REPUBLIC OF ZAMBIA

ZAMBIA NATIONAL MONEY LAUNDERING AND TERRORIST FINANCING RISK ASSESMENT REPORT 2016

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DISCLAIMER

"The National Money Laundering and Terrorist Financing (ML/TF) Risk Assessment of Zambia has been conducted as a self-assessment by the Zambian authorities, using the National ML/TF Risk Assessment Tool that has been developed and provided by the World Bank Group. The World Bank Group project team's role was limited to delivery of the tool, providing guidance on the technical aspects of the tool, and review/feedback to assist with the accurate use of it. Data, statistics, and information used for completing the National Ml/TF Risk Assessment Tool modules, as well as findings, interpretation, and judgment under the scope of National ML/TF Risk Assessment, completely belong to the Zambian authorities and do not reflect the views of the World Bank Group."

ACRONYMS

AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
BOZ	Bank of Zambia
CRB	Credit Reference Bureau
CFT	Countering the Financing of Terrorism
DBZ	Development Bank of Zambia
DNFBPs	Designated Non-Financial Businesses and Professions
ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
FATF	Financial Action Task Force
FIC	Financial Intelligence Centre
GDP	Gross Domestic Product
ML	Money Laundering
ML/TF	Money Laundering/Terrorist Financing
NRA	National Risk Assessment

RBA	Risk Based Approach
SADC	Southern Africa Development Community
SEC	Securities and Exchange Commission
TF	Terrorist Financing
UNSCRs	United Nations Security Council Resolutions
ZIEA	Zambia Institution of Estate Agents

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1.0 INTRODUCTION

Zambia is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a Financial Action Task Force (FATF) -styled regional body. FATF is an independent governmental body that develops and promotes policies to protect the global financial system against Money Laundering (ML), Terrorist Financing (TF) and the financing of weapons of mass destruction. FATF sets standards on Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT). The standards are globally recognised and are referred to as "Recommendations".

FATF Recommendation 1 of the revised FATF standards requires countries to identify, assess, and understand the ML/TF risk they face to enable them apply a Risk Based Approach (RBA) in mitigating ML/FT risks.Money launderingand the Financing of Terrorism are of global concern and if left unchecked can impact negatively on security, economic development and social cohesion. Countering ML and TF has therefore become a key priority for international standard setters, governments, civil society and the financial sector. Therefore, Identifying, assessing and understanding (ML/TF) risks is an important part of the development and implementation of national anti-money laundering and countering the financing of terrorism (AML/CFT) regime which includes laws, regulations , enforcement and other measures to mitigate ML/TF risks.

2.0 PURPOSE AND OBJECTIVES OF ML/TF ASSESSMENT

Identification, assessing and understanding of ML/TF risks are essential parts of the development and implementation of an effective AML/CFT regime. The NRA would assist in the prioritization and efficient allocation of resources by authorities and provide useful information to reporting entities to support theconduct of their own risk assessments. In particular, the objectives of the NRA were to:

a. examine ML/TF methods used in the Republic of Zambia;

b. apply the RBA in order to ensure that measures implemented by supervisory authorities and regulated entities are commensurate with the level of AML/CFT risks at national level;

c. identify gaps in Zambia's AML/CFT systems and controls;

d. prioritise and allocate AML/CFT resources by competent authorities and regulated entities;

e. provide input to reporting entities as they develop their own risk assessments;

f. ensure that competent authorities apply AML/CFT measures that are proportionate to the identified risks;

g. inform potential improvements to the AML/CFT regime, including through the formulation or calibration of national AML/CFT regulations, policies, laws and strategies;

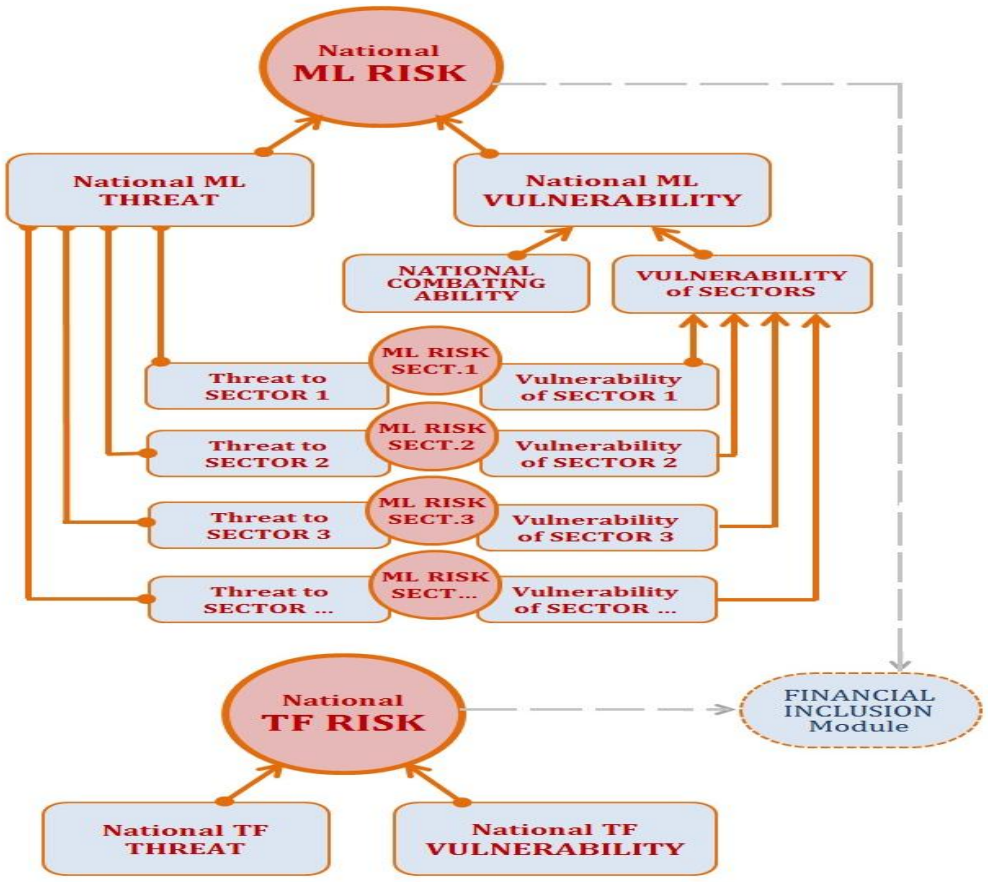
h. assist Law Enforcement Agencies (LEAs) in understanding the AML/CFT risks thereby arming them with adequate mechanisms to combat ML/FT issues whenever they occur; and

i. provide the public with a greater awareness of the ML/TF risks in Zambia and the measures the Government and the regulated entities have implemented or that need to be implemented to mitigate them.

2.1 Assessment Methodology/ National Risk Assessment Tool

In conducting the NRA, Zambia adopted the ML/TF Risk Assessment tool developed by the World Bank. The World Bank model defines the ML risk as a combination of national threat and national vulnerability. The national ML risk consists of 8 modules as shown in the 'structure of the NRA tool' in figure 1:

Figure1: Structure of the NRA Tool



The national ML threat module focuses on understanding the proceeds of crime in the financial system while the national vulnerability module focuses on the national combating ability and the overall sectoral vulnerability. The sectoral vulnerability assesses the financial sector and the DNFBPs.

A number of input variables relating to these sectors are evaluated to determine the national combating ability. The tool also has a separate TF risk assessment module which focuses on the TF threat and vulnerability.

The tool has an additional module on Financial Inclusion Product Risk Assessment which seeks to assist authorities in assessing ML/TF risks arising from both existing and emerging financial inclusion products. This module is different from other modules and benefits from the output of NRA rather than feeding into it. Please note that there is a separate report on the financial inclusion module.

2.2 The National Risk Assessment Process

Government approved the decision to undertake the ML/TF NRA in June, 2015 in line with the revised FATF recommendations of 2012. As part of the process to create awareness and stakeholder buy-in on the NRA process, Government launched the NRA on 23rd October 2015. Participants included some officials from Government, private sector and civil society.

2.3 Participants of the NRA

In undertaking the ML/TF NRA process, nine (9) interagency working groups were establishedbased on the modules of the World Bank tool. The working group members comprised participants from public and private institutions. The participants were chosen on the basis of their experience and expert knowledge in their respective fields.

2.4 Workshop with the World Bank Experts

Prior to the launch of the NRA, the World Bank experts held a video conference with the Chairpersons of the Working Groups as part of the NRA preparatory process. This culminated into the workshop on Financial Inclusion held on 13th October, 2015. The participants for the workshop were drawn from public and private institutions as well as civil society. Another Workshop for the other working groups was held from 16-18th November, 2015.Following the workshops the

Working Groups embarked on the process of conducting the NRA. In conducting the NRA, the country received technical assistance from the World Bank.

2.5 Data and Information required for NRA

The working groups on NRA developed information collection templates which were administered to various institutions for data collection. Both quantitative and qualitative data was used in undertaking the NRA. Qualitative data included intelligence information, expert judgements, private sector input, case studies, and typology studies and perception surveys. Information/data collected by the Working Groups was corroborated by site-visits to various sources. In addition quantitative date was obtained from LEAs, FIU and reporting entities.

The data series were limited to a five year period where data was available but shorter time-periods were used in cases where availability of data was limited. In determining the data requirements, FATF recommendations were also considered.

Generally, the NRA faced a number of limitations related to data as outlined below:

i. Nonexistence or inadequate data from the targeted sources in some instances. This was common among the DNFBPs. The data provided were not sufficient to come up with a proper ML risk rating for certain areas. As already alluded to, in such instances, expert judgments on ML risk rating was indispensable;

ii. Non responsiveness of institutions where information collection tools were administered. This was feasible to both government and private institutionswhere they had to obtain official clearance before releasing the data. Consequently, no comprehensive data was collected for specific variables for proper assessment;

iii. Proceeds generated from criminal activities are not captured in some cases, as evidenced by responses provided by LEAs.

iv. Manually managed data for some government as well as private institutions making it difficult to easily access data timely; and

v. Poorly kept statistics especially for Law Enforcement Agencies. This created problems with data collection and finalization of the draft report.

Despite the above data limitations, the authorities worked around the deficiencies by using experts' views and judgement from supervisory authorities ' inspections and other monitoring mechanisms. Further, investigations by LEAs provided useful insights in arriving at the conclusions. Deficiencies regarding data limitation have been captured as one of the action plan for future NRA.

3.0 MONEY LAUNDERING THREAT ASSESSMENT

Identification and understanding of the ML threat is an important aspect in the process of assessing the ML risk. This requires understanding of the environment in which predicate offences[1] are committed. In assessing the ML threat, consideration was given to the level and trend of predicate offences reported, investigated and prosecuted, convictions recorded, seizure and forfeiture of proceeds of crime.

3.1 Objectives of the Threat Assessment

The objectives of the threat assessment module were to:

i. Identify ML threats and understand those threats in terms of type of predicate offence, origin and sector;
ii. Systematically collect data to assess ML threat; and
iii. Analyze cross border threats from foreign jurisdictions

[1]Predicate offences are the crimes that produce unlawful proceeds that are the subject of money laundering

3.2 Threat Assessment Outcome

The National ML threat analysis considered the level and trend of predicate offences the country was prone to and the resultant money laundering threats associated with the identified predicate offences. The assessment revealed that corruption in Zambia was the most prevalent predicate offence for ML and the resultant ML threat was rated **very high**. This was on account of inadequate effectiveness in implementing legal and administrative measures by various law enforcement agencies and the engagement in and tolerance of corrupt practices by members of the public who should be reporting the crime.

This was followed by the Tax Evasion offence where ML threat was rated high. The reason for the **high** rating was a result of the inadequate mechanisms for the monitoring of compliance with tax obligations and the large informal sector which is not incorporated into the formal tax system. Theft was assessed as **medium high** and Fraud was assessed to be high. The Drug Trafficking offence was also assessed to be medium high.

In terms of sectoral threats, DFNBPs sector comprising lawyers, accountants, the real estate sector, casinos, precious metal and stones dealers and the motor vehicles dealers was identified as posing high ML threat levels. The ML threat in the Securities (Capital) Market, Insurance and Pensions, and Other Financial Institutions sectors was assessed as medium while for the Banking sector, the ML threat was assessed to be **medium low.**

The assessment revealed that, due to its geographical location (Zambia is surrounded by nine neighboring countries with long land borders), the country was being used as a transit point by drug traffickers. Further, it was established that the country was also being used as a route for human trafficking. It was noted that the porous nature of some of the borders made it vulnerable to smuggling of consumable goods. In view of this, the ML threat for cross border assessment was considered to be **medium high**.

3.3 National overall MLthreat assessment

Based on the ML threat posed by prominent predicate offences, cross border threat and ML sector assessment, the overall threat of ML was rated **medium high**. The rating was as a result of the deficiencies such as financial and human capacity challenges in the various institutions, which negatively affect effectiveness.

4.0 MONEY LAUNDERING VULNERABILITY AT NATIONAL LEVEL

The National Vulnerability module was utilized to assess the defense and reaction mechanisms available for combating money laundering at national level. In addition, national vulnerability was assessed on the basis of the vulnerabilities of various sectors that could potentially be abused for money laundering.

4.1 Objectives of the National Vulnerability Assessment

The main objectives of the National Vulnerability Module were:

- To identify the overall vulnerability of the country to money laundering
- To identify the weaknesses and gaps in the country's ability to combat money laundering
- To prioritize actions that would improve the country's ability to combat money laundering by strengthening AML controls at national level.

4.2 National Overall Money Laundering Vulnerability

The National Money Laundering vulnerability of the country was assessed to be **medium high**. This rate was arrived at through an assessment of the national combating ability and the overall vulnerability of various sectors. Figure 1 below shows that the national money laundering combating ability is **medium low**,

while the overall sectoral money laundering vulnerability is **medium high** resulting in the **overall national vulnerability rate of medium high**.

Figure 1 summarises the assessment ratings of all the variables relating to overall national money laundering vulnerability. The figure maps all the input and intermediate variables which impact the overall national combating ability. It also shows the total impact of sectoral vulnerability on the national ML vulnerability.

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Variables relating to overall national money laundering vulnerability

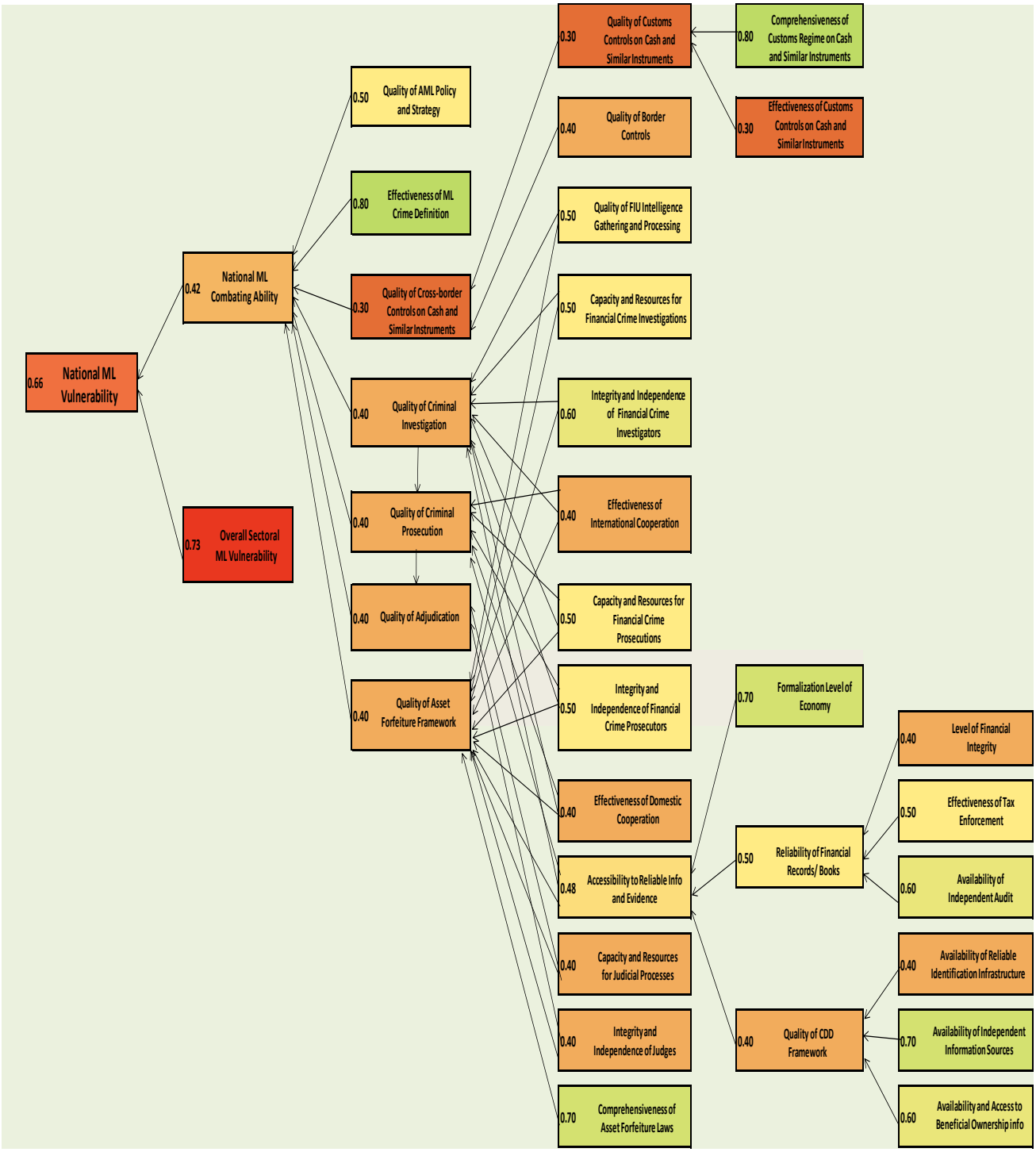
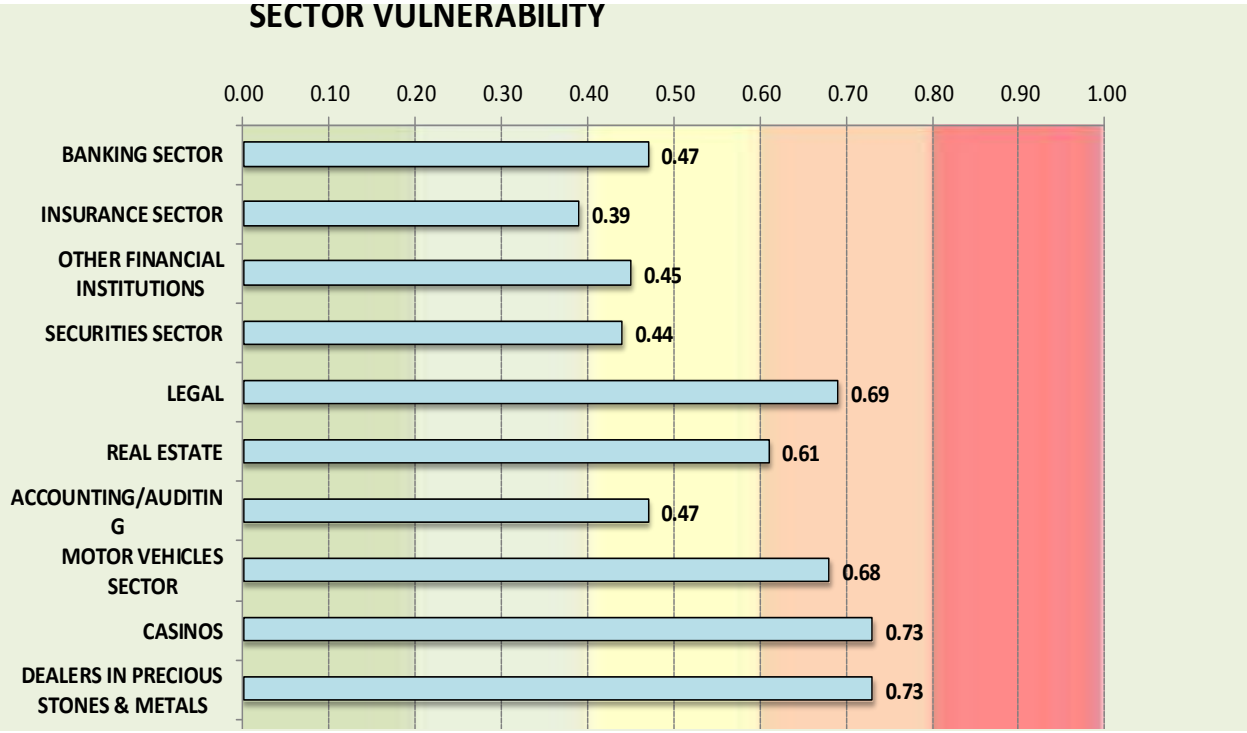


Figure 1

The assessment further indicates that the overall national vulnerability was driven by a high sectoral vulnerability. Figure 2 below shows that the highest

vulnerability was in the precious stones and metals sector and the casino sector which were rated **mediumhigh**.

Figure 2: Sectoral vulnerability



4.3 National Combating Ability

The overall measure of national combating ability was assessed using twenty two (22) variables which related to AML controls such as quality of criminal investigations, effectiveness of ML Crime definition, Integrity and independence of Judges, quality of asset forfeiture framework, availability and access to beneficial ownership information quality of border controls, among others as summarized in figure 1.

The major strengths identified from the assessment were the effectiveness of the Money Laundering crime definition and the comprehensiveness of the customs regime on cash and similar Instruments which were rated very high at **0.8**. Other

strengths were the comprehensiveness of the Asset Forfeiture Laws and availability of independent information sources which were rated **0.7** (high).

The major weakness identified in the national money laundering combating ability was the quality of cross border controls on cash and similar instruments which was rated **0.3(low**). This was due to weaknesses in the quality and effectiveness of customs controls, which was determined by a) the effectiveness of customs controls on cash and similar instruments rated 0.3 and b) the comprehensiveness of the customs regime on cash and similar instruments rated 0.80.

5.0 MONEY LAUNDERING RISK-BANKING SECTOR

The banking sector plays a significant role in the Zambian economy. Therefore understanding the vulnerability the sector was key to inform the assessment National Vulnerability.

5.1 Objectives of the sectoral vulnerability assessment

The main objectives of Sectoral Vulnerability assessment were to:

i. Identify the overall vulnerability of the sector;
ii. Identify products/services/channels with high vulnerability; and
iii. Prioritize action plans that would strengthen anti-money laundering controls (AML controls) in the sector.

The outcome of sectoral vulnerability assessment is necessary for:

i. Designing action plans for more effective AML policies and practices throughout the sector;
ii. Evaluating the impact of different interventions by regulatory (and other relevant) authorities;

iii. Comparing the level of vulnerability in the sector with the vulnerability in other sectors;
iv. Ensuring efficient resource allocation; and
v. Developing specific AML controls for high-risk products.

5.2 Overview of the Banking Sector

The banking sector in Zambia has a special place in the Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) regime due to its importance in the financial system. In Zambia, the banking sector is the largest sector and account for a large portion of the financial market.

The sector contributed an estimated 18 per cent to gross domestic product and had an asset base of K65billion while the total liabilities amounted to K47billion as at 30th September 2015. Due to their significance in the financial systems, commercial banks have a special place in the spectrum of the AML/CFT systems.

As at 31 December 2015, the number of commercial banks remained unchanged at 19, of which eight (8) were subsidiaries of foreign banks, nine (9) were locally owned private banks, while two (2) were partly owned by Government.

5.3 General AML Control Variables

In assessing the vulnerability of the banking sector, thirteen variables which relate to the strength of the general AML controls were assessed. The following general AML controls were assessed:

i. Comprehensiveness of the AML Legal framework
ii. Availability and Enforcement of Criminal Sanctions
iii. Level of Market Pressure to Meet AML Standards
iv. Availability and Effectiveness of Entry Controls

v. Effectiveness of Supervision Procedures and Practices
vi. Availability and Enforcement of Administrative Sanctions
vii. Integrity of Banks' Staff
viii. AML Knowledge of Banks' Staff
ix. Effectiveness of Compliance Systems
x. Effectiveness of Suspicious Activity Monitoring and Reporting
xi. Availability and Access to Beneficial Ownership Information
xii. Availability of Reliable Identification Infrastructure
xiii. Availability of Independent Information Sources

The assessment was further conducted on the overall Product/Services offered by the commercial banks. Thirteen (13) products/services were assessed, namely;Private Banking (e.g. Priority Banking, Premium Banking, Executive Banking), Correspondent Banking, Retail deposits, Wire transfers, Electronic Banking, Deposits of Legal Persons, Credit products for retail customers, Credit products for small and medium size, Credit products for large businesses, Current accounts, Trust and asset management services, Trade Finance and Microcredit Banking. The analysis for the product/service assessment was based on the 16 banks that provided responses to the questionnaire.

Outcome of the assessment

The assessment of the vulnerability of ML for the sector was considered to be **medium**. The rating was on account of the comprehensiveness of the AML Legal framework, availability and enforcement of criminal Sanctions, availability and effectiveness of entry controls and effectiveness of supervision procedures and practices. However, it was established that there deficiencies with compliance function of most of the banks much more the local banks. The assessment further established that most of the banks were not effective in suspicious activity monitoring and report. Availability of reliable identification infrastructure was rated medium low due to some notable deficiencies on the effectiveness

and reliability of public information systems that could assist in the verification of details of customers' details.

In terms of vulnerability of the products/ services offered by the banking sector, current account, deposits of legal persons, private banking, electronic banking and wire transfers were found to be more vulnerable with a medium rating while credit products for small and medium businesses was the least vulnerable to ML with a low rating. The vulnerability of the rest of the products/services lay on the medium low rating.

As for the ML threat for the banking sector, the rating was assessed to be medium low resulting into the overall **ML risk** for the banking sector being rated **medium**.

