



Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

August 2008

Republic of Zambia

The Republic of Zambia 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 1st mutual evaluation by its Task Force of Senior Officials on 20 August 2008 and approved by its Council of Ministers on 22 August 2008.

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List of Abbreviations

ACC	Anti Corruption Commission Zambia
AG	Attorney General
AML	Anti Money Laundering
AMLA	Anti Money Laundering Authority
AML/CFT	Anti Money Laundering/Combating Financing of Terrorism
AMIZ	Association of Micro -Lenders of Zambia
BFSA	Banking and Financial Services Act
BOZ	Bank of Zambia
BoZ AML Directives	BoZ Anti-Money Laundering Directives, 2004
BoZ CDD Directives	Directives on Customer Due Diligence and Foreign Currency Cash Transactions, 1998
CFT	Combating Financing of Terrorism
CISNA	Committee of Insurance, Securities and Non-banking Financial Authorities
DEC	Drug Enforcement Commission
DNFBP(s)	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
EAZ	Economics Association of Zambia
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force on Money Laundering
AMLIU	Anti-Money Laundering Investigation Unit
FT	Financing of Terrorism
IAIS	International Association of Insurance Supervisors
IBC	International Business Companies
IOSCO	International Organisation of Securities Commissions
ITZ	International Trade Zone
KYC	Know Your Customer
LAZ	Law Association of Zambia
LuSE	Lusaka Stock Exchange
ML	Money Laundering
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOU	Memorandum of Understanding
NDPSA	Narcotic Drugs and Psychotropic Substances Act

NBFIs	Non Bank Financial Institutions
NCCT	Non-Cooperative Countries and Territories
PACRO	Patents and Companies Registration Office
PEPs	Politically Exposed Persons
PIA	Pensions and Insurance Authority
PPMLA	Prohibition and Prevention Money Laundering Act
SADC	Southern African Development Community
SARPPCO	Southern Africa Regional Police Chiefs Cooperation Organization
SEC	Securities and Exchange Commission
STRs	Suspicious Transaction Reports
TF	Terrorist Financing
UN	United Nations
WCO	World Customs Organisation
WTO	World Trade Organisation
ZAR	Zambia Revenue Authority
ZICA	Zambia Institute of Certified Accountants
ZPS	Zambia Police Service
ZSIC	Zambia State Insurance Corporation

PREFACE

Information and methodology used for the Evaluation of the Republic of Zambia

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of The Republic of Zambia was based on the Forty Recommendations 2004 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004¹.

A Pre-mutual Evaluation workshop was held on the first and second of October 2007 in Lusaka Zambia by ESAAMLG and the World Bank with stakeholders from Zambia. The workshop was to identify what specifically would be needed to be supplied to the team conducting the evaluation. The objectives and goals of the Evaluation were outlined to all the stakeholders that would be subject of the Mutual Evaluation. The evaluation was based on the laws, regulations and other materials supplied by Zambia and information obtained by the evaluation team during its on-site visit to Zambia from the 19th of November to the 28th of November 2007. During the on-site the evaluation team met with officials and representatives of all relevant The Zambia government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

The following Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG) representatives acted as evaluators for this report: Legal Expert Mr. Joseph Jagada of Zimbabwe, Law Enforcement Mr. Saitoti Ole Maika of Kenya, FIU Mr. Tom Malikebu of Malawi, Financial Expert: Mr. Michael Tukei of Uganda. The ESAAMLG Secretariat was represented by Dr. E. Kisanga, Executive Secretary and Mr. W. Blackburn, UN Mentor. 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.

A second face to face meeting was held with the Zambian authorities from 21 to 24 July 2008 to clarify outstanding issues identified in the draft mutual evaluation report. Mr. Saitoti Ole Maika of Kenya and Mr. Tom Malikebu of Malawi represented the assessment team while Mrs. Yotsna Lalji-Venketasawmy, Legal Adviser, ESAAMLG represented the ESAAMLG Secretariat.

This report provides a summary of the AML/CFT measures in place in Zambia as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Zambia'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).

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

1. ¹ As updated in 2006

Executive Summary

Background Information

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

Key findings

2 Zambia has demonstrated some commitment to establish a strong AML/CFT framework. This commitment is reflected by the enactment of the the Prohibition and Prevention of Money Laundering Act (PPMLA) and the Anti-Terrorism Act as well as the establishment of the Anti-Money Laundering Investigations Unit (AMLIU). The PPMLA addresses some key fundamental requirements by imposing AML obligations on all financial institutions and some designated non-financial businesses and professions covered by international standards.

3 A National AML Task Force chaired by the Secretary to the Treasury has been formed. It consists of all the major stakeholders in Zambia. Its core terms of references are: to enhance domestic cooperation, oversee adoption and implementation of international AML/CFT standards as well as development of national AML/CFT strategies. However, the Anti-Money Laundering Authority established under the PPMLA which is tasked with the responsibility to provide policy direction in matters of AML does not appear to be effective.

4 The AMLIU which is intended to operate as a financial intelligence unit, suffers from serious weaknesses which undermine its capacity to play that role. It has not fulfilled some of its statutory obligations under the PPMLA and does not fully meet the Egmont Group definition of an FIU.

5 The implementation of preventive measures by financial institutions has not been uniform across the sector. The financial institutions falling under the supervisory authority of the BoZ have implemented AML/CFT measures. The BoZ has also issued the AML and CDD directives to assist these financial institutions to comply with their AML obligations. The financial institutions falling under the supervisory purview of the PIA and SEC are however, not supervised for AML/CFT compliance. No sector specific directives have been issued by the respective supervisory authority to assist them to comply with their AML/CFT obligations.

6 The full range of the DNFBPs as defined under the FAFT recommendations is not covered under the PPMLA. The level of AML/CFT awareness amongst those that are covered is very low and therefore AML/CFT measures under the PPMLA have not been implemented. AMLIU has not developed any programme for assisting the reporting institutions to comply with the requirements under the PPMLA. As a result of the above, AML/CFT compliance by DNFBPs is non-existent.

7 Zambia should develop and implement an aggressive awareness raising campaign in the non-banking financial services and DNFBP sectors and the general public. This should be part of AMLIU's action plan for the next two years.

8 In order to ensure the effective implementation of the AML & CFT framework, Zambia should, by providing relevant training, enhance the technical capacity of the law enforcement agencies, the public prosecutors and the judiciary.

Legal Systems and Related Institutional Measures

9 Zambia initiated the fight against ML when it amended the Narcotic Drugs and Psychotropic Substances Act to introduce legislation that criminalizes money laundering. The initiative was reinforced in 2001 with the enactment of the PPMLA.

10 The PPMLA does not adopt a threshold approach. Predicate offences for money laundering extend to all illegal activities which amount to a crime. The law does not define the term crime nor has there been any judicial pronouncement on the issue.

11 As Zambia has recently promulgated the Anti- Terrorism Act the regulatory and administrative frameworks for implementing the United Nations Security Council Resolutions 1267 and 1373 have yet to be established. Zambia should expedite the setting up of appropriate regulatory and administrative processes to implement the requirements under these resolutions. Furthermore, the authorities are not disseminating the UNSCR 1267 lists to financial institutions. The authorities should establish the appropriate legislative framework for freezing terrorist assets as required by the UNSCRs.

12 **The PPMLA provides an adequate framework for Zambia's seizure and forfeiture regime.** However, forfeiture (confiscation) is conviction-based, with freezing, seizing and restraining orders being provided for under the Act. Adequate powers are available to identify and trace property. These powers have been used successfully by the AMLIU and the Anti-Corruption Commission to forfeit property used in the commission of an offence.

13 **The legal framework in place to monitor cross border movement of currency and bearer negotiable instruments is inadequate.** Currency has not been defined and bearer negotiable instruments have not been included in the definition of currency. Although the Customs and Excise Act requires declarations of currency above US\$5,000, it does not provide for submission of any cross-border movement of currency reports on both genuine and false declarations. Nor is there a specific requirement to maintain data on cross-border currency movements in the event of a suspicion of ML/TF. In addition, Zambia has not established systems and procedures on how seized currency should be handled.

Preventive Measures – Financial Institutions

14 There are different types of financial institutions operating in Zambia. Banks, deposit taking institutions and foreign exchange bureau are licensed and supervised by Bank of Zambia, whereas insurance and stock market players fall under the jurisdiction of Pensions & Insurance Authority and Lusaka Stock Exchange respectively. Legislation for regulating money transmitters has just been passed. The Bank of Zambia is the designated licensing authority under the new law. However, the provisions of the Act had not been implemented as at the date on the onsite visit.

15 **The PPMLA applies to all financial institutions. However, currently, only banks and foreign exchange bureaux are supervised for AML purposes.** PIA has drafted AML/CFT directives which have not yet been issued for implementation while the capital market supervisory authority has not taken any action with respect to AML/CFT enforcement in the sector. These sectors are therefore vulnerable to exploitation for ML and TF.

16 **There is currently no AML/CFT regulatory framework dealing with financial institutions with foreign branches or subsidiaries.** Authorities should consider putting them in place even though at the time of the onsite, there was no bank in Zambia with a branch or subsidiary outside the country. However, one of the insurance companies had established a foreign subsidiary.

17 There are no AML/CFT requirements for money value transfers outside the formal banking sector. In addition, wire transfers rules do not exist. Although some banks have systems and procedures to handle

18 **There are banking confidentiality provisions under the banking laws. While the Anti-Terrorism Act contains provisions that would override these confidentiality provisions it is not clear whether the provision under the PPMLA will prevail over the banking laws- which allows disclosure of information under specific circumstances.** The BFSa does not have enabling provisions to facilitate exchange of information amongst competent authorities. In addition, weaknesses in maintaining secrecy and confidentiality at AMLIU may affect the willingness of financial institutions release information.

19 **The requirement for suspicious transactions reporting (STR) is laid out in the PPMLA. However, there are no reporting requirements in respect of TF.** To date, only banks have been reporting, and the number of STRs has been declining over the years despite the growth and diversity of the financial sector. Insurance companies and capital market players are not aware of their obligations to submit STRs on ML and TF even though there are required to report under the PPMLA.

20 **Provisions that protect the reporting agents and entities against civil and criminal proceedings are part of the PPMLA** But there are no tipping off provisions with respect to STRs and related information submitted to the AMLIU.

21 **There is no law or regulation dealing with shell banks.** While the current licensing approach does not authorize shell banks, such licensing is discretionary. In this respect, the authorities should consider specifically prohibiting the establishment of shell banks.

Preventive Measures – Designated Non-Financial Businesses and Professions

22 Not all designated non-financial businesses and professionals (DNFBPs) as defined by the FATF are covered under the PPMLA. The designated supervisory authorities for the DNFBPs and the reporting institutions are not aware of their AML obligations under the PPMLA. In addition, there some DNFBPs that are not members of professional bodies. All of them remain vulnerable to ML and TF risks.

23 AMLIU has not carried out its duty to supervise the reporting requirements and provide training to supervisory authorities and reporting institutions.

Legal Persons and Arrangements & Non-Profit Organisations

24 **Zambia has a wide range of legal persons and arrangements. These include: companies and other forms of companies, partnerships, sole proprietorships, trusts and societies.** The country has a registration system for most of these legal persons. For instance, companies formed under the Companies Act are required to have a registered office in Zambia, and keep up-to-date register of names and addresses of its members. The company registry office is automated. However, the Registrar is not required to obtain details of the source of capital to be used for starting a company or particulars of beneficial owners of shares.

25 Lack of information on beneficial owners and the fact that directors and shareholders may be nominees can slow down investigative trails. Authorities are therefore advised to 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 agencies.

26 Currently, non profit organisations are regulated by the Societies Act Cap 119. The Organisations (Control of Assistance) Act 116 regulates the receipt of financial assistance given to organisations of a political nature by foreign governments and their agencies. Specific legislation to regulate non profit organisations is yet to be enacted.

27 The Registrar of Societies carries out random inspections to review compliance with the Act. These are normally based on information submitted in the annual returns. However, such reviews do not cover AML/CFT matters. Additionally, the officers have not been trained on AML/CFT.

28 In as far as preventing the unlawful use of legal persons and legal arrangements, Zambia relies on the investigative and other powers of law enforcement, regulatory and other competent authorities to obtain or get access to information.

National and International Co-operation

29 The Anti-Money Laundering Authority and National AML Task Force serve as platforms to enhance domestic cooperation and coordination. However, these fora have not been fully utilized for this purpose. The assessors did not get any information that members of the AMLA meet and exchange views on ML matters. In addition, there has been lack of engagement of other stakeholders in AML matters by AMLIU.

30 There is no national framework in place to deal with domestic cooperation on TF matters.

31 **The Mutual Legal Assistance in Criminal Matters Act does not cover all forms of assistance as required under the international standards.**

32 **Money laundering and terrorist financing are extraditable offences**

Other Issues

33 This report has demonstrated that Zambia has made significant commitment to establish a strong AML/CFT system. The commitment is reflected by the enactment of the PPMLA and the Anti Terrorism Act. It has also established the AMLIU which is expected to carry out the functions of an FIU. The PPMLA has addressed some key fundamental requirements by imposing AML obligations on all financial institutions and some DNFBPs.

34 The report has also identified deficiencies in the existing system and has made recommendations on actions that Zambia needs to take in the medium and long term to address the deficiencies and strengthen the legal and institutional framework it has put in place to combat money laundering and terrorist financing.

35 As the report indicates Zambia is a jurisdiction which is committed to extending the liberalisation of its economy and its financial sector to make it a sustainable investment destination. To achieve this overall national objective, Zambia will need to take concerted action to address the AML/CFT deficiencies identified in the report to enable the country to continue benefiting from the liberalisation of its economy.

36 There are a number of capacity related issues that Zambia will need to address in its efforts to develop its AML/CFT system in the medium and long term. Strengthening of existing institutions involved in the fight against money laundering and terrorist financing is one of the major challenges. There is also the need to raise more awareness of the risk of money laundering and terrorist financing in the intuitions obligated to report in the law. Given the resource constraints that countries at Zambia's

level of development are facing there will be a requirement for mobilisation of technical assistance to assist Zambia to build the requisite capacity.

37 This report and its recommendations for actions provide an opportunity to the Zambian authorities to engage with technical assistance providers to seek assistance in advancing the existing AML/CFT systems to enable them to progressively attain the international standards.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information

1. Zambia, which got its independence from Britain on 24 October 1964, is a unitary state headed by a Republican President who is elected by universal suffrage for a term of five years.

2. It is a land-locked country measuring approximately 750,000 square kilometres. It has 8 neighbouring countries.² The population according to the last national census in 2000 was 9.8 million people. It has 9 provinces, namely, Central, Copper belt, Eastern, Luapula, Lusaka, Northern, North-Western, Southern and Western. Further, Zambia is divided into 72 districts. The capital city of the country is Lusaka.

Governance

3. The political system of Zambia is a multi-party democracy and its legal system is based on statute law enacted by its Parliament, English Law and Zambian Customary Law. Section two of the English Law (Extent of Application) Act sets out the English laws that are recognised in Zambia. These are-

- (a) the common law;
- (b) the doctrines of equity;
- (c) the statutes which were in force in England on the 17th August, 1911 (being the commencement of the Northern Rhodesia Order in Council, 1911);
- (d) any statutes of a later date than that mentioned in paragraph (c) in force in England, now applied to the Republic, or which hereafter shall be applied thereto by any Act or otherwise; and
- (e) the Supreme Court Practice Rules of England in force until 1999:

4. The British Acts Extension Act also provides for application of British statutes in Zambia. These statutes are:

- The Conveyancing Act, 1911
- The Forgery Act, 1913
- The Industrial and Provident Societies (Amendment) Act, 1913
- The Larceny Act, 1916

² Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Namibia, Tanzania and Zimbabwe

- The Bills of Exchange (Time of Noting) Act, 1917
- The Married Women (Maintenance) Act, 1920
- The Gaming Act, 1922
- The Industrial and Provident Societies (Amendment) Act, 1928
- The Limitation Act, 1939
- The Law Reform (Enforcement of Contracts) Act, 1954

5. The three arms of Government which operate independently comprise the Executive, the Legislature and the Judiciary.

6. The Executive is made up of the President and his appointed cabinet. Cabinet members are appointed from members of the National Assembly by the President.

7. The Legislature is made up of the National Assembly comprising 150 members of Parliament elected by universal suffrage for a five-year term. In addition, the President has statutory powers to nominate an additional 10 members of Parliament.

8. The Judiciary is headed by the Chief Justice. It comprises the Supreme Court, the High Court, subordinate courts and local courts. Judges of the Supreme Court and the High Court are appointed by the President upon the recommendation of the Judicial Service Commission. The magistrates and local court justices are appointed by the Judicial Service Commission.

9. There is a Judicial Complaints Authority that receives and investigates complaints against the judiciary and the administration of justice.

Economy

10. In 2006, Zambia's economy posted a 5.8% growth in Gross Domestic Product (GDP). This was a build-up on the 2005 growth rate of 5%. The main contributors to growth in 2006 were the mining, construction and transport sectors each recording 11.8%, 9% and 13.4% growth respectively. However lower growth rates were experienced in agriculture (2.4%), tourism (3.1%) and manufacturing (3.3%).

11. Beginning 2007, the implementation of the Fifth National Development Plan (FNDP) and the Vision 2030 enhanced development efforts to accelerate economic growth so as to create jobs and broad-based wealth. As a result, the Government is aligning public expenditures with the FNDP objectives and policies. Macroeconomic objectives for 2007 include:

- Achieving a real GDP growth of 7%;
- Reducing inflation to 5 %;
- Reducing the Government domestic borrowing to 1.2% of GDP;
- Raising gross international reserves to 2.5 months of import cover.

Structural Elements Supportive of Combating Money Laundering and Financing of Terrorism

Transparency and Good Governance

12. Zambia is implementing a Public Service Reform Programme (PRSP) which is creating a more transparent and accountable public sector. The Government's strategy for implementing the PRSP has three components namely Public Service Management (PSM), Public Expenditure Management and Financial Accountability (PEMFA) and Decentralisation.

13. PSM outlines the Government's overall intentions and commitment to enhancing institutional and human capacity in public service. The interventions under PSM provide impetus to the overall government, political, economic and social reforms, in general, and improve public expenditure management, public services delivery and governance, in particular. PSM focuses on the effective management of people employed in the public service in order to improve their performance and that of the ministries and institutions for which they work. It is a prerequisite to effective implementation of the other two components of PRSP because PEMFA and the Decentralisation components cannot succeed without a public service where employees carry out the right jobs, possess the appropriate skills to undertake them, and are motivated to perform well.

14. The overall objective of PEMFA is to contribute to the efforts of government in improving its capacity to effectively and efficiently mobilise and utilise public resources (improve public expenditure management) and to strengthen overall financial accountability. Some of the components of PEMFA include:

15. The Integrated Financial Management Information System (IFMIS) component whose objective is to improve public expenditure management through an integrated and automated financial management system in order to ensure efficient and effective use of public resources.

16. The Improved Fiscal Policy and Economic Planning component whose objective is to put in place a policy based budgetary process in order to facilitate timely, adequate and effective mobilisation, allocation, and utilisation of resources and attainment of policy objectives.

17. The Enhanced Internal Audit and Control component whose objective is to strengthen the internal controls throughout the public sector for improved public expenditure management and financial accountability.

18. The Legal and Regulatory Framework component whose objective is to put in place a consistent and harmonised legal framework to support transparency and accountability in public sector.

19. The Enhancing Parliamentary Oversight component whose objective is to develop the capacity of Parliament to play its oversight role in public resources management in order to promote the culture of democratic governance, transparency and accountability.

20. The Zambia Institute of Chartered Accountants whose objective is to strengthen the accountancy profession and to provide effective regulatory service in order to promote high professional and ethical standards in the accountancy profession.

21. The third component of the PSRP is decentralisation. Decentralisation is based on the National Decentralisation Policy which was launched on 20 August 2004. The policy provides for the strengthening of Local Governments through devolution of designated functions from sector ministries and matching resources to councils. The vision of Government is to achieve a fully decentralised and democratically elected system of governance characterised by open, predictable and transparent policy making and implementation processes, effective community participation in decision making,

development and administration of their local affairs while maintaining sufficient linkages between the centre and the periphery.

Anti-Money Laundering/Combating of Financing of Terrorism

22. The Government has set the tone for the development of an anti-money laundering culture through:

- the enactment of the Narcotic Drugs and Psychotropic Substances Act;
- the enactment of the Prohibition and Prevention of Money Laundering Act;
- the establishment of an Anti-Money Laundering Authority;
- the establishment of the Anti-Money Laundering Unit;
- the enactment of the Anti-Corruption Act;
- the establishment of the Anti-Corruption Commission;
- the enactment of the Anti-Terrorism Act;
- the issuances of Anti-Money Laundering Statutory Directives by the financial regulatory authorities to financial institutions and
- the investigation and prosecution of politically exposed persons (former president, and other senior government and public officials).

Measures to Combat Corruption

23. With regard to preventing and combating corruption, Zambia has done the following:

- enacted the Anti-Corruption Act;
- established the Anti-Corruption Commission;
- developed and implemented a national corruption prevention policy whose ultimate goal is to combat the occurrence of corruption;
- active involvement of the private sector, civil society and public sector in the attainment of their respective objectives under the national corruption prevention policy;
- acceded to the United Nations Convention on Corruption and the African Union Convention on Corruption;
- ratified the SADC Protocol on corruption;
- acceded to the United Nations Security Council Resolutions on Terrorism and effected these resolutions, whenever necessary and
- maintained membership and active participation in ESAAMLG.

Judicial and Law Enforcement System

24. The judiciary has maintained its independence without interference and all its judgments in cases of corruption and money laundering have been upheld.

25. Zambia has addressed issues of integrity in the judiciary and law enforcement agencies through the following:

- the enactment of the Judicial Code of Conduct Act
- the establishment of the Judicial Complaints Authority
- the establishment of the Police Public Complaints Authority
- the establishment of the Office of the Investigator General (the ombudsman)
- the establishment of Integrity Committees within the Judiciary and law enforcement agencies pursuant to the national corruption prevention policy.

DPP's Office

26. The office of the Director of Public Prosecutions (DPP) is established in terms of the Constitution of Zambia. The DPP is the head of the Prosecution Department and is mandated to prosecute all criminal matters. He does not play any role in the investigation of criminal cases except in cases involving tax matters under the Anti-Corruption Act. In terms of the constitution the DPP is empowered to appoint both lawyers and certified personnel as prosecutors. Matters involving public policy and where the DPP might require other directives, are referred to the Attorney General for his guidance and decision. The decision of the Attorney General in such matters is final.

27. The DPP can stay in office until the retirement age of 65. As a constitutional appointee his salary is paid directly by the Ministry of Finance. The budget for the DPP's Office is approved and allocated by the Ministry of Justice. The Ministry of Justice is also responsible for paying the salaries of the prosecutors.

28. The DPP's Office has an establishment of 49 advocates but is currently staffed with about 25 employees, who are spread throughout the 5 provinces of Zambia. The DPP plays a supervisory role. He is responsible for allocating the day today work of the advocates and prosecutors. The DPP recommends the promotion of the advocates and prosecutors. He is also responsible for the secondment of both advocates and prosecutors to law enforcement agencies. The advocates and prosecutors in these agencies consult him from time to time when they have problems with their work.

29. The DPP is also consulted on difficult cases and depending on the circumstances of the case he may direct that the investigations be done by a specific institution of the law enforcement or that such investigations be moved from one investigating law enforcement agency to another. The DPP'S office is responsible for prosecutions which are done in the High Court and those prosecuted from the different law enforcement agencies which are to be taken to either the High Court or Supreme Court on appeal. It is also anticipated that cases relating to financing of terrorism if ever they are to occur would be prosecuted by the DPP's Office.

30. The DPP's Office does not deal with mutual legal assistance or extradition matters, all such matters are dealt with by the Attorney General. The police may however approach the DPP for legal advice before referring such requests to the Attorney General.

31. Currently there is no specialization on the prosecution of cases in the DPP's Office. The appointment of both advocates and prosecutors to deal with cases in different law enforcement agencies is expected to develop specialization by the prosecutors. The DPP's office however raised concerns that control of the assigned advocates and prosecutors might turn to be difficult as they would not be reporting to him directly on a daily basis but to the chain of command in the law enforcement agency. The set up of the law enforcement agencies was also another area which concerned the DPP's Office as it was likely to interfere with the advocates and prosecutors' better judgment when dealing with cases arising from the same institution to the extent that a conflict of interest might arise.

32. The DPP's Office ordinarily does not prosecute money laundering cases but only plays a complimentary role. The Drug Enforcement Commission is responsible for prosecuting such cases. The DPP's Office has not yet dealt with cases relating to financing of terrorism.

33. The DPP's input is required when drafting new legislation. Pursuant to that the DPP's views were sought on whether the definition of money laundering as provided for under the Prohibition and Prevention of Money Laundering Act adequately captured all circumstances relating to the offence as it does not include possession, concealment, receipt or dispossession of any property in circumstances which a reasonable man ought to have known that such property is the proceeds of crime. The office of the DPP concurred that this could have been an oversight when the anti-money laundering laws were enacted.

34. The DPP's office was of the view that the powers delegated to the Commissioner General of the Anti-Corruption Commission and other provisions relating to forfeiture and restriction notices provided for under the Anti-Corruption Act and the Prohibition and Prevention of Money Laundering Act sufficiently enabled seizure and forfeiture processes. Third parties who have an interest in any property to be forfeited are protected by the law as it requires that the State gives a three months public notice through the government gazette and national newspapers of its intention to apply for the forfeiture of such property.

35. Zambia does not currently have a law providing for witness protection and relocation. Administrative measures however can be put in place on case by case bases where such witnesses are concerned. The DPP's Office was of the view that legislation on such measures would be appropriate.

36. The advocates in the DPP's Office attend international seminars where there are trained on money laundering and financing of terrorism matters. There are no internal training programs for prosecutors and advocates in the DPP's office on money laundering and financing of terrorism.

1.2 General Situation of Money Laundering and Financing of Terrorism

37. Zambia is one of the countries in Southern Africa that has been affected by the devastating effects of money laundering. The trends indicate that the major predicate crimes that give rise to money laundering are:

(i) *Offences relating to public fraud*

Example of offences

- Theft by Public Servant/Theft by Servant
- Obtaining Money/Goods by False Pretences
- Forgeries i.e. Making False Documents and Uttering False Documents
- Fraudulent False Accounting (by either Public Officer or Private Sector)

(ii) ***Offences relating to Administration of Public Office***

Example of offences

- Abuse of Authority of Office by a Public Officer
- False Certification by Public Officer
- Conspiracy to defeat Justice
- Deceiving witnesses (in cases of Judicial Officials)

(iii) ***Offences relating to property*** (General thefts)

(iv) ***Sexual related offences according to the Penal Code
Chapter 87 of the Laws of Zambia***

Example of Offences

- Being in possession of obscene matters or things contrary to Sec 177 of the Penal Code.
- Procuring Child or other person for prostitution contrary to Section 140 of the Penal Code.

(v) ***Trafficking in Human Being and Migrant Smuggling***

Example of Offences

- Selling or Trafficking in Children/Human Being contrary to
- Section 143 of Chapter 87 of the Laws of Zambia

(vi) ***Offences connected with murder.***

(vii) ***Offences against liberty (Kidnapping or abduction wrongfully
Concealing Section 258 of Cap 87)***

(viii) ***Offences allied to stealing (Fraudulent dealing with minerals)***

- (ix) Conspiracy and other conspiracy (Section 394 and 396
 - (x) Extortion or black mail under the Penal Code Cap 87
 - (xi) Drug trafficking under the Narcotic and Psychotropic Substances Act Cap 96,
 - (xii) Corruption under the Anti Corruption Commission Act No. 42 of 1996
 - (xiii) Cyber Crime under the Computer misuse Act
 - (xiv) Counterfeiting and piracy of products
 - (xv) Tax evasion under the customs Act Cap 322
 - (xvi) Currency Smuggling under the Customs Act Cap 322
 - (xvii) Robbery under the penal code Cap 87
 - (xviii) Murder under the Penal code Cap 87
38. All these serious crimes are predicate offences for Money Laundering in Zambia.

39. Illicitly gotten proceeds are laundered in various ways in Zambia. Money launderers have used smurfing/structuring, currency exchanges, money instruments, gambling, under-valuing assets, front businesses, and non-financial institutions to launder their proceeds. Other means include securities, debit/credit cards, physical transportation of cash, wire transfer, false currency reporting and off-shore corporations. Further, some criminals use their proceeds to purchase luxury goods such as vehicles and real estate.

40. The Anti Terrorism Act No. 21 of 2007 has been passed. The Prohibition and Prevention of Money Laundering Act no. 14 of 2001 is currently under review to allow it to incorporate the new conventions and developments in the fight against ML and FT.

41. The most commonly used institutions to launder money include; banks, real estate agents, insurance companies, casinos and law firms.

42. Despite the various measures being implemented to combat money laundering incidences of the offence are on the increase.

43. With regard to terrorist financing, there are no acknowledged cases. However, Zambia has cooperated with the international community on issues of terrorism.

1.3 Overview of the Financial Sector and DNFBP

Financial sector

Banks

44. The financial sector is made up of three sub-sectors according to the financial sector supervisory authorities. These are the banking and financial institutions sub-sector (supervised by the Bank of Zambia), the securities sub-sector (supervised by the Securities and Exchange Commission, and the pensions and insurance sub-sector (supervised by the Pensions and Insurance Authority).

45. The banking industry, as at end 2006 was made up of 13 commercial banks. The ownership structure of these banks is set out in Table 1.

Table 1: Analysis of Ownership of Commercial Banks

Foreign owned	7
Local ownership	4
State owned	1
Joint ownership (Zambia & India)	1
Total	13

46. The total assets of the banking industry amounted to about K10.7 trillion as at 31 December 2006.

Non-bank financial institutions

47. Non-Bank Financial Institutions (NBFIs) as at end 2006 comprised 317 institutions with total assets of K25.3 trillion. Table 2 shows the composition of NBFIs and their respective supervisory authorities.

Table 2: Non-Bank Financial Institutions and their Supervisory Authorities

Regulated Institutions		Supervisory authority
Insurance companies	14	Pension and Insurance Authority
Pension funds	220	Pension and Insurance Authority
Leasing companies	10	Bank of Zambia
Building societies	3	Bank of Zambia
Development banks	1	Bank of Zambia
Savings and credit institutions	1	Bank of Zambia
Bureaux de change	32	Bank of Zambia
Micro finance institutions	6	Bank of Zambia

Venture capital funds	1	Securities and Exchange Commission
Securities firms	31	Securities and Exchange Commission

Designated Non-Financial Businesses and Professions

48. The types of DNFBPs that operate in Zambia include casinos, real estate agents, motor vehicles dealers and precious stones and metal dealers. While these dealers are licensed there is no designated competent authority to monitor or supervise them for AML/CFT purposes.

49. In terms of professions, there are two associations that are established by Acts of Parliament in Zambia. These are the Law Association of Zambia (LAZ) and the Zambia Institute of Chartered Accountants (ZICA). Each of these has a regulatory body that oversees membership and exercises disciplinary powers within the respective statutory framework.

50. LAZ has 594 members who are admitted to the Bar some of whom provide legal services such as Conveyancing, investment advice, company and trust formation.

51. ZICA is a member of the Eastern and Southern Africa Federation of Accountants and International Federation of Accountants. It has 906 professional members and 1,809 non-professional members.

52. Zambia has over 15 casinos and they are all regulated under the Casinos Act, Lotteries Act, Betting Control Act and State Lotteries Act. The Gaming Act 1922 of Britain applies in Zambia to the extent that it is not inconsistent with Zambian legislation. Casinos under the Casinos Act are licensed by the Ministry of Tourism while the other lotteries, betting companies and state lotteries are licensed by the Ministry of Finance.

53. Zambia is a member of Gaming Regulatory Africa Forum (GRAAF) which is also regulated by the International Gaming Board.

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

54. Generally, the following are the business forms regulated by the Patents and Companies Registration office:

- Private limited company
- Private company limited by guarantee
- Private unlimited company
- Public limited company
- A foreign company incorporated elsewhere but registered in Zambia.
- A business name (could be an individual , a firm or a corporation)

Formation

55. A company whether public or private will only be recognized as such upon its registration or incorporation. The promoters must provide relevant information to the Registrar as regards the subscribers, directors and share capital in the prescribed form. The Registrar once satisfied that the requirements have been complied with issues a certificate of incorporation.

56. Section 6 of the Companies Act Cap 388 of the laws of Zambia requires among other things that the application for incorporation should be accompanied by:

- any proposed articles;
- consent by directors to act in that capacity;
- a declaration of guarantee if it is a company limited by guarantee;
- proposed name;
- physical address;
- amount of share capital;
- particulars of directors;
- particulars of the secretary;
- name and address of the individual lodging the application; and
- Nature of the proposed business.

57. On the other hand, a body corporate formed outside Zambia may be registered and allowed to carry out business pursuant to section 245 of the Companies Act. The Act requires that the application for registration provides among other things the following information :

- Name;
- nature of the business;
- Particulars of at least one individual resident in Zambia known as the documentary agent authorized to accept on behalf the company service of process or any notice;
- relevant details of local directors;
- number of shares and amount of nominal capital;
- address of the company's registered office in the country of incorporation;
- a certified copy of the charter , memorandum and articles or any other instrument constituting the constitution of the company; and
- a statement by the local director(s) accepting to act as such.

58. The registration of a business name is governed by the Registration of Business Names Act Cap 389 of the laws of Zambia. Registration of a business name can be done by an individual, a firm or a corporation. The Act requires the following information to be supplied by the applicant(s):

- the proposed business name;
- nature of business;
- location of business;
- names of applicants;
- nationality of applicants;
- residential address; and
- Financial year end.

59. Once the Registrar is satisfied with the information provided, a certificate of registration is issued and the applicant is permitted to use the business name.

Basic characteristics

60. The basic characteristics of companies incorporated in Zambia are that ownership is by the shareholders who may be either individuals or corporations while the day to day management of the affairs is the responsibility of the directors appointed in accordance with the Articles. The Act requires that there should be no fewer than two directors at any time. Pursuant to section 207(1) (a) of the Act a body corporate cannot be a director of the company.

61. Additionally, section 208 of the Act requires that more than half of the directors of the company including the managing director shall be resident in Zambia. However, there are a few exceptional cases where the Minister has, by Statutory Instrument, permitted some companies to operate with fewer than fifty percent of the directors being resident in Zambia.

Information Requirements

62. There is a legal requirement for every type of business form to file annual returns with the Registrar at the end of each financial year. The annual returns are intended to merely capture any changes to the business arrangement that could have taken place. There is however no requirement for private companies as well as business names to submit financial statements to the Registrar. The Companies Act nevertheless makes it mandatory for all companies to maintain accounting records and make these available for inspection by the directors, secretary and auditors of the company. It is also a requirement that these records be retained for a period of ten years from the date of the transactions to which they relate.

63. As regards public limited companies and foreign companies registered in Zambia, there is a legal obligation to submit audited accounts. (Sections 186 & 251 of Cap 388). As such, like any other document lodged with the Registrar, the accounts submitted may be viewed by any member of the public upon payment of the prescribed fees. Thus, financial statements of a public liability company as well as a foreign company registered in Zambia are in the public domain where as those of a private company incorporated in Zambia are not.

64. Trusts are registered pursuant to section 74 of the Lands and Deeds Act. A trust may not be registered save with the authority of the Registrar of Lands, and once granted a notice of the trust is placed in the Miscellaneous Registry at the Ministry of Lands. The trust formation is required to be done by a lawyer. The Minister of Lands is empowered to issue Statutory Instruments in respect of requirements for the maintaining of registers and documentation necessary to applications for registration. The Trust (Perpetual Succession) Act makes provision for trustees to apply for perpetual succession to land. A trustee (or trustees) may be appointed by any community of persons bound together by custom, religion, kinship or nationality or by a body or association of persons established for any religious, educational, literary, scientific, social or charitable purpose, or for any purpose which, in the opinion of the Minister, is for the benefit or welfare of the inhabitants of Zambia. The Trust Restriction Act makes provision for the circumstances under which a trust may be established. This Act specifically prohibits-

- (a) the settlement of any property;
- (b) the limiting in any of property in trust for another; or
- (c) the making of any disposition where property vests in possession at a future date.

65. The Minister of Lands is empowered to make such regulations as may be necessary for the better regulation of trusts.

66. Non-profit organisation (NPOs)/non-government organisations (NGOs) are registered under the Societies Act and are regulated by the Registrar of Societies under the Societies Act. Any club, company, partnership or other association of ten or more persons, whatever its nature or object whose activities or meetings are in Zambia has to be approved and registered by the Registrar of Societies. The Registrar has the power to reject any application where he deems it to have objectives for an unlawful purpose, its activities are inimical to the welfare of Zambians, would cause breaches of the peace, or even that Zambians would be prejudiced by its existence in the country. Once approved, the society is required to furnish relevant information relating to its members, objectives and activities on an annual basis. The returns will require the society to furnish the office of the Registrar of Societies with its constitution, information on its office bearers, accounts, and any other information the Registrar may require.

67. Those organisations that are registered under the Societies Act and which have as activities or in their constitution politically inclined objectives have their donations from foreign funding regulated through the Organisations (Control of Assistance) Act. These organisations have to account for any assistance received from a foreign government. Under this Act, an "organisation" means any association of persons, incorporated or unincorporated (and whether or not it has been established or registered in accordance with any written law) having, in the opinion of the President, objects of a political nature and declared by the President to be an organisation for the purposes of this Act. However, the monitoring and accountability only arises when the president has declared an organisation as falling within the ambit of the Organisations (Control of Assistance) Act.

68. A new Non Governmental Organisations Bill has been introduced to regulate Non Governmental Organisations. Any organisation ordinarily subject to the Societies Act may, upon the decision of the Minister be required to register under the Non Governmental Organisations Bill and thereafter be required to account for its activities, funding, financial statements, within the provisions of the Non Governmental Organisations Bill. The registration requires the organisation to make full disclosure of its local and foreign affiliations, sources of funding, membership, office bearers, activities to be carried out and the duration of these activities. It is envisaged that the Bill will cover such organisations registered under the Societies Act which may require further supervision under the proposed Non Governmental Organisation Act.

1.5 Overview of strategy to prevent money laundering and terrorist financing

69. The current control policies and objectives to combat money laundering or terrorist financing are contained in the Prohibition and Prevention of Money Laundering Act No. 14 of 2001 and the Draft Strategy Paper on combating money laundering which is before the Zambian Cabinet. Zambia enacted the Prohibition and Prevention of Money Laundering Act No. 14 in 2001 under which the Anti-Money Laundering Investigations Unit (AMLIU) was established. Currently there is an Anti-Terrorism Act which has passed third reading in the National Assembly.

70. Although the country's ALM/CFT strategy paper has not yet been approved by the Zambian Cabinet and Parliament, some aspects are already being implemented by the Drug Enforcement Commission. These aspects include sensitization programmes, effecting arrests and the setting up of the AMLIU.

71. The Zambian government has shown the will to fight money laundering as is evidenced by the conventions and protocols signed and ratified. Further, the enactment of the PPMLA in 2001 and the creation of the AMLIU as well as the proposed Bill on terrorism indicate the country's commitment to fighting money laundering and terrorist financing.

72. The institutional framework for combating money laundering and terrorist financing in Zambia comprises relevant institutions in accordance with the PPMLA which stipulates the role of such institutions. The Ministry of Finance and National Planning oversees the National Task Force on Anti Money Laundering and the funding of the unit.

73. The Ministry of Justice and the Ministry of Home Affairs oversee the dispensation of justice and the enforcement of the relevant laws concerning money laundering. The Ministry of Foreign Affairs is the depository of international instruments that Zambia accedes to.

74. The Anti-Money Laundering Authority (AMLA) has been put in place to coordinate policy directives and provide general oversight on matters pertaining to combating of money laundering. Section 4 of the PPMLA provides for the functions of AMLA and these are-

- (a) to provide general or specific policy directives to the Commissioner and the Commissioner shall give effect to such directives; and
- (b) to advise the Minister on measures required to prevent and detect money laundering in the Republic of Zambia.

75. AMLA comprises the Attorney General, Inspector-General of Police, Commissioner of the Drug Enforcement Commission, the Director-General of the Anti-Corruption Commission, the Governor, Bank of Zambia, Commissioner-General, Zambia Revenue Authority and two members of the public. Further, Zambia has a National Task Force on Money Laundering that comprises the Drug Enforcement Commission, the Ministry of Finance and National Planning, the Ministry of Justice, Ministry of Home Affairs, Bank of Zambia, Zambia Revenue Authority, Anti Corruption Commission and Zambia Police.

76. Other agencies involved are the AMLIU under the DEC enforces the PPMLA on money laundering. The Zambia Police Service, the Zambia Revenue Authority, the Anti-Corruption Commission and are collaborating partners in the combating of money laundering and related offences.

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

77. The laws of Zambia are based on the English common law and statute law as enacted by Parliament. Zambia currently has legislation to combat money laundering in the form of the Narcotic Drugs and Psychotropic Substances Act (Act No 37 of 1993) and the Prohibition and Prevention of Money Laundering Act (Act No. 14 of 2001).

78. The Zambian Laws are read as one in so far as they are not inconsistent with each other. As regards the legal system and criminal laws the following Acts would be considered together with AML/CFT legislation:

- A) Constitution of Zambia
- B) Criminal Procedure Code
- C) Penal Code
- D) INTERPRETATIONS AND General Provisions Act
- E) Mutual Legal Assistance in Criminal Matters Act
- F) State Security Act

79. This list is not exhaustive in as far as criminal investigations and prosecutions of AML/CFT are involved.

80. Section 37 of the Anti-Corruption Commission Act (Act No. 42 of 1996) also criminalises money laundering (proceeds of corruption) though this only applies to public officials. Section 41 provides for asset forfeiture of the proceeds of the crime.

Section 319 and 320 of the Penal Code Cap 87 also provide sanctions against having property reasonably believed to have been stolen within Zambia or outside Zambia. In this way, the Zambia Police Service has been able to contribute to efforts aimed at combating money laundering.

Recommendation 1

Legal Framework

Criminalization of Money Laundering (c. 1.1 - Physical and Material Elements of the Offence)

81. Zambian legislation has criminalised money laundering in line with the relevant United Nations Conventions. Zambia ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on 28 May 1993, the Convention against Transnational Organised Crime on the 24th April 2005 and the International Convention for the Suppression of Financing of Terrorism in 2007.

82. In Section 2 of the Prohibition and Prevention of Money Laundering Act (the PPMLA), money laundering is defined as:

- a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime;
- b) receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realised directly or indirectly from illegal activity; or
- c) the retention or acquisition of property knowing that the property is derived or realised, directly or indirectly, from illegal activity.

83. In general, Section 2 of the PPMLA meets the requirements of Article 6(1) of the Palermo Convention but does not cover all elements of the ML offence as provided for under Article 6 (1) (a) (ii) 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.”

84. It does not provide for the concealment or disguise of the true nature, source, location, disposition, movement or ownership of rights relating to property which is proceeds of crime. Article 6 (1) (a) (ii) sets a clear distinction of ownership of the property compared to having rights to such property.

85. Further, section 2 of the PPMLA does not specifically provide for the movement of property which is proceeds of crime within Zambia in compliance with Article 6(1) (a) (ii) of the Convention.

The Laundered Property (c.1.2)

86. The PPMLA defines money laundering as:

- (a) engaging, directly or indirectly, in a business transaction that involves property acquired with proceeds of crime;
- (b) receiving, possessing, concealing, disguising, disposing of or bringing into Zambia, any property derived or realised directly or indirectly from illegal activity; or
- (c) the retention or acquisition of property knowing that the property is derived or realised, directly or indirectly, from illegal activity.

87. Section 2 of the PPMLA further defines “property” as including money and all other property, real or personal, movable or immovable including things in action and other intangible or incorporeal property wherever situated and includes any interest in such property. While proceeds of crime means any property, benefit or advantage, within or outside Zambia realised or derived, directly or indirectly from illegal activity. Illegal activity is defined as any activity, whenever or wherever carried out which under any written law of Zambia amounts to a crime.

88. The authorities in Zambia have indicated that the definition of property under the PPMLA must be read in conjunction with the definition of property under the Interpretation and General Provisions Act (IGPA), Chapter 2 of the laws of Zambia. Under section 2 of the IGPA the definition of property includes “personal property”, “personalty” or “goods” includes money, bonds, bills, notes, deeds, chattels real, mining rights in or under or in respect of any land and corporeal property of every description other than real property”. The definition of property under the laws of Zambia applies to a wide range of assets and is in line with the definition of property in the Vienna and Palermo Conventions and in the FATF Glossary.

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

89. The PPMLA does not specifically provide for a prior conviction of an offender for a predicate offence not being a prerequisite for the prosecution of a money laundering offence. Section 7 of the PPMLA only seems to imply that there is no such prerequisite. This creates an ambiguity which might even lead to prosecution of ML offences being challenged as impeaching on peoples' rights to own property.

The Scope of the Predicate Offences (c. 1.3 & c. 1.4)

90. In terms of Section 2 of the PPMLA, an illegal activity is defined as "any activity, wherever or wherever carried out which under any written law in the Republic amounts to a crime". The Act however, does not define the word "crime".

91. The DPP's Office explained that the issue of the definition of the word "crime" for the purposes of defining the term "illegal activity" under the PPMLA has not been specifically addressed by the Courts in Zambia thus far. In the money laundering cases that have been prosecuted so far, the Courts have interpreted the word "crime" in a very wide sense which seems to encompass any offence under the laws of Zambia.

92. It is to be noted that the Interpretation and General Provisions Act defines "offence" as meaning any crime, felony, misdemeanour, contravention or other breach of, or failure to comply with, any written law, for which a penalty is provided. This seems to imply a classification of offences into different categories.

93. The definition of the word "crime" is fundamental to the definition of the offence of money laundering under the PPMLA. In the absence of a statutory definition or a judicial pronouncement, the assessment team was not able to confirm that predicate offences for the purposes of money laundering in Zambia include the range of each of the designated categories of offences as defined in the FATF Glossary.

Extraterritorially Committed Predicate Offences (c. 1.5)

94. Section 29 of the PPMLA provides as follows:

Any Act-

(a) carried out by a citizen of Zambia anywhere; or

(b) carried out by a person on a ship or aircraft registered in Zambia;

shall, if it would be an offence by that person on the land in the Republic, be an offence under this Act.

95. It does not appear that the dual criminality test applies under section 29 of the PPMLA. Any act carried out by a citizen of Zambia anywhere would be an offence under the PPMLA if the act constitutes an offence domestically. The DPP's Office has explained that the Courts in Zambia have jurisdiction to try an offence committed by a citizen of Zambia no matter where the offence has been committed. However, the situation was a bit more difficult with offences committed by foreign nationals. Generally, the Courts in Zambia do not have jurisdiction over foreign nationals. Section 29(b) however, makes an exception to the general rule by providing that Acts carried out by non-citizens on a ship or aircraft registered in Zambia would be an offence under the PPMLA if those acts constitute an offence

domestically. This is the only case where the Courts in Zambia will have jurisdiction over foreign nationals under the PPMLA.

Laundering One's Own Illicit Funds (c. 1.6)

96. The PPMLA, in particular Section 7 which deals with offences relating to ML does not provide for prosecution of both the predicate offence which generated the proceeds of crime and the ML offence arising from the laundering of such proceeds by the same person. During the onsite visit, no such examples were cited to assist the assessors to understand whether in practice one can be prosecuted for laundering his own illicit funds.

Ancillary Offences (c. 1.7)

97. The PPMLA, in **Section 9 provides for ancillary offences** such as attempts, aiding and abetting or conspiring to commit an offence. The section states:

- (1) Any person who attempts, aids, abets, counsels or procures the commission of the offence of money laundering shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years, or to both.
- (2) Any person who conspires with another to commit the offence of money laundering shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred and thirty-nine thousand penalty units or to imprisonment for a term not exceeding five years or to both.”

Additional Element (c. 1.8)

98. Section 29 of the PPMLA provides:

Any Act-

- (a) carried out by a citizen of Zambia anywhere; or
- (b) carried out by a person on a ship or aircraft registered in Zambia;

shall, if it would be an offence by that person on the land in the Republic, be an offence under this Act.

99. In terms of the above section, a Zambian national who committed a predicate offence elsewhere other than in Zambia where such conduct is not an offence would be legible for prosecution under this section in Zambia as long as the conduct complained of is an offence in Zambia. The only deficiency with the provision is that it only applies to Zambian nationals and not any other nationals who might fall under the same circumstances.

100. Section 6 of the Penal Code does not specifically deal with a situation where the conduct alleged is not a predicate offence in the country where it was committed. Even if the assessors' understanding of that section would include conduct which is not an offence in the country where it was committed, it is still limited to Zambian citizens only.

Recommendation 2

Liability of Natural Persons (c. 2.1) and the Mental Element of the ML Offence (c. 2.2)

101. Both under the Palermo Convention and Recommendation 2 of FATF, intent and knowledge form the fundamental elements/basis in the commission of a money laundering offence. The requirement covers either where a person is involved with tainted property with full knowledge or where the circumstances are such that the person ought to have reasonably known that the property could be proceeds of crime.

102. Section 7 of the PPMLA does not provide for both intent and knowledge of one's criminal conduct and subsequent results of such conduct. However, the element of knowledge is referred to in the definition of money laundering under section 2 only with respect to the "retention or acquisition of property". In the absence of the essential element of intent, it becomes difficult to lay the grounds alleging that one had knowledge of his criminal conduct and to lay the basis to support that he had knowledge that the property involved is either tainted or is the proceeds of crime. Section 7 reads:

"A person who, after the commencement of this Act, engages in money laundering, shall be guilty of an offence and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both."

103. Paragraph(c) in the definition of money laundering under section 2 of the PPMLA reads as follows:

*"the retention or acquisition of property **knowing** that the property is derived or realised, directly or indirectly, from illegal activity."*

104. Although the PPMLA only partly provides for the element of intention or knowledge, the Zambian authorities are of the view that the requirement is covered under the customary procedure of adducing evidence to prove intention under the laws of Zambia.

105. The law does not expressly permit that the intentional element under paragraph (c) of the definition of money laundering under section 2 of the PPMLA may be inferred from objective factual circumstances. In this respect, the authorities have also indicated that under Article 18 of the Constitution of Zambia an accused person is presumed innocent until proven guilty.

Liability of Legal Persons (c. 2.3 & c. 2.4)

106. Criminal liability of legal persons is provided under the PPMLA under section 8 which states that where an offence under the provisions of this Act is committed by a body of person, whether corporate or unincorporated:-

- a) The body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding four hundred thousand penalty units; and
- b) Every person who, at the time of the offence, acted in an official capacity for or on behalf of such body of persons, whether as a Director, Manager, Secretary or other similar capacity, or was purporting to act in such capacity and who was involved in the commission of that offence, shall be guilty of that offence; and

shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years, or to both.

107. The PPMLA does not provide for possible parallel proceedings in situations where persons are criminally liable. However, the assessors were informed by the Zambian authorities that in practice, this is possible but may result in a stay of civil proceedings if the accused person involved is able to show that the criminal proceedings will be prejudiced due to the mandatory requirement for the person to give a defence under civil matters.

108. Sections 7 and 8 of the PPMLA respectively provide for the following sanctions for the commission of a ML offence:

Section 7 PPMLA

A natural person convicted of an ML offence will be liable to a fine not exceeding one hundred and seventy thousand penalty units or to a term of imprisonment not exceeding ten years or to both.

Section 8 PPMLA

A body person whether corporate or unincorporated upon conviction is liable to a fine, not exceeding four hundred thousand penalty units and for a person convicted for acting on behalf of a body corporate, for example as a director or manager and involved in the commission of the ML offence shall be liable to a fine not exceeding one hundred seventy thousand penalty units or to a term of imprisonment not exceeding ten years or to both.

