome of prudential risk profiling of the regulated entities. Essentially, onsite activities are driven by prudential risks

since they constitute the majority of factors under consideration (see the discussion under Core Issue 3.2). On the other hand, the scope of AML/CFT inspection is informed by the results of the compliance risk assessment which includes AML/CFT (which is part of the prudential risk profile) and findings of previous AML/CFT onsite examination. In addition to full scope prudential onsite inspection, BoZ may conduct a targeted or thematic AML/CFT examination. This principle is applied in respect of all institutions under the purview of the BoZ. Specific to forex bureaus, onsite visits are also guided by the assessed ML/TF risk levels and volume of transactions.

**Table 17: Onsite Examinations for Banks and Bureaus de Change**

Period		2013	2014	2015	2016	2017	May 2018	Total
Banks	Total No. of banks	19	19	19	19	19	17	
	Prudential Onsite Examination	4	2	3	4	3	1	17
	AML/CFT Onsite Examination	2	0	3	2	3	1	11
Forex Bureaus	Total No. of Forex Bureaus	73	73	73	73	73	73	
	Prudential Onsite Examinations	1	6	6	16	0	0	29
	AML/CFT Examinations	1	6	6	16	0	0	29

340. In respect of sectoral inspection approach, the BoZ has prioritised banks and certain bureau de changes as they are rated medium high risk on the basis of materiality and nature of transactions. For instance, the BoZ conducted onsite visits on 29 forex bureaus (out of 73) over the period 2013 to May 2018, which represented 40 percent of the total number of entities. In addition, the BoZ introduced a transactions monitoring software, to which all forex bureaus are connected as part of its off-site monitoring processes in respect of the transactions being carried out in the sector. This system has capacity to monitor transactions conducted by forex bureaus in real time. This has significantly improved the capability of the BoZ to effectively monitor compliance with the overall regulatory requirements. By contrast, the microfinance institutions are considered to be low risk and therefore the BoZ carried out only one (1) onsite inspection over the same period. The BoZ monitors MVTs through collection of regular statistics, information and data. Under the NRA, MVTs were rated medium risk and as such the BoZ should enhance the monitoring by incorporating relevant AML/CFT information in their analysis.

341. Based on the inspection reports reviewed and discussions held with the Authorities, the BoZ focuses substantially on all the following elements of an AML/CFT Compliance Programme:- Policies and procedures, CDD and record keeping, compliance function, STRs, wire transfers, governance and reporting lines to the Board, and UNSCRs Sanctions Screening. The depth of analysis varies with the size and complexity of the institution, informed by the scope determined through the compliance risk assessment. This enables the BoZ to generally determine

the extent of compliance by the inspected entity with the applicable AML/CFT obligations, and consider appropriate recommendations and remedial measures.

342. There is currently one financial group in Zambia. Consolidated supervision is conducted based on supervisory colleges and MoUs that were signed with other supervisory bodies on the cross-border establishments.

*Pensions and Insurance Authority and Securities and Exchange Commission*

343. AML/CFT onsite examination program of PIA and SEC is determined by prudential risks considerations. In relation to PIA, the onsite program is also subject to a two-year statutory requirement (i.e., by law all pensions and insurance entities must be inspected at least once in a two-year cycle). Therefore, ML/TF risks do not determine the selection and frequency of the inspection for AML/CFT compliance. AML/CFT assessments are reviewed as part of full scope prudential inspections and not tailored towards the areas, which pose specific ML/TF risks. In addition, the samples of inspection reports reviewed and the discussions held with the PIA, showed that the scope and depth of analysis during AML/CFT inspections are limited. PIA mainly focusses on KYC, availability of AML policies, appointment of MLRO, reporting of STRs, and staff training. There is no analysis of the adequacy of the AML/CFT Policies against the AML/CFT requirements, except to indicate that the entity has such a Policy. This is attributed to, inter alia, a lack of adequate AML/CFT expertise. The assessments are yet to incorporate review of PEPs and other high risk customers, transaction monitoring, sanction screening, high risk jurisdictions etc.

344. SEC plans to use the results of the offsite thematic reviews in conjunction with the findings of the revised NRA to develop and implement an AML/CFT risk based framework for supervision including putting in place AML/CFT inspection manual, procedures and processes. Thus, SEC developed an Action Plan of 2017 to 2019 to implement the gaps identified.

**Table 18: Total number of AML/CFT inspections conducted by the BoZ, the PIA and the SEC, 2013 to 2017:**

Type of Financial Institution	Number of AML/CFT on-site examinations					
	2013	2014	2015	2016	2017	May 2018
<b>Banks</b>	2	0	3	2	3	1
<b>Microfinance</b>	0	0	0	1	0	0
<b>Leasing</b>	0	0	0	0	0	2
<b>Life Insurance</b>	1	1	2	1	0	0
<b>General Insurance</b>	2	2	1	4	0	0
<b>Collective Investment Schemes</b>	10	8	8	8	0	0
<b>Securities</b>	1	2	2	0	0	0

Type of Financial Institution	Number of AML/CFT on-site examinations					
	2013	2014	2015	2016	2017	May 2018
Investment dealers	17	21	23	15	0	0
Investment Advisor	3	4	5	3	0	0
Safekeeping- (Custodian)	0	2	2	1	0	0
Savings & Institutions	0	0	0	1	0	0
Bureau de change	1	6	6	16	0	0

#### *DNFBPs*

345. The majority of the DNFBP supervisory authorities are aware of their responsibilities under the FIC Act, however, they have not yet started AML/CFT supervision to monitor AML/CFT compliance. All of the DNFBP supervisors are yet to set-up supervisory functions or develop supervisory tools mainly as a result of a lack of expertise and financial resources to enable them fully discharge their responsibilities.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions*

346. Prior to the amendments of the FIC Act in 2016, the AML/CFT enforcement regime in Zambia did not provide for administrative sanctions against breaches of AML/CFT legal and regulatory requirements. The amendment expanded the scope of AML/CFT obligations and strengthened the sanction powers of the supervisors for AML/CFT violations. Even though there have been several incidents of non-compliance identified during inspections that would ordinarily attract appropriate sanctions, the supervisors did not impose monetary penalties, but instead opted to give the institutions time to remedy the deficiencies. These included directing FIs to establish compliance function, remediating KYC, training, record keeping, sanction screening, EDD for PEPs, customer risk rating and statutory reporting.

347. Some of the breaches identified by the financial sector supervisors over the period 2013 to 2016, were inadequate board oversight, lack of AML/CFT policies, ineffective compliance function, failure to identify customers, poor record keeping, inadequate filing of suspicious transactions and failure to conduct employee training. The range of remedial actions and sanctions imposed by the financial sector supervisors included recommendations, directions and suspension of licences. In particular, the BoZ used the actions taken to permit reasonable time for the FIs to develop and improve the necessary systems, resources, and procedures to effectively manage and mitigate the risks. In respect of forex bureaus, the BoZ issued directives under its laws for remedial actions against deficiencies and suspended forex bureau licences. For instance, a forex bureau licence was suspended in 2015 for persistent failure to identify and verify the identities of its customers as required under the FIC Act.

348. In respect of SEC, the only sanction applied against violation of the SEC AML/CFT Directives of 2009 was withdrawal or suspension of a licence. This was due to lack of

administrative sanctions in both the FIC Act and the Securities Act at the time. The sanctions were therefore not proportionate to the breaches.

349. It is the view of the assessors that the remedial actions and sanctions taken by the FIs supervisors were, to some extent, proportionate, dissuasive and effective.

Table 19 below shows selected number of AML/CFT sanctions or remedial actions imposed by BoZ, PIA and SEC from 2013 to 2016.

**Table 19: Number of sanctions and remedial actions, 2013 to 2016**

Type of Financial Institutions	Year	Nature of violation	Type of sanction or other remedial action imposed
Banks	2013 to 2016	Lack of EDD on PEPs, Absence of RBA to AML/CFT, Weak KYC remediation Lack of customer acceptance policy, Lack of framework for risk rating customers, Lack of targeted AML/CFT training, No framework for assessing impact of AML/CFT training and awareness, Inadequate compliance function, Lack of risk rating framework for customers, No framework for assessing impact of AML/CFT training No MIS for screening and monitoring ML/TF risks in the bank, No assessments of compliance risk by business units within the bank, Weak board and senior management oversight for AML/CFT, Record retention period not consistent with legal requirements in FICA	Requiring FIs to:- Establish compliance function, Remediate KYC, Conduct training, Have proper record keeping practices, Conduct sanction screening, Adopt a risk based approach to assessing ML/TF risks, Conduct EDD for PEPs; Establish a compliance risk framework for risk rating customers and risk rate Customers; Monitor transaction and statutory reporting
Securities firms/brokers	2013	Lack of or Inadequate Customer Identification Program	None
	2014 to 2016	Lack of or Inadequate Customer Identification Program	Licenses were withheld until the reporting entities had resolved the shortcomings
Insurance Co./ brokers/ agents	2013 to 2015	None	None
	2016	Fraud	Licence of the insurance broker revoked by Pensions and Insurance Authority.
Bureaux de change	2013 to 2016	The bureaux de change did not put in place measures for combating money laundering and the financing of terrorism in line with section 23 of the Financial	Bureaux de change directed to implement AML/CFT measures and urged to seek guidance if they were not clear on how to



Type of Financial Institutions	Year	Nature of violation	Type of sanction or other remedial action imposed
		Intelligence Centre Act (FICA) of 2010. Bureaux de change Tellers, Chief Finance Officers and Directors were not trained in detecting suspicious customers and transactions.	implement their legal requirements.
	2015	One bureau de change persistently failed to identify and verify the identities of its customers contrary to the requirements of section 16 of the Financial Intelligence Centre Act	The Bank of Zambia suspended the licence of the bureau de change for six months.
Microfinance	2016	There were six fraud cases involving employees. The Compliance function to deal with AML/CFT was a recent establishment and had not yet started reporting Suspicious Transactions.	Supervisory directive was issued to the institution to start reporting STRs in line with the BoZ AML/CFT directives. At the time of the examination, the institution was also in the process of recruiting another compliance officer.
Savings & Institutions	2016	The compliance function was not fully functional. The institution had a compliance officer role in their organogram, but had no designated compliance officer. The AML function was not existent in most of the branches. Fraud cases involving K137,771.10 and a theft of K1,796,170 were being investigated by the police.	The institution was issued with supervisory directives to comply with <i>Section 23(1) of the Financial Intelligence Centre Act</i> which requires the reporting entity to have ongoing training of officers and employees and make them aware of the laws relating to money laundering, the financing of terrorism and other serious offences.
Leasing; Building societies; Development Financial institutions; Other FIs	2013 to 2016	None	None

#### DNFBPs

350. Since no AML/CFT inspection had been conducted by the DNFBPs supervisors, there had been no breaches detected nor sanctions/remedial actions applied. Therefore, effectiveness of the sanctions and remedial actions could not be determined.

### *Impact of supervisory actions on compliance*

351. Financial sector supervisors did not provide data and information to demonstrate the effect of supervisory action at individual firm level over time. Only BOZ confirmed that there were positive changes in the nature of banking sector deficiencies over a period. However, assessors could not determine the impact of supervisory actions by PIA and SEC regulated entities on compliance. DNFBPs supervisory authorities had not taken any supervisory actions and therefore it was not possible to assess their impact on compliance by institutions under their purview.

#### *Bank of Zambia*

352. The BoZ issues an inspection feedback report to inspected entities with remedial actions against weaknesses identified. There are mechanisms for follow-up actions, including the requirement for the inspected institution to submit progress reports on the recommended actions. BoZ indicated that remedial actions taken have resulted in corrective measures by FIs to address non-compliance issues. Worth noting is the establishment of compliance functions, development of ML/TF risk assessment by large FIs affiliated to international groups, and overall improvement in AML/CFT compliance culture.

#### *Pensions and Insurance Authority*

353. PIA directions/recommendations issued following AML/CFT inspections are done without timelines and supervisory action plan; which makes it difficult to follow whether there has been an impact on PIA's actions. Notwithstanding, some insurance companies have put in place measures in order to comply with actions taken by the Authority in the area of AML/CFT. Some of the measures undertaken include: - recruitment of Compliance Officers; implementation of AML policies and procedures; and filing of STRs.

#### *Securities and Exchange Commission*

354. Notable improvements are yet to be demonstrated since most capital market players are still putting in place AML/CFT compliance programs. Nonetheless, some entities have developed AML/CFT policies, engaged FIC to conduct AML/CFT training; and CIS discuss AML/CFT issues during their quarterly meetings.

#### *DNFBPs*

355. DNFBPs supervisory authorities have not yet taken any inspections and therefore it was not possible to assess their impact on compliance by institutions under their purview.

### *Promoting a clear understanding of AML/CTF obligations and ML/TF risks*

356. Supervisors in Zambia have undertaken numerous general awareness-raising initiatives to strengthen understanding of ML/TF risks and AML/CFT obligations by reporting entities. The FIC, working closely with some sector supervisors, has been instrumental in ensuring that reporting entities maintain a reasonably good understanding of risks and the mitigating controls. BoZ, PIA and SEC teamed up with the FIC in delivering outreach programmes such as holding discussion of AML/CFT issues at regular industry associations meetings and issuance of

guidance material to financial sector entities. There has been very little or no similar exercises with the DNFBP sector. With regard to DNFBPs, the FIC has undertaken outreach activities, although these were minimal. The activities concentrated mainly on general AML/CFT obligations and the results of the NRA. In some instances, the FIC has been invited by financial sector players and DNFBPs to train staff and management on the AML/CFT obligations.

357. Furthermore, the FIC issues on annual basis ML/TF trends and typologies reports, which the private sector has confirmed as being useful to them in relation to promoting their understanding of ML/TF risks and transactions risk indicators.

358. The financial sector supervisors provide feedback on the findings of the onsite inspections which, to some extent assist FIs' understanding of ML/TF risk and AML/CFT obligations. The level of understanding of the ML/TF risks and AML/CFT obligations by the reporting entities reflect the extent of engagement by the supervisors in relation to undertaking of outreach activities and provision of guidance on AML/CFT issues, with banking sector having a greater understanding than insurance and capital market entities.

359. In Zambia considering the context, structure and sector significance, positive and negative aspects of supervision were weighed most heavily for the banking sector, moderately heavy for the pension and insurance sector, and less heavily for capital markets and DNFBPs as explained in Chapter 1.

**Zambia has achieved a Moderate Level of effectiveness for Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### **Key Findings**

- a) Information on creation and types of legal persons and arrangements is publicly available in Zambia through public websites and at registries of both legal persons and arrangements. However, the information at the time of the on-site visit did not include requirements on BO as a new Companies Act with such requirements had just been enacted.
- b) There has not been a specific risk assessment for ML/TF undertaken for legal persons to assist the authorities in identifying, assessing and understanding ML/TF risks involved. Although PACRA has noted that legal persons, in particular companies limited by shares, are at risk of being misused for money laundering and terrorist financing there has not been a proper assessment to identify and understand such risks therefore the risks associated with legal persons are still to be identified and properly understood.
- c) Zambia has recently enacted a Companies Act that makes it a requirement to obtain beneficial ownership information for legal persons. However, there is no similar requirement under the law administering trusts and societies. Other processes like introducing a data base and Register on UBO information which would enhance access to accurate and timely information by competent authorities were still work in progress. No

similar measures are being taken to prevent the misuse of legal arrangements for ML/TF purposes.

- d) There are no adequate mechanisms to enable competent authorities to have timely access to UBO information held by DNFBBs.
- e) Trusts are only expected to file returns to the Registrar of Trusts after every five years, not one year as per best practice, making the updating information untimely and again not all registered trusts are doing it. Officials manning the trust registry have not been trained on AML/CFT or vulnerabilities associated with possible abuse of trusts for ML/TF.
- f) Sanctions that can be imposed on the legal persons are very minimal as to warrant them to be effective, proportionate and dissuasive where companies contravene the provisions of the Act. There are no sanctions for trusts under the Land (Perpetual Succession) Act.

### **Recommended Actions**

- a) Although information on creation of legal persons and arrangements is publicly available in Zambia, on legal persons the authorities should start looking at ways of improving the information to also include requirements on UBO information which have been brought in by the newly enacted Companies Act 2017, which replaced the Companies Act, 1994.
- b) Undertake an ML/TF risk assessment for specific legal persons to identify, understand and mitigate any risks that might create ML/TF vulnerabilities in the sector.
- c) Expedite promulgation of regulations to the Companies Act which, through implementation of some of the provisions, like obtaining of information on BO, will enable the authorities to identify some of the ML/TF risks linked to legal persons created in Zambia. The regulations to be promulgated should therefore introduce measures which will enable through obtaining of basic and BO information, scrutinisation of creation and incorporation of companies from high ML/TF risk jurisdictions to determine whether they pose risk to Zambia and assessment and understanding of such ML/TF risks once identified.
- d) Efforts to establish a data base on UBO information and a Register should be speeded up as this would immensely benefit access to such information by competent authorities and similar applicable measures should also be introduced pertaining to legal arrangements to prevent them from being misused for ML/TF purposes.
- e) Enhance awareness and provide adequate training to the Registrar of Companies and Registrar of Trusts' officials on the vulnerabilities of legal persons and trusts being used for ML and TF.
- f) The authorities should come up with a legal framework which enables the Registrar of Trusts to obtain UBO information during the registration process.
- g) Introduce measures necessary to enable registered trusts to file returns annually. This would ensure that information maintained and accessed on trusts is accurate, adequate and up to date.
- h) Have mechanisms in place to ensure that competent authorities can have timely access to UBO information held by DNFBBs.

- i) Consider strengthening the sanctions under the Companies Act, which are at very minimal levels to enable them to be more effective, proportionate and dissuasive in order to make the sanctioning regime commensurate with risks identified.

360. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

### ***Immediate Outcome 5 (Legal Persons and Arrangements)***

#### *a) Public availability of information on the creation and types of legal persons and arrangements*

361. The types of companies which can be registered in Zambia are: private limited by shares; private limited by guarantee; public companies; and foreign companies. As for trusts, two types of trusts can be registered: express trusts where a trust deed would be required; and societies which have to show that they are already registered in terms of the Societies Act for them to qualify to be registered as a trust.

362. Zambia laws enable members of the public to get information on the creation and types of legal persons and arrangements. For corporate entities, this information can be found in the Companies Act 2017 and for Trusts and other legal arrangements in the Land (Perpetual Succession) Act. Information on creation and types of legal persons is also publicly available on PACRA's website, so is information on creation of legal arrangements on the Registrar of Trusts' website<sup>9</sup>. The websites are easily accessible to members of the public..

363. Members of the public can also visit the offices of both entities to get guidance on creation of legal persons and arrangements.

#### *b) Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

364. During the onsite visit authorities indicated that they are aware that legal entities can be abused for money laundering and terrorist financing in particular following interactions with FIC in the course of the NRA exercise. PACRA officials reported that although no sector specific risk assessment had been undertaken to identify, assess and understand the ML/TF risks prevalent in the sector during the NRA they had highlighted that companies vulnerable to abuse for ML are companies limited by shares as shareholders and directors' main intention is to benefit from the investment. This was mostly reflected by fraudulent transfer of shares, forfeiture of shares, surrender of shares and changes in directors and a company registering a number of companies and dissolving them.

365. At the time of the on-site visit, the officers responsible for registering trusts indicated that they were not aware that trusts can be abused for money laundering or terrorist financing and this had only been brought to their attention very recently that is, a few weeks before the onsite. They noted with concern the recent trend of rising registration of trusts, particularly complex ones

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<sup>9</sup> [www.pacra.gov.zm](http://www.pacra.gov.zm) for legal persons and [www.mlnrep.gov.zm](http://www.mlnrep.gov.zm) for legal arrangements

where the settlor, trustee and beneficiary will all be legal persons, or where the settlor being a legal person is also the trustee or beneficiary of the trust. According to the authorities, administering such trusts was difficult as the relevant law did not have specific requirements relating to establishing of UBO and the Registrar of Trusts is not required to obtain this information when registering Trusts. The authorities also attributed the increase in the registration of trusts to the fact that trusts do not usually pay tax like corporate entities are required to do. The other identified deficiency which creates potential for abuse of trusts for ML/TF is that returns on changes of trustees, beneficiary or any other pertinent information to the trust are only supposed to be submitted to the Registry Office every five years which in practice was hardly happening. The mere fact that this requirement (to file returns in every 5 years) was still in place during the on-site visit could be a clear indicator the ML/TF risks posed by trusts have not yet been considered as serious as with the other sectors.

366. At the time of the on-site, the extent of identification, assessment and understanding of ML/TF risks associated with legal persons in Zambia was still low and this could be attributed to the fact that the framework enabling such assessment had just been introduced through the enactment of a revised Companies Act which now has specific provisions addressing some of the issues and that the implementing regulations to some of the requirements of this Act had not been issued. The PACRA has to be credited for trying to have a framework which will enable implementation of the new law as quick as possible, including external assistance and guidance on how best to obtain information required in terms of the Act, including on BO. It was also improving the systems to enable it pick on red-flags relating to legal persons during their creation. As indicated above, cognisance has to be taken that at the time of the onsite requirements to comply with obtaining of information on UBO were not fully effective as the implementing regulations had not yet been promulgated. In the absence of such mechanisms, it was not possible to tell how the new framework would be effective in identifying, assessing and understanding ML/TF risks relating to legal persons, particularly linked to UBO. It should be noted that the new law already provides for maintaining of a BO register and the kind of information which has to be obtained. At the time of the on-site visit, PACRA as a supervisory authority on AML/CFT had made three disclosures to the FIC<sup>10</sup>. In one of them, based on circumstances surrounding the company, PACRA was no longer clear of who was in charge of the company as two groups of people were visiting its offices concerning matters of the particular company. However, based on the information provided by the authorities, given that this company was originating from one of the high TF risk countries in the Middle-East, proper assessment on the possible high risks associated with incorporating the company locally should have been considered by PACRA before it was incorporated. Whilst all this shows a positive direction, more still needs to be done on the overall capacity to be able to identify, assess and understand ML/TF risks related to companies. Further, the NRA did not largely look into vulnerabilities inherent with legal persons.

367. The identification, assessment and understanding of ML/TF risks relating to legal arrangements is relatively low. Although, in practice the Registry Office has observed certain trends associated with ML/TF risks, this was not adequate to determine the level of understanding of the risks relating to trusts. This is added by the fact that the current legal regime which might have aided the authorities to understand these risks better has not been updated to meet AML/CFT requirements pertaining to trusts. The officials responsible for registering the trusts also need

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<sup>10</sup> In terms of s. 36 of the FIC Act.

awareness and capacity building, which they indicated they had not received to enable them to effectively meet the expectation of implementing measures to prevent the abuse of identifying, assessing and understanding the entities they register for ML/TF purposes.

*c) Mitigating measures to prevent the misuse of legal persons and arrangements*

368. The authorities repealed and replaced the Companies Act, 1994 with a new Companies Act 2017, which will assist in curbing the misuse of legal persons for ML/TF purposes as it now provides for obtaining of BO information at the time of registering a company with PACRA. The information required to be entered in the BO Register such as full names, dates of birth, nationality, country of residence, residential address and any other particulars which can be prescribed, if properly verified (as now required by the new law particularly regarding foreign companies) will assist in limiting or deterring legal persons being used for ML/TF purposes. Also the requirements to have annual returns providing updated information on both basic and BO information will assist PACRA to keep records with accurate information which will assist LEAs in the event that they have to carry out inquiries on any legal person. This is in addition to reporting entities being required to obtain similar information when entering into a business relationship with a legal person as part of CDD (see IO 4). However, some of the reporting entities, like DNFBPs have not started complying fully with CDD obligations making it difficult for competent authorities to timely access such information when required. At the time of the on-site visit PACRA was being assisted by two foreign institutions on how to obtain information on UBO and how to establish a Register for BO information. However, although PACRA was aware that companies limited by shares are mostly vulnerable to be used in money laundering related schemes it had not yet developed a strategy nor policy as to how these risks could be mitigated. PACRA was in the process of establishing a strategy of how to integrate the new requirements of the law into its systems for effective implementation.

369. The Ministry of Lands which registers trusts and other legal arrangements had not implemented any mitigating measures to prevent the misuse of trusts.

*d) Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons*

370. Generally competent authorities have access to basic information on legal persons in the country maintained by PACRA. Equally, members of the public have access to information obtained by PACRA at a minimal fee to obtain the information. Information sought depending on the kind of information can be obtained over the counter or in a matter of two hours. PACRA has made the following arrangement for competent authorities to access information in its possession:

- (i) PACRA has an online sharing platform with the following:
  - Zambia Revenue Authority
  - National Pensions Scheme Authority
  - Zambia Public Procurement Authority
- (ii) PACRA has made its database on companies available to the following competent authorities:
  - Drug Enforcement Commission
  - Financial Intelligence Centre
  - Business Regulatory Review Agency
  - Workers Compensation Fund Control Board



- Zambia Development Agency
- (iii) The following have access to companies database upon request to PACRA:
- ZPS
  - Auditor General
  - Anti-Corruption Commission

371. Obtaining beneficial ownership information through PACRA was still a challenge at the time of the on-site visit as this was a new requirement to the institution and the regulations intended to implement the new requirements, such as who should access UBO information are still to be promulgated. Modalities of how the information is going to be obtained from existing companies were not yet developed. However, provisions to improve the process of obtaining such information have already been included in the new Companies Act, as it requires maintaining of a BO Register which has to capture specific information on UBO and it has to be updated annually. PACRA intends to apply this requirement also to already existing companies, which will be given a remediation period to comply with it. If implemented, this will enable competent authorities timely access to such information. At the time of the on-site visit, PACRA had already started work on a separate data base on BO which is intended to be available only to competent authorities but not to members of the public. Meanwhile, competent authorities were obtaining information on BO from reporting entities, which were required to obtain the information as part of their CDD processes. The only limitation could have been the scope of legal persons having a business relationship with a reporting entity considering that Zambia is largely a cash economy with most of the transactions still informal and also that some of the reporting entities, like DNFBPs are not yet fully meeting their AML/CFT obligations in terms of obtaining the required CDD information. Further, the new Companies Act had not yet been fully implemented to demonstrate any kind of effectiveness relating to obtaining of UBO information.