Table 1: Ranking of Priority Areas

PRIORITY RANKING - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Availability and Enforcement of Criminal Sanctions	
Level of Market Pressure to Meet AML Standards	
Availability and Effectiveness of Entry Controls	
Effectiveness of Supervision Procedures and Practices	
Availability and Enforcement of Administrative Sanctions	2
Integrity of Banks' Staff	
AML Knowledge of Banks' Staff	
Effectiveness of Compliance Systems	2
Effectiveness of Suspicious Activity Monitoring and Reporting	1
Availability and Access to Beneficial Ownership Information	5
Availability of Reliable Identification Infrastructure	4
Availability of Independent Information Sources	

The table above shows that banks should focus resources in developing systems of suspicious activity monitoring and reporting and establishment effective compliance functions. Further, the supervisory authorities should ensure enforcement of administrative sanctions for erring reporting entities.

6.0 MONEY LAUNDERING RISK - SECURITIES (CAPITAL MARKET SECTOR)

6.1 Supervision and Regulation

The securities sector is supervised by the Securities and Exchange Commission (SEC) established under section 3 of the Securities Act, Cap. 354 of the laws of Zambia. This supervisory authority also issues Anti – Money laundering directives which must be adhered to by the various institutions licensed under this sector.

There are six (6) main Securities sector institutions consisting of Brokers, Dealers, Investment Advisors, Fund Managers, Commercial Banks (Treasury departments) and the Securities Exchanges. The table below shows the number of market players in each institution:

Table 10: Classification of SEC-licensed Institution

TYPE OF INSTITUTION	NUMBER OF INSTITUTIONS
Stock Brokers	7
Dealers	27
Investment Advisors	8
Fund managers	8
Banks (Treasury)*	9
Securities Exchanges	2

* Note that the Securities sector working group specifically looked at the treasury function in the nine commercial banks which function was not assessed by the banking sector working group.

The capital markets sector in Zambia is still in its nascent stage. The market capitalization closed at K64, 281 million in the year ending 31st December 2015 compared to K66, 456 million in December 2014. A total trade volume of 116,900,214 with a turnover of K742 million translating into 3,216 trades was recorded at end December 2015. The following are some of the statistics with regard to market capitalization:

Table 11: Market Capitalization:

	December 2015	**December 2014**	**December 2013**
In K million (Excl. Shoprite)	30,042	32,217	23,948
In US$ million (Excl. Shoprite)	2,734	4,979	4,315
In K million (incl. Shoprite)	64,281	66,456	58,187
In US$ million (incl. Shoprite)	5,849	10,271	10,484
Market Cap/GDP Ratio	20.76%	22.26%	21.57%
Turnover/Market Cap. Ratio	2.47%	3.42%	0.88%
LuSE Depository Cap. (K million)	13.414	14,951	11,462

The trading volumes reduced in the year 2015 despite recording an increase in 2014. The following are some of the statistics on trading volumes and activities between 2013 and 2015:

Table 12: Trading Volumes and Activity

TRADING VOLUMES AND ACTIVITY			
	December 2015	**December 2014**	**December 2013**
Volume	116,900,214	318,885,294	275,907,714
Turnover (K)	742,597,048	1,101,542,932	211,291,942
No. of trades	3,216	5,373	5,829
Trading days	247	252	254
Daily average volume	473,280	1,265,418	1,086,251
Daily average turnover (K)	3,006,466	4,371,202	831,858
Daily average no. of trades	13	21	23

The secondary market for GRZ bonds is not very active as most of the participants buy to hold and the retail market is not well developed. The following table shows the level of GRZ bond activity on the stock market for the year 2015:

Table 13: GRZ Bond Activity on the LuSE for 2015

GRZ BOND ACTIVITY ON THE LuSE FOR 2015			
Month	**No. of trades**	**Face value (K)**	**Value (K)**
January	11	110,134,500	88,759,515
February	14	186,410,000	131,751,613
March	15	168,830,000	117,471,274
April	8	85,745,000	62,134,016
May	34	658,410,000	449,312,296
June	36	393,830,000	263,968,936
July	15	105,860,000	76,443,000
August	23	54,910,000	44,351,820
September	55	507,495,000	337,724,053
October	42	221,440,000	159,421,333
November	12	260,435,000	165,689,335
December	5	58,685,000	37,206,986
Totals	**270**	**2,812,184,500**	**1,934,234,177**

The contribution of collective investment schemes (CISs) to the capital markets has had a steady growth over the three years from 2013 to 2015. The table below indicates the fund size during the period under review:

Collective Investment schemes FUND SIZE			
	December 2015	December 2014	December 2013
Total Fund Size (K million)	335.98	241.33	163.99

6.2 Money Laundering Risk Level of the Securities Sector

The assessment of the vulnerability and threat of ML for the securities sector was rated **medium.** Therefore, the overall ML risk for the sector was assessed to be **medium**. The detailed analysis of the variables and institutions in the sector is presented below.

6.3 General AML control variables assessment

The AML control variables were used to assess the vulnerability of each institution in the securities sector to AML/CFT with a rating allocated to each variable as well as an explanation of the rationale behind the rating given to each variable for each particular institution.

The Banking Sector assessment assigned a rating of **medium high** to the variables relating to availability and access to beneficial ownership information as well as availability of reliable identification infrastructure. The variable on the availability of independent information sources was rated **high**.These ratings were relied onthe assessment of the sector.

The overall vulnerability of the securities sector was assessed using the general AML control variables and the product specific variables as outlined in the World Bank National Risk Assessment tool. The assessment of the first five variables revealed common features for all the securities institutions and the report gives a general analysis for all the securities institutions.

i. Comprehensiveness of AML Legal Framework

The assessment of the comprehensiveness of AML legal framework reviewed the laws aimed at ensuring compliance by the securities sector entities. The following are the key pieces of legislation that were reviewed:

a) the Financial Intelligence Centre Act, No. 46 of 2010;
b) the Securities Act, Cap. 354 of the laws of Zambia;
c) the Prohibition and Prevention of Money Laundering Act, No. 14 of 2001;
d) the Public Interest Disclosure (Protection of Whistleblowers) Act, No. 4 of 2010;
e) the Penal Code, Cap. 87 of the Laws of Zambia;
f) the Anti-Terrorism Act, No. 21 of 2007; and
g) the Forfeiture of Proceeds of Crime Act, No. 19 of 2010.

In addition to the AML statutes, the country has existing regulations and directives designed to combat Money laundering. These include the FIC General Regulations of 2016 and the SEC AML directives of 2009. Due to the comprehensiveness of the AML legal framework, this variable was rated **Close to Excellent** with a score of **0.9**

ii. Effectiveness of Supervision Procedures and Practices

In considering this variable, the assessment disclosed that the supervisory authority (SEC) understands and appreciates the money laundering risk on the market. However, it was noted that SEC does not have an AML supervision manual. The SEC relies on the SEC AML directives of 2009 which addresses the issue of money laundering. Further, the SEC has developed a check list that is used during AML inspections. There is need to develop a comprehensive policy to meet the international standard and implement risk based supervision for the sector. With the aforementioned, the rating assigned to the variable on

effectiveness of supervision procedures and practices is **Medium** with a score of 0.5.

iii. Availability and Enforcement of Administrative sanctions

Neither the Financial Intelligence Centre Act nor the Securities Act have administrative sanctions at the moment. Although the regulator has recourse of not renewing the licence of a securities sector entity, administrative sanctions are not extensive. However, for Securities Exchanges, administrative sanctions are available in the Lusaka Stock Exchange (LUSE) trading rules. If there is a breach of the trading rules, members will be subject to disciplinary actions ranging from censure and suspension to delisting of a company listed on the Exchange. Due to the foregoing, the AML control variable on availability and enforcement of administrative sanctions was rated **very low** with a score of 0.2.

iv. Availability and Enforcement of Criminal Sanctions

It should be noted that the Financial Intelligence Centre Act, the Forfeiture of Proceeds of Crimes Act, the Penal Code and the Prohibition and Prevention of Money Laundering Act, prescribe criminal penalties for non-compliance with the legislation for AML-related offences. Therefore, it can be concluded that generally, Zambia has a legal framework that has comprehensive criminal penalties in case of non-compliance with AML Laws and Regulations with adequate criminal sanctions such as imprisonment and fines. Although the legal framework is adequate, during the period under review there were no recorded criminal cases on AML in the securities sector. In this regard, the AML control variable on availability and enforcement of criminal sanctions was rated **very high** with a score of **0.8.**

v. Availability and Effectiveness of Entry Controls

The security Act has comprehensive provisions on the procedures for licensing new entrants in the market. An entity that does not meet the minimum criteria is

denied a license. In addition, securities exchanges also have membership rules which prospective members of the Exchange are required to satisfy before they are admitted as members. In light of the aforementioned, the rating assigned to the variable on availability and effectiveness of entry controls was **high** with a score of 0.7**.**

vi. Integrity of Staff in Securities firms

In assessing this variable, the quality of being honest, upright and having strong moral principles is considered as being an excellent attribute for staff in securities firms. Although the assessment of this variable revealed that there were no sanctions in place for breach of staff integrity, the securities firms generally regard their members of staff as secure from corruption by criminals.

a) Brokerage firms

The assessment revealed that there is a LEA-reliant vetting procedure done in brokerage firms, except in the case of one broker who indicated that they only undertake an internal vetting process without involving LEAs. In light of the aforementioned, the rating assigned to the variable on integrity of brokerage staff was **medium high** with a score of **0.6.**

b) Dealers

With regard to Dealers, some of the respondents indicated that they only relied on the vetting done by the supervisory authority (SEC). In light of the aforementioned, the rating assigned to the variable on integrity of staff for Dealers was **medium** with a score of **0.5.**

c) Investment Advisors

Investment advisors also indicated that they had a vetting procedure in place which involved the issuance of a police conduct certificate after clearance by the state police. In light of the aforementioned, the rating assigned to the

variable on integrity of Investment Advisory staff was **medium high** with a score of **0.6.**

d) Fund Managers

All the fund managers assessed, except one, indicated that they only undertake an internal vetting process without involving law enforcement agencies. Reliance is mainly placed on the vetting done by the regulator. The securities firms conduct vetting with LEAs on the directors and staff. In light of the aforementioned, the rating assigned to the variable on integrity of staff in securities firms was **medium high** with a score of **0.6.**

e) Securities Exchanges

The Securities Exchanges relied on the vetting done by the regulator (SEC) as well as the LEA-conducted vetting on the directors and staff of individual securities firms which are members of the exchange. In light of the aforementioned, the rating assigned to the variable on integrity of staff in securities firms was **medium low** with a score of **0.4.**

f) Banks (Treasury)

The assessment revealed that banks conduct an extensive vetting procedure for prospective employees involving background checks by LEAs. It was, therefore, established that bank staff arescreened from the recruitment procedure. In addition, BOZ checks the effectiveness of the staff vetting programs including verification of the necessary documentation submitted. This entails that banks have a very protective approach in recruiting staff with sound integrity. All banks indicated that they have mechanisms for detecting incidences of integrity failure (negligence or willful blindness) related to suspicious transactions reporting. In light of the aforementioned, the rating assigned to the variable on integrity of staff in banks was **very high** with a score of **0.8.**

vii. AML knowledge of Staff in Securities Firms

Directive 22 of the SEC AML Directives of 2009 mandates securities staff to undergo annual training on AML. The staff of securities firms are therefore required to have appropriate AML training programs and materials available.

a) Brokers

The assessment revealed that Brokerage firms conducted AML training programs every year, in line with the regulatory requirement of the SEC AML Directives. However, despite the sector claiming to have knowledge in AML, the assessment revealed that the level of AML knowledge is very low in provincial offices. The knowledge is relatively high at Head offices in Lusaka as opposed to the provincial offices. This was evidenced by the validation exercise the working group undertook in the provincial offices. In light of the aforementioned, the rating assigned to the control variable on AML knowledge of staff in Stock Brokerage Firms was **high** with a score of 0.7**.**

b) Dealers

With regard to dealers, the assessment disclosed that internal AML training programs were conducted on an *ad hoc* basis only, the frequency of which was not clear. This is inconsistent with the regulatory requirement of the SEC AML Directives. Further, a face to face discussion with some staff of the dealers highlighted a limited knowledge of the AML legal framework. In light of the aforementioned, the rating assigned to the control variable on AML knowledge of staff of Dealers was **medium low** with a score of 0.4**.**

c) Investment Advisors

The assessment revealed that Investment Advisors conducted AML training programs every year in line with the regulatory requirement of the SEC AML Directives. In light of the aforementioned, the rating assigned to the control

variable on AML knowledge of Staff in Investment Advisory Firms was **medium high** with a score of 0.6**.**

d) Fund Managers

The assessment revealed that Fund Managers conducted AML training programs annually in accordance with the SEC AML Directives. Fund managers indicated that they have dedicated staff to deal with money laundering in their firms. The supervision of fund managers is risk based. Inspections carried out by the supervisory authority indicated that a lot more needed to be done. For example, fund managers did not fully understand the reporting procedures for suspicious transactions. Further, inspection results indicated that most of the fund managers did not have dedicated AML officers. In light of the aforementioned, the rating assigned to the control variable on AML knowledge of Fund Management staff was **medium high** with a score of 0.6**.**

e) Securities Exchanges

As for Securities Exchanges, the assessment revealed that they conducted annual AML training programs in line with the SEC AML Directives. In light of the aforementioned, the rating assigned to the control variable on AML knowledge of Staff in Securities Exchanges was **high** with a score of 0.7**.**

f) Banks (Treasury)

In the case of the Treasury departments of banks, the assessment revealed that all banks undertook their own training programmes on AML Laws, policies and procedures. AML training inductions are conducted as well as training given periodically to upgrade the staff knowledge. The mode of training includes classroom and online training arrangements. It was further noted that not all banks' training on AML was taken on an ongoing basis. Notwithstanding the foregoing knowledge on customer risk profiling and categorization by many

banks staff was found to be low. Considering aforesaid discussions, this variable was rated **veryhigh** with a score of 0.8.

viii. Effectiveness of Compliance Functions (Organization)

Section 23 of the FIC Act requires a securities institution to appoint a sufficiently resourced and independent AML compliance officer at senior management level to effectively handle the compliance function.

a) Brokers

An evaluation of the response of most Brokers indicated that they only have a particular staff member whose additional duty is that of compliance, and the officer is not at management level. In addition, brokers do not have internal compliance programs on AML and most of them do not undertake AML audits. Having had no recorded cases on AML breaches, no disciplinary action was taken. In light of the aforementioned, the rating assigned to the control variable on effectiveness of compliance functions was **low** with a score of 0.3**.**

b) Dealers

With regard to Dealers, the assessment revealed that most respondents only have a member of staff performing compliance functions as an additional duty. However, the officer is not at management level. Although most of the respondents indicated that they have internal AML programs, the assessment revealed that Dealers did not undertake AML audits in the period under review. There were no recorded cases on AML breaches. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Compliance Functions was **very low** with a score of 0.2**.**

c) Investment Advisors

An assessment of this variable for Investment Advisors indicated that most firms have designated a particular staff with compliance functions as an additional duty, although the officer is not at management level. Investment Advisors do

not have internal compliance programs on AML and do not undertake AML audits. Having had no recorded cases on AML breaches, no disciplinary action was taken. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Compliance Functions was **very low** with a score of 0.2.

d) Fund Managers

In the case of Fund Managers, the assessment revealed that most fund management firms assigned the compliance function to a particular staff member as an added job description but that the officer is not at management level. In addition, some of the respondents indicated that they sometimes outsource this function. The assessment revealed that Fund Managers do not have internal compliance programs on AML and do not undertake AML audits. During the period under review, no cases on AML breaches were recorded. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Compliance Functions was **low** with a score of 0.3.

e) Securities Exchanges

The securities exchanges indicated that they have a designated compliance officer at senior management level. Securities Exchanges have internal compliance programs on AML and undertake AML audits. During the period under review, no cases on AML breaches were recorded. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Compliance Functions was **very high** with a score of 0.8.

f) Banks (Treasury)

An assessment of this variable for the Treasury department of commercial Banks revealed that the Banks have designated compliance officers based at head office and as for the branches, the branch managers were the designated ML reporting officers. The compliance officers are at management level which

entails their ability to galvanise resources and exert the appropriate level of influence required for the effective operations of the compliance function. Furthermore, Banks have internal compliance programs for staff and also undertake periodic AML audits.In light of the aforementioned the rating assigned to the control variable on Effectiveness of Compliance Functions was **very high** with a score of 0.8.

ix. Effectiveness of Suspicious Activity Monitoring and reporting

a) Brokers

Brokers do not have sufficient systems for record keeping, monitoring, and STR reporting. The Brokers do not have sufficient STR reporting systems. This can be evidenced by the fact that there has never been any STR submitted to the FIC despite their knowledge of the requirement. In light of the aforementioned, the rating assigned to the control variable on effectiveness of suspicious activity monitoring and reporting was **close to nothing** with a score of 0.1.

b) Dealers

Brokers do not have sufficient systems for record keeping, monitoring, and STR reporting. This can be evidenced by the fact that there has never been any STR submitted to the FIC despite their knowledge of the requirement. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Suspicious Activity Monitoring and reporting was **close to nothing** with a score of 0.1.

c) Investment Advisors

The assessment revealed that Investment Advisors do not have sufficient systems for record keeping, monitoring, and STR reporting. Despite their knowledge of the requirement, Investment Advisors have never submitted any STRs to the FIC.. In light of the aforementioned, the rating assigned to the control variable on

Effectiveness of Suspicious Activity Monitoring and reporting was **close to nothing** with a score of 0.2.

d) Fund Managers

Fund managers do not have sufficient systems for record keeping, monitoring, and STR reporting. The assessment revealed that, despite their knowledge of this requirement, Fund Managers have never submitted any STR to the FIC. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Suspicious Activity Monitoring and reporting was **close to nothing** with a score of 0.1.

e) Securities Exchanges

Securities exchanges do not have sufficient systems for record keeping, monitoring, and STR reporting. The Exchanges have not submitted any STR to the FIC despite their knowledge of this requirement and the designated compliance officer's awareness of this requirement. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Suspicious Activity Monitoring and reporting was **close to nothing** with a score of 0.1.

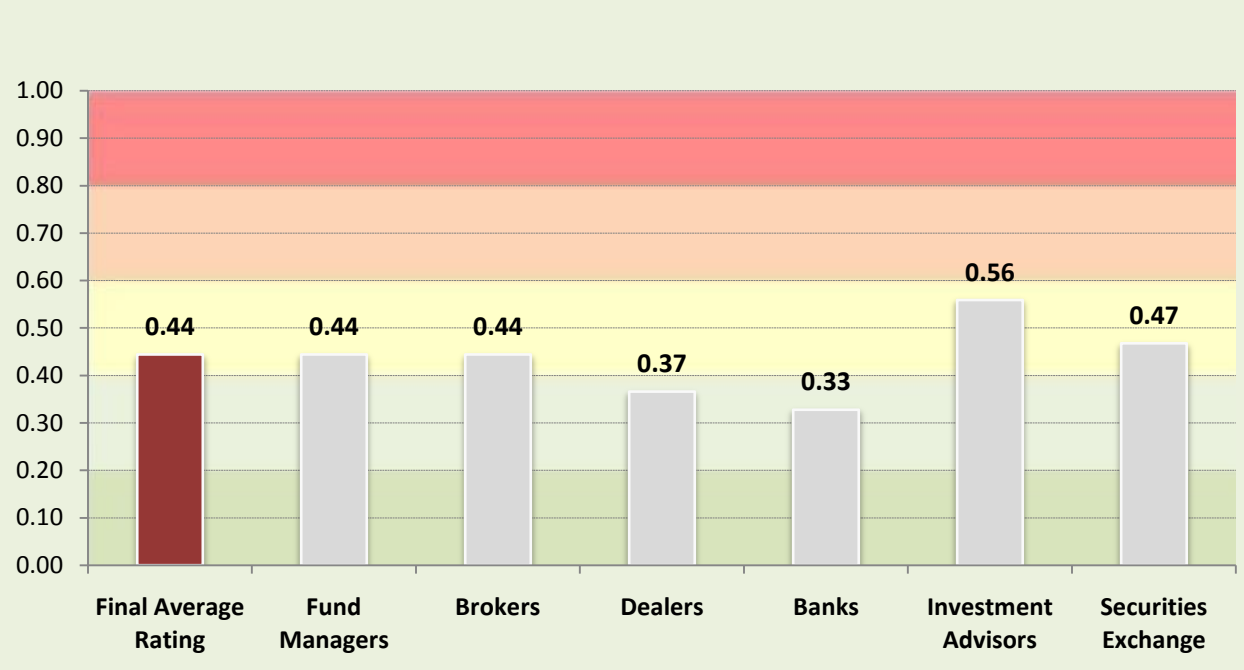
f) Banks (Treasury)

Commercial banks have sufficient systems for record keeping, monitoring, and STR reporting. The Banks have submitted a number of STRs to the FIC. In light of the aforementioned, the rating assigned to the control variable on Effectiveness of Suspicious Activity Monitoring and reporting was **very high** with a score of 0.8.

6.4 Final Vulnerability Rating of the Securities Sector

The final assessment of the Securities sector's ML vulnerability was assessed to be 0.44 (**medium**) as highlighted in figure 4 below:

Figure 4: Overall Sector Vulnerability rating



6.5 Inherent Vulnerability

An assessment of the inherent vulnerability of the securities sector was made for each securities sector institution and the following variables were analysed:

a) Total value/size of the institution type;

b) Complexity and diversity of the portfolio;

c) Client base profile;

d) Existence of investment/deposit feature;

e) Liquidity of the portfolio;

f) Frequency of international transactions; and

g) Other vulnerable factors.

a) Brokers

The total funds under management as of end of 2015 were about K212 million which the assessment considered provided a medium low risk of abuse to ML. The complexity and diversity of the portfolio was rated low because brokers predominantly invest funds in equity and debt instruments which are not complex. With regard to client base profile, although high net worth individuals

place their money in collective investment schemes, they have an opportunity to invest large amounts of money in equity and debt instruments through Brokers, thereby introducing a medium risk of abuse to ML. The existence of investments with Brokers is prominent because, by their nature, they allow clients to deposit funds in the Broker's bank accounts. The liquidity of the stock brokers' portfolio was found to be high as it was easy to get back one's investment once requested. The frequency of international transactions was rated low because Brokers have little or no participation in foreign investments as the funds deposited by their clients are channeled through custodian banks. Brokers are not used by anonymous clients as the remote opening of accounts by Brokers was not available. The SEC AML directives of 2009 do not allow non-face-to-face trading and therefore account opening is done on a face-to-face basis. The assessment also noted that there have been typologies on the abuse of brokers for ML purposes. Due to the higher reputational risk for Brokers, there is no motivation to engage in market manipulation, insider trading, or securities fraud as these offences are criminalized by the Securities Act. The assessment revealed that Brokers found it difficult or time consuming to trace transaction records because Brokers deal with a number of retailers hence documents easily get lost. This is also partly because most brokers have not invested in electronic filing systems. Brokers do not usually handle cash as they request clients to deposit money in the firm account and they are then furnished with deposit slips. The overall inherent vulnerability for the brokers is **0.44 (medium)**

b) Dealers

The Securities Act requires that Dealers continuously maintain a threshold capital adequacy level which assesses the value/size of the institution. This variable was rated medium because it poses a risk of abuse of Dealers to ML. The Complexity and diversity of the portfolio was rated low because the capital market products offered on the market by Dealers are predominantly generic viz-a-viz equity and debt instruments which are not complex in nature. Client base profile

was rated medium due to the fact that it is probable that dealers will deal with high net worth individuals and local PEPs investing large amounts of funds in the said instruments. The Securities Act permits the collection of funds by dealers via deposits by investors. Accordingly, investment/deposit feature is available. The liquidity of the portfolio of dealers was rated low on the premise that the Zambian capital market is generally illiquid and underdeveloped and also illiquidity relative to other institutions within the securities sector. In regard to frequency of international transactions, it was ascertained that Dealers have little or no participation in foreign investments as they invest the funds investors deposit with them in the local capital market and hence a low rate. There are no anonymous products currently trading on the Zambian market which may increase the ML risk. The Other vulnerable factors of institution type – Anonymous/ Omnibus use of product in securities in the securities institution variable was therefore rated, not available. The assessment revealed the existence of other vulnerable factors of institution of ML typologies on the abuse of securities dealers. In addition other vulnerable factors of institution type – Use of the institution type in market manipulation, insider trading, or securities fraud do exit. Notwithstanding the fact that there were no recorded cases on market manipulation, insider dealing or securities fraud by Dealers, anecdotal evidence suggested that this could be as a result of inadequate surveillance being conducted on Dealers. The assessment concludes that dealers found it difficult or time consuming to trace transaction records because dealers deal with a number of retailers hence documents easily get lost. Most dealers have not invested in electronic filing systems. The SEC AML directives of 2009 do not allow non-face-to-face trading. Dealers do not usually handle cash as they request clients to deposit money in the firm's account and only provide deposit slips as proof of payment. In view of the foregoing, the overall inherent vulnerability for the dealers is 0.37 (**medium low**)

c) Investment Advisors

The total value/size of the investment advisers sub sector was assessed low because the number of licensed investment advisers as at the end of 2015 was eight and all of them are relatively small entities while half of them were not very active. Almost all licensed investment advisers promote services on behalf of international financial institutions. The complexity and diversity of the portfolio and the existence of investment or deposit feature were rated medium high and available but limited respectively because the services promoted are mostly hybrid in nature with a few having characteristics of derivatives. The client base profile was rated high because investment advisers' services are usually targeted at PEPs and high net worth individuals. The liquidity of the portfolio was rated low as services offered by investment advisers allow for a cooling off period after which liquidation is not allowed. The frequency of international transactions was rated high as almost all the services are offered on behalf of international institutions. With regard to anonymous or omnibus use of the product a rating of not available was assigned because accounts are opened on face to face basis and the Securities Act does not allow the opening of anonymous accounts. ML typologies on the abuse of investment advisers exist, for example the Typologies Report on Money Laundering through the Securities Market in the ESAAMLG Region issued in September 2015. The use of investment advisers in securities fraud was rated exist but limited because the services offered may not be properly registered/authorised in the countries of origin. Most of the investment advisers use manual filing systems which increases the risk of documents getting lost, hence this variable was rated difficult/time consuming. The SEC directives of 2009 do not allow non face-to-face use of investment adviser's services therefore this variable was rated not available. Lastly the level of cash activity associated with the investment advisers was rated low because the Securities Act does not allow them to hold clients'

money. Based on the foregoing the inherent vulnerability for the Investment Advisers was rated 0.56 which is **medium**.