109. On average, the sanctions appear to be on the high side compared to penalties for other commercial crimes but given the wide interpretation of illegal activities it became very difficult for the assessors to assess whether the sanctions were effective, proportionate and dissuasive.

110. The assessors were informed that a penalty unit is currently one hundred and eighty kwacha which is equivalent to 0.047788 United States dollars.

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Year	2003	2004	2005	2006	2007
Investigations	88	197	192	171	146
Prosecutions	4	18	63	97	119
Convictions	0	4	3	14	5

2.1.2 Recommendations and Comments

111. The PPMLA, the Anti-Corruption Commission Act and the Penal Code of Zambia criminalize money laundering. The offence of ML as provided for by the PPMLA covers any type of property directly or indirectly representing proceeds of crime.

112. However, it is recommended that the definition of money laundering be widened to encompass acquiring of laundered property by any other means so that it is not only limited to the methods or means currently outlined in the definition.

113. It is further recommended that PPMLA specifically provides for non-requirement of a prior conviction of an offender for a predicate offence as a prerequisite for the prosecution of any ML offence.

114. The PPMLA does not define a predicate offence. However, during the onsite visit the assessors were informed that a definition of a predicate offence is covered under ‘illegal activity’ as defined in Section 2 of the Act.

115. The definition of illegal activity does not meet the requirements of a predicate offence as set out under essential criteria 1.3 and 1.4. The Act does not specifically provide for a minimum standard of a range of offences which can be categorized as predicate offences based on the seriousness of the offence or a maximum penalty of more than a year’s imprisonment or a minimum penalty of more than six months imprisonment. The determination of predicate offences as any illegal activity as defined under the PPMLA, made it difficult for the team to determine the scope of predicate offences for money laundering purposes.

116. Zambia must amend its AML laws to expressly define the range of predicate offences to cover all serious offences in each of the designated category of offences. If a serious offence is not defined in any of Zambia’s domestic laws then the threshold approach based on the sentencing patterns in Zambia can be used to determine predicate offences.

117. Although section 29 of the PPMLA creates extra-territorial jurisdiction for any acts committed outside the jurisdiction of Zambia, it is limiting in that such jurisdiction is only created where Zambian citizens are concerned. A foreigner who has committed a predicate offence elsewhere, other than on a ship or aircraft registered in Zambia and is in Zambia, cannot be prosecuted for such offence in Zambia even where such an act constitutes a predicate offence domestically.

118. The AML laws of Zambia need to be broadened to give extra-territorial jurisdiction to prosecute foreign nationals for predicate offences which will have been committed elsewhere other than within the jurisdiction of Zambia. The restriction to extraterritorial jurisdiction being limited to a ship or aircraft registered in Zambia should also be looked at with a view to give the section a wider extraterritorial jurisdiction.

119. The PPMLA does not provide for the intentional element of ML to be inferred where objective factual circumstances establish that a reasonable person ought to have known that the property received, possessed, concealed or disposed of by him was directly or indirectly derived or realised from proceeds of crime.

120. The AML laws of Zambia need to be broadened to include the element of intent to the offence of ML.

121. The PPMLA 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 an individual.

122. Section 8 of the PPMLA criminalizes acts of ML by legal persons whether corporate or unincorporated but again due to the wide range of offences covered as predicate offences under the PPMLA it was difficult to determine the effectiveness of the criminal sanctions applied to legal persons as well as whether such sanctions were proportionate and dissuasive enough to deter ML activities.

123. It is recommended that predicate offences should be defined under the PPMLA so that it can be in line with the international standard which defines predicate offences. This will make it easier for the effectiveness of the sanctions applied in terms of the Act to be determined.

124. Current legislation in Zambia does not provide for the application of civil or administrative sanctions parallel to proceedings relating to ML offences. Zambia's PPMLA should be enhanced to provide for parallel civil and administrative sanctions.

125. Provisions under section 40(1) c of the Anti- Corruption Commission Act should also be provided for in the Prohibition and Prevention of ML Act.

2.1.3 Compliance with Recommendations 1& 2

	Rating	Summary of factors underlying rating ³
R.1	NC	<ul style="list-style-type: none"> ▪ The definition of ML is not as wide as to include the acquiring of proceeds of crime by any other means. ▪ Not all the relevant requirements of the Palermo Convention are met by the PPMLA (it does not deal with the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights relating to proceeds. ▪ The PPMLA does not specifically provide for a prior conviction of an offender for a predicate offence as not being a prerequisite for the prosecution of a money laundering offence. ▪ The law does not define predicate offences specifically for the purpose of ML. ▪ The courts in Zambia only have limited jurisdiction over offences committed by foreign nationals.
R.2	NC	<ul style="list-style-type: none"> ▪ The PPMLA does not provide for the intentional element to commit an ML offence of Money Laundering where a reasonable man receives, possesses, conceals or disposes of property in circumstances where he is expected to have knowledge that such property was realised or derived directly or indirectly from commission of an offence and would be proceeds of crime. ▪ The law does not expressly permit the intentional element to be inferred from objective factual circumstances. ▪ Current laws of Zambia do not provide for civil or administrative liability to run parallel with criminal ML proceedings. . ▪ Given the current definition of illegal activities and absence of definition either of a predicate offence or a serious offence in the PPMLA, it is not possible to determine whether the sanctions applied are effective, proportionate or dissuasive.

³ These factors are only required to be set out when the rating is less than Compliant.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

Legal Framework

126. Zambia has put in place adequate legislation to fight the financing of terrorism. It has recently promulgated the Anti-Terrorism Act 2007. Zambia has also ratified the International Convention for the Suppression of the Financing of Terrorism 1999. Most of the provisions criminalising financing of terrorism in the Convention have been domesticated and enacted in the Anti-Terrorism Act. However, Zambia has not ratified any of the UN Conventions and protocols relevant to the suppressing of financing of terrorism such as:

- Convention on Offences and Certain Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- International Convention against Taking of Hostages;
- Protocol on the Suppression of Unlawful Act against the Safety of Maritime Navigation;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf;
- International Convention for the Suppression of Terrorist Bombings;
- Convention on the Physical Protection of Nuclear Material;
- Convention of the Marketing of Plastic Explosives for the Purpose of Detection; and
- International Convention on the Suppression of Acts of Nuclear Terrorism.

127. Note should be taken that Section 2 as read with the Fifth Schedule of the Anti-Terrorism Act domesticates the UN conventions relating to terrorism including those that Zambia have not been signed or ratified. For those conventions that Zambia has not signed or acceded to the rational of first domesticating them was not explained.

Criminalization of Financing of Terrorism (c. II.1)

128. The Anti-Terrorism Act criminalizes terrorism, acts of terrorism and the financing of terrorism. Under Part 1 of the Act, terrorism and acts of terrorism are defined '*as an act or omission in or outside Zambia and which is intended, or by its nature and context, may reasonably be regarded as being intended to intimidate or threaten the public or a section of the public or compel a government or an international organisation to do, or refrain from doing, any act, and is made for the purpose of advancing a political, ideological or religious cause*' and which would:-

- (a) *constitute an offence consistent with the counter terrorism conventions;*
- (b) *cause or is intended to cause death or serious bodily harm to a person;*
- (c) *cause or is intended to cause serious damage to private or public property;*
- (d) *endanger a person's life;*
- (e) *create a serious risk to the health or safety of the public or a section of the public;*
- (f) *involve the use of firearms or explosives;*

- (g) *involve the release into the environment or any part thereof or distribution or exposition of the public or any part thereof to any dangerous, hazardous, radioactive, harmful substance, toxic chemical, microbial or other biological agent or toxin;*
- (h) *disrupt or is intended to disrupt any computer system or provision of services directly related to communications, infrastructure, banking or financial services and other services;*
- (i) *disrupt or intended to disrupt provision of essential emergency services e.g. police, civil defence and medical services;*
- (j) *cause serious risk to national security;*
- (k) *cause damage to any vessel or aircraft or airport or to any other instrumentalities related to such facilities.'*

129. Section 20 of the Anti-Terrorism Act makes it an offence for a person to invite another to provide or make available money or other property with the intention that the money or other property be used for the purposes of terrorism. It also makes it an offence for a person to provide or make available money or other property knowing that the money or other property shall or may be used for the purposes of terrorism. The Section further provides that a reference to the provision of money or other property in that Section refers to its being given, lent, or otherwise being made available, whether or not for consideration.

130. Section 21 provides that a person who knowingly uses or who causes or permits any other person to use, money or other property for the purposes of terrorism commits an offence. It further provides that a person who possesses money or other property and intends it to be used for the purposes of terrorism commits an offence.

131. Section 22 of the Act provides that a person shall commit an offence if he enters into or becomes involved in any arrangement whereby the retention or control by or on behalf of another person of terrorist funds is facilitated whether by concealment, by removal from the jurisdiction, by transfer to nominees or in any other way.

132. Under Section 22(3) of the Act "terrorist funds" are defined as:

- (a) funds which may be applied or used for the commission of, in furtherance of or in connection with, acts of terrorism;
- (b) the proceeds of the commission of acts of terrorism or of activities in furtherance of or in connection with such acts, or
- (c) the resources of a declared terrorist organisation.

133. Part 11 of the Act makes it an offence to carry out any terrorist act and upon conviction a sentence to imprisonment of a minimum of twenty years to a maximum of life imprisonment can be imposed.

134. For the purposes of the Act, "property" as defined under section 2 of the Act, includes property wherever situated, whether real or personal, heritable or moveable, things in action and other intangible or incorporeal property. However the authorities have indicated that the definition should be read in conjunction with the definition of "personal property". Under the IGPA "personal property", "personalty" or "goods" includes money, bonds, bills, notes, deeds, chattels real, mining rights in or under or in respect of any land and corporeal property of every description other than real property.

135. The assessors are however of the view that the combined definitions of property do not expressly refer to “legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest” in property.

C. II. 1(c)

136. The Anti-terrorism Act does not expressly provide that for an act to constitute the financing of terrorism offence, it is not necessary that the funds were actually used to carry out the act of terrorism or that the funds were linked to a specific terrorist act. The terms used in section 20(1) and (2) of the Act seem to suggest that it is not necessary that the funds were actually used to carry out the act of terrorism. The law refers to “intends that any money or other property should be used for the purposes of terrorism” and “knows that the money or other property shall or may be used for the purposes of terrorism”.

C. II.1 (d)

137. The attempt to commit the offence of terrorist financing is not criminalised under the Anti-Terrorism Act. However, the authorities have indicated that an attempt to commit an offence is generally criminalised under sections 389 and 390 of the Penal Code.

C. II.1 (e)

138. The Anti-Terrorism Act does not expressly make it an offence to participate in the financing of terrorism crime, to organise or direct others to commit the crime or to contribute to the crime. However, the authorities have indicated that in respect of these acts, the provisions of sections 21 to 23 and 389 to 393 of the Penal Code will apply.

Predicate Offence for Money Laundering (c. II.2)

139. The PPMLA does not specifically list the category of offences which are predicate offences to ML. Any legal activity which is a crime under the laws of Zambia is a predicate offence. However, there is no legal definition of the word ‘crime’. In the absence of such a definition the assessors were unable to determine whether terrorist financing offences are predicate offences.

Jurisdiction for Terrorist Financing Offence (c. II.3& II.4)

140. The Anti-Terrorism Act is not restricted to criminalizing acts of terrorism committed only within Zambia but beyond. Under Section 3(2), the Act creates extraterritorial jurisdiction in matters relating to financing of terrorism. The Section covers a wide range of situations where the jurisdiction of the Zambian authority can be extended beyond its ordinary jurisdiction.

The Mental Element of the TF Offence (applying c. 2.2 in R.2)

141. Sections 20, 21, 22 and 23 of the Anti-Terrorism Act permit the intentional element of offences relating to financing of terrorism to be deduced or inferred from an objective factual assessment of the circumstances. The sections allow for the conviction of a person against whom it has been proven that at the time of doing acts described in these sections had reasonable cause to suspect that the act(s) would be used for purposes of terrorism. The Act therefore does not only criminalize circumstances where the person had actual knowledge of the intended commission of the offence of terrorism but also circumstances where the person acting reasonably ought to have known that his actions would lead to the

commission of the offence but proceeded to act regardless. [Could the authorities in Zambia confirm the foregoing analysis please?]

Liability of Legal Persons (applying c. 2.3 & c. 2.4 in R.2)

142. The Anti-Terrorism Act does not contain a definition of the term “person”. “Person” is defined in the IGPA as including “any company or association or body of persons, corporate or unincorporate”. the definition under the IGPA This criterion is therefore met.

143. Note has to be taken that in terms of subparagraph (4) of paragraph 1 and paragraph 6 of the Second Schedule to Section 36 of the Act, financial institutions and bodies corporate which fail to comply with conditions of an order commit a criminal offence and are liable to a penalty not exceeding five hundred thousand penalty units. Individuals representing the institutions as directors, managers or secretaries or purporting to be in these positions upon conviction are liable to imprisonment for a term not exceeding two years or to a fine not exceeding two hundred thousand penalty units or both.

144. The Anti-Terrorism Act does not provide for possible parallel proceedings in situations where persons are criminally liable. However, the assessors were informed by the Zambian authorities that in practice, this is possible but may result in a stay of civil proceedings if the accused person involved is able to show that the criminal proceedings will be prejudiced due to the mandatory requirement for the person to give a defence under civil matters.

Sanctions for FT (applying c. 2.5 in R.2)

145. Section 5(1) of the Act makes it an offence for anyone to commit any act of terrorism. A person convicted of such acts is liable to be sentenced to a term of imprisonment for a minimum of twenty years and a maximum of life imprisonment. For sections 22 to 23, upon conviction there is a standard application of the term of imprisonment which is imprisonment for life. Although it was difficult at the time of the on-site visit to determine the effectiveness, dissuasiveness and proportionality of the sanctions as the Act had just been enacted, the assessors’ view was that the imprisonment penalty provisions were adequate to deter any would be offenders in relation to the Act.

2.2.2 Recommendations and Comments

146. The effectiveness of the Anti- Terrorism Act at the time of the on site visit was difficult to determine as the law had just been enacted and no cases had yet been prosecuted under the new Act. The Central Bank and the Anti-Money Laundering Unit could also not provide any statistics on the STRs reported relating to FT to enable assessment of Zambia’s capability to deal with FT matters Zambia to sign and ratify the remaining UN conventions and protocols as outlined in the Fifth Schedule of the Anti-Terrorism Act which go hand in hand with the Convention against Financing of Terrorism.

147. The Anti-Terrorism Act of Zambia appears in principle to be in line with the set international standards. However, it is inadequate in certain areas.

148. The Act should be broadened to specifically define funds as provided for under the Terrorist Financing Convention. The current definition of funds in the Act does not encompass all kinds of funds, including legitimate ones, as defined under the Convention.

149. Although the Act had just been enacted at the time of the on site visit making it difficult to assess its effectiveness its provisions satisfactorily criminalize acts of terrorism provided for under the relevant international conventions in particular the Convention on the Suppression of the Financing of Terrorism and the UN Resolutions.

150. As there are no cases which have been prosecuted yet under the new Act, it is important that both prosecution and the judiciary are trained and sensitized on such cases on a continuous basis.

151. There is need for the Central Bank to ensure during its inspections that all the financial institutions have put adequate measures in place to allow detection of suspicious transactions relating to FT and reporting of such transactions to the relevant authorities.

152. At the time of the onsite visit, it became apparent to the assessors that no ministry was administering the Anti- Terrorism Act. It is recommended therefore that a Minister or ministry be quickly appointed to take responsibility of the administration of the Act.

153. It should also create an offence where funds for terrorist financing were not actually used to carry out a terrorist act or were not linked to a specific terrorist act.

154. Zambia should sign and ratify outstanding conventions relating to terrorism.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none">▪ Effectiveness could not be determined as the Act had just been enacted and there was no statistics on either previous cases or STRs dealt with relating to FT.▪ The definition of funds provided for under the Anti-Terrorism Act does not meet the definition of funds as described in the convention.▪ There is no evidence indicate that TF offences are predicate offences.▪ Zambia has not signed and ratified most of the UN conventions and protocols relating terrorism.▪ .The Act does not create an offence where terrorist finances were not actually used to carry out a terrorist act or were not linked to a specific terrorist Act.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

Legal Framework

155. In terms of Zambia's domestic laws, in particular, section 18 of the PPMLA, section 28 of the Anti-Terrorism Act and 41 of the Anti-Corruption Commission Act specifically provide for forfeiture of tainted property after conviction of the person. It appears in general, forfeiture in Zambia is conviction based. However, note should be taken that the laws in certain circumstances provide for pre-conviction

forfeiture. For example, the Corrupt Practices (Disposal of Recovered Property) Regulations of 2004 provide for pre-conviction forfeiture of property where-

- (a) the rightful owner leaves Zambia to evade the investigation or prosecution;
- (b) the rightful owner absconds;
- (c) the rightful owner cannot be traced or ascertained; or
- (d) the person in possession of the property admits involvement and agrees to surrender such property because of the involvement.

156. In terms of Section 17 and 41 of the PPMLA and the Anti-Corruption Commission Act respectively, it is mandatory for the court upon conviction of the person to order forfeiture of any proceeds of crime. In terms of Section 28 of the Anti-Terrorism Act, the court has discretion to either order forfeiture of proceeds of crime or not.

157. In the three Acts examined, it appears that the use of the term “seizing” is preferred to the use of term ‘freezing’ while the term “forfeiture” is preferred to the used of the term “confiscation”.

Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1) and Confiscation of Property Derived from Proceeds of Crime (c3.1.1)

158. Part VI of the Prohibition and Prevention of Money Laundering Act provides for seizure and forfeiture of ***property acquired as a result of money laundering and predicate offences. The Anti-Corruption Commission Act provides for seizure of property obtained through abuse of authority of office and*** corruption. Section 24 of the ACC Act impliedly provides for freezing of proceeds of corrupt practices through a written notice issued by the Director General of the Commission. Part IV of the ACC Act deals with actual forfeiture of proceeds derived from corrupt practices. The Anti- Terrorism Act under Part IV provides for seizure, and detention of terrorist funds, attachment and forfeiture of terrorist property.

159. The definition of terrorist property provided for in terms of section 19(1) of the Anti- Terrorism Act includes money or other property used, being used, intended to be used for the purposes of terrorism, money or property controlled or owned by or on behalf of a terrorist organisation, proceeds of the commission of acts of terrorism as well as proceeds of acts carried out for the purposes of terrorism. Sub-section (2) to section 19 further defines proceeds to include reference to any property which wholly or partly, and whether directly or indirectly, represents the proceeds of the act, including payments or other rewards in connection with its commission. Reference to an organisation’s resources includes any money or other property which is applied or made available, or is to be applied or made available for use by the organisation.

160. The laws of Zambia from the above observations appear to adequately provide for the seizure and forfeiture of property that has been obtained through commission of money laundering, financing of terrorism and other predicate offences. However, seizure and forfeiture of instrumentalities used in, and instrumentalities intended for use in the commission of any money laundering, financing of terrorism or other predicate offences and property of corresponding value is not provided for in any of the pieces of legislation.

161. Part VI of the PPMLA provides for the forfeiture of property relating to money laundering and any other illegal activities. The Act does not specifically provide for the seizure or forfeiture of property of corresponding value in the absence of the original illegally acquired property whose value has been determined.

Forfeited Assets	
Year	Assets Forfeited
2003	Nil
2004	K83,356,721= 33 14 motor vehicles
2005	K151,365=00/ USD28,000 3 motor vehicles
2006	US\$94,485 8 motor vehicles
By June 2007	K2,267,200 4 motor vehicles

162. Similarly, the Anti-Terrorism Act although it covers a wide range of property which can be seized under its Part IV, where such property is related to acts of terrorism, it also does not provide for the seizure and forfeiture of property of corresponding value.

163. The law, under section 15 of the PPMLA provides for seizure of property by an authorised officer where he has reasonable grounds to suspect that the property is derived or acquired from money laundering. Section 17(1)(b) of the same Act proceeds to provide for the forfeiture of property derived or acquired from proceeds of crime if it has been in possession or under the control of a person convicted of the offence of ML and which property is derived or acquired from the proceeds of crime. Although the provision discusses property which is derived or acquired from proceeds of the crime as being liable for forfeiture, it does not specifically provide for the forfeiture of income, profits and other benefits accruing from the proceeds of crime. This is also compounded by the limits created in the definition of property as it does not include income, profits or other benefits arising out of proceeds of crime.

164. Forfeiture as provided for in section 17 of PPLMA seem to be limited to proceeds of crime which will have been in the possession or under the control of the person convicted of ML. This section does not extend to cover forfeiture of proceeds of crime relating to the same offender but in the possession of another third party. Currently the PPMLA does not cover proceeds of crime held by a third party linked to the offender.

165. Section 28 of the Anti-Terrorism Act sets out various instances where property connected to acts of financing of terrorism can be forfeited.

Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2)

166. This is provided for under the Anti-Corruption Act, the Prohibition and Prevention of Money Laundering Act, the Penal Code and The Anti Terrorism Act.

167. Section 24(1) of the ACC Act reads as follows:

The Director General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act or against whom a prosecution for such offence has been instituted direct that such person shall not dispose off or otherwise deal with any property as specified in such notice without the consent of the Director General of the Commission.

168. Subsection 4 to this section reads as follows-“any person who, having been served with or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director General shall be guilty of an offence, and liable upon conviction to imprisonment for a term not exceeding 10 years or to a fine not exceeding ten thousand penalty units or to both. Such a notice can only be challenged by application to the High Court”.

169. In terms of Section 15 of the PPMLA, where an authorised officer has reasonable grounds to believe or to suspect that the property is derived or acquired from money laundering shall seize such property. The authorised officer can only order the release of such property to the person from who it was seized if he is satisfied that the property is not:

- liable for forfeiture,
- required for the purpose of an investigation, or
- is not required for purposes of any prosecution under any other written laws of Zambia.(Section 16 of the PPMLA).

170. The table below shows the number of accounts which were seized during the last five years:

Year	Number of Accounts seized
2003	14
2004	10
2005	8
2006	14
June 2007	5

171. Section 27(1), (2) and (3) of the Anti-Terrorism Act provides as follows:

(1) *An authorised officer who has reasonable grounds to suspect that any money which is being imported into or exported from Zambia or is being brought to any place in Zambia for the purpose of being exported from Zambia is terrorist property, may seize the money.*

(2) *An authorised officer may seize money under this Section if the officer reasonably suspects only part of the money to be terrorist property, where it is not reasonably practicable to seize that part only of the money.*

(3) *An authorised officer may exercise powers under subsection 1 whether or not any proceedings have been brought for an offence in connection with any terrorist money.'*

172. The PPMLA and the Anti-Terrorism Act appear to give authorised officers wide powers to temporarily seize property suspected to be proceeds of crime even in situations where a formal investigation relating to such property has not even commenced. It is also clear that the interest of securing such property are well-balanced with the interests of the person from whom the property will have been seized as the person has a right by way of application to the High Court to challenge seizing of such property and also within the expiry of seven days the authorised officer, in terms of the Anti-Terrorism Act is expected to make an application to the High Court for further detention of the money (property). The High Court, before issuing such an order, has to satisfy itself that there are reasonable grounds to suspect that the money is terrorist property to warrant the issuing of the detention order.

Ex Parte Application for Provisional Measures (c. 3.3)

173. The Anti-Terrorism Act in Section 26 gives the Attorney-General the discretion to apply for a provisional order *ex parte* from the High Court temporarily barring a person charged or about to be charged under the Act to deal with money or other property due or owing or belonging to or held on behalf of that person including terrorist declared organisations or a person suspected to be a member of that organisation or any other specified person. The court making the order may appoint a suitable person to manage the property placed under the provisional order during the duration of the order. Such an order prescribes in thirty days unless the court otherwise directs.

174. The PPMLA has got no special provisions for *ex parte* applications intended to prevent any dealing, transfer or disposal of property subject to confiscation. Although section 15 of the PPMLA gives an officer the authority to seize any property connected to money laundering such authority is not based on a court order or a formal application in court.

175. In terms of section 23 of PPMLA an officer can obtain a warrant from a court of competent jurisdiction in situations where he suspects that in or on any premises there is concealed or deposited property which is subject to seizure or forfeiture. The warrant will among other things authorize the officer to enter and search the premises identified in the warrant, to seize and detain any property which includes books and documents. This provision to a limited extent prevents dealing, transfer or disposal of the property during the time when it is detained. The provision however is ambiguous as it does not seem to prevent dealing, transfer or disposal of other types of proceeds of crime, in particular immovable property. It is not clear whether the “.....***in or on the premises*** there is concealed or deposited property which is subject to seizure or forfeiture” provided for in this provision can be said to be including other property such as immovable property. In our view it creates the impression that the property liable for seizure or confiscation found in or on the premises is restricted only to movable property. Further to that section 17(1) of the PPMLA refers to seizure of property provided for under section 15(1) of the same Act but according to the Act, section 15 has got no subsections to it, so it is not clear whether the subsection referred to was also intended to deal with provisional orders preventing dealing, transfer or disposal of

property subject to confiscation which other than the warrant provided for under section 23 of the Act are not specifically provided for.

Identification and Tracing of Property (c.3.4)

176. The PPMLA, under Section 19, provides for property tracking and monitoring. In such circumstances, the Commissioner will have to make an application to the High Court seeking that any document relevant to identifying, locating or quantifying property of the person or identifying or locating any document necessary for the transfer of property for the person be submitted to him. The Commissioner may also seek for an order directing a regulated institution to produce to the Commissioner all information obtained by that institution about any business transaction conducted by or for the person with the institution before and/or after the date of the order as the court may direct.

177. The Anti-Terrorism Act in section 25 authorizes the AG, where he has reasonable grounds to suspect that a person has committed or is about to commit or is committing an act of terrorism or is in possession of terrorist property, for purposes of investigating the offence to apply to the High Court for an order compelling the person to deliver any document or record relevant for the identification, location or quantification of any property belonging to that person or in that person's possession or control to an authorised officer. Such order may also require the bank or any other financial institution, trustee or custodian to produce all information, documents and records pertaining to any business or transaction carried out by the person or conducted on his behalf. Based on the order an authorised officer may be permitted to enter any premises for purposes of searching it, removing any documents or records to allow successful execution of the order. Section 35 of the Anti-Terrorism Act further allows an authorised officer with the consent of the AG to apply without due notice (*ex parte*) to a judge of the High Court for an order authorizing gathering of information pertaining to the offence or information revealing the whereabouts of the person suspected of having committed the offence, including situations where it might be suspected that an offence might be committed.

178. Subsections 7 to 9 to section 35 however sets out what can be termed provisos to the order by the court. These include the right by the person to refuse to disclose such information or to provide documents if providing of such information would disclose information protected by the law relating to non-disclosure of information or privilege. However the final discretion to determine whether such information should be disclosed rests with the Judge of the High Court presiding over the matter. It is also important to note here that the right to refuse to disclose such information is not extended to an individual on the basis that disclosing such information might incriminate the individual. The incriminating information is however not admissible against the individual in any criminal proceedings unless they relate to a charge of perjury or giving false evidence.

Protection of Bona Fide Third Parties (c. 3.5)

179. Third party rights are taken into account before an order of forfeiture is made. Section 18 of the Prohibition and Prevention of Money laundering Act states:

18. (1) Where any property has been seized under this Act and –

- (a) no prosecution for any offence under any written law is instituted with regard to the property;*
- (b) no claim in writing is made by any person; and*

- (c) *no proceedings are commenced within six months from the date of seizure, for the forfeiture of property; the Commissioner shall apply to the Court upon the expiration of the period of six months for an order of forfeiture of that property.*
- (2) *The Court shall not make an order of forfeiture under subsection (1) unless -*
 - (a) *the Commissioner has given notice by publication in the Gazette and in one national newspaper to the effect that property which has been seized under this Act shall be liable to vest in the State if it is not claimed within three months; and*
 - (b) *three months after the giving of the notice under paragraph (a) the property remains unclaimed.*
- (3) *Where a claim in writing is made by any person that is lawfully entitled to the property seized that it is not liable to forfeiture under this Act the Commissioner may order release of the property to the claimant if satisfied that there is no dispute as to ownership of the property and that it is not liable for forfeiture.*
- (4) *Where a claim is made against property seized under this Act and the Commissioner finds that –*
 - (a) *there is a dispute as to the ownership of the property;*
 - (b) *there is insufficient evidence to determine the ownership of property;*
 - (c) *the Commissioner is unable to ascertain whether the property is liable to forfeiture or not; the Commissioner shall refer the claim to High Court.*

180. In terms of subsection (7) of section 28 of the Anti - Terrorism Act the court before making a forfeiture order is required to afford any third party who is not a party to the proceedings and states his right to ownership or interest in the property to be forfeited, a chance to be heard. The Act however, does not set out guidelines to assist the courts in considering such a claim by a *bona fide* third party. Such guidelines could include evidence showing that the person making the claim was not involved in the commission of the offence concerned, or that if he acquired the property at the time or after the commission of the offence, he paid sufficient value for the property and he did so without knowing and in circumstances which could not have raised reasonable suspicion that the property was tainted at the time of the acquisition.

Power to Void Actions (c. 3.6)

181. Both the PPMLA and the Anti-Terrorism Act do not have provisions intended as steps to prevent actions, whether arising from a formal arrangement such as a contract or otherwise, where the persons involved knew or ought to have known at the time of entering into the arrangement that as a result of their actions the State would be prejudiced in its ability to recover property subject to confiscation.

Additional elements (c.3.7)

182. The laws in Zambia do not currently address the additional elements under criterion 3.7.

2.3.2 Recommendations and Comments

183. Although the effectiveness of forfeiture relating to financing of terrorism could not be easily determined during the on site visit as the act had just been enacted, from the discussion with the Drug Enforcement Commission and the Anti-Money Laundering Investigations Unit and the statistics provided from the Drug Enforcement Commission, it appeared the provisions of the PPMLA and the Anti-Corruption Commission Act were being widely applied in the forfeiture of property obtained through money-laundering and the other predicate offences to ML.

184. The AML and financing of terrorism laws of Zambia should be broadened to provide for seizure and forfeiture of instrumentalities used in or intended to be used in the commission of ML and FT offences.

185. Although Zambia has made an effort to enact most of the laws dealing with forfeiture and seizing of proceeds of money laundering and financing of terrorism, it appears there are still gaps within the laws which need to be attended to.

186. Parts IV and VI of the PPMLA and the Anti-Terrorism Act respectively should be amended to provide for forfeiture of property of corresponding value in the absence of the original illegally acquired property whose value has been determined.

187. The definition of property needs to be amended to specifically include income, profits and other benefits accruing from proceeds of crime. Section 17 of the PPMLA needs to specifically provide for the forfeiture of income, profits or any other benefits arising from proceeds of crime.

188. Section 17 of the PPMLA should be broadened to cover forfeiture of proceeds of crime relating to the same offence and offender but in the possession or under the control of a third party.

189. The PPMLA has got no special provision for *ex parte* applications temporarily barring a person charged or about to be charged under the some Act from dealing, transferring or disposing of property suspected to be proceeds of crime. Although the Act provides for a warrant being issued to an officer for purposes of seizing property, the Act seems to imply that only movable property can be seized.

190. The Act needs to be amended to provide for provisional orders barring the dealing, transferring and disposing of property subject to forfeiture.

191. Section 23 of the PPMLA is difficult to appreciate as to which property it implies as being subject to seizure in terms of the warrant. The ambiguity needs to be clarified so that the property referred to in the section is properly defined.

192. Section 17 of the PPMLA needs to be revisited to clarify which subsection (1) to section 15 is being referred to as section 15 currently does not have any subsections, let alone a subsection providing for the obtaining of provisional orders against dealing, transferring or disposing of property subject to confiscation or forfeiture.

193. It is recommended that Section 19 of the PPMLA be amended to specifically provide for property tracking and monitoring applications to made without notice or *ex parte* to the High Court.

194. The Anti-Terrorism Act under section 28(7) should provide guidelines to assist the courts when considering claims by a *bona fide* third party. The guidelines could include evidence showing that the

person making the claim was not involved in the commission of the offence concerned, or that if he acquired the property at the time or after the commission of the offence he paid sufficient value for the property and he did so without knowing and in circumstances which could not have raised reasonable suspicion that the property was tainted at the time of the acquisition.

195. The Anti-Terrorism Act and the PPMLA can be further enhanced by providing for preventive measures to be taken against entering into agreements or contracts by persons who at the time of involving themselves in such conduct knew or ought to have known that as a result of their actions the State would be prejudiced in its ability to recover property which is subject to confiscation.

196. It is recommended that the forfeiture regime of Zambia can be further enhanced by providing for Civil Forfeiture in offences where the full criminal liability against an offender cannot be established but the property concerned with the case can be shown to be tainted on a balance of probabilities. The current position where all the burden of proof rests with the State is undesirable. Such provisions however should ensure that property rights of citizens are still retained and respected.

197. The forfeiture regime should also be broadened to require those suspected of having committed criminal offences, where property becomes subject to forfeiture to explain the lawful origin of the property.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> ▪ The forfeiture of property of corresponding value in the absence of the originally acquired property whose value has been determined is not provided for by both the PPMLA and the Anti-Terrorism Act making possession of benefits acquired from proceeds of such crimes lawful. ▪ Both the PPMLA and the Anti-Terrorism Act do not specifically provide for instrumentalities used in or intended for use in the commission of an ML, FT or other offences. ▪ The PPMLA does not specifically provide for property derived directly or indirectly from proceeds of crime such as income, profits or other benefits. ▪ The PPMLA does not also provide for forfeiture of proceeds of crime held by a third party. ▪ The PPMLA does not provide for <i>ex parte</i> applications barring a person charged or about to be charged from dealing, transferring or disposing of property subject to confiscation or forfeiture. ▪ The Anti-Terrorism Act and the PPMLA do not provide for preventive measures to stop persons from entering into contracts where they have knowledge or ought to have knowledge that such contracts might have the effect of prejudicing the recovery of property subject to confiscation.

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

2.4.1 Description and Analysis

Legal Framework

198. The Zambian legislation relating to terrorism is mainly provided for by the Anti-Terrorism Act which was recently enacted into law in 2007. It is further supported by the ratification by Zambia of the UN Convention for the Suppression of Financing of Terrorism. The Anti-Terrorism Act in Part IV provides for seizing and attachment of funds/ property relating to terrorist financing.

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

199. Section 16 of the Anti-Terrorism Act empowers the Minister where he has reasonable grounds to believe that an organisation is engaged in terrorism by notice published in a gazette declare that the specified organisation is engaged in terrorism. The same section describes (a) a declared terrorist organisation, among other things as an organisation which has been declared by the Security Council of the UN or the African Union as a terrorist organisation. However, the Act does not proceed to provide either as provisions in the Act itself or as regulations the procedures which are supposed to be followed in disseminating information about the gazetted blacklisted terrorist organisations to the other stakeholders mainly the banks and the feedback by stakeholders to the Minister on information received or detected about such organisations as required by the UN Security Council. Also there are no effective procedures in place to disseminate and receive information to and from stakeholders on individuals designated as terrorists by the UN Security Council under SR 1267.

200. The Anti-Terrorism Act in section 26(2)(a) specifically gives the AG the discretion to apply *ex parte* to the High Court for a provisional order temporarily suspending dealings relating to any money or other property due, or owing or belonging to, or held on behalf of a declared terrorist organisation, a specified person reasonably suspected of being a member of such an organisation or any other specified person. The effect of this provision as read with Section 16 which provides for the gazetting of terrorist organisations, in essence is to allow the AG without giving due notice to apply for the attachment of funds or other property as directed under S/Res/1267 of the UN Security Council.

Freezing Assets under S/Res/1373 (c. III.2)

201. Section 16 of the Anti-Terrorism Act defines a “**declared terrorist organisation**” as an organisation which the Minister has by notice declared to be involved in terrorism, or an organisation operating under the same name as the organisation declared by the Minister, or an organisation which has been declared by the UN Security Council or the African Union to be a terrorist organisation. Subsection (1)(a) of section 16 which gives the Minister the discretion to declare by notice an organisation to be engaged in terrorism does also include organisations declared under the UN S/Res/1373. If our interpretation of this subsection is correct then the AG can use the wide discretion given him under section 26(2)(a) of the Act to apply for freezing orders of assets belonging to organisations declared under UN S/Res/1373.

202. As observed above, again there are no effective procedures in place to disseminate and receive information to and from stakeholders on individuals designated as terrorists by the UN Security Council under SR 1373.

Freezing Actions Taken by Other Countries (c. III.3)

203. Part VII of the Anti-Terrorism Act provides for mutual legal assistance to competent authorities of other States. In terms of section 42 of the Act the AG may apply for a provisional order from the High Court seeking the freezing of the funds or property identified in the request. This Part also deals with a wide spectrum of assistance which can be provided to foreign jurisdictions and also gives the AG the powers to make similar extra territorial requests relating to financing of terrorism offences.

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

204. Although Parts IV and VII of the Anti-Terrorism Act in general provide for the attachment of assets for organisations specified under the UN Resolutions and provision of mutual legal assistance in matters involving extra-territorial attachment of assets respectively, it does not specifically provide for attachment of funds and other assets wholly or jointly owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. The Anti-Terrorism Act does not provide for attachment of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations.

Communication to the Financial Sector (c. III.5)

205. The AG, where he has secured an order in terms of section 26 of the Anti-Terrorism Act temporarily suspending dealings relating to money or property due or owing or belonging to, or held on behalf of a terrorist organisation, or a person suspected to be a member of that organisation is required in terms of subsection (5)(b) of the same section to give notice of the order to any bank, financial institution or other business person. Section 36 of the Anti-Terrorism Act in addition also provides for the obtaining of an order by a police officer of or above the rank of inspector to enable him to gather information relevant for purposes of his investigations from financial institutions, the Act however does not proceed to provide on how such an order is communicated to the financial institutions. As the financial sector is broad it would be necessary for more guidelines to be developed by the Central Bank and other supervisory bodies to guide communication in this area with the various types of financial institutions.

Guidance to Financial Institutions (c. III.6)

206. Guidelines under the Anti Terrorism Act are yet to be drawn up as the Act was recently enacted.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7)

207. The Anti-Terrorism Act does not currently provide for de-listing and unfreezing of funds of de-listed persons. It is recommended that such provisions be provided for in the Guidelines to the Act which are yet to be provided.

Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8)

208. Under section 26(6) of the Act, an order freezing dealings relating to terrorist assets or suspected terrorist assets issued in terms of the same section lapses upon the expiry of thirty days from the date of issue of the order unless the court issuing the order directs otherwise. Further to that, section 26(7) of the Act allows any person aggrieved by an order temporarily freezing his assets to bring action in the High Court against the AG for damages or any other legal remedy. The Act other than the above provisions does not specifically lay out timeous unfreezing procedures of funds of persons affected by the freezing provisions. It is also recommended that guidelines be worked out and issued on such procedures.

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

209. The Anti Terrorism Act does not specifically provide for access to frozen funds for expenses and other purposes. It would be worth noting that section 26(3)(b) which provides as follows,

an order made under this section may

- (b) *provide for the granting or authority to make money or other property available to any person and on such conditions as may be specified in the order.*

210. It is not clear whether it was meant to allow access to frozen funds for expenses and other purposes by those affected by the order although it appears to give wide powers to the court on the conditions of the order. The provision does not discuss access to frozen funds determined on the basic needs such as payments for food, mortgages, medical treatment or rentals.

Review of Freezing Decisions (c. III.10)

211. The Act, other than section 26(7) which provides for an aggrieved party where a provisional freezing order has been given in the High Court to bring an action against the AG for damages or any other legal remedy, does not set out procedures in reviewing freezing orders.

Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11)

212. Part IV of the Act covers a wide area of circumstances where attaching, seizing and forfeiting of terrorist assets or suspected terrorist assets can be done although not exhaustive.

Protection of Rights of Third Parties (c. III.12)

213. The Anti-Terrorism Act provides for the protection of third party interest before a court makes an order to forfeit proceeds from acts of terrorism. Section 28(7) of the Act provides that before making an order for forfeiture the court has to afford any person who is not party to the proceedings and claims to have interest in the property to be forfeited as its owner or otherwise, a chance to be heard. However the Act does not give guidelines to assist the court in determining such request or application.

Enforcing the Obligations under SR III (c. III.13)

214. Other than the Anti-Terrorism Act having been enacted, at the time of the on site visit there was little activity to show what Zambia had done in enforcing the obligations under SR III. The explanation given as the main cause of the lack of activity at the time was that Zambia had just enacted its laws on anti-terrorism and was to still develop guidelines to compliment the provisions of the Act.

Additional Elements (c. III.14)

215. Guidelines, measures and procedures under the Anti-Terrorism Act are yet to be drawn up as the Act was recently enacted.

216. Measures for maintaining statistics on CFT under the Anti-Terrorism Act are yet to be drawn up as the Act was recently enacted.

2.4.2 Recommendations and comments

217. Effectiveness of the implementation of provisions under the Anti-Terrorism Act could not be easily determined as the act had just been enacted at the time of the on site visit and no cases had yet been dealt with under the new Act. Compliance with the requirements of the new Act was also difficult to determine as not all the stakeholders were aware of the existence of the Act yet, and these included some members of the financial sector.

218. Effectiveness of the Act could not be determined as no cases had yet been dealt with or prosecuted under the Act.

219. Zambia should quickly compliment the provisions of the Anti-Terrorism Act with guidelines giving directions, procedures and measures to all designated agencies which would enhance effectiveness in complying with the requirements of the Act.

220. The guidelines could also be broadened to cover areas raised from c.III.4 to c.III.10 under paragraph 2.4.1 which are not adequately provided for by the Act.

221. In developing the guidelines it will also be necessary to look at and provide specific areas which may guide the courts when determining applications made by third parties before forfeiture can be ordered, which could include looking at whether the third party was not in any way involved in the commission of the offence, the time at which the third party acquired his interest in the property, that is before or after the commission of the offence and if it was after, he did so for sufficient value and under circumstances which could not have aroused any suspicion that the property was at the time of his acquisition proceeds of crime.

222. The Ministry of Home Affairs should in collaboration with other agencies involved in the fight against TF organise an awareness raising campaign to make the public and other stakeholders aware of their responsibilities under the Act, as it was clear from discussions held with some of the stakeholders and designated agencies that they were not aware of or clear about their role in implementing the requirements of the Act.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none">▪ The Anti-Terrorism Act is not exhaustive in some areas and needs to be complimented with guidelines or directives which are not yet in existence making it difficult for the designated agencies to implement it.▪ It was not possible to determine the effectiveness of the Act as there are no cases of funds or property relating to financing of terrorism which had been dealt with or completed under the Act at the time of the onsite visit.▪ Institutions mandated to implement the Act were either not acquainted with it or unaware of its existence.▪ In terms of the Anti-Terrorism Act, the court can only proceed to

		<p>order forfeiture of funds or property related to terrorist financing where evidence to meet the criminal standards has been adduced and the person has been convicted of the offence. This makes it difficult for the court to order forfeiture where only circumstantial evidence which is not adequate to meet the criminal standards has been adduced but on a balance of probability there is evidence to show that the property is tainted.</p> <ul style="list-style-type: none"> ▪ Although the Act provides for compliance with UN Resolutions 1267 and 1373 respectively, Zambia at the time of the evaluation had no mechanism or structures in place to give effect to the actual implementation of the resolutions.. ▪ The Anti-Terrorism Act does not provide for attachment of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. ▪ It appeared to the Evaluators that there was no effective implementation of the requirements of the Anti-Terrorism Act.
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Authorities

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

2.5.1 Description and Analysis

Legal Framework

223. The Anti-Money Laundering Investigations Unit (AMLIU) established in terms of Section 5 of the PPMLA of 2001 carries out the function of the FIU in Zambia. The Commissioner of the DEC is the Head of the FIU and is mandated to appoint such other persons to assist him with administering the FIU operations.

224. In terms of the law describing the functions of the AMLIU, Zambia has a law enforcement type of FIU. It is empowered to investigate and prosecute money laundering offences.

Establishment of FIU as National Centre (c. 26.1)

225. The AMLIU currently falls under the Drug Enforcement Commission (DEC). According to the authorities, the decision to locate the AMLIU within the DEC was based on historical developments. Originally, money laundering issues were only associated with drugs and drug-related offences. For this purpose, the DEC was mandated to be responsible for AML matters. When FATF Recommendations introduced the requirement for countries to establish FIUs, Government of Zambia decided to create AMLIU within the DEC which was already handling AML matters. This was deemed logical and cost-effective at that time.

226. In terms of Sec 6 (1) of PPMLA, the functions of the AMLIU are as follows:

- (a) to collect, evaluate, process and investigate financial information including that from regulated institutions and Supervisory Authorities, relating to financial and other business transactions suspected to be part of Money Laundering for the purpose of preventing and suppressing money laundering offences,
- (b) to conduct investigations and prosecutions of money laundering offences;
- (c) to liaise with other law enforcement agencies in the conduct of investigations and prosecutions of money laundering offences,
- (a) to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and Supervisory Authorities under this Act;
- (b) to assist, in developing, training programs for use by regulated institutions and Supervisory Authorities, and
- (c) to cooperate with other enforcement agencies and institutions in other countries responsible for investigations and prosecution of money laundering offences.

227. During the onsite visit, the Assessors were informed that AMLIU also does vetting of government suppliers' tenders and contracts. The intention of this function was to reduce corruption relating awarding to such tenders and standards of the contracts.

228. The functions of the AMLIU as provided for under Section 6(1) of the PPMLA fall short of meeting all the elements as set out in Criteria 26.1. The wordings of section 6(1)(a) of the PPMLA seems to suggest that the Unit must collect information from the regulated institutions as opposed to receiving them. During the onsite visit, the assessors were informed that AMLIU officers can actually collect STRs from the regulated institutions while being on their premises for any other business. However, the AMLIU has indicated that in practice, the AMLIU receives STRs and do not collect them from the regulated institutions.

229. In addition, the PPMLA does not have provisions requiring the receipt, analysis and dissemination of STRs relating to terrorist financing. Furthermore, the Anti-Terrorism Act, 2007 does not designate AMLIU as recipient of suspicious transactions relating to terrorist financing. The assessors did not get any indications that GoZ has plans to amend the PPMLA to incorporate provisions on reporting of STRs relating to terrorist financing.

230. It is further observed that PPMLA does not include other DNFBPs (eg lawyers and accountants acting on behalf their clients) as regulated institutions.

231. Section 6(1)(d) of PPMLA describes one of the functions of AMLIU as being "to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and supervisory authorities" under PPMLA. The procedures in place to enable AMLIU to carry out this function are not clearly established. During the onsite visit, it was observed that AMLIU did not have the capacity to carry out this function. This was confirmed also by some supervisory authorities being unaware of their obligations to issue directives, to report to AMLIU and supervise the regulated institutions on AML/CFT matters.

Guidelines to Financial Institutions on Reporting STR (c. 26.2)

232. AMLIU has not issued any guidelines to reporting institutions on the manner of reporting, including the specification of reporting forms and the procedures that should be followed when reporting. The AMLIU is not empowered under the PPMLA to issue guidelines. The responsibility for providing guidance on the manner of reporting lies with the supervisory authorities. In terms of Section 12(4) of the PPMLA, supervisory authorities may issue directives which may be necessary for the regulated institutions in Zambia to prevent and detect money laundering. The AMLIU is required to approve such directives.

233. As at the date of the on-site visit, only the Bank of Zambia had issued Anti-Money Laundering Directives. These however do not include specification of reporting forms and procedures that should be followed when reporting. Directive 11 of the BoZ Directives states that regulated institutions shall report suspicious reports to AMLIU. In addition, these directives require regulated institutions to report to the Unit where the identity of the persons involved, the circumstances of any business transaction or where any cash transaction, gives any officer or employee of the regulated institution reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed. The directives also prescribe the responsibilities of a Money Laundering Reporting Officer.

234. The other reporting institutions do not have the relevant guidance with respect to AML/CFT reporting requirements although the AMLIU has indicated that it conducts seminars and meetings to assist the regulated institutions in fulfilling their obligations.

Access to Information on Timely Basis by FIU (c. 26.3)

235. While one of the functions of the AMLIU under section 6(1)(a) of the PPMLA is to collect financial information from regulated institutions and supervisory authorities, relating to financial and other business transactions suspected to be part of money laundering the PPMLA does not set out express powers to enable the AMLIU to have 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 the analysis of STRs. In terms of Sections 13(1)(d) and (e), an authorised officer of AMLIU requires a warrant in order to be permitted to enter into premises of a regulated institution to inspect records suspected of containing information relating to money laundering and make notes or take copies of the whole or part of such records. Assessors were informed that in practice the AMLIU can access records from the Companies Registry and Deeds Registry for purposes of investigations and prosecutions. AMLIU, unlike other private institutions and individuals, is exempted from paying search fees in order to access information.

236. The PPMLA under Section 6 allows the AMLIU to liaise and cooperate with other law enforcement agencies and institutions both within and outside Zambia for purposes of investigations and prosecution of money laundering offences.

237. During the onsite visit, however, it could not be determined how much time it takes AMLIU to access information relating to STRs from both regulated institutions and supervisory authorities. AMLIU as of the time of the onsite visit had no online access facilities linked to the regulated institutions and supervisory authorities to facilitate quick access of information. Further, although it is mandated to liaise with law enforcement agencies at the time of the onsite visit, there were no indications that there was an arrangement in place of how such liaison operates, nor is there a liaison officer appointed to facilitate such liaison.

238. An observation was made by the assessors during the onsite visit to AMLIU that access to information by AMLIU through proper analysis of STRs received was not being fully exploited to its benefit in terms of gathering more information about the transaction before taking further action. Also an

observation was made that AMLIU does not maintain any database that would help it in profiling and periodical upgrading of information and data received from outside sources in order to facilitate effective analysis of STRs.

Additional Information (c. 26.4)

239. There is express provision under the PPMLA for the AMLIU to request additional information directly from reporting parties. In terms of Section 13 of the PPMLA, pursuant to receiving an STR an authorised officer can obtain a warrant to gather additional information from any regulated institution. The additional information would include inspection of records during working hours suspected of containing information relating to money laundering and making of notes or copies of the whole or any part of such records.

Dissemination of Information (c. 26.5)

240. As has already been cited under essential criteria 26.1, Zambia has a law enforcement type FIU which carries both investigations and prosecutions of ML offences. This in practice limits the dissemination, if any at all, of financial information to other domestic authorities for purposes of investigations or action when there are grounds to suspect ML.

241. Concerns raised by other investigative agencies during the onsite visit confirmed that there was very little financial information disseminated by AMLIU to other investigative authorities relating to ML predicate offences.

242. At the time of the onsite visit, it was not clear which Ministry administering the Anti-Terrorism Act and the authority responsible for receiving STRs on financing of terrorism. There were also no practical experiences on reported STRs relating to terrorist financing. This made it difficult for the assessors to determine the authority which was responsible for disseminating financial information to other domestic authorities for investigation or action when there were grounds to suspect financing of terrorism.

Operational Independence (c. 26.6)

243. Although during the onsite visit the assessors were told that AMLIU was an independent unit, it became apparent from observations on the ground that the Unit and its functions were not independent. The Act creating AMLIU also did not envisage it to operate independently. In Terms of Section 5 of the PPMLA, the Head of the Unit is actually the Commissioner of Drug Enforcement Commission who is further mandated to appoint officers to run the Unit.

244. The Unit depends on the DEC for its budget. It does not have its own budget and there are no administrative arrangements to ensure that AMLIU has an adequate budget line to finance its operations. In addition, during the onsite visit, the observations were that the Unit relies on officers appointed to it on secondment from other law enforcement agencies, mostly from DEC.

245. The organigram given to the assessors during the onsite visit shows that the Senior Assistant Commissioner, who was supposed to be in charge of AMLIU, although the position was vacant at the time, also reports to the Commissioner of DEC, confirming what is provided for under Section 5 of PPMLA. Although the PPMLA provides for AMLIU to investigate its own cases of ML, information obtained during the onsite visit indicated that some of the AMLIU cases are prosecuted by prosecutors from DEC, with the Principal State Advocate who heads prosecutions in the DEC also appearing on the list of state advocates of AMLIU.