*e) Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements*

372. Information on legal arrangements can be obtained from the Ministry of Lands which has a department responsible for registration of trusts. Basic information on trusts is easily available to both the public and competent authorities. However, the information may not be accurate and up to date. The public can access such information at a prescribed fee (K40 equivalent to about USD4) and for free to competent authorities in a timely manner. The law requires registered trusts to file returns with the Registry after every 5 years. The assessors noted that it was not possible to obtain adequate, accurate and current basic information in all cases due to very few registered trusts filing returns and the long interval between filing returns. In addition, the law did not provide for follow up processes with defaulting registered trusts which limited the incentive by the Registrar to chase up on such information, which in practice it was not doing. Based on the information provided by the authorities, most common legal arrangements in Zambia are express trusts with other legal arrangements being almost non-existent.

373. There are no legal requirements for obtaining BO information. The Registry obtains BO information when registering trusts, therefore it might only be available where family trusts which do not have complex structures are concerned. Where the trusts are corporate trusts, or trustees and beneficiaries are legal persons, such information is not always available as it is not a requirement for the Registrar to obtain it when a trust is created or registered and according to the Officer's submissions during the on-site, it was not always easy for it to deal with such trusts as

they were complicated and no training had been given to the office to handle such levels of complicated trusts.

374. Although reporting institutions (FIs and DNFBPs) are required to obtain beneficial ownership of trusts it is not guaranteed that they can obtain accurate and current beneficial ownership information for the trust given that there is no requirement in law to maintain the same by other competent authorities where such information could be verified. The period of 5 years upon which trusts are supposed to file returns with the Registrar of Trusts in the Ministry of Lands is too long to guarantee that reporting institutions can be able as and when the need arises to verify currency and accuracy of information provided during the onboarding of trusts. In addition, not all DNFBPs had started effectively implementing the requirements on CDD due to a variety of reasons, with the most common one being lack of capacity and resources to fully comply with the obligations. Banks interviewed during the on-site visit indicated that the level of business which involved trusts was quite negligible.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

375. Sanctions for legal persons and entities are not proportionate and dissuasive. In the case of companies, a criminal offence can attract a penalty of US\$12,000.00 and there is no criminal penalty set for legal arrangements, in particular trusts. At the time of the on-site visit, no criminal or administrative sanctions had been applied to any of the legal persons created in Zambia relating to a contravention of any of the provisions of the Companies Act. Effective, proportionality and dissuasiveness of sanctions could therefore not be determined.

#### *Overall conclusion Immediate Outcome 5*

**Zambia has achieved Low Level of effectiveness on Immediate Outcome 5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- a) Although Zambia did demonstrate the ability to provide MLA and exchange information as well as extradite fugitives from justice, the information kept left a lot of gaps to enable a determination to be made on how effective the system was as a whole.
- b) There was no proper case management system to enable a determination to be made on how timely the authorities have been able to provide MLA. The information provided also made it difficult to determine whether in certain requests which were still pending at the time of the on-site any follow-up had been made and the exact nature of the status of the request.
- c) The records maintained did not indicate the requests made by the authorities where they had received feedback on the information provided from the requesting jurisdiction to enable determination to be made on whether the information was constructive or of good quality.
- d) On MLA received by the authorities, at times there was no link with how the investigation or inquiry ended to enable determination of whether the information received was helpful or not.
- e) Authorities did not prioritise MLA requests according to ML/TF risks in Zambia.
- f) In cases where extradition was granted, the records did not indicate how long it took to execute the requests to enable determination on whether it was timely or not guided by the circumstances of each case.
- g) In cases where Zambia declined extradition requests on the basis that the suspect was a Zambian national, there was no information on whether the suspect was eventually prosecuted in Zambia or what further action necessary under the circumstances of the case was taken.
- h) FIC, DEC, ZPS, ACC, BoZ, PIC, PACRA and ZRA demonstrated that through MoUs, participation in regional and international organisations were providing and requesting for other forms of international cooperation. However the levels of retaining the information were different resulting with it being easy to determine the outcomes of the information requested in some of the cases and in others that determination could not be made.
- i) Mechanisms for international exchange of basic and beneficial ownership information of legal persons and arrangements were not yet in place and at the time of the on-site visit Zambia had not exchanged information on BO.

#### **Recommended Actions**

- a) Zambia should put in place an effective case management system to enable authorities to manage and track requests as well as to keep comprehensive statistics on requests made or sought. Such a system should enable the authorities to determine when a request was made or received, who made the request, type of offence involved, prioritisation made, action taken, when finalised and dispatched out of the Central Authority whether direct to the

requesting or requested State's Central Authority or to the Ministry of Foreign Affairs and finally whether any feedback was received or provided by the Central Authority.

- b) The Central Authority on its own or in liaison with the LEAs requesting MLA should be able to assess and retain information on the quality of MLA received and likewise where the requesting jurisdictions provided such feedback.
- c) Authorities should develop a strategy or policy to enable prioritisation of requests according to ML/TF risks identified to be prevalent in Zambia.
- d) LEAs, and other competent authorities, like AML/CFT supervisors, where they carry out or receive requests from foreign counterparts should have effective systems of retaining adequate information on the requests, including the quality of the information.
- e) Where extradition has been declined due to the person being a Zambian national, the authorities should maintain records indicating what further action would have been taken in such cases as some of the cases where Zambia declined to extradite its own nationals related to serious offences which are also recognised under Zambian domestic laws.
- f) Zambia should expedite introduction of mechanisms to facilitate international exchange of basic and beneficial ownership information.

376. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

### ***Immediate Outcome 2 (International Cooperation)***

377. Zambia is a land locked country and a transit point to countries in the Southern, Central, and Eastern Africa. This makes it vulnerable as a transit point and to transnational organised crime, therefore the need for international cooperation is of utmost importance.

#### ***(a) Providing constructive MLA and Extradition***

378. Zambia, in addition to the procedures set out in the Mutual Legal Assistance in Criminal Matters Act (MLACM Act) strengthened the process of requesting and providing MLA and extradition in April 2014, when the main institutions<sup>11</sup> involved in such matters agreed on recommendations referred to the Ministry of Justice on how to deal with such matters more prudently. The recommendations provide simple and clear procedures including appointment by all line institutions of focal points to deal with MLA and extradition requests. However, in practice aspects relating to case management of requests received for both MLA and extradition were not properly monitored making it difficult to determine whether ultimately Zambia was providing timely and constructive MLA and extradition.

379. During the on-site visit, the assessors were provided with two sets of records, an electronic copy and a manual copy of the original list of incoming and outgoing requests, maintained by the Ministry of Justice. The electronic and manual copies provided statistics for both MLA and extradition. Although both documents show that Zambia had received a number of

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<sup>11</sup> Ministry of Justice- Attorney General's Office, Ministry of Foreign Affairs, Drug Enforcement Commission, Anti-Corruption Commission, Zambia Police, INTERPOL, FIC

both MLA and extradition requests from 2013 to the time of the on-site visit in June 2018, the information retained on most of the incoming requests was inadequate to determine the end result of the requests. For example, whilst the electronic copy showed that Zambia did not receive any requests for extradition in 2015, the information recorded in the manual register indicated that Zambia had received two requests during the same period. This was apparent with the other years as will be shown in the two tables below. In addition, although the register provides the dates of when the requests for extradition were received compared to the electronic copy which just indicates the year, the cases in the register are not all consistent with those in the electronic copy to enable reconciliation and determination of the dates when all the requests in the electronic copy were received. This applied to both MLA and extradition requests. In the electronic copy, although the authorities provide the results of both the MLA and extradition requests received, there are no dates indicating when the action was taken. As for the manual register, the column which is supposed to provide the results is either blank or is written “done”, making it unclear whether the ‘done’ is referring to the request having been acceded to, or refused, or that the case has been finalised in some other way. This provided difficulties in determining whether requests made for both MLA and extradition were being attended to in a timely and constructive manner, and in some cases determining the end result of the requests. There are no records or information provided on whether the authorities ever received feedback on the quality of the information they had provided. From the information provided in the register, it was not possible to tell whether the authorities ever received any extradition request on ML. Of the two requests for extradition which were declined on the basis that the suspects were Zambian nationals, no information was provided on whether they were eventually prosecuted in terms of the domestic laws of Zambia as required under the MLACM Act. Table 20 and 21 below illustrate some of the gaps highlighted in this paragraph.

**Table 20: Incoming Requests on Extradition**

Year	Incoming Requests received	Offence	Status	Gaps identified
2014	No requests received			
2015	No requests received			
2016	1	Unlawful possession of elephant tusks	Request denied on the basis of the suspect being a Zambian national	No indication of when the request was refused and if the offence was common to both jurisdictions and there was sufficient evidence, whether the authorities proceeded to initiate prosecution of the suspect domestically as required under the MLACM Act.
2017	1	Participation in activities of terrorist group	Request was received in January 2017 and was granted in December 2017	No gaps were identified with this request, the authorities acted on time. Although the execution of the extradition had not yet been carried out at the time of the on-site visit, the authorities acted on the request in

				reasonable time.
2018	2	a) Insurance Health Fraud	The AG requested that the request be made in terms of the Extradition Act	No date is given as to when this decision was made and when it was communicated to the requesting State
		b) Drug trafficking	Request was refused on the basis of suspect being a Zambian national.	No indication of dates or time the request was refused and if the offence is recognised in Zambia whether it was considered to prosecute the suspect under the domestic laws.

**Table 21: (Manual Register) - Incoming Requests on Extradition**

Date received	Incoming Requests received	Offence	Status	Gaps identified
2014	No requests received			
/09/2015	1	No offence provided	<i>Done</i> 23/05/16	This request does not appear in the electronic copy above. The offence is not indicated, it is also not clear what is meant by <i>done</i> as recorded in the register as it might mean either the request being granted or refused, or it being finalised in any other way.
29/12/2015	1	No offence provided	<i>Done</i> 30/05/16	Same observations as above.
2016	Of the 5 extradition requests dealt with in 2016(not including clear straightforward outgoing ones), on four of them it is difficult to tell from the information provided in the register whether they are incoming or outgoing.	No offences are recorded for all the 5 requests	Three are written <i>done</i> with the dates provided; on one there is no entry; and one indicates <i>actioned on</i> 28/06/01	On four of the requests, it is difficult to establish whether they are incoming or outgoing; the offences are not provided; it is not clear what is meant by <i>done</i> ; and <i>actioned on</i> , as no information on the action taken is further provided in the register. The electronic copy only indicates one incoming request being received in 2016.

2017	Of the 5 requests dealt with in 2017 (again not including clear outgoing ones), 2 are not clear whether they are incoming or outgoing.	No offences are recorded for all the 5 requests	3 have no entries recorded as to their current status and 2 are written <i>done</i>	Similar gaps as identified above.
2018	No incoming requests received			The electronic copy shows two incoming requests having been received.

380. Zambia received a total of nine (9) incoming requests for MLA from 2013 to 2018. The electronic table indicated that Zambia received one (1) incoming request in 2013, two (2) in 2014, four (4) in 2015 and no request for the years 2016 to 2018. Only the years of receipt of the requests are provided and not the actual dates. On the other hand the manual register indicated that no incoming requests for MLA had been received in the years 2013, 2014, 2016 and 2017 whilst two (2) had been received in 2015 and one (1) in 2018, with one of the requests appearing in both the electronic table and the manual register. The incoming requests recorded in the manual register had dates when they were received. The clear inconsistencies in the figures show that Zambia has to improve the way it reconciles the statistics of the incoming requests both for MLA and extradition and maintain a central case management system which will make it easy to determine the requests received whether direct by the Central Authority or through the Ministry of Foreign Affairs, when they were received, action taken, granted or refused and whether feedback was provided by the requesting State on the quality of the information provided. Of the seven (7) incoming MLA requests indicated in the electronic table, all of them were granted but again no dates are provided when the requests were granted and sent to the requesting authorities. As for the other two in the manual register, the one in 2015 had no entry indicating what had happened to the request, whilst the one in 2018 indicated “*done*” and the date but as earlier indicated in the above paragraph, it was not clear what was meant by the word “*done*” as no further information was provided in the manual register. Although, it is quite commendable that the authorities granted all the incoming MLA requests they received with the exception of the two in the register, it was again not possible to determine the time within which the requests were attended to and when the information requested was eventually communicated to the requesting parties. Further, there was no indication from the authorities whether they had received any feedback on any of the information provided to the requesting countries to enable quality of the information to be determined. Zambia provided MLA on ML in three of the MLA requests received and the rest related to predicate offences.

381. The authorities, relating to the quality of information received, should always assess the MLA requests received and provide feedback on the quality of the information to the requested State. This can be done in liaison with the beneficiary who would be the relevant LEA to use the information on how helpful the information would have been to an investigation or other matters in question being pursued by the LEA.



**Table 22: Incoming Requests on Mutual Legal Assistance**

Year	Offence	Status
2013	Money Laundering	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided.
2014	Drug trafficking	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided.
	Money Laundering	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided. Funds repatriated to Namibia
2015	Murder	Zambia had been requested to provide a witness and served a subpoena on the witness awaiting the dates for the trial to be provided as well as the travel arrangements. The exact dates the subpoena was received and served on the witness were not provided.
	Trafficking in persons	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided. The only information provided was that the request was granted in 2016.
	Fraud, money laundering etc	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided.
	Theft	Granted but the date of receipt of the request and the time it took the authorities to execute the request was not provided.
<b>Register</b>		
3/11/15	No offence provided	No results provided
18/04/18	No offence provided	Done 24/4/18

382. Despite the above shortcomings, the Ministry of Justice has a satisfactory framework that can be effectively used to provide MLA and extradition on incoming requests. The Memorandum which lays down the procedures to be followed when executing requests on MLA and extradition which if its recommendations are followed would be one such instrument which can be used effectively by the authorities to assist in mitigating some of the problems relating to efficient case management of requests. One of the remedies to this problem would be the role of the focal persons, the document recommends be appointed in the key institutions relevant to MLA and extradition to coordinate such requests. In addition, despite the deficiencies picked, there was evidence that the MLA system in Zambia to some extent was working. This was based on the requests which had been granted and Zambia being able to confiscate and repatriate proceeds of crime to Namibia in one of the cases. The system therefore needs to be further strengthened so that it can become effective and efficient and provide for proper accounting of incoming requests.

*(b) Seeking timely legal assistance*

383. All requests going out of Zambia have to be made through the Attorney General, whose office scrutinises and clears all documents relating to the request. In the Attorney General's

Office, the Director of International Law and Agreements, among other things is in-charge of considering incoming and outgoing requests for both MLA and extradition.

384. Based on discussions with the various LEAs, particularly the AMLIU, ACC and ZPS, they all recognised the importance of seeking MLA in supporting their investigations. The LEAs give instructions to the AG's Office in form of a request when they require MLA. The AG's Office looks at the information provided and verifies that it meets the expectations of the assistance being requested in conformity with the requirements of the MLACM Act. The AG's Office timeously considers and acts on the information received from the LEAs depending on the complexity and urgency of the case. This usually takes between 5 and 21 days.

385. The LEAs have successfully, through the AG's Office, sought MLA in various matters during the period 2013 to 2018. These matters included: 5 MLA requests with 1 having been granted and four still pending at the time of the on-site visit; 5 corruption related; 3 theft related; and 1 forgery case. Of the identified high risk proceed generating offences (corruption, tax evasion, theft, fraud, drug trafficking), the authorities had sought MLA in offences relating to corruption and theft. However, there was no information that the authorities had prioritised the outgoing MLA requests according to ML/TF risk.

386. Although there were other 5 outgoing requests indicated in the register, these did not provide the offence relating to the request and in 4 of them, no results were indicated. There were also 19 cases on MLA listed in the register where due to the limited information provided, it was not possible to determine whether there were incoming or outgoing requests as there is no indication of who is making the request or where it is going. Of the 19 cases, 6 have got no results provided whilst the remaining 13 only indicate *done*.

387. Information provided in both the electronic copy and the manual register confirmed that Zambia was requesting for MLA to assist LEAs with their investigations. However, as already noted with the incoming requests above, information provided in both the electronic copy and the manual register is not enough to provide a complete picture of the MLA regime in Zambia. In the absence of full information on when the MLA requests were made, whether there were any subsequent follow up made on some of the requests particularly those which had been pending for some time, when they were responded to, how many were granted or refused and the quality of the information received, it is not possible to determine the timeliness within which Zambia seeks mutual legal assistance and how helpful the MLA received has been assisting LEAs to carry out investigations. The records provided do not indicate that there is assessment of the quality of the information received and the impact of the information to relevant investigations. Particularly of the information provided in the register, which does not indicate which type of offences are the requests relating to, which made it impossible to tell how many involved ML, TF and other predicate offences. Below are some of the requests on MLA recorded in the electronic copy provided by the authorities.

**Table 23: Outgoing Mutual Legal Assistance Requests**

Year	Offence	Client Institution	Status
2013	Abuse of authority of office	ZPS	Pending - no indication of any follow up made.
	Money laundering.	ZPS	Request was granted - no indication of when granted .
	Corruption.	Anti-Corruption Commission.	There has been no response from the requested State.
	Abuse of office	ZPS	Pending – no indication of any follow up made
	Corruption and abuse of authority.	Anti- Corruption Commission.	Pending- no indication of any follow up made.
	Theft by Director	ZPS	No response has been received fromthe requested State.
	Theft by Director.	ZPS	Pending - no indication of any follow up made.
	Theft by Director	ZPS	Granted – no indication of when granted.
2014	Money Laundering.	Ant-Corruption Commission.	Pending - no indication of any follow up made.
	Forgery and Money Laundering.	ZPS	Request was granted - no indication of when granted.
2015	Money laundering.	Anti-Corruption Commission.	Pending - no indication of any follow up made.
	Abuse of Authority, Fraudulent False Accounting and Theft by public servant	ZPS	One of the jurisdictions granted the request on 16 <sup>th</sup> June, 2016, and the other one asked for further and better particulars on 23 <sup>rd</sup> Dec, 2015. The other States did not respond. The request was made to 8 countries.
2016	Theft.	ZPS	Pending - no indication of any follow up made.
2017	Conspiracy to commit a felony.	ZPS	One of the countries granted the Request whilst the other one has not – there is no information as to when the other country granted the request
2018	Money Laundering.	Drug Enforcement Commission.	In progress, the file is still being worked on.
	Money laundering.	ZPS	In progress, the file is still being worked on.

388. The ZPS pursued extradition through the AG’s Office during their investigations. According to the electronic copy, of the 10 extradition requests made from 2013 to 2018, 9 of the requests were made by ZPS and 1 was made by the ACC. However, all the 10 requests related to predicate offences and not necessarily prioritised according to risk. Of the 16 extradition requests recorded in the register, 13 were made by ZPS, of the remaining three, one is not indicated which institution instructed the AG, and two of them the AG was instructed or the requests came through the Ministry of Foreign Affairs with one being a request for a prison transfer to Zambia. Three of

the 16 requests indicated in the manual register were matched to the extradition requests in the electronic copy, two (2) could not be matched due to inadequate information provided in the manual register and 11 did not appear in the electronic copy. In addition to the 16 extradition requests in the register, three (3) could not be determined whether they were incoming or outgoing requests due to the limited information provided in the register. The same shortcomings identified for outgoing MLA requests in the paragraph above pertaining to both the electronic copy and the register were also common with outgoing extradition requests. Although, it was evident that the authorities were seeking extradition to pursue domestic offences, the information retained on the requests was not consistent and detailed enough to determine the timely manner in which the requests were being made. Regarding the three cases in the register which were matched to those in the electronic copy, in the column providing the status of the request it had no information in one case and the other two cases just indicated *done* and the dates. When the same requests in the electronic copy are compared to the information in the register, the one where no information had been provided in the register is indicated as pending in the electronic copy, whilst the other two with the entry *done* in the register are indicated that the requests had not been granted. However, no indication is made in the electronic copy as to when the information that the two requests had been declined was received and whether the reasons for declining the extradition requests were provided. Table 24 below illustrates some of the shortcomings.

**Table 24: Outgoing Extradition Requests**

YEAR		OFFENCE	CLIENT INSTITUTION	STATUS	
Typed Table	Register			Electronic Copy	Register
2013		Obtaining money by false pretences.	Anti-Corruption Commission	Pending.	
2014	16/06/14	Theft by servant.	ZPS	Pending.	No entry
		Theft of good in transit.	ZPS	Granted.	
2015	01/04/15	Theft by servant	ZPS	Not Granted—no dates as to when request was declined and whether reasons were provided.	Done 20/04/15 – no information on what is meant by done and as it turns out the requests had been declined.
	26/05/15	Theft of good in transit.	ZPS	Extradition was Not granted – same observations as above.	Done 20/07/15 – same observations as above
2016		Murder	ZPS	The request was granted and the suspect was tried in the Zambian court	
2018		Theft of good in transit.	ZPS	Extradition request was sent – no dates on when sent.	

	Forgery, Uttering False Documents & Theft by Servant.	ZPS	Request granted and the suspect is in Zambia facing trail – no indication when request granted.	
	Forgery, uttering false documents and theft by servant.	ZPS	In progress, the file is still being worked on.	
	Forgery, uttering false documents and theft by servant.	ZPS	The request was sent. The suspect was extradited to Zambia – no dates when request was granted.	

*(c) Seeking other forms of international cooperation*

389. Zambia has been able to seek other forms of international cooperation related to AML/CFT issues. The FIC in addition to seeking information from other FIUs to support its work, has also been involved in assisting other domestic competent authorities in seeking required information from overseas counterparts on their behalf. Between 2015 to 2017, the FIC made 11 requests for information from different jurisdictions receiving responses on 9 of the requests. The AMLIU, ZPS and the other LEAs have been assisted by the FIC from 2015 to 2018 to get information from other jurisdictions on cybercrime, fraud and money laundering cases.

390. The INTERPOL is a critical channel which the ZPS use to request for assistance and receive requests for assistance from other police counterparts in foreign jurisdictions. During the period from 2013 to 2017, ZPS made a total of 42 requests to various jurisdictions through the INTERPOL seeking information on an assortment of predicate offences. The requests assisted in having 3 convictions in 2013 whilst investigations in 3 other cases continued; 1 case being prosecuted and another one being investigated in 2014; 2 cases being acquitted, 2 being withdrawn and 4 being investigated in 2015; 1 conviction and 5 being investigated in 2016; and 2 cases being prosecuted and 7 being investigated in 2017. Although all these cases related to predicate offences, the ZPS effectively used the information received to support their investigations. There was also evidence in a few cases that the ZPS had also used the ARINSA and SARPCCO to request information from outside Zambia.

391. The ACC had also used the INTERPOL to request information from other jurisdictions when carrying out inquiries which involved other jurisdictions.

*(d) Providing other forms of international cooperation*

392. Different competent authorities in Zambia were able to demonstrate that they provide other forms of international cooperation. The ZPS from 2013 to 2017 received 59 requests from foreign counterparts through the INTERPOL to assist with information, location of suspects and location of stolen assets, among other requests. In 14 of the requests ZPS were able to provide the information requested; provide feedback in 5 cases where suspects were being sought; and provide feedback in three cases regarding identification of assets which led to one of the assets

being identified and later repatriated. However, none of the information related to a ML or TF inquiry.

393. The NATC demonstrated that it could independently share information with foreign counterparts. The NATC provided material to one of the USA agencies which had a target of interest in Zambia (see IO.9).

394. In 2016, PACRA also provided information following a request made by South Africa Revenue Authority to have a PACRA officer attend a criminal trial in South Africa as a witness.

395. ZRA has entered into MoUs with a number of countries to exchange information on tax related matters. The ZRA demonstrated that it was able to exchange information with its foreign counterparts on numerous occasions. The greater amount of exchange of information was centred on the Revenue Authorities of Zambia with South Africa, Tanzania and Zimbabwe. Some of the exchange of information concerning all the four countries related to unlawful exports from Zambia of mukula tree which is a protected indigenous tree in Zambia leading to numerous interceptions of such exports and the logs being confiscated by ZRA upon return of the logs to Zambia. In one of the cases ZRA had successfully exchanged information with Zimbabwe Revenue Authority (ZIMRA) leading to a full investigation by both Authorities and later the ZIMRA officers who assisted with the investigations on the Zimbabwean side coming to testify on the case in Livingstone, Zambia.

396. DEC uses the INTERPOL to execute some of its request for information. A few requests were provided where it had requested for information through the INTERPOL but the records were incomplete to enable determination of the end result of the requests. However, regarding a request from one of the Latin American countries, the DEC had successfully executed a controlled delivery in a case involving drugs passing through Kenneth Kaunda Airport in Lusaka. AMLIU also uses ARINSA platform to facilitate exchange of information at international or regional level. One of the cases involved a request for information on directors of companies registered in Zambia who were being investigated in one of the European countries for various offences including ML, bribery and organised crime. AMLIU through records obtained from PACRA was able to assist its European counterpart with the information required through ARINSA and CARIN. In another case it sought for information through ARINSA relating to trafficking of cocaine.

397. The FIC mostly relies on MoUs to implement other forms of international cooperation. The FIC has MoUs with 18 jurisdictions, which include a significant portion of the countries within the ESAAMLG Region. The FIC has successfully used other avenues such as Tax Treaties that Zambia has with other countries to obtain information to enrich its work. Further the FIC has also used some Egmont member countries in the region to contact third party countries on the Egmont Secure Web.

398. The cases of other forms of international cooperation which have been handled by the FIC have been mostly bilateral and some multi-lateral in nature. The case example explained below demonstrates a multi-lateral international cooperation investigation/analysis.