d) Fund Managers

The total funds under management in 2015 were about K350million and was considered relatively low risk of abuse to ML warranting a rating of medium low. With regard to complexity and diversity of the portfolio, it's noteworthy that Funds are predominantly invested in equity and debt instruments which are not complex thus being rated low. The client base profile showed that there has been a few incidents of PEPs and high net worth individuals placing their money in collective schemes operated by Fund Managers resulting in a rating of medium. As regards, the existence of investment/deposit feature, Fund Managers, by their nature are an investment vehicle and the availability of an investment or deposit feature by investors is prominent. Further, liquidity of the portfolio of the institution type during the period under review showed that a comparison of liquidity was done between Fund Managers and other institution types within the securities sector which revealed that the liquidity of funds managed was high due to the fact that it was easy to get back one's investment once requested, thereby being rated high. Nonetheless, the frequency of international transactions showed that there is little or no participation in foreign investments with the funds in the market. With regard to anonymous/ omnibus use of the products, the assessment disclosed that there is no remote opening of accounts by Fund Managers as it is done on a face-to-face basis. Regarding the existence of ML typologies on the abuse of securities institution type, the assessment revealed that there have been typologies conducted on the exploitation of Fund Managers to ML. In terms of market manipulation, insider trading, or securities fraud, the assessment showed that there is no motivation for Fund Managers to engage in such practices. However, its difficulty to trace transaction records as Fund Managers deal with a number of retailers. The SEC directives of 2009 do not allow non-face-to-face

trading and Fund Managers deposit money in the bank account for the owners of the securities products they promote. Fund Managers do not handle cash. The inherent vulnerability of Fund Managers was rated 0.44 (medium)

e) Banks

There are few transactions on the secondary market of capital markets which the banks are engaged in although the transaction sizes are quite high and Banks predominantly invest funds in treasury bills and bonds. In addition, Banks offer specific products to high net worth individuals and PEPs and some of these individuals prefer to invest in bonds. By their nature, Banks are an investment vehicle in which the investment in bonds and treasury bills is prominent. With regard to Liquidity of the portfolio of the institution typemost of the products offered by Banks are time bound (long term investments). It was noted that it was not easy to get back one's investment. As a result of the highly illiquid capital market, Banks have little or no participation in foreign investments as all the funds are invested in the local capital market. Further, there are few transactions in the secondary markets. Regarding omnibus use of product in securities in the securities institution type, Banks do not have remote opening of accounts as accounts opening is done on a face-to-face basis. However, there have been typologies of on the abuse of Banks for purposes of ML. Relatedly, Banks do not have any motivation to engage in market manipulation and insider trading due to its illiquidity. It worth noting that Banks have invested in electronic systems of filling of records and, as a result, it is easy to trace documents. Accordingly, the SEC directives of 2009 do not allow non-face-to-face trading and there is no cash handling by the treasury department of commercial Banks as securities transactions are completed electronically. The inherent vulnerability for banks (Treasury) is 0.33 which is **medium low.**

f) Securities Exchanges

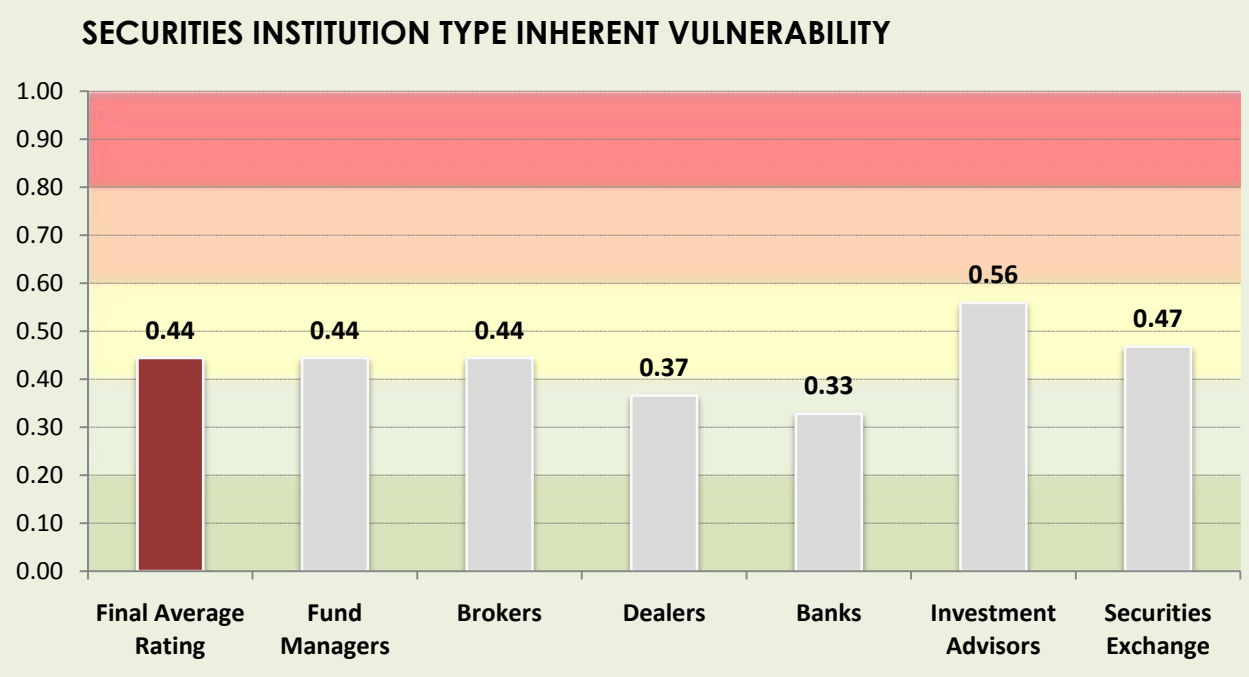
The volumes transacted on the Securities Exchanges are very high and therefore attractive for investment which makes it vulnerable to ML and was consequently rated as high. The complexity and diversity of the portfolio was rated low because the types of securities traded on the Securities Exchanges are largely equity and debt instruments which are not complex or diverse. Securities Exchanges through a surveillance system screen the trading activities of capital market players. The client base profile was rated medium because the volumes executed are mostly from local retailers which is quite low. The existence of investment or deposit was not available as Securities Exchanges do not deal with direct or cash deposits but only maintain an electronic securities database. Liquidity was rated low as the assessment provided revealed that the liquidity for securities exchanges in comparison to other institution types within the securities sector was low due to its high illiquidity. The frequency of international transactions was rated medium low because Securities Exchanges have very little or no participation in foreign investments as the market currently only lists local equity and debt instruments in the capital market. The use of omnibus accounts was available as Securities Exchanges have omnibus accounts which are held in the Central Shares depository (CSD) of the Exchange. There was existence of typologies on the abuse of securities Exchanges for ML. The assessment provided revealed that individuals who work at the Securities Exchanges can trade on the same platform which created room for manipulation, insider trading or securities fraud and as such this factor was existent although limited. Tracing transaction records was rated easy as Securities Exchanges use an electronic CSD for record keeping.The use of non-face -to- face trading was not available as the SEC directives of 2009 do not allow non face-to-face trading by a Securities Exchange. The assessment revealed that cash activity did not exist as the Securities Exchanges do not get involved in funds movement as this is done at commercial and central bank

level. The inherent vulnerability for the securities exchange is 0.47 which is **medium**.

6.6 Institutional Inherent Vulnerability

The overall inherent vulnerability of the securities sector is **0.44** (**medium**). The highest inherent vulnerability is on the Investment Advisors **0.56** (**medium**) and the lowest being the Banks at **0.33** (**medium low**). This is highlighted in the figure

5 below:Figure 5 : Inherent Vulnerability



The table 14 below shows the overall priority ranking of the securities sector.

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision Procedures and Practices	1
Availability and Enforcement of Administrative Sanctions	2
Availability and Enforcement of Criminal Sanctions	
Availability and Effectiveness of Entry Controls	
Integrity of Staff in Securities Firms	6
AML Knowledge of Staff in Securities Firms	5
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	3
Level of Market Pressure to Meet AML Standards	
Availability and Access to Beneficial Ownership Information	8
Availability of Reliable Identification Infrastructure	7
Availability of Independent Information Sources	

7.0 MONEY LAUNDERING RISK –INSURANCE AND PENSION SECTOR

The assessment covered the insurance and pensions sectors with a particular focus on the following:

(a) re-insurance;
(b) general insurance (short-term insurance);
(c) life insurance (long-term insurance);
(d) intermediaries (brokers and agents); and
(e) pensions fund management.

The assessment also covered the prevailing regulatory environment for the sectors.

7.1 Overview of the Pensions and Insurance Sector

The pensions and insurance sectors are regulated and supervised by the PIA. The PIA is a body corporate created under Section 4 of the Pension Scheme Regulation Act, No. 28 of 1996 (as amended by Act No. 27 of 2005).

The PIA administers the Pension Scheme Regulation Act and Insurance Act, No. 28 of 1996 (as amended by Act No. 27 of 2005) in its mandate to regulate and supervise the pensions and insurance sectors.

The pension and insurance sector is subjected to the present Anti-Money laundering and countering the Financing of Terrorism regime (AML/CFT) in the country. The present AML/CFT regime covers both the general insurance and long-term insurance companies.

The insurance sector comprises reinsurance companies, general insurance companies, long-term insurance companies and intermediaries such as brokers, agents, claim agents, risk-surveyors, motor assessors and loss-adjusters.
The pensions sector regulated by the PIA comprises registered private occupational pension schemes, pension fund managers, pension fund administrators and custodians[2].

The product coverage in the market generally includes:

I. Annuities:
II. Endowment Plans;
III. Group Life Assurance;
IV. Medical Insurance;
V. Motor Insurance;
VI. Bonds/Guarantee;
VII. Credit Life;
VIII. Individual Funeral; and

[2] There has not been any custodian registered as at the time of the assessment

IX. Other casualty related insurance products.

The tables below list the number of industry players in each category for the years 2014 and 2015:

The tables below list the number of participants in each category for the years 2014 and 2015:

Table 15: Distribution of Entities

	CATEGORY	2014	2015
1	Reinsurance	2	3
2	Long Term Insurance	9	12
3	General Insurance	18	22
4	Insurance Brokers	48	44
5	Reinsurance brokers	1	1
6	Insurance Agents	279	237
7	Motor Assessors	6	6
8	Loss Adjusters	8	8
9	Claims agents	10	11
10	Risk Surveyors	5	3

Table 16: Pension Schemes, Fund Managers and Fund Administrators

Description	2014	2015
Pension Schemes	238	238
Fund Managers	7	7
Fund Administrators	6	6

In addition to insurance companies, 5 commercial banks have been licensed to undertake insurance agency business.

The growth in total assets for the insurance sector is shown in the table below:

Table 17: Growth of Total Assets in the Insurance Sector

	2013	2014	% Growth Rate
General Insurance (ZMW)	1.014billion	1.116 billion	10%
Long Term Insurance (ZMW)	765 million	918million	20%
Re-insurance (ZMW)	68.02million	69.32million	2%

The total assets for the insurance sector grew from 2.460 billion in 2013 to 2.727 billion in 2014. The long term insurance assets represented 31% and 34% of the total assets in 2013 and 2014 respectively.

The performance of the insurance sector against the country economic indicators over a three year period is shown in the tables below:

Insurance Companies' GWP Growth Rate and GWP to GDP ratio

Year	2011	2012	2013
General Insurance	860,201,739	1,019,040,477	1,077,239,169
Long Term Insurance	299,525,455	410,443,501	445,787,647
GWP(ZMW)	1,159,727,194	1429483978	1, 523, 026, 816
GDP[3] (ZMW)	103,377,860,000	110,377,860,000	117,743,120,000
GWP Growth Rate	8%	17%	11%
GDP Growth Rate[4]	6.3%	6.7%	6.7%
GWP/GDP	1.18%	1.28%	1.34%

[3] Source: National Accounts, CSO
[4] Source: CSO

The insurance sector witnessed growth in the period under review, from a gross written premium of K1.160 billion in 2011 to a gross written premium K1.796 billion in 2014. This growth has brought with it increased innovation regarding the product offering on the market. Despite the growth witnessed in the sector, insurance penetration levels in Zambia are currently low. The 2015 Finscope survey indicates that only 5.5% of the adult population has access to insurance or pension services.

Table 18: Movements in Pension Fund Assets

Description	2011	2012	2013	2014
Net Assets	2,923,719,000	3,573,807,849	4,417,166,270	**4,997,253,318**
GDP (Constant)	103,377,860,000	110,377,860,000	117,743,120,000	125,396,422,800
Net Asset to GDP	3%	3%	4%	4%

The net assets for the pension industry have continued to grow steadily. In 2014 the net assets grew by 13% percent (2013: 24%) year on year from 4,417 million in 2013 to K4, 977 million in 2014.

7.2 Money Laundering Risk Level of the Insurance and Pension Sector

The money laundering risk level of the sector was assessed as ***medium.*** This was as a result of the vulnerability and threat of ML for the insurance sector being assessed as **medium.**The detailed analysis of the variables and products in the sector is presented below.

7.3 General AML Control Variables Assessment

The General AML Controls were assessed using the following variables:

i. Comprehensiveness of AML Legal Framework

The FIC Act designates the PIA as the supervisory authority for the insurance and pensions sector and therefore places an obligation on the PIA to monitor and ensure AML compliance by the reporting entities within the purview of its regulation and supervision.

The FIC Act provides for the following:

- Customer Due Diligence;
- Reliance on Customer Due Diligence by third parties;
- Record-keeping;
- Suspicious Transaction Reporting (STR)
- Tipping-off and confidentiality;
- Internal controls, foreign branches, and subsidiaries;
- Regulation and supervision of financial institutions;
- Supervisory powers.

This variable was assessed as **high** (0.7).

ii. Effectiveness of Supervision Procedures and Practices

The PIA has been identified and appropriately designated under the FIC Act with authority and mandate to conduct AML compliance supervision.

It has been noted that the PIA is currently not conducting AML monitoring and inspections and has in that regard continued focusing only on onsite/offsite prudential monitoring and market conduct of its regulated entities. It has also been established that the Authority does not have a sufficient number of staff with requisite AML training. At the time of data collection the Pensions and

Insurance Authority had only one staff member with the requisite skills and up to date AML knowledge.This variable was rated**medium low**with a score of 0.4.

iii. Availability and Enforcememnt of Administrative Sanctions

The FIC Act No. 46 of 2010 did not provide for administration sanctions during the period under review however, the Act was amended in May 2016 to provide for administrative sanctions to be imposed on reporting entities and individuals that breach the provisions of the Act which is not a criminal offence. The Act empowers the Centre and a supervisory authority to impose administrative sanctions.

The administrative sanctions available under the Act are:

(a) a caution not to repeat the conduct which led to the non-compliance with a provision of the Act;

(b) a reprimand (admonish, rebuke, warn);

(c) a directive to take remedial action or to make specific arrangements to redress identified non-compliance;

(d) the restriction or suspension of certain specified business activities;

(e) publication of a public notice of any prohibition or requirement imposed by the Centre or a supervisory authority…

(f) a financial penalty not exceeding one million penalty units.

The Insurance Act No. 27 of 1997 has provisions on administrative sanctions. The administrative sanctions in the Insurance Act No. 27 of 2010 provide for suspension, revocation or refusal of license renewal held by any natural or legal persons. The sanctions provided in this Act are therefore contextually designed to attend to the breaches in prudential supervision requirements in as much as they could with necessary amendments be applied and augment the provisions in the FIC Act to attend to AML compliance breaches. The Pension Scheme

Regulation Act No. 28 of 1996 does not provide for any administrative sanctions for AML compliance breaches.

There is no record of administrative sanctions taken against a natural or legal person for non-compliance to AML obligations.

This variable was rated **medium** with a score of 0.5.

iv. Availability and Enforcement of Criminal Sanctions

The FIC Act No. 46 of 2010 provides for criminal sanctions in cases of non-compliance with AML laws and regulations.

During the period under consideration i.e. 2012 to 2014, there were 22 investigations and 2 prosecutions undertaken. Information regarding the number of convictions was not provided by the law enforcement agencies.

The level of awareness among the staff in insurance companies as regards the existence of criminal sanctions is low. This variable was rated assessed **medium high** (0.6).

v. Availability and Effectiveness of Entry Controls

Legislation administered by the PIA has comprehensive provisions on registration and licensing requirements. The Authority has also put in place guidelines such as *Fit and Proper Test (Suitability of Persons with Significant Influence) Guidelines for License Entities* in the sector with a view to ensure that only appropriate persons with appropriate skills and unquestionable character are allowed to undertake the management or effective control of the business. These requirements act as a barrier to prevent criminals (or their associates) from undertaking or participating in the pensions or insurance business.

In summary the Fit and Proper Test works as follows:

When an application has been received, the PIA (Authority) will assess the applicant's responses and after careful consideration, may enter into discussions with the applicant insurer to understand the applicant's objectives.

To ensure that the applicant is not likely to have significant implications for the sound and prudent management of a regulated entity the Authority exercises judgment and discretion in assessing fitness and propriety and takes into account all relevant matters including:

- Competence and capability;
- Honesty, integrity, fairness, ethical behavior, and
- Financial soundness;

The application of fitness, propriety or other qualification tests to persons with significant influence in an entity including but not limited to senior managers, directors, key shareholders, auditors and actuaries may vary depending on the degree of their influence and on their responsibilities in the affairs of the entity.

In determining the honesty, integrity and reputation of the applicant/key person, the Authority will consider among other things, whether the applicant/key person has been convicted or indicted of dishonesty, fraud, money laundering, theft or financial crime within the last 10 years.

The Authority also conducts character reference checks with BOZ, SEC, Zambia Police, ACC, DEC and the FIC as part of the fit and proper test.

In the case of foreign applicants, the Authority contacts the applicant's home regulator or any other appropriate body in order to fulfil the fit and proper requirements. This is usually facilitated by cooperation mechanisms through

memoranda of understanding that PIA has signed with regulators in other jurisdictions.

This variable was assessed as **medium high** (0.6).

vi. Integrity of Staff in Insurance Companies

Statistics on integrity breaches were not available as reporting entities do not currently report cases of integrity failure of their staff to the supervisory authority.

The survey done on the reporting entities indicate that reporting entities generally regard their staff as being secure from corruption. This is on account of the reference checks that are conducted at recruitment and the existence of internal controls. This variable was assessed as medium (0.5).

vii. AML Knowledge of Staff in Insurance Companies

The assessment revealed that the most staff in the reporting entities have not undergone any AML training. The assessment also indicated that staff do not have sufficient knowledge on domestic and transnational schemes and typologies, AML compliance requirements and sanctions for non-compliance.

This variable was assessed 0.1 (Close to nothing).

viii. Effectiveness of Compliance Function

About 10 out of 32 companies that provided responses to the questionnaire indicated that they have compliance units in place. It was however noted that most of these compliance units that were generally referred to do not have a dedicated AML units or officers and these units have functionally been established to attend to other prudential regulatory requirements other than AML issues. It was further noted that were AML compliance has been put in place, the functionality has been incorporated in the internal audit units. The

responses further indicated that there are no independent AML audits that have been undertaken in these entities.

The variable was rated **close to nothing** (0.1).

ix. Effectiveness of Suspicious Activity Monitoring and Reporting

It has been noted that reporting entities in the pensions and insurance sectors do not currently have in place adequate and appropriate AML monitoring and STR reporting systems. The sectors have in that regard not been submitting suspicious transaction reports to the FIC.

The variable was assessed **very low** (0.2).

x. Level of Market Pressure to Meet AML Standards

Market pressure to have effective AML compliance within the domestic market was considered to very low. It was however noted that management in most entities in the pensions and insurance sectors are sensitive to reputational risks that may arise from AML related reputation damage. Entities with parent companies domiciled in foreign jurisdictions with stringent AML regimes have observably been subjected to increased pressure from their parent companies. It was also observed that insurance companies often take out re-insurance policies with re-insurers at various levels outside the country. These re-insurers may be domiciled in jurisdictions with more stringent AML regimes.

This variable was assessed as **medium** (0.5). It was noted however that more data was needed especially on the level of market pressure that is exerted from outside the domestic market.

xi. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment done by the

Banking Vulnerability Working Group. This variable was assessed as medium high rating of **0.6***(Source: Banking Sector Vulnerability Working Group)*

xii. Availability of a Reliable Identification Infrastructure

The Working Group reviewed and adopted the assessment done by the Banking Vulnerability Working Group. The variable was assessed as given an assessment rating of **0.4***(Source: Banking Sector Working Group)*.

xiii. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment done by the Banking Vulnerability Working Group. This variable was given a rating of 0.7 *(Source: Banking Sector Vulnerability Working Group)*.

Table 19 shows Priority Ranking for the Sector

PRIORITY RANKING - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision Procedures and Practices	2
Availability and Enforcement of Administrative Sanctions	6
Availability and Enforcement of Criminal Sanctions	8
Availability and Effectiveness of Entry Controls	10
Integrity of Staff in Insurance Companies	7
AML Knowledge of Staff in Insurance Companies	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	4
Level of Market Pressure to Meet AML Standards	5
Availability and Access to Beneficial Ownership Information	9
Availability of Reliable Identification Infrastructure	
Availability of Independent Information Sources	

7.4 Product Specific Money Laundering Vulnerabilities

This assessment was performed on eight different products which are briefly discussed below. In assess these products the working group faced challenges in obtaining data on the total value/size of some of the products. The number of products available on the market is limited.

a) Annuities

These are life insurance products that are sold by insurance companies whereby the insurer undertakes to make a series of payments at fixed intervals typically for the rest of the insured's life. The insurance companies sell this product for a single-premium (lump sum) payment or multiple premium payments prior to the onset of the annuity. The feature that allows for a single lump-sum premium is called Immediate Annuity whilst the feature that allows for multiple premium

payments is referred to as Deferred Annuity. This product does not have a provision for cancellation.

This product has an investment type policy, but the level of cash activity is low. The use of agents and cross border use of the product is low. The client base profile of this product is mostly individuals who have reached retirement age. It is on the basis of the foregoing that the product vulnerability was assessed as **medium low***(0.37)***.**

b) Endowment Plans

This is a life assurance product that offers payment of a lump sum after a specific term, or on death. The product allows for multiple premium payments to be made. This product is usually set up as a regular savings plan and at the end of a set period a lump sum is paid to the insured.

This product has an investment type feature and it is mainly marketed through agents/brokers. However, the client base profile of this product is middle to low income salaried workers, it has a low level of cash activity and it is not available for cross border use. The product also does not have an anonymous/omnibus use feature. It is on the basis of the foregoing that the products vulnerability was assessed **medium low***as* (0.29).

c) Bonds/Gurantees

A bond/guarantee is any written undertaking issued by a guarantor in this case an insurance company to guarantee satisfactory execution of contractual obligations.

Apart from a premium being payable this product requires collateral in the form of cash or assets to deposited with the insurance company. This collateral is a percentage of the total contract sum.

This product does not have an investment type feature and cross border use of the product is low. The level of cash activity is high and the client base profile is high risk. The use of agent/brokers is high and the use of the product for fraud exists.

It was on the basis of the foregoing that this product's vulnerability was assessed as 0.49 (Medium).

d) Group Life

This product allows for cover to be purchased by corporates for their employees. This product allows for a single premium payment. The product is used as a cash management tool by the corporates in the levent of death of its employees while in service.

The total value of this product is high as it accounts for more than 40% of the total Gross Written Premium in the insurance sector. The use of agents in this product is high, however the client base profile is made of corporates. The product does not have investment type feature and the level of cash activity is non-existant. Further, this product is not available for cross border use.

It is on the basis of the foregoing that the products vulnerability was assessed as**medium low** (0.25).

e) Health Insurance

This product allows for medical cover to be purchased for employees by their employer. This product allows for single premium payment. The medical cover allows for members of staff to access medical services from medical services providers according to the types of limits set out in the policy.

The total value of this product is 14% of the overall GWP of the industry. The use of agents for this product is generally low and the client base profile is mostly corporates. Further, the product does not have an investment type feature, and the level of cash activity is non existant as all transactions are done through bank transfers. The product does not provide for cross border and non face to face use. It is on the basis of the foregoing that the products vulnerability was assessed as **low** (0.17).

f) Credit Life

This product allows for cover to be obtained for loans issued by lending institutions. The product allows for lending institutions i.e. banks or microfinance institutions to cover the loan in cases of death or physical incapacitation of the borrower.