Protection of Information Held by FIU (c. 26.7)

246. AMLIU does not have a procedure manual explaining how STRs should be handled right from the reporting institutions, within AMLIU offices and up to the time of disseminating them to other law enforcement agencies. The absence of the guidelines has led to cases where some AMLIU staff members have been asked to pick STRs while they are in a banking hall of the reporting institutions. Evaluators also noted that even within AMLIU offices, there are no special measures to ensure enhanced protection of information. Although AMLIU offices are detached from the rest of DEC offices, it was noted that access into the offices by other officers of DEC staff is not restricted. There are no physical barriers separating them from the DEC offices. They do not have special security measures such as access control systems to ensure that only authorised people enter the premises, CCTV to monitor access into the offices, security alarm system to detect unauthorised access into the offices outside working hours.

247. Further, the assessment team is of the view that the security measures in place in the analysis section were inadequate and did not provide a secure and confidential environment.

248. In addition, there were no outlined procedures as to how AMLIU assists foreign FIUs with intelligence information, requests information from other FIUs and collect information from other domestic agencies, including dissemination and accessing of such information.

249. From the AMLIU organigram given to the assessors during the on-site visit, other than the IT Investigators, there is no person responsible for manning the security of the IT system.

250. During the onsite visit, some regulated institutions expressed their concern regarding the confidentiality of the identities of persons filing STRs with the AMLIU as in some cases the names of the compliance officers who had filed STRs had ended up in the press. However, these concerns were not confirmed as the evaluation team was not provided with any such press reports. The authorities have indicated that they were not aware of any such press reports.

Publication of Annual Reports (c. 26.8)

251. The PPMLA does not contain any provision requiring AMLIU to provide any periodic reports on statistics, typologies and trends in ML let alone TF as well as other information related to its activities. However, it was noted that the DEC publishes annual reports which incorporate AMLIU activities.

Membership of Egmont Group (c. 26.9)

252. Despite the fact that AMLIU has been in operation since 2001, it has never considered applying for membership of the Egmont Group. Until AMLIU becomes a member of Egmont, it is not able to benefit from the resources of Egmont which would enhance its operations.

Exchange of Information among FIUs (c. 26.10)

253. There is no legal or regulatory provision empowering AMLIU to exchange information with other FIUs. It does not subscribe to Egmont Group Statement of Purpose and its Principles for Information Exchange between FIUs for Money Laundering Cases. There is no evidence that AMLIU has ever exchanged information with any FIU even in the absence of the legal provisions.

Adequacy of Resources for the FIU (c. 30.1)

254. AMLIU is not financially independent - it relies on the DEC for funding. The budgetary requirements could not be established during the onsite visit. It also appeared that AMLIU does not work on a specific budget for its annual operations.

255. AMLIU also relies on staff attached to it on secondment. There were no indications that its human resources requirements were properly planned for. Lack of a budget allocation to AMLIU which is fundamental to its operations and independence was seen by the assessors as a setback in its effectiveness.

Skills and Integrity of FIU Staff (c. 30.2)

256. Members of staff of the AMLIU are required to maintain high professional standards. They swear an oath of secrecy and their conduct is regulated by Staff Rules under Statutory Instrument number 51 of 1994 issued under CAP 96 of the Laws of Zambia.

257. During the onsite visit, concerns were raised by regulated institutions regarding the lack of diligence exercised by the officers of the AMLIU when dealing with STRs. The regulated institutions were of the view that in a number of cases the AMLIU had directed the freezing of client accounts before a thorough analysis of the STRs was completed. The AMLIU has however indicated that accounts were seized on a case to case basis depending on the circumstances of the case.

Training for FIU Staff (c. 30.3)

258. Members of staff of the AMLIU have attended periodic training through structured courses, workshop and secondments to law enforcement agencies in other jurisdictions. However, it was not clear to the assessors on whether officers who are seconded or who join AMLIU go through an induction course to sensitize them on their obligations and duties under AMLIU. No information or statistics of such induction courses was provided.

Statistics (applying R.32)

259. The tables below provide the number of STRs received and the number of persons have been convicted for a money laundering offence.

STR	2003	2004	2005	2006	2007
Received	0	37	71	70	54
Disseminated					

STRs Received	2003	2004	2005	2006	2007
Banks	0	37	71	70	54
Other FIs	0	0	0	0	0

DNFBPs	0	0	0	0	0
Other sources	88	197	192	171	146 (by June 2007)
Number of persons convicted	Nil	4	3	14	5 (by June 2007)

2.5.2 Recommendations and comments

260. An observation was also made that the effectiveness of AMLIU was being overshadowed by its location as the DEC appeared to have more influence on its work than it being independent.

261. AMLIU, in its current status, does not meet the Egmont definition of an FIU as it does not serve as a national centre for receipt of STRs on ML and TF from financial institutions and DNFBPs. One of the fundamental functions of an FIU which is receiving of STRs from reporting institutions is not provided for under section 6 of PPMLA which describes the functions of AMLIU. The PPMLA which creates the AMLIU does not give it any mandate to receive reports on TF activities.

262. The functions of AMLIU are overstretched as it is required to vet tenders of suppliers to government and contracts, functions which are not directly linked to either ML or TF thereby affecting its effectiveness of AMLIU.

263. AMLIU, in terms of the PPMLA, does not issue guidelines to reporting institutions. It is only the supervisory authority which is mandated to do so in concurrence with AMLIU. As at the date of the onsite visit no guidelines had been issued by the supervisory authorities other than the BoZ.

264. PPMLA does not incorporate terrorist financing provisions, other supervisory bodies such as the Law Society of Zambia and other business entities such as real estate agents, dealers in precious metals etc. Absence of such provisions implies that AMLIU does not have jurisdiction to request for reports suspicious transactions relating to terrorist financing or ML from these institutions. By extension, supervisory authorities which have not been specifically mentioned by PPMLA, such as the Law Society of Zambia, do not have powers to issues guidelines to their members on AML/CFT and require them to report STRs on ML/TF to AMLIU. The interview with representatives of the Law Society of Zambia during the onsite visit also confirmed this position.

265. The operational independence of the AMLIU is undermined as it cannot recruit its own staff based on its requirements and criteria. In this regard, it is influenced by the DEC. Furthermore, AMLIU's budget is part of DEC's budget and there are no administrative arrangements to ensure that AMLIU's budget is predetermined before its allocation and that the budget allocation from DEC is guaranteed.

266. The manner in which AMLIU accesses and handles STRs raises concerns and undermines the confidence that reporting institutions have in it. AMLIU has not maintained a healthy relationship with reporting FIs as it has been confrontational in its approach. The failure by AMLIU to adequately protect information on STRs and its inadequate analysis before it takes further action have negatively affected its relationships with reporting institutions.

267. The PPMLA confers significant responsibilities on supervisory authorities of reporting institutions to enforce compliance. However, other than the BoZ, most of them are not aware of their obligations. As a result, these institutions are not submitting any STRs neither are they aware of the existence of either AMLIU or requirement to submit STRs.

268. In order for AMLIU to become effective and play its appropriate role in the fight against ML and TF, Zambian authorities should consider implementing the following measures.

269. Amend the PPMLA:

- so that it includes provisions related to terrorist financing in accordance with Recommendation 26;
- to change the location of AMLIU. This should be an outcome of extensive consultations with all or key stakeholders so that the new location of AMLIU is acceptable to, and commands the trust and confidence, of all stakeholders;
- so that it has operational independence such as having its own budget, powers to recruit its own staff, powers to enter into agreements on exchange of information, cooperation with domestic law enforcement agencies;
- to include all DNFBPs such as legal firms, real estates, etc among the list of reporting institutions;
- to provide for establishment of a board to whom the head of AMLIU should be reporting.

270. Enhance the physical security of its offices by, among other things, installing access control systems, security alarm system, CCTV cameras etc.

271. Submission of STRs and movement of files within AMLIU should be properly provided for and managed to ensure that they do not fall into any unauthorized hands.

272. Handling and analysing STRs should be restricted to authorised officers only.

273. AMLIU should recruit staff with financial analytical skills, IT skills among others.

274. AMLIU should develop training programmes and refresher courses for reporting institutions.

275. AMLIU should consider applying to become a member of Egmont.

276. AMLIU should ensure that supervisory authorities of various reporting sectors comply with the PPMLA provisions by issuing directives and guidelines to reporting institutions to facilitate compliance with the PPMLA provisions.

2.5.3 Compliance with Recommendations 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> ▪ The AMLIU does not have sufficient operational independence or autonomy. ▪ The AMLIU does not serve as a national centre for receiving and analysing and disseminating disclosures for STRs and other relevant information concerning ML as required under the Egmont definition of

		<p>an FIU.</p> <ul style="list-style-type: none"> ▪ It does not address STRs relating to TF. ▪ The AMLIU does not provide regulated institutions with guidance regarding the manner of reporting, including specification of reporting forms and the procedures thereto. ▪ The AMLIU does not have adequate procedures to secure and protect information under its custody. ▪ The AMLIU does not release periodic reports to guide on trends and typologies of criminal activities. ▪ The AMLIU is not considering applying for Egmont membership. ▪ The AMLIU does not have set procedures for exchanging information with other FIUs in line with the Egmont Group Statement of Purpose and Principles. ▪ No training programmes for reporting institutions have been developed.
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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

Legal Framework

277. The Acts which empower law enforcement agencies to investigate ML and FT offences are: the Penal Code, Criminal Procedure Code, the Narcotic Drugs and Psychotropic Substances Act, the Prohibition and Prevention of Money Laundering Act Number 14 of 2001, the Anti- Corruption Commission Act Number 42 of 1996 and the Anti-Terrorism Act of 2007.

278. The power to prosecute is vested in the Director of Public Prosecutions office in terms of the Constitution of the Republic of Zambia. The Attorney General's office plays an ancillary role in the prosecution of cases as he is consulted by the DPP's office on matters concerning public policy where the DPP might require guidance and decision. The creation of the AG's office is also provided for by the Constitution.

279. The other competent authorities who can prosecute AML/CFT cases such as Police Prosecutors, Prosecutors in the DEC, AMLIU and ACC do so upon the authority of the DPP who can also direct an investigation to be done by a specific institution of the law enforcement depending on how complex it is.

Designation of ML/FT Investigations (c. 27.1)

280. The law designates the AMLIU to investigate ML offences in Zambia.

281. Under the provisions of section 32 of the Anti-Terrorism Act, the special powers conferred by the Act for the purposes of a terrorist investigation (defined under section 29(1) as including a TF

offence) are available by means of a warrant issued by a judge of the High Court on application by an authorised officer.

282. An authorised officer under section 2 of the Anti-Terrorism Act means

- A police officer
- A customs officer
- An immigration officer
- An army officer
- An intelligence officer
- An officer from the Drug Enforcement Commission
- An officer from the Anti-Corruption Commission or
- Any person appointed as such in writing by the Minister.

283. Where the judge is satisfied that the warrant is sought for the purpose of a terrorist investigation and there are reasonable grounds for believing that there is material on the premises which may be relevant to the terrorist investigation, the Judge may issue a warrant authorising a police officer of or above the rank of inspector to-

- Enter any premises specified in the warrant
- Search any premises, any person and inspect any document, record or thing, found in the premises; and
- Seize and retain any relevant material, including any relevant document, record or thing found on the premises.

284. In urgent cases of terrorist investigation there is no single designated authority to investigate TF offences. Pursuant to section 33 of the Anti Terrorism Act an authorised officer may, with the assistance of such other authorised officers as may be necessary, exercise the powers under section 33(1) of the Act for the purposes of an urgent terrorist investigation. Where an authorised officer has exercised any power under section 33(1) of the Act, the authorised officer must bring the matter before a judge of the High Court within 48 hours of doing so and the judge will make such orders as the judge thinks fit in respect of the matter.

285. The DEC was established in 1989 but started its operations in 1990. The table below provides details of the staffing arrangements of the DEC.

	Department	Number of officers
1	Operational Ranks	326
2	Legal	2

3	Public relations	2
4	Administrative positions	131
	Total	461

286. ACC was established in 1980 through the Corrupt Practices Act No. 14 of 1980. The Act was repealed and replaced by the Anti-Corruption Commission Act No. 42 of 1996. The functions of the Commission are outlined in section 9 of the Act which include: (1) to prevent and take necessary effective measures for the prevention of corruption in public and private bodies, (2) to receive and investigate complaints of alleged or suspected corrupt practices and, subject to the directions of the DPP, to prosecute such cases, (3) to investigate any conduct of any public officer who, in the Commission's view may be connected or conducive to corrupt practices. The Commission can use its discretion and refuse to conduct or discontinue with any investigation where in its view the complaint or allegation was malicious, trivial, frivolous, vexatious or where scanty information not helpful to conduct the investigation was provided.

287. The Zambia Police Force has currently 14,365 officers in total out of which 2,203 are in the criminal investigations department. The criminal investigations department is headed by the Deputy Commissioner of Police and its mandate is to investigate all predicate offences including ML and TF.

Waiver of Arrest of Suspects (c. 27.2)

288. ZPS, ACC and DEC have administrative discretionary measures in investigations. They can use their discretion in certain investigations, particularly complex ones to decide on the right time to make an arrest. The discretion to postpone or waive arrest is widely used where it becomes necessary to identify either the persons involved in the illegal activity or proceeds relating to the crime.

Additional Element: Ability to use of Special Investigative Techniques (c. 27.3 & 27.4)

289. The DEC confirmed use of special investigative techniques relating to narcotics or drugs investigations. The most common special investigative techniques indicated was controlled delivery of proceeds of crime and undercover operations. In terms of section 27 of the Narcotic Drugs and Psychotropic Substances Act, where upon application by a drug enforcement officer or a police officer, a Judge considers it appropriate that any communication or postal article is likely to contain any information or substance which is likely to be relevant for an investigation into an offence, may issue an order authorising the officer power to intercept, detain and open any postal article in the course of transmission by post or to intercept any message transmitted or received by any telecommunication.

290. Section 34 of the Anti-Terrorism Act provides for an authorised officer to apply ex-parte to a Judge of the High Court for an interception of communications order. However, the authorised officer can only make such an application after obtaining prior written consent of the AG. A Judge of the High Court can only issue such an order only after having satisfied himself that the written consent of the AG has been obtained and that there are reasonable grounds to believe that the material information relating to the commission of an offence or the whereabouts of the person suspected to have committed and offence is contained in the communication against which the order is sought.

291. The powers of investigation under sections 32 and 33 of the Anti-Terrorism Act have however not been tested. The Assessment Team was therefore not able to assess the effectiveness of these powers.

Additional Element: Mechanisms for Cooperative / Multi-Agency Investigation Teams (c. 27.5)

292. The different pieces of legislation establishing the law enforcement agencies set out the extent of domestic cooperation among themselves which can be extended to each one of the law enforcement agencies by the other. The observations of the assessors were that such cooperation was limited since the Acts establishing the law enforcement agencies give them powers to investigate, seize and apply for forfeiture of proceeds of crime as individual entities, thus limiting reliance on other agencies.

293. Cooperative investigations with appropriate competent authorities in other countries is done through International Criminal Police Organisation (Interpol), through bilateral agreements, regional agreements which include the SADC Mutual Legal Assistance Protocol, Southern Africa Regional Police Chiefs Cooperation Organization and under the Mutual Legal Assistance in Criminal Matters Act of Zambia.

Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6)

294. During the onsite visit information obtained from the DEC through its annual reports indicates that there is review of money laundering trends and statistics relating to the methods of laundering proceeds of crime, the people involved- such as nationality and value/ amounts involved.

295. However, there were no indications that there is review of trends relating financing of terrorism by law enforcement agencies.

Production of Documents and Information (c. 28.1)

296. Part 5 of the Narcotic Drugs and Psychotropic Substances Act, Section 15 of PPMLA and Sections 25-28, 35 and 36 of the Anti-Terrorism Act provide broad powers that can be used to obtain document and information. These powers can be further used to trace assets, attach assets, seize and detain assets and to forfeit assets relating to both ML and TF.

297. The ACC Act, Penal Code and the Criminal Procedure Code also provide for lawful entry, search and seizures under search warrant provisions. Such powers also include the power to compel production, search persons or premises and seize and obtain evidence (including any type of property, document or electronically-held information).

Taking Witnesses' Statement (c. 28.2)

298. All the above law enforcement agencies have powers to collect evidence by recording statements from witnesses for use in investigations and prosecutions of ML and TF and other underlying predicate offences, or related actions.

Integrity of Competent Authorities (c. 30.2)

299. The integrity of all law enforcement agencies, including all public servants, is provided for under Statutory Instrument No 51 of 1994 issued in terms of the laws of Zambia CAP 96 regarding staff rules. Standards are maintained through continuous training, capacity building, standing orders (codes of conduct and ethics). Most of the law enforcement agencies have Integrity Committees.

Training of Staff of Competent Authorities: (30.3)

300. During the onsite visit the assessors were informed that DEC staff members attend training courses held both internally and externally. Some of the officers received investigations training in Egypt, India and the UK. The ACC indicated that its staff members attend regional training courses held by groups such as South Africa Forum against Corruption, African Union Anti-Corruption Association and the International Law Enforcement Academy in Botswana..

301. Advocates and prosecutors in the DPP's officers attend international seminars where they are trained on ML & FT. It was indicated, however, that there were no internal programs for prosecutors and advocates in the DPP's office on ML and FT. A wish for further training on AML/CFT measures and procedures as well as trends was made by the DPP.

Additional Element: Special Training for Judges (30.4)

302. The assessors were not privileged during the on-site visit to have an interview session with the judges. However, the assessors were informed that an AML workshop was held for the Judges in January 2006.. Out of the 20 judges who were invited only 3 did not attend the workshop.

ZAMBIA POLICE SERVICE

303. ZPS has powers of arrest, detention, investigation and prosecution as specified in the Police Act. ZPS does investigate all offences prescribed by law as criminal. Due to its presence in every part of the country, ZPS remains the first contact point of investigation on AML/CFT matters although its expertise is limited. Its effectiveness on carrying out AML/CFT investigations could not be competently gauged, since its seriously hampered by lack of training and adequate resources.

304. ACC and ACTF are charged with the responsibility of combating corruption at institutional, legal and societal level. ACC is empowered by law to investigate arrest and prosecute persons implicated of corruption. Owing to these powers, ACC has been effective in the prevention of ML as a predicate offence and in the confiscation and freezing of assets acquired through laundered proceeds of corruption.

2.6.2 Recommendations and Comments

305. ZPS as the lead law enforcement agency lacks both the necessary basic skills and resources to investigate TF offences.

306. AMLIU should liaise with other law enforcement agencies, in particular the ZPS, when carrying out ML investigations..

2.6.3 Compliance with Recommendation 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none">▪ No specific administrative or operational structures in place within ZPS to deal with the investigation of TF offences.▪ The powers of investigation for TF offences have not been used and tested. The effectiveness of these powers cannot be assessed.
R.28	LC	<ul style="list-style-type: none">▪ Although the provisions are there, in as far as exercising such powers

		relating to investigations and prosecutions of FT matters, it was difficult to determine their effectiveness as the authority which is supposed to investigate and prosecute such offences is not yet in existence. Again, there were no statistics or information on successful use of such procedures in assisting investigations and prosecution relating to FT matters.
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2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

Legal Framework

Customs & Excise Act

307. Cross border declaration, disclosures and other activities are governed by the Customs and Excise Act, 1955. This includes the importation into and exportation from Zambia, of currency notes of any kind. The Zambian Revenue Authority is responsible for administering the Act.

Mechanisms to Monitor Cross-border Transportation of Currency (c. IX.1)

308. In terms of Section 41A of the Customs and Excise Act, Zambia has adopted a declaration system which requires any person importing into or exporting from Zambia, currency in excess of the equivalent of US\$5,000 to declare in the prescribed form. However, the term “currency” has not been defined in the Act. So, the provision currently does not cover declaration of negotiable instruments, although the Zambian authorities indicated that such instruments are covered under this section.

309. However, during the onsite visit the assessors were informed that Customs Department does not have adequate resources, including equipment such as scanners, which can be used to detect currency at the exit and entry points. They also raised concerns on the difficulties posed by unofficial entry and exit points on the porous borders with its neighbours.

310. ZRA Customs issues pre-alert information to DEC and to the Regional Intelligence Liaison Office based in Kenya who later circulates to other Customs Administration & other Anti-Money Laundering Agencies in the region. ZRA assumed DEC uses these reports as and when necessary for profiling cases of money laundering. However, the statistics provided by the DEC did not indicate information on reports received from ZRA.

Information on Origin and Use of Currency (c. IX.2)

311. Where an officer has reason to believe that a person required to make a declaration has not made or refuses to make the declaration and the officer has reason to believe that the declaration is an incorrect or false declaration, the officer may search that person and any baggage carried by or associated with that person [section 41A (2)]. The section, however, does not provide for interrogation of the carrier for further information with regard to the origin of the currency or in bearer negotiable instruments and their intended use. This was acknowledged by the Zambian authorities.

312. Note should be taken that there could be a typographic error with the current section 41A of the Act as it provides subsection 2 as subsection 3, meaning that currently there is no subsection 2.

313. The authorities indicated that where currency is exported, the ZRA may use its powers under the Income Tax Act to require proof that holder has complied with income tax requirements and declared his income fully. However, although further questions could be asked customs officials in terms of Income Tax Act on the income tax requirements, the assessors felt that this did not cover essential criteria IX.2 as it would not explain the origin of the currency or its intended use. Also taking into consideration that terrorist financing can even be carried out using legitimate funds.

314. Section 41A (2) does not provide for transit on transit passengers.

Restraint of Currency (c. IX.3)

315. In terms Section 41A (3) where after the search referred to in subsection 2 (above), an officer finds currency notes in excess of the amount specified in subsection (1), the officer shall seize the currency notes in excess of the threshold amount and that amount so seized shall be forfeited to the state. However, in one case cited as an example to the Assessors of a person who was driving from the DRC intending to fly to South Africa, and upon entering Zambia made a false declaration, upon being searched he was found with US\$15,000 which was confiscated by the Customs Officer and the case was referred to the DEC for investigations. The DEC concluded that the person had not committed any offence and returned the money to him.

316. The nature of the investigation conducted by the DEC in the above matter was not made clear to the assessors. In the assessors' views, two things were supposed to happen to this person. If it was true that he made a false declaration and in terms of Section 41A (3), the money was supposed to be seized and forfeited to the state instead of being referred to the DEC. The DEC was only supposed to receive the report. Forfeiture, as provided for in this section, does not appear to be conviction based and is not connected to issues of ML or TF, but simply a breach of the Customs and Excise Act. Secondly, in terms sections 41A (2) and (3) as read together with section 155 (1) of the Act, he was supposed to be prosecuted for failure to comply with the provisions of the Customs and Excise Act.

317. This section does not provide for the circumstances or procedures which enable the forfeiture or how much time can be given for the customs officers to ascertain whether evidence of money laundering or terrorist financing may be found where there is suspicion of ML or TF leading to the false declaration. It is worth noting that this section only describes false declaration in general but not linked to either money laundering or terrorist financing. The section does not also provide for situations where the currency or negotiable instruments might be legitimate but the customs officers, based on other reasons, having a suspicion that the funds could be intended to finance terrorism.

Retention of Currency and Identification Data by Authorities (c. IX.4)

318. In terms of section 41A (3) once an officer searches a person and finds currency notes in excess of the threshold amount, the officer shall seize the excess currency notes and they become mandatory subject of forfeiture to the state. During the onsite visit, the assessors were informed by the customs officials that the undeclared currency in excess of the US\$5,000 threshold is handed over to the DEC for further investigations. But in terms of section 41 A (3) as described above, this would not be a correct procedure as such funds are supposed to be forfeited to the state. The assessors were not informed as to how DEC further manages the funds, given that on the statistics provided to the assessors by the DEC there were no statistics on such reports from ZRA.

Access of Information to FIU (c. IX.5)

319. According to the Zambian authorities, any undeclared currency in excess of USD\$5000 is seized and handed over to DEC for further investigations. This approach further confirms the potential conflict of interest earlier raised in this report between the DEC and AMLIU, as in terms of this essential criteria such information is supposed to be accessed by an FIU, which in Zambia would be AMLIU but instead, it is sent to the DEC.

Domestic Cooperation between Customs, Immigration and Related Authorities (c. IX.6)

320. The assessors were informed at the assessment of Zambia that it has put up structures at borders which ensure exchange of information among the various security officials at border points. Further, adequate co-ordination was said to exist in the form of joint permanent commissions and security commissions at border areas whose membership includes Immigration, DEC, ACC, Police and Army. It is important to note here that of the domestic cooperation, AMLIU is not included.

321. There is production of intelligence reports and pre-alert bulletins (including post-seizure analysis reports) on money laundering and the reports which are sent to all entry ports. It should be noted that most of these are general reports that include other illegitimate activities that relate to Customs.

322. Customs, from the interview carried out by the assessors, does not seem to advise the FIU of areas of concern or of specific cases where there might be possible ML or TF.

International Cooperation among Customs, Immigration and Related Authorities (c. IX.7)

323. Adequate co-ordination exists in the form of joint permanent commissions with countries bordering Zambia which are Angola, Botswana, DRS, Namibia, Malawi, Mozambique, Tanzania and Zimbabwe. District Joint Operating Committees comprising district officers from Immigration, DEC, ACC, Police, Army, in the border areas liaise with their counterparts across the respective borders.

324. Furthermore, SADC and COMESA Customs Protocols on sharing of information are in place and used for customs matters.

Sanctions (c. IX.8) and (cIX.9)

325. Section 155 (1) of the Customs and Excise Act makes it an offence for any person to fail to comply with any provision of the Act and it further highlights that such an offence is committed even if it is not specifically stated that the person responsible for such non-compliance is guilty of an offence.

326. There are no specific provisions in the Customs and Excise Act creating offences for persons who carry out a physical cross border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering. The Zambian authorities, for such situations relating to terrorist financing, may rely on offences created by the Anti-Terrorism Act.

Confiscation of Currency (c. IX.10)

327. The Customs and Excise Act does not provide for confiscation of currency or bearer negotiable instruments intended for purposes of terrorist financing or money laundering. In such cases authorities will have to rely on the PPMLA and Anti-Terrorist Act.

Confiscation of Currency Related to FT (applying c. III.1-III.10 in SR III, c. IX.11)

328. Under the Customs and Excise Act, there are no provisions for the ZRA to receive notices under the UN Resolution 1267 and 1373. During the interview with Customs Officers there was no indication that they receive the UN notices relating to SR 1267 and 1373.

Unusual Movement of Precious Metal and Stones (c. IX.12)

329. In the case of the unusual movement of precious metals and stones, the District Joint Operating Committees comprising district officers from Immigration, DEC, ACC, Police, Army, OPSD in the border areas liaise with their counterparts across the respective borders from which the items concerned will have originated or to which they are destined with the aim of establishing the source, destination and purpose of the movement of such items with the intention to stop the activity.

330. This has been used in respect of copper smuggling between Congo and Zambia.

Systems to Ensure Proper Use of Information (c. IX.13 & 14)

331. The reports of declarations are not necessarily maintained in a computerised database. Instead, physical security is in place. The information is treated with confidentiality. Additionally, members of staff swear an oath of secrecy.

332. The Customs authorities informed the assessors that statistics recorded by them are maintained for customs purposes but are made available to law enforcement agencies upon request. The statistics provided by DEC and AMLIU did not cover reports or statistics on cross border transportation of either currency or negotiable instruments. From the discussion with both the DEC and AMLIU, there was no information that either of the two receives such reports from ZRA. Note should be taken ZRA itself gave an example of one case which was referred to the DEC.

2.7.2 Recommendations and Comments

333. It is recommended that Section 41A be amended to include declaration of bearer negotiable instruments or alternatively, currency be defined in the Act to include bearer negotiable instruments.

334. In order to improve effectiveness of the declaration monitoring system, ZRA should consider using necessary equipment such as scanners which can be used to detect currency in baggages. In addition, where possible, patrols of borders should be enhanced in informal entry or exit routes.

335. It is recommended that Section 41A(2) be broadened to provide for further questioning of the carrier in regards to the origin and intended use of the currency or bearer negotiable instruments which will have been falsely declared by the carrier.

336. The Act should provide for restraining of currency or bearer negotiable instruments for a reasonable period in order to ascertain whether evidence of ML or TF can be found where there is suspicion of ML or TF.

337. It is again recommended that the functions of DEC and AMLIU in practice be streamlined to avoid confusion as to which institution deals with what. Information relating to possible ML of the undeclared currency should be referred to AMLIU, given that it has both investigative and prosecutorial mandates.

338. It is recommended that, as per Section 41A(3), ZRA should meet the legal requirement first to have the currency or bearer negotiable instruments forfeited to the state and thereafter forward the report to AMLIU for further investigations to determine whether the currency or bearer negotiable instruments is connected to ML or TF

339. The laws should specifically provide for declaration of currency and bearer negotiable instruments by passengers in transit, not necessarily staying at the port of entry or exit during the transit period.

340. There should be a facility for both ZRA and AMLIU to submit cross border currency transportation reports online, given the location of the entry and exit points.

341. It is recommended that from such reports AMLIU and ZRA maintain a statistical record of the cases reported, trends and develop effective guidelines or training programmes.

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"> ▪ There are major shortcomings with the Zambian legislation. ▪ No provisions directly dealing with the cross border transportation of currency relating to ML and TF. ▪ The law does not provide for any cross border currency reports, reporting on both genuine and false declarations to be made to AMLIU. ▪ Stakeholders not clear as to which institution to send reports between DEC and AMLIU. ▪ There is no definition of currency in the Act and bearer negotiable instruments are not specified. ▪ There are no provisions specifically declarations by passengers on transit. ▪ Sanctions not being applied for false declarations. ▪ There are no systems in place for notifying AMLIU about suspicious cross border transportation incidents. ▪ The declaration requirements at the entry and exit points are not being effectively applied. ▪ ZRA does not maintain records and current trends on cross border transportation of currency or bearer negotiable instruments. ▪ AMLIU does not have a system to collect and maintain statistics on cross border transportation of currency or bearer negotiable instruments. ▪ No records on analysis and disseminated reports on cross border

		<p>transportation of currency or bearer negotiable instruments.</p> <ul style="list-style-type: none"> ▪ No records of trends on cross border transportation of currency or bearer negotiable instruments. ▪ No statistics on prosecutions and convictions, currency or bearer negotiable instruments frozen, seized and confiscated relating to ML, TF and criminal proceeds.
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3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal Framework

342. The financial sector is made up of three sub-sectors: the securities sub-sector (supervised by the Securities and Exchange Commission, the pensions and insurance sub-sector (supervised by the Pensions and Insurance Authority) and the banking and financial institutions sub-sector (supervised by the Bank of Zambia).

343. The following types of financial institutions as defined by the FATF operates in Zambia

Financial Activity by Type of Financial Institution			
Type of Financial institutions (see the glossary of the FATF 40 Recommendations)	Type of Financial Institution that performs this activity	AML/CFT Requirement under PPMLA	AML/CFT Supervisor/Regulator
Acceptance of deposits and other repayable funds from the public	Banks Leasing companies Housing Finance Institutions Savings and credit institutions Microfinance Institutions	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)
Lending	Banks Microfinance Institutions Leasing companies? Savings and credit institutions Housing Finance Institutions Development Finance Institutions	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)
Financial leasing	Banks Leasing companies	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)

Transfer of money or value	Banks		AMLIU (designated under statute)
	Money Transfer Operators	Yes	Bank of Zambia (in practice)
	Post Office	No	No designated authority
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)
	Post Office	No	No designated authority
Financial guarantees and commitments	Banks	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)
	Insurance Companies		AMLIU
Trading in Money market instruments (cheques, bills, CDs, derivatives etc.)	Not applicable		
Trading in Foreign exchange	Banks		AMLIU (designated under statute) Bank of Zambia (in practice)
Trading in Exchange, interest rate and index instruments	Not applicable		
Trading in Transferable securities	Dealers	Yes	AMLIU
Trading in Commodities	Not applicable		
Participation in securities issues and the provision of financial services related to such issues	Dealers		AMLIU
	Banks	Yes	AMLIU (designated under statute)

			Bank of Zambia (in practice)
Individual and collective portfolio management	Dealers/Fund Managers	Yes	AMLIU
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	Yes	AMLIU (designated under statute) Bank of Zambia (in practice)
	Custodians for securities (Dealers)		AMLIU
Otherwise investing, administering or managing funds or money on behalf of other persons	Fund Managers	Yes	AMLIU
	Pension fund managers		
	Insurance Companies		
Underwriting and placement of life insurance and other investment related insurance	Insurance Companies	Yes	AMLIU
	Insurance Brokers		
Money and currency changing	Banks	Yes	AMLIU (designated under statute)
	Bureaux de Change		Bank of Zambia (in practice)

344. Under the provisions of section 12(4) of the PPMLA, supervisory authorities are empowered to issue such directives as may be approved by the AMLIU which may be necessary for the regulated institutions to prevent and detect money laundering. In accordance with the provision of section 13(1)(c) of the PPMLA a regulated institution must comply with any directives issued to it by the Supervisory Authority with respect to money laundering activities. Failure to comply with the directives may entail criminal liability pursuant to the provisions of section 13(4) of the PPMLA.

345. At the time of the onsite visit the Bank of Zambia was the only supervisory authority which had pursuant to its powers under the PPMLA, issued directives to financial institutions falling under its supervision. In addition, the evaluators were also provided with BoZ Directives on Customer Due Diligence and Foreign Currency Cash Transactions, 1998 (BoZ CDD Directives) which was issued under the Banking & Financial Services Act in 1998.

346. The Bank of Zambia has indicated that these two Directives are complementary and must be read and applied in conjunction with each other.

347. The Securities and Exchange Commission has not yet issued any directives as required under Section 12 (3) of PPMLA while the Pensions and Insurance Anti-Money Laundering Directives, 2005 are still in draft form.

348. Zambia has just passed Anti-Terrorism Act, 2007. However, at the time of the on-site visit, the country had not yet put in place implementation measures and procedures in terms of the Act.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

349. The authorities in Zambia have not conducted any formal risk assessment and no financial institution or activities are excluded from the scope of the PPMLA on a risk-sensitive basis. The PPMLA applies to all banks and non-bank financial institutions as described in the above table. The legal and regulatory framework does not refer to a risk-based approach.

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

3.2.1 Description and Analysis

Anonymous Account (c. 5.1)

350. There are no provisions in the law or regulations in Zambia that prohibit financial institutions to keep anonymous accounts or accounts in fictitious names.

351. However, in the absence of any law or regulations, banks and financial institutions falling under the supervision of the BoZ must comply with the BoZ CDD Directives. These Directives clearly state that financial institutions should not keep anonymous accounts or accounts in obvious fictitious names. The BoZ has indicated that they verify compliance with this requirement in the course of their onsite inspections.

Undertake CDD Measures (c. 5.2)

352. The PPMLA, which is the primary legislation that requires financial institutions to have in place AML preventive measures, does not expressly set out any direct customer identification obligation. The requirement for customer identification may be indirectly inferred from the provisions of section 13(1)(a) of the PPMLA which reads as follows:

“A regulated institution shall keep an identification record and a business transaction record for a period of ten years after the termination of the business transaction so recorded”.

353. Section 2 of the PPMLA defines “business transaction record” and “identification record” as follows:

“business transaction record” in relation to a business transaction, includes-

- (a) the identification record of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;

- (c) the details of any bank account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

“identification record” means –

- (a) where the person is a corporate body, the details of-
 - (i) the certificate of incorporation;
 - (ii) the most recent annual return to the Supervisory Authority; or
 - (iii) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction.

354. In the absence of any requirement under the law or regulations, Directive 6 of the BoZ AML Directives, requires financial institutions to identify their individual customers when opening an account, establishing business relation and conducting a business transaction or the regulated institution has doubts as to the identity of the customer. The Directives distinguish information about a customer that must be obtained (identifying the customer) and documents/information that must be used to verify the identity. However, the Directives do not provide for CDD measures to be applied where there is suspicion of money laundering or terrorist financing.

355. Zambian authorities have indicated that dealers are required by Section 41 of the Securities Act, Rule of the Conduct of Business Rules and the LuSE Trading Rules identify their clients individually at first contact when opening securities accounts. Brokers obtain copies of proof of residence or address, identity for individuals, certificates of registration or incorporation for legal persons, utility bills, and acceptable references. In addition, it was mentioned in securities transactions all transactions are subject to CDD measures, there is no threshold. Parties to the transactions have to be disclosed.

356. However, our observations are that the provisions of the Act do not provide for details of the client to record as it simply requires the dealer to record the name of the client on the contract note (Section 41 of the Securities Act).

Required CDD Measures

Identification Measures and Verification Sources (c. 5.3)

357. There is no requirement set out in the law or regulation that requires financial institutions to identify the customer and verify the customer’s identity using reliable, independent source documents, data or information.

358. However, Directives 6 and 7 of the BoZ AML Directives require that a financial institution must identify and verify individuals wishing to open an account, establish a business relation or conduct a business transaction. For purposes of identification, financial institutions are required to use National Registration Card, valid passport or driver’s licence. In the case of foreign nationals, a valid passport with, where applicable, a duly issued visa. Apart from the official identification documents, Directive 7 requires financial institutions to verify the identity of the person by way of a reference from an employer,

a known customer of the financial institution, previous bankers, conducting a credit reference agency search, certified recent council or utility bill receipts. Proof of residential address of the prospective customer is also required.

359. In practice, the banks operating in Zambia have put in place client verification procedures. One of the commercial banks which is a member of an international group had put in place KYC procedures in line with its group standards. The procedures apply to prospective customers and throughout the lifetime of the relationship with the client. In accordance with these procedures, the bank identifies and screens the prospective clients and assigns them to an AML risk category.

360. The operators in the financial services sector have indicated that in practice, the requirement to obtain proof of residential address was causing some difficulties especially for customers residing in semi-urban or rural areas. Nevertheless, some of the banks that the evaluators met indicated that they use a reference letter from a Pastor or a head of a farm. Authorities should consider revising the directives to include additional acceptable methods for verifying residential address of customers. This will ensure consistency in the implementation of CDD measures amongst the financial institutions.

Identification of Legal Persons or Other Arrangements (c.5.4)

Legal Persons

361. There is no requirement set out in the law or regulations for financial institutions to verify that any person purporting to act on behalf of the customer (a legal person or other arrangement) is so authorised, and identify and verify the identity of that person.

362. Directive 8 of BoZ AML Directives requires that a financial institution must identify and verify legal existence of a corporate body, its directors, beneficial owners and management before a corporate body is allowed to open an account, establish a business relationship or conduct an occasional transaction. Some of the information and documents required are a certified copy of certificate of incorporation, details of the corporate body's registered office and place of business, nature of its business, expected turnover and copy of last available accounts. It also specifically requires a financial institution to identify the person purporting to act on behalf of the corporate body. In this case, the prospective customer must produce a power of attorney and a board resolution appointing and authorising the account signatories.

363. Where an account is opened for or on behalf of the trust, Directive 9(1) of the BoZ AML Directives requires that the regulated institution must endeavour to know and understand the structure of the trust and identity of the trust owners sufficiently to determine the provider and source of funds and the controlling authority of the funds.

364. Further Directive 9(2) of the BoZ AML Directives provides where the account is opened or business transaction conducted on behalf of a trust, the regulated institution must also request details which prove to the satisfaction of the regulated institution, the identity of the beneficial owner or owners; and such other information as may be required to demonstrate the provider and source of funds and the controlling authority of the funds in respect of the trust.

365. Through regular on-site inspection process, the BoZ ensures that regulated institutions comply with this requirement.

366. The provisions of the Securities Act, its regulations and financial rules permit nominee accounts but there is no requirement for verifying that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. The authorities have

indicated that this is a requirement under the Lusaka Stock Exchange CSD Rules. Rule 6.06 provides that for the purposes of complying with the provisions of written law and these rules, every participant shall keep records of the transactions carried out by it in the course of its business of dealing in securities which are kept up to date and which are in sufficient detail to show particulars of its activities, including

- (i) all securities which are the property of the participant, showing by whom they are held and if held otherwise than by the participant itself, whether they are so held as collateral against loans or advances; and
- (ii) All securities which are not the property of the participant but for which the participant is accountable, showing by whom or for whom they are held, distinguishing those which are held for safe custody, and those which are deposited to a third party whether as security for loans or advances made to the participant or any related corporation or for any other purposes.

367. The assessors are of the view that the requirement set out in the LsSE CSD Rules does not meet the criterion.

Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2)

368. There is no requirement set out in law or regulation to require financial institutions to determine the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is.

369. There is also no requirement in the law or regulation for financial institutions to determine, for all customers, whether the customer is acting on behalf of another person, and to take reasonable steps to obtain sufficient identification data to verify the identity of that other person.

370. For customers that are legal persons or legal arrangements, there is no requirement in the law or regulation for financial institutions to determine who are the natural persons that ultimately own or control the customer.

371. In terms of Directives 6(3) of the BoZ AML Directives regulated institutions are required, where natural persons are concerned to identify and verify the identity of the beneficial owner of the account they intend to open on behalf of another person. In terms of Directive 8(1) of the BoZ AML Directives regulated institutions are required to identify the beneficial owner of the account where legal persons are concerned.

372. However, these directives do not define the term “beneficial owner”. The absence of a definition undermines the consistent implementation of the Directives in practice.

373. When a financial institution opens an account for and on behalf of a trust, Directive 9 (1) of BoZ AML Directive requires the financial institution to endeavour to know and understand the structure of the trust and identity of the trust owners sufficiently to determine the provider and source of funds and the controlling authority of the funds.

Insurance

374. The authorities have indicated that due to the personal nature of most insurance policies, intermediation requires authentic identification of the claimant. Customers are required to complete

proposal forms at the inception of the policy and at the time of the claim they have to complete a claim form. Information in these two documents is verified before settlement of the claim. It must, however, be noted that this information is only obtained when it has a bearing on the terms of the insurance policy that the customer has acquired. This however, does not meet the requirements of the criterion.

Capital Market

375. Dealers are also required under the Securities [Financial and Accounting] Rules, 1993 to obtain identification data. There is no indication, however, how SEC and other market players verify such information.

Information on Purpose and Nature of Business Relationship (c. 5.6)

376. The BoZ AML Directives 8(2)(b) and (3)(b) require banks and NBFIs, to obtain information on the purpose and intended nature of the business relationship, to establish and verify the applicants, its financial status, a clearing understanding the legitimate business of the customer and to effect an ongoing monitoring of the activities of the customer to ensure that they are consistent with the expected level of business transactions. This information is necessary in order for the financial institution to be able to fulfil its duty of identifying and reporting suspicious activities.

377. BoZ informed the assessors that it carries out regular on-site inspections to confirm that regulated institutions comply with the requirement.

378. There is no requirement for the regulated institutions falling under the supervision of the SEC and of the PIA to obtain information on the purpose and intended nature of the business relationship.

Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2)

379. There is no requirement set out in the law or regulation for financial institutions to conduct ongoing due diligence on the business relationship.

380. The BoZ AML Directives do not specifically require financial institutions to conduct on-going due diligence on business relationships with customers. Nor is there a general requirement that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds. Furthermore, there is no legal or regulatory requirement for regulated institutions to keep documents, information or data collected under the CDD process to be kept up-to-date, particularly for high risk customers.

381. However, some banks that evaluators met indicated that they carry out continuous monitoring of their customers although this could not be verified. In the absence of a legal or regulatory requirement, BoZ can not apply sanctions against institutions that do not carry out on-going monitoring of their customers.

382. Under the AML law, regulated institutions in the insurance and securities sectors are not required to conduct on-going due diligence. Furthermore, supervisory authorities have not issued any AML/CFT related directives. Therefore, they cannot take any measures against regulated institutions for non-compliance. The review and updating of information in these sectors have different objectives than those of countering money laundering risks. For example, those in the insurance sector are only required to deal with insurance issues rather than directly looking at countering ML and TF risks.

Enhanced Due Diligence for Higher Risk Customers (c. 5.8)

383. There is no requirement for financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship and transaction.

384. However, the authorities in Zambia have indicated that Directive 9 of the BoZ CDD Directives, sets out the requirement for regulated institutions to carry out enhanced due diligence for higher risk customers. Directive 9 reads as follows:

“financial institutions should pay particular attention to all complex, unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose”

385. This however does not meet the criterion 5.8 which requires financial institutions to perform enhanced due diligence measures for higher risk categories of customer, business relationship or transaction. Examples of higher risk categories may include non-resident customers, private banking, legal persons or arrangements such as trusts that are personal assets holding vehicles and companies that have nominee shareholders or shares in bearer form.

Applying Simplified CDD Measures (c. 5.9 – 5.12)

386. These criteria are not applicable. Under the PPMLA financial institutions are not permitted to apply simplified CDD measures.

Timing of Verification of Identity (c. 5.13 -5.14 & 5.14.1)

387. In terms of Directives 8 and 9 of the BoZ AML Directives financial institutions are required to verify the identity of corporate bodies, beneficial owners or trusts, before they open an account, establish a business relationship or conduct a transaction. However, this requirement does not apply to individual clients.

388. At the time of the on-site visit, the insurance and securities sector did not have any AML/CFT directives in place that address timing of verification of identity. However, the assessors were informed that traditionally there are requirements that cover verification of identity in these sectors, albeit with a different objective. In practice, the principle of utmost good faith allows for an insurance contract to be entered into before verification is completed. The requirement to complete the verification of the identity of the beneficiary becomes mandatory before settlement of a claim

Failure to Complete CDD (c. 5.15 & c. 5.16)

389. The BoZ AML Directives in Directive 6(3) states that ‘a regulated institution shall identify the beneficial owner of an account opened with it and any person using remittance and safe custody facilities, and if the regulated institution fails to ascertain the identity of such owner or person, it shall make a report to the AMLIU’. This provision does not cover situations where financial institutions have failed to carry out verification of the person opening the account and other customers in general. In addition, the directives do not prohibit financial institutions from opening the accounts, commencing business relations or performing transactions in case the regulated institutions fail to verify the customers’ identity.

390. Although Directives 8 and 9 of Bank of Zambia AML Directives require financial institutions to verify the identity of a corporate body, beneficial owner and trust before opening an account, establishing a business relationship or conducting a transaction, the Directives do not proceed to

specifically prohibit regulated institutions from opening an account, establishing a business relationship or conducting a transaction where the identity of directors, signatories, beneficial owners, management, trustees or any natural person purporting to be authorised to act on behalf of the corporate body or trust has not been verified.

391. There is no requirement to terminate the business relationship where the regulated institution has already commenced a business relationship but fails to later verify the identity of the customer. Furthermore, a regulated institution is not explicitly required to make a suspicious transaction report to AMLIU.

CDD Requirements for Existing Customers (c. 5.17 & 5.18)

392. In terms Directive 7 the BoZ CDD Directives, regulated institutions are obliged to apply CDD measures on existing customers on the basis of materiality and risk. However, the Directives do not specifically require that CDD measures should be applied to all existing anonymous accounts.

393. The laws for the securities and insurance sectors currently do not address CDD requirements for existing customers. The PPMLA which is supposed to be the fundamental base for addressing AML/CFT issues does not, as an Act or through regulation, directives/guidelines, provide for CDD requirements for existing customers as required by international standards.

Recommendation 6

Identification, Risk Management and Ongoing Monitoring of Foreign PEPs (c. 6.1- 6.4)

394. The current AML/CFT laws of Zambia do not provide for the identification, risk management and on-going monitoring of foreign PEPs. The financial institutions, therefore, have no obligations to put in place appropriate risk management systems to determine whether a potential customer or the beneficial owner is a PEP as required by FATF Recommendation 6.

395. Financial institutions, due to absence of a legal and regulatory framework dealing with PEPs, are not obligated to obtain senior management approval for establishing business relationships with a PEP. Currently, there are no provisions dealing with situations where a customer will have been accepted and the customer or beneficial owner later turns out to be or later becomes a PEP.

396. Requirements to take reasonable measures to establish the source of their wealth including funds of customers or beneficial owners who will have been identified as PEPs are not provide for and therefore where such situations exist, financial institutions are not obligated to conduct enhanced ongoing monitoring of the account.

397. It appears in practice, however, that some financial institutions take this issue seriously and are already implementing PEP-related procedures. This is especially the case with international and regional banks whose home country supervisory authorities require implementation of enhanced CDD requirements with respect to PEPs.

Domestic Politically Exposed Persons (c. 6.5): (Additional Elements)

398. The laws regulating the financial sector of Zambia relating to AML/CFT also do not provide for the identification, risk management and on-going monitoring of domestic PEPs even where it is public knowledge that such people hold prominent public functions.

399. Note should be taken, however, that under the Ministerial Code of Conduct Act No.35 of 1994 and the Judicial Code of Conduct Act No.13 of 1999, public officers and judicial officers of a certain level are required to declare their assets, income and extra remuneration on a regular basis. The declarations by public officers are kept in a publicly accessible register and those made by judicial officers are made in a register and kept by Commission. These registers can be accessed by financial institutions since they are public records but the financial institutions are under no obligation to do so in terms of the law or under any other requirement.

Ratification of the Merida Convention (c. 6.6): (Additional Elements)

400. In terms of the list of both regional and international agreements signed and acceded by the Zambian government provided to the assessors during the onsite visit, Zambia has signed the United Nations Convention against Corruption in 2003 and has ratified it December 2007.

Recommendation 7

Banking & Financial Services Act

Requirement to Obtain Information on Respondent Institutions (c. 7.1- 7.5)

401. There are no specific provisions that apply to cross-border correspondent banking and other similar relationship under the PPMLA or the BoZ AML and CDD Directives. Hence, the financial institutions are currently not obliged to apply CDD measures on respondent institutions, gather sufficient information about a respondent institution to enable them understand the nature of its business and to determine the reputation and quality of supervision of the respondent bank from independent sources.

402. The financial institutions are also not obliged 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.

403. The laws of Zambia do not specifically provide for the normal CDD measures to be applied, obtain approval from senior management, and assessing the AML/CFT controls of the respondent institution before maintaining a payable through accounts.

404. However, it appears in practice, that foreign owned financial institutions are implementing some CDD measures before establishing correspondent 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 Zambia seem to be on the receiving end as they are subjected to CDD measures by respondent banks which are, in most cases, well established banks which have robust AML/CFT systems.

Misuse of New Technology for ML/FT (c. 8.1)

405. There is no explicit requirement obligating financial institutions 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.

406. Although Directives 4 and 5 of the BoZ Directives direct that financial institutions should have effective procedures and policies that would suppress criminal use of the banking system., in the assessor's view the term banking system is too wide to effectively relate to misuse of new technology

relating to ML/FT. There should be specific provisions explicitly dealing with misuse of new technologies.

Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1)

407. Directive 6(4) of the BoZ AML Directives requires a financial institution to establish clear procedures on how to identify a customer who applies to open an account through the Internet or other electronic means. A financial institution is not allowed to establish a relationship through the Internet unless the identity documents have been verified or confirmed.

408. However, in the assessors' view the Directives should give guidance on the "clear procedures" so that a common standard is set for all financial institutions. This will also enable BoZ to check on effective implementation across the sector.

There is no requirement for the other financial institutions falling under the supervisory purview of the PIA and the SEC to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

3.2.2 Recommendations and Comments

409. Overall, Zambia's compliance with the FATF standards on CDD requirements shows a number of essential gaps namely:

- absence of requirements with respect to terrorist financing,
- no enhanced due diligence requirements,
- no directives have been issued for insurance & securities sectors,
- no requirement to identify and verify beneficial owner, PEPS,
- no ongoing monitoring requirements, and
- no CDD requirements for existing customers.

410. Further, certain elements are not addressed in the law or regulation or other enforceable means, which further weakens Zambia's compliance with FATF standards.

411. Except for the banking sector, the awareness of AML/CFT requirements and the application of due diligence measures seem to be lacking in the financial sector. Supervisory authorities in these sectors should issue directives and conduct training on AML/CFT to ensure compliance.

