



# Mutual Evaluation Report

## Anti-Money Laundering and Combating the Financing of Terrorism

December 2009

United Republic of Tanzania

The United Republic of Tanzania is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). This evaluation was conducted by the ESAAMLG and was adopted as a 1<sup>st</sup> mutual evaluation by its Task Force of Senior Officials on 18 August 2009 and approved by its Council of Ministers in December 2009.

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## ACRONYMS

AML	Anti Money Laundering
AML Act	Anti Money Laundering Act, 2006
AML/CFT	Anti Money Laundering/Combating the Financing of Terrorism
AML Committee	National Multi- Disciplinary Committee on Anti- Money Laundering
BoT	Bank of Tanzania
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CID	Criminal Investigation Department
CMSA	Capital Markets and Securities Authority
CMS Act	Capital Markets and Securities Act
CPA	Certified Public Accountant
DNFBP	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
DSE	Dar Es Salaam Stock Exchange
EAPCCO	Eastern Africa Police Chiefs Organisation
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
IAIS	International Association of Insurance Supervisors
ISD	Insurance Supervisory Department
IOSCO	International Organisation of Securities Commissions



LDMS	Licensed Dealing Members
LEAS	Law Enforcement Agencies
Merida Convention	UN Convention against Corruption
ML	Money Laundering
MOU	Memorandum of Understanding
NBAA	National Board of Accountants and Auditors
NPO	Non-Profit Organisation
NPS	National Prosecution Service
ODPP	Office of the Director of Public Prosecutions
OAG	Office of the Attorney General
Palermo Convention	UN Convention against Transnational Organised Crime, 2000
PEP	Politically Exposed Person
POCA	Proceeds of Crime Act
POTA	Prevention of Terrorism Act
SACCOS	Savings and Credit Cooperatives
SARPPCO	Southern African Regional Police Chiefs Co-operation Organisation
STR	Suspicious Transaction Report
TF	Terrorist Financing
TIN	Tax Identification Number
TLS	Tanganyika Law Society
TZS	Tanzanian Shillings
UN	United Nations

UNSCR	United Nations Security Council Resolution
Vienna Convention	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
Zanzibar	Tanzania Zanzibar
ZLS	Zanzibar Law Society

## **PREFACE**

### **Information and Methodology Used For The Evaluation of the United Republic Of Tanzania**

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the United Republic of Tanzania was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>1</sup>. The evaluation was based on the laws, regulations and other materials supplied by the United Republic of Tanzania, and information obtained by the evaluation team during its on-site visit to the United Republic of Tanzania from 26 January to 07 February 2009, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Tanzanian government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The evaluation was conducted by an assessment team, which consisted of members of the ESAAMLG Secretariat and ESAAMLG experts in criminal law, law enforcement and regulatory issues: Mrs. Yotsna Lalji-Venketasawmy and Mr. Phineas R Moloto from the ESAAMLG Secretariat, Ms. Leonie Dunn, Director FIU- Bank of Namibia-Legal Expert, Mr. Tom Malikebu, Deputy Director FIU, Malawi- Law Enforcement Expert, Mr. Joseph Munyoro, Senior Inspector, Bank of Zambia- Financial Expert, Mr. Titus Mulindwa, Bank of Uganda- Financial Expert and Mr. Simon Nyathi, Assistant Commissioner of Police, Zimbabwe Republic Police - Law Enforcement Expert. Paul Allan Schott, consultant to the World Bank, assisted the assessors by serving as mentor to the team. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the United Republic of Tanzania as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Tanzania's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

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<sup>1</sup> As updated in February 2008

The ESAAMLG Secretariat and the evaluation team would like to express their gratitude to the authorities in the United Republic of Tanzania for their cooperation and hospitality throughout the evaluation mission.

## **Executive Summary**

### **A. Background Information**

1. This report provides a summary of the AML/CFT measures in place in the United Republic of Tanzania (comprising of Mainland Tanzania and Tanzania Zanzibar) as at the date of the on-site visit, which constitutes the period of 26 January to 06 February 2009 and within three months thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Tanzania's levels of compliance with the FATF 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).
2. The AML/CFT system in the United Republic of Tanzania is still in its early stage of development and much work needs to be done with regard to the implementation of the AML/CFT system, capacity building and awareness raising within the reporting community and the general public. The Anti Money Laundering Act 2006 (AML Act) and the Prevention of Terrorism Act 2002 (POTA) are the key enactments which support the AML/CFT legal framework in the United Republic of Tanzania. AML Regulations have also been issued for implementing the AML Act. The overarching issue in need of resolution, which affects many of the individual FATF Recommendations, is the scope of the enforceability of the AML Act, POTA and POCA in Zanzibar. For example, at the time of the onsite visit, the assessors were informed that the AML Act is not enforceable in Zanzibar. To underscore this problem, a separate Anti Money Laundering and Proceeds of Crime Bill is under consideration in Zanzibar. Furthermore, the POTA has not come into effect in Zanzibar. The AML Act, POTA and POCA do not appear to be enforceable in Zanzibar. This significantly undermines the overall AML/CFT regime in the United Republic of Tanzania. This enforceability issue is a sensitive political matter, but one that needs to be resolved by all the relevant authorities in the United Republic of Tanzania. It is not the role of this report to recommend how to achieve this crucial objective. This is most appropriately left to the relevant authorities.
3. The AML Act addresses some core requirements applicable to financial institutions by imposing AML/CFT obligations on "reporting persons", which is defined to include certain financial institutions and all Designated Non-Financial Businesses and Professions (DNFBPs), except for Trust and Company Service Providers, under the FATF definitions of those terms. However, some of these requirements are not mandatory as there is no sanction for failure to comply with these requirements under

the AML Act. Further guidance needs to be issued to the non-bank financial and DNFBP sectors for ensuring full implementation of the AML Act.

4. The Act also provides for the establishment of an administrative Financial Intelligence Unit as an extra-Ministerial Department and a National Multidisciplinary Committee on Anti-Money Laundering.
5. Following the bombing of the US Embassy in 1998, international terrorism remains a serious issue for the United Republic of Tanzania while the threat for domestic terrorism is low.
6. The major profit generating crimes include theft, robbery, corruption, smuggling of precious metals and stones and drug trafficking. Suspicious transaction reporting is relatively low and there has been no prosecution of the money laundering offence thus far.

#### **B. Legal Systems and Related Institutional Measures**

7. The AML Act criminalises money laundering in a manner that is largely consistent with the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 United Nations Convention against Transnational Organised Crime (Palermo Convention). The AML Act provides a list of predicate offences which covers to a large extent each of the 20 designated categories of offences. Fraud, counterfeiting of currency, piracy of products, murder and grievous bodily injury are the uncovered categories of the designated offences. A conviction for a predicate offence is required when proving that property is the proceeds of crime and predicate offences for money laundering do not extend to conduct that occurred in another country. There is also a broad range of ancillary offences to the money laundering offences. Liability for money laundering applies to both natural and legal persons. However, according to the authorities, the AML Act is not enforceable in Zanzibar. The overall effectiveness of the AML/CFT system in Mainland Tanzania could not be assessed as there has been no money laundering prosecution.
8. Terrorist financing is criminalised under Part IV of the POTA. The POTA criminalises the collection or provision of funds with the intention that it be used for the purpose of committing a terrorist act or by a terrorist organisation or an individual terrorist for committing or facilitating the commission of a terrorist act. While the term “terrorist act”, as defined under the POTA is very broad, overall it does not satisfy Special Recommendation III of the FATF as the United Republic of Tanzania has ratified only some of the relevant UN Conventions and Protocols. In addition, it has not

criminalised all the acts that they cover.. The TF offences under Part IV of the POTA make reference to the terms “funds” and “property”. There seems to be a gap in the legislation as the term “funds” has not been defined under the Act. On the other hand, the term “property” is broadly defined and there is no requirement for the funds or property to be used to carry out or attempt a terrorist act, or be linked to a specific terrorist act. Terrorist financing is a predicate offence for money laundering. A broad range of ancillary offences also apply to TF offences. Legal and natural persons are both criminally liable. The TF offences under the POTA are punishable by imprisonment for a term not less than 15 years and not more than 20 years. In addition the Court may order the forfeiture of any property used for or in connection with or received as payment or reward for the commission of a TF offence. The effectiveness of the measures under the POTA could not be assessed. It is also notable that according to the authorities the POTA is not effective in Zanzibar.

9. As at the date of the on-site visit no implementing regulations had been issued to give effect to the freezing mechanisms under the POTA for the purposes of the UNSCR 1267 and 1373.
10. The Proceeds of Crime Act is the primary legislation which provides for criminal forfeiture in Mainland Tanzania. The scope of tainted property that may be subject to confiscation is undermined as the definition of predicate offences under the AML Act does not cover all designated categories of offences. It was not clear that property of corresponding value can be subject to forfeiture. Provisional measures to prevent dealing in property subject to confiscation are available and applications for freezing and /or seizing property subject to confiscation may be made ex-parte or without prior notice. There is no authority to prevent or void actions that can prejudice the ability of the authorities to recover property subject to confiscation. It was not possible to obtain an accurate picture of the effectiveness of these measures as no statistics were available.
11. According to the authorities, the Proceeds of Crime Act is not enforceable in Zanzibar.
12. While the FIU was established in July 2007 it was not fully operational and did not have the required capacity to undertake its statutory functions effectively. The FIU has powers under the law to exchange information with other financial intelligence units and for issuing guidelines to the reporting persons. Shortly after the onsite visit, the FIU issued guidelines for the Verification of Customers’ Identities, Anti-Money Laundering Guidelines to Banking Institutions and Anti-Money Laundering Guidelines for Bank of Tanzania (collectively referred to as the “FIU Guidelines”). However, these guidelines are not enforceable.

13. The Tanzanian Police is responsible for the investigation of money laundering and terrorist financing in the United Republic of Tanzania. The Criminal Investigation Department has a special unit that deals with financial crime and money laundering. The Police in the United Republic of Tanzania have a broad range of investigative powers. There were five money laundering investigations that were ongoing at the time of the onsite visit.
14. The scope of the legal framework implemented with respect to Special Recommendation IX is not clear. Under the AML Act, transportation of cash or bearer negotiable instruments beyond a certain threshold is subject to customs authorities. No threshold has been prescribed and the meaning of the term “subject to customs authorities” has not been defined.

**C. Preventive Measures – Financial Institutions**

15. AML/CFT preventative measures have been implemented through the application of the AML Act and the AML Regulations. The FIU has also issued guidelines on the Verification of Customers’ Identities and Anti-Money Laundering Guidelines to Banking Institutions. In general, there is a scope issue in that a limited number of financial institutions as defined by the FATF are not subject to the AML/CFT requirements under the AML Act. Save for failure to report suspicious transactions, the Act and Regulations do not provide for sanctions where reporting institutions fail to comply with AML/CFT preventative measures. It is to be noted that the FIU guidelines do not constitute other enforceable means. As noted previously, according to the authorities, the AML Act is not enforceable in Zanzibar.
16. Financial institutions covered by the AML Act (referred to under the Act as reporting persons) are required to take reasonable measures to satisfy themselves as to the true identity of their client before establishing a business relationship or carrying out a single transaction and where any person is acting on behalf of another person. The AML Regulations set out further details on the CDD documentation that must be obtained by the reporting person. There is however, no specific requirement in law or regulation for reporting persons to identify or verify the identity of beneficial owners (i.e. the natural persons who ultimately own and control the customer). There are no explicit requirements to undertake CDD measures where there is a suspicion of money laundering or terrorist financing. With regard to legal persons or arrangements there is no specific requirement to verify that the person purporting to act on behalf of the customer is so authorised and for reporting persons to take reasonable measures to understand the ownership and control structure of the customer. The AML framework does not require financial institutions to perform enhanced due diligence measures for higher risk categories of customers, business relationship or transaction.



The CDD measures with respect to PEPs are inadequate and there are no requirements relating to correspondent banking relationships.

17. The provisions relating to record keeping under the AML Act were inoperative as the threshold amount had not been specified. The use of a threshold approach may undermine investigations as information of individual transactions below the specified threshold will not be available to follow the financial trail. It is, therefore, recommended that the authorities should do away with the threshold approach. Further, the AML Act or regulations should contain provisions to ensure that records should be made available on a timely basis to domestic competent authorities.
18. The financial institutions use the SWIFT messaging formats for all wire transfers. The requirements under SRVII have not been fully implemented. In 2004, The Bank of Tanzania issued the Tanzania Interbank Settlement System Rules and Regulations ("TISS Rules") that apply to domestic wire transfers. These rules require financial institutions to comply with SWIFT requirements which in turn require the elements of the originator information to be provided in SWIFT messages. There is also the requirement for the verification of identity of clients for all transactions, including both domestic and international wire transfers, under section 15 of the AML Act. However, the requirement is undermined by the absence of sanction in case of non-compliance.
19. The licensing requirements under the Banking and Financial Institutions Act are sufficiently robust to prevent the establishment of shell banks in the United Republic of Tanzania. Nevertheless, financial institutions are not prevented from entering into or continuing correspondent banking relationships with shell banks and there are no requirements for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Similarly, there is no requirement that foreign branches and subsidiaries apply AML/CFT measures consistent with the FATF recommendations and apply the higher of either domestic or Tanzanian standards and inform the home supervisors if they are unable to do so.
20. Financial institutions are required to pay special attention to complex, unusual or large business transactions and to unusual patterns of transactions and to insignificant but periodic transactions which have no apparent economic or lawful purpose. This requirement is, however, not mandatory as no sanction has been provided for non-compliance.
21. Reporting persons under the AML Act are required to report all suspicious transactions to the FIU within 24 hours of forming the suspicion. In practice, the reporting regime is not well implemented. Since its establishment, the FIU has

received only 5 STRs. No guidelines, as required under the AML Regulations, have yet been issued to prescribe the format and manner in which STR must be made to the FIU. Draft guidelines have however been prepared. The safe harbour provisions under the AML Act are limited to breach of “banking or professional secrecy”. However, it was not clear that non-bank financial institutions were covered under “professional secrecy” as these terms are not defined under the Act. “Tipping off” is prohibited under the Act, but it is a defence where the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of money laundering or a predicate offence. This exception effectively undermines the entire tipping off prohibition.

22. Other than the requirement to establish internal reporting requirements, reporting persons are not required to establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing that cover CDD, record retention and the detection of unusual or suspicious transactions. There is also no requirement to develop appropriate compliance management arrangements and to maintain an adequately resourced and independent audit function to test compliance with the internal AML/CFT procedures, policies and controls.
23. There is no designated authority to monitor and ensure compliance by financial institutions with AML/CFT requirements under the AML Act.
24. There are no mechanisms in place to ensure that reporting persons are to be advised of concerns about weaknesses in the AML/CFT systems of other countries. There are also no specific provisions for reporting persons to apply counter measures in situations where countries do not sufficiently apply the FATF recommendations.

#### **D. Preventive Measures Designated Non-Financial Businesses and Professions**

25. The following categories of DNFBPs are designated as reporting persons under the AML Act: accountants, real estate agents, dealers in precious stones, work of arts or metals; attorneys, notaries and other independent legal professionals and operators of gaming activities (including casinos). There are no independent trust and company service providers in the United Republic of Tanzania. These services are provided by accountants and lawyers.
26. Generally, DNFBPs have not implemented AML/CFT measures as required under the Act and there is no designated authority to monitor and ensure that DNFBPs comply with these requirements. There has been no suspicious transaction reporting by DNFBPs thus far.

## **E. Legal Persons and Arrangements & Non-Profit Organisations**

27. The United Republic of Tanzania has a registration system for companies. Companies must be registered under the Companies Act in Mainland Tanzania and the Companies Decree in Zanzibar. All companies must have a registered office in the United Republic of Tanzania and must keep an up- to –date register of their members and directors. There is no registration system for trusts. While trusts do exist they are not commonly used in the United Republic of Tanzania.
28. To prevent the unlawful use of legal persons and legal arrangements for money laundering and terrorist financing, the investigative and other powers of law enforcement are relied upon. While the investigative powers work well in practice there are no adequate measures in place to ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities.
29. Information kept by the registrars of companies pertains only to legal ownership and control (as opposed to beneficial ownership). It is not verified and is not necessarily reliable. Nominees and other legal persons can act as directors and shareholders , which can hamper the investigative trail. Share warrants may also be issued to bearer and there are no measures in place to ensure that they are not misused for money laundering and terrorist financing purposes. It is recommended that the authorities in the United Republic of Tanzania review the current system to determine ways in which adequate and accurate information on beneficial ownership may be available on a timely basis to law enforcement authorities.
30. The United Republic of Tanzania has separate legal frameworks for registration and coordination of NPO sector in Mainland Tanzania and Zanzibar. In both parts, NPOs are required by law to register with a designated registrar. Effective implementation of the NPO sector's laws for purposes of combating terrorist financing is fairly new. No risk assessment has been undertaken to determine the nature and extent of the sector's vulnerability to terrorist financing. The authorities should undertake effective outreach programs to protect the sector from possible terrorist financing abuse.

## **F. National and International Co-operation**

31. There are no established mechanisms to cooperate on operational matters to combat money laundering and terrorist financing in the United Republic of Tanzania. The newly established FIU has no mechanism in place to exchange information and coordinate with the regulators and law enforcement agencies effectively and to cooperate effectively amongst themselves.

32. The United Republic of Tanzania acceded to the Vienna Convention in 1996 and to the Palermo Convention in July 2005. The provisions of the Conventions have been implemented to a large extent. As at the date of on-site visit, there was no implementing regulation to give effect to the freezing mechanism under the Prevention of Terrorism Act for the purposes of the United Nations Security Council Resolutions 1267 and 1373.
33. The United Republic of Tanzania is able to render a wide range of mutual legal assistance under the Mutual Assistance in Criminal Matters Act (MACM Act). Pursuant to the provisions of the MACM Act, the Attorney General can exercise his discretion to refuse a request for mutual legal assistance in the absence of dual criminality. The other grounds for refusal of legal assistance set out under the MACM Act do not appear to be prohibitive or subject to unreasonable, disproportionate or unduly restrictive conditions. However, it is not clear that mutual legal assistance for ML/TF investigations and prosecutions could be made available with respect to Zanzibar as the AML Act and the POTA are not enforceable in Zanzibar.
34. The MACM Act further provides for the enforcement of foreign forfeiture or foreign pecuniary penalty order in respect of property located in Tanzania and it is also possible to apply for an order restraining any person from dealing with property. Search warrants in respect of property tracking documents may also be obtained.
35. Extradition is governed by the Extradition Act, which applies to both Mainland Tanzania and Zanzibar. The Act sets out the procedure for extraditing offenders to and from a foreign state. Dual criminality is a requirement for extradition but technical differences in the statutes of different jurisdictions do not pose an impediment to extradition. While money laundering is an extraditable offence, terrorist financing offences under the POTA are not extradition crimes for which extradition may be granted under the Extradition Act. The United Republic of Tanzania can extradite its own nationals.
36. The FIU, law enforcement agencies and supervisors are able to provide international co-operation to foreign counterparts however, the overall effectiveness of such co-operation could not be assessed.

**G. Other Issues**

37. All relevant government agencies expressed concern about the lack of qualified and skilled human resources, funding and other technical resources to meet their requirements.
38. The authorities in the United Republic of Tanzania should develop mechanisms to record and maintain comprehensive statistics on money laundering investigations,

prosecutions and convictions, mutual legal assistance and extradition matters so as to be able to assess the effectiveness of the AML/CFT systems and procedures.

#### **H. Priorities for recommended plan of action**

39. In the short term, the priority for the authorities should be to-

- resolve the enforceability of the AML Act, the POTA and the POCA with respect to Zanzibar;
- strengthen the application of the preventative measures under the AML Act and Regulations by providing for a wide range of proportional and effective sanctions for failure to comply with these measures;
- take steps to enhance the human and other technical capacity of the FIU to enable it to expeditiously perform its functions under the AML Act;
- build the technical AML/CFT capacity of law enforcement agencies, the regulators, the public prosecutors and the judiciary; and
- engage more aggressively with the non-bank financial services and the DNFBP sectors to encourage and assist rapid development of compliance with AML/CFT requirements.

## MUTUAL EVALUATION REPORT

### 1. GENERAL

#### 1.1 General information on the United Republic of Tanzania

1. The United Republic of Tanzania consists of Mainland Tanzania and Tanzania Zanzibar (Zanzibar). The President of the United Republic of Tanzania is the Head of State and the Head of Government for both jurisdictions.
2. All State authority in the United Republic is exercised and controlled by the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar. Each Government has three organs: the Executive, the Judiciary and the Legislature<sup>2</sup>.
3. Zanzibar, although part of the United Republic of Tanzania, is autonomous in specific areas of governance. The House of Representatives enacted the Constitution of Zanzibar in 1984. Zanzibar has its own Government which comprises the House of Representatives, the Executive and the Judiciary.
4. The total area of the United Republic of Tanzania covers an area of 945,000km<sup>2</sup> made up as follows: 888,000 km<sup>2</sup> (Mainland), 2,000 km<sup>2</sup> (Zanzibar), Water 62,000km<sup>2</sup> and forest and woodlands 3,350km<sup>2</sup>. Zanzibar comprises of two main islands of Unguja and Pemba with a combined land area of 2332 sq. kilometres and an estimated population of 1,200,000 (2008) people, growing at a rate of 3.1% per year, (2002 Population and Housing Census).
5. Mainland Tanzania is located in Eastern Africa and shares the frontier with the following countries Kenya and Uganda (North), Rwanda, Burundi and Democratic Republic of Congo (West), Zambia, Malawi and Mozambique (South) and the Indian Ocean (East).
6. Dodoma is the capital; Dar es Salaam is the commercial hub and major sea port for Mainland Tanzania and it serves neighbouring land-locked countries of Malawi, Zambia, Burundi, Rwanda, and Uganda, as well as Eastern Democratic Republic of Congo.

#### *General economic profile*

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<sup>2</sup> Article 4(1) of the United Republic of Tanzania

7. The United Republic of Tanzania is a low income developing country situated in East Africa. In 2007, the authorities estimated the population of the United Republic of Tanzania at 39,384,223. In 2009, the World Bank estimated income per capita at USD 400. The Government of the United Republic of Tanzania is committed to opening up the economy to promote private sector participation within a sound and predictable macro-economic framework to achieve sustained and shared economic growth.
8. The IMF notes that in the last decade, real economic growth in Tanzania has averaged 6-7 percent of GDP. In 2007, the United Republic of Tanzania recorded a 7.3 percent real GDP growth rate, which was driven by communications, mining, financial intermediation, construction and trade sectors.
9. Agricultural sector is the main contributor to national income. It accounts for more than 50 percent of GDP, 70 percent of exports and 80 percent of employment. The sector is a major foreign exchange earner for the country.
10. Industrial sector remains small by size and value. On average, the sector contributes around 8 percent to GDP. Industrial activities are dominated by simple manufacturing of consumer goods.
11. The services activities registered a growth rate of 8.1 percent in 2007. Despite declining financial intermediation, real estate and business services in 2007, the share of services sector to GDP was 43.3 percent during this period. The country has experienced a high growth rate in private sector participation in the financial sector, especially the banking activities, following liberalisation of the sector. Around 80 percent of the total assets in the sector are controlled by private sector.
12. The United Republic of Tanzania is rich in mineral resources. In 2009, the World Bank noted that the country is the fourth largest producer of gold in Africa. Other minerals resources include diamonds and gemstones such as tanzanite. However, the sector remains one of the smallest contributors to GDP, at around 3.5 per cent per annum.

### *The legal system*

13. The Judiciary in Tanzania consists of three organs: the Court of Appeal of the United Republic of Tanzania, the High Courts for Mainland Tanzania and Zanzibar, Magistrates Courts and Primary Courts.
14. The Judiciary in Tanzania is headed by the Chief Justice with the Registrar of the Court of Appeal as the Chief Executive Officer. The Principal Judge assisted by the Registrar of the High Court, is in charge of the Administration of the High Court and the subordinate Courts. The High Court is divided into zones which are administered by Judges in Charge with the assistance of District Registrars. At

Regional levels the administration is under Resident and District Magistrate in Charge. District Magistrates in Charge also supervise Primary Courts in their respective districts.

15. Apart from sharing the Court of Appeal of the United Republic of Tanzania with Mainland Tanzania, Zanzibar has a distinct and separate legal system. The Court system in Zanzibar has a High Court, Kadhis (Islamic) Courts and Magistrates Courts. The Constitution of the United Republic also provides for a Special Constitutional Court whose sole function is to hear and give conciliatory decision over constitutional issues referred to it regarding the interpretation and application of the Constitution of the United Republic.
16. Tanzanian legal system is based on the English common law and statutes as enacted by Parliament. The Constitution of the United Republic of Tanzania and the Constitution of Zanzibar are the highest laws of the land.
17. Laws may, in general, be grouped into three categories: those applicable to (1) both Mainland Tanzania and Zanzibar, (2) only mainland Tanzania or (3) only Zanzibar. More specifically under the Constitution of the United Republic of Tanzania for matters deemed to be “Union” matters<sup>3</sup>, the Parliament of the United Republic of Tanzania has the authority to pass laws applicable to both Mainland Tanzania and Zanzibar<sup>4</sup>. Otherwise for matters that are not deemed to be “Union” matters, the Parliament has the authority to pass laws that are applicable only to Mainland Tanzania. Also under the Constitution, for matters not deemed to be “Union” matters, the House of Representatives of Zanzibar has the authority to pass laws that are applicable to Zanzibar<sup>5</sup>.

#### *Transparency, good governance, ethics and measures against corruption*

18. Transparency International’s Corruption Perception Index ranks Tanzania 102 (out of 180 countries) which indicates that corruption is an issue of concern in Tanzania. Tanzania has been fighting corruption since 1970 and it has recently revised its anti-corruption legislation. The new legislation established the Prevention and Combating of Corruption Bureau which is an independent public body responsible for investigating and prosecuting (subject to directions from the DPP) corruption

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<sup>3</sup> Please refer to Annex 3 which reproduces the list of Union Matters as set out in the First Schedule of the United Republic of Tanzania.

<sup>4</sup> See full text of Article 64 of the Constitution of the United Republic of Tanzania as set out in Annex 3.

<sup>5</sup> Article 106 (3) of the Constitution of the United Republic of Tanzania: “All legislative authority in Zanzibar over all matters which are not Union Matters is hereby vested in the House of Representatives of Zanzibar.”



related offences. Its functions further include examining and advising public and private sectors in order to facilitate the detection of corruption or prevention of corruption, enlisting and fostering public support in combating corrupt practices and cooperate and collaborate with international institutions, agencies or organisations in the fight against corruption.

19. Public leaders, including the President of the United Republic, the President of Zanzibar, the Prime Minister, the Chief Minister of Zanzibar, Ministers, the Chief Justice of the United Republic, Judges and Magistrate and the Inspector General of Police are subject to the Code of Ethics under the Public Leadership Code of Ethics Act. The Code of Ethics, inter alia, seeks to uphold the highest possible ethical standards so that public confidence and trust in the integrity and objectivity and impartiality of Government are conserved and enhanced. The Code of Ethics and Conduct for the Public Service issued under the Public Service Act, 2002 applies to all public servants while law officers and state attorneys in the Ministry, Government Departments and Agency are bound by the Code of Ethics for Law Officers, State Attorneys and other Legal Officers in the public service under the Office of the Attorney General (Discharge of Duties) Act. The Tanzania Police Force must comply with the Police General Orders. Advocates and accountants in the private sector must comply with the Rules of Professional Conduct and Etiquette of the Tanganyika Law Society and the Professional Accountants (Code of Conduct and Ethics) By-laws respectively. Nevertheless corruption remains an issue.

## **1.2 General Situation of Money Laundering and Financing of Terrorism**

20. The geographical position of The United Republic of Tanzania makes it a strategic gateway into East and Central Africa for legitimate and illicit trade. Dar es Salaam is a major sea port that serves Mainland Tanzania. In addition, a large number of land-locked countries such as Malawi, Zambia, Burundi, Rwanda, Uganda and the Eastern part of the Democratic Republic of Congo depend on Dar es Salaam for movement of goods.
21. The United Republic of Tanzania acknowledges that money laundering, terrorist financing and corruption remain serious impediments to attain national development objectives. According to the figures provided by the authorities in the United Republic of Tanzania, theft and robbery are the most reported cases. Corruption related cases are also quite high. As at 30 September 2008, 4, 768 corruption cases were reported out of which 360 cases were prosecuted and 30 convictions were secured. Illicit trafficking in narcotic drugs and psychotropic substance is also of growing importance, however, no figures were provided by the authorities to indicate the prevalence of the crime in the United Republic. The other crimes that occur quite frequently are murder and rape. As at the date of the onsite

visit no money laundering prosecution had taken place although 5 cases were still under investigation by the police.

22. During the onsite visit, various authorities raised concerns regarding increasing general fraud level in Tanzania: customs fraud, smuggling of goods especially counterfeit ones, financial sector fraud, and smuggling of precious metals are some of the prime examples named by the authorities. The authorities indicated that most of these illegal activities showed attributes of organised crime in nature.
23. Under-valuing of assets for lesser tax liability, foreign currency exchanges, front businesses, physical transportation of cash and other monetary instruments, financial fraud, electronic transfers, and buying of high-value goods such as motor vehicles are common methods and techniques used to launder proceeds.
24. Although real estate is becoming a rising business, real estate agents remain unregulated. The authorities have expressed concern regarding real estate being misused for laundering by criminals purchasing property.
25. There have been no reported cases with regard to terrorist financing in the United Republic of Tanzania. However, in 1998 Tanzania was subject to terrorists act with the bombing of the US Embassy in Dar es Salaam. Twelve people were killed by the terrorist attacks. The UNSCR 1267 lists of designated persons and entities are circulated to banks and financial institutions by the Bank of Tanzania. The list is also sent to home affairs and the Attorney General's Office. According to the authorities, no request has been made under UNSCR 1373.

### **1.3 Overview of the Financial Sector and DNFBP**

#### **Financial sector**

26. The financial sector in the United Republic of Tanzania is diverse but very small in relation to the economy with limited access (it has been estimated that only 10% of the people have access to formal financial services<sup>6</sup>). It consists of four main sectors, namely, banking, insurance, pension funds and capital markets. Each of the four sectors falls under the supervision of an industry specific regulator.. Moreover, savings and credit cooperatives (SACCOS) and micro finance institutions which serve the low income segment of the economy are also well established in the financial system.

#### **Banks**

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<sup>6</sup> Finscope Survey 2007

27. The Bank of Tanzania (the BoT) is the regulator of the banking sector. Institutions regulated by BOT include commercial banks, financial institutions<sup>7</sup> and microfinance institutions.
28. As at 31 December 2007, the banking sector comprised 34 banking institutions, made of 24 banks and 10 financial institutions.
29. The financial sector is dominated by commercial banks. As at 30 September 2008, total assets of the financial sector amounted to TZS 8, 116.53 billion, of which 95% was contributed by commercial banks. The three largest banks had 46% of the total assets, 48% of loans, 50% of deposits and 41% of capital as at 30 September 2008.

**Table A: Ownership structure of commercial banks, as at 31 December 2007**

Ownership	Number owned
Foreign (100%)	11
Locally (100%)	12
Jointly owned	11 <sup>8</sup>
<b>Total</b>	<b>34</b>

30. There are only three branches abroad and one subsidiary abroad in the commercial banks industry in the United Republic of Tanzania.

#### ***Bureaux de change***

31. Bureaux de change are licensed by the BoT. As at 30 September 2008, there were 175 bureaux de change operating in the United Republic of Tanzania. In terms of geographical spread, there were 26 bureaux de change operating in Zanzibar. Out of the total of 149 operating in Mainland Tanzania, 97 were in Dar es Salaam and 28 in Arusha. Tourism is the major factor influencing the geographical spread of bureaux de change in the United Republic of Tanzania. Bureaux de change are allowed to carry-on the business of buying and selling foreign currency on spot.
32. The greatest challenge facing bureaux de change sector in the United Republic of Tanzania is compliance with client identification and verification requirements to safeguard potential misuse of the sector for ML/TF purposes.

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<sup>7</sup> Financial institutions are defined under the Banking and Financial Institutions Act as entities engaged in the business of banking, but limited as to size, locations served, or permitted activities, as prescribed by the Bank or required by the terms and conditions of its licence. The authorities have advised that all financial institutions that have been licensed thus far are not permitted to operate current accounts.

<sup>8</sup> 6 majority foreign owned and 5 majority locally owned

### *Pension Industry*

33. The definition of long term assurance business includes pension business. In 2007, pension fund administration by insurance companies represented 31.49% of the total long term assurance gross premiums. There are six pensions fund managers operating in the pension industry.

### *Insurance sector*

34. The insurance sector was opened up for private participation in the year 1997. As at end of December 2007, 16 private companies have been licensed to conduct business in life and non-life insurance. As at the date of the onsite visit there were four companies licensed to conduct life insurance in the United Republic of Tanzania. The insurance sector falls within the supervisory ambit of the Insurance Supervisory Department (ISD), an agency of the Government established under the Insurance Act. The ISD which is subject to the general supervision of the Minister for Finance and Economic Affairs is headed by the Commissioner of Insurance who is also the Chief Executive.
35. The Insurance Act establishes a framework for the regulation and supervision of the conduct of insurance business in the United Republic of Tanzania. It also provides for the registration of insurers, insurance brokers, insurance agents and agents for brokers.

### *Securities Sector*

36. The Capital Markets and Securities Act 1994, provides for the regulatory framework for the securities sector in the United Republic of Tanzania. It provides for the establishment of the Capital Markets and Securities Authority (CMSA) which is responsible for regulating and monitoring securities business in Tanzania. The main operators in the securities market in Tanzania are the securities dealers, the investment advisers and the Dar es Salaam Stock Exchange Ltd (DSE). All these players are licensed by the CMSA. As at the date of the onsite visit there were 6 securities dealers and 14 investment advisers licensed by the CMSA under the CMS Act.

### *DSE*

37. The DSE is a non-profit self regulatory organisation set up to encourage wider share ownership of companies in Tanzania. Products that are currently traded on the Tanzania Capital Markets include:

- Equities, there are 14 listed companies
  - Corporate bonds, 5 listed corporate bonds are traded
  - Government bonds, 8 treasury bonds
  - Units, from 4 Unit Trust Schemes
38. As at 30 September 2008, the DSE had a market capitalisation of USD 2,853.66 million (TZS 3,349.59 billion).
39. Foreign investors are allowed to invest up to 60% in aggregate of the share capital of any listed company.
40. DSE membership consists of Licensed Dealing Members (LDMs) and Associate members. LDMs that are allowed to transact at the DSE as agents or on behalf of the investors are known as brokers whereas those that are allowed to deal as principals on their own behalf are known as dealers. Associate members are natural and legal persons who have an interest in the development of capital markets in Tanzania including listed companies, companies with a potential for listing, institutional investors, professional associations as well as individuals.
41. The DSE has primary responsibility for supervising trading, ensuring that the LDMs adhere to its trading, depository, clearing and settlement rules and monitoring compliance of its listing rules by listed companies. Both the CMSA and DSE monitor the market trading activities to detect market malpractices such as false trading, market manipulation and insider dealing. The CEO of the DSE has the authority to suspend anytime offers and bids that appear to be suspicious.
42. No AML/CFT regulator has been designated under the AML Act to monitor financial institutions and ensure that they comply with the AML/CFT requirements under the AML Act.
43. Table B below shows the types of “financial institutions” (as defined by the FATF) that operate in the United Republic of Tanzania and indicates if they are subject to the AML/CFT requirements of the AML Act while Table C indicates the size of the financial sector.

**Table B: Type of financial institutions**

<b>Financial Activity by Type of Financial Institution</b>			
<b>Type of Financial institutions (see the glossary of the FATF 40 Recommendations)</b>	<b>Type of Financial Institution that performs this activity</b>	<b>AML/CFT Requirement</b>	<b>AML/CFT Supervisor/Regulator</b>
<b>Acceptance of deposits and other repayable funds</b>	banks and financial institutions	AML Act 2006	Not designated

<b>from the public</b>	savings and credit cooperative society	uncovered	
<b>Lending</b>	banks and financial institutions	AML Act 2006	Not designated
	Micro finance companies	Uncovered	
	Savings and credit cooperative society	Uncovered	
	Housing finance companies	Uncovered	
<b>Financial leasing</b>	banks/financial institutions	AML Act 2006	Not designated
	Leasing entities	Uncovered	
<b>Transfer of money or value</b>	banks/financial institutions	AML Act 2006	Not designated
	Tanzania Postal Bank		
<b>Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)</b>	banks/financial institutions	AML Act 2006	Not designated
<b>Financial guarantees and commitments</b>	banks/financial institutions	AML Act 2006	Not designated
<b>Trading in Money market instruments (cheques, bills, CDs, derivatives etc.)</b>	banks/financial institutions	AML Act 2006	Not designated
<b>Trading in Foreign exchange</b>	banks/financial institutions	AML Act 2006	Not designated

<b>Trading in Exchange, interest rate and index instruments</b>	N/A		
<b>Trading in Transferable securities</b>	Dealers	AML Act 2006	Not designated
<b>Trading in Commodities</b>	N/A		
<b>Participation in securities issues and the provision of financial services related to such issues</b>	Dealers Banks	AML Act 2006	Not designated
<b>Individual and collective portfolio management</b>	Investment advisers	Uncovered	
<b>Safekeeping and administration of cash or liquid securities on behalf of other persons</b>	Banks CIS custodians/trustee  Securities custodians	AML Act 2006  uncovered	Not designated
<b>Otherwise investing, administering or managing funds or money on behalf of other persons</b>	Banks Unit trust managers CIS Managers  Pension fund managers	AML Act 2006  Uncovered	Not designated
<b>Underwriting and placement of life insurance and other investment related insurance</b>	Insurance companies Insurance brokers and agents	AML Act 2006	Not designated
<b>Money and currency changing</b>	Bureaux de change Banks	AML Act 2006	Not designated

**Table C: Size of the financial services sector**

Type of financial institution	Number of Institutions	Total assets
Commercial banks/Fin. Inst	35	TZS 8,116.53 billion
Micro finance companies	Not available	
Housing finance companies	Not available	
Savings and credit cooperative society	Not available	
Life Insurance companies	4	TZS 18.1 billion
Insurance brokers	54	
Insurance Agents	424	
Agents for brokers		
Pension funds managers	6	TZS 2,174.25 billion
Bureaux de change	175	TZS 8,116.53 billion
Dealers	6	
Investment advisers (including portfolio management)	14	
CIS custodians	1	
Securities custodians	2 applications under consideration	

### **Designated Non-Financial Businesses and professions (DNFBPs)**

44. The following types of DNFBPs operate in the United Republic of Tanzania casinos, dealers in precious metals and stones, lawyers and accountants. All these DNFBPs are reporting persons under the AML Act.
45. There is however, no designated competent authority to monitor and supervise DNFBPs for AML/CFT purposes.

#### ***Casinos***

46. Casinos operations are regulated under the Gaming Act CAP.41. There are eight privately owned licensed to operate in the United Republic of Tanzania. Six of these casinos are in Dar es Salaam and one each in Arusha and Mwanza. The Gaming Act does not expressly prohibit the licensing of internet casinos. However, Tanzanian authorities indicated that legislation would be introduced in the near future to specifically address internet casinos.

#### ***Lawyers, notaries and other independent legal professionals***

47. The legal profession in the United Republic of Tanzania comprises advocates who can also act as notaries and commissioners of oaths.



48. A person holding the appropriate qualification may apply to the Chief Justice to be admitted as an advocate. Advocates must be registered with the Tanganyika Law Society (TLS) in Mainland Tanzania. The TLS was established in 1955 under the Tanganyika Law Society Act, Cap. 307. All practicing advocates are required to become members and are bound by the Rules of Professional Conduct and Etiquette of the Tanganyika Law Society.
49. An advocate must renew its practising certificate every year. The renewal of the certificate is subject to the advocate maintaining his/her membership with the TLS and fulfilling certain requirements of the TLS, including attending the minimum number of Continued Legal Education sessions and the General meetings of the Society. The Advocates Committee which is chaired by a High Court Judge and established under the Advocates Act has the power to enquire into, hear and determine any allegation of misconduct made against any advocate. In addition, the Chief Justice or any of the Judges of the High Court have disciplinary powers to deal with misconduct or offences by advocates. Complaints against advocates channelled through the TLS are resolved by way of mediation.
50. A typical large legal firm in the United Republic of Tanzania does not exceed 20 advocates. The number of advocates is expected to rise as a result of the newly set-up Law School in Mainland Tanzania.
51. The Zanzibar Law Society (ZLS) is an independent and private entity established in 1995. It is still at a nascent development stage.
52. Both in Mainland Tanzania and Zanzibar, legal services comprise litigation, legal advisory services, company and trusts services, notarial work and real estate transactions. Assessors were informed that there are about 850 and 60 practicing legal professionals licensed by the TLS and ZLS, respectively.

### *Accountants*

53. The accounting profession in the United Republic of Tanzania comprises of Certified Public Accountants (CPA)<sup>9</sup> (962), Certified Public Accountants in Public Practice (397), Approved Accountants (664), Graduate Accountants (1,485) and Accounting Technicians (210) who must be registered by the National Board of Accountants and Auditors (NBAA) under the Accountants and Auditors (Registration) Act. All Certified Public Accountants in Public Practice firms and Certified Public Accountants firms must also be registered by the NBAA. There are 151 auditing firms registered in the United Republic of Tanzania. Only persons who hold the relevant academic qualifications and who are fit and proper can be registered by the NBAA in one of above categories of accountants. The NBAA may take disciplinary

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<sup>9</sup> CPA comprise accountants in employment, CPA in Public Practice and auditors

actions against any registered person who has been convicted of an offence under the Act or who has been found guilty of any professional misconduct.

54. Every member of the accountancy profession whether registered with the NBAA or not must comply with the provisions of the Professional Accountants (Code of Conduct and Ethics) By-Laws. The NBAA Ethics and Disciplinary Committee is empowered to investigate complaints regarding the conduct or action of any member and may recommend any one of the following disciplinary sanctions to the NBAA: i) de-registration of the member with public notice in the Gazette and the NBAA journals, ii) disciplinary action as may be directed by the governing council of the NBAA; or iii) criminal prosecution.

#### *Real estate agents*

55. Real estate agents are not regulated and there is therefore no requirement for registration in the United Republic of Tanzania. Notaries are highly involved in land transactions and the sale and purchase agreement must be filed with the land office of the Commissioner of Land where the evaluation of the property is undertaken to check the reasonableness of the price and for tax purposes.

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

56. The United Republic of Tanzania is a significant producer of gold, diamond and tanzanite. Dealers in precious stones and gold are licensed by the Ministry of Energy and Minerals.
57. 45 of the licensed of the Precious Stones and Gold Dealers are members of the Tanzania Mineral Dealers Association (TAMIDA).
58. Table D below shows the size and structure of the DNFBP sector in the United Republic of Tanzania.

**Table D.: Structure and Size of the DNFBP Sector  
(As at 30 September 2008)**

Sector	In Tanzania Activity performed by	Size of Sector	AML/CFT requirements in Domestic Law	AML/CFT Oversight provided by
Casinos (including internet casinos)	Privately owned land based casino operations; no internet casinos.	8	Yes	Not designated

Real Estate Agents	Individuals and firms	N/A <sup>10</sup>	Yes	Not designated
Dealers in precious metals	Individuals and firms	N/A	Yes	Not designated
Dealers in precious stones	Individuals and firms	N/A	Yes	Not designated
Legal professionals	Advocates	850	Yes	Not designated
Accountants	CPAs and Accounting Technicians	3223	Yes	Not designated
Other (please specify)	Auctioneers	N/A	Yes	Not designated

#### 1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

##### Mainland Tanzania

59. Within the context of the Companies Act, two or more persons can be associated to set up a company, with or without liability, for any lawful purpose. A company may be public or private and may be limited by shares or guarantee. Companies are required to have at least two directors. Corporate directors are allowed under the Companies Act.
60. Table E below indicates the number of each type of companies registered on Mainland Tanzania.

**Table E: Companies Registered with BRELA as at 30 Jan. 2008**

Company Type	Total registered
Public Companies limited by shares	10
Public companies limited by guarantee	0
Private Companies limited by shares	65, 035
Private companies limited by Guarantee	4, 512
Unlimited companies	3
Foreign companies	4000
<b>Total</b>	<b>73, 560</b>

##### Zanzibar

61. There are 1368 companies and 156 foreign companies registered in Zanzibar.

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<sup>10</sup> N/A-Not available

### *Legal Arrangements*

62. Trusts may be established in the United Republic of Tanzania under Common Law. There is no requirement to register trusts. According to the authorities, the use of trusts is not very common in the United Republic of Tanzania.

### *NPO Sector*

63. There is separate designated registrar of NPOs for registration and coordination of NPOs in Mainland Tanzania and Zanzibar. No risk assessment has been undertaken by the authorities. There is a need for effective outreach activities to protect the sector from possible terrorist financing abuse.

## **1.5 Overview of strategy to prevent money laundering and terrorist financing**

64. The United Republic of Tanzania is a founding member of the Eastern and Southern Africa Anti-Money Laundering Group. ESAAMLG strives to forge regional coordination in the adoption and effective implementation of the Financial Action Task Force 40+9 Recommendations and other international instruments to combat money laundering and terrorist financing.
65. In an effort to deal with the general risks posed by ML/TF, the United Republic of Tanzania enacted the Prevention of Terrorism Act, 2002 and Anti-Money Laundering Act, 2006. As far as possible, the United Republic of Tanzania prepared both the Acts to meet international standards and applicable UN Conventions.
66. The United Republic of Tanzania has drafted a National Strategy on AML/CFT to address the effects of ML/TF, and is awaiting Cabinet approval. The national strategy is aligned with the objectives of the national AML/CFT Acts. It is expected that once the Mutual Evaluation Report is adopted, the United Republic of Tanzania will use the evaluation report to develop and implement effective national strategy implementation programmes.

### ***b. The institutional framework for combating money laundering and terrorist financing***

#### **(i) Ministries**

67. *Ministry of Finance and Economic Affairs:* The Ministry of Finance and Economic Affairs (MOFEAs) in both the United Republic of Tanzania and that of the Revolutionary Government of Zanzibar have similar roles of coordination and supervising financial and economic matters of the two parts of the Republic. These ministries are responsible for developing regulatory policies for the countries financial sectors in cooperation with the Bank of Tanzania. However MOFEA

Mainland Tanzania represents the United Republic of Tanzania in negotiations with International financial institutions such as the World Bank, IMF, ADB, and ODA. The Ministry of Finance and Economic Affairs coordinates all anti-money laundering issues through the National Multi- Disciplinary Committee on Anti- Money Laundering (AML Committee) established under section 8 of the AML Act.

68. The AML Committee comprises various relevant government authorities from both Mainland Tanzania and Zanzibar. The functions of the Committee are, inter alia, to formulate, assess and advise government policy on the effective implementation of AML/CFT efforts. The Committee meets regularly on quarterly basis, and is chaired by the Bank of Tanzania
69. **Ministry of Constitutional Affairs and Justice:** The Ministry of Constitutional Affairs and Justice is responsible for the administration of justice and is a coordinator of all legal matters concerning the Government.
70. **Ministry of Constitutional Affairs and Good Governance:** The Ministry of Constitutional Affairs and Good Governance of Zanzibar is responsible for the administration and overseeing constitutional issues as well as issues of good governance within the public and the private sectors. The Ministry caters for specific and some independent departments such as the Office of the DPP, Controller and Auditor General's Office, General Registrar's Office, Attorney General Chambers, the Office of the Mufti and Kadhi.
71. **Ministry of Home Affairs:** The Ministry of Home Affairs comprises of departments of Police Force, Immigration, Prisons Services, Refugees, Fire Rescue, National Identity Card Department and Complaint Department. The responsible departments for combating ML/FT are Police Force and Immigration. They work very closely through task forces by sharing information, conduct joint investigations, operations and training on ML/FT issues.
72. **Ministry of Foreign Affairs and International Cooperation:** The Ministry of Foreign Affairs and International Cooperation serves as a linkage between the national authorities and their counterparts in other countries as well as relevant international organizations abroad. It participates in the United Nations and other international decision-making fora and facilitates mutual legal assistance.

## **(ii) Criminal Justice and Operational Agencies**

73. **The Financial Intelligence Unit (FIU)** which is established under section 4 of the AML Act serves as the national centre for receiving (where appropriate, request), analyse and disseminate information to law enforcement agencies, issue AML/CFT guidelines to reporting persons, provide guidance on AML/CFT training

programmes and awareness raising and to act as primary link of the reporting persons, regulators and law enforcement agencies.

74. *The Office of the Attorney General (OAG)* is established under article 59 of the Constitution of United Republic of Tanzania. It is responsible for matters concerning the drafting of laws including the ML/FT, it is also a central authority for mutual assistance in criminal matters and extradition and initiates prosecution in cases involving ML and predicate offences under the Office of the Director of Public Prosecutions which is under OAG.
75. *The Office the Director of Public Prosecutions* is established under article 59B of the Constitution of United Republic of Tanzania. The DPP heads the National Prosecution Service and is responsible for the organisation, management, monitoring and supervision of prosecutions and coordination of investigations.
76. *The Police Force of the United Republic of Tanzania* which is constituted under the Police Force and Auxiliary Services Act is responsible for preserving peace, maintaining law and order, preventing and detecting crime and protecting property. Within the Police Force, the Criminal Investigation Department (CID) is responsible for the investigation of all crime, including money laundering and terrorist financing.
77. *Tanzania Revenue Authority* is responsible for all taxation and customs services in Mainland Tanzania.
78. *Zanzibar Revenue Board* is responsible for all taxation and customs services in Zanzibar.
79. *The Tanzania Intelligence Security Service* is responsible for the domestic intelligence relevant to the security of the United Republic of Tanzania.

### **(iii) Financial Sector Supervisors**

80. *The Bank of Tanzania* was established in 1966 and regulates the banking sector, including banks, financial institutions, bureaux de changes and microfinance institutions, in the United Republic of Tanzania.
81. *Insurance Supervisory Department* is the supervisory body for the insurance sector in the United Republic of Tanzania.
82. *The Capital Markets and Securities Authority (CMSA)* regulates and supervises the securities industry in the United Republic of Tanzania.

### **(iv) DNFBP and Other Matters**

83. *The Gaming Board of Tanzania* is responsible for the supervision of all gaming activities in Mainland Tanzania.

84. *National Board of Accountants and Auditors (NBAA)* is an independent regulatory body established by the Auditors and Accountants (registration) Act. The Board is charged with the responsibility of promoting, developing and regulating the accounting profession in the United Republic of Tanzania.

**(v) Self-regulatory organisations (SRO) for professionals such as lawyers and accountants.**

85. *The Tanganyika Law Society (TLS)* is established under the Tanganyika Law Society Act and all practising advocates (including state attorneys) are members of the TLS. It has as one of its main object to maintain and improve the standards of conduct and learning of the legal profession in Mainland Tanzania.

**(vi) Legal persons and arrangements and Non-Profit Organisations**

86. *Business Registration and Licensing Authority (BRELA)* is a Government Executive Agency established in 1999 and is responsible for registration of companies and business names in Mainland Tanzania.

87. *The Registrar of NGOs* is responsible for the registration of NGOs under the Non-Governmental Organisations Act and coordination of NGO activities in Mainland Tanzania.

88. *General Registrar's Office* is responsible for registration of all companies intending to have their operations in Zanzibar, NGOs, societies and co operatives.

**c. Approach concerning risk**

89. The United Republic of Tanzania has not undertaken a risk assessment for AML/CFT purposes.

**d. Progress since the last mutual evaluation**

90. This is the first AML/CFT mutual evaluation of the United Republic of Tanzania.

## 2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

#### 2.1 Criminalisation of Money Laundering (R.1 & 2)

##### 2.1.1 *Description and Analysis*

#### Recommendation 1

#### *Legal framework*

##### Preamble

91. Money laundering is criminalised under section 71 of the Proceeds of Crime Act. However, the authorities have indicated that this provision has never been used in practice.
92. Money laundering is also criminalised under the Anti-Money Laundering Act, 2006 (AML Act), which became operational on 01 July 2007.
93. During the onsite visit, the authorities indicated that the AML Act is not enforceable in Zanzibar. The assessors were informed that Zanzibar is considering enacting its own AML legislation. To this end, a copy of the draft Anti-Money Laundering and Proceeds of Crime Bill was provided to the evaluation team.

##### Mainland Tanzania

94. In addition to the AML Act the following legislation are also relevant:
  - The Written Laws (Miscellaneous Amendments) Act, 2007 (Act No. 15 of 2007);
  - The Proceeds of Crime Act
  - The Penal Code
  - The Police Force and Auxiliary Services Act
  - The Criminal Procedure Act
  - The Extradition Act
  - The Mutual Assistance in Criminal Matters Act



- The Prevention and Combating of Corruption Act
- The Economic and Organized Crime Control Act; and
- The Penal Decree Amendment Act
- The Prevention of Terrorism Act, Cap. 19
- The Drugs and Prevention of Illicit Traffic in Drugs Act
- The Anti Trafficking in Persons Act No. 6 of 2008
- The Gaming Act, Cap 41

***Criminalisation of Money laundering (c.1.1-Physical and Material Elements of the Offence)***

95. The United Republic of Tanzania has ratified both the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention Against Transnational Organised Crime, 2000, (the Palermo Convention).
96. Section 3 of the AML Act defines ‘Money Laundering’ as meaning: *“engagement of a person or persons, direct or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement intends to avoid the legal consequence of such action and includes offences referred to in section 12.”*
97. Section 12 provides as follows:-
- “A person who-*
- (a) *engages, directly or indirectly, in a transaction that involves property that is proceeds of a predicate offence while he knows or ought to know or ought to have known that the property is the proceeds of a predicate offence;*
  - (b) *converts, transfers, transports or transmits property while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence, for the purposes of concealing, disguising the illicit origin of the property or of assisting any person who is involved in the commission of such offence to evade the legal consequences of his actions;*
  - (c) *conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, while he knows or ought to know or ought to have known that such property is the proceeds of a predicate offence;*
  - (d) *acquires, possesses, uses or administers property, while he knows or ought to know or ought to have known at the time of receipt that such property is the proceeds of a predicate offence; or*

- (e) *participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section,*

*commits the offence of money laundering.”*

98. Articles 3(1)(b) and (c) of the Vienna Convention and 6(1) of the Palermo Convention require countries to establish as a criminal offence the following intentional acts (material elements):

- The conversion or transfer of proceeds;
- The concealment or disguise of the true nature, source location, disposition, movement or ownership of or rights with respect to proceeds; and
- Subject to the fundamental or constitutional principles and basic concepts of the country’s legal system (Art.2 para 1 of the Vienna Convention and Art. 6 para. 1 of the Palermo Convention), the acquisition, possession or use of proceeds (Art. 3 para 1(b)(i)-(ii) of the Vienna Convention and Art. 6 para. 1(a)(i)-(ii) of the Palermo Convention) as well as the participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counselling the commission of any of the foregoing (Art. 6(1)(b)(iii) of the Palermo Convention).

99. Section 3 of the AML Act defines ‘property’ as having the meaning ascribed to it under the Proceeds of Crime Act (POCA)<sup>11</sup>.

100. Under section 4 of the POCA, ‘property’ is defined as meaning: *“currency or monetary instruments and all other real or personal property of every description, whether situated in the United Republic or elsewhere and whether tangible or intangible, moveable or immovable and includes an interest in any such property.”*

101. In general, the material elements of the offence of money laundering as defined under section 12 of the AML Act are broad and are consistent with the Vienna and Palermo Conventions. Section 12 thus meet the requirements of Article 6(1) of the Palermo Convention and they cover all elements of the ML offence as provided for under Article 6(1)(a) (ii) of the Palermo Convention which provides as follows:

*“The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime”.*

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<sup>11</sup> The POCA was amended by the Written Laws (Miscellaneous Amendments) Act, 2007 and any reference to the POCA includes these amendments.

102. Furthermore, the whole of section 12 of the AML Act, also covers all material elements of the offence of ML as provided under Article 3(1) (b) & (c) of the Vienna Convention.

***Property and conviction for predicate offence (c 1.2)***

103. The offences under section 12 of the AML Act refer to “ *property that is proceeds of a predicate offence*”
104. In addition to the definition of “property “under section 4 of the POCA (see definition above) the authorities in the United Republic of Tanzania indicated that the definitions of property and the proceeds of crime in the AML Act, must be read together with the definitions of property and proceeds of crime as it appears in the Prevention and Combating of Corruption Act and the Penal Code. No case law was however submitted to support this argument.
105. Although corporeal and incorporeal assets are not specifically mentioned, they are clearly covered in the definition of property under section 4 of the Proceeds of Crime Act. The definition of property under the laws of Tanzania applies to wide range of assets and is in line with the definition of property in Vienna Convention, Palermo Convention and the FATF Glossary.