**Box 9: Use of various agencies and sources to support findings.**

**CASE III.**

- 1.1 The Financial Intelligence Centre (FIC) commenced verifications in the matter following revelations in both print and electronic media on allegations that sixty-nine people with links to Zambia were clients of an international subsidiary and holding substantial amounts in their accounts.
- 1.2 The Authorities embarked on an analysis of this intelligence with the purpose of verifying the source and the nature of funds. In order to achieve the aforesaid objectives, the Centre did the following:
  - 1.2.A Conducted open search for a European citizen and former employee of a large international bank, who was the whistle blower in this matter;
  - 1.2.B Requested Asset Recovery Inter Agency Networks of Southern Africa (ARINSA) to assist with intelligence on Zambian Nationals associated with accounts at the same bank,
  - 1.2.C Requested Embassy of an European country to assist the Centre have access to the whistle-blower or his Lawyers
  - 1.2.D Requested Zambia Development Agency to furnish the Centre with details of persons involved in the Privatization of the State Owned Enterprises:
  - 1.2.E Conducted random bank searches with all the banks in Zambia;
  - 1.2.F Requested the Task Force on Corruption through the office of the Deputy Inspector General of Police to furnish the Centre with names of those who were involved and or investigated into the misuse of a public entity bank account;
  - 1.2.G Through the office of the Commissioner General ZRA, the Centre wrote to the Head of Tax audit service, and the Minister of Finance in the European country to help with names of Zambians holding accounts at this international bank.

399. Despite the vulnerability of ML and associated predicate offences arising and spilling into Zambia from its neighbouring economies as major transit country, (a fact underscored by the NRA), there are few records on regional cross border cooperation exchange of information. Overall statistics on international sharing of information for FIC are relatively low. The table below shows a summary of outgoing and incoming requests by the FIC from 2013 to 2018.

**Table 25: International request.**

Year	No. of international requests to FIC	No. of the requests granted	No. of requests from FIC to other FIUs	No. of the requests granted
2014	0	0	0	-
2015	3	3	2	2
2016	0	0	5	5
2017	4	4	3	3
2018	0	0	17	-

400. Of the outgoing requests, two resulted in funds being blocked in two countries, a multi-jurisdiction investigation being carried out by one of the countries, and assessment of tax compliance on Zambian nationals involved.



401. The supervisory authorities namely, PIA and BoZ demonstrated that they have arrangements with foreign counterparts to exchange information through MoUs entered with foreign counterparts.

402. The ACC is able to exchange with its foreign counterparts as a member to regional and international organisations which facilitates sharing of information. The ACC is a member of the SADC Organ on Corruption which has enabled it to form strong bonds with other similar institutions in the SADC Region. It is also a member of the Commonwealth Association of Anti-Corruption Agencies. Through these platforms the ACC has been able to request and receive requests for information. However, no specific examples of cases where these platforms had been used to share information by ACC were provided.

*(e) International exchange of basic and beneficial ownership information of legal person and arrangement*

403. Zambia can share basic information on legal persons as this is provided in the law. During the on-site visit, PACRA indicated that it had been requested by the Embassy of an East European country to provide certain information of a company in Zambia which concerned the East European country citizens and the requested information was provided accordingly. Discussions with LEAs during the on-site visit indicated that PACRA indirectly provided information provided by local LEAs. Further, PACRA had not yet established a framework for providing information on BO as the new Companies Act, 2017 had just been promulgated. Zambia is also a member of Corporate Registry Forum through which PACRA can exchange information with its counterparts.

*Overall conclusion on immediate outcome 2*

**Zambia has achieved Moderate Level of effectiveness on Immediate Outcome 2.**

## TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of Zambia's level of compliance with the FATF 40 Recommendations. It does not describe the country situation or risks, and it focuses on the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008 available at [www.esaamlg.org](http://www.esaamlg.org).

### ***Recommendation 1- Assessing Risks and applying a Risk Based Approach***

This is a new Recommendation which came into force after completion of the First Round of Mutual Evaluations and therefore there was not requirement to assess Zambia on this in 2008.

#### *Risk assessment*

*Criterion 1.1 (Met)* - Zambia conducted a National Risk Assessment in 2016 whose report was approved by the Zambian Cabinet on 14th August 2017. The assessment was carried out using the ML/TF Risk Assessment Tool developed by the World Bank and disseminated to various stakeholders through a national workshop held in September 2017. Participants in the Assessment were drawn from a diverse field including government officials, private sector and civil society, all chosen on the basis of experience and expert knowledge. The NRA was updated in June 2018 through a Sectoral Threat Assessment Addendum. Zambia also conducted a Financial Inclusion Risk Assessment and published a report thereof in November 2016. The country has assessed and identified its ML/TF risk.

*Criterion 1.2 (Met)* -The FIC is listed as a responsible authority to coordinate actions on the NRA Action Plan.

*Criterion 1.3 (Met)* - The authorities first issued a NRA report in September 2016 and it was updated in June 2018 through an addendum.

*Criterion 1.4 (Met)* - The results of the NRA were released through a circular, FIC/Circular 1 of September 2017 that was published on FIC website<sup>12</sup>. The NRA Report was launched by the Secretary to the Cabinet at a workshop held on 22<sup>nd</sup> September 2017, attended by, among others, members of the Cabinet of the Republic of Zambia, Permanent Secretaries, members of the Diplomatic Community, Heads of LEAs, Heads of Supervisory Authorities, members of the Anti-Money Laundering Authority, the FIC Board of Directors and the staff of the FIC, civil society organisations, reporting entities and the press.

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<sup>12</sup> <https://www.fic.gov.zm/79-fic-news/99-national-risk-assessment-2016>

### *Risk mitigation*

*Criterion 1.5 (Met)* – Following the NRA and based on the risks identified, the authorities developed a Risk-based Supervision Framework in March 2017 which is a high level document providing guidance to supervisory authorities on the application of the RBA.

*Criterion 1.6 (Not Applicable)*

*Criterion 1.7 (Met)* – Section 19 of the FIC Act as read with Part III and IV of the FIC General Regulations requires reporting entities to apply the enhanced identification, verification and ongoing due diligence measures where high risk customers are identified.

*Criterion 1.8 (Met)* - Regulation 9 of the FIC (General) Regulations permits a reporting entity to apply simplified CDD measures where the reporting entity determines that the risk of money laundering or terrorist financing is low, as was the case with the Financial Inclusion products assessed. Regulation 9(2) further requires a reporting entity that applies simplified customer due diligence measures to prove the low risk to the satisfaction of the FIC or the supervisory authority.

*Criterion 1.9 (Met)* – The FIC issued a Circular on 22nd September 2017 requiring the Supervisors and SRBs to ensure that financial institutions and DNFBPs are implementing their obligations under Recommendation 1.

### **OBLIGATIONS AND DECISIONS FOR FINANCIAL INSTITUTIONS AND DNFBPS**

#### *Risk assessment*

*Criterion 1.10 (Mostly Met)* - Part IV of the FIC (General) Regulations, 2016 requires Financial institutions and DNFBPs to take appropriate steps to identify, assess, and understand their ML/TF risks (for customers, countries or geographic areas; and products, services, transactions or delivery channels). It further requires all reporting entities to take into consideration all relevant risk factors to determine the overall level of risk and determine the appropriate level and type of mitigation to apply. Circular from the FIC to all reporting bodies requires them to assess and keep their Risk Assessments updated, and undertake periodic follow-up on the implementation of the resultant action plans in the reporting entities. However, the recruitment of a compliance officer as cited by the authorities cannot be deemed “an appropriate mechanism” to provide risk assessment information to competent authorities and SRBs.

*Criterion 1.11 (Met)* - Provisions of S. 19 of the FIC Act, 2010 requires reporting entities to have policies, procedures and controls to manage and mitigate risk that has been identified by them; Regulation 12 and 13 of the FIC (General) Regulation, 2016 requires a reporting entity to implement risk management systems to identify high risk customers whose activities may pose a high risk of money laundering and financing of terrorism. S. 23 (2) (f) of the FIC Act, 2010 requires independent audits of effectiveness while S. 19 of the FIC Act 2010, provides for enhanced measures to mitigate risks, where higher risks have been identified; and Regulations 10 and 12 of the FIC (General) Regulations, 2016.

*Criterion 1.12 (Met)* - Regulation 9 of the FIC (General) Regulations, 2016 provides for simplified due diligence where the reporting entity determines the risk of ML/TF to be low, such as in the financial inclusion products.

## *Weighting and conclusion*

**Zambia is rated Largely Compliant with R.1.**

### ***Recommendation 2 - National Cooperation and Coordination***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with this Recommendation (formerly R.31). The main deficiencies noted were absence of mechanisms in terms of the PPMLA to enable domestic cooperation and coordination of AML matters; ad hoc nature of National Task Force; no clear distinction between the coordinating roles played by the DEC and AMLIU; lack of frequent engagement of other stakeholders by AMLIU; lack of national framework dealing with domestic cooperation and coordination of matters on TF and lack of AML/CFT Strategy and policy.

*Criterion 2.1 (Not Met)* - Zambia does not have a national AML/CFT policy. At the time of the on-site, the government was in the process of drafting the National AML/CFT Policy and Strategy to give direction and enable effective implementation of some of the recommendations of the NRA exercise at national level.

*Criterion 2.2 (Met)* - Ss. 3 and 4 of the PPML Act, 2001 establish the AMLA and mandate it to (a) provide general or specific policy directives to the Commissioner and the Commissioner shall give effect to such directives; and (b) advise the Minister on measures required to prevent and detect money laundering in the Republic. For TF, Section 4A of the ATA, 2007 as amended by the Anti Terrorism Amendment Act, 2015 established the NATC, whose mandate and responsibility is the enforcement of the Anti Terrorism Act, 2007 as amended, which includes the development and implementation of CFT policies..

*Criterion 2.3 (Met)* - AML policy matters in Zambia are the responsibility of the AMLA established under S.3 of the PPMLA, 2001, which is chaired by the Attorney General, with other members being the Inspector General of ZPS; the Commissioner, DEC; the Director General, ACC; the Governor, Bank of Zambia; the Commissioner General, ZRA; and two other persons appointed by the Minister. The Authority's mandate is to provide general and specific policy directives to the Commissioner, DEC, and advise the Minister on the measures required to prevent and detect ML in Zambia (S. 4, PPMLA, 2001). At an operational level, Zambia has a NTFSO appointed by the Secretary to the Cabinet and chaired by the Ministry of Finance, with the FIC as the secretariat. Other members of the NTFSO are representatives from the Ministry of Justice, NATC, NPA, ZPS, ACC, DEC, AMLIU, Immigration Department, ZRA, BoZ, SEC, PIA, PACRA, ZICA, ZSIS and the LAZ. The NTFSO is mandated to make policy recommendations to the AMLA and coordinate the implementation of those policies once approved and adopted. For CFT policy matters, Zambia established the National Anti Terrorism Committee under S.4C of the ATA, as amended. The Committee is chaired by the Director General of ZSIS, deputized by the Inspector General of ZPS, and representatives of the Zambia Army, Zambia Air Force, Zambia National Service, Immigration Department and any other institution the President may deem necessary. Their mandate, under S.4D of the Act, is to give general and specific policy directions to the NATC regarding obligations and measures to be taken to detect, prevent and deter the commission of terrorist acts. At the CFT operational level, under S.4A of the ATA as amended, Zambia established the NATC, a unit responsible for the enforcement of the ATA, which is based in and supervised by the Minister responsible for internal security. Its mandate is

to coordinate the detection, response to, mitigation of terrorist incidents and threats to internal security (S.4B (1), including drawing up plans and coordinating actions for counter-terrorism.

*Criterion 2.4 (Met)* - Provisions of S. 4B (2) (h) (ii – vii) and (i) (v) of the AT (Amendment) Act 2015, empowers the National Anti Terrorism Center to similarly cooperate, coordinate combating the financing of proliferation of weapons of mass destruction.

*Weighting and conclusion*

**Zambia is rated Largely Compliant with R.2.**

### ***Recommendation 3 - Money laundering offence***

In the MER under the First Round of MEs, Zambia was rated Non-Compliant (formerly R.1& R.2). The main technical deficiencies were that: the definition of ML was not wide enough to include the acquiring of proceeds of crime by any other means; not all the relevant requirements of the Palermo Convention were met by the PPMLA; PPMLA did not specifically provide for prior conviction of an offender for a predicate offence not being a prerequisite for prosecution for money laundering; the law did not define predicate offences specifically for the purpose of ML; the courts in Zambia had limited jurisdiction over offences committed by foreign nationals. With regards to R.2, the PPMLA did not provide for the intention to commit a ML offence or the negligent element of ML, therefore it was not possible for an offence of ML to be inferred from objective factual circumstances; the relevant laws of Zambia did not provide for civil or administrative liability to run parallel with criminal ML proceedings; it was not possible to determine whether the sanctions applied were effective, proportionate or dissuasive.

*Criterion 3.1 (Met)* – Section 7 of the PPMLA No. 14 of 2001 as read with the definition of ML and proceeds of crime as provided in S. 2 of the PPML (Amendment) Act No. 44 of 2010, adequately criminalises the offence of ML on the basis of the Vienna Convention and the Palermo Convention.

*Criterion 3.2 (Met)* -Zambia has covered all serious offences and has adopted the all crimes approach to predicate offences.

*Criterion 3.3 (not applicable)*

*Criterion 3.4 (Met)* – The definition of property under PPMLA does not attach the value to what type of property can represent proceeds of crime but when read together with all crime approach the ML offence extends to any type of property regardless of its value that directly or indirectly represent the proceeds of crime.

*Criterion 3.5 (Met)* - In terms of section 71 of the FPCA proceeds of crime are not based on a conviction of a predicate offence as demonstrated in the Supreme Court Appeal Judgment - The People vs Austin Chisangu Liato, SC 291/2014.

*Criterion 3.6 (Met)* - S. 29 of the PPML Act as repealed by the PPML (Amendment) Act No. 44 of 2010, creates extra-territorial jurisdiction on predicate offences for ML which will have

occurred and constituting any offence in another country, and recognized as a predicate offence had they occurred in Zambia.

*Criterion 3.7 (Met)* - ML as a general criminal offence is criminalised in terms of S.7 of the PPML Act but the section does not provide for the criminalisation of any specific type of ML, including self-laundering. However, it has to be noted that although the definition of ML provided under S. 2 of the PPML Act and S. 7 of the same Act, criminalizing ML are quite wide, these provisions are quite general in nature to an extent that they would not prevent anyone to be charged with the general offence of ML, whether as a standalone offence, or 3rd party laundering, or self-laundering.

*Criterion 3.8 (Met)* - The definition of the ML offence provided in S. 2 of the PPML Act and S. 3 of the PPML (Amendment) Act, adequately provides for intent and knowledge required to prove a ML offence to be inferred from objective factual circumstances. This was also tested and upheld by the Zambian Supreme Court in the appeal case of the People vs Austin Chisangu Liato, SC 291/2014.

*Criterion 3.9 (Met)* - The PPML Act under S.7, adequately provides for proportionate and dissuasive criminal sanctions for natural persons convicted of ML, as if convicted of money laundering, they are liable to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both.

*Criterion 3.10 (Met)* - Legal persons committing offences under the PPML Act can be held criminally liable and sanctioned under S.8 of the PPML Act. The sanctions provided for both the legal person and any natural person acting in his/her official capacity on behalf of the legal person during the commission of the offence are proportionate and dissuasive as convicts are liable to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both.

*Criterion 3.11 (Met)* – S.9 of the PPMLA as amended provides appropriate ancillary offences to the ML offence which includes conspiracy to commit, attempt, aiding and abetting or procuring the commission of ML.

#### *Weighting and conclusion*

All the criteria are met.

### **Zambia is rated Compliant with R.3.**

#### ***Recommendation 4 Confiscation and provisional measures***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R.3). The main technical deficiencies were that: the forfeiture of property of corresponding value in the absence of the originally acquired property whose value has been determined was not provided for by both the PPMLA and the ATA making possession of benefits acquired from proceeds of such crimes lawful; both the PPMLA and the ATA did not specifically provide for instrumentalities used in or intended for use in the commission of an ML, TF or other offences; the PPMLA did not provide for property derived directly or indirectly from proceeds of crime such as income, profits or other benefits; PPMLA did not provide for forfeiture of proceeds of crime held by a third party; PPMLA did not provide for ex parte applications barring a person charged or about to be charged from dealing,



transferring or disposing of property subject to confiscation or forfeiture; and both the ATA and the PPMLA did not provide for preventive measures to stop persons from entering into contracts where they have knowledge or ought to have knowledge that such contracts might have the effect of prejudicing the recovery of property subject to confiscation.

*Criterion 4.1 (Met)* - Zambia implements confiscation measures as follows:

- (a) Competent authorities are able under S.17 and 18 of PPMLA to forfeit property seized under S.15 of PPMLA where the basis is that the property is acquired from money laundering.
- (b) Under S.4 of the FPCA No. 19 of 2010 a forfeiture order can be applied upon conviction of criminal defendant against the property which is tainted property or confiscation order can be applied where it is determined that a person benefitted from the commission of the offence.
- (c) S.28 of the ATA, 2007 provides for forfeiture of any property that is proceeds of, used in, intended for use in or allocated for financing of terrorism, terrorist act or terrorism organization, upon conviction for any offence under the ATA.
- (d) S.2 of PPMLA and S.3 of the FPCA provide for property of corresponding value and where confiscation or forfeiture of proceeds of crime is not feasible to be confiscated or forfeited the court, pursuant to S.15 of the Forfeiture of Proceeds of Crime Act, is empowered to order the person to pay to the State an amount equal to the value of property, part or interest.

*Criterion 4.2 (Met)* - (a) S.19 of the PPML Act provides a legal basis for competent authorities to apply to court for identification, tracing and evaluation of property to establish whether it is subject to forfeiture.

(b) S.27 and 28 of the FPCA, 2010; S.58 of the Anti-Corruption Act, 2012; S.15 of the PPML Act, 2001; and S.24 of the Narcotic Drugs and Psychotropic Substances Act, Cap 96 all provide the respective competent authorities with the powers to implement provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation.

(c) S.32 of the FPCA provides grounds for the court to nullify or declare void any transactions or conveyances that appear to have been initiated or executed to prejudice the ability to freeze or seize or recover property that is subject to confiscation.

(d) Competent authorities in Zambia have a wide range of investigative powers to identify, trace, seize, freeze and confiscate tainted property.

*Criterion 4.3 (Met)* - S.12 of the Forfeiture of Proceeds of Crime Act, 2010; S.28 (7) of the ATA, 2007; S.60 (5) of the Anti-Corruption Act, 2012; and S.18 (3) of the PPML Act, 2001 provide protection for the rights of bona fide third parties.

*Criterion 4.4 (Met)* - Zambia has established Forfeited Assets Fund under S.73 of the Forfeiture of Proceeds of Crime Act. S.39 of the Forfeiture of Proceeds of Crime Act, 2010 gives the Attorney General power to appoint an Administrator to manage or administer property confiscated, forfeited or held by the state under any order issued under the Act. Such management could include the disposal of such property, if deemed necessary or appropriate.

*Weighting and conclusion*

All criteria are met.

**Zambia is rated Compliant with R.4.**



## ***Recommendation 5 - Terrorist financing offence***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly SR II). The main technical deficiencies were that: the definition of funds provided for under the ATA did not meet the definition of funds as described in the convention; there was no evidence to indicate that TF offences were predicate offences; Zambia had not signed and ratified most of the UN conventions and protocols relating terrorism; the Act did not create an offence where terrorist finances were not actually used to carry out a terrorist act or were not linked to a specific terrorist act; effectiveness could not be determined as the Act had just been enacted and there was no statistics on either previous cases or STRs dealt with relating to TF.

*Criterion 5.1 (Met)* - Under Section 20 of the ATA Zambia has criminalized TF on the basis of Article 2 of the International Convention for the Suppression of the Financing of Terrorism.

*Criterion 5.2 (Met)* - The offence of terrorist financing extends to financing of terrorist act, terrorist organisation and individual terrorist.

*Criterion 5.2b (Not Met)* - There is no provision in Zambia that prohibits financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

*Criterion 5.3 (Mostly Met)* - The definition of funds in section 2 of the ATA as amended does not differentiate legitimate or illegitimate funds consistent with the Financing of Terrorism Convention.

*Criterion 5.4 (Met)* - (a) Under the provisions of Section 20 (1) (a) of the ATA, 2007, a person can be deemed guilty of committing the offence of terrorism financing irrespective of whether the act or attempt was actually carried out. (b) Under the provisions of Section 20 (1) (b) of the ATA, 2007, a person can be deemed guilty of committing the offence of terrorism financing irrespective of whether any specific act of terrorism was attempted or actually carried out.

*Criterion 5.5 (Met)* - The authorities cited the cases of David Zulu V The People (1977) Z.R. 151 (S.C.) and Khupe Kafunda Vs The People (2005) Z.R. 31 (S.C.) which prove that intent, a key ingredient of the offence of terrorism financing, can be proved by circumstantial evidence, as recommended under this criterion.

*Criterion 5.6 (Met)* - Section 20 (2) (b) of the ATA, 2007 provides for custodial sentence of life imprisonment for a natural person found guilty of the offence of terrorist financing. The sanction of life imprisonment is proportionate and dissuasive.

*Criterion 5.7 (Mostly Met)* - The authorities provided the cases of Leco Limited v The People (1975) Z.R. 16 (H.C) and Patel's Bazaar Limited v The People (1965) ZLR 98 (Court of Appeal) that show that legal persons can and have been held criminally liable in Zambia. Regulation 37 provides for sanctioning of the natural person who is the director or manager of the offending legal person. The sanctions are proportionate and dissuasive. However, civil or administrative sanctions do not appear to be options where criminal liability is not possible.

*Criterion 5.8 (Met)* – (a) S.20 (4) of the ATA, 2007 includes an attempt to finance terrorism as constituting the offence of financing of terrorism; (b) S.20 (1) (a) criminalizes the financing or “...participating...” in the financing of terrorism; (c) S.20 (1) (b) makes it an offence for a person to “invite” another person to make money or other property available for the purpose financing of terrorism. Such invitation should be interpreted liberally to include persons that organize or direct others, whether natural or legal, to finance terrorism; (d) S.20 (1) (a) criminalizes the financing or “...participating...” in the financing of terrorism. Furthermore, Zambia recognizes and applies the doctrine of common intention (S.21 and 22 of the Penal Code Act) and therefore, accomplices in a terrorism financing offence can be charged with the offence.

*Criterion 5.9 (Met)* - Zambia adopted the “all crimes approach, and therefore the criminalization of terrorist financing under S.20 of the ATA, 2007, renders it a money laundering predicate offence.

*Criterion 5.10 (Met)* - Section 3 (2) (c) of the ATA, 2007, the High Court of Zambia has the jurisdiction to try any person that is present in Zambia after committing an offence of terrorism or terrorism financing, whether such offence was committed inside or outside Zambia, in other words, regardless of where the offence was committed. This provision means there is no limit on which persons can be prosecuted in Zambia, as long as they are within Zambia, regardless of where they committed the offence. This provision is complimented by S. 6 of the Penal Code Act, which provides for prosecution of suspects in Zambia even if the offence was committed wholly or partly outside Zambia.

#### *Weighting and conclusion*

There are some deficiencies in respect of 5.2bis, 5.3 and 5.7 .

### **Zambia is rated Largely Compliant with R.5**

#### ***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly SR. III). The main technical deficiencies were that: there were no guidelines or directives to compliment the ATA making it difficult for the designated agencies to implement it; institutions mandated to implement the Act were either not acquainted with it or unaware of its existence; at the time of the evaluation Zambia had no mechanism or structures in place to give effect to the actual implementation of the UN Resolutions 1267 and 1373; the ATA was not providing for attachment of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations; In terms of the ATA, the court could only proceed to order forfeiture of funds or property related to terrorist financing where evidence to meet the criminal standards has been adduced and the person has been convicted of the offence. This made it difficult for the court to order forfeiture where only circumstantial evidence which is not adequate to meet the criminal standards has been adduced but on a balance of probability there is evidence to show that the property is tainted; there was no effective implementation of the requirements of the ATA.

## *Identifying and designating*

*Criterion 6.1 (Not Met)* - There is no provision in the regulations that:

- (a) Enable Zambia to propose designation for persons or entities to the 1267/1989 Committee for designation or persons or entities to the 1267/1988 Committee.
- (b) Regulation 4(2) does not specifically spell out whether proposal would be for Al Qaeda group, Taliban, 1373 or proliferation financing where these resolutions have their specific designation criteria. (See IN to Rec 6).
- (c) Zambia uses evidentiary standard of proof of reasonable belief.
- (d) Zambia does not have procedures for listing consistent with resolutions 1267/1989 committee or 1988 committee.
- (e) There is no provision in the regulations that enables Zambia to provide as much relevant information as possible on the proposed name, statement of case which contains as much detail as possible on the basis for the listing for to the 1989 and 1988 Committees nor is there a provision which would address whether Zambia status as a designating state would be made known if the proposal for designation was to be made to 1267/1989 Committee.

*Criterion 6.2 (Mostly Met)* - For designation under UNSCR 1373:

- (a) Regulation 4(1) designates the Minister of Home Affairs to nationally list persons or entities at the recommendation of the NATC. It is submitted that designation here is made pursuant to UNSCR 1373.
- (b) Regulation 4(2) has provided mechanism that would enable the NATC to recommend national listing to the Minister.
- (c) The Minister is able to nationally list upon request made and on the basis of the determination by the NATC-See regulations 4(8),(9)(10).
- (d) Reasonable belief is a standard of proof used in the national listing. (regulation 4(2)(a) of Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017.).
- (e) There is no provision in the Regulation that enables Zambia to request another state to give effect to the actions initiated under the freezing mechanisms.