412. With Respect to Recommendation 5, Zambia should put the following obligations into law and/or regulation:

- (i) financial institutions must undertake CDD measures in the circumstances set out in Recommendation 5;
- (ii) CDD measures in line with international standards;

- (iii) Financial institutions must identify a beneficial owner in respect of individual customers and take reasonable measures to identify and verify who are the natural persons that ultimately own or control the customer;
- (iv) Financial institutions must be required to reject application for opening an account or terminate business relationship where a FI has failed to conduct proper CDD on the customer;
- (v) Requirement to apply enhanced due diligence on high risk customers;
- (vi) Requirement to conduct on-going customer due diligence;
- (vii) Requirement to implement CDD measures of existing customers on the basis of materiality and risk.

413. Zambian authorities should also create enforceable obligations regarding PEPs and correspondent banking relationships to ensure consistency in the application of the laws and regulations.

414. For practical purposes, the BoZ CDD and AML Directives should be reviewed and reissued under the PPMLA.

415. BoZ AML Directives should be amended to provide for CDD measures to be applied where there is a suspicion of money laundering or terrorist financing.

416. BoZ AML Directives should provide additional guidance on how banks should deal with customers who are not able to provide proof of physical address.

417. AML Directives should guide reporting institutions on how to verify the identity of a beneficial owner of an account. In cases where the beneficial owner is a corporate body, regulated institutions must be required to lift the veil and identify the persons who ultimately own or control the beneficial owner. This should be also contained in the Directives for the securities and insurance sectors.

418. The PPMLA as read together with the Directives should provide for regulated institutions to conduct on-going due diligence on their business relationships. The laws should require regulated institutions to keep up to date information or data collected under the CDD process throughout the business relationship.

419. Regulated institutions should be required to adopt and implement risk-based assessment of their customers and perform enhanced due diligence for higher risk categories of customers.

420. The laws or directives should consider allowing the application of simplified or reduced CDD measures for low risk customers.

421. The laws should provide clear guidance to financial institutions on how to deal with cases where regulated institutions have failed to identify their customers. In cases where the account has already been opened and the regulated institution has not been able to obtain, identification documents, financial institutions should be required to close the account and terminate the business relationship.

422. AML Directives should specifically require that verification of the identity of a customer who is a natural person should be done before an account is opened.

423. CDD measures should be applied to all existing anonymous accounts.
424. Zambia should have enabling laws providing for CDD measures on identification, risk management and ongoing monitoring of both domestic and foreign PEPs.
425. In situations where financial institutions are establishing business relationships with PEPs they should be required by the law, regulation or other enforceable means to obtain the approval of senior management.
426. These measures should also cover relationships already existing between a financial institution and a customer or beneficial owner who later turns out to be or later becomes a PEP, including seeking approval of senior management to continue with such business relationship.
427. There is need for Zambia to urgently consider acceding or ratifying the Merida Convention.
428. Zambia should have provisions on CDD measures applying to cross-border correspondent banking. In addition to CDD measures, there should be requirements for financial institutions 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 cross-border correspondent relationships,
 - 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.
429. Zambia should have requirements set out in the law, regulations or other enforceable means to specifically deal with misuse of technology relating to ML and TF. These requirements should be flexible to accommodate the continuous technological development of the payment systems likely to be abused for ML and TF.
- 430.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> ▪ There are no provisions in the law or regulations that prohibit financial institutions to keep anonymous accounts or accounts in fictitious names. ▪ There is no provision set out in the law or regulations that requires financial institutions to undertake customer due diligence measures. ▪ There is no requirement set out in the law or regulation that requires financial institutions to identify the customer and verify the customer's

		<p>identity using reliable, independent source documents, data or information.</p> <ul style="list-style-type: none"> ▪ There is no requirement set out in law or regulation to require financial institutions to determine the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is. ▪ PPMLA and BoZ AML Directives do not make any reference to terrorist financing. ▪ Financial institutions are not required to perform enhanced CDD for high risk customers. ▪ The laws or regulations do not prohibit opening an account, commencing business relationship or performing a transaction where financial institutions have failed to verify identity of prospective customer. In addition, there is no legal or regulatory requirement to terminate an existing business relationship where the financial institution later fails to verify the identity of the customers. ▪ There is no requirement in law or regulation to ensure that identification documents collected for CDD are kept up-to-date and relevant by undertaking reviews of existing records. ▪ There is no requirement for financial institutions to conduct on-going due diligence. ▪ A requirement to apply CDD measures on existing anonymous customers is not provided for. ▪ Financial institutions falling under the supervisory purview of the PIA and the SEC do not undertake CDD measures in line with the FATF standard.
R.6	NC	<p>There are no legal or regulatory requirements for financial institutions:</p> <ul style="list-style-type: none"> ▪ to put in place risk management systems to determine if customers are PEPs; ▪ to require senior management approval to establish relationships with PEPs; ▪ to establish source of wealth and conduct enhanced ongoing monitoring of the relationship.
R.7	NC	<ul style="list-style-type: none"> ▪ There are no provisions in the current laws relating to correspondent banking relationship.

R.8	NC	<ul style="list-style-type: none"> ▪ There are no requirements providing for prevention of the misuse of technological developments in ML/TF schemes. ▪ There are insufficient guidelines in the BoZ Directives on the procedures that must be put into place by banks and other financial institutions to prevent the misuse of technological developments in ML or TF schemes. ▪ There is no requirement for the other financial institutions falling under the supervisory purview of the PIA and the SEC to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.
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3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

431. The laws and regulatory frameworks in Zambia do not expressly permit or prohibit financial institutions to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business.

432. It appears that in practice, banks in Zambia do not generally rely on third parties or intermediaries to perform CDD process.

433. In the insurance sector, brokers act as intermediaries between insurance companies and policy holders. However, principles regulating the working relationship do not consider AML/CFT elements.

434. In the capital markets sector dealers in Zambia sometimes rely on non-Zambian dealers for introducing non-Zambian customers.

Reliance on Third Party for CDD Purposes (c. 9.1)

435. There is no requirement for financial institutions 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 to Third Parties (c. 9.2)

436. There is no requirement for financial institutions 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 (applying R. 23, 24 & 29, c. 9.3)

437. There is no requirement for financial institutions to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendations 23, 24 and 29) and has measures in place to comply with the CDD requirements set out in R5 and R 10.

Adequacy of Application of FATF Recommendations (c. 9.4)

438. The laws and regulations are silent on this requirement. However, the supervisory authorities feel that they would comply with this criterion in practice. There has not been cases referred to the supervisory authorities to assist regulated financial institutions in determining which countries adequately apply the FATF Recommendations and therefore it is not possible to determine the supervisory authority's capacity to assist in this regard.

Ultimate Responsibility for CDD (c. 9.5)

439. There is no specific requirement that expressly provides that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

3.3.2 Recommendations and Comments

440. Supervisory authorities should provide proper guidelines to financial institutions on the measures that they must into place where they rely on third parties to perform some of the elements of the CDD process or to introduce business. These measures should require financial institutions 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

441. The Guidelines should also provide that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party.

442. 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.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> ▪ No supervisory guidance has been issued to address customer introductions by intermediaries and third parties. ▪ There is no requirement for financial institutions to immediately obtain from the third party the necessary information concerning certain elements of the CDD process. ▪ There is no requirement for financial institutions 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

		<p>the third party upon request without delay.</p> <ul style="list-style-type: none"> ▪ There is no mechanism in place to determine in which countries the third party that meets the conditions can be based. ▪ There is no guidance to ensure that the ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party.
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3.4 Financial Institution Secrecy or Confidentiality (R.4)

3.4.1 Description and Analysis

Inhibition of Implementation of FATF Recommendations (c. 4.1)

443. Section 50 of the Banking and Financial Services Act which imposes a duty of confidentiality on banks, financial institutions and their officers and employees reads as follows:

(2) A bank or financial institution and every director, chief executive officer, chief financial officer, manager and employee thereof shall maintain the confidentiality of all confidential information obtained in the course of service to the bank or institution and shall not divulge the same except-

- (a) in accordance with the express consent of the customer, or the order of a court;
- (b) where the interest of the licensee itself requires disclosure; or
- (c) where the Bank of Zambia, in carrying out its functions under this Act, so requests.

(3) For the purposes of this section, confidential information about a person includes information that is not public, concerning-

- (a) the nature, amount or purpose of any payment made by or to the person;
- (b) the recipient of a payment by the person;
- (c) the assets, liabilities, financial resources or financial condition of the person;
- (d) the business or family relations of the person; or
- (e) any matter of personal nature that the person disclosed to the bank in confidence.

(4) Notwithstanding the provisions of any law to the contrary, in any case where evidence of commission of an offence is to be found in the books, accounts or records or a bank or financial institution, such evidence shall not be sought or obtained from the bank or institution otherwise than in accordance with the provisions of any other written law.

Exchange of information with FIU

444. The Anti-Terrorism Act contains general provisions that override the confidentiality provision under section 50 of the Banking and Financial Services Act.

445. Sections 24 (5) of the Anti-Terrorism Act provides that: “A person shall not be subject to any liability for making a disclosure in accordance with this Act and no action, claim or demand shall be taken, made against or of, the person for making the disclosure”.

446. Furthermore, Section 24(7)(b) of the Anti-Terrorism Act stipulates that: “Any person who makes a disclosure in accordance with this Act on whom a provision of any written law, other than this Act, imposes a duty to maintain confidentiality with respect to any information disclosed is taken not to have committed an offence against that written law”.

447. Section 14 of the PPMLA Act specifically provides that “it shall not be unlawful for any person to make any disclosure in compliance with this Act”. While section 14 of the PPMLA is couched in sufficiently large terms, in the absence of any judicial pronouncement it cannot be ascertained that it will prevail over the provision of section 50 of the Banking and Financial Services Act. Section 50(1) of the BFSa provides for specific circumstances under which information may be disclosed by a bank or financial institution. The authorities have indicated that under the rules of interpretation the provisions of the most recent enactment will prevail.

448. Directive 15 (2) of BoZ AML Directives stipulates that “no action, legal suit or claim shall be taken against a director, principal officer or employee of a regulated institution for performing his duties, powers and functions in good faith under the directives”. Given that the Directives are not set out in primary legislation it is not clear whether the Directive will override the duty of confidentiality under section 50 of the BFSa.

Exchange of information between financial institutions

449. Further the confidentiality provisions under section 50 of the BFSa may not allow financial institutions to share information between themselves where this is required by R7, R9 or SR VII.

Ability of Competent Authorities to Access Information

450. The BoZ has comprehensive powers to require a financial service provider, its subsidiary, and affiliate or associate to produce books, accounts and records for inspection by its inspectors at a specified time relating to its business in Zambia or elsewhere (Section 79 of BFSa).

451. In addition, Section 13 (1) (d) and (e) of PPMLA provides that a regulated institution shall permit an authorised officer with a warrant to enter its premises, inspect records suspected of containing information relating to money laundering and make notes. Section 23 of the PPMLA allows an officer after obtaining a warrant from a competent court to enter any premises and search for, seize and detain any property, books or documents liable for seizure or forfeiture.

452. Section 27 of the same Act makes it an offence for any person to wilfully fail or refuse to disclose any information or produce any accounts, documents or articles in relation to any investigations under the Act.

Sharing of Information with Other Competent Authorities Internationally and Domestically

453. Section 6(1)(c) of PPMLA empowers of AMLIU, for the domestic sharing of information, “to liaise with other law enforcement ***agencies in the conduct of investigations and prosecution of ML offences.*** ***Section 6 (1)*** (f) empowers AMLIU for sharing information with other international competent authorities to “cooperate with law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecution of ML offences. Section 28 of the same Act, provides for the automatic application of the Mutual Legal Assistance in Criminal Matters Act to offences under the PPMLA to the extent where its provisions are not inconsistent with the PPMLA.

454. Part VII of the Anti-Terrorism Act empowers the Attorney General to offer and request mutual legal assistance from competent authorities of other jurisdictions. The AG is also empowered under the same Part to consider extradition request from and make extradition request to other jurisdictions. The jurisdiction granted to the AG under this Part is confined to acts relating to terrorism in terms of the Anti-Terrorism Act.

455. The BFSA or BoZ AML directives do not contain specific provisions addressing the issue of sharing of information between regulated institutions related to correspondent banking, third parties (intermediaries) and wire transfers.

456. Pursuant to the provisions of section 22 of the Bank of Zambia Act, every person appointed under the Act and every person employed by the Bank must take and subscribe to an oath of secrecy. Pursuant to the provisions of section 23 of the Bank of Zambia Act, information may be disclosed in compliance with a Court order or with the written consent given by or on behalf of the Board.

Sections 22 and 23 of the Bank of Zambia Act read as follows:

Section 22

- (1) *Every person appointed under this Act or employed by the Bank shall take and subscribe, before a Commissioner of Oaths, an oath of secrecy as set out in the Official Oaths Act, and the provisions relating to affirmation and duplication of oaths contained in that Act shall apply mutatis mutandis.*
- (2) *Any person to whom this section applies who, having complied with the provisions of subsection (1), does or omits to do any act in contravention of the oath of secrecy shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand fine units or to imprisonment for a term not exceeding two years or both.*

Section 23

- (1) *Except in compliance with an order of a court of competent jurisdiction or with the written consent given by or on behalf of Board, no person appointed under this Act shall publish or disclose to any person, otherwise than in the course of that person’s duties the contents of any document, communication or information, whatsoever, which relate to, and which have come to that person’s knowledge in the course of, such person’s duties under this Act.*
- (2) *Any person who knowingly contravenes the provisions of subsection (1), shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two years, or to both.*

- (3) *If any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates such information to any other person, that person shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding forty five thousand fine units, or to imprisonment for a term not exceeding three years, or to both.*

457. Sections 12(1) and 14 of the PPMLA read as follows:

Section 12(1)

Where a Supervisory Authority obtains any information, that a business transaction indicates that any person has or may have been engaged in money laundering, the Supervisory Authority shall, disclose or cause to be disclosed that information to the Unit.

Section 14

It shall not be unlawful for any person to make any disclosure in compliance with this Act.

458. In practice, the Bank of Zambia has indicated that it has reported a suspicious transaction to the AMLIU following an investigative inspection undertaken by the BoZ.

459. There is no confidentiality provision under the Securities Act that applies to the Securities and Exchange Commission. The functions of the Securities and Exchange Commission under section 4 of the Securities Act include:

- (n) *to co-operate, by the sharing of information and otherwise, with other supervisory bodies in Zambia and elsewhere;*
- (o) *to exercise and perform such other powers, authorities, duties and functions as may be conferred of imposed upon it by or under this or any other Act.*

460. There is no confidentiality provision that applies to the Pensions and Insurance Authority under the Pension Scheme Regulation Act or under the Insurance Act.

461. An MOU was signed by The Registrar of Banks and Financial Institutions, the Registrar of Pensions and Insurance and the Chief Executive of the Securities and Exchange Commission in 2003 for the Exchange of Information for Co-operation and Consultation.

462. The PIA and SEC have signed the CISNA Multilateral MOU at the SADC level. The SEC has also entered into bilateral MOUs with individual CISNA members as well as non-CISNA members such as Uganda.

3.4.2 Recommendations and Comments

463. The section 14 PPMLA must be amended to include similar confidentiality overriding provisions as obtained under the Anti-Terrorism Act.

464. Section 50 of the BFSA must also be amended to enable financial institutions to exchange information where this is required by R7, R9 and SRVII.

465. Authorities should consider incorporating enabling laws to permit sharing of information between financial institutions in respect of such areas as correspondent banking, third parties (intermediaries) and wire transfers.

466. The weaknesses observed by the assessors relating to securing of information at AMLIU might affect its successful exchange of information with other FIUs which strictly apply Egmont Group's Principles of Exchange of Information. Intelligence (before investigations and prosecutions) by AMLIU with other FIUs.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none">▪ BFSA does not have enabling provisions to permit sharing of information amongst FIs on correspondent banking, third parties and wire transfers.▪ In the absence of any judicial pronouncement it is not clear whether the confidentiality provision under section 50 of the BFSA will be overridden by section 14 of the PPMLA.▪ Weaknesses to secure information which exist at AMLIU.

3.5 Record Keeping and Wire Transfer Rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Record-Keeping & Reconstruction of Transaction Records (c. 10.1)

467. Under Section 13(1)(a) of PPMLA financial institutions must keep an identification record and business transaction record for a period of 10 years after termination of the business transaction.

468. Section 13(1)(a) of the PPMLA reads as follows:

“A regulated institution shall keep an identification record and a business transaction record for a period of ten years after the termination of the business transaction so recorded”.

469. Section 2 of the PPMLA defines “business transaction record” as follows:

“business transaction record” in relation to a business transaction, includes-

- (a) the identification record of all the persons party to that transaction;
- (b) a description of that transaction sufficient to identify its purpose and method of execution;
- (c) the details of any bank account used for that transaction, including bank, branch and sort code; and
- (d) the total value of that transaction;

470. Under section 2 of the PPMLA “identification record” means –

- (a) where the person is a corporate body, the details of-
 - (i) the certificate of incorporation;
 - (ii) the most recent annual return to the Supervisory Authority; or
- (b) in any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” shall include any person who is a nominee, agent, beneficiary or principal in relation to a business transaction.

471. Furthermore, Directive 10 of BoZ AML Directives has the same timeframe requirement for financial institutions and further states that the records may be kept in original hard copies or in electronic form.

472. In terms of Section 28 of the National Payment System Act, 2007, financial institutions are required “to keep all documentation obtained and generated in the operation and administration of its payment system or the management or operation of a clearing house as the case may be for a period of six years”.

c.10.1.1

473. Directive 10(4) of BoZ AML Directives requires FIs to ensure that they keep information sufficient to permit reconstruction of individual business transactions, including the amounts and type of currency involved, if any, so as to provide, if necessary, evidence for prosecution of criminal conduct. However, there are no statistics to verify the effectiveness of the implementation of this recommendation on a timely basis.

474. Under the Securities Regulations, Rule 9 of the Securities (Accounting and Financial Requirements) Rules, and Rule 31(2) of the Securities (Conduct of Business) Rules, it is a requirement that records must be kept for at least six years so as to afford a clear audit trail for all transactions on any customer.

Maintenance of Identification Data, Account Files and Correspondence (c.10.2)

475. Section 13 (1)(a) of the PPMLA requires regulated institutions to keep identification data for a period of ten years after termination of the business transaction. However, the provision does not cover account files and business correspondence between the financial institution and the customer during the business relationship.

476. In addition, Directive 10 of BoZ AML Directives has the same timeframe requirement for financial institutions and further states that the records may be kept in original hard copies or in electronic form.

Availability of Records to Competent Authorities (c. 10.3)

477. There is no express requirement under the PPMLA which requires financial institution to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

478. However, section 13(1)(d) and (e) of the PPMLA permits an authorised officer with a warrant to access records suspected of containing information relating to ML. AMLIU has been using this provision to obtain information from regulated institutions. The period within which a regulated institution can provide information ranges from 1 day to 2 weeks depending on the type and volume of information requested. AMLIU further indicated that the authorised officer applying for the warrant can specify the period within which a regulated institution should provide the requested information.

479. Although AMLIU has not faced any problems in this area the assessors are of the view that the requirement to have a court warrant to access transactions records and information held with regulated institutions negates the objectives of recommendation 10.3 as it is possible for the application to be delayed.

Originator Information for Wire Transfers (c.VII.1 – VII.7)

480. Zambia passed the National Payments Systems Act (NPS Act) in June 2007. The main objective of the Act is to provide for the management, administration, supervision and regulation of payment, clearing and settlement systems in Zambia. The NPS Act 2007 defines “Payment Systems Business” as *“the business of providing money transfer or transmission services or any other business the Bank of Zambia may prescribe as a payments systems business.”*

481. Pursuant to the NPS Act, any person conducting an existing payment system business as defined above must apply to the Bank of Zambia for designation within one hundred and eighty (180) days of the commencement of the National Payment System Act 2007. At the time of the on-site visit, BoZ had not yet issued specific requirements/guidelines with respect to the application process for designation under the NPS Act and no application for designation had been made as at that date.

482. However, the Zambian authorities informed the assessors that in practice, financial institutions, including money transmission service providers, obtain full originator information. Section 51(1)(f) of BFSa may be used generally to cover this aspect. The problem is that such a provision still requires to be expanded by way of a regulation or directive to explain in detail the scope of information that financial institutions are required to keep.

483. Section 51(1)(f) of the BFSa reads as follows:

“Every bank or incorporated financial institution shall prepare and maintain at its head office records containing records showing, for each customer of the bank or institution on a daily basis, particulars of its transactions with or for the account of the customer and the balance owing to or by the customer;”

484. Authorities strongly feel that, in practice, financial institutions including money transmission service providers have adequate policies and procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

485. Even if this was a correct position, in the absence of legal provisions there are no means of enforcing compliance and applying sanctions for non-compliance.

Monitoring of Implementation of SR VII (c. VII.6)

Zambia currently does not have rules and regulations set by the supervisory authorities for effective monitoring of compliance of financial institutions with SR VII. However, Zambian authorities informed assessors that through the on-site inspection process, the BoZ ensures that financial institutions comply with banking best practices in this area. ***Sanctions (c. VII.7)***

486. The Bank of Zambia has wide administrative powers that enable it to take appropriate corrective actions against financial institutions. These corrective actions include warning letters, corrective recommendations in inspection reports, requiring financial institutions to develop action plans for effecting corrective actions, among others.

487. In particular, ***section 77 of the BSFA*** gives the Bank of Zambia wide administrative discretion for dealing with situations that in its opinion constitute unsafe and unsound practices by a financial institution. Further, section 77(3) of the BFSFA provides, among others, that the Bank of Zambia may direct a financial institution to refrain from adopting or pursuing a particular course of action or to refrain from entering into any other transaction or limit the scope of its business; prohibit a financial institution from entering into any other transaction or class of transactions, or from commencing or continuing any activity; or require the suspension or removal from office of any director, officer or other person.

488. Section 77(6) of the BFSFA furthermore provides that any person who acts in contravention with the directives of the Bank of Zambia for correcting any unsafe and unsound practice shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding 100,000 penalty units (K180 = 1 penalty unit) or to imprisonment for a term not exceeding five years, or to both.

489. While existence of the foregoing powers is appreciated, evaluators could not test the effectiveness of those powers because, the NPA has just been passed and BoZ has not issued any directives/ regulations specifically addressing the issue of wire transfers.

3.5.2 Recommendations and Comments

490. The Zambian laws currently do not provide for availability of customer transaction records and information on a timely basis to domestic competent authorities upon request.

491. Zambia needs to develop laws, regulations that ensure compliance with production of all customer transaction records and information to domestic competent authorities on a timely basis upon request.

492. Financial institutions should be required to maintain account files and business correspondence for at least five years following the termination of an account or business relationship.

493. The laws or other enforceable means should provide for the following matters under SR VII:

- Financial institutions should be required to obtain and maintain complete originator information and verify its accuracy for all wire transfers for both domestic and cross-border wire transfers.
- Each intermediary and beneficiary financial institution in the payment chain 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.

494. Supervisory authorities should ensure that they effectively monitor compliance of financial institutions with rules and regulations implementing SR VII.

495. The laws or regulations must contain specific sanctions against non-compliance.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> ▪ The laws do not provide for maintenance of records by financial institutions on account files and business correspondence. ▪ The laws does not provide for customer and transaction records and information to be produced on a timely basis to domestic competent authorities upon request.
SR.VII	NC	<ul style="list-style-type: none"> ▪ Financial institutions are not required to obtain and maintain complete originator information and verify its accuracy for all wire transfers for both domestic and cross-border wire transfers. ▪ Each intermediary and beneficiary financial institution in the payment chain is not required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. ▪ Beneficiary financial institutions are not required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information. ▪ Supervisory authorities are not monitoring compliance of financial institutions with rules and regulations implementing SR VII. ▪ The laws or regulations do not contain specific sanctions against non-compliance..

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Legal Framework

496. The BFSa and PPMLA; In 1998, Banking and Financial Services (Customer Identification and Foreign Currency Cash Transactions) Directives were issued by BoZ under the BFSa. Subsequent to this, in August 2004, the Bank of Zambia issued the Anti-Money Laundering Directives under the PPMLA.

Both sets of Directives guide financial institutions on how to identify and report unusual and suspicious transactions and activities.

Complex, Unusual Large Transactions (c. 11.1)

497. Directive 9 of the BoZ CDD Directives, explicitly provides that ‘banks and financial institutions should pay special attention to all complex, unusual large transactions and pattern of transactions, which do not have any apparent economic or visible lawful purpose’.

498. There is no requirement that applied to the other financial institutions that fall under the purview of the PIA and the SEC to special attention to all complex, unusual large transactions and pattern of transactions, which do not have any apparent economic or visible lawful purpose’

Examination of Complex & Unusual Transactions (c11.2)

499. In terms of Directive 9 of the Banking and Financial Services (Customer Identification and Foreign Currency Cash Transactions) Directives, 1998, banks and financial institutions are further required to examine the background and purpose of complex, unusual large transactions or unusual patterns of transactions. The provision further requires banks and financial institutions to put in writing the findings thereof.

Recording Keeping of Findings of Examination (11.3)

500. There are no specific requirements for banks and financial institutions 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.

501. For the insurance and securities sector, there are no provisions requiring that special attention be given to all complex, unusual large transactions or unusual patterns that have no apparent or visible economic or lawful purpose. Further, there are no requirements for the institutions to examine the background and purpose of the transactions are record the findings in writing.

Special Attention to Countries Not Applying FATF Recommendations (c. 21.1 & 21.1.1)

502. Zambia’s current laws relating to AML/CFT do not have specific requirements which direct Zambian regulated institutions to pay particular attention to business relationships and transactions with persons from or in countries that do not, or insufficiently apply the FATF Recommendations. Further, there are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries they intend to hold business relationships with.

503. However, during the onsite visit that Zambian authorities felt that Directive 16 of the Bank of Zambia Anti-Money Laundering Directives of 2004 which states that ‘financial institutions should establish appropriate policies and practices for detecting and preventing money laundering fulfils the requirements of Recommendation 21’. The evaluators found the provisions of the Directive inadequate in various respects including, in particular, its failure to cite business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

Application of Counter Measures (c. 21.3)

504. The AML/CFT laws of Zambia currently do not direct financial institutions to apply appropriate counter-measures when dealing with countries or persons in countries which do not apply, or insufficiently applies the FATF Recommendations.

3.6.2 Recommendations and Comments

Recommendation 11

505. The regulatory provisions with respect to monitoring suspicious transactions in the banking sector comply with the FATF Recommendations, except where noted above.

506. It is recommended that there should be specific provisions of maintaining of record 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.

507. The supervisory authorities in insurance and securities should, in terms of section 12(4) of the PPMLA issue directives which should include provisions dealing with all complex, unusual large transactions or unusual patterns of transactions that have no visible economic or lawful purpose, examination of the background and purpose of such transactions, recording of the findings in writing and keeping such records for a period of not less than 5 years.

508. The AML/CFT of Zambia should specifically require financial institutions to pay attention to business relationships and transactions with persons from or in countries that do not, or insufficiently apply the FATF Recommendations.

509. Authorities must put in place measures to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.

510. Zambia should have provision enabling application of appropriate counter-measures by financial institutions when dealing with countries that continue not to apply FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none"> There are no provisions requiring the financial institutions 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. Absence of directives for insurance and securities sectors in respect of complex and unusual transactions.
R.21	NC	<ul style="list-style-type: none"> Non-existence of regulatory framework for financial institutions to pay attention when establishing business relationships with countries that do not apply or insufficiently apply FATF Recommendations. No measures to inform financial institutions of AML/CFT concerns in other countries. Absence of specific legal framework to apply appropriate counter-measures

		to countries that continue not to apply FATF Recommendations.
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3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25.2 & SR.IV)

3.7.1 Description and Analysis

Legal Framework

511. The Banking and Financial Services Act; in August 2004, the Bank of Zambia issued the Bank of Zambia Anti-Money Laundering Directives which guide financial institutions on how to identify and report unusual and suspicious transactions and activities.

Reporting to FIU (c. 13.1)

512. Section 13 (1)(b) of the PPMLA requires regulated institutions to report to AMLIU where the identity of the persons involved, the circumstances of any business transaction concerned or any cash transaction gives an officer or employee of the regulated institution reasonable grounds to believe that a ML offence is being, or is about to be committed.

513. The requirement to report under the PPMLA does not extend to funds that are proceeds of a criminal activity but is restricted to a ML offence.

STR Related to Terrorism and it's Financing (c. 13.2 & SR IV.1)

514. There are no requirements in the law or by regulation obliging financial institutions to report to AMLIU suspicious transactions linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The Anti- Terrorism Act of 2007 does not prescribe reporting mechanisms for suspect terrorist financing activities although during the interview with bank representatives, particularly the foreign banks, they indicated that they put internal administrative measures in place requiring the reporting of suspicious of transactions linked to financing of terrorism. However, the representatives informed the assessors that they had not come across such transactions yet. Given that there are no provisions requiring AMLIU to receive suspicious transactions relating to FT it was not clear to whom the banks were to make such reports if STRs relating to FT occurred.

Reporting Threshold (c. 13.3)

515. Sections 12(1) and 13(1)(b) of the PPMLA do not have a *de minimis* reporting threshold of suspicious transactions relating to transactions linked to money laundering. Therefore, all such transactions have to be reported to AMLIU regardless of the amount concerned. However, there is no express requirement under the PPMLA to report of attempted transactions to AMLIU.

516. Reporting suspicious transactions or attempted transactions relating to terrorist financing is not provided for.

Protection for Reporting ST (c. 14.1)

517. Section 14 of the PPMLA provides that 'it shall not be unlawful for any person to make any disclosure in compliance with this Act'. It would appear that the section provides for protection by law

from both criminal and civil immunity from prosecution for reporting a suspicion in good faith to AMLIU in good faith. However, in the absence of a judicial pronouncement, it was not possible for the assessment team to gauge the effectiveness of the section of the PPMLA.

Prohibition against Tipping-Off (c. 14.2)

518. Section 11 of the PPMLA provides that ‘any person who knows or suspects that an investigation into money laundering has been, is being or is about to be conducted, without lawful authority, divulges that fact or information to another person, shall be ***guilty of an offence***’. ***Section 11 of PPMLA*** and Directive 29 of BoZ AML Directives makes it an offence for any person to reveal information which is likely to prejudice a resulting law enforcement investigation.

519. Unfortunately, section 11 covers only “**an investigation into money laundering**” and does not cover disclosure of the fact that a STR or related information is being reported or provided to the AMLIU. The Money Laundering Reporting Officers who met the assessment team complained that their names and particulars were being passed on to suspects that they had reported on.

Additional Elements – Confidentiality of Reporting Staff (c. 14.3)

520. There are no specific provisions in law or regulations which enforce confidentiality on the release of names and personal details of staff of financial institutions who report STRs to AMLIU. Interviews with Money Laundering Reporting Officers revealed that there were cases whereby their names had been mentioned to the suspects.

521. The conditions at AMLIU office are not conducive to retain confidential information on STRs and any other information reported.

Consideration of Reporting All Large Currency Transactions (c. 19.1 - 3)

522. The laws and regulations of Zambia do not set a threshold beyond which financial institutions report all transactions to a national central agency with a computerised database. Authorities have not indicated any policy review on the feasibility and utility of implementing a threshold reporting regime.

Feedback to Financial Institutions with respect to STR and Other Reporting (c 25.2)

523. Section 6(1) of the PPMLA which provides for the functions of AMLIU does not provide for the AMLIU to give feedback to reporting institutions. During the interview with AMLIU officials, it also appeared that AMLIU does not provide any feedback to the reporting institutions nor does it pay regard to FATF Best Practice Guidelines on Providing Feedback to Reporting Institutions and Other Persons.

524. The reporting institutions, particularly the banks, during the onsite visit complained of AMLIU not acknowledging receipt of STRs and not providing feedback to them on the STRs filed.

3.7.2 Recommendations and Comments

525. The requirement to report under the PPMLA does not extend to funds that are proceeds of a criminal activity but is restricted to a ML offence.

526. It is recommended that the provisions of sections 12 and 13 of the PPMLA relating to reporting of STRs be amended to include the timeframe within which such reports should be made and the

requirement to report must be extended to funds that are proceeds of all offences that are required to be included as predicate offences under Recommendation 1.

527. As recommended under Recommendation 1 the PPMLA should have a clear definition of predicate offences for money laundering.

528. Sections 12 and 13 of PPMLA should be amended to include for the reporting of attempted transactions.

529. The Anti-Terrorism Act should be broadened to have provisions requiring financial related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism to report to AMLIU.

530. The PPMLA should be amended to provide for “tipping off” provisions whereby financial institutions and their directors, officers and employees (permanent and temporary) should be prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the AMLIU.

531. Zambia should include in its laws, legal provisions against disclosure of names and personal details of staff of financial institutions that make a STR to AMLIU.

532. AMLIU should ensure that there is effective implementation of provisions of PPMLA, in particular, those relating to disclosure of information on an STR.

533. This should be followed by appropriate training of AMLIU staff to avoid mentioning names of Money Laundering Reporting Officers to suspects in order to maintain the dignity of client/bank relationship.

534. Zambia, being a cash-based economy, should consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to AMLIU.

535. Supervisory authorities of securities market, insurance, money transmitters and DNFBPs should issue directives and conduct training to guide the reporting institutions on their obligations.

536. AMLIU should closely supervise the supervisory authorities and ensure that issue directives on AML/CFT as required by the law.

537. There is need for AMLIU to sensitize the supervisory authorities and the regulated institutions on their role and responsibilities in respect of the AML/CFT requirements.

538. The functions of AMLIU, under Section 6 of the PPMLA should be amended to include an obligation on AMLIU to give acknowledge receipt and give feedback on the STRs to the reporting institutions. The feedback should be on the basis of the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and other Persons.

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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R.13	NC	<ul style="list-style-type: none"> ▪ The requirement to report under the PPMLA does not extend to funds that are proceeds of a criminal activity but is restricted to a ML offence. ▪ The AML/CFT laws do not provide for reporting requirements in respect of suspected terrorist financing activities, including <i>attempted</i> terrorist financing transactions. ▪ No legal provisions requiring reporting of attempted suspicious transactions. ▪ The effective implementation of the reporting requirements in the securities and insurance sectors is undermined by lack of AML/CFT supervisory oversight and training.
R.14	PC	<ul style="list-style-type: none"> ▪ The PPMLA does not provide for “tipping off” provisions. Financial institutions and their directors, officers and employees (permanent and temporary) are not prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the AMLIU. ▪ In the absence of a judicial pronouncement it was not possible to ascertain the effectiveness of the safe harbour provisions under section 14 of the PPMLA.
R.19	NC	<ul style="list-style-type: none"> ▪ There is no requirement for reporting of all transactions in currency above a prescribed threshold. ▪ Zambia has not considered a cash transaction reporting system above a certain threshold.
R.25.2	NC	AMLIU does not acknowledge receipt of STRs provide feedback to regulated institutions filing STRs.
SR.IV	NC	<ul style="list-style-type: none"> ▪ There are no laws or regulations requiring regulated institutions to submit STRs relating to terrorist financing activities or attempted TF activities.

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

3.8.1 Description and Analysis

Legal Framework

The Banking and Financial Services Act; Securities Act, Insurance Act

Establishing Internal Controls (c. 15.1& 15.1.1)

539. The PPMLA does not have specific provisions requiring financial institutions to establish and maintain internal procedures, policies and controls to prevent money laundering and, let alone terrorist financing, which is not provided in the PPMLA.

540. However, financial institutions falling under the supervisory purview of the BoZ must comply with the requirements of the BoZ AML Directives. Directive 16 of the BoZ AML Directives provides as follows:

(1) The board and principal officers of a regulated institution shall put in place an anti-money laundering programme consisting of anti money laundering measures to be taken and practices to be adopted in order to detect and prevent the commission of the offence of money laundering, and shall ensure that the employees of the regulated institution are familiar and comply with the programme.

(2) The measures and practices referred to in sub Directive (1) shall include:

- the development of internal policies, procedures and controls with due regard to the risks posed by money laundering;
- the establishment of "know your customer" procedures, which shall include knowing the customer's business, establishing systems that would recognise suspicious activities and having in place internal reporting procedures of suspicious transactions;
However, it is to be noted that the above provision does not cover external reporting obligations.
- the appointment of Money Laundering Reporting Officers;
The directives however, do not set out the functions of the MLRO.
- procedures to be followed by directors, principal officers, officers and employees of a regulated institution in the conduct of the business of the regulated institution;
- instructions given to directors, principal officers, officers and employees of a regulated institution on the prevention of the use of the regulated institution for the purpose of engaging in activities of money laundering; and
- training of directors, principal officers, officers and employees of a regulated institution for the purpose of enabling them to identify business transactions which may relate to the commission of the offence of money laundering.

c.15.1.2

541. There is no requirement to ensure that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

Independent Audit of Internal Controls to Prevent ML and TF (c.15.2)

542. Financial institutions currently are not required to maintain an adequately resourced and independent audit function to test compliance with internal procedures, policies and controls to prevent ML and FT. However, an observation was made that in practice some of the banks, particularly the foreign owned banks, had initiated on their own to have effective and independent audit functions. Since there was no standard requirement to maintain adequately resourced and independent audit functions, it was difficult to assess effectiveness and compliance by financial institutions with such requirements.

543. It is also worth noting that financial institutions falling under the supervision of the BoZ must in terms of Directive 16(2) establish of a sound anti-money laundering compliance policy which shall be reviewed by the regulated institution annually and approved by the Bank of Zambia.

Ongoing Employee Training on AML/CFT Matters (c.15.3)

544. Directive 18 of BoZ AML Directives requires financial institutions to train all its employees to ensure that they are kept abreast of new developments, including information on ML techniques, methods, and trends. FT is not covered. In terms of Section 6 of PPMLA, AMLIU is supposed to assist in developing training programmes for use by regulated institutions. However, except for banks and financial institutions, the rest of regulated institutions (insurance and securities market players and DNFBPs) have not undergone any training on AML/CFT.

Employee Screening Procedures (c.15.4)

545. There is no specific requirement under the law or any regulation requiring financial institutions to screen their employees to ensure high standards when hiring them. However, authorities contend that in practice financial institutions screen prospective employees.

Independence of Compliance Officer: Additional Element (c. 15.5)

546. BoZ requires regulated institutions to have a MLRO at management level. Unfortunately, the directives do not prescribe the reporting relationships. The principle of independence may be said to be underpinned by Directives 12(3) and (4) of the BoZ AML Directives which provide for notification of the BoZ by financial institutions whenever a MLRO has resigned or been dismissed.

Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1 – 22.3)

547. The current AML/CFT laws of Zambia do not provide for financial institutions with foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local laws permit.

548. As at the date of the onsite visit, Zambian banks did not have any foreign branches or subsidiaries and therefore it was not possible to determine compliance of financial institutions with this requirement.

549. The PIA has indicated that one of the insurance companies has a foreign subsidiary.

3.8.2 Recommendations and Comments

550. BoZ should consider amending its AML Directive 16(2) to specifically require that the internal policies, procedures and controls should include details on the functions of the MLRO and external reporting requirements.

551. Financial institutions must be required to maintain an adequately resourced and independent audit function to test compliance with the policies and procedures.

552. Financial institutions falling under the purview of the SEC and the PIA should be required to establish on-going training to ensure that they are kept informed of new developments on ML and FT techniques, methods and trends.

553. FIs should be required to put in place screening procedures to ensure high standards when hiring employees.

554. Zambia should consider developing directives to address AML/CFT requirements in respect of foreign branches and subsidiaries of Zambian financial institutions.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	<ul style="list-style-type: none">▪ There are no requirements for financial institutions falling under the supervisory purview of the SEC and the PIA to develop appropriate internal control policies and procedures.▪ No requirement for appointment of Money Laundering Reporting Officers for financial institutions falling under the supervisory purview of the SEC and the PIA and to develop an on-going employee training programme.▪ Absence of requirements for financial institutions to maintain and adequately resourced and independent audit function to test compliance with AML/CFT policies and procedures.▪ Financial institutions are not required to have in place screening procedures to ensure that high standards when hiring employees.
R.22	NC	<ul style="list-style-type: none">▪ There are currently no AML/CFT legal requirements for financial institutions with foreign branches and subsidiaries.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Legal Framework

The Banking and Financial Services Act

Shell Banks (c. 18.1)

555. At the time of the onsite mission visit, there was no shell bank operating in Zambia and the Bank of Zambia had not approved the establishment of the operation of any shell bank in Zambia.

556. While there is no express provision prohibiting the establishment of shell banks, the BoZ has indicated that it will not approve applications for shell banks as all application must comply with the BFSa and other licensing requirements. It is to be noted that pursuant to section 17 of the BFSa no person can provide banking business in Zambia without a licence from the BoZ. Section 4 of the BFSa sets out the particulars that must be provided for an application to obtain a banking licence in Zambia. These include:

- the articles of association of the company;
- the physical and postal addresses of its head office and the permanent residential

- addresses of its directors, chief executive officer, managers and shareholders;
- the name and permanent residential address of every subscriber for any class or series of shares issued by the company in a number that will exceed one per centum of all the shares of that class or series, whether such shares carry the right to vote in all circumstances or not;
- the addresses of each branch proposed to be opened by the company and, in the case of a mobile office, the area proposed to be served;
- full particulars of the business it proposes to conduct under the authority of the licence;
- the amount of its capital; and
- such assurances and evidence of the foregoing as the Registrar may require to be given by the applicant.

557. For a subsidiary of a foreign company, the foreign company must be a bank which is authorised to engage in banking business in the country where its head office is located and the Bank of Zambia is satisfied that the foreign bank is adequately supervised by the competent authorities in its home country.

558. Section 6 of the BFSA further provides that the Registrar shall not grant a licence if the applicant does not meet the requirements prescribed by the Bank of Zambia.

559. In addition, under the BFSA every bank licensed in Zambia must have a Chief Executive Officer and a Chief Financial Officer. The applicant and the proposed senior officers of the bank must further satisfy the fit and proper test. In addition every bank licensed under the BFSA must in terms of section 43 of maintain a principal administrative office in Zambia in which the overall administration of the affairs of a bank, other than its banking business is carried on. The BoZ must be informed of the location of the principal administrative office and any change to the location can only be effected after written confirmation from the BoZ.

560. A bank licensed by the BoZ must satisfy post licensing ongoing requirements including before commencement of business the newly licensed bank must demonstrate its fulfilment of the minimum requirements for the premises of a bank. When the premises are ready, but before commencement of business, the Bank of Zambia will conduct an inspection of the premises. The premises where a bank is licensed to operate should meet the following minimum requirements:

- A lease agreement where the premises are on lease or a Certificate of Title where the premises are owned by the company (i.e. the bank);
- Suitable location in an area that meets the needs of the community;
- Proper counters and offices for the conduct of banking business;
- The name of the bank should be prominently displayed on the building in which the bank is housed;
- Telephone, facsimile and email facilities;
- A board for displaying exchange rates;
- Safe (s);
- Note counting machine (s);
- Note detector (s);
- Adequate security measures e.g. electronic alarm, security guard(s)

561. The BoZ has further indicated that all banks operating in Zambia are monitored and supervised through both the onsite and offsite surveillance regime by the Bank Supervision Department of the Bank of Zambia.

562. Taking into account the robust licensing requirements of the BoZ the assessors consider that the likelihood that a shell bank will be allowed to operate in Zambia is remote. However, considering that there is no express provision in the BFSa or elsewhere that prohibit the establishment of a shell bank, the assessors consider that this is an essential point, which is not covered under the AML/CFT regime in Zambia.

Correspondent Banking with Shell Banks (c. 18.2)

563. There are no provisions in the current laws of Zambia prohibiting financial institutions from entering into, or continuing, correspondent banking relationships with shell banks. Presently, due to the absence of provisions specifically dealing with relationship with shell banks, financial institutions in Zambia can successfully establish a relationship with such banks.

Use of Accounts by Shell Banks (c. 18.3)

564. The banking laws of Zambia do not provide for reporting institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

565. There are no shell banks in Zambia and the legislation under which the Bank of Zambia operates prevents the establishment of shell banks in the future.

566. Measures should be taken to prohibit financial institutions from entering into a correspondent banking relationships with shell banks.

567. Financial institutions should be required to satisfy themselves that respondent 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"> ▪ Financial institutions are not prohibited from entering into a correspondent banking relationships with shell banks. ▪ There is no legal obligation for financial institution to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.

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, 30, 17, 32 & 25)**

3.10.1 Description and analysis

Legal Framework

The PPMLA Act, Anti-Terrorism Act, the Banking and Financial Services Act as read with the BoZ AML Directives, the Insurance Act; and the Securities Act.

Regulation and Supervision of Financial Institutions (c. 23.1& 23.2)

568. The PPMLA is the primary legislation which imposes AML requirements on financial institutions. In addition, pursuant to the provision of section 12(4) of the PPMLA the Supervisory authorities are required to issue such directives as may be approved by the AMLIU which may be necessary for the regulated institutions to prevent and detect money laundering. As at the date of the onsite visit only the BoZ had issued AML Directives which apply to banks and financial institutions falling its statutory purview.

569. The provisions of section 6(1)(d) of the PPMLA provide for AMLIU, amongst its functions, to supervise the reporting requirements and other administrative obligations imposed on regulated institutions (including financial institutions) and supervisory authorities relating to AML. In practice however, the AMLIU is not undertaking the supervisory function and has no short term or midterm plans to undertake this function.

570. The BoZ is currently supervising and regulating financial institutions falling under its supervisory functions for ensuring that they are effectively implementing AML requirements. The internal AML/CFT onsite inspection procedures of the BoZ were developed with the assistance from the IMF. Where required the onsite inspection report requires defaulting financial institutions to take corrective action within a defined time frame. The BoZ follows up on the implementation of the corrective action. The financial institution is required to provide progress reports on the implementation of the corrective action.

571. All the other financial institutions are not being supervised for money laundering purposes.

Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1)

Banks and other financial institutions

572. Under Section 23 of the BFSa, acquisition of shares in a bank or financial institution is subject to the Bank of Zambia prior approval. In this regard, the *fit and proper test* is also applied to the prospective shareholders in banks and financial institutions.

573. During the onsite visit, the Assessors were informed that the ‘fit and proper test’ criteria is applied by BoZ pursuant to section 31 of the BFSa, when vetting appointments of directors and senior managers of banks and financial institutions before issuing a license and the process is on-going. In this respect, BoZ will have regard to the “honesty, integrity, reputation, competence, capability and financial soundness” of the person. This assessment may also involve consultation with other supervisory agencies within or outside Zambia. Zambia demonstrated its resolve in this area by demanding resignation of one senior officer who had been implicated in suspected money laundering activities while he was in the employment of a bank outside Zambia.

574. During the onsite visit, the Assessors were informed that the ‘fit and proper test’ criteria is applied by BoZ when vetting appointments of directors and senior managers of banks and financial institutions before issuing a license and the process is on-going.

Securities sector

575. The Securities Act precludes persons with criminal past from being licensed as intermediaries. Where firms are concerned, the persons exercising control of the firm are investigated and must be cleared of criminal record before the firm can be licensed to provide securities services. At the regulatory level, a person is not fit for appointment as a Commissioner if he or she has a criminal record and/ or has been convicted of a criminal offence and sentenced to a prison term of at least six months without option of a fine.

Insurance sector

576. On the basis of the information which was submitted to the assessors it does not seem that the PIA takes necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function.

It was also not clear whether the Directors and senior management of the insurers were evaluated on the basis of the “fit and proper” criteria including those relating to expertise and integrity.

Application of Prudential Regulations to AML/CFT (c. 23.4)

577. Regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering apply in a similar manner for anti-money laundering purposes with regard to banking and other deposit taking business. These institutions fall under the supervisory purview of the BoZ which has issued AML Directives and which also supervises its licensees with respect to AML/CFT requirements.

578. While Zambia is a member of IOSCO and IAIS there was no indication that the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering apply in a similar manner for money laundering purposes to the securities and insurance sectors. The SEC and PIA have not issued AML Directives to their respective licensees. Licensees of the SEC and the PIA are not supervised with respect to AML/CFT requirements.

Licensing or Registration & Monitoring of Value Transfer Service (c. 23.5, 23.6, 23.7 and SR VI)

579. Money or value transfer service providers are required to be licensed under the National Payment Systems Act, 2007 administered by the BoZ. However, modalities for their licensing and supervision, at the time of the onsite visit, were in process of being worked out as the Act had just been promulgated (15 June 2007).

580. In terms of the Bank of Zambia (Bureaux de Change) Regulations, 2003, bureaux de change that deal with money or currency changing service, are required to be licensed, and are licensed and supervised by the Bank of Zambia.

Inspections and Access to Records

581. Section 17 of the BFSa requires all financial service providers to be licensed by the Bank of Zambia. All financial institutions under the statutory purview of the BoZ are subject to AML supervision. However, financial institutions falling the supervisory purview of the SEC and the PIA are not subject to AML/CFT supervision.

582. The Bank of Zambia conducts both offsite and onsite examinations of bureaux de changes. Bureaux de change submit reports to BoZ every Monday of the week and are subject to quarterly inspections by BoZ examiners. The inspections also cover AML/CFT compliance. How many bureaux de change operate in Zambia? How many have been inspected? Details of the onsite supervisory regime.

583. Currently, money or value transfer service providers are not subject to AML/CFT supervision.

Guidelines to financial institutions (c.25.1)

584. The supervisory authorities, in terms of Section 12 (4) of the PPMLA, have an obligation to issue such directives as approved by AMLIU which may be necessary for the regulated institutions to prevent and detect money laundering.

585. The only supervisory authority which at the time of the onsite mission visit, was complying with provisions of section 12(4) of the PPMLA was BoZ which had issued two sets of directives, with the second set issued in 2004 after the enactment of the PPMLA. The rest of the supervisory authorities, including the Registrar of Cooperatives, the Commissioner appointed under the Securities Act, Registrar of Companies, the Commissioner of Lands, the Investment Board and licensing authorities of casinos, with the exception of the Pensions and Insurance Authority which had directives in draft form, had not issued guidelines to regulated institutions. There were no indications that guidelines will be issued by these supervisory bodies in the immediate future.

586. No guidelines have been established to assist DNFBP to implement and comply with their respective AML/CFT requirements.

Monitoring of AML/CFT by Supervisors (c. 29.1 and 29.2)

587. Pursuant to section 6(1)(d) of the PPMLA the AMLIU is responsible for supervising the reporting requirements and other administrative obligations of regulated institutions. While under the PPMLA the AMLIU has wide investigative powers, it has no express powers to conduct onsite inspections in relation to its supervisory functions under the PPMLA. In practice, the AMLIU does not monitor or ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations. The AMLIU has not short term or medium term plans to undertake this compliance monitoring function.

588. In practice, while the BoZ does not have the express mandate to monitor and ensure compliance by financial institutions with AML/CFT requirements, the BoZ which has the mandate for the prudential supervision of financial institutions falling under its supervisory purview is monitoring and ensuring compliance by these financial institutions with AML/CFT requirements. For this purpose, the BoZ, uses its powers under Section 78 of the BFSa. The BoZ conducts onsite inspections to ensure compliance with AML requirements.

589. Section 12(4) of the PPMLA gives supervisory authorities power to issue directives to regulated institutions for the prevention and detection of money laundering. On the basis of this, the Bank of Zambia has also issued Anti-Money Laundering Directives in 2004.

Power to Compel Record by Supervisors (c. 29.3 & 29.3.1& 29.4)

590. The PPMLA provides, under Section 13(1)(c), for regulated institutions to comply with any directives issued to them by the supervisory authority with respect to money laundering activities. Section 13(1) (d) of the same Act further provides for regulated institutions to 'permit an authorised officer with a

warrant, upon request, to enter into any premises of a regulated institutions during working hours and inspect records suspected of containing information relating to money laundering. Paragraph (e) to subsection 1 of the same section further permits an authorised officer with a warrant ‘to make notes or take any copies of the whole or any part’ of the inspected record described above.