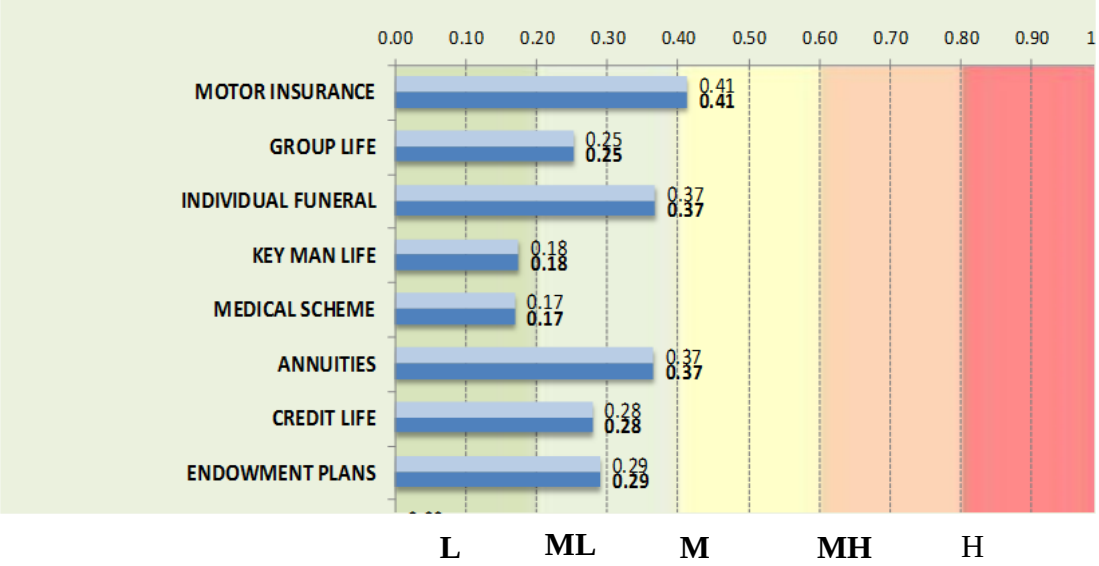
The total value of this product was assessed as high as it accounts for over 30% of the Gross Written Premium in the insurance sector. The use of agents to sale and market this product is high however the client base profile is very low risk as it is targeted at ordinary citizens that require loans. Although the use of agents is high, this is mainly because, the banks and microfinance institutions that provide the bulk of loans are licensed as agents by the PIA. Persons accessing the facility would generally been subjected to comprehensive KYC requirements. The product does not have an investment type feature. The level of cash availablity is non-existent as premiums are deducted from lending institution before the loans are disbursed. The product does not allow for cross border use. The products vulnerability was assessed as **medium low** (0.28).

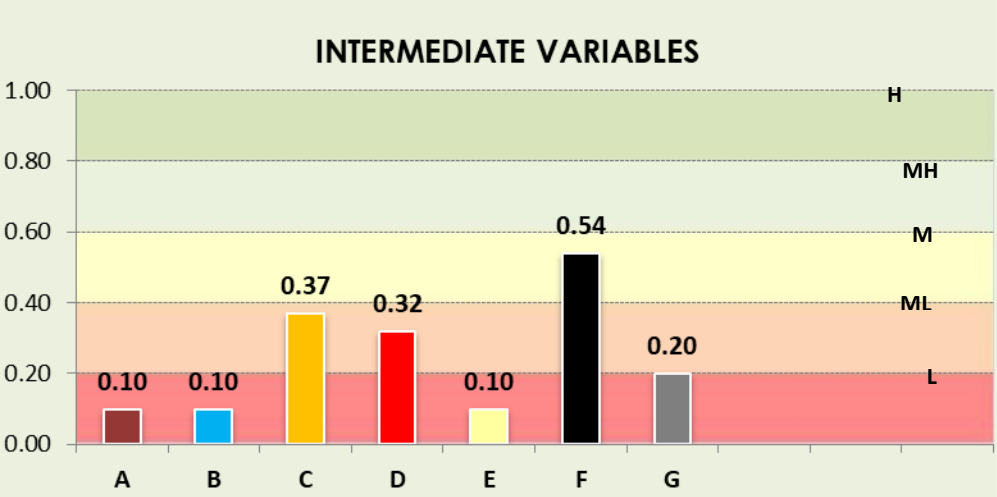
g) Individual Funeral

This product allows for cover to be obtained by individual to cover for funeral expenses at the time of death of a listed beneficiary. This product allows for multiple premium payments to be made.

This product has high use of agents/brokers and levels of cash activity. However, cross border use and investment type features are not available on the product. It is on the basis of the foregoing that the products vulnerability was assessed as**medium low** (0.37)**.**

Product vulnerability assessment





8.0 MONEY LAUNDERING RISK-OTHER FINANCIAL INSTITUTIONS SECTOR

In Zambia, the Other Financial Institutions (FIs) sector comprised leasing companies (9), bureaux de change (70), micro finance institutions (45), building societies (4), the money transfer services providers (3), money value transfers (11) as well as institutions like Development Bank of Zambia and National Savings and Credit Bank as at December, 2015.

8.1 Money Laundering Risk Level of the Sector

The money laundering risk level of the sector was assessed as ***medium.*** This was as a result of the vulnerability and threat of ML for the other financial institutions sector being assessed as **medium.**The detailed analysis of the variables and products in the sector is presented below.

The table below shows the approach that was used to analyze and assess the ML vulnerability of the Other FIs category:

Table 20: Approach to assessing Vulnerability of Other FIs sector

Variable	Approach to analysis and assessment
AML Control Variable	
Comprehensiveness of AML Legal Framework	The Other Financial Institutions Category was analysed and assessed as a whole for each of these AML control variables
Effectiveness of Supervision/Oversight Activities	
Availability and Enforcement of Administrative Sanctions	
Availability and Enforcement of Criminal Sanctions	
Availability and Effectiveness of Entry Controls	
Integrity of Business/Institutional Staff	Each sector in the Other Financial Institutions Category was analysed and assessed separately for each of these AML control variables
AML Knowledge of Business/Institution Staff	
Effectiveness of Compliance Functions (organisation)	
Effectiveness of Suspicious activity Monitoring and Reporting	
Availability and Access to Beneficial Ownership information	The assessment of each of these AML control variables was derived from Banking Working Group
Availability of Reliable Identification Infrastructure	
Availability of Independent Information Sources	
Inherent ML Vulnerabilities Variable	
Total size/volume of the Other FI category	Each sector in the Other Financial Institutions Category was assessed separately for each of these inherent ML vulnerability variables
Client base profile of the Other FI category	
Use of agents in the Other FI category	
Level of cash activity in the Other FI category	
Frequency of international transactions in the Other FI category	

Based on the above approach, the ratings assigned to each of the sectors in the Other FIs category was the same for the first five AML control variables.

i. Comprehensiveness of AML Legal Framework

The review of the Act (as read together with the FIC General Regulations), the Bank of Zambia Act and the Banking and Financial Services Act concluded that Zambia has an adequate legal framework that largely provides for the following in line with the FATF Recommendations:

a. Customer Due Diligence
b. Record-keeping
c. Enhanced Due Diligence for Politically Exposed Persons (PEPs) and high-risk countries
d. Reliance on Customer Due Diligence by third parties (including introduced business)
e. Suspicious Transaction Reporting (STR)
f. Licensing of FIs
g. Tipping-off and confidentiality
h. Internal controls, foreign branches, and subsidiaries
i. Regulation and supervision/oversight of FIs.

With the aforementioned, the rating assigned to the variable on AML Legal framework was rated **0.9** which is **Close to Excellent.**

ii. Effectiveness of Supervision/Oversight Activities

The Bank of Zambia Act and the Banking and Financial Services Act currently do not designate the Bank of Zambia as the AML supervisor but the prudential supervisor for the Other FI category. Even with this deficiency, Section 2 of the FIC Act designates Bank of Zambia as a Supervisory Authority and Section 36 further provides for the Bank of Zambia to monitor and ensure compliance by reporting entities. Based on the FIC Act, the Bank of Zambia conduct AML supervision of the Other FIs. The Bank of Zambia therefore, conducts limited

reviews of compliance with AML requirements as part of the regular prudential examinations of Other FIs. Therefore, the rating assigned to the variable on Effectiveness of Supervision/Oversight Activities is **0.6** which is **medium high.**

iii. Availability and Enforcement of Administrative sanctions for all Other FI categories

Sections 36(3),b and 37(6) of the FIC Act requires supervisory authorities to impose administrative sanctions on financial service providers for non-compliance with their AML requirements. Currently the BFSA does not provide for administrative sanctions specific to ML but for breaches related to prudential requirement. These administrative sanctions include:

i. Cautioning the reporting entity not to repeat the conduct which led to the non-compliance;
ii. Reprimand the reporting entity or specific officer;
iii. Direct the reporting entity to take remedial;
iv. Restrict or suspend specified business activities;
v. Issue cease and desist order; or
vi. Suspend or Revoke the license

The assessment noted that there were no statistics to show that the Bank of Zambia had imposed administrative sanctions against Other FIs in the period 2011 – 2015. This was as result of the absence of sanctions in the enabling AML FIC Act. This finding was also confirmed by the responses received from the Other FIs which indicated that the Other FIs and their staff had not been subject to administrative sanction by the Bank of Zambia for non-compliance with the money laundering preventive measures in the FIC Act. However, members of staff in the Other FI category were generally aware and believed that the Bank of Zambia could take administrative sanctions against them for failure to comply with their AML requirements.

Considering the above factors, the assessment for the availability and enforcement of administrative was rated **0.5** which is **medium**.

iv. Availability and Enforcement of Criminal Sanctions

Part IV of the Financial Intelligence Centre Act, 2010, the Forfeiture of Proceeds of Crimes Act, 2010, the Penal code Cap 87 of the laws of Zambia and the Prohibition and Prevention of Money Laundering Act, 2001 provide for criminal penalties for non-compliance with the legislation and AML-related offences. Further, from the Other FI level, the category is alive to the fact that their staff members believe that criminal enforcement actions would be initiated in cases of breaches of AML-related obligations. This factor was evidenced from the disciplinary measures taken when a member commits a fraudulent activity and the penalties ranges from suspension to having the individual being reported to the Police. To a large extent, it was noted that this perception and thought of being subjected to criminal sanctions influenced individual behavior patterns of staff members from committing criminal activities that would call for criminal sanctions.

However, the assessment found that in the period 2011 t0 2015, none of the Other FIs or their staff had been subjected to any criminal sanctions by the FIC or LEAs. Therefore , the variable on availability and enforcement of criminal sanctions was rated **0.5** which is **Medium**.

v. Availability and Effectiveness of Entry Controls

The Bank of Zambia as a supervisory authority of the Other FIs category is responsible for licensing Other FIs intending to operate in Zambia. The Banking and Financial Services Act and the National Payments Systems Act (NPSA) prohibit the provision of a financial service or payment service without a licence or designation from the Bank of Zambia.

The Bank of Zambia has a Licensing Committee mandated with evaluating all FIs licence applications. The BSFA and the NPSA provides for the criteria used to review license applications which includes the fit and proper assessment designed to prevent criminals (or their associates) from being granted a license.

Before an applicant submits an application, the Bank of Zambia conducts pre-filing meetings with applicants to discuss the minimum licensing requirements. This practice has the benefit of increasing the success rate of the applications. During the period under review, only three applicants had failed to proceed with the application beyond the prefilling stage.

The fit and proper requirement is applied not only at the point of entry but also on an on-going basis. On account of the foregoing, the rating assigned to the variable on availability and effectiveness of entry controls is **0.8** which is **very high**.

The ratings for each sector in the Other Financial Institutions Category for AML control variables which comprises the leasing companies, bureaux de change, micro finance institutions, building societies, the money transfer services providers, as well as institutions like Development Bank of Zambia and National Savings and Credit Bank were arrived at through separate analysis and assessment of the following AML control variables:

i. Integrity of Business/Institution Staff
ii. AML Knowledge of Business / Institutional Staff
iii. Effectiveness of Compliance Function (Organisation), and
iv. Effectiveness of Suspicious Activity Monitoring and Reporting

The following sections describe the analysis and assessments made in each Other FIs Category using the above mentioned AML control variables.

a) Leasing sector

i. Integrity of Business/Institution Staff

The assessment found that high integrity is a desirable attribute for staff in the leasing sector and therefore viewed its members of staff as being less vulnerable to corruption.

The sector indicated that staff were vetted or screened for criminal records before being employed. All respondents indicated that incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff were not prevalent in the sector. With regards to the sector ensuring that their members of staff are well protected from negative consequences resulting from reporting STRs or carrying out actions that comply with AML obligations, the sector indicated that adequate measures were in place including implementation of whistleblower policies.In spite of the BOZ not having received integrity failures in the period under review, the assessment, however, took note that the leasing sector might have avoided to report such cases. Further the respondents could have painted an overly positive picture in relation to the existence of integrity failures because of the culture of preserving the reputation of the institution.

However assessment notes that the respondents could have painted an overly positive picture in relation to the existence of integrity failures because of the culture of preserving the reputation of the institution. With the foregoing, the variable on availability on Integrity of Business/Institution staff was rated **0.7** which is **high**.

ii. AML Knowledge of Business / Institutional Staff

Section 23(2)(C) of the FIC Act has placed an obligation on FIs to conduct on-going training for purposes of enhancing members of staff AML knowledge.

Further, Section 23 (1) places an obligation on reporting entities to develop and implement programmes for the prevention of ML. Responses from the leasing sector indicated that members of staff were provided with appropriate AML training to ensure that their knowledge of AML laws, policies, and procedures was relevant and up-to-date in line with the requirements of the FIC Act.

The responses showed that staff had good AML knowledge and were regularly updated on domestic and transnational ML schemes.

However, the following deficiencies were observed in 7 out of the 9 institutions;

- had no appropriate AML training programs and materials available
- did not undertake staff AML training
- had no person responsible for conducting AML training
- leasing finance institutions did not conduct AML training for new recruits
- did not conduct regular AML training for their staff

With the foregoing, the variable on AML Knowledge of the business/institutional staff members for the sector was rated **0.4** which is **Medium Low**.

iii. Effectiveness of Compliance Function (Organization)

Section 23 of the FIC Act requires reporting entities to develop and implement programmes for the prevention of ML. In this regard, the responses from the leasing sector indicated that they had developed and implemented internal AML programmes (i.e. systems, policies, procedures and controls). Contrary to the requirement of section 23(3) of the FIC Act, the assessment noted that some leasing companies did not have an independent compliance function that is headed by a compliance officer at management level. Further, it is a requirement that the AML function be audited by an independent auditor.

However, it was noted that the majority of the leasing companies do not conduct audits of their AML programmes. Therefore, the variable on Effectiveness of Compliance Function (Organisation) for the sector was rated **0.2** which is **very low**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

Section 29 of the FIC Act places an obligation on reporting entities make reports to the FIC. According to the responses by the leasing companies, they indicated that the sector had information systems for monitoring transactions. Further, the responses indicated that the sector retained records of financial transaction in line with legal requirements.

However, the assessment found that the leasing sector had not submitted any STRs to the FIC despite having the knowledge about their obligations and the systems to submit such reports. The absence of STRs could be attributed to the fact that the leasing sector did not take their reporting obligation seriously. Therefore, the variable on effectiveness of suspicious activity monitoring and reporting for the Leasing sector was rated **0.2** which is **very low**.

b) Building societies sector

i. Integrity of Business/Institution Staff

Section 23 of the FIC Act requires reporting entities to develop and implement internal AML programmes. The responses from the building societies indicated that staff are of high integrity and are less vulnerable to corruption.

Interviews conducted with staff of building society branches revealed that the mortgage product offering which is a primary business for the building society is frequently a subject of abuse by staff with the intention of defrauding the

business through disbursing mortgages to fictitious customers or customers that may not satisfy the credit assessment criteria.

Further, the interviews revealed that some building societies did not subject prospective employees to background screening before employing them. The managers interviewed indicated that incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff existed although no systematic statistics are maintained on criminal or administrative cases brought against members of staff.

Despite the general awareness of the requirement to report STRs to FIC, the building societies sector did not submit any STRs to the FIC. The sector also indicated that there were adequate measures to protect members of staff negative consequences resulting from reporting STRs or carrying out actions that comply with AML obligations.

However, in view of reputational considerations, there is likelihood that the responses could have painted overly positive picture in relation to the existence of integrity failures.

With the above analysis on the variable on integrity of business/Institution Staff, it rated **0.5** which is **medium**.

ii. AML Knowledge of Business / Institutional Staff

Section 23 (1) places an obligation on reporting entities to develop and implement AML programmes. The responses from the building society sector indicated that their members of staff underwent ongoing AML training to ensure that their knowledge of AML laws, policies, and procedures was appropriate. Further most building societies had an officer responsible for conducting AML training and in some instances involved external training providers to assist the

meet their staff AML training needs. The following deficiencies were observed in three out of the four building societies:

However, the following were noted from the sector:

a. had no appropriate AML training programs and materials available;
b. not undertook AML training; and
c. did not conduct AML training for new staff

in light of the foregoing, the variable on AML Knowledge of the business/institutional staff members was rated **0.6** which is **medium high**.

iii. Effectiveness of Compliance Function (Organisation)

The responses from the building societies sector indicated that they had independent compliance functions that were headed by compliance officers at management level as prescribed by section 23 (3) of the FIC Act. Further the compliance officers conduct AML/CFT training in collaboration with competent authorities to members of staff. It was also noted that the entities had developed AML/CFT functions. However, during the assessment it was observed that someof the building societies did not subject their compliance function to independent audit.

Based on the above, the variable on effectiveness of compliance function (Organisation) for the sector was rated **0.6** which is **medium high**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

Section 29 of the FIC Act places an obligation on reporting entities to submit STRs to the FIC. Responses from the building societies indicated that they had information systems that enabled and facilitated the monitoring of transactions. Further, building societies retained financial transaction records in line with legal requirements.

However, none of the building societies submitted any STR to the FIC despite their knowledge of their obligation to make STR reports.

With the foregoing, the variable on effectiveness of suspicious of activity monitoring and reporting was rated **0.1** which is **close to nothing**.

c) Development Financial institution

i. Integrity of Business/Institution Staff

The assessment found that the institution viewed its staff as being prone to corruption. Further, it was also noted that members of staff are not subjected to background screening for any criminal records before employing them. To this end, incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff were not uncommon.

In light of the institution being aware of its mandate to report suspicious transactions, the entity has not submitted any STR report to the FIC. With regard to ensuring that its staff members are well protected from negative consequences resulting from reporting STR's, the bank stated that there were appropriate mechanisms in place such as the internal business whistle blowing mechanism that ensured the protection of employees making reports on wrong doing within the business. However, anecdotal information indicates that members of staff that sought to protect the interest of the institution by pursuing a court case against high profile individuals that had defaulted on loans were either fired or forced to resign.

With the above analysis of the variable on integrity of business/Institution Staff, it rated **0.3** which is **low**.

ii. AML Knowledge of Business / Institutional Staff

The Development Finance Institution (DFI) indicated that its staff members underwent ongoing training in AML. Despite the DFI indicating that they had

appropriate AML training programmes and materials in place and its staff undertook regular AML training, the assessment noted that there was no designated officer responsible for conducting ongoing-AML training.

The absence of a responsible officer in charge of AML training casts some doubt on whether members of staff at the DFI undergo ongoing AML training. As such, the variable was rated **0.4** which is **medium low**.

iii. Effectiveness of Compliance Function (Organisation)

The institution indicated that it has developed and implemented AML programmes consistent with the requirements of section 23 of the FIC Act. The Institution also indicated that it has an independent compliance function that is headed by a compliance officer at management level. Further, it also indicated that it conducted one external and one internal audit of its AML programmes between 2011 and 2015.

Despite the above, engagements with the DFI suggests that the compliance function is not effective. In light of this, the variable was rated **0.3** which is **low**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

The DFI indicated that it had information systems for monitoring of transactions against the clients' profiles to assist with the detection of suspicious transactions.

However the DFI has never submitted any STR to the FIC despite the knowledge of their obligation to make STR reports to the authorities. The non-reporting of STRs indicated that the institution was not effective in monitoring and reporting suspicious transactions. Therefore the variable was rated **0.3** which is **low**.

d) National Savings and Credit Institutions

i. Integrity of Business/Institution Staff

The institution viewed its staff as not being prone to corruption by criminals. It indicated that it subjects its prospective employees to background screening of criminal records. However, the institution indicated that incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff were prevalent. Despite being aware of its requirement to report suspicious transactions, the institution did not submit any STRs to the FIC during the period 2011 to 2015.

The institution also indicated that it has an internal whistleblower protection policy to protect staff from negative consequences resulting from reporting STRs. The variable was rated **0.5** which is **medium**.

ii. AML Knowledge of Business / Institutional Staff

It was indicated that staff members at the institution undergo ongoing training in AML matters. The institution also indicated that it had designated an officer responsible for conducting AML training. However, the assessment noted the deficiencies

a. There were no AML training programs and materials available;
b. AML training only conducted for new recruits as part of the induction programme; and
c. There was no regular AML training;

In light of the above deficiencies, the variable was rated **0.3** which is **Low**.

iii. Effectiveness of Compliance Function (Organisation)

The institution indicated that it developed and implemented internal AML programmes. The institution also indicated that it had an independent

compliance function headed by a compliance officer at management level as prescribed by the FIC Act to manage AML programmes. The assessment revealed that the institution did not undertake any AML audits in the period under consideration. Therefore, the variable was rated **0.5** which is **medium**.

Effectiveness of Suspicious Activity Monitoring and Reporting

The institution indicated that it did not have an information system in place to monitor transactions against the clients' profiles. However, records of financial transactions were maintained in line with legal requirements.

The institution did not submit any STRs to the FIC during the period under review despite knowledge of its obligation to make STR reports.

The variable rated **0.1** which is **Close to Nothing**.

e) Microfinance Institutions

i. Integrity of Business/Institution Staff

The MFIs did not consider their members of staff as being prone to corruption. MFIs indicated that they subject their members of staff to background screening for criminal records. It was noted incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff were not prevalent.

Fifty seven (57) percent of the respondents from the sector stated that there were appropriate whistleblower mechanisms in place to protect staff against the consequences of reporting STRs.

With the above analysis, the variable was rated 0.6 which is **medium high**.

ii. AML Knowledge of Business / Institutional Staff

The majority of MFIs that responded to the questionnaire indicated that their members of staff did not undergo ongoing training in AML. Fifty seven (57%) of the respondent highlighted the following deficiencies:

i. Lack of AML training programs and materials
ii. Lack of on-going staff training in AML/CFT and;
iii. Absence of officers responsible for conducting AML training

On account of the above analysis, the variable rated **0.4** which is **medium low**.

iii. Effective of Compliance Function (Organization)

The assessment of the MFIs showed that they did not have internal AML programmes as required under Section 23 of the FIC Act. Further, the MFIs indicated that they did not have independent compliance functions in their institutions. Consequently, no independent audits of AML compliance functions were conducted by MFIs during the review period.

On account of the above, the variable was rated **0.5** which is **Medium**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

Most MFIs indicated that they did not have information systems for monitoring transactions against clients' profiles.

Further, MFIs did not submit any STRs to the FIC during the review period despite their knowledge of the reporting obligation. However, some MFIs indicated that financial transaction records are retained in line with regulatory requirements. With the above, the variable was rated **0.3** which is **Low**.

f) Bureau de Change

i. Integrity of Business/Institution Staff

Forty-two (42) percent of bureau de change indicated that they regarded their staff members as being vulnerable to corruption.

Eighty three (83) percent of the respondents confirmed conducting vetting and screening of staff for any criminal records. In terms of instances of integrity failure, the respondents indicated that the incidences of integrity failure were not prevalent. Further, four (4) percent of the respondents in the sector stated that they had experienced integrity failures in the five years to 2015. The nature of integrity failures were related to fraud and theft by employees or fraud resulting from fake currency exchanges by customers.

Despite the sector being aware of its obligation to report suspicious transactions, no STRs were submitted to the FIC during the period under consideration.

With regards to the sector ensuring that their members of staff were protected from negative consequences resulting from reporting STRs, 91% of the sector stated that there were appropriate mechanisms in place. However, given that most bureaux de change are owner managed, these responses may not reliable as a member of staff risked facing reprisals if they reported the owner for integrity failures. Anecdotal information suggests that bureau owners are complicit in changing currencies above prescribed limits. However, such incidents don't get reported by members of staff who witness them.

With the above analysis, the variable rated **0.3** which is **Low**.

ii. AML Knowledge of Business / Institutional Staff

Most bureaux de change (88%) indicated that their members of staff undergo ongoing training in AML. The assessment revealed that 71% of the respondents indicated that they had knowledge of AML matters.

Despite indicating that most bureau de change had AML training programmes and that their staff undertook AML training, the sector seemingly had no officers responsible for conducting AML training. They relied on external experts to conduct the training. The training programmes were mostly undertaken by BdCs affiliated to the Bureau de Change Association of Zambia.

The variable on AML Knowledge of the business/institutional staff members from the MFIs sector was rated **0.6** which is **medium high**.

iii. Effectiveness of Compliance Function (Organisation)

Most BdC (84%) indicated that they had developed and implemented AML programmes in line with the provisions under section 23 of the FIC Act.

The assessment established that the sector failed to demonstrate the availability of AML compliance programmes. The businesses also indicated that they did not have independent compliance functions. The assessment further revealed that independent audits were undertaken on AML compliance. Given that most bureau de change are owner-managed, anecdotal information suggests that bureau owners are complicit in flouting regulatory requirements. With the foregoing, the variable was rated **0.3** which is **Low**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

The assessment revealed that sixty-three percent of BdC did not have information systems for monitoring transactions against the clients' profiles. With regard to the retention of financial records, all BdC businesses indicated that they maintain records as required by the FIC Act.

The assessment of the BdCs noted a serious weakness in the sectors compliance culture which resulted in the failure of the sector to submit STRs to the FIC. In this respect, anecdotal information suggests that suspicious transactions involving foreign nationals have routinely take place in some BdCs.

Therefore, the variable on Effectiveness of Suspicious Activity Monitoring and Reporting for the sector was rated **0.1** which is '**Close to nothing'**.

g) Mobile Money Operators /Payment Systems Business

i. Integrity of Business/Institution Staff

Two out of three mobile money operators (MMOs) regarded their staff members as being prone to corruption. MMOs indicated that they vetted and screened their prospective employees for any criminal records before employing them. To this end, two out of three of the respondents indicated that incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) were not experienced whilst one of the respondents indicated that it had experienced integrity failures related to fraud and theft. The MMO that had experienced integrity failures also indicated that it had submitted an STR to the FIC.

With regard to the sector ensuring that their staff members were protected from negative consequences resulting from reporting STRs, the MMOs indicated that there were appropriate mechanisms in place and one such mechanism adopted was the development and implementation of whistle blowers mechanisms.