*Criterion 6.3 (Partly Met)*

- (a) Regulations 4(2) does not detail how authorities may collect or solicit information to identify persons and entities that meet criteria for designation.
- (b) Although regulation 4(2) appears to empower the Centre to operate ex parte in submitting information for listing to the Minister, this is limited to national listing and does not cover proposing a name to the relevant UN Security Council committees.

*Criterion 6.4 (Partly Met)* - Regulations 4 (11)(a) and 7(1)(a) which are applicable for designation made pursuant to UNSCR 1373 and relevant UNSC Committees enable financial sanctions to be effected immediately upon designation by only reporting entities. However, requiring natural and legal persons to freeze, **without delay and without prior notice**, the funds or other assets of designated persons and entities is not provided for in these provisions.

*Criterion 6.5 (Partly Met)* - In terms of implementing and enforcing targeted financial sanctions the following procedure is adopted:

- (a) Freezing can only be done by reporting entities per regulation 4(11) and 7(1).
- (b) Regulation 4(11) generally meets this sub-criterion, save that, at the time of onsite the definition of funds did not extend to however funds are obtained.

- (c) Regulation 7 and 17 generally meet this sub-criterion, save that, at the time of onsite the definition of funds did not extend to however funds are obtained.
- (d) Both regulation 4(11) (a) and 7(1) (a) enable the NATC to direct reporting institutions to freeze funds or asset of listed or designated persons or entities.
- (e) The regulations do not require financial institutions or DNFBPS to report to the NATC or competent authorities asset frozen or action taken in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions.
- (f) Regulation 8(1) provides protection of the rights of bona fide third parties.

*Criterion 6.6 (Partly Met)* - For delisting and unfreezing the following procedure is adopted:

- (a) Pursuant to regulation 9(1) Zambia has adopted procedures in the relevant UN Sanctions Committee for de-listing requests.
- (b) Pursuant to regulation 10(1) the Minister can delist a person or entity where the NATC has recommended that the person or entity no longer meets conditions for listing save that delisting in this context does not automatically warrant unfreezing of funds or assets.
- (c) Regulation 32(2) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations provides that a designated person or entity can have the designation set aside by appealing to the High Court. However appeal appears to be applicable to both designation made pursuant to UN Sanctions Committees as well as under UNSCR 1373 a factor which is a shortcoming since it otherwise traverses into the territory of UN Sanctions Committees.
- (d) There is no stated procedure save that pursuant to regulation 7(1)(b) the Centre can provide guidance on the procedure to take to have designation reviewed in order for a person to be delisted.
- (e) Regulation 7(1) (b) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations will equally apply as mentioned in sub-criterion (d) above.
- (f) Unfreezing funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism has not been provided in the regulations.
- (g) Regulation 9(7) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations empowers the NATC to only notify supervisory authorities, defence and security organs, the LEAs and FIC. This notification as regards deletion made by Sanctions Committee does not extend to financial institutions or DNFBPs but the current arrangement is such that supervisory authorities have to notify reporting institutions.

*Criterion 6.7 (Mostly Met)* - Access to frozen funds is catered under regulation 22 of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations. However, it is not clear as to why access to frozen funds even those made pursuant to 1373 should still be referred to UN Sanctions Committee. See regulation 22(9)(a) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations.

#### *Weighting and conclusion*

The following have been noted as shortcomings in meeting the requirements of Recommendation 6:

- The regulations do not empower Zambia to propose a name for designation to relevant UNSC Committees.

- There is no clear provision in the regulations that can enable authorities to move ex parte in proposing from designation to relevant UNSC Sanctions Committees.
- The regulations do not empower authorities or the Centre to collect or solicit relevant information for designation. The regulation do not require financial institutions or DNFBPS to report to the Centre or competent authorities asset frozen or action taken in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions.
- Regulation 32(2) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations is inconsistent with the requirements of resolutions 1267/1999 in as far as it allows designated person to appeal their designation to the national courts.

## **Zambia is rated Partially Compliant with R.6**

### ***Recommendation 7 – Targeted financial sanctions related to proliferation***

These obligations were added during the revision of the FATF Recommendations in 2012 and were thus not considered in the framework of the evaluation of Zambia in 2008 under the First Round of MEs.

*Criterion 7.1 (Not Met)* - The Anti-Terrorism (United Nations Resolutions Implementation) Regulations 2017 do not meet the requirements of criterion 7.1, as: (a) though Regulation 2 (1) (l) provides that UNSCRs relating to proliferation and proliferation financing can be implemented under these Regulations; (b) proliferation and proliferation financing are defined under the Regulations; and (c) Regulation 3 (b) makes the Regulations applicable to a person or entity suspected of proliferation or proliferation financing; the Regulations were enacted by the Minister pursuant to powers under S.50 of the ATA, which has no provisions or bearing on proliferation or proliferation financing. Subsidiary legislation cannot grant powers or rights or be applicable to an area outside the scope of the parent Act, therefore, these Regulations cannot confer powers to implement proliferation and proliferation financing provisions because they are outside the scope of the ATA. Proliferation is treated merely as an act of terrorism under Regulation 2 (2) (e) (ii).

*Criterion 7.2 (Partly Met)* Criterion 7.2 (a) – (f) are not met, because, as analysed in 7.1 above, the provisions of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, are not applicable to proliferation and proliferation financing.

*Criterion 7.3 (Not Met)* - Criterion 7.3 is not met, because, as analysed in 7.1 above, the provisions of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, are not applicable to proliferation and proliferation financing.

*Criterion 7.4 (Not Met)* - Criterion 7.4 is not met, because, as analysed in 7.1 above, the provisions of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, are not applicable to proliferation and proliferation financing.

*Criterion 7.5 (Not Met)* - Criterion 7.5 is not met, because, as analysed in 7.1 above, the provisions of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, are not applicable to proliferation and proliferation financing.

### *Weighting and conclusion*

The Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017 cater for targeted financial sanctions for terrorism and terrorist financing and not proliferation or proliferation financing, as it is not covered under the ATA as a result there is no basis to implement proliferation financing under the Anti-Terrorism (United Nations Resolutions Implementation) Regulations 2017 until such time that the Act would have been amended to cater the same.

**Zambia is rated Non Compliant with R.7**

### ***Recommendation 8 – Non-profit organisations***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly SR VIII). The main technical deficiencies were that: risk assessment of the NPOs regarding misuse of the sector for terrorist financing had not been conducted; periodic assessment on the sector's potential vulnerabilities to terrorist activities had not been undertaken; Zambia had not undertaken outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse; absence of specific retention period prescribed for NPOs to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation; absence of mechanisms that allow for prompt investigative or preventative action against such NPO that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations; and Zambia had not identified appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.

### *Taking a risk-based approach*

#### *Criterion 8.1 (Partly met)*

- (a) *(Partly met)* - Although the NGO Act provides for the definition of NGOs, a subset of NGOs whose features and types determined by virtue of their activities or characteristics, and are likely to be at risk of terrorist financing abuse have not been identified.
- (b) *(Not met)* - The authorities have not explained the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. There is no explanation which has been provided by the authorities to illustrate how the determination of the TF risk being moderate was reached and whether in the process the TF threats related to those NPOs were identified.
- (c) *(Partly met)* - Although Zambia reviewed the laws and regulations of its NGO sector in 2009, and came up with a wide definition of NPOs, the review did not specifically include addressing or looking at TF risks associated with the subset of NPO Sector that may be abused for terrorism financing. The provisions of the NGO Act do not specifically provide for a subset of NGOs which might be subject to TF abuse nor have such NGOs been identified.
- (d) *(Partly met)* - The authorities did not provide any indication as to whether the current NGO Act will be amended to include provisions to specifically look at the subset of NGOs sector that may be abused for terrorism financing. The review of the sector's risks is



indicated as going to be re-done again after 3 years following the results of NRA done in 2017-18 but it is not indicated whether this will be done following a policy directive or the law.

*Criterion 8.2(Partly Met)*

- (a) *(Partly Met)* There are several measures in place to promote accountability, integrity, and public confidence in the administration and management of NPOs in Zambia. In terms of the NGO Act, it is prohibited to operate an unregistered NPO, both domestic and international (s. 10), the application requires for certain information, including list of office bearers, head office and postal address of the organisation, duration of the activities and proposed sources of funding, domestic and international affiliations and certificates of incorporation (s. 11); an NPO can only operate in Zambia subject to having a certificate of registration issued by the Registrar of NPOs (s. 13); there is set criteria for rejecting an application for registration by the Board (s. 15); set procedures for renewal of the registration certificate after every five years (s. 16); the Registrar has to maintain a Register where all particulars and all other information relating to the NPOs shall be registered and the Register is open for inspection by any person upon payment of a prescribed fee (s. 20); the Registrar has to publish annually new registrations, cancellations/suspensions and refusal of registration in the Government Gazette (s. 21), exemptions to registrations are published in the Gazette by the Minister and it has to be at the recommendation of the Board (s. 23); and NPOs registered under this Act are not entitled to diplomatic immunity and privileges (s. 24). NPOs registered under the NGO Act have to carry out the following obligations: notifying the Registrar with 14 days of any changes made to the information provided upon registration of the NPO (s.25); upon request by the Registrar to provide a true copy of the constitution and rules of the NPOs; source of funding; list of the office bearers; annual reports; and such accounts, returns and other information which the Minister may prescribe (s. 26); the NGO is required to have a registered office and postal address where all communication and notices can be sent. In addition to these measures the Act requires that there be two organisations, Zambia Congress of NGOs (s. 29) and Council of NGOs (s. 30) whose functions are facilitate self-regulation of the NGOs including: activities, funding, programmes, foreign affiliations, training, the development of national human resources (ss. 29 – 32). These measures are robust enough to ensure accountability, integrity, and public confidence in the administration and management of NPOs in Zambia. However, the law is not precise on the application of those legal requirements relating to TF.
- (b) *(Partly met)* - In order to raise and deepen awareness among NPOs about the potential vulnerabilities of NPOs to TF abuse and TF risks and measures that NPOs can take to protect themselves against such abuse, the FIC in collaboration with the Registrar of NGOs has conducted AML/CFT awareness with the NGOs and the programme is still ongoing. Further to that, the Department of Registrar of NGOs has shared relevant information on ML and TF with NGOs such as 2016 NRA report, 2015, 2016 AML/CFT Trends report. However, there is no indication from the authorities that such awareness has also been provided to the donor community.
- (c) *(Not met)* - The authorities have not worked with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.
- (d) *(Not met)* Measures to encourage NPOs to conduct transactions through regulated channels were not provided although in general funds being provided by donors to the



NPOs are usually transmitted through the banks. However, this does not automatically apply to actual transactions carried out by the NPOs.

#### *Targeted risk-based supervision or monitoring of NPOs*

*Criterion 8.3(Not met)* The authorities have not taken steps to promote effective supervision or monitoring of NPOs according to their exposure to TF risk. The risk factors have not been identified to enable risk based measures to be applied to NPOs which might be at risk of TF abuse. Further, there is possibility of unregistered NPOs existing in Zambia, although the law specifically prohibit it.

#### *Criterion 8.4(Partially met)*

- (a) *(Not Met)* - The TF risk factors relating to the NPO sector in Zambia have not yet been identified<sup>13</sup>. Therefore, the TF risk factors being monitored by the Supervisory Authorities in NPO sector for compliance have not been determined according to risk, which affects the risk based measures applied by the authorities. Again the authorities did not indicate whether there is a programme which has been developed to monitor compliance consistent with the TF risks identified and prioritisation in dealing with such risks. The authorities have not taken stock of the NGOs currently in existence to enable a risk based approach and on which identified NPOs. Further, although the NGO Act in s.10 prohibits the operation of an unregistered NGO in Zambia, there is existence of unregistered NPOs which by virtue of not being registered would make compliance monitoring on those NPOs extremely difficult since they are not formally known to the authorities, or the basis of such supervision since these are not registered.
- (b) *(Mostly Met)* - Offences and penalties for transgressing representatives of NPOs and NPOs are provided in terms of s. 36 of the NGO Act. The following offences are set out in that section: (1) a person who (a) makes, signs, or utters false statement or declaration in support of an application for registration or exemption; (b) On being required to do so (under S.26) fails or refuses to produce to the Registrar a certificate, constitution, activity reports or relevant information for the purposes of the NGO Act (c)knowingly or recklessly gives false information for the purpose of obtaining a certificate or other requirements commits an offence. Penalties for the above violations are provided in s. 36(2) and (3) of the Act and they provide as follows: (2) any person convicted of an offence under s. 36 shall be disqualified from holding office in any NGO for a period of three years; (3) On conviction of an Officer of an NGO under section 26, the NGO Registration Board may de-register that organization. Further, in terms of s. 17 of the NGO Act, the NGO Board may suspend or cancel the NGO certificate for various offences committed by the NGO. The sanctions, however, are not specifically linked to offences relating to TF.

#### *Effective information gathering and investigation*

#### *Criterion 8.5 (Mostly met)*

- (a) *(Mostly met)* - In order to ensure effective co-operation, co-ordination and information sharing, mechanisms including entering into MoUs, AML/CFT awareness campaigns, and

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<sup>13</sup> Also refer to analysis under Core Issue 8.1

the Registrar of NGOs upon request being able to share information with other LEAs, are in place. The Department of the Registrar for NGOs and the Financial Intelligence Centre signed a Memorandum of Understanding (MoU) which provides for collaboration in fighting ML and TF in the NGO sector, including sharing information on matters of ML/TF. The Registrar of NGOs can share information with other competent authorities, such as Anti-Corruption Commission (ACC), Drug Enforcement Commission, the Police and the FIC, upon request.

- (b) *(Mostly met)* - Zambia has competent authorities (LEAs and National Anti-Terrorism Centre) with investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.
- (c) *(Mostly met)* - The NGO Act has enabling provisions on obtaining full access to information on the administration and management of particular NPOs during the course of an investigation. S. 26(1) and (2) provides that the Registrar of NGOs can use Form 1 (Regulation 5) of Statutory Instrument 62 of 2011, to request for any relevant information such as books of accounts, source of funding, annual reports, returns or any other relevant information from registered NGOs. A person or NGO that fails to furnish the Registrar with requested information commits an offence and is liable, upon conviction, to a fine not exceeding eighty thousand penalty units or to imprisonment for a period not exceeding three months or both. S. 9 of the same Act also requires that the NGO Registration Board establishes a Documentation Centre to maintain information on NGOs and their activities and such other information as may be necessary for the understanding and promotion of the contribution of NGOs to national development. However, the requirements are not necessarily to do with TF.
- (d) *(Partly met)* - Although, in terms of s. 2 of the FIC (Amendments) Act, NPOs are designated as reporting entities, this mechanism might not be adequate as the NPOs involved in terrorist financing abuse and/or as a front for fundraising by a terrorist organisation; or being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations may not report such kind of transactions to the FIC as they would be directly involved, if not interested parties. It would have been prudent for the NGO Act to have provisions assigning the role of ensuring that such NPOs are identified to the Registrar of NGOs or the FIC as the AML/CFT supervisor of the sector. The requirement is to have a mechanism which enables detection of such activities through suspicion or having reasonable grounds to enable such information to be quickly shared and preventive or investigative action taken.

*Effective capacity to respond to international requests for information about an NPO of concern*

*Criterion 8.6 (Met)* - Zambia has a National Anti-Terrorism Centre which is mandated to be the point of contact dealing with international requests for information regarding NPOs suspected of TF or involvement in other forms of terrorist support. In addition, the FIC can also use its powers under section 5(3)(b) of the Act to deal with requests for information regarding such NPOs.

### *Weighting and conclusion*

The legal framework regulating the NPO sector is not yet risk based to require identification and determination of NPOs which based on their activities or their characteristics could be at risk of terrorist financing abuse. The supervision and monitoring of the NPO sector is also not yet required to be done on TF risk sensitive basis, the same requirements apply to all NPOs. The legal framework currently existing does not take into account TF risks in the NPO sector but is based on general regulation of the NPOs and their activities. **Zambia is rated Partially Compliant with R.8**

### ***Recommendation 9 – Financial institution secrecy laws***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R 4). The main technical deficiencies were that: BFSA does not have enabling provisions to permit sharing of information amongst FIs on correspondent banking, third parties and wire transfers; in the absence of any judicial pronouncement it is not clear whether the confidentiality provision under section 50 of the BFSA would be overridden by section 14 of the PPMLA; weaknesses to secure information which exist at AMLIU.

*Criterion 9.1 (Met)* – Despite provisions of sections 50(1) of the Banking and Financial Services Act, 175 of the Customs and Excise Act, 8 of the Income Tax Act on secrecy and confidentiality, section 32 of the FIC Act No. 46 of 2010 provides that no secrecy or confidentiality provision in any other law shall prevent a reporting entity from fulfilling its obligation under the FIC Act.

- (a) All competent authorities have access to information in line with Section 43 of the FIC Act.
- (b) Sharing of information between competent authorities – There are mechanisms to exchange and share information between competent authorities both domestically and internationally (see R.2 and R.40 analyses) and there are no financial institution secrecy laws that inhibit this sharing.
- (c) Sharing of information between FIs - There are no restrictions in legislation preventing FIs to fulfil their obligations according to R.13, 16 and 17.

### *Weighting and conclusion*

There are no shortcomings observed in respect of criterion 9.1.

**Zambia is rated Compliant with R.9**

### ***Recommendation 10 – Customer due diligence***

In the First Round of MEs, Zambia was rated Non-Compliant with the requirements of this Recommendation (formerly R.5). The main technical deficiencies noted were: no provisions in the law or regulations that prohibited financial institutions to keep anonymous accounts or accounts in fictitious names; no provision set out in the law or regulations that required financial institutions to undertake customer due diligence measures; no requirement set out in the law or regulation that required financial institutions to identify the customer and verify the customer's identity using reliable, independent source documents, data or information; no requirement set out in law or regulation to require financial institutions to determine the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is; no CDD requirements in law or regulation for NBFIs including

insurance and security market players; PPMLA and BoZ AML Directives did not make any reference to terrorist financing; Financial institutions not required to perform enhanced CDD for high risk customers; The laws or regulations did not prohibit opening an account, commencing business relationship or performing a transaction where financial institutions have failed to verify identity of prospective customer. In addition, there was no legal or regulatory requirement to terminate an existing business relationship where the financial institution later fails to verify the identity of the customers; no requirement in law or regulation to ensure that identification documents collected for CDD are kept up-to-date and relevant by undertaking reviews of existing records; no requirement for financial institutions to conduct on-going due diligence; requirement to apply CDD measures on existing anonymous customers not provided for.

*Criterion 10.1 (Met)* - Section 15 of the FIC Act, 2010 prohibits FIs from establishing or maintaining anonymous accounts or any account in a fictitious name.

*When CDD is required*

*Criterion 10.2 (Largely Met)* - S.16 of the FIC Act, requires FIs to undertake CDD measures when:

- a) *(Met)* - Opening an account or establishing a business relationship with a customer;
- b) *(Met)* - Carrying out all occasional transactions and transactions that appear to be linked, done by customers who are either non- account holders or established business relationships.
- c) *(Mostly Met)* - Carrying out a domestic or international wire transfer in the prescribed amounts equivalent to USD 10,000 for legal persons and USD5, 000 for natural persons. This, however, seem not to address the circumstances of R.16 which requires a minimum threshold of \$1,000 for wire transfers.
- d) *(Met)* - There is a suspicion of ML/TF or proliferation.
- e) *(Met)* - When there are doubts about the veracity or adequacy of previously obtained customer identification data.

*Required CDD measures for all customers*

*Criterion 10.3 (Met)* - S.16 (1) of the FIC Act as read with Regulation 7(1)(a)(i) of the FIC Regulations obliges FIs to verify the identity of a customer using documents, data or information obtained from a reliable and independent sources or from any other sources that the FI can reasonably rely upon to identify and verify the identity of the customer.

*Criterion 10.4 (Met)* - S. 16 (5) (d) of the FIC Act as read with Regulation 7(2) of the FIC (General) Regulations require FIs to verify that any person who purports to act on behalf of the customer is so authorised, and identify and verify the identity of that person.

*Criterion 10.5 (Met)* - S.16 (6) and (7) of the FIC Act as read with Regulation 7(1) requires FIs to identify and take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from a reliable source, such that the FI is satisfied that it knows who the beneficial owner is.

*Criterion 10.6 (Mostly Met)* - S.16 (5) (e) of the FIC Act, 2010 requires FIs with respect to each customer to obtain and verify information on the intended purpose and nature of each business

relationship but does not extend to understanding the intended purpose and nature of each business relationship.

*Criterion 10.7 (Partly Met)* - S.24 of the FIC Act requires a FI to exercise on-going due diligence on any business relationship:

- (a) (Not Met) - no provision in the law which requires FIs to scrutinise transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the FI's knowledge of the customer, their business and risk profile, including where necessary, the source of funds.
- (b) (Met) - maintaining up to date CDD documents, data or information through reviews of records including for higher risk customers,

#### *Specific CDD measures required for legal persons and legal arrangements*

*Criterion 10.8 (Met)* - S. 16(5) of the FIC Act obliges FIs to understand the ownership and control of the legal person or arrangement including information on the nature of each customer's business.

*Criterion 10.9 (Partly Met)* - For customers that are legal persons or legal arrangements, FIs are required in terms of S.16 (5) and Regulation 7(1) to identify the customer and verify its identity through the following information:

- a) (Met) - name, legal form and proof of existence;
- b) (*Partly Met*) – The powers that regulate and bind the legal person, as well as the names of the relevant persons holding a senior management position. The requirement, however, does not extend to legal arrangements.
- c) (*Partly Met*) – The address of the registered office and, if different, a principal place of business. The requirement, however, does not extend to legal arrangements.

*Criterion 10.10 (Met)* - For customers that are legal persons, FIs are required to identify and take reasonable measures to verify the identity of beneficial owners (S.16(5)(b) and 16(6) of the FIC Act) and this includes obtaining and verifying the corporate name, head office address, identities of directors, proof of incorporation or similar evidence of legal status and legal form, provisions governing the authority to bind the legal person, and such other information as is necessary to understand the ownership and control of the legal person; identifying and verifying the identity of the natural person with ultimate effective control over a legal person or arrangement.

*Criterion 10.11 (Met)* - For customers that are legal arrangements, S.16(5)(c) of the FIC Act requires FIs to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (a) Identity of settlor, trustee(s), beneficiaries and any other parties with the authority to manage, vary or otherwise control the arrangement.
- (b) *Not applicable*

#### *CDD for Beneficiaries of Life Insurance Policies*

*Criterion 10.12 (Not Met)* - There is no specific requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

*Criterion 10.13 (Not Met)* - There is no legal provision requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD measures. In addition, there is no legal obligation for reporting entities to take enhanced measures if it determines that the beneficiary who is a legal person or legal arrangement presents a higher risk.

#### *Timing of verification*

*Criterion 10.14 (Met)* - In Zambia, in terms of S.16 (1) and (3) of the FIC Act, it is not permissible for a FI to establish a business relationship or conduct a transaction before verifying the identity of a customer except in circumstances explained under c10.15 below. Therefore the normal identification and verification requirements covered under c.10.2 above apply.

*Criterion 10.15 (N/A)* - There is no direct requirement that FIs should adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. Although S.16(4) of the FIC Act allows the Minister to prescribe the circumstances in which the verification of identity may be completed as soon as reasonably practicable after the commencement of the business, the section is not yet utilized and thus c.10.15 is not applicable.

#### *Existing customers*

*Criterion 10.16 (Partly Met)* – There is a requirement under S.24 of the FIC Act for FIs to conduct ongoing due diligence with respect to any business relationship with a customer. However, there is no specific provision for remediation for existing customers on the basis of materiality.

#### *Risk-Based Approach*

*Criterion 10.17 (Partly Met)* - S.19 of the FIC Act as read with Regulation 10 of the FIC (General) Regulations require FIs to perform enhanced due diligence when dealing with high risk customers or in circumstances where a reporting entity reasonably considers the risk of ML/TF to be high. There is however no obligation for FIs to apply enhanced measures where the ML/TF risks are higher.

*Criterion 10.18 (Partly Met)* - Regulation 9 requires FIs to apply the simplified CDD measures where ML/TF risk is determined to be low to the satisfaction of the FIC or the supervisory authority. However, there is no provision for application of simplified measures which are commensurate with the lower risk factors and its inapplicability in circumstances where there is suspicion of ML/TF or specific higher risk scenarios.

#### *Failure to satisfactorily complete CDD*

*Criterion 10.19 (Met)* - Where an FI is unable to comply with relevant CDD measures, it is required (S.21 of the FIC Act):

- (a) (Met) - Not to establish an account for, or maintain the business relationship with that customer, and
- (b) (Met) - To make a report to the FIC in accordance with the FIC Act.



### *CDD and tipping-off*

*Criterion 10.20 (Not Met)* - There is no specific legal provision permitting FIs not to pursue the CDD process, and instead to file an STR, where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.

### *Weighting and conclusion*

**Zambia is rated Partially Compliant with R.10.**

### ***Recommendation 11 – Recordkeeping***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R. 10). The main technical deficiencies were that: the laws did not provide for maintenance of records by FIs on account files and business correspondence; and the laws did not provide for customer and transaction records and information to be produced on a timely basis to domestic competent authorities upon request.

*Criterion 11.1 (Met)* - S.22 of the FIC Act requires FIs to maintain records on any transactions for a minimum period of 10 years following completion of the transaction.

*Criterion 11.2 (Met)* -S.22 of the FIC Act requires FIs to keep all records obtained through CDD measures and transactions conducted including account files and business correspondence and results of any analysis undertaken for at least ten years following the termination of the business relationship or after the date of the occasional transaction.

*Criterion 11.3 (Met)* - S.22(2)(b) requires FIs to keep transaction records sufficient to enable the transaction to be reconstructed.