591. BoZ, in terms of Section 79(1) of the BFSA has powers to compel a financial institution to produce documents, information and accounts, including those of its affiliate and associate. No court order is required by BoZ to compel production or obtain access to such documents, accounts and information. Under 78 of the BFSA, the BoZ is mandated to check that a regulated institution complies with all other laws in Zambia, including PPMLA.

592. Supervisory authorities for the securities and insurance sectors, in terms of section 13 of the PPMLA has the powers to compel production of or obtain access to all records, documents or information relevant to monitoring compliance from the regulated institutions with prudential requirements. However, an observation was made that the supervisory authorities do not have the mandate to ensure compliance by their licensees with AML/CFT requirements and they are not currently undertaking this compliance monitoring function.

593. Section 13(4)-(6) of the PPMLA provides for sanctions against any regulated institution which does not comply with requirements by the authorised officer in possession of a warrant for production of documents, inspection of records, taking of notes and photocopying of such documents. However, note should be taken that section 13 does not provide for administrative sanctions against the regulated institution but criminal sanctions. states that any regulated institution which contravenes the provision of subsection (1) or subsection 2 shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand penalty units. Furthermore, Directive 23 of the Bank of Zambia Anti-Money Laundering Directives states that a contravention of the directives is an offence under section 13 of the Prohibition and Prevention of Money Laundering Act. In determining whether a regulated institution officer or employee of a regulated institution has complied with any of the requirements, a court may take account of the directives issued by Supervisory Authority.

Adequacy of Resources for Supervisory Authorities (c. 30.1)

594. The AMLIU is headed by the Commissioner of the Drug Enforcement Commission. The head is supported by a Senior Assistant Commissioner who is in charge of the day to day operations of the Unit. In the performance of his functions, the latter is assisted by an Assistant Commissioner. As at the date of the onsite visit the position of the Senior Assistant Commissioner was vacant and the Unit was operating under the Assistant Commissioner. Members of staff are recruited by the Government.

595. The internal structure of the AMLIU is organised in a Financial Intelligence Unit, an Information Technology and Liaison Department, a Legal Department and two investigation teams that investigate ML offences.

596. The AMLIU is funded by Government.

Integrity and Ethical Standards (c.30.2)

597. Members of staff under AMLIU, law enforcement and prosecution agencies and other public competent authorities involved in combating ML and TF must take an oath of secrecy under the Ministerial Code of Conduct and Statutory Instrument number 51 of 1994 issued under CAP 96 of the Laws of Zambia regarding Staff Rules. The regulations provide for the integrity of staff and confidential treatment of information.

598. On the basis of observations made during the Mission visit, the AMLIU's officers have attended various AML/CFT courses. The qualifications of AMLIU's officers seem to indicate a wide skill base in the relevant areas.

599. The DPP's office has qualified lawyers practising as state advocates as well certified prosecutors. However, as of the time of the onsite visit it did not have specialised AML/CFT prosecution team. The assessment team was also advised that the DDP's office does not ordinarily deal with ML cases but provide assistance to other agencies involved in ML cases.

Training for Competent Authorities (c. 30.3)

600. Members of staff of the AMLIU undergo periodic training through structured courses, workshop and secondments to law enforcement agencies in other jurisdictions.

601. Members of staff of the BoZ have consistently received AML/CFT training. However, this is not the case for members of staff of the PIA and the SEC.

Training of Judges (c30)

602. The Drug Enforcement Commission held a three day workshop for High Court Judges in January 2006. The aim of the workshop was to highlight the critical role that the Judiciary plays in enforcing sanctions against ML.

Effective, Proportionate, & Dissuasive Sanctions (c. 17.1 & 17.4)

603. The PPMLA provides for effective, proportionate and dissuasive sanctions to deal with natural or legal persons that fail to comply with Zambia's AML requirements. Section 7 of the PPMLA provides that any person who engages in money laundering shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or to both. Section 8 of the same Act provides for penalties for offences committed by a body of persons whether corporate or unincorporated. The body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding four hundred penalty units and every person who at the time of the offence acted in an official capacity for or on behalf of such a body of persons whether as a director, manager, secretary or other similar capacity or was purporting to act in such capacity and who was involved in the commission shall be guilty of that offence and shall be liable and upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or both.

604. It is to be noted that these powers have been used and tested in the courts of Zambia. In 2003 top management officials of the United Bank of Zambia Limited were convicted by the Courts.

605. The Act also makes it an offence to attempt, aid, abet, counsel or procure the commission of the offence of money laundering and upon conviction such a person will be liable to a fine not exceeding one hundred and thirty nine thousand penalty units or to imprisonment for a term not exceeding five years or to both. Conspiring with another to commit an offence of money laundering is also an offence in terms of the Act. A person convicted of such act shall be liable to a fine not exceeding one hundred thirty nine thousand penalty units or to imprisonment for a term not exceeding five years or to both. Under the AML laws of Zambia, civil and administrative sanctions are not provided for.

606. The Anti-Terrorism Act also provides for effective, proportionate and dissuasive criminal sanctions to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national CFT requirements. The penalties vary proportionate to the offence. Upon conviction for the violation of the Act, in terms of Section 5 of the Act one would be liable to a sentence varying from imprisonment for a minimum of twenty years and a maximum of life imprisonment. However, for specific violations stipulated in the Act, different penalties are provided.

607. The Bank of Zambia has wide administrative powers that enable it to take appropriate corrective actions against financial institutions. These corrective actions include warning letters, corrective recommendations in inspection reports, requiring financial institutions to develop action plans for effecting corrective actions, among others.

608. In particular, section 77 of the BFSA gives the Bank of Zambia wide administrative discretion for dealing with situations that in its opinion constitute unsafe and unsound practices by a financial institution. Further, section 77(3) of the BFSA provides, among others, that the Bank of Zambia may direct a financial institution to refrain from adopting or pursuing a particular course of action or to refrain from entering into any other transaction or strict the scope of its business; prohibit a financial institution from entering into any other transaction or class of transactions, or from commencing or continuing any activity; or require the suspension or removal from office of any director, officer or other person. In 2004, the BoZ directed the removal from office of the Chief Financial Controller of a bank.

609. Section 77(6) of the BFSA furthermore provides that any person who acts in contravention with the directives of the Bank of Zambia for taking corrective measures on any unsafe and unsound practice shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding 100,000 penalty units (K180 = 1 penalty unit) or to imprisonment for a term not exceeding five years, or to both.

610. Directive 23 of the Bank of Zambia Anti-Money Laundering Directives states that a contravention of the directives is an offence under section 13 of the Prohibition and Prevention of Money Laundering Act which carries penalties for both legal persons and natural persons as explained in response to criterion 17.1 above.

611. No criminal, civil or administrative sanctions have been taken against financial institutions falling under the supervisory purview of the PIA and the SEC for failure to comply with national AML/CFT requirements.

Designation of Authority to Impose Sanctions (c. 17.2)

612. The AMLIU is the designated authority under the PPMLA for investigating and prosecuting money laundering offences.

613. In the case where a financial institution falling under the supervisory authority of the BoZ fails to comply with the AML Directives the BoZ may take disciplinary sanctions under the defaulting financial institutions pursuant to its powers under section 77 of the BFSA. These powers have been used by the BoZ in practice.

Sanctioning Directors & Senior Management (c. 17.3)

614. Under the provisions of section 13(5) of the PPMLA, where any regulated institution is guilty of an offence under the Act, any officer or employee of the institution who is responsible for, or causes, the regulated institution to commit the offence shall be guilty of an offence.

615. These powers have been used and tested by the Courts in Zambia.

Range of sanctions (c. 17.4)

616. *The range of sanctions varies according to the offence committed.* Under Section 77 of the BFSFA, this may include power to impose disciplinary and financial sanctions as well as withdrawal of a license. The Bank of Zambia have used these powers to remove the top management of a bank in 2003.

3.10.2 Recommendations and Comments

617. Section 6 (1) (d) which deals with functions of AMLIU be amended to cover both ML and FT.

618. Since the AMLIU is not presently undertaking onsite and offsite supervision of the financial institutions and that this function is being undertaken by the BoZ and that the PIA and SEC are already conducting onsite examinations for prudential purposes it is recommended that the PPMLA should be amended to transfer this function to the financial supervisory authorities who appear to have the resources and capacity for carrying out this function.

619. The PPMLA must be amended to give adequate powers to the AMLIU to fulfil its supervisory functions.

620. All supervisory authorities should issue sector specific directives/ guidelines relating to anti-money laundering (except BoZ) and combating the financing or terrorism and monitor compliance of institutions under their supervision through onsite inspections.

621. BoZ should implement the necessary provisions of the Payment Systems Act with respect to money or value transfer service providers.

622. BoZ should develop and implement supervisory frameworks for the money or value transfer service providers, which should include AML/CFT to facilitate compliance.

623. Supervisory authorities should ensure that the directives so issued provide for administrative sanctions against non-complying institutions under their supervision as they are convenient and flexible.

624. The supervisory authorities listed under the PPMLA should also be designated to include in their functions the combating of terrorist financing.

3.10.3 Compliance with Recommendations 23, 29, 17, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	LC	<ul style="list-style-type: none">▪ There is no provision under the PPMLA for administrative sanctions against institutions that fail to comply with PPMLA.▪ The Anti-Terrorism Act does not specifically make a distinction between a natural and legal person.
R.23	PC	<ul style="list-style-type: none">• There is no adequate CFT regulation and supervision in all financial institutions.• Money or value transfer service providers were not licensed and subject to

		<p>AML/CFT supervision.</p> <ul style="list-style-type: none"> • All financial institutions, other than those falling under the supervisory purview of the BoZ, are not being supervised for money laundering purposes. • It did not seem that the PIA takes necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • It was also not clear whether the Directors and senior management of the insurers were evaluated on the basis of the “fit and proper” criteria including those relating to expertise and integrity. • While Zambia is a member of IOSCO and IAIS there was no indication that the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering apply in a similar manner for money laundering purposes to the securities and insurance sectors. The SEC and PIA have not issued AML Directives to their respective licensees. Licensees of the SEC and the PIA are not supervised with respect to AML/CFT requirements.
R25	PC	<ul style="list-style-type: none"> • No guidelines have been established for the financial institutions falling under the supervisory purview of the PIA and the SEC to assist these financial institutions to implement and comply with their respective AML/CFT requirements. • No guidelines have been established to assist DNFBP to implement and comply with their respective AML/CFT requirements.
R.29	PC	<ul style="list-style-type: none"> • Supervisors do not have powers to monitor and ensure compliance by financial institutions with requirements to combat terrorist financing. • Supervisory authorities of the insurance and securities sectors have not issued directives/ guidelines to institutions under their supervision to facilitate onsite inspections with respect to AML/CFT.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

Legal Framework

The Banking and Financial Services Act; National Payments Systems Act.

625. In Zambia, money or value transfer services are provided by through the regulated financial system or informally through non-bank financial institutions or other business entities. It should be noted that in practice, international MVT service providers have their own internal anti-money laundering measures that require the identification of both the sender and recipient

626. MVT service operators outside the formal banking system, have been operating without any licences issued by the Bank of Zambia. However, on 15 June 2007, the commencement order for National Payments Systems Act was signed. MVT service operators will soon be licensed and supervised by the Bank of Zambia.

Monitoring of Value Transfer Service Operators (c. VI.)

627. Effective from June 2007, the Bank of Zambia has been designated as the supervisory and licensing authority for natural and legal persons that perform money or value transfer services. So, far MVT service operators have not been subject to the FATF Recommendations because they were not licensed and supervised by any supervisory agency. Authorities are considering developing modalities for implementing this requirement and adopting measures in the Best Practices Paper prepared by FATF.

List of Agents of Value Transfer Service Operators (c. VI.4)

628. Modalities for implementing this requirement will be worked out in the process of developing the modalities of applying the National Payments Systems Act to the MVT service providers.

Sanctions (applying c. 17.1-17.4 in R.17, c. VI.5)

629. Once the National Payments Systems Act is fully implemented, value transfer service operators will be subject to appropriate sanctions against non-compliance.

Additional Elements – Applying Best Practices Paper for SR VI (c. VI.6)

630. Nil

3.11.2 Recommendations and Comments

631. Authorities should put in place mechanisms for implementing the requirements of the National Payment Systems Act to ensure that BoZ licenses and supervises MVTs which fall outside the Banking and Financial Services Act.

632. The directives or regulations should take into account FATF SR VI Recommendations

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	There are no requirements for MVTs outside the formal bank system to be licensed and supervised.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12) *(applying R.5, 6, 8 to 11, & 17)*

4.1.1 Description and Analysis

Coverage of DNFBPs

633. In terms of section 12(4) of the PPMLA, the Supervisory Authorities have the power to issue directives to the regulated institutions which assist them in implementing among other things CDD measures and record keeping requirements to prevent and detect money laundering.

634. Subsections (4), (5), and (6) to section 13 of the PPMLA create obligations on regulated institutions to abide by record keeping requirements as provided for by the Act and failure by the regulated institution to do so shall be an offence in terms of subsection (4). The Act further provides for an officer or employee of the institution convicted in terms of subsection (4) to section 13 of the Act and who was responsible or caused the regulated institution to commit the offence to be guilty and subject to conviction of the same offence committed by the regulated institution (section 13(5)). Subsection (6) to the same section gives the court discretion in determining whether a regulated institution, officer or employee of the regulated institution has complied with provisions of subsection (1) to section 13 which include CDD and record keeping requirements to take into account the directives issued by the Supervisory Authority to guide the regulated institution, its officers or employees.

635. Regulated institutions are defined in section 2 of the PPMLA as ‘an institution regulated by a Supervisory Authority’. Included in the definition of Supervisory Authorities which would be of relevancy to this recommendation would be the Registrar of Banks and Financial Institutions, the Registrar of Co-operatives, the Registrar of Insurance, the Commissioner appointed under the Securities and Exchange Commission Act, the Commissioner of Lands and the licensing authority under the Casino Act.

636. Paragraph 1(4) of the Second Schedule to section 36 of the Anti-Terrorism Act makes it an offence for a bank, financial service provider or a financial institution to fail to comply with a requirement under an order to provide customer information to an investigating officer of or above the rank of inspector for purposes of a terrorist investigation. Paragraph 6(1) further provides that where an offence under subparagraph (4) of paragraph 1 described above is committed by an institution and it is proved that the offence was committed with the consent or connivance of an officer of the institution or was attributable to neglect on the part of an officer of the institution the officer and the institution shall be guilty of an offence. An officer of the body corporate is defined in terms of paragraph 6(3) under the same Schedule as ‘a director, manager or Secretary, a person purporting to act as a director, manager or Secretary and if the affairs of the body are managed by its members, a member’ and in the case of a partnership an officer is defined to mean a partner and for an institution which is an unincorporated association an officer will be the person in the management or control of the association.

CDD and Record Keeping Requirements (c. 12.1)

637. Section 13(1)(a) of the PPMLA provides for the regulated institutions to ‘keep an identification record and a business transaction record for a period of ten years after the termination of the business transaction so recorded’. In terms of section 13(4) of the same Act, a regulated institution only commits an offence if it fails to keep such records for ten years after the termination of the business relationship. The section is not clear on the average standard of information which is expected to be in these records

and what would happen to the regulated institution if it failed to record and keep records to such standards. The section does not set out the CDD requirements which the regulated institutions are supposed to comply with so again it is not clear from this section what identification information is expected to be in the identification records and what happens to the regulated institution if it does not comply in gathering such information.

638. During the on site visit it was also clear that most of the Supervisory Authorities had not complied with the provisions of section 12(4) of the PPMLA which required them to issue directives to the regulated institutions which fall under their jurisdiction. In the absence of directives guiding the regulated authorities on the information to look for in compliance with the CDD and record keeping requirements again the extend of the information which the regulated institutions are supposed to keep in compliance with section 13(1)(a) above is not clear.

639. The Second Schedule provided for in terms of section 36 of the Anti-Terrorism Act requires a bank, financial service provider or a financial institution to provide customer information for purposes of the schedule for the time it is in existence and for the time it was in existence if it has ceased to exist (paragraph 4(2)). Paragraph 5(1) to the Schedule gives at least informative guidelines on the meaning of customer information compared to the provisions of section 13(1) to the PPMLA described above. The only disadvantage with the provisions of the paragraph is that it is only restricted to a bank, financial service provider or a financial institution to any other DNFBP. Customer information which the institution is expected to have in terms of paragraph 5 to this schedule is defined as:

- (a) information as to whether a business relationship exists or existed between a bank, financial institution or financial service provider and a particular customer;
- (b) a customer's account number;
- (c) a customer's full name;
- (d) a customer's date of birth;
- (e) a customer's address or former address;
- (f) the date on which a business relationship between a bank, financial institution or financial service provider and a customer begins and ends;
- (g) any evidence of a customer's identity obtained by a bank, financial institution or financial service provider in pursuance of or for purposes of the PPMLA; and
- (h) the identity of a person sharing an account with a customer.

640. The Act under paragraph 5(2) of the Schedule sets the parameters of a business or customer relationship between a bank, a financial institution or financial service provider and a person as being where 'there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them and the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made'.

Casinos

641. Casinos in Zambia are currently licensed by the Ministry of Tourism. Particulars of who owns the company and shares in the company are required upon registration. This information is not subject to verification by the authorities. Those interviewed during the mission visit seemed to be of the opinion that it was relatively easy to obtain a casino license in Zambia. The license is renewed on an annual basis. After the casino has been set up, the assessors were informed that the Ministry officials come in to look around the casino operations but are not properly trained to understand the business operations of the casinos.

642. The Ministry of Tourism as the licensing authority of casinos under the Casino Act has not issued any guidelines to the casinos as it is mandated to do under section 12(4) of the PPMLA. The casino operators informed the assessors that currently there were no customer identification requirements and verification. The casino customers were said to deal only in small amounts with a maximum of 100 000 kwacha at the main table and casinos would not cash more than a million kwacha. The casino owners indicated that there was nothing official which had been communicated to them on money laundering. The Casino Act provides for how casinos should operate and staff checks/screening of staff. The assessors were informed that there had been attempts to set up a Gaming Board to regulate the licensing of casinos and lotteries.

643. The casino owners indicated that there were no requirements for them to maintain client records nor was there a requirement to keep these records for a given period.

Real Estate Agents:

644. The real estate market is not regulated. There is an association but it has not done much and is not effective. There is a bill cited as the Real Estate Bill which has not yet passed Parliament. Most transactions relating to sell of real estate are done through lawyers. Lawyers most of the times keep records for their own information on the buyers and sellers of the property. Currently any one can set up real estate business. Purchases are done on cash basis or through obtaining a mortgage from the bank. The Zambia Institute of Estate Agents exists but it does not have regulatory powers.

645. Currently there are no specific requirements on customer identification and record keeping on those in real estate. Some real estate agents keep information on the name, address and contact numbers of the client for their own information not for record purposes. These agents do not do background checks on the information or the buyer or seller of the property. The agents are not required to know the source of the money used for the purchase including in non face to face transactions which were said to happen quite often. The agents also rent properties on behalf of clients and collect the rentals which can be paid as a once of payment for specific period. The tenants can shortly after the payment of the rentals pull out of the lease agreement and ask for their money back and in such instances the agent would refund the money minus the sum deducted for the notice period. This creates room for the estate agents to be used as avenues for ML through tainted funds being used to pay the rentals and being immediately withdrawn.

646. The agents told the assessors that they were not aware of the requirement to report suspicious transactions and they did not forward any to AMLIU. The agents were not aware of the AML legislation and of the existence of AMLIU. They also said there were no programs in place to educate their members on ML/FT.

647. There are also no requirements for the real estate agents to keep records on corporate clients. The corporate clients can settle the transactions through banks or by paying cash.

Law Association of Zambia

648. The Law Association of Zambia informed the team of Evaluators that it was not clear on its mandate in regards to AML/CFT matters. The Association does not have minimum reporting standards. The Association was also not clear on whether it is one of the Supervisory Authorities in terms of the PPMLA. It was also observed that the Association is not specified in terms of the PPMLA as one of the Supervisory Authorities neither is it designated as a reporting institution. Although the activities of lawyers are regulated under the Law Association of Zambia Act, the provisions of the Act do not adequately deal with AML/CFT issues. It does not deal with KYC and customer due diligence issues for

AML/CFT purposes. At the time of the on site visit the Association was not reporting any suspicious transactions to AMLIU. Client (Trust) accounts are not audited.

KYC and Customer Due Diligence Requirements.

649. The relationship between lawyer and client is not established through laid down procedures. The lawyer does not need to do a background check on the identity of the client nor his address. The lawyers are not mandated to keep client records. In order to secure the services of a lawyer one only needs to make payment for the services. The lawyer is not required to know the source of the funds neither is he required to verify it. The general approach is that make a deposit and you have a lawyer and the lawyer does not necessarily need to check the particulars of the client before accepting the money. Verification of a client's particulars depends on each law firm but it is not a standard practice. Particulars of corporate clients are easier to verify as this can be done through the Registrar of Companies but again no independent verification is done by the lawyer. As for non face to face transactions, in particular people from abroad who might have been recommended by a person in Zambia it is again not a requirement that their source of funds be verified.

Purchase of Real Estate

650. The lawyers in such purchases are not required to do a background check on their clients. The mode of payment depends on a lawyer/client basis but payment in bank transfers, cash and cheques is acceptable. The Association has not given specific guidelines to its members relating to cash transactions. Lawyers use their discretion to do background checks on the existence of a company and its directors before commencing a transaction. Again there are no standing guidelines by the Association to members where companies are concerned.

Financial Records

651. Lawyers are obliged to maintain client (trust) accounts as well as other administrative accounts. The client's account is billed with costs of any services provided. The lawyer has an obligation to send a statement of account giving a breakdown of the costs incurred by the client and the refund of the balance from the trust account, if any to the client. The lawyer is not obliged to keep the financial record of the client once he has finished dealing with the client. The lawyer or law firm has got no obligation to inform the Association with which bank he will have opened an trust/client account for his practice. Lawyers are supposed to be audited annually but are not obligated to furnish the Association with the annual audited statement for purposes of renewal of their practising certificates or as confirmation of their books of accounts being in order. If there is any misuse of funds by the lawyer or law firm the only way such a matter can come to surface is only after a report has been made to the Association by the aggrieved party.

Registration and Transfer of Immovable Properties (Ministry of Lands)

652. The Ministry of Lands in Zambia administers the Registrar of Deeds' Office. The office is headed by the Lands and Deeds Registrar. The main objectives of the Office are to make available land for development by the government, to allocate land and give title, to facilitate buying and selling of the land, to survey and parcel land due for sell and allocation, to facilitate transfer of title and to administer the laws governing the sector.

Criteria used to allocate land

653. The Land Act of Zambia prohibits acquiring of land by none Zambians except in exceptional circumstances. Such exceptional circumstances would include getting authority from the President of Zambia or acquiring an investment licence.

654. A company may acquire land if at least 24% of its shares are owned by Zambians and 76 % by foreigners.

655. Requirements when transferring land and acquiring title deeds:

- One has to be in possession of a National Registration card to confirm that he is Zambian
- One has to have attained 21 years of age or older
- If it is a company, it has to be registered in Zambia and have the certificate of incorporation as proof of its registration with the Registrar of Companies in Zambia.
- The Commissioner of Lands has to give permission authorising the transfer of one's plot or piece of land to another person. In doing so the Commissioner of Lands will not have done a due diligence check on the actual beneficiary of the transfer including checking the identity using reliable and independent source documents, identification data or information. There was no indication that in the event of a third party being used by a legal person, the Commissioner will check that the third party is authorised to do so and there is verification of the identity of the third party.

656. Section 90 of the Lands and Deeds Act requires a person intending to acquire land in Zambia to do the transaction through a lawyer. The person is expected to sign a consent form and have the lawyer draft the assignment letters. The lawyer will then lodge the assignment and the consent form papers with the deeds registry office for the office's consent. Upon issuing of the consent the person will have to pay the required taxes with the Zambia Revenue Authority.

657. The Ministry does not do a due diligence check on the person intending to acquire the land for AML/CFT purposes. The Ministry relies solely on the information supplied by the lawyer. The purchaser does need to provide his source of income. Besides the minimum requirement of the person being able to show that he is a Zambian by providing a national registration card he is only required to prove occupation not for purposes of AML/CFT but for the Ministry to be satisfied that if allocated the land he will be able to develop it. As for companies the Ministry relies on information accessed from the Registrar of Companies and does not do a due diligence check of its own.

658. The lawyer handling the transaction is the one who takes over the responsibility to establish the full particulars of both parties involved with the transaction. The Ministry is not involved in getting the specifications of the means used to settle the purchase of land. The method of settlement is a private arrangement between the two parties involved with the purchase of land.

659. The evaluation team was informed that AML/CFT issues were a new phenomenon to the Ministry and it was not yet competent to deal with such issues.

Corporate Persons

660. The Lands and Deeds Registrar when dealing with corporate clients relies on information obtained from the Registrar of Companies gathered in line with the requirements of the Companies Act. Currently there are no requirements to comply with AML/CFT during the registration of land.

661. There are requirements for the parties to settle the transaction through the banks. Payment of the purchase of land can be done in cash and there are no restrictions on the cash amounts that can be dealt with.

Ownership of land by Foreigners.

662. The Estate Agency Act is administered under the Local Government. In order for a foreigner to acquire land he has to be a holder of a residence permit. If an investor wants to acquire land, the Ministry rely on the information from the Investment Centre to verify if the investor has got an investment licence. The identity of the person investing is not verified nor does the Ministry do any background check of the information on its own.

General Information

663. The registers at the Lands and Deeds Registry are public documents. Members of the public who are not law enforcement agencies need to pay a search fee before accessing information from the records.

664. The police were said to be investigating a number of fraud cases to land transactions which were said to be on the increase. The assessors were informed that due to the nature of the system, it was not possible for the authorities to detect many transactions in land done by one person for purposes of manipulating the market.

665. The process of completing a land purchase transaction can take about three weeks.

666. Trusts are required to provide certificates of incorporation or trust deed before acquiring land. The names of the trust's beneficiaries are not a prerequisite neither does the register reflect the names of beneficiaries or the directors. The only requirement is that the certificate of incorporation has to be attached to the file. There is no verification of the Trust, although section 2 of the Land Perpetual Act requires that the purpose of the trust be known, there was no indication that independent checks are done to verify this information.

Land Distribution.

667. The State owns 6% of the land and 94% is traditional land (customary land). Any other person other than the government is a lease holder. A sub-lease which is over two years must be registered. Customary land can be transferred to State land after the consent of the Chief. Once it is State land then title deeds can be applied for.

668. Land transactions of up to 250 hectares are approved by the Commissioner of Lands, transactions above 250 hectares but below 1000 hectares are approved by the Minister and transactions above 1000 hectares are approved by the President.

669. The Deeds and Registry Office has two offices in Zambia, one in Lusaka and the other one in Ndola. The office only deals with the allocation of land and transfers. The Commissioner of Lands' offices are in all the nine provinces of Zambia and they deal with the administrative issues.

670. The Ministry is currently updating and developing its land information systems and management.

671. The Commissioner of Lands as Supervisory Authority has not issued any guidelines AML in terms of section 12(4) of the PPMLA to the regulated institutions which it administers.

672. None of the Supervisory Authorities listed in terms of section 2 of PPMLA other than the Bank of Zambia and the Registrar of Banks and Financial Institutions have yet provided guidelines to the regulated institutions that they are supposed to supervise, therefore there are no directives for the DNFBPs in addition to performing CDD measures, to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. Again there are no provisions requiring the DNFBPs to seek senior management approval before establishing business relationships with a PEP nor to check on their source of wealth and funds. The DNFBPS are also not guided on what they should do in the event of them having established a business relationship with a PEP.

673. The regulated institutions including DNFBPs due to the absence of guidelines have not put any measures in place to prevent the misuse of technological developments in facilitating ML/FT activities. There are again no guidelines or provisions on CDD checks relating to the use of third parties by DNFBPS.

674. DNFBPS are required in terms of section 13(1)(a) of the PPMLA to keep transaction records for a period of ten years after the termination of the business transaction so recorded, however the standard and quality of information is supposed to be kept is not provided. It is not clear therefore based on the provision whether the information required to be kept would be sufficient to permit reconstruction of individual transactions so as to provide if required evidence enabling a criminal prosecution. DNFBPS currently have no obligation to pay special attention to complex, unusual transactions, or unusual patterns of transactions, that have no apparent or visible economic or visible lawful purpose nor they have an obligation to the origins and purpose of such transactions and put the findings in writing.

4.1.2 Recommendations and Comments

675. It was difficult to assess effectiveness as some of the DNFBPS, like the Real Estate Agents Association have not been issued with guidelines regulating them by the Supervisory Authorities are supposed to supervise them and yet they handle at times large amounts of cash. In terms of the PPMLA it is not clear whether some of the DNFBPS like the Law Association of Zambia have been designated as Supervisory Authorities particularly taking into consideration that the PPMLA was enacted when the Law Association of Zambia Act which created the Law Association of Zambia which should be the supervisory authority for lawyers had already been enacted. The PPMLA is not specific about them. Those representing some of the DNFBPS like the Law Association clearly displayed total lack of information in as far as the existence of AMLIU, let alone its functions. The responses given by those representing the DNFBPS indicated that there was no sufficient dissemination of information on AML/CFT to them from the AMLIU and that they were not being educated on how to come up with guidelines to assist them with the monitoring of AML/ CFT in their areas of interest.

676. Section 13(1)(a) of the PPMLA needs to be amended to provide for the minimum standards of information expected to be kept in the identification and business records provided for in that section so that so that in the absence of the guidelines to regulated institutions like is the current situation with Zambia the standard of such information can be determined.

677. The section should also provide for specific penalties for failure by the DNFBPS as regulated institutions to comply with keeping information in their records up to certain standards.

678. The Supervisory Authorities should comply with section 12(4) of the PPMLA and issue guidelines to DNFBPS.
679. The Ministry of Tourism as the Supervisory Authority of casinos should issue guidelines on KYC and CDD measures to them.
680. The Ministry as the Supervisory Authority should educate the casino operators on the risks of ML/FT and of the existence of AMLIU and its functions.
681. The authorities should pursue the idea of forming a Gaming Board to ensure closer monitoring of the licensing of casinos and assessment of those intending to form such businesses.
682. There is need to have the Real Estate Bill passed to assist with the effective regulation of the real estate sector.
683. There is need to put in place mechanisms of identifying the buyers and sellers of real estate and verifying such identity.
684. Source of the funds used to purchase or acquire real estate need to be verified
685. There should be legal requirements for real estate agents to maintain appropriate records of their clients and the transactions carried out for a specific period after the transaction.
686. There is need for AMLIU to educate the agents of its functions, the AML legislation and the obligations of the real estate agents as regulated institutions.
687. The status of Law Association of Zambia on whether it is a Supervisory Authority or not needs to be properly defined
688. Once the status of the Association has been properly determined then it should issue guidelines to its members on AML/CFT.
689. More reliable means of accounting for clients' funds by lawyers should be provided for by the law. Such measures could include making it a requirement for lawyers to submit their annual audited reports to the Association for scrutiny. The lawyers should be obliged to furnish the Association with the address and details of the bank where the lawyer maintains the client/trust account for easy access by the Association to independently check on the position of the account.
690. The Association should consider designing acceptable standards of KYC measures when accepting new clients.
691. The lawyers should be required to check on the source of the funds brought in by the client.
692. Lawyers as an AML/CFT measure should be required to keep client's records for a reasonable time after the client's case has been finalised.
693. The lawyers should receive induction and continuous courses on matters relating to AML/CFT to improve on their awareness.

694. The Association together with the other stakeholders on AML/CFT should work out ways on how lawyers can report STRs without necessarily compromising the lawyer/client privilege.

695. The Commission of Lands and the Lands and Deeds Registrar should introduce more prudence measures to check on the identity of its clients and be able to verify such information through reliable and independent source document, identification data or information.

696. The authorities should check the authority held by third parties to transact on behalf of principal as well as be able to verify the identity of the third parties.

697. The authorities should be to check and verify the source of funds used in the transaction and put in place more secure means of payment e.g. to accept payment only through financial institutions.

698. The authorities should be able to do independent background checks on the identity of foreigners intending to purchase land or properties in Zambia

699. For Trusts, provisions requiring the names of the beneficiaries should be made a prerequisite.

700. There should be full compliance with the requirement of the law that there should be full disclosure of the purpose of the Trust.

701. The Commissioner of Lands should issue guidelines be used in supervising the regulated institutions.

702. The Supervisory Authorities should put measures in place to prevent the misuse of technological developments in facilitating ML/FT activities.

703. The Supervisory Authorities should issue guidelines to the DNFBPS requiring them to pay special attention to unusual and complex transactions which have no apparent or visible economic or lawful purpose.

Sanctions (applying c. 17.1-17.4 in R. 17, c. 12.3):

704. There is need to regulate activities of DNFBPs and designate them for purposes of reporting STRs to the AMLIU. As for those which are already regulated there is again need for them to be designated in terms of the law in order for them to comply with AML/CFT requirements as well as reporting STRs. The DNFBPs need to be trained on KYC and Customer Due Diligence as well as maintaining of financial records for a specific period as required by the law. The AMLIU needs to assist the DNFBPs to come up with guidelines relating to AML/CFT. (Also see comments and recommendations under the Law Association of Zambia.)

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">▪ The DNFBPs are not regulated and of those regulated there are no clear provisions indicating that they have an obligation to comply with AML/CFT requirements.

		<ul style="list-style-type: none"> ▪ The DNFBPs are not aware of the existence of AMLIU and how to relate to it. ▪ The AMLIU has not assisted the DNFBPs to develop guidelines to assist them in administering AML/CFT matters. Other than the expected codes of conduct which some of the DNFBPs did not have, none of them had set out written guidelines. ▪ The PPMLA provisions on identification and record keeping lack specificities on the standard of information expected to be obtained hence there has been no practical effect of this requirement on the DNFBPs. ▪ The DNFBPS are not subject to full legal obligations to carry out sufficient CDD and record-keeping requirements. ▪ There has been no effort to educate the DNFBPS on their obligations in particular CDD checks, risks relating to non-face to face transactions e.g. transactions involving purchase of immovable assets through lawyers and estate agents, risks related to new technology, unusual and complex transactions which do not seem to make economic sense.
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4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

Obligation to Report (c.16.1)

705. In terms of section 12(1) of the PPMLA where DNFBPs obtain any information that a business transaction indicates that a person has or may have been engaged in money laundering they are suppose to disclose or cause to be disclosed the information to AMLIU. And in terms of 13(1)(b) of the PPMLA the DNFBPs have an obligation to report to AMLIU ‘where the identity of the persons involved, the circumstances of any business transaction or where any cash transaction, gives an officer or employee of the regulated institution on reasonable grounds to believe that a money laundering offence is being or is about to be committed.’ The DNFBPs, where they are supervisory authorities in terms of section 12(4) of the PPMLA are supposed to issue directives to the regulated authorities to assist them in preventing and detecting ML.

706. The PPMLA does not define the term suspicious transaction neither does it make reference to it in its body. The assumption of reference to a suspicious transaction is taken from the provisions of section 13(1)(b) of the same Act which provides as follows

707. “(b) report to the Unit where the identity of the persons involved, the circumstances of any business transaction or where any cash transaction, *gives any officer or employee of the regulated institution reasonable grounds to believe that a money laundering offence is being or is about to be committed.*”

708. The PPMLA again does not provide a list of the regulated institutions or DNFBPs but it lists the supervisory authorities which are supposed to be in charge of the regulated institutions.

709. Although the DNFBPs in terms of the law have an obligation to report suspicious transactions to AMLIU, the observations during the on site visit from interviews with members of these bodies in particular the Law Association of Zambia, the Estate Agents Association, Small Miners Association and Casinos were that they were not aware of the existence of AMLIU and its functions and they were not making any STRs to it. The Commissioner of Lands was also not aware of the obligation to report ST to AMLIU. Due to the absence of clarity relating to the Law Association of Zambia (as already illustrated in criteria 12.1 above) on whether it can be specified as one of the Supervisory Authorities, it becomes difficult to deal with the aspect of legal privilege when it comes to reporting of suspicious transactions by lawyers. At the time of the mission visit there were no guidelines to lawyers as to which transactions would be covered by legal privilege between a lawyer and client. The Law Association of Zambia could not be of any assistance in this regard as it was not even aware of whether it was one of those institutions whose members were supposed to report STRs to AMLIU.

710. The Anti-Terrorism Act does not have provisions creating an obligation on DNFBPs to report suspicious transactions relating to terrorism to any authority and again there are no guidelines yet to direct the DNFBPs to report suspicious transactions relating to financing of terrorism which have been issued subsequent to the enactment of this Act.

711. In terms of section 13(1)(b) of the PPMLA it appears all suspicious transactions irregardless of the amounts involved are supposed to be reported to AMLIU how ever the Act does not specifically deal with attempted transactions. In terms of this section all suspicious transactions are supposed to be reported and there is no exemption of any transaction but it is not clear whether suspicious transactions involving tax matters are supposed to be reported to AMLIU. The absence of clarity on the reporting of suspicious transactions relating to tax matters is further complicated by the non listing of the department of taxes under section 2 of the PPMLA as one of the supervisory authorities which under section 12(1) of the same Act would have an obligation to disclose suspicious transactions to AMLIU.

c. 16.2

712. In terms of section 13(1)(b) of the PPMLA cited in criteria 16.1 above, regulated institutions have an obligation to report STRs directly to AMLIU and not to the Supervisory Authorities which regulate them.

Protection for Reporting STR and Prohibition of Tipping Off (c. 14.1-2):

713. Section 14 of the PPMLA provides in general immunity to any party from legal liability for making any disclosures in compliance with the Act. The Act has got no specific provisions prohibiting DNFBPs, their directors, officers and employees from disclosing that a STR or related information is being reported or provided to AMLIU.

714. The Anti-Terrorism Act in section 24(5) provides that no person shall be 'subject to any liability for making a disclosure in accordance with this Act and no action, claim or demand shall be taken, made against or of, the person for making the disclosure' and in subsection (6) of the same section it provides that the 'section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or imposed by any written law, applicable to a person.' Note has to be taken how ever that the disclosure discussed here is not specifically to AMLIU and the immunity from legal liability is not necessarily to do with disclosures made to AMLIU.

Internal Controls, Compliance and Audit (c 15.1-4)

715. The PPMLA does not provide for DNFBPs to establish and maintain internal procedures, policies and controls to prevent ML/FT and communicate these to their employees. Section 13(3) of the Act however provides for the DNFBPs with the assistance of AMLIU to provide employees with training on the enactments and regulations on ML, in mechanisms for preventing ML and in the recognition and handling of business transactions carried out by or on behalf of any person who is or appears to be engaged in ML.

716. At the time of the on site visit there were no regulations on ML and DNFBP Supervisory Authorities which were supposed to issue guidelines with the assistance of AMLIU to guide the DNFBPs in developing their own internal procedures, policies and controls against ML had not done so. The majority of the DNFBPs interviewed during the on site visit were not even aware of their obligations under the PPMLA, let alone the requirement for them to develop internal procedures, controls and policies to prevent ML/FT and communicate these to the employees. Most of the DNFBPs themselves had not yet received training on ML from AMLIU, therefore they were still handicapped in setting up the required internal procedures for themselves. During the on site visit there were no indicators that the DNFBPs had continuous training programs to ensure that their employees are kept informed of new developments in ML/FT techniques, methods and trends.

717. The guidelines to the banks issued by the both the Bank of Zambia and the Registrar of Banks and Financial Institutions providing for internal controls through the appointment of ML Reporting Officers, the same measure has not been extended to DNFBPs through issuing of guidelines.

c. 16.5.

718. The Chartered Accountants Association informed the assessors during the time of the on site visit that the Accountants Act was amended to include AML provisions after the enactment of the PPMLA. The Association's members are supposed to comply with all national accounting standards which include information on AML and are updated through holding of workshops from time to time, circulars and quarterly reports which also at times includes information on ML. The Association indicated that there was no monitoring of ML by the Association and that there were no guidelines on ML/FT. Firms are not audited on compliance with AML/CFT measures. The Association informed the assessors that it did not make suspicious transactions reports and had no knowledge of AMLIU but had limited conduct with the DEC through attendance by some members of the Association on AML training. The Code of Conduct of Accountants required that they reported an act of an accountant which was not consistent with his duties. General guidelines issued to Accountants previously, not specifically dealing with AML/CFT have been ignored.

Special Attention to Relationships involving countries that inadequately apply AML/CFT measures and Countermeasures (c. 21.1 - 3)

719. The current provisions of the PPMLA do not create mandatory obligations for DNFBPs to pay special consideration and attention to transactions involving customers from high risk countries. The assessors were however informed by the casino operators that for purposes of protecting their own interest they would pay particular attention to new customers, who are not known to them but this is not a requirement of the law.

720. There was no indication that there are effective measures in place to ensure that DNFBPs are advised about weaknesses in the AML/ CFT systems of other countries and that they are aware of counter measures to apply to countries which insufficiently applies the FATF Recommendations.

4.2.2 Recommendations and Comments

- 721. AMLIU should intensify its outreach programs so that the DNFBPs are educated on its existence and functions.
- 722. STR reporting obligation should be extended to DNFBPs.
- 723. There is need to monitor compliance on STR reporting by all DNFBPs.
- 724. The supervising authorities to DNFBPs should provide guidelines on ML to them.
- 725. Section 13 of the PPMLA needs to be amended to also include reporting of STRs relating to FT.
- 726. Need for clarification on the status of the Law Association of Zambia and application of legal privilege relating to reporting of STRs to AMLIU.
- 727. The PPMLA should be amended to specifically provide against tipping- off on reported about to be reported STRs.
- 728. Section 13 of the PPMLA should be amended to provide for reporting of STRs on attempted transactions.
- 729. The provisions of PPMLA should be clear on reporting of suspicious transactions relating to tax matters.
- 730. There is need through amendment of both the Acts to establish a link between the PPMLA and the Anti-Terrorism Act, relating to reporting of STRs to AMLIU.
- 731. The licensing authorities of the DNFBPs should be obligated to educate them on AML/CFT measures.
- 732. Both the PPMLA and the Anti-Terrorism Act should provide for DNFBPs to have internal procedures, policies and controls to prevent ML/FT and educate their employees on same or have regulations issued to that effect.
- 733. DNFBPs should be encouraged to have continuous training programs for their employees on ML/FT techniques, methods and trends.
- 734. DNFBPs should employ ML Reporting Officers to assist with the management of AML/CFT internal policies.
- 735. The PPMLA should be amended to specifically include the Chartered Accountants Association or any other board which represents them as one of the Supervisory Authorities under section 2 of the Act. The current position of both the accountants and lawyers creates an ambiguous situation in determining their status in relation to reporting of AML/CFT issues.
- 736. Accountants should have a direct obligation to report STRs to AMLIU.

737. The PPMLA and Anti-Terrorism should be both amended to provide for DNFBPs have mandatory obligations to pay special attention to transactions involving customers from high risk countries.

738. AMLIU should consider DNFBPs to be one of the high risk areas where training on AML/CFT is needed in order to ensure compliance with the requirements of the PPMLA.

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"> ▪ DNFBPs do not file any STR reports with the AMLIU; ▪ There is no monitoring of compliance on STR reporting by DNFBPs; ▪ There are only minimal efforts by AMLIU to educate DNFBPs on their obligations; ▪ Lack of clarity in regards to STR reporting obligations on lawyers and accountants; ▪ CDD requirements relating to AML/CFT are not being applied by DNFBPs; ▪ No specific provisions in the law against tipping-off on STRs reported or about to be reported; ▪ No guidelines to DNFBPs on reporting of STRs; ▪ No obligations on supervisory authorities to DNFBPs to advise them on how to deal with customers from high risk areas. ▪ The law relating to reporting of STRs connected to financing of terrorism transactions is inadequate neither is the law clear on the designated authority to which STRs on FT should be reported.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and Analysis

Lawyers and Notaries

739. The professional conduct of lawyers in Zambia is regulated under the Law Association of Zambia Act. In order to practice law in Zambia one has to have acquired a law degree, be admitted to the bar and be a person of good standing in society. The Law Association of Zambia to which the lawyers are affiliated to as members was formed in terms of the requirements of the Act. The Association has a Disciplinary Committee which deals with misconduct reports against the lawyers. In some cases the Association carries out investigations on its own into the conduct of its members. In the event that the Association finds the lawyer's conduct out of line with the ethics of the profession, it has statutory powers to discipline the lawyer and in some cases where the conduct of the lawyer is gross the Association can

revoke the practicing licence/certificate of the lawyer. If the conduct of the lawyer is of a criminal nature the matter is reported to the police for further management. The Association's representative was not sure what happens where a lawyer steals trust funds but suggested that there should be a fund to compensate those affected in such instances. (Also see R. 12 under c.12.1)

740. The professional conduct of Notaries in Zambia is also catered for by the same Act. The same disciplinary measures which apply to lawyers also apply to notaries in the event of them conducting themselves in a manner which is unbecoming in terms of the ethics which govern their profession.

Accountants and Auditors

741. Activities of accountants in Zambia are regulated under the Accountants Act. The Zambia Institute of Certified Accountants (ZICA) established by an act of Parliament in 1982 is the regulatory authority of accountants. The institute has around 1000 individual and partnership members. It has a membership of 10 firms with five to six of the firms being international firms. ZICA oversees the conduct of accountants and ensures that accountants adhere to government regulations. Accountants are expected to be guided by the international accounting standards which were adopted and domesticated by ZICA as the national accounting standards. The accountants have a Code of Conduct. The accountants reported that there was no follow up by ZICA on implementation of regulations and the guidelines issued by it are often ignored by the accountants as there is no subsequent follow up on their implementation. The accountants indicated that the Accountants Act was amended after the enactment of the PPMLA to include provisions on AML but no guidelines had been issued to them on ML. The accountants informed the assessors that they do not monitor AML systems neither are firms audited on compliance with AML/CFT measures.

Regulation and Supervision of Casinos (c. 24.1, 24.1.1, 24.1.2 & 24.1.3)

742. Casinos are regulated under the Casinos Act. Interviews with those in the casino business during the mission visit seem to confirm that casinos in Zambia are not subject to a comprehensive regulatory and supervisory regime ensuring that they effectively implement AML/CFT measures. The assessors were informed among other things that it was very easy to get a casino license in Zambia compared to other countries and the regulators were said not to know as much as they should know about the casino business, there is no inspection of equipment and the inspectors do not know if tables were fixed or not. The Ministry of Tourism which is the regulatory authority of casinos by the time of the on site visit had not issued the industry with any guidelines on AML/CFT measures. The Ministry officials were said not to be adequately trained to advise the casino operators on how to manage gaming. The operators informed the assessors that they had not received any instructions on ML from the Ministry as the industry's regulating authority and if it all any measures are in place they are out of their own initiative to protect their businesses from fraudsters. The Ministry gets copies of monthly turnovers by the casinos for tax purposes and 20 % of the profits. The operators however pointed out that risks of ML involving casinos were still minimal in Zambia as it was still a small business and the operators knew most of the gamers and easily note new comers. The limits are also so low that they do not attract professional gamblers.

743. Section 2 of the PPMLA provides for the establishment of a supervisory authority over casinos under the Casino Act. The Supervisory Authority in terms of the PPMLA is only responsible for regulating and supervising the AML regime but does not include the regulation and supervision of the CFT regime. In terms of section 12(4) of the PPMLA the Supervisory Authority is empowered to issue guidelines to casino licensees on AML measures. The guidelines have however not been issued. Similar provisions do not exist in the Anti-Terrorism Act and at the time of the on site visit no regulatory authority was in place as the act had just been enacted.

744. Casinos are currently licensed by the Ministry of Tourism under the Casinos Act. Applicants are screened through conducting background checks on propriety and fitness with other regulatory authorities both local and foreign. The local vetting involves the Zambia Development Agency, Competition Commission, Immigration Department and Zambia Police Service. Before the license is issued the Ministry needs the name of the company and of the shareholders. Inspectors will have to inspect the casino and the number of people to be employed has to be identified. The Casino Act provides on how casinos should operate, staff checks and screening of staff.

745. Lotteries and raffles are licensed by the Ministry of Finance.

Monitoring and Compliance of other DNFBPs (c. 24.2 & 24.2.1)

Real Estate and other DNFBPs

746. The Real Estate is not regulated and there are effective systems for monitoring and ensuring compliance with AML/CFT requirements. There is an Association in place but it has not been very effective and presently anyone can set up an estate agent business. A Bill proposed on real estate has not yet been passed. The Zambia Institute of Estate Agents has got no regulatory powers on its members and cannot enforce AML/CFT measures.

747. The Supervisory Authorities to DNFBPs have not issued guidelines to ensure compliance with AML/CFT by the regulated institutions. The Supervisory Authorities which are supposed to be responsible for monitoring and ensure compliance of DNFBPs with AML/CFT requirements are still to comply with that requirement. During the on site visit it was not possible to tell the problems which have been encountered by the Supervisory Authorities which have caused them to fail to comply with their supervisory duties.

Guidelines and Feedback for DNFBPs (c. 25.1 - 2)

748. Guidelines exist for financial institutions. However, regulatory authorities for DNFBPs have not complied with the requirement to supervise and issue the regulated institutions with AML/CFT guidelines. Most of them during the mission visit by the assessors were hearing about AML/CFT requirements for the first time and were not aware that there are supposed to be guidelines issued to them to assist them in putting in place internal control measures against ML/FT. The DNFBPs were not aware of the existence of AMLIU and late alone the requirement to report STRs to it. Due to the absence of disclosures made to AMLIU there was no feedback from it to the DNFBPs on the number of disclosures made, information on current techniques, methods and trends on ML/FT. Based on the same reason no feedback was being done on a case by case analysis and the result thereof.

4.3.2 Recommendations and Comments

Supervision and Monitoring (R.24)

749. The definition of supervisory authority under section 2 of the PPMLA should be amended to include ZICA as the designated Authority for Accountants.

750. ZICA should issue guidelines to accountants on AML/CFT measures.

751. ZICA should make it mandatory for its members to monitor companies for compliance with AML/CFT systems.

752. ZICA should be empowered to enforce its guidelines on its members and monitoring the implementation of the guidelines.

753. Applications for casino licences should be properly vetted to prevent criminals or their associates from having any controlling interest in the casinos.

754. The Supervisory Authority should ensure comprehensive regulatory and supervisory regimes to enable effective implementation of AML/CFT measures.

755. The Supervisory Authority should issue guidelines to casinos on AML/CFT measures.

756. The Ministry of Tourism should enhance the capacity of the inspectors who inspect the casinos on AML/CFT measures.

757. The Ministry of Tourism as the Supervisory Authority should exercise its mandate and powers to monitor and sanction the casinos.

758. The PPMLA should be amended to enable the Supervisory Authorities to issue guidelines on CFT.

759. The authorities in Zambia must designate a competent authority to be in charge of AML/CFT matters with respect to the other types of DNFBPs in particular real estate agents and small miners association which are not regulated for AML/CFT purposes.

Guidance (R. 25)

760. The Supervisory Authorities of DNFBPs which are regulated under AMLIU should issue guidelines to assist the DNFBPs in complying with AML/CFT measures;

761. Establish a Supervisory Authority to provide guidance on AML/CFT measures to DNFBPs which currently are not provided for under section 2 of the PPMLA;

762. The guidelines issued should provide adequate sanctions to ensure compliance by the DNFBPs;

763. AMLIU should put in place feedback mechanisms to DNFBPs on disclosures made by them to the Unit, guiding them on the current techniques, methods and trends in ML/FT including typologies.