***Proving Property is the Proceeds of Crime (c.1.2.1)***

106. If one has regard to the definition of money laundering in section 3 of the AML Act it is clear that the person who deals with the money or property must know that the property is of illicit origin. Each of the offences under section 12 of the AML Act further requires that the person involved in the money laundering act ‘must know, ought to know or ought to have known that such property is the proceeds of predicate offence’. As such it is clear, that a person can only be prosecuted for a money laundering offence if that person has been convicted for a predicate offence. It is only upon conviction of a predicate offence, that property will be regarded as property of an illicit origin.

***Scope of Predicate offences (c. 1.3)***

107. Tanzania determines the underlying predicate offences for money laundering by reference to a list of predicate offences as defined under section 3 of the AML Act.
108. Section 3 of the AML Act defines “predicate offences” to include the following:
- (a) Any dealing which amounts to illicit drug trafficking under the law for the time being relating to narcotic drugs and psychotropic substances;
  - (b) Terrorism, including terrorist financing;

- (c) Illicit arms Trafficking;
- (d) Participating in an organized criminal group and racketeering;
- (e) Trafficking in human beings and smuggling immigrants;
- (f) Sexual exploitation, including sexual exploitation of children;
- (g) Illicit trafficking in stolen or other goods;
- (h) Corrupt Practice;
- (i) Counterfeiting;
- (j) Armed Robbery;
- (k) Theft;
- (l) Kidnapping, illegal restraint and hostage taking;
- (m) Smuggling;
- (n) Extortion,;
- (o) Forgery;
- (p) Piracy;
- (q) Hijacking;
- (r) Insider dealing and market manipulation;
- (s) Illicit Trafficking or dealing in human organs and tissues;
- (t) Poaching;
- (u) Tax evasion;
- (v) Illegal fishing;
- (w) Illegal mining;
- (x) Environmental crimes; or
- (y) any other offence, which the Minister may, by notice published in the Gazette, declare, whether committed within the national boundaries of the United Republic or outside the country.

109. Under paragraph (y) of the definition of “predicate offence” under section 3 of the AML Act, the Minister of Finance may declare any other offence as a predicate offence. As at the date of the onsite visit, the Minister had made no such declaration with regard to any other offence.
110. The definition of predicate offences under section 3 of the AML Act does not cover fraud, murder, grievous bodily injury, counterfeiting currency and piracy of products which are the designated categories of offences for the purposes of FATF

definition. Further, it is also not clear whether corrupt practice covers corruption and bribery as defined under the Prevention and Combating of Corruption Act. Similarly, the AML Act also provides a definition of “terrorist financing” which does not seem to relate to the terrorist financing offences under the Prevention of Terrorism Act. This causes some ambiguity with respect to the scope of FT offences that are covered for the purposes of the definition of predicate offences.

***Threshold approach for predicate offences (c 1.4)***

111. Not applicable.

***Extraterritorially committed predicate offences***

112. Section 12 of the AML ACT makes it clear that a person commits the offence of money laundering when such person does anything with property which such person knows, ought to know, or ought to have known is the proceeds of a predicate offence. Section 12 however does not expressly provide that a person will be prosecuted for money laundering if such person committed the predicate offences extraterritorially the United Republic of Tanzania. As such one has to refer back to the definition of predicate offences in the AML Act to establish the scope of its extraterritorial application.

113. Paragraph (y) in the definition of predicate offences under section 3 of the AML Act defines predicate offence as including: “...any other offence which the Minister may, by notice published in the Gazette declare, whether committed within the national boundaries of the United Republic or outside the country.” A literal reading of this subparagraph directs one to conclude that the prosecutions for money laundering based on predicate offences committed outside the United Republic are limited to those ‘predicate’ offences that the Minister has published in the Gazette.

114. The above conclusion is supported by Representatives of the Attorney-General’s Office, who advised that the wording “...whether committed within the national boundaries of the United Republic or outside the country” ought to have appeared at the bottom of the text of the definition of predicate offence, in order for it to apply to the predicate offences mentioned in (a) to (x). As the law is currently drafted, they were of the opinion that the wording “...whether committed within the national boundaries of the United Republic or outside the country” in was restricted to the text of subparagraph (y).

115. However, be it as it may, the manner in which the AML Act is drafted, prosecuting money laundering for predicate offences committed outside the United Republic, are limited to those predicate offences falling within the ambit of subparagraph (y) of the

definition clause of predicate offences. As such, the ML offence will not apply where the property in question is the proceeds of crime that falls outside the ambit of section (y) of the definition clause of predicate offence, if committed outside the United Republic of Tanzania.

116. Representatives of the office of the Director of Public Prosecutions further confirmed that the dual criminality test will be applied in all prosecutions of money laundering offences where the proceeds of crime is derived from an act which was committed outside the United Republic. If the act from which the property was derived was committed outside the United Republic of Tanzania, and at the time of its commission it was not an offence in Tanzania, the authorities in Tanzania will not be able to prosecute for money laundering. As such it is clear that dual criminality test applies in money laundering offences.

#### *Self laundering (c. 1.6)*

117. The definition of money laundering under section 3 of the AML Act, applies to a person or persons who engages directly or indirectly in the activities listed, and no distinction is made between the author of the predicate offence and the launderer. There is thus no provision in the AML Act which prohibits the prosecution of an accused for both the predicate offence and money laundering offence.
118. However, representatives from the Office of the Director of Public Prosecutions could not confirm to the assessment team that a person who committed the predicate offence could also be charged with the money laundering offence. In the absence of any decided cases on the topic, the assessors were therefore not clear that prosecution for laundering one's own funds is possible under AML Act.

#### *Ancillary offences (c. 1.7)*

119. The AML Act, in section 12 (e) provides for the ancillary offences. The provision states that "*A person who participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section, commits offence of ML*".

#### *Additional elements (c.1.8)*

120. There is no provision in the AML Act or any other applicable law, which permits the prosecution for money laundering, for a predicate offence, which if it was committed in a country that did not criminalize the act, but which would have constituted an offence, had it occurred in the United Republic of Tanzania.

## Recommendation 2

### *Liability of natural and legal persons (c. 2.1 & 2.3)*

121. The AML Act does not define 'person or persons' and as such the term 'person or persons' when used in the AML Act, has the meaning given to it in the Interpretation of Laws Act. The definition of person under the Interpretation of Laws Act includes both natural and legal persons.
122. Section 4 of the Interpretation of Laws Act defines "person" as meaning "*any word or expression descriptive of a person and includes a public body, company or association or body of persons, corporate or unincorporated;*"
123. Section 13(b) of the AML Act further provides for specific sanctions where the person is a body corporate.

### *The mental element of the ML offence (c.2.2)*

124. The ML offence under AML Act requires intent and therefore applies to anyone who knowingly engages in a transaction that involves tainted property or receives, is in possession of, or engages in any of the predicate offences defined in section 3.
125. The intentional element is provided under section 3 of the AML Act that reads as follows:-  
  
*"ML means engagement of a person or persons, directly or indirectly in conversion, transfer, concealment, disguising, use or acquisition of money or property known to be of illicit origin and in which such engagement **intends** to avoid legal consequences of such action..."*
126. Section 12 of the AML Act uses the term "*knows or ought to know or ought to have known*".
127. The representatives of the Office of the Director of Public Prosecutions explained that under the Common Law, the Criminal Procedure Act and the Evidence Act the intentional element of any offence can be inferred from objective factual circumstances. They specifically relied on the inclusion of the wording "*knows, ought to know or ought to have known*" to argue that whenever doubt exists in a criminal prosecution, on whether an accused had the necessary intent to commit the money laundering offence in question, the Court can look at objective factual circumstances such as all the evidence adduced before court, as well as applying the reasonable man's test. According to the authorities the rules pertaining to proving intent in terms of the common law will apply. As such, proof of intent can be satisfied either by adducing direct evidence linking the accused to the commission of the crime or by inference being made from objective factual circumstances. According to the

representatives of the DPP's office, in assessing whether an accused may have intended to commit the offence of ML, all the circumstances of the case are looked at and a reasonable conclusion can be inferred from the same, that there was intention to commit the offence.

128. The Evidence Act however appears not to support that the intentional element of any offence can be inferred from objective factual circumstances. At most, these sections state that such facts are relevant facts, but not that objective factual circumstances shall be regarded as conclusive proof that such facts i.e. intention exists. However, the Assessors were provided with the following decided cases:

- Nurdin Akasha alias Habab v Republic 1995 TLR 227 (CA)
- Republic v Jonathan Loilangwaki Eliahu and 5 others, High Court of Tanzania, delivered on 30 December 2005
- Republic v Kabwe Aleko Mulenga and 2 Others, High Court of Tanzania, delivered on 12 March 2004

129. Although these cases contain no direct pronouncement on the issue of proving intent by use of objective factual circumstances appear to support the view of the representatives of the DPP's office, that the intentional element of any offence can be inferred from objective factual circumstances.

*Liability of Legal Person should not preclude possible parallel criminal, civil or administrative proceedings (c.2.4)*

130. The AML Act does not provide for possible parallel proceedings in situations where legal persons are criminally liable, it only makes provision for criminal liability of both natural and legal persons. It contains no provision which caters for possible parallel criminal, civil or administrative proceedings for legal persons should they be found to have contravened any of the provisions of the Act. As such, whenever a legal person commits an offence under section 12, the provisions of section 13 and 14 are the only applicable penalty clauses that penalize offences under section 12. No parallel criminal, civil or administrative proceedings are catered for under the AML ACT.

*Sanctions for ML (c.2.5)*

131. Section 13 of the AML Act provides that:

*"Any person who contravenes the provision of section 12 shall, on conviction;*



- a) *If the person is an individual, be sentenced to a fine not exceeding five hundred million shillings and not less than one hundred million shillings or to a term of imprisonment not exceeding ten years and not less than five years;*
- b) *If the person is a body corporate, be liable to a fine not exceeding one billion shillings and not less than five hundred million shillings or to be ordered to pay the amount equivalent to three times the market value of property, whichever amount is greater."*

132. Section 14 of the AML Act further provides that:

*"(1) Where an offence under the provisions of section 12 is committed by a body corporate or an association of persons, every person who, at the time of the commission of the offence, was-*

- a) *a director, manager, controller or partner, or*
- b) *concerned in the management of its affairs,*

*may be convicted of that offence and shall be liable to a penalty specified in section 13, unless that person proves that, the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence, as he ought to have exercised, having regard to the nature of his functions in that capacity and to the circumstances pertaining to commission of offence.*

*(2) The director, manager, controller, partner or a person concerned in the management of affairs of a body corporate or an association may be convicted for an offence under subsection (1) notwithstanding that, such body corporate or association of persons has not been convicted of the offence.*

*(3) Any person who would have committed an offence if any act had been done or omitted to be done by him personally, commits that offence and shall on conviction be liable to the same penalty as if such act had been done or omitted to be done by his agent or officer in the course of that agent's business or in the course of that officer's employment, as the case may be, unless he proves that the offence was committed without his knowledge or consent and he took all reasonable precautions to prevent the doing of, or omission to do, such an act."*

133. On average, the sanctions appear to be on the high side compared to penalties for other commercial crimes and predicate offences. However, given the wide scope of predicate offences and commercial crimes, and the fact that courts in the United Republic of Tanzania never tried money laundering offence, it became very difficult for the assessors to assess whether the sanctions were effective, proportionate and dissuasive. The level of penalties for money laundering however seem to be in line with money laundering penalties imposed by courts in comparable jurisdictions within the ESAAMLG region.

*Statistics (applying recommendation 32)*

134. At the time of the onsite visit there were four cases of money laundering still under investigation by the Police while there has been no prosecution for the money laundering offence.

**2.1.2 Recommendations and Comments**

135. All the relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar.
136. The definition of money laundering as it appears in the AML Act is very wide and covers any type of property directly or indirectly derived from the commission of a predicate offence, which represents proceeds of crime.
137. The definition of predicate offence under section 3 of the AML Act must be amended to include fraud, counterfeiting of currency, piracy of products, murder and grievous bodily injury. Further, reference to corrupt practices should be clarified to make specific reference to the corruption and other related offences under the Prevention and Combating of Corruption Act. The definition of “terrorist financing” under the AML Act should also be amended to specifically refer to the terrorist financing offences under the Prevention of Terrorism Act.
138. It is further recommended that an amendment should be brought to the AML Act in order not require a conviction for a predicate offence, before an accused can be charged with an offence of money laundering.
139. The provisions under the AML Act, must be reviewed to give extra-territorial jurisdiction for any predicate offence and any act committed outside the jurisdiction of the United Republic of Tanzania. Currently, the manner in which subparagraph (y) in the definition of predicate offences in section 3 of AML Act is drafted, leads to the interpretation that only offences covered under subparagraph (y) has extra-territorial jurisdiction.
140. The AML Act must further be broadened to give extra-territorial jurisdiction to prosecute foreign nationals for predicate offences which will have been committed elsewhere other than in the jurisdiction of the United Republic of Tanzania.
141. The AML Act should specifically provide for the prosecution of both the commission of the predicate offence and the laundering of illicit funds arising from the predicate offence by the same person or individual.
142. The AML Act should further be broadened to make provision for the application of civil or administrative sanctions parallel to proceedings relating to money laundering offences, as within the United Republic of Tanzania, more than form of liability is indeed available. Parallel civil and administrative sanction must be catered for.

### 2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating <sup>12</sup>
R.1	NC	<ul style="list-style-type: none"><li>• The AML Act requires a conviction for a predicate offence when proving that property is the proceeds of crime.</li><li>• The definition of predicate offence under the AML Act does not cover all the categories of designated categories of offences as defined by the FATF.</li><li>• Predicate offences for money laundering do not extend to conduct that occurred in another country.</li><li>• It is not clear that prosecution for laundering one's own funds is possible under the AML Act.</li><li>• An assessment of the effective implementation could not be made as the AML Act had not been tested in the Courts.</li><li>• The AML Act is not enforceable with respect to Zanzibar..</li></ul>
R.2	NC	<ul style="list-style-type: none"><li>• Neither the AML Act, nor any other law provide for civil or administrative liability to run parallel with criminal money laundering proceedings.</li><li>• The AML Act is not enforceable with respect to Zanzibar.</li><li>• An assessment of the effective implementation could not be made as the AML Act had not been tested in the Courts.</li></ul>

## 2.2 Criminalisation of Terrorist Financing (SR.II)

### 2.2.1 Description and Analysis

#### *Legal framework*

#### *Preamble*

143. The main laws that criminalizes and deal with all aspects pertaining to financing of terrorism and terrorism acts, are:

- The Prevention of Terrorism Act, 2002 (Act No. 21 of 2002) (POTA)

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<sup>12</sup> These factors are only required to be set out when the rating is less than Compliant.

- The Anti-Money Laundering Act, 2006 (Act No. 12 of 2006)
- The Written Laws (Miscellaneous Amendments Act), 2007 (Act No. 15 of 2007)

144. The assessment team was advised by the authorities in Zanzibar that the POTA was not yet in force in Zanzibar as the requirements of Article 132(2) of the Constitution of Zanzibar, which provides that had a law enacted by the Union Parliament must be submitted to the House of Representative by the responsible Minister, have not been satisfied.
145. In addition, as discussed under section 2.1.1 above, the AML Act is not enforceable with respect Zanzibar.
146. The United Republic of Tanzania has acceded to the International Convention for Suppression of Financing of Terrorism (1999) but has not yet ratified the Convention.
147. It has also ratified or acceded to the following UN Conventions and Protocols:
  - Convention for the Suppression of Unlawful Seizure of Aircraft, 16 December 1970
  - Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 23 September 1971
  - Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, 24 February 1988
  - Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973
  - International Convention against the Taking of Hostages, 17 December 1979
  - Convention on the Physical Protection of Nuclear Material, 3 March 1980
  - Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 10 March 1988
  - Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 10 March 1988
  - International Convention for the Suppression of Terrorist Bombings, 15 December 1997 (not yet ratified)

### ***Criminalisation of financing of terrorism (c.II.1 (a))***

148. Part IV of the POTA criminalises terrorist financing in sections 13 and 14 of the Act.
149. Section 13 of the POTA establishes a terrorist financing offence in the following terms: *“Every person who provides, or collects by any means, directly or indirectly, any funds, intending, knowing or having reasonable grounds to believe that the funds will be used in full or in part to carry out a terrorist act commits an offence and shall on conviction be liable to imprisonment for term of fifteen years and not more than twenty years”.*

150. Section 14 of the POTA further provides that: *“Every person who directly, collects property or provides, invites a person to provide, or makes available, property or financial or other related services:*
- (a) intending that they be used, in whole or in part, for the purpose of committing or facilitating the commission of, a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of, a terrorist act, or*
  - (b) knowing that in whole or part, they will be used by, or will benefit, a terrorist group; commits an offence and shall on conviction, be liable to imprisonment for a term not less than twenty years and not more than twenty five years”.*
151. *“terrorist act” is defined under section 3 of the POTA as “an act or omission referred to under section 4 of the Act and the expression “terrorist” shall be construed accordingly.”*
152. Section 4 of the POTA defines “terrorist act” and “terrorism” in the following terms:
- (2) “A person commits terrorist act if, with terrorist intention, does an act or omission which-*
    - (a) may seriously damage a country or an international organization; or*
    - (b) is intended or can reasonably be regarded as having been intended to-*
      - (i) seriously intimidate a population;*
      - (ii) unduly compel a Government or perform or abstain from performing any act;*
      - (iii) seriously destabilise or destroy the fundamental, political, constitutional, economic or social structures of country or an international organization; or*
      - (iv) otherwise influence such Government, or international organization; or*
      - (v) involves or causes, as the case may be-*
        - a) attacks upon a person’s life which may cause death;*
        - b) kidnapping of a person.”*
    - (3) “An act shall also constitute terrorism within the scope of this Act if it is an act or threat of action which-*
      - a) Involves serious bodily harm to a person;*
      - b) Involves serious damage to property;*
      - c) Endangers a person’s life;*
      - d) Creates a serious risk to the health or safety of the public or a section of the public;*
      - e) Involves the use of firearms or explosives*
      - f) Involves releasing into the environment or any part of it or distributing or exposing the public or any part of it to-*
        - (i) any dangerous, hazardous, radioactive or harmful substance;*
        - (ii) any toxic chemical*

- (iii) *any microbial or other biological agent or toxin*
- g) *Is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;*
- h) *Is designed or intended to disrupt the provision of essential emergency services such as the police, civil defence or medical services;*
- i) *Involves prejudice to national security or public safety, and is intended, or by its nature and context, may reasonably be regarded as being intended to-*
  - a. *intimidate the public or a section of the public*
  - b. *compel the Government or an international organization to do, or refrain from doing, any act,*

*and is made for the purpose of advancing or supporting acts which constitutes terrorism within the meaning of this Act."*

(4) *"An act which-*

(a) *disrupts any services;*

(b) *is committed in pursuance of a protest, demonstration or stoppage of work*

*shall be deemed not be a terrorist act within the meaning of this section, so long and so long only as the act is not intended to result in any harm referred in paragraphs (a), (b), (c) or (d) of subsection (3)."*

(5) *"In this Act, unless the context requires, otherwise, any reference to 'terrorist act' shall include any act referred to in sections 5, 6, 7, 8, 9 and 10<sup>13</sup>"*

153. As defined above, the notion of "terrorist act" is very broad. The United Republic of Tanzania nevertheless falls short of the FATF standard and in particular in the definition of "terrorist act" as it has not ratified all the relevant UN Conventions and Protocols and criminalised all the acts that they cover.

#### ***Criminalisation of financing of terrorism (c.II.1 (b))***

154. Section 13 of the POTA refers to the term "funds" which is not defined in the Act. It was therefore not possible to determine whether the term "funds" as used in section 13 of the POTA meets the definition in the TF Convention.

155. With respect to the TF offence under section 14 of the POTA, the term "property" is used and is defined under section 3 of the Act.

156. Section 3 of the POTA defines the term "property" as *"any property and any assets of every description, whether corporeal or incorporeal movable or immovable, tangible or intangible and deeds and instruments evidencing title to, interest in, such property or assets and includes bank account."*

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<sup>13</sup> These sections of the POTA are set out in Annex 3a.

157. The definition of property under the POTA appears to be wide enough for the purposes of the standard.

*Criminalisation of financing of terrorism (c.II.1(c))*

158. The TF Convention states that the terrorist financing offence need not require that the funds (i) were actually used to carry out or attempt a terrorist act(s); or (ii) be linked to a specific terrorist act(s). The wordings in sections 13 and 14 of the POTA make reference to the provision or collection of funds “intending, knowing or having reasonable grounds to believe” that it will be used for terrorist activity. The criminal conduct is met here if there is an intention
159. to carry out terrorist activity and therefore does not require that funds are actually used to carry out or linked to terrorist activity.

*Criminalisation of financing of terrorism (c.II.1 (d))*

160. The attempt to commit an offence under the POTA is criminalised under section 27 (b) of the POTA. Furthermore, an attempt to commit an offence is generally criminalised under chapter XLIII sections 380 and 381 of the Penal Code Cap 16 of the Laws.

*Criminalisation of financing of terrorism (c.II.1 (e))*

161. Under Section 27 of the POTA every person who (i) aids and abets the commission; (ii) conspires to commit and (iii) the counsels or procures the commission of an offence under the POTA (including TF offences under sections 13 and 14 of the POTA) is also guilty of an offence.

In addition, section 22 of the Penal Code provides that; when an offence is committed, each of the following persons is deemed to have taken part in committing the offence; a person who actually does the act, a person who does any act for the purpose of enabling or aiding another person to commit the offence, a person who aids or abets another person in committing the offence or a person who counsels or procures any other person to commit the offence.

*Predicate offence for money laundering (c.II.2)*

162. Terrorist financing is a predicate offence for money laundering. The definition of predicate offences under section 3 of the AML Act includes terrorist financing.

### *Jurisdiction for Terrorist Financing Offence (c.II.3)*

163. The TF offences under sections 13 and 14 of the POTA applies regardless of whether the terrorist act was committed or would have been committed in the United Republic of Tanzania or in another jurisdiction.
164. Under Section 34(6) of the Act, the High Court has jurisdiction to try the offences under the POTA where the offence is committed by a person who is, after the commission of the act in the United Republic of Tanzania, and the person cannot be extradited to a foreign state having jurisdiction over the offence.
165. Section 34(6) provides:
- “For the purposes of subsection (2), an act or omission committed outside the United Republic and which would, if committed in the United Republic constitute an offence under this Act, shall be deemed to have been committed in the United Republic, if the person committing the act or omission is present in the United Republic and cannot be extradited to a foreign state having jurisdiction over the offence constituted by such act or omission.”*

### *The mental element of the TF offence (applying c.2.2 in R2)*

166. Sections 13 of the Prevention of Terrorism Act and other provisions in the Act, provides for the intentional element of offences relating to FT. Section 13 provides as follows:
- “Every person who provides, collects by any means, directly or indirectly, any funds, intending, **knowing** or having reasonable grounds to believe that the funds will be used to carry out terrorist acts, commits an offence”*
167. Sections 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of the POTA further permit the intentional element of the offence relating to FT, to be deducted from objective factual circumstances.
168. Furthermore the provisions that create offences of terrorism and FT under the act are couched in terms, which make them offences of specific intent. The said provisions use the terms “knowing” and “intending” in defining the relevant offences.
169. See also earlier discussions on money laundering offences and the deduction of intent from objective factual circumstance.

### *Liability of legal persons (applying c.2.3 & c.2.4 in R2)*



170. The terrorist financing offences under sections 13 and 14 of the POTA refer to “every person”. The term “person” is not defined under the POTA. That being so, the definition under the Interpretation of Laws Act, which includes legal persons as well as natural persons, will apply. However, it is not clear whether parallel actions are possible.

#### *Sanctions for TF (applying c.2.5 in R2)*

171. Terrorist financing offences under sections 13 and 14 of the POTA are punishable by imprisonment for a term not less than 15 years and not more than 20 years. In addition, the Court may order the forfeiture of any property used for or in connection with or received as payment or reward for the commission of an offence under the Act.

#### *Statistics*

172. There have been no cases of terrorist financing investigated or prosecuted in the United Republic of Tanzania.

#### **2.2.2 Recommendations and Comments**

173. The term “funds” as used under section 13 of the POTA should be defined in the law in terms of TF Convention.
174. The United Republic of Tanzania must ratify all the relevant UN Conventions and Protocols and should criminalise all the acts that they cover.
175. The effectiveness of the POTA at the time of the on-site visit was difficult to determine as the law have not as yet been tested by courts in the United Republic and no cases of TF had yet been prosecuted under the POTA.
176. Parallel criminal, civil or administrative sanctions against legal persons should be available.
177. All the relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

#### **2.2.3 Compliance with Special Recommendation II**

	Rating	Summary of factors underlying rating
SR.II	NC	• Not all the relevant UN Conventions and Protocols under the

		<p>International Convention for Suppression of Financing of Terrorism have been ratified and fully implemented in the United Republic of Tanzania.</p> <ul style="list-style-type: none"> <li>• As the term funds for the purposes of the TF offence under section 13 of the POTA is not defined it was not possible to determine if it meets the standard under the TF Convention.</li> <li>• It is not clear whether parallel actions are possible against legal persons.</li> <li>• The assessors could not assess the overall effectiveness of the legislation.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
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## 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

### 2.3.1 *Description and Analysis*

#### *Legal framework*

The Proceeds of Crime Act, Cap 223 R.E 2002

AML Act

The Prevention and Combating of Corruption Act, No.11 of 2007

The Drugs and Prevention of Illicit Traffic in Drugs Act, Cap 95 R.E 2002

The POTA

The Criminal Procedure Act, Cap20 R.E 2002

All of the above mentioned laws contain provisions for the confiscation or forfeiture (both terms are used interchangeably), freezing and seizing of the proceeds of crime.

#### *Confiscation of property related to ML, TF or other predicate offences (c.3.1)*

Various laws deal with the issue of confiscation of property related to money laundering and terrorist financing offences.

178. Section 3 of the AML Act defines the term “forfeiture” to have the meaning ascribed to it under the Proceeds of Crime Act, Cap 223 R.E 2002 (the POCA).

Section 3 of the POCA provides that forfeiture order means an order made in terms of section 14.

179. Section 14 of the POCA provides as follows:

*“Where the Attorney General applies to a court for a forfeiture order...against any property in respect of a person’s conviction of an offence and the court is satisfied that the property is tainted property in respect of an offence, the court may, if it considers it appropriate, order that the property or such of the property as it may specify in the order, be forfeited to the United Republic”.*

180. Under section 3 of the POCA the term “confiscation order” includes a forfeiture order while “tainted property” is defined as follows:

*“...in relation to a serious offence, means–*

- (a) any property used in, or in connection with, the commission of the offence;*
- (b) any proceeds of the offence; or*
- (c) any property in the United Republic which is the proceeds of a foreign serious offence in respect of which an order may be registered in terms of Part VI of the Mutual Assistance Act”*

181. The term “serious offence” under the POCA (as amended) means money laundering and includes a predicate offence”

182. Section 3 of the Prevention and Combating of Corruption Act (applicable only in Mainland Tanzania) provides that confiscation which includes forfeiture where applicable shall mean the permanent deprivation of property by order of the court.

183. Part IV of the Prevention and Combating of Corruption Act (the PCCA) provides for the forfeiture of the proceeds of corruption. Sections 40(1) of the Act reads as follows:

*“The Bureau may, in collaboration with the Office of the Director of Public Prosecutions, recover proceeds of corruption through confiscation to the Government”.*

184. Section 40(2) of the PCCA further provides:

*“Where a person is convicted of an offence of corruption under the Act, the Director of Public Prosecutions may apply to the convicting court or to any appropriate court not later than six months after conviction of the person for forfeiture order against any property that was obtained through corruption.”*

185. Section 36 of the POTA provides that

*“Where any person is convicted of an offence under this Act, the court may order that any property–*

- (a) used for, or in connection with; or*
  - (b) received as payment or reward for the commission of that offence,*
- be forfeited to the United Republic.”*

186. Sections 43 of the Drugs and Prevention of Illicit Traffic in Drugs Acts (Mainland Tanzania) and the Drugs and Prevention of Illicit Traffic in Drugs Act (Zanzibar) which reproduces similar provisions to that of the Mainland enactment provide-

*“(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under this section and if it decides that article is so liable, it shall order confiscation accordingly.*

*(2) Where any article or thing under this Act appears to be liable to confiscation, but the person who committed the offence in connection therewith, is not known or cannot be found, the court may inquire into and decide such liability and may order confiscation accordingly.*

*(3) No order of confiscation of an article or thing shall be made until-*

- a. the expiry of one month from the date of seizure; or*
- b. without hearing any person claiming the right thereto; or*
- c. without evidence if any, produced in respect of the claim*

*(4) If any article or thing, other than a narcotic drug, psychotropic substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of the opinion that its sale would be for the benefit of its owner, it may, at any time, direct it to be sold, and the provisions of this subsection shall, as may be practicable, apply to the net proceeds of the sale.*

*(5) An person who claims any right to property which has been confiscated under this Act, may appeal to the High Court against the order of confiscation.”*

187. Section 351 of the Criminal Procedure Act Cap 20, gives power to the Court to issue an order for forfeiture or confiscation of property where it is satisfied that the property has been used for the purpose of committing or facilitating the commission of offence. This section reads as follows:

*“(1) Where a person is convicted of an offence and the court which passes sentence is satisfied that any property which was in his possession or under his control at the time of his apprehension—*

- (a) has been used for the purpose of committing or facilitating the commission of any offence; or*
- (b) was intended by him to be used for that purpose,*

*that property shall be liable to forfeiture and confiscation and any property so forfeited under this section shall be disposed of as the court may direct.*

(2) *Where the court orders the forfeiture or confiscation of any property as provided in subsection (1) of this section but does not make an order for its destruction or for its delivery to any person, the court may direct that the property shall be kept or sold and that the property or, if sold, the proceeds thereof shall be held as it directs until some person establishes to the court's satisfaction a right thereto; but if no person establishes such a right within six months from the date of forfeiture or confiscation, the property or the proceeds thereof shall be paid into and form part of the Consolidated Fund.*

(3) *The power conferred by this section upon the court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions regarding forfeiture, confiscation, destruction, detention or delivery contained in the written law under which the conviction was had or in any other written law applicable to the case.*

(4) *When an order is made under this section in a case in which an appeal lies the order shall not, except when the property is livestock or is subject to speedy and natural decay, be carried out until the period allowed for presenting the appeal has passed or, when an appeal has been presented, until the disposal of the appeal.*

(5) *In this section any reference to—*

(a) *"property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which it is exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise;*

(b) *facilitating the commission of an offence includes the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection."*

***Confiscation of property that has been laundered or which constitutes proceeds from the Commission of any ML, FT or other predicate offences (c.3.1 (a))***

188. Section 14 of the POCA and section 40(2) PCCA provide for such confiscation.

***Confiscation of property that constitutes instrumentalities used in the Commission of any ML, FT or other predicate offences (c.3.1 (b))***

189. Section 14 of the POCA, when read with the definition of “tainted property” under section 3 of the POTA and section 351(1)(a) of the Criminal Procedure Act seem to allow the confiscation of instrumentalities used in the commission of any ML, FT or other predicate offences.

*Confiscation of property that constitutes instrumentalities intended for use in the Commission of any ML, FT or other predicate offences (c.3.1 (c))*

190. Section 351(1)(a) of the Criminal Procedure Act allows the confiscation of property that constitutes instrumentalities intended for use in the Commission of any offence.

*Property of corresponding value*

191. It is not clear that property of corresponding value may be subject to confiscation. While the term “proceeds of crime<sup>14</sup>” under section 3 of the POCA is wide enough to include property of corresponding value confiscation orders under the POCA can only be made with respect to “tainted property”.

*Confiscation of property derived from proceeds of crime (c.3.1.1 applying c.3.1)*

192. The definition of “proceeds of crime” under the POCA appears to be broad enough to meet the standard. However, the confiscation orders under the POCA may only be made with respect to tainted property. As discussed above, the definition of “tainted property” appears to be more restrictive than the definition of “proceeds of crime”.
193. No distinction is made with respect to the person who owns the property subject to confiscation under section 14 of the POCA. This would imply that all “tainted property” described above, including that owned by a third party may be forfeited.

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<sup>14</sup> The definition of “proceeds of crime” under the POCA as amended by the Written Laws (Miscellaneous Amendments) Act, 2007 reads as follows:

“proceeds of crime” means any property derived or realized directly or indirectly by any person out of the commission of a serious offence and includes-

- (a) at a proportional basis, property derived or realized directly from the Commission of that offence or was later successively converted, transformed or intermingled into another property; and
- (b) capital, income or other economic gains derived or realized from such property

***Provisional measures to prevent dealing in property subject to confiscation (c.3.2)***

194. In order to address the issue of provisional measures to prevent dealing in property subject to confiscation, it is necessary to make a distinction between:
- a) property which has not yet been confiscated, but for which a court has issued a restraining order in respect of specified offences; and
  - b) pecuniary penalty orders
  - c) relevant laws that contain provisions pertaining to how the Authorities should be dealing with property that is subject to confiscation.

***Restraining Order***

195. Section 3 of POCA defines a specified offence in terms of which a restraining order can be made as follows:

*"specified offence" means–*

- (a) serious narcotic drugs and psychotropic substances offence;*
- (b) money-laundering contrary to section 71;*
- (c) any other offence which the Minister may, by order published in the Gazette, prescribe as such, subject to approval by resolution of the National Assembly"*

196. Section 3 of the POCA defines a restraining order as an order made under section 38 of the Act.

197. Section 38 of the POCA provides as follows:

*(1) Where a person has been convicted of a serious offence or has been or is about to be charged with a serious offence, the Attorney-General may apply to a court for a restraining order in terms of this Part against all or any specified property of that person including property acquired after the issue of the restraining order and property of a person other than the person convicted.*

*(2) On an application in terms of subsection (1), the court may, subject to section 39–*

- (a) *order that the property specified in the application shall not be disposed of, or otherwise dealt with, by any person except in the manner and in the circumstances specified in the order; or*
  - (b) *if it is satisfied that the circumstances so require, direct that the property or such part of the property as is specified in the order, be taken into the custody and control of a trustee appointed for that purpose by the court.*
- (3) *A restraining order against a person's property may be granted subject to such conditions as the court thinks fit and may make provision for meeting out of the property—*
- (a) *that person's reasonable living expenses, including the reasonable living expenses of his dependants and reasonable business expenses;*
  - (b) *that person's reasonable expenses in defending a criminal charge; and*
  - (c) *a specified debt incurred by that person in good faith, being a debt to which neither paragraph (a) nor (b) applies.*
- (4) *A court shall not make any provision referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to the interdict.*
- (5) *Where a trustee takes charge of any property in terms of this section, he may do anything that is reasonably necessary for the purpose of preserving the property, including—*
- (a) *becoming a party to any civil proceedings affecting the property;*
  - (b) *ensuring that the property is insured; and*
  - (c) *if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.*

198. Section 25 of POCA provides as follows:

*“(1) Subject to section 43(4), if at the expiration of six months from the day of conviction a restraining order issued in respect of the property of a person convicted of a specified offence is still in force, the property shall be forfeited to the United Republic.*

*(2) Subject to subsection (3), property forfeited to the United Republic under subsection (1) shall vest in the Treasury Registrar.*

*(3) Where immovable property or other property whose ownership passes through registration is forfeited to the United Republic, the Treasury Registrar shall be entitled to be*



*registered as the owner of the property and the Minister shall have power to do, or to authorise to be done, anything necessary or convenient to effect the registration of the Treasury Registrar as the owner, including execution of any instrument required to be executed by a person transferring an interest in property of that kind.*

(4) *Where property is forfeited to the United Republic in accordance with this section—*

(a) *the property shall not, except with the leave of the court that issued the restraining order and in accordance with any directions the court may make, be disposed of or otherwise dealt with by or on behalf of the Treasury Registrar until any appeal instituted in relation to the matter has been determined or the time for instituting an appeal has lapsed without any appeal being instituted; and*

(b) *if, at the end of the period referred to in paragraph (a), the conviction has not been quashed, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorised by the Minister for the purposes of this paragraph.*

(5) *Any direction in terms of paragraph (b) of subsection (4) may include a direction that the property shall be disposed of in accordance with any enactment specified in the direction."*

199. Section 47 of the POCA provides as follows:

*"(1) Every person who disposes of, or otherwise deals with, property which to his knowledge is subject to a restraining order shall be guilty of an offence and liable—*

(a) *in the case of an individual, to a fine not exceeding five hundred thousand shillings or the value of the property, whichever is the greater, or to imprisonment for a period not exceeding fifteen years, or to both that fine and that imprisonment; or*

(b) *in the case of a body corporate, to a fine not exceeding five million shillings or three times the value of the property, whichever is the greater.*

(2) *Any unauthorised dealing with property which is subject to a restraining order may be set aside by the court at the instance of the Attorney-General."*

#### Pecuniary Penalty Order

200. Section 3 of POCA defines ‘pecuniary penalty order’ as meaning an order under section 22 of the Act.

201. Section 45 of POCA provides that

*“(1) Where—*

- (a) a pecuniary penalty order is made against a person in reliance on his conviction of an offence; and*
- (b) a restraining order is or has been made against his property or the property of another person in relation to which an order under section 23(3) is, or has been, made in reliance on his conviction of the offence or a related offence or in reliance on his being charged, or proposed charging, with the offence or a related offence,*

*then, upon the making of the later of the orders there shall be created, by virtue of this section and without any further assurance, a charge on the property to secure the payment to the United Republic of the penalty amount.*

*(2) Where a charge is created by subsection (1) on property of a person, the charge shall cease to have effect in respect of the property—*

- (a) upon the quashing of the conviction in reliance on which the pecuniary penalty order was made;*
- (b) upon the discharge of the pecuniary penalty order or the restraining order by a court hearing an appeal against the making of the order;*
- (c) upon payment to the United Republic of penalty amount in satisfaction of the pecuniary penalty order;*
- (d) upon the sale of the property to a purchaser in good faith for value who, at the time of purchase, has no notice of the charge, whichever occurs first.*

*(3) A charge created on property by subsection (1)—*

- (a) shall be subject to every encumbrance on the property that came into existence before the charge and that would, apart from this subsection, have priority over the charge;*
- (b) shall have priority over all other encumbrances; and*
- (c) subject to subsection (2), shall not be affected by any change of ownership of the property.*

(4) *Where a charge is created by subsection (1) on property of a particular kind and the provisions of any law in the United Republic provide for the registration of title to, or charges over, property of that kind, the Public Trustee or the Attorney-General, as the case be, may cause the charge so created to be registered under the provisions of that law and, if the charge is so registered, a person who purchases or otherwise acquires an interest in the property after the registration of the charge shall, for the purposes of subsection (2)(d), be deemed to have notice of the charge at the time of the purchase or acquisition."*

202. Section 46(1) of the Drugs and Prevention of Illicit Traffic in Drugs Act as applicable to Mainland Tanzania and section 49(1) of the Drugs and Prevention of Illicit Traffic in Drugs Act, 2003 as applicable to Zanzibar, provides that where any person has been convicted for an offence under Part IV, the property owned by him on the date of the conviction or acquired by him after that date, shall be forfeited to the Government in accordance with the provisions of the POCA.

203. Section 33 of the POTA provides that where the Inspector General of Police or Commissioner of Police has reasonable grounds for suspecting that any property has been or is being used to commit an offence under this act, he may seize the property.

204. Section 36 of the POTA provides that:

*"(1) Where any person is convicted of an offence under this Act, the Court may order that any property –*

- (a) used for, or in connection with; or*
- (b) received as payment or reward for, the commission of that offence, be forfeited to the United Republic*

*(2) Before making an order under subsection (1), the Court shall give every person appearing to have an interest 43q property in respect of which the order is proposed to be made, an opportunity of being heard.*

*(3) Property forfeited to the United Republic under subsection (1), shall vest in the Government –*

- (a) if no appeal has been made against the order, at the end of the period within which an appeal may be. made against the order; and*
- (b) if an appeal has been made against the order, on the final determination of the appeal."*

205. Section 3 of the Anti-Money Laundering Act, 2006 (Act No. 12 of 2006) provides that forfeiture has the meaning ascribed to it under the Proceeds of Crime Act.

206. Section 34 of the Prevention and Combating of Corruption Act provides that:

*“(2) Where the Attorney-General has reason to believe that any person having illicitly received or acquired, an advantage or property, he may by notice addressed to that person or to any other person to whom the advantage or property, the proceeds or money value, or any part of the proceeds or money value, the advantage or property money is believed to have been transferred or conveyed by the person suspected of having illicitly received or acquired it or by an agent of that person, directing the person to whom the notice is addressed, not to transfer, dispose of or part with the possession of the property or money value specified in the notice.*

*(4) Every notice issued under subsection (2) shall remain in force and binding on the person to whom it is addressed, for a period of 6 months as from date of issue of the notice, or where a proceeding for an offence or any other written law in relation to the advantage or property, commenced against any of such person, until the determination of such proceedings.*

*(5) Any person who has been served with a notice under subsection (2) and (3), who on contravention of the notice, transfers, disposes or parts with the possession of the sum of money, value or property specified in the notice, commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term of imprisonment not exceeding 7 years, or to both.*

207. Section 38 of the Prevention and Combating of Corruption Act provides that:

*“(1) Where a person is charged or is about to be charged in any court with a corruption offence or any other related offences, the court may order on application by the Director of Public Prosecutions, subject to such conditions as the duration of the order or otherwise as the Court may deem fit,-*

- (a) the attachment in the hands of any person named in the order, all moneys and other property due or owing or belonging or held on behalf of the accused; and*
- (b) the prohibition of the accused or any other person named in the order, from transferring, pledging or otherwise from disposing of any money or property so attached.*

*(7) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section, shall be null and void.”*

### ***Ex-parte application for provisional measures (c.3.3)***

208. Various laws in the United Republic of Tanzania allow the initial application to freeze and/or seize property subject to confiscation to be made ex-parte or without prior notice. These laws are:

- the Prevention of Terrorism Act;
- the Proceeds of Crime Act,

- the Criminal Procedure Act;
  - the Drugs and Prevention of Illicit Traffic in Drugs Acts as applicable to Mainland Tanzania and Zanzibar; and
  - the Anti-Money Laundering Act; and
  - the Economic and Organized Crime Control Act.
209. Section 31A of the POCA empowers the Inspector General of Police or the Director of Criminal Investigation to freeze a bank account and seize any document from that bank or financial institution for seven days. The leave of the court for continued seizure must be obtained during the seven day period.
210. Under section 33 of the POTA the Inspector General of Police or Commissioner of Police may seize property without notice or a court order. However, the Commissioner of Police must as soon as practicable make an ex-parte application to the Court for a detention order in respect of the seized property. A detention order is valid for sixty days and may be renewed by the Court for a further period of sixty days (section 33(6) POCA).
211. Section 34 of the POCA empowers a police officer to search and seizure any tainted property without notice or an order of the court to prevent the concealment, loss or destruction of the tainted property and where the search or seizure is made in serious or urgent circumstances.
212. Moreover, in respect of any property against which an order of forfeiture may be made, section 42 of the POCA provides that an ex-parte application for a restraint order prohibiting any disposal of or otherwise dealing with any interest in that property found in any building, place or vessel can be made to the court.
213. Sections 30-33 of the Drugs and Prevention of Illicit Traffic in Drugs Act (as applicable in Mainland Tanzania) and sections 31-34 of the Drugs and Prevention of Illicit Traffic in Drugs Act (as applicable in Zanzibar), appear to provide the police in the United Republic with the authority to search and seize without authority or order of the court.

#### *Identification and tracing of property subject to confiscation (c.3.4)*

214. Various laws operational within the United Republic of Tanzania, provide powers to law enforcement agencies to identify and trace property, including production orders, tracking and search and seizure orders, thus ensuring that property subject to confiscation are identified and traced. These laws<sup>15</sup> are:

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<sup>15</sup> Please refer to Annex 3c which sets out the relevant extracts of these enactments

- the Proceeds of Crime Act;
  - the Prevention of Terrorism Act
  - the Criminal Procedure Act;
  - the Drugs and Prevention of Illicit Traffic in Drugs Acts as applicable to Mainland Tanzania and Zanzibar;
  - the Anti-Money Laundering Act; and
  - the Economic and Organized Crime Control Act.
215. Section 28 of the AML Act provides that the procedure in relation to arrest, information gathering powers, trial, determination, confiscation, forfeiture, pecuniary penalty and restraining orders and control of property liable to confiscation, shall be in accordance with the provisions of the POCA and the Criminal Procedure Act.
216. Under the provisions of the POCA (sections 31, 32, 33 and 34) a police officer has extensive powers of search and seizure with respect to tainted property. The powers under section 32 of the POCA can be exercised subject to the issue of a search warrant by a magistrate.
217. Section 33 of the POCA further enables a police officer to apply for a warrant to a Magistrate by telephone in urgent circumstances. A warrant issued pursuant to the provisions of section 33 of the POCA gives authority for any search, entry or seizure by a police officer.
218. Pursuant to the provisions of section 34 of the POCA a police officer may seize any tainted property that he finds in the course of his search without a court order or a warrant. The circumstances in which this power may be exercised include, to prevent the concealment, loss or destruction of the tainted property and serious and urgent circumstances.
219. Under the provisions of section 58 of the POCA a police officer may apply for a court order directing a person who has in his possession or control of any property-tracking document <sup>16</sup>to produce such document to the police officer.

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<sup>16</sup> Pursuant to section 3 of the POCA, “property –tracking document” means a document relevant for-

- (a) identifying, locating or quantifying the property of a person who committed a serious offence
- (b) identifying or locating any document necessary for the transfer of the property of a person who committed a serious offence;
- (c) identifying, locating or quantifying tainted property in relation to a serious offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to a serious offence;

220. Section 63A of the POCA also gives powers to the Inspector General of Police to authorise in writing any police officer of or above the rank of Assistant Superintendent to investigate a bank account and such authorisation is sufficient to warrant the production of bank account for scrutiny by that police officer. The police officer may also take copies of any relevant entry from that account.
221. For the purposes of obtaining evidence in relation to serious offences, predicate offences or money laundering, section 63 B of the POCA empowers a police officer of the rank of Assistant Superintendent of Police or above as authorised by the Inspector General of Police or the Director of Criminal Investigations and with leave of the court to-
- (a) have access to computer data systems, networks and services;
  - (b) place under surveillance means of preservation of information including facsimile machines, electronic transmission and communication facilities;
  - (c) make audio or video recording of acts and behaviours or conversations; and
  - (d) have access to notarial and private deeds, or financial institutions and commercial records.
222. The POTA also provides extensive powers of search and seizure to a police officer not below the rank of Assistant Superintendent with respect to an offence under the Act. These powers may be used for the maintenance of public order and public safety.
223. The Criminal Procedure Act, the Drugs and Prevention of Illicit Traffic in Drugs Acts (Mainland Tanzania and Zanzibar) and the Economic and Organised Control Act also contain powers of search and seizure.

### *Protection of bona fide third parties (c.3.5)*

#### Forfeiture orders under the POCA

224. **Forfeiture orders:** Pursuant to the provisions of section 16 of the POCA, third parties have the right to apply to the Court before the forfeiture order is made for restitution or payment of an amount equal to the value of the interest.
225. **Forfeiture of restrained property:** Similarly, in terms of the provisions of section 26 of the POCA third parties may apply to the Court with respect to restrained property which has been forfeited for the restitution or payment of an equal to the value of the interest.

226. **Forfeiture of seized properties:** Any person who claims an interest in property that has been seized under Part V of the POCA may apply to the court for the restitution of the property.
227. **Restraining orders:** A third party may, after the Attorney General has given notice of an application for a restraining order or for the extension of a restraining order, appear and adduce evidence at the hearing before the court (section 41 POCA).

#### Forfeiture orders under the POTA

228. The Court must give any person appearing to have an interest in the property in respect of which the forfeiture order is proposed to be made an opportunity of being heard (section 36(2) POTA).
229. Under section 43(6) of the POTA a Court may require notice to be given to any person who in its opinion might have an interest in property owned or controlled by, or on behalf of, a terrorist group or property used to commit or facilitate the commission of a terrorist act.

#### Forfeiture orders under the Prevention and Combating of Corruption Act (PCCA)

230. A third party may, after the Director of Public Prosecutions has given notice of an application for a forfeiture order to a third party, the latter may appear and adduce evidence at hearing. The Court may also at any time before the final determination of the application, direct the DPP to give notice of the application to a specified person or class of persons. Section 41 of the PCCA.

#### The Economic and Organized Crime Control Act

231. Even though the Economic and Organized Crime Control Act does not contain any specific provision which directly protects the interests or rights of bona fide third parties, section 22(4) provides that *“where at any stage of the investigations it appears that anything seized is not related to any economic or other offence in respect of which any person is or is to be charged, the police officer in charge of the case shall forthwith cause the thing to be restored to its owner and shall in no case detain it longer than is necessary.”*

#### ***Power to void actions (c.3.6)***

232. It does not appear that there is authority to take steps to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation.

#### ***Additional elements (c.3.7)***



233. The laws in the United Republic of Tanzania do not make provision for the confiscation of the property of organizations principally criminal in nature.
234. The United Republic of Tanzania also does not have a civil forfeiture framework in addition to the system of confiscation triggered by a criminal conviction.

*Statistics (applying recommendation 32)*

235. As no case for money laundering or terrorist financing was ever prosecuted by any court within the United Republic of Tanzania, the authorities could not provide the assessors with any statistics on freezing, seizing and confiscation of money laundering and terrorist financing related cases.

**Zanzibar**

236. The AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar.

**2.3.2 Recommendations and Comments**

237. The confiscation powers as described above seem to be adequate. However, the definition of predicate offences under the AML Act does not cover all designated categories of offences as defined by the FATF. Hence, a forfeiture order under section 14 of the POCA will not apply to all the predicate offences as defined by the FATF. It is therefore recommended that the definition of predicate offence under the AML Act be amended to include all the designated categories of offences as defined by the FATF.
238. It is not clear that property of corresponding value may be subject to confiscation. The authorities must review the relevant enactments to provide for the confiscation of property of corresponding value when the property subject to confiscation is not available. More specifically, the definition of “tainted property” under the POCA should be amended to include “proceeds of crime”
239. The Authorities should consider adopting legislation that allows steps to be taken to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation.

240. The provisions for the protection of the rights and interests of bona fide third parties should be further enhanced under the Economic and Organised Crime Control Act. Currently, the Act contains no such protection.
241. The Authorities should consider the adoption of a civil forfeiture regime for confiscation and forfeiture of proceeds of crimes.
242. The Authorities should consider the development of a system that will cater for adequate capturing of all information on search, seizures, confiscation, forfeiture of proceeds of crime and for prosecutions and convictions of Money Laundering and Terrorist Financing cases. This will ensure that the United Republic of Tanzania has a systematic and comprehensive maintenance of statistics.
243. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POTA and the POCA with respect to Zanzibar.

### 2.3.3 *Compliance with Recommendations 3*

	Rating	Summary of factors underlying rating
R.3	NC	<ul style="list-style-type: none"> <li>• The definition of predicate offences does not cover all designated categories of offences. This undermines the scope of tainted property that may be subject to confiscation under section 14 of the POCA.</li> <li>• It is not clear that property of corresponding value may be subject to confiscation when the property subject to confiscation is not available.</li> <li>• There is no authority to take steps to void actions.</li> <li>• The provisions for the protection of the rights and interests of bona fide third parties under the Economic and Organised Crime Control Act are inadequate.</li> <li>• A comprehensive legal framework for freezing, seizing and confiscation of proceeds of crime is not enforceable in Zanzibar.</li> <li>• The overall effectiveness could not be determined.</li> </ul>

## 2.4 Freezing of funds used for terrorist financing (SR.III)

### 2.4.1 *Description and Analysis*

#### *Legal framework*

The Prevention of Terrorism Act, 2002.

244. As at the date of on-site visit, there was no implementing regulation to give effect to the freezing mechanism under the Prevention of Terrorism Act for the purposes of the United Nations Security Council Resolutions 1267 and 1373.

*Freezing assets under S/Res/1267 (c.III.1)*

245. Section 12 of the POTA provides the legal basis that enables the Minister to declare a person as a suspected international terrorist. Section 12(1) of the POTA provides that "the Minister may declare any person to be a suspected international terrorist where-
- (a) he reasonably suspects that the person-
    - (i) is or has been concerned in the commission, preparation or instigation of acts of international terrorism;
    - (ii) is a member of, or belongs to, an international terrorist group or entity;
    - (iii) has links with an international terrorist group, and he reasonably believes that the person is a risk to national security;
  - (b) the person is listed as a person involved in terrorist acts in any Resolution of the United Nations Security Council or in any instrument of the international community; or
  - (c) the person is considered as a Person involved in international terrorist acts by such State or other international organization.
246. Once the Minister has made such a declaration he must, in such manner as he considers appropriate, cause the person so declared to be notified as soon as reasonably practical.
247. Under section 12(3) of the POTA, the Minister may also declare a group to be an international terrorist group if the group-
- (a) is subject to the control or influence of person outside the United Republic, and the Minister reasonably suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism; or
  - (b) is listed as a group or entity involved in terrorist acts in accordance with the Resolutions of the United Nations Security Council or in any instrument of the international community as "may be made from time to time; or
  - (c) is considered as a group or entity involved in international terrorist acts as the Minister may approve and publish in the Gazette.

248. Pursuant to the provisions of section 12(6) of the POTA, the Minister must give notice of with any declaration he makes under this section in the Gazette and in such other manner as he deems fit.
249. Section 12(5) of the POTA makes provision for the general framework for freezing measures and for the Minister to issue implementing regulations. However, as at the date of the onsite visit no such regulations had been made by the Minister. There was therefore no legal framework for the freezing measures.
250. The consolidated list of designation pursuant to UNSCR 1267 and its updates are sent to the United Republic of Tanzania through its Ministry of Foreign Affairs. The list is further sent to the Ministry of Finance, Directorate of Criminal Investigations and the Attorney General. The Ministry of Finance further disseminates the list to the Bank of Tanzania who circulates the same to all banks. There is no dissemination of the list to the FIU, the non-banking financial regulators or to the non-bank financial institutions.

*Freezing assets under S/Res/1373 and freezing actions taken by other countries (c.III.2 & 3)*

251. The mechanism described above all applies to all relevant UNSCR (section 12(1)(b) of the POTA) including UNSCR 1373 and to the actions initiated by another country should, according to the authorities be similar to as the one applied for the implementation of UNSCR 1267.
252. However, as discussed above no implementing regulations have as of date been issued by the Minister.
253. It is worth noting that the authorities have indicated that no request had ever been made to the United Republic of Tanzania and no names were ever circulated under UNSCR 1373 or as a consequence of another country's freezing actions.

*Extension of c.III.1-III.3 to funds or assets controlled by designated persons (c.III.4)*

254. Under section 12(5)(a) of the POTA, the Minister may make regulations for the freezing of the funds of any suspected international terrorist or an international terrorist group, including funds derived from property owned or controlled directly or indirectly by him or it, by persons acting on his or its behalf or at his or its discretion.
255. The POCA does not define the term "funds" but defines "property" as any property and any assets of every description whether corporeal or incorporeal, movable or

immovable, tangible or intangible and deeds and instruments evidencing title to, interest in, such property or asset and includes bank account.

256. Further, section 12(5)(a) does not cover funds jointly owned or controlled directly or indirectly.

*Communication to the financial sector (c.III.5)*

257. There are no systems in place yet for communicating actions under the freezing mechanisms referred to in Criteria III.1 – III.3 to the financial sector immediately upon taking such action.

*Guidance to financial institutions (c.III.6)*

258. Since there is no freezing mechanism in place, no guidance has been provided to the financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations.

*De-listing requests and unfreezing funds of de-listed persons (c.III.7)*

259. There are no procedures in place for considering de-listing persons.

*Unfreezing procedures of funds of persons inadvertently affected by freezing mechanism (c.III.8)*

260. There are no freezing or unfreezing mechanisms in place.

*Access to frozen funds for expenses and other purposes (c.III.9)*

261. There are no freezing mechanisms and hence no procedures for authorising access to funds or other frozen assets.

*Review of freezing decisions (c.III.10)*

262. There are no freezing mechanisms in place hence no appropriate procedures through which the freezing measures can be challenged.

***Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3 (c.III.11))***

263. Forfeiture or confiscation, freezing and or seizing measures may be taken in other contexts as described under Recommendation 3- Terrorist Finance offences.

***Protection of rights of third parties (c.III.12)***

264. Measures are in place to provide for the protection of bona fide third parties only in the context of freezing mechanisms under a criminal investigation as described under Recommendation 3.