*Criterion 11.4 (Partly Met)* - S.22 (1) of the FIC Act requires CDD information and transaction records to be available timely only to the FIC. There is no similar provision for the other domestic competent authorities except in the case results of any findings (S.25(2)).

### *Weighting and conclusion*

**Zambia is rated Largely Compliant with R.11.**

### ***Recommendation 12 – Politically Exposed Persons***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R 6). The main technical deficiencies were that: there were no legal or regulatory requirements for financial institutions (i) to put in place risk management systems to determine if customers are PEPs, (ii) requiring senior management approval to establish relationships with PEPs, (iii) to establish source of wealth and conduct enhanced on-going monitoring of the relationship.

*Criterion 12.1 (Met)* - S.19 of the FIC Act, as amended, read with Regulation 12 and paragraphs 2 and 3 of the AML/CFT Guidance Note on PEPs require FIs to:



- (a) have appropriate risk management systems to determine high risk ML/TF customers and beneficial owners.
- (b) obtain senior management approval before establishing a business relationship
- (c) take all reasonable measures to identify the source of wealth and funds of the customer/beneficial owner; and
- (d) conduct on-going monitoring of the customer and the business relationship.

*Criterion 12.2 (Met)* - The measures set out in c.12.1 also apply to domestic PEPs and persons entrusted with a prominent function by an international organisation (S.19 of the FIC Act).

*Criterion 12.3 (Mostly Met)* – The measures set out in c.12.1 apply to the family members and close associates of domestic and foreign PEPs but do not extend to the family members and close associates of an individual who is or has been entrusted with a prominent function by an international organization.

*Criterion 12.4 (Not Met)* – There are no specific requirements for FIs to determine whether beneficiaries of life insurance policies and their beneficial owners, are PEPs.

*Weighting and conclusion*

**Zambia is rated Largely Compliant with R.12.**

### ***Recommendation 13 – Correspondent banking***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R 7). The main technical deficiencies were that there were no provisions in the relevant laws relating to correspondent banking relationship.

*Criteria 13.1 (Met)* - S.20 (a) – (f) of the FIC Act, requires FIs to:

- a) gather information on the nature of the respondent institution’s activities and use publicly available information to evaluate the reputation of the institution and the quality of supervision to which it is subject;
- b) assess the respondent institution’s AML/CFT controls;
- c) obtain senior management approval prior to establishing a correspondent banking relationship; and
- d) understand the AML/CFT responsibilities of each institution

*Criteria 13.2 (Met)* - S.20 (g) of the FIC Act requires FIs, in respect of payable-through accounts, to:

- (a) ensure that the respondent institution has performed CDD obligations on its customer, and;
- (b) is capable of providing relevant CDD information upon request.

*Criteria 13.3 (Met)* - S.20 (h-i) of the FIC Act prohibits a bank from entering into or continuing a correspondent banking relationship with a shell bank and requires banks to take reasonable measures to satisfy themselves that respondent banks do not permit their accounts to be used by shell banks.

*Weighting and conclusion*

**Zambia is rated Compliant with R.13.**

***Recommendation 14 – Money or value transfer services***

In the First Round of MEs, Zambia was rated Non-Compliant with the requirements of this Recommendation (formerly SR.VI). The main deficiencies noted were that there was no requirement for MVTS outside the formal banking system to be licensed and supervised.

*Criterion 14.1 (Met)* - S.12-13 of the NPS Act No. 1 of 2007 requires for designation of MVTS.

*Criterion 14.2 (Met)* - S.13 of the NPS Act prohibits any person from providing a payment system business without prior designation by the BoZ. S.34 gives the BoZ power to enter and search premises of any person it has reason to believe is providing or carrying on a payments system business while S.12 (7) provides for sanctions applicable to any person who contravenes the designation requirements ranging from a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding 5 years or to both.

*Criterion 14.3 (Met)* – S.2 of the FIC Act as read with S.11 of the NPS Act designates BoZ to monitor MVTS for AML/CFT compliance as a reporting entity.

*Criterion 14.4 (Met)* - Directive 12 of the NPS Directives on e-Money Issuance, 2015 requires the Bank of Zambia to maintain a register of all e-money institutions and their branches. Further, Directive 22(8) requires an e-money institution to provide the BoZ with a quarterly update of its agents covering details of the agent such as the name, contact details and location; the directors and managers of the agent; as well as the beneficial owners of the institution providing agency services.

*Criterion 14.5 (Not Met)* – There is no provision requiring MVTS providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes.

*Weighting and conclusion*

**Zambia is rated Largely Compliant with R.14.**

***Recommendation 15 – New technologies***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R 8). The main technical deficiencies were that: there were no requirements providing for prevention of the misuse of technological developments in ML/TF schemes; insufficient guidelines in the BoZ Directives on the procedures that must be put into place by banks and other FIs to prevent the misuse of technological developments in ML or TF schemes, no requirement for the other FIs falling under the supervisory purview of the PIA and the SEC to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

*Criterion 15.1 (Mostly Met)* –The country and the large domestic and foreign FIs in Zambia have identified and assessed ML/TF risks that may arise in relation to the development of new products and new business practices, new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products when providing financial services.

*Criterion 15.2 (Not Met)* – There is no specific legal provision that requires FIs to undertake the risk assessments prior to launch or use of such products, practices technologies and to take appropriate measures to manage and mitigate the risks.

#### *Weighting and conclusion*

**Zambia is rated Partially Compliant with R.15.**

### ***Recommendation 16 – Wire transfers***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly SR VII). The main technical deficiencies were that: financial institutions are not required to obtain and maintain complete originator information and verify its accuracy for all wire transfers for both domestic and cross-border wire transfers; each intermediary and beneficiary financial institution in the payment chain was not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer; beneficiary financial institutions not required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information; supervisory authorities not monitoring compliance of financial institutions with rules and regulations implementing SR VII; laws or regulations not containing specific sanctions against non-compliance.

#### *Ordering financial institutions*

##### *Criterion 16.1 (Partially Met) -*

- (a) S.26(1) of the FIC Act requires FIs to include accurate originator information on electronic funds transfers. The thresholds set under Regulation 6 of the FIC (Prescribed Threshold) Regulations, 2016, are however above USD/EUR 1,000.
- (b) the law does not provide for requirements for FIs to obtain required beneficiary information.

*Criterion 16.2 (Not Met)* – The requirements for ordering FIs to include full beneficiary information in cross-border batch files are conditional and hence not yet obligatory on FIs (S.26(4) of the FIC Act).

*Criterion 16.3 (Not Met)* - There are no specific legal provisions that permit compliance with the criterion.

*Criterion 16.4 (Not Met)* - There are no specific legal provisions that permit compliance with the criterion.

*Criterion 16.5 (Met)* - S.26(1) of the FIC Act requires FIs undertaking any wire transfers to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers under c.16.1 above.

*Criterion 16.6 (Not Met)* - There is no specific provision requiring the ordering FI to make the information available within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. In the same vein, there is no provision that explicitly enables law enforcement authorities to be able to compel immediate production of such information related to wire transfers.

*Criterion 16.7 (Mostly Met)* - S.22 of the FIC Act, 2010 requires FIs to maintain all the books and records with respect to its customers and transactions for a period of at least ten years. However, since there is no requirement to obtain beneficiary information (see c.16.1), it means that the requirements of S.22 do not extend to beneficiary information.

*Criterion 16.8 (Not Met)* - S.26(7) of the FIC Act provides that a FI shall, where it fails to obtain any missing information, refuse acceptance of the transfer and report it to the FIC. There is however no requirement for obtaining beneficiary information so FIs are not obligated to refuse accepting the transfer on the basis that a client has failed to avail beneficiary information.

#### *Intermediary Financial Institutions*

*Criterion 16.9 (Mostly Met)* - S.26(3) of the FIC Act requires FIs who act as intermediary in a chain of payments, to re-transmit all the information received with the wire transfer. However, since there is no requirement to obtain beneficiary information (see c.16.1), it means that the requirements of S.26 do not extend to beneficiary information.

*Criterion 16.10 (Partly Met)* - The general record keeping provision under S.22 of the FIC Act applies to all types of transactions and CDD information obtained by FIs in respect of a customer. However, there is no specific obligation for intermediary FIs to keep records of all the information received from the ordering FI or another intermediary FIs where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer.

*Criterion 16.11 (Met)* – S.26 (6) of the FIC Act No requires FIs to take measures to obtain and verify the missing information from the ordering institution or the beneficiary where it receives wire transfers that do not contain the complete originator information.

*Criterion 16.12 (Not Met)* - There is no specific legal requirement for FIs to apply a risk-based approach to wire transfer transactions under any circumstances.

#### *Beneficiary Financial Institutions*

*Criterion 16.13 (Not Met)* - There is not explicit legal requirement to have measures in place to monitor transactions in order to identify such wire transfer transactions which lacks originator or beneficiary information.

*Criterion 16.14 (Partly Met)* - There is no explicit legal requirement for beneficiary FIs to verify the identity of the beneficiary information as outlined under c.16.1(b) above. The general record keeping requirements as per S.22 of the FIC Act apply.

*Criterion 16.15 (Not Met)* - There is no explicit requirement for beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and the appropriate follow-up action.

### *Money or value transfer service operators*

*Criterion 16.16 (Not Met)* – Although the wire transfer obligations also apply to MVTs providers and their agents, the same deficiencies identified under R.16.1-16.15 apply.

*Criterion 16.17 (Not Met)* - Whilst there is a general requirement for reporting entities to file suspicious transactions, there is no specific obligation for MVTs providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU.

### *Implementation of Targeted Financial Sanctions*

*Criterion 16.18 (Met)* - FIs are required to take freezing measures pursuant to UNSCR 1267/1999 and UNSCR 1373/2001 as described under R.6. (Regulation 4 (11)(a) and 7(1)(a) Anti-Terrorism Regulations 2017).

### *Weighting and conclusion*

**Zambia is rated Partially Compliant with R.16.**

### ***Recommendation 17 – Reliance on third parties***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R 9). The main technical deficiencies were that: there were no supervisory guidance issued to address customer introductions by intermediaries and third parties; no requirement for FIs to immediately obtain from the third party the necessary information concerning certain elements of the CDD process and to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements would be made available from the third party upon request without delay; no mechanism in place to determine in which countries the third party that meets the conditions could be based; no guidance to ensure that the ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party.

*Criterion 17.1 (Met)* - S.17 of the FIC Act permits FIs to rely on third parties or intermediaries to apply CDD measures on their behalf although the FIs remain ultimately liable for any failure to apply such measures. S.17(1-4) requires FIs to:

- a) obtain immediately the necessary information concerning elements (a) – (c) of the CDD measures set out in R.10;
- b) produce copies from third parties, without delay, upon request; and
- c) satisfy itself that the third party upon whom reliance is placed, is regulated and supervised for compliance with CDD and record keeping obligations equivalent to those in the FIC Act.

*Criterion 17.2 (Met)* - Regulation 11 (1) of the FIC (General) Regulations, requires FIs relying on third parties to have regard to country's ML/TF risk level to satisfy themselves that the third party is from a jurisdiction which have established FIUs; are members of the Egmont Group; not subject to FATF monitoring and (not subject to UN sanctions).

*Criterion 17.3 (Not Met)* - There are no obligations for FIs relying on third parties which is part of the same financial group in the circumstances set out in (a) to (c) of the criterion.

### *Weighting and conclusion*

**Zambia is rated Largely Compliant with R.17.**

### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R.15 & R.22). The main technical deficiencies were that: there were no requirements for FIs falling under the supervisory purview of the SEC and the PIA to develop appropriate internal control policies and procedures; no requirement for appointment of Money Laundering Reporting Officers for FIs falling under the supervisory purview of the SEC and the PIA and to develop an on-going employee training programme; absence of requirements for FIs to maintain an adequately resourced and independent audit function to test compliance with AML/CFT policies and procedures; FIs not required to have in place screening procedures to ensure high standards when hiring employees. There were also no AML/CFT legal requirements for FIs with foreign branches and subsidiaries.

*Criterion 18.1 (Met)* - S.23 of the FIC Act, 2010 requires FIs to develop and implement programmes for the prevention of ML/TF or financing of proliferation and any other serious offence. Such programmes are required to include the following internal policies, procedures and controls:

- (a) designate a compliance officer at management level to be responsible for the implementation of, and on-going compliance with the Act.
- (b) adequate screening procedures to ensure high standards when hiring employees;
- (c) On-going AML/CFT training programme for officers and employees
- (d) Independent audit arrangements to test the system

*Criterion 18.2 (Not Met)* -

There are no provisions for financial groups to implement group-wide programmes against ML/TF, which should be applicable and appropriate to, all branches and majority owned subsidiaries of the financial group under the measures set in c.18.1 and 18.2.

*Criterion 18.3 (Met)* - In Zambia, FIs are required to ensure that their branches and majority owned subsidiaries outside the country implement the requirements of the FIC Act to the extent that domestic applicable laws of the host country so permit [S.27 (1) of the FIC Act]. Where the laws of the country where its branch or majority owned subsidiary is situated prevent compliance with the obligations stipulated under the Act, the FI is required to advise its supervisory authority, which may take such steps as it believes to be appropriate to accomplish the purposes of the FIC Act [S.27 (2) of the FIC Act].

### *Weighting and conclusion*

**Zambia is rated Largely Compliant with R.18.**

### ***Recommendation 19 – Higher-risk countries***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R. 21). The main technical deficiencies were that: non-existence of regulatory framework for FIs to pay attention when establishing business relationships with



countries that do not apply or insufficiently apply FATF Recommendations; no measures to inform FIs of AML/CFT concerns in other countries; and absence of specific legal framework to apply appropriate counter-measures to countries that continue not to apply FATF Recommendations.

*Criterion 19.1 (Not Met)* - There is no requirement for FIs to apply EDD, proportionate to the risks, to business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF.

*Criterion 19.2 (Met)* - S.25 (1) b of the FIC Act requires FIs to take such specific measures as may be prescribed to counter the risks with respect to business relations. The FIC issued a circular on 23 December 2015 on the publication of jurisdictions with deficiencies in AML/CFT regimes as well as measures to be taken by FIs when dealing with customers from these jurisdictions. The circular referred FIs to the list made available (and updated periodically) on the FATF website, also available on the FIC website. S.19 of the FIC Act also requires FIs to have appropriate risk management systems to identify potential higher risk situations and accordingly take the necessary risk mitigation measures.

*Criterion 19.3 (Met)* – Zambia issues circulars (like the one issued by FIC on 23 December 2015) to advise FIs on the FATF’s list of high-risk jurisdictions. The list on FIC’s website is updated immediately after the FATF lists are published and thus it reflects the latest advice by the FATF.

*Weighting and conclusion*

**Zambia is rated Largely Compliant with R.19.**

### ***Recommendation 20 – Reporting of suspicious transaction***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R.13 and SRIV). The main technical deficiencies were that: the requirement to report under the PPMLA did not extend to funds that are proceeds of a criminal activity but was restricted to a ML offence; AML/CFT laws did not provide for reporting requirements in respect of suspected terrorist financing activities, including attempted terrorist financing transactions; no legal provisions requiring reporting of attempted suspicious transactions; no agency that had been designated; no effective implementation of the reporting requirements in the securities and insurance sectors.

*Criterion 20.1 (Met)* - S.29(1) of the FIC Act requires FIs or their directors, principal officers, partners, professionals or employees that suspect or has reasonable grounds to suspect that any property— (a) is the proceeds of crime; or (b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or persons who finance terrorism; to report to the FIC no later than three working days after forming the suspicion.

*Criterion 20.2 (Met)* - S.29(2) of the FIC Act requires FIs to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction.

*Weighting and conclusion*

**Zambia is rated Compliant with R.20.**



### ***Recommendation 21 – Tipping-off and confidentiality***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R14). The main technical deficiencies were that in the absence of a judicial pronouncement it was not possible to ascertain the effectiveness of the safe harbour provisions under section 14 of the PPMLA.

*Criterion 21.1 (Met)* – S.35(1) of the FIC Act provides for protection of directors, principals, officers, partners, professionals or employees of FIs from any criminal, civil, disciplinary or administrative proceedings in relation to any reports or information made in good faith.

*Criterion 21.2 (Met)* – S.33 (1) of the FIC Act prohibits FIs or their directors, partners, officers, principals or employees from tipping off their customers or a third party that an STR or any other information concerning suspected ML/TF or any other serious offence shall be, is being or has been submitted to the FIC or that a ML or TF or any other serious offence investigation is being carried out.

#### *Weighting and conclusion*

**Zambia is rated Compliant with R.21.**

### ***Recommendation 22 – DNFBPs: Customer due diligence***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R.12). The main technical deficiencies were that: the DNFBPs were not regulated; the DNFBPs were not aware of the existence of AMLIU and that it had not assisted the DNFBPs to develop guidelines to assist them in administering AML/CFT matters; no written guidelines;; DNFBPs not subjected to CDD and record-keeping obligations; no education undertaken in the DNFBP sector.

*Criterion 22.1 (Partly Met)* – S.16 of the FIC Act, read with Regulation 7 of FIC (General) Regulations, 2016] requires DNFBPs to comply with the CDD requirements set out in R.10 The Trust and Company Service Provider activities are provided by accountants and lawyers who are designated as reporting entities under the FIC Act. (See R.10 for analysis of the deficiencies identified)

*Criterion 22.2 (Mostly Met)* - See R.11 (Record keeping) for a full analysis, as the provisions of the FIC Act on record keeping equally applies to DNFBPs.

*Criterion 22.3 (Mostly Met)* - See R.12 (PEPs) for a full analysis of Regulation 6 the FIC Act and Regulations in respect of PEPs obligations which also extend to DNFBPs.

*Criterion 22.4 (Partly Met)* - See analysis of R.15 for description of measures that also apply to DNFBPs. The deficiency noted under criterion R.15 also apply to this criterion.

*Criterion 22.5 (Mostly Met)* - DNFBPs are required to comply with the same third-party reliance requirements as FIs under the FIC Act – see analysis of R.17.

#### *Weighting and conclusion*

**Zambia is rated Partially Compliant with R.22.**

### ***Recommendation 23 – DNFBPs: Other measures***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R.16). The main technical deficiencies were that: DNFBPs were not sending STR reports to AMLIU; no monitoring of compliance on STR reporting by DNFBPs; minimal efforts by AMLIU to educate DNFBPs on their STR obligations; lack of clarity in regards to STR reporting obligations on lawyers and accountants; no specific provisions in the law against tipping-off on STRs reported or about to be reported; no guidelines to DNFBPs on reporting of STRs; no obligations on supervisory authorities to DNFBPs to advise them on how to deal with customers from high risk areas; law relating to reporting of STRs on TF transactions inadequate and unclear on the designated authority to which STRs on TF should be reported.

*Criterion 23.1 (Met)* - S.29 (1) and (3) of the FIC Act requires DNFBPs including lawyers, notaries, other independent legal professionals, accountants, and dealers in precious metals or stones to submit STRs on ML/TF to the FIC. See R.20 (suspicious transaction reporting) for a description of the requirements and findings that equally apply to this criterion.

*Criterion 23.2 (Mostly Met)* - DNFBPs are required to comply with the same internal control requirements as FIs under the FIC Act – see analysis of R.18.

*Criterion 23.3 (Mostly Met)* - DNFBPs are required to comply with the same higher-risk countries requirements as FIs under the FIC Act – see analysis of R.19.

*Criterion 23.4 (Met)* - DNFBPs are required to comply with the same tipping-off and confidentiality requirements as FIs – see analysis of R.21.

#### *Weighting and conclusion*

**Zambia is rated Largely Compliant with R.23.**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R. 33). The main technical deficiencies were that: the Registrar’s office was not yet fully computerized making it difficult for information to be readily accessed for companies whose records were still kept in a manual form; lack of the jurisdiction by the Registrar to verify on the particulars of the beneficiary owners could easily lead to manipulation of information supplied for such purposes compromising the information contained in the Registrar’s records; share warrant or bearer shares were transferable by mere delivery, making it difficult to monitor their transfer.

*Criterion 24.1(Met)* - There are legal instruments in Zambia that provide for establishment of different types of legal persons and processes for creating them. The information is publicly available at a fee. Authorities clarified that members of the public are able to conduct a search online upon payment of a statutory search fee.

*Criterion 24.2(Not Met)* - The NRA report does not have a section where all types of legal persons created in Zambia have been assessed. At the time of the on-site visit, the authorities had still not assessed the ML/TF risks of all types of legal persons created in the country.

*Criterion 24.3(Met)* - S.21 of the Companies Act 2017 requires the Registrar of Companies to establish and maintain a Register of the company in which shall, among other information, be entered records of documents lodged in compliance with the Act. According to s. 12 of the Companies Act, information that can be retained at the Companies Registry include company's name, certificate of incorporation, type of company, the registered address of the company, list of directors or secretaries articles of association. This information is accessible to the members of the public and competent authorities..

*Criterion 24.4 (Met)* - In terms of S.30 of Companies Act, 2017 companies are required to keep, at their registered office records which are but not limited to the following, articles of association, register of members and members indicating separately for each class of equity and preference shares held by each member residing in or outside Zambia etc.

*Criterion 24.5 (Met)* - The Companies Act provides mechanisms which ensures information required under criteria 24.3 and 24.4 is accurate and updated on a timely basis. Ss. 10(5) and 10(7) requires companies limited by guarantee to within 7 days lodge with the Registrar a person becoming a member or ceasing to be a member. Failure to do so is a criminal offence. Under s. 21(3), where change occurs in a company's shareholding or BO as set in a register maintained in accordance with the Act, the company to notify the Registrar of the changes within 14 days of the change. S. 27(2) provides that where a company amends its Articles of Association, it has within 21 days after the date of passing the resolution lodge a copy with the Registrar and in terms of s. 27(4), failure to do so is a criminal offence. Under s. 28(4), it is required that where a change occurs with a company's registered office, it informs the Registrar in a prescribed manner within 14 days failure to do so attract criminal punitive measures if the company and its officers are convicted. S. 30(1) sets out information which is supposed to be kept by a company at its registered office of business and in terms of s. 30(5) failure to maintain a document with such information is a criminal offence. On directors and secretaries, s. 31(1) requires that companies keep a register with specific details about its directors and secretaries at its registered office of business and failure to do so is a criminal offence under s. 31(5) of the Act..

*Criterion 24.6 (Mostly Met)* -

The definition of beneficial owner in S.2 of the Company's Act generally conforms to FATF definition of beneficial owner except that it has not included the aspect of "the natural person on whose behalf the transaction is conducted". However, the definition provided under FIC Act, 2010 may complement this shortcoming.

(a) The following is beneficial ownership information required to be in the companies register in terms of S.21 r/w S.12(e):

- the full names;
- the date of birth;
- the nationality or nationalities;
- the country of residence;
- the residential address;
- any other particulars as maybe prescribed; and
- a declaration by the applicants that the particulars stated from bullet 1 to 6 herein have been submitted to the Registrar with the knowledge of the individuals to whom the particulars relate.

- (b) S.21(3) of the Companies Act further ensures that where there are changes in respect of information on beneficial ownership this should be brought to the attention of the Registrar within 14 days.
- (c) There are no mechanisms to ensure that existing information held by other entities on beneficial ownership can be obtained by companies as required under this criterion however, this requirement is not mandatory as the above options have been satisfied.

*Criterion 24.7 (Met)* - S. 21(3) of the Companies Act, 2017 provides that where there are changes in respect of information on beneficial ownership this should be brought to the attention of the Registrar within 14 days. It is submitted that this is to ensure that the register maintained by the Registrar is kept up to date on the beneficial ownership information.

*Criterion 24.8 (Not Met)* - There is no provision creating legal obligation for companies to cooperate with competent authorities in determining the beneficial owner. The same applies with DNFBPs.

*Criterion 24.9 (Met)* - S.356 of the Companies Act provides for the retention of records or books as defined under S.2 for a period of 10 years and in accordance with the FIC Act No. 46 of 2010 (as amended).

*Criterion 24.10 (Met)* - The competent authorities, particularly LEAs can use their different powers as specified under R. 31.1 to obtain timely access to basic and beneficial ownership information held by relevant parties.

*Criterion 24.11 (Not Met)* - The new Companies Act does not have a provision on prohibition or permitting issuance of bearer shares or bearer share warrant. The old Companies Act allowed such issuance in section 69. At the time of on-site, Zambia had not yet developed mechanisms on how it would deal with share warrants that had been issued pursuant to the old Act.

*Criterion 24.12 (Met)* - Section 123 of the Companies Act does provide for a person to hold shares on behalf of a beneficial owner and such persons should disclose the status of the beneficial owner of the shares and such information is registered in the register.

*Criterion 24.13 (Mostly Met)* - The Companies Act 2017 provides sanctions for non-compliance with the requirements of the Act which are largely criminal in nature. S.373 of the Companies Act in particular, caters for general penalty where a person has contravened the provisions of the Act where no penalty is provided. The penalty provided in this section is not proportionate and dissuasive when one takes into account the provisions of S.324 of the Penal Code. Under the companies Act a natural person upon conviction can be sentenced to imprisonment for a term of 4 years while under the Penal Code, the same offence can attract a term of imprisonment of 7 years. The monetary penalty of 400,000 penalty units in the case of legal penalty is also considered too low to be dissuasive. S.370 of the Companies Act provides administrative sanctions which may be prescribed by the minister. The provision is couched in such a manner that the sanctions can be proportionate but the Minister has not yet prescribed the administrative sanctions to be imposed.

*Criterion 24.14 (Met)* - Using Mutual Legal Assistance in Criminal Matters Act, Zambia is able to provide international cooperation on the basis of Recommendation 37. Zambia is also a member of Corporate Registry Forum which can enable it to exchange information based on recommendation 40.

*Criterion 24.15 (Not Met)* - There is no mechanism that enables monitoring the quality of assistance received from other countries on basic and beneficial ownership.