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">▪ There is no effective regulation and supervision of accountants on AML/CFT measures through issuing and implementation of guidelines;▪ The casino sector is not fully regulated and supervised on AML/CFT;▪ Inadequate vetting measures on AML/CFT when issuing casino licenses;▪ No guidelines have been issued to regulate the casino sector;▪ Lack of adequate training of inspectors of casinos on AML/CFT

		<p>measures.</p> <ul style="list-style-type: none"> ▪ The Supervisory Authority on casinos has got no powers to issue guidelines on CFT. ▪ Some sectors of the DNFBPs are not regulated or supervised for AML/CFT purposes. ▪ There are no ongoing mechanisms to monitor nearly all the DNFBPs on AML/CFT measures.
R.25	NC	<ul style="list-style-type: none"> ▪ Lack of guidance on AML/CFT measures to both regulated and non regulated DNFBPs; ▪ Lack of sanctions to ensure compliance by DNFBPs on guidance issued; ▪ No feedback mechanisms put in place by AMLIU on disclosures made to it by DNFBPs.

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Other Vulnerable DNFBPs (applying R. 5, 6, 8-11, 13-15, 17&21, c. 20.1)

Currency Bureaus

764. Currency Bureaus are established in terms of the Banking and Financial Services Act. They are licensed and regulated by the Bank of Zambia. The bureaus implement KYC and CDD checks on their clients. A receipt book provided by the Bank of Zambia is used by the bureaus. The identification card, name and address of the client are required for any transaction but what is not clear is how much identification information would be required where a transaction is being done by a third party on behalf of someone else. The bureaus cannot sell or buy over US\$ 1000.00. The Bank of Zambia inspects the bureaus quarterly and the inspections are not announced. The Bank of Zambia to ensure compliance with CDD checks inspects the receipt books and bank accounts of the bureaus. The business of bureaus is restricted to shoppers only and not to traders. The bureaus highlighted the problem of counterfeits as being a major risk in their business. The bureaus do weekly returns to the BoZ and are not allowed to do any transfers abroad. The bureaus have received training on counterfeit identification from the USA embassy personnel.

Other DNFBPs

765. Although section 13(1)(a) of the PPMLA provides for identification and business transaction records to be kept for ten years after the termination of the business transaction by the regulated institutions which would include other vulnerable regulated DNFBPs like lotteries and raffles, there are no specific provisions for these institutions to abide by specific CDD checks and internal controls on CDD checks and risk management nor are there guidelines to provide the DNFBPs with same. Due to the absence of adequate information in the sector, it was not possible to establish whether there were other forms of betting in Zambia such as pool betting and if any, how they were regulated and supervised.

766. Other vulnerable DNFBPs like auction houses for the sale of movable property and dealers in luxury and high value goods where large amounts of cash change hands are not subject to AML/CFT measures. The records maintained are for the DNFBPs' own information. No CDD functions are carried

out by these institutions in compliance with AML/CFT requirements. The cash transactions carried out are not formally subject to any threshold limits.

767. The authorities for DNFBPs have not taken any steps to ensure compliance with AML/CFT measures on identification of clients, record keeping and application of CDD checks by DNFBPs which are currently not regulated.

768. Modernization of Conduct of Financial Transactions (c. 20.2): Zambia has enacted a National Payments Systems Act which will encourage the development and use of modern and secure techniques for conducting financial transactions. The regulated DNFBPs have not been issued with guidelines on how to benefit from the new payments systems for AML/CFT purposes.

769. During the on site visit it was observed that cash is used in most cases as the method of payment and in some instances credit cards and cheques are used depending on the level of sophistication of the person. Almost all the banks were observed to have automated teller machines.

4.4.2 Recommendations and Comments

770. The BoZ should conduct more training courses for Currency Bureaus on AML/CFT risk management.

771. There should be adequate identification of third parties or intermediaries when they carry out transactions on behalf of other parties with currency bureaus.

772. Establish a regulatory authority on AML/CFT for the DNFBPs that are not currently regulated.

773. The regulatory authority once established should issue guidelines on identification of customers, CDD checks and internal risk management measures on AML/CFT.

774. There should be a general review of procedures used by the other vulnerable DNFBPs when conducting sales.

775. It might be necessary to consider thresholds for vulnerable DNFBPs which deal with cash sales or encourage other means of payment, which might include use of credit cards and cheques.

776. Provide more information to DNFBPs on modern conduct of financial transactions.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	NC	<ul style="list-style-type: none">▪ Not all vulnerable DNFBPs are regulated on AML/CFT.▪ No guidelines have been issued for most of the vulnerable DNFBPs.▪ No regulatory authority for the DNFBPs on AML/CFT.▪ Vulnerable DNFBPs which conduct large cash sales are not monitored.

		<ul style="list-style-type: none"> There are no risk management arrangements in place for the DNFBPs nor has there been assessment done on the DNFBPs.
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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

777. The Patents and Registration of Companies Office is responsible for registration of all businesses and companies in Zambia. The office is headed by a Registrar who is deputized by two Assistant Registrars. The Office has one provincial office in the Copper belt of Zambia. It interfaces with other government institutions. Although the Office has been independent from government since 1998 in terms of policy it is guided by the Ministry of Trade and Commerce.

778. The Registrar's Office is responsible for administering: the Companies Act, the Registration of Business Act, the Trade Mark Act, the Patent Act and the Registered Designs Act. The office has a staff compliment of 60 members. Inspectors in the Registrar's Office ensure that the registration of companies is done in accordance with the terms of the Companies Act. Lawyers amongst others file the necessary documents for the registration of companies with the Registrar's office. Under the Companies Act Cap 388, prospective entities through their promoters provide detailed information about shareholders to the Registrar. The Companies Act regulates the creation of companies with limited shares, public/unlimited companies, companies limited by guarantee or both guarantees and shares.

779. In order to register a business name, the applicants have to submit particulars about themselves. Additionally, the courts in Zambia have readily lifted the veil of incorporation each time it has been apparent that a corporate legal personality was being used as a sham or special purpose vehicle in furtherance of illegal activities.

780. The beneficial owners are required to make full disclosure of their particulars to the Registrar and these are reflected in the company registers. In terms of section 9 of the Companies Act, company service providers are obliged to make a statutory declaration as to be compliant with the requirements of the Act. However, it appears there is no mechanism through which the office can determine other people who may have beneficial interest apart from those indicated on the documents.

Transparency Mechanisms (c. 33.1)

781. The Companies Act Cap 388 requires full disclosure of information about the subscribers and directors before a certificate of incorporation is issued. (section 6). The particulars of the person applying for the license as well as his nationality have to be provided. The amount of capital to be invested has to be provided. The assessors were informed that it was not necessary for the person applying for the license to declare the source of income neither is the Registrar's Office mandated to look into such aspects when considering the application for registration.

782. There is a requirement to maintain a register of members showing the name, address, occupation, shares held and date when such person became a member (section 48).

783. During the on site visit the assessors were informed that the background of the directors is not checked at the time of registration but if the person was a director in a company which went into

liquidation and at the time of the liquidation the person was aware of the insolvency then in terms of the Companies Act, the person cannot become a director in any company within a period of five years. The Registrar can search for a name only in circumstances where the offences relate to the Companies Act. The insolvent company's records are kept for ten years.

784. At the time of registration an identity document such as the national identification card or passport is required to be produced. The assessors were however informed that the Registrar does not have the mandate to interrogate persons on their identity before the registration of their companies. If the person uses the same name to register a new company the system will link him to all the companies where he has an interest under that name.

785. The Company Registers are available for inspection to members of the public upon payment of a search fee. (Section 193).

786. The beneficial owners are required to make full disclosure of their particulars to the Registrar and these are reflected in the company registers.

787. The Companies Act contains sufficient provisions for Legal persons to provide information about their ownership. The Companies Act Cap 388 requires full disclosure of information about the subscribers and directors before a certificate of incorporation is issued. (section 6). The law requires those registering the companies to bring in correct information about their beneficial owners. The Registrar has got no mandate to do background checks on the companies applying to be registered but the person doing the registration has to identify himself, shares of the company and owner of the shares. If the information is incorrect the Registrar does not verify it unless something about the information is so wrong that it becomes obvious that it is incorrect. The Registrar's office is not competent to assess whether information is incorrect or not. In terms of the Companies Act false disclosures to the Registrar are a criminal offence.

788. Additionally, there is a requirement to maintain a register of members showing the name, address, occupation, shares held and date when such person became a member (section 48). In terms of transparency, the Company Registers are available for inspection to members of the public. (Section 193).

789. The beneficial owners are required to make full disclosure of their particulars to the Registrar and these are reflected in the company registers.

790. In order for a foreign company to operate in Zambia it has to be registered under Zambian laws, have a local registered office, a local operating agent and one of the directors has to be locally registered. In terms of the 2008 amendment to the Companies Act, at least half of the directors need to be resident in Zambia. Immigration will not give a resident permit to a foreign director unless he is locally registered. Police can be asked to check for further information on a particular registration from the home country of the company concerned. Investment companies can advise the Registrar if they are not happy with the information supplied by foreign companies. The Registrar has had only one inquiry from INTERPOL concerning goods which had been seized at the border. Annual accounts had to be compared with past disclosures on database. Currently only public liability companies file financial accounts with ZRA.

791. The Registrar also receives requests from other companies outside Zambia which will be intending to do business with the Zambian companies. The Registrar has got no mandate to carry out verification of beneficial owners of international companies. The beneficial owners are only required to indicate the shareholders and the current direction of the company.

792. The Registrar of Companies does not rely on investigative or enforcement agencies to obtain information. Investigation and enforcement agencies are dependent on the Registrar's office to provide information on registered businesses. Plans are under way for some investigation and enforcement agencies' information systems to have an interface with the companies' electronic register so that they can readily access updated information on a real time basis.

Access to Information (c. 33.2)

793. During the on site visit the assessors were informed that in 2003 the Registrar's Office had a re-registration exercise where the manual data on the companies' registers was to be computerized. As all companies were not submitting annual returns the manual data had information which was out of date. About 70% of the records at that time had been computerized, making it possible to get information in real time. There is still need for manual search of information on companies that have not yet re-registered.

794. Rules under the Societies Act Cap 119 and also the Companies Act Cap 388 provide for the submission of annual returns.

795. The records held by the Registrar are public information which can be accessed by any member of the public after payment of a search fee. Members of the law enforcement who require such information during their course of duty do not pay any fees. Law Enforcement does not need to disclose the reasons why the information is required. Their requests are usually send to a senior person within the Registrar's Office. The Registrar has an obligation to keep information given to law enforcement confidential. Officers from the Registrar's office constantly appear in court to adduce evidence on information relating to registered businesses. There are plans to link the Registrar's data base to at least one of the investigation and enforcement agencies.

Bearer Shares (c. 33.3)

796. The Office of the Registrar appreciated in general that funds can be laundered through purchase of shares. The purchase of share warrants or bearer shares and their transfer is supposed to be registered with the Registrar but due to the fact that share warrants are transferable by mere delivery and the Registrar is not always advised of such movements. Such shares can be used for ML. Although section 69 of the Companies Act deals with the issuing of share warrants to bearer, there is no requirement in the law to compel either the transferor or the transferee to give notice of transfer to the Registrar. In terms of the law, a company is only required to file its returns on the status of the directors and shareholders once a year and as a result the other transactions are not brought to the Registrar's attention until the annual returns are filed.

Additional elements

797. The company registers are public registers and are fully accessible for inspection to Financial Institutions. Financial Institutions at the time of the on site visit did not accept to open accounts for companies without the latest information of their registration with the Registrar of Companies.

5.1.2 Recommendations and Comments

798. The Companies Act needs to be amended to regulate the transfer of share warrants to bearer, as the current position of transfer by mere delivery can be easily used for ML activities.

799. The Authorities in addition to the Companies Act being amended need to take appropriate measures to ensure that in practice transfer of share warrants is not abused.

800. The Registrar should also be allowed by law in circumstances where he is not satisfied to use his discretion to verify the background of the directors before registration of a company.

801. Consideration should be made for listed companies to pay transfer taxes for the shares sold on the Stock Exchange.

802. The Registrar should also be allowed by law to use his discretion where he has reasonable suspicion that the amount of capital to be invested could be tainted to ask the applicant to declare the source of such income.

803. The functions of AMLIU should be extended to the Registrar of companies as during the on site visit the Office of the Registrar indicated that it was aware of the DEC and its role but was not aware of the existence of AMLIU and its role.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none">▪ The Registrar's office is not yet fully computerized making it difficult for information to be readily accessed for companies whose records are still kept in a manual form.▪ Shares on a share warrant or bearer shares are transferable by mere delivery thus making it difficult to monitor their transfer.▪ The lack of the jurisdiction by the Registrar to verify on the particulars of the beneficiary owners can easily lead to manipulation of information supplied for such purposes compromising the information contained in the Registrar's records.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

Legal Framework

Transparency Mechanism (c. 34.1)

804. Every document that purports to grant, convey or transfer land or any interest in land must be registered at the Lands & Deeds Registry, under the Lands & Deeds Act Cap 185, section 4. The Miscellaneous Register provides for the registration of Trusts and the trust deeds under the Lands & Deeds Act Cap 185, section 74. The information regarding beneficial ownership and control of trusts and other legal arrangements is recorded and the Act requires that total full disclosure is made in respect of beneficial owners and maintained in the Miscellaneous Register, section 10 of Cap 185.

805. There are full disclosure requirements under the Lands and Deeds Register.

806. Information on beneficial ownership and control is publicly available in the Miscellaneous Register and the Lands and Deeds Register.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2)

807. Information on beneficial ownership and control of legal arrangements is available publicly. The Miscellaneous Register and the Lands Deeds Register are public registers.

Additional elements

808. Information on beneficial ownership and control of legal arrangements is available publicly. The Miscellaneous Register and the Lands Deeds Register are public registers.

5.2.2 Recommendations and Comments

809. It is not clear what is understood by protectors as well as other legal arrangements. The legislation to clarify what is meant by these terms.

810. The minister of Lands should require trustees to maintain records related to the trusts.

811. The legal frameworks should ensure that competent authorities are able to obtain or have access in a timely fashion to adequate accurate and current information on the beneficial ownership and control of legal arrangements and in particular on the settlor, the trustee and beneficiaries of express trusts.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none">▪ It is not clear what is understood by protectors as well as other legal arrangements.▪ The minister of Lands does not require trust providers to maintain records related to the trusts.▪ Competent authorities are not able to obtain or have access in a timely fashion to adequate accurate and current information on the beneficial ownership and control of legal arrangements and in particular the settlor, the trustee and beneficiaries of express trusts.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

Legal Framework

812. Currently, Non profit organisations are governed by the Societies Act Cap 119 generally. The Organisations (Control of Assistance) Act 116 regulates the receipt of financial assistance given to organisations (having a political nature) by foreign governments and their agencies. A new bill for regulating the NPOs is under preparation. . The objects of the Non-Governmental Organisations Bill are

to inter alia, provide for the registration and co-ordination of NGOs and to enhance the transparency, accountability and performance of NGOs.

Adequacy of Laws & Regulations of NPOs (c. VIII.1)

813. Pursuant to the provisions of section 6 of the Societies Act, every society must apply for registration or for exemption under the Act. As at the date of the onsite visit there were over 20,000 societies in Zambia.

814. For the purposes of the Societies Act, “society” means any club, company, partnership or other association of ten or more persons, whatever its nature or object- formed or registered in Zambia, or having its headquarters or chief place of business within Zambia or which is deemed to be an association established in Zambia under the provisions of section 5 of the Act. An association is deemed to be established in Zambia although it is organised and has its headquarters or chief place of business outside Zambia, if any of its office-bearers or members reside in Zambia or is present therein, or if any person in Zambia manages or assists in the management of such association or solicits or collects money or subscription in its behalf.

815. NPOs may have many purposes. However, pursuant to the provisions of section 8 of the Societies Act, the Registrar may refuse to register and shall not exempt any society where it appears to him that such society has among its objects, or is likely to pursue or to be used for, any unlawful purpose or for any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia or that the interests of the peace, welfare or good order in Zambia would otherwise be likely to suffer prejudice by reason of the registration, exemption from registration of such society. Societies registered in Zambia include political parties, religious societies, cultural groups, women’s groups and community service societies.

816. The Registrar of Societies has not conducted any risk assessment of the NPOs regarding misuse of the sector for terrorist financing. No periodic assessment is undertaken on the sector’s potential vulnerabilities to terrorist activities.

Preventing Abuse by Terrorist Organizations (c. VIII.2)

817. The authorities in Zambia have not undertaken any outreach programmes for the NPO sector with a view to protecting the sector from terrorist financing abuse, nor is there any systematic outreach for promoting transparency, integrity, accountability or public confidence in the sector. The authorities would welcome receiving training for the sector in all of these areas and general AML/CT training.

Supervision or monitoring of NPOs that account for significant share of the sector’s resources or international activities (c. VIII.3)

While no risk approach regarding terrorist financing has been applied, the assessment team was informed that random inspections were conducted. No further details were provided to the assessment team on how these inspections are conducted.

Information maintained by NPOs and availability to the public thereof (c.VIII.3.1)

818. Under rule 4 of the Societies Rules every registered society must keep a register of its members in which the following details must be entered:

- the full name and address of each member
- the date on which each member was admitted to membership and
- the date on which each member ceases to be a member.

819. Societies are required under section 17 of the Act to notify the Registrar of any change of name, any change of the provisions of its constitutions or rules, any alteration of objects or where it becomes a branch of, or affiliated to or connected with, any organisation or group of a political nature established outside Zambia. Additionally, under the provisions of Rules 14 and 15 of the Societies Rules, every society must notify the Registrar of any change in office bearers and any change in the situation of the registered office or postal address.

820. Under the provisions of rule 16(1) of the Societies Rules every registered society must furnish to the Registrar an annual return no later than 31st March in every year.

821. Under section 10 of the Societies Act, the Registrar must keep a register in which the particulars given in the application form must be kept. Pursuant to the provisions of rule 17(1) of the Societies Rules all post registration changes that are notified to the Registrar must also be entered in the Register. Pursuant to the provisions of section 10(2) of the Act, any person may search and examine the register subject to payment of a fee and application made to the Registrar.

Measures in place to sanction violations of oversight rules by NPOs (c.VIII.3.2)

822. A wide range of measures is available to sanction violation of oversight measures or rules made by NPOs or persons acting on behalf of NPOs. Pursuant to the provisions of section 13(2) of the Societies Act, the Registrar may cancel the registration of a society where inter alia, the society has in contravention of the Act altered its objects or pursues objects other than its declared objects. Prior to cancelling any registration under the provisions of this section, the Registrar must notify his intention to the society and must give such society an opportunity to submit reasons why the registration should not be cancelled.

823. Under the provisions of section 13(1) of the Act, the Minister may, in his discretion, cancel at any time the registration if any society if he is satisfied that it is expedient to do so on the ground that the society has, in his opinion, among its objects, or is, in his opinion, likely to pursue, or to be used for, any unlawful purpose or any purpose prejudicial to or incompatible with the peace, welfare or good order in Zambia or the interests of peace, welfare or good order in Zambia would, in his opinion, be likely to suffer prejudice by reason of the continued registration of such society.

824. Further where any society fails to notify the registrar of any change in inter alia, its name, objects or any provision of its constitution or rules the society and every office bearer thereof is guilty of a criminal offence. Section 17(2) of the Societies Act refers.

825. Under the provisions of section 6(4) of the Act, any person who knowingly makes any false statement in any application made for registration shall be guilty of an offence.

826. Any breach of the Societies Rules may also lead to criminal sanction. Under the provisions of Rule 19(4) of the Societies Rules, every office bearer and every person managing or assisting in the management in Zambia of a registered society who has been served with an order shall be guilty of an offence.

827. The assessors were not provided with examples of cases where sanctions had been imposed under the Act.

Licensing or registration of NPOs and availability of this information (c.VIII.3.3)

828. Societies must be registered with the Registrar of Societies under the Societies Act. This information is available to the public and other competent authorities at the office of the Registrar of Societies.

Maintenance of records by NPOs and availability to appropriate authorities (c.VIII.3.4)

829. Under the provisions of rule 3(2) of the Societies Rules, every registered society which receives money from any source, whether by way of subscription, donation or otherwise, must keep one or more books of account in which details of all moneys received and payments made by the society must be recorded. There is no requirement under the Act for NPOs to follow a “know your beneficiaries and associate NPOs rule”.

830. There is however, no specific retention period prescribed under the Rules for NPOs to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

831. While there is no explicit requirement under the Societies Act for a registered society to have its financial statements audited it appears under the terms of section 20(1) of the Act that a registered society must have its financial statements audited. Section 20(1) of the Act reads as follows:

“An authorised officer may, at any time by notice under his hand, order any registered society to furnish him, within a time not being less than twenty eight days to be stated in such order, with duly audited accounts of such society.”

832. In accordance with the provisions of section 21(1) of the Act, any order made by an authorised officer in relation to any registered society under the provisions of section 20 is binding upon every officer bearer and upon every person managing or assisting in the management of such society in Zambia who has been served with such an order. Failure to comply with an order under section 20(1) of the Act is an offence pursuant to the provisions of section 21(2) of the Act. The assessors were not provided with details of instances where these powers have been used.

Domestic cooperation, coordination and information sharing on NPOs (c.VIII.4.1)

833. There is no mechanism in place in Zambia to ensure effective domestic co-operation, co-ordination and information sharing among all levels of appropriate authorities or organisations that hold relevant information on NPOs of potential terrorist financing concern.

Access to information on administration and management of NPOs during investigations (c.VIII.4.2)

834. Investigative powers are contained under section 29 of the Act. Under the provisions of section 29 of the Societies Act, an authorised officer may after obtaining a search warrant from a Judge or Magistrate search the place of business and seize all books, accounts, writings, list of members and other articles where in fact or according to reasonable suspicion any society is being used or has been used or is about to be used for unlawful purposes or for purposes prejudicial to or incompatible with the maintenance of peace, order and good government or that any society is being used or has been used or is

about to be used for unlawful purposes at variance with its declared objects. For the purposes of the Act, “an authorised officer” means the Registrar, an Administrative Officer, a police officer in charge of a District Police Station and any police officer of or above the rank of Sub-Inspector.

835. The effective of these provisions could not be assessed as no evidence was provided to the team on how these powers have been used and tested.

Sharing of information, preventive actions and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (cVIII.4.3)

836. At the time of the onsite inspection no mechanism has been developed 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 is a front organisation for terrorist fundraising.

837. In the absence of any case in practice, it does not appear to the assessors that the Zambian authorities have the investigative expertise and the capability to examine those NPO that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.

838. There is no mechanism in place that allow for prompt investigative or preventative action against such NPO that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.

Responding to international requests regarding NPOs-points of contacts and procedures (c.VIII.5)

839. Zambia has not identified appropriate points of contact and procedures to respond to international requests for information regarding particular NPOS that are suspected of terrorist financing or other forms of terrorist support.

5.3.2 Recommendations and comments

840. Authorities in Zambia should review law relating to ensure that NPOs are not misused by terrorist organisations. The provisions for registration, transparency, supervision and investigation of societies must be enhanced to meet international standards. The draft Non-Governmental Organisations bill addresses these issues to some extent.

841. The authorities in Zambia should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs. Zambia should undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse.

842. The Registrar of Societies must be given adequate powers under the law to conduct onsite inspections for effective supervision and monitoring of the NPOs. The Registrar must be given a wider range of administrative measures to sanction violations of oversight measures or rules by NPOs.

843. The office of the Registrar of Societies must be adequately resourced in order to carry out their functions under the governing legislation and also to provide adequate support to the work of law enforcement authorities in relation to terrorism and terrorist financing investigations.

844. NPOs must be required to maintain, for a period of at least 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 a manner consistent with the purpose and objectives of the NPO.

845. Zambian authorities should ensure effective co-operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

846. The capacity of the relevant authorities must be enhanced to ensure that they have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations.

847. Zambia should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) 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 action.

848. The authorities in Zambia must identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> ▪ No risk assessment of the NPOs regarding misuse of the sector for terrorist financing has been conducted. ▪ No periodic assessment is undertaken on the sector's potential vulnerabilities to terrorist activities. ▪ Zambia has not undertaken outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse. ▪ There is no specific retention period prescribed for NPOs to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. ▪ There is no mechanism in place that allow for prompt investigative or preventative action against such NPO that are suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations. ▪ Zambia has not identified appropriate points of contact and procedures to

		respond to international requests for information regarding particular NPOS that are suspected of terrorist financing or other forms of terrorist support.
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6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

849. The PPMLA, the Anti- Terrorism Act and the Extradition Act, Mutual Legal Assistance in Criminal Matters Act, the Narcotic Drugs and Psychotropic Substances Act all have provisions for international co-operation. There is also cooperation through Joint Permanent Commissions, SARPCCO, HONLEA and Interpol.

850. At national level, PPMLA 14 of 2001 establishes the Anti Money Laundering Authority and technical sub committees comprised of various stakeholders. Zambia has a National Task Force that oversees the implementation of ESAAMLG objectives, Zambia's country strategy paper and related activities.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1)

851. The Drug Enforcement Commission has co-operating partners at various levels in accordance with the PPMLA. Section 3 of the PPMLA provides for the formation of the Anti-Money Laundering Authority (AMLA) whose members shall be appointed by the Minister and are to include the AG who shall be chairperson of the Authority, the Inspector-General of the Zambia Police Force, the Commissioner, the Director-General of the Anti-Corruption Commission, the Governor of the Bank of Zambia, the Commissioner-General, of the Zambia Revenue Authority and two other persons. The AMLA oversees the operations of the Anti-Money Laundering Investigations Unit (AMLIU), in particular:

- i) providing general or specific policy directives to the Commissioner who heads AMLIU and
- ii) advising the Minister of Home Affairs on measures to prevent and detect money laundering.

852. Although there are adequate laws creating an obligation for authorities dealing with ML to be formed such as the above provision, the evaluators were not provided with specific policy guidelines issued by such authorities establishing effective mechanisms to enable domestic cooperation and coordination of development and implementation of policies and activities relating to AML. Other than the Authority being in existence in terms of the requirements of the PPMLA, it was difficult to determine the effectiveness of the operational co-operation of the members of the Authority. During the on-site visit the evaluators were not privileged to meet any of the members of this Authority and were not also informed of the arrangement in place between the Minister of Home Affairs and the Authority in terms of complying with the requirement of the Act that the Authority has to advise the Minister of Home Affairs on AML issues.

853. Operational cooperation is also enabled by the provisions of section 6(1) of the PPMLA which requires AMLIU, amongst its functions, to liaise with other law enforcement agencies in the conduct of investigations and prosecutions of ML and to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and supervisory authorities under the Act.

854. An observation was made that the practical co-ordination mechanisms between the AMLIU, the Commissioner as Head of AMLIU and as Head of the DEC, and the other members of law enforcement as provided for by the PPMLA were again difficult to determine as there were no written guidelines or examinable information on the development and implementation of policies and activities designed to enable effective mechanisms of domestic cooperation by the policy makers to combat ML and TF.

855. Some of the stakeholders who are supposed to have a role in the development and implementation of such policies like the Law Association of Zambia were not even aware of the existence of the other policy makers in AML matters, let alone the role and responsibilities of AMLIU in combating ML.

856. An observation was made that most of the work on ML was being co-ordinated by the Drug Enforcement Commission and the role of the AMLIU in such co-ordination was being over shadowed by the Commission. Even in an earlier report received from the Zambian Authorities themselves through a questionnaire sent to them there was a perception that AMLA was created to guide the DEC with policy, which confirms the confusion which has arisen out of the relationship between the DEC, AMLIU and AMLA.

857. The ESAAMLG National Task Force comprising the Ministry of Finance and National Planning, the Ministry of Justice, the Drug Enforcement Commission, the Anti-Money Laundering Investigations Unit, the Office of Director Public Prosecutions, the Anti-Corruption Commission, the Zambia Revenue Authority, the Bank of Zambia and the Zambia Police Service promotes co-operation on AML. Additional representation is at the Task Force on Corruption where all law enforcement agencies are included.

858. The AMLA, the ESAAMLG National Task Office, the Attorney General's office, the DPP's office, the Zambia Police Service (note should be taken that ZPS does not have a special unit that deals with AML/CFT investigations), the DEC and the National Task Force on Corruption are meant to facilitate cooperation on AML.

859. At the time of the onsite visit there were no specific domestic structures to cooperate and coordinate the development and implementation of policies and activities to combat terrorist financing.

Additional elements

Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c.31.2)

860. In terms of section 6(1)(d) of PPMLA, AMLIU is supposed to supervise the reporting requirements and other administrative obligations imposed on regulated institutions and supervisory authorities. This section provides for consultation between AMLIU and the financial sector through the reporting structures on AML. Furthermore, section 12 (4) of the Act mandates supervisory authorities to issue directives to the regulated institutions. The directives provide administrative mechanisms for consultations between the supervisory authority and the regulated institutions in AML matters.

861. From the interviews conducted with the stakeholders or the to be regulated institutions, particularly the DNFBPs, it was observed that although AMLIU is empowered in terms of the law to ensure that mechanisms are in place for consultations with the regulated institutions, it had not fully embarked on this role as at the time some of the stakeholders, like the Micro Finance Association of Zambia were not aware of their domestic responsibilities and the role of AMLIU in combating ML.

862. Practical assessment of the mechanisms for consultation between the competent authorities and regulated institutions were also difficult to determine as no clear guidelines or examinable information to determine and confirm the extent of such mechanisms was available.

863. Mechanisms for consultations between competent authorities and the financial sector and other players that are subject to CFT laws, regulations, directives, guidelines and other measures were not available at the time of the onsite visit as the Anti-Terrorism Act had just been enacted and there was no national framework yet.

c.32.1

864. Zambia does not currently have mechanisms to review the effectiveness of its systems to combat money laundering and terrorist financing or such information was not provided to the assessors

6.1.2 Recommendations and Comments

865. Proper policy guidelines should be issued under the PPMLA promoting development and implementation of domestic cooperation amongst stakeholders in AML\CFT matters

866. The AMLA should play a more active role in the co-ordination and implementation of AML policies as it is composed of nearly all the stakeholders dealing with AML.

867. The roles of the DEC and those of the AMLIU need to be properly streamlined so that the DEC does not appear to be over shadowing the role played by AMLIU. Currently there appears to be no clear distinction between the co-ordinating roles played by the DEC and the AMLIU.

868. AMLIU should be properly resourced to enable it carry out awareness programs on the need for cooperation and coordination of AML matters with other stakeholders, particularly DNFBPs.

869. There should be a national framework, which is not *ad hoc*, to cooperate and coordinate the development and coordination of policies and activities to combat both ML and TF.

870. Zambia should put in place mechanisms to review the effectiveness of its systems in combating ML and TF on a regular basis.

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> ▪ No mechanisms have been put in place in terms of the PPMLA to enable domestic cooperation and coordination of AML matters. ▪ Some of the structures, such as National Task Forces, are on ad hoc basis. ▪ Effectiveness of domestic development and implementation of cooperation and coordination of policies relating to AML/CFT could not be determined. ▪ There is no clear distinction between the coordinating roles played by

		<p>the DEC and AMLIU in AML.</p> <ul style="list-style-type: none"> ▪ Lack of frequent engagement of other stakeholders in AML matters by AMLIU ▪ Lack of national framework dealing with domestic cooperation and coordination of matters on FT.
R.32.1	NC	<ul style="list-style-type: none"> ▪ No mechanisms in place to review the effectiveness of systems for combating ML and TF on a regular basis.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Legal Framework

871. Under the Zambian constitution international instruments do not have any legal force unless domesticated. The Anti Terrorism Act under the 5th schedule has domesticated the major conventions related to terrorism and financing of terrorism.

Ratification of AML/CFT Related Conventions (c. 35.1 & c. I.1)

872. The Government of the Republic of Zambia did accede to the 1961 UN Convention on Narcotic Drugs as amended by the 1972 Protocol. The Government also acceded to the 1971 UN Convention on Psychotropic Substances. Further, on **the** 28th of May 1993, Zambia ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Zambia has since domesticated the provisions of the international conventions in the Narcotic Drugs and Psychotropic Tropic Substances Act.

873. Further, Zambia is a party to the SADC Protocol on the Combating of Illicit Drugs. Zambia also signed a bilateral agreement with India in 1993 on the combating of drug trafficking and related issues. This agreement was necessitated by the fact that the Indian sub-continent was at the time the main supplier of mandrax (methaqualone) and heroin to Zambia.

874. Zambia acceded to the Palermo Convention on the 24th of April 2005. Zambia has largely implemented the provisions of the Palermo Convention. Section 9 of the PPMLA criminalizes participation in an organised group. The section covers a wide range of offences including conspiring to commit an ML offence. Section 7 criminalizes laundering of proceeds of crime through receiving, possessing, concealing, disguising or disposing of such proceeds. The Act provides for the creation of the AMLA and AMLIU as measures to combat ML. Liability of legal persons is created by section 8 of PPMLA which provides as follows:

Where an offence under the provisions of this Act is committed by a body of person, whether corporate or unincorporated-

- (a) *the body of persons shall be guilty of an offence and liable upon conviction to a fine not exceeding four hundred thousand penalty units; and*
- (b) *every person who, at the time of the offence, acted in an official capacity for or on behalf of such a body of persons, whether as a Director, Manager, Secretary or other similar*

capacity, or was purporting to act in such capacity and who was involved in the commission of that offence, shall be guilty of that offence;

and shall be liable, upon conviction to a fine not exceeding one hundred and seventy thousand penalty units or to imprisonment for a term not exceeding ten years or both.

875. The PPMLA provides for the prosecution, conviction, sanctions and sentences for ML offences. In Part VI, the PPMLA provides for the seizure and forfeiture of property relating to ML. Procedures on disposal of the confiscated proceeds of crime or property are also provided for under Part VI of the PPMLA. The provisions of the Mutual Legal Assistance in Criminal Matters Act apply to offences of ML. Any offences under the PPMLA are deemed to be extraditable offences under the provisions of the Extradition Act.

876. However, note should taken that the PPMLA does not cover all the provisions of the convention. For instance, it does not provide for:

- assistance to witnesses and their protection;
- witness relocation in ML cases;
- it does not define predicate offences as well as a serious offence;
- the development of preventive measures against ML and;
- the development and evaluation of national ML projects.

Implementation of the Terrorist Financing Convention

877. Zambia acceded to the International Convention for the Suppression of the Financing of Terrorism of 1999 in 2007. In September 2007, Zambia enacted the Anti-Terrorism Act. The Act domesticated most of the provisions set out in the Suppression of Financing of Terrorism Convention, in particular articles 2-18 of the Convention. Section 2 (1) of the Act cites terrorism and terrorist acts to be of the scope of the offences created and listed in the counter terrorist conventions including the SFT Convention. The Act also captured most of the international standards set by the FATF in the nine special recommendations. As the anti-financing of terrorism laws were recently promulgated into law, it was difficult to determine how widely and effectively they have been used in Zambia.

Implementation of the UN Special Resolutions

878. Section 16 of the Anti-Terrorism Act provides for the simultaneous recognition under the Zambian jurisdiction of organisations declared by the UN Security Council in terms of the UN Special Resolutions to be terrorist organisations, therefore the Security Council declaration has equal force in Zambia. Under this section Zambia has an obligation to report of the existence of such an organisation within its jurisdiction to the UN Security Council. The section also gives the Minister a wide discretion based on reasonable grounds to declare, by notice in the Gazette, an organisation specified for engaging in terrorist activities. However, by the time of the on site visit there were no reports of the Minister having yet taken such measures against any organisation and the reporting systems in place to facilitate such reporting, therefore the extent of the implementation of the UN Security Council Resolutions could not be determined.

879. The country signed the UN Convention against Corruption on December 11, 2003 which is yet to be ratified. The provisions of this convention are captured in the Anti-Corruption Commission Act, which some of its provisions are under review for possible amendments. Zambia also signed the African Union (A.U.) Convention on Preventing and Combating Corruption.

Additional Elements (Other relevant international conventions, c. 35.2)

880. Zambia is also a member of the African Heads of the National Law Enforcement Agencies (HONLEA), the International Police Organization (INTERPOL) as well as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). The Drug Enforcement Commission has alongside the Zambia Police Service participated in SARPCCO meetings, especially in the field of drug control matters.

881. Zambia also signed the AU Convention on Preventing and Combating Corruption and ratified it on the 26th of March 2007.

6.2.2 Recommendations and comments

882. It is recommended that Zambia should amend the PPMLA to provide for witness assistance, their protection and relocation.

883. PPMLA should be amended to meet the international standards on the definition of predicate offences.

884. Zambia should develop preventive measures and national projects against ML that can be evaluated to enhance the implementation of the Palermo Convention

885. Zambia should develop a national framework and administrative mechanisms to enable implementation of both the provisions of the Anti-Terrorism Act, the UN Convention on the Suppression of Financing of Terrorism and Security Council Resolutions 1267 and 1373.

886. Once an authority is established to administer the Anti-Terrorism Act, it is recommended that it also develops guidelines to assist stakeholders to implement the Act.

887. In the event of Zambia dealing with persons listed under UN Security Council Special Resolutions, to keep records or statistics of such matters and the reports to the Security Council.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none">▪ Zambia has not fully implemented the Palermo Convention as it has no provisions for witness assistance, protection and relocation.▪ No adequate training programmes and technical assistance on ML at national level to enhance effective implementation of the UN Palermo Convention.▪ Zambia has not developed preventive measures and national projects against ML that can be evaluated to determine implementation of the

		convention.
SR.I	NC	<ul style="list-style-type: none"> ▪ No effective framework to administer implementation of CFT matters. ▪ Standard of implementation of CFT provisions could not be determined. ▪ No guidelines to the regulated institutions in implementing CFT laws. ▪ No clear accountability on who handles and report on UN Security Council Special Resolutions.

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Legal Framework

888. Zambia enacted the Mutual Legal Assistance in Criminal Matters Act Cap 98 (MLACMA) on the 13th April 1993. The Act provides for mutual legal assistance between Zambia and other jurisdictions. The Act makes it possible for mutual legal assistance to be provided in the absence of bilateral or multilateral agreements. In such instances, the Minister responsible for Home Affairs may in agreement with the Minister of Legal Affairs, enter into an administrative arrangements with another state requiring such assistance. The Attorney General, in terms of Section 2 of MLACMA is the competent authority who receives and attends to the requests.

889. The following international conventions of which Zambia is a party to, widens the scope of Zambia's participation in international cooperation:

- UN Convention against Illicit Trafficking Drugs and Psychotropic Substances
- UN Convention against Trans-national Organised Crime
- UN Convention against Corruption (signatory), and
- International Convention for the Suppression of Terrorism.

890. At a regional level Zambia has also signed the SADC Protocol on Mutual Legal Assistance.

Widest Possible Range of Mutual Assistance (c. 36.1 & c. 36.1.1)

891. The powers of the AG to accept or refuse a request for mutual legal assistance requests are provided for under Sections 10 and 11 of the MLACMA. Part 2 of the Act sets out the nature of mutual legal assistance that can be given by the AG. The nature of mutual legal assistance ranges, from enforcing payment of fines (section 12) imposed by a court of criminal jurisdiction of the foreign state, search and seizures of information, documents or evidence (section 13), taking of evidence or recording of statements from persons, providing originals or copies of relevant documents and records as well as any other information and evidentiary items (section 20 (2)) and seizure or confiscation of assets (section 14).

892. The Act does not provide for the facilitation of voluntary appearance of persons for the purposes of providing information or testimony to the requesting country neither does it provide for the service of judicial documents.

893. The AG of Zambia can request for recording of foreign evidence and service of documents abroad.

894. Section 28 of the PPMLA cites the MLACMA as applying to all offences committed under it except where the provisions of the MLACMA are inconsistent with PPLMA.

c. 36.1.1

895. The Mutual Legal Assistance in Criminal Matters Act does not provide specific time or period within which the AG should provide the assistance requested. It only requires the requesting state, in terms of section 10 (2)(f), to state the details of the period within **which** it wishes the request to be complied with.

Restrictions on Mutual Assistance (c. 36.2)

896. In terms of section 11 (1) of the MLACMA, the AG is mandated to refuse any request which in his opinion relates to:

- prosecution or punishment of the person for an offence of a political character,
- where there are substantial grounds to believe that the request was made for the purposes of prosecuting, punishing or to cause any other prejudice to the person on account of race, sex, religion, nationality or political opinions.
- where the request relates to a prosecution or punishment for an offence of which if it had occurred in Zambia would have been an offence under the military laws of Zambia.
- where the granting of the request would prejudice the sovereignty, security or the national interest of Zambia.
- where the prosecution relates to an offence for which the person has already been acquitted or pardoned by a competent of the foreign state or undergone punishment for the same offence.
- where the foreign state is not a state to which the MLACMA applies.

897. The Mutual Legal Assistance in Criminal Matters Act, under section 11(2) provides for situations where the AG can use his discretion and refuse to accede to a request as follows:

- where the request relates to the prosecution or punishment of a person for an offence that if it had occurred in Zambia it would not have been an offence in terms of the Zambian Laws.
- where the offence, if it had occurred in Zambia, it would have been prescribed due to passage of time.

- where the provision of the assistance could prejudice an investigation or proceedings relating to a criminal matter in Zambia.
- where the provision of the assistance would prejudice the safety of any person whether in Zambia or outside.
- where provision of such assistance would cause an excessive burden on the resources of Zambia.

898. The reasons outlined above for the refusal to offer mutual legal assistance do not appear to be unreasonable, disproportionate or unduly restrictive.

Efficiency of Processes (c. 36.3 & c. 38.1)

899. Section 10 of Mutual Legal Assistance in Criminal Matters Act provides for such processes and states:

- (1) A request by a foreign state for international assistance in a criminal matter may be made to the Attorney-General or a person authorised by the Attorney-General, in writing, to receive requests by foreign states under this Act.
- (2) A request under subsection (1) shall be accompanied by-
 - (a) the name of the authority concerned with the criminal matter to which the request relates;
 - (b) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (c) a description of the purpose of the request and the nature of the assistance being sought;
 - (d) details of the procedure that the foreign state wishes to be followed by Zambia in giving effect to the request, including details of the manner and form in which any information, document or thing is to be supplied to the foreign state pursuant to the request;
 - (e) statement setting out the wishes of the foreign state concerning the confidentiality of the request and the reasons for those wishes;
 - (f) details of the period within which the foreign state wishes the request be complied with;
 - (g) if the request involves a person travelling from Zambia to the foreign state, details of allowances to which the person shall be entitled, and of the arrangements for accommodation for the person, while the person is in the foreign state pursuant to the request;
 - (h) any other information required to be included with the request under a treaty or other arrangement between Zambia and the foreign state; and
 - (j) any other information that may assist in giving effect to the request.

900. But failure to comply with this subsection shall not be a ground for refusing the request.

- (3) Where a request by a foreign state is made to a person authorised under subsection (1), the request shall be taken, for the purpose of this Act, to have been made to the Attorney-General.
- (4) Where a request is made to the Attorney-General by a foreign state the Attorney-General shall deal with the request in accordance with the treaty and this Act.

901. Note should be taken that although section 10(1) of the Act says, “----- or a person authorised by the Attorney General, in writing, to receive requests by foreign states under this Act.” during the on-site visit none of the state advocates in the AG’s Office appeared to have that mandate even in his absence as no one seemed prepared to give the assessors the required information on mutual legal assistance requests handled. The state advocates met advised that this was the sole responsibility of the AG therefore they could not provide with the specific information required such as the statistics of how many requests had been received, how long they took to be processed, how many were successful, how many were turned down and so on.

902. The procedures described above do not give the time frame in which a request received is dealt with so that one is able to determine whether it is efficiently executed without any undue delays. Can such timeframes be provided?

Fiscal Matters and Mutual Assistance (c. 36.4)

903. This is not one of the grounds on which a request may be refused in terms of section 11 of the Mutual Legal Assistance in Criminal Matters Act

Secrecy and Confidentiality (c. 36.5)

904. This is not one of the grounds stated as a ground for refusal under Mutual Legal Assistance in Criminal Matters Act.

Powers of Competent Authorities (applying R.28, c. 36.6)

905. A police officer, in terms of section 13 of MLACMA, upon securing a search warrant from a Magistrate can proceed to compel the production of, search for and seize and confiscate records and any other information required relating to the offence to assist the requesting state..

Avoiding Conflicts of Jurisdiction (c. 36.7)

906. This is provided for in the Mutual Legal Assistance in Criminal Matters Act.

International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1)

907. Section 42(1) of the Anti-Terrorism Act provides as follows:

(1) Where a foreign State makes a request for assistance in the investigation or prosecution of an offence constituting an act of terrorism, or for the tracking, attachment or forfeiture of terrorist property located in Zambia, the A.G. may –

- (a) execute the request; or
- (b) decline to execute the request, or delay its execution, and inform the foreign State making the request of the reasons therefore.

(2) Where the A.G. decides to execute a request for assistance under subsection (1), the A.G. may in the manner prescribed apply to the High Court for -

- (a) an order in writing authorising an officer –
 - (i) to search the premises, search any person and inspect any document, record or thing, found therein; and
 - (ii) to seize and retain any relevant material, including any relevant document, record or thing, found therein.
- (b) a property tracking order under section twenty-five;
- (c) an attachment order under section twenty-six; or
- (d) an order for forfeiture of property under section twenty-eight.

(3) The High Court may make an order under this section on such conditions as it may deem fit to impose, including any conditions as to payment of debts, sale, transfer or disposal of any property.

908. The above section provides for mutual legal assistance to a foreign State in the investigation and prosecution of a case involving CFT. The section upon obtaining of an order from the High Court by the A.G. provides for the production, search and seizure of any material, including any relevant document, record or thing, found therein by an officer. Although the section does not specifically provide for the taking of evidence or statements from persons, by using the term investigations it is assumed that goes as far as allowing recording of evidence as part of the investigation. The section provides for the tracking, attachment or forfeiture of terrorist property located in Zambia.

909. The section however does not provide for facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country, effecting service of judicial documents, identification, freezing, seizure, or confiscation of instrumentalities used for FT and assets of corresponding value. The provisions of this section on mutual legal assistance are therefore not exhaustive to cover those provided for by the Palermo Convention which are also required to be complied with under SR V.

910. The section cited above does not give specific guidelines as to the time within which the assistance asked for should be provided making it difficult to determine whether such assistance is provided for in a timely, constructive and effective manner. Statistics on such requests was again not provided to determine whether there have been any requests relating to FT.

911. Part VII of the Anti-Terrorism Act which provides for mutual legal assistance does not take into account the provisions of the MLACMA to compliment it. The absence of reference to the MLACMA in the Anti-Terrorism Act makes the legislature's intentions unclear as to whether mutual legal assistance to be provided in FT cases is only to be limited to the provisions of mutual legal assistance as specified by the Anti-Terrorism Act, or can be extended in areas where it does not adequately provide to include provisions of the MLACMA.

Provision of Assistance in Timely, Constructive and Effective Manner under SR V (applying c. 36-1-1)

912. Section 42(2) of the Anti-Terrorism Act which provides for the execution of the requests from other states by the AG does not provide for a specific time frame for such execution.

913. Section 10(2)(f) of the of the MLACMA, if it is applicable to financing of terrorism cases provides for the requesting state to indicate the time within which it expects the request to be complied with. The assessors could not verify whether any applications requesting for mutual legal assistance involving financing of terrorism had been received and if so, how much time it had taken the AG to assist with the information required, particularly whether it had been able to respond within the time specified by the requesting state as provided for by this section.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance under SR V (applying c. 36.2)

914. The provisions of section 42(1) of the Anti-Terrorism Act give the AG the discretion to execute or to refuse to execute a request for mutual assistance. Section 44 of the same Act gives further guidelines on what is required for such a request to be met. Included in these requirements is the need for the request to be in writing, dated and signed by or on behalf of the person making it. Subsection (3) to this section sets out the following:

A request shall-

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected offence related to terrorism ;
- (b) state the grounds on which any person is being investigated or prosecuted for an offence related to terrorism or details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution or financial service provider or other person believed to have information, documents, record or materials which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, financial service provider or other person any information, document, record or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and the person to whom any information, document, record or material obtained pursuant to the request is to be produced;
- (g) state whether an attachment order or forfeiture order is required and identify the property to be the subject of such an order; and

(h) contain such other information as may assist the execution of the request.”

915. Subsection (4) of section 44 proceeds to provide that “a request shall not be invalidated for purposes of this Act or any legal proceedings by virtue of any failure to comply with subsection (3) where the AG is satisfied that there is sufficient compliance to enable the execution of the request.”

916. The above provisions seem to provide a wide base for the AG to execute mutual assistance requests without such requests being subjected to unreasonable, disproportionate or unduly restrictive conditions. It appears once the request meets the expectations of the AG then he can use his discretion to have it complied with regardless of its failure to meet some of the requirements set out in subsection (3) above.

917. This part of the Act compared to the provisions of the MLACMA which explicitly sets out the grounds upon which a request for mutual assistance can be refused by the AG, does not provide for grounds upon which the AG can take such similar action. The Anti-Terrorism Act therefore appears to give the AG a wider discretion in exercising his powers to accede or not to accede to mutual legal assistance requests compared to the MLACMA.

Efficiency of Processes under SR V (applying c. 36.3)

918. The time taken by the AG to receive a request, the procedure followed if any for such a request to get to him, how much time it takes him to respond to such requests and the procedure followed by him in returning the information gathered relating to the request could not be determined as the A.G. who was supposed to assist with such information was away. It also could not be determined whether the AG’s Office as the office seized with dealing with such requests would at times receive informal requests and if it did how much time it took it to respond to such requests and the procedure it followed in transmitting such information to the requesting state.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters under SR V (applying c. 36.4)

919. The Anti-Terrorism Act, in the Part which provides for mutual legal assistance does not specifically set out the grounds upon which execution of a request can be declined by the AG but seems to leave such grounds to the discretion of the AG. Under the MLACMA, the fact that an offence is considered to involve fiscal matters is not one of the reasons for the AG to deny the requesting state assistance. It could not be verified from the authorities what actually happens in practice as all such questions were said to be the AG’s domain and he was not present to guide the assessors.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws under SR V (applying c. 36.5)

920. The Anti-Terrorism Act has got no specific provisions dealing with secrecy and confidentiality clauses but in terms of section 44(2) of the Act once the AG has decided to execute the request, he can proceed to apply for an order from a judge of the High Court authorising an officer to access information including banking records in financial institutions. The practical aspects of compliance with such orders by financial institutions again could not be determined neither could it be determined how many of such orders have been appealed against by the financial institutions on the basis of confidentiality.

Availability of Powers of Competent Authorities under SR V (applying c. 36. 6)

921. In terms of section 44(2), (3) of the Anti-Terrorism Act once the order applied for by the AG has been granted by the judge, an ‘authorised officer’ who is defined in terms of section 2 of the Act as a police officer, a customs officer, an immigration officer, an army officer, an intelligence, an officer from the DEC and an officer from the Anti-Corruption Commission can compel the production of, search persons or premises and obtain business and transaction records or thing found therein

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2)

922. In terms of Section 11 (2) MLACMA, in the absence of dual criminality the Attorney General can use his discretion to either refuse or allow a request. The section reads as follows:

- (2) A request by a foreign state for assistance under this Act *may* be refused if, in the opinion of the Attorney-General-
 - (a) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence against Zambian law;
 - (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 state and a similar act or omission occurring outside Zambia in similar circumstances would not have constituted an offence against Zambian law;

923. In terms of the section cited above, where there is dual criminality and Zambia does not have any legal or practical impediments to rendering mutual legal assistance where the conduct underlying the offence is criminalised in both countries, it does not appear that technical differences between Zambia and the requesting state would cause any impediments to the provision of mutual legal assistance.

International Cooperation under SR V (applying c. 37.1-37.2 in R 37)

924. Part VII of the Anti-Terrorism Act makes it possible for Zambia to give the widest range of assistance possible in mutual assistance. This part however does not link the nature of assistance provided to any of the international conventions to which Zambia is a party to. Sections 41 and 42 of the Act sets out the kind of assistance which can be provided and the procedure which can be followed by the AG in securing such assistance which includes applying for court orders for the production of the required evidence and exhibits.