***Enforcing the obligations under SR III (c.III.13)***

265. Section 12(5)(d) of the POCA provides the Minister may make regulations to provide that any person who contravenes any regulations made under this subsection shall commit an offence and shall on conviction be liable to penal servitude for a period not exceeding five years. However, no regulations have been issued thus far.

**Additional element**

***Implementation of measures in best practices paper for SR III (c.III.14)***

266. The measures set out in the FATF Best Practices Paper for SRIII have not been implemented.

***Implementation of procedures to access frozen funds (c.III.15)***

267. No procedures to authorise access to funds or other assets that were frozen have been implemented.

**2.4.2 Recommendations and Comments**

268. The Authorities in the United Republic of Tanzania should consider issuing regulations for setting up a legal framework providing-
- for the freezing of funds used for terrorist financing, in accordance with the requirements of SRIII.

- procedures and processes for de-listing requests and unfreezing funds of de-listed persons
- for the unfreezing procedures of funds of persons inadvertently affected by freezing mechanism
- access to frozen funds for expenses and other purposes
- for challenging freezing decisions
- for the protection of rights of bona fide third parties consistent with the TF Convention.

269. The POTA should be amended to provide for the definition of the term “funds” and the definition of “property” should be reviewed to meet the requirement under SR.III
270. The authorities should develop appropriate mechanisms and processes for communicating with the financial institutions and other stakeholders within the United Republic of Tanzania for the purposes of SR.III.
271. The authorities should issue clear guidance to financial institutions and other persons or entities that may be holding targeted funds or assets concerning their obligations in taking action under freezing mechanisms.
272. As discussed earlier in this report, the POTA is not enforceable with respect to Zanzibar. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the POTA with respect to Zanzibar and regulations that meet the requirements of SR.III must be issued as soon as possible.

#### 2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• There is no legal framework in place to enable the freezing of funds and other assets of persons designated under the UNSCR 1267.</li> <li>• There is no legal framework in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373.</li> <li>• There is no definition of the term “funds” under the POTA and the definition of “property” does not meet the standard.</li> <li>• There are no effective and publicly known procedures and processes for de-listing requests and unfreezing funds of de-listed persons</li> <li>• There are no procedures for the unfreezing of funds of persons inadvertently affected by freezing mechanism</li> <li>• There are no procedures in place to allow access to frozen funds for</li> </ul>

		<p>expenses and other purposes.</p> <ul style="list-style-type: none"> <li>• There are no procedures in place for challenging freezing decisions.</li> <li>• There are no procedures in place for the protection of rights of bona fide third parties consistent with the TF Convention.</li> <li>• There are no mechanisms and processes in place for communicating with the financial institutions and other stakeholders within the United Republic of Tanzania for the purposes of SRIII.</li> <li>• No guidance to financial institutions and other persons or entities that may be holding targeted funds or assets, concerning their obligations in taking action under freezing mechanisms has been issued.</li> <li>• The POTA is not enforceable with respect to Zanzibar.</li> </ul>
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### Authorities

## 2.5 The Financial Intelligence Unit and its functions (R.26)

### 2.5.1 Description and Analysis

#### *Legal framework*

The AML Act (2006) establishes the Financial Intelligence Unit.

#### *Establishment of FIU as National centre (c.26.1)*

273. The FIU was established in July 2007 pursuant to section 4 of the AML Act as an Extra-Ministerial Department in the Ministry of Finance and Economic Affairs. The FIU is responsible for receiving, analyzing and disseminating suspicious transaction reports and other information regarding potential money laundering or terrorist financing filed by the reporting persons and other sources from within and outside the United Republic.
274. However, the AML Act (which establishes the FIU) is not enforceable with respect to Zanzibar. Accordingly, the enforceability of the functions of the FIU is limited to Mainland Tanzania. On this basis, the FIU cannot not be described as a ***national central agency*** for receiving, analyzing, and disseminating suspicious transaction reports and other financial intelligence information to appropriate law enforcement agencies.



### *Guidelines to financial institutions on reporting STR (c.26.2)*

275. Section 6 (f) of the AML Act empowers the FIU in collaboration with regulators to prepare and issue guidelines to banks, financial institutions and other reporting persons in respect of suspicious transactions, record keeping and reporting obligations provided under Sections 16, 17, 18 and 19 of the AML Act. Regulation 32 of the AML Regulations gives powers to the FIU to issue guidelines related to, inter alia, reporting of suspicious and unusual transactions taking into account categories of reporting persons, persons involved and categories of transactions. Taking into account the provisions of section 6(f) of the AML Act, the scope of the powers under Regulation 32 was not clear. It was also not clear whether the regulation does away with the requirement to consult regulatory authorities as provided under section 6(f) of the Act.
276. The FIU has issued three guidelines which became effective from 1<sup>st</sup> April 2009, namely: Guidelines for the Verification of Customers' Identities (Guidelines No 1); AML Guidelines to Banking Institutions (Guidelines No 2) and AML Guidelines for Bank of Tanzania (Guidelines No. 3). However, Guideline No 2, which is related to reporting of STRs, covers only banking institutions. The FIU has not issued similar guidelines to the rest of the reporting institutions.
277. In addition, Section 4 of the Guidelines for reporting of suspicious transactions is fundamentally inadequate. For instance,
- (a) It only requires banking institutions to have contact persons for handling AML/CFT issues and have internal reporting mechanisms.
  - (b) The section states that banking institutions can forward an STR to the FIU in writing by post, facsimile or electronic mail. It does not explain the procedures to be followed in respect of each of the channels.
  - (c) There is no reporting form. The FIU informed the assessors that they are procuring an Analysis Software package that comes with a pre-programmed STR format. For this reason, it was deemed necessary to wait for its installation so that the STR form to be issued to reporting institutions is consistent with the form that will come with the software.
278. In view of the above deficiencies, these guidelines do not provide guidance regarding the manner of reporting, the specification of reporting forms and the procedures that should be followed when reporting.

### *Access to information on timely basis by FIU (c.26.3)*

279. There is no provision in the AML Act that empowers the FIU to access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including analysis of STRs. The FIU indicated that it will soon make formal arrangements such as signing MoUs with domestic Law Enforcement Agencies (LEA) to facilitate timely access to information.
280. During the onsite, the LEA expressed willingness to provide access to their information to the FIU despite the lack of a legal provision to do so. However, the LEAs may not be able to provide the information on a timely basis because a large number of their files are stored manually. This may inhibit timely access by the FIU to information held by them.

*Additional information from reporting parties (c.26.4)*

281. Although Section 17(3) of the AML Act gives the FIU authority to request for additional information from reporting persons, no such requests have been made. This power appears to be restricted to the reporting person who has filed an STR under section 17(1) of the AML Act.

*Dissemination of information (c.26.5)*

282. In terms of section 6(b) of the AML Act, the FIU is authorized to disseminate STRs to appropriate LEAs where the FIU has reasonable grounds to suspect that the transaction involves money laundering or any predicate offence. It is to be noted that the AML Act does not specify the LEAs to which the FIU can disseminate reports. As of the date of the onsite, the FIU had disseminated 5 STRs to Directorate of Criminal Investigations. Before the inception of the FIU, a total number of 17 STRs (reported to the BoT under Circular 8) were disseminated to LEAs between 2005 and 2007.

*Operational independence (c.26.6)*

283. The AML Act sets up the FIU as an Extra-Ministerial Department in the Ministry of Finance and Economic Affairs. In terms of Section 5, the FIU is headed by a Commissioner, who is appointed by the President, and is responsible for the general administration of the FIU. The AML Act does not contain any legal provision for the security of tenure of office of the Commissioner of the FIU. The authorities indicated that the tenure and removal of the Commissioner would be guided by Civil Service Regulations and the Public Service Act. However, the assessors observed that the Public Service Act does not apply to the Commissioner. Civil Service Regulations were not provided to the assessors and therefore it was not possible to verify the view of the authorities.

284. According to the approved organisation structure (as approved by the President on 13 January 2009) the Commissioner reports directly to the Minister. In assessing the operational autonomy of the FIU, a key factor is whether or not the Minister is considered to be part of the FIU as the organisation chart seems to suggest. The authorities said that although the Minister appears in the organisation chart of the FIU, he is not involved in the day to day operational and administrative issues of the FIU.
285. The FIU has its own budget and is funded by government through the Parliamentary budgetary process<sup>17</sup>. The funds of the FIU may also consist of grants and donations lawfully received by the FIU<sup>18</sup>. As at the date of the onsite visit, the FIU had not received any grants or donations. The Authorities indicated that the FIU receives adequate funding to support its activities.
286. Under the terms of section 7(2) of the AML Act, employees of the FIU are appointed by “the appointing authority” for a period of five years. The Act does not define the appointing authority. However, the FIU is of the view that the Commissioner is the appointing authority. This could not be tested since all the employees of the FIU are on secondment from the BoT and Ministry of Finance and Economic Affairs. Only employees of the Government or other public institutions may be appointed to the FIU. The assessors feel that this restriction can potentially have negative impact on the work of the FIU in situations where the FIU has failed to identify suitable people from the Government and public institutions. However, the authorities said that if that kind of situation arises, then the prospective employees will have to be employed by Government first and then transfer to the FIU.
287. There is no express provision in the Act for the FIU to determine its own conditions of service that will enable it to attract and retain highly skilled personnel to effectively carry out its functions. Section 7(3) of the AML Act provides that the employees of the FIU shall hold office for a term of five years and shall be eligible for reappointment. Apart from this, the FIU has developed its own scheme of service which has been approved by Government. In addition, the FIU is currently drafting its procedures manual which includes matters such as administrative and financial routines, human resource matters and a code of conduct.
288. The lack of clarity on the role of the Minister within the context of the FIU, tenure and grounds for the removal of the Commissioner and the statutory restrictions on the FIU requiring employees to emanate only from the public service may potentially have a negative bearing on the operational independence and autonomy of the FIU.

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<sup>17</sup> Section 24(a) AML Act

<sup>18</sup> Section 24(b) AML Act

### *Protection of information held by FIU (c.26.7)*

289. The FIU does not have a legislated requirement to ensure that information in its possession is protected and remains confidential. The legal provisions regarding dissemination are inadequate as the law does not specify the LEAs to whom the FIU may disseminate financial information.
290. There are also no sanctions stipulated in the law against unauthorised disclosure of information obtained by employees or outsiders while working for and after they had left the FIU. Furthermore, the law does not require the Commissioner, an officer or employee of the FIU not to disclose any information that would directly or indirectly identify the individual who provided a report to the FIU, or information on an individual or legal entity about whom a report was provided under the Act.
291. However, the FIU has put in place adequate measures necessary to safeguard information in its possession. For instance, the office space of the FIU is on the last floor and is segregated from the rest of the Ministry of Finance building. It has installed an integrated security program that includes an electronic id-card entry system to control physical access. The door to the server room is also equipped with an access control gadget. In addition, the FIU has installed CCTV cameras that are meant to capture moving objects within the office.

### *Publication of annual reports (c.26.8)*

292. The AML Act or Regulations do not require the FIU to prepare periodic reports or any other report which may include typologies and trends as well as information regarding its activities. Section 6(e) of the AML Act states that the FIU may compile statistics and records, disseminate information within the United Republic or elsewhere and make recommendations arising from information received. Since the FIU started operations, it has not publically released any reports.

### *Membership of Egmont Group (c.26.9)*

293. The FIU has considered application for Egmont membership. It has identified the Financial Intelligence Centre (South Africa) and the Financial Enforcement Centre (USA) as sponsors.

### *Egmont principles of exchange of information among FIUs (c.26.10)*

294. In terms of Section 6(i) the FIU has the power to exchange information with foreign FIUs and comparable bodies. As of the onsite date, the FIU had not yet considered the Egmont Group Statement of Purpose and Principles and its Principles for Information Exchange between FIUs as it is still seeking Egmont membership.
295. However, the AML Act does not have a legal provision that empowers the FIU to access information from reporting persons (this is restricted to information related to an STR which the reporting institution filed) and domestic agencies. The ability to exchange information may not work well in the absence of the power to collect the requested information.

### **Recommendation 30**

#### ***Structure, funding, staffing and other resources (c.30.1)***

296. According to the structure of the FIU, it has eight Units, namely; the Management Information Systems Unit (MIS), Legal Services Unit, Monitoring Unit, Inspections Unit, Internal Audit, Procurement Management Unit, Finance & Accounts Unit and Administration & Human Resources Management Unit. Currently, the FIU has 4 staff members, comprising the Commissioner and 3 other members seconded from the Bank of Tanzania for a period of two years. These seconded staff occupy the positions of IT expert, financial analyst and personal assistant to the Commissioner. Arrangements are underway to recruit additional staff. The organogram of the FIU is set out in Annex 2j.
297. The functions of the Inspections Unit should be clearly defined in terms of the main objective vis-à-vis the role of supervisory authorities of reporting institutions. The ideal model would be for the Act to give compliance monitoring mandate to supervisory authorities. The FIU should be responsible for sectors which do not have a regulatory authority. Otherwise, it would be a monumental task for the FIU to undertake supervisory functions for all reporting institutions as specified in the Act.
298. As mentioned above, Section 7 (1) of the AML Act provides that *“There shall be appointed such number and categories of employees of the Government or other public institutions of such qualifications as may be considered necessary to assist the Commissioner in the performance of the FIU”*. Furthermore, sub-section (2) provides that the “appointing authority” shall have regard to persons with experience in law, finance, customs and law enforcement.

299. The restriction imposed by the Act on the pool from which to source employees may limit chances of the FIU to attract and retain highly skilled staff. This may lead to ineffective operation of the FIU.
300. Funds for the operations of the FIU come from the Government's annual budget and any grants and donations lawfully received by the FIU. Funds from Government are not given in one lump sum, but received in monthly disbursements after submitting a monthly budget requirement to the Permanent Secretary of the Ministry of Finance. So far, the FIU feels that it is allocated enough funding and that there are not problems in getting its monthly subventions.
301. With the assistance from the US Government provided under the Millennium Challenge Program, the FIU has acquired office furniture, office security system, ICT equipment, Software for analysis and cars. This has supplemented funding from Government.

*Integrity and confidentiality standards (c.30.2)*

302. There is no statutory requirement for FIU staff to maintain high professional standards, including standards concerning confidentiality.
303. With respect to integrity, Section 7 (4) of the AML Act provides that employees of the FIU shall be subject to initial and periodical disclosure of financial position in the manner as may be prescribed under Regulations. Regulation 28 of the AML Regulations states that any employee who holds leadership position in terms of the Public Leadership Code of Ethics, shall submit to the Ethics Commissioner a written declaration of all property, assets owned by, or liabilities owned to him, his spouse or unmarried minor in a manner prescribed by the Act.
304. Whereas the AML Act requires all employees to declare assets and liabilities, the Regulation limits the disclosure obligations to the employee who holds a leadership position (in terms of the Public Leadership Code of Ethics Act. Under the definition of "public leaders" under section 4 of the Public Leadership Code of Ethics Act<sup>19</sup> it would appear that only the Commissioner of the FIU who may fall in the category of "public officers in charge of independent Government departments" is required to make the asset declaration. The inconsistency between the two instruments should be corrected so that all employees are subjected to the asset declaration requirements.

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<sup>19</sup> Annex 3f reproduces the definition of "public leaders" under section 4 of the Public Leadership Code of Ethics Act.

305. The Act does not require that a thorough background check on the employees be performed for the FIU by the Police or the National Intelligence Service before an offer of employment is made. However, the FIU has assured the assessors that in practice, prospective employees will be vetted by the Police or National Intelligence Services but has not applied this on its current employees.

#### *Training (c.30.3)*

306. Members of the FIU staff have made study tours to the Financial Intelligence Centre in South Africa. The FIU has participated in other training programs as follows:
- AML/CFT Workshop on measures for FIU officials conducted by the IMF and the African Development Bank, October 2007 (Tunisia).
  - Rolling out an FIU conducted by the World Bank, February 2008 (Botswana).
  - The FIU and its Role in the Fight against Money Laundering and Terrorist Financing.
  - Workshop on Operationalising the AML/CFT Framework in Tanzania conducted by the FIU in collaboration with the World Bank.
307. The foregoing training is not adequate. There is need for the FIU staff to undergo specific and specialised training covering all the critical areas of the FIU's operations.

### **Recommendation 32**

#### *Review of AML/ CFT effectiveness (c32.1)*

308. Tanzania has not yet reviewed the effectiveness of its systems for combating money laundering and terrorist financing, probably because the AML/CFT regime has just been in operation for nearly two years.

#### *Statistics (c 32.2)*

309. Although Section 6(e) of the AML Act requires the FIU to compile statistics and determine effectiveness, the FIU has not yet become fully operational and therefore it would be too early for it to review the effectiveness of systems for combating money laundering and terrorist financing.
310. Regulation 33 of the AML Act further requires the FIU and reporting institutions to maintain comprehensive statistics on matters relevant for effectiveness and efficiency of the systems for combating money laundering and terrorist financing. Some of the statistics cover STRs, domestic or foreign currency transactions, international

transportation of currency, property seized, frozen and confiscated, mutual legal assistance in relation to ML and TF, and requests for assistance.

311. There is no statistics collected on international transportation of currency. The enabling legal provisions (section 23 of the Act) appear to be inadequate.
312. The Act does not empower the FIU to request for information from domestic agencies on ML and FT investigations, prosecutions and convictions; onsite inspections conducted by supervisors relating to AML/CFT and any sanctions applied.
313. Currently, the FIU has not yet established a database but details of statistics so far compiled are as follows:

***STRs received***

Number of STRs received by the FIU from 2005 to September 2008

Source of report	Number of STR received			
	2005	2006	2007	Sept 2008
Banks	5	3	9	3
Telecommunication Company <sup>20</sup>	-	-	-	1
Individual <sup>21</sup>	-	-	-	1
Total	5	3	9	5

***STRs disseminated***

Number of STRs disseminated by the FIU from 2005 to September 2008

Agency Disseminated to	Number of STRs Disseminated			
	2005	2006	2007	As at Sept 2008
Tanzania Police Force(DCI)	5	3	9	5

314. There has been no request made to the FIU and it has not received any reports on property frozen, seized or confiscated. Furthermore, the authorities have not provided any information on STRs that have resulted in investigations, prosecution and convictions.

<sup>20</sup> Although not a reporting institution under the AML Act a mobile phone network company submitted an STR.

<sup>21</sup> A report was submitted by a member of the public to the FIU.



### 2.5.2 *Recommendations and Comments*

315. All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar. This will ensure that the FIU becomes a national centre for receiving, analysing and disseminating suspicious transaction reports.
316. As a matter of urgency, the FIU should address gaps that appear in the guidelines on reporting of suspicious transactions sent to the banking institutions and re-issue them. In addition, the FIU should also issue the guidelines to the rest of the reporting institutions to facilitate compliance with the Act.
317. The authorities should consider amending the AML Act to authorize the FIU to have access to information from law enforcement agencies and other domestic agencies to reinforce its analytical work and be able to respond to requests for information from law enforcement authorities. Establishing an MOU would be desirable, so that the scope of information exchange and the procedures for accessing such information are set out clearly.
318. The AML Act should expressly define the LEAs to which the FIU can disseminate financial disclosures.
319. There is need for legislative provisions requiring that information held by the FIU be protected. There must be restrictions on the use of the information to avoid unauthorized disclosures and the FIU staff must be subjected to confidentiality requirements. Any violations of these provisions must attract proportionate sanctions and penalties.
320. The AML Act should set out an obligation for the FIU to prepare periodic reports containing money laundering typologies and trends which could be used by the authorities as a basis for policy formulation.
321. The authorities should consider amending the AML law so that the obligation to monitor compliance with the Act is placed on supervisory authorities of sub-sectors of the financial sector and DNFBPs. It may not be possible for the FIU to have the necessary human resource and financial capacity to carry out AML/CFT supervisory functions over all the reporting institutions.
322. In consultation with relevant supervisory authorities, the FIU should conduct awareness raising seminars beyond the banking sector to include other reporting institutions and the general public.
323. The authorities should strengthen the operational independence of the FIU by explicitly mentioning the grounds under which the Commissioner of the FIU may be removed from office and by clarifying the role of the Minister within the FIU context.

In addition, the FIU should not be restricted to only employ staff from the public sector as some of the required skills may be available outside the public sector. Furthermore, it must have legal authority to have its own staff terms and conditions of employment. This will ensure that the FIU is able to attract and retain appropriately skilled staff that will support its effectiveness.

324. The FIU should consider developing a mechanism which would allow it to evaluate the effectiveness of the AML/CFT regime, notably the added value of intelligence reports to law enforcement authorities.

### 2.5.3 *Compliance with Recommendation 26*

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> <li>• Since the AML Act is not enforceable in Zanzibar, the FIU does not serve as a national centre.</li> <li>• The FIU has not yet issued guidelines, including STR reporting guidelines, to all reporting institutions. The guidelines issued to banking institutions are inadequate.</li> <li>• The provisions to safeguard the operational independence of the FIU are inadequate.</li> <li>• The AML Act does not have a provision enabling the FIU to have access to information on timely basis and no administrative mechanisms in place to facilitate sharing information with competent authorities domestically.</li> <li>• No legal provisions requiring secure protection, confidentiality and use of information held by the FIU.</li> <li>• Due to the AML Act being relatively new, the overall effectiveness could not be determined.</li> </ul>

## 2.6 **Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 & 28)**

### 2.6.1 *Description and Analysis*

#### **Recommendation 27**

##### *Legal framework*

The Prevention of Terrorism Act, 2002, the Prevention and Combating of Corruption Act, 2007, the Penal Code cap 16, the Criminal Procedure Act, cap 20, the Evidence Act, cap 6, the Proceeds of Crime Act cap 256, the Mutual Assistance in Criminal Matters Act, cap 256, the Extradition Act Cap368, the National Prosecutions Service Act, no 27 of 2008, the Drugs and Prevention of Illicit Trafficking in Drugs Act, Cap 95, the AML Regulations,2007, the Written Laws( Miscellaneous Amendments) Act, No 15 of 2007, The Public Leadership Code of Ethics Act, Cap 398, the Police Force and auxiliary services Cap 322.

*Designation of authorities ML/FT Investigations (c.27.1)*

325. The Police Force of the United Republic of Tanzania which is constituted under the Police Force and Auxiliary Services Act is the main agency that is responsible for investigating money laundering and terrorist financing offences. The mandate of the Police Force includes preserving peace, maintaining law and order, preventing and detecting crime and protecting property. Within the Police Force, the Criminal Investigation Department (CID) is responsible for the investigation of all crime, including money laundering and terrorist financing.
326. The Crime Intelligence Unit within the CID is responsible for crime intelligence and assists other operational components within the police to combat crime effectively. The combating of transnational crime and terrorism is an integral part of crime intelligence priorities.
327. A National Counter Terrorism Centre under the auspices of the Ministry of Home Affairs was set up in 2008. The Centre is headed by the Assistant Commissioner of Police and its role is to educate Tanzanians regarding the threat against terrorism.
328. It is worth noting the functions of the Director of Public Prosecutions under the Office of the Attorney General (Discharge of Duties) Act, 2005. The DPP is responsible for the coordination of investigation duties conducted by investigative organs, including the Police Force. For the purposes of his functions the DPP is empowered to direct investigative organs on any matter of a general or specific nature relating to the investigation of crime.
329. The functions of the DPP under the National Prosecutions Service Act, 2008 also include the duty to coordinate the investigation of crimes.

*Ability to postpone/waive arrest of suspects or seizure of property (c.27.2)*

330. Law enforcement authorities have the powers, which are exercised at their sole discretion, and subject to the domestic legal framework, to arrest suspects and seize property. Other than any directives which may be issued by the DPP under section 10

of the Attorney General (Discharge of Duties) Act 2005, no legislative authority is required to make decisions as to the timing of arrests or seizures.

*Additional element-Ability to use special investigative techniques (c.27.3 & 27.4)*

331. Section 63C<sup>22</sup> of the Proceeds of Crime Act, as amended by the Written Laws (Miscellaneous Amendments) Act, 2007, provides safe harbour provisions whereby no punishment will be imposed on any investigator participating in an undercover operation. The authorities have indicated that controlled delivery and undercover operations may be used as special investigative techniques.
332. Pursuant to the provisions of the Proceeds of Crime Act investigators may, with the appropriate authority, for the purposes of obtaining evidence in relation to serious offences, predicate offences or money laundering place under surveillance means of preservation of information including facsimile machines, electronic transmission and communication facilities. Further, the police can also make audio or video recording of acts and behaviours or conversations.
333. However, no examples of cases where these techniques have been used were provided.

*Additional element- Specialised investigation groups and conducting multi-national cooperative investigations (c.27.5)*

334. Joint investigations with foreign law enforcement agencies do take place. In 1998 when the United States Embassy was bombed a joint committee comprising the Police Force of the United Republic of Tanzania and the USA Federal Bureau of Investigation was set up for investigation purposes. Nationally, specialised investigation teams comprising the Police Forensic Bureau, the National Central Bureau, Intelligence and Terrorism Unit, Anti-Drugs Unit, Arms Management and Disarmament, Human Trafficking and Smuggling Unit and the Financial Investigation and Cybercrime Unit are in place to conduct special investigations. These units can be co-opted with the TRA, Immigration and the Intelligence Security Services.
335. The following specialised investigations groups have been set up to conduct joint investigations

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<sup>22</sup> Section 63C of the Proceeds of Crime Act reads as follows: "No punishment shall be imposed to any person investigating a serious offence, predicate offence of money laundering who, for the sole purpose of obtaining evidence, performs in the manner specified, acts which would rather be construed as elements constituting a serious offence, a predicate offence or money laundering or a conspiracy to commit a predicate offence or money laundering."

- The Anti-Smuggling Unit (ASU) managed by Customs and Police at the ports of Dar-es-Salaam, Tanga, Mtwara and Zanzibar
- The Task Force on Human Trafficking comprising Police, Immigration and the Tanzania Intelligence and Security Services (TISS).
- Task Force on Anti-Robbery comprising of Police, TISS and Tanzania Peoples Defence Forces.
- Task Force on Narcotic Drugs comprising police, TRA, TISS and PCCB.
- Task Force on Counterfeiting on Medical Products comprising Tanzania Food and Drug Authority, Police, Tanzania Bureau of Standards, Medical Stores Department, Fair Competition Commission, TRA and TISS.

*Additional element- review of ML and FT trends by law enforcement authorities (c. 27.6)*

336. ML and FT methods, techniques and trends are not reviewed by law enforcement authorities, the FIU or other competent authorities.

**Recommendation 28**

*Ability to compel production of and searches for documents and information (c.28.1)*

337. The investigative powers of the police to compel the production and searches for documents and information are widely laid down under the Criminal Procedure Act, the Proceeds of Crime Act and the AML Act.
338. Under section 10(2) of the Criminal Procedure Act a police officer making an investigation may in writing order any person who appears acquainted with the circumstances of the case, or who is in possession of a document or any other thing relevant to investigation of the case to attend or to produce such document or any other thing as so required.
339. Sections 24, 38, 39, 40, 41, 42, 43 and 44 of the Criminal Procedure give the police wide powers of entry into premises, search and seizure of articles connected to an offence. Such searches and seizure can be conducted on persons, vehicles, vessels and premises. The searches and seizures can be conducted with or without a warrant or order of court depending on the seriousness and urgency of the case.
340. In the majority of such cases the search is done under a warrant but in exceptional situations such as where the police officer believes on reasonable grounds, that any delay may result in the loss or destruction of anything connected with an offence the search can be done without a warrant.

341. With respect to financial records held by banks, under the provisions of section 65 of the Proceeds of Crime Act the Director of Public Prosecutions may apply to a court for a monitoring order directing a financial institution to give information to the Inspector-General of Police about financial transactions conducted through an account held by a particular person with that financial institution.
342. With respect to evidence related to the commission of a serious offence, predicate offence or money laundering by a person likely to be found in a bank account a police officer may with appropriate authority in writing from the Inspector General of Police require the production of the bank account for scrutiny and the officer may take copies of any relevant entries from that account (section 63A POCA). Further, pursuant to the provisions of section 63B of the POCA, a police officer may with leave of the court, have access to a) computer data systems, networks and services, and b) notarial and private deeds or financial institutions and commercial records. It is to be noted that the definition of “financial institutions” under the POCA is restricted to financial institutions licensed under the Banking and Financial Institutions Act, 2006 and does not cover other non-bank financial institutions.
343. In addition, under the provisions of section 17(3) of the AML, a reporting person who has made an STR must give such further information in relation to such transaction to the FIU or a law enforcement agency investigating a suspicious transaction.
344. Pursuant to the provisions of section 40A of the Evidence Act, in any criminal proceedings information retrieved from computer systems, networks or servers is admissible as evidence.

***Power to take witnesses' statement (c.28.2)***

345. A police officer making an investigation may pursuant to the provisions of section 10 (3) of the Criminal Procedure Act orally examine any person who is supposed to be acquainted with the facts or circumstances of a case and to reduce into writing any statement made by the person so examined.

**Recommendation 30**

***Structure, funding, staffing and other resources of law enforcement and other AML/CFT investigative and prosecutorial agencies (c.30.1)***

346. The Police Force of the United Republic of Tanzania is mandated under the Police Force and Auxiliary Services Act and is the main agency that is responsible for investigating all crimes in the United Republic of Tanzania.
347. The Tanzania Police Force is headed by the Inspector General of Police. He is assisted by five Commissioners of Police manning Directorates namely; the Commissioners for Administration Resource Management, Operations, Criminal Investigations, Zanzibar and Dar es Salaam Police Special Zone. All 26 regions in Tanzania have Regional Police Commanders assisted by Regional Crime Officers.
348. Money laundering and terrorist financing offences are investigated by the Department of Criminal Investigation. The Criminal Investigation Department is divided into four divisions: Criminal Investigation Department (CID), Operations, Intelligence and Terrorism, Forensic Bureau and Interpol. Within the CID Operations Division there is the Financial and Cyber Crime Investigation Unit, which is responsible for investigating money laundering and terrorist financing. There are other specialized units within the Directorate of Criminal Investigation responsible for investigation of predicate offences namely;
- Police Forensic Bureau
  - National Central Bureau – Interpol Dar es Salaam (NCB)
  - Intelligence and Terrorism Unit.
  - Anti Drugs Unit (ADU)
  - Arms Management and Disarmament (AMAD)
  - Human Trafficking and Smuggling Unit.
  - Financial Investigation and Cyber Crime Unit
349. There are 17 officers attached to the Financial and Cyber Crime Investigation Unit. In the regions ML and TF offences are investigated by Regional Crime Officers.
350. The Criminal Intelligence unit is responsible for providing intelligence for investigations and for terrorism. There are 38 officers in the unit.
351. The National Central Bureau is responsible for international coordination and for transnational offences. There are 15 officers in this unit.
352. The authorities were of the view that the staffing and funding were not adequate. During the year 2009 the CID was planning to recruit 93 additional officers.
353. Overall the Police Force in the United Republic of Tanzania did not appear to be adequately resourced to combat money laundering and terrorist financing. Technical and other resources required in the investigation of ML/FT also appeared to be inadequate to enable law enforcement to fully and effectively perform their duties.

### ***Integrity of competent authorities (c.30.2)***

354. The Inspector General of Police and the Regional Police Commanders are subject to the Public Leadership Code of Ethics and Conduct Act. All other members of the Police Force are required to adhere by the Police General Orders (PGO) issued by the Inspector General pursuant to his powers under section 7 of the Police Force and Auxiliary Services Act.
355. In accordance with the provisions of the PGOs every member should aim at strict adherence to the guidelines propounded in these Orders and others which may issue from time to time to ensure the integrity of the member him/herself and of the Force in general. In particular all corrupt practices and any abuse of power are strictly prohibited.
356. In general, according to the authorities in the United Republic of Tanzania corruption was not a rampant issue within the Police Force even if formal action has been taken against a few corrupt officials. An Integrity Committee which is responsible for receiving complaints from the police and the public with respect to corrupt practices. is also empowered to investigate complaints. The Committee is also subject to periodic reporting to the Governance Unit within the President's Office. However, no statistics were provided to the assessors on the number of complaints which have been received and investigated.
357. Commanding Officers and all senior officers should endeavour at ensuring the observation of confidentiality of informers and crime information under the PGO.

### ***Training for competent authorities (c.30.3)***

358. Members of the Police Force have attended AML/CFT training by the FIU, the Interpol, World Bank, ESAAMLG and FBI. However, the authorities expressed the view that due to inadequate funding on-going training in AML/CFT matters was slow. The authorities have indicated that a new Criminal Investigation College was in the process of being set up.
359. Staff members of the Police Force have also been seconded to the BoT.

### ***Additional element –Special training for judges (c.30.4)***

360. There has been no special training for the judges and magistrates in the United Republic of Tanzania.

### ***Statistics (applying R.32)***



361. The Police indicated that there are 4 ML investigations under way. There have however not been any TF investigations.

## 2.6.2 *Recommendations and Comments*

362. It is recommended that the members of the Police Force involved in ML and TF investigations should be adequately trained on an ongoing basis.

363. There is a very low number of ML investigations and investigations. The authorities should focus more pro-actively on pursuing specific money laundering offences.

364. The definition of “financial institutions” under the POCA should be extended to include the non-bank financial institutions. At present it is restricted to financial institutions licensed under the Banking and Financial Institutions Act, 2006 and does cover other non-bank financial institutions.

365. It is recommended that the law enforcement agencies should maintain comprehensive statistics of the investigation and prosecution of ML/FT cases and other predicate offences.

366. All the relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POCA and the POTA with respect to Zanzibar.

## 2.6.3 *Compliance with Recommendations 27 & 28*

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> <li>• The overall effectiveness of money laundering and terrorist financing investigations could not be assessed.</li> <li>• The AML Act, the POCA and the POTA are no not enforceable with respect to Zanzibar.</li> <li>•</li> </ul>
R.28	PC	<ul style="list-style-type: none"> <li>• The definition of “financial institutions” under the POCA is restricted to financial institutions licensed under the Banking and Financial Institutions Act, 2006 and does not cover other non-bank financial institutions. This undermines the powers of the police to have access to financial records held by other reporting persons.</li> <li>• The powers of the police are undermined as the AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar. The overall effectiveness in the investigation of ML and FT matters could not be assessed.</li> </ul>

## 2.7 Cross Border Declaration or Disclosure (SR.IX)

### 2.7.1 Description and Analysis

#### *Legal Framework*

367. Section 23 (1) of the AML Act, provides that “any person, who enters or leaves the territory of the United Republic of Tanzania while transporting or has transported cash or a bearer negotiable instruments in any amount equal or above the amount prescribed by the Minister in Regulations, shall be subject to customs authorities which shall transmit that information to the Financial Intelligence Unit”.
368. The scope of this provision is not well defined under the law and the assessors were unable to determine what the term “subject to customs authorities” entailed. Further, no regulations had been prescribed by the Minister and at present there is no declaration/disclosure system in place.

### 2.7.2 Recommendations and Comments

369. The authorities in the United Republic of Tanzania should as soon as possible develop the appropriate legal framework to implement the requirements under SR IX.

### 2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"><li>The requirements under SR IX have not been implemented in the United Republic of Tanzania.</li></ul>

## 3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

#### *Preamble: Law, regulation and other enforceable means.*

370. AML/CFT preventative measures have been implemented through the application of the AML Act and the Anti-Money Laundering Regulations, 2007 (the AML Regulations). Shortly after the onsite visit, on 1 April 2009, the FIU issued the Anti-Money Laundering Guidelines No. 1, 2 and 3 (“FIU Guidelines”).
371. It is to be noted however, that the Interpretative Notes to the FATF 40 Recommendations require that “The basic obligations under Recommendations 5, 10

and 13 should be set in law or regulation". For the purposes of the FATF, "law or regulation" refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance.

372. The non-basic elements in the criteria of Recommendations 5, 10 and 13 as well as obligations under Recommendations 6-9, 11, 14-15, 18 and 21-22 could be required either by law or regulation or by other enforceable means.
373. Other enforceable means refers to guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance and which are issued by a competent authority (e.g. a financial supervisory authority). In both cases the FATF requires that the sanctions for non-compliance should be effective, proportionate and dissuasive.
374. While the above mentioned requirements are to some extent addressed in the AML Act or the AML Regulations there are no sanctions that apply for non-compliance with such requirements. The Assessment Team was of the view that the absence of sanctions for non-compliance was a major deficiency in meeting the FATF requirements which affect the ratings relating to some of the Recommendations discussed in section 3 of this report.
375. It is notable that the FIU Guidelines are not other enforceable means as there are no sanctions for failure to comply with the requirements under these guidelines. When reading the guidelines it did not appear to the assessment team that financial institutions and DNFBPs would understand that sanctions would be applied for non-compliance and what those sanctions could be.
376. Moreover, as discussed in section 2.1.1 of this report, according to the authorities, with respect to Zanzibar, the AML Act and the POTA are not enforceable. This also affects the ratings relating to the Recommendations discussed in section 3 of this report.

#### **Customer Due Diligence & Record Keeping**

### **3.1 Risk of money laundering or terrorist financing**

377. The legal and regulatory framework of the United Republic of Tanzania does not provide for a risk-based approach to AML/CFT. The authorities in the United Republic of Tanzania have not undertaken a comprehensive risk assessment of money laundering and terrorist financing and all financial institutions are subject to the same obligations under the AML Act. The reporting persons are required to apply the

AML/CFT measures in their entirety and are not permitted to adopt any simplified measures with respect to areas that they deem to be of little or low risk.

378. As at the date of the onsite visit, bureaux de change and insurance entities were in the process of developing and implementing their internal AML/CFT procedures and their level of AML/CFT awareness as compared to the banking sector was relatively low. It appeared to the assessors that the ML/TF risks were not being adequately managed in these sectors. However, the evaluators consider that the risk of ML/TF in the insurance sector as compared to the banking sector is relatively lower as the customer base of the insurance entities is largely domestic.

### **3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)**

#### **3.2.1 Description and Analysis**

379. The AML measures applicable to the Tanzanian financial sector are provided in the AML Act. The definition of reporting person under the Act includes most of the financial institutions as defined by the FATF for the purposes of the 40+9 Recommendations, namely

- Banks and financial institutions;
- Cash Dealers, including insurers and insurance brokers, securities dealer and brokers, manager of Collective Investment Scheme, forex bureaux

380. However, not all of these categories of financial institutions fall under the definition of reporting persons under the AML Act.

#### ***Scope issue***

381. The following financial institutions are not reporting person for the purpose of the AML Act: pension fund managers, investment advisers; securities custodians, financial leasing entities, micro finance companies, savings and credit co-operative societies and housing finance companies (collectively referred to as “uncovered financial institutions”). These exclusions create a scope issue. Since they are not reporting institutions, the uncovered financial institutions are not subject to the verification of identity, record keeping and internal control requirements of the AML Act. These exclusions have not been justified based on demonstrated low risk for ML/FT. These gaps in the scope of the AML obligations affect the ratings relative to some of the Recommendations discussed in Section 3 of this report.

#### ***Legal framework***

The Anti Money Laundering Act, No.12 of 2006 (the AML Act)

## Anti Money Laundering Regulations, 2007 (the AML Regulations)

382. The AML Act is the primary legislation which imposes Customer Due Diligence obligations on reporting persons, particularly financial institutions, banks, insurance entities, money transmission services, cash dealers, including bureaux de change.
383. The Act came into operation on 5th January, 2007. Prior to the enactment of the AML Act and issuance of AML Regulations, banks and financial institutions, which fall under the supervisory purview of the Bank of Tanzania, were required to comply with Circular No.8 on Money Laundering Control (Circular No.8) which was issued by the Bank of Tanzania on 30th June, 2000. As at the date of the onsite visit one of the banks which was interviewed by the evaluation team was still using Circular No. 8 which the BoT advised has been superseded by the AML Act and regulations. Circular No.8 was repealed by the Bank of Tanzania on 14 April 2009. The Financial Intelligence Unit issued Anti-Money Laundering Guidelines No. 1 on Verification of Customer's Identities (applies to all reporting persons), Guideline No. 2 contains various Anti-Money Laundering Guidelines to Banking Institutions, and Guideline No. 3 concerns Anti-Money Laundering Guidelines to the Bank of Tanzania. These Guidelines, however, do not create and legal or enforceable obligations.

### **Recommendation 5**

#### ***Prohibition of anonymous accounts (c.5.1)***

384. Pursuant to the provisions of section 19(2) of the AML Act, no person is permitted to open or operate anonymous accounts or any account which is in a false or disguised name with a reporting person. The above mentioned provision of the Act does not create any direct obligation on reporting persons. In addition there is no sanction for failure to comply with this requirement.
385. Section 15(1) (a) of the AML Act also aims at ensuring that anonymous, numbered and fictitious named accounts are not allowed to exist in Tanzania by requiring that reporting persons to verify the true names of account holders.
386. The AML Act does not expressly refer to numbered accounts however, pursuant to the provisions of section 15(1)(a) of the AML Act, reporting persons are required to verify the true identity of account holders.
387. In practice it would seem that the financial institutions do not maintain anonymous accounts or accounts in fictitious names. Numbered accounts are also not maintained.

#### ***When is CDD required (c. 5.2)***

388. The AML Act under section 15(1)(a) requires CDD measures to be undertaken by reporting persons when an applicant seeks to enter into a business relationship with him or carry out a transaction or series of transactions with him.
389. Regulation 2 of the AML Regulations define the term “business relationship” as an arrangement between a person and reporting person, where the purpose or effect of the arrangement is to facilitate the carrying out of transactions between the reporting person on one-off, frequent, habitual or regular basis;”
390. In general banks operating in the United Republic of Tanzania undertake verification of identity of clients at the time of opening client accounts. During discussions held with the Tanzanian Bankers’ Association and two commercial banks, it was confirmed that banks did verify the identity of the client and no accounts were opened until all identity documentation were submitted by the client.
391. The mutual evaluation team met with four insurance companies which conducted insurance business in Tanzania. Proposal forms are used as the primary KYC documentation. Details of the identity of the customer is required at the time of assuming the insurance risk and settling the insurance claim but there is no practice for this information to be independently verified. The basic principle in insurance is ‘utmost good faith’. Insurance companies also carry out risk surveys which include identity checks. The Evaluators were informed that in practice, insurance companies do not insist on knowing the identities of their clients at the time of entering the insurance contract but always do so at the time of settling/paying the insurance claim since this is the riskiest time. The insurance companies pointed out that do not meet face to face with the clients as about 80% of their business comes through the Insurance Brokers who acts as the interface between the insurance company and the customers.
392. Following discussions held with insurance brokers companies it would appear that brokers have not implemented AML/CFT in their internal procedures. Insurance brokers use the proposal forms and risk surveys for KYC purposes. The information provided in the proposal form is not verified independently.
393. With regard to the securities sector, the securities dealers use the client information form to obtain basic identification details on the client. The voter’s registration card or a confirmation letter from the cell leaders are used for the verification of identity in the absence of a national identity card on Mainland Tanzania.
394. The requirements under section 15(1)(a) of the AML Act applies irrespective of the threshold. While the AML Act does not define the term “transaction” it would appear that the term “transaction” is very broad and applies to all transactions whether carried out in a single operation or in several operations. In addition, the term “business relationship” as defined under the AML Regulations also includes “the

carrying out of transactions between the reporting person on one-off, frequent, habitual or regular basis”.

395. There is no specific requirement to undertake CDD measures where there is a suspicion of money laundering or terrorist financing or where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

### *Identification of customers (c.5.3)*

396. Section 15(1)(a) of the AML requires a reporting institution to satisfy itself as to the true identity of “any applicant seeking to enter into a business relationship with him...” . Unfortunately, the AML does not define the term “applicant”. However, the AML Regulations define the term “business relationship” as an arrangement between a person and reporting person, where the purpose or effect of the arrangement is to facilitate the carrying out of transactions between the reporting person on one-off, frequent, habitual or regular basis;”
397. The term “person” under the Interpretation of Laws Act includes both natural and legal persons whether corporate or unincorporated. It is also to be noted that section 15(2) of the AML Act sets out the types of official record that must be obtained by a financial institution both in respect of natural persons and bodies corporate. Trusts are covered under the AML regulations.
398. Where the client is a natural person section 15(2)(a), (b) and (d) of the AML Act requires the financial institution to obtain the following official records: (i) birth certificate or an affidavit to that effect; a passport or other official means of identification and any other documents as may be prescribed in regulations.
399. Regulation 3(1) of the AML Regulations further requires the reporting person dealing with a natural person, who is a citizen of or resident in the United Republic of Tanzania, to obtain the following information on the client-
- Full names and residential address
  - Date and place of birth
  - Voter registration card
  - Introductory letter from relevant authority such as employer or government official
  - Tax Identification Number (TIN) if such number has been issued to that person;
  - Any or all of, telephone number, fax number, postal and email address;

- Location of the client, including important landmarks close to the prospective client's residence
- Where the client is a student-
  - (i) an introductory letter from the client's institution signed by the head of the institution or a representative of the head of institution;
  - (ii) the student's identity card;
- nature of business relationship;
- signature and thumb print; and
- utility bills, where applicable.

400. Under regulation 4(1) of the AML Regulations a reporting person is required to verify the full names, date and place of birth and Tax Identification Number (TIN) of an individual being a citizen of or resident in the United Republic of Tanzania under regulation 3 by comparing these particulars with-

- (a) *an identification document of that person; or*
- (b) *in the case where that person is, for a reason that is acceptable to the reporting person, unable to produce an identification document, another document issued to that person, which , taking into account any guidelines concerning the verification of identities which may apply to that reporting person, is acceptable to the reporting person and bears-*
  - (i) *a photograph of that person;*
  - (ii) *that person's full names or initials and surname;*
  - (iii) *that person's date and place of birth; and*
- (c) *any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidelines concerning the verification of identities which may apply to that reporting person.*

401. Regulation 4(2) of the AML Regulations sets out the manner in which the TIN is required to be identified while regulation 4(3) provides that a reporting person shall verify the residential address by comparing this information with information which can reasonably be expected to achieve such verification and obtained by practical means, taking into account any guidelines concerning the verification of identities which may apply to that reporting person.

402. The FIU Guidelines No.1 further set out the types of documentation that may be used to verify the residential address. These include, utility bills, bank statement, recent lease or rental agreement, or a letter from a public authority or embassy or consular office.



403. Regulation 5 of the AML Regulations sets out similar provisions with respect to a natural person who is not a citizen or resident of the United Republic of Tanzania.
404. Section 15(6) of the AML Act provides an exemption to the requirement to verify the identity of the customer where the applicant is himself a “reporting person” in the following terms :

*“Nothing in this section shall require the production of any evidence of identity where-*

- (d) the applicant himself is a reporting person to which this Act applies;*
- (e) there is a transaction or series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity”.*

#### **Identification of legal persons and other arrangements (c.5.4)**

405. Where the customer is a legal person or arrangement there is no requirement to verify that any person purporting to act on behalf of the customer is so authorised.
406. Nevertheless, where the client is a local entity, foreign entity, partnership or trust, the reporting institution must identify and verify the identity of each individual who purports to be authorised to establish a business relationship or transact on behalf of the entity, partnership or trust. (Regulations 7 to 15 of the AML Regulations).
407. Where the client is a local company the reporting person must verify the legal status and form, the name, address and directors.
408. In case of a foreign company the reporting person must verify the name and address. There is no requirement to verify the directors but only the manager in respect of the company’s affairs in the United Republic of Tanzania. There is also no requirement to verify the legal form and status.
409. Regarding a partnership the reporting person must verify the legal status and form, the name, address and the person who exercises executive control over the partnership.
410. In case of a trust, the trustees must be verified. In case of a public trusts the authorisation given in terms of the Trustees Incorporation Act in respect of each trustee must be verified. Similar requirements apply with respect to foreign trusts.
411. In case of a public trusts the authorisation given in terms of the Trustees Incorporation Act in respect of each trustee must be verified.
412. As part of their internal processes, insurance companies normally seek and verify details provided by legal entities seeking insurance including reviewing Articles of Association, Memorandum of Association, business license, certificate of incorporation, etc. This information is verified with the BRELA office.

***Identification of beneficial owners (c. 5.5, 5.5.1 & 5.5.2)***

***C.5.5***

413. There is no requirement set out in the law or regulation on reporting persons to identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner using relevant information or data from a reliable source such that the reporting person is satisfied that it knows who the beneficial owner is (as defined by the FATF standards).

***C.5.5.1***

414. Sect 15(4) of the AML Act requires financial institutions to take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, as trustee, nominee, agent or otherwise.

***C.5.5.2***

415. For customers that are legal persons or arrangements there is no requirement for financial institutions to take reasonable measures to understand the ownership and control structure of the customer. There is also no express requirement to determine the natural persons that ultimately own or control the legal person or arrangement. This criterion is therefore not met.

***Information on purpose and nature of business relationship (c. 5.6)***

416. There is no direct obligation on financial institutions to obtain information on the purpose and nature of the business relationship in the United Republic of Tanzania. Regulation 16(e)) of the AML Regulations requires financial institutions to maintain identification procedures that allow a reporting person to obtain information on the purpose and intended nature of the business relationship. It is unclear whether the word “maintain” as used in the regulation also means “implement”.

***Ongoing due diligence on Business relationship (c. 5.7, 5.7.1 & 5.7.2)***

417. There is no direct requirement for reporting persons to conduct on-going monitoring or on-going due diligence on the business relationship. Regulation 16(f) of the AML Regulations merely provides that financial institutions must maintain (which does not necessarily mean “implement”) identification procedures that require a financial

institution to conduct ongoing due diligence. The regulation uses similar terms as in the standard except with respect to the source of funds which must be investigated.

418. Both of the banks that the evaluators interviewed indicated that they somewhat carry out continuous monitoring of their customers.
419. There is no direct obligation that documents, data or information collected under the CDD process should be kept up-to-date and relevant by undertaking reviews of existing records. However, Regulation 16(g) of the AML Regulations requires financial institutions to maintain identification procedures that ensure that information collected under the client due diligence process is kept up to date by reviewing existing records. This applies to all categories of customers or business relationships.

*Enhanced due diligence for higher risk customers (c.5.8)*

420. The AML law and regulations do not address the issue of enhanced due diligence, and there is no general requirement to take additional steps when there is a higher risk scenario, whatever that higher risk scenario may be.

*Application of simplified/reduced CDD measures (c.5.9-5.12)*

421. Under the AML Act reporting persons are not permitted to apply simplified CDD measures on a risk sensitive basis.

*Timing of verification of identity (c.5.13)*

422. In terms of section 15(1) of the AML Act and Regulation 16(a) of the AML Regulations it appears that financial institutions require evidence of the client identity before the establishment of the business relationship. However, there is no requirement to verify the identity of the beneficial owner.
423. In general banks require that the verification of the identity of the client is completed before establishing the business relationship. Where banks open an account before the completion of the verification of identity of the client, no transaction will be allowed to go through the account until all the necessary documentation has been submitted and verified by the banks.

*Verification of identity after establishment of business relationship (c. 5.14)*

424. Financial institutions are not expressly permitted to complete the verification of the identity of the customer and beneficial owner following the establishment of the

business relationship. However, this seems to be a practice with the insurers and the securities dealers.

425. At the time of the on-site visit, representatives from one of the insurance companies explained that the principle of “utmost good faith” allows for an insurance contract to be entered into before verification of identity is completed. However, the requirement to complete the verification of identity of the beneficiary becomes mandatory before settlement of a claim.
426. With respect to the securities sector, representatives from one of the securities dealers explained that in practice it was not possible to complete full CDD during Initial Public Offerings (IPOs).

#### *Failure to complete CDD (c.5.15)*

427. There is no direct requirement to terminate a business relationship where the reporting person has already commenced a business relationship but fails later to verify the identity of the customer. Regulation 16(c) of the AML Regulations requires that the reporting institution must maintain procedures that the business relationship or single transaction should not be continued where the reporting person is unable to obtain satisfactory of the prospective client’s identity.
428. There is no requirement that the financial institution should consider making a suspicious transaction report.

#### *Termination of business relationship (c.5.16)*

429. There are no such requirements that apply where the financial institution has already commenced the business relationship as financial institutions are not permitted to commence a business relationship before completing client identification.

#### *CDD requirements for existing customers (c. 5.17 & 5.18)*

430. Regulation 17 of the AML Regulations requires a reporting person to take reasonable measures, taking into account any guidelines concerning the verification of identities which may apply in respect of existing business relationship, to maintain the correctness of particulars which are susceptible to change and are provided under the Regulations.
431. The scope of regulation 17 does not require reporting financial institutions to undertake CDD measures with respect to existing clients. It appears to only require

that the financial institutions maintain the correctness of existing particulars which are susceptible to change.

432. One of the banks indicated that it was not undertaking CDD for existing clients. From the discussion held with the Tanzanian Bankers Association, it would appear that applying CDD measures to existing clients is difficult to implement in practice and the banks have sought guidance from the BoT on this issue.

***CDD requirements for existing anonymous customers (c.5.18)***

433. There is no requirement on financial institutions to perform CDD measures on existing customers if they have anonymous accounts or accounts in fictitious names.

**Recommendation 6**

***Requirement to identify foreign PEP (c. 6.1)***

434. Under section 15(1)(b)(i) of the AML Act, in addition to performing normal due diligence measures, reporting persons must have appropriate risk management systems to determine whether a customer is a PEP.
435. This requirement does not apply to a potential customer or the beneficial owner.

***Risk management of foreign PEP (c. 6.2)***

436. In relation to a PEP, a financial institution must obtain senior management approval for establishing business relationship with such a customer (section 15(1) (b)(ii) AML Act).

***c.6.2.1***

437. There is no requirement under the AML Act for reporting persons to obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.

***Source of wealth and funds of foreign PEP (c. 6.3)***

438. Under Section 15(1)(b)(iii) of the AML Act a reporting person must take reasonable measures to establish the source of wealth and source of funds of a customer identified as a PEP.

439. There is however, no requirement to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

*Ongoing monitoring of business relationship with foreign PEP (c.6.4)*

440. Reporting persons must conduct enhanced on-going monitoring of the business relationship in relation to a customer who is a PEP (section 15(1)(iv) AML Act).

*Additional element- Domestic PEP (c.6.5)*

*Domestic PEPs*

441. The definition of PEP under section 3 of the AML Act does not include a domestic PEP.

*Additional element –Ratification of Merida Convention (c.6.6)*

442. The UN Convention against Corruption has been ratified by the United Republic of Tanzania.

**Recommendation 7**

*Requirement to obtain information on respondent institution (c. 7.1)*

443. There are no specific provisions that apply to cross-border correspondent banking and other similar relationships under law or regulation. Hence, the reporting persons are currently not obliged to apply CDD measures on respondent institutions, gather sufficient information about a respondent institution to enable them to understand the nature of its business and to determine the reputation and quality of supervision of the respondent bank from independent sources.
444. However, it appears in practice, that foreign owned financial institutions are implementing some CDD measures before establishing correspondence banking relationships. In most cases, they rely on their home country offices which may have already established relationships with the respondent bank in question. If this is not the case, they are guided by their home country offices on what to do before the relationship is established. On the other hand, small banks in Tanzania seem to be on the receiving end as they are subjected to CDD measures by respondents which are, in most cases, well established banks with robust AML/CFT systems.

***Assessment of AML/CFT controls in respondent institution (c.7.2)***

445. The laws of the United Republic of Tanzania do not specifically require financial institutions to assess the AML/CFT controls of the respondent institution and ascertain that they are adequate and effective.

***Approval for establishing correspondent relationships (c. 7.3)***

446. The reporting persons are also not required to obtain approval from senior management before establishing new correspondent banking relationships and assess the respondent bank's AML/CFT controls and levels of supervision.
447. Pursuant to the provisions of the Banking and Financial Regulations, banks in the United Republic of Tanzania are required to have the approval of the BoT before establishing new correspondent/foreign relationships.

***Documentation of AML/CFT responsibilities (c. 7.4)***

448. There is no requirement to document AML/CFT responsibilities of the each institution.

***Payable through accounts (c.7.5)***

449. There are no requirements with respect to correspondent relationship that involves the maintenance of "payable –through accounts"

**Recommendation 8**

***Misuse of new technology for ML/FT (c. 8.1)***

450. There is no explicit requirement for reporting persons to have policies in place or take measures as may be necessary to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

***Risk of non-face to face business relationships (c. 8.2 & 8.2.1)***

451. There are no requirements for reporting persons to have policies and procedures in place or take such measures as needed to prevent the misuse of technological developments in ML/FT, or specific and effective CDD procedures that apply to non-face to face customers.

**3.2.2 Recommendations and Comments**

- 452. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.
- 453. The AML/CFT framework under the AML Act should be extended to cover the full range of financial institutions as defined by the FATF.
- 454. Effective, proportionate and dissuasive criminal, civil or administrative sanctions for failure to comply with the CDD requirements under the AML Act and the AML Regulations should be provided for in the immediate future.