#### *Weighting and conclusion*

The legal framework administering registration of legal persons has been relatively strengthened by the enactment of the new Companies Act which among other information, requires obtaining of information on BO when a legal person is being registered. However, with the law being new, the Regulations to operationalise access of the information by competent authorities were yet not in place at the time of the on-site. The authorities need to promulgate such Regulations as quickly as possible to enable PACRA to be able to share information on BO. Zambia should put mechanisms in place to enable assessment of ML/TF risks of all legal persons being created in Zambia, particularly foreign companies being incorporated. The legal framework regulating administration of companies and DNFBPs should be amended to have requirements for companies and DNFBPs to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner. The authorities should develop mechanisms on how they will deal with bearer shares or bearer share warrants that had been issued under the old Companies Act as the new Companies Act is silent on such shares. Zambia has to put in place mechanisms that enable monitoring of quality of assistance received from other countries on basic and beneficial ownership. Zambia to consider expeditiously addressing deficiencies identified under this Recommendation when it issues the implementing Regulations to the new Companies Act. **Zambia is rated Partially Compliant with R.24.**

#### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R. 34). The main technical deficiencies were that: it was not clear what is understood by protectors as well as other legal arrangements; the minister of Lands did not require trust providers to maintain records related to the trusts; competent authorities are not able to obtain or have access in a timely fashion to adequate accurate and current information on the beneficial ownership and control of legal arrangements and in particular the settlor, the trustee and beneficiaries of express trusts. With the enactment of the FIC Act majority of the deficiencies have been addressed.

*Criterion 25.1 (Partly Met)* - The Lands (Perpetual Succession) Act which the authorities cited as the authority for registering and administering trusts in Zambia does not have requirements in sub-criterion (a)-(c). However, Accountants acting as professional trustees are supposed to obtain all information pertaining to the trust as provided in s. 16(5)(c) of the FIC Act 2010 as a reporting entity and under s. 22(2)(a), keep the information for 10 years after involvement with the trust seizures.

*Criterion 25.2 (Partly Met)* – Whilst the Lands (Perpetual Succession) Act does not require information held pursuant to this Recommendation to be kept accurate and as up to date as possible nor to be updated on a timely basis, s. 24(a) of the FIC Act, requires reporting entities, which would include Accountants acting as professional trustees, to keep the information and records current. However, this does not extent to keeping the information accurate.

*Criterion 25.3 (Met)* - Zambia is able to take measures to ensure that trustees disclose their status to reporting institutions in accordance with section 16 (5)(c) of the FIC Act 2010 as amended.

*Criterion 25.4 (Met)* - The Lands (Perpetual Succession) Act does not prevent trustees from providing competent authorities with information relating to trust. In fact trustees are compelled to disclose their status to reporting institutions in accordance with section 16 (5)(c) of the FIC Act 2010 as amended.

*Criterion 25.5 (Met)* - Competent authorities can use powers bestowed on them by the different Acts they administer to obtain access to information held by trustees or other parties like reporting entities (including FIs) in a timely manner (see R. 31.1). S. 16(5)(c) of the FIC Act requires a reporting entity to obtain such information when entering into a business relationship with a legal arrangement

*Criterion 25.6 (Met)* - Analysis made under criterion 24.14 equally applies to this criterion.

*Criterion 25.7 (Not Met)* – There is no law that can ensure that trustees are legally liable for failure to perform duties relevant to meeting their obligations. Sanctions imposed under the Penal Code only relate to instances when a trustee in administering the trust has committed an act criminalised under the Code.

*Criterion 25.8 (Met)* - S. 43(c) of the FIC Act 2010 provides that a person (including reporting entities as the term person refers to both natural and artificial persons in Zambia) who fails to make information available in a timely manner in response to a lawful request will be committing an offence and subject to sanctions of a fine or imprisonment to a period of not more than 2 years or to both a fine or imprisonment upon conviction. The criminal sanction when compared to the offence appear proportionate and dissuasive.

#### *Weighting and conclusion*

The authorities position is noted that majority of trusts are express trusts and are registered under Land (Perpetual Succession) Act. However, this Act has major shortcomings in meeting requirements of Recommendations 25. That notwithstanding, the provisions of FIC Act mitigates in the majority deficiencies identified under the Land (Perpetual Succession) Act to meet most of the requirements under this Recommendation.

### **Recommendation 25 is rated Partially Compliant**

#### ***Recommendation 26 – Regulation and supervision of financial institutions***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R.23). The main technical deficiencies were that: there was no adequate CFT regulation and supervision in all FIs; money or value transfer service providers were not licensed and subject to AML/CFT supervision; all FIs, other than those falling under the supervisory purview of the BoZ, were not being supervised for money laundering purposes; it did not seem that the PIA takes necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function; not clear whether the Directors and senior management of the insurers were evaluated on the basis of the “fit and proper” criteria including those relating to expertise and integrity; no indication that the regulatory and supervisory measures that apply for prudential purposes and which were also relevant to money laundering apply in a similar manner for money laundering purposes to the securities and insurance sectors.

The SEC and PIA had not issued AML Directives to their respective licensees. Licensees of the SEC and the PIA were not supervised with respect to AML/CFT requirements

*Criterion 26.1 (Met)* – S. 2 of the FIC Act designates the BoZ, PIA and SEC as supervisory authorities for banks and other financial institutions (leasing companies, bureaux de change, micro finance institutions, building societies, the money transfer services providers, money value transfers, National Savings, and Credit Bank), pensions and insurance companies, and security sector, respectively.

#### *Market Entry*

*Criterion 26.2 (Met)* – BoZ, PIA, and SEC are responsible for the licensing, designation and registration of market entrants under their purview. BoZ is also responsible for the registration of bureau de change, and designation of money or value transfer service providers.

All Core Principles FIs are required to be licensed (S. 6 of the BFSa, S. 4 & 11 of the Insurance Act and S. 20, 32-34 of the Securities and Commission Act). MVTS providers are subject to designation as per S.12 of the NPS Act. Foreign exchange bureaux are licensed under S.6 of the BFSa. S. 28 of the FIC Act does not permit shell banks to operate in or through the territory of Zambia.

#### *Pensions and Insurance Authority*

S. 4 of the Insurance Act requires that all insurance companies should be licensed before they carry out any insurance business. Specific requirements for an insurer, broker, loss adjustor assessor, and insurance agent licence are provided from S. 10 to S.18 of the Insurance Act. The AML/CFT regime covers both the general insurance and long-term insurance companies.

#### *Securities and Exchange Commission*

S. 9(2) provides that the Commission shall - (b) license securities exchanges; (c) license capital markets operators; (d) license clearing and settlement agencies and other participants in the capital markets; and license credit rating agencies. S.20 (1) and S.21 of the Securities Act provides for specific licensing requirements for securities exchange; or clearing and settlement agency.

Further, Parts III, IV, V and VI of the Securities Act provide for specific licensing requirements for capital markets operators.

*Criterion 26.3 (Mostly Met)* - BoZ conducts fit-and-proper tests on the significant shareholders, beneficial owners, directors and management in terms of S. 7 and S. 41 of the BFSa. The fit and proper test includes the financial condition, resources, integrity, experience, criminal record and history.

BoZ also developed guidelines that provide the criteria for determining the fitness and probity of persons proposed to be shareholders, board members and senior management in banks or financial business. The guidelines provide guidance to ensure that shareholding structure of the applicant is reviewed so that the final beneficial owners are identified for ensuring that there's compliance with AML/CFT and compliance with control and shareholding limitations as contained in the BFSa. Sale/purchase of significant interest in a financial business requires prior approval of BoZ as per S. 25. Further, in accordance with S.34 (1) a person shall not be elected or appointed as a



director or senior management position of a financial service provider without the prior written approval of BoZ.

### *Pensions and Insurance Authority*

At the licensing stage, PIA conducts fit and proper tests on the owners, directors and management of an insurer, broker, loss adjustor assessor, and insurance agent as provided for under S. 10 to S. 18 of the Insurance Act. Further, the Insurance Act provides that a chief executive officer who shall be the principal officer of the insurer or broker shall be appointed with prior approval of the Registrar having satisfied requirements as stipulated under S. 26(3). PIA issued Fit and Proper Guidelines in February, 2015 that aim at ensuring that all persons exercising significant ownership, control, responsibility, management of or oversight of any regulated entity remain suitable for the discharge of their respective roles, duties, functions and responsibilities. A significant owner, means a person or a body whether corporate or unincorporated that holds more than 15.0% of the ordinary shareholder capital or has voting rights exceeding 15.0% of the regulated entity whether directly or indirectly through an intermediate company or a nominee, and can exercise considerable influence over the management of the regulated entity.

### *Securities and Exchange Commission*

Provisions for conducting fit and propriety tests are provided for under the Securities Act, 2016 as follows:- S. 34(1)(f) for any person who intends to do business as a share transfer agent; and S. 38(4) (e) for any person who wants to be licensed as a dealer or investment adviser. S. 66 provides for fitness standards for members, directors, members of a disciplinary committee and any other person with direct access to the securities exchange. Further, S. 123 (3), states that SEC shall refuse to grant an authorisation to operate as a manager, trustee or custodian of a collective investment scheme, unless satisfied that the applicant is a fit and proper person, and in relation to a venture capital fund, applicants' fit and propriety requirements are covered under S.129(4). In addition, S. 207 grants SEC powers to recommend to a securities exchange, clearing and settlement agency, dealer, investment adviser, or self regulatory organisation, the removal from office of a person in senior management who is not a fit and proper person. In December 2015, SEC issued Guidelines on Minimum Fit and Proper Requirements of Competence and Capability for Applicants for Representatives Licenses. Furthermore, SEC standard licensing procedures require that it vets directors of applicant companies with other supervisory authorities and LEAs. Nonetheless, there are no provisions for conducting fit and propriety tests for beneficial owners.

### *Risk-Based Approach to Supervision and Monitoring*

*Criterion 26.4 (Partly Met)* - BoZ, PIA and SEC are responsible for prudential supervision of Core Principle institutions in Zambia under the BFSAs, Insurance Act and Securities Act as well as designated AML/CFT supervisors as per S. 2 of the FIC Act and S. 19 of the FIC Act as amended. FIs under BoZ are subjected to consolidated prudential supervision as per S. 61 and S.62 of the BFSAs 2017, however it does not cover AML/CFT. There are no legal provisions in the PIA and SEC legislations requiring that that FIs should be supervised on a consolidated basis for AML/CFT purposes. MVTs providers and forex bureaus are supervised by BoZ for compliance with the FIC Act.

*Criterion 26.5 (Not Met)* - The frequency and intensity of onsite and offsite AML/CFT supervision is not determined by the level of ML/TF risks inherent in the regulated entities or

ML/TF risks present in the country. Zambia has not implemented a RBA to AML/CFT supervision.

*Criterion 26.6 (Partly Met)* – Some supervisory authorities do not conduct individual ML/TF risk assessment of FIs to determine their risk profiles. In certain cases the assessments are not reviewed periodically and/or when there are major events or developments in the management and operations of the financial institution or group.

#### *Weighting and Conclusion*

Zambia has designated financial supervisors that are responsible for regulating and supervising/monitoring FIs' compliance with the AML/CFT requirements. There are provisions requiring Core Principles FIs to be licensed, including forex bureaus while MVTS are designated. The law does not permit shell banks to operate in or through the territory of Zambia. Legal provisions are also available for conducting fitness and probity assessment for shareholders, BO, directors and senior management, except for SEC, which does not have legal provisions for conducting fit and propriety tests for BO. On the other hand, the frequency and intensity of onsite and offsite AML/CFT supervision is not determined by the level of ML/TF risks. Some supervisors do not review the assessment of individual risk profile of the FIs. Zambia has not implemented a RBA to AML/CFT supervision.

**Zambia is rated Partially Compliant with R.26.**

#### ***Recommendation 27 – Powers of supervisors***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R.29). The main technical deficiencies were that: supervisors did not have powers to monitor and ensure compliance by FIs with requirements to combat terrorist financing; supervisory authorities of the insurance and securities sectors had not issued directives/ guidelines to institutions under their supervision to facilitate onsite inspections with respect to AML/CFT.

*Criterion 27.1(Met)*– BOZ, PIA, and SEC have powers to supervise, monitor and ensure compliance by FIs with their obligations under S. 36 (2) of the FIC Act.

*Criterion 27.2 (Met)* –Section 36, Section 11A and 11B of the FIC Act No. 46 of 2010 (as amended) provide for the FIC and supervisory authorities to have authority to carry out inspections of FIs.

*Criterion 27.3 (Met)*– Supervisors have powers to compel production of any information that is reasonably required in the exercise of the supervisors function from the regulated entities without the need for a court order [S. 36 (3)(a) of the FIC Act, 11B(c) and 11B(d) of the FIC Act (as amended)].

*Criterion 27.4 (Met)* – S. 36(3)(b) of the FIC Act provides that a supervisory authority shall impose sanctions for any failure by reporting entities to comply with their obligations under the Act. In addition, S. 49(a) and (b) of the FIC Act provides that a person convicted of an offence is subject to the sanctions and measures available to the supervisory authority for administrative violations and may be banned permanently, from pursuing the business or profession which provided the opportunity for the offence to be committed. In addition, S. 49B of the FIC Act

provides for administrative sanctions. Furthermore, the supervisory powers have the power to restrict, suspend and cancel registration of applicants under the respective AML/CFT Directives.

*Weighting and Conclusion:*

**Zambia is rated Compliant with R.27.**

### ***Recommendation 28 – Regulation and supervision of DNFBPs***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R.24). The main technical deficiencies were that: there was no effective regulation and supervision of accountants on AML/CFT measures through issuing and implementation of guidelines; casino sector is not fully regulated and supervised on AML/CFT; inadequate vetting measures on AML/CFT when issuing casino licenses; no guidelines have been issued to regulate the casino sector; lack of adequate training of inspectors of casinos on AML/CFT measures; the Supervisory Authority on casinos had no powers to issue guidelines on CFT; some sectors of the DNFBPs are not regulated or supervised for AML/CFT purposes; no ongoing mechanisms to monitor nearly all the DNFBPs on AML/CFT measures.

#### *Casinos*

*Criterion 28.1 (Mostly Met)* - The FIC Act (S.2) designates Casinos as reporting entities.

- (a) Part VI, section 47 of the Tourism and Hospitality Act requires Casinos to be licensed. The same section of the Act equally designates the Licensing Committee (established under the Hospitality and Tourism Act) as the AML/CFT supervisory authority.
- (b) S.48 of the same Act provides for procedures for application for a Casino license. The licensing committee has in place vetting procedures for applicants of Casino licenses in Zambia. However, the Act and Guidelines for Licencing Casinos (issued in June 2017) do not require submission of information which can assist in identifying and preventing criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. The registration requirements for Casinos primarily focuses on ensuring the proper running of such operations, management of client's funds and indigenisation compliance and not specifically on identifying the controlling structure and beneficial ownership, in line with international AML/CFT requirements.
- (c) As with all other DNFBPs, S.36 (2) of the FIC Act requires supervisory authorities to monitor and ensure compliance by reporting entities with their obligations under the FIC Act.

#### *DNFBPs other than casinos*

*Criterion 28.2 (Mostly Met)* - The FIC Act designates various agencies as supervisory authorities under S. 2, 5 and 36 to monitor and ensure compliance by reporting entities as described below:

- (a) The Licensing Committee established under the Tourism and Hospitality Act for casinos;
- (b) The Registrar of Estate Agents established under the Estate Agents Act for real estate agents;
- (c) The FIC in terms of S. 5 of the FIC Act for dealers in precious metals and stones;
- (d) The LAZ established under the LAZ Act for lawyers, notaries and independent legal practitioners;

- (e) The ZICA established under the Accountants Act for accountants.

There are no legal restrictions on trust and company service provisions. Entities outside the legal practitioners and accountants which provide these services are not designated as reporting entities and therefore do not have a supervisory authority.

*Criterion 28.3 (Mostly Met)* – All DNFBPs, except independent trust and company service providers, are designated as reporting entities and thus subjected to AML/CFT monitoring and supervision (S.36 of FIC Act).

*Criterion 28.4 (Partly Met)* – The designated supervisory authorities have necessary powers to perform their functions, although the powers vary from one competent authority to another as explained below:

- (a) all supervisory authorities have specific powers to perform their functions, including monitoring compliance [S 36 (2) of FIC Act].
- (b) Most of supervisory authorities do not have legal provisions which empowers them to take necessary measures to prevent criminals or their associates from being professionally accredited, or holding (or being beneficial owner of) a significant or controlling interest, or holding a management function. The requirements do not specifically focus on identifying the controlling structure and beneficial ownership, in line with international AML/CFT Standards.

#### *Casinos*

See discussion on market entry under 28.1(b) above in relation to the weaknesses in the licencing procedures.

#### *Dealers in precious metals and stones*

There registration requirements include among others, the submission of list of shareholders, directors. However, the current law does not require the competent authorities to determine whether or not one is a criminal or not.

#### *Accountants*

S.22 of the Accountants Act provides for the disqualification from registration among other things due to conviction of an offence of dishonesty;

#### *Lawyers*

There is no specific legal provision which requires the Law Association to assess or obtain information on the criminal record of the applicants for a practicing licence.

#### *Real estate agents*

S.12(2) of the Estate Agents Act disqualifies a person from being registered as a real estate agent if he was convicted under any other law. (c) In terms of ability by supervisory authority to use sanctions, sections 42, 43, 44, 45, 46, 47 and 48 of the FIC Act (read with section 49) provides for various sanctions to be imposed for breach of the provisions of the Act.

*Criterion 28.5 (Not Met)* - The FIC has developed a Risk Based Approach to AML/CFT supervision framework which describes how to come up with a risk-based supervision. . Further, the framework enables the FIC to take into account the ML/TF risk profile of the DNFBPs when assessing the adequacy of their AML/CFT internal controls, policies and procedures. Apart from

the said FIC framework, there were no other risk based supervision guidance or framework documents presented – which outline how the other DNFBP supervisory authorities apply risk based supervision to reporting entities in terms of ML/TF risks.

### *Weighting and Conclusion*

Zambia mostly meets criteria 28.1 to 28.3; partly meets criteria 28.4 but does not meet 28.5. Majority of the DNFBPs do not take necessary steps to prevent criminals or their associates from holding significant interest (or becoming a beneficial owner) or holding a management function. All supervisory authorities have not started implementing risk-based supervision of the DNFBPs. Considering that the NRA report determined that the DNFBPs are high risk, these deficiencies could have a material impact on the AML/CFT regime.

**Zambia is rated Partially Compliant with R.28.**

### *Recommendation 29 Financial Intelligence Units*

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R.26). Some of the main technical deficiencies were that: the AMLIU did not have sufficient operational independence or autonomy; the AMLIU did not serve as a national centre for receiving, analysing and disseminating disclosures for STRs and other relevant information concerning ML as required under the Egmont definition of an FIU; AMLIU did not have adequate procedures to secure and protect information under its custody; AMLIU did not release periodic reports to guide on trends and typologies of criminal activities; AMLIU not seriously considering applying for Egmont Group membership;

*Criterion 29.1 (Met)* - The Zambia FIC is established under s.3 (1) of the FIC Act, No. 46 of 2010 (*as amended*). It is an administrative type FIU, legally independent and autonomous, headed by a Director General who has five directorates immediately under her office, (namely, Monitoring and Analysis, Compliance, Legal, ICT and Finance & Administration). The offices of the FIC are housed exclusively in a detached but secure and discrete building complex. It is the centre for receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing; and for the dissemination of financial intelligence. It is empowered to carry out all the core functions of an FIU under S. 5(1).

#### *Criterion 29.2 (Met)*

(a) (*Met*) - S.5(1) of the FIC Act (as amended) designates the FIC as a centre for a receipt of disclosures. S.29(1)(a) & (b) of the FIC Act obliges reporting entities to report suspicious transaction reports (STR) promptly to the Centre when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing.

(b). (*Met*)-The Centre is empowered under the FIC Act to receive disclosures for Wire Transfers (S. 26), Currency Transaction Reports (S.30) and Financial Instrument Reporting at the Border. The FIC (Prescribed Thresholds) Regulations, Statutory Instrument, No. 52 of 2016 prescribes thresholds for the above disclosures.

#### *Criterion 29.3 (Met)*

(a) (*Met*) - The legal provision in S. 10.(1)of the FIC Act empowers the FIC that further to the information that it receives from reporting entities be able to obtain and use additional information for the performance of the Centre's functions, under the FIC Act to request;

(b) *(Met)* - S.5 (2) (i) of the FIC Act (2010) further empowers the Centre to access directly or indirectly and on a timely basis financial, administrative and law enforcement information required for the better carrying out of its functions, have access to the widest possible range of financial, administrative and law enforcement information required for the better carrying out of its functions.

*Criterion 29.4 (Met)*

(a) *(Met)* S.5 (2) (a) Provides for the FIC to conduct operational analysis. As one of its core functions, the centre is conducting operational analysis from information received from reporting entities with the results of such analysis being disseminated to LEAs for investigation.

(b). *(Met)* In accordance with S.5 (2) (e) which provides for the Centre to undertake strategic analysis, the FIC has over the course of existence produced strategic analysis reports which culminate annually in the publication of the national trends and typologies report at the end of each calendar year.

*Criterion 29.5 (Met)* - S. 5(2) (b) and (c) of the FIC Amendment Act, provides for the dissemination of information to law enforcement agencies including providing information relating to suspicious transactions to any foreign designated authority as determined by the FIC. To this effect the FIC is involved in the spontaneous dissemination of intelligence to the various LEAs with its jurisdiction. The Intelligence Reports of which most are disseminated physically are protected by a seal and only authorized persons are permitted to deliver and to break the seal.

*Criterion 29.6 (Met)*

(a) *(Met)* - The FIC has in place policies and procedures that govern security and confidentiality of information and these are encapsulated in various policy manuals that include the Physical Security Policy, ICT Policy and the Analyst and Intelligence manual. All these serve to provide for standards and rules to ensure that systems are secure.

(b) *(Met)*. Through the Analyst and Intelligence Manual, procedures for handling both incoming and outgoing confidential information are clearly laid out. Staff are clear of their levels as regards the handling of information and intelligence. The office of the Director General is the central point by which information may be received and disseminated from the FIC.

(c) *(Met)*. The offices of the FIC are situated in a secured location, with the premises surrounded by a high security fence, with CCTV camera for surveillance. Entry into the location is through a manned security check point. The IT systems can only be accessed through authorised passwords and the server room is out of bounds for other staff other than authorised personnel.

*Criterion 29.7(Met)*

(a) *(Met)* - S.6 of the FIC Act(as amended) provides the Centre the authority to carry out its functions freely, including analysing, requesting and disseminating financial intelligence independently.

(b) *(Met)*. In terms of the FIC Amendment Act, S.3 (a) the FIC is empowered to enter into agreements or arrangements with domestic and foreign counterparts on the exchange of information. To this effect the FIC has to date 18 MoUs with other international agencies and jurisdictions.

(c) *(Not Applicable)*. It is also noted that in the Zambian case, the FIC is not a part of another authority and operates in its own stand-alone building.

(d) *(Met)*. –There are legal safeguards to protect the FIC from external interference in its operations.

Overall, the autonomy and independence of the FIC is enshrined in law. Further from an effective perspective of this criterion, issues of staff, skills, adequate ICT systems, the role and functions of the Board, in practice further strengthen the legal defined autonomy to make the FIC operationally independent.

*Criterion 29.8 (Met)* - Zambia has submitted its application for EGMONT membership and its assessment for membership is at an advanced stage. The authorities expect that Zambia would be admitted possibly in March 2018. Zambia's sponsors for membership are South Africa and Malawi who have already conducted an onsite visit to assess Zambia's readiness for EGMONT membership. The FIC was invited to attend the EGMONT meeting held in July 2017 in China.

### *Weighting and Conclusion*

The country meets the requirements on all the criteria on this recommendation.

**Zambia is rated Compliant with R.29.**

### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

In its MER under the First Round of MEs, Zambia was rated Largely Compliant with requirements of this Recommendation (formerly R. 27). The main technical deficiencies were that: no specific administrative or operational structures in place within ZPS to deal with the investigation of TF offences; the powers of investigation for TF offences had not been used and tested. The effectiveness of these powers could not be assessed.

*Criterion 30.1(Met)* - S.2 of the FIC Act designates law enforcement (competent) authorities with responsibility to investigate money laundering and associated predicate offences and terrorist financing offences, within the framework of national AML/CFT policies.

*Criterion 30.2(Partly Met)* - The laws provided only account for the predicate offence of corruption (ranked the highest proceeds generating predicate offence in the NRA) under Ss. 6 (2) – mandate of the ACC to investigate and prosecute corruption and allied offences, under the guidance of the DPP; 56 – granting the DG/Deputy DG or officer with Court Order to carry out financial investigations into any account; 67 – acceptance of evidence of unexplainable resources as corroborative evidence of corruption and allied offences; 78 – negation of confidentiality laws; 91 – provisions applicable whether offence committed in or outside Zambia.

*Criterion 30.3(Met)* - The Immigrations, Anti-Corruption Commission, Anti-Money Laundering Investigation Units, Financial Intelligence Centre, Zambia Revenue Authority are designated competent authorities that can expeditiously identify, trace, and initiate freezing of property that is or may become subject to confiscation.

*Criterion 30.4(Not Met)* - The authorities have conceded that Recommendation 30 (carrying out prompt proper investigations of predicate offences under the AML/CFT national policies; conducting parallel financial investigations, identifying tracing and freezing/seizing tainted property) does not apply to the named competent authorities that are not LEAs. Such powers should be extended to non-LEA competent authorities.



*Criterion 30.5 (Met)* - The ACC has sufficient powers to identify, trace and initiate freezing and seizing of assets.