Further the assessment of the sector revealed that agents who are the driving force of the MMO sector, experienced the most integrity failures resulting from their need to make large profits and commission. With the above analysis of the variable on integrity of business/Institution Staff, it rated **0.3** which is **Low**.

ii. AML Knowledge of Business / Institutional Staff

MMOs indicated that their members of staff underwent ongoing training in AML matters. They further indicated that they had AML knowledge resulting from trainings undertaken. However, it was noted that the agent network is not well-

trained in matters of AML. With the aforesaid, the variable was rated **0.5** which is **medium**.

iii. Effectiveness of Compliance Function (Organisation)

MMOs indicated that they have developed and implemented AML programmes that meet legal requirements. The two MMOs also indicated that they had independent compliance functions as required by law.

From the three (3) MMOs operating in the sector, only one (1) MMO indicated that it did not conduct independent AML compliance audits citing its AML system capability to enforce AML requirements.

With the above, the variable was rated **0.6** which is **Medium High**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

MMOs indicated that they have information systems for monitoring transactions against the clients' profiles. The MMOs also indicated that they retain records in accordance with the requirements of the law.

Although the sector handles high volumes of cash transactions, transactions limits are imposed to reduce or minimize the possibility of above by criminal elements.

Despite the regulatory transactions limit, anecdotal information points to the possibility of agents assisting customers to scircumvent the limits in order to increase commissions resulting from increased transactional volumes.

On account of the above, the variable was rated **0.4** which is **Medium low**.

h) Remittance Service Providers

i. Integrity of Business/Institution Staff

Sixty (60) percent of the Remittance Service Providers (RSPs) that responded to the questionnaire regarded their staff members as being less vulnerable to corruption.

RSPs subjected prospective employees to vetting and screening for any criminal records. All RSPs stated that incidences of integrity failure (e.g. negligence or "willful blindness" to suspicious transactions) involving staff were not prevalent. Although the RSPs were aware of their reporting obligations in respect of STRs, no reports were submitted to the FIC during the review period.

All RSPs reported having appropriate whistleblowing mechanisms to protect their staff from negative consequences arising from reporting STRs. With the above analysis, the variable was rated **0.4** which is **Medium Low**.

ii. AML Knowledge of Business / Institutional Staff

RSPs indicated that their members of staff are trained in AML matters on an ongoing basis. The respondents also indicated that staff members had knowledge of, and were regularly updated on domestic and transnational ML schemes.

The following strengths were also noted from sector:

a. RSPs had appropriate AML training programs and materials available;
b. Members of staff of RSPs undertook AML training;
c. RSPs had officers responsible for conducting AML training;
d. RSPs conducted AML training for new recruits; and
e. RSPs conducted regular in-house AML training.

Based on the assessment, it was established that some of the above-stated strengths were not in existence. From the above analysis, the variable was rated **0.6** which is **medium high**.

iii. Effectiveness of Compliance Function (Organisation)

The assessment revealed that RSPs have developed and implemented AML programmes in line with section 23 of the FIC Act. The respondents also highlighted that eighty percent (80%) of businesses had independent compliance functions headed by compliance officers at management level. In addition, the businesses indicated that have undertaken independent AML compliance audits. However, the assessment revealed that the compliance function was not effective in its operations. With the aforementioned, the variable was rated **0.5** which is **medium**.

iv. Effectiveness of Suspicious Activity Monitoring and Reporting

Most RSPs (80%) indicated that they had information systems for monitoring client transactions. A similar proportion of RSPs indicated that they maintained records as required by law.

With regard to STR reporting, the assessment revealed that there were no STRs submitted to the FIC in the period under review. With the aforementioned, the variable was rated **0.2** which is **very low**.

a. Variables from the Banking Sector Category

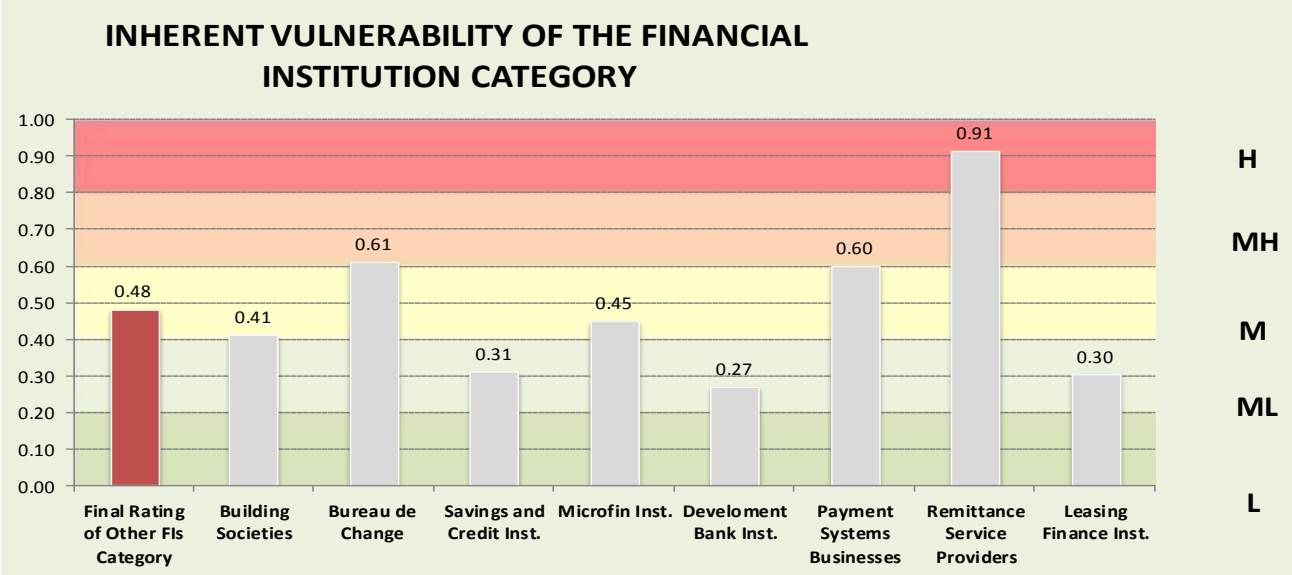
The Banking sector assessment assigned a rating of **medium high (0.6)** to the variables relating to Availability and Access to Beneficial Ownership information. While a medium low rating with a score of 0.4 was assigned to the 'Availability of Reliable Identification Infrastructure'**.** A rating of **high (0.7)** was assigned to the variable relating to Availability of Independent Information Sources.

8.2 Other FIs Category Inherent Vulnerability

The Inherent Vulnerability of the Other FIs assesses the susceptibility of the sector as a whole to money laundering, solely based on key inherent factors of the category, without taking into account its AML controls. The Other FI category as assessed is inherently vulnerable when its characteristics render it open to abuse for money laundering. This relies on inherent vulnerability variables, namely:

- Total size/volume of the Other FI category,
- Client base profile of the Other FI category,
- Use of agents in the Other FI category,
- Level of cash activity in the Other FI category,
- Frequency of international transactions in the Other FI category, and
- Other vulnerability factors of the Other FI category.

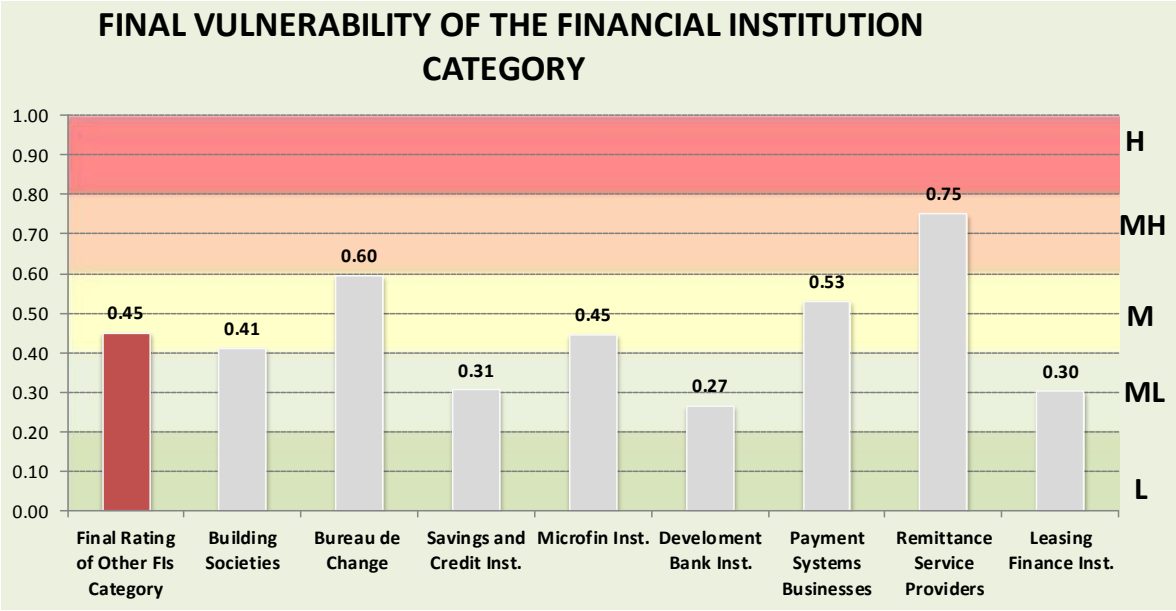
The graph below gives an overview of the sectors overall inherent vulnerability was assessed to be **0.46** (**medium**).



8.3 Other FIs Category Final Vulnerability Rating

Following the final assessment of the Other FIs Category AML control variables and the final assessment of the inherent vulnerability factors, the sectoral final vulnerability rating for the Other FIs Category is **0.45** (**medium**).

The graph on final vulnerability of the Other FIs Category is illustrated below along with the vulnerability rating for the assessed Other FI sectors.



The table below illustrates the overall Other FIs Sectoral prioritisation ranking of AML control variables

Table 20: Sectoral Prioritisation Ranking

PRIORITY RANKING FOR AML CONTROL VARIABLES	Sectoral Priorisation Ranking
AML Knowledge of Business/Institution Staff	1
Effectiveness of Suspicious Activity Monitoring and Reporting	2
Effectiveness of Compliance Function (Organization)	3
Integrity of Business/Institution Staff	4
Effectiveness of Supervision/Oversight Activities	5
Availability and Enforcement of Administrative Sanctions	6
Availability and Enforcement of Criminal Sanctions	7
Availability of Reliable Identification Infrastructure	8
Availability and Access to Beneficial Ownership information	9
Comprehensiveness of AML Legal Framework	
Availability of Independent Information Sources	
Availability and Effectiveness of Entry Controls	

The table above shows that the Other FIs category has serious challenges with the AML control variable on AML knowledge of the business/Institution staff, followed by effectiveness of the compliance function and effectiveness of suspicious activity monitoring and reporting. These have been prioritised in the action Plan.

9.0 THE DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPS) SECTOR

The Designated Non-Financial Businesses and Professions (DNFBPs) as per FATF standards that operate in Zambia include real estate agents, legal practitioners, accountants and auditors, motor vehicle dealers, casinos, precious stones and metal dealers. All these sectors were assessed.

Until, April 2016, only the real estate agents, casinos, legal practitioners, accountants and auditors had designated supervisory authorities to supervise

them for AML purposes. The motor vehicle, precious stones and metal dealers had no designated Supervisory Authority to supervise them for AML purposes until April, 2016 when the FIC Act was amended. Currently, the Centre has the power to supervise a reporting entity that has no designated AML supervisory authority or which has a supervisory authority that is not effective.

It is noted that the definition of supervisory authority under section 2 of the FIC Act, as amended, includes the Licensing Committee established under the Tourism and Hospitality Act, No. 23 of 2007 which licences casinos; the Registrar of Zambia Institute of Estate Agents appointed under the Estate Agents Act, No. 21 of 2000; the Law Association of Zambia established under the Law Association of Zambia Act, Cap 31 of the Laws of Zambia; the Zambia Institute of Chartered Accountants established under the Accountants Act, No. 13 of 2008 and the Centre as a supervisor of last resort.

9.1 Assessment Conducted

Questionnaires were used to conduct the assessment. One questionnaire was administered to supervisory/regulatory or licencing authorities, where available while another was administered to the players for each sector. The team administered the questionnaires through face-to-face interviews in most cases in order to not only explain the objective of the assessment but to provide clarification on the questions where necessary.

9.2 Real Estate Agents

(a) Size of Sector

There were, at the time of the assessment, three hundred and fifty-seven (357) registered real estate agents in the real estate sector regulated by ZIEA.

The sector's contribution to Gross Domestic Product (GDP) for the years 2011 to 2014 are as indicated below:

	2011	**2012**	**2013**	**2014**
GDP Contribution	4.0	3.9	3.7	3.9

- *Source: CSO 2010 GDP Benchmark Estimates (Accounting sub sector estimates disaggregated by CSO GDP office)*

The GDP values do not include the value generated by new construction. According to the Central Statistics Office, the values include the provision of real estate activities on a fee or contract basis including real estate related services.

This includes:

(i) Activities of real estate agents and brokers
(ii) Intermediation in buying, selling and renting of real estate on a fee or contract basis
(iii) Management of real estate on a fee or contract basis
(iv) Appraisal services for real estate and
(v) Activities of real estate escrow agents

This is as per United Nations International Standard Industrial Classification of All Economic Activities (ISIC), Rev.4.

(b) Supervisory Authority (Licensing & AML/CFT Compliance)

Real estate agents are regulated by the Zambia Institute of Estate Agents (ZIEA) which is established under the Estate Agents Act, No. 21 of 2000.

The role of ZIEA under section 5 of the Estates Agents Act includes:

(i) to promote and regulate the practice and business of estate agents;

(ii) to promote and maintain best standards and practices in the business of estate agents;

(iii) to register members of the institute and persons qualified to be registered as estate agents and to maintain a register for both;

(iv) to provide continuing education for its members; and

(v) to regulate the professional conduct and discipline of estate agent

ZIEA is also designated as an AML supervisory authority under the FIC Act.

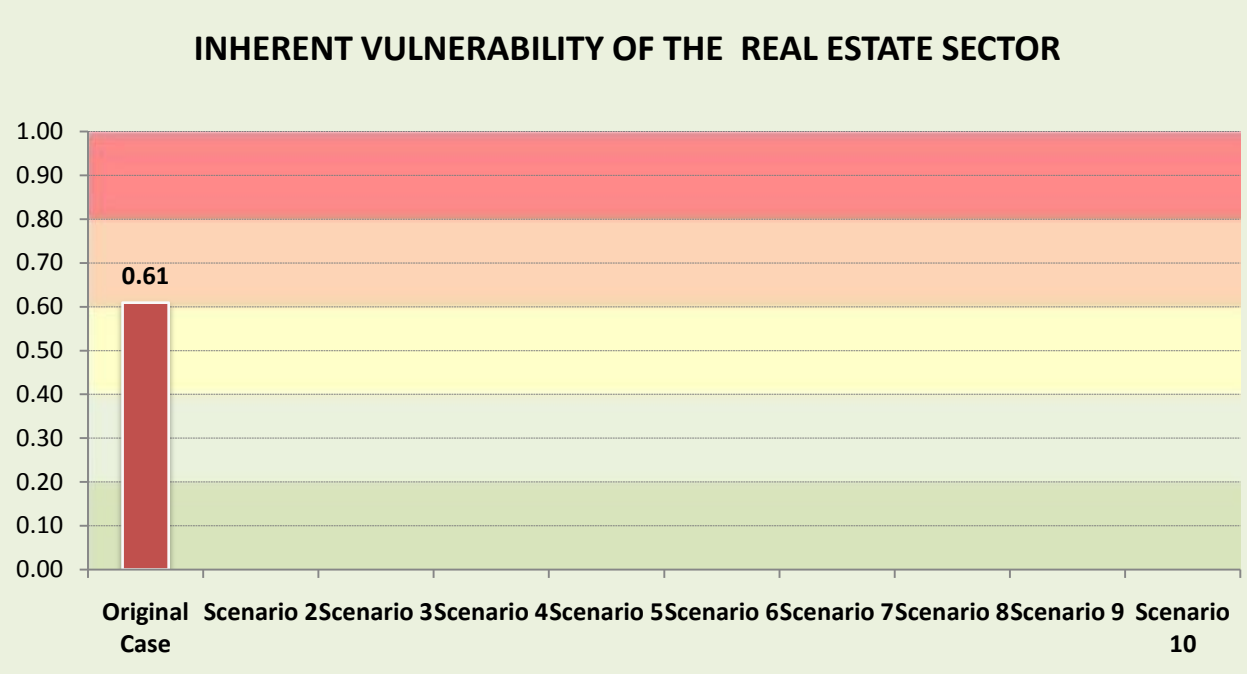
Relevant Legislation

In addition to the Estates Agents Act and the FIC Act, the legislation relevant for the operations of real estate agents for purposes of AML are general in nature as indicated below:

i. Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
ii. The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
iii. Forfeiture of Proceeds of Crime Act No 19 of 2010

Vulnerability Analysis

The sector's inherent vulnerability to money laundering is 0.61 (Medium High).



Legend

Dark Pink – High

Light Pink – Medium High

Yellow – Medium

Light Blue – Medium Low

Green - Low

The sector is vulnerable due to the fact that most of its high value clients are foreigners and politically exposed persons. Further, the foreign clients and politically exposed persons tend to use third parties for their transactions thereby distancing themselves from the transactions. Beneficial ownership is at times difficult to ascertain. Source of income is not established during transactions by agents. There are large cash transactions that take place, frequently, involving PEPs. The participation, in the sector, of unregistered and unlicensed players is a factor that increases the sector's vulnerability.

Money Laundering Risk

The money laundering risk for the sector was rated High as a result of vulnerability being Medium High and threat being High.

Conclusions/Findings

The following deficiencies or gaps in the AML controls apply to this sector:

i. The Estates Agents Act, which is the enabling legislation for the regulation of real estate agents does not have AML provisions;

ii. Despite ZIEA being designated as a supervisory authority under the FIC Act, with specific powers, ZIEA is currently not supervising the sector on AML as a result, ZIEA is not imposing effective sanctions for compliance deficiencies;

iii. There are no provisions in the ZIEA Act that relate to the role of ZIEA as reflected under the FIC Act and this gives members a reason to not buy into AML regulation of the sector;

iv. The number of unregistered real estate agents poses a regulatory challenge in the sector;

v. Lack of knowledge on AML for supervisory authority and reporting entities;

vi. Lack of knowledge on role of supervisory authority and reporting entities in AML;

vii. Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of

administrative sanctions (including monetary penalties) both AML/CFT compliance deficiencies; and

viii. Lack of enforcement action taken for entities operating without a license.

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there in the sector.

Key ***recommendations:***

The priority areas to mitigate the vulnerability for the sector are depicted in the table 21:

Table 21: Priority Ranking Real Estate Sector

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	5
Availability and Enforcement of Criminal Sanctions	9
Availability and Effectiveness of Entry Controls	6
Integrity of Business/ Profession Staff	7
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	4
Availability and Access to Beneficial Ownership information	10
Availability of Reliable Identification Infrastructure	8
Availability of Independent Information Sources	11

As a matter of priority the sector requires knowledge in AML. Following which the ZIEA needs to be capacitated for effective AML supervision and oversight which is lacking currently. Overall, the legal framework for the sector needs to be amended to provide for AML requirements and to provide for administrative sanctions for AML breaches.

Further, the ZIEA should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties).

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by ZIEA (ie., type & number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).

Reporting entities will also need to be capacitated to have in place an effective compliance function and effective suspicious activity monitoring and reporting regime.The agents operating outside the regulation of ZIEA need to be brought on board in order to reduce the sector vulnerability.

9.3 Lawyers

Size of the Legal Practitioners Sector

There were, at the time of the assessment, eight hundred and eighty-four (884) registered lawyers who are regulated by LAZ some of whom provide legal services such as conveyancing, investment advice, company and trust formation. A few of these lawyers are notary publics. The sector's contribution to Gross Domestic Product (GDP) for the year 2010 was 0.1% *(Source: CSO 2010 GDP Benchmark Estimates*

Supervisory Authority (Licensing & AML Compliance)

Lawyers in Zambia are regulated by the Law Association of Zambia (LAZ) in as far as they are registered with the supervisory body as legal practitioners. LAZ is established by the Law Association of Zambia Act, Chapter 31 of the Laws of Zambia.The role of LAZ in regulating legal practitioners is provided for in the Legal Practitioners Act and in summary includes:

(i) to promote and regulate the practice and business of legal practitioners;
(ii) to promote and maintain best standards and practices in the business of legal practitioners;
(iii) to register members of the institute and persons qualified to be registered as legal practitioners and to maintain a register for both;
(iv) to provide continuing education for its members; and
(v) to regulate the professional conduct and discipline of legal practitioners

LAZ is designated as a supervisory authority for AML under the FIC Act.

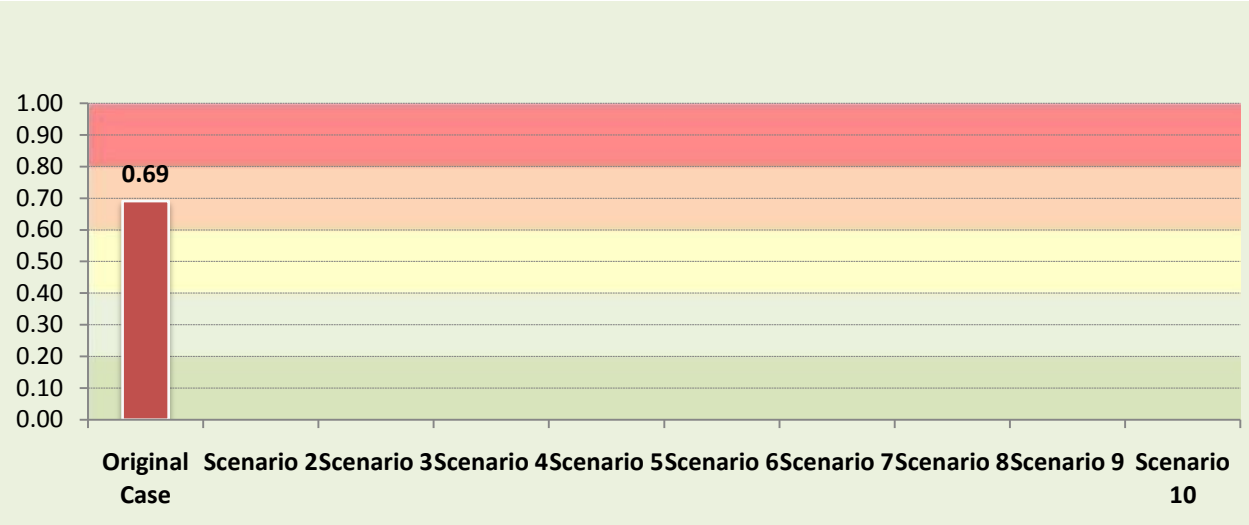
Relevant Legislation

In addition to the Law Association of Zambia Act, the Legal Practitioners Act and the FIC Act, the legislation relevant for the operations of legal practitioners for purposes of AML are general in nature as indicated below:

i. Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
ii. The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
iii. Forfeiture of Proceeds of Crime Act No 19 of 2010
iv. Penal Code [Cap. 87 of the Laws of Zambia]

Vulnerability Analysis

The sector's vulnerability to money laundering is 0.69 (Medium High) as indicated below:



The sector is vulnerable due to the fact that lawyers act on behalf of clients who may use the services of lawyers to launder money. The sector is misused in the following transactions for purposes of money laundering:

- Misuse of client accounts through masking beneficial ownership
- Purchase of real property
- Creation of trusts and companies
- Management of trusts and companies
- Management of client money, securities and other assets

The other factor that makes the sector vulnerable is that some clients choose to be anonymous in transactions.

Money Laundering Risk

The money laundering risk for the sector was rated High as a result of vulnerability being Medium High and threat being High.

Conclusions/Findings

The following deficiencies or gaps in the AML controls apply to this sector:

(i) The Legal Practitioners Act, which is the enabling legislation for the regulation of lawyers does not have AML provisions;

(ii) Despite LAZ being designated as a supervisory authority in FICA, with specific powers, LAZ is currently not supervising the sector on AML as a result, LAZ is not imposing effective sanctions for compliance deficiencies;

(iii) There are no provisions in the Legal Practitioners Act that relate to the role of LAZ as reflected under the FIC Act and this gives members a reason to not buy into AML regulation of the sector;

(iv) Lack of knowledge on AML for supervisory authority and reporting entities;

(v) Lack of knowledge on role of supervisory authority and reporting entities in AML;

(vi) Lack of knowledge on AML for supervisory authority and reporting entities;

(vii) Lack of knowledge on role of supervisory authority and reporting entities in AML; and

(viii) Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of deterrent administrative sanctions (including monetary penalties) for AML/CFT compliance deficiencies.

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there in this sector.

Key ***recommendations:***

The priority areas to mitigate the vulnerability for the sector are depicted in the table 22 below:

Table 22: Priority Ranking for the Legal Practitioners

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	4
Availability and Enforcement of Criminal Sanctions	9
Availability and Effectiveness of Entry Controls	7
Integrity of Business/ Profession Staff	6
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	5
Availability and Access to Beneficial Ownership information	10
Availability of Reliable Identification Infrastructure	8
Availability of Independent Information Sources	11

As a matter of priority the sector requires knowledge in AML. Following which LAZ needs to be capacitated for effective AML supervision and oversight which is lacking currently. LAZ should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively

implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties) for AML breaches.

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by LAZ (ie., type & number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).Reporting entities need to be capacitated to have in place an effective compliance function and effective suspicious activity monitoring and reporting regime.
Overall, the legal framework for the sector needs to be amended to provide for AML. The AML legal framework needs to provide for administrative sanctions.

9.4 Casino Sector

Size of the Casino Sector

At the time of the assessment there were thirty-five (35) registered Casinos in Zambia.

The sector's contribution to Gross Domestic Product (GDP) is only available for 2010 at a rate of 0.03% (Source: CSO 2010 GDP Benchmark Estimates).