#### ***Recommendation 5***

- 455. In practice there is no level playing field with regard to the implementation of CDD measures by banks. One of the banks interviewed by the evaluation team appeared to have implemented the requirements of the AML Act to some extent while two other banks interviewed by the evaluation team explained that their internal AML policy were as at the time of the on-site visit based on Circular No. 8.
- 456. In practice, the banks operating in Tanzania seem to have put in place client verification procedures (particularly commercial banks that are members of an international group who put in place KYC procedures in line with the bank's group standards). The procedures apply to prospective customers and throughout the lifetime of the relationship with the customer. In accordance with these procedures, the bank identifies and screens the prospective clients and assigns them to an AML risk category.
- 457. Two of the foreign exchange bureaux interviewed explained that in practice it was difficult to undertake CDD measures as there is no level playing field in the sector as not all of the bureaux have implemented client identification procedures and there is a parallel informal market for foreign exchange.
- 458. On the other hand, insurance companies use the Proposal Forms to verify the identity and activities of the customer and understand the nature and risk of business being placed. It did not appear to the assessors that the insurers and the insurance brokers had adopted or implemented the internal AML/CFT policies as required under the AML Act. Further, the insurers were also view that they had not been exposed to ML issues for the past 5 to 10 years to establish the high level of AML alertness. It was only very recently that the FIU has started a sensitisation process. However, the authorities indicated that the Ministry of Finance and Economic Development started the sensitization process on money laundering prior to the establishment of the FIU.
- 459. The securities dealers have also not implemented internal AML/CFT policies. The client information form is used as the primary CDD documentation.



460. The operators in the financial services sector including the banks, insurance companies and foreign exchange bureaux have indicated that in practice the requirement to obtain proof of identity and residential address was causing some difficulties, in practice, especially for customers residing in semi-urban or rural areas as there is no national identity card on Mainland Tanzania. Nevertheless, the evaluators were informed that to overcome this difficulty, financial institutions were using references from “Cell Leaders” to identify and verify customer’s residential addresses (not expressly prescribed as a CDD document under the regulations) and the voter’s registration card issued by the National Electoral Commission which contains the signature and thumbprint of the owner.
461. It is recommended that the AML Act or the AML Regulations should be amended to specifically provide the requirement for reporting persons to-
- undertake CDD measures where there is a suspicion of money laundering or terrorist financing
  - undertake CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.
  - identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner using relevant information or data from a reliable source such that the reporting person is satisfied that it knows who the beneficial owner is ( as defined by the FATF standards).
  - determine the natural persons that ultimately own or control the legal person or arrangement
462. It is also recommended that the AML Regulations should be amended to provide that-
- where the customer is a legal person or arrangement reporting persons must to verify that any person purporting to act on behalf of the customer is so authorised.
  - in the case of private trusts the authorisation given to each trustee must be verified.
  - for customers that are legal persons or arrangements financial institutions must take reasonable measures to understand the ownership and control structure of the customer.
  - the financial institution should consider making a suspicious transaction report where it fails to satisfactorily complete CDD measures.
463. Having regard to the situation in practice whereby some categories of financial institutions are establishing business relationships prior to the completion of the verification of identity requirements it is recommended that this practice should be

regulated for AML/CFT purposes in line with the requirements set out in the essential criteria 5.14, 5.14.1 and 5.16 of Recommendation 5.

464. It is to be noted that while AML Regulations 6(3), 8(b), 8(e), 13(c), 15(1)(e), 15(2) and 17 refer to “taking into account any guidelines concerning the verification of identities which may apply to that reporting person” as at the date of the onsite visit no guidelines pertaining to the verification of identity had been issued to give provide further guidance under these regulations. It is recommended that where appropriate guidelines should be issued for the effective implementation of these regulations.
465. Regulation 16 of the AML regulation is drafted in ambiguous terms and it does not appear to create a direct obligation on financial institutions -
- to obtain information on the purpose and nature of a business relationship
  - to conduct on-going monitoring or on-going due diligence on the business relationship.
  - to ensure that documents, data or information collected under the CDD process should be kept up-to-date and relevant by undertaking reviews of existing records.
  - not to continue the business relationship or single transaction where the reporting person is unable to obtain satisfactory of the prospective client’s identity.
466. It is therefore recommended that the wordings of the regulations be amended to create a direct obligation on financial institutions to undertake the above mentioned CDD measures.
467. The AML framework does not require financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship or transaction. It is therefore recommended that the AML regulatory framework should provide for such requirement.
468. The requirement under Regulation 17 of the AML Regulations should be clarified to expressly provide that financial institutions should apply CDD requirements to existing customers in terms of the requirements under essential criterion 5.17 under Recommendation 5. In addition, financial institutions must also perform CDD measures on existing customers if numbered accounts exist.

#### ***Recommendation 6***

469. One of the banks interviewed by the Evaluation team indicated that PEPs were considered as high risk and the account opening process goes through the compliance officer who then makes an appropriate recommendation to management. The bank also checks the World Check database for determining whether a customer is a PEP.

470. The insurance entities and securities dealers have not implemented additional CDD measures with respect to their business relationship with PEPs.
471. It recommended that financial institutions should be required to-
- In addition to performing the CDD measures, put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP.
  - obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.
  - to take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.

### *Recommendation 7*

472. In addition to the normal CDD measures, financial institutions the United Republic should establish requirements for reporting persons to:
- Gather sufficient information about a respondent institution to enable it fully understand the nature of the respondent's business and gather information about its reputation and quality of supervision;
  - Assess respondent institution's AML/CFT controls, adequacy and effectiveness,
  - Obtain approval from senior management before establishing new correspondent relationships,
  - Document the respective AML/CFT responsibilities of each institution is a correspondent banking relationship;
  - where correspondent relationship involves the maintenance of "payable-through accounts" ensure that respondent banks perform all normal CDD obligations on all its customers that have direct access to the accounts of the respondent financial institution and the customer identification data is provided to the correspondent financial institution by the respondent institution upon request.
473. These requirements may be set out in laws, regulations or other enforceable means

### *Recommendation 8*

474. Financial institutions should be required to have policies and procedures in place to prevent the misuse of technological developments in ML or TF schemes and to address any specific risks associated with non-face to face relationships or transaction in line with the requirements of Recommendation 8.
475. These requirements may be set out in laws, regulations or other enforceable means.

### 3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> <li>There are no enforceable requirements to- <ul style="list-style-type: none"> <li>undertake CDD measures where there is a suspicion of money laundering or terrorist financing</li> <li>undertake CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner using relevant information or data from a reliable source such that the reporting person is satisfied that it knows who the beneficial owner is ( as defined by the FATF standards).</li> <li>determine the natural persons that ultimately own or control the legal person or arrangement</li> </ul> </li> <li>There is also no requirement- <ul style="list-style-type: none"> <li>where the customer is a legal person or arrangement, for reporting persons to verify that any person purporting to act on behalf of the customer is so authorised.</li> <li>in the case of private trusts, for the authorisation given to each trustee to be verified.</li> <li>for customers that are legal persons or arrangements, that financial institutions must take reasonable measures to understand the ownership and control structure of the customer.</li> </ul> </li> <li>The AML framework does not require financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship or transaction.</li> <li>There is no requirement for financial institutions to perform CDD measures on existing customers if numbered accounts exist.</li> <li>The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> </ul>

		<ul style="list-style-type: none"> <li>• The AML/CFT measures under the AML Act and the AML Regulations do not appear to be mandatory as there are no sanctions that apply for failure to comply with these requirements.</li> </ul>
<b>R.6</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Whilst there is a legal or regulatory requirement under section 15(1)(b)(ii) of the AML Act for reporting persons regarding PEPs there is no requirement to: <ul style="list-style-type: none"> <li>▪ put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP.</li> <li>▪ obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.</li> <li>▪ take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.</li> </ul> </li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> <li>• The AML/CFT measures under the AML Act and the AML Regulations do not appear to be mandatory as there are no sanctions that apply for failure to comply with these requirements.</li> </ul>
<b>R.7</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are no enforceable requirements on financial institutions relating to correspondent banking relationship(s).</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>R.8</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are no requirements providing for prevention of the misuse of technological developments in ML/TF schemes.</li> <li>• There is no requirement for the other reporting persons to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.</li> <li>• The AML Act and the POTA are not enforceable with respect to</li> </ul>

		Zanzibar.
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### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and Analysis

##### Legal framework

476. The laws and regulatory frameworks in the United Republic of Tanzania do not expressly prohibit reporting persons to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduced business. With respect to non-face to face customer relationships, section 2. 8 of the FIU Guidelines for the Verification of Customers' Identities reporting persons are required to take specific and adequate arrangements to mitigate the higher risk by taking such measures as third party introduction.
477. In practice, some banks do rely on other financial institutions within the same financial services group to perform some aspects of the CDD measures. However, all underlying CDD documentation must be submitted to the bank in Tanzania.
478. Within the securities sector it is the practice among securities dealers to rely on foreign dealers/brokers to perform the verification of identity of a foreign client. The underlying verification of identity must be sent to the dealer in Tanzania

##### *Requirement to immediately obtain certain CDD elements (c. 9.1)*

479. There is no requirement for reporting persons relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

##### *Availability of Identification Data (c. 9.2)*

480. Reporting persons are not required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay.

##### *Regulation and supervision of third party (c. 9.3)*

481. There is no requirement for financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29) and has measures in place to comply with CDD requirements set out in Recommendation 5 and 10.

*Adequacy of application of FATF Recommendations (c. 9.4)*

482. Competent authorities have not put in place any mechanism to determine from which countries the third parties can be based.

*Ultimate responsibility for CDD (c. 9.5)*

483. There is no specific requirement in the AML/CFT regime in the United Republic of Tanzania that expressly provides that the ultimate responsibility for customer identification and verification should remain with the reporting person relying on the third party. In the absence of any express requirement under the AML Act it not clear whether reporting persons are aware that the ultimate responsibility of ensuring customer identification and verification remains with them.

**3.3.2 Recommendations and Comments**

484. Where they rely on third parties or other intermediaries to perform some of the elements of the CDD process financial institutions should be required, by way of law regulation or other enforceable means, to:
- immediately obtain from the third party the necessary information concerning certain elements of the CDD process;
  - take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay
  - satisfy themselves that the third party is under effective regulation and supervision and has measures in place to comply with CDD requirements
485. The AML regulatory framework should also provide that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.
486. In determining in which country the third party can be based, supervisory authorities should take into account information available on whether the country adequately applies the FATF Recommendations.

487. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar.

### 3.3.3 *Compliance with Recommendation 9*

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> <li>▪ The AML/CFT regulatory framework does not address the requirements under recommendation 9 even if in practice financial institutions do rely on third parties or intermediaries to perform some elements of the CDD measures.</li> <li>▪ The AML Act is not enforceable with respect to Zanzibar.</li> </ul>

## 3.4 Financial institution secrecy or confidentiality (R.4)

### 3.4.1 *Description and Analysis*

#### Legal framework

#### *Inhibition of implementation of FATF Recommendations (c. 4.1)*

#### *Financial Institutions*

#### *Confidentiality provisions under the Banking and Financial Institutions Act 2006*

488. Section 48(1) of the Banking and Financial Institutions Act 2006 provides as follows :-

*Every bank or financial institution shall observe, except as otherwise required by law, the practices and usages customary among bankers, and in particular, shall not divulge any information relating to its customers or their affairs except in circumstances in which, in accordance with the law or practices and usages customary among bankers, it is necessary or appropriate for the bank or financial institution to divulge such information otherwise required by law,*

489. The Banking and Financial Institutions Act thus creates a general duty of confidentiality that permits disclosure of information only in specific circumstances. There are restrictions on the sharing of information between financial institutions



where this is required by R.7 (correspondent banking) and R.9 (third parties and introduced business). Consequently, the law does not permit disclosure of CDD data for the purposes of criterion 7.5 of R.7 & R.9. Information sharing for the purpose of SRVII seems to be allowed under section 48(1) of the Banking and Financial Institutions Act, 2006. There is however, no judicial pronouncement that would enable the assessors to determine the scope of section 48 of the Banking and Financial Institutions Act.

- 490. There is limited domestic information sharing permitted by S. 18 of the CMSA. No statutory confidentiality provisions apply to securities operators.
- 491. The Foreign Exchange (Bureaux de Change) Regulations 2008 states under Regulation 23 that every bureau de change shall ensure that its transactions are conducted and maintained in strict confidence. In the absence of a judicial pronouncement the scope of this provision could not be determined.
- 492. Further, section 21 of the AML Act provides that the provisions of this 'Part' shall have effect notwithstanding any obligation as to secrecy or restrictions upon the disclosure of information imposed by law or otherwise.
- 493. On the basis of the above provisions it may be concluded that there are some legal provision which may prevent the sharing of information between financial institutions where it may be required for the purposes of criterion 7.5 of R.7 & R.9.

#### ***Powers of the FIU to exchange information***

- 494. Under Section 6(i) of the AML Act, the FIU may exchange information with overseas financial intelligence units and comparable bodies. There is no statutory duty of confidentiality that applies to the FIU.

#### **3.4.2     *Recommendations and Comments***

- 495. There is need to amend the provisions of the AML Act to widen the application of section 21 of the AML Act to enable financial institutions to share information where it may be required for the purposes of criterion 7.5 of R.7 & R.9.
- 496. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

### 3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"><li>▪ There are some legal provisions which may prevent the sharing of information between financial institutions where it may be required for the purposes of criterion 7.5 of R.7 &amp; R.9.</li><li>▪ The overall effectiveness could not be assessed.</li><li>▪ The AML Act is not enforceable with respect to Zanzibar.</li></ul>

## 3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

### 3.5.1 Description and Analysis

#### Legal framework

497. Section 16 of the AML Act and Regulation 29 of the AML Regulations set out the requirement for reporting persons to maintain transaction records and records of CDD documentation.

#### Recommendation 10

##### *Record keeping and reconstruction of transaction records (c. 10.1 & 10.1.1)*

498. Under section 16(1)(a) of the AML Act reporting persons must establish and maintain records with respect to all transactions of such amount of currency or its equivalent in foreign currency as the Minister may, by order published in the Gazette specify. As at the date of the onsite visit no order had been made by the Minister, hence section 16(1)(a) of the AML Act was not effective.

499. Further, under section 16(2) of the AML Act records of all transaction required under section 16(1)(a) of the AML Act must contain the following particulars:-

- The name, address and occupation or where appropriate business or principal activity of each person (i) conducting the transaction ; (ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the reporting person to verify the identity of each such person;

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

500. The particulars that must be kept under Regulation 16 are sufficient to allow the reconstruction of transactions. Nevertheless, the evaluation team considers that the adoption of a threshold approach under section 16 of the AML Act goes against the principle set out under Recommendation 10 which requires financial institutions to have transaction records to permit reconstruction of individual transactions. In practice the adoption of the threshold approach may undermine investigations to a large extent as no records will be available for transactions below the threshold amount. It is therefore essential that the record retention system allows the reconstruction of all individual transactions irrespective of the amount.
501. Regulation 29(1) of the AML Regulations require records to be kept for at least five years from the date-
- (a) when all activities relating to a transaction or a series of linked transactions were completed;
  - (b) when the business relationship was formally ended; or
  - (c) where the business relationship was not formally ended but when the last transaction was carried out.
502. Under the provisions of regulation 29(2) of the AML regulations, the FIU may, where a suspicious transaction report has been made to it, require a reporting person to retain all relevant records for as long as may be required by the FIU.

***Record keeping for identification data (c. 10.2)***

503. With respect to evidence of identity, under section 16(1)(b) of the AML Act, reporting persons must establish and maintain, a record that indicates the nature of the evidence

obtained and which comprises of either a copy of the evidence or such information as would enable a copy of it to be obtained.

- 504. These records must be kept for a period of 5 years in accordance with regulation 29(1) of the AML Regulations (see above) and may also be kept for a longer period where required by the FIU (regulation 29(2) of the AML regulations).
- 505. Under regulation 15 of the Foreign Exchange (Bureaux de Change) Regulations 2008, a bureau de change is required to keep copies of valid identification and supporting documents for every sale of foreign currency in excess of an amount that is equivalent to two thousand US dollars. There is no prescribed period for which these records must be retained.
- 506. There is however, no requirement for financial institutions to maintain account files and business correspondence.

*Availability of records to competent authorities (c. 10.3)*

- 507. Regulation 30(1) of the AML regulations requires that a reporting person must ensure that records must be capable of retrieval in legible form without undue delay. This does not however amount to the requirement that records should be made available on a timely basis to domestic competent authorities upon appropriate authority.

**Special recommendation VII**

- 508. Local electronic payments in Tanzania are done through the Tanzania Inter-bank Settlement Systems (TISS) and international electronic payments are done via the SWIFT network. The TISS uses the SWIFT network for the exchange of inter-bank payment and settlement instructions. Banks and financial institutions in the United Republic of Tanzania are subject to applicable standard, rules and regulations for users of the SWIFT network.
- 509. For the purposes of discussion Special Recommendation VII in this section, all references to financial institutions are limited to banks and financial institutions (as defined under the Banking and Financial Institutions Act 2006) and the Tanzania Postal Bank. It is to be noted pursuant to the provisions of section 24(1)(d) of the Banking and Financial Institutions Act, 2006 a licensed bank or financial institution may engage in money transmission services. The Tanzania Postal Bank (licensed as financial institution under the Banking and Financial Institutions Act) acts as the agent for Western Union while two of the banks operating in Tanzania act as agents for MoneyGram.

### *Originator information for wire transfers (c. VII.1)*

510. The Tanzania Inter-Bank Settlement System (TISS) Rules and Regulations require that all local electronic payments in Tanzania are done through the Tanzania Inter-bank Settlement Systems (TISS) and international electronic payments are done via the SWIFT network. The TISS uses the SWIFT network for the exchange of inter-bank payment and settlement instructions. The TISS Rules and Regulations require compliance with the SWIFT network requirements under which Banking and financial institutions must obtain and maintain complete full originator information including the name of originator, the originator's account number or unique reference number (where no account number exists) and the originator's address or identification document. These are mandatory fields that must be filled for the SWIFT message to be transmitted. In addition, there is a requirement to verify the identity of customers for all transactions including both domestic and cross-border wire transfers in accordance with section 15 of the AML Act. This provision is, however, not enforceable as no sanction applies for failure to comply with its requirements.
511. There is no requirement for reporting persons/financial institutions to obtain and maintain complete originator information name of originator, originator's account number or unique reference number and originator's address or identification document for cross-border wire transfers in accordance with FATF Recommendation 5. In practice these are however obtained as they are required under SWIFT requirements.

### *Inclusion of originator information in cross border wire transfers (c. VII.2)*

512. There is no requirement in cross-border wire transfers of EUR/USD 1,000 or more, that the ordering financial institution should be required to include all originator information in the message or payment form accompanying the wire transfer.

### *Inclusion of originator information in domestic wire transfers (c.VII.3)*

513. The TISS Rules and Regulations require that in domestic wire transfers the financial institution should be required to include the originator's account number or a unique identifier within the message or payment form.

### *Originator information through payment chain (c. VII.4 & VII.4.1)*

514. There is no requirement under law or regulation that each intermediary and beneficiary financial institution in the payment chain is required to ensure that all

originator information that accompanies a wire transfer is transmitted with the transfer.

515. There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross- border wire transfer from being transmitted with a related domestic wire transfer.

***Risk based procedures for wire transfers that do not contain originator information (c. VII.5)***

516. Beneficiary financial institutions are not required to adopt risk-based procedures for handling wire transfers that do not contain complete originator information.

***Monitoring of compliance with SR VII (c. VII.6)***

517. Section 6.(1)(a) (b) of the Bank of Tanzania Act 2006, gives power to the Bank of Tanzania to regulate, monitor, and supervise the payment, clearing and settlement system including all products and services thereof; and conduct oversight functions on the payment, clearing and settlement systems in any bank, financial institution or infrastructure service provider or company.

***Sanctions (c. VII.7 applying criteria 17.1-17.4)***

518. Under, Regulation 12(3) of the TISS Rules and Regulations, the BOT may accept or reject application to participation in TISS. BOT may also suspend any institution from participation in TISS pursuant to Regulations 14 and 15 of the TISS Rules and Regulations”.
519. There are no sanctions that apply as there are no obligations with respect to SR VII for cross border wire transfers.

***Additional elements***

***Incoming cross border wire transfers (c. VII.8)***

520. There is no requirement for all incoming cross-border wire transfers to contain full and accurate originator information.

***Outgoing wire transfers of less than EUR/USD 1,000 (c. VII.9)***

521. There is no requirement for all out-going cross-border wire transfers below EUR/USD 1 000 to contain full and accurate originator information.
522. In practice, one of the banks has indicated that most wire transfer transactions were carried out for clients of the banks through direct debit. Over the counter transactions were very rare. For outward remittances, the bank indicated that for any amount in excess of USD1,000 they are required to undertake the verification of identity.

### **3.5.2 Recommendations and Comments**

523. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

#### ***Recommendation 10***

524. The AML Act should be amended to ensure that record keeping procedures meet the requirements of Recommendation 10. In particular, the transaction threshold approach under section 16(1)(a) of the AML Act must be removed. The requirements under the Act and regulations should further be amended to provide for-
- the requirement to keep records of account files and business correspondence.
  - the requirement that records should be made available on a timely basis to domestic competent authorities upon appropriate authority.
  - effective, proportionate and dissuasive criminal, civil or administrative sanctions for failure to comply with the record retention requirements under the AML Act and the AML Regulations.

#### ***Special Recommendation VIII***

525. The United Republic of Tanzania should enact appropriate legislation and issue guidance to meet the gap(s) in the AML Act to ensure compliance with the requirements of SRVII, including appropriate sanctions for non-compliance. In particular, laws or other enforceable means should provide for the following matters under Special Recommendation VII :-
- Financial institutions should be required to obtain and maintain complete originator information and verify its accuracy for cross-border wire transfers.
  - Each intermediary and beneficiary financial institution in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.

- Beneficiary financial institutions should be required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information.
- Supervisory authorities should ensure that they effectively monitor compliance of financial institutions with rules and regulations implementing SR VII.
- The laws or regulations must contain specific sanctions for non-compliance with the above requirements.

### 3.5.3 *Compliance with Recommendation 10 and Special Recommendation VII*

	Rating	Summary of factors underlying rating
R.10	NC	<ul style="list-style-type: none"> <li>• The provisions pertaining to the retention of transaction records are not effective.</li> <li>• The threshold approach under section 16 of the AML Act goes against the principle set out under Rec. 10 which requires financial institutions to have records to permit reconstruction of individual transactions.</li> <li>• There is no requirement under the AML Act to keep records of account files and business correspondence.</li> <li>• While the provisions of section 16(2) of the AML Act meet the requirement of criterion 10.1.1 it is still inoperative as the transaction threshold under section 16(1)(a) of the AML Act has not been specified.</li> <li>• There is no requirement that records should be made available on a timely basis to domestic competent authorities upon appropriate authority.</li> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• There are no sanctions for failure to comply with the record retention requirements under the AML Act and the AML Regulations.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>



SR.VII	NC	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Each intermediary and beneficiary financial institution in the payment chain is not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.</li> <li>• Beneficiary financial institutions are not required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information.</li> <li>• Supervisory authorities are not monitoring compliance of financial institutions with rules and regulations implementing SR VII.</li> <li>• There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross- border wire transfer from being transmitted with a related domestic wire transfer.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
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### Unusual and Suspicious Transactions

## **3.6 Monitoring of transactions and relationships (R.11 & 21)**

### **3.6.1 Description and Analysis**

#### **Legal framework**

526. Before enactments of AML Act and promulgation of AML Regulations, all suspicious transactions from financial institutions were being reported directly to law enforcement agency under advice to Bank of Tanzania, but now suspicious

transactions are reported to FIU as provided for under Section 17 of the Act and Regulations 17 and 26 of the AML Regulations.

## **Recommendation 11**

### ***Special attention to complex, unusual large transactions (c. 11.1)***

527. Under Regulation 20(1) of the AML Regulations there is a (specific) requirement that a reporting person should pay special attention to any complex, unusual or large transaction or any unusual pattern of transactions with no apparent economic or lawful purpose. This requirement of the law is, however, not backed up with a criminal sanction for non-compliance therewith and is thus unenforceable.

### ***Examination of complex & unusual transactions (c.11.2)***

528. There is no specific requirement in law or regulation that a reporting person should examine as far as possible the background and purpose of the transactions mentioned above and record its findings in writing.

### ***Record keeping of findings of examination (c.11.3)***

529. There are no specific requirements for reporting persons to keep the written findings of the complex, unusual large transactions or unusual patterns of transactions as part of the institutional records for at least five years.

## **Recommendation 21**

### ***Special attention to countries not sufficiently applying FATF Recommendations (c.21.1 & 21.1.1)***

530. The current laws of the United Republic of Tanzania relating to AML/CFT do not have specific requirements which direct reporting persons to pay particular attention to business relationships and transactions with persons from or in countries that do not, or insufficiently apply the FATF Recommendations.
531. There are no effective measures in place to ensure that reporting entities are advised of concerns about weaknesses in the AML/CFT systems of other countries they intend to hold business with.

*Examination of transactions with no apparent economic or visible lawful purpose (c. 21.2)*

532. There is no requirement under law or regulation for reporting person should examine as far as possible the background and purpose of transactions or business relations persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or financing of terrorism and record their findings in writing.

*Ability to apply counter measures with regard to countries that insufficiently apply FATF Recommendations (c. 21.3)*

533. There is no obligation under the AML Act for reporting persons to apply counter-measures where other country continues not to apply or insufficiently apply the FATF recommendations.

**3.6.2 Recommendations and Comments**

534. The requirements under the AML/CFT laws of the United Republic of Tanzania have not been implemented by insurance entities. There is therefore no effective compliance with the requirements of Recommendation 11 and 21 by insurance entities.
535. Insurance entities do not have AML/CFT awareness and should be accordingly trained further to enable them to comply with the requirements of FATF Recommendation 21.
536. To meet international standards the AML Act should be enhanced to provide for a statutory retention period with respect to records of findings of reporting persons on the examination of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.
537. There is also no requirement to make records available to auditors. The AML Act should be accordingly amended.
538. Appropriate measures should be put into place to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries. The onus has been left to reporting persons to make their own determination. This has resulted in various degrees of compliance and lack of understanding of what the requirement entails.
539. AML/CFT framework of the United Republic of Tanzania should make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

540. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

### 3.6.3 *Compliance with Recommendations 11 & 21*

	Rating	Summary of factors underlying rating
<b>R.11</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are no provisions requiring reporting persons to maintain records in writing of the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no visible economic or lawful purpose for at least five years.</li> <li>• There is no specific retention period for which the required records must be kept by reporting persons.</li> <li>• Not all reporting persons have put into place measures to comply with this requirement.</li> <li>• There are uncovered financial institutions that are not subject to the AML Act and regulations.</li> <li>• The requirement under regulation 20(1) of the AML Regulation is not mandatory as there is no sanction for failure to comply with this requirement.</li> </ul> <p>The AML Act and the POTA are not enforceable with respect to Zanzibar.</p>
<b>R.21</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• There are no measures to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li> <li>• AML/CFT framework does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>

### 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

#### 3.7.1 *Description and Analysis*<sup>23</sup>

##### **Legal framework**

Reporting obligations are set out in the Anti Money Laundering Act, Cap 423 and Anti Money Laundering Regulations, 2007.

##### **Recommendation 13**

##### *Requirement to make STRs on ML & TF to FIU (c.13.1 & IV.1)*

541. Section 17(b) of the AML Act provides that *“where a reporting person suspects or has reasonable grounds to suspect that, funds or property are proceeds of crime, or are related or linked to or are to be used for commission or continuation of a predicate offence or has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence, he shall within 24 hours after forming that suspicion and, and wherever possible, before any transaction is carried out prepare a report of the transaction or proposed transaction in accordance with subsection (2) and, communicate the information to the FIU by any secured means as may be specified by the FIU”*.
542. However, the AML Act does not cover all the financial institutions and DNFBPs as listed by the FATF. This means that those uncovered reporting institutions have no obligation to file an STR to the FIU. Moreover, the Act does not apply to financial institutions and DNFBPs operating in Zanzibar.
543. Section 17 (4) of the AML Act provides that any person who contravenes subsection (1) shall, on conviction, be liable to a fine up to five million TZ shillings or imprisonment not exceeding five years in respect of an individual. Fines for corporate bodies are a maximum of ten million TZ shillings or three times the market value of the property. However, the Act does not designate a regulatory authority responsible for monitoring compliance by various sectors of reporting institutions. In addition, the Act does not provide for administrative sanctions.

##### *STRs related to Terrorism and its financing (c. 13.2)*

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<sup>23</sup> The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

544. Section 17 (1)(a) and (b) of the Act creates a direct obligation on reporting institutions to lodge an STR to the FIU whenever they suspect or have reasonable grounds to suspect that, funds or property are proceeds of crime, or are related to, or linked to, or are to be used for commission or continuation of a predicate offence, or has knowledge of a fact or an activity that may be an indication of money laundering or predicate offence. Since the definition of a predicate offence covers terrorist financing (under Section 3 of the Act), reporting persons are required to submit an STR in respect of suspected terrorist financing transactions.
545. Terrorism financing is defined under the Act as (a) *“the provision of, or making available such financial or other related services to a terrorist, group or entity which is concerned with terrorist act; or (b) entering into or facilitating, directly or indirectly, any financial transaction related to a dealing in property owned or controlled by or on behalf of any terrorist or any entity owned or controlled by a terrorist.”*
546. A more direct obligation to report the suspicion of TF appears in Regulation 20 (1) and (2) where it mentions ‘all complex, unusual or large business transactions, unusual patterns of transaction which have no apparent economic or lawful purpose’ must be reported to the FIU upon reasonable suspicion that they constitute or are related to money laundering or terrorist financing. This approach is permitted under the FATF Methodology for SR IV, where a footnote indicates that *“systems based on the reporting of unusual transactions (rather than suspicious transactions), are equally satisfactory”*. While it may be argued that any system that effectively identifies “unusual transactions” should be capable of flagging funds when they are directed or used in a manner deemed to be inconsistent with the customers’ profile, the assessors could not be persuaded to believe the effective implementation of this requirement in the absence of reports generated in this way.
547. Moreover, this definition of terrorist financing is inadequate as it does not include other elements prescribed under SRIV.1. In addition, other institutions covered under the FATF definition of a financial institution are not required by law or regulation to report suspected terrorist financing transactions. Furthermore, the Act does not apply to Tanzania Zanzibar and therefore none of the institutions operating there are required to submit reports to the FIU.
548. Reporting person, as defined in Section 3, includes a regulator. It is awkward to put a regulator and institutions that it regulates at the same level. An appropriate approach would be to have a separate section that obliges a regulatory authority to report such transaction or attempted transaction to the FIU if the regulator suspects or has reasonable grounds to believe that information it has related to any transaction or attempted transaction may involve a money laundering offense, the financing of terrorism, or may be of assistance in the enforcement of the ML & TF Act.

549. Section 17(1) (b) of the AML Act as read together with Regulation 22 of the Anti Money Laundering Regulations, 2007 also applies to a transaction or attempted transaction related to the commission of an offence of financing of terrorism.

***No reporting threshold for STRs (c. 13.3)***

550. In terms of Section 17 all suspicious transactions are required to be reported to the FIU regardless of the amount of the transaction.
551. Furthermore, Regulation 20 (1) states that “a reporting person shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose”.

***Making of ML& TF STRs regardless of possible involvement in tax matters (c.13.4 & IV.2)***

552. The statute requires the reporting of all transactions or proposed transactions, where there are reasonable grounds to suspect that they relate to the commission of a money laundering or terrorist financing offence, regardless of the involvement in tax matters.

***Additional element –reporting of all criminal acts (c. 13.5)***

553. Section 17 provides that if reporting persons suspect or have reasonable grounds to suspect that funds are related to money laundering or are proceeds of crime they must report to the FIU. This means that all criminal acts that would constitute predicate offence for money laundering are covered under the statute for suspicious transaction reporting.

**Recommendation 14**

***Legal Framework***

The Anti Money Laundering Act, Cap 423

The Anti Money Laundering Regulations, 2007

***Protection for making STRs (c. 14.1)***

554. Section 22 of the AML Act prescribes the immunity provisions for reporting entities. It provides that “reporting persons and their directors, officers, employees or

representatives of the reporting persons are protected from any action, suit or other proceeding against them on grounds of breach of banking or professional secrecy or by reason of loss resulting from an investigation, prosecution or other legal action following a report or information transmitted in good faith whether or not the suspicion proves to be well-founded". This provision gives sufficient legal protection to banks so that they should feel fairly adequately covered. This also applies even if the bank officials and staff did not know the underlying criminal activity and regardless of whether the illegal activity actually occurred.

555. However, by limiting the legal protection to *breach of banking or professional secrecy*, it does not appear that other institutions such as foreign exchange bureaux or other financial institutions may enjoy the same protection. The assessment team has not been able to determine the scope of the term "professional secrecy" under the AML Act. It would appear that under the provisions of the Evidence Act "professional secrecy" might apply to communications between a law practitioner and a client (Sections 134, 135 and 137 of the Evidence Act).
556. One foreign exchange bureau expressed concern that while they are willing to carry out their obligations under the law, they feel that their exposure to physical threats or legal action is high. Fears like these may affect the level of compliance.

***Prohibition against tipping-off (c. 14.2)***

557. Section 20(1) of the AML Act provides that-

*"No person shall disclose or warn any person involved in the transaction or to an unauthorized third party, during the establishment or course of customer relationship or when conducting occasional transactions-*

- a) that, a suspicious transaction report under section 17 may be prepared, or is being prepared or has been sent to the Financial Intelligence Unit; or*
- b) any other information or matter, except so far as is required by this Act."*

558. However, Subsection (1)(b) does not read properly and therefore it is difficult to infer that disclosure of any other related information is being reported to or provided to the FIU is prohibited. In addition, Section 20(3) states that *"in proceedings of an offence under subsection (1), it shall be a defence to prove that, the person did not know or have reasonable grounds to suspect that, the disclosure was likely to prejudice any investigation of money laundering or a predicate offence"*. This provision seems to negate the prohibition against disclosure of information about an STR.



559. Contravention of the above provision of the law is a punishable offence under section 20(2) of the AML Act. Surprisingly, however, section 20(3) of the AML Act appears to undermine the effectiveness of section 20(1) & (2) of the AML Act by stating that *“In proceedings for an offence under subsection (1), it shall be a defence to prove that, the person did not know or have reasonable grounds to suspect that, the disclosure was likely to prejudice any investigation or money laundering or a predicate offence.”*

***Additional element –confidentiality of reporting staff (c. 14.3)***

560. The law does not have any provision that states that names and personal details of staff of financial institutions that are responsible for filing STRs are kept confidential by the FIU. However, it is expected that the FIU shall ensure that disclosure of designated persons does not occur

**Recommendation 19**

***Legal Framework***

The Anti Money Laundering Act, Cap 423

The Anti Money Laundering Regulations, 2007

***Consideration of reporting of currency transactions above a threshold (c. 19.1)***

561. The United Republic of Tanzania, through the Multi-Disciplinary Committee considered the feasibility and utility of implementing a currency threshold reporting system. The Committee discussed and agreed that all transactions above USD10.000.00 would constitute mandatory threshold reporting.
562. Although Section 16 (1) requires reporting persons to establish and maintain records of all transactions of such amount of currency or its equivalent in foreign currency as the Minister may, by order published in the Gazette, specify, it is observed that reporting persons are not required to report such transactions to the FIU. In this regard, Authorities may have to consider issuing an enabling regulation to facilitate introduction of the reporting requirement.

***Additional element – computerised data base for currency transactions above a threshold and access by competent authorities (c. 19.2)***

563. The FIU is in the process of setting up a database in which the reports will be maintained.

*Additional element- proper use of reports of currency transactions above a threshold*

564. Since the database has not yet been set up and systems not yet in place, it is not possible to determine whether or not there are appropriate safeguards to ensure proper use of information or data.

**Recommendation 25**

*Establishment of guidelines for financial institutions (c. 25.1)*

565. The FIU has issued the following guidelines to some reporting institutions with effect from 1<sup>st</sup> April 2009.
- Guidelines for the Verification of Customers' Identities Guideline No:1
  - Anti-money laundering Guidelines to Banking Institutions Guideline No.2
  - Anti-money laundering issues for Bank of Tanzania Guideline No. 3
566. The Guidelines contain some descriptions of ML and FT techniques and methods. It is expected that these will assist in identifying suspicious transactions and putting in place additional measures to ensure effective AML/CFT implementation. However, these guidelines were issued to banking institutions and BoT only. The rest of the reporting institutions were left out. The authorities stated that they are implementing the Act in an incremental manner and therefore will issues additional guidelines to other sectors of reporting institutions in due course. .
567. Most supervisory authorities indicated that they will issue additional guidelines specific to their sectors to take into account the nature of, and peculiarities in, their respective sectors. However, considering that there is low level of AML/CFT exposure for supervisory authorities apart from BoT, it is doubtful that this will be implemented in the immediate future.

*Feedback to financial institutions (c. 25.2)*

568. Regulation 31 puts the FIU under obligation to provide reporting persons with feedback which includes (a) an acknowledgement of an STR and results of an investigation, (b) whether the matter is closed because of prosecution (c) whether a report was found to relate to a legitimate transaction (d) information on the decision of result (e) information on the current techniques, trends, methods and trends of money laundering and (f) examples of actual money laundering and terrorist financing.

569. In respect of the STRs that the FIU has received, there has not been any acknowledgement of the STRs or feedback on their outcome. Feedback on techniques, methods and trends has also not been made. However, the assessors appreciate the fact that the FIU has not been in operation for long in order to come up with reliable reports on trends and methods.
570. Although the Regulation obliges the FIU to provide feedback on investigations and prosecution, it is observed that the Act does not empower the FIU to request for such information from the law enforcement agencies. The authorities may have to consider entering into arrangements (MOUs) with other domestic agencies to facilitate collation of the information so that the FIU is able to discharge its obligation under Regulation 31.

### 3.7.2 *Recommendations and Comments*

571. The authorities should put in place legislative measures to ensure that financial institutions and DNFBPs are obliged to report suspicious transactions. As at the onsite date, the AML Act and the POTA were not enforceable with respect to Zanzibar.
572. Other categories of financial institutions such as financial leasing, lending institutions, fund managers, pension funds managers and insurance agents are not included in the definition of reporting persons. Authorities should amend the AML legislation so that all financial institutions covered by the definition of the FATF are subject to the suspicious transactions reporting requirement unless a proven low risk is established in these sectors.
573. Authorities should address the underlying reasons why only banks are submitting STRs. Lack of guidelines may be one of the contributing factors. Authorities should therefore expedite issuance of guidelines. Such guidelines should be sector-specific and guide the reporting institutions on how to detect money laundering and terrorist financing.
574. The laws should clearly state that failure to report is an offence. The current provisions do not appear to create an offence although they mention that persons who contravene those sections shall be liable to a fine and imprisonment.
575. There is an apparent absence of legal immunity in favour of other reporting institutions such as foreign exchange bureaux to protect them against legal action arising from a suspicious transaction report even if such a report has been made in good faith.

576. The prohibition against disclosure that an STR or related information is being or has been submitted to the FIU is weak. Offenders are permitted to plead that they did not know or have reasonable grounds to suspect that the disclosure is likely to prejudice any investigation.
577. The FIU should start providing specific and regular general feedback to reporting institutions.
578. The current definition of terrorist financing is inadequate. Authorities should consider expanding it to include all elements covered in SR IV.1.
579. There is a very low level of AML/CFT awareness among reporting persons which makes it difficult for them to identify suspicious activities that must be reported. This is reflected by the low number of STRs received by the FIU.
580. Staff of reporting persons should be provided with adequate AML/CFT training.
581. The FIU is the competent authority responsible under the AML Act for ensuring that reporting persons comply with the requirements of the AML Act. It is empowered under the Act to, in consultation with the supervisory authorities, issue guidelines to reporting persons in relation to their obligations under the Act. The FIU must, having regard to industry specific ML/TF risk, issue guidelines to reporting persons to assist them to implement and comply with their respective AML/CFT requirements.
582. The FIU must provide feedback- including statistics on the number of disclosures, with appropriate breakdowns and on the results of the disclosures, information on current techniques, methods and trends and sanitised examples of actual money laundering- to reporting persons.
583. The FIU comprised 3 members of staff, including the Commissioner. The staff member, excluding the Commissioner, had very little exposure to AML/CFT issues. Having regard to the overall obligations of the FIU under the AML Act, it is recommended that the capacity of the FIU must be enhanced and staff members must be trained to enable them to carry out their functions effectively.
584. All the relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

**3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV**

	Rating	Summary of factors underlying rating
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<b>R.13</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> <li>• There are some uncovered financial institutions for reporting STRs under the AML Act.</li> <li>• Not all predicate offences required in recommendation 1 are included in the scope of the reporting requirement.</li> <li>• Not all the required aspects of terrorist financing are included in the scope of the reporting requirement.</li> <li>• The low number of STRs by reporting institutions, all four of which are from banks, raises concern in relation to the overall effectiveness of the reporting system.</li> </ul>
<b>R.14</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• Non-bank financial institutions do not enjoy legal immunity in relation to STRs submitted in good faith.</li> <li>• Section 20 (3) of the AML Act seems to weaken the prohibition against non-disclosure of information related to an STR.</li> <li>• The AML Act is not enforceable in Zanzibar.</li> </ul>
<b>R.19</b>	<b>C</b>	The recommendation is fully met.
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU has issued guidelines to limited reporting persons to facilitate effective implementation and compliance with the AML Act.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• The FIU does not provide adequate and appropriate feedback to reporting persons as set out under the FATF Best Practice Guidelines on providing feedback to reporting persons and other Persons.</li> </ul>
<b>SR.IV</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Not all financial institutions and DNFBPs operating in the United Republic of Tanzania are covered as reporting persons for the purposes of the AML Act.</li> <li>• The definition of terrorist financing is inadequate.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• The overall effectiveness of the reporting system could not be assessed.</li> </ul>

**Internal controls and other measures**

### 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

#### 3.8.1 Description and Analysis

##### Legal framework

The Anti Money Laundering Act, Cap 423

The Anti Money Laundering Regulations, 2007

##### Recommendation 15

##### *Establish and maintain internal controls to prevent ML& TF (c. 15.1, 15.1.1 & 15.1.2)*

585. Section 18 of the AML Act requires a reporting person to establish internal reporting procedures. These include the designation of a person to whom employees of a reporting person are required to report any suspicious transaction which comes to the employee's attention that another person is engaged in money laundering or an act constituting a predicate offense. These reporting procedures are elaborated in regulation 19 of the AML Regulations. Regulation 19 requires a reporting person to establish written internal reporting procedures which, among other requirements, will ensure that there is a clear reporting chain under which suspicions of money laundering and terrorism financing activities can be passed to a designated person.
586. Section 19 of AML Act further requires a reporting person to: (i) provide employees with appropriate training in the recognition and handling of transactions relating to money laundering or financing of terrorism; and (ii) take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering and terrorist financing, and the procedures and related policies established and maintained by it as required by the Act. Though the section 19 refers to establishment and maintenance of policies, there is no requirement in the Act for reporting persons to establish and maintain them.
587. Beyond imposing requirements for establishment of reporting procedures, the AML Act and Regulations do not extend to placing broad obligations on reporting persons to establish and maintain *internal procedures, policies and controls to prevent money laundering and financing of terrorism*. In particular, there are no requirements for reporting persons to establish procedures, policies and controls that cover, inter alia, customer due diligence, record retention, the detection of unusual and suspicious transactions. These requirements are set out in the FIU Guidelines No. 2 which the FIU issued to banking institutions on 1 April 2009. However, the FIU Guidelines are not other enforceable means.

588. Section 18 of the AML Act and regulation 19 (c) of the AML Regulations 2007 require a reporting person to designate a person to whom employees of a reporting person are required to report any suspicious transaction relating to money laundering or a predicate offense. However, the AML Act and the AML Regulations do not require a reporting person to adopt appropriate compliance management arrangements which, in the case of financial institutions should, at a minimum, require the appointment of an AML/CFT compliance officer at management level. These requirements are instead contained in the FIU Guidelines Number 2 which is not enforceable as noted above.
589. Section 18(b) of the AML Act and regulation 19(e) permit the designated person to have reasonable access to information that may be relevant to determine whether sufficient basis exists to report to the FIU. The AML Act in this regard restricts access to information as it only permits reasonable access. It does not also permit the designated person to have timely access to relevant information such as customer identification data and other CDD information, transaction records and other relevant information.
590. While section 18 of the AML Act and regulation 19 of the AML Regulations impose some AML/CFT reporting procedures, the requirements are not enforceable. However, in practice, it appears that banks have AML/CFT policies and procedures of varying degrees of sophistication. During discussions with one bank the assessors met, a subsidiary of a foreign bank, the assessors formed the view that the bank maintained adequate AML/CFT procedures, policies and controls based on its group AML/CFT policy. The description of its practices indicated that its AML/CFT policy went beyond the requirements imposed by the AML Act.
591. One other bank, a local one, indicated that it had developed its AML/CFT policy based on the Money Laundering Control Circular which the BoT issued on 30 June 2000 and repealed on 14 April 2009. The repealed Circular required banks and financial institutions to institute effective CDD procedures and develop and communicate to employees policies relating to money laundering. It also guided institutions on the identification of suspicious transactions and appropriate training of employees. However, the circular did not impose specific requirements for banks and financial institutions to adopt appropriate compliance management arrangements which at a minimum would have required the appointment of an AML/CFT compliance officer at management level. Following the repeal of the Circular on 14 April 2009, all banking institutions are required to comply with the FIU Guidelines which were issued on 1 April 2009. The FIU Guidelines have addressed some of the short-comings that were in the AML Circular. However, the FIU Guidelines are not enforceable as they do not have sanctions for non-compliance.

592. Apart from banks and financial institutions licensed by the BoT, other financial institutions in the insurance and securities sectors did not have internal procedures, policies and controls to prevent money laundering and financing of terrorism because as at the date of the onsite visit these sectors had not implemented the requirements under the AML Act. In its on-site inspection reports, the ISD encourages insurance companies to appraise themselves with the AML/CFT requirements and to develop appropriate AML/CFT policies.

***Independent audit for internal controls to prevent ML & TF (c. 15.2)***

593. Banks and financial institutions supervised by the BoT are required to have independent and resourced audit functions under regulation 19(2) of the Banking and Financial Institutions (Internal Controls and Audit) Regulations 2005. Further, the FIU Guidelines No. 2 requires banking institutions to have audit functions to test the consistency and robustness of the AML systems.
594. The laws and regulations for the insurance and securities sectors do not have similar requirements. Assessors were not provided with any other enforceable means that would confirm that institutions in the insurance and securities sectors are required to maintain an adequately resourced and independent audit function to test compliance with procedures, policies and controls.
595. The AML Act does not require reporting persons to establish and maintain broad *internal procedures, policies and controls to prevent money laundering and financing of terrorism*. Even though these are set out in the FIU Guidelines No. 2, these Guidelines apply only to banking financial institutions and are not other enforceable means.

***Ongoing employee training on AML/CFT matters (c. 15.3)***

596. Section 19(1) of the AML Act requires a reporting person to take appropriate measures for the purpose of making employees aware of domestic laws relating to money laundering and terrorist financing. It also requires a reporting person to provide appropriate training in the recognition and handling of transactions relating to money laundering or financing of terrorism.
597. The training requirement in the AML Act does not extend to keeping employees informed of new developments, including providing them with information on current money laundering and financing of terrorism techniques, methods and trends. Under section 6.5(f) of the FIU Guidelines No. 2 banking institutions are required to make arrangements for refresher training at least annually to ensure that members of staff keep abreast of new developments on AML/CFT. However, the



requirement of the law is not enforceable as the AML Act as there are no sanctions that apply for failure by a reporting person to comply with the requirement. Further, the requirements of the FIU Guidelines Number 2 are not other enforceable means.

598. From the discussions assessors had with some banks, it appeared that banks in practice are providing AML/CFT training to employees covering aspects such as CDD, record keeping and suspicious transaction reporting. However, the training does not seem to cover new developments, including provision of information on current money laundering and financing of terrorism techniques, methods and trends.
599. In the case of financial institutions in the insurance and securities sector, they do not as yet have programs for on-going training of employees. The insurance companies, insurance brokers and securities dealers indicated that they have recently been sensitised about money laundering and financing of terrorism by the FIU and are yet to institute programmes for employee training.

#### *Employee screening procedures (c. 15.4)*

600. Financial institutions supervisory authorities have criteria in law and regulations that they use in screening individuals concerned with the management of financial institutions. They conduct fit and proper tests on directors and senior managers before these take up appointment in financial institutions.
601. In particular, section 9 of the Banking and Financial Institutions Act and regulation 7 of the Banking and Financial Institutions Regulations, 1997 gives the BoT power to conduct an investigation to satisfy itself as to the character and experience of the subscribers, shareholders, board directors, Chief Executive Officer and any officer directly reporting to the Chief Executive Officer.
602. In the insurance sector, section 18 of the Insurance Act provides that no insurer may employ as its manager, controller or principal officer any person who is, in the opinion of the Commissioner of Insurance, an unfit person to hold the office. The authorities indicated that in practice, the ISD conducts review of policies, including human resource policies to satisfy themselves that insurance companies have adequate screening procedures when hiring employees.
603. In the securities sector, the Capital Market and Securities Authority, as permitted by regulation 6 (1) of the Capital Market Securities (Custodian of Securities) Regulations 2006 performs fit and proper tests on directors of securities firms. Before granting a certificate as a Custodian of Securities, the Authority also takes into account, among others, whether the applicant has employed adequate and competent persons who have the experience, capacity and ability of managing the business of the custodian

of securities; and the applicant's directors, principal officers or employees are not involved in any litigation connected with the securities market; and the applicant's directors, principal officers or employees have not at any time, been convicted of any offence involving moral turpitude, criminal or any economic offence.

604. Further, regulation 4 of the Banking and Financial Institutions Regulations, 1997 requires banking and financial institutions to have some policies. Under regulation 24, banking institutions are required to submit policies, including administration policies, for review by the BoT before commencement of operations. During on-site inspections, the BoT conducts compliance review of the policies.
605. Human resource policies and procedures of two banks that assessors reviewed showed that the banks had adequate procedures for screening employees during the recruitment process. However, there is no requirement in law, regulation or other enforceable means for financial institutions outside the supervisory ambit of the BoT to have employee screening procedures that ensure high standards when hiring employees. In practice, financial supervisory authorities rely on the directors and managers they have screened to, in turn, hire employees of high standards.

*Additional element – independence of compliance officer (c. 15.5)*

606. As discussed above, the AML Act does not require reporting persons to implement appropriate compliance management arrangements which would at a minimum require the appointment of an AML/CFT compliance officer at management level. This requirement is contained in the FIU Guidelines No. 2 issued to banking institutions. One of the banks which the assessors interviewed had a Money Laundering Reporting Officer (MLRO), who also had AML/CFT compliance responsibilities. The MLRO was appointed by the Board of Directors. The level of the appointing authority ensured that the MLRO could, if circumstances required, report directly to the Board of Directors. This arrangement assured the independence of the MLRO.
607. However, in the absence of the requirement in the AML Act or Regulations for reporting persons to implement appropriate compliance management arrangements means that the independence of AML/CFT compliance officers in financial institutions outside the supervisory ambit of the BoT cannot be assured.

**Recommendation 22**

**Legal framework**

The Anti Money Laundering Act, Cap 423

The Anti Money Laundering Regulations, 2007

**Branches and subsidiaries of financial institutions as at 30 September 2008**

Financial institution	Number of branches abroad	Number of subsidiaries abroad	Branches of foreign financial institution in the country	
			Number	Supervisor
Commercial banks	3	1	-	-
Insurance companies	2	-	-	-

***Application of AML/CFT measures to foreign branches and subsidiaries (c. 22.1, 22.1.1 & 22.1.2)***

608. There are three commercial banks and one insurance company with branches and/or subsidiaries in foreign jurisdictions. Presently, the AML Act does not require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations to the extent that local laws and regulations permit.
609. The financial supervisory authorities did not provide the assessors with any document which would confirm that, apart from the AML Act, there exist any enforceable means that impose home country AML/CFT requirements on foreign branches and subsidiaries.
610. The assessors were, however, informed that, in practice, branches and subsidiaries of financial institutions comply with the more stringent of the home or host AML/CFT requirements

***Requirement to inform home country supervisor if foreign branches and subsidiaries are unable to implement AML/CFT measures (c. 22.2)***

611. Similarly, at the time of the on-site visit, there was no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary was unable to observe appropriate AML/CFT measures because that was prohibited by local laws, regulations or other measures

***Additional element- consistency of CDD measures at group level (c. 22.3)***

612. Under section 35 of the Banking and Financial Institutions Act, the BoT may implement supervision on a consolidated basis whenever it determines that it is necessary to do so. However, as discussed above, there are no requirements that impose home country AML/CFT requirements on foreign branches and subsidiaries. In the absence of such requirements for banking and financial services groups, it is unlikely that banking and financial services groups would apply consistent CDD measures at the group level. In this respect, application of consolidated supervision would be of limited effect in fostering consistent CDD measures in financial services groups.

### **3.8.2 Recommendations and Comments**

613. The AML Act requires reporting persons to provide their employees with appropriate training in the recognition and handling of transactions relating to money laundering and terrorist financing. It also requires them to take appropriate measures for the purpose of making their employees aware of domestic laws relating to money laundering and terrorist financing. However, these requirements do not address the whole gamut of AML/CFT internal control systems and compliance arrangements.
614. In this regard, it is recommended that the AML Act or Regulations should be amended, or other enforceable means developed, to:
- Require reporting persons to establish internal procedures, policies and controls to prevent money laundering and terrorist financing.
  - Require reporting persons to adopt appropriate AML/CFT compliance arrangements, which in the case of banks and financial institutions should, at a minimum, require the appointment of an AML/CFT compliance officer at management level.
  - Require reporting persons to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.
  - Extend the existing employee training requirements to include requiring reporting persons to keep their employees informed of new developments, including providing information on current ML and FT techniques, methods and trends.
  - Require reporting persons to put in place screening procedures to ensure high standards when hiring employees.

- Include provisions on the application of AML/CFT measures to branches and subsidiaries of Tanzanian banks and financial institutions in accordance with Recommendation 22.
- Make the required provisions enforceable.

615. The AML Act and the POTA are not enforceable with respect to Zanzibar. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

### 3.8.3 *Compliance with Recommendations 15 & 22*

	Rating	Summary of factors underlying rating
R.15	NC	<ul style="list-style-type: none"> <li>• Section 18 of the AML Act is limited the requirement of internal reporting procedures.</li> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• Requirement for policies and controls to prevent ML and FT not set out in law in AML Act or regulations while those in the FIU Guidelines are not enforceable.</li> <li>• There is no requirement for financial institutions to designate a compliance officer</li> <li>• Section 18(b) AML Act refers to “reasonable access” and not timely access. Section 18 of the AML Act is not enforceable.</li> <li>• Audit function is of limited benefit in the absence of an enforceable requirement to establish and maintain procedures, policies and controls.</li> <li>• Section 19 of the AML Act is deficient. It does not cover employee training in current ML and FT techniques, methods and trends. . The requirements under the FIU Guidelines do not constitute other enforceable means.</li> <li>• Section 19 of the AML Act is not enforceable.</li> <li>• Apart from the banking institutions, there is no requirement for the other financial institutions to screen employees.</li> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> </ul>
R.22	NC	<ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to apply AML/CFT requirements to subsidiaries.</li> <li>• There is no requirement for financial institutions to inform supervisory authority in case a foreign branch or subsidiary is unable to comply with home country AML/CFT requirements.</li> </ul>

		<ul style="list-style-type: none"> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
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### 3.9 Shell banks (R.18)

#### 3.9.1 *Description and Analysis*

##### **Legal framework**

The Banking and Financial Institutions Act

The Banking and Financial institutions Regulations, 1997.

The above legal instruments apply to both Mainland Tanzania and Zanzibar.

##### ***Prohibition of establishment of shell banks (c. 18.1)***

616. The licensing provisions under the Banking and Financial Institutions Act effectively prevent the establishment of shell banks in the United Republic of Tanzania. At the time of the on-site visit, there were no shell banks in Tanzania.

##### ***Prohibition of correspondent banking with shell banks (c. 18.2)***

617. There is no express provision in the AML Act or the Banking and Financial Institutions Act that prohibits banks to enter into, or continue, correspondent banking relationships with shell banks.