#### *Weighting and Conclusion*

There are no provisions to enable non-LEA competent authorities to exercise powers of LEAs under Recommendation 30 while conducting parallel financial investigation when pursuing predicate offences, as recommended under Criterion 30.4. Secondly, the authorities did not demonstrate that all LEAs have the mandate to pursue related ML/TF offences discovered during parallel financial investigations for a predicate offence, as required under Criterion 30.2.

**Zambia is rated Largely Compliant with R.30.**

#### ***Recommendation 31- Powers of law enforcement and investigative authorities***

In its MER under the First Round of MEs, Zambia was rated Largely Compliant with requirements of this Recommendation (formerly R. 28). The main technical deficiencies were that: the authority which was supposed to investigate and prosecute TF offences was not yet in existence; there were no statistics or information on successful use of such procedures in assisting investigations and prosecution relating to FT matters.

#### *Criterion 31.1(Partly Met)* -

(a) The following provisions empower competent authorities in Zambia to compel production of records and documents by FI, DNFBPSs and other natural and legal persons for purposes of investigation and prosecution of ML/TF: s. 4H (4) and (6) of the AT Act, 2007, as amended by the AT (Amendment) Act, 2015 (NATC); s. 6 (a) of the Immigration and Deportation Act, 2010; (Immigration Department); Anti-Corruption Commission ss. 53 (1) and 56 of the Anti-Corruption Act, 2012 (Immigration Department); ss. 9 (2) (b) & (c), 9 (7) of the Customs and Excise Act, CAP 322 and Ss. 37 (1) (a) and (b) and 37 (2) (a) and (b) VAT Act, CAP 331 (ZRA); and s. 23 (a) of the PPMLA Act, 2001 (AMLIU).

(b) Powers for competent authorities to search persons and premises to obtain information and evidence are provided: s. 4H(4) of the AT Act, 2007, as amended by the AT (Amendment) Act, 2015(NATC); ss. 6(j) and 8(a) of the Immigration and Deportation Act, 2010 (Immigration); ss. 54 and 55 of the ACC Act, 2012 (ACC); s. 9 (1) and (2) of the Excise and Customs Act, CAP 322 and s. 38 (1) and (2) of the VAT Act, CAP 331 (Customs); and s. 23 (a) and (b) of the PPMLA, 2001 (AMLIU).

(c) Powers to take statements are provided under: s. 35(4)(a) of the AT Act, 2007(NATC); ss. 13 (2) (d) and 16 (2) (c) of the Immigration and Deportation Act, 2010; s. 53 (1) (a) and (b) of the AC Act (ACC), ss. 9 (8) of the Excise and Customs Act, CAP 322 and 37 (3) of the VAT Act, CAP 331 (ZRA). There are no specific provisions empowering AMLIU to take witness statements.

(d) Competent authorities can seize and obtain information and evidence using the following provisions: s. 4H (7) of the AT Act, as amended by the AT (Amendment) Act, 2015 (NATC); s. 53 (3) (c) and (d) of the ACC Act, 2012 (ACC); S. 9 (2) (a) and (d) of the Excise and Customs Act, CAP 322 and S. 38 (2) (b) of the VAT Act, CAP 331 (ZRA); and s. 23 (a) and (b) of the PPMLA, 2001. There are no provisions giving such powers to Immigration Officers.

The law does not empower the DEC, ZPS, and ZSIS, all being competent authorities that investigate offences of ML/FT to obtain evidence or information for prosecution or investigation of ML/TF by, if necessary, compelling production of records by FIs, DNFBPs, legal or natural persons; conduct searches of persons and premises; taking witness statements; or seizing and obtaining evidence.

*Criterion 31.2(Mostly Met) -*

(a) undercover operations - Competent authorities are able to conduct undercover operations based on: s. 6 (2) of the ACC Act, 2012 (ACC); and Clause 7 of Part III of the Narcotics Drugs and Psychotropic Substances (DEC) (Staff) Rules, 1994, which are a schedule to the ND&PS Act, CAP 96. There are no specific legal provisions entitling ZPS, ZRA, NATC, and AMLIU to undertake undercover operations.

(b) intercepting communications - Law Enforcement Authorities conducting ML, TF and predicate offence investigations can conduct interception of communication under the provisions of Ss. 66, 67 and 68 of the Electronic Communications and Transactions Act, 2009; read together with the stand-alone provisions of the legislation establishing the LEAs.

(c) accessing computer systems - Law Enforcement Authorities conducting ML, TF and other predicate offence investigations can access computer systems under the provisions of s. 4(H)(7) of the Anti-Terrorism (Amendment) Act of 2015; s. 6 (2) of the Anti-Corruption Act, 2012; and s. 5 of the Prohibition and Prevention of Money Laundering Act, 2001 as amended by Act 44 of 2010; and s. 38 of the VAT Act, Cap 338.

(d) controlled delivery – There are no provisions or other mechanisms available to enable LEAs to carry out controlled delivery.

Not all the listed LEAs have the legal mandate to conduct undercover operations, or conduct controlled delivery operations, as recommended under this Criterion.

*Criterion 31.3 (Met) -*

(a) LEAs in Zambia have mechanisms to identify, in a timely manner, whether natural or legal persons hold or control accounts under the following provisions: s. 6 (j) and (k) of the Immigration and Deportation Act, 2010 and s. 56 of the ACC Act, 2012, both of which give the respective LEAs powers to search and inspect bank and other accounts; s. 8 (1) of the Evidence (Bankers’) Act, CAP 44 allows LEAs to search and examine bank and other financial accounts records upon production of a warrant; exercising the powers of search and seizure of evidence/evidential material under s. 38 of the VAT Act, CAP 331 and S. 104 of the Income Tax Act, CAP 323; invoking the powers of the DG of FIC, under the provisions of S. 10 (1) of the FIC Act, 2010 as amended in 2016; utilisation of the requirements for PACRA to obtain and retain records of ultimate beneficial owners under S. 124 of the Companies Act, 2017; and utilizing the MoU between the FIC and ACC to facilitate the timely exchange of bank account information.

(b) S. 27(2) of the Forfeiture of Proceeds of Crime Act, 2010 provides for a process to identify assets without prior notification to the owner through *ex parte* restraining order applications.

*Criterion 31.4 (Met) –* Competent authorities conducting investigations of ML, associated predicate offences and TF are able to ask for all relevant information held by the FIU (S. 5 (2) of the FIC Act).

*Weighting and Conclusion*

Not all the listed competent authorities that investigate and prosecute ML, TF and associated predicate offences have all the recommended powers to access all relevant evidence and

information or documents for investigation or prosecution; can employ a wide range of investigative techniques for investigations.

**Zambia is rated Largely Compliant with R.31.**

### ***Recommendation 32 – Cash Couriers***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly SR. IX). The main technical deficiencies were that: no provisions directly dealing with the cross border transportation of currency; law does not provide for any cross border currency reports, reporting on both genuine and false declarations to be made to AMLIU; stakeholders not clear as to which institution to send reports between DEC and AMLIU; no definition of currency in the Act and bearer negotiable instruments are not specified; no provisions specifically requiring declarations by passengers in transit; sanctions not being applied for false declarations; no systems in place for notifying AMLIU about suspicious cross border transportation incidents; declaration requirements at the entry and exit points not being effectively applied.

*Criterion 32.1 (Met)* - Zambia uses a declaration system to control physical cross-border transportation of cash or bearer negotiable instruments or both of a value equivalent or more than USD 5,000. For travellers carrying cash or bearer negotiable instruments or both above the threshold, the declaration and enforcement are done under the provisions of S. 38 (1) of the FIC Act, 2010; while for the cross-border transportation of cash or BNI's or both above the threshold using mail or cargo, checks would be implemented under s. 41A of the Excise and Customs Act, CAP 323. The transportation of cash through post is prohibited under the Universal Postal Union Regulations (Regulation 6.1), to which Union, Zambia is a member. The definition of BNIs under S. 2 of the FIC Act, 2010 is in line with that of the Methodology.

*Criterion 32.2 (Met)* – Whereas criterion 32.2(a) and (c) are not applicable to Zambia, Criterion 32.2 (b) is addressed under S. 38 (1) of the FIC Act, 2010, and Reg. 8 (1) of SI 52 – 2016 that sets the threshold at \$5,000 or equivalent.

*Criterion 32.3 (Not Applicable)* Zambia uses a declaration system so a disclosure system is not applicable.

*Criterion 32.4 (Met)* - the relevant competent authority (ZRA), through its Customs Officers, upon discovery of a false declaration or disclosure of currency, BNIs or both, or failure to declare, has the authority to seize the undeclared or excess undeclared cash, BNI or both, and such seized amount shall be forfeited to the State, without the need to establish the origin or intended use (See S. 41A (4) of the E&C Act, CAP 323). The carrier has a right to appeal against such forfeiture to the Commissioner General, within 30 days from the date of seizure and forfeiture.

*Criterion 32.5 (Met)* - Under provisions of S.38 (2) of the FIC Act, 2010, a false declaration would be in contravention of the required declaration under Section 38 (1) and the person making the false declaration would be liable to a fine not exceeding 100,000 penalty units or imprisonment for one year or both. Additionally, under Section 41 A, if an officer believes that a declaration is false, he or she is authorised to conduct a search and any currency notes in excess of the threshold (USD 5,000) that has not been declared or been falsely declared shall be forfeited. Persons that make a false declaration are liable to imprisonment, a large fine and forfeiture of the undeclared currency or BNI; the sanctions for non-declaration are proportionate and dissuasive.

*Criterion 32.6 (Met)* - Under the provisions of Regulation 8 (3) of SI 52 of 2016, a customs officer is required to transmit a declaration, made to them under sub-regulation (1), to the FIC as soon as practicable. Additionally, the Zambia Revenue Authority, through the Customs Division, submits monthly schedules for all currency declarations through the borders.

*Criterion 32.7 (Met)* - S.6 (e) of the Immigration and Deportation Act No. 18 of 2010 provides for liaison between the Immigration Authorities and the Zambia Revenue Authority on issues relating to the implementation of border procedures, including handling of cash couriers. Further, S.6 of the PPML Act No. 14 of 2001 as amended provides for liaison with other LEAs in the Conduct of investigations and prosecutions of ML offences.

*Criterion 32.8-(Met).*

- a) The provisions of S. 15 of the PPMLA, 2001, empowers authorised officers to seize property reasonably suspected of being derived from ML. There is no time limit within which the officer must release the property, as under S. 16 (1) of the PPMLA, 2001, the authorized officer may release the property at any time, provided he is satisfied that it is not liable to forfeiture under the Act, and it is not otherwise required for the purpose of any investigations or proceedings under this Act or for the purpose of any prosecution under any other written law. Therefore, the period is undefined, but adequate as the authorized officer can hold the seized property for as long as he deems it necessary, subject to appeal to the CG. Regarding TF, an authorized officer can seize money if he has reasonable grounds to suspect that the money being imported into or exported from Zambia is terrorist property (S. 27 (1) of the ATA, 2007), but has to make an application to the High Court within seven days for a detention order to maintain the seizure (S. 27 (4) of ATA, 2007). The detention order granted will maintain the seizure for a further 60 days, but the order can be renewed for 30 days indefinitely or until the money is produced in court in proceedings against the suspect. The provisions cited mean that the seizure or detention of the funds can be maintained for as long as the authority deem it necessary and the High Court agrees with them. The period of seizure is, therefore, adequate for both ML and TF investigations.
- b) The provisions of S. 41 (4) of the Customs and Excise Act, Cap 322, which empowers officers to search for currency and where it is found in excess of the threshold amount, the currency notes in excess of the threshold would be subject to seizure and be forfeited to the State.

*Criterion 32.9 (Met)* - Zambia's declaration system allows for international cooperation by ensuring information obtained and retained where there is (a) a declaration of cross-border transportation of cash, BNI's or both exceeding the threshold (under S. 38 (1) of the FIC Act, 2010 or S. 41A of the C & E Act, CAP 323); or (b) a report of a false disclosure established after a search, seizure and forfeiture (under the provisions of S. 41A (3) and (4) of the C & E Act, CAP 323); and (c) where an authorized officer seizes cash, BNI's or both on suspicion of ML/TF (under the provisions of S. 15 of the PPMLA/ S. 27 of the ATA, 2007, respectively); such information is reported to the FIC and can be shared spontaneously or upon request by the DG-FIC with foreign designated authorities under the provisions of S. 40 of the FIC Act, 2010.

*Criterion 32.10. (Met)* - the authorities cited memoranda that restricting the use and/or disclosure of information obtained and shared to ensure information collected through declaration is not misused to restrict trade payments between countries for services and goods, or restrict freedom of capital movements.

*Criterion 32.11 (Met)* - Persons carrying out physical cross-border transportation of cash or BNIs suspected or deemed to be related to ML/TF are liable to, upon conviction, a fine not exceeding 100,000 penalty points or Zambian Kwacha 18 million (equivalent to approximately USD 1.5million) under the provisions of S. 38 (2) of the FIC Act, 2010; in addition to forfeiture of the excess, undeclared or currency/BNI suspected of being connected with ML/TF, under the provisions of S. 38 (4) of the FIC Act, 2010 and S. 41A (4) of the C & E Act, CAP 323. These criminal and civil or administrative sanctions are proportionate and dissuasive. Further, there are ample provisions for freezing and eventual confiscation as cited under criterion 32.5 and 32.8, above.

#### *Weighting and Conclusion*

**Zambia is rated Compliant with R.32.**

### ***Recommendation 33 – Statistics***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R. 32). The main technical deficiency was that there were no mechanisms in place to review the effectiveness of systems for combating ML and TF on a regular basis.

*Criterion 33.1(Met)* -S. 54 of the FIC Act, 2010 requires FIC to maintain comprehensive statistics on:

- a) 54 (1) (a) of the FIC Act mandates the FIC to keep comprehensive statistics on STRs received and disseminated to LEAs;
- b) S. 54 (1) (b) of the FIC Act mandates the FIC to keep comprehensive statistics on ML/TF investigations, prosecutions and convictions;
- c) S. 54 (1) (c) of the FIC Act mandates the FIC to keep comprehensive statistics on property frozen, seized and confiscated;
- d) S. 54 (1) (d) of the FIC Act mandates the FIC to keep comprehensive statistics on international requests for MLA or other cooperation.

#### *Weighting and Conclusion*

**Zambia is rated Compliant with R.33.**

### ***Recommendation 34 – Guidance and feedback***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R. 25). The main technical deficiencies were that: no guidelines had been established for the financial institutions falling under the supervisory purview of the PIA and the SEC to assist these financial institutions to implement and comply with their respective AML/CFT requirements; no guidelines had been established to assist DNFBP to implement and comply with their respective AML/CFT requirements.

*Criterion 34.1 (Met)* – Guidance to the industry on AML/CFT is mainly disseminated through the FIC and supervisory authorities. FIC provides guidance to both FIs and DNFBPs that is also accessible on its website. The FIC has power to issue guidelines pursuant to section 56 (1) of the FIC Act No. 46 of 2010 (as amended) which empowers the Centre to issue instructions,

directives, guidelines or rules to reporting entities as it considers necessary for the better carrying out of its functions. FIC guidance notes issued are tailored to the different reporting sectors and deals with reporting, record-keeping, customer due diligence, general compliance information, high risk jurisdictions, prescribed thresholds, and AML/CFT Procedures for PEPs. The FIC also announced the results of the NRA through a circular. In 2017, BoZ, SEC, and PIA issued directives on AML/CFT or Proliferation Directives that deals with reporting obligations and AML/CFT compliance. Additionally, S.54(2) of the FIC Act (as amended) provides that the Centre shall, as far as is practicable, provide information to a reporting entity on the action taken by the Centre with regard to a suspicious transaction report. BoZ and SEC further provide feedback after onsite examinations where regulated entities are requested to address the shortfalls.

### *Weighting and Conclusion*

**Zambia is rated Compliant with R.34.**

### ***Recommendation 35 – Sanctions***

In its MER under the First Round of MEs, Zambia was rated Largely Compliant with requirements of this Recommendation (formerly R.17). The main technical deficiency was that: there was no provision under the PPMLA for administrative sanctions against institutions that fail to comply with PPMLA; the ATA does not specifically make a distinction between a natural and legal person.

*Criterion 35.1 (Partly Met)* -In Zambia criminal, civil or administrative sanctions are available that deal with natural or legal persons that fail to comply with the AML/CFT requirements and legislation.

**Targeted financial sanctions (R.6):** The legal framework does not provide for sanctions for failure to freeze funds without delay. Regulation 14 of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations 2017 prohibits any person from dealing with funds or economic resources of a listed person and failure to comply with this is an offence. However, Regulation 14(2) states that upon a conviction a person shall be liable to penalties specified in the Act. The Act does not specify the penalty for the offence.

**NPOs (R.8):** Sanctions for failing to comply with relevant requirements are provided in terms of S. 17 and S. 36 of the NGO Act [See analysis of c.8.4(b)].

**Preventive Measures and Reporting (R.9-23):** S.42-48 of the FIC Act (as amended) provides for criminal sanctions to be imposed for breach of some obligations under the FIC Act. In addition, S.49B(1) of the FIC Act (as amended) provides for administrative sanctions to be imposed by the FIC or a supervisory authority where a reporting entity is in breach of the provisions of the FIC Act which is not a criminal offence. Besides, S.49 of the FIC Act provides that a person convicted of an offence under the Act (a) is subject, in addition, to the sanctions and measures available to the supervisory authority for administrative violations; and (b) may be banned permanently, or for such period as the Minister may prescribe, from pursuing the business or profession which provided the opportunity for the offence to be committed. Unfortunately, violation of majority of obligations in relation to preventive measures constitutes a criminal offence. This means that in such cases competent authorities have to go to court irrespective of



the severity of violation. For this purpose, the legal framework does not give room for proportionate sanctions.

*Criterion 35.2 (Met)* – S.52 of the FIC Act provides where an offence under the Act is committed by a body corporate or unincorporated body, every director or manager of the body corporate or unincorporated body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

#### *Weighting and Conclusion*

**Zambia is rated Partially Compliant with R.35.**

### ***Recommendation 36 – International instruments***

In its MER under the First Round of MEs, Zambia was rated Largely Compliant with requirements of R.35 and Non-Compliant with the requirements of SR. I. The main technical deficiencies were that: Zambia had not fully implemented the Palermo Convention as it had no provisions for witness assistance, protection and relocation; no adequate training programmes and technical assistance on ML at national level to enhance effective implementation of the UN Palermo Convention; Zambia had not developed preventive measures and national projects against ML that can be evaluated to determine implementation of the convention; No effective framework to administer implementation of CFT matters; Standard of implementation of CFT provisions could not be determined; no guidelines to the regulated institutions in implementing CFT laws; no clear accountability on who handles and report on UN Security Council Special Resolutions.

*Criterion 36.1 (Mostly Met)* - Zambia is a party to Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption (the Merida Convention) and the Terrorist Financing Convention. However, there are two conventions mentioned in criterion 5.1 which have not yet been ratified by Zambia and as such not all convention offences are covered for purposes of terrorist financing.

*Criterion 36.2 (Met)* - Zambia has enacted relevant laws to implement the Vienna Convention, the Palermo Convention, the Merida Convention and the Terrorist Financing Convention.

#### *Weighting and Conclusion*

There is a minor deficiency. Zambia needs to ratify the remaining convention as observed in criterion 36.1.

**Zambia is rated Largely Compliant with R.36.**

### ***Recommendation 37 - Mutual legal assistance***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of R36 and Non-Compliant with the requirements of SR V. The main technical deficiencies were that: the mutual legal assistance in criminal matters act did not cover all forms



of assistance covered under the international standards; no information on the kind of MLA offered and the extent to which such assistance was provided; no statistics available on the number of requests which had been received for the past three years and on the nature of the applications in terms of assistance required and how they were handled; no information on how much time it took to provide the assistance required and whether it was provided in a constructive and effective manner; With regards to SR.V the deficiencies were that: there were no mechanisms in place to administer exchange of information relating to terrorist financing; no time frame given to handle such requests and the ability of the authorities to provide such assistance in a timely and effective manner could not be verified; not able to determine proper accountability on the handling of requests relating to FT and whether there had been such requests before; no proper recording system of international cooperation requests on CFT was provided.

*Criterion 37.1 (Met)* - Zambia uses Mutual Legal Assistance in Criminal Matters Act, of 1993 to provide MLA requests. S.10 (2)(f) in particular enables the authorities, when requested to determine the period within which a request may be granted. The Office of Attorney General also maintains a Service Level Charter which prescribes the times within which requests have to be attended to.

*Criterion 37.2 (Mostly Met)* – Zambia uses the Attorney General as the Central Authority in the transmission and execution of requests. In terms of the Service Level Charter, urgent request are attended to in 5 days. However, Zambia does not maintain case mangament system that would enable it to monitor requests.

*Criterion 37.3 (Met)* - S.7 of the MLA in Criminal Matters Act enable Zambia to grant MLA to another state even in the absence of treaty.

*Criterion 37.4 (Met)* – The MLA in Criminal Matters Act in S.11 does not provide for refusal to grant MLA based on fiscal matters nor secrecy obligations.

*Criterion 37.5 (Met)* - S.46(6) of the MLA in Criminal Matters Act provides for maintaining confidentiality of the request received.

*Criterion 37.6 (Met)* - S.11 of MLACMA empowers the AG to refuse request by a foreign country if the prosecution or punishment in respect of an act or omission if it had occurred in Zambia would not have constituted an offence under Zambian law. This means whether coercive action exists or not request by a foreign state has to be based on dual criminality.

*Criterion 37.7 (Met)* - Zambia shall not grant a request to a foreign state where the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence against Zambian law - (*See section 11(2) (a) and (b) of MLACM*).

*Criterion 37.8 (Mostly Met)* – S.20 of the MLA in Criminal Matters Act empowers the magistrate to issue out an order that will enable gathering of evidence. However, due to some shortcomings noted in R.31 the order may not be sufficient enough to cover some elements related to the shortcoming noted in Recommendation 31.

### *Weighting and conclusion*

Zambia is not in a position to monitor requests made due to lack of case management system. Not all listed competent authorities that investigate and prosecute ML, TF and associated predicate offences have all the recommended powers to access all relevant evidence and information or documents for investigation or prosecution. **Zambia is rated Largely Compliant with R.37.**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

In its MER under the First Round of MEs, Zambia was rated Non-Compliant with requirements of this Recommendation (formerly R. 38). The main technical deficiency were that: it could not be determined whether any mutual legal assistance requests relating to identification, freezing, seizure or confiscation of laundered property, proceeds from, instrumentalities used in or intended to be used in the commission of any ML, FT or other predicate offences had been received; it could also not be determined whether effective and timely procedures had been followed in response to such requests; no provisions for the establishment of an asset forfeiture fund to deposit confiscated property; no provisions for asset sharing of confiscated property where there have been co-ordinated investigations; no provision for seizure, confiscation or forfeiture of property of corresponding value; the MLACMA does not provide for effective and timely mutual legal assistance to requests regarding the identification, freezing and seizure or confiscation of property of corresponding value.

*Criterion 38.1 (Met)* - S.40 of the FPCA enables a police officer authorised under MLA in Criminal Matters Act, to search and seize tainted property in relation to a foreign offence. Tainted property means property used in or in connection with the commission of the offence; property intended to be used in or in commission of the offence or proceeds of crime. S. 52(1) of the FPCA provides for application of a foreign restraining order on tainted property and s. 15 as read with s. 18 of the same Act provides for payment of property of corresponding value, with s. 26 of the same Act providing for amounts that can be paid in respect of a registered foreign confiscation order. The FPCA also extensively makes cross reference to and relies on registration and enforcement of foreign orders under the Mutual Legal Assistance Criminal Matters Act.

*Criterion 38.2 (Partly Met)* - S.9 of the FPCA is relevant to the extent that the perpetrator would have absconded or died. This section does not appear to be applicable in the event of providing assistance to foreign jurisdictions.

*Criterion 38.3 (Met)* - (a) S. 63 of the FPCA provides for provisional measures which can be used by LEAs relating to foreign offences. (b) Part VI of the FPCA provides creation of an Forfeited Assets Fund which provides for management and disposal of frozen, seized or confiscated assets.

*Criterion 38.4 (Met)* - There is authority under S.75 of FPCA to share confiscated property with other states.

### *Weighting and conclusion*

Zambia met criteria 38.1, 38.3 and 38.4, and partly met criterion 38.2.

**Zambia is rated Largely Compliant with R.38.**

### ***Recommendation 39 – Extradition***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R. 39). The main technical deficiency were that: there was no information on the efficiency and implementation of the extradition requests; no record of how many extradition requests had been handled and how many of those dealt with related to Zambian nationals; no information on the ability of the Zambian Authorities to effectively handle extradition requests in a timely manner.

*Criterion 39.1 (Partly Met)* – (a) Money laundering and terrorist financing are extraditable offences. (b) There is no case management system in place to process timely execution of extradition requests. (c) Conditions in S.34, 35, 39(2) and 41 of the Extradition Act may make execution of extradition request unduly restrictive.

*Criterion 39.2 (Met)* - (a) In terms of S.34 of the Extradition Act, Zambia cannot extradite its own nationals.

(b) S.59 permits Zambia to prosecute and convict its nationals where a request for extradition had been made but for S.34 such a person could not be extradited.

*Criterion 39.3 (Met)* - Dual criminality is a requirement for extradition to be granted in Zambia. S.13 of the Extradition Act states that the “extraditable offence” should be an offence against the law in force in the Republic and punishable under the laws of the Republic, being an offence for which extradition is provided under the terms of an extradition agreement, or for which reciprocal extradition facilities are afforded.

*Criterion 39.4 (Not Met)* - Simplified extradition mechanism does not exist in Zambia.

#### *Weighting and conclusion*

While Zambia has in place legislation that enables extradition, deficiencies identified under criterion 39.1 and 39.4 renders this legal framework not to fully adhere to the requirements of this Recommendation.