Supervisory Authority (Licensing & AML Compliance)

Pursuant to section 81(4) of the Tourism and Hospitality Act, No. 13 of 2015, casino operators are regulated by Part VI of the Tourism and Hospitality Act, No. 23 of 2007. The 2007 Act establishes a Licensing Committee which oversees the functioning of casinos and defines circumstances under which casino licenses may be issued.

The Licensing Committee is a designated AML supervisor for casino operators under the FIC Act.

Relevant Legislation

The primary legislation for regulating the casino operators is the Tourism and Hospitality Act (Part VI), No. 23 of 2007. The FIC Act provides for AML obligations of casino operators and the supervisory authority.

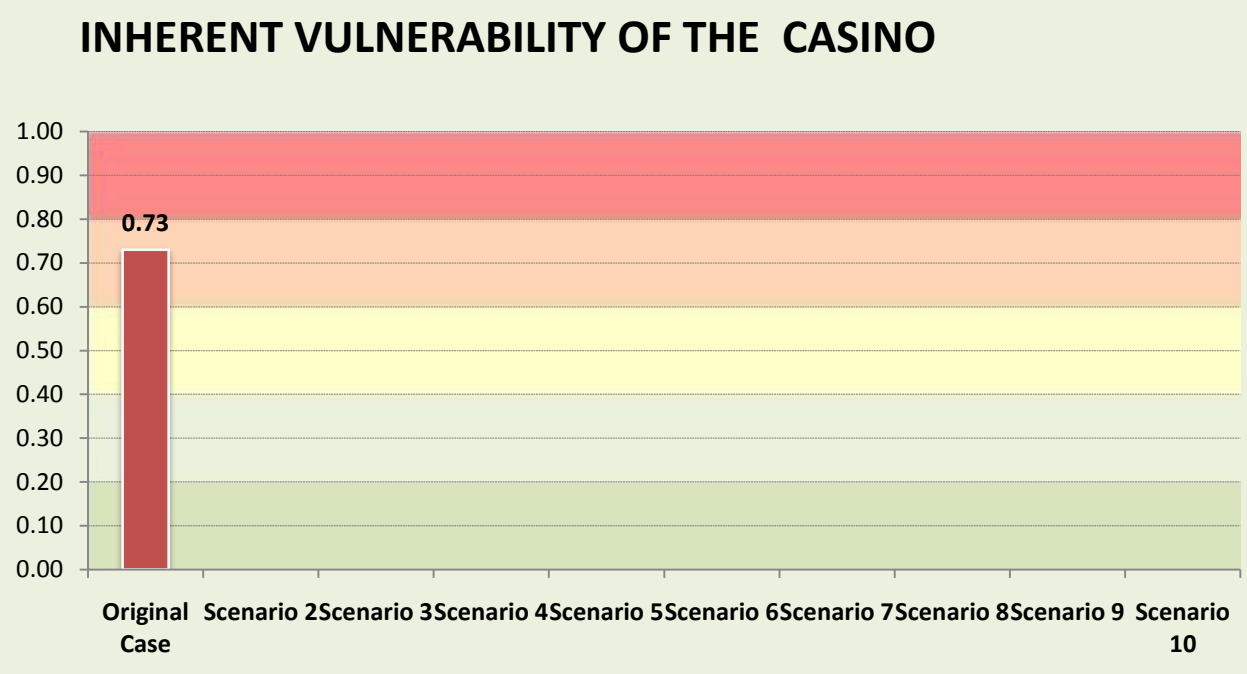
Casinos operating Gaming Machines are also regulated by the Gaming Machines (Prohibition) Act, Chapter 92 of the Laws of Zambia.

The other legislation relevant for the operations of casinos for purposes of AML are general in nature as indicated below:

- Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
- The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
- Forfeiture of Proceeds of Crime Act No 19 of 2010

Vulnerability Analysis

The vulnerability to money laundering of the Casino sector was rated as 0.73 *(High)* as depicted in the table below.



The sector is vulnerable due to the fact that it is not being regulated comprehensively and effectively. The law provides for regulation through the Licencing Committee which in practice is not operational. Instead there is an individual who has been given the role of licencing casinos at Ministry of Tourism and Arts. The licencing process is therefore a vulnerability for the sector as the one individual cannot carry out thorough checks on the applicants for licences.

The other factor contributing to the sector's vulnerability is the fact that most of the high value clients are foreigners and politically exposed persons. Further, casinos offer online gambling which is not properly understood or regulated by the licencing authority. Identification of customers is not performed and source of income is not established. There are large cash transactions that take place involving foreigners and PEPs making the sector vulnerable to tax evasion and fraud. Lack of effective and comprehensive regulation also increases the sector's vulnerability.

Money Laundering Risk

The money laundering risk for the sector was rated High as a result of vulnerability being High and threat being High.

Conclusions/Findings

The deficiencies or gaps in the AML controls that apply to this sector are the following:

(i) None of the laws for regulating of casinos have AML provisions;

(ii) Licencing is currently done by an individual although the law provides for a Licensing Committee as such the capacity to verify particulars of applicants is lacking;

(iii) The Ministry of Tourism and Arts is currently not supervising the sector on AML as a result, the Ministry is not imposing effective sanctions for compliance deficiencies;

(iv) Lack of knowledge on AML for supervisory authority and reporting entities;

(v) Lack of knowledge on the role of the supervisory authority and reporting entities in AML; and

(vi) Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of deterrent administrative sanctions (including monetary penalties) for both AML/CFT compliance deficiencies and operating without a license.

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there in this sector.

The key **recommendations**:

The main areas of priority to mitigate the vulnerabilityare as depicted below in Table 23 below:

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	5
Availability and Enforcement of Criminal Sanctions	9
Availability and Effectiveness of Entry Controls	6
Integrity of Business/ Profession Staff	7
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	4
Availability and Access to Beneficial Ownership information	10
Availability of Reliable Identification Infrastructure	8
Availability of Independent Information Sources	11

As a matter of priority there is need to amend the Tourism and Hospitality Act and other relevant laws that deal with the Casino sector to provide for effective and comprehensive overall and AML supervision. The Supervisory Authority should be operationalized and capacitated to supervise the sector under the ongoing process spearheaded by Ministry of Finance. The supervisor should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties).

Applications for casino licences should be properly vetted to prevent criminals or their associates from having any controlling interest in the casinos.

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by the Licensing Committee (ie., type and number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).

Reporting entities will also need to be capacitated to have in place an effective compliance function and effective suspicious activity monitoring and reporting regime. Overall, the legal framework for the sector needs to be amended to provide for AML.

There is need for awareness on AML for the entire sector.

9.5 Motor Vehicle Dealers

Size of Sector

There were, at the time of the assessment, ten (10) registered dealers in new motor vehicles spread across Lusaka, Southern and Copperbelt Provinces of Zambia. In addition, there are second hand Motor Vehicle dealers in Zambia who were not considered in the assessment.

The available statistics on GDP contributions from CSO for the sector include

wholesale and retail trade; repair of motor vehicles and motor cycles.

Below is a table with the actual GDP values:

	2010	**2011**	**2012**	**2013**	**2014**
GDP Contribution	18.4%	19.8%	19.8%	22%	22.3%

(Source: CSO 2010 GDP Benchmark Estimates)

Supervisory authority (Licensing & AML Compliance)

Motor Vehicle dealers are not licensed for trading purposes. It is sufficient for one to have the requisite registration from the Patents and Companies Registration Office and the Zambia Revenue Authority to engage in the businesses of selling vehicles. A general trading licence issued by the Council is required to be displayed on the business premises as is the case for all other traders.

Under the FIC Act as amended in 2016, the Center is empowered to supervise sectors for AML where no specific supervisor is designated. In this regard, the Centre is the AML supervisory authority for Motor Vehicle dealers.

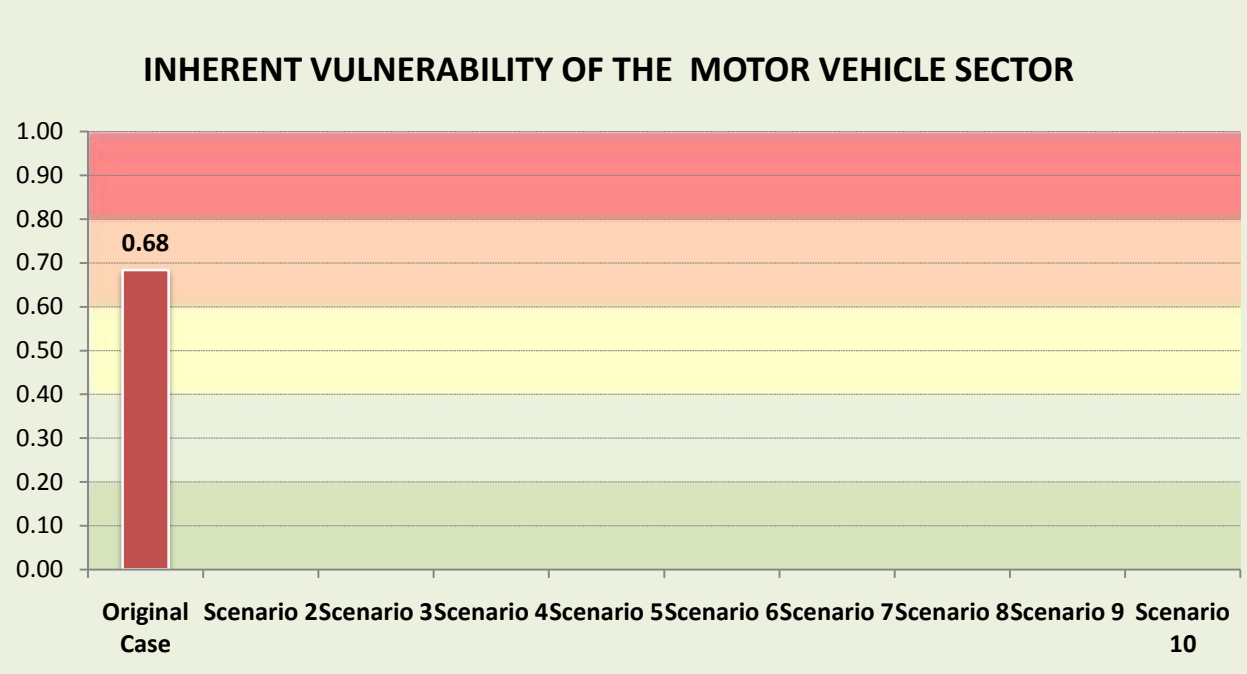
Relevant Legislation

The other legislation relevant for the operations of Motor Vehicles for purposes of AML are general in nature as indicated below:

i. Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
ii. The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
iii. Forfeiture of Proceeds of Crime Act No 19 of 2010

Vulnerability Analysis

The vulnerability to money laundering of the dealers in new motor vehicles was assessed as 0.68 (Medium High) as depicted in the table below.



The sector is vulnerable due to the fact that it offers high value products that can be used to launder money. Identification of customers is not performed and source of income is not established. Lack of effective and comprehensive regulation also increases the sector's vulnerability.

Money Laundering Risk

The money laundering risk for the sector was rated High as a result of vulnerability being Medium High and threat being High.

Conclusions/ Findings

The deficiencies or gaps in the AML controls that apply to this sector are the following:

(i) The AML legal framework does not provide for the motor vehicle dealers;

(ii) Licensing procedures are not comprehensive and do not take into account AML requirements;

(iii) Until April, 2016 there was no designated supervisory authority on AML for the sector;

(iv) Lack of knowledge on AML in the sector;

(v) Motor vehicle dealers were not required to report suspicious transactions until the FIC Act was amended in April, 2016;

(vi) Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of deterrent administrative sanctions (including monetary penalties) for both AML/CFT compliance deficiencies

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there in this sector.

The key **recommendations**:

The main areas of priority to mitigate the vulnerabilityare as depicted 24below:

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	3
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	6
Availability and Enforcement of Criminal Sanctions	8
Availability and Effectiveness of Entry Controls	5
Integrity of Business/ Profession Staff	9
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	4
Effectiveness of Suspicious Activity Monitoring and Reporting	7
Availability and Access to Beneficial Ownership information	11
Availability of Reliable Identification Infrastructure	10
Availability of Independent Information Sources	12

As a matter of priority there is need to amend the AML legal framework to provide for effective and comprehensive overall and AML supervision of the dealers in motor vehicles. Further, the laws should include AML/CFT obligations.

The designated supervisor should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties).

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by the Centre, as designated AML/CFT supervisor (ie., type & number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).

The Licensing procedures should be improved and take into account AML/CFT requirements.

Reporting entities will also need to be capacitated to have in place an effective compliance function and effective suspicious activity monitoring and reporting regime.There is need for awareness on AML for the entire sector.

9.6 Precious Stones and Metal Dealers

Size of Sector

There are 3,000 precious stones and metal dealers that are affiliated to the Federation for Small Scale Mining Association in Zambia (FESSMAZ). In addition, there are other dealers that operate independently.

According to the Central Statistics Office Report for September 2015 the export of precious stones contributed to 15.1 % of Zambia's top 25 non-traditional exports (NTEs) for August and July, 2015. Zambia produces about 20% of the world's emeralds as they are much sought after for their deep green color.

Supervisory authority (Licensing and AML Compliance)

The Mines and Minerals Development Act No. 11 of 2015 provides the legislation covering exploration, mining and processing of minerals. The Act under sections 44 to 45 requires traders (domestic or International) in minerals to obtain a permit from the Director of Mines which is valid for three (3) years. A holder of a mineral trading permit is required to:

(i) Maintain accurate and separate mineral trading registers for the transactions for each mineral;

(ii) Keep daily records of buying, selling or processing, indicating the names of buyers and sellers, their licence numbers and the amount and value of minerals bought, sold, processed, exported or imported;

(iii) Submit to the Director of Mines, on or before the fifteenth day of each month, a true and correct copy in duplicate of all the entries made in the mineral trading register in the preceding month; and

(iv) Make the records and minerals available within normal working hours for inspection by an authorized officer.

In relation to the mineral import permit, the Director of mines considers the following in evaluating an application:

(i) Clearance by the national authority responsible for mining in the country of origin; and

(ii) For a conflict mineral, a regional certificate as confirmation that the minerals are not from a conflict area.

A holder of a mineral export or mineral import permit is required to submit monthly export or import returns.

Under the FIC Act as amended in 2016, the Center is empowered to supervise sectors for AML where no specific supervisor is designated. In this regard, the Centre is the AML supervisory authority for the dealers in Metals and Precious Stones.

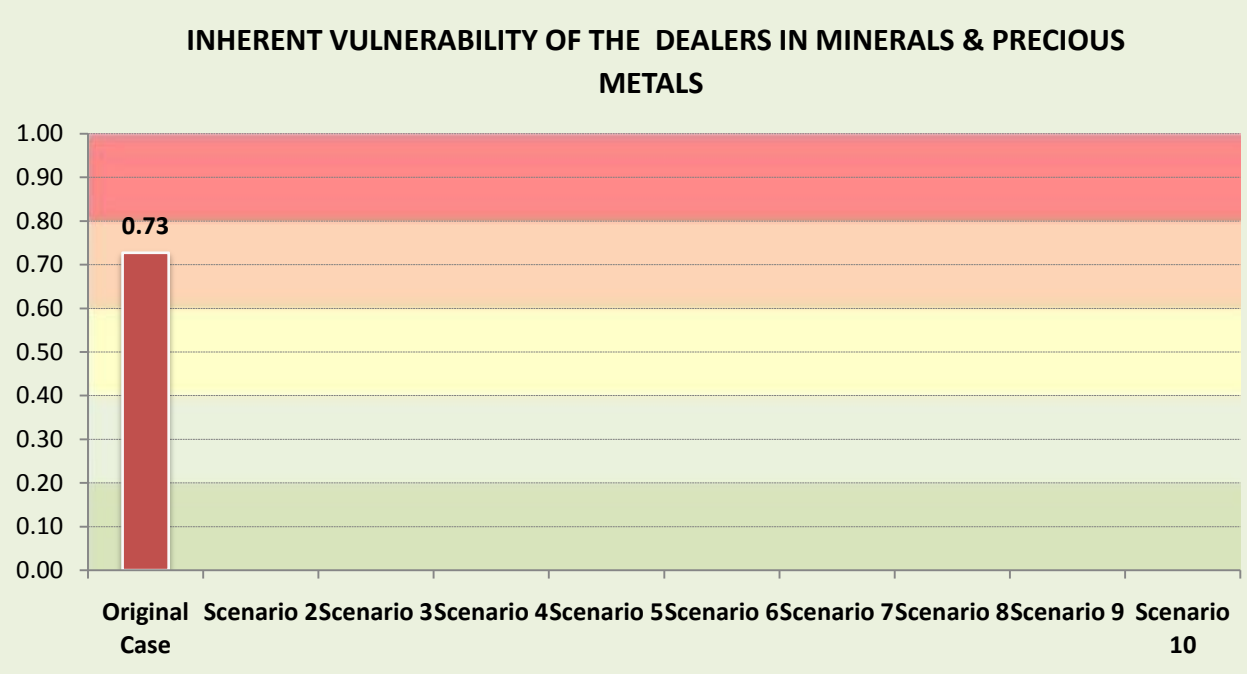
Relevant Legislation

In addition to the Mines and Minerals Development Act, the other legislation relevant to dealers in Metals and Precious Stones for purposes of AML are general in nature as indicated below:

i. Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
ii. The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
iii. Forfeiture of Proceeds of Crime Act No 19 of 2010

Vulnerability Analysis

The sector's vulnerability to money laundering is 0.73 (Medium High) as depicted in the table below:



The sector is vulnerable due to the high value product that is traded. Identification of customers is not performed and source of income is not established. Lack of effective and comprehensive regulation also increases the sector's vulnerability. There is also high use of cash in transactions. Trade with persons who are not licensed by Ministry of Mines or not even registered with any association or the Federation is very high. According to the players interviewed the sector is highly compromised due to interference by politically exposed persons.

Supervision of the sector is centralized to the Ministry of Mines. The Federation and Associations are voluntary and have no regulatory or supervisory powers over their membership. They are more like cooperative societies or unions merely there to further interests of their membership which primarily relate to the marketing of gemstones. The large scale gemstone miners do not belong to any of these Associations.

The foregoing factors increase the sector' vulnerability.

Money Laundering Risk

The money laundering risk for the sector was rated High as a result of vulnerability being Medium High and threat being High.

Conclusions/ Findings

The deficiencies or gaps in the AML controls that apply to this sector are the following:

(i) The principle piece of legislation, the Mines and Minerals Development Act, regulating the sector does not have AML provisions;

(ii) Licensing procedures do not take into account AML requirements and there is lack of knowledge on AML in the sector;

(iii) Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of deterrent administrative sanctions (including monetary penalties) for both AML/CFT compliance deficiencies

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there in this sector.

Key **recommendations**:

The priority areas to mitigate the vulnerability for the sector are depicted in the table 25 below:

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	3
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	7
Availability and Enforcement of Criminal Sanctions	9
Availability and Effectiveness of Entry Controls	6
Integrity of Business/ Profession Staff	8
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	5
Availability and Access to Beneficial Ownership information	11
Availability of Reliable Identification Infrastructure	10
Availability of Independent Information Sources	12

Primarily, the sector requires knowledge in AML. The designated supervisor should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties). The law should include AML/CFT obligations.

The Licensing procedures should be improved and take into account AML/CFT requirements.

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by the Centre (ie., type & number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).

Reporting entities need to have their capacity built in the area of compliance and effective monitoring and reporting of suspicious transactions. Overall the legal framework of the entire sector needs to be amended to provide for AML.There is need for awareness on AML for the entire sector.

9.7 Accounting Sector

Size of the Sector

As of October 2015 there were eighty-four (84) fully paid up audit firms and twenty-six (26) non-audit firms registered with ZICA *(source: www.zica.co.zm)*.

Besides firms and members in practice, the institute also supervises accountants working in various sectors of commerce and industry.

The sector's contribution to Gross Domestic Product (GDP) is only available for 2010 at a rate of 0.3% *(Source: CSO 2010 GDP Benchmark Estimates)*.

Supervisory Authority (Licensing and AML Compliance)

The accounting sector in Zambia is regulated by the Zambia Institute of Chartered Accountant which was formed under the Accountants Act of 2008. The primary mandate of the Institute is to promote the accountancy profession through the regulation of the accountancy practice and education in Zambia *(source: www.zica.co.zm)*.

ZICA is a designated AML supervisory authority under section 2 of the FIC Act and as such accountants and auditors are reporting entities under Zambia's AML legal framework. In the interview with ZICA it was noted that the body does not currently supervise its members for AML.

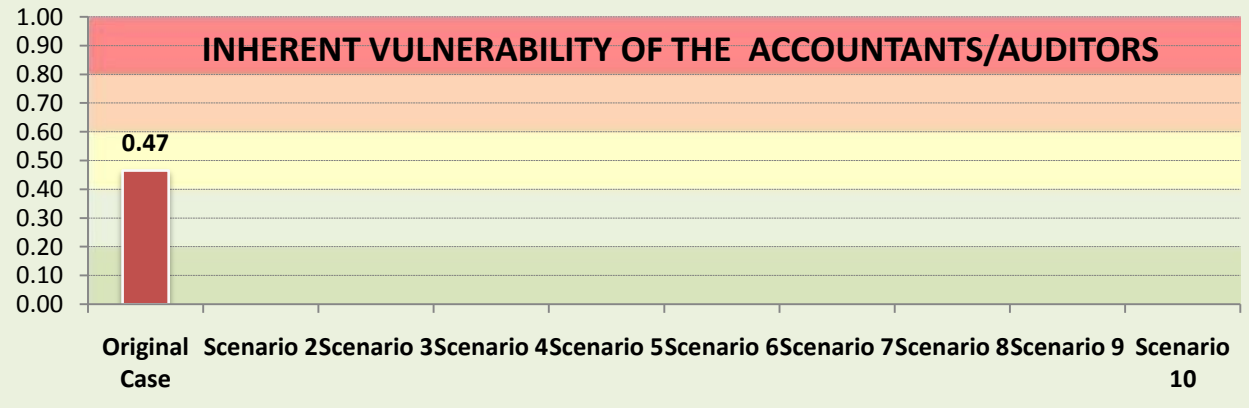
Relevant Legislation

In addition to the Accountants Act of 2008 and the FIC Act, the other legislation relevant to Accountants and Auditors for purposes of AML are general in nature as indicated below:

i. Prohibition and Prevention of Money Laundering Act No 14 of 2001 (as amended)
ii. The Public Interest Disclosure (Protection of Whistleblowers) Act No 4 of 2010
iii. Forfeiture of Proceeds of Crime Act No 19 of 2010

Vulnerability Analysis

The sector's vulnerability to money laundering is 0.47 (Medium) as depicted in the table below:



The sector is vulnerable in relation to trade based money laundering. Reports submitted to the Centre show that the services provided by this sector can be used in tax evasion as a result of abusive transfer pricing, trade mispricing, mis-invoicing of services and intangibles and shifting of profits.

Money Laundering Risk

The money laundering risk for the sector was rated Medium High as a result of vulnerability being Medium High and threat being High.

Conclusions/ Findings

The following deficiencies or gaps in the AML controls apply to this sector:

(i) The Accountants Act, which is the enabling legislation for the regulation of accountants and auditors does not have AML provisions;

(ii) Despite ZICA being designated as a supervisory authority in the FIC Act, with specific powers, ZICA is currently not supervising the sector on AML as a result ZICA is not imposing effective sanctions for compliance deficiencies;

(iii) There are no provisions in the Accountants Act that relates to the role of ZICA as reflected under the FIC Act and this gives members a reason to not buy into AML regulation of the sector;

(iv) Until, April 2016 when administrative sanctions were introduced under the FIC Act, there has been a lack of a sufficiently wide range of deterrent sanctions (including monetary penalties) for both AML/CFT compliance deficiencies;

(v) Administrative sanctions are not provided for in relation to breaches related to AML;

(vi) Lack of knowledge on AML for supervisory authority and reporting entities; and

(vii) Lack of knowledge on role of supervisory authority and reporting entities in AML.

The AML controls are weak they therefore do not have any impact on reducing the vulnerability that is inherently there.

*Key **recommendations**:*

The priority areas to mitigate the vulnerability for the sector are depicted in the table 26 below:

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS - LAST CASE/SCENARIO	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision/Oversight Activities	2
Availability and Enforcement of Administrative Sanctions	4
Availability and Enforcement of Criminal Sanctions	8
Availability and Effectiveness of Entry Controls	
Integrity of Business/ Profession Staff	5
AML Knowledge of Business/ Profession Staff	1
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	6
Availability and Access to Beneficial Ownership information	9
Availability of Reliable Identification Infrastructure	7
Availability of Independent Information Sources	10

Primarily, the sector requires knowledge in AML. Further, the regulator, in this case ZICA needs to be capacitated for the effective supervision and oversight of AML matters which currently is close to nothing. ZICA should have a written, risk-based strategy for supervising the sector and off/on-site AML supervision procedures that are effectively implemented, along with authority to impose sufficiently deterrent sanctions (including monetary penalties).

Regular and systematic collection of AML/CFT compliance inspection statistics is needed by ZICA (ie., type & number of violations, sanctions, analysis of trends, analysis of whether sanctions are remedying compliance issues, etc).

Reporting entities will also need to have their capacity built in the area of compliance and effective monitoring and reporting of suspicious transactions. Overall the legal framework of the entire sector needs to be amended to provide for AML.There is need for awareness on AML for the entire sector.

10.0 TERRORIST FINANCING

Terrorist financing is the process of financing terrorist activities. There is an overlap between money laundering and terrorist financing. Though the motives are different, criminals and terrorists use similar methods to raise, store and move funds. The motivation for money laundering is financial gain while terrorist financing is non-financial gain such as seeking political influence, publicity and disseminating an ideology.

Terrorists rely on both legitimate and criminal activities to raise funds for their terror activities.