618. However, regulation 26 of the Banking and Financial institutions Regulations, 1997, prohibits licensed institutions from establishing a relationship with a correspondent bank or financial institution abroad without prior approval of the BoT. In practice, as part of the approval process for correspondent relationships, the BoT satisfies itself that the prospective correspondent bank is a reputable institution with a good credit rating obtained from internationally recognised rating agencies. This procedure of requiring a credit rating minimises the possibility that a bank in Tanzania can enter into a correspondent relationship with a shell bank.

***Requirement to satisfy respondent financial institutions prohibit the use of accounts by shell banks (c. 18.3)***

619. The AML Act and the Banking and Financial Institutions Act do not require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
620. However, regulations 9 and 10 of the AML Regulations require a reporting person that establishes a business relationship with a foreign entity to undertake enhanced customer due diligence reviews which include (a) gathering information about the foreign entity to understand the nature of the foreign entities business to determine: (i) the reputation of the foreign entity; (ii) the quality of supervision of the foreign entity; (iii) whether the foreign entity has been subject to money laundering or terrorist financing investigation or regulatory action; and (b) assessing the foreign entity's anti-money laundering and counter terrorist financing controls to determine whether they are effective. An officer of a reporting person is required to obtain approval from senior management before establishing a business relationship with a foreign entity.
621. The measures in regulations 9 and 10 of the AML Regulations, together with the approval process by the BoT for any correspondent banking relations, would, in practice, reduce the possibility of banks in Tanzania having correspondent relationships with respondent banks that permit their accounts to be used by shell banks. However, it should be noted that the requirements in regulations 9 and 10 of the AML Regulations are not enforceable.

***3.9.2 Recommendations and Comments***

622. The requirements of Banking and Financial Institutions Regulations effectively eliminate the possibility of a shell bank establishing a presence in the United Republic of Tanzania. However, for the sake of clarity, it is recommended that the Banking and Financial Institutions Regulations should be amended, or other enforceable means developed, in order to:
- Expressly prohibit the operation of shell banks in the United Republic of Tanzania;
  - Prohibit financial institutions from entering into corresponding relationships with shell banks; and
  - Require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none"><li>Financial institutions are not prohibited from entering into, or continuing, correspondent banking relationships with shell banks. The requirements under Regulations 9 and 10 of the AML Regulations are not enforceable.</li><li>There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li></ul>

#### Regulation, supervision, guidance, monitoring and sanctions

### 3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

#### 3.10.1 Description and Analysis

##### Legal framework

The Anti Money Laundering Act, Cap 423

The Anti Money Laundering Regulations, 2007

##### Recommendation 23

#### *Regulation and supervision of financial institutions (c. 23.1)*

623. There is an overarching scope issue in that financial institutions which are not reporting persons are not subject to AML/CFT supervision: pension fund managers, investment advisers; securities custodians, financial leasing entities, micro finance companies, savings and credit co-operative societies and housing finance companies (collectively referred to as uncovered financial institutions). See section 3.2.1 of this report for more details.

#### *Designation of competent authority (c. 23.2)*

624. The AML Act has not designated a competent authority or authorities with responsibility for ensuring that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing.



625. Section 6(d) of the AML Act gives FIU power to instruct any reporting person to take such steps as may be appropriate to facilitate any inspection anticipated by the FIU. The Act does not provide the scope of the inspection. According to the FIU, the scope of the inspection anticipated under section 6(d) of the AML Act was with respect to those reporting persons who were not under the supervisor purview of any sector specific regulator.
626. Under section 33(2) of the Banking and Financial Institutions Act, the BoT has authority to ensure its licensees comply with any law or regulation. It is possible that the BoT could use this authority to ensure banks and financial institutions comply with the AML Act and Regulations. With respect to bureaux de change, regulation 14 of the Foreign Exchange (Bureau de Change) Regulation 2008 gives the BoT power to revoke a bureau de change licence for a contravention of the AML Act, circulars and directives issued by the BoT and any other competent authority.
627. Other financial supervisory authorities expressed the view that they also had the responsibility and authority to ensure compliance with AML/CFT requirements. However, they were unable to point out any legal authority to support their position.

*Prevention of criminals from controlling institutions (c. 23.3 & 23.3.1)*

628. Section 8 of the Banking and Financial Institutions Act requires that every application for a licence be made in writing and include the name and address of every subscriber, shareholder, board directors, chief executive officer and any officer directly reporting to the chief executive officer. The application is also required to include information that may be prescribed by the BoT for purposes of assessing solvency and trustworthiness of each shareholder with a significant interest.
629. Further, under section 9 of the Banking and Financial Institutions Act, the BoT has power to conduct an investigation to satisfy itself as to the completeness and validity of the documents submitted, the solvency and trustworthiness of subscribers and shareholders and the character and experience of the subscribers, shareholders, board directors, chief executive officer and any officer directly reporting to the chief executive officer.
630. The first schedule to the Banking and Financial Institutions Regulations, 1997, provides the criteria the BoT follows in assessing the character of a person. The criteria include a review of whether the person (i) has adequate education background, professional skills, competence and soundness of judgement for the fulfilment of his responsibilities and (ii) was previously convicted of an offense of fraud or any other offense of which dishonesty was an element; whether the person contravened any law designated for the protection of members of the public against

loss due to the dishonesty or incompetence of, or malpractice by persons engaged in the provision of banking, insurance, investment or other financial services. Further, in respect of corporate shareholders, the FIU Guidelines No. 1 provides guidance that reporting persons should vet ultimate shareholders who are natural persons. Further, in respect of corporate shareholders, the FIU Guidelines No. 1 provides guidance that reporting persons should vet ultimate shareholders who are natural persons.

631. Under section 37(3)(a) the CMSA is required to refuse an application for a licence if (i) the applicant has been adjudged a bankrupt anywhere; (ii) the applicant has been convicted in Tanzania or elsewhere, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for a term of three months or more; (iii) the Authority is not satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of a dealer's licence or an investment adviser's licence, as the case may be; (iv) the Authority has reason to believe that the applicant is not of good reputation or character; or (v) the Authority has reason to believe that the applicant will not perform the duties of a holder of a dealer's licence or an investment adviser's licence, as the case may be, efficiently, honestly and fairly.
632. The Insurance Act is silent with respect to the vetting of shareholders of insurers, insurance brokers and agents. As such, there are no legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest.
633. However, section 18 of the Insurance Act prohibits an insurer from employing as its manager, controller or principal officer any person who (i) has been adjudged an undischarged bankrupt in any country; (ii) has been convicted by a court in any country of an offence involving dishonesty or (iii) in the opinion of the Insurance Commissioner is an unfit person to hold the office.
634. All the three financial sector laws do not require the supervisory authorities to vet beneficial owners of shares. However, the BoT indicated that in practice they vet the ultimate natural shareholders with significant interest. The BoT defines a significant interest as representing at least 5 percent of total voting shares.
635. The pension fund managers are presently not regulated and as such shareholders of pension fund management institutions are not vetted.

*Application of prudential regulations to AML/CFT (c. 23.4)*

636. As part of the prudential licensing process, the BoT subjects shareholder with a significant interest to fit and proper tests as required by section 8 of the Banking and

Financial Institutions Act. A significant interest is defined as at least 5 percent of total voting shares. This licensing requirement is applied for both prudential as well as AML/CFT purposes.

- 637. The BoT has authority under section 33(2) of the Banking and Financial Institutions Act to ensure that its licensees comply with any law or regulation. If a licensed institution contravenes the provisions of the AML Act or AML Regulations, the BoT can direct a bank or financial institution to take such measures as the BoT may consider necessary to rectify the situation.
- 638. However, the other pieces of financial sector legislation do not have prudential measures that are relevant for AML/CFT purposes.
- 639. The BoT and Insurance Supervisory Department apply the risk-based approach to supervision and AML/CFT risk assessment is included in the scope of their on-site inspections. The BoT also indicated that it implements consolidated supervision of financial institutions groups. Consolidated supervision is provided for under section 35 of the Banking and Financial institutions Act.
- 640. All the three financial supervisory authorities subject regulated entities to on-going supervision comprising off-site monitoring and periodic on-site inspections.
- 641. During the on-site visit, the assessors were provided with licensing procedures, on-site inspection reports and examination manuals which indicated that the regulatory and supervisory measures that apply for prudential purposes, and which are also relevant to money laundering, are applied in a similar manner for anti-money laundering and terrorist financing purposes.

#### *Licensing or registration of Value Transfer Services (c. 23.5)*

- 642. As discussed under Special Recommendation VI, the legal framework in the United Republic of Tanzania does not provide for the licensing or registration of stand-alone MVT service providers. Only a licensed bank or financial institution can directly provide a MVT service or provide it indirectly through its separately incorporated subsidiary. Natural persons such as bus drivers and merchants who informally provide MVT services do so outside the legal framework. However, the law does not prohibit the provision of MVT by informal operators.

#### *Monitoring and supervision of Value Transfer Services (c. 23.6)*

- 643. As discussed under Special Recommendation VI, the BoT does not monitor MVT service operators such as mobile telephone operators and the Tanzania Postal

Corporation for compliance with AML/CFT requirements. In the case of the Tanzania Postal Corporation, it is outside the supervisory scope of the BoT.

*Licensing and AML/CFT supervision of other financial institutions (c. 23.7)*

- 644. Regulation 8 of the Foreign Exchange (Bureaux de Change) Regulations requires any company intending to carry on the business of a bureau de change to apply to the BoT for a licence.
- 645. It should, however, be noted that the Bureau de Change Regulations do not have any sanctions for persons engaged in the business of buying and selling of foreign exchange without obtaining a licence from the BoT. Some representatives of the bureaux de change who the assessors met indicated that a number of supermarkets engaged in the buying and selling of foreign exchange transactions when in fact they did not have a licence from the BoT. The existence of unlicensed buyers and sellers of foreign exchange may represent a significant AML/CFT vulnerability which authorities should consider addressing.
- 646. According to section 24 of the Banking and Financial institutions Act, other types of financial institutions such as payment card issuers and money remitters can only operate as subsidiaries of a licensed bank. Such institutions are subject to supervision by the BoT to the same extent as banks.
- 647. However, pension fund management firms are not presently required to be licensed.
- 648. The BoT supervises bureaux de change. Under regulation 27 of the Bureau de Change Regulations, 2008, the BoT has power to conduct an inspection on the business premises of a bureau de change. The BoT also has power to compel a bureau de change to produce any documents the BoT may require. The BoT, in this regard, conducts both on-site and off-site inspections of bureaux de change. However, as discussed under Recommendation 30, it appeared to the assessors that the BoT did not have adequate numbers of staff to carry out effective supervision of the 187 bureaux de change it had licensed.
- 649. The BoT, however, informed the assessors that they have since taken appropriate measures aimed at strengthening the supervision of the bureau de change sector. These measures include: (i) sensitising the public on the requirement to deal with licensed bureaux de change and to demand receipts for foreign exchange transactions; (ii) issuance of the Bureau de Change Regulations 2008 which, in regulation 6, has increased the minimum capital for a bureau de change to Tsh 40 million. Existing bureaux de change have up to 31 December 2009 to increase their capital. This higher minimum capital requirement is likely to result in the consolidation or drop-out of small and weak bureaux de change that will fail to raise the minimum capital because the BoT may revoke their licences. It is likely that after

31 December 2009 the foreign exchange sector will have a manageable number of bureaux de change. (iii) The BoT intends to strictly enforce the sanctions for non-compliance with the Regulations in order to bring about a sense of order in the sector. In this regard, the BoT was to organise a seminar for bureaux de change at which the new supervisory approach would be explained.

650. Though the BoT conducts some on-site inspections of bureaux de change, the assessors did not get the impression that the scope of such on-site inspections included AML/CFT compliance review inspections. A copy of one inspection report of a bureau de change the assessors interviewed did not address AML/CFT issues.

### **Recommendation 30**

#### ***Structure, funding, staffing and other resources of AML/CFT supervisors (c. 30.1)***

651. The BoT enjoys operational autonomy. Under section 5, the BoT Act states that in the pursuit of its objectives and performance of its tasks, the BoT shall be autonomous and accountable as provided for under the Act. Under the BoT Act, the President appoints the Governor and the three Deputy Governors for five-year terms to a maximum of two terms. They can only be removed from office for good cause or if disqualified.
652. The Governor, the Deputy Governors, and four non-executive directors appointed by the Minister of Finance make up the Board of Directors of the BoT. The Permanent Secretary to the Treasury of the Government of United Republic and the Principal Secretary to the Treasury of the Revolutionary Government of Zanzibar are ex-officio members of the Board.
653. Under section 13 of the BoT Act, the management of the BoT and the direction of its business and affairs is vested in the Governor and the Governor is required, in the exercise of such functions and direction, to conform with the policy and other decisions made by the Board. The Board of Directors is accountable to the National Assembly through the Minister of Finance.
654. Under section 33 of the BoT Act, the BoT is permitted to charge fees to finance the cost of its operations. The authorities indicated that they generate sufficient revenue to cover operating expenditure. In particular, the management of the Bank Supervision Department confirmed that they had adequate funding for training and that their staff requirements were reasonably met.
655. The Bank Supervision Directorate which is charged with the responsibility of supervising banks and financial institutions licensed by the BoT had a complement of 52 members of staff organised in four departments that oversaw 35 banks and financial institutions and 187 bureaux de change. The BoT indicated the staffing level

for Banking Supervision Directorate was adequate to discharge its supervisory responsibility. Its key staffing challenge was retention of staff, as some 3 members of staff resigned in 2008 and 5 in 2007.

656. The Non-Bank Supervision Department under which the supervision of bureaux de change fell had three supervisory teams made up of 11 officers and three supervisors. This number of staff did not appear to be adequate to provide adequate supervision of the bureaux de change sector.
657. Whereas it appeared to the assessment team that the staff of the Bank Supervision Directorate was fairly competent in general supervisory matters, the assessment team could not determine whether they were provided with adequate technical resources to enable them fully perform AML/CFT functions.
658. Insurance Supervisory Department (ISD), is a government agency created under section 5 of the Insurance Act. It is headed by a Commissioner appointed by the Minister and is subject to the supervision of the Minister of Finance. In this regard, the ISD may not have sufficient operational independence and autonomy to ensure freedom from undue influence or interference.
659. The Insurance Act provides for the funding of the Insurance Supervisory Department by Parliamentary appropriations or levies on premiums and commissions. In this regard, the assessment team was informed that the Department levied a fee at the rate of 1.5 percent of gross premiums and this revenue has so far been adequate to support the operating costs of the Department. In particular, the annual report for 2007 showed that the ISD had excess of income over expenditure for financial years ending 30 June 2007 and 2006.
660. The assessors were informed that the ISD was able to pay competitive salaries to its members of staff and as a result it was able to retain and attract adequate numbers of staff to enable it discharge its functions. Some of the members of staff of the ISD have undergone some AML/CFT training. The ISD performs risk-based inspections which includes review of money laundering risks. In its reports, it encourages insurance companies to develop AML/CFT policies.
661. The Capital Market and Securities Authority is created under section 6 of the Capital Market and Securities Act. The chairperson of the Authority is appointed by the President. Other members include the Principal Secretary to the Treasury, the Governor of the Bank of Tanzania, the Registrar of Companies, the Attorney-General the Chief Executive of the Authority and four other members who have appropriate experience and expertise appointed by the Minister.
662. The Chief Executive Officer is appointed by the Minister after consultation with the Authority. The Chief Executive is subject to the general direction and control of the Authority, and is charged with the direction of the affairs and transactions of the

Authority, the exercise, discharge and performance of its objectives, functions and duties including the administration and control of the officers and other employees of the Authority. The Authority is empowered to employ such other officers and employees as it considers necessary for the efficient discharge of its responsibilities and functions.

663. The Capital Market and Security Authority funds its operations through charging annual licence fees, prospectus fees and other fees provided for under the Capital Market and Securities Act. However, this internally generated revenue is not adequate. In this regard, in order to complement its revenue, the Authority receives some annual Government subventions.
664. With regard to staffing, the CMSA has a complement of 16 members of staff. This level of staffing appeared adequate to cover the six securities dealers and 14 investment advisors as these were largely small companies.

*Integrity of AML/CFT supervisors (c. 30.2)*

665. Members of the three financial supervisory authorities were generally appropriately skilled and possessed professional qualifications.
666. Under section 16 of BoT Act, the staff members of the BoT are required to maintain confidentiality and thus are not permitted to disclose any information relating to the BoT or to any transaction or customer of the BoT acquired in the course of employment or discharge of their duties. Further, the BoT staff bye-laws address the need for staff to be honesty and of high integrity.
667. The assessment team was informed that the Code of Ethics and Conduct for the Public Service applied to the staff of the Insurance Supervisory Department and the Capital Market and Securities Authority. The Code addresses a number of aspects of required behaviours of public servants including the requirement for integrity, accountability, respect of law and proper use of official information. However, it appeared to the assessment team that staff members of the supervisory authorities were not public servants to which the Code of Ethics and Conduct applied. This situation created the possibility that members of staff of the Insurance Supervisory Department and the Capital Market and Securities Authority did not have direct requirements to be of high integrity and to maintain confidentiality.

*Training for staff of AML/CFT supervisors (c. 30.3)*

668. The three financial sector supervisory authorities indicated that their staff are provided with routine AML/CFT training. However, none of the supervisory authorities provided any AML/CFT training statistics to indicate the exact nature of training their staff had received. The FIU confirmed that it had conducted workshops on AML/CFT for various organisations including the financial sector supervisory authorities. However, these workshops largely addressed AML/CFT awareness and could not be said to have been adequate training that would equip staff of supervisory authorities with adequate skills to enable them undertake effective AML/CFT supervision of regulated institutions.

## **Recommendation 29**

### **Legal framework**

Bank of Tanzania Act, The Capital Markets and Securities Act, Insurance Act Cap 394, the Gaming Act, 2003

#### ***Power for supervisors to monitor AML/CFT requirement (c. 29.1)***

669. The AML Act has not designated a competent authority or authorities with responsibility for monitoring and ensuring compliance by financial institutions with requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations.

#### ***Authority to conduct AML/CFT inspections by supervisors (c. 29.2)***

670. Section 4(2)(b) of the Banking and Financial Institutions Act gives the BoT power to carry out inspections over the operations of all banks or financial institutions. Further, pursuant to the provisions of section 31 of the Banking and Financial Institutions Act, the BoT has the power to access to any oral and documented information, including information in computers, books, minutes, accounts, cash, securities, documents, vouchers as well as any other things in the possession or custody or under the control of a bank or financial institution or its affiliate, which relate to the business of such bank or financial institution. The authorities expressed the view that the terms of section 31 of the Banking and Financial Institution Act, should be interpreted widely to include the power of the BoT to undertake onsite inspections. In practice, these powers have been used for the purposes of onsite inspections.



671. It does not appear that the CMS Act gives express powers to the CMSA to conduct on site inspections of financial institutions to ensure compliance with regulatory and other requirements. However, the assessment team took note that under section 21 of the CMS Act, the CMSA appears to have powers to conduct investigations where it has reason to suspect that a person has committed an offence under the Act or the Companies Act.
672. Similarly, it does not appear that the Insurance Act gives express powers to the ISD to conduct on site inspections of financial institutions to ensure compliance with regulatory and other requirements. However, the assessment team took note that under section 119 of the Insurance Act, the Commissioner or other person appointed by him may investigate the affairs of any insurer, broker, agent or any applicant for registration. The Commissioner may also employ an auditor, actuary or other person to assist him in the investigation.
673. Despite the absence of express powers to conduct on-site inspections, in practice the CMSA and the ISD conduct regular on-site inspections. The inspection reports of the ISD briefly covered AML/CFT issues and encouraged insurance companies to develop AML/CFT policies. The CMSA does not monitor compliance with AML/CFT requirements under the scope of its onsite compliance supervisory regime.

*Power for supervisors to compel production of records (c. 29.3 & 29.3.1)*

674. Section 47 of the BoT Act and section 31 of the Banking and Financial Institutions Act give the BoT powers to have access to any oral and documented information, including information in computers, books, minutes, accounts, cash, securities, documents, vouchers as well as any other things in the possession or custody or under the control of a bank or financial institution or its affiliate, which relate to the business of such bank or financial institution. The Bank may require a bank or a financial institution to produce for examination by a person or persons in the service of or authorized by the Bank any oral or documented information and any other things.
675. Under section 11 of the CMS Act, the CMSA may, by notice in writing, at any time, where it considers that there is sufficient cause to do so, give a direction to a person including (a) a stock exchange; (b) a member of the council of a stock exchange; (c) a person who is or has been, either alone or together with another person, a dealer or an investment adviser or is or has been a dealer's representative or an investment representative; (d) a person who is or has been an officer or an employee of, or an agent, lawyer, auditor or other person acting in any capacity for or on behalf of, a stock exchange or a person mentioned in section 11.

676. The books in respect of which a request to produce may be made relate to (a) the business or affairs of a stock exchange; (b) any dealing in securities; (c) any advice concerning securities or the issuing or publication of a report or analysis concerning securities; (d) the character or financial position of, or any business carried on by a person mentioned in section 11(1); or (e) an audit of, or any report of an auditor concerning a dealing in securities or any accounts or records of a dealer or of an investment adviser.
677. Further, under section 40(2) of the CMS Act, CMSA may, in such form and within such time as it may specify by notice in writing, require a dealer or his representative or an investment adviser or his representative to submit detailed information of all or any transactions which were completed during the relevant period before or after the commencement of this Act.
678. Under section 119 of the Insurance Act, the Insurance Commissioner may require the production of any document or information relating to or concerning the insurance business of any insurer, broker or agent or of any applicant for registration as the case may be.
679. Based on the review of the provisions of the law, it appeared to the assessors that all the three supervisory authorities had adequate powers to compel production of documents.

*c. 29.3.1.*

680. For all the three financial sector supervisory authorities, their powers to compel production of or to obtain access to all records, documents or information for supervisory purposes is not predicated on the need to require a court order.

*Powers of enforcement & sanction (c. 29.4)*

681. The BoT has authority under section 33(2) of the Banking and Financial Institutions Act to ensure that its licensees comply with any law or regulation. If a licensed institution contravenes the provisions of the AML Act or AML Regulations, under section 33(2)(a), the BoT can direct a bank or financial institution to take such measures as the BoT may consider necessary to rectify the situation. However, its powers to impose fines on individual directors or officers of financial institutions is limited in section 33(2)(g) to violations of the Banking and Financial Institutions Act and Regulations.

682. The BoT does not have powers of enforcement and sanction for failure to comply with or properly implement requirements to combat money laundering and terrorist financing.
683. Similarly, the other two financial sector supervisory authorities do not have powers of enforcement and sanction against financial institutions, and their directors or senior management for failure to comply with or properly implement requirements to combat money laundering and terrorist financing.

## **Recommendation 17**

### ***Availability of effective, proportionate & dissuasive sanctions (c. 17.1)***

684. Sections 13 (penalties for acts of money laundering) and 17 (failure to report STR), and 20(tipping off) of AML Act provide for criminal sanctions against individuals and bodies corporate upon conviction. The sanctions appear to be proportionate and dissuasive. In the case of natural persons, they range from one hundred million shillings to a maximum of five hundred million shillings or a term of imprisonment ranging from 5 year and to a maximum of 10 years. In the case of a body corporate, the sanctions range from five hundred million shillings to a maximum of one billion shillings or three times the market value of the property, whichever the amount is greater. However, given that the AML Act is still new, the effectiveness of the sanctions could not be determined as the law had not yet been tested at the time of the on-site visit.
685. It should also be noted that the AML Act does not provide for administrative or civil sanctions.

### ***Designation of authority to impose sanctions (c. 17.2)***

686. Only criminal sanctions that are admissible by the courts are available under the AML Act. However, the BOT has general powers under section 33(2) of the Banking and Financial Institutions Act to require a bank or financial institution that is in violation of any law or regulation to take such measures as it may consider necessary to rectify the situation.

### ***Ability to sanction directors and senior management of financial institutions (c. 17.3)***

687. Section 14 of the AML Act provides for criminal sanctions to directors and senior management of a body corporate convicted of the offence of money laundering.

688. However, sanctions for bodies corporate that contravene other AML/CFT requirements in Part IV of the AML Act do not extend to their directors and senior management.

*Range of sanctions – broad and proportionate (c. 17.4)*

689. As discussed above, the AML Act only provides for criminal sanctions against individuals and bodies corporate. It does not provide for a broad range of sanctions that would allow proportionate application to the severity of non-compliance.

**Recommendation 25**

*Guidelines for financial institutions (applying c.25.1)*

690. Under section 6(f) of the AML Act and regulation 32 of the AML Regulations, the FIU is empowered to issue AML/CFT guidelines in consultation with regulatory authorities. Shortly after the onsite visit, on 1 April 2009, the FIU issued guidelines to banking institutions to assist them implement and comply with their AML/CFT requirements. The guidelines cover, among other aspects, verification of identity documents, on-going customer due diligence, staff training and establishment of internal policies, procedures and controls. However, the guidelines have not provided guidance on the description of ML and FT techniques and methods and other measures that banking institutions could take to ensure that their AML/CFT measures are effective.
691. Further, the FIU is yet to issue guidelines to the non-bank financial institutions.

**3.10.2 Recommendations and Comments**

692. All types of financial institutions in the United Republic of Tanzania are regulated and subject to licensing requirements and on-going supervision by a competent authority, except for the pension fund managers. However, no authority was designated as a competent authority for ensuring compliance with AML/CFT requirements by financial institutions.
693. The supervisory authorities are adequately structured, funded and staffed, save for the Insurance Supervisory Department which did not appear to have sufficient operational independence and autonomy. It also appeared to the assessors that members of staff of the supervisory authorities were not provided with adequate AML/CFT training and technical resources to enable them conduct effective AML/CFT supervision.

694. All the three financial sector supervisory authorities conducted both on-site and off-site supervision of their licensees. They had adequate powers to compel production of documents without the need for a court order. However, it did not appear to the assessor that the supervisory authorities had express legal authority to conduct on-site AML/CFT inspections, except in the case of bureaux de change where the on-site inspection powers of the BoT are clearly spelt out in the Foreign Exchange (Bureau de Change) Regulations, 2008.

695. It is, therefore, recommended that:

- Pension fund managers should be subjected to licensing requirements and on-supervision by a competent authority;
- The AML Act should be amended in order to specifically designate competent authorities with responsibilities and powers, including the express power to conduct onsite examination, for monitoring and ensuring compliance of financial institution with AML/CFT requirements;
- Staff members of these competent authorities should be provided with adequate technical resources and training to conduct effective AML/CFT supervision of financial institutions;
- Financial sector legislation should be amended to require financial supervisory authorities to vet beneficial owners of significant or controlling interests and persons holding management functions, including those in the executive or supervisory boards of financial institutions;
- The AML Act should be amended to make the requirements under Part IV enforceable by providing a wide of proportionate and dissuasive sanctions (civil, criminal and administrative) that apply to both legal and natural persons and to directors and senior officers of legal persons;
- A competent authority should be designated to apply the administrative sanctions;
- For the avoidance of doubt, the Insurance Supervisory Department and the CMSA should develop codes of ethics and conduct for their staff in order to require them to maintain confidentiality and be of high integrity;
- All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

### 3.10.3 *Compliance with Recommendations 23, 29, 17 & 25*

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	NC	<ul style="list-style-type: none"> <li>• Civil and administrative sanctions are not available for persons that</li> </ul>

		<p>fail to comply with AML/CFT requirements</p> <ul style="list-style-type: none"> <li>• Criminal sanctions do not apply to all the AML/CFT requirements</li> <li>• Some sanctions for criminal offenses by legal persons are not extended to directors and senior managers</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>R.23</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Implementation of the AML/CFT requirements is still in its infancy stage.</li> <li>• Some AML/CFT provisions in the AML Act are not enforceable</li> <li>• AML Act has not designated any competent authority with responsibility for ensuring compliance by financial institutions with AML/CFT requirements. Only BoT had limited authority.</li> <li>• There are no legal or regulatory measures for preventing criminals or their associates from holding or being the beneficial owner of a significant interest in a financial institution.</li> <li>• The legal framework in the United Republic of Tanzania does not provide for the licensing or registration of stand-alone MVT service providers and are no prohibitions that apply for unlicensed MVT operators.</li> <li>• There is an uncovered category of financial institutions that are not subject to AML/CFT requirements.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>R.25</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU has issued guidelines to banking institutions. Guidelines have not been issued to other financial institutions to implement and comply with their respective AML/CFT requirements.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>R.29</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• Supervisory authorities do not have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat ML and TF consistent with the FATF recommendation.</li> <li>• Supervisors do not have authority to conduct AML/CFT onsite inspections of financial institutions.</li> <li>• There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> <li>• Supervisory authorities do not have powers of enforcement and sanction against financial institutions and their directors and senior management for failure to comply with AML/CFT requirements. The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>

### **3.11 Money or value transfer services (SR.VI)**

#### **3.11.1 Description and Analysis (summary)**

##### **Legal framework**

696. Section 24 of the Banking and Financial Institutions Act lists activities that a licensed bank or financial institution may engage in directly or through a separately incorporated subsidiary. The list of permissible activities includes money transmission services and other activities determined by the BoT to be customary banking practice or incidental to banking business.

##### ***Designation of registration or licensing authority (c. VI.1)***

697. There is no express requirement to register and/or license natural and legal persons that perform money or value transfer services.

698. However, as discussed under section 3.10.1 of this report a licensed bank or financial institution can directly provide a MVT services or it can provide it indirectly through its separately incorporated subsidiary. Section 4 of the Banking and Financial Institutions Act designates the BoT as the licensing authority for all banks and financial institutions. A company or service provider wishing to engage in money transfer service has to enter into an arrangement whereby a licensed bank will provide the service on behalf of a MVT service operator.

699. In practice, the licensed bank applies to the BoT for a “no objection” before it can commence providing MVT services under an arrangement with a MVT service operator. It should be noted that the “no objection” letter is issued to a bank or financial institution after the BoT is satisfied that the licensee has met the pre-determined criteria for its issuance. The BoT issues the “no objection” letter on the understanding that the licensee will comply with AML requirements, among other requirements.

700. Entities that have entered into arrangements with commercial banks for the provision of MVT services include internationally known providers such as Western Union and Money Gram. Others are mobile telephone operators.

701. The Tanzania Postal Corporation, a statutory body, also provides MVT services by way of a service called money fax.

702. Though Tanzania also has informal MVT service operators such as bus operators and merchants, these conduct their business outside the regulatory framework.

*Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23 & SRI-IX) (c. VI.2)*

703. Criterion VI.2 requires countries to ensure that all MVT service operators are subject to the applicable FATF Forty Recommendations (in particular Recommendations 4-11, 13-15 and 21-23) and FATF Nine Special Recommendations (in particular SR.VII). Tanzania Postal Corporation and mobile telephone companies that operate MVT service are not subject to AML/CFT requirements.
704. In addition, as indicated above there exist in Tanzania informal MVT service providers that operate outside the regulatory framework.
705. With respect to MVT services operated under a bank or financial institutions licence, the discussion in sections 3.2 – 3.10 is also applicable to SR.VI.

*Monitoring of value transfer service operators (c. VI.3)*

706. The BoT conducts on-site inspections of banks and financial institutions. However, the BoT does not have powers of enforcement and sanction for failure to comply with or properly implement requirements to combat money laundering and terrorist financing.
707. The BoT, through its Directorate of National Payment System, carries out inspections of mobile telephone operators who are MVT service operators in order to monitor compliance of the MVT service operators with operating requirements. The assessment team was informed that these inspections are focussed on ensuring that the transactions processed by MVT service operators are within the maximum permissible amount of Tsh500, 000.00. The scope of inspections did not encompass a compliance review of AML/CFT requirements.

*List of agents of value transfer service operators (c. VI.4)*

708. As part of the criteria for assessing mobile telephone companies intending to provide MVT services, the BoT obtains the number of agents and sub-agents that the service provider has at the time of applying to the BoT for a “no-objection” letter. However, the assessment team was not provided with any document to indicate that the BoT requires a MVT service operator to maintain a current list of its agents which must be made available to the BoT. The assessment team could not confirm that the BoT obtained lists of agents from MVT service operators because copies of such lists were not made available to the assessors.



### *Sanctions (applying c.17.1-17.4- c. VI.5)*

709. Sanctions in the AML Act as described in the discussion under Recommendation 17 are available for MVT service operators which are banks. However, as indicated in this report, the sanctions are not enforceable and are not broad enough. They are of criminal nature and do not include administrative sanctions. Limited administrative sanctions by the BoT are possible.
710. There are no sanctions against unlicensed or unregistered MVT operators assessors.

### **Additional element- applying Best Practices Paper for SR VI (c. VI.6)**

711. The best practices paper cannot be met because:
- There is no requirement for all MVT service operators to be licensed or registered with the BoT;
  - The BoT has not imposed AML/CFT requirements on MVT service operators;
  - The BoT does not have a system of identifying informal MVT service providers and raising awareness of their AML/CFT obligations; and
  - The BoT does not have sanctions for unlicensed MVT service operators.

#### **3.11.2 Recommendations and Comments**

712. Banks and financial institutions which provide MVT services are licensed by the BoT and subject to on-site inspections. However, with respect to other MVT service operators outside the banking system, the authorities in the United Republic of Tanzania should consider the following recommendations:
- All MVT service operators should be licensed and/or registered and subject to AML/CFT requirements and supervision;
  - Systems for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations should be developed and implemented;
  - Enforceable means should be developed that require each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the designated competent authority; and
713. The recommendation in this report on the sanctions framework in respect of FATF Recommendation 17 should be implemented.

#### **3.11.3 Compliance with Special Recommendation VI**

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> <li>• MVT service operators such as mobile phone operators and the Tanzania Postal Corporation are not subject to AML/CFT requirements.</li> <li>• MVT service operators are not monitored for compliance with AML/CFT requirements.</li> <li>• The BoT has powers to sanction licensed banks and financial institutions for non-compliance with any laws; however, most of the applicable provisions of the AML Act are not enforceable.</li> <li>• MVT service operators are not required to maintain current list of agents.</li> <li>• There are no requirements for MVT service providers outside the banking system to be licensed and/or registered and supervised for AML/CFT purposes.</li> <li>• There are no sanctions against unlicensed informal operators.</li> </ul>

#### 4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

##### 4.1 Customer due diligence and record-keeping (R.12)

*(applying R.5, 6, and 8 to 11)*

##### Legal framework

The Auditors and Accountants (registration) Act No. 33 of 1972 as amended by Act No. 2 of 1995

The National Board of Accountants and Auditors (Code of Ethics) by-laws, 1999

International Standards on Auditing (NBAA adopted international standards on a wholesale basis in 2004), The Tanganyika Law Society Act,

##### 4.1.1 Description and Analysis

714. The following categories of DNFBP are subject to the requirements of the AML Act, 2006:

- Casinos, cash dealers including insurance company and brokers, and dealers, forex bureaux, trustee or manager of a collective investment scheme.
- Real estate agents
- Dealers in precious metals and dealers in precious stones when they engage in any cash transaction with a customer equal to or above the prescribed value. As at the date of the mutual evaluation no value had been prescribed.
- Attorney at laws, notaries and/or independent legal professionals and accountants when they prepare or carry out transactions for their clients concerning the following activities-
  - Purchase of sale of real property or commercial enterprises
  - Management of funds, securities or other assets which belong to a client
  - Opening or management of bank, savings accounts or portfolios
  - Organisation of contributions required to create, or direct companies or legal entities
  - Creation, direction or management of companies or legal entities' and
  - buying or selling of business entities;

#### **Casinos**

715. Section 6 of the Gaming Act provides for the powers of the Tanzania Gaming Board to carry out the operations and management of the gaming activities in Tanzania.

Section 7 of the Gaming Act lists the functions of the Gaming Board of Tanzania. It states that the Board shall perform the functions and exercise such powers as are necessary for the carrying out of such activities and the doing of such things as are necessary, advantageous or proper for promotion, protection and benefit of the gaming industry in Tanzania. The Board shall primarily oversee, monitor and regulate the conduct of gaming activities in Tanzania and in so doing it shall be responsible for, among others: (a) the granting, issuing, suspending, withdrawing and amending of gaming licence and any other licence pertinent to the gaming activities; (b) conducting a continuous study and investigation of gaming activities for the purpose of ascertaining any defects in the rules and regulations in order to discover abuses in administration and operations of the industry and to deal with them; (c) exercising such other incidental powers as may be necessary to ensure safe and orderly regulation of the industry including performing background checks of applicants, qualifications and registration thereof, approving licensees internal control procedures and testing of gaming devices.

#### **Accountants**

716. The National Board of Auditors and Accountants is established under section 3 of the Auditors and Accountants (Registration) Act. Section 4 of the Act lists the functions of the Board which include: (a) to promote and provide opportunities for the study of accountancy, auditing and allied subjects (b) to maintain a register of Certified Public Accountants in Public Practice, Certified Public Accountants, Graduate Accountants, Accounting Technicians and practising firms; (c) to consider and decide upon applications for registration and to effect registration of practicing accountants, Accountants, Accounting Technicians and practicing firms; and (d) to regulate the activities and conduct of Certified Public Accountants in Public Practice, Certified Public Accountants, Graduate Accountants, Accounting Technicians and practising firms.

### **Lawyers**

717. The practice of law in Tanzania is governed by the Advocates Act. Section 8(3) of the Advocates Act gives the Chief Justice power to determine, as he thinks fit, which applicant is satisfactory and fit to be admitted as an advocate.
718. Section 3 of the Tanganyika Law Society Act establishes the Law Society of Tanganyika whose objects as listed in section 4(a) of the Act include: (a) to maintain and improve the standards of conduct and learning of the legal profession in Tanzania; and (b) to assist the Government and the courts in all matters affecting legislation and the administration and practice of the law in Tanzania.
719. In Tanzania Zanzibar, the Zanzibar Law Society is an independent and private entity whose object is to promote the rule of law in the islands and monitoring and protecting the integrity and ethical standards of the profession. The assessment team did not meet representatives of the Zanzibar Law Society during the on-site visit.

### **Real Estate Agents**

720. Presently, there is no law regulating the conduct of real estate agents in Tanzania. Real estate agents are not registered. At the time of the on-site visit, the real estate agents were not organised as an association or any self-regulatory organisation.
721. The authorities indicated that the organisation of the real estate agents has lagged behind mainly because the volume of activity is low due to the land tenure system in Tanzania whereby most land is public land and is not on title. Individuals can only acquire right of occupancy for specific terms but not title to land.
722. Real estate transactions involve a notary. Parties enter into a contract and submit the contract to the Ministry of Land. Any disposition of real estate has to have the approval of the Ministry of Land which has delegated its authority to district offices which can consent and approve real estate transactions.

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

723. The Department of Mines under the Ministry of Mines, Minerals and Energy licenses dealers in precious metals and stones. Licensed dealers are required to submit monthly returns to the Department of Mines.
724. The market for precious metals and stones is largely unstructured in Tanzania. At the time of the on-site visit, the Tanzania Mineral Dealers Association had only 45 members. The vast majority of precious metal and stone dealers were not members of the association. The assessment team was informed that most of the dealers have been pushed into the underground market due to a 15 percent tax the Government levies on gross revenues of licensed dealers. Due to resource constraints, the Department of Mines is unable to conduct inspections in order to monitor the operations of the dealers.
725. The precious stones and metals industry presents a significant AMLCFT vulnerability given the high prevalence of illegal trade of precious stones and metals from Tanzania.

### **Trust and Company Service Providers**

726. Trust and company service providers do not exist in the United Republic of Tanzania. These functions are performed by the law practitioners.
727. The same deficiencies in the AML/CFT preventive measures applicable to reporting persons as described with respect to Recommendations 5, 6 and 8-11 in section 3 above apply also to DNFBPs, since the core obligations for both DNFBPs and financial institutions are based on the same AML/CFT regime.
728. As at the date of the onsite visit, the operators in the DNFBP sector had not implemented AML/CFT requirements.
729. The Casino which met with the assessment team did not display any AML/CFT awareness and also indicated that they were not required to identify customers.
730. The NBAA indicated that it has been organising AML workshops for its members since 2006 and it has also approached the FIU to establish a working relationship.
731. The Tanganyika Law Society indicated that members have attended the FIU workshops to which they have been invited. They have however not implemented AML/CFT measures as required under the AML Act.

#### **4.1.2 Recommendations and Comments**

732. Same deficiencies apply for DNFBPs as for reporting persons with respect to Recommendations 5, 6, 8-11. In general, the United Republic of Tanzania should take immediate steps to fully implement Recommendations 5, 6, 8-11 and apply them to DNFBPs.

733. The application of AML/CFT requirements to DNFBPs is relatively recent and there is an urgent need to build up an effective AML culture in this area through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines.
734. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

#### 4.1.3 *Compliance with Recommendation 12*

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> <li>• The same deficiencies apply for DNFBPs as for reporting persons with respect to Recommendations 5, 6, 8-11 and 17.</li> <li>• DNFBPs have not adopted and implemented the requirements of the AML Act.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>

## 4.2 **Suspicious transaction reporting (R.16)**

*(applying R.13 to 15 & 21)*

### 4.2.1 *Description and Analysis*

#### **Legal framework**

The Auditors and Accountants (registration) Act No. 33 of 1972 as amended by Act No. 2 of 1995

The National Board of Accountants and Auditors (Code of Ethics) by-laws, 1999

International Standards on Auditing (NBAA adopted international standards on a wholesale basis in 2004)

AML Act and Regulations

#### ***Requirement to make STRs on ML and TF to FIU - Applying Recommendation 13***

735. DNFBPs are subject to the reporting requirements under section 17 of the AML Act. The same deficiencies that apply to financial institutions also apply to DNFBPs.
736. As at the date of the onsite visit the FIU has received no STR from the DNFBP sector.

#### ***Protection for making STRs - Applying Recommendation 14***

737. The provisions of sections 20 and 22 of the AML Act apply to all reporting persons including the DNFBPs. The same deficiencies that apply to financial institutions under Recommendation 14 also apply to DNFBPs.

***Establish and maintain internal controls to prevent ML and TF - Applying Recommendation 15***

738. As discussed under Recommendation 15, the AML Act does not require DNFBPs as reporting persons to establish and maintain internal procedures, policies and controls to prevent money laundering and financing of terrorism. In particular, there are no requirements for reporting persons to establish procedures, policies and controls that cover, inter alia, customer due diligence, record retention, the detection of unusual and suspicious transactions. Section 18 of the AML Act only requires reporting persons to establish reporting procedures.
739. Casinos are required under section 61 of the Gaming Act to maintain systems of internal controls which are approved by the Tanzania Gaming Board. One of the Casinos visited had a system of internal controls which was adequate to ensure correct recording of turnover for determination of tax obligations, prevent fraud, cheating and gambling irregularities. The casino did not issue cheques, effect wire transfer or credit a payment card in respect of winnings. This feature of the internal control system had beneficial aspects for preventing money laundering. It was also in compliance with the requirements of section 56 of the Gaming Act. However, these controls did not address the whole gamut of minimum AML/CFT internal controls.
740. With regard to the accounting profession, the National Board of Accountants and Auditors is a member of the International Federation of Accountants which has issued a Code of Ethics for Professional Accountants. The Code requires professional accountants to implement appropriate risk management and internal control systems. Accountants and auditors practicing in the United Republic of Tanzania are required to adhere to the requirements of the Code. The requirements are a necessary part of a good internal control framework but do not provide a basis for addressing specific AML/CFT risks.
741. There other categories of DNFBPs, such as the lawyers, the real estate agents and dealers in precious metals and stones, do not have have any requirements for establishment of internal controls.

***Special attention to countries not sufficiently applying FATF Recommendations - Applying Recommendation 21***

742. The same deficiencies that apply to recommendation 21 also apply to DNFBPs.

#### **4.2.2 Recommendations and Comments**

743. The United Republic of Tanzania should take immediate steps to fully implement Recommendations 13-15 and 21 and apply them to DNFBPs.

744. The Tanzanian authorities should develop enforceable means that will require DNFBPs to develop AML procedures, policies and internal controls in line with FATF Recommendation 15.

745. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar..

#### **4.2.3 Compliance with Recommendation 16**

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"><li>• The same deficiencies that apply to recommendations 13, 14, 15 and 21 also apply to DNFBPs.</li><li>• The DNFBPs have not implemented the AML/CFT requirements under the AML Act.</li><li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li></ul>

### **4.3 Regulation, supervision and monitoring (R.24-25)**

#### **4.3.1 Description and Analysis**

#### **Recommendation 24**

##### ***Regulation and supervision of casinos (c.24.1, 24.1.1, 24.1.2 & 24.1.3)***

746. Casinos are reporting persons according to section 3 of the AML Act. Section 3 defines a reporting person to include a cash dealer. A cash dealer is further defined to include an operator of a gaming activity. Under section 3 of the Gaming Act, a casino is defined as premises used for gaming purposes where the public have access to play various games of chance, notably table games, slot machines and others.

747. The AML/CFT requirements applicable to reporting persons under the AML Act are applicable to casinos.



748. As described above, the Tanzania Gaming Board is responsible for licensing of casinos. Under section 13 of the Gaming Act, a casino is required to have a gaming licence issued under the Act. Under section 15 of the Act, an application for a licence or for the renewal of a licence is required to be made to the Tanzania Gaming Board in the prescribed form and manner and should be accompanied by the prescribed fee.
749. As part of the determination of the licence application, the licensing criteria under regulation 3 of the Gaming Regulations requires the Tanzania Gaming Board to satisfy itself that the applicant has not been convicted of any criminal offense involving fraud or dishonesty, among other considerations.
750. Under regulation 29 of the Gaming Regulations, the key employs are also required to be licensed by the Tanzania Gaming Board. Regulation 28 classifies key employees to include (a) the senior management of the licensee (b) where a licensee is a trust, partnership or corporate body, every director and officer (c) any job position or individual who, upon written notification by the Tanzania Gaming Board, is considered to be a key position or employee.
751. Section 28 of the Gaming Act requires applicants for a licence and a person holding such licences, including a person interested, directly or indirectly, in the gaming business or licence held by an applicant or licensee, shall upon request by the Board provide samples of fingerprints and handwriting and each of such person shall allow himself to be photographed in accordance with procedures established by the Board.
752. Further, Section 28 of the Gaming Act provides that upon issuance of a formal request or warrant by the Board to answer or produce information, evidence, or testimony, each applicant and licensee is required to comply with the request or warrant. If an applicant or licensee, or any employee or person interested, directly or indirectly, in either the gaming business or licence refuses or fails to comply with the Board request or warrant, then that person's licensee or application may be suspended, revoked, or denied, based solely upon such failure or refusal.
753. The Gaming Act does not contain explicit provisions for preventing criminals or their associates from being beneficial owner of a significant or controlling interest in a casino. However, in practice, the Tanzania Gaming Board has procedures that ensure that in the case of corporate shareholders, they still have to vet the natural persons who are the ultimate shareholders. This practice has been reinforced by FIU Guidelines No. 1 which gives guidance on how to extend vet to natural persons who are the ultimate shareholders in a corporation that holds shares in a casino.
754. As already discussed under Recommendation 23, the AML Act has not designated a competent authority or authorities with responsibility for ensuring that Casinos

adequately comply with the requirements to combat money laundering and terrorist financing.

755. However, the Tanzania Gaming Board has limited powers of inspection. Under section 79 of the Gaming Act, a person authorized in writing by the Board has power to enter without warrant and inspect premises in which he has reason to believe that an offence under the Gaming Act, or under any regulations made there-under, has been or is about to be committed. The wording of the Act makes it clear that such inspections are not routine and in any case would not be conducted by the Tanzania Gaming Board in case of offenses under the AML Act. The authorities indicated that despite the limitation on the scope of inspection imposed by the Gaming Act, in practice the Tanzania Gaming Board conducts regular on-site inspections.
756. The Tanzania Gaming Board does not have power to sanction casinos that fail or improperly implement AML/CFT requirements. Under section 24 of the Gaming Act the power to sanction is limited to revoking or suspending a licence.
757. As discussed under Recommendation 17, sanctions under the AML Act do not include civil and administrative sanctions. They are limited to criminal sanctions which are applicable to both natural persons and legal persons. In the case of legal persons, sanctions are available for directors and senior management. However, sanctions relating to AML/CFT supervision under Part IV of the AML ACT have not been extended to directors and management

#### ***Monitoring (c.24.2 & 24.2.1)***

758. The other categories of DNFBPs are subject to the AML/CFT requirements under the AML legislative framework. There are however, no effective systems for monitoring and ensuring compliance with AML/CFT requirements.
759. There is no designated authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.

#### **Recommendation 25**

##### ***Legal framework***

AML Act, 2007 and AML Regulation, 2007.

##### ***Guidelines for DNFBPs (applying R.25.1)***

760. Section 6 of the AML Act, requires the FIU, in consultation with the regulatory authorities of the relevant reporting persons, to issue guidelines to reporting persons

in respect of suspicious transactions, record-keeping and reporting obligations under the Act.

761. The FIU has issued guidelines to DNFBPs. The guidelines addressed identity verification procedures for reporting persons. However, the guidelines have not provided guidance on the description of ML and FT techniques and methods and other measures that DNFBPs could take to ensure that their AML/CFT measures are effective.

#### **4.3.2 Recommendations and Comments**

762. The AML Act applies to all existing DNFBPs except that it is not enforceable in Zanzibar. However, the supervisory framework for monitoring and ensuring that they comply with AML/CFT requirements is not yet in place. In this regard, it is recommended as follows:

- The United Republic of Tanzania should designate a competent authority or authorities for DNFBPs to ensure that all DNFBPs effectively implement the AML/CFT measures required under the FATF Recommendations;
- The Gaming Act should be amended in order to:
  - a) broaden powers of the Tanzania Gaming Board to enable it conduct routine on-site inspections;
  - b) give power to the Gaming Board of Tanzania to sanction casinos that fail to or improperly implement AML/CFT requirements;
- Enforceable means should be developed to ensure all dealers in precious stones and metals belong to a state-recognised association(s) such as the Tanzania Mineral Dealers Association.
- Enforceable means should be developed to ensure all real estate agents belong to a state-recognised association.

763. The recommendation in this report on the sanctions framework in respect of FATF Recommendation 17 should be implemented.

764. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

#### **4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)**

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> <li>• There are no competent authorities designated to monitor and ensure compliance by DNFBPs with AML/CFT requirements</li> <li>• The Tanzania Gaming Board has limited inspection powers</li> <li>• While the other categories of DNFBPs are subject to the AML/CFT requirements under the AML legislative framework, there are, however, no effective systems for monitoring and ensuring compliance with AML/CFT requirements.</li> <li>• There is no designated authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.</li> <li>• Only criminal sanctions are available. Civil and administrative sanctions are not provided for.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• While the FIU has issued AML Verification of Identities guidelines they do not provide guidance on other measures that DNFBPs could take to ensure that their AML/CFT measures are effective.</li> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> </ul>

#### 4.4 Other non-financial businesses and professions

##### Modern secure transaction techniques (R.20)

##### 4.4.1 Description and Analysis

##### Legal framework

AML Act, 2006 and AML Regulations, 2007.

##### *Other vulnerable DNFBPs (c. 20.1)*

765. Section 3 of the AML Act included auctioneers and dealers in works of art in the definition of reporting persons to which the AML/CFT requirements of the AML Act apply. The authorities in Tanzania consider auctioneers and dealers in works of art as being at risk of being misused for AML/FT. The authorities are considering extending AML/CFT requirements to car dealers.

##### *Modernisation of conduct of Financial Transactions (c. 20.2)*

766. The United Republic of Tanzania is largely a cash-based economy. Under the National Payment Project, authorities in Tanzania have developed an electronic clearing house and an electronic funds transfer system to serve as platforms for conducting electronic payments and reducing reliance on cash.
767. The BoZ informed the assessment team that they participated in the development and launch of a switch for automated teller machines which was accompanied by the introduction of debit cards by commercial banks. These measures were aimed at giving the general public an electronic alternative to payment by cash. The authorities indicated that they have sensitised the general public about benefits of using debit cards instead of cash.
768. Because of the in-built controls, including the audit trail, that are associated with electronic payments, they are less vulnerable to money laundering compared to cash payments.

#### 4.4.2 *Recommendations and Comments*

#### 4.4.3 *Compliance with Recommendation 20*

	Rating	Summary of factors underlying rating
R.20	C	This recommendation is fully met

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

### 5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

#### 5.1.1 *Description and Analysis*

#### **Legal framework**

769. The incorporation of companies is governed by the Companies Act 2002 in Mainland Tanzania and by the Companies Decree 1952 in Zanzibar (the Companies Decree).

#### *Measures to prevent unlawful use of legal persons (c. 33.1)*

#### Mainland Tanzania

770. The Companies Act allows for the creation of companies limited by shares, companies limited by guarantee, unlimited companies and the registration of foreign companies (companies incorporated outside of Tanzania).
771. Companies are incorporated or registered by the Business Registrations and Licensing Agency (BRELA).
772. In order to incorporate a company, BRELA requires:
- The memorandum and articles of association of the proposed company.
  - Statement in the prescribed form containing the name, address (or registered office), date of birth and consent of-
    - a) The person or persons being the first director or directors of the company.
    - b) The person or persons being the first secretary or joint secretaries of the company.
  - In case of the first director or directors, particulars of any other directorship held during the five years preceding the date on which the statement is delivered to the Registrar.
  - The intended address of the company's registered office on incorporation.
773. The first members of the company are the subscribers to the Memorandum. The subscribers are required under section 4 of the Companies Act to sign the memorandum and provide details of their full names, occupation and postal address. This information is not verified by BRELA.
774. A body corporate may be appointed as the director or secretary of a Company. According to BRELA corporate directorship services are provided by private companies and a foreign incorporated company can be act as corporate director. With respect to a corporate director, BRELA requires the following information the name, country of incorporation and the situation of the registered office. There is no requirement for the disclosure of the shareholders, beneficial owners or directors of the corporate director. There is also no mechanism in place to identify the signatory of a corporate director.
775. Any changes that occur in the director or secretary of a company must be notified to BRELA within 14 days of the appointment.
776. Similarly any change that occurs in the shareholders must be notified to BRELA. A return of allotment of shares must be filed with BRELA within sixty days after the shares have been issued. The return must contain the name, addresses and descriptions of the shareholders.

777. A company is also required to file annual returns yearly at the anniversary of the company's incorporation. A prescribed form which must include the following information must be used for this purpose-
- Address of the company's registered office
  - Name and address of the company secretary
  - The name and address of each individual director, his nationality, date of birth, business occupation, and particulars of other directorship(s);
  - Names and address of every person who is a member of the company at the date on which the return is made;
  - The number of shares of each class held by each member of the company at the date the return is made.
778. A company, other than a private company exempt from the obligation of appointing auditors and an unlimited company exempt from the obligation to prepare accounts, must attach its financial statements together with the auditor's report with the annual return.
779. A company which fails to file the annual return may be subject to the payment of a fine.
780. The registry at the BRELA uses a manual system. Updating and locating the files can take a long time in some cases, especially in relation to old files. All records are kept forever. Preserving and maintaining records represent a big challenge for BRELA.

### *Corporate record keeping requirement*

#### Register of members

781. A company must keep a register of its members containing the names and addresses of the members and the number of shares of each class that is held by each member (section 115 of the Companies Act). The register must also contain the date on which a person became a member and ceased to be a member.
782. Shareholders may be natural or legal persons and the use of nominee shareholders is allowed. Shares can also be held on behalf of another person however, there is no duty to disclose to the company or BRELA the identity on whose behalf the share is being held or the number and class of shares so held.

#### Register of directors and secretaries

783. Every company must keep at its registered office a register of its directors and secretaries which shall include the following particulars with respect to each director:

- in case of an individual, name and surname, any former name or surname, nationality, nationality of origin (if different from current nationality), business occupation, date of birth and particulars (if any) of all other directorship held.
- in case of a corporation, its corporate and registered office;

784. With respect to the Secretary or each joint secretary where joint secretaries are appointed:

- in case of an individual, name and surname, any former name or surname, and usual address
- in case of a corporation its corporate name and registered office.

### Zanzibar

785. The company law regime in Zanzibar is very similar to the one in Mainland Tanzania. Some of the differences include:

- For a company other than a private company, seven or more persons may form a company while in case of a private company at least two persons are required.
- In order to incorporate a company, in addition to the memorandum and articles of association of the proposed company a list of the persons who have consented to act as directors of the company and their consent to act as directors. (This requirement does not apply to a private company, a company not having a share capital, a company which was a private company before it became a public company.)

### *Access to information on beneficial owners of legal persons (c. 33.2)*

786. Documents kept with the Registrar at the BRELA and with the Registrar in Zanzibar and are available for public inspection. The public may, subject to payment of a minimal fee, view this information pursuant to section 458 of the Companies Act and section 376 (1)(a) of the Companies Decree.