925. Section 45 of the Act makes it possible for Zambia to provide the greatest measure of assistance possible in extradition proceedings regarding offences relating to financing of terrorism. The section makes it possible for Zambia where there is an extradition agreement in place to provide other state party to the Convention for the Suppression of the Financing of Terrorism with extradition in respect of offences falling within the scope of the convention. And where there is no extradition agreement in existence but the requesting state being party to the convention the Minister of Foreign Affairs, in terms of section 45(2) through an order published in the Gazette deem the counter-terrorism convention to be an extradition agreement between Zambia and the requesting state which will provide for extradition in respect of offences falling within the scope of the convention.

926. The assessors could not get information on whether any of the above provisions have been applied yet in respect of matters relating to counter financing of terrorism and no statistics were provided by the authorities

c.38.1

927. The Mutual Legal Assistance in Criminal Matters Act addresses this and will be enhanced by the SADC Protocol, once in force.

Property of Corresponding Value (c. 38.2)

928. The Mutual Legal Assistance in Criminal Matters Act does not address this issue.

Coordination of Seizure and Confiscation Actions (c. 38.3)

929. Sections 13 to 17 of the Mutual Legal Assistance in Criminal Matters Act provide for the coordination and confiscation actions. In particular, section 13 of the MLACMA provides that the provisions of the Criminal Procedure Code shall apply with necessary modifications in respect of searches and seizures under the AMLACMA except where the Criminal Procedure Code is inconsistent with the AMLACMA. Where the AG has approved the request of a foreign state to have a search or a seizure carried out in Zambia regarding an offence with respect to which the foreign state has jurisdiction, the AG shall authorise a police officer to apply *ex parte* for a search warrant to a magistrate. In terms of the search warrant, the police officer will be entitled to seize any document, records or thing referred to in the warrant. Although Zambia has ratified the International Convention Against Transnational Organised Crime which ordinarily would give it more opportunities to enter into bilateral agreements and enhance effectiveness in its international cooperation at the time of the assessment, the authorities did not assist with giving the assessors a list of bilateral agreements which had been entered into relating to mutual legal assistance in criminal matters.

International Cooperation under SR V (applying c .38.1-38.3 in R.38 c.V.3):

930. The current Mutual Legal Assistance in Criminal Matters Act does not provide for an effective and timely response to mutual legal assistance requests by foreign countries relating to the identification, freezing, seizure and confiscation of laundered property, proceeds, instrumentalities used or intended to be used in the commission of an ML, FT or other predicate offences.

931. Section 42 of the Anti-Terrorism Act mandates the AG to execute or decline mutual legal assistance requests relating to the tracking, attachment or forfeiture of terrorist property located in Zambia. The AG, where he accedes to execute such requests, will have to apply to the judge of the high court for an order in writing authorising an officer to search and seize the relevant material, or to apply for a property tracking order in terms of Section 25 of the same Act or an attachment order in terms of section 26 of the same Act or an order for forfeiture of the property in terms of section 28 of the Act in the High Court. Mutual legal assistance given to foreign states relating to property tracking orders, attachment and forfeiture of property will be provided with certain modifications where necessary in respect of acts done or alleged to have been done outside Zambia which acts would have constituted an offence under the Act or if the act had occurred in Zambia it would have constituted an offence. However it is not clear from the provisions of this section whether the AG is equally empowered to apply for enforcement of foreign orders relating to tracking, attachment and forfeiture of property relating to financing of terrorism offences.

932. However, the Anti-Terrorism Act does not provide for identification, freezing, seizure or confiscation where the mutual legal assistance requests relate to property of corresponding value.

933. The Anti- Terrorism Act which provides for the Convention for the Suppression of the Financing of Terrorism to be given effect affords other state parties to the Convention a moderate measure of assistance relating to extradition proceedings in respect of terrorist financing offences.

Asset Forfeiture Fund (c. 38.4)

934. There is no provision for the establishment of an Asset Forfeiture Fund neither is it in existence in both the PPMLA and the Anti-Terrorism Act. Confiscated funds are deposited into the general revenues of the Republic.

Sharing of Confiscated Assets (c. 38.5)

935. There are no provisions providing for sharing of confiscated assets.

Additional elements (R 38) (applying c. 3.7 in R. 3, c. 38.6)

936. The provisions of the enforcement of foreign judgements (Reciprocal Enforcement Act (**Cap 84**)) provides for recognition of foreign orders for the confiscation of assets from organisations principally criminal in nature.

Additional Elements SR V (applying c. 38.4-38.6 in R. 38, c. V.7)

937. The laws of Zambia currently do not provide for the creation of an asset forfeiture fund into which confiscated/forfeited property can be deposited.

938. The Anti-Terrorism Act, PPMLA, the MLACMA and the Extradition Act do not provide for the sharing of forfeited assets between Zambia and other countries where the confiscation of such property has been as a result of coordinated law enforcement efforts.

939. Foreign non criminal confiscation orders are recognised in Zambia and are enforced under both the Foreign Judgments Reciprocal Enforcement Act (Cap 84) and the Reciprocal Enforcement of British Judgments Act 199 on condition that the judgment is final and conclusive.

International cooperation

Attorney General's Office

940. The AG'S Office facilitates all international cooperation. It receives and replies to MLA requests. Although Zambia has signed and ratified almost all the relevant international instruments pertaining to ML and FT, it was not possible to determine the effectiveness of such instruments where international co-operation and mutual legal assistance was concerned as this was said to be the domain of the AG, who was away therefore no one could assist with statistical data on such matters.

941. It was therefore not possible to determine how many cases requiring mutual legal assistance had been received by Zambia during the past three to four years, what the assistance sought related to, how many requests were acceded to, how many were refused and the grounds for such refusal if any were given. It was not possible to determine whether Zambia has received requests requiring taking of evidence or statements from persons, effecting service of judicial documents, facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country, identification,

freezing, seizure or confiscation of assets laundered or intended to be laundered, proceeds of ML, assets intended to be used for FT, instrumentalities of ML and FT and assets of corresponding value.

942. The time taken to provide mutual legal assistance and the standard of such assistance was not provided. It was not possible to then determine whether the assistance was being provided in a timely, constructive and effective manner. Other than being informed that requests for MLA are handled by the AG himself, due to absence of adequate information from those interviewed, the efficiency of the processes followed in executing MLA requests could not be determined.

943. The laws of Zambia, although they do not deny assistance based on the case involving fiscal matters or the grounds of laws that impose secrecy or confidentiality clauses, it was again not possible to determine whether such requests had been received.

944. The extend of the discretion vested in the AG in deciding whether to accede to an MLA request could again not be determined therefore it was not possible to verify what happens when there is a direct request from a foreign judicial or law enforcement authority to the Zambian competent judicial authority.

945. In Zambia although the MLA in Criminal Matters Act provides for MLA it was reported that administrative processes seem to give much faster results. Two cases were cited where Zambia was assisted to gather evidence from cooperating partners. There is a bill which proposes to set up a forfeiture fund which will include asset sharing but until the bill passes into law, proceeds of crime forfeited to the state are deposited into the State Revenue Fund.

946. Before Zambia accedes to a request, the country making the request has to make an undertaking that the evidence gathered will only be used for the case for which it was made. Zambia as a member of the Commonwealth community receives cooperation from other Commonwealth countries. As MLA matters involve policy issues the AG is expected to make the last decision on the requests.

947. Zambia receives a number of foreign judgments and under the Foreign Judgment and Reciprocal Enforcement Act applications for enforcement of a foreign judgment have to be made to a judge of the High Court. In considering the application the judge will look at the foreign judgment as to whether it was not acquired through falls means and whether the court has got jurisdiction to deal with the matter. Zambia only dealt with two cases in 2007 where enforcement of a foreign judgment was required. Litigation on the two cases is still pending in the High Court. The enforcement of a foreign judgment can only be opposed on the basis that the court has got no jurisdiction to enforce the judgment.

948. In terms of section 11(2) of the MLA in Criminal Matters Act absence of dual criminality may lead to the request being denied.

Ministry of Foreign Affairs

949. The Ministry is responsible for promoting international cooperation. It facilitates the coordination of MLA requests as well as other international assistance requests. The Minister is a member of a national committee which is charged with the implementation of combating terrorism including compliance with the UN Security Council Resolutions 1267 and 1373. The Ministry coordinates the preparation of reports on the Security Council. The Ministry reported that Zambia's mutual legal assistance on criminal matters was treaty based and that it had treaties with many organisations which were however not named. Zambia participates in MLA schemes such as the Commonwealth and SADC. The Ministry indicated that it strives to provide assistance in a timely manner relating to certain cases

where political charges would be preferred. The Ministry consults the AG for recommendations on how cooperation will be provided on matters where dual criminality is not applicable.

950. The Ministry chairs the Global Anti-Terrorism Committee. The Committee is responsible for external relations in the area of terrorism including coordinating reports on the UN Security Council Resolutions 1267 and 1373 and weapons of mass destruction.

951. The Ministry raised concerns over challenges created by porous borders and also the lack of capacity to deal with international cooperation matters. It also pointed out problems in MLA arising from the absence of agreements with Zambia's neighbouring countries, for example Angola and DRC.

President's Office (Anti-Terrorism Office)

952. The Anti-Terrorism Office serves as an intelligence office under law enforcement. It deals with anti-terrorism and also investigates organisations and individuals for terrorist activities. The office monitors multi-national funds and their movement on a daily basis to ensure that they are not being used to finance terrorism. It profiles movement of groups of people to ensure that they are not being used as agents to transport sums of money for purposes of terrorism. The office identifies and ensures that there are no links with terrorist cells in Zambia. It monitors organisations which have received funds for charitable purposes. The office tracks groups that might take out money out of the country for purposes of financing terrorism. It gathers intelligence on organised crime which is drug related, human trafficking, trafficking of mandrax and vehicles into neighbouring countries.

953. In gathering the intelligence the office is allowed to use advanced investigative techniques, which might include wire tapes, cameras. The office assists in the vetting of the NGOs. It has received UN Security list through the Ministry of Foreign Affairs and uses it to monitor the threats of terrorism.

954. The Office sits on the Permanent Commission on Defence and Security with other neighbouring countries. It also attends meetings organized by the Africa Centre for the Threat of Terrorism.

955. The Office has observed that there is resistance to regulate NGOs, that there are concerns that NGOs are using the funds received from donors for unlawful purposes. The Office recommended that there is need for bilateral sharing of information on NGOs with neighbouring countries.

6.3.2 Recommendations and Comments

956. The Evaluation team could not get adequate and useful information on statistics to MLA requests as such function is only left to one person, the AG. In the absence of the AG it was not possible to get accurate information on the nature of the MLA requests received, how many applications were received, the rate at which they were attended to, how many applications were acceded to and how many were denied, reasons for such denials etc.

957. There is need for the function of the AG in attending to MLA work to be shared with senior officers in his office to allow continuity of such work in his absence.

958. The record system method used to capture data on MLA requests needs to be improved on to allow easy access to such statistics by the senior officers in the AG's absence.

959. The role played by the other national stakeholders in international cooperation such as the Ministry of Foreign Affairs, the President's Office requires better coordination in terms of retaining of statistics of requests dealt with and positions taken by each one of the stakeholders on such requests where the involvement of the AG or his office is not necessarily required.

960. The MLACMA should be amended to facilitate the voluntary appearance of persons for the purposes of providing information or testimony to the requesting country.

961. The Act should also be amended to provide for effecting of service of judicial documents from the requesting state.

962. The MLACMA should be amended to provide for effective and timely mutual legal assistance to requests regarding the identification, freezing and seizure or confiscation of property of corresponding value.

963. It is also recommended that the Act should provide average time frames to guide on timely responses to requests for mutual legal assistance.

964. The MLACMA, PPMLA and the Anti-Terrorism Act should provide specifically for the establishment of *an* asset forfeiture fund and for the seizure and forfeiture of property of corresponding value.

965. The three Acts cited above should also provide for sharing of confiscated assets.

6.3.3 Compliance with Recommendations 36 to 38, Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	PC	<ul style="list-style-type: none"> ▪ The mutual legal assistance in criminal matters act does not cover all forms of assistance covered under the international standards. ▪ No information on the kind of MLA offered and the extent to which such assistance was provided. ▪ Statistics on the number of requests which have been received for the past three years, the nature of the applications in terms of assistance required and how they were handled was not available. ▪ There was again no information on how much time it took to provide the assistance required and whether it was provided in a constructive and effective manner.
R.37	NC	<ul style="list-style-type: none"> ▪ Under the MLA in Criminal Matters Act, the absence of dual criminality with the requesting jurisdiction may lead to a request for MLA being denied. ▪ Information on whether or not technical differences in facilitating MLA in cases with due criminality are becoming an impediment was not available. ▪ There were no information of whether MLA has been given in the absence of due criminality and the criteria used.
R.38	NC	<ul style="list-style-type: none"> ▪ It could not be determined whether any mutual legal assistance requests relating to identification, freezing, seizure or confiscation of

		<p>laundered property, proceeds from, instrumentalities used in or intended to be used in the commission of any ML, FT or other predicate offences had been received.</p> <ul style="list-style-type: none"> ▪ It could not be determined whether effective and timely procedures had been followed in response to such requests. ▪ There are no provisions for the establishment of an asset forfeiture fund to deposit confiscated property. ▪ No provisions for asset sharing of confiscated property where there have been co-ordinated investigations. ▪ The MLACMA does not provide for effective and timely mutual legal assistance to requests regarding the identification, freezing and seizure or confiscation of property of corresponding value.
SR.V	PC	<ul style="list-style-type: none"> ▪ There are no provisions for the establishment of an asset forfeiture fund to deposit confiscated property. ▪ No provisions for asset sharing of confiscated property where there have been co-ordinated investigations. ▪ No provision for seizure, confiscation or forfeiture of property of corresponding value. ▪ .Statistics on mutual legal assistance requests, the nature of requests, how they were dealt with: whether they were acceded to or declined, were not provided.

6.4 *Extradition (R.37, 39, SR.V, R.32)*

6.4.1 *Description and Analysis*

Legal Framework

966. Extradition is provided for by the Extradition Act Cap 94, Mutual Legal Assistance in Criminal Matters Act Cap 98, the Narcotic Drugs and Psychotropic Substances Act Cap 96, the PPMLA 14 of 2001 and the Anti-Terrorism Act 21 of 2007.

967. In terms of sections 32 to 36 of the Extradition Act extradition will be denied:

- where there is belief that the offence for which the person is sought is of a political character or that the offence is connected to a political offence;
- where there is belief that the prosecution or punishment of the requested person is based on account of his race, religion or nationality or may be prejudiced for any of these reasons;
- where the offences would fall under military law but not being offences under the ordinary criminal law;
- where the person requested is a Zambian citizen unless the law otherwise provides;
- where the offence for which the request is being made is regarded under the laws of Zambia to have been committed in Zambia;

- where prosecution is pending in Zambia for the same offence upon which the request has been made;
- where according to the laws of Zambia or the requesting state the time for the intended prosecution or punishment has lapsed and the person has become immune to such proceedings;
- where the offence is punishable by death under the law of the requesting state but would not call for the same penalty under the laws of Zambia or ordinarily the death penalty would not be applied, unless the requesting country gives such guarantees that the AG considers adequate that the death penalty would not be applied;
- where there is risk of re-extradition to a third country
- where there are conflicting requests made concurrently by more than one country either for the same offence or for different offences.

968. The AG has to refer to the President for a ruling, requests for extradition which he believes to be of a political nature or where the person due for extradition through the magistrate presiding over the request applies to have his case referred to the AG to determine whether the case is political or not.

Dual Criminality and Extradition (c. 37.1 - 2)

969. Absence of dual criminality is a possible ground for refusal of mutual legal assistance under subsection (2) of section 11 of the Mutual Legal Assistance in Criminal Matters Act which provides:

- (2) *A request by a foreign state for assistance under this Act may be refused if, in the opinion of the Attorney-General-*
- (a) *The request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Zambia would not have constituted an offence against Zambian law;*
 - (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 state and a similar act or omission occurring outside Zambia in similar circumstances would not have constituted an offence against Zambian law;*

970. The discretion to provide mutual legal assistance in the absence of dual criminality rests with the Attorney General. In terms of this section the discretion can be used where the request relates to an offence which if the act had occurred in Zambia it would not have been recognised as an offence under its jurisdiction. Such discretion is also extended to offences which will have occurred outside the jurisdiction of the requesting state and the same conduct had it occurred outside Zambia under similar circumstances would not have been recognised as an offence in terms of the laws of Zambia. It could not be determined from the authorities whether any applications for mutual legal assistance have been declined based on the absence of dual criminality.

971. In terms of the section cited above, where there is dual criminality and Zambia does not have any legal or practical impediments to rendering assistance where the conduct underlying the offence is

criminalised in both countries, it does not appear that technical differences between Zambia and the requesting state would cause any impediments to the provision of the required extradition.

Money Laundering as Extraditable Offence (c.39.1)

972. In terms of section 25 of the PPMLA, money laundering is an extraditable offence. The section reads:

‘an offence under this Act shall be deemed to be an extraditable offence under the provisions of Extradition Act.’

973. The procedures to extradite an offender for ML are provided for in the Extradition Act. In addition under section 4 of the Extradition Act any offence which is punishable under the laws of the requesting state and those of Zambia by a maximum term of imprisonment not less than a year or a more severe penalty would be an extraditable offence. However given that there is no definition of a predicate offence and every criminal offence, regardless of its seriousness is regarded as a predicate offence the provisions of this section are likely to cause problems relating to the extradition of offenders to Zambia for any other ML offence where the likely sentence is to be less than 12 months imprisonment. Cases of less than 12 months jail term although recognised in Zambia as ML cases in terms of the above provision would not be extraditable offences.

Extradition of Nationals (c. 39.2)

974. The law allows extradition of Zambian nationals subject to Part II of the Extradition Act, which requires extradition of Zambian nationals to be on a reciprocal basis. Section 34 of the Extradition Act prohibits the granting of extradition where a person required is a citizen of Zambia unless the relevant extradition provisions otherwise provide.

Prosecution of Nationals (applying c. 39.2(b), c. 39.3, c 39.4)

975. This is not applicable in light of 39.2 (a) above which permits the extradition of Zambian nationals.

976. This is not applicable in Zambia’s case as it allows the extradition of its nationals, making the cooperation in procedural and evidentiary aspects required to satisfy the country making the request of a fair trial of the offender in Zambia where the request for the extradition of the Zambian national would have been refused unnecessary.

977. Other than the procedures allowing extradition provided for by the Extradition Act the other measures in place to enable extradition requests relating to ML to be handled without undue delay were not explained, therefore the effectiveness of such measures could not be determined..

Simplified Procedures of Extradition (c39.5) Additional Elements

978. The Extradition Act in terms of section 6 does not allow direct transmission of extradition requests between appropriate ministries. The request has to be made in writing to the AG and should be communicated by a diplomatic agent of the requesting country accredited to Zambia or any other means provided in the relevant extradition provisions. Section 11 of the Act provides for a simplified procedure of extradition of a consenting person who waives formal extradition proceedings.

Additional Element under SR V (applying c.39.5 in R.39, c. V.8)

979. The financing of terrorism is an extraditable offence under the Extradition Act. In terms of section 45 of the Anti-Terrorism Act where there is an extradition agreement in existence between Zambia and another state and both countries are parties to a counter-terrorism convention, the extradition agreement shall be deemed for the purposes of the Extradition Act to include provision for extradition in respect of offences falling within the scope of that convention. Where there is no agreement in place, the Minister responsible for foreign affairs may through an order published in the Gazette treat the counter-terrorism convention for purposes of the Extradition Act as an extradition agreement between Zambia and the other state providing for extradition in respect of offences cited in the convention.

980. Section 6 of the Extradition Act allows for the extradition request to be referred direct to the AG by a diplomatic agent of the requesting country accredited to Zambia or by any other means that might be provided in the relevant extradition provisions. In relation to Commonwealth countries which have been declared by the President through a statutory instrument to be Commonwealth countries, the requests may be made in writing direct to the AG. Such requests must be accompanied by an external warrant for the arrest of the person required.

981. The Extradition Act of Zambia seem to provide for extradition based on other orders other than only a warrant but with the same effect of a warrant issued in the requesting country in accordance with the laws of that country (section 9 of the Act). However the Extradition Act does not provide for a simplified procedure of extradition of consenting persons who will have waived the right to formal extradition proceedings.

Efficiency of Extradition Process and Statistics (c. 39.4 & R.32)

982. The efficiency of the extradition process could not be determined as no specific cases of ML or predicate offences thereof, where extradition has been successfully implemented were cited. Statistics of cases where extradition was successfully implemented were also not provided.

6.4.2 Recommendations and Comments

983. In the absence of verifiable statistics of extradition requests successfully dealt with to finality it was not possible to determine the effectiveness of the extradition system in Zambia.

984. The Zambian Authorities need to compliment the satisfactory legislation they have on extradition with proper maintenance of records on the extradition cases. The records should give the basic information about the request and the time taken to comply with it. The records should also be easily accessible for purposes of information. Zambia needs to maintain records of its international co-operation as well as ML and FT cases dealt with including the predicate offences so that it is able to observe trends used by criminals in committing such offences and do relevant profiling. The records would enable determination of the efficiency with which extradition requests are handled and the number of such requests granted. The records would also provide statistics of the requests denied and the reasons for the denial.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	PC	<ul style="list-style-type: none"> While Zambia has legislation in place which would enable extradition to take place, there is no information on the efficiency and implementation of

		<p>the extradition requests.</p> <ul style="list-style-type: none"> ■ The is no record of how many extradition requests have been handled so far and how many of those dealt with related to Zambian nationals. ■ There was no information on the ability of the Zambian Authorities to timeously and effectively handle extradition requests
R.37	NC	<ul style="list-style-type: none"> ■ Dual criminality is required in both MLA and Extradition cases. Zambia may refuse to assist and extradite a person where there is absence of dual criminality its jurisdiction and the requesting country.
SR.V	PC	<ul style="list-style-type: none"> ■ Part VII of the Anti-Terrorism Act provides for MLA and extradition in CFT cases. The MLA in Criminal Matters Act and the Extradition Act also provides for MLA and extradition in CFT cases. Implementation of these acts however could not be easily determined as there was no information on the cases dealt with relating to MLA or extradition of FT offenders.
R.32	NC	<ul style="list-style-type: none"> ■ The three separate interviews held with the Zambian authorities to get statistics on MLA and Extradition requests dealt with did not give positive results which might have been an indicator that such information was not available.

6.5 Other Forms of International Co-operation (R.40& SR.V)

6.5.1 Description and Analysis

Legal Framework

985. Zambia signed and ratified the SADC Protocol on Combating of Illicit Drugs on the 24th of August 1996 and 30th of October 1998 respectively, the SADC Protocol Against Corruption on the 14th of August 2001 and 8th of July 2003 respectively and the SADC Protocol on Extradition on the 24th of August 2003 and 20th of August 2004 respectively. The regional protocols compliment the other international agreements on AML/CFT that Zambia is already a party to. Zambia has however not yet ratified the SADC protocol on Mutual Legal Assistance in Criminal Matters. Zambia is a member of SARPPCO and has signed a bi-lateral agreement on exchange of information against drug trafficking and money-laundering with India.

Widest Range of International Cooperation and Exchange of Information (c. 40.1- c. 40.11, SR V, c. V 5)

986. In terms of section 6(1) (f) of the PPMLA, AMLIU is supposed to cooperate with other law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecutions of ML offences. Subsection (1)(c) of the same section provides for AMLIU to liaise with other law enforcement agencies in the conduct of investigations and prosecutions of ML offences. The PPMLA however does not specifically provide for AMLIU to enter into bi-lateral or multi-lateral agreements or memoranda of understanding with other FIUs. During the on site visit the assessors were not informed of any MOUs or agreements entered into by the Bank of Zambia on sharing of information, including information on ML and TF. The assessors were also not given any examples of MoU or agreements entered into by AMLIU on exchange of information other than those where information had been exchanged on *ad hoc* bases with competent authorities of other jurisdictions.

987. Section 41 of the Anti-Terrorism Act allows the AG upon request by a competent authority of another jurisdiction to disclose to that authority any information in his possession on actions or movements of persons suspected to be involved in acts of terrorism, use of forged or falsified travel documents by people suspected to be conducting acts of terrorism, trafficking of weapons and sensitive materials for purposes of terrorism, use of communications technologies for purposes of terrorism and on any other contraventions of the Act. The AG however can only disclose such information provided such disclosure is not prohibited by any other provision of the law or will not prejudice the national security or public safety. The section does not provide the time frame within such assistance is supposed to be provided and the manner it is supposed to be provided in terms of usefulness and effectiveness.

988. Although section 6(1)(f) of the PPMLA provides for AMLIU to cooperate with competent authorities in other jurisdictions, neither the section nor the act provides guidelines on the duration within which such cooperation should be given and the manner in which it should be given. Note should be taken that in terms of section 28 of the Act, the MLACMA also applies to offences under the PPMLA. The DEC besides confirming being able to provide information to other competent authorities on *ad hoc* basis, it again was not able to provide the time frame within which such assistance is provided and the manner in which it is provided.

c.40.2, c. V.5

989. As explained in c. 40.1 above, the PPMLA provides for AMLIU to liaise and cooperate with other competent authorities, although the Act does not go as far as specifically providing for AMLIU to enter into MoU or agreements with other FIUs or competent authorities. Section 41 of the Anti-Terrorism Act allows the AG to disclose information relating to suspected acts of terrorism to competent authorities of other jurisdictions under certain conditions. As also highlighted in c.40.1 above, Zambia has signed and ratified some of the SADC protocols which allow and facilitate exchanges of information directly between counterparts. What could not be verified during the on site visit was the effectiveness of using such channels as statistics in such exchanges of information could not be provided.

990. Zambia is a member of both Interpol and SARPCCO which provide gateways for exchange of information but again the effectiveness of these channels could not be determined as no figures of such assistance given by Zambia as a member to these organisations was provided during the on site visit. Zambia is not yet a member of the Egmont Group of FIUs.

c.40.3, c. V.5

991. In terms of section 28 of the PPMLA and sections 41 and 42 of the Anti-Terrorism Act exchanges of information should be possible upon request in relation to both the PPMLA and the Anti-Terrorism Act. Exchanges of information can be done both spontaneously and upon request in terms of the Anti-Terrorism Act but it was not possible for the assessors to determine whether this was being done or not as statistics were not provided.

Making Inquiries and Conducting Investigations on Behalf of Foreign Counterparts (c. 40.4, 40.4.1, & 4.5)

992. Section 6(1)(f) of the PPMLA provides for AMLIU to cooperate with other law enforcement agencies and institutions in other jurisdictions responsible for investigations and prosecution of ML offences. This section can be widely interpreted to include AMLIU having the authority to search its databases for information on behalf of a requesting country. In terms of section 12 of the PPMLA, supervisory authorities and the regulated institutions are both supposed to report to AMLIU. The act does not provide for AMLIU to have authority to directly access the databases of these bodies and institutions

and the assessors were not informed whether this in practice is happening, therefore it was not possible to tell whether AMLIU has direct access to these institutions' databases. It was again not explained, if such access was possible what mechanisms were in place to enable AMLIU to access the databases. The assessors were however informed by both the regulated and public institutions during the on site visit that AMLIU could access information in their data bases upon request. For public institutions which hold public information, AMLIU could access the information like any other person only that it would not pay the search fees normally charged on other persons who/which are not public institutions or law enforcement agencies.

993. At the time of the on site visit the regulatory framework of the Anti-Terrorism Act had not yet been put in place but for purposes of mutual legal assistance in terms of the Act, the AG becomes the competent authority. In terms of section 42 of the Act, where the AG accedes to a request he can apply for an order from the High Court conferring an officer with powers to search and seize electronic and magnetic records which includes disks and computers. The section does not specifically provide for accessing of databases or the appropriate authority to do it.

c. 40.5, c.V.5

994. The PPMLA in section 28 provides for mutual legal assistance for offences committed under the Act to be done in terms of the MLACMA. The MLAMCA and the Anti-Terrorism Act provides for the AG, where he has acceded to the request for mutual assistance in addition to authorising the request to seek orders from the appropriate courts authorising law enforcement agencies to carry out the required investigations in compliance with the request. It does not appear under the current Zambian laws that any law enforcement agency has the jurisdiction to carry out investigations on behalf of a foreign counterpart without the request having been first authorised by the AG.

No undue Restrictions on Exchange of Information (c. 40.6 & 40.7)

995. Section 11(1) and (2) of the MLACMA provides for restrictions relating to mutual legal assistance. The restrictions as provided by the law do not appear to be in any way different from the internationally accepted conditions of providing mutual assistance as set out in international instruments therefore the conditions on exchange of information can not be said to be disproportionate or unduly restrictive. The assessors however could not determine how the restrictions were applied in practice by the AG or the person assigned by him in terms of section 10(1) of the MLACMA in assessing the requests.

996. Refusal to cooperate on the sole ground that the request could involve fiscal matters is not listed as one of the reasons upon which cooperation can be refused (section 11, MLACMA) therefore cooperation extends to all requests for assistance in criminal matters which are not in conflict with the provisions of this Act.

Secrecy or Confidentiality and Cooperation (c. 40.8, c. V.5)

997. The PPMLA in section 14 specifically provides that it shall not be unlawful for any person to make any disclosure in compliance with this Act.

998. Section 24 (5) of the Anti-Terrorism provides that no person shall be liable for making a disclosure in accordance with the Act and that no action, claim or demand shall be taken, made against or of, the person for making a disclosure. Section 24(6) of the same Act further states that the duty to disclose information shall have effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by any written law, applicable to a person.

Safeguards in Use of Exchanged Information (c. 40.9, c. V.5)

999. Although there is a law in place obliging public officers to protect official information obtained during the course of their duties from the interviews conducted with the other stakeholders to AML such as the financial institutions, it did not appear the public officers particularly those in AMLIU were upholding these obligations. The regulated institutions complained of AMLIU officers informing the individuals who had transactions in their accounts reported to AMLIU as STRs and these individuals in turn confronting the financial institutions on the STR..From the reports received the controls and safeguards to secure such information seem not to be adequate.

1000. Section 38 of the Anti-Terrorism Act makes it an offence for anyone to disclose information relating to acts of terrorism investigations

Additional Elements (40.10 and 40.10.1, c. V.9)

1001. Exchange of information with non-counterparts is done indirectly through the Ministry of Foreign Affairs. During the mission visit the Ministry could not guide on specific examples where such requests had been made and the kind of particulars disclosed in the requests.

1002. AMLIU in terms of section 6(1) (b) of the PPMLA can conduct investigations and prosecutions of ML making it a law enforcement type FIU. Section 13 of the PPMLA obliges regulated institutions not to obstruct any investigations into money laundering being done by AMLIU but what is not clear is whether this obligation can be extended to investigations relating to obtaining of information required by AMLIU on behalf of a foreign counterpart FIU. In terms of section 6 (1)(f) of the PPMLA, it is one of AMLIU's major functions to cooperate with other competent authorities responsible for the investigation and prosecution of ML offences and to supervise the Supervisory Authorities and the regulated institutions (section 6(1)(d)) to ensure that they are complying with their obligations. These provisions seem to give AMLIU wide powers to cooperate with both other FIUs and competent authorities and at the same time to have the regulated institutions comply with reporting and administrative obligations placed on them in terms of the Act. It is again not clear whether AMLIU can not use the wide powers it has under this section to ask the regulated institutions to provide relevant information requested from it by a foreign counterpart FIU.

1003. At the time of the on site visit there were no legal structures in place to deal with obtaining of information requested by a foreign FIU from other competent authorities in Zambia other than information obtained through orders secured by the AG in terms of section 42(2) of the Anti-Terrorism Act, authorising officers to gather information requested by a foreign country through the AG.

SR V (applying c. 40.1-40.9 in R. 40, c. V.5)

1004. See write up on R40 above.

Additional Elements (SR V applying c. 40.10-40.11 in R. 40, c. V.9)

1005. See write up R40, c. 40.10-11

Statistics (applying R.32)

1006. The AMLIU has made one (1) formal request with the government of the Republic of Botswana and the request was granted. This led to the arrest of a Zambian national who had fled to Botswana. Although note should be taken that this request was not one of the requests discussed during the mission visit. In general it was observed that statistics relating to international cooperation requests were poorly maintained and no full detail of the requests for purposes of statistics such as the nature of the assistance being requested, nature of the request whether it is based on an agreement or not was not being recorded or such information if it was there was not provided to the assessors.

6.5.2 Recommendations and Comments

1007. Recommended to ratify the SADC Protocol on Mutual Legal Assistance in Criminal Matters

1008. Need for an express provision authorising AMLIU to enter into agreements or MoUs with other FIUs on cooperation and exchange of information.

1009. Provisions authorising the AG to provide mutual legal assistance should provide guidelines on the time frame within which such assistance can be given and the manner it should be given

1010. Statistics of the requests on the exchange of information acceded to and the nature of the assistance required should be easily accessible

1011. Provide AMLIU with powers to access information, including that not yet held by it in relation to requests from foreign FIUs regardless of whether the request related to an STR filed with the FIU in the foreign country.

1012. Need to set up a regulatory framework for matters relating to CFT

1013. There is need to educate the persons immediately in charge of receiving confidential information to keep it safe and prejudice caused by the release of such information to unauthorised persons

1014. Clarification is required on whether AMLIU has powers to ask the Supervisory Authorities and the regulated institutions to provide information in their custody by it on behalf of a foreign counterpart FIU.

1015. Proper recording of statistics on the requests of exchange of information received, those acceded to, those declined, nature of assistance required, those successfully complied with and easy access to such statistics.

6.5.3 Compliance with Recommendation 40, Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	PC	<ul style="list-style-type: none"> • No time frame given for providing assistance and the manner of providing such assistance • Effectiveness of exchange of information could not be determined • Spontaneous exchange of information relating to AML not provided for. • Poor safeguarding of information received from the regulated institutions

		by AMLIU <ul style="list-style-type: none"> • No provisions allowing AMLIU to access directly the databases of the relevant institutions • No statistics maintained on the requests for international cooperation
SR.V	NC	<ul style="list-style-type: none"> • No mechanisms in place to administer exchange of information relating to terrorist financing • No time frame given to handle such requests and the ability of the authorities to provide such assistance in a timely and effective manner could not be verified. Not able to determine proper accountability on the handling of requests relating to FT and whether there has been such requests before. • No proper recording system of international cooperation requests on CFT was provided.

7. OTHER ISSUES

7.1 Resources and statistics

Adequacy of Resources and Training for Law Enforcement and Prosecution agencies (c. 30.1 & 30.2)

1016. Although some statistics was received from AMLIU and the Police, the assessors were of the view that there was poor profiling of such information to create a reliable database on ML and FT cases including their trends and typologies. The regulated institutions which were providing STRs to AMLIU by the time of the mission visit particularly the financial institutions complained that they did not receive feed back at all from AMLIU on what will have happened to the STRs they will have sent and at times not even acknowledgment of receipt of the STRs. The police also indicated that they did not get any information disseminated from AMLIU following STRs for further investigations. The assessors could not get statistics of cases disseminated to the police for further investigations during the interview with the police. The police highlighted that this could be attributed to the dual role played by AMLIU as a recipient of STRs and any investigator of the result of the analysis of the STR. The observation made was that there were no effective mechanisms of information dissemination between AMLIU and other stakeholders to AML/CFT.

1017. The assessors were informed that both the officers from the DEC and AMLIU receive training internally and from abroad. At the time of the on site visit one of the officers with AMLIU had just returned from South Africa where he had been on attachment with the Asset Forfeiture Unit. The assessors however could not get the training programmes for the in-house training of AMLIU officers.

1018. The Customs Department also indicated that it receives both internal and external training courses. The assessors were also informed that the department benefits from the experience gained from interaction with other regional and international customs organisations. The same position was expressed by the Anti-Corruption Commission.

1019. During the interviews with the law enforcement agencies the assessors were informed that some of the training has been provided in-house through tailor made structured courses and some of it through attendance of workshops and seminars both locally and internationally. Again for the in-house

training programs the assessors were not given any samples of the running programs or the previous ones. The regulated institutions which are supposed to receive training programmes from AMLIU for use in implementing the PPMLA in terms of section 6(1) (e) of the same Act informed the assessors that they had not received such programmes and some of them expressed little knowledge of the functions of AMLIU and their obligations in relation to AML.

1020. The law enforcement agencies expressed that although they had autonomy their resources were far inadequate to ensure their sufficient operational independence.

1021. The DEC informed the assessors that at times it requests for the cooperation of the other law enforcement agencies when carrying out sensitive investigations such as the police, the Anti-Corruption Commission and Customs Department. The mechanisms of doing so did not come out clearly but it appeared this was done as when necessary with no standing policy in place to combat money laundering. There was also coordination of investigations at a higher level through the Anti-Corruption Task Force which comprised of officers from nearly all the law enforcement departments but this was said to be an *ad hoc* arrangement and Task Force would be eventually disbanded.

Additional Elements (c.30.4)

1022. The assessors did not have an opportunity to talk to the judges on AML/ CFT matters, however of those interviewed including the DPP's office, the Police, the DEC, the Anti-Corruption Commission and AMLIU, all seem to have some understanding of AML/CFT issues. It was difficult to determine the level of expertise as it varied from one institution to another and from one person to the next. The DPP's Office informed the assessors that it did not handle trials relating to ML but only on appeal to the higher courts and it did not retain statistics on both ML and FT cases. It also had not yet started on specialized prosecution of cases. The interviews reflected that training was needed at all levels from investigation of AML/CFT cases to their prosecution. There is need for the DPP's Office to have specially trained prosecutors on AML/CFT and also to start specialized prosecution which will enable it to come up with trends and typologies in both AML/CFT which will enhance its fight against money laundering and financing of terrorism. The training should also include searches, seizures, confiscation, asset forfeiture etc. It was difficult to come up with a clear picture of how long it took on average for a money laundering case to develop from investigation to finalization of prosecution which could also have been another sign for the need for continuous training of investigators and prosecutors.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	NC	<ul style="list-style-type: none"> • There is no proportionate training of both law enforcement agencies, prosecutors and other court officials on AML/ CFT matters • The DPP does not have specialized training of prosecutors and specialized prosecution of ML/FT cases • The DPP's does not retain statistics on ML/FT cases and its involvement in such cases is limited. • There is need for further training for prosecution, including the court presiding officers, judges on ML/FT trends and typologies and measures relating to AML/CFT.

R.32	PC	<ul style="list-style-type: none"> • Poor communication between AMLIU and other stakeholders to AML. • The institutions did not have programmes for their in-house training • Lack of adequate human and material resources • Lack of coordinated training of stakeholders to AML/CFT • Poor coordination of training programmes by AMLIU to the Supervisory Authorities and Regulated institutions to AML as specified by the law.
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7.2 Other relevant AML/CFT measures or issues

1023. The AMLIU of the Drug Enforcement Commission in Zambia has managed to train several officers in the area of financial investigations. Some officers have even been seconded to other local and international agencies to assist in their operations. For instance, officers have been seconded to the South African Asset Forfeiture Unit.

1024. Zambia is also a member of the African Heads of the National Law Enforcement Agencies (HONLEA), the International Police Organization (Interpol) as well as the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG). The Drug Enforcement Commission has alongside the Zambia Police Service participated in Southern Africa Regional Police Chiefs Coordinating Organisation (SARPCCO), especially in the field of transnational organised crime.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	NC	<ul style="list-style-type: none"> • The definition of ML is not as wide as to include the acquiring of proceeds of crime by any other means. • Not all the relevant requirements of the Palermo Convention are met by the PPMLA. It does not deal with the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights relating to proceeds. • The PPMLA does not specifically provide for a prior conviction of an offender for a predicate offence as not being a prerequisite for the prosecution of a money laundering offence. • The law does not define predicate offences specifically for the purpose of ML. • The courts in Zambia only have limited jurisdiction over offences committed by foreign nationals.
2. ML offence – mental element and corporate liability	NC	<ul style="list-style-type: none"> • The PPMLA does not provide for the intention to commit an ML offence or the negligent element of Money Laundering where a reasonable man receives, possesses, conceals or disposes of property in circumstances where he is expected to have knowledge that such property was realised or derived directly or indirectly from commission of an offence and would be proceeds of crime. Thus, it is not possible for an offence of ML to be inferred from objective factual circumstances.

		<ul style="list-style-type: none"> • Current laws of Zambia do not provide for civil or administrative liability to run parallel with criminal ML proceedings. • Given the current definition of illegal activities and absence of definition either of a predicate offence or a serious offence in the PPMLA, it is not possible to determine whether the sanctions applied are effective, proportionate or dissuasive.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • The forfeiture of property of corresponding value in the absence of the originally acquired property whose value has been determined is not provided for by both the PPMLA and the Anti-Terrorism Act making possession of benefits acquired from proceeds of such crimes lawful. • Both the PPMLA and the Anti-Terrorism Act do not specifically provide for instrumentalities used in or intended for use in the commission of an ML, FT or other offences. • The PPMLA does not specifically provide for property derived directly or indirectly from proceeds of crime such as income, profits or other benefits. • The PPMLA does not also provide for forfeiture of proceeds of crime held by a third party. • The PPMLA does not provide for <i>ex parte</i> applications barring a person charged or about to be charged from dealing, transferring or disposing of property subject to confiscation or forfeiture. • The Anti-Terrorism Act and the PPMLA do not provide for preventive measures to stop persons from entering into contracts where they have knowledge or ought to have

		knowledge that such contracts might have the effect of prejudicing the recovery of property subject to confiscation.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • BFSA does not have enabling provisions to permit sharing of information amongst FIs on correspondent banking, third parties and wire transfers. • In the absence of any judicial pronouncement it is not clear whether the confidentiality provision under section 50 of the BFSA will be overridden by section 14 of the PPMLA. • Weaknesses to secure information which exist at AMLIU.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • There are no provisions in the law or regulations that prohibit financial institutions to keep anonymous accounts or accounts in fictitious names. • There is no provision set out in the law or regulations that requires financial institutions to undertake customer due diligence measures. • There is no requirement set out in the law or regulation that requires financial institutions to identify the customer and verify the customer's identity using reliable, independent source documents, data or information. • There is no requirement set out in law or regulation to require financial institutions to determine the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the

		<p>beneficial owner is.</p> <ul style="list-style-type: none"> • There are no CDD requirements in law or regulation for NBFIs including insurance and security market players. • PPMLA and BoZ AML Directives do not make any reference to terrorist financing. • Financial institutions are not required to perform enhanced CDD for high risk customers. • The laws or regulations do not prohibit opening an account, commencing business relationship or performing a transaction where financial institutions have failed to verify identity of prospective customer. In addition, there is no legal or regulatory requirement to terminate an existing business relationship where the financial institution later fails to verify the identity of the customers. • There is no requirement in law or regulation to ensure that identification documents collected for CDD are kept up-to-date and relevant by undertaking reviews of existing records. • There is no requirement for financial institutions to conduct on-going due diligence. • A requirement to apply CDD measures on existing anonymous customers is not provided for.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There are no legal or regulatory requirements for financial institutions: <ul style="list-style-type: none"> - to put in place risk management systems to determine if customers are PEPs; - requiring senior management approval to establish relationships with PEPs;

		<ul style="list-style-type: none"> - to establish source of wealth and conduct enhanced ongoing monitoring of the relationship.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There are no provisions in the current laws relating to correspondent banking relationship.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> ▪ There are no requirements providing for prevention of the misuse of technological developments in ML/TF schemes. ▪ There are insufficient guidelines in the BoZ Directives on the procedures that must be put into place by banks and other financial institutions to prevent the misuse of technological developments in ML or TF schemes. • There is no requirement for the other financial institutions falling under the supervisory purview of the PIA and the SEC to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> ▪ No supervisory guidance has been issued to address customer introductions by intermediaries and third parties. ▪ There is no requirement for financial institutions to immediately obtain from the third party the necessary information concerning certain elements of the CDD process. ▪ There is no requirement for financial institutions 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. ▪ There is no mechanism in place to determine in which countries the third party that meets the conditions

		<p>can be based.</p> <ul style="list-style-type: none"> • There is no guidance to ensure that the ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party..
10. Record keeping	PC	<ul style="list-style-type: none"> • The laws do not provide for maintenance of records by financial institutions on account files and business correspondence. • The laws do not provide for customer and transaction records and information to be produced on a timely basis to domestic competent authorities upon request.
11. Unusual transactions	PC	<ul style="list-style-type: none"> • There are no provisions requiring the financial institutions 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. • Absence of directives for insurance and securities sectors in respect of complex and unusual transactions.
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> • The DNFBPs are not regulated and of those regulated there are no clear provisions indicating that they have an obligation to comply with AML/CFT requirements. • The DNFBPs are not aware of the existence of AMLIU and how to relate to it. • The AMLIU has not assisted the DNFBPs to develop guidelines to assist them in administering AML/CFT matters. Other than the expected codes of conduct which some of the DNFBPs did not have, none of them had set out written guidelines. The PPMLA provisions on identification and record keeping lack

		<p>specificities on the standard of information expected to be obtained hence there has been no practical effect of this requirement on the DNFBPs.</p> <ul style="list-style-type: none"> • The DNFBPs are not subject to full legal obligations to carry out sufficient CDD and record-keeping requirements • There has been no effort to educate the DNFBPs on their obligations in particular CDD checks, risks relating to non-face to face transactions e.g. transactions involving purchase of immovable assets through lawyers and estate agents, risks related to new technology, unusual and complex transactions which do not seem to make economic sense.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> ▪ The requirement to report under the PPMLA does not extend to funds that are proceeds of a criminal activity but is restricted to a ML offence. ▪ The AML/CFT laws do not provide for reporting requirements in respect of suspected terrorist financing activities, including <i>attempted</i> terrorist financing transactions. ▪ No legal provisions requiring reporting of attempted suspicious transactions. • There is no effective implementation of the reporting requirements in the securities and insurance sectors.
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • In the absence of a judicial pronouncement it was not possible to ascertain the effectiveness of the safe harbour provisions under section 14 of the PPMLA..
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> ▪ There are no requirements for financial institutions falling under the supervisory purview of the SEC and the PIA to develop appropriate internal

		<p>control policies and procedures.</p> <ul style="list-style-type: none"> ▪ No requirement for appointment of Money Laundering Reporting Officers for financial institutions falling under the supervisory purview of the SEC and the PIA and to develop an on-going employee training programme. ▪ Absence of requirements for financial institutions to maintain and adequately resourced and independent audit function to test compliance with AML/CFT policies and procedures. • Financial institutions are not required to have in place screening procedures to ensure that high standards when hiring employees.
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> • DNFBPs do not send any STR reports to AMLIU. • There is no monitoring of compliance on STR reporting by DNFBPs. • Minimal efforts by AMLIU to educate DNFBPs on their obligations. • Lack of clarity in regards to STR reporting obligations on lawyers and accountants. • CDD requirements relating to AML/CFT are not being applied by DNFBPs. • No specific provisions in the law against tipping-off on STRs reported or about to be reported. • No guidelines to DNFBPs on reporting of STRs. • No obligations on supervisory authorities to DNFBPs to advise them on how to deal with customers from high risk areas. • The law relating to reporting of STRs connected to financing of terrorism transactions is inadequate neither is

		the law clear on the designated authority to which STRs on FT should be reported.
17. Sanctions	LC	<ul style="list-style-type: none"> ▪ There is no provision under the PPMLA for administrative sanctions against institutions that fail to comply with PPMLA. ▪ The Anti-Terrorism Act does not specifically make a distinction between a natural and legal person.
18. Shell banks	PC	<ul style="list-style-type: none"> ▪ Financial institutions are not prohibited from entering into a correspondent banking relationships with shell banks. ▪ There is no legal obligation for financial institution to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	NC	<ul style="list-style-type: none"> • PPMLA and BoZ directives do not provide for reporting of all transactions in currency above a prescribed threshold. • Zambia has not considered a cash transaction reporting system above a certain threshold.
20. Other NFBP & secure transaction techniques	NC	<ul style="list-style-type: none"> • Not all vulnerable DNFBPs are regulated on AML/CFT. • No guidelines have been issued for most of the vulnerable DNFBPs. • No regulatory authority for the DNFBPs on AML/CFT. • Vulnerable DNFBPs which conduct large cash sales are not monitored. • There are no risk management arrangements in place for the DNFBPs nor has there been assessment done on the DNFBPs.

21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • Non-existence of regulatory framework for financial institutions to pay attention when establishing business relationships with countries that do not apply or insufficiently apply FATF Recommendations. • No measures to inform financial institutions of AML/CFT concerns in other countries. • Absence of specific legal framework to apply appropriate counter-measures to countries that continue not to apply FATF Recommendations.
22. Foreign branches & subsidiaries	NC	There are currently no AML/CFT legal requirements for financial institutions with foreign branches and subsidiaries.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • There is no adequate CFT regulation and supervision in all financial institutions. • Money or value transfer service providers were not licensed and subject to AML/CFT supervision. • All financial institutions, other than those falling under the supervisory purview of the BoZ, are not being supervised for money laundering purposes. • It did not seem that the PIA takes necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • It was also not clear whether the Directors and senior management of the insurers were evaluated on the basis of the “fit and proper” criteria including those relating to expertise and integrity. • While Zambia is a member of IOSCO and IAIS there was no indication that the regulatory and supervisory measures that apply for prudential

		<p>purposes and which are also relevant to money laundering apply in a similar manner for money laundering purposes to the securities and insurance sectors. The SEC and PIA have not issued AML Directives to their respective licensees. Licensees of the SEC and the PIA are not supervised with respect to AML/CFT requirements.</p>
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • There is no effective regulation and supervision of accountants on AML/CFT measures through issuing and implementation of guidelines; • The casino sector is not fully regulated and supervised on AML/CFT; • Inadequate vetting measures on AML/CFT when issuing casino licenses; • No guidelines have been issued to regulate the casino sector; • Lack of adequate training of inspectors of casinos on AML/CFT measures; The Supervisory Authority on casinos has got no powers to issue guidelines on CFT; • Some sectors of the DNFBPs are not regulated or supervised for AML/CFT purposes; • There are no ongoing mechanisms to monitor nearly all the DNFBPs on AML/CFT measures.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • No guidelines have been established for the financial institutions falling under the supervisory purview of the PIA and the SEC to assist these financial institutions to implement and comply with their respective AML/CFT requirements. • No guidelines have been established to

		assist DNFBP to implement and comply with their respective AML/CFT requirements.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • The AMLIU does not have sufficient operational independence or autonomy. • The AMLIU does not serve as a national centre for receiving and analysing and disseminating disclosures for STRs and other relevant information concerning ML as required under the Egmont definition of an FIU. • It does not address STRs relating to TF. • The AMLIU does not provide regulated institutions with guidance regarding the manner of reporting, including specification of reporting forms and the procedures thereto. • The AMLIU does not have adequate procedures to secure and protect information under its custody. • The AMLIU does not release periodic reports to guide on trends and typologies of criminal activities. • The AMLIU is not seriously considering applying for Egmont Group membership • The AMLIU does not have set procedures for exchanging information with other FIUs in line with the Egmont Group Statement of Purpose and Principles. • The AMLIU does not have training programmes to reporting institutions.