10.1 Objectives

The National Terrorist Financing (TF) Risk Assessment seeks to identify and understand the TF threats and vulnerabilities in Zambia.
Broadly, the goals and objectives of the TF Risk assessment are:

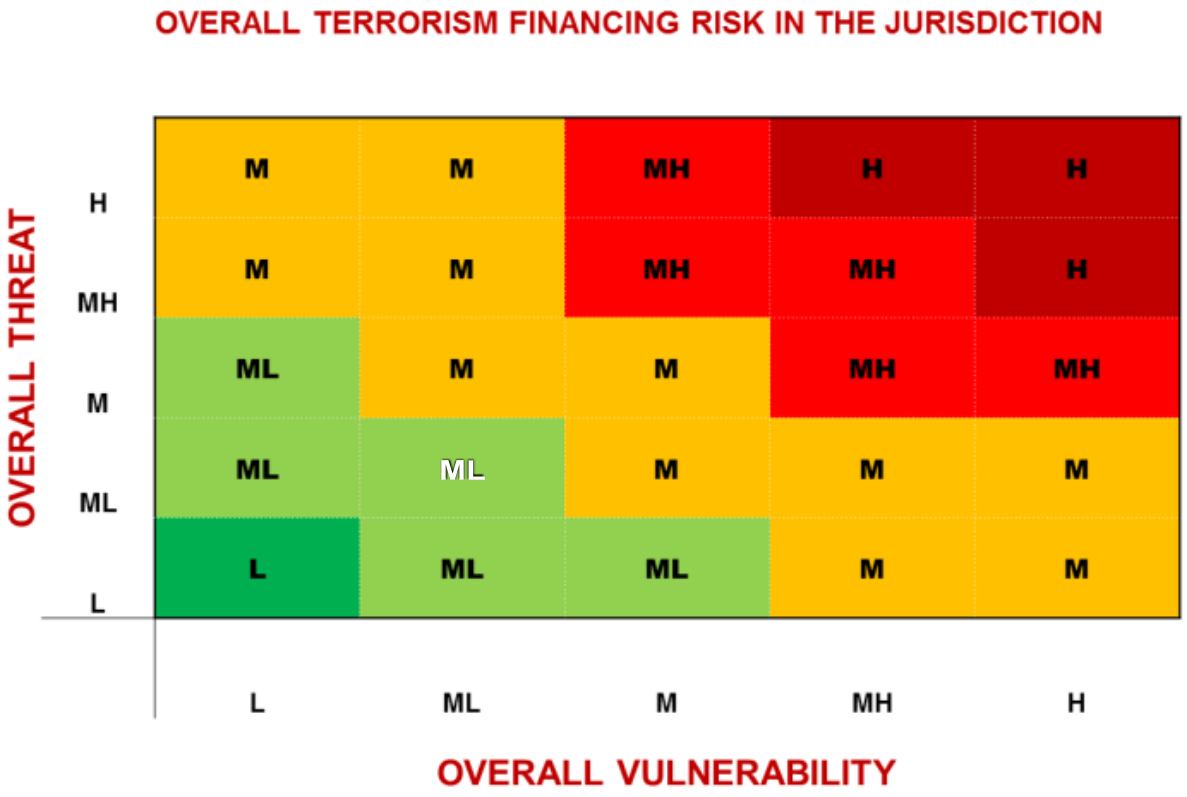
i. To identify the weaknesses and gaps in the country's ability to combat terrorist financing;
ii. To identify the overall vulnerability of the country to terrorist financing; and
iii. To prioritize actions that will improve the country's ability to combat terrorist financing.

10.2 Overall Assessment of Terrorist Financing Risk

The overall TF risk is determined by the assessment of the TF threat and vulnerability. The TF threat aims at determining the direction of funds, and the

sources and channels that are used for TF while the TF vulnerability aims at determining the strength of TF controls within the country.

The overall TF threat assessment was found to be Medium Low while the vulnerability assessment was found to be Medium Low- resulting into the overall TF risk in Zambia to be **medium low** as can be seen in the table below:



Terrorist Financing Risk Map

10.3 Terrorist Financing Threat Analysis

Zambia does not face any immediate terrorist threats but considers the volatile geo-political situation in the Southern Africa Development Community (SADC), the Great Lakes and East Africa regions as possible avenues for the spread of terrorism and terrorism financing into the country[5]. Zambia has been a host to a number of foreign nationals from jurisdictions where there have been cases of

[5]http://www.defensenews.com/story/defense/international/mideast-africa/2015/09/11/zambia-ready-fund-agency-counter-terroristm-efforts-finance/72026530/

terrorism. Some of the foreign individuals may have sympathy for organizations involved in terrorism activities in their countries of origin.

The assessment of the borders revealed that there is easy movement of nationals from around the region and beyond through Zambia's borders. This entails that Zambia could be used as a transit point.

Zambia is predominantly cash based economy with most transactions remitted using both formal and informal value transfer mechanisms. Informal systems, such as hawala[6], might be used to move funds related to terrorist activities quickly as the transactions are based on trust and leaves no paper trail. Further, transactions through formal systems are normally below the reporting threshold. With technological advancements, it is easy to transfer money to any part of the world within a short period of time. This makes monitoring and analyses of such transactions more complex.

While there have been reports of suspect TF, none have been substantiated to conclude the existence of terrorist financing or terrorism in Zambia. In view of the foregoing, the TF threat in Zambia is assessed to be **medium-low**.

10.4 National Vulnerability to Terrorist Financing

The following variables were considered when assessing the terrorist financing vulnerability.

i. Quality of Legislation

This variable assessed whether Zambia has an effective legislative framework to combat terrorist financing and terrorism in Zambia. The review of legislation established that terrorist financing and terrorism offences are criminalized under the Anti-Terrorism Act, No. 21 of 2007(as amended) and the FIC Act, No.46 of

[6]Hawala means underground banking. An informal value transfer system, outside of the legitimate banking system, based on trust.

2010. The FIC Act has been amended in order to provide for compliance inspections and monetary sanctions. Regulations related to terrorist financing obligations have also been issued.

In addition other pieces of legislation are used to supplement the provisions in the Anti-Terrorism Act: These include:

i. PPMLA 14 of 2001 (as amended),
ii. Forfeiture of Proceeds of Crime Act No 19 of 2010
iii. The Public Interest Disclosure Act
iv. Mutual Legal Assistance in Criminal Matters Act (MLACMA), 1993
v. The Anti-Corruption Act, No. 3 of 2012
vi. The Non-Governmental Organizations Act, No. 16 of 2009;
vii. The Penal Code Act, Cap. 87 of the Laws of Zambia.

Further, Government has issued regulations to implement the United Nations Security Council Resolutions (UNSCRs) 1267 and 1373 and their successor resolutions. These resolutions require countries to freeze funds, assets and economic resources of individuals and entities connected to terrorism and terrorist financing. In addition, the government has also ratified 4 of the 9 UN conventions aimed at countering terrorist financing.

In view of the foregoing, the effectiveness of the quality of legislation was assessed to be **Medium-High.**

ii. Quality of Intelligence

This variable assessed whether Zambia's authorities gather intelligence on terrorism and terrorist financing effectively.

The Zambian Government has taken a coordinated approach to mitigate the risk of terrorist financing. Various departments have been designated different responsibilities by the law. These departments include, but not limited to, the

Ministry of Defence (MOD), Zambia Security Intelligence Services (ZSIS), the FIC, Zambia Police (ZP), and other LEAs and Supervisory Authorities as defined in the FIC Act.

Currently, these departments coordinate and exchange intelligence on terrorism financing through mechanisms such as the Central Joint Operations Committee (CJOC) and various Memoranda of Understanding (MOUs). The CJOC meets on a quarterly basis and as and when there is an urgent matter to resolve.

Further, the FIC is mandated to receive STRs and disclosures bordering on TF from both the reporting entities and supervisory authorities. However, the number of STRs related to TF is insignificant and usually do not contain actionable intelligence. Therefore, the effectiveness of intelligence gathering was assessed to be **medium**.

iii. Awareness and commitment to fight Terrorist Financing

This variable assessed the level of political commitment and the awareness and commitment among policy makers, LEAs, FIC and intelligence agencies authorized to fight terrorist financing and terrorism in Zambia.

The Government has taken a strong commitment to fighting terrorist financing in Zambia. The FIC has in the past conducted CFT awareness to reporting entities and the public. However, not all sectors have received CFT awareness. Most personnel in branches, especially in border areas and airports, have not received any awareness training on TF. In view of the foregoing, the awareness and commitment among policy makers, LEAs, FIC and intelligence agencies authorized to fight terrorist financing and terrorism was assessed to be **medium**.

iv. Effectiveness of Terrorist Financing-related Suspicious Transaction Reporting, Monitoring and Analysis

This variable assessed the effectiveness of the reporting, monitoring and analysis of Suspicious Transaction Reports (STRs) related to terrorist financing.

Reporting entities especially commercial banks (international commercial banks) have systems that assist them to screen against UN and other sanctions list on TF. Reporting entities are obligated to report STRs on TF to the FIC. The FIC has systems in place in to analyse and process STRs related to TF. The FIC provides intelligence related to detection of terrorist financing to LEA such as the ZSIS and ZP. In the period under review, 3 STRs relating to terrorism financing were received and analyzed by the FIC, while 17 were investigated by DEC. In all these reports there was lack of evidence of terrorism financing.
In view of the foregoing, the effectiveness of the reporting, monitoring and analysis of Suspicious Transaction Reports (STRs) related to terrorist financingwas assessed to be **medium-high**.

v. Adequacy of resources

This variable assessed the adequacy of human, financial, and other resources (such as technical and Information Technology resources, especially analytical software) that are available for counter-terrorism financing.

To enhance monitoring and quick analysis of terrorist financing, a number of Information Communication Technology (ICT) systems have been put in place by LEAs. However, in most cases these systems are outdated and may not have advanced features to cope with current TF trends. The processes for analyzing transactions are mainly manual. Another challenge is that these ICT systems are in most cases installed only at head offices of LEAs and not in all the branches. In addition, they are also not inter-linked amongst the LEAs. Hence they do not

facilitate quick information sharing amongst the agencies. Further, most border posts and some airports lack specialized equipment to detect cash smuggling that maybe related to TF.

The assessment has established that the budget allocation to LEAs is not sufficient and as such, LEAs may not devote resources terrorist financing related activities. In terms of capacity building, the focus has mainly been on countering terrorism rather TF.

In view of the foregoing, the adequacy of human, financial, and other resources (such as technical and Information Technology resources, especially analytical software) that are available for counter-terrorism financing was assessed to be **medium-low**.

vi. International Cooperation

This variable assessed the effectiveness of international cooperation: whether the jurisdiction actively and effectively renders and requests international (legal) assistance in relation to terrorist financing.

The Mutual Legal Assistance (MLA) in Criminal Matters Act and Extradition Act provide for the exchange of information with other jurisdictions. In addition, Government has signed various treaties and MOUs with jurisdictions on international cooperation. The National Central Bureau (NCB) under the International Police (Interpol) and MOUs between the FIC and other Financial Intelligence Units (FIUs) in the region facilitate quick exchange intelligence information. The FIC has signed fourteen (14) MOUs with other jurisdictions.

In the period under review, 1 mutual legal request related to terrorist financing was received and feedback was provided promptly. Clear processes have been put in place to ensure prompt responses to requests received. Zambia has

not sent out any mutual legal request in the period under review. In 2012, an incident was coordinated informally through intelligence information and other sources.

In view of the foregoing, the effectiveness of international cooperation: whether the jurisdiction actively and effectively renders and requests international (legal) assistance in relation to terrorist financing was assessed to be **medium-high**.

vii. Geographic Factors

This variable assessed whether there are geographic factors that may facilitate terrorist financing, and increase/decrease Zambia's vulnerability to terrorist financing.

Due to the geographic location of Zambia, there is a lot of cross border trading and movement on all borders of the country. The borderlines are porous and stretch for long distances in most cases. In addition, the border beacons are not clearly marked making it difficult to implement measures in countering illegal activities. Cash smuggling is the most common means of transferring funds across the borders. In addition, cash is mostly concealed on the body and is smuggled by use of undesignated routes.

At the borders, verification of goods and items through scanners is only restricted to commercial vehicles. Physical search on private vehicles is only conducted were a suspicion has been raised. This further makes the detection of cash smuggling difficult. On account of the above, the vulnerability as a result of geographic factors was assessed to be **Medium-Low**.

viii. Demographic Factors

This variable assessed whether there are demographic factors that may facilitate terrorist financing, and increase/decrease Zambia's vulnerability to terrorist financing.

According to statistics from the immigration department, there has been a steady increase in the number of immigrants and foreigners entering Zambia between 2011 and 2014 as indicated in the table 26 below.

Table 26: Statistics on Employment Permits

Year	2011	2012	2013	2014
Total	10,163	10,596	11,393	16,060

In addition, a total of 50,609 refugees had been recorded by the Commissioner for Refugees in the Ministry of Home Affairs as at 2015. Faith based NPOs, schools and colleges have also increased. These groups could be exploited by radical fundamentalists to advance their ideologies.

In view of the foregoing, the vulnerability as a result of demographic factors was assessed to be **medium**.

In view of the assessments for individual variables above, the overall national vulnerability to TF in Zambia was assessed to be **medium**.

10.5 Terrorist Financing Risk at Sectoral Level

The assessment shows that there are 3 sectors, namely: the Banks, Money Value transfer mechanisms, and NPOs that could be exploited for terrorist financing in Zambia and were assessed for the period under review.

i. Banking Sector

The banking sector remains the main channel for movement of funds in Zambia. Both electronic and cash based transactions are mainly done through the banking system. The total number of STRs submitted to the FIC was 1164 between 2014 and 2015. Of these STRs, 3 were linked to terrorist financing while 2 originated from the banking sector. The sector is supervised and regulated by the Bank of Zambia (BOZ). The assessment also noted that the BOZ and the FIC have not issued directives and regulations specifically related to TF. Therefore, TF risk emanating from this sector was assessed to be **medium low**.

ii. Non-Profit Organizations Sector

In Zambia, NPOs comprise of Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs). Several NPOs are registered in Zambia and totalled over 400 in number by end of 2015.These NPOs are governed by the NGO Act of 2009 under the auspices of the Ministry of Community Development, Mother and Child Health (MOCDMCH). The NGO Act defines NGOs as " a private voluntary grouping of individuals or associations, whether corporate or unincorporated, not established or operated for profit, partisan politics or any commercial purposes, and who or which have organized themselves for the promotion of civic education, advocacy, human rights, social welfare, development, charity, research or other activity or program for the benefit or interest of the public, through resources mobilized from sources within or outside Zambia". Under this Act, an NGO is required to register within 30 days of formation and thereafter, to re-register every 5 years. In addition, the NGOs are required to report their activities, accounts and financiers, and the private wealth of their officials annually. The NGO Registration board has powers to approve the NGO's mission, operational controls and its geographical location of the operations, among others, especially that NPOs might be exploited by terrorists to mask their activities. However, the NGO act does not make

reference directly or indirectly to activities related to terrorist financing. In the period under review, no STRs were submitted to the FIC by the NPOs.

In terms of beneficial ownership, registration records indicate that owners for some of these organizations are from different countries across the globe. The assessment also revealed that huge financial transactions associated with NPOs were processed by the banks. Further, it was observed that there is a significant volume of outward and inward movement of funds between these organizations and their beneficiaries. In the period under review, ZMK 561,146,544.00 worth of transactions was processed for inward movement of funds while ZMK 230,719,510.57 was recorded for outward movement in one bank.

The TF risk emanating from NPOs sector in Zambia is assessed to be **medium**.

iii. Money Value Transfer Sector

In the period under review, there has been a growing number of Money Value transfer services offered in Zambia. There is a lot of competition among the players such that rates for transfers are significantly reduced to attract consumers. Some of these services are structured in such a way that they are very easy to use and are accessed in the remotest parts of the country. As a result of this reduction in the rates and the nature of the product structure, huge volumes of transactions are recorded on a daily basis.

The MVTs are regulated by the Bank of Zambia. However, periodic inspections to ensure compliance are not done due to limited resources by the regulator. From the typologies produced by different jurisdictions, it has been established that TF risks are widespread in this sector. In light of the foregoing, the TF risk in this sector is assessed to be **medium-high.**

iv. Other Sectors

It was noted that no STRs on TF were submitted to the FIC during the period under review emanating from the Insurance, Capital Market, and DFNBPs sector. While typologies conducted around the world show that these sectors may be exploited by terrorist financiers, the TF risk for these sectors was assessed to be **medium-low**.

10.6 Findings of the assessment of the terrorist financing

During the assessment, the following were the findings:

I. Inadequate specialized training of personnel in countering terrorist financing.
II. Insufficient specialized equipment to detect, monitor and analyze terrorist financing (e.g. Scanners, Currency detectors, among others).
III. Absence of integrated ICT systems amongst LEAs
IV. No clearly defined reporting channels on matters related to terrorist financing and terrorism amongst LEAs
V. Inadequate awareness on countering terrorist financing among law enforcements agencies and general public.
VI. No clearly marked beacons in some border areas (this made it difficult to implement government bans and controls).
VII. Inadequate personnel to counter terrorist financing activities
VIII. Inadequate adherence to reporting requirements by Alternative money value transfer operators.
IX. No regular inspections by supervisory authorities on Alternative money value transfer operators.
X. No specific provisions in the Banking and Financial Services Act compelling regulated entities to report on terrorist financing.
XI. Absence of specific provisions in the Legal Practitioners Act compelling lawyers to disclose client accounts.
XII. Lack of knowledge on TF among NPOs players

11.0 CONCLUSION

The NRA has revealed that ML risk in Zambia is **medium high** while TF risk is **medium low**. Although the country has a comprehensive AML/CFT legal framework, the assessment also noted some deficiencies. These included ineffective monitoring of suspicious transactions activities, ineffective compliance functions in reporting entities, inadequate AML/CFT knowledge for both supervisory authorities and reporting entities especially for DNFBPs and weak enforcement of administrative and criminal sanctions.

Further, there were some challenges encountered in conducting the NRA including the limitations related to data collection such as non-availability of required information, non-disclosure of information and delay in submission of required information. Based on the findings of the assessment, an action plan has been developed to assist both Government and private sectors to prioritize their allocations of resources to mitigate ML/TF risks (See Appendix 1_ML/TF Action Plan).

APPENDIX I

IN THE SUPREME COURT OF ZAMBIA **APPEAL NO. 291/2014**
HOLDEN AT LUSAKA
(CRIMINAL JURISDICTION)

BETWEEN:

THE PEOPLE **APPELLANT**

AND

AUSTIN CHISANGU LIATO **RESPONDENT**

Coram: Wanki, Muyovwe and Malila, JJS

on3rd February, 2015 and .....

For the Appellant: Mr. B. Mpalo, Senior State Advocate, with Mr. M. K. Chitundu, Principal State Advocate, National Prosecutions Authority

For the Respondent: Prof. M. P. MvungaSC, of Messrs. Mvunga& Associates; Mrs. N. B. Mutti and Mr. M. Chitambala, of Messrs. Lukona Chambers; and Mr. M. Mutemwa, of Messrs. Mutemwa Chambers

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JUDGMENT

Malila, JS, delivered the Judgment of the court.

Cases referred to:-

1. *Shauban Bin Hassien and Others v. Chong Fook Kan and Another (1903) 3 ALL ER 1629*
2. *Queensland Bacon v. Rees (1966) 115 CLR 266*
3. *Streat v. Bauer & Blanco BC 9802 155*
4. *George v. Rockett (1990) 170 CLR 104*
5. *Anderson v. Judge of District Court (1992) 27 NSWLR 702*
6. *R. v. Chan (1992) 63 A Crim R 242*
7. *Simutenda v. The People (1975) ZR 294*

8. *Director of Public Prosecutions v. Sharon Lee Brown (1994) 72 Crim R 527*
9. *Director of Public Prosecutions v. AhmudAzamBholah (2011) UK PC 44*
10. *R. v. IihamAnwoir, Brian McIntosh, Ziad, Megharbi and Adnan Elmoghrabi (2008) EWZA Crim 1354*
11. *DPP v. Ng'andu& Others (1978) ZR 253*
12. *DPP v. Chibwe SCZ Judgment No. 54 of 1975*
13. *MususuKaenga Building Limited and Another v. Richman's Money Lenders Enterprises (1999) ZR 27*
14. *R. v. John Rondo (2001) 126 A Crim. R. 562:*
15. *The Director of Asset Recovery Agency & Others v. Green & Others (2005) EW HC 3168*
16. *R. v. Buckett (1995) 79 A Crim R302*
17. *Woomington v. DPP (1935) AC 462, 481*
18. *Asset Recovery Agency v. Jackson and Smith (2007) EWHC 2553.*
19. *John NyambeLubinda v. The People (1988-89) ZR 110*
20. *Chimbini v. The People (1973) ZR 191*
21. *David Dimuna v. The People (1988 – 1989) ZR 58*
22. *McIntosh v. Lord Advocate (2001) Cr. App. R. 498*
23. *Stock v. Frank Johns (Tipton) Ltd (1978)*
24. *I.R.C. v. Hinchey (1960)*

Other authorities cited

1. *The Forfeiture of Proceeds of Crime Act No. 19 of 2010, of the laws of Zambia*
2. *The Proceeds of Crime Act, 2002 of the United Kingdom*
3. *Section 8 of the Supreme Court Act, chapter 25 of the laws of Zambia*
4. *Article 5 paragraph 7 of the United Nations Convention Against Illicit Traffic of Narcotic Drugs and Psychotropic Substances, 1988,*
5. *The United Nations Convention Against Transnational Organized Crime, 2000*
6. *Black's Law Dictionary 8th and 9th editions at page 1487 and 1585*
7. *Journal of Money Laundering, Volume.8, issue 2, pages 104 to 114*
8. *Article 18(12) of the Constitution of Zambia*

This is an appeal against a decision given on 12th December, 2013, by the High Court,constituted as a divisional court, and sitting in its appellate jurisdiction.

The issues for determination in this appeal become much clearer after a recapitulation of the background facts, even if cursory, that provoked the proceedings in the lower courts. Those

facts can fairly be described as exotic, and they raise novel and recondite points of law.

The respondent was arraigned, tried and convicted by the Subordinate Court of the first class on one count of possession of property suspected of being proceeds of crime contrary to **section 71 (1)** of the **Forfeiture of Proceeds of Crime Act No. 19 of 2010[1],** of the laws of Zambia.

The particulars of the offence were that the respondent, on the 24th November, 2011 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did possess and conceal money at his farm, namely No. L/Mpamba/44, Mwembeshi, amounting to K2,100,100,000, being reasonably suspected of being proceeds of crime.

After hearing six prosecution witnesses, and the respondent having opted to remain silent, the learned trial Magistrate, in a judgment delivered on 23rd July, 2013, was satisfied that, on the totality of the evidence before her, the prosecution had proved the case against the respondent to the requisite standard. She convicted the respondent and subsequently sentenced him to twenty-four months imprisonment with hard labour. She also ordered forfeiture of the K2,100,100,000 and the farm to the State.

Piqued by that judgment, the respondent appealed to the High Court,impugning the judgment on four grounds. Before the learned High Court Judges, the parties made detailed submissions and copious lists of authorities prior to doing 'battle'through a

stellaassemblage of learned counsel. The High Court crystalised the issues for determination as gyrating around the onus and the standard of proof of the subject offence. In its judgment, now subject of this appeal, the High Court held that the learned Magistrate had misdirected herself in holding as she did, that the respondent failed to discharge the onus placed on him by section 71 (2) of the Forfeiture of Proceeds of Crime Act, when he elected to remain silent. The High Court reasoned that the provisions of section 71 (2) of the Act do not place any onus on an accused person to satisfy the court of the legitimacy of the source of the property, subject of a charge under section 71 of the Act. In the view taken by the High Court, the prosecution had failed to adduce sufficient evidence toprove the offence with which the respondent was charged.

Discomposed by the High Court judgment, the Director of Public Prosecution, on behalf of the people, has now taken up the cudgels and seeks to assail that judgment through this appeal, and has fronted four grounds as follows:

"1. The court erred in law when it held that to prove reasonable suspicion under section 71 (1) the prosecution had to show the link between the source of the money or the accused to possible criminal conduct.

2. The court erred in law when it held that under section 71 (2) the prosecution needed to prove that the accused had knowledge that the source of the money was a result of criminal conduct.

3. The court erred in law when it held that the prosecution's burden of proof under section 71 (1) was not discharged as the prosecution failed to adduce evidence upon which an inference

could be drawn that money could reasonably be suspected to be proceeds of crime.

4. **The court erred in law when it construed section 71 of the Forfeiture of Proceeds of Crime Act in a manner that would render it impossible to give effect to the intention of the Legislature taking into account the preamble to the said Act."**

A perusal of these grounds of appeal makes it crystal clear to us that the appeal raises a point of paramount importance in that it poses for consideration the broad question whether section 71 of the Forfeiture of Proceeds of Crime Act, does prescribe a different standard of proof from the ordinary general criminal law standard, and whether the onus of proof and the evidentiary burden of proof ought to be understood differently under that section, from the general criminal law position.

Although the grounds of appeal as formulated encompass other issues of law which were strenuously canvassed before us, the interpretation of section 71 is, in our view, the dominant purpose of this appeal.

Written heads of argument together with lists of authorities were filed in court. The parties indicated that they would adopt and place reliance on these heads of argument.

The prolixity of the arguments advanced before us, replete with long quotations from works by learned authors and judicial *dicta*, have only served to obfuscate the issues. We, nonetheless, consider all the grounds raised and arguments advanced, seriatim.

Under ground one of the appeal, it was contended on behalf of the appellant that the appeal turns on the construction to be placed on the words 'may reasonably be suspected of being proceeds of crime,' in section 71 (1) of the Forfeiture of Proceeds of Crime Act, the question being whether the money which the respondent was found in possession of, may reasonably be suspected of being proceeds of crime. The learned counsel for the appellant cited and quoted *dicta* from no less than five case authorities to define the term "reasonable suspicion." These include the case of **Shauban Bin Hassien and Others v. Chong Fook Kan and Another**[1]. In that case, the court defined suspicion as a state of conjecture or surmise where proof is absent. The learned counsel also referred to the case of **Queensland Bacon v. Rees**[2]where a suspicion was defined as mere idle wondering whether something exits or not. A passage from the judgment of Smart J, in **Streat v. Bauer & Blanco**[3]was also quoted. More purposefully perhaps, the following passage from the judgment of the Australian Court in **George v. Rockett**[4], was reproduced.