787. Company registers are also available for public inspection subject to payment of a minimal fee (sections 118 and 210(6) of the Companies Act). Only the register of directors is available for public inspections (sections 197 (6) of the Companies Decree) in Zanzibar.



788. These provisions provide easy access to investigative and supervisory authorities for any purpose. The authorities indicated that Government Officials are not required to pay any fees for inspecting the documents held by the registrars and they may also access the correspondence file which is not publicly available.
789. The use of a manual system for keeping company records may undermine the timely access to these records by investigative and supervisory authorities. Further, the information which is available pursuant to the mechanism described above does not capture accurate and current information on the beneficial ownership and control of legal persons. In particular, information is not verified and the use of nominee shareholders and corporate directors may obscure beneficial ownership and control information available on a company. Share warrants to bearer may also render the beneficial ownership and control structure of a company opaque.

***Prevention of misuse of bearer shares (c. 33.3)***

790. Under the provisions of section 85 of the Companies Act and section 83 of the Companies Decree, a company limited by shares may issue share warrants to bearer. The share warrant entitles the bearer to shares and the shares may be transferred by delivery of the warrant. These share warrants in effect allows for the use of bearer shares. To the knowledge of the authorities, share warrants have been issued by some companies.
791. There are no measures in place to ensure that share warrants issued to bearer are not misused for money laundering purposes.

**5.1.2 *Recommendations and Comments***

792. The registrars not collect information on beneficial ownership and control in terms of the FATF definitions. Another overarching problem is that none of the information kept by the registrars is verified, so it cannot be said to be accurate.
793. According to BRELA 40% of applicants use agents for incorporating their companies. These agents are mainly auditing firms and law firms. While accountants and attorneys are reporting persons for the purposes of the AML Act, it does not appear in practice that they have implemented the preventative measures. Please see the discussion at section 4.1 above. Authorities must ensure that lawyers and accountants who act as company registration agents adequately implement and comply with AML/CFT requirements.
794. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar..
795. Very limited information is available on corporate directors which may also be a company incorporated outside of Tanzania.

796. It is recommended that measures should be put into place to require the identification of the beneficial owner of corporate directors.
797. Further, mechanisms should be put in place to determine the identity of the beneficial owner where nominee shareholders are used.
798. Measures should be put in place to curb the misuse of share warrants. For example, the authorities may require that the owners of the share warrants should be known to the company and that this information should be made readily available to the investigatory authorities upon request.
799. In the long term, the authorities should consider introducing an electronic filing system for keeping, maintaining, preserving and ensuring timely access to its records.

### 5.1.3 *Compliance with Recommendations 33*

	Rating	Summary of factors <i>underlying rating</i>
R.33	NC	<ul style="list-style-type: none"> <li>• No information on beneficial ownership and control in terms of the FATF definitions is available.</li> <li>• The use of corporate directors and nominee shareholders obscures beneficial ownership and control information of companies that use them.</li> <li>• Information kept in the company registers and at the registrars is not verified and is not necessarily accurate.</li> <li>• The use of a manual filing system may undermine the timely access to the information kept by the registrars.</li> <li>• There are no measures in place to ensure that share warrants are not misused for money laundering purposes.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>

## 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

### 5.2.1 *Description and Analysis*

#### Legal framework

Private trusts although not very common in the United Republic may be created by a trust deed or a will under Common law.

*Measures to prevent unlawful use of legal arrangements (c. 34.1)*

800. There are no measures in place to prevent the unlawful use of trusts for money laundering and terrorist financing purposes.

*Access to information on beneficial owners of legal arrangements (c. 34.2)*

801. There is no central filing requirement for private trusts and no register of trusts is maintained by any institution.

*Additional element- access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)*

**5.2.2 Recommendations and Comments**

802. The authorities should consider putting in place measures to prevent the unlawful use of trusts for money laundering and terrorist financing purposes.

803. There is no mechanism in place for accessing beneficial ownership information and control of trusts. The authorities should consider adopting a mechanism to register private trusts and to keep information on the settlor, trustee and beneficiaries of private trusts. This information should be made available to investigatory and supervisory authorities.

804. Authorities must ensure that lawyers who provide trusteeship services adequately implement and comply with AML/CFT requirements.

805. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

**5.2.3 Compliance with Recommendations 34**

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none"> <li>No information on the ownership or control of private trusts is available.</li> <li>There are no measures in place to prevent the unlawful use of trusts for money laundering and terrorist financing.</li> </ul>

		<ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
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### 5.3 Non-profit organisations (SR.VIII)

#### 5.3.1 Description and Analysis

##### Legal framework

There are two separate legal frameworks for regulating and coordinating NPO sector in the United Republic of Tanzania. The laws regulating NPOs in Mainland Tanzania include the NGO Act (2002), as amended in 2005, and the NGO Regulations (2004). Societies Act No.6 of 1995 and Societies Rules of 1995 regulate activities of NPOs in Zanzibar.

##### Overview of the sector

##### Mainland Tanzania

806. Before 2005, NPOs were registered by Business Registration and Licensing Authority under Companies Act CAP 212 of 2002, Trusteeship Act and Societies Ordinance CAP. 337 of 54. NPOs may be companies limited by guarantees but not shares.
807. Presently, the NPO sector is regulated by the Non-Governmental Organisations Act No.24 (2002) as amended in 2005 and Non Governmental Organisations Regulations (2004). During the onsite, authorities indicated that there are 2893 registered NGOs in Mainland Tanzania.
808. The registration and coordination of NGO activities in Mainland Tanzania is done by the Registrar of NGOs located in the Ministry of Community Development, Gender and Children. Section 6 of the NGO Act establishes Non-Governmental Organisation Coordination Board. Amongst others, section 7 of the Act gives the Board powers to approve and coordinate registration of NGOs in Tanzania Mainland. The Board consists of 10 members, comprising four members from NGO sector and six from authorities in Mainland Tanzania.
809. Section 17 of the NGO Act requires the NGOs that registered under other domestic laws to apply for certificate of compliance. However, the authorities have not set a timeframe to comply with this provision. Instead, the authorities decided to first raise awareness to all stakeholders regarding the provisions of the NGO Act before setting a time frame to comply with this section of the Act.

810. Religious Propagating Organizations such as churches and mosques are not regarded as NGOs. They are registered under Societies Act by the Ministry of Home Affairs. Religious Propagating Organisations intending to conduct NGO activities are required to register a separate legal entity with the Registrar of NGOs at the Ministry of Community Development, Gender and Children.
811. The following table provides a summary of levels and number of registrations of NGOs in Mainland Tanzania since 2005.

YEAR	LEVEL OF REGISTRATION				
	District	Region	National	International	TOTAL
2005	48	27	324	35	434
2006	178	145	452	38	813
2007	189	126	498	26	839
2008	155	89	533	30	807
<b>TOTAL</b>	<b>566</b>	<b>378</b>	<b>1796</b>	<b>129</b>	<b>2893</b>

812. The following table shows an overview of financial flows per sector of NGOs in Mainland Tanzania.

Sector	Number of NGOs	licensing authority	Estimated financial flows through sector	
			Income in TZS	Expenditure in TZS
Health	361	Registrar of NGOs	45,218,842,311	30,603,209,313
Education	137	Registrar of NGOs	17,495,040,151	14,719,259,724
Environment	246	Registrar of NGOs	4,451,719,074	4,584,654,030
Child Welfare	439	Registrar of NGOs	27,724,189,828	17,392,268,636

## Zanzibar

813. The societies sector in Zanzibar is regulated by the Societies Act No.6 of 1995 and the Societies Rules of 1995. The Registrar of Societies, which is under the Ministry of State Constitutional Affairs and Good Governance, is responsible for registration and coordination of societies in Zanzibar.

Statistics of NGOs in Zanzibar as at January 2009 is as follows:

Type of society	Number of societies
National NGOs	250
Community-Based Organisations (CBOs)	300
Religious associations:	76:
a) Islamic NGOs	a) 51
b) Christian NGOs	b) 25
International NGOs	34
<b>Total</b>	<b>660</b>

814. There are about 35 societies which existed before the new Societies Act, 1995, which failed to comply with the re-registration requirements of the new Act. The figures below are as at 9<sup>th</sup> February 2009.

Sector category	Number of societies
Education	80
Science	10
Agriculture	42
Health	20
Culture	12
Environment	41
HIV/AIDS	63
General poverty and development	343
Sports	5
Business	6
Building construction & engineering	2
News, information & journalism	8
Trusts	7
Laws	4
Tourism	5
Fishing	12
<b>Total</b>	<b>660</b>

#### *Review of adequacy of laws and regulations of NPOs (c. VIII.1)*

##### Mainland Tanzania

815. In terms of the Act, an “NGO” means a voluntary grouping of individuals or organisation which is autonomous, non-partisan, non-profit sharing organised at the local, national or international level for the purpose of enhancing or promoting economic, environmental, social or cultural development or protecting environment,

lobbying or advocating on such public issues; or established under the auspices of any religious organisation or faith propagating organisation, trade union, sports club, political party, religious or faith organisation or community based organisation, but does not include a trade union, a social club or religious organisation or a community based organisation<sup>24''</sup>.

816. An NGO must apply for registration to the Registrar of NGOs in Mainland Tanzania in a prescribed manner pursuant to the provisions of sections 11 and 12 of the NGO Act. The Registrar must submit application forms for registration to the Non-Governmental Organisations Coordination Board for registration approval. Once the Registrar is satisfied with the terms and conditions applicable under the procedure for registration, a certificate of registration is issued to such NGO.
817. The authorities informed the assessors that before an international NGO is registered to operate in Tanzania Mainland, there is a procedure to sign an agreement of cooperation with the Ministry of Community Development, Gender and Children on behalf of Government. The process of registering international NGOs involves other competent authorities such as Ministry of Justice and Constitutional Affairs, Immigration and Tanzania Revenue Authority. The authorities provided the assessors with a copy to this effect.
818. Pursuant to section 22 of the Act, the Registrar must appoint for each region or district, a public officer from amongst the public officers within that region or district to facilitate registration of NGOs at regional or district levels. The public officer has the power to register and issue a certificate of registration or a certificate of compliance in a manner prescribed under section 7 of the NGO Regulations to an NGO for operation in that region or district and must submit a report to the Registrar to that effect.
819. The Board may refuse to approve application for registration of an NPO if it is satisfied that the activities of that NGO are not for public interest or are contrary to any written national laws; or the application has given false or misleading information in any material particular; or on the recommendation of the National Council of NGOs (the Council consists of all representatives of NGOs from all region and acts as a self-regulatory body) that the NGO should be refused registration.
820. The Registrar of NGOs in Mainland Tanzania and the Registrar of Societies in Zanzibar have not conducted any risk assessment of the NPO regarding misuse of the sector for terrorist financing. There is no periodic assessment undertaken on the sector's potential vulnerabilities to terrorist financing activities.

## **Zanzibar**

821. Zanzibar NGO Policy defines NGO as “a voluntary group of individuals or Organisation which is autonomous, non-partisan, not for profit sharing, established at the grass root level, nationally or internationally for public benefit purposes particularly for the purpose of enhancing the legitimate economic, social and /or cultural development or lobbying and advocating on issues of public interest”.
822. Societies in Zanzibar are regulated by the Societies Act No. 6 of 1995, Societies Rules of 1995 and the Zanzibar NPO Policy. Pursuant to sections 10 & 11 of the Societies Act and section 4 of the Societies Rules, all NPOs must apply for registration or exemption (i.e. apply for certificate of compliance) to operate in Zanzibar.
823. In terms of section 11 of the Act and sections 5 & 6 of the Rules, the Registrar of Societies must issue a registered society with a certificate of registration or exemption from registration. The Registrar has powers to refuse registration of a society.
824. Section 12 of the Act provides that, inter alia, he is satisfied that such society is a branch of, or is affiliated to or connected with, any organisation or group of a political nature established within or outside of Tanzania; or it appears to him that the society is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance; or he is satisfied that the application does not comply with the provisions of this Act or of any rules made thereunder.
825. Pursuant to section 9 of the Rules, the Registrar shall publish in the Gazette or in any newspaper notice of the registration, exemption or refusal for registration of any society. In a case where a society feels aggrieved by the Registrar’s decision to refuse registration or exemption or invoke cancellation, such society may appeal such a decision to the High Court.

### ***Protecting the NPO sector from terrorist financing through outreach and effective oversight (c. VIII.2)***

826. Authorities in the United Republic of Tanzania have not undertaken any outreach programmes for the NPO sector with a view to protecting the sector from terrorist financing abuse.
827. There is no systematic outreach programmes for promoting transparency, integrity, accountability or public confidence in the NPO sector. Mainland Tanzania authorities informed assessors that they conduct limited awareness raising initiatives for the NPO sector. For now the authorities are focusing sensitising the sector about the roles of National Council of NGOs and National NGOs Coordination Board (both



established in 2005), formulation of self-regulatory Code of Conduct, setting up of NGO Database on Website of NGO Division in the Ministry of Community Development, Gender and Children for reporting of performance of the NPO sector, and decentralisation of registration and coordination process into regional and district categories.. The authorities further expressed that in general inadequate funding is hampering their awareness raising initiatives.

828. The authorities in the United Republic of Tanzania expressed willingness to receive assistance in outreach programmes to prevent abuse by terrorist organisation in the NPO sector.

*Diversion of funds for terrorists purposes (c. VIII.3, VIII.3.1, VIII.3.2, VIII.3.3, VIII.3.4)*

829. The assessors were informed that there has been no risk assessment or inspections conducted regarding national or international financial inflows into the NPO sector for terrorist financing purposes in the United Republic of Tanzania.
830. Sections 29 of both Acts in Mainland Tanzania and Zanzibar require NGOs to submit annual audited financial reports to the respective Registrars. The authorities informed the assessors that majority of the NPOs do not file annual returns and audited financial statements.
831. The assessors were informed by the authorities that both the Registrars of NGOs and Societies are: i) under-resourced; ii) the manual registration system is unable to cope with the large volume of information; and iii) therefore supervision and monitoring of the NPO sector is ineffective. The public and competent authorities must fulfill prescribed terms and conditions applicable under the NGO Act and the Societies Act to access any information on NPOs at the Office of Registrar in Mainland Tanzania and Zanzibar.
832. Section 29 of the NGO Act requires NGOs to submit annual audited financial reports and submit such to the Registrar of NGOs. There is no legal duty in both Mainland Tanzania and Zanzibar to NGOs to keep and maintain records for a minimum period of five years. Section 24 (1) of Societies Act requires societies to keep register of members and section 25 (1) requires societies to keep books of accounts detailing funds received and payments made. But there is no provision to maintain the records and keep such for a minimum period of time. As a result, authorities in the United Republic of Tanzania will find it difficult to make available to appropriate authorities, records of domestic and international transactions that are detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation under both Acts.
833. In Mainland Tanzania, the NGO Act does imply under section 24(1) as follows:

834. “Where the Board has reason to suspect that a Non Governmental Organisation has ceased to exist, it may issue a notice in writing to the office bearers of that Non Governmental Organisation or publish a notice in a newspaper widely circulating in Mainland Tanzania, requiring it to submit to the Board within a period of thirty days, proof of its existence”.
835. Similarly, section 27(1) of the Societies Act in Zanzibar implies as follows:

*“The books of accounts and any documents in relation thereto of every society, and a list of members thereof, shall be available for inspection by any officer or member of such society at such times as may be provided for in the constitution or rules of such society, and by the registrar, or any person authorized in that behalf in writing by the Registrar, at any reasonable time”*

***Powers to investigate and sanction (c. VIII.4, VIII.4.1, VIII.4.2 & VIII.4.3)***

836. There is no clearly defined formal mechanism to ensure effective domestic cooperation, coordination and information sharing in Mainland Tanzania and Zanzibar to the extent possible among all levels of appropriate authorities or organisation that hold relevant information on NPOs of potential terrorist financing. However, the authorities provided the assessors with a copy of a case regarding allegations of misuse of funds by an international NGO as investigated by a multi-disciplinary team of domestic authorities that included National NGOs Coordination Board, Dar es Salaam Regional Security Committee, Prime Minister’s Office, Treasury and Bank of Tanzania.
837. Although section 7(1) (i) of the NGO Act gives powers to the NGO Board to investigate and enquire in order to ensure adherence with this provision, there is no express powers given to the Board to consult with domestic competent authorities for purposes of conducting an investigation and prosecution in the sector.
838. Investigative powers to ensure full access on the administration and management of any registered society in Zanzibar, including financial and programmatic information, are set out in sections 40 to 41 of the Societies Act.
839. However, the lack of legal provision to require NPOs in Mainland Tanzania and Zanzibar to keep and maintain records for a minimum of five years will make full access of information on the administration and management of a particular NPO, including financial and programmatic information, difficult to be obtained during the course of an investigation in Mainland Tanzania.
840. Section 40(1) of the Societies Act provides that the Registrar may in writing, require the attendance before himself of any person who he has reason to believe is able to

give any information of any unlawful society, or suspected society, or as to the operations of any registered or exempted society.

841. Section 41(1) of the Act states that any magistrate, any officer of the rank of assistant superintendent or higher rank, or any police officer authorised in writing by magistrate or by such officer authorised in writing by magistrate or by such officer, may without a warrant enter with or without assistance any house or building or any place in which he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held, and may similarly arrest or cause to be arrested all persons found therein, and search such house, building or place, and seize or cause to seize all insignia, banners, arms, books, papers, documents and other property which he has reasonable cause to believe belong to an unlawful society or are in any way connected with the purpose of the meeting.
842. The assessors were informed by the authorities in the United Republic of Tanzania that there is no mechanism for the prompt sharing of information among all relevant competent authorities in order to take preventative or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is being exploited for terrorist financing purposes or actively supporting terrorist activity or terrorist organisation.
843. The assessors were informed by the authorities in the United Republic of Tanzania there are no investigative expertise and capability to examine those NPOs that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisation.
844. There is no mechanism in place that allow for prompt investigative or preventative action against such NPOs.
845. The authorities in the United Republic of Tanzania expressed a wish for technical assistance in this area once the coordination and registration process of NPOs in the Mainland Tanzania is completed.

*Domestic and international cooperation (c. VIII.5)*

846. The authorities in the United Republic of Tanzania informed the assessors that there are 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. No cases were shared with the assessors to determine effectiveness.
847. The assessors were also informed by the authorities that the United Republic of Tanzania has established National NGOs Data Base. The information will be made

available through NGO Coordination Division on-line and off-line. The latter will soon be accessible through a website which is expected to be launched in the financial year 2008/2009.

### **5.3.2 Recommendations and Comments**

848. Authorities in the United Republic of Tanzania should review laws relating to NPO sector to ensure that NPOs are not misused for terrorist activities. In order to enhance compliance with international requirements, provisions of the laws covering registration, transparency and accountability, regulation and monitoring of the NPO sector should be reviewed.
849. Authorities in the United Republic of Tanzania should conduct risk assessment of the NPO sector regarding misuse of the sector for terrorist financing. The authorities should also undertake outreach programmes to raise awareness in the NPO sector about vulnerabilities to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse.
850. Authorities in the United Republic of Tanzania should develop and implement effective systematic programmes that promote transparency, accountability, integrity and public confidence in the NPO sector.
851. The Registrars of NGOs and Societies in Mainland Tanzania and Zanzibar respectively should be given adequate powers under their laws to conduct inspections for effective supervision and monitoring of the NPO sector.
852. Furthermore, the resource capacity of Registrars of NGOs and Societies should be adequately improved to effectively meet the objectives of the NGO Act and Societies and support the work of the law enforcement authorities in relation to terrorist financing investigations.
853. NPOs should be required to maintain, for a minimum period of five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in consistent with the purpose and objectives of the NPO.
854. Authorities in the United Republic of Tanzania should enhance the capacity of the relevant authorities to ensure that there is adequate expertise and capacity to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or organisations. In addition, the authorities should have effective formal mechanism in place that allow for prompt investigative or preventative action against such NPOs.
855. Authorities in the United Republic of Tanzania should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO is a front for fundraising by a terrorist organisation; is being

exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative measures.

856. In Mainland Tanzania, authorities should give adequate investigative powers to the Registrar of NGOs to ensure that that full access on the administration and management of a particular NGO, including financial and programmatic information, may be obtained during the course of an investigation.
857. The authorities in the United Republic of Tanzania should have clearly defined formal mechanism to ensure effective domestic cooperation, coordination and information sharing to the extent possible among all levels of appropriate authorities or organisation that hold relevant information on NPOs of potential terrorist financing.
858. All relevant authorities in the United Republic of Tanzania need to take appropriate measures to ensure that the POTA is enforceable in Zanzibar.

### 5.3.3 *Compliance with Special Recommendation VIII*

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> <li>▪ No risk assessment of the NPO sector regarding misuse of the sector for terrorist financing has been conducted.</li> <li>▪ No periodic assessment is undertaken on the sector's potential vulnerabilities to terrorist activities.</li> <li>▪ There has been no outreach programmes undertaken in the United Republic of Tanzania to raise awareness in the NPO sector about the vulnerabilities of the NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse.</li> <li>▪ There is no specified record keeping period prescribed for NPOs to maintain and make available to the 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.</li> <li>▪ There is no mechanism in place that allow for prompt investigative or preventative action against such NPOs that are</li> </ul>

		<p>suspected of either being exploited or actively supporting terrorist activity or terrorist organisations.</p> <ul style="list-style-type: none"> <li>▪ There is no mechanism to ensure effective domestic cooperation, coordination and information sharing to the extent possible among all levels of appropriate authorities or organisation that hold relevant information on NPOs of potential terrorist financing.</li> <li>▪ The Registrars of NGOs and Societies are under-resourced to effectively implement the NPO legislations.</li> <li>▪ The POTA is not enforceable in Zanzibar.</li> </ul>
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## 6. NATIONAL AND INTERNATIONAL CO-OPERATION

### 6.1 *National co-operation and coordination (R.31 & R.32)*

#### 6.1.1 *Description and Analysis*

##### *Legal framework*

859. The AML Act, 2006, the Mutual Assistance in Criminal Matters Act; the Extradition Act; the Prevention of Terrorism Act; the Prevention and Combating of Corruption Act; the Drugs and Prevention of Illicit Trafficking in Drugs Act, the Proceeds of Crime Act and the Economic and Organised Crime Control Act all have provisions for international cooperation. There is also cooperation through SARPCCO, HONLEA and Interpol.

860. Zanzibar has no AML legislation in place yet and the POTA was not yet effective in Zanzibar.

##### *Mechanism for domestic cooperation and coordination in AML/CFT (c. 31.1)*

##### *Policy cooperation*

861. Section 8 of the AML Act, establishes the National Multi-Disciplinary Committee on AML to advise Government on legislative, regulatory and policy reforms in respect of Anti-Money Laundering and combating predicate offences. The Committee comprises representatives from the Bank of Tanzania, Ministry of Finance (Mainland

and Zanzibar), Attorney General's Chambers (Mainland and Zanzibar), Directorate of Criminal Investigation, Ministry of Foreign Affairs, CMSA and TISS. The Commissioner of the FIU is also a member of the National AML Committee.

862. The National Committee was formally constituted in 2007 and cooperates and coordinates domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing within the United Republic of Tanzania. It is spearheading the implementation of the AML Act. In this respect, the Committee, with the help of the ESAAMLG Secretariat has been actively sensitising senior government officials, government departments, Members of the Parliament of the United Republic of Tanzania and financial sector regulators in AML/CFT issues. The National Committee has also drafted a National AML/CFT strategy which as at the date of the on-site visit was in the process of being approved by the relevant authorities in the United Republic. The National Strategy is designed to guide the implementation of the AML/CFT programme in the next 5 years.
863. The National AML Committee however has no representation from all the government institutions involved in the fight against ML and TF including the ISD, the Gaming Board, the Customs Services, and Immigration. Further, the mandate of the National AML Committee does not extend to CFT issues. These shortcomings may slow down the implementation of the AML/CFT policies across all sectors.
864. Section 27 of the NPSA makes provision for the establishment of a National Criminal Justice Forum to meet and discuss strategic issues involved in the administration of criminal justice. Members of the forum include the DPP, the Director of Criminal Investigation, Director of TISS, Director of Operations of the Prevention and Combating of Corruption Bureau, the Commissioner of the FIU and two legal experts from an association of public universities and an association of private universities, two senior practising advocates.
865. Section 4 of the Drugs and Prevention of Illicit Traffic in Drugs Act as applicable to Mainland Tanzania and Section 4 of the Drugs and Prevention of Illicit Traffic in Drugs Act as applicable to Zanzibar provides for the establishment of the Commission for the National Coordination of Drug Control responsible for defining, promoting and coordinating the policy of the Government for the control of drug abuse and of drug trafficking.
866. At the time of the onsite visit, there were no specific domestic structures to cooperate and coordinate the development of policies to combat terrorist financing.

### *Operational cooperation*

867. An MOU was signed in 2002 between the Tanzania Post Corporation, the Tanzania Police Force and the Customs Department of the Revenue Authority for cooperation in combating drug trafficking in Tanzania and cross border criminal offences.
868. There is however, no mechanism in place to promote effective operation co-ordination between law enforcement agencies and the FIU or between supervisors, law enforcement agencies and the FIU.

*Additional element –mechanisms for consultation between competent authorities (c. 31.2)*

869. Section 6(f) of the AML Act provides that the FIU must in consultation with the appropriate regulatory authority issue guidelines to reporting persons.
870. While there is no mechanism for consultation with the reporting persons, it appeared to the assessment team from the discussions held with some of the private sector operators that they had been consulted on the AML Act and Regulations. Some of them have also indicated that they have received the draft STR Forms from the FIU for comments.

*Recommendation 32*

871. There has been no review of the effectiveness of the AML/CFT system in the United Republic of Tanzania.

**6.1.2 Recommendations and Comments**

872. The authorities should consider extending (i) the mandate of the National AML Committee to include CFT issues and (ii) the membership of the Committee to ensure that all government institutions involved in the fight against money laundering and terrorist financing including the ISD, Customs and Immigration, are adequately represented.
873. Appropriate mechanisms should be implemented to ensure effective operational cooperation between the FIU and law enforcement agencies and between the FIU, law enforcement agencies and supervisory bodies. The FIU should consider entering into MOU with the law enforcement agencies and supervisory bodies to facilitate exchange of information and other operational cooperation issues.
- .



874. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

### 6.1.3 *Compliance with Recommendation 31 & 32 (criterion 32.1 only)*

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> <li>▪ No mechanisms have been put in place in terms of the Anti-Money Laundering Act to enable domestic operational cooperation and coordination on AML/CFT matters between law enforcement agencies and the FIU or between supervisors, law enforcement agencies and the FIU.</li> <li>▪ Effectiveness of domestic development and implementation of cooperation and coordination of policies relating to AML/CFT could not be determined.</li> <li>▪ Lack of a national framework dealing with domestic cooperation and coordination on TF.</li> <li>▪ The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
R.32	NC	<ul style="list-style-type: none"> <li>▪ No mechanisms in place to review the effectiveness of systems for combating ML and TF on a regular basis.</li> </ul>

## 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

### 6.2.1 *Description and Analysis*

#### *Ratification of AML related UN Conventions (c. 35.1)*

875. The United Republic of Tanzania acceded to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) in 1996 and to the UN Convention Against Transnational Organized Crime (2000) (Palermo Convention) in July 2005.

#### *Ratification of CFT related UN Conventions (c.I.1)*

876. The United Republic of Tanzania acceded to the UN International Convention for Suppression of Financing of Terrorism (1999) on 22 January 2003.

877. Responsive to the UN comprehensive legal framework in the field of counter-terrorism, Tanzania is already Party to nine (9) out of thirteen (13) major UN

Instruments (Conventions and Protocols) relating to Terrorism and is in the process of ratifying or acceding to the remaining four (4).

***Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19- c. 35.1)***

878. The United Republic of Tanzania, in particular Mainland Tanzania has adopted legislative provisions to implement the provisions in Article 3 (on offences and sanctions related to narcotics and psychotropic substances); Article 4 (on establishing jurisdiction over offences related to narcotics and psychotropic substances); Article 5 (on confiscation of instrumentalities); Articles 6 and 7 (on extradition and mutual legal assistance); Articles 8-11 (on transfer of proceedings, other forms of cooperation and training, international cooperation and controlled delivery); and Articles 15 and 19 (on commercial carriers and the use of the mails).
879. The articles are implemented pursuant to the Anti-Money Laundering Act, 2006; the Mutual Assistance in Criminal Matters Act; the Extradition Act; the Drugs and Prevention of Illicit Trafficking in Drugs Act and The Proceeds of Crime Act.

***Implementation of SFT Convention (Articles 2-18, c 35.1 & c. I.1)***

880. The United Republic of Tanzania has adopted legislative provisions to implement the provisions in Article 2 (creating terrorist related acts as offences); Article 4 (offences in Article 2 of Convention); Article 5 (legal and natural persons can be liable); Article 6 (terrorist related offences are not justifiable for political or other reasons); Article 7 (The United Republic of Tanzania has jurisdiction over terrorist acts in the United Republic of Tanzania); Article 8 (identification and confiscation terrorist related assets); Articles 9-10 (investigating terrorist activities in the United Republic of Tanzania); Article 11 (terrorist financing offence is an extraditable offence); Article 12 (providing assistance to other States); Article 13-14 (sole ground of fiscal and political offences); Article 15-16 (extradition of accused or suspect).
881. The articles are implemented in the Prevention of Terrorism Act, the Anti-Money Laundering Act, 2006; the Mutual Assistance in Criminal Matters Act; the Extradition Act; the Constitution of the United Republic of Tanzania and The Proceeds of Crime Act.

***Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34- c. 35.1)***

882. The United Republic of Tanzania has adopted legislative provisions to implement the provision in Articles 5, 6, 7, 10, 11, 12-16, 18 (on criminalization of participation in an organized criminal group, on criminalization of the laundering of proceeds of crime; on establishing the FIU; liability of legal persons; prosecution, adjudication and sanctions for ML; confiscation and seizure of instrumentalities of crime; providing

international cooperation for purposes of confiscation; establishing jurisdiction over ML offences; and extradition and mutual legal assistance).

883. In addition, the United Republic of Tanzania has adopted legislation to implement Articles 26, 27, 29, 30, 31, and 34 (on law enforcement and prevention of organized crime).
884. The articles are implemented in the Anti-Money Laundering Act, 2006; the Mutual Assistance in Criminal Matters Act; the Extradition Act; the Proceeds of Crime Act and the Economic and Organized Crime Control Act.
885. The United Republic of Tanzania has not as yet adopted any legislation to give effect to the following provisions of the Palermo Convention:
- Article 7(2): Introducing measures to detect and monitor the movement of cash across borders,
  - Article 18(13): Designation of a Central Authority tasked with the Responsibility and power to receive requests for mutual legal assistance and either to execute or transmit such requests to competent authorities for execution
  - Article 20: Use of Special Investigative Techniques as far as it relates to controlled delivery
  - Article 24 & 25: No law operational within the United Republic contain any provision which ensures the protection of witnesses and victims. Current laws only cater for assistance to be provided to victims, but not protection.
  - Article 29: No training programmes appears to have been developed for law enforcement personnel, including prosecutors, investigating magistrates, customs personnel and other personnel charged with the prevention, detection and control of the offences covered by the Palermo Convention. The Assessors were not provided with any formal training programme, nor were the Authorities forthcoming with information on how they plan to train their law enforcement staff on dealing with the challenges posed by money laundering, terrorist financing and organized crime.

***Implementation of UN SCRs relating to Prevention and Suppression of FT (c. I.2)***

886. As discussed in Section 2.4 (Freezing of funds used for terrorist), the United Republic of Tanzania no regulations have been issued to give effect to the freezing mechanisms under UNSCRs 1267 and 1373

***Additional element- ratification or implementation of other relevant international conventions (c. 35.2)***

887. The United Republic of Tanzania has acceded to the following AML/CFT related protocols:

- East Africa Protocol on Combating of Illicit Drug Trafficking, 2001
- SADC Protocol on Combating of illicit drug trafficking in the SADC Countries, 1996
- UN Protocol against the Illicit Manufacturing and Trafficking in Firearms, their parts and Components and Ammunitions, Supplementing the UN Convention Against Transnational Organised Crime of 2001
- BAMAKO Declaration on African Common Position on the illicit proliferation, circulation and trafficking on SALW of 2000
- SADC Declaration concerning Firearms, ammunition and other related materials in the Southern Africa.
- SADC Protocol on the control of Firearms, ammunitions and other related materials of 2001
- The Nairobi Declaration and protocol on small arms and light weapon;
- Signatory to the Protocol to the said OAU Convention of 2005.
- UN Convention on Psychotropic Substances (1971) acceded in December 2000,
- UN Convention Against the taking of Hostages (1979) acceded on 2003,
- UN Convention for the Suppression of Terrorism Bombing (1997) acceded in 2003,
- Single Convention on Narcotic Drugs (1961), acceded in 1993.
- Tanzania is an active member of various regional protocols such as Southern African Regional Police Chiefs Cooperation Organization (SARPCCO),
- East African Regional Police Chiefs Cooperation Organization (EAPCCO),
- HONLEA The Operational Meeting on drugs for Directors of CID and Heads of Anti Narcotic Units in East African Countries;
- the East African Interstate Security Committee,
- SADC Interstate Security Committee and attends regularly in meetings held in Vienna by UN Commission on Drugs

#### 6.2.2 *Recommendations and Comments*

888. As mentioned earlier, and in the discussion to follow under mutual legal assistance, the efficacy of the implementation of these conventions at least in the area of international cooperation, could not be determined as no statistics were available to enable the assessors to make an assessment of whether and how the United Republic of Tanzania has implemented the provision of the international conventions.

889. It is recommended that the United Republic of Tanzania widens the scope of the Economic and Organized Crime Control Act; the Drugs and Prevention of Illicit Traffic in Drugs Act; the Proceeds of Crime Act; the Anti-Money Laundering Act and

the Prevention of Terrorism Act to provide for witness assistance, their protection and relocation.

890. It is recommended that the United Republic of Tanzania widens the scope of the Economic and Organized Crime Control Act; the Drugs and Prevention of Illicit Traffic in Drugs Act; the Proceeds of Crime Act; the Anti-Money Laundering Act and the Prevention of Terrorism Act to cater for the use of special investigative techniques as far as it relates to controlled delivery
891. The United Republic of Tanzania should also introduce measures to detect and monitor the movement of cash and bearer instruments across borders
892. The United Republic of Tanzania should designate a Central Authority tasked with the responsibility and power to receive requests for mutual legal assistance and either to execute or transmit such requests to competent authorities for execution
893. The United Republic of Tanzania should also consider developing a National Training Programme for law enforcement personnel, including prosecutors, investigating magistrates, customs personnel and other personnel charged with the prevention, detection and control of the offences covered by the Palermo Convention.
894. The authorities must issue implementing regulations under the POTA to give effect to the freezing mechanisms under UNSCRs 1267 and 1373.
895. The authorities must ratify and fully implement all the relevant UN Conventions and Protocols under the SFT Convention.
896. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POTA and the POCA with respect to Zanzibar. .

### 6.2.3 *Compliance with Recommendation 35 and Special Recommendation I*

	Rating	Summary of factors underlying rating
R.35	PC	<ul style="list-style-type: none"><li>• No effective framework to administer implementation of AML matters</li><li>• The United Republic of Tanzania has not fully implemented the Palermo Convention and the UN International Convention for the Suppression of the Financing of Terrorism as it has no provisions, (but to mention a few), for:<ul style="list-style-type: none"><li>a. witness assistance, protection and relocation; and</li><li>b. use of Special Investigative Techniques as far as it relates to controlled delivery</li><li>c. no Central Authority tasked with the responsibility and power to receive requests for mutual legal assistance and either to execute or transmit such requests to competent authorities for execution</li></ul></li></ul>

		<p>d. no adequate training programmes and technical assistance on Money Laundering at National level to enhance effective implementation of the UN Palermo Convention.</p> <ul style="list-style-type: none"> <li>• The AML Act, the POCA and POTA are not enforceable with respect to Zanzibar.</li> <li>• Not all the relevant UN Conventions and Protocols under the SFT Convention have been ratified and fully implemented in the United Republic of Tanzania.</li> </ul>
SR.I	NC	<ul style="list-style-type: none"> <li>• No implementing regulations have been issued to give effect to the freezing mechanism under the UN Security Council Resolutions 1267 and its successor resolutions and UNSCR 1373 have not been implemented.</li> <li>• Not all the relevant UN Conventions and Protocols under the SFT Convention have been ratified and fully implemented in the United Republic of Tanzania.</li> <li>• The POTA is not enforceable in Zanzibar.</li> </ul>

### 6.3 Mutual Legal Assistance (R.36-38, SR.V)

#### 6.3.1 *Description and Analysis*

##### **Legal framework**

897. The United Republic of Tanzania has enacted the Mutual Assistance in Criminal Matters Act (MACM Act) which makes provision for mutual assistance between the United Republic of Tanzania and foreign countries in relation to criminal matters. The term “criminal matters” is construed under the Act in terms of the definition of “serious offence”. A “serious offence” is defined under section 2 of the MACM Act as an offence the maximum penalty for which is death or imprisonment for not less than twelve months. The definition of “serious offence” captures the money laundering offences under the AML Act and the terrorist financing offences under the POTA. Pursuant to the terms of sections 8 and 9(1) of the MACM Act the Attorney General appears to be the central authority for making and receiving requests for mutual legal assistance. However, in practice all requests for mutual legal assistance are channelled through the Ministry of Foreign Affairs.

898. It was not clear to the assessors that mutual legal assistance for ML/TF investigations and prosecutions could be made available with respect to Zanzibar as the AML Act and the POTA are not enforceable with respect to Zanzibar.
899. The United Republic of Tanzania has entered into the following bilateral and multilateral agreements on extradition and mutual legal assistance-
- Agreement between the United Republic of Tanzania and the International Criminal Court (ICC) on the relocation to the territory of Tanzania witnesses who have appeared or will appear in proceedings before the Court
  - Agreement between the United Republic of Tanzania and the Registrar of ICC on the Temporary Relocation of Refugee Witnesses of the ICC
  - MOU between Tanzania Prisons Services and Zambia Prisons Services
  - Agreement between the United Republic of Tanzania and the Republic of Mauritius on Exchange of Convicted Offenders
  - Agreement on Legal Proceedings in Civil and Commercial Matter between Tanzania and the Republic of Austria
  - Headquarters Agreement between the United Republic of Tanzania and the United Nations International Criminal Tribunal for Rwanda
  - Agreement between the preparatory commission for the comprehensive nuclear test ban treaty organisation and the Government of the United Republic of Tanzania in the conduct of activities relating to the international monitoring facilities for the comprehensive nuclear ban treaty signed 6<sup>th</sup> July 2006
  - Arrangement with Commonwealth countries (made under the London scheme as amended in November, 2002 and implemented by the Extradition (Commonwealth Countries) Regulations 1998
  - OAU Convention on the Prevention and Combating of Terrorism 1999
  - UN Convention on the Prevention and Punishment of the Crime of Genocide
900. The United Republic of Tanzania has also acceded to the SADC Protocol on Mutual Legal Assistance in Criminal Matters and Extradition.
901. The Act also allows for the United Republic of Tanzania to provide assistance to other States in criminal matters outside the ambit of the MACM Act (section5)

### **Recommendation 36**

*Widest possible range of mutual assistance (c. 36.1)*

902. Section 4 of the MACM Act defines mutual assistance in criminal matters as including: obtaining evidence, documents or other articles, provision of documents and other records, the location of identification of witnesses or suspects, the execution of requests for search and seizure, the making of arrangements for persons to give evidence or assist in investigation, the forfeiture or confiscation of property in respect of offences; the location of property that may be forfeited and the service of documents.
903. Evidence taking includes appearing before a magistrate and giving evidence under oath and answering questions (section 11 MACM Act). The Magistrate must certify that the evidence was taken by him and certify copies of all documents and articles produced before him before sending them to the Attorney General.
904. Mutual assistance to a foreign state also includes obtaining an order from the Magistrate for a warrant for the search of a person or premises and seizure of any thing (section 13 MACM Act). The Act makes specific provisions for the following types of other assistance:-
- the making of arrangements for persons to give evidence or assist in investigations (sections 24 and 25 MACM Act). Under these provisions a prisoner in Tanzania arrangements may be made to enable a prisoner in Tanzania to testify in person in proceedings in a criminal matter in such foreign country, or for such prisoner to grant assistance to the foreign authorities in the investigation to a criminal matter in such foreign country
  - enforcement of foreign forfeiture or foreign pecuniary penalty order in respect of property located in Tanzania (section 33 MACM Act)
  - application for an order restraining any person from dealing with property (interdict: section 34 MACM Act)
  - obtaining search warrants in respect of property tracking documents (section 35)
  - obtaining an order from a judge of the High Court section to obtain information about transactions through an account with a financial institution in Tanzania or to obtain a monitoring order directing a financial institution to give information about transactions conducted through an account with the financial institution(section 35(3)(b) and (c) MACM Act)
  - service of documents (section 36 MACM Act)

*Provision of assistance in timely, constructive and effective manner (c. 36.1.1)*

905. The United Republic of Tanzania if requested to provide any information by a requesting state is able to reply in timely manner, a good example can be adduced in



the case of bombing of US Embassy in Dar Es Salaam in 1998, whereby a bilateral agreement was concluded and assistance was given to FBI.

906. The Representatives of the DPPs office indicated that assistance to foreign countries can be provided between a period of 1 month to 3 months as from date of receiving the request, depending on the complexity of the case and whether the DPP's office has to involve the Police to assist in the execution of the request for mutual legal assistance. The Assessment Team requested for statistics to confirm the information received, but none was provided. As such, the assessors could not determine whether the United Republic can and do provide assistance in a timely, constructive and effective manner.

*No unreasonable or unduly restrictive conditions on mutual assistance (c. 36.2)*

907. Section 6 sets out the grounds on which the Attorney General may refuse a request for mutual assistance. These include:

- the request relates to the prosecution or punishment of a person for an offence that is, by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- there are reasonable grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his race, sex, religion nationality or political opinions;
- the request relates to a prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Tanzania, would have constituted an offence under the military law of Tanzania but not under the ordinary criminal law of Tanzania
- the granting of the request would prejudice public safety, public order, defence or the economic interest of Tanzania;
- the request relates to the prosecution of a person for an offence in a case where the person has been acquitted or pardoned by a competent court or authority in the foreign country or has undergone the punishment provided by the law of that country, in respect of that offence or of another offence constituted by the same act or omission as that offence; or
- the provision of the assistance could prejudice an investigation or proceedings in relation to a criminal matter in Tanzania; or
- the provision of the assistance would, or would be likely to prejudice the safety of any person, whether in or outside Tanzania;

- the provision of assistance would impose an excessive burden on the resources of Tanzania

908. These grounds for refusal of legal assistance do not appear to be prohibitive or subject to unreasonable, disproportionate or unduly restrictive conditions.

*Efficiency of process (c. 36.3)*

909. Although the MCAM Act provides that requests for mutual legal assistance must be made to the Attorney General, in practice requests for mutual legal assistance are received by the Ministry of Foreign Affairs which then forwards it to the OAG which in turn then sends it to the ODPP. Once the request has been dealt with, it is transmitted back to the Ministry of Foreign Affairs through the OAG for forwarding to the requesting state. The representatives of the DPP's office indicated that the execution of requests for mutual legal assistance requests occurs in an efficient and timely manner. However, no statistics were provided to enable the Assessors to determine whether requests were executed in a timely way and without undue delays.

*Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)*

910. Involvement of fiscal matters is not one of the grounds on which a request for Mutual Legal Assistance may be refused in terms of section 6 of the Mutual Legal Assistance Act. The Written Laws (Miscellaneous Amendments) Act expanded the definition of serious offences under the Proceeds of Crime Act to include money laundering and predicate offences. As such, within the United Republic, all serious offences regardless of whether it involves fiscal matters or not, are offences on which Mutual Legal Assistance can be provided under the Mutual Assistance in Criminal Matters Act.

*Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)*

911. The Mutual Assistance in Criminal Matters Act does not contain an express provision for overriding secrecy and confidentiality provisions. Under section 48 of the Banking and Financial Institutions Act banks and financial institutions can only disclose information as permitted under the law. In the absence of a judicial pronouncement on this issue the assessment team was unable to determine the impact of section 48 of the Banking and Financial Institutions Act on mutual legal assistance requests pertaining to disclosure of financial and other records held by a bank or financial institution.

*Availability of powers of competent authorities (applying R28, c.36.6)*

912. Law enforcement authorities may, on obtaining an order from the Court use the powers vested upon them under the laws of the United Republic of Tanzania in response to requests for mutual legal assistance.

*Avoiding conflicts of jurisdiction (c. 36.7)*

913. It did not appear that the United Republic of Tanzania has devised any mechanism for determining the best venue for prosecutions of defendants in the interests of justice in cases that are subject to prosecution in more than one country.
914. The authorities have indicated that if such a scenario was to arise, the first step would be to identify those countries claiming the right to prosecute.

*Additional element –Availability of powers of competent authorities required under R28 – (c. 36.8)*

915. The Authorities advised that where requests for assistance were channelled directly to their offices by their counterparts in foreign jurisdictions, assistance can only be provided in an informal manner. Examples were given where assistance were informally provided through SARPCO and INTERPOL

*International cooperation under SR V (applying c.36.1-36.6 in R.36, c. V.1)*

916. The MACM Act makes provision for the granting of mutual assistance in any criminal matter and does not make a distinction between money laundering and terrorist financing. The Written Laws (Miscellaneous Amendments) Act further amended the MACM Act to ensure that serious offences include money laundering and terrorist financing, which is a predicate offence for money laundering. The test under the MACM Act, is whether a matter is a criminal matter and whether it is a serious offence. Accordingly, assistance in connection with criminal investigations or extradition proceedings in respect of TF offences may be rendered. The write up on criteria 36.1 to 36.6 apply to this paragraph.
917. However, the provision of legal assistance in TF related matters is undermined as the POTA is not enforceable with respect to Zanzibar.

*Additional element- (applying c. 36.7 & 36.8 in R 36, c. V.6)*

918. The same rules apply as discussed above on V.1.

### **Recommendation 37**

#### *Legal framework*

Mutual Assistance in Criminal Matters, Act Cap 254, The Extradition Act, Cap 368

#### *Dual criminality and mutual assistance (c. 37.1 & 37.2)*

919. Section 6(2)(a) & (b) of the MACM Act, provides that in the absence of dual criminality, the Attorney General can use his discretion to refuse a request for mutual legal assistance. This subsection contains the following provision:

*A request by a foreign country for assistance under this Act may be refused if in the opinion of the Attorney-General-*

- (a) the request relates the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Tanzania, would not have constituted an offence against the law of Tanzania;*
- (b) the request relates to the prosecution or punishment of a person in respect of an act or omission that occurred, or is alleged to have occurred, outside the foreign country and a similar act or omission occurring outside Tanzania in similar circumstances, would not have constituted and offence against the law of Tanzania.*

920. The Authorities explained that once the dual criminality requirement has been met, there will be no legal or practical impediments for rendering assistance. The Authorities further confirmed that technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence, will not pose an impediment to the provision of mutual legal assistance.

921. As no examples of any cases and statistics on requests for mutual legal assistance received by the United Republic were provided to the assessment team the overall effectiveness of the regime could not be determined.

#### *International co-operation under SRV (applying c. 37.1-37.2 in R37, cV.2)*

922. As stated above, the MACM Act makes provision for the granting of mutual assistance in any criminal matter and do not make a distinction between money laundering and terrorist financing. The test for providing assistance under the MACM Act, is whether a matter is a criminal matter and whether it is a serious offence. Accordingly, assistance in connection with criminal investigations or extradition proceedings in respect of TF offences may be rendered provided that the requirement of dual criminality is met. The write up on criteria 37.1 to 37.2 apply to this paragraph.
923. However, the provision of legal assistance in TF related matters is undermined as the POTA is not enforceable with respect to Zanzibar.

### **Recommendation 38**

#### ***Timeliness to requests for provisional measures including confiscation (c. 38.1)***

924. The MACM Act sets out the procedure where a foreign request is received for the enforcement of a foreign forfeiture order (section 32(1)(a)(i)), a foreign pecuniary penalty order (section 32(1)(a)(ii) or foreign interdict (section 32(2)) and for assistance for locating any tainted property<sup>25</sup> (section 33). The term “tainted property” which is defined in terms of the POCA includes any property used in or in connection with the commission of the offence. However, instrumentalities intended to be used in the commission of the ML, FT or other predicate offences are not covered.
925. As no statistics were made available to the assessment team it was not possible to determine the effectiveness of the mutual legal assistance regime in place and the timeliness of the response to requests for assistance.

#### ***Property of corresponding value (c. 38.2)***

926. The definition of “tainted property” under the POCA does not appear broad enough to cover property of corresponding value.

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<sup>25</sup> The term “tainted property” has the meaning assigned to it under the POCA and reads as follows:  
“tainted property” in relation to a serious offence, means –

- (a) any property used in, or in connection with, the commission of the offence;
- (b) any proceeds of the offence; or
- (c) any property in the United Republic which is the proceeds of a foreign serious offence in respect of which an order may be registered in terms of Part VI of the MACM Act

### *Coordination of seizure and confiscation actions (c. 38.3)*

927. There are no formal arrangements in place to coordinate seizure and confiscation actions with foreign countries.

### *International cooperation under SR V (applying c. 38.1-38.3 in R.38, c.V.3)*

928. As discussed earlier in the report, the test to provided mutual legal assistance under the MACM Act is whether a matter is a criminal matter and whether it is a serious offence. Accordingly, assistance in connection with requests by foreign countries for the identification, freezing, seizure, or confiscation of TF funds may be rendered provided that the requirement of dual criminality is met. The write up for 38.1-38.3 also applies to this paragraph.
929. However, the provision of legal assistance in TF related matters is undermined as the POTA is not enforceable with respect to Zanzibar.

### *Asset forfeiture fund (c. 38.4)*

930. The laws of the United Republic do not make provision for the establishment of an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes. Where, a court makes a forfeiture order against property, the property vests in the United Republic (section15 POCA).

### *Sharing of confiscated assets (c. 38.5)*

931. Section 32A of the MACM Act provides for the reciprocal sharing of confiscated assets. Section 32A provides that the Attorney General may order that property or any part of the property forfeited or the value of that property to be given out or remitted to the requesting Government.

*Additional element – recognition of foreign orders for a) confiscation of assets from organisations principally criminal in nature; b) civil forfeiture and c) confiscation of property which reverses burden of proof (applying c. 3.7 in R3- c. 38.6)*

932. The laws applicable to the United Republic of Tanzania do not make provision for the civil forfeiture of proceeds of crimes. As such, the United Republic of Tanzania will not be able to enforce foreign confiscation orders pertaining to proceeds of crime which is obtained as a result of a civil process.

*Additional element under SR V (applying c. 38.4-38.6 in R38, c. V.7)*

933. The write up for 38.4-38.6 also applies to this paragraph.
934. However, the provision of legal assistance in TF related matters is undermined as the POTA is not enforceable with respect to Zanzibar.

*Statistics (applying R32)*

935. The Assessors were not provided with any statistics on Mutual Legal Assistance Requests whether to or from the United Republic that pertains to ML and TF.
936. The Assessors were however provided with general statistics on Mutual Legal Assistance Requests on other criminal matter that were made to the United Republic of Tanzania as highlighted herein below.

**Statistics on MLA requests, January 2005 to September 2008**

	Money Laundering	Terrorist Financing	Other criminal offence (specify)
Number of MLA requests received	-	-	9 cases mainly in fraud offences.
Number of requests granted	-	-	9 cases
Number of requests refused	-	-	
Average Time required to respond	-	-	Very short time (ML cases are supposed to be brief)

**6.3.2 Recommendations and Comments**

937. The authorities should maintain comprehensive statistics on: the number requests for Mutual legal assistance received, the nature of such requests, the number of requests responded to, the time taken to respond to such requests and other relevant matters.

938. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POCA and the POTA with respect to Zanzibar.

***Recommendation 36***

939. The United Republic of Tanzania's legal framework for providing Mutual Legal Assistance and facilitating cooperation is strong. However, the absence of proper procedures to implement the existing framework has the potential to undermine the effectiveness of the system. This also has the potential of unnecessary delaying the speedy execution of requests.
940. The authorities should have in place proper procedures to ensure that requests are executed in a timely way and without undue delays.
941. The MACM Act should be amended to include a confidentiality overriding provision to ensure that there are no impediments to the disclosure of financial and other records held by a bank or financial institution.
942. The United Republic of Tanzania should devise a mechanism for determining the best venue for prosecutions of defendants in the interests of justice in cases that are subject to prosecution in more than one country.

***Recommendation 38***

943. The POCA should be amended to ensure that mutual legal assistance can be provided in relation to the confiscation, freezing or seizure of instrumentalities intended to be used in the commission of the ML, FT or other predicate offences are not covered.
944. The definition of "tainted property" under the POCA should be amended to cover property of corresponding value.
945. Formal arrangements must be put in place to coordinate seizure and confiscation actions with foreign countries.
946. The authorities should establish an Asset Forfeiture Fund into which all or a portion of confiscated properties will be deposited and which will be used for law enforcement, health, education or other appropriate purposes.

**6.3.3 *Compliance with Recommendations 36 to 38 and Special Recommendation V***

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	▪ It was not clear to the assessors that mutual legal assistance for



		<p>ML/TF investigations and prosecutions could be made available with respect to Zanzibar as the AML Act and the POTA are not enforceable with respect to Zanzibar..</p> <ul style="list-style-type: none"> <li>▪ In the absence of statistics it could not be determined that assistance is provided in a timely, constructive and effective manner.</li> <li>▪ In the absence of statistics it could not be determined that requests were executed in a timely way and without undue delays.</li> <li>▪ In the absence of a judicial pronouncement on this issue the assessment team was unable to determine the impact of the secrecy provision under section 48 of the Banking and Financial Institutions Act on mutual legal assistance requests pertaining to disclosure of financial and other records held by a bank or financial institution.</li> <li>▪ No provision for avoiding conflict of jurisdiction.</li> <li>▪ Overall effectiveness could not be determined.</li> </ul>
<b>R.37</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>▪ The absence of dual criminality can be a ground for refusal of a request. This may be an issue as certain designated categories of predicate offences are not predicates under the AML Act.</li> <li>▪ The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>▪ Overall effectiveness could not be determined.</li> </ul>
<b>R.38</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ Instrumentalities intended to be used in the commission of the ML, FT or other predicate offences are not covered.</li> <li>▪ As no statistics were made available to the assessment team it was not possible to determine the effectiveness of the mutual legal assistance regime in place and the timeliness of the response to requests for assistance.</li> <li>▪ The definition of “tainted property” under the POCA does not appear broad enough to cover property of corresponding value.</li> <li>▪ There are no formal arrangements in place to coordinate seizure and confiscation actions with foreign countries.</li> <li>▪ The laws of the United Republic do not make provision for the establishment of an asset forfeiture fund.</li> <li>▪ The AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>▪ The same deficiencies that apply to Recommendations 36, 37 and 38 also apply to SRV.</li> </ul>

		<ul style="list-style-type: none"> <li>It was not clear to the assessors that mutual legal assistance related to TF offences could be made available with respect to Zanzibar as: the POTA was not enforceable with respect to Zanzibar.</li> </ul>
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## 6.4 Extradition (R.37, 39, SR.V)

### 6.4.1 Description and Analysis

#### Legal framework

The Extradition Act Cap 368

Mutual Legal Assistance in Criminal Matters Act Cap 254

The Prevention of Terrorism Act, cap 19

The Prevention and Combating of Corruption Act, 2007

947. Extradition is governed by the Extradition Act which applies to both Mainland Tanzania and Zanzibar. The Act sets out the procedure for extraditing offenders to and from a foreign state.
948. A fugitive criminal defined in section 2 of the Extradition Act as *“any person accused or convicted of an extradition crime committed within the jurisdiction of another country who is in, or is suspected of being in Tanzania, and a reference to a fugitive criminal of a country is a reference to a fugitive criminal accused or convicted of an extradition crime committed within the jurisdiction of that country”* may be surrendered.
949. Further, section 2 of the Extradition Act defines an ‘extradition crime’ as meaning a crime which, if committed within the jurisdiction of Tanzania, would be one of the crimes described in the Schedule to this Act.
950. Section 16 of the Extradition Act sets out the restrictions to the surrender of a person. A person will not be surrendered where-
- the offence is of a political character (section 5(2) and 16 of the Extradition Act)
  - the fugitive criminal or the person arrested is accused of some offence triable by a court in Tanzania or is undergoing sentence under any conviction in Tanzania, until he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise;
  - no provision (under the law of the requesting country or by agreement) exists to the effect that the offender will only be tried for the offence for which he is surrendered

#### *Dual criminality and mutual assistance (c. 37.1 & 37.2)*

951. Although not expressly mentioned in the law, dual criminality is required for the purposes of the extradition as the Extradition Act defines an “extradition crime” as a crime which, if committed within the jurisdiction of Tanzania, would be one of the crimes described in the Schedule to this Act.
952. The Authorities further confirmed that technical differences between the laws in the requesting and requested states, such as differences in the manner in which each country categorises or denominates the offence, will not pose an impediment to the provision of mutual legal assistance.