27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • No specific administrative or operational structures in place within ZPS to deal with the investigation of TF offences. • The powers of investigation for TF offences have not been used and tested. The effectiveness of these powers cannot be assessed.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • Although the provisions are there, in as far as exercising such powers relating to investigations and prosecutions of FT matters, it was difficult to determine their effectiveness as the authority which is supposed to investigate and prosecute such offences is not yet in existence. • Again, there were no statistics or information on successful use of such procedures in assisting investigations and prosecution relating to FT matters.
29. Supervisors	PC	<ul style="list-style-type: none"> • Supervisors do not have powers to monitor and ensure compliance by financial institutions with requirements to combat terrorist financing. • Supervisory authorities of the insurance and securities sectors have not issued directives/ guidelines to institutions under their supervision to facilitate onsite inspections with respect to AML/CFT.
30. Resources, integrity and training	NC	<ul style="list-style-type: none"> • There is no proportionate training of both law enforcement agencies, prosecutors and other court officials on AML/ CFT matters • The DPP does not have specialized training of prosecutors and specialized prosecution of ML/FT cases

		<ul style="list-style-type: none"> • The DPP's does not retain statistics on ML/FT cases and its involvement in such cases is limited. • There is need for further training for prosecution, including the court presiding officers, judges on ML/FT trends and typologies and measures relating to AML/CFT.
31. National co-operation	PC	<ul style="list-style-type: none"> • No mechanisms have been put in place in terms of the PPMLA to enable domestic cooperation and coordination of AML matters. • Some of the structures, such as National Task Forces, are on ad hoc basis. • Effectiveness of domestic development and implementation of cooperation and coordination of policies relating to AML/CFT could not be determined. • There is no clear distinction between the coordinating roles played by the DEC and AMLIU in AML. • Lack of frequent engagement of other stakeholders in AML matters by AMLIU • Lack of national framework dealing with domestic cooperation and coordination of matters on FT.
32. Statistics	NC	<ul style="list-style-type: none"> • No mechanisms in place to review the effectiveness of systems for combating ML and TF on a regular basis.
33. Legal persons – beneficial owners	PC	<ul style="list-style-type: none"> • The Registrar's office is not yet fully computerized making it difficult for information to be readily accessed for companies whose records are still kept in a manual form. • Share warrant or bearer shares are transferable by mere delivery, making

		<p>it difficult to monitor their transfer.</p> <ul style="list-style-type: none"> • The lack of the jurisdiction by the Registrar to verify on the particulars of the beneficiary owners can easily lead to manipulation of information supplied for such purposes compromising the information contained in the Registrar's records.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • It is not clear what is understood by protectors as well as other legal arrangements. • The minister of Lands does not require trust providers to maintain records related to the trusts. • Competent authorities are not able to obtain or have access in a timely fashion to adequate accurate and current information on the beneficial ownership and control of legal arrangements and in particular the settlor, the trustee and beneficiaries of express trusts.
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> • Zambia has not fully implemented the Palermo Convention as it has no provisions for witness assistance, protection and relocation. • No adequate training programmes and technical assistance on ML at national level to enhance effective implementation of the UN Palermo Convention. • Zambia has not developed preventive measures and national projects against ML that can be evaluated to determine implementation of the convention.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • The mutual legal assistance in criminal matters act does not cover all forms of assistance covered under the international standards. • No information on the kind of MLA offered and the extent to which such

		<p>assistance was provided.</p> <ul style="list-style-type: none"> Statistics on the number of requests which have been received for the past three years, the nature of the applications in terms of assistance required and how they were handled was not available. There was again no information on how much time it took to provide the assistance required and whether it was provided in a constructive and effective manner.
37. Dual criminality	NC	<ul style="list-style-type: none"> Under the MLA in Criminal Matters Act, the absence of dual criminality with the requesting jurisdiction may lead to a request for MLA being denied. Information on whether or not technical differences in facilitating MLA in cases with due criminality are becoming an impediment was not available. There were no information of whether MLA has been given in the absence of due criminality and the criteria used.
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> It could not be determined whether any mutual legal assistance requests relating to identification, freezing, seizure or confiscation of laundered property, proceeds from, instrumentalities used in or intended to be used in the commission of any ML, FT or other predicate offences had been received. It could not be determined whether effective and timely procedures had been followed in response to such requests. There are no provisions for the establishment of an asset forfeiture fund to deposit confiscated property.

		<ul style="list-style-type: none"> • No provisions for asset sharing of confiscated property where there have been co-ordinated investigations. • No provision for seizure, confiscation or forfeiture of property of corresponding value. • The MLACMA does not provide for effective and timely mutual legal assistance to requests regarding the identification, freezing and seizure or confiscation of property of corresponding value.
39. Extradition	PC	<ul style="list-style-type: none"> • While Zambia has legislation in place which would enable extradition to take place, there is no information on the efficiency and implementation of the extradition requests. • There is no record of how many extradition requests have been handled so far and how many of those dealt with related to Zambian nationals. • There was no information on the ability of the Zambian Authorities to effectively handle extradition requests in a timely manner.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • No time frame given for providing assistance and the manner of providing such assistance • Effectiveness of exchange of information could not be determined • Spontaneous exchange of information relating to AML not provided for. • Poor safeguarding of information received from the regulated institutions by AMLIU • No provisions allowing AMLIU to access directly the databases of the

		<p>relevant institutions</p> <ul style="list-style-type: none"> • No statistics maintained on the requests for international cooperation
Nine Special Recommendations	Rating	Summary of factors underlying rating
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • No effective framework to administer implementation of CFT matters. • Standard of implementation of CFT provisions could not be determined. • No guidelines to the regulated institutions in implementing CFT laws. • No clear accountability on who handles and report on UN Security Council Special Resolutions.
SR. II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> ▪ Effectiveness could not be determined as the Act had just been enacted and there was no statistics on either previous cases or STRs dealt with relating to FT. ▪ The definition of funds provided for under the Anti-Terrorism Act does not meet the definition of funds as described in the convention. ▪ There is no evidence indicate that TF offences are predicate offences. ▪ Zambia has not signed and ratified most of the UN conventions and protocols relating terrorism. ▪ .The Act does not create an offence where terrorist finances were not actually used to carry out a terrorist act or were not linked to a specific terrorist Act.
SR. III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • The Anti-Terrorism Act is not exhaustive in some areas and needs to be complimented with guidelines or

		<p>directives which are not yet in existence making it difficult for the designated agencies to implement it.</p> <ul style="list-style-type: none"> • It was not possible to determine the effectiveness of the Act as there are no cases of funds or property relating to financing of terrorism which had been dealt with or completed under the Act at the time of the onsite visit. • Institutions mandated to implement the Act were either not acquainted with it or unaware of its existence. • It did appear to the Evaluators that Zambia despite the act being enacted had not yet practically implemented the laws against financing of terrorism. • In terms of the Anti-Terrorism Act, the court can only proceed to order forfeiture of funds or property related to terrorist financing where evidence to meet the criminal standards has been adduced and the person has been convicted of the offence. This makes it difficult for the court to order forfeiture where only circumstantial evidence which is not adequate to meet the criminal standards has been adduced but on a balance of probability there is evidence to show that the property is tainted. • Although the Act provides for compliance with UN Resolutions 1267 and 1373 respectively, Zambia at the time of the evaluation had no mechanism or structures in place to give effect to the actual implementation of the resolutions. • The Anti-Terrorism Act does not provide for attachment of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist
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		<p>organisations.</p> <ul style="list-style-type: none"> • It appeared to the Evaluators that there was no effective implementation of the requirements of the Anti-Terrorism Act.
SR IV	Suspicious transaction reporting	<p>NC</p> <ul style="list-style-type: none"> • There are no laws or regulations requiring regulated institutions to submit STRs relating to terrorist financing activities. • There is no agency that has been designated.
SR. V	International co-operation	<p>NC</p> <ul style="list-style-type: none"> • No mechanisms in place to administer exchange of information relating to terrorist financing • No time frame given to handle such requests and the ability of the authorities to provide such assistance in a timely and effective manner could not be verified. • Not able to determine proper accountability on the handling of requests relating to FT and whether there has been such requests before. • No proper recording system of international cooperation requests on CFT was provided.
SR VI	AML requirements for money/value transfer services	<p>NC</p> <ul style="list-style-type: none"> • There are currently no requirements for MVTs outside the formal banking system to be licensed and supervised.
SR VII	Wire transfer rules	<p>NC</p> <ul style="list-style-type: none"> ▪ Financial institutions are not required to obtain and maintain complete originator information and verify its accuracy for all wire transfers for both domestic and cross-border wire transfers. ▪ Each intermediary and beneficiary

		<p>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.</p> <ul style="list-style-type: none"> ▪ Beneficiary financial institutions are not required to adopt effective risk-based procedures for handling wire transfers that do not contain complete originator information. ▪ Supervisory authorities are not monitoring compliance of financial institutions with rules and regulations implementing SR VII. • The laws or regulations do not contain specific sanctions against non-compliance...
SR VIII Non-profit organisations	NC	<ul style="list-style-type: none"> ▪ No risk assessment of the NPOs regarding misuse of the sector for terrorist financing has been conducted. ▪ No periodic assessment is undertaken on the sector's potential vulnerabilities to terrorist activities. ▪ Zambia has not undertaken outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse. ▪ There is no specific retention period prescribed for NPOs to maintain and make available to appropriate authorities records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation. ▪ There is no mechanism in place that allow for prompt investigative or preventative action against such NPO that are suspected of either being

		<p>exploited by or actively supporting terrorist activity or terrorist organisations.</p> <p>Zambia has not identified appropriate points of contact and procedures to respond to international requests for information regarding particular NPOS that are suspected of terrorist financing or other forms of terrorist support.</p>
SR. IX	Cross Border Declaration & Disclosure	<p>NC</p> <ul style="list-style-type: none"> • There are major shortcomings with the Zambian legislation. • No provisions directly dealing with the cross border transportation of currency relating to ML and TF. • The law does not provide for any cross border currency reports, reporting on both genuine and false declarations to be made to AMLIU. • Stakeholders not clear as to which institution to send reports between DEC and AMLIU. • There is no definition of currency in the Act and bearer negotiable instruments are not specified. • There are no provisions specifically requiring declarations by passengers in transit. • Sanctions not being applied for false declarations. • There are no systems in place for notifying AMLIU about suspicious cross border transportation incidents. • The declaration requirements at the entry and exit points are not being effectively applied.

Table 2: Recommended Action Plan to improve the AML/CFT system

AML/CFT System	Recommended Action
1.General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> ▪ It is recommended that the definition of money laundering should be widened to encompass acquiring of laundered property by any other means so that it is not only limited to the methods or means currently outlined in the definition. ▪ It is recommended that PPMLA should specifically provide for non-requirement of a prior conviction of an offender for a predicate offence as a prerequisite for the prosecution of any ML offence. ▪ Zambia must define the range of predicate offences to cover all serious offences in each of the designated category of offences. If a serious offence is not defined in any of Zambia's domestic laws then the threshold approach based on the sentencing patterns in Zambia can be used to determine predicate offences to ML. ▪ The AML laws of Zambia need to be broadened to give extra-territorial jurisdiction to prosecute foreign nationals for predicate offences committed elsewhere other than in Zambia. The restriction to extraterritorial jurisdiction being limited to a ship or aircraft registered in Zambia should also be looked at with a view to give the section a wider extraterritorial jurisdiction. ▪ The AML laws of Zambia need to be broadened to include the element of negligence to the offence of ML. ▪ The PPMLA 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 an individual. ▪ It is recommended that predicate offences be defined under the PPMLA so that it can be in line with the international standard which defines predicate offences relating to ML. This will make it easier for the effectiveness of the sanctions applied

	<p>in terms of the Act to be determined.</p> <ul style="list-style-type: none"> ▪ Zambia's PPMLA should be enhanced to provide for parallel civil and administrative sanctions. ▪ Provisions under section 40(1) c of the Anti-Corruption Commission Act should also be provided for in the Prohibition and Prevention of ML Act.
2.2 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> ▪ Zambia must sign and ratify the remaining UN conventions and protocols as outlined in the Fifth Schedule of the Anti-Terrorism Act which go hand in hand with the Convention against Financing of Terrorism. ▪ The Act should be broadened to specifically define funds as provided for under the Terrorist Financing Convention. The current definition of funds in the Act does not encompass all kinds of funds, including legitimate ones, as defined under the Convention. ▪ As there are no cases which have been prosecuted yet under the new Act, it is important that both prosecution and the judiciary are trained and sensitized on such cases on a continuous basis. ▪ There is need for the supervisory authorities to ensure during its inspections that all the financial institutions have put adequate measures in place to allow detection of suspicious transactions relating to FT and reporting of such transactions to the relevant authorities. ▪ It should also create an offence where funds for terrorist financing were not actually used to carry out a terrorist act or were not linked to a specific terrorist act.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> ▪ The AML and financing of terrorism laws of Zambia should be broadened to provide for seizure and forfeiture of instrumentalities used in or intended to be used in the commission of ML and FT offences. ▪ Parts IV and VI of the PPMLA and the Anti-Terrorism Act respectively should be amended to

	<p>provide for forfeiture of property of corresponding value in the absence of the original illegally acquired property whose value has been determined.</p> <ul style="list-style-type: none"> ▪ The definition of property needs to be amended to specifically include income, profits and other benefits accruing from proceeds of crime. Section 17 of the PPMLA needs to specifically provide for the forfeiture of income, profits or any other benefits arising from proceeds of crime. ▪ Section 17 of the PPMLA should be broadened to cover forfeiture of proceeds of crime relating to the same offence and offender but in the possession or under the control of a third party. ▪ The Act needs to be amended to provide for provisional orders barring the dealing, transferring and disposing of property subject to forfeiture. ▪ Section 23 of the PPMLA is difficult to appreciate as to which property it implies as being subject to seizure in terms of the warrant. The ambiguity needs clarified so that the property referred to in the section is properly defined. ▪ Section 17 of the PPMLA needs to be revisited to clarify which subsection (1) to section 15 is being referred to as section 15 currently does not have any subsections, let alone a subsection providing for the obtaining of provisional orders against dealing, transferring or disposing of property subject to confiscation or forfeiture. ▪ It is recommended that Section 19 of the PPMLA be amended to specifically provide for property tracking and monitoring applications to made without notice or ex parte application to the High Court. ▪ Section 28(7) of the Anti-Terrorism Act should provide guidelines to assist the courts when considering claims by a bona fide third party. The guidelines could include evidence showing that the person making the claim was not involved in the commission of the offence concerned, or that if he acquired the property at the time or after the commission of the offence he paid sufficient value for the property and he did so without knowing and
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	<p>in circumstances which could not have raised reasonable suspicion that the property was tainted at the time of the acquisition.</p> <ul style="list-style-type: none"> ▪ The Anti-Terrorism Act and the PPMLA can be further enhanced by providing for preventive measures to be taken against entering into agreements or contracts by persons who at the time of involving themselves in such conduct knew or ought to have known that as a result of their actions the State would be prejudiced in its ability to recover property which is subject to confiscation. ▪ It is recommended that the forfeiture regime of Zambia can be further enhanced by providing for Civil Forfeiture in offences where the full criminal liability against an offender cannot be established but the property concerned with the case can be shown to be tainted on a balance of probabilities. The current position where all the burden of proof rests with the State is undesirable. Such provisions however should ensure that property rights of citizens are still retained and respected. ▪ The forfeiture regime should also be broadened to require those suspected of having committed criminal offences, where property becomes subject to forfeiture to explain the lawful origin of the property.
2.4 Freezing of funds used for terrorist financing (SR III)	<ul style="list-style-type: none"> ▪ Zambia should quickly compliment the provisions of the Anti-Terrorism Act with guidelines giving directions, procedures and measures to all designated agencies which would enhance effectiveness in complying with the requirements of the Act. ▪ The guidelines could also be broadened to cover areas raised from c.III.4 to c.III.10 under paragraph 2.4.1 which are not adequately provided for by the Anti-Terrorism Act. ▪ In developing the guidelines it will also be necessary to look at and provide specific areas which may guide the courts when determining applications made by third parties before forfeiture can be ordered, which could include looking at whether the third party was not in any way involved in the commission of the offence, the time at which the third party acquired his interest in the property, that is before or after the commission of

	<p>the offence and if it was after, he did so for sufficient value and under circumstances which could not have aroused any suspicion that the property was at the time of his acquisition proceeds of crime.</p> <ul style="list-style-type: none"> ▪ The Ministry of Home Affairs should in collaboration with other agencies involved in the fight against TF organise an awareness raising campaign to make the public and other stakeholders aware of their responsibilities under the Act.
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> ▪ Amend the PPMLA so that it includes provisions related to terrorist financing in accordance with Recommendation 26. ▪ Change the location of AMLIU. This should be an outcome of extensive consultations with all or key stakeholders so that the new location of AMLIU is acceptable to, and commands the trust and confidence of all stakeholders. ▪ The AMLIU must attain operational independence and as such must have its own budget, powers to recruit its own staff, powers to enter into agreements on exchange of information and cooperation with domestic law enforcement agencies. ▪ Include all DNFBPs such as legal firms and real estates in the list of reporting institutions. ▪ The PPMLA should provide for establishment of a board to whom the head of AMLIU should be reporting. ▪ Enhance the physical security of its offices by among other things installing access control systems, security alarm system, CCTV cameras. ▪ Submission of STRs and movement of files within AMLIU should be properly provided for and managed to ensure that they do not fall into any unauthorized hands. ▪ Access to the section that receives and analyses STRs should be restricted to authorised officers only.

	<ul style="list-style-type: none"> ▪ Recruitment of officers into AMLIU should look at specific needs and criteria such as financial analytical skills, IT skills among others. ▪ AMLIU should draw training and refresher courses for other reporting institutions. ▪ It is recommended that when the shortcomings of AMLIU have been addressed to meet the definition of an FIU under Egmont, it should consider applying to become a member of Egmont. ▪ AMLIU should ensure that supervisory authorities of various reporting sectors comply with the PPMLA provisions by issuing directives and guidelines to reporting institutions to facilitate compliance with the PPMLA provisions.
2.6 Law enforcement, prosecution and other competent authorities (R27 & 28)	<ul style="list-style-type: none"> ▪ As the lead law enforcement agency, ZPS must build its capacity by acquiring the necessary basic skills and resources to conduct investigations in TF offences. ▪ AMLIU should liaise with other law enforcement agencies, in particular the ZPS, when carrying out investigations relating to ML.
2.7 Cross Border Declaration & Disclosure (SR IX)	<ul style="list-style-type: none"> ▪ It is recommended that Section 41A of Customs and Excise Act should be amended to include declaration of bearer negotiable instruments or alternatively, currency be defined in the Act to include bearer negotiable instruments. ▪ In order to improve effectiveness of the declaration monitoring system, ZRA should consider using necessary equipment such as scanners which can be used to detect currency in passenger baggage. In addition, where possible, patrols of borders should be enhanced at informal entry or exit routes. ▪ It is recommended that Section 41A(2) of Customs and Excise Act be broadened to provide for further questioning of the carrier in regards to the origin and intended use of the currency or bearer negotiable instruments which will have been falsely declared by the carrier. ▪ The Act should provide for restraining of currency or

	<p>bearer negotiable instruments for a reasonable period in order to ascertain whether evidence of ML or TF can be found where there is suspicion of ML or TF.</p> <ul style="list-style-type: none"> ▪ It is further recommended that the functions of DEC and AMLIU in practice be streamlined to avoid confusion as to which institution deals with what. Information relating to possible ML of the undeclared currency should be referred to AMLIU, given that it has both investigative and prosecutorial mandates. ▪ It is recommended that, as per Section 41A(3), ZRA should meet the legal requirement first to have the currency or bearer negotiable instruments forfeited to the State and thereafter forward the report to AMLIU for further investigation to determine whether the currency or bearer negotiable instrument is connected to ML or TF ▪ The laws should specifically provide for declaration of currency and bearer negotiable instruments by passengers in transit, not necessarily staying at the port of entry or exit during the transit period. ▪ There should be a facility for both ZRA and AMLIU to submit cross border currency transportation reports online, given the location of the entry and exit points. ▪ It is recommended that from such reports AMLIU and ZRA maintain a statistical record of the cases reported, trends and develop effective guidelines or training programmes.
3. Preventive Measures- Financial Institutions	
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"> ▪ Supervisory authorities for insurance, stock exchange markets should issue directives and conduct training on AML/CFT to ensure compliance by the market players. ▪ With Respect to Recommendation 5, Zambia should put the following obligations into law and/or regulation <ul style="list-style-type: none"> ○ financial institutions must undertake CDD measures in the circumstances set out in Recommendation 5; ○ CDD measures in line with international

	<p>standards;</p> <ul style="list-style-type: none"> ○ Financial institutions must identify a beneficial owner in respect of individual customers and take reasonable measures to identify and verify who are the natural persons that ultimately own or control the customer; ○ Financial institutions must be required to reject application for opening an account or terminate business relationship where a FI has failed to conduct proper CDD on the customer; ○ Requirement to apply enhanced due diligence on high risk customers; ○ Requirement to conduct on-going customer due diligence; ○ Requirement to implement CDD measures of existing customers on the basis of materiality and risk. <ul style="list-style-type: none"> ▪ Zambian authorities should also create enforceable obligations regarding PEPs and correspondent banking relationships to ensure consistency in the application of the laws and regulations. ▪ For practical purposes, the BoZ CDD and AML Directives should be reviewed and reissued under the PPMLA. ▪ BoZ AML Directives should be amended to provide for CDD measures to be applied where there is a suspicion of money laundering or terrorist financing. ▪ BoZ AML Directives should provide additional guidance on how banks should deal with customers who are not able to provide proof of physical address. ▪ AML Directives should guide reporting institutions on how to verify the identity of a beneficial owner of an account. In cases where the beneficial owner is a corporate body, regulated institutions must be required to lift the veil and identify the persons who ultimately own or control the beneficial owner. This should be also contained in the Directives for the securities and insurance sectors. ▪ The PPMLA as read together with the Directives
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	<p>should provide for regulated institutions to conduct on-going due diligence on their business relationships. The laws should require regulated institutions to keep up to date information or data collected under the CDD process throughout the business relationship.</p> <ul style="list-style-type: none"> ▪ Regulated institutions should be required to adopt and implement risk-based assessment of their customers and perform enhanced due diligence for higher risk categories of customers. ▪ The laws or directives should consider allowing the application of simplified or reduced CDD measures for low risk customers. ▪ The laws should provide clear guidance to financial institutions on how to deal with cases where regulated institutions have failed to identify their customers. In cases where the account has already been opened and the regulated institution has not been able to obtain, identification documents, financial institutions should be required to close the account and terminate the business relationship. ▪ AML Directives should specifically require that verification of the identity of a customer who is a natural person should be done before an account is opened. ▪ CDD measures should be applied to all existing anonymous accounts. ▪ Zambia should have enabling laws providing for CDD measures on identification, risk management and ongoing monitoring of both domestic and foreign PEPs. ▪ In situations where financial institutions are establishing business relationships with PEPs they should be required by the law, regulation or other enforceable means to obtain the approval of senior management. ▪ The laws should also cover relationships already existing between a financial institution and a customer or beneficial owner who later turns out to be or later becomes a PEP, including seeking approval of senior management to continue with such business relationship.
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	<ul style="list-style-type: none"> ▪ There is need for Zambia to urgently consider acceding to or ratifying the Merida Convention. ▪ Zambia should have provisions on CDD measures applying to cross-border correspondent banking. In addition to CDD measures, there should be laws, regulations or other enforceable means requiring financial institutions to: <ul style="list-style-type: none"> ○ Gather sufficient information about a respondent institution to enable it to 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; ○ Obtaining approval from senior management before establishing new cross-border correspondent relationships; ○ 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. ▪ Zambia should have requirements set out in the law, regulations or other enforceable means to specifically deal with misuse of technology relating to ML and TF. These requirements should be flexible to accommodate the continuous technological development of the payment systems likely to be abused for ML and TF. ▪ The laws should require prepare proper verification identity of the customers when opening such accounts, if need be, physical attendance of the customer should required.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> ▪ Supervisory authorities should provide proper guidelines to financial institutions on the measures that they must into place where they rely on third parties to perform some of the elements of the CDD process or to introduce business. These measures

	<p>should require financial institutions to</p> <ul style="list-style-type: none"> ○ 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 <ul style="list-style-type: none"> ▪ The Guidelines should also provide that the ultimate responsibility for customer identification and verification should remain with the financial institution relying on the third party. ▪ 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.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> ▪ The section 14 PPMLA must be amended to include similar confidentiality overriding provisions as obtained under the Anti-Terrorism Act. ▪ Section 50 of the BFSa must also be amended to enable financial institutions to exchange information where this is required by R7, R9 and SRVII.
3.5 Record keeping and wire transfer rules (R.10 & SR VII)	<ul style="list-style-type: none"> ▪ Zambia needs to develop laws or regulations that ensure compliance with production of all customer transaction records and information to domestic competent authorities on a timely basis upon request. ▪ Financial institutions should be required to maintain account files and business correspondence for at least five years following the termination of an account or business relationship. ▪ The laws or other enforceable means should provide

	<p>for the following matters under SR VII:</p> <ul style="list-style-type: none"> ○ Financial institutions should be required to obtain and maintain complete originator information and verify its accuracy for all wire transfers for both domestic and cross-border wire transfers. ○ Each intermediary and beneficiary financial institution in the payment chain 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 against non-compliance.
<p>3.6 Monitoring of transactions and relationships (R.11 & 21)</p>	<ul style="list-style-type: none"> ▪ There should be specific provisions for maintaining written records of the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no visible economic or lawful purpose. ▪ The Insurance and Securities supervisory authorities should, in terms of section 12 (4) of the PPMLA issue directives which should include provisions dealing with all complex, unusual large transactions or unusual patterns of transactions that have no visible economic or lawful purpose, examination of the background and purpose of such transactions, recording of the findings in writing and keeping such records for a period of not less than 5 years. ▪ The AML/CFT of Zambia should specifically require financial institutions to pay attention to business relationships and transactions with persons from or in countries that do not, or insufficiently apply the FATF Recommendations. ▪ Authorities must put in place measures to ensure that

	<p>financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries.</p> <ul style="list-style-type: none"> ▪ Zambia should have provision enabling application of appropriate counter-measures by financial institutions when dealing with countries that continue not to apply FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR. IV)	<ul style="list-style-type: none"> ▪ It is recommended that the provisions of sections 12 and 13 of the PPMLA relating to reporting of STRs be amended to include the timeframe within which such reports should be made and the requirement to report must be extended to funds that are proceeds of all offences that are required to be included as predicate offences under Recommendation 1. ▪ As recommended under Recommendation 1 the PPMLA should have a clear definition of predicate offences for money laundering. ▪ Sections 12 and 13 of PPMLA should be amended to provide for the reporting of attempted suspicious transactions on ML. ▪ The Anti-Terrorism Act should be broadened to have provisions requiring financial institutions, when they suspect or have reasonable grounds to suspect, that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism to report to AMLIU. ▪ The PPMLA should be amended to provide for “tipping off” provisions whereby financial institutions and their directors, officers and employees (permanent and temporary) should be prohibited by law from disclosing the fact that a STR or related information is being reported or provided to the AMLIU. ▪ Zambia should include in its laws, legal provisions against disclosure of names and personal details of staff of financial institutions that make a STR to AMLIU. ▪ AMLIU should ensure that there is effective implementation of provisions of PPMLA, in particular, those relating to disclosure of information on an STR or tipping off. This should be followed by appropriate training of AMLIU staff to avoid mentioning names of Money Laundering Reporting

	<p>Officers to suspects in order to maintain the dignity of client/bank relationship.</p> <ul style="list-style-type: none"> ▪ Zambia, being a cash-based economy, should consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to AMLIU. ▪ Supervisory authorities of securities market, insurance, money transmitters and DNFBPs should issue directives and conduct training to guide the reporting institutions on their obligations. ▪ AMLIU should closely supervise the supervisory authorities and ensure that they issue directives on AML/CFT as required by the law. ▪ There is need for AMLIU to sensitize the supervisory authorities and the regulated institutions on their role and responsibilities in respect of the AML/CFT requirements. ▪ The functions of AMLIU, under Section 6 of the PPMLA should be amended to include an obligation on AMLIU to acknowledge receipt and give feedback on the STRs to the reporting institutions. The feedback should be in line with the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and other Persons.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<ul style="list-style-type: none"> ▪ BoZ should consider amending its AML Directive 16(2) to specifically require that the internal policies, procedures and controls should include details on the functions of the MLRO and external reporting requirements. ▪ Financial institutions must be required to maintain an adequately resourced and independent audit function to test compliance with their policies and procedures. ▪ Authorities should issue directives requiring financial institutions to establish and maintain appropriate internal control policies and procedures, appointment of MLRO and establish an effective audit function. ▪ Financial institutions falling under the purview of the SEC and the PIA should be required to establish on-going training to ensure that they are kept informed of new developments on ML and FT techniques,

	<p>methods and trends.</p> <ul style="list-style-type: none"> ▪ FIs should be required to put in place screening procedures to ensure high standards when hiring employees. ▪ Zambia should consider developing directives to address AML/CFT requirements in respect of foreign branches and subsidiaries of Zambian financial institutions.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> ▪ Measures should be taken to prohibit financial institutions from entering into a correspondent banking relationships with shell banks. ▪ Financial institutions should be required to satisfy themselves that respondent institutions in a foreign country do not permit their accounts to be used by shell banks.
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"> ▪ Section 6(1)(d) of the PPMLA which deals with the functions of AMLIU should be amended to cover both ML and FT. ▪ Since the AMLIU is not presently undertaking onsite and offsite supervision of the financial institutions and that this function is being undertaken by the BoZ and that the PIA and SEC are already conducting onsite examinations for prudential purposes it is recommended that the PPMLA should be amended to transfer this function to the financial supervisory authorities who appear to have the resources and capacity for carrying out this function. The PIA and SEC should issue sector specific directives/ guidelines relating to anti-money laundering and combating the financing or terrorism and monitor compliance of institutions under their supervision through onsite inspections. ▪ BoZ should implement the necessary provisions of the Payment Systems Act with respect to money or value transfer service providers. ▪ BoZ should develop and implement supervisory frameworks for the money or value transfer service providers, which should include AML/CFT to facilitate compliance. ▪ Supervisory authorities should be given adequate

	<p>disciplinary powers to impose administrative sanctions against defaulting financial institutions under their supervision</p> <ul style="list-style-type: none"> ▪ The supervisory authorities listed under the PPMLA should also be designated to include in their functions the combating of terrorist financing.
3.11 Money value transfer services (SR VI)	<ul style="list-style-type: none"> ▪ Authorities should put in place implementing mechanisms for National Payment Systems Act to ensure that BoZ licenses and supervises MVTs which fall outside the Banking and Financial Services Act. ▪ The directives or regulations should take into account FATF SR VI Recommendations
4. Preventive measures –Non-Financial Businesses and Professions	
4.1 Customer due diligence and record keeping (R.12)	<ul style="list-style-type: none"> ▪ Section 13(1)(a) of the PPMLA needs to be amended to provide for the minimum standards of information expected to be kept in the identification and business records provided for in that section so that in the absence of guidelines to regulated institutions the standard of such information can be determined. ▪ The section should also provide for specific penalties for failure by the DNFBPs as regulated institutions to comply with keeping information in their records up to certain standards. ▪ The Supervisory Authorities issue guidelines to DNFBPs. ▪ The Ministry of Tourism as the designated supervisory authority of casinos should issue guidelines on CDD measures to them ▪ The Ministry should educate the casino operators on the risks of ML/FT and of the existence of AMLIU and its functions. ▪ The authorities should pursue the idea of forming a Gaming Board to ensure closer monitoring of the licensing of casinos and assessment of those intending to form such businesses. ▪ There is need to have the Real Estate Bill passed to assist with the effective regulation of the real estate

	<p>sector.</p> <ul style="list-style-type: none"> ▪ There is need to put in place mechanisms for identifying the buyers and sellers of real estate and verifying their identity. Source of the funds used to purchase or acquire real estate need to be verified. ▪ There should be legal requirements for real estate agents to maintain appropriate records of their clients and the transactions carried out for a specific period after the transaction. ▪ There is need for AMLIU to educate the real estate agents of its functions, the AML legislation and the obligations of the real estate agents as regulated institutions. ▪ The status of Law Association of Zambia on whether it is a supervisory authority or not needs to be properly defined ▪ Once the status of the Association has been properly determined then it should issue guidelines to its members on AML/CFT. ▪ More reliable means of accounting for clients' funds by lawyers should be provided for by the law. Such measures could include making it a requirement for lawyers to submit their annual audited reports to the Association for scrutiny. The lawyers should be obliged to furnish the Association with the address and details of the bank where the lawyer maintains the client/trust account for easy access by the Association to independently check on the position of the account. ▪ The Association should consider designing acceptable standards of KYC measures when accepting new clients. ▪ The lawyers should be required to check on the source of the funds brought in by the client. ▪ Lawyers as an AML/CFT measure should be required to keep client's records for a reasonable time after the client's case has been finalised. ▪ The lawyers should receive induction and continuous courses on matters relating to AML/CFT to improve on their awareness.
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	<ul style="list-style-type: none"> ▪ The Association together with the other stakeholders on AML/CFT should work out ways on how lawyers can report STRs without necessarily compromising the lawyer/client privilege. ▪ The Commission of Lands and the Lands and Deeds Registrar should introduce more prudence measures to check on the identity of its clients and be able to verify such information through reliable and independent source document, identification data or information. ▪ The authorities should check the authority held by third parties to transact on behalf of principal as well as be able to verify the identity of the third parties. ▪ The authorities should be to check and verify the source of funds used in the transaction and put in place more secure means of payment e.g. to accept payment only through financial institutions. ▪ The authorities should be able to do independent background checks on the identity of foreigners intending to purchase land or properties in Zambia. ▪ For Trusts, provisions requiring the names of the beneficiaries should be made a prerequisite. ▪ There should be full compliance with the requirement of the law that there should be full disclosure of the purpose of the Trust. ▪ The Commissioner of Lands should issue guidelines be used in supervising the regulated institutions. ▪ The Supervisory Authorities should put measures in place to prevent the misuse of technological developments in facilitating ML/TF activities. ▪ The Supervisory Authorities should issue guidelines to the DNFBPs requiring them to pay special attention to unusual and complex transactions which have no apparent or visible economic or lawful purpose.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> ▪ AMLIU should intensify its outreach programs so that the DNFBPs are educated on its existence and functions. ▪ STR reporting obligation should be extended to

	<p>DNFBPs.</p> <ul style="list-style-type: none"> ▪ There is need to monitor compliance on STR reporting by all DNFBPs. ▪ The respective supervising authorities of DNFBPs should provide AML guidelines to them. ▪ Section 13 of the PPMLA needs to be amended to also include reporting of STRs relating to TF. ▪ Need for clarification on the status of the Law Association of Zambia and application of legal privilege relating to reporting of STRs to AMLIU. ▪ The PPMLA should be amended to specifically provide against tipping- off on reported or about to be reported STRs. ▪ Section 13 of the PPMLA should be amended to provide for reporting of attempted transactions. ▪ The provisions of PPMLA should be clear on reporting of suspicious transactions relating to tax matters. ▪ There is need through amendment of both the Acts to establish a link between the PPMLA and the Anti-Terrorism Act, relating to reporting of STRs to AMLIU. ▪ The licensing authorities of the DNFBPs should educate them on AML/CFT measures. ▪ Both the PPMLA and the Anti-Terrorism Act should require DNFBPs to have internal procedures, policies and controls to prevent ML/TF and educate their employees on same or have regulations issued to that effect. ▪ DNFBPs should be encouraged to have continuous training programs for their employees on ML/TT techniques, methods and trends. ▪ DNFBPs should employ ML Reporting Officers to assist with the management of AML/CFT internal policies. ▪ The PPMLA should be amended to specifically include the Chartered Accountants Association or any other board which represents them as one of the
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	<p>Supervisory Authorities under section 2 of the Act. The current position of both the accountants and lawyers creates an ambiguous situation in determining their status in relation to reporting of AML/CFT issues.</p> <ul style="list-style-type: none"> ▪ Accountants should have a direct obligation to report STRs to AMLIU. ▪ The PPMLA and Anti-Terrorism should both be amended to require DNFBPs to have mandatory obligations to pay special attention to transactions involving customers from high risk countries. ▪ AMLIU should consider DNFBPs to be one of the priority areas where training on AML/CFT is needed in order to ensure compliance with the requirements of the PPMLA.
4.3 Regulation, supervision and monitoring (R.24-25)	<ul style="list-style-type: none"> ▪ As the PPMLA is the enabling Act on AML, ZICA should be cited in its section 2 as the designated Supervisory Authority for Accountants. ▪ ZICA should issue guidelines to accountants on AML/CFT measures. ▪ ZICA should make it mandatory for its members to comply with AML/CFT systems. ▪ ZICA should be empowered under legislation to enable it to enforce its guidelines on members and to monitor the implementation of the guidelines. ▪ Application for casino licences should be properly vetted to prevent criminals or their associates from having any controlling interest in the casinos. ▪ The Supervisory Authority should ensure comprehensive regulatory and supervisory regimes to enable effective implementation of AML/CFT measures. ▪ The designated supervisory authority for casinos should issue guidelines to casinos on AML/CFT measures. ▪ The designated supervisory authority should enhance the capacity of the casino inspectors on AML/CFT measures. ▪ The Ministry of Tourism as the supervisory authority

	<p>should exercise its mandate and powers to monitor and sanction the casinos.</p> <ul style="list-style-type: none"> ▪ The PPMLA should be amended to enable the supervisory authorities to issue guidelines on CFT. ▪ Designate an authority or body to be in charge of AML/CFT matters with respect to the other types of DNFBPs in particular real estate agents and small miners association which are not regulated for AML/CFT purposes. ▪ The supervisory authorities of DNFBPs which are regulated under AMLIU should issue guidelines to assist the DNFBPs in complying with AML/CFT measures. ▪ Establish a supervisory authority to provide guidance on AML/CFT measures to DNFBPs which are currently are not provided for under section 2 of the PPMLA. ▪ The guidelines issued should be enforceable and the supervisory authority must be empowered to impose adequate sanctions to ensure compliance by the DNFBPs. ▪ AMLIU should put in place feedback mechanisms to DNFBPs on disclosures made by them to the Unit, guiding them on the current techniques, methods and trends in ML/TF including typologies.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> ▪ The BoZ should conduct more training courses for Currency Bureaus on AML/CFT risk management. ▪ There should be adequate identification of third parties or intermediaries when they carry out transactions on behalf of other parties with currency bureaus. ▪ Establish a regulatory authority on AML/CFT for the DNFBPs that are not currently regulated. ▪ The regulatory authority once established should issue guidelines on identification of customers, CDD checks and internal risk management measures on AML/CFT; ▪ There should be a general review of procedures used by the other vulnerable DNFBPs when conducting

	<p>sales;</p> <ul style="list-style-type: none"> ▪ It might be necessary to consider thresholds for vulnerable DNFBPs which deal with cash sales or encourage other means of payment, which might include use of credit cards and cheques; ▪ Provide more information to DNFBPs on modern conduct of financial transactions.
5. Legal Persons and Arrangements & Non-profit Organisations	
5.1 Legal Persons-Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> ▪ The Companies Act needs to be amended to regulate the transfer of share warrants to bearer, as the current position of transfer by mere delivery can be misused for ML activities. ▪ In addition to amending the Companies Act the Authorities need to take appropriate measures to ensure that in practice transfer of share warrants is not abused. ▪ The Registrar should also be allowed under the law in circumstances where he is not satisfied, to use his discretion to verify the background of the directors before registration of a company. ▪ Consideration should be made for listed companies to pay transfer taxes for the shares sold on the Stock Exchange. ▪ The Registrar should also be allowed under the law to use his discretion where he has reasonable suspicion that the amount of capital to be invested could be tainted to ask the applicant to declare the source of such income. ▪ The functions of AMLIU should be extended to the Registrar of companies as during the on site visit the Office of the Registrar indicated that it was aware of the DEC and its role but was not aware of the existence of AMLIU and its role.
5.2 Legal Arrangements- Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> ▪ The legislation to clarify what is meant by protectors as well as other legal arrangements. ▪ Trustees must be required to maintain records related to the trusts. ▪ The legal frameworks should ensure that competent

	<p>authorities are able to obtain or have access in a timely fashion to adequate accurate and current information on the beneficial ownership and control of legal arrangements and in particular on the settlor, the trustee and beneficiaries of express trusts.</p>
5.3 Non-Profit Organisations (SR VIII)	<ul style="list-style-type: none"> ▪ Authorities in Zambia should review the law to ensure that NPOs are not misused by terrorist organisations. ▪ The provisions for registration, transparency, supervision and investigation of societies must be enhanced to meet international standards. The draft Non-Governmental Organisations bill addresses these issues to some extent. ▪ The authorities in Zambia should have clear policies to promote transparency, integrity and public confidence in the administration and management of all NPOs. ▪ Zambia should undertake outreach programmes to raise awareness in the NPO sector about the vulnerabilities of NPOs to terrorist abuse and terrorist financing risks and the measures that NPOs can take to protect themselves from such abuse. ▪ The Registrar of Societies must be given adequate powers under the law to conduct onsite inspections for effective supervision and monitoring of the NPOs. ▪ The Registrar must be given a wider range of administrative measures to sanction violations of oversight measures or rules by NPOs. ▪ The office of the Registrar of Societies must be adequately resourced in order to carry out their functions under the governing legislation and also to provide adequate support to the work of law enforcement authorities in relation to terrorism and terrorist financing investigations. ▪ NPOs must be required to maintain, for a period of at least 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 a manner consistent with the purpose and objectives of the NPO. ▪ Zambian authorities should ensure effective co-

	<p>operation, co-ordination and information sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.</p> <ul style="list-style-type: none"> ▪ The capacity of the relevant authorities must be enhanced to ensure that they have investigative expertise and capability to examine those NPOs suspected of either being exploited by or actively supporting terrorist activity or terrorist organisations. ▪ Zambia should establish appropriate mechanisms to ensure that when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is a front for fundraising by a terrorist organisation; (2) is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures; or (3) 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 action. ▪ The authorities in Zambia must identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or other forms of terrorist support.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> ▪ Proper policy guidelines should be issued under the PPMLA promoting development and implementation of domestic cooperation amongst stakeholders in AML/CFT matters ▪ The AMLA should play a more active role in the co-ordination and implementation of AML policies as it is composed of nearly all the stakeholders dealing with AML. ▪ The roles of the DEC and those of the AMLIU need to be properly streamlined so that the DEC does not appear to be over shadowing the role played by AMLIU. Currently there appears to be no clear distinction between the co-ordinating roles played by the DEC and the AMLIU. ▪ AMLIU should be properly resourced to enable it to carry out awareness programs on the need for

	<p>cooperation and coordination of AML matters with other stakeholders, particularly DNFBPs.</p> <ul style="list-style-type: none"> ▪ There should be a national framework, which is not <i>ad hoc</i>, to cooperate and coordinate the development and coordination of policies and activities to combat both ML and TF. ▪ Zambia should put in place mechanisms to review the effectiveness of its systems in combating ML and TF on a regular basis.
6.2 The Conventions and UN Special Resolutions (R.35 & SR I)	<ul style="list-style-type: none"> ▪ It is recommended that Zambia should amend the PPMLA to provide for witness assistance, their protection and relocation. ▪ PPMLA should be amended to meet the international standards on the definition of predicate offences. ▪ Zambia should develop preventive measures and national projects against ML that can be evaluated to enhance the implementation of the Palermo Convention. ▪ Zambia should develop a national framework and administrative mechanisms to enable implementation of both the provisions of the Anti-Terrorism Act, the UN Convention on the Suppression of Financing of Terrorism and Security Council Resolutions 1267 and 1373. ▪ Once an authority is established to administer the Anti-Terrorism Act, it is recommended that it also develops guidelines to assist stakeholders to implement the Act. ▪ In the event that Zambia deals with persons listed under UN Security Council Special Resolutions appropriate measures should be implemented to keep records or statistics of such matters and of the reports to the Security Council.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> ▪ There is need for the function of the AG in attending to MLA work to be shared with senior officers in his office to allow continuity of such work in his absence. ▪ The record system method used to capture data on MLA requests needs to be improved to allow easy access to such statistics by the senior officers in the

	<p>AG's absence.</p> <ul style="list-style-type: none"> ▪ The role played by the other national stakeholders in international cooperation such as the Ministry of Foreign Affairs and the President's Office requires better coordination in terms of retaining of statistics of requests dealt with and positions taken by each one of the stakeholders on such requests where the involvement of the AG or his office is not necessarily required. ▪ The MLACMA should be amended to facilitate the voluntary appearance of persons for the purposes of providing information or testimony to the requesting country. ▪ The Act should also be amended to provide for effecting of service of judicial documents from the requesting state. ▪ It is also recommended that the Act should provide indicative time frames to guide on timely responses to requests for mutual legal assistance. ▪ The MLACMA, PPMLA and the Anti-Terrorism Act should provide specifically for the establishment of an asset forfeiture fund and for the seizure and forfeiture of property of corresponding value. ▪ The three Acts cited above should also provide for sharing of confiscated assets. ▪ The MLACMA should be amended to provide for effective and timely mutual legal assistance to requests regarding the identification, freezing and seizure or confiscation of property of corresponding value.
6.4 Extradition (R.39,37 & SR.V)	<ul style="list-style-type: none"> ▪ The Zambian Authorities need to complement the existing legislation they have on extradition with proper maintenance of records on the extradition cases. The records should give the basic information about the request and the time taken to comply with it. The records should also be easily accessible for purposes of information. ▪ Zambia needs to maintain records of its international co-operation as well as ML and TF cases dealt with including the predicate offences so that it is able to observe trends used by criminals in committing such offences and do relevant profiling. The records

	<p>would enable determination of the efficiency with which extradition requests are handled and the number of such requests granted. The records should also provide statistics of the requests denied and the reasons for the denial.</p>
6.5 Other forms of Co-operation (R.40 & SR. V)	<ul style="list-style-type: none"> ▪ Recommended to ratify the SADC Protocol on Mutual Legal Assistance in Criminal Matters. ▪ Need for an express provision authorising AMLIU to enter into agreements or MoU with other FIUs on cooperation and exchange of information. ▪ Provisions authorising the AG to provide mutual legal assistance should provide guidelines on the time frame within which such assistance can be given and the manner in which it should be given. ▪ Statistics on the number of requests on the exchange of information acceded to and the nature of the assistance required should be easily accessible. ▪ Provide AMLIU with powers to access information, including that not yet held by it in relation to requests from foreign FIUs regardless of whether the request related to an STR filed with the FIU in the foreign country. ▪ Need to set up a regulatory framework for matters relating to CFT. ▪ There is need to educate the persons immediately in charge of receiving confidential information to keep it safe and prejudice that may be caused by the release of such information to unauthorised persons. ▪ Clarification is required on whether AMLIU has powers to ask the Supervisory Authorities and the regulated institutions to provide information in their custody by it on behalf of a foreign counterpart FIU. ▪ Zambia should take measures to ensure maintenance of statistics on the requests of exchange of information received, those acceded to, those declined, nature of assistance required, those successfully complied with and easy access to such statistics.
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	

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.

Annex 2: Details of all bodies met on the on-site mission 21-24 July 2008**Members of National Task Force**

	Name	Designation	Institution
1	Mr. Andrew Nkunica	Parliamentary Counsel	Ministry of Justice
2	Mr. Lishomwa Muuka	Legal Counsel	Zambia Revenue Authority
3	Mr. Chisha Mwanakatwe	Director	Bank of Zambia
4	Mr Eustace Mainza	Senior Manager	Bank of Zambia
5	Mr. Joseph Munyoro	Senior Financial Analyst	Bank of Zambia
6	Mrs. Mary Chirwa Sikazwe	Assistant Commissioner	Drug Enforcement Commission
7	Mr. Shubert Sinkala	Senior Investigations Officer	Drug Enforcement Commission
8	Ms Priscarol Chiluwe	Senior Investigations Officer	Drug Enforcement Commission
9	Mr. Constantine Hara	Legal Counsel	SEC
10	Mr. Mayford Chikoya	Commission Accountant	SEC
11	Mr. Martin Libinga	Deputy Registrar- Pensions	PIA
12	Mr. Nicholas Mbuya	Manager Analysis and Policy -Insurance	PIA
13	Mrs. Mwila Kasase-Zulu	Economist	MOFNP

14 Solicitor General

15 DPP

Annex 3: List of all laws, regulations and other material received

1. The Mutual Fund and Hedge Fund Act 2006
2. The Narcotic Drugs and Psychotropic Substances Act
3. The Customs and Excise Act
4. The Customs and Excise (General) Regulations, 2000
5. Customs and Excise (Amendment) Act, 2007
6. Customs and Excise (Amendment) Act, 2006
7. The Customs and Excise Act, Statutory Instrument No. 54 of 2000
8. The National Payment Systems Act, 2007
9. The Extradition Act
10. The Securities Act
11. The Statutory Functions, Portfolios and Composition of Government GN 547/2004
12. The Companies Act
13. The Mutual Legal Assistance in Criminal Matters Act
14. The Anti-Terrorism Act 2007
15. The Anti corruption Commission (Disposal of Recovered Property) Regulations, 2004
16. Income Tax (Amendment) Act 2000
17. The Anti-Terrorism Bill, 2007
18. Non-Bank Financial Services Authority Bill, 2006
19. Bank of Zambia Inspection Procedures
20. The Banking and Financial Services (Bureau de Change) Regulations 2003
21. SEC List of licensees
22. MOU Between The Registrar of Banks and Financial Institutions, the Registrar of Pensions and Insurance and Chief Executive of the Securities and Exchange Commission on the Exchange of Information for Co-operation and consultation
23. Extradition Treaty between The Government of the Republic of Zambia and the Government of the Republic of Malawi
24. Sensitizations Programmes held by the DEC/AMLIU

25. Bank of Zambia Anti- Money Laundering Directives, 2004
26. Zambia Revenue Authority (ZRA) Compendium of Policies and Procedures (CPP) Part 1
27. ZRA CPP Part 2
28. ZRA CPP Part 3
29. ZRA CPP Part 4
30. ZRA CPP Part 5
31. ZRA CPP Part 6
32. ZRA CPP Part 8
33. ZRA CPP Part 11
34. ZRA CPP Part 12
35. ZRA CPP Part 14
36. ZRA CPP Part 15
37. ZRA CPP Part 17
38. ZRA CPP Part 18
39. National Payment System Bill 2007
40. SADC Treaty and Protocols signed by Zambia
41. C& S Investments Limited & Ors v. The Attorney General SCZ 24 OF 2004
42. D'Souza & ors. V. The People
43. Sydney Chileshe v. The People
44. Fofana v. The People
45. Parekh v. The People
46. Mutale v. The People
47. Skinner v. The People
48. Zambia Police Service Statistics on Predicate Offences based on Serious Crimes
49. General situation of ML Crimes within Zambia Police
50. Mutual Agreement between India and Zambia to combat Illicit Trafficking in Narcotic
Drugs and ML
51. Drug Enforcement Commission Organisation Profile
52. Report of Detainees Review Tribunal
53. Supervisory Manual and Recommendations for the Supervision of Capital Market
Institutions in Zambia
54. The Anti-Corruption Commission Bill, 2005
55. UNODC The Asset confiscation Programme of Zambia
56. Drug Enforcement Commission Annual Report 2004

57. Drug Enforcement Commission Annual Report 2005
58. Drug Enforcement Commission Annual Report 2006
59. Zambia National Governance Baseline Survey Report,2004
60. Draft National Anti-Corruption Policy
61. Strategic Plan for the Anti-Corruption Commission 2004-08
62. Draft Code of Microfinance Practice in Zambia
63. Barclays Bank KYC Standards
64. Barclays Group Financial Crime AML/TF Policy & Principles
65. Zambia State Insurance Corporation Limited Proposal Form for Life Insurance
66. Drug Enforcement Commission –Statistics
67. Pangaea/EMI Securities Ltd Brokerage Account Agreement
68. Pangaea/EMI New Account Application Form- Institution
69. Pangaea/EMI New Account Application Form
70. Stero Bureau de change Ltd –Draft Code of Conduct
71. Paper on Bank of Zambia
72. Zambia Revenue Authority Custom House Deposit Account
73. DEC Profiling of Passengers at Entry and Exit Points
74. DEC Presentation on ML Trends and Typologies
75. AMLIU Paper on ML
76. AMLIU Presentation on ML5
77. Certificates
78. List of sensitisation programmes undertaken by AMLIU
79. Paper on AMLIU
80. List of Institutions that are member of the ESAAMLG National Task Force
81. List of AMLIU Officers
82. Bank of Zambia Letter of 27 November 2007
83. DEC Brochure- Marijuana A common drug of abuse in Zambia
84. DEC Brochure Effects of Excessive Alcohol Drinking
85. DEC Brochure Treating Drug Addiction
86. DEC Substance Abuse may Lead to HIV Infection
87. DEC Sticker Say No to Drugs
88. Association of Microfinance Institution of Zambia Brochure