**Zambia is rated Largely Compliant with R.39.**

### ***Recommendation 40 – Other forms of international cooperation***

In its MER under the First Round of MEs, Zambia was rated Partially Compliant with requirements of this Recommendation (formerly R. 40). The main technical deficiency were that: there was no time frame given for providing assistance and the manner of providing such assistance; effectiveness of exchange of information could not be determined; spontaneous exchange of information relating to AML not provided for; poor safeguarding of information received from the regulated institutions by AMLIU; no provisions allowing AMLIU to access directly the databases of the relevant institutions; no statistics maintained on the requests for international cooperation.

*Criterion 40.1 (Met)* - Competent authorities rapidly provide international co-operation in relation to money laundering, associated predicate offences and terrorist financing, spontaneously or upon request. The Mutual Legal Assistance Act in Criminal Matters provide legal basis for the jurisdiction to render assistance to other jurisdictions. Further, S.6(d) of PPMLA as amended

provides for the cooperation with LEAs and institutions in other Jurisdictions responsible for the investigations and prosecution of money laundering offences. S.5(3) (a) of the FIC Act (as amended) empowers the Centre in performing its functions to cooperate and exchange information with, or enter into an agreement or arrangement, in writing, with a foreign designated authority, supervisory authority, LEAs or other relevant authority.

*Criterion 40.2 (Mostly Met)* - The competent authorities have an extensive legal basis for providing cooperation. The FIC can provide information based on S.5 of the FIC Act and signed MoUs with several other foreign entities; BoZ under S. 62(2) of the BFS Act 2017, S.165 of the SEC Act, allows the SEC to provide the assistance regardless of the nature or status of the requesting authority in order to assist the recipient of the assistance to perform its functions under any other law, including AML/CFT. The AG's office normally responds to all requests emanating from foreign countries and has received several such requests though some are not ML/TF related. BoZ, SEC and PIA can exchange information on supervisory matters (including matters relating to ML/TF), whether based on a Memorandum of Understanding or not, with supervisory authorities in other countries mainly on reciprocal basis. ZPS share information with member states from the SARPCCO while it also shares information through INTERPOL. ACC and DEC have also used Interpol to exchange information. Further, Zambia is a member of ARINSA, an informal network which is also a member of other informal networks across the world where any and all means deemed appropriate such as, telephone communications, email correspondences, fax messages and other efficient means are used to render assistance or cooperation. Article 4 of the MoU between Federal Republic of Russia and DEC provides that in urgent cases, oral phone request may be accepted, but should be confirmed either through writing or technical means of text transfer within three days. All authorities use clear and secure gateways, mechanism or channels, e.g. the authorities have cited the mechanism for transmission and execution of requests only for the FIC. Other competent authorities such as SEC, ACC, NPA, and the AMLIU have not been provided for; MoUs between local competent authorities and foreign competent authorities; trade agreements such as COMESA and SADC Treaties, which are on the COMESA, SADC and ZRA websites have elaborate mechanisms for exchange of information. Nothing prevents the competent authorities from using the most efficient means to co-operate. Relevant authorities can co-operate directly with their counterparts in accordance with Zambian laws. Except for the FIC, the rest of the competent authorities do not demonstrate that they have a prioritization process. There provisions empowering the FIC to communicate information it has received to a foreign designated authority. For DEC, documents are "marked secret" and are only accessed and used by the specific officers assigned to deal with particular requests. For ZRA to safe guard information obtained under international cooperation, S.8 of the Income Tax Act, provides for preserving the secrecy of the information, S.50A of the VAT act requires any information received by a country or territory under an agreement entered into to be treated as secret in the same manner as information obtained under the domestic laws of that country or territory and shall be disclosed only to persons or authorities involved in the assessment, collection enforcement, prosecution or determination of appeals in relation to, the taxes. S. 37 makes it an offence not to comply with the secrecy provisions

*Criterion 40.3 (Met)* – Zambia has demonstrated the ability to negotiate and sign, in a timely way, and with the widest range of foreign counterparts. Under S.5.2(f) of the FIC Act, the FIU can enter into an agreement or arrangement in writing with a foreign designated authority which the FIC Board considers necessary or desirable for the discharge or performance of its functions. As at the date of the onsite visit, FIC had entered signed 18 MoUs with different countries, both regionally and internationally. FIC and other competent authorities do not necessarily need a MoU

to provide assistance, though they have established bi-lateral and signed up to multilateral MoUs when appropriate.

*Criterion 40.4 (Not Met)* - Requesting competent authorities do not provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained.

*Criterion 40.5 (Mostly Met)* - (a) (*Met*) - The competent authorities do not prohibit or place unreasonable or unduly restrictive conditions on information exchange or assistance with foreign counterparts. Neither do they refuse requests on grounds that they are considered to involve fiscal matters.

(b) (*Met*) the authorities demonstrated that secrecy or confidentiality provisions in other laws cannot prohibit the competent authorities such as the FIC from retrieving information held by reporting entities, and rendering assistance (S.32 of the FIC Act);

(c) (*Met*) In accordance with the provisions of S. 11 (2) (d) of the MLA in Criminal Matters Act, competent authorities will not refuse a request for assistances on grounds that there is an inquiry, investigation or proceeding underway in the Zambia, unless the assistance would impede that inquiry, investigation or proceeding is valid;

(d) (*Met*) difference in status of the requesting authority to the requested competent authority in Zambia is not among the mandatory or discretionary grounds for a competent authority to refuse to render assistance, as provided under S. 11 of the MLA in Criminal Matters Act.

*Criterion 40.6 (Partially Met)* – S.5 (2) (c) and 40 (c) of the FIC Act demonstrate the controls and safeguards which ensure that information exchanged with counterpart competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided, unless the requested competent authority has given prior authorization. S.16(1) of the AC Act No 3 of 2012 prohibits disclosure of information to unauthorised persons which ensures maximum protection for information exchanged. DEC ensures that there is a confidentiality clause in all the MoUs signed with other foreign competent authorities. For example, article 7 the MoU between Federal Republic of Russia and DEC provides for confidentiality. Article 5 of the ZRA MoUs clearly spells out that the permissible use of the information shall only be used for the purpose spelled out in the MoUs unless with written permission. However, there are no similar provisions cited for the other competent authorities authorized to render assistance.

*Criterion 40.7 (Met)* – Competent authorities are required to maintain appropriate confidentiality for any request for co-operation and the information exchanged, consistent with both parties' obligations concerning confidentiality, privacy, and data protection. For example, S.40 (c) of the FIC Act, 2010, cited, shows that the FIC has legal basis to insist on minimum protection for information exchanged with designated authorities and may only provide information when satisfied that a foreign designated authority has given appropriate undertakings. S.16(1) of the AC Act prohibits disclosure of information to unauthorised persons which ensures minimum protection for information exchanged. DEC ensures that there is a confidentiality clause in all the MoUs signed with other foreign competent authorities.

*Criterion 40.8 (Partially Met)* – S.5 (3) (a) and (b) of the FIC Amendment Act, empowers the FIC to conduct inquiries on behalf of foreign counterparts. DEC uses informal means (ARINSA), MoUs signed as a result of Joint Permanent Commissions for Peace and Security (JOPCS) between countries to exchange information and also formal means (Interpol and MLA) for the purposes of exchanging information or to conduct inquiries domestically on behalf of Foreign

counterparts. Article 11 in the sample MoU submitted empowers ZRA to conduct inquiries on behalf of foreign counterparts. However, similar provisions should be cited for the other competent authorities authorized to provide information.

*Criterion 40.9 (Met)* – S.5 (3) (a) of the FIC Act, provides the FIC with a legal basis for providing co-operation on money laundering, associated predicate offences and terrorist financing

*Criterion 40.10 (Met)* - S.5 (3) (b) of the FIC Act, as amended, requires the FIC to notify foreign designated authorities the results of inquiries conducted on information they provide or on their behalf.

*Criterion 40.11 (Met)* - S.5 (3) (a), (c) and (e) of the FIC Act, as amended, empower the FIC to obtain, request, access directly or indirectly and exchange any information, statistics from competent authorities where the information is required for the discharge of its functions or for purposes of the FIC Act.

#### *Exchange of Information Between Financial Supervisors*

*Criterion 40.12 (Mostly Met)* – S.5(3)(a) of the FIC Act (as amended) enables the FIC to cooperate and exchange information with, or enter into an agreement or arrangement, in writing, with a foreign designated authority, supervisory authority, law enforcement agency or other relevant authority to facilitate the discharge or performance of its functions. BoZ under S. 62(2) of the BFS 2017 allows the Bank to enter into arrangements for sharing supervisory information on a reciprocal basis with the competent supervisory authorities outside Zambia. For the capital market sector, S.165 of the SEC Act, allows the SEC to provide the assistance regardless of the nature or status of the requesting authority in order to assist the recipient of the assistance to perform its functions under any other law, including AML/CFT. However, there are no provision for PIA that provides for legal basis for cooperation with other foreign counterparts.

*Criterion 40.13 (Mostly Met)* – With the exception of PIA, all the other financial supervisors are able to exchange with foreign counterparts information domestically available to them, including information held by FIs, in a manner proportionate to their respective needs. Information is exchanged provided that it is for the purpose of fulfilling the functions of the foreign competent authority, and upon confirmation that the requesting country has similar confidentiality requirements (see legal basis under c.40.12).

*Criterion 40.14 (Met)* –

(a) PIA, SEC and BoZ signed an MoU in May 2003 to allow for the exchange of any information. The MoU has a general clause that states that the scope of the MoU include sharing of information on any matters agreed by the authorities from time to time, including AML/CFT matters.

(b) The Zambian authorities indicated that the scope of the MoUs provide for exchange of any information that may be necessary for the effective supervision of a reporting entity as and when required by counterparties. The MoUs with prudential regulators were established under the Basel core principles on cross-border and consolidated supervision of reporting entities operating in Zambia. It was noted during the onsite visit that the three financial sector supervisors share information with regard to the fit and properness of key persons to be engaged in the financial sector.

(c) The Zambian authorities indicated that the scope of the MoUs provide for exchange of any information that may be necessary for the effective supervision of a reporting entity as and when

required by counterparties. In addition, BoZ, SEC, and PIA meet on a quarterly basis to share notes of their regulated entities.

*Criterion 40.15 (Mostly Met)* – With the exception of PIA, S. 62(2) of the BFSAs and S. 162 of the Securities Act empowers BoZ and SEC respectively to conduct inquiries on behalf of their foreign counterparts and to permit foreign supervisors to conduct inquiries in Zambia to facilitate effective group supervision.

*Criterion 40.16 (Mostly Met)* – BoZ and SEC have appropriate confidentiality provisions in their MoUs that guide the sharing and disseminating of information with other parties. In this regard, the information cannot be disseminated to third parties without the prior approval of the requesting authority. There are no provisions for PIA for c. 40.16.

#### *Exchange of information between law enforcement authorities*

*Criterion 40.17 (Met)* - the FIC and the AML Investigation Units are able to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences or terrorist financing, including the identification and tracing of the proceeds and instrumentalities of crime under the provisions of the FIC Act and PPML Act cited. S.(6)(1)(f) of the AC Act provide for the ACC to consult, co-operate and exchange information with appropriate bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices which is one of the predicate offences of ML. DEC exchanges available domestic information with foreign counterparts for intelligence and investigative purposes relating to ML and associated predicate offences of TF, including identification and tracing of the proceeds and instrumentalities of crime. DEC and ZPS conducted a joint investigation and assisted Namibian law enforcement counterparts gather evidence necessary for the prosecution of a Namibian national resident in Zambia. In addition S.50A (1) of the VAT Act reads, the President may enter into an agreement, which may have retrospective effect, with the government of any other country or territory for the exchange of information on tax matters or for mutual assistance in tax matters with the objective of rendering reciprocal assistance in the administration and collection of taxes under the tax laws of the Republic and such other country or territory as provided for under S.81 of CAP 322.

AMLIU is also empowered under S.6(1)(c) and (d) of the PPMLA to liaise with other law enforcement agencies in the conduct of investigations and prosecutions of ML offences; and to cooperate withdraw enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecution of ML offences.

*Criterion 40.18 (Met)* - Through legal powers and arrangements explained earlier, law enforcement agencies in Zambia can use their respective powers, including investigative techniques available within national laws, to carry out inquiries and gather information on behalf of foreign counterparts. For instance, the Police uses the Regional Centre for Operational Coordination, SARPCCO, Interpol and ARINSA to initiate investigation and obtain information on behalf of foreign counterparts.

*Criterion 40.19 (Met)* - Law enforcement agencies in Zambia rely on legal powers and other mechanism such as bilateral and multilateral arrangements to enter into and participate in joint investigative teams with foreign counterparts in relation to ML, TF and predicate crimes. Within SARPCCO's investigation cooperation arrangements, there is Simultaneous Joint Operations in



which members can send their police officers in foreign countries, or carry out simultaneous investigation at home on the same matter and provide the information collected to a foreign counterpart. The Police indicated that one such case involved an investigation involving Namibian law enforcement counterparts to gather evidence necessary for the prosecution of a Namibian National, resident in Zambia and had committed crimes in Namibia. The results of the operations was a conviction and forfeiture of assets in Zambia which were later repatriated to Namibia. S.6(1)(c) and (d) of the PPMLA, S.6(1)(e) and Article 193 (1) (a) of Zambia's Constitution all promote cooperation and coordination among LEAs.

*Exchange of information between non-counterparts*

*Criterion 40.20 (Partly Met)* - S.5(3) (a) of the FIC Act provides that the Centre may in performing its functions under this Act cooperate and exchange information with, or enter into an agreement or arrangement, in writing, with a foreign designated authority or other relevant authority to facilitate the discharge or performance of its functions under this Act. However, there is no legal or regulatory basis which gives authority to the supervisors and the LEAs to exchange information indirectly with foreign counterparts.

*Weighting and conclusion*

**Zambia is rated Largely Compliant with R.40.**

## Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	[LC]	<ul style="list-style-type: none"> <li>No appropriate mechanism to provide risk assessment information to competent authorities and SRBs.</li> </ul>
2. National cooperation and coordination	[LC]	<ul style="list-style-type: none"> <li>No national AML/CFT policy</li> </ul>
3. Money laundering offence	[C]	<ul style="list-style-type: none"> <li>The Recommendation is fully met</li> </ul>
4. Confiscation and provisional measures	[C]	<ul style="list-style-type: none"> <li>The Recommendation is fully met</li> </ul>
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> <li>No provision in Zambia that prohibits financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training</li> <li>The definition of funds in the ATA does not differentiate legitimate or illegitimate funds consistent with the TF Convention nor extend to however funds are obtained.</li> <li>Civil or administrative sanctions do not appear to be options where criminal liability is not possible.</li> </ul>
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> <li>No provision in the regulations to (a) propose designation for persons or entities to the 1267/1989 Committee; (b) specifically spell out whether proposal would be for Al Qaeda group, Taliban, 1373 or proliferation financing (c) have procedures for listing consistent with resolutions 1267/1989 (d) enables Zambia to provide as much relevant information as possible on the proposed name, statement of case and whether Zambia status as a designating state would be made known if the proposal for designation was to be made to the Committee.</li> <li>No provision in the regulations that enables Zambia to request another state to give effect to the actions initiated under the freezing mechanisms</li> <li>No detail in the regulations on how authorities may collect or solicit information to identify persons and entities that meet criteria for designation</li> <li>No provision requiring natural and legal persons to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities</li> <li>Regulations do not require FIs or DNFBPS to report to the Centre or competent authorities asset frozen, action taken or attempted transactions</li> <li>Regulation 32(2) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations is inconsistent with the requirements of resolutions 1267/1999 in as far as it allows designated person to appeal their designation to the national courts</li> </ul>
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> <li>No legal provisions for PF</li> </ul>
8. Non-profit organisations	PC	<ul style="list-style-type: none"> <li>The legal framework regulating the NPO sector is not yet risk based to</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		require identification and determination of NPOs which based on their activities or their characteristics could be at risk of terrorist financing abuse. The supervision and monitoring of the NPO sector is also not yet required to be done on TF risk sensitive basis, the same requirements apply to all NPOs. The legal framework currently existing does not take into account TF risks in the NPO sector but is based on general regulation of the NPOs and their activities
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
10. Customer due diligence	PC	<ul style="list-style-type: none"> <li>• Transactions limits for wire transfers above the threshold of \$1,000</li> <li>• No requirement to understand the intended purpose and nature of each business relationship</li> <li>• No provision in the law which requires FIs to scrutinise transactions undertaken throughout the course of that relationship</li> <li>• No provision to identify and verify customers that are legal arrangements through the powers that regulate and bind the legal person; and the address of the registered office and, if different, a principal place of business.</li> <li>• No specific requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies</li> <li>• No legal provision requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD measures. In addition, there is no legal obligation for reporting entities to take enhanced measures if it determines that the beneficiary who is a legal person or legal arrangement presents a higher risk.</li> <li>• No specific provision for remediation for existing customers on the basis of materiality.</li> <li>• No obligation for FIs to apply enhanced measures where the ML/TF risks are higher</li> <li>• No provision for application of simplified measures which are commensurate with the lower risk factors and its inapplicability in circumstances where there is suspicion of ML/TF or specific higher risk scenarios.</li> <li>• No specific legal provision permitting FIs not to pursue the CDD process, and instead to file an STR where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.</li> </ul>
11. Record keeping	LC	<ul style="list-style-type: none"> <li>• No requirement for FIs to ensure that CDD information and transaction records are swiftly made available to domestic competent authorities.</li> </ul>
12. Politically exposed persons	LC	<ul style="list-style-type: none"> <li>• EDD measures on PEPs do not extend to the family members and close associates of an individual who is or has been entrusted with a prominent function by an international organization.</li> <li>• No specific requirements for FIs to determine whether beneficiaries of life insurance policies and their beneficial owners, are PEPs</li> </ul>
13. Correspondent banking	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
14. Money or value transfer services	LC	<ul style="list-style-type: none"> <li>• No provision requiring MVTs providers that use agents to include them in their AML/CFT programmes and monitor them for compliance with the programmes.</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>• No specific legal provision that requires FIs to undertake the risk assessments prior to launch or use of such products, practices technologies and to take appropriate measures to manage and mitigate the risks.</li> </ul>
16. Wire transfers	PC	<ul style="list-style-type: none"> <li>• Thresholds set under Regulation 6 of the FIC (Prescribed Threshold) Regulations, 2016, are higher than USD/EUR 1,000. Further, the law does not provide for requirements for FIs to obtain required beneficiary information</li> <li>• No requirements for ordering FIs to include full beneficiary information in cross-border batch files</li> <li>• No specific legal provisions that permit compliance with the criterion 16.3-4.</li> <li>• No provision requiring the ordering FI to make the information available within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. There is no provision that explicitly enables LEAs to be able to compel immediate production of such information related to wire transfers</li> <li>• No requirement to maintain all beneficiary information collected in accordance with R.11</li> <li>• No specific obligation for intermediary FIs to keep records of all the information received from the ordering FI or another intermediary FIs where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer</li> <li>• No specific legal requirement for FIs to apply a risk-based approach to wire transfer transactions under any circumstances</li> <li>• No explicit legal requirement to have measures in place to monitor transactions in order to identify such wire transfer transactions which lacks originator or beneficiary information</li> <li>• No explicit requirement for beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and the appropriate follow-up action</li> <li>• No specific legal requirements for MVTs providers to review information from ordering and beneficiary side of the wire transfer and to decide whether to file an STR or to ensure that an STR is filed in any country affected and transaction information made available to the FIU</li> </ul>
17. Reliance on third parties	LC	<ul style="list-style-type: none"> <li>• There are no obligations for FIs relying on third parties which is part of the same financial group in the circumstances set out in (a) to (c) of the criterion</li> </ul>
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> <li>• No provisions for financial groups to implement group-wide programmes against ML/TF, which should be applicable and appropriate to, all branches and majority owned subsidiaries of the financial group under the measures set in c.18.1 and 18.2.</li> </ul>
19. Higher-risk countries	LC	<ul style="list-style-type: none"> <li>• There is no requirement for FIs to apply EDD, proportionate to the risks, to business relationships and transactions with natural and legal</li> </ul>

### Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		persons from countries for which this is called for by the FATF.
20. Reporting of suspicious transaction	C	<ul style="list-style-type: none"> <li>The Recommendation is fully met</li> </ul>
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> <li>The Recommendation is fully met</li> </ul>
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> <li>Deficiencies identified in respect of CDD (R.10), PEPs (R.12) and third party (R.17) also apply.</li> </ul>
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> <li>Deficiencies identified in respect of Internal Controls (R.18) and Higher Risk Countries (R.19) also apply.</li> </ul>
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> <li>No assessment of ML/TF risks of all types of legal persons created in the country</li> <li>The definition of beneficial owner does not include the aspect of “the natural person on whose behalf the transaction is conducted”</li> <li>There is no provision creating legal obligation for companies and DNFBPs to cooperate with competent authorities in determining the beneficial owner.</li> <li>The new Companies Act does not have a provision on prohibition or permitting issuance of bearer shares or bearer share warrant. Zambia has not developed mechanisms on how it would deal with share warrants that had been issued pursuant to the old Act.</li> <li>There is no mechanism that enables monitoring the quality of assistance received from other countries on basic and beneficial ownership.</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> <li>The Lands (Perpetual Succession) Act does not have requirements in sub-criterion 25(1) (a)-(c).</li> <li>No legal provision to keep accurate trust information</li> <li>No law that can ensure that trustees are legally liable for failure to perform duties relevant to meeting their obligations.</li> </ul>
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> <li>SEC has no provisions for conducting fit and propriety tests for beneficial owners.</li> <li>BoZ does not have an AML/CFT consolidated supervision framework. There are no legal provisions in the PIA and SEC legislations requiring that FIs should be supervised on a consolidated basis for AML/CFT purposes</li> <li>Zambia has not implemented a RBA to AML/CFT supervision. The frequency and intensity of onsite and offsite AML/CFT supervision is not determined by the level of ML/TF risks.</li> <li>Supervisory authorities do not conduct individual ML/TF risk assessment of FIs to determine their risk profiles. Assessments are not reviewed periodically or when there are major events or developments in the management and operations of the FI or group.</li> </ul>
27. Powers of supervisors	C	<ul style="list-style-type: none"> <li>The Recommendation is fully met</li> </ul>
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> <li>The legal provisions for Casinos do not require submission of information which can assist in identifying and preventing criminals or their associates from holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function, or being an operator of a casino. The registration requirements for Casinos</li> </ul>

## Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>does not focus on identifying the controlling structure and beneficial ownership</p> <ul style="list-style-type: none"> <li>• No legal restrictions on trust and company service provisions. Entities outside the legal practitioners and accountants which provide TCSP services are not designated as reporting entities and therefore do not have a supervisory authority</li> <li>• Current law for dealers in precious stones and metals does not require the competent authorities to determine whether or not one is a criminal or not</li> <li>• No specific legal provision which requires the Law Association to assess or obtain information on the criminal record of the applicants for a practicing licence</li> <li>• DNFBP supervisory authorities do not apply risk based supervision to reporting entities in terms of ML/TF risks</li> </ul>
29. Financial intelligence units	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• There are no provisions to enable non-LEA competent authorities to exercise powers of LEAs under Recommendation 30</li> <li>• Not all LEAs have the mandate to pursue related ML/TF offences discovered during parallel financial investigations for a predicate offence, as required under Criterion 30.2.</li> </ul>
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> <li>• Not all the listed competent authorities that investigate and prosecute ML, TF and associated predicate offences have all the recommended powers to access all relevant evidence and information or documents for investigation or prosecution</li> <li>• Not all the listed LEAs have the legal mandate to conduct undercover operations, or conduct controlled delivery operations</li> </ul>
32. Cash couriers	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
33. Statistics	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
34. Guidance and feedback	C	<ul style="list-style-type: none"> <li>• The Recommendation is fully met</li> </ul>
35. Sanctions	PC	<ul style="list-style-type: none"> <li>• The legal framework does not provide for sanctions for failure to freeze funds without delay.</li> <li>• Violation of majority of obligations in relation to preventive measures under the FIC Act constitute a criminal offence, thus legal framework does not give room for proportionate sanctions</li> </ul>
36. International instruments	LC	<ul style="list-style-type: none"> <li>• Zambia has not ratified two of the protocols which are Annexes to the TF Convention.</li> </ul>
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> <li>• Zambia does not maintain case management system that would enable it to monitor requests.</li> <li>• Not all listed competent authorities that investigate and prosecute ML, TF and associated predicate offences have all the recommended powers to access all relevant evidence and information or documents for</li> </ul>

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		investigation or prosecution.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• S.9 of the FPCA does not appear to be applicable in the event of providing assistance to foreign jurisdictions.</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• There is no case management system in place to process timely execution of extradition requests. Conditions in S.34, 35, 39(2) and 41 of the Extradition Act make execution of extradition request unduly restrictive.</li> <li>• There is no simplified extradition mechanism in place in Zambia.</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• Requesting competent authorities do not provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained</li> <li>• Apart from FIC, DEC and ZRA, there are no provisions for other competent authorities to establish controls and safeguards that ensure that information exchanged is used only for, and by the authorities, for which the information was sought or provided.</li> <li>• No provision that other competent authorities, apart from FIC, DEC and ZRA are able to conduct inquiries on behalf of foreign counterparts.</li> <li>• There are no legal provisions for PIA that provide basis for cooperation with other foreign counter-parts.</li> <li>• PIA is not able to exchange with foreign counterparts information domestically available to them, including information held by FIs, in a manner proportionate to their respective needs.</li> <li>• PIA has no provisions to conduct inquiries on behalf of their foreign counterparts and to permit foreign supervisors to conduct inquiries in Zambia to facilitate effective group supervision including appropriate confidentiality provisions in its MoUs that guide the sharing and disseminating of information with other parties.</li> <li>• No legal or regulatory basis which gives authority to the supervisors and the LEAs (with the exception of FIC) to exchange information indirectly with non-counterparts.</li> </ul>