*Money laundering as extraditable offence (c. 39.1)*

953. Under the Extradition Act (as amended by the Written Laws (Miscellaneous Amendments) Act 2007) money laundering and offences relating to money laundering are extradition crimes.
954. However, as discussed earlier in the report, it was not clear to the assessors that the AML Act applied to Zanzibar.

*Extradition of nationals (c. 39.2)*

955. Under section 4 of the Extradition Act “every fugitive criminal of that country [the requesting state] who is in or suspected of being in Tanzania” is liable of being arrested, detained and surrendered. Further, the definition of a “fugitive criminal” refers to “any person accused or convicted of an extradition crime”. It would appear that the law does not make a distinction between a national and a non-national. As such, it appears that it is possible to extradite nationals. The authorities have indicated that nationals of the United Republic can be extradited under the Extradition Act and have been extradited.

*Cooperation for prosecution of nationals (applying c. 39.2(b), c. 39.3)*

956. The United Republic can extradite its own nationals so criterion 39.3 does not apply.

*Efficiency of extradition process (c. 39.4)*

957. The Extradition Act provides that a requisition for extradition must be made to the Minister (defined under section 2 as the Minister responsible for legal affairs) by a

diplomatic representative or consular officer of the requesting State. The authorities have indicated that the Ministry of Foreign Affairs receives extradition requests which are forwarded to the Office of the Attorney General to be processed. The procedure which is provided under the Act involves different stages and appears to be lengthy

958. The United Republic of Tanzania has not received any extradition request for money laundering. The Assessors were also not provided with any statistics in relation to the time taken to process extradition requests regarding other non-ML offences. It was therefore not possible for the assessors to determine whether requests and proceedings relating to ML could be handled without undue delay.

*Additional element – existence of simplified procedures relating to extradition (c. 39.5)*

959. There are no provisions which allow the adoption of simplified procedures for extradition.

*Extradition under SR V (applying c. 39.1-39.4 in R.39, c.V.4)*

960. Terrorist Financing Offences under the POTA are not extradition crimes for which extradition may be granted under the Extradition Act.

*Additional element under SR V (applying c. 39.5 in R 39, c. V.8)*

961. Terrorist Financing Offences under the POTA are not extradition crimes for which extradition may be granted under the Extradition Act.

*Statistics (applying R32)*

962. The table below shows the number of extradition requests, received by the authorities from January 2005 to September 2008

	ML	TF	Other criminal offence (specify)
Number of extradition requests received relating to domestic nationals	None	None	6 cases involving offences like rape, (gang rape), obtaining money by false pretence, murder, robbery (armed robbery, robbery with violence)
Number of extradition requests received relating to	None	None	8

foreign nationals			
Number of extradition requests granted relating to domestic nationals	None	None	6
Number of extradition requests granted relating to foreign nationals	None	None	8
Number of extradition requests refused relating to domestic nationals	None	None	None
Average Time required to finalise the request	N/A	N/A	

#### 6.4.2 *Recommendations and Comments*

963. The authorities must ensure that requests and proceedings relating to ML are handled without undue delay.
964. The Schedule to the Extradition Act must be amended to include the TF offences under the POTA.
965. Comprehensive statistics on extradition requests received, granted and time taken to process the requests must be kept and maintained by the authorities.
966. All relevant authorities in the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.

#### 6.4.3 *Compliance with Recommendation s 37 & 39, and Special Recommendation V*

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
<b>R.39</b>	PC	<ul style="list-style-type: none"> <li>The AML Act is not enforceable with respect to Zanzibar. Overall effectiveness of the extradition regime in relation to ML could not be assessed.</li> </ul>
<b>R.37</b>	PC	<ul style="list-style-type: none"> <li>The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>Terrorist Financing Offences under the POTA are not extradition crimes for which extradition may be granted under the Extradition Act.</li> <li>Overall effectiveness could not be assessed.</li> </ul>

SR.V	NC	Terrorist Financing Offences are not extradition crimes for which extradition may be granted under the Extradition Act.
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## 6.5 Other Forms of International Co-operation (R.40 & SR.V)

### 6.5.1 Description and Analysis

967. The FIU, police and supervisors are able to provide international cooperation to foreign counterparts. However, there were no statistics to confirm that such assistance is provided in a rapid, constructive and effective manner.

#### *Widest range of international cooperation (c. 40.1-40.2)*

##### *FIU to FIU cooperation*

968. Under the provision of section 6(i) of the AML Act, the FIU may exchange information with overseas financial intelligence units and comparable bodies. However, at the time of the onsite visit the FIU had not entered into any MOU to facilitate this process and it had not exchanged any information with other FIUs.

##### *Police to police cooperation*

969. The Police Force sends and receives police to police cooperation requests via the Interpol. There is also continued cooperation between the United Republic and the SADC countries in respect of the SARPPCO Agreement. The co-operation also enables the Police in Tanzania to hold joint investigations in any other police force's jurisdiction in the SADC region. Further cooperation is provided under the EAPCCO Agreement between the Police in the United Republic and members of EAPCCO.
970. According to the Authorities, there have been cooperation on joint investigations from time to time and cannabis eradication operations have been carried out and controlled deliveries undertaken particularly on drug cases mainly at the United Republic's international airport.
971. The police also provided examples of cases of joint investigations conducted under SARPPCO involving Tanzania, Zambia and Malawi to combat illegal immigration, illicit trafficking of fire arms stolen motor vehicles and narcotic drugs. A number of motor vehicles, large quantities of cannabis sativa, heroin, cocaine and khats were seized as a result of these joint operations. Homemade firearms and a large quantity

of precious stones and pornographic materials were also seized. Over a hundred and seventy illegal immigrants were arrested.

### *Other agencies*

972. Customs via the World Customs Organisation, Immigration through the International Office for Migration, the Post Corporation via Universal Postal Union and the Pan Africa Postal Union are able to exchange information with foreign counterparts.

### *Supervisor to supervisor exchange of information*

#### *Bank of Tanzania*

973. The Bank of Tanzania may, for the purposes of conducting consolidated supervision, enter into information sharing arrangements with foreign supervisory bodies (section 35(2) of the Banking and Financial Institutions Act, 2006).
974. The Bank has entered into MOU with-
- The Central Bank of Cyprus
  - The Reserve Bank of Zimbabwe
  - Central Bank of Comoros
  - Central Banks of Kenya, Uganda, Rwanda and Burundi under the Monetary Affairs Committee

#### *CMSA*

975. The United Republic of Tanzania is a member of the IOSCO and has applied to be a signatory of the IOSCO multilateral memorandum of understanding (MMOU) concerning consultation and cooperation and the exchange of information.
976. The CMSA is also part of the Committee of Insurance, Securities and Non-Banking Financial Authorities (CISNA) established under the SADC. CISNA promotes cooperation, exchange of information and engagement between regional regulators.
977. The CMSA is also a signatory of the East African Member States Securities Regulatory Authorities (EASRA) MOU. The objectives of the EASRA MOU are to establish a basis for technical cooperation and to foster mutual assistance including the execution of requests and the sharing of information. The other signatories of the MOU are the Capital Markets Authority Kenya, Capital Markets Authority Uganda

and the Capital Markets Advisory Council, Rwanda. The CMSA has also entered into bilateral MOU with the Nigeria Securities Exchange Commission and the Financial Services Board of South Africa.

#### **ISD**

978. The United Republic of Tanzania is a member of the International Association of Insurance Supervisors (IAIS) The ISD is also part of CISNA. The ISD has entered into bilateral MOU on the Exchange of Information for Cooperation and Consultation with the Financial Services Board of South Africa, the Registrar of Insurance, Pension and Provident Funds of Botswana and the Financial Services Commission of Mauritius.
979. No statistics were available to demonstrate that the assistance provided has been provided in a timely, constructive and effective manner.

#### ***Spontaneous exchange of information (c. 40.3)***

980. It appears that information may be exchanged both spontaneously and upon request in relation to both money laundering and the underlying predicate offences. However, the authorities in the United Republic of Tanzania have not received any request regarding money laundering and terrorist financing.

#### ***Making inquiries on behalf of foreign counterparts (c. 40.4)***

981. The powers of the Bank of Tanzania under the Banking and Financial Institutions Act (section 31) and the CMSA under the CMS Act (section 11) appear to be sufficiently wide to enable them to conduct inquiries on behalf of their foreign counterparts. However, in practice no such inquiries have been undertaken.
982. The ISD does not appear to have authority to conduct inquiries on behalf of its foreign counterparts.

#### ***FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1)***

983. Under section 6(i) of the AML Act the FIU may exchange information with overseas financial intelligence units. The scope of this provision is however not clear as the FIU does not have access to law enforcement data bases, public data bases, administrative databases and commercially available databases.



*Conducting of investigations on behalf of foreign counterparts (c. 40.5)*

984. According to the authorities as a member of Interpol the Tanzania Police is empowered to carryout investigations on behalf of foreign counterparts.

*No unreasonable or unduly restrictive conditions on exchange of information (c. 40.6)*

985. There are seemingly no unreasonable or unduly restrictive conditions on exchange of information.

*Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)*

986. Provision of assistance is possible in fiscal matters. However, no statistics were provided to assess the effectiveness.

*Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 40.8)*

987. The confidentiality provision under the Banking and Financial Institutions Act and the Foreign Exchange (Bureaux de Change) Regulations 2008 may hinder the provision of assistance.
988. In the absence of a judicial pronouncement the scope of these provisions could not be determined.

*Safeguards in use of exchanged information (c.40.9)*

989. The assessment team was not apprised of any national provisions on privacy and data protection. However, copies of the MOU entered into by the financial supervisors contained confidentiality provisions to ensure that information received by them are only used in the authorised manner.

*Additional element –exchange of information with non-counterparts (c.40.10 & c.40.10.1)*

990. The Assessors were not provided with any information that shows information is shared among non-counterparts in an informal manner.
991. The United Republic further has no formal mechanism for prompt and constructive exchange of information and one is left in doubt as to whether information is exchanged in a direct or indirect manner.
992. No formal statistics are kept on information exchanged and there appears to be no formal procedures or safeguards in place, for sharing of information.

### *Statistics (applying R.32)*

993. Other than the police no statistics were provided by the other authorities to demonstrate that international cooperation has been provided.

### **6.5.2 Recommendations and Comments**

994. At the time of the onsite visit the FIU had not entered into any MOU to facilitate the exchange of information between counter parts. It is therefore recommended that the FIU enters into MOU with other FIUs to facilitate the exchange of information with other FIUs.

995. The ISD must be given statutory authority to conduct inquiries on behalf of its foreign counterparts.

996. Under section 6(i) of the AML Act the FIU may exchange information with overseas financial intelligence units. The scope of section 6(i) of the AML Act must be clarified to ensure that the FIU has access to law enforcement data bases, public data bases, administrative databases and commercially available databases.

997. The confidentiality provision under the Banking and Financial Institutions Act and the Foreign Exchange (Bureaux de Change) Regulations 2008 must be expressly overridden to ensure that they do not hinder the provision of assistance.

998. The authorities in Zanzibar must ensure that the POTA is made enforceable as soon as possible.

999. Zanzibar must enact AML legislation.

### **6.5.3 Compliance with Recommendation 40 and Special Recommendation V**

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>PC</b>	<ul style="list-style-type: none"><li>• Except for police to police cooperation the overall effectiveness of international cooperation could not be determined.</li><li>• The ISD does not appear to have authority to conduct inquiries on behalf of its foreign counterparts.</li><li>• In the absence of a judicial pronouncement the scope of the confidentiality provision under the Banking and Financial Institutions Act and the Foreign Exchange (Bureaux de Change) Regulations 2008 could not be determined.</li><li>• The scope of the powers of the FIU under section 6(i) could not be determined as the FIU does not have access to law enforcement data</li></ul>

		<p>bases, public data bases, administrative databases and commercially available databases.</p> <ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• As POTA is not enforceable with respect to Zanzibar it was not clear whether Zanzibar will be able to provide international cooperation in TF matters under Recommendation 40.</li> <li>• Overall effectiveness of international cooperation in TF matters under recommendation 40 could not be determined.</li> </ul>

## 7. OTHER ISSUES

### 7.1 Resources and statistics

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
<b>R.30</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• The FIU does not have adequate staff to enable it carry out supervisory functions as envisaged by the Act.</li> <li>• Appointment of staff is restricted to the public sector.</li> <li>• The FIU does not have a legal mandate to establish its own staff terms and conditions of employment.</li> <li>• Only the Commissioner of FIU is required to declare assets and liabilities.</li> <li>• No legal requirement for staff to be subjected to the rigorous screening process.</li> <li>• Overall the Police Force in the United Republic of Tanzania did not appear to be adequately resourced to combat money laundering and terrorist financing.</li> <li>• Technical and other resources required in the investigation of ML/FT also appeared to be inadequate to enable law enforcement to fully and effectively perform their duties.</li> <li>• It was not clear that members of staff of the ISD and the CMSA have direct requirements to be of high integrity and to maintain confidentiality.</li> <li>• Inadequate training to equip staff of supervisory authorities with adequate skills to enable them undertake effective AML/CFT</li> </ul>

		supervision of regulated institutions.
<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• No mechanism in place for evaluating the effectiveness of the AML/CFT systems on a regular basis.</li> <li>• No legislative powers or administrative arrangements allowing the FIU to request for information necessary to compile some of the statistics on ML and FT investigations, prosecutions and convictions etc.</li> </ul>

## 7.2 Other relevant AML/CFT measures or issues

1000. Assessors may use this section to set out information on any additional measures or issues that are relevant to the AML/CFT system in the country being evaluated, and which are not covered elsewhere in this report.

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating <sup>26</sup>
<b>Legal systems</b>		
1. ML offence	NC	<ul style="list-style-type: none"> <li>• The AML Act requires a conviction for a predicate offence when proving that property is the proceeds of crime.</li> <li>• The definition of predicate offence under the AML Act does not cover all the categories of designated categories of offences as defined by the FATF.</li> <li>• Predicate offences for money laundering do not extend to conduct that occurred in another country.</li> <li>• It is not clear that prosecution for laundering one's own funds is possible under the AML Act.</li> <li>• An assessment of the effective implementation could not be made as the AML Act had not been tested in the Courts.</li> <li>• The AML Act is not enforceable with respect to Zanzibar..</li> </ul>
2. ML offence – mental element and corporate liability	NC	<ul style="list-style-type: none"> <li>• Neither the AML Act, nor any other law provide for civil or administrative liability to run parallel with criminal money</li> </ul>

<sup>26</sup> These factors are only required to be set out when the rating is less than Compliant.

		<p>laundering proceedings.</p> <ul style="list-style-type: none"> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> <li>• An assessment of the effective implementation could not be made as the AML Act had not been tested in the Courts.</li> </ul>
3. Confiscation and provisional measures	NC	<ul style="list-style-type: none"> <li>• The definition of predicate offences does not cover all designated categories of offences. This undermines the scope of tainted property that may be subject to confiscation under section 14 of the POCA.</li> <li>• It is not clear that property of corresponding value may be subject to confiscation when the property subject to confiscation is not available.</li> <li>• There is no authority to take steps to void actions.</li> <li>• The provisions for the protection of the rights and interests of bona fide third parties under the Economic and Organised Crime Control Act are inadequate.</li> <li>• A comprehensive legislative framework for the freezing, seizing and confiscation of the proceeds of crime is not enforceable in Zanzibar.</li> <li>• The overall effectiveness could not be determined.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> <li>• There are some legal provisions which may prevent the sharing of information between financial institutions where it may be required for the purposes of criterion 7.5 of R.7 &amp; R.9.</li> <li>• The AML Act is not enforceable with</li> </ul>

		<p>respect to Zanzibar.</p> <ul style="list-style-type: none"> <li>• The overall effectiveness could not be assessed.</li> </ul>
5. Customer due diligence	NC	<ul style="list-style-type: none"> <li>• There are no enforceable requirements to- <ul style="list-style-type: none"> <li>▪ undertake CDD measures where there is a suspicion of money laundering or terrorist financing</li> <li>▪ undertake CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>▪ identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner using relevant information or data from a reliable source such that the reporting person is satisfied that it knows who the beneficial owner is (as defined by the FATF standards).</li> <li>▪ determine the natural persons that ultimately own or control the legal person or arrangement</li> </ul> </li> <li>• There is also no requirement- <ul style="list-style-type: none"> <li>▪ where the customer is a legal person or arrangement, for reporting persons to verify that any person purporting to act on behalf of the customer is so authorised.</li> <li>▪ in the case of private trusts, for the authorisation given to each trustee to be verified.</li> <li>▪ for customers that are legal persons or arrangements, that</li> </ul> </li> </ul>

		<p>financial institutions must take reasonable measures to understand the ownership and control structure of the customer.</p> <ul style="list-style-type: none"> <li>• The AML framework does not require financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship or transaction.</li> <li>• There is no requirement for financial institutions to perform CDD measures on existing customers if numbered accounts exist.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> <li>• The AML/CFT measures under the AML Act and the AML Regulations do not appear to be mandatory as there are no sanctions that apply for failure to comply with these requirements.</li> </ul>
6. Politically exposed persons	NC	<ul style="list-style-type: none"> <li>• Whilst there is a legal or regulatory requirement under section 15(1)(b)(ii) of the AML Act for reporting persons regarding PEPS there is no requirement to: <ul style="list-style-type: none"> <li>▪ put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP.</li> <li>▪ obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently</li> </ul> </li> </ul>



		<p>becomes a PEP.</p> <ul style="list-style-type: none"> <li>▪ take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> <li>• The AML/CFT measures under the AML Act and the AML Regulations do not appear to be mandatory as there are no sanctions that apply for failure to comply with these requirements.</li> </ul>
7. Correspondent banking	NC	<ul style="list-style-type: none"> <li>• There are no enforceable requirements on financial institutions relating to correspondent banking relationship(s).</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> <li>• There are no requirements providing for prevention of the misuse of technological developments in ML/TF schemes.</li> <li>• There is no requirement for the other reporting persons to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
9. Third parties and introducers	NC	<ul style="list-style-type: none"> <li>• The AML/CFT regulatory framework does not address the requirements under recommendation 9 even if in practice financial institutions do rely on third parties or intermediaries to</li> </ul>

		<p>perform some elements of the CDD measures.</p> <ul style="list-style-type: none"> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> </ul>
10. Record keeping	NC	<ul style="list-style-type: none"> <li>• The provisions pertaining to the retention of transaction records are not effective.</li> <li>• The threshold approach under section 16 of the AML Act goes against the principle set out under Rec. 10 which requires financial institutions to have transaction records to permit reconstruction of individual transactions.</li> <li>• There is no requirement under the AML Act to keep records of account files and business correspondence.</li> <li>• While the provisions of section 16(2) of the AML Act meet the requirement of criterion 10.1.1 it is still inoperative as the transaction threshold under section 16(1)(a) of the AML Act has not been specified.</li> <li>• There is no requirement that records should be made available on a timely basis to domestic competent authorities upon appropriate authority.</li> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• There are no sanctions for failure to comply with the record retention requirements under the AML Act</li> </ul>

		<p>and the AML Regulations.</p> <ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
11. Unusual transactions	NC	<ul style="list-style-type: none"> <li>• There are no provisions requiring reporting persons to maintain records in writing of the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no visible economic or lawful purpose for at least five years.</li> <li>• There is no specific retention period for which the required records must be kept by reporting persons.</li> <li>• Not all reporting persons have put into place measures to comply with this requirement.</li> <li>• There are uncovered financial institutions that are not subject to the AML Act and regulations.</li> <li>• The requirement under regulation 20(1) of the AML Regulation is not mandatory as there is no sanction for failure to comply with this requirement.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> <li>• The same deficiencies apply for DNFBPs as for reporting persons with respect to Recommendations 5, 6, 8-11 and 17.</li> <li>• DNFBPs have not adopted and implemented the requirements of the</li> </ul>

		<p>AML Act.</p> <ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> <li>• There are some uncovered financial institutions for reporting STRs under the AML Act.</li> <li>• Not all predicate offences required in recommendation 1 are included in the scope of the reporting requirement.</li> <li>• Not all the required aspects of terrorist financing are included in the scope of the reporting requirement.</li> <li>• The low number of STRs by reporting institutions, all four of which are from banks, raises concern in relation to the overall effectiveness of the reporting system.</li> </ul>
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> <li>• Non-bank financial institutions do not enjoy legal immunity in relation to STRs submitted in good faith.</li> <li>• Section 20 (3) of the AML Act seems to weaken the prohibition against non-disclosure of information related to an STR.</li> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> </ul>
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• Section 18 of the AML Act is limited the requirement of internal reporting procedures.</li> <li>• Requirement for policies and controls to prevent ML and FT not set out in law in AML Act or regulations while those in the FIU Guidelines are not</li> </ul>

		<p>enforceable.</p> <ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to designate a compliance officer</li> <li>• Section 18(b) AML Act refers to “reasonable access” and not timely access. Section 18 of the AML Act is not enforceable.</li> <li>• Audit function is of limited benefit in the absence of an enforceable requirement to establish and maintain procedures, policies and controls.</li> <li>• Section 19 of the AML Act is deficient. It does not cover employee training in current ML and FT techniques, methods and trends. The requirements under the FIU Guidelines do not constitute other enforceable means.</li> <li>• Section 19 of the AML Act is not enforceable.</li> <li>• Apart from the banking institutions, there is no requirement for the other financial institutions to screen employees.</li> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> </ul>
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>• The same deficiencies that apply to recommendations 13, 14, 15 and 21 also apply to DNFBPs.</li> <li>• The DNFBPs have not implemented the AML/CFT requirements under the AML Act.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
17. Sanctions	NC	<ul style="list-style-type: none"> <li>• Civil and administrative sanctions are not available for persons that fail to comply with AML/CFT requirements</li> <li>• Criminal sanctions do not apply to all the AML/CFT requirements</li> <li>• Some sanctions for criminal offenses by</li> </ul>

		<p>legal persons are not extended to directors and senior managers</p> <ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
18. Shell banks	PC	<ul style="list-style-type: none"> <li>• Financial institutions are not prohibited from entering into, or continuing, correspondent banking relationships with shell banks</li> <li>• There is no requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul>
19. Other forms of reporting	C	This requirement is fully met.
20. Other NFBP & secure transaction techniques	C	This recommendation is fully met
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> <li>• There is no effective implementation by a number of reporting persons of this requirement of the AML Act.</li> <li>• There are uncovered financial institutions that are not subject to the requirements of the AML Act and regulations.</li> <li>• There are no measures to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries.</li> <li>• There is no requirement to make these records available to auditors.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• The AML/CFT framework does not make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently applies the FATF Recommendations</li> </ul>
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• There are uncovered financial</li> </ul>

		<p>institutions that are not subject to the requirements of the AML Act and regulations.</p> <ul style="list-style-type: none"> <li>• There is no requirement for financial institutions to apply AML/CFT requirements to subsidiaries.</li> <li>• There is no requirement for financial institutions to inform supervisory authority in case a foreign branch or subsidiary is unable to comply with home country AML/CFT requirements.</li> </ul>
23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• Implementation of the AML/CFT requirements is still in its infancy stage.</li> <li>• Some AML/CFT provisions in the AML Act are not enforceable</li> <li>• AML Act has not designated any competent authority with responsibility for ensuring compliance by financial institutions with AML/CFT requirements. Only BoT had limited authority.</li> <li>• There are no legal or regulatory measures for preventing criminals or their associates from holding or being the beneficial owner of a significant interest in a financial institution.</li> <li>• The legal framework in the United Republic of Tanzania does not provide for the licensing or registration of stand-alone MVT service providers and are no prohibitions that apply for unlicensed MVT operators.</li> <li>• There is an uncovered category of financial institutions that are not subject to AML/CFT requirements.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• There are no competent authorities designated to monitor and ensure compliance by DNFBPs with</li> </ul>

		<p>AML/CFT requirements</p> <ul style="list-style-type: none"> <li>• The Tanzania Gaming Board has limited inspection powers</li> <li>• The other categories of DNFBPs in Mainland Tanzania are subject to the AML/CFT requirements under the AML legislative framework. There are however, no effective systems for monitoring and ensuring compliance with AML/CFT requirements.</li> <li>• There is no designated authority responsible for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements.</li> <li>• Only criminal sanctions are available. Civil and administrative sanctions are not provided for.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>• The FIU has not issued guidelines to non-bank financial institutions and DNFBPs to assist them to implement and comply with AML/CFT requirements.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• The FIU does not provide adequate and appropriate feedback to reporting persons as set out under the FATF Best Practice Guidelines on providing feedback to reporting persons and other Persons.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	NC	<ul style="list-style-type: none"> <li>• Since the AML Act is not enforceable with respect to Zanzibar, the FIU does not serve as a national centre.</li> <li>• The FIU has not yet issued guidelines, including STR reporting guidelines, to all reporting institutions. The guidelines issued to banking</li> </ul>



		<p>institutions are inadequate.</p> <ul style="list-style-type: none"> <li>• The provisions to safeguard the operational independence of the FIU are inadequate.</li> <li>• The AML Act does not have a provision enabling the FIU to have access to information on timely basis and no administrative mechanisms in place to facilitate sharing information with competent authorities domestically.</li> <li>• No legal provisions requiring secure protection, confidentiality and use of information held by the FIU.</li> <li>• Due to the AML Act being relatively new, the overall effectiveness could not be determined.</li> </ul>
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> <li>• The overall effectiveness of money laundering and terrorist financing investigations could not be assessed.</li> <li>• The AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> <li>• The definition of “financial institutions” under the POCA is restricted to financial institutions licensed under the Banking and Financial Institutions Act, 2006 and does not cover other non-bank financial institutions. This undermines the powers of the police to have access to financial records held by other reporting persons.</li> <li>• The powers of the police are undermined as the AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar..</li> <li>• The overall effectiveness in the</li> </ul>

		investigation of ML and FT matters could not be assessed.
29. Supervisors	NC	<ul style="list-style-type: none"> <li>• Supervisory authorities to do not have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat ML and TF consistent with the FATF recommendation.</li> <li>• Supervisors do not have authority to conduct AML/CFT onsite inspections of financial institutions.</li> <li>• There are some uncovered institutions to which the CDD measures under the AML Act do not apply.</li> <li>• Supervisory authorities to do not have powers of enforcement and sanction against financial institutions and their directors and senior management for failure to comply with AML/CFT requirements.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> <li>• The FIU does not have adequate staff to enable it carry out supervisory functions as envisaged by the Act.</li> <li>• Appointment of staff is restricted to the public sector.</li> <li>• The FIU does not have a legal mandate to establish its own staff terms and conditions of employment.</li> <li>• Only the Commissioner of FIU is required to declare assets and liabilities.</li> <li>• No legal requirement for staff to be subjected to the rigorous screening process.</li> <li>• Overall the Police Force in the United Republic of Tanzania did not appear to be adequately resourced to combat</li> </ul>

		<p>money laundering and terrorist financing.</p> <ul style="list-style-type: none"> <li>• Technical and other resources required in the investigation of ML/FT also appeared to be inadequate to enable law enforcement to fully and effectively perform their duties.</li> <li>• It was not clear that members of staff of the ISD and the CMSA have direct requirements to be of high integrity and to maintain confidentiality.</li> <li>• Inadequate training to equip staff of supervisory authorities with adequate skills to enable them undertake effective AML/CFT supervision of regulated institutions.</li> </ul>
31. National co-operation	PC	<ul style="list-style-type: none"> <li>• No mechanisms have been put in place in terms of the Anti-Money Laundering Act to enable domestic operational cooperation and coordination on AML/CFT matters between law enforcement agencies and the FIU or between supervisors, law enforcement agencies and the FIU.</li> <li>• Effectiveness of domestic development and implementation of cooperation and coordination of policies relating to AML could not be determined.</li> <li>• Lack of a national framework dealing with domestic cooperation and coordination on TF.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
32. Statistics	NC	<ul style="list-style-type: none"> <li>• Due to the AML Act being relatively new, the overall AML/CFT systems effectiveness could be determined.</li> <li>• No statistics collected on international transportation of currency as the enabling legal provision appears inadequate.</li> </ul>

		<ul style="list-style-type: none"> <li>• The Act does not empower the FIU to collect statistics on ML/TF investigations, prosecutions and convictions from LEAs.</li> <li>• There is no statistics on STRs that led to investigations, prosecutions and convictions.</li> <li>• No mechanism in place to record and maintain comprehensive statistics on money laundering investigations, prosecutions and convictions, mutual legal assistance , extradition matters and other forms of mutual assistance.</li> <li>• There is no mechanism in place to review the effectiveness of systems for combating ML/TF on a regular basis.</li> </ul>
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> <li>• No information on beneficial ownership and control in terms of the FATF definitions is available.</li> <li>• The use of corporate directors and nominee shareholders obscures beneficial ownership and control information of companies that use them.</li> <li>• Information kept in the company registers and at the registrars is not verified and is not necessarily accurate.</li> <li>• The use of a manual filing system may undermine the timely access to the information kept by the registrars.</li> <li>• There are no measures in place to ensure that share warrants are not misused for money laundering purposes.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> <li>• No information on the ownership or control of private trusts is available.</li> <li>• There are no measures in place to prevent the unlawful use of trusts</li> </ul>

		<p>for money laundering and terrorist financing.</p> <ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>International Co-operation</b>		
35. Conventions	PC	<ul style="list-style-type: none"> <li>• No effective framework to administer implementation of AML matters</li> <li>• The United Republic of Tanzania has not fully implemented the Palermo Convention and the UN International Convention for the Suppression of the Financing of Terrorism as it has no provisions, (but to mention a few), for: <ul style="list-style-type: none"> <li>- witness assistance, protection and relocation; and</li> <li>- use of Special Investigative Techniques as far as it relates to controlled delivery</li> <li>- no Central Authority tasked with the responsibility and power to receive requests for mutual legal assistance and either to execute or transmit such requests to competent authorities for execution</li> <li>- no adequate training programmes and technical assistance on Money Laundering at National level to enhance effective implementation of the UN Palermo Convention.</li> </ul> </li> <li>• The AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar.</li> <li>• Not all the relevant UN Conventions and Protocols under the SFT Convention have been ratified and fully implemented in the United Republic of Tanzania.</li> </ul>

36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> <li>• It was not clear to the assessors that mutual legal assistance for ML/TF investigations and prosecutions could be made available with respect to Zanzibar as The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> <li>• In the absence of statistics it could not be determined that assistance is provided in a timely, constructive and effective manner.</li> <li>• In the absence of statistics it could not be determined that requests were executed in a timely way and without undue delays.</li> <li>• In the absence of a judicial pronouncement on this issue the assessment team was unable to determine the impact of the secrecy provision under section 48 of the Banking and Financial Institutions Act on mutual legal assistance requests pertaining to disclosure of financial and other records held by a bank or financial institution.</li> <li>• No provision for avoiding conflict of jurisdiction.</li> <li>• Overall effectiveness could not be determined.</li> </ul>
37. Dual criminality	NC	<ul style="list-style-type: none"> <li>• The absence of dual criminality can be a ground for refusal of a request. This may be an issue as certain designated categories of predicate offences are not predicates under the AML Act.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• Terrorist Financing Offences under the POTA are not extradition crimes for which extradition may be granted under the Extradition Act.</li> </ul>

		<ul style="list-style-type: none"> <li>• Overall effectiveness could not be assessed.</li> </ul>
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> <li>• Instrumentalities intended to be used in the commission of the ML, FT or other predicate offences are not covered.</li> <li>• As no statistics were made available to the assessment team it was not possible to determine the effectiveness of the mutual legal assistance regime in place and the timeliness of the response to requests for assistance.</li> <li>• The definition of “tainted property” under the POCA does not appear broad enough to cover property of corresponding value.</li> <li>• There are no formal arrangements in place to coordinate seizure and confiscation actions with foreign countries.</li> <li>• The laws of the United Republic do not make provision for the establishment of an asset forfeiture fund.</li> <li>• The AML Act, the POCA and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
39. Extradition	PC	<ul style="list-style-type: none"> <li>• The AML Act is not enforceable with respect to Zanzibar.</li> <li>• Overall effectiveness of the extradition regime in relation to ML could not be assessed.</li> </ul>
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> <li>• The scope of the powers of the FIU under section 6(i) could not be determined as the FIU does not have access to law enforcement data bases, public data bases, administrative databases and commercially available databases.</li> <li>• Except for police to police</li> </ul>

		<p>cooperation the overall effectiveness of international cooperation could not be determined.</p> <ul style="list-style-type: none"> <li>• The ISD does not appear to have authority to conduct inquiries on behalf of its foreign counterparts.</li> <li>• In the absence of a judicial pronouncement the scope of the confidentiality provision under the Banking and Financial Institutions Act and the Foreign Exchange (Bureaux de Change) Regulations 2008 could not be determined.</li> <li>• The scope of the powers of the FIU under section 6(i) could not be determined as the FIU does not have access to law enforcement data bases, public data bases, administrative databases and commercially available databases.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
<b>Nine Special Recommendations</b>	<b>Rating</b>	Summary of factors underlying rating
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> <li>• No implementing regulations have been issued to give effect to the freezing mechanism under the UN Security Council Resolutions 1267 and its successor resolutions and UNSCR 1373 have not been implemented.</li> <li>• Not all the relevant UN Conventions and Protocols under the SFT Convention have been ratified and fully implemented in the United Republic of Tanzania.</li> <li>• The POTA is not enforceable with respect to Zanzibar.</li> </ul>
SR.II Criminalise terrorist financing	NC	<ul style="list-style-type: none"> <li>• Not all the relevant UN Conventions</li> </ul>



		<p>and Protocols under the International Convention for Suppression of Financing of Terrorism have been ratified and fully implemented in the United Republic of Tanzania.</p> <ul style="list-style-type: none"> <li>• As the term funds for the purposes of the TF offence under section 13 of the POTA is not defined it was not possible to determine if it meets the standard under the TF Convention.</li> <li>• It is not clear whether parallel actions are possible against legal persons.</li> <li>• The assessors could not assess the overall effectiveness of the legislation.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> </ul>
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> <li>• There is no legal framework in place to enable the freezing of funds and other assets of persons designated under the UNSCR 1267.</li> <li>• There is no legal framework in place to freeze without delay terrorist funds or other assets of persons designated in the context of UNSCR 1373.</li> <li>• There is no definition of the term “funds” under the POTA and the definition of “property” does not meet the standard.</li> <li>• There are no effective and publicly known procedures and processes for de-listing requests and unfreezing funds of de-listed persons.</li> <li>• There are no procedures for the unfreezing of funds of persons inadvertently affected by freezing mechanism.</li> <li>• There are no procedures in place to allow access to frozen funds for</li> </ul>

		<p>expenses and other purposes.</p> <ul style="list-style-type: none"> <li>• There are no procedures in place for challenging freezing decisions.</li> <li>• There are no procedures in place for the protection of rights of bona fide third parties consistent with the TF Convention.</li> <li>• There are no mechanisms and processes in place for communicating with the financial institutions and other stakeholders within the United Republic of Tanzania for the purposes of SR.III.</li> <li>• No guidance to financial institutions and other persons or entities that may be holding targeted funds or assets, concerning their obligations in taking action under freezing mechanisms has been issued.</li> <li>• The POTA is not enforceable with respect to Zanzibar.</li> </ul>
SR.IV Suspicious transaction reporting	NC	<ul style="list-style-type: none"> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar.</li> <li>• Not all financial institutions and DNFBPs are covered as reporting persons of the purposes of the AML Act.</li> <li>• The definition of terrorist financing is inadequate.</li> <li>• The overall effectiveness of the reporting system could not be assessed.</li> </ul>
SR.V International co-operation	NC	<ul style="list-style-type: none"> <li>• The same deficiencies that apply to Recommendations 36, 37 and 38 also apply to SRV.</li> <li>• It was not clear to the assessors that mutual legal assistance related to TF offences could be made available with respect to Zanzibar as the POTA is</li> </ul>

		<p>not enforceable with respect to Zanzibar.</p> <ul style="list-style-type: none"> <li>• Terrorist Financing Offences are not extradition crimes for which extradition may be granted under the Extradition Act.</li> <li>• As POTA is not enforceable with respect to Zanzibar it was not clear whether Zanzibar will be able to provide international cooperation in TF matters under Recommendation 40.</li> <li>• Overall effectiveness of international cooperation in TF matters under recommendation 40 could not be determined.</li> </ul>
SR VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• MVT service operators such as mobile phone operators and the Tanzania Postal Corporation are not subject to AML/CFT requirements.</li> <li>• MVT service operators are not monitored for compliance with AML/CFT requirements.</li> <li>• The BoT has powers to sanction licensed banks and financial institutions for non-compliance with any laws; however, most of the applicable provisions of the AML Act are not enforceable.</li> <li>• MVT service operators are not required to maintain current list of agents.</li> <li>• There are no requirements for MVT service providers outside the banking system to be licensed and/or registered and supervised for AML/CFT purposes.</li> <li>• There are no sanctions against unlicensed informal operators.</li> </ul>
SR VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• Financial institutions are not required to obtain and maintain</li> </ul>

		<p>complete originator information cross-border wire transfers.</p> <ul style="list-style-type: none"> <li>• The requirement to verify the identity of the originator for all wire transfers under section 15 of the AML Act is not enforceable.</li> <li>• Each intermediary and beneficiary financial institution in the payment chain is not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer.</li> <li>• Beneficiary financial institutions are not required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information.</li> <li>• Supervisory authorities are not monitoring compliance of financial institutions with rules and regulations implementing SR VII.</li> <li>• There is no requirement for the receiving intermediary financial institution to keep a record for five years of all the information received from the ordering financial institution where technical limitations prevent the full originator information accompanying a cross- border wire transfer from being transmitted with a related domestic wire transfer.</li> <li>• The AML Act and the POTA are not enforceable with respect to Zanzibar..</li> </ul>
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SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• No risk assessment of the NPO sector regarding misuse of the sector for terrorist financing has been conducted.</li> <li>• No periodic assessment is undertaken on the sector's potential vulnerabilities to terrorist activities.</li> <li>• There has been no outreach programmes undertaken in the United Republic of Tanzania to raise awareness in the NPO sector about the vulnerabilities of the NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse.</li> <li>• There is no specified record keeping period prescribed for NPOs to maintain and make available to the 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.</li> <li>• There is no mechanism in place that allow for prompt investigative or preventative action against such NPOs that are suspected of either being exploited or actively supporting terrorist activity or terrorist organisations.</li> <li>• There is no mechanism to ensure effective domestic cooperation, coordination and information sharing to the extent possible</li> </ul>
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		<p>among all levels of appropriate authorities or organisation that hold relevant information on NPOs of potential terrorist financing.</p> <ul style="list-style-type: none"> <li>• The Registrars of NGOs and Societies are under-resourced to effectively implement the NPO legislations.</li> <li>• The POTA is not enforceable with respect to Zanzibar.</li> </ul>
SR.IX Cross Border Declaration & Disclosure	NC	The requirements under SR.IX have not been implemented.

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar.</li> <li>• The definition of predicate offence under section 3 of the AML Act must be amended to include fraud, counterfeiting of currency, piracy of products, murder and grievous bodily injury. Further, reference to corrupt practices should be clarified to make specific reference to the corruption and other related offences under the Prevention and Combating of Corruption Act. The definition of “terrorist financing” under the AML Act should also be amended to specifically refer to the terrorist financing offences under the Prevention of Terrorism Act.</li> <li>• It is further recommended that an amendment should be brought to the AML Act in order not require a conviction for a predicate offence, before an accused can be charged with an offence of money laundering.</li> <li>• The provisions under the AML Act, must be reviewed to give extra-territorial jurisdiction for any predicate offence and any act committed outside the jurisdiction of the United Republic of Tanzania.</li> <li>• The AML Act must further be broadened to give extra-territorial jurisdiction to prosecute foreign nationals for predicate offences which will have been committed elsewhere other than in the jurisdiction of the United Republic of Tanzania.</li> <li>• The AML Act should specifically provide for the</li> </ul>

	<p>prosecution of both the commission of the predicate offence and the laundering of illicit funds arising from the predicate offence by the same person or individual.</p> <ul style="list-style-type: none"> <li>• The AML Act should further be broadened to make provision for the application of civil or administrative sanctions parallel to proceedings relating to money laundering offences, as within the United Republic of Tanzania, more than form of liability is indeed available. Parallel civil and administrative sanction must be catered for.</li> </ul>
2.2 Criminalisation of Terrorist Financing (SR.I)	<ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.</li> <li>• The term “funds” as used under section 13 of the POTA should be defined in the law in terms of TF Convention.</li> <li>• The United Republic of Tanzania must ratify all the relevant UN Conventions and Protocols and should criminalise all the acts that they cover.</li> <li>• Parallel criminal, civil or administrative sanctions against legal persons should be available.</li> </ul>
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• It is recommended that the definition of predicate offence under the AML Act be amended to include all the designated categories of offences as defined by the FATF.</li> <li>• The authorities must review the relevant enactments to provide for the confiscation of property of corresponding value when the property subject to confiscation is not available. More specifically, the definition of “tainted property” under the POCA should be amended to include “proceeds of crime”</li> <li>• The Authorities should consider adopting legislation that allows steps to be taken to void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions, the authorities</li> </ul>



	<p>would be prejudiced in their ability to recover property subject to confiscation.</p> <ul style="list-style-type: none"> <li>• The provisions for the protection of the rights and interests of bona fide third parties should be further enhanced under the Economic and Organised Crime Control Act. Currently, the Act contains no such protection.</li> <li>• The Authorities should consider the adoption of a civil forfeiture regime for confiscation and forfeiture of proceeds of crimes.</li> <li>• The Authorities should consider the development of a system that will cater for adequate capturing of all information on search, seizures, confiscation, forfeiture of proceeds of crime and for prosecutions and convictions of Money Laundering and Terrorist Financing cases. This will ensure that the United Republic of Tanzania has a systematic and comprehensive maintenance of statistics.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POCA and POTA with respect to Zanzibar.</li> </ul>
<p>2.4 Freezing of funds used for terrorist financing (SR.III)</p>	<ul style="list-style-type: none"> <li>• The Authorities in the United Republic of Tanzania should consider issuing regulations for setting up a legal framework providing- <ul style="list-style-type: none"> <li>▪ for the freezing of funds used for terrorist financing, in accordance with the requirements of SR.III.</li> <li>▪ procedures and processes for de-listing requests and unfreezing funds of de-listed persons</li> <li>▪ for the unfreezing procedures of funds of persons inadvertently affected by freezing mechanism</li> <li>▪ access to frozen funds for expenses and other purposes</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>▪ for challenging freezing decisions</li> <li>▪ for the protection of rights of bona fide third parties consistent with the TF Convention.</li> </ul> <ul style="list-style-type: none"> <li>• The POTA should be amended to provide for the definition of the term “funds” and the definition of “property” should be reviewed to meet the requirement under SRIII.</li> <li>• The authorities should develop appropriate mechanisms and processes for communicating with the financial institutions and other stakeholders within the United Republic of Tanzania for the purposes of SRIII.</li> <li>• The authorities should issue clear guidance to financial institutions and other persons or entities that may be holding targeted funds or assets concerning their obligations in taking action under freezing mechanisms.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the POTA with respect to Zanzibar and regulations that meet the requirements of SRIII must be issued as soon as possible.</li> </ul>
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar. This will ensure that the FIU becomes a national centre for receiving, analysing and disseminating suspicious transaction reports.</li> <li>• As a matter of urgency, the FIU should address gaps that appear in the guidelines on reporting of suspicious transactions sent to the banking institutions and re-issue them. In addition, the FIU should also issue the guidelines to the rest of the reporting institutions to facilitate compliance with the Act.</li> <li>• The authorities should consider amending the AML Act to authorize the FIU to have access to</li> </ul>

	<p>information from law enforcement agencies and other domestic agencies to reinforce its analytical work and be able to respond to requests for information from law enforcement authorities. Establishing an MOU would be desirable, so that the scope of information exchange and the procedures for accessing such information are set out clearly.</p> <ul style="list-style-type: none"> <li>• The AML Act should expressly define the LEAs to which the FIU can disseminate financial disclosures.</li> <li>• There is need for legislative provisions requiring that information held by the FIU be protected. There must be restrictions on the use of the information to avoid unauthorized disclosures and the FIU staff must be subjected to confidentiality requirements. Any violations of these provisions must attract proportionate sanctions and penalties.</li> <li>• The AML Act should set out an obligation for the FIU to prepare periodic reports containing money laundering typologies and trends which could be used by the authorities as a basis for policy formulation.</li> <li>• The authorities should consider amending the AML law so that the obligation to monitor compliance with the Act is placed on supervisory authorities of sub-sectors of the financial sector and DNFBPs. It may not be possible for the FIU to have the necessary human resource and financial capacity to carry out AML/CFT supervisory functions over all the reporting institutions.</li> <li>• In consultation with relevant supervisory authorities, the FIU should conduct awareness raising seminars beyond the banking sector to include other reporting institutions and the general public.</li> </ul>
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	<ul style="list-style-type: none"> <li>• The authorities should strengthen the operational independence of the FIU by explicitly mentioning the grounds under which the Commissioner of the FIU may be removed from office and by clarifying the role of the Minister within the FIU context.</li> <li>• In addition, the FIU should not be restricted to only employ staff from the public sector as some of the required skills may be available outside the public sector.</li> <li>• Furthermore, it must have legal authority to have its own staff terms and conditions of employment. This will ensure that the FIU is able to attract and retain appropriately skilled staff that will support its effectiveness.</li> <li>• The FIU should consider developing a mechanism which would allow it to evaluate the effectiveness of the AML/CFT regime, notably the added value of intelligence reports to law enforcement authorities.</li> </ul>
<p>2.6 Law enforcement, prosecution and other competent authorities (R.27 &amp; 28)</p>	<ul style="list-style-type: none"> <li>• It is recommended that the members of the Police Force involved in ML and TF investigations should be adequately trained on an ongoing basis.</li> <li>• The authorities should focus more pro-actively on pursuing specific money laundering offences.</li> <li>• The definition of “financial institutions” under the POCA should be extended to include the non-bank financial institutions. At present it is restricted to financial institutions licensed under the Banking and Financial Institutions Act, 2006 and does cover other non-bank financial institutions.</li> <li>• It is recommended that the law enforcement agencies should maintain comprehensive statistics of the investigation and prosecution of ML/FT cases and other predicate offences.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the</li> </ul>

	AML Act, the POCA and the POTA with respect to Zanzibar.
2.7 Cross Border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> <li>The authorities in the United Republic of Tanzania should as soon as possible develop the appropriate legal framework to implement the requirements under SR IX.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> <li>All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> <li>The AML/CFT framework should be extended to cover the full range of financial institutions as defined by the FATF.</li> <li>Effective, proportionate and dissuasive criminal, civil or administrative sanctions for failure to comply with the CDD requirements under the AML Act and the AML Regulations should be provided for in the immediate future.</li> </ul> <p><b>Recommendation 5</b></p> <ul style="list-style-type: none"> <li>It is recommended that the AML Act or the AML Regulations should be amended to specifically provide the requirement for reporting persons to- <ul style="list-style-type: none"> <li>undertake CDD measures where there is a suspicion of money laundering or terrorist financing</li> <li>undertake CDD measures where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.</li> <li>identify the beneficial owner or take reasonable measures to verify the identity of the beneficial owner using relevant information or data from a reliable source</li> </ul> </li> </ul>

	<p>such that the reporting person is satisfied that it knows who the beneficial owner is ( as defined by the FATF standards).</p> <ul style="list-style-type: none"> <li>▪ determine the natural persons that ultimately own or control the legal person or arrangement</li> </ul> <ul style="list-style-type: none"> <li>• It is also recommended that the AML Regulations should be amended to provide that- <ul style="list-style-type: none"> <li>▪ where the customer is a legal person or arrangement reporting persons must to verify that any person purporting to act on behalf of the customer is so authorised.</li> <li>▪ in the case of private trusts the authorisation given to each trustee must be verified.</li> <li>▪ for customers that are legal persons or arrangements financial institutions must take reasonable measures to understand the ownership and control structure of the customer.</li> <li>▪ the financial institution should consider making a suspicious transaction report where it fails to satisfactorily complete CDD measures.</li> </ul> </li> <li>• Having regard to the situation in practice whereby some categories of financial institutions are establishing business relationships prior to the completion of the verification of identity requirements it is recommended that this practice should be regulated for AML/CFT purposes in line with the requirements set out in the essential criteria 5.14, 5.14.1 and 5.16 of Recommendation 5.</li> <li>• It is recommended that where appropriate guidelines should be issued for the effective implementation of AML Regulations 6(3), 8(b), 8(e), 13(c), 15(1)(e), 15(2) and 17.</li> <li>• It is recommended that the wordings of the Regulation 16 of the AML Regulations be</li> </ul>
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	<p>amended to create a direct obligation on financial institutions to undertake CDD measures.</p> <ul style="list-style-type: none"> <li>• It is recommended that the AML regulatory framework should require financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship or transaction.</li> <li>• The requirement under Regulation 17 of the AML Regulations should be clarified to expressly provide that financial institutions should apply CDD requirements to existing customers in terms of the requirements under essential criterion 5.17 under Recommendation 5. In addition, financial institutions must also perform CDD measures on existing customers if numbered accounts exist.</li> </ul> <p><b><i>Recommendation 6</i></b></p> <ul style="list-style-type: none"> <li>• It recommended that financial institutions should be required to- <ul style="list-style-type: none"> <li>▪ in addition to performing the CDD measures, put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP.</li> <li>▪ obtain senior management approval to continue a business relationship where a customer has been accepted and the customer or beneficial owner is subsequently found to be or consequently becomes a PEP.</li> <li>▪ take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs.</li> </ul> </li> </ul> <p><b><i>Recommendation 7</i></b></p> <ul style="list-style-type: none"> <li>• In addition to the normal CDD measures, financial institutions the United Republic should establish requirements for reporting persons to: <ul style="list-style-type: none"> <li>▪ Gather sufficient information about a respondent institution to enable it fully</li> </ul> </li> </ul>
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	<p>understand the nature of the respondent's business and gather information about its reputation and quality of supervision;</p> <ul style="list-style-type: none"> <li>▪ Assess respondent institution's AML/CFT controls, adequacy and effectiveness,</li> <li>▪ Obtain approval from senior management before establishing new correspondent relationships,</li> <li>▪ Document the respective AML/CFT responsibilities of each institution is a correspondent banking relationship;</li> <li>▪ where correspondent relationship involves the maintenance of "payable-through accounts" ensure that respondent banks perform all normal CDD obligations on all its customers that have direct access to the accounts of the respondent financial institution and the customer identification data is provided to the correspondent financial institution by the respondent institution upon request.</li> </ul> <ul style="list-style-type: none"> <li>• These requirements may be set out in laws, regulations or other enforceable means</li> </ul> <p><b>Recommendation 8</b></p> <ul style="list-style-type: none"> <li>• Financial institutions should be required to have policies and procedures in place to prevent the misuse of technological developments in ML or TF schemes and to address any specific risks associated with non-face to face relationships or transaction in line with the requirements of Recommendation 8. These requirements may be set out in laws, regulations or other enforceable means.</li> </ul>
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> <li>• Where they rely on third parties or other intermediaries to perform some of the elements of the CDD process financial institutions should be</li> </ul>



	<p>required, by way of law regulation or other enforceable means, to:</p> <ul style="list-style-type: none"> <li>▪ immediately obtain from the third party the necessary information concerning certain elements of the CDD process;</li> <li>▪ take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay</li> <li>▪ satisfy themselves that the third party is under effective regulation and supervision and has measures in place to comply with CDD requirements</li> </ul> <ul style="list-style-type: none"> <li>• The AML regulatory framework should also provide that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.</li> <li>• In determining in which country the third party can be based, supervisory authorities should take into account information available on whether the country adequately applies the FATF Recommendations.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and the POTA with respect to Zanzibar.</li> </ul>
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> <li>• There is need to amend the provisions of the AML Act to widen the application of section 21 of the AML Act to enable financial institutions to share information where it may be required for the purposes of criterion 7.5 of R.7 &amp; R.9.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act with respect to Zanzibar.</li> </ul>
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the</li> </ul>

	<p>AML Act and POTA with respect to Zanzibar.</p> <p><b>Recommendation 10</b></p> <ul style="list-style-type: none"> <li>• The AML Act should be amended to ensure that record keeping procedures meet the requirements of Recommendation 10. In particular, the transaction threshold approach under section 16(1)(a) of the AML Act must be removed. The requirements under the Act and regulations should further be amended to provide for- <ul style="list-style-type: none"> <li>▪ the requirement to keep records of account files and business correspondence.</li> <li>▪ the requirement that records should be made available on a timely basis to domestic competent authorities upon appropriate authority.</li> <li>▪ effective, proportionate and dissuasive criminal, civil or administrative sanctions for failure to comply with the record retention requirements under the AML Act and the AML Regulations.</li> </ul> </li> </ul> <p><b>SR VII</b></p> <ul style="list-style-type: none"> <li>• The United Republic of Tanzania should enact appropriate legislation and issue guidance to meet the gap(s) in the AML Act to ensure full compliance with the requirements of SRVII, including appropriate sanctions for non-compliance. In particular, laws or other enforceable means should provide for the following matters under Special Recommendation VII :- <ul style="list-style-type: none"> <li>▪ Financial institutions should be required to obtain the full/ complete originator information for cross-border wire transfers.</li> <li>▪ Each intermediary and beneficiary financial institution in the payment chain should be required to ensure that all originator</li> </ul> </li> </ul>
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	<p>information that accompanies a wire transfer is transmitted with the transfer.</p> <ul style="list-style-type: none"> <li>▪ Beneficiary financial institutions should be required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information.</li> <li>▪ Supervisory authorities should ensure that they effectively monitor compliance of financial institutions with rules and regulations implementing SR VII.</li> <li>▪ The laws or regulations must contain specific sanctions for non-compliance with the above requirements.</li> </ul>
3.6 Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• To meet international standards the AML Act should be enhanced to provide for a statutory retention period with respect to records of findings of reporting persons on the examination of the background and purpose of complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.</li> <li>• There is also no requirement to make records available to auditors. The AML Act should be accordingly amended.</li> <li>• Appropriate measures should be put into place to ensure that reporting persons are advised of concerns about weaknesses in the AML/CFT systems of other countries. The onus has been left to reporting persons to make their own determination. This has resulted in various degrees of compliance and lack of understanding of what the requirement entails.</li> <li>• AML/CFT framework of the United Republic of Tanzania should make provision for the possibility to apply appropriate counter measures where a country continues not to apply or insufficiently</li> </ul>

	<p>applies the FATF Recommendations.</p> <ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> <li>• The authorities should put in place legislative measures to ensure that all financial institutions and DNFBPs are obliged to report suspicious transactions.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> <li>• Authorities should amend the AML legislation so that all financial institutions covered by the definition of the FATF are subject to the suspicious transactions reporting requirement unless a proven low risk is established in these sectors.</li> <li>• Authorities should therefore expedite issuance of guidelines to all reporting persons.</li> <li>• The laws should clearly state that failure to report is an offence.</li> <li>• There is an apparent absence of legal immunity in favour of other reporting institutions such as foreign exchange bureaux to protect them against legal action arising from a suspicious transaction report even if such a report has been made in good faith.</li> <li>• The prohibition against disclosure that an STR or related information is being or has been submitted to the FIU is should be strengthened.</li> <li>• The FIU should start providing specific and regular general feedback to reporting institutions, including ML/TF trends, techniques and methods.</li> <li>• The current definition of terrorist financing is inadequate. Authorities should consider expanding it to include all elements covered in SR IV.1.</li> </ul>

	<ul style="list-style-type: none"> <li>• Authorities should intensify awareness raising programmes to cover all reporting persons.</li> <li>• Staff of reporting persons should be provided with adequate AML/CFT training.</li> </ul>
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> <li>• It is also recommended that the AML Act or Regulations should be amended, or other enforceable means developed, to: <ul style="list-style-type: none"> <li>▪ Require reporting persons to establish internal procedures, policies and controls to prevent money laundering and terrorist financing.</li> <li>▪ Require reporting persons to adopt appropriate AML/CFT compliance arrangements, which in the case of banks and financial institutions should, at a minimum, require the appointment of an AML/CFT compliance officer at management level.</li> <li>▪ Require reporting persons to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls.</li> <li>▪ Extend the existing employee training requirements to include requiring reporting persons to keep their employees informed of new developments, including providing information on current ML and FT techniques, methods and trends.</li> <li>▪ Require reporting persons to put in place screening procedures to ensure high standards when hiring employees.</li> <li>▪ Include provisions on the application of AML/CFT measures to branches and</li> </ul> </li> </ul>

	<p>subsidiaries of Tanzanian banks and financial institutions in accordance with Recommendation 22.</p>
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> <li>• For the sake of clarity, it is recommended that the Banking and Financial Institutions Regulations should be amended, or other enforceable means developed, in order to: <ul style="list-style-type: none"> <li>▪ Expressly prohibit the operation of shell banks in the United Republic of Tanzania;</li> <li>▪ Prohibit financial institutions from entering into corresponding relationships with shell banks; and</li> <li>▪ Require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.</li> </ul> </li> </ul>
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<ul style="list-style-type: none"> <li>• It is recommended that: <ul style="list-style-type: none"> <li>▪ Pension fund managers should be subjected to licensing requirements and on-site supervision by a competent authority;</li> <li>▪ The AML Act should be amended in order to specifically designate competent authorities with responsibilities and powers, including the express power to conduct onsite examination, for monitoring and ensuring compliance of financial institution with AML/CFT requirements;</li> <li>▪ Staff members of these competent authorities should be provided with adequate technical resources and training to conduct effective AML/CFT supervision of financial institutions;</li> <li>▪ Financial sector legislation should be amended to require financial supervisory authorities to vet beneficial owners of significant or controlling interests and</li> </ul> </li> </ul>

	<p>persons holding management functions, including those in the executive or supervisory boards of financial institutions;</p> <ul style="list-style-type: none"> <li>▪ The AML Act should be amended to make the requirements under Part IV enforceable by providing a wide of proportionate and dissuasive sanctions (civil, criminal and administrative) that apply to both legal and natural persons and to directors and senior officers of legal persons;</li> <li>▪ A competent authority should be designated to apply the administrative sanctions;</li> <li>▪ For the avoidance of doubt, the Insurance Supervisory Department and the CMSA should develop codes of ethics and conduct for their staff in order to require them to maintain confidentiality and be of high integrity;</li> </ul> <ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
<p>3.11 Money value transfer services (SR.VI)</p>	<ul style="list-style-type: none"> <li>• The authorities in the United Republic of Tanzania should consider the following recommendations: <ul style="list-style-type: none"> <li>▪ All MVT service operators should be licensed and/or registered and subject to AML/CFT requirements and supervision;</li> <li>▪ Systems for monitoring MVT service operators and ensuring that they comply with the FATF Recommendations should be developed and implemented;</li> <li>▪ Enforceable means should be developed that require each licensed or registered MVT service operator to maintain a current list of its agents which must be made available to the designated competent authority; and</li> </ul> </li> <li>• The recommendation in this report on the sanctions framework in respect of FATF</li> </ul>

	Recommendation 17 should be implemented.
<b>4. Preventive Measures – Non-Financial Businesses and Professions</b>	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Same deficiencies apply for DNFBPs as for reporting persons with respect to Recommendations 5, 6, 8-11. In general, the United Republic of Tanzania should take immediate steps to fully implement Recommendations 5, 6, 8-11 and apply them to DNFBPs.</li> <li>• The application of AML/CFT requirements to DNFBPs is relatively recent and there is an urgent need to build up an effective AML culture in this area through a combination of intensive training and issuance of sector specific comprehensive and focused guidelines.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> <li>• The United Republic of Tanzania should take immediate steps to fully implement Recommendations 13-15 and 21 and apply them to DNFBPs.</li> <li>• The Tanzanian authorities should develop enforceable means that will require DNFBPs to develop AML procedures, policies and internal controls in line with FATF Recommendation 15.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> <li>• The United Republic of Tanzania should designate a competent authority or authorities for DNFBPs to ensure that all DNFBPs effectively implement the AML/CFT measures required under the FATF Recommendations;</li> <li>• The Gaming Act should be amended in order to:</li> </ul>



	<ul style="list-style-type: none"> <li>▪ broaden powers of the Tanzania Gaming Board to enable it conduct routine on-site inspections;</li> <li>▪ give power to the Gaming Board of Tanzania to sanction casinos that fail to or improperly implement AML/CFT requirements;</li> <li>• Enforceable means should be developed to ensure all dealers in precious stones and metals belong to a state-recognised association(s) such as the Tanzania Mineral Dealers Association.</li> <li>• Enforceable means should be developed to ensure all real estate agents are licensed and registered.</li> <li>• The recommendation in this report on the sanctions framework in respect of FATF Recommendation 17 should be implemented.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
4.4 Other non-financial businesses and professions (R.20)	
<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>• Measures should be put in place for the verification of information kept by the registrars to ensure that it is accurate.</li> <li>• It is recommended that measures should be put into place to require the identification of the beneficial owner of corporate directors.</li> <li>• Further, mechanisms should be put in place to determine the identity of the beneficial owner where nominee shareholders are used.</li> <li>• Measures should be put in place to curb the misuse of share warrants. For example, the authorities may require that the owners of the share warrants should be known to the company</li> </ul>

	<p>and that this information should be made readily available to the investigatory authorities upon request.</p> <ul style="list-style-type: none"> <li>• In the long term, the authorities should consider introducing an electronic filing system for keeping, maintaining, preserving and ensuring timely access to their record</li> <li>• Authorities must ensure that lawyers and accountants who act as company registration agents adequately implement and comply with AML/CFT requirements.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> <li>• The authorities should consider putting in place measures to prevent the unlawful use of trusts for money laundering and terrorist financing purposes.</li> <li>• The authorities should consider adopting a mechanism to register private trusts and to keep information on the settlor, trustee and beneficiaries of private trusts. This information should be made available to investigatory and supervisory authorities.</li> <li>• Authorities must ensure that lawyers who provide trusteeship services adequately implement and comply with AML/CFT requirements.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> <li>• Authorities in the United Republic of Tanzania should review laws relating to NPO sector to ensure that NPOs are not misused for terrorist activities. In order to enhance compliance with international requirements, provisions of the laws covering registration, transparency and accountability, regulation and monitoring of the</li> </ul>

	<p>NPO sector should be reviewed.</p> <ul style="list-style-type: none"> <li>• Authorities in the United Republic of Tanzania should conduct risk assessment of the NPO sector regarding misuse of the sector for terrorist financing.</li> <li>• The authorities should also undertake outreach programmes to raise awareness in the NPO sector about vulnerabilities to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse.</li> <li>• Authorities in the United Republic of Tanzania should develop and implement effective systematic programmes that promote transparency, accountability, integrity and public confidence in the NPO sector.</li> <li>• The Registrars of NGOs and Societies in Mainland Tanzania and Zanzibar respectively should be given adequate powers under their laws to conduct inspections for effective supervision and monitoring of the NPO sector.</li> <li>• Furthermore, the resource capacity of Registrars of NGOs and Societies should be adequately improved.</li> <li>• NPOs should be required to maintain, for a minimum period of five years, and make available to appropriate authorities, detailed records of domestic and international transactions.</li> <li>• Authorities in the United Republic of Tanzania should enhance the capacity of the relevant authorities to ensure that there is adequate expertise and capacity to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or organisations. In addition.</li> <li>• The authorities should have effective formal mechanism in place that allow for prompt investigative or preventative action against such</li> </ul>
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	<p>NPOs.</p> <ul style="list-style-type: none"> <li>• Authorities in the United Republic of Tanzania should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO is a front for fundraising by a terrorist organisation; is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with all relevant competent authorities in order to take preventative or investigative measures.</li> <li>• The authorities in the United Republic of Tanzania should have clearly defined formal mechanism to ensure effective domestic cooperation, coordination and information sharing.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the POTA with respect to Zanzibar.</li> </ul>
<b>6. National and International Co-operation</b>	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> <li>• The authorities should consider extending (i) the mandate of the National AML Committee to include CFT issues and (ii) the membership of the Committee to ensure that all government institutions involved in the fight against money laundering and terrorist financing including the ISD, Customs and Immigration, are adequately represented.</li> <li>• Appropriate mechanisms should be implemented to ensure effective operational cooperation between the FIU and law enforcement agencies and between the FIU, law enforcement agencies and supervisory bodies. The FIU should consider entering into MOU with the law enforcement</li> </ul>

	<p>agencies and supervisory bodies to facilitate exchange of information and other operational cooperation issues.</p> <ul style="list-style-type: none"> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>• It is recommended that the United Republic of Tanzania widens the scope of the Economic and Organized Crime Control Act; the Drugs and Prevention of Illicit Traffic in Drugs Act; the Proceeds of Crime Act; the Anti-Money Laundering Act and the Prevention of Terrorism Act to provide for witness assistance, their protection and relocation.</li> <li>• It is recommended that the United Republic of Tanzania widens the scope of the Economic and Organized Crime Control Act; the Drugs and Prevention of Illicit Traffic in Drugs Act; the Proceeds of Crime Act; the Anti-Money Laundering Act and the Prevention of Terrorism Act to cater for the use of special investigative techniques as far as it relates to controlled delivery</li> <li>• The United Republic of Tanzania should also introduce measures to detect and monitor the movement of cash and bearer instruments across borders</li> <li>• The United Republic of Tanzania should designate a Central Authority tasked with the responsibility and power to receive requests for mutual legal assistance and either to execute or transmit such requests to competent authorities for execution</li> <li>• The United Republic of Tanzania should also consider developing a National Training Programme for law enforcement personnel, including prosecutors, investigating magistrates, customs personnel and other personnel charged with the prevention, detection and control of the offences covered by the Palermo Convention.</li> </ul>

	<ul style="list-style-type: none"> <li>• The authorities must ensure that TF offences should be fully consistent with Article 2 of the SFT Convention.</li> <li>• The authorities must issue implementing regulations under the POTA to give effect to the freezing mechanisms under UNSCRs 1267 and 1373.</li> <li>• The authorities must ratify and fully implement all the relevant UN Conventions and Protocols under the SFT Convention.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POCA and the POTA with respect to Zanzibar.</li> </ul>
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> <li>• The authorities should maintain comprehensive statistics on: the number requests for Mutual legal assistance received, the nature of such requests, the number of requests responded to, the time taken to respond to such requests and other relevant matters.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act, the POCA and POTA with respect to Zanzibar.</li> </ul> <p><b>Recommendation 36</b></p> <ul style="list-style-type: none"> <li>• The authorities should have in place proper procedures to ensure that requests are executed in a timely way and without undue delays.</li> <li>• The MACM Act should be amended to include a confidentiality overriding provision to ensure that there are no impediments to the disclosure of financial and other records held by a bank or financial institution.</li> <li>• The United Republic of Tanzania should devise a mechanism for determining the best venue for prosecutions of defendants in the interests of justice in cases that are subject to prosecution in</li> </ul>

	<p>more than one country.</p> <p><b>Recommendation 38</b></p> <ul style="list-style-type: none"> <li>• The POCA should be amended to ensure that mutual legal assistance can be provided in relation to the confiscation, freezing or seizure of instrumentalities intended to be used in the commission of the ML, FT or other predicate offences are not covered.</li> <li>• The definition of “tainted property” under the POCA should be amended to cover property of corresponding value.</li> <li>• Formal arrangements must be put in place to coordinate seizure and confiscation actions with foreign countries.</li> <li>• The authorities should establishing an Asset Forfeiture Fund into which all or a portion of confiscated properties will be deposited and which will be used for law enforcement, health, education or other appropriate purposes.</li> </ul>
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> <li>• The authorities must ensure that requests and proceedings relating to ML are handled without undue delay.</li> <li>• The Schedule to the Extradition Act must be amended to include the TF offences under the POTA.</li> <li>• Comprehensive statistics on extradition requests received, granted and time taken to process the requests must be kept and maintained by the authorities.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
6.5 Other Forms of Co-operation (R.40 & SR.V)	<ul style="list-style-type: none"> <li>• At the time of the onsite visit the FIU had not entered into any MOU to facilitate the exchange of information between counter parts. It is therefore recommended that the FIU enters into MOU with</li> </ul>

	<p>other FIUs to facilitate the exchange of information with other FIUs.</p> <ul style="list-style-type: none"> <li>• The ISD must be given statutory authority to conduct inquiries on behalf of its foreign counterparts.</li> <li>• Under section 6(i) of the AML Act the FIU may exchange information with overseas financial intelligence units. The scope of section 6(i) of the AML Act must be clarified to ensure that the FIU has access to law enforcement data bases, public data bases, administrative databases and commercially available databases.</li> <li>• The confidentiality provision under the Banking and Financial Institutions Act and the Foreign Exchange (Bureaux de Change) Regulations 2008 must be expressly overridden to ensure that they do not hinder the provision of assistance.</li> <li>• All relevant authorities of the United Republic of Tanzania need to resolve the enforceability of the AML Act and POTA with respect to Zanzibar.</li> </ul>
<b>7. Other Issues</b>	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> <li>• The Police Force in the United Republic of Tanzania should be adequately staffed to combat money laundering and terrorist financing.</li> <li>• Technical and other resources required in the investigation of ML/FT should also be provided to enable law enforcement to fully and effectively perform their duties.</li> <li>• Adequate training should be also be provided to all law enforcement agencies to enable them to undertake ML government and TF investigations and prosecutions.</li> <li>• Authorities in the United Republic of Tanzania must put in place appropriate mechanisms to record and maintain comprehensive statistics on money laundering investigations, prosecutions and convictions, mutual legal assistance,</li> </ul>



	extradition matters and other forms of mutual assistance.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

**Table 3: Authorities’ Response to the Evaluation (if necessary)**

Relevant sections and paragraphs	Country Comments

## ANNEXES

Annex 1: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.

- 1 Financial Intelligence Unit
- 2 Tanzania National Multi-Disciplinary Committee on AML
- 3 Ministry of Foreign Affairs and International Cooperation
- 4 Ministry of Foreign Affairs Zanzibar
- 5 Ministry of Lands
- 6 Attorney General's Office
- 7 Attorney General Chambers Zanzibar
- 8 Tanzania Police Force
- 9 Tanzania Intelligence and Security Services
- 10 Bank of Tanzania
- 11 Insurance Supervisory Department
- 12 Capital Markets and Securities Authority
- 13 Dar es Salaam Stock Exchange
- 14 Tanzania Gaming Board
- 15 Tanzania Communications Regulatory Authority
- 16 Tanzania Investment Centre
- 17 Zanzibar Investment Promotion Authority
- 18 Tanzania Post Corporation
- 19 Tanzania Revenue Authority
- 20 Zanzibar Revenue Board
- 21 National Board of Accountants and Auditors
- 22 Business Registration and Licensing Authority
- 23 Office of Registrar General Zanzibar
- 24 RITA
- 25 Registrar of NGOs, Ministry of Gender and Children
- 26 National Bank of Commerce
- 27 People's Bank of Zanzibar
- 28 Standard Chartered
- 29 Commercial Bank of Africa
- 30 Exim Bank Ltd
- 31 Tanzania Banking Association
- 32 Tanganyika Law Society
- 33 F&P Insurance Brokers Ltd.
- 34 Ndege Insurance Brokers
- 35 Corporate Insurance Brokers
- 36 AON Tanzania Limited
- 37 Heritage Insurance
- 38 Lion Insurance
- 39 Alliance Insurance

40	Real Insurance
41	Tanzania Securities Ltd
42	Orbit Securities
43	Tanzania Mineral Dealers Association
44	New Africa Hotel-Casino

**Extracts of the Constitution of the United Republic of Tanzania, 1977<sup>27</sup>**

***Article 4 of the Constitution of the United Republic of Tanzania***

- (1) All State authority in the United Republic shall be exercised and controlled by two organs vested with executive powers, two organs vested with judicial powers and two organs vested with legislative and supervisory power over the conduct of public affairs.
- (2) The organs vested with executive powers shall be the Government of the United Republic and the Revolutionary Government of Tanzania Zanzibar, the organs vested with judicial powers shall be the Judiciary of the United Republic and the Judiciary of Tanzania Zanzibar, and the organs vested with legislative and supervisory powers over public affairs shall be the Parliament of the United Republic and the House of Representatives of Zanzibar.
- (3) For the purposes of efficient conduct of public affairs in the United Republic and for the allocation of powers among the organs specified in this Article, there shall be union matters as listed in the First Schedule and there shall also be non-union matters which are all other matters not so listed.
- (4) Each organ specified in this Article shall be established and shall discharge its functions in accordance with the other provision of this Constitution.

**First Schedule  
(Referred to in Article 4)**

**Union Matters**

- 1 The Constitution of Tanzania and the Government of the United Republic.
- 2 Foreign Affairs.
- 3 Defence and Security.
- 4 Police.
- 5 Emergency Powers.
- 6 Citizenship.
- 7 Immigration.
- 8 External borrowing and trade.
- 9 Service in the Government of the United Republic.

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<sup>27</sup> Came into operation on 26 April 1977

- 10 Income tax payable by individuals and by corporations, customs duty and excise duty on goods manufactured in Tanzania collected by the Customs Department.
- 11 Harbours, matters relating to air transport, posts and telecommunications.
- 12 All matters concerning coinage, currency for the purposes of legal tender (including notes), banks (including savings banks) and all banking business, foreign exchange and exchange control.
- 13 Industrial licensing and statistics.
- 14 Higher education
- 15 Mineral oil resources, including crude oil and natural gas.
- 16 The National Examinations Council of Tanzania and all matters connected with the functions of that Council.
- 17 Civil aviation.
- 18 Research.
- 19 Meteorology.
- 20 Statistics.
- 21 The Court of Appeal of the United Republic.
- 22 Registration of political parties and other matters related to political parties.

*Article 64 of the Constitution of the United Republic of Tanzania*

- (1) Legislative power in relation to all Union Matters and also in relation to all other matters concerning Tanzania is hereby vested in Parliament.
- (2) Legislative power in Tanzania Zanzibar over all matters which are not Union Matters is hereby vested in the House of Representatives.
- (3) Where any law enacted by the House of Representatives concerns any matter in Tanzania Zanzibar which is within the legislative jurisdiction of Parliament, that law shall be null and void, and likewise if any law enacted by Parliament concerns any matter which is within the legislative jurisdiction of the House of Representatives that law shall be null and void.
- (4) Any law enacted by Parliament concerning any matter shall not apply to Tanzania Zanzibar save in accordance with the following provisions:
  - (a) such law shall have expressly stated that it shall apply to Mainland Tanzania as well as to Tanzania Zanzibar or it replaces, amends or repeals a law which is in operation in Tanzania Zanzibar;

- (b) such law replaces, or amends or repeals a law which was previously in operation in Mainland Tanzania and also in operation in Tanzania Zanzibar pursuant to the Articles of the Union of Tanganyika and Zanzibar, or pursuant to any law which expressly stated that it shall apply to Mainland Tanzania as well as Tanzania Zanzibar; or
  - (c) such law relates to Union Matters; and whenever reference is made to the term “Tanzania” in any law, it is hereby declared that such law shall apply in the United Republic in accordance with the interpretation contained in the provisions of this Article.
- (5) Without prejudice to the application of the Constitution of Zanzibar in accordance with this Constitution concerning all matters pertaining to Tanzania Zanzibar which are not Union Matters, this Constitution shall have the force of law in the whole of the United Republic, and in the event any other law conflicts with the provisions contained in this Constitution, the Constitution shall prevail and that other law, to the extent of the inconsistency with the Constitution shall be void.

***Article 106 (3) of the Constitution of the United Republic of Tanzania***

- (3) All legislative authority in Zanzibar over all matters which are not Union Matters is hereby vested in the House of Representatives of Zanzibar.

**Extracts of the Constitution of Zanzibar, 1984**

*(came into operation on 12 January 1985)*

***Article 78***

(1) Legislative power in relation to all matters that are not Union Matters in Zanzibar is hereby vested in the House of Representatives.

***Article 132***

(1) No law enacted by the Union Parliament shall apply to Zanzibar unless that law relates to Union affairs only and having complied with the provisions of the Union Constitution.

(2) The enacted shall be submitted to the House of Representative by the responsible Minister.

(3) Where subsidiary legislation is made in terms of the authority provided for in sub-articles (1) and (2) of this Article in accordance with the law shall only apply on compliance with the conditions in the parent Act as prescribed in this Article.



**Extracts of the Prevention of Terrorism Act**

**Section 5 – Commission of offence of terrorist meeting**

A person commits an offence who-

- (a) arranges, manages or assist in arranging or managing or participates in a meeting or an act knowingly that it is concerned with an act of terrorism;
- (b) provides logistics, equipment or facilities for a meeting or an act knowingly that it is concerned with an act of terrorism; or
- (c) attends meetings knowingly that it supports a proscribed organization, or to further the objectives of proscribed organization.

**Section 6 – Offence of proscribed organization for commission of terrorist act**

(1) Where two or more persons associate for the purpose of, or where an organization engages in any act of the purpose of-

- (a) participating, or collaborating in an act of terrorism;
- (b) promoting, encouraging or exhorting others to commit an act of terrorism; or
- (c) setting up or pursuing acts of terrorism,

the Minister may declare such person or organization to be a proscribed organization

(2) A person who belongs, or professes to belong, to a proscribed organization commits an offence.

(3) It shall be a defence for a person charged under subsection (2) to prove that the organization in respect of which he is charged had not been declared a proscribed organization at the time the person charged became a member or began to profess to be a member of that organization and that he has not taken part in the activities of that organization at any time after it had been declared to be a proscribed organization.

**Section 7 - Rendering support to terrorism**

(1) A person commits an offence who, in any manner or form-

- (a) solicits support for, or tenders support in relation to, an act of terrorism, or
- (b) solicits support for, or tenders support to, a proscribed organization.

(2) "Support" as used in subsection (1), means and includes-

- (a) instigating to the cause of terrorism;

- (b) offering of or weapons, explosives, training, transportation, false documentation or material assistance, weapons including biological, chemical identification;
- (c) offering of or provision of moral assistance, including invitation to adhere to a proscribed organization;
- (d) the provision of, or making available such financial or other related services to a terrorist group or entity which is concerned with terrorist act;
- (e) dealing directly or indirectly, in any property that is owned or controlled by or on behalf of any terrorist or any entity owned or controlled by any terrorist , including funds derived or generated from property owned or controlled, directly or indirectly, by any terrorist, or an entity owned or controlled by any terrorist; or
- (f) entering into, or facilitating, directly or indirectly, any financial transaction related to a dealing in property referred to in paragraph (e).

### **Section 8- Harboursing terrorists**

A person who harbours, conceals, or causes to be harboured or concealed, any person whom he knew to have committed or to have been convicted of, an act of terrorism or against whom he knew that a warrant of arrest or imprisonment in relation to an act of terrorism had been issued, commits an offence.

### **Section 9 – Possession of unauthorized article information etc. Act No. 38 of 1969**

1. A person shall commit an offence under this section who is in possession of any code, password, sketch, plan, model, note or other document, article or information which relates to or is used in a protected place or anything in that place, in contravention of this Act or the Protected Places and Areas Act 1969, or which has been entrusted to that person in confidence by any person holding office, or he had access to office from or which he has obtained or to which that person ha access owing to the position or office held by him as a person who is or was party to a contract with the Government.
2. Any person who is in possession of anything specified under subsection (1), and who
  - 
  - (a) uses it for a terrorist intention or for any purpose prejudicial to the safety or interest of the United Republic; or
  - (b) communicates such information to any person other than a person to whom there exist an authority to communicate it or to whom it is in the interest of the United Republic to communicate it; or
  - (c) fails to take proper care of, or so conducts himself as to endanger the safety of that information; or

- (d) retains the sketch, plan, model, note document or article when he has no right or when it is contrary to his duty so to do, or fails to comply with any lawful directions with regard to the return or disposal of such things; or
  - (e) uses anything described in paragraphs (a), (b), (c) or (d) for terrorist purposes
- commits an offence against this Act.

3. Any person who receives any code, password, sketch, plan, model, note or other document, article or information, knowingly or having reasonable grounds to believe at the time when receives it that the same is communicated to him in furtherance of or rendering support to terrorist act contravention of the provisions of this Act unless a proof exist that such communication was against his wish, commits an offence.

### **Section 10 – Prohibition against false threats of terrorist act**

(1) No person in the United Republic and no citizen of Tanzania outside the United Republic shall communicate or make available by any means any information which he knows or believes to be false to another person with the intention of inducing in him or any other person a false belief that a terrorist act has been, is being or will be carried out.

(2) No person in the United Republic and no citizen of Tanzania outside the United Republic shall place any article or substance in any place whatsoever with the intention of inducing in some other person a false belief that-

- (a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
- (b) the article contains or the substance consists of
  - (i) any dangerous, hazardous, radioactive or harmful substance;
  - (ii) any toxic chemical; or
  - (iii) any microbial or other biological agent, or toxin, that is likely to cause death, disease or personal injury or damage to property.

(3) No person in the United Republic and no citizen of Tanzania outside the United Republic shall dispatch any article or substance by post, rail or any other means whatever of sending things from one place to another with the intention of inducing in some other person a false belief that-

- (a) the article or substance is likely to explode or ignite and thereby cause personal injury or damage to property; or
- (b) the article contains or the substance consists of-
  - (i) any dangerous, hazardous, radioactive or harmful substance;
  - (ii) any toxic chemical; or
  - (iii) any microbial or other biological agent, or toxin, that is likely to cause death, disease or personal injury or damage to property.

(4) For the purposes of subsections (1), (2) and (3), a reference to a Person inducing in any other person a false belief does not require the first mentioned person to have any particular person in mind as the person in whom he intends to induce the false belief.

## **Section 29. Powers of investigation in case of urgency**

(1) Notwithstanding the provisions of the Criminal Procedure Act, 1985, where, in a case of urgency, application to the court to obtain a warrant would cause delay that may be prejudicial to the maintenance of public safety or public order, a police officer, not below the rank of Assistant Superintendent, or in charge of a police station, may, notwithstanding any other Act, with the assistance of such other police officers as may be necessary-

- (a) Enter and search any premises or place, if he has reason to suspect that, within those premises or at that place:
  - (i) an offence under this Act is being committed or likely to be committed; and
  - (ii) there is evidence of the commission of an offence under this Act
- (b) Search any person or vehicle found on any premises or place which he is empowered to enter and search under paragraph (a)
- (c) Stop, board and search any vessel, aircraft or vehicle if he has reason to suspect that there is in it evidence of the commission or likelihood of commission of an offence under this Act;
- (d) Seize, remove and detain anything which is, or contains or appears to him to be or to contain or likely to be or to contain evidence of the commission of an offence under this Act;
- (e) Arrest and detain any person whom he reasonably suspects of having committed or of being about to commit an offence under this Act.

**Proceeds of Crime Act (Mainland Tanzania)**

**Section 31 Powers to search for and seize tainted property**

“(1) Subject to subsection (2) a police officer may search a person for, and seize, any property which he believes, on reasonable grounds, to be tainted property.

(2) The search or seizure referred to in subsection (1) shall be made–

- (a) with the consent of the person concerned;
- (b) under warrant issued under section 32; or
- (c) in emergencies in accordance with section 34.

(3) Subject to subsection (2), a police officer may enter upon any land or upon or into premises, search the land or premises for tainted property and seize any property found in the course of the search which the officer believes, on reasonable grounds, to be tainted property.

(4) In conducting a search in terms of this section, a police officer may also search the clothing that is being worn by the person and any property under or apparently under the person's immediate control; save that nothing contained in this section shall be construed as authorising a police officer to carry out a search by way of an examination of body cavities.”

**Section 32. Search warrants in relation to tainted property**

“(1) Where a police officer has reasonable grounds for believing that there is tainted property of a particular kind on a person, his clothing or under his immediate control, or upon any land or upon or in any premises, he may apply to a magistrate for the issue of a search warrant for the tainted property.

(2) On an application in terms of subsection (1), a police officer shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (4), issue a warrant authorising a police officer–

- (a) in the case of a search warrant in respect of land or premises, to enter upon the land, or upon or into the premises;
- (b) to search for the tainted property; and

- (c) to seize property found in the course of the search which the police officer on reasonable grounds believes to be tainted property.
- (3) A search warrant may be issued in terms of subsection (2) in relation to tainted property whether or not information has been laid before the magistrate in respect of the relevant offence.
- (4) A magistrate shall not issue a warrant in terms of this section unless he is satisfied that–
  - (a) there are reasonable grounds for issuing the warrant; and
  - (b) where information has not been laid before him in respect of the relevant offence at the time of the application for the warrant–
    - (i) the property is tainted property; and
    - (ii) information will be laid before him in respect of the relevant offence within forty-eight hours.
- (5) A warrant issued in terms of this section shall specify–
  - (a) the purpose for which the warrant is issued, including the nature of the relevant offence;
  - (b) the kind of property authorised to be seized;
  - (c) the date on which the warrant shall cease to have effect; and
  - (d) the time during which entry upon any land or premises is authorised.
- (6) If in the course of searching under a search warrant issued in terms of this section for tainted property in relation to a particular offence, a police officer finds–
  - (a) property which he believes on reasonable grounds to be tainted property in relation to the offence, although not of a kind specified in the warrant; or
  - (b) tainted property relating to another serious offence; or
  - (c) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence,

and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing or continuing or repeating the offence or any other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.

- (7) A police officer acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.

(8) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.”

### **Section 33. Search warrant may be granted by telephone**

(1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so he may apply for a search warrant to a magistrate by telephone.

(2) Before making the application referred to in subsection (1), the police officer shall prepare the information referred to in section 32(2).

(3) On an application in terms of subsection (1), a magistrate may, if satisfied after considering the information referred to in subsection (2) or any other information he may receive concerning the grounds upon which the issue of the search warrant is sought, that there are reasonable grounds for issuing the warrant, he shall issue the warrant and record thereon the reason for granting it.

(4) Where a magistrate has issued a warrant in terms of subsection (3), he shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed and the police officer shall in turn complete a form of warrant in terms furnished by the magistrate, including the name of the magistrate.

(5) Not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is the earlier, the police officer shall give the magistrate who authorised the warrant the form of the warrant completed by him and the information in connection with the warrant, duly sworn.

(6) On receipt of the documents referred to in subsection (5), the magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with them had the application been made in terms of section 32.

(7) A form of warrant duly completed by a police officer in accordance with subsection (4) shall be authority for any search, entry or seizure.”

### **Section 34 Searches in emergencies**

A police officer may search a person for tainted property or enter upon land or into premises and search for tainted property and may seize any tainted property he finds in the course of the search if–

(a) he believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property; and

- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Act.”

### **Section 37 Search for and seizure of tainted property in relation to foreign offences**

(1) Where a police officer is authorised under the Mutual Assistance Act to apply to a magistrate for a search warrant under this Act in relation to tainted property in respect of a foreign specified offence, the provisions of this Part shall, *mutatis mutandis*, apply in relation to the application for the search warrant.

(2) If, in the course of searching for tainted property in relation to a foreign specified offence, a police officer finds—

- (a) any property which he believes, on reasonable grounds, to be tainted property in relation to the foreign specified offence although not of the kind specified in the warrant;
- (b) any property which he believes, on reasonable grounds, to be tainted property in relation to another foreign specified offence in respect of which a search warrant is in force; or
- (c) anything which he believes, on reasonable grounds—
  - (i) to be relevant to criminal proceedings in the foreign country in respect of the foreign specified offence; or
  - (ii) will afford evidence as to the commission of a criminal offence,

and he believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence, the warrant shall be deemed to authorise the police officer to seize that property or thing.”

### **Section 58. Production orders**

(1) Where a person has been convicted, or is reasonably suspected of having committed, a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of any property-tracking document in relation to that offence he may apply to a court for an order directing the person, subject to subsection (5), to produce to a police officer any document described in the order which is in that person's possession or control.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.



(3) Where, in an application for an order in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, the court may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining in terms of subsection (3) whether to treat a document as a property-tracking document in relation to an offence, a court may have regard to matters referred to in subsection (2) of section 25.

(5) An order for the production of documents shall not be made unless the court is satisfied that there are reasonable grounds for making the order."

(6) Where a document is produced to a police officer, the police officer may–

- (a) inspect the document;
- (b) take extracts from the document;
- (c) make copies of the document; or
- (d) retain the document if, and for as long as, retention of the document is reasonably necessary.

(7) A police officer referred to in subsection (6) shall, at the request of the person to whom the order was addressed–

- (a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; or
- (b) permit the person to–
  - (i) inspect the document;
  - (ii) take extracts from the document, or
  - (iii) make copies of the document.

(8) A person shall not be excused from producing a document on the ground that its production–

- (a) might tend to incriminate him or make him liable to a penalty; or
- (b) would be in breach of any obligation or privilege not to disclose the existence or contents of the document.

(9) The production of a document in terms of this section or any information, document or thing obtained as a direct or indirect consequence of the production of the document, shall not be admissible against any person, other than the person against whom charges have or are to be laid, in any criminal proceedings except proceedings relating to–

- (a) a contravention of an order of the court; or
- (b) the production of a document known to the person to be false or misleading in a material particular.

(10) For the purposes of subsection (9) proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

### **Section 63A Investigation of a bank account**

(1) Notwithstanding the provisions of any other written law, the Inspector General of Police may, where he considers that any evidence of the commission of a serious offence, predicate offence or money laundering by a person is likely to be found in a bank account kept by that person or his spouse or child or any person reasonably believed to be a trustee or agent of such person, and that procedure for obtaining an order of the court is likely to defeat the course of investigation, authorise in writing any police officer, of or above the rank of Assistant Superintendent of Police, either alone or with any other officer, to investigate the bank account and such authorization shall be sufficient to warrant the production of the bank account for scrutiny by that police officer and such officer may take copies of any relevant entries from that account.

(2) Where in the course of investigation, it appears necessary that a bank account be held for a period exceeding 7 days, the police officer referred to under subsection(1) shall be required to obtain leave of the court for continued holding of such bank account.

(3) Any person who, pursuant to the provisions of subsection( 1), fails to produce a bank account when required to do so or obstruct a police officer from scrutinizing the bank account or take copies of any relevant entries from that bank account commit an offence and shall, on conviction be liable to imprisonment for a term not exceeding two years or to a fine of not less than one million shillings or to both.

(4) In this section-

“bank account” includes any ledger, log book, cash book, and any other document used in the ordinary course of business by any person carrying on, whether on his own behalf or as an agent for another, and whether exclusively or otherwise, any banking business whatsoever, whether or not such person is a bank within the meaning of the Banking and Financial Institutions Act, 2005.

### **Section 63 B Placing under surveillance**

For the purposes of obtaining evidence in relation to serious offences, predicate offences or money laundering, a police officer of the rank of Assistant Superintendent of Police or above

authorized as such by the Inspector General of Police or the Director of Criminal Investigations may, with leave of the court-

- (a) have access to computer data systems, networks and services;
- (b) place under surveillance means of preservation of information including facsimile machines, electronic transmission and communication facilities;
- (c) make audio or video recording of acts and behaviours or conversations; and
- (d) have access to notarial and private deeds, or financial institutions and commercial records.

### **Section 65 Monitoring orders**

“(1) The Director of Public Prosecutions may apply to a court for a monitoring order directing a financial institution to give information to the Inspector-General of Police about financial transactions conducted through an account held by a particular person with that financial institution.

(2) A monitoring order shall apply in relation to financial transactions conducted during the period specified in the order.

(3) A court shall not make a monitoring order unless it is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought-

- (a) has committed or is reasonably suspected of having committed a specified offence;
- (b) was involved in the commission of or is reasonably suspected of having been involved in the commission of, a specified offence; or
- (c) has benefited, directly or indirectly, from the commission of a specified offence.

(4) A monitoring order shall specify the name or names in which the account is believed to be held and the type of information that the financial institution is required to give.

(5) Any financial institution which contravenes a monitoring order or provides false or misleading information shall be guilty of an offence and liable to a fine not exceeding one million shillings.”

**Criminal Procedure Act (Mainland Tanzania)**

**Section 38. Power to issue search warrant or authorise search**

- (1) If a police officer in charge of a police station is satisfied that there is reasonable ground for suspecting that there is in any building, vessel, carriage, box, receptacle or place—
  - (a) anything with respect to which an offence has been committed;
  - (b) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of an offence;
  - (c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purpose of committing an offence, and the officer is satisfied that any delay would result in the removal or destruction of that thing or would endanger life or property, he may search or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place as the case may be.
- (2) When an authority referred to in subsection (1) is issued, the police officer concerned shall, as soon as practicable, report the issue of the authority, the grounds on which it was issued and the result of any search made under it to a magistrate.
- (3) Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.
- (4) Whoever, being empowered by law to order, authorise or conduct the search or any person, place, building, vessel, carriage or receptacle, vexatiously and without having reasonable grounds for doing, orders, authorises or conducts such search is guilty of an offence and upon conviction is liable to a fine not exceeding three thousand shillings or imprisonment for a term not exceeding one year.
- (5) No prosecution against any person for an offence under subsection (4) shall be instituted except with the written consent of the Director of Public Prosecutions."

**Section 39. Things connected with an offence**

For the purposes of this Part—

- (a) anything with respect to which an offence has been or is purported on reasonable grounds to have been committed;
- (b) anything as to which there are reasonable grounds for believing that it will afford evidence of the commission of any offence; and

- (c) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence,  
shall be deemed to be a thing connected with the offence.”

#### **Section 40. Execution of search warrant**

A search warrant may be issued and executed on any day (including Sunday) and may be executed between the hours of sunrise and sunset but the court may, upon application by a police officer or other person to whom it is addressed, permit him to execute it at any hour.

#### **Section 41. Search and seizure**

A police officer may search the person or the clothing that is being worn by, or property in the immediate control of, a person and may seize any thing relating to an offence that is found in the course of the search, if the search and seizure is made by the police officer—

- (a) in pursuance of a warrant issued under this Part;
- (b) in accordance with section 24 upon taking the person into lawful custody in respect of an offence;
- (c) upon stopping the person in accordance with subsection (2) of section 42;
- (d) in pursuance of an order made by a court.”

#### **Section 42. Searches in emergencies**

- (1) A police officer may—

- (a) search a person suspected by him to be carrying anything concerned with an offence; or
- (b) enter upon any land, or into any premises, vessel or vehicle, on or in which he believes on reasonable grounds that anything connected with an offence is situated,  
and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be—

- (i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and

- (ii) the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part.

(2) A police officer who believes on reasonable grounds that that person is carrying an offensive weapon or anything connected with an offence may stop that person and seize any such weapon or thing that is found on the person.

(3) A police officer who believes on reasonable grounds that an offensive weapon, or anything connected with an offence is being carried in a vessel or vehicle, may stop and seize any such weapon or thing found in the vessel or vehicle.

## **The Drugs and Prevention of Illicit Traffic in Drugs Act (Mainland Tanzania)**

### **Section 30. Application of Criminal Procedure Act with necessary modification**

- (1) The provision of any law in force in the United Republic in relation to arrests, search, seizure and general powers and duties of investigation by officers of the police, customs, excise, revenue or any other person having powers of arrest, shall apply to this Act.
- (2) Subject to section (1), any such officer referred to in subsection (1) may at any time-
  - (a) enter into and search any building, conveyance, or place;
  - (b) in case of resistance, break open any door or remove any obstacle to such entry;
  - (c) seize any drug or substance and all materials used in the manufacture and any other article and any thing or conveyance which he has reason to believe to have committed any offence under this Act.
- (3) Where an officer takes down any information in writing under subsection (2) or records grounds for his belief, he shall forthwith send a copy thereof to his immediate superior.
- (4) The provisions of this section shall so far as may be, apply in relation to the offences under Part IV and relating to coca plants, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs or psychotropic substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

### **Section 31. Procedure of seizure where confiscation is not possible**

Where it is not possible to seize any goods (including standing crop) which are liable to confiscation under this Act, any officer authorised under section 30, may serve on the owner or person in possession of the goods, an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

### **Section 33. Powers of attachment of crops illegally cultivated**

Any officer empowered under this Act, may order attachment of any opium poppy, cannabis plant or coca plant which he has reason to believe to have been illegally cultivated and may pass such order, including an order to destroy the crop, as he thinks fit.

## **The Drugs and Prevention of Illicit Traffic in Drugs Act (Zanzibar)**

### **Section 31. Application of Criminal Procedure Act with necessary modification**

- (1) The provision of any law in force in Zanzibar dealing with arrests, search, seizure and powers and duties of investigation by officers of the police, customs, revenue or any other person having power of arrest, shall apply to this Act.
- (2) Subject to section (1), any such officer referred to in subsection (1) may at any time-
  - (a) enter into and search any building, conveyance, or place;
  - (b) in case of resistance, break open any door or remove any obstacle to such entry;
  - (c) seize any drug or substance and all materials used in the manufacture and any other article and any thing or conveyance which he has reason to believe to have committed any offence under this Act.
- (3) Where an officer takes down any information in writing under subsection (2) of this section records grounds for his belief, he shall forthwith send a copy thereof to his immediate superior.
- (4) The provisions of this section shall so far as may be, apply in relation to the offences under Part IV and relating to coca plants, the opium poppy or cannabis plant and for this purpose references in those sections to narcotic drugs or psychotropic substance, shall be construed as including references to coca plant, the opium poppy and cannabis plant.

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**Extract of the Economic and Organized Control Act**

**Section 22**

(1) Where a police officer is satisfied that there is reasonable ground of for suspecting that there is in any building, vessel, carriage, box, receptacle or place–

- (a) anything with respect to which any economic offence has been committed;
- (b) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of any economic offence;
- (c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purposes of committing any offence,

and that any delay would result in the removal or destruction of that thing or danger to life, or property he may search, or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place.

## Extract of The Public Leadership Code of Ethics Act

### Section 4-Interpretation

"public leader" means any person holding any of the following public offices, namely–

- (i) President of the United Republic;
- (ii) Vice-President of the United Republic;
- (iii) President of Zanzibar;
- (iv) Prime Minister;
- (v) Chief Minister of Zanzibar;
- (vi) Speaker and Deputy Speaker;
- (vii) Chief Justice of the United Republic;
- (viii) Minister, Deputy Minister and Regional Commissioner;
- (ix) Attorney-General;
- (x) Judge and Magistrate;
- (xi) Member of Parliament;
- (xii) Ambassador or High Commissioner representing Tanzania abroad;
- (xiii) Chief Secretary, and District Commissioner; Regional Administrative Secretary, Permanent Secretary, Deputy Permanent Secretary;
- (xiv) Controller and Auditor-General;
- (xv) Clerk of the National Assembly;
- (xvi) Chief of Defence Forces;
- (xvii) Inspector-General of Police and the Regional Police Commander;
- (xviii) Chief of National Service;
- (xix) Principal Commissioner of Prisons;
- (xx) Director-General of Intelligence;
- (xxi) Director-General of Prevention of Corruption Bureau;
- (xxii) Mayor, Chairman, Member or chief executive officer of a local government;
- (xxiii) Governor, Deputy Governor, Chairman, Managing Director, General Manager or Director-General of a body corporate in which the Government has a controlling interest;
- (xxiv) Chairman and Members of all commissions appointed on full-time basis;
- (xxv) public officers in charge of independent Government departments;
- (xxvi) Commissioners for tax at the Tanzania Revenue Authority;
- (xxvii) Commissioners and Directors in the Government Ministries;

(2) Notwithstanding subsection (1), the President may, by notice published in the Gazette, change, vary or amend the list of public leaders specified under subsection (1).

(3) Where any changes or variations occur in respect of any title of public leader specified under section (1), the new titles shall be deemed to be the proper title under this Act.

**Extract of the National Prosecutions Service Act, 2008**

**Section 16**

(1) Notwithstanding the provisions of any other law in force for the time being, the Director shall have powers to do all things that are necessary to be done for the purpose of performing the functions of the Service including the coordination of criminal investigations.

(4) Without prejudice to other provisions of this Act or any other law, the Director may order that a State Attorney coordinate an investigation of a crime and every investigating officer shall comply with that order.

**Section 24**

(1) The Director shall coordinate the investigation of crimes.

(2) The Director in consultation with the investigative organs shall develop guidelines to facilitate the effective participation of the Director in the investigative process."

## Extract of the Mutual Assistance in Criminal Matters Act

### Section 32

- 1) Where-
  - (a) An appropriate authority of a foreign country requests the Attorney-General to make arrangements for the enforcement of-
    - (i) a foreign forfeiture order made in respect of a foreign specified offence against property that is believed to be located in Tanzania; or
    - (ii) a foreign pecuniary penalty order made in respect of a foreign specified offence where some or all of the property available to satisfy the order is believed to be located in Tanzania; and
  - (b) The Attorney-General is satisfied that-
    - (i) a person has been convicted of the offence; and
    - (ii) the conviction and the order are not subject to appeal in the foreign country,

the Attorney-General may, on application, obtain the registration of the order with the High Court.
- 2) Where an appropriate authority of a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign interdict issued in respect of a foreign specified offence against property that is believed to be located in Tanzania, the Attorney-General may, on application, obtain the registration of the order by the High Court.
- 3) If, on an application in terms of subsection (1) or (2), the High Court is satisfied from the documents filed on record, or from any other evidence, that the foreign forfeiture order, the foreign pecuniary penalty order or the foreign interdict, as the case may be-
  - (a) was properly made against the person concerned; and
  - (b) the person concerned was given an adequate opportunity to make presentations in regard to the registration of the order,

the High Court may register the order.
- 4) A foreign forfeiture order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a forfeiture order made by a court under the Proceeds of Crime Act at the time of registration.
- 5) A foreign pecuniary penalty order registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were a pecuniary penalty order made by a court under the Proceeds of Crime Act at the time of registration and requiring the payment to Tanzania of the amount payable under the order.

- 6) A foreign interdict registered with the High Court in terms of this section shall have effect, and may be enforced, as if it were an interdict made by a court under the Proceeds of Crime Act at the time of registration.”

### Section 33

- 1) Where-
- (a) Criminal proceeding or criminal investigations have commenced in a foreign country in respect of a foreign specified offence;
  - (b) There are reasonable grounds for believing that tainted property in relation to the offence is located in Tanzania; and
  - (c) The appropriate authority of the foreign country requests the Attorney-General to obtain the issue of the search warrant under the Proceeds of Crime Act, in relation to tainted property,
- the Attorney-General may, in writing, authorise a police officer to apply to a magistrate of the area concerned for the search warrant requested by the appropriate authority of the foreign country.”

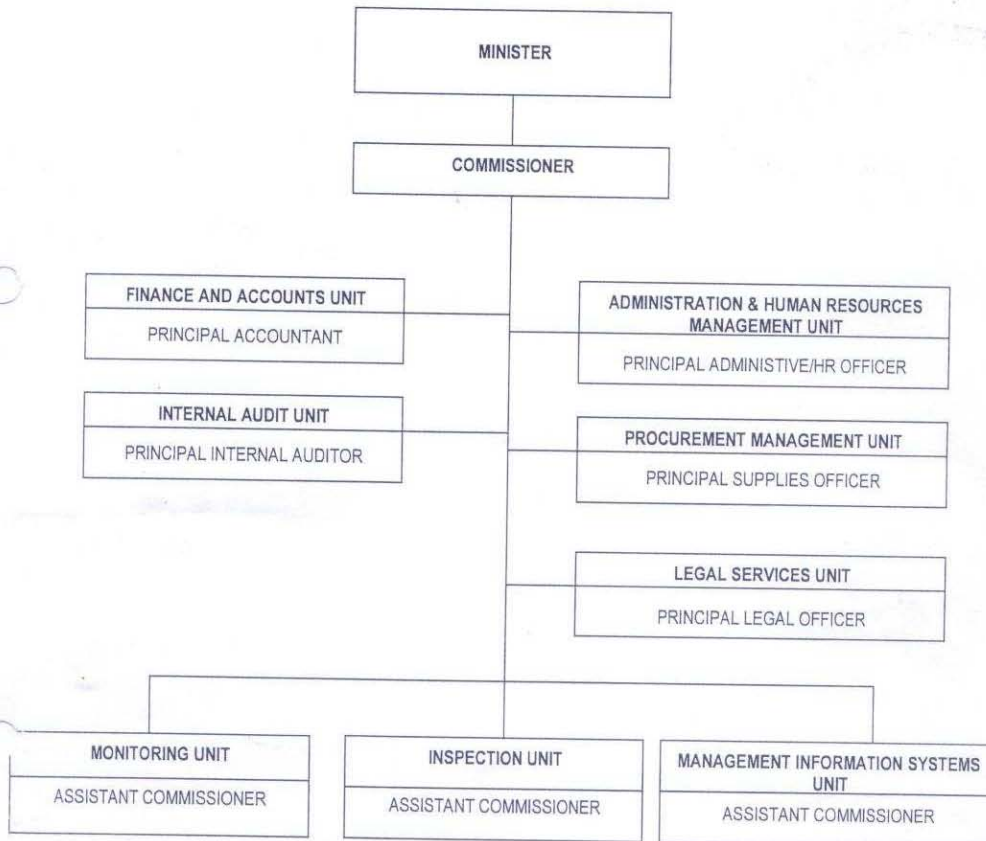
### Section 34

Where-

- (a) criminal proceedings have commenced in a foreign country in respect of a foreign specified offence;
  - (b) there are reasonable grounds for believing that tainted property that may be made or is about to be made, the subject of an interdict located in Tanzania; and
  - (c) the appropriate authority of the foreign country requests the Attorney-General to obtain the issue of an interdict under the Proceeds of Crime Act, against the property,
- the Attorney-General may authorise an application to the High Court for the issue of the interdict requested by the appropriate authority of the foreign country”

Chart I

**APPROVED ORGANISATION STRUCTURE OF FINANCIAL  
INTELLIGENCE UNIT**  
(Approved by the President on 13<sup>th</sup> January, 2009)



#### **Annex 4: List of laws, regulations and other material received**

- 1 Constitution of the United Republic of Tanzania of 1977
- 2 The Constitution of Zanzibar, 1984
- 3 The Anti Money Laundering Act, 2006
- 4 The Bank of Tanzania Act 2006
- 5 Banking and Financial Institutions Act 2006
- 6 The Foreign Exchange (Bureaux de Change) Regulations 2008
- 7 The Insurance Act
- 8 The Capital Markets and Securities Act
- 9 The Capital Markets and Securities (Licensing) Regulations
- 10 The Capital Markets and Securities (Establishment of Stock Exchanges) Regulations
- 11 The Capital Markets and Securities (Collective Investment Schemes) Regulations
- 12 The Financial Leasing Act 2008
- 13 Office of the Attorney General (Discharge of Duties) Act 2005
- 14 The National Prosecutions Service Act, 2008
- 15 The Anti-Trafficking in Persons Act, 2008
- 16 The Business Activities Registration Act, 2007
- 17 Prevention of Terrorism Act
- 18 Penal Code
- 19 The Proceeds of Crime Act
- 20 The Criminal Procedure Act
- 21 Anti-Money Regulations 2007
- 22 Evidence Act
- 23 Extradition Act
- 24 Public Leadership Code of Ethics Act
- 25 Police Force and Auxiliary Services Act
- 26 Capital Markets and Securities Staff Regulations and Code of Conduct 2003
- 27 Electronic Payment Scheme Guidelines 2007
- 28 Companies Act 2002
- 29 Tanzania Inter-Bank Settlement System Rules and Regulations
- 30 The Economic and Organised Crime Control Act
- 31 Special Economic Zones Act, 2006
- 32 The Tanzania Revenue Authority Act
- 33 The East African Community Customs Management Act 2005
- 34 The Tanzania Communications Regulatory Authority Act 2003
- 35 The Communications (Licensing) Regulations, 2005
- 36 The Non-Governmental Organisations Act, 2002
- 37 The Non-Governmental Organisations Regulations, 2004
- 38 The Written Laws (Miscellaneous Amendment) (No.2) Act, 2005
- 39 The Mutual Assistance in Criminal Matters Act



- 40 The Gaming Act
- 41 The Prevention and Combating of Corruption Act, 2007
- 42 The Cooperative Societies Act, 2003
- 43 The Societies Act, No. 6 of 1995
- 44 The Drugs and Prevention of Illicit Traffic Drugs Act No. 16 of 2003
- 45 The Accountants and Auditors (Registration) Act
- 46 The National Board of Auditors and Accountants (Registration and Membership) By-Laws
- 47 The Written Laws (Miscellaneous Amendments) Act 2007
- 48 The Penal Decree (Amendment) Act No.6 of 2004
- 49 The Tanganyika Law Society Act
- 50 The Advocates Act
- 51 The Advocates (Accounts) Regulations
- 52 Zanzibar Investment Promotion and Protection Act, 2004
- 53 Zanzibar Investment Policy
- 54 Statistics on the number of accountants (source NBAA)
- 55 NBAA Annual Report and Accounts 2006/2007
- 56 International Standard on Accounting (ISA) 330 The Auditor's procedures in response to assessed risks
- 57 ISA 240-The Auditor's responsibility to consider fraud in an audit of financial statement
- 58 ISA 210: Terms of Audit Engagement
- 59 BOT Checklist of documents to be submitted for licensing of Banks and Financial institutions
- 60 List of Bureaus licensed under the Foreign Exchange Regulations, 2008
- 61 BOT List of MOU with other Central Banks
- 62 The Foreign Exchange (bureaux de change) Regulations, 2008
- 63 BOT Examinations Procedures (extract)
- 64 The Banking and Financial Institutions (Licensing) Regulations, 2008
- 65 The Anti-Money Laundering and Proceeds of Crime Bill (Zanzibar)
- 66 FIU Sensitisation Workshop, July 9, 2008
- 67 The Executive Agencies Act
- 68 The Political Parties Act
- 69 The Trustees Incorporation Act (Mainland)
- 70 The Trustee Investment Act
- 71 Land Perpetual [succession] Decree Application of Incorporation Form (Zanzibar)
- 72 Procedures for registration of NGOs under the NGO Act, 2002
- 73 The NGO Code of Conduct GN 363 of 2008
- 74 Zanzibar Societies Rules 1995
- 75 Zanzibar Societies Act 1995
- 76 BRELA Current Statistics

- 77 Companies Decree, Zanzibar
- 78 Zanzibar Notice of Situation of Registered Office or any change therein form
- 79 Zanzibar Consent to Act as Director of a Company Form
- 80 Zanzibar Declaration of Compliance with the Requirements of the Decree on application for registration of a company Form 12
- 81 Particulars of the person who is the Secretary of the Company
- 82 Particulars of the person who is the Secretary of the Company
- 83 List of documents delivered for Registration by an Oversea Company Form No. 1F
- 84 List of Names and address of persons resident in Zanzibar authorised to accept service on behalf of an overseas company
- 85 Form of annual return of a company having a share capital
- 86 The Mutual Assistance in Criminal Matters Act (Revised 2002)
- 87 The Drugs and Prevention of Illicit Traffic in Drugs Act
- 88 The Interpretation of Laws Act
- 89 FIU Budget
- 90 Updated FIU Statistics
- 91 Draft AML Guidelines to Banking Institutions, June 2008
- 92 Draft Guidelines for the Verification of Customers' Identities, March 2008;
- 93 Draft STR Form
- 94 AML Issues for Bank of Tanzania, July 2008
- 95 FIU AML Guidelines to Banking Institutions, Guidelines No.2
- 96 FIU Guidelines for the Verification of Customers' Identities, Guidelines No.1
- 97 AML Issues for Bank of Tanzania, Guidelines No.3
- 98 Instructions for Completing and submitting STRs to FIU
- 99 The Gaming Regulations 2003
- 100 Additional Information to the MEQ (Customs)
- 101 The Capital Markets and Securities Authority Enforcement Guidelines 2004
- 102 Capital Markets and Securities (Conflict of Interest) Guidelines 2002
- 103 Capital Markets and Securities (Corporate Governance) Guidelines 2002
- 104 Postal Rules, 2001 (hard copy to be consulted onsite)
- 105 Post Office Guide Volume 2 International Postal and Remittance Services (hard copy to be consulted onsite)
- 106 Rules of Professional Conduct and Etiquette of The Tanganyika Law Society
- 107 The Economic Survey 2007 (hard copy to be consulted onsite)
- 108 The National Policy on Non-Governmental Organizations (NGOs)
- 109 Memorandum of Understanding Between Three Entities Namely Tanzania Posts Corporation, Tanzania Police Force, Tanzania Customs Department
- 110 The Republic v. Rashid Salehe Hemedi
- 111 Insurance Act 2009 (effective as from 01 July 2009)
- 112 The Social Security (Regulatory Authority) Act 2008 (not yet effective)
- 113 Nurdin Akasha alias Habab v Republic TLR 227 (CA)

- 114 Criminal Session Case No.3 of 2002 Republic v. Jonathan Loilangwaki and Ors.
- 115 Criminal Session Case No.51 of 2003, Republic v. Kabwe Aleko Mulenga and ors.