> **"suspicion, as Lord Devlin said in *Hussein v. Chong Fook Kam (1970) AC 942 at 948*, 'in its ordinary meaning is a state of conjecture or surmise, where proof is lacking: 'I suspect but I cannot prove.' The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief, yet some factual basis for the suspicion must be shown."**

Counsel submitted that reasonable suspicion must attach to the property and not to the person or persons the subject of the inquiry.

It was the appellant's further submission that although generally, the standard of proofin criminal matters is that of beyond reasonable doubt, section 71 (1) deals with an offence pertaining to the existence of a reasonable suspicion.They contended that it is not required to prove that the money or other property'is reasonably suspected' but rather that the money or property 'may be reasonably suspected....'Citing the case of **Anderson v. Judge of District Court**[5], counsel submitted that the word 'may' falls short of 'is' while the word 'suspects' falls short of 'known' or even 'convinced' or 'shown'. The learned counsel went on to quote a passage in the judgment of Kirby P in that case.

In the view of the appellant's counsel, the effect of the word 'may' rather than 'is', is that the suspicion need not be conclusive, and that in arriving at the criminal standard, the court need not be satisfied that the relevant suspicion is the only suspicion, or that the relevant suspicion is even the most likely of the possible suspicions. The case of **R. v. Chan**[6]was cited as authority for this proposition.

The appellant's counsel next referred to section 71 (3) of the Forfeiture of Proceeds of Crime Act which provides that the offence under sub section (1) is not predicated on proof of the commission of a serious offence or foreign serious offence, and therefore, that in the present case, no predicate offence needed to be proved.

The appellant fervidly submitted that the facts in the present case aroused suspicion, and that the evidence led by the

prosecution pertaining to the quantity of the cash money found in the respondent's possession, as well as the method of concealment employed by the respondent, provoked suspicion in the mind of any reasonable person. Counsel referred us to exhibit P4, the photographic album, which depicts in graphic form, both the cash involved and the method of concealment, and asserted that, that would create in the mind of any reasonable person an apprehension or fear that the state of affairs envisioned in section 71 (1) of the Forfeiture of Proceeds of Crime Act, had occurred.

The learned counsel faulted the High Court for its suggestion that individuals may keep money in any manner they desire, labeling it as misleading and flying in the teeth of the evidence reflected by exhibit P4, which showed that the money was not kept in a house in the sense suggested by the High Court, but was in fact concealed away from the respondent's house.The manner of concealment, according to the learned counsel is also prohibited under the Forfeiture of Proceeds of Crime Act. They further argued that the steps taken by PW6, the investigations officer from the Drug Enforcement Commission, after the discovery of the money, to verify the legitimacy of the source of the money in question, fortifies the apprehension that it was derived or realized from the commission of an offence. According to the learned counsel for the appellant, the prosecution's case was complete when PW6 testified that he checked the respondent's personal and business accounts, and looked into the sources of the respondent's income, including his gratuity from the National Assembly, and the income from his

lodges. This evidence, in counsel's view, provided *prima facie* proof that the money the appellant was in possession of, and which he concealed in the manner describe, may be proceeds of crime. At this point, submitted the learned counsel, the evidentiary burden had shifted to the accused (respondent) to avail himself of the statutory defence in subsection (2) of section 71 of the Forfeiture of Proceeds of Crime Act, if the appellant wished to rely on it.

The appellant's learned counsel further submitted that the prosecution had proved beyond reasonable doubt, firstly, that the respondent was in possession of money, and secondly that the said money may reasonably be suspected of being proceeds of crime. Once this was done, it was, according to the learned counsel, incumbent upon the respondent to avail himself of the opportunity to discharge the lesser, civil standard,onus available to him of satisfying the court that he had no reasonable grounds for suspecting that the money was unlawfully obtained, as provided under subsection (2) of section 71. The respondent, however, failed to seize that opportunity. The case of **Simutenda v. The People**[7]was cited to illustrate the court's duty to draw proper inferencesfrom the available evidence, when an accused person fails to give any contrary evidence to a court.

While supporting the trial Magistrate'sfinding that the inference was irresistible, that the money in issue could have derived from crime, the learned counsel for the appellant criticized the High Court for holding that to prove reasonable suspicion that

the money was proceeds of crime, the prosecution ought to link its source or the accused to possible criminal conduct. The High Court's conclusion on this point, according to the learned counsel, went contra to the provisions of subsection (3) of section 71 of the Forfeiture of Proceeds of Crime Act which states that the offence under subsection (1) of section 71 is not predicted on proof of a commission of a serious offence or a serious foreign offence. Cited in aid of this submission was the case of **Director of Public Prosecutions v. Sharon Lee Brown**[8] where at pages 12-15, the court stated that:

> **"The test deals with and interrogates the accused person's state of mind as to whether or not he had suspicion that the money could have been proceeds of crimes which question is only resolved by interrogating the source or manner it came into the accused person's possession."**

The learned counsel posited that the High Court applied a test which was not that of section 71(1) but that of subsection (2) of section 71 of the Forfeiture of Proceeds of Crime Act, when considering whether the requirements under section 71 (1) were satisfied on the evidence before the court. Hefurther submitted that the courtmisconstrued the *ratio* in the case of **Director of Public Prosecutions v. Sharon Lee Brown**[8]. The thrust of the appellant's argument here, was that the prosecution's burden under subsection (1) of section 71 is a relatively lower one, as it is confined to proving that the accused was in possession of property that may be reasonably suspected of being proceeds of crime. That burden does not extend to proof of the mental state of the accused

person in relation to the money or other property. It was on this basis that we were beseeched to uphold ground one of the appeal.

In their equally detailed and animated written heads of argument, the learned counsel for the respondent gainsaid the submissions by the learned counsel for the appellant. In their retort to the appellant's arguments on ground one, counsel for the respondent began by taking issue with the charge. They argued that what the appellant was charged with is not one count. They contended that the particulars of the offence alleged possession and concealing. To this effect, counsel agreed with the finding of the High Court that the charge was defective and consequently bad at law. The learned counsel then supported the High Court's reasoning that, to prove reasonable suspicion under section 71(1) of the Forfeiture of Proceeds of Crime Act, the prosecution in the present case had to adduce evidence linking the sum of K2,100,100,000 found in the possession of the respondent, or indeed the respondent himself to some criminal activity or conduct. They contended that theappellant failed to establish the essential ingredients of the charge under section 71 (1) of the Act, namely, to show that the money found in possession of the respondent may reasonably be suspected of being a proceed of crime.

The learned counsel dismissed as a misconstruction, the definition of 'reasonable suspicion' as given by the appellant's counsel. According to counsel for the respondent, the explanation of the term 'reasonablesuspicion' in the authorities cited by the

appellant's counsel was inapropos as that term was,in those cases,explained in relation to police powers of arrest, rather than in circumstances akin tothose envisioned in section 71 of the Forfeiture of Proceeds of Crime Act. They argued that 'reasonable suspicion' is not equivalent to *prima facie* proof. The case of **Shaaban Bin Hussein and Others v. Chong Fook Kan& Another**[1]was cited as authority. Counsel argued that under the Forfeiture of Proceeds of Crime Act, 'reasonable suspicion' is an essential ingredient of the offence under section 71(1), and must be specifically proved through evidence. They suggested that a more useful definition of the term 'reasonable suspicion' is that given in **Black's Law Dictionary**[1](8th edition) as follows:-

> **"A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity."**

Counsel maintained that 'reasonablesuspicion' in section 71 (1) of the Forfeiture of Proceeds of Crime Act attaches to both property subject of the offence, and the conduct of a person in instances where the accused is not a third party in relation to the property. They adverted to the definitions of the words 'proceeds', 'proceeds of crime' and 'unlawful activity' under section 3 of the Act, to substantiate their submission on this point.

The learned counsel for the respondent next submitted on the standard of proof. They sought confute the appellant's claim that a lower standard of proof suffices under section 71 (1) of the Act, contending that under that section, the prosecution is duty bound

to prove every ingredient of the offence beyond reasonable doubt. A multitude of authorities from within and without this jurisdiction on the standard of proof in criminal proceedings, were cited to buttress this position. More pointedly, the learned counsel referred to the case of **Anderson v. Judges of District Court**[5]which was cited by the learned counsel for the appellant, and argued that, that case confirmed that the standard of proof required to secure a conviction in cases involving 'reasonable suspicion', is one prescribed by the general criminal law.

The learned counsel for the respondent argued that the quantity of cash found on the property of the accused did not prove suspicion as there was nothing unlawful with the manner in which the respondent kept the money. Counsel referred to the Privy Council decisions in the cases of **Director of Public Prosecutions v. AhmudAzam Bholah**[9],and that of **R. v. IihamAnwoir, Brian McIntosh, Ziad,Megharbi and Adnan Elmoghrabi**[10]and quoted *in extenso*, passages from those judgments, *ipsissmaverba,* in support of the position they took that the prosecution should adduce evidence from which could be made, an inference that the money found in the possession of the appellant came from criminal activity. Only in those circumstances, according to counsel, would the reasonable suspicion be proved. It was submitted that the appellant failed to adduce any evidence suggesting any criminal activity in relation to the sum of ZMK 2,100,100,000 found in the possession of the respondent to warrant charging him with the subject offence.

In a manner reminiscent of circumlocution and tautology, counsel for the respondent went on to cite numerous other authorities, replete with excerpts and quotations, to buttress the argument already delivered in rebutting this ground.

The learned counsel for the respondent raised objection to the reference by the appellant's counsel to the impressions in thephotographic album, exhibit P4, arguing in what we consider,a somewhat elliptical manner, that the respondent could not challenge the decision of the lower court on the ground of exhibit P4, as that was a finding of fact which could not be a subject of appeal. Various authorities including **DPP v. Ng'andu& Others**[11]and **DPP v. Chibwe**[12]were cited. Counsel further argued that the particular issue relating to exhibit 4 did not specifically arise in the court below and can, therefore, not be competently raised in this appeal. The case of **MususuKalenga Building Limited and Another v. Richman's Money Lenders Enterprises**[13]was also called in aid,for that submission.

We have ruminated on the rival submissions of the parties on ground one. Section 71 (1) of the Forfeiture of Proceeds of Crime Act under which the respondent was found guilty by the Subordinate Court, criminalizes the receipt, possession, concealment, disposal of, or bringing into Zambia, any money or other property that my reasonably be suspected of being proceeds of crime. As pointed out by the learned counsel for the appellant, in the present case the aspect of possession of the money by the

respondent, is common ground. What is in issue is whether the money in question may reasonably be suspected of being proceeds of crime.

We do not intend to address the question of the charge being possibly bad in law. It was not the *ratio decidendi* of the lower court, nor does it appear to have been contested at the trial before the learned Magistrate. We also do not agree that there were any findings of fact through exhibit P4 which cannot be raised before this court. To the contrary, P4 was admitted in evidence in the court below.

The appellant argues that the money may indeed be reasonably suspected of being proceeds of crime. The respondent denies this claim most emphatically. What become relevant questions are, first who should have the suspicion, second, how should that suspicion be proved, third, who should establish it, and finally, whether on the facts of the present case, reasonable suspicion was indeed established.

It should be clear fromwhat we have thus far stated that central and determinative of the first ground of appeal are the questions what must be proved, who bears the burden of proof and what standard of proof is required.

Having already stated that the issue of possession by the respondent of the money is settled, we now only have to consider what must be proved to establish that the money 'may reasonably

be suspected of being proceeds of crime. In addressing this question, learned counsel for the parties referred to numerous case authorities on what reasonable suspicion is.

It is obvious to us that it is the prosecution which must harbor the reasonable suspicion and which must prove it.As observed by the learned counsel for the appellant, most case authorities that have determined the meaning of 'reasonable suspicion', are those that considered that term in regard to the law of arrest and search. Counsel for the respondent took court objection to the reference made to these cases, arguing that the cases cited by the appellant in support of the meaning to be attributed to 'reasonable suspicion' are inapplicable and should not be considered. We think, with utmost respect to the respondent's learned counsel, that the objection they make in this connection is not well-taken. Definitions oflegal terms and concepts, even if made in different circumstances, may still serve a useful purposeof elucidating unclear terms in the interpretive approach which any court is enjoined to adopt. To us, the resort to definitions of general legal terms and concepts used for specific ends, serve no worse a purpose than that served by the concept of persuasive authorities in the context of *stare decisis*. We do not accept the narrow approach being advocated by the respondent's learned counsel, which in truth only seeks to asphyxiate the court in its bid to do justice under an Act of Parliament whose provisions have hitherto remained substantially untested in this jurisdiction. We are, therefore, of the view that reference by the appellant to the

definition of the term 'reasonable suspicion' in case authorities that dealt with police powers of search and arrest, and other contexts such as bankruptcy, was not inappropriate.

The appellant's counsel quoted Lord Devlin in the case of **Shauban Bin Hassien and Others v. Chong Fook Kan and Another**[1]where he stated that:-

> **"Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking, 'I suspect but I cannot prove.' Suspicion arises at or near the starting point of an investigation of which the obtaining of prima facie proof is the end. When such proof has been obtained, the police case is completed and it is ready for trial and passes on to its next stage."**

Reference was also made to the passage of Kitto J, in **Queensland Bacon v. Rees**[2] to the effect that a suspicion that something exists is more than a mere idle wondering whether it exists or not.

> **"It is a positive feeling of actual apprehension or mistrust, amounting to a 'slight opinion, but without sufficient evidence' as Chambers Dictionary expresses it. Consequently, a reason to suspect that a fact exists is more than a reason to consider or look into the possibility of existence."**

As we have already stated, the respondent's counsel suggested to us that these *dicta* are inapplicable for purposes of determining 'reasonable suspicion' under section 71 (1) of the Forfeiture of Proceeds of Crime Act. They proposed instead that the definition of reasonable suspicion in **Black's Law Dictionary**[8](8th edition) be used.

We have examined the definition of reasonable suspicion in **Black's Law Dictionary,**as already quoted by the learned counsel for the respondent.Inour considered view, the definition of reasonable suspicion as given in the cases cited tous by the learned counsel for the appellant, and that as given in **Black's Law Dictionary**, are not at variance. They seem to state or imply the same position that,reasonable suspicion is not arbitrary; there ought to be a factual basisupon which it is anchored. As explained by the New South Wales Court of Criminal Appeal in **R. v. John Rondo**[14]

> **"... reasonable suspicion involves less than a belief but more than a mere possibility. There must be some factual basis for the suspicion; reasonable suspicion is not arbitrary."**

We are, for our part, perfectly satisfied that reasonable suspicion as used in section 71 (1) of the Forfeiture of Proceeds of Crime Act, is mere conjecture or surmise, shy of actual proof that a state of affairs exists. Such suspicion must be based of articulable facts. In this regard, we are persuaded by the *dicta* of Lord Devlin in **Shauban Bin Hussein v. Chang Fook Kan and Others**[1] as restated and adopted in **George v. Rocket**[4] by the High Court of Australia, an excerpt of which we have reproduced earlier on in this judgment.

Having ascertained that what the prosecution needs to prove, is possession and reasonable suspicion, it now remains for us to consider whether proof of such suspicion should show a link

between the source of the money or the accused to possible criminal conduct.

It is clear to us from the very definition of 'suspicion', that there is a call to prove what may well be inconclusive. Suspicion, being essentially a state of mind, is not in itself easy to prove with certainty. In fact, we think it cannot be proved conclusively and is,in itself to a large extent, subjective. What however, calls for proof under section 71 (1) of the Act is 'reasonable suspicion'. This necessarily entails that the suspicion ought to be based on some factual basis which removes the subjectivity implicit in ordinary 'suspicion'.If there are no grounds which make suspicion reasonable, then such suspicion is mere suspicion or is unreasonable suspicion. **It is that factual basis which makes suspicion reasonable,that require to be established**. What is more, establishment of the factual basis does not, in our considered view, equal proof of suspicion. The articulable facts merely assist in determining whether the suspicion is reasonable, or is not reasonable under those circumstances. The factual basis which make any suspicion which is actually formed reasonable must be shown to exist at the time the suspicion was formed. Whether grounds for suspicion actually existed at the time that suspicion is formed, is to be tested objectively. Consequently, a suspicion may be reasonable even though subjectively it was based on unreasonable grounds. In our considered view, proof of reasonable suspicion never involves certainty of the truth. Where it does, it ceases to be suspicion and becomes fact.

Additionally, the terminology used in section 71 (1) namely, 'may reasonably be suspected' reinforces our view that proof beyond reasonable doubt of reasonable suspicion, was not contemplated or intended when section 71 (1) was formulated.

The learned counsel for the appellant have submitted that the effect of the word 'may' rather than 'is' is that the suspicion need not be conclusive. We agree with this submission. We are also greatly persuaded by the *dicta* of Kirby P, quoted by the appellant's counsel in **Anderson v. Judges of the District Court**[5] where it was stated that:-

> **"How a level of thought which is qualified by what 'may' be (and does not have to reach beyond what is 'suspected') can be established beyond reasonable doubt, is not entirely clear. But the section exists and has survived for more than a century in substantially the same form. It must therefore be given meaning. Presumably, the criminal onus and the words of the section must be reconciled by saying that court before which the person is charged must be satisfied beyond reasonable doubt that the thing in question may be reasonably be suspected of being stolen or otherwise unlawfully obtained."**

Our view is reinforced by section 71 (3) of the Act which dispenses with the need to prove a predicate offence for purposes of satisfying the requirements under section 7(1). Section 7 (3) reads as follows:-

> **"The offence under subsection (1) is not predicated on proof of the commission of a serious offence or foreign serious offence."**

It is for these reasons that we accept the authorities that have been cited by the learned counsel for the appellant, to support the

position we take, that in section 71 (1) of the Act proof of 'reasonable suspicion' entails a lower standard than beyond reasonable doubt.

Having so stated, we now proceed to consider what evidence needed to be adduced in the lower court to satisfy the requirements under section 71 (1).What, in this case, are the specific and articulable facts? The appellant's counsel submitted that sufficient evidence was adducedof specific and articulable facts to make the suspicion envisioned in section 71 (1) reasonable. These facts, according to theappellant's counsel, were the quantity of cash money found in the possession of the respondent and the method of concealment.We were referred to P4, the photographic Album, which shows photographs of the scene at the place where the money was hidden, and also depicts, quite graphically, the effort that went into unearthing the two trunks containing safes laden with money, that were buried underneath the ground in a chalet, and covered with reinforced concrete slabs.

We have examined the contents of exhibit P4. Considered together with the evidence given by the witnesses, they portray a highly unusual state of affairs. An amount of K2,100,100,000 in cash, is not inconsiderable by any stretch of imagination, whether then or now. It is not the amount of cash that people ordinarily possess and keep in their homes or chalets, even if there is diminished faith in the banking system, such as we witnessed in this country in the mid and late 1990s following the collapse of

Meridien Bank and others. Besides the unusually large number of bank notes in the possessionof the respondent, the mode of concealment of the money was most strange. In our view, these facts together cannot, but raise reasonable apprehension that the respondent not only had his cash to hide, but everything else about that cash. We agree with the appellant's counsel that these facts are totally out of the ordinary and were sufficient to ground reasonable suspicion.

Yet, the matter does not end there. PW6 gave evidence before the trial court to the effect that he investigated the respondent's bank accounts, both personal and business, and also examined his source of income, including his gratuity from the National Assembly. The result of these investigations was, however, that the respondent did not at any one point have any such money from those known lawful sources. Although PW6 did not produce bank statements, pay slips, etc.,to the trial court, his evidence was not shaken in cross examination. All these facts blend to make reasonable suspicion inevitable in the circumstances.

We hold, therefore, that the quantum of the cash found in the possession of the respondent, the method of concealment which he employed together with the facts investigated by PW 6 as to the possible source of the appellant's money were specific and articulable facts sufficiently established by the prosecution, which in our view, grounded reasonable suspicion.To prove reasonable suspicion under section 71 (1) of the Act, therefore, the prosecution

does not have to show the link between the source of the money or the accused to possible criminal conduct. It is sufficient that possession and reasonable suspicion are proved. We disagree with the decision of the High Court in this connection. On this basis, ground one of the appeal succeeds.

In ground two, the appellant impugns the High Court's holding that under section 71 (2), the prosecution needed to prove that the accused had knowledge that the source of money was a result of criminal conduct.

In developing their arguments on this ground, the learned counsel for the appellant first posited that what is discernable from the High Court judgment was that the court opined that the *mens rea*for the subject offence was to be found in both subsections (1) and (2) of section 71 of the Act. Secondly, that he mental element comprised knowledge by the accused that the source of the money was a result of criminal activity, and thirdly, that the prosecution bore the burden to prove the said mental element beyond reasonable doubt.

The gist of counsel's submission here,as we understood it, was that the approach adopted by the High Court was patently flawed. It was counsel's contention that the prosecution has a lower burden as to *mens rea* under section 71 which, in their view, extends only to subsection (1). They contended that the mental element under subsection (1) relates to receiving, possession, concealing, disposal or bringing into Zambia, any money, or other property. In the view

of counsel for the appellant, the High Court misapprehended and misapplied the *dicta*in the Australian Court of Appeal case of**Director or Public Prosecutions v. Sharon Lee Brown[8].**

In the opinion of the learned counsel for the appellant, the requisite knowledge in the present case, must relate to the possession of the money. The onus for the prosecution in this regard is to show that the accused knew that he was in possession of money. Counsel submitted further that although there is a metal element to the subject offence, the prosecution need not establish that the accused entertained any level of suspicion whether reasonable or otherwise, to establish its case. This is all because an accused person, may or may not, avail himself of the available defence in subsection (2).

Counsel quoted Olsson J in **DPP v. Sharon Lee Brown[8]** where he said that:

> **"Once it is shown that there has been a relevant receiving, possession, concealment or disposal of property that may reasonably be suspected of being proceeds of crime, then an offence has, prima facie, been committed."**

Counsel reiterated that section 71 (2) of the Act provides the accused person with an opportunity to escape criminal liability by satisfying the court (on a balance of probabilities) that he or she has no reasonable grounds for suspecting that the property referred to in the charge, was derived or released from the commission of a crime. According to counsel, the defence in section 71 (2) goes to the state of mind of the accused at the time of possession. Counsel

submitted that, whereas the prosecution has a burden to negate the defence, the accused has the burden to establish it; the evidentiary burden shifts to the accused to prove his innocent state of mind in relation to the property in question once the prosecution has proved section 71 (1). The case of **R. v. Buckett**[16]was adverted to and relied upon.

In rebutting the appellant's submissions on ground two, the learned counsel for the respondent, relying on the decision in the **Sharon Lee Brown**[8] case, argued that theaccused's defence under section 71 (2) of the Forfeiture of Proceeds of Crime Act, only arises once the prosecution has proved that there is reasonable ground for suspecting that the property in question is a proceed of some unlawful activity. In the present case, counsel contended, the prosecution failed to establish any objective indications of unlawful activity in relation to the money found in the possession of the respondent to require the respondent to invoke the defence under section 71 (2) of the Act. Counsel posited that under section 71 (1) the mental element is in establishing 'reasonable suspicion' on the basis of clearly established facts and circumstances of criminal or unlawful activity, and not knowledge of the accused that the source of money is some criminal activity.

Counsel concluded their arguments on this ground by reiterating their support for the High Court's reasoning that the prosecution needed to prove that there were reasonable

circumstances showing that the money was sourced from some criminal activity.

We have carefully considered the opposing arguments of the parties on this ground. It seems that the arguments are confined to interpretation of section 71 (2) of the Forfeiture of Proceeds of Crime Act, and more particularly what requires to be proved and on whom lies the burden of proof.

The learned trial Magistrate found that section 71 (2) of the Act placed the onus on the accused person to satisfy the court that he had no reasonable ground to suspect that the money had been derived from unlawful activity. That section provides that:-

> "**It is a defence under this section, if a person satisfies the court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realized, directly or indirectly from unlawful activity.**

The High Court reasoned, from the stand point of the general criminal law position, that the prosecution bears the burden to prove its case against the accused beyond reasonable doubt. The court did not think that subsection 2 of section 71 of the Act suggested any reversal of the general position on who bears the burden of proof; that although the subsection did require of the accused person to plead, if he so wishes, his innocent state of mind, that is to say that he had no reasonable grounds to suspect the property to be from criminal activity, it did not shift the burden on to the accused to establish the ingredients of the offence.

We agree that burden of proof in criminal proceeding lies and remains throughout on the prosecution to prove its case against the accused person beyond reasonable doubt. However, despite the ringing phrase of Viscount Sanky LC in the timeless case of **Woomington v. DPP**[17]regarding this 'golden thread of English criminal law', the presumption of innocence and the onus of proof which it entails, the law does, in appropriate instances, castthe evidentiary burden on the accused person to prove certain facts.

For the avoidance of doubt, we must state that the fundamental law of the land, the Constitution of Zambia, does recognize this reality. **Article 18(12)** of the **Constitution of Zambia** provides that:

> **"Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of paragraph (a) of clause (2) to the extent that it is shown that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts."**

The offence of recent possession as set out in section 319 of the Penal Code,chapter 87 of the laws of Zambia is a classic example of legislation that shifts the burden on the accused person to prove certain facts. It is, therefore, possible that in some cases, statute may cast the burden of proving certain facts on the accused person.

The question in the present situation is whether section 71 (2) does shift the burden to prove the offence under section 71 (1) from the prosecution to the accused person.

Our understanding of section 71 (2) is that it does not impose any duty on the accused person to prove any ingredient of the offence under section 71 (1). Where the prosecution proves its case against the accused under section 71 (1), it behoves such accused person,if desirous of defending himself,to show that he had no reasonable grounds for suspecting that the property to which the charge under section 71 (1) related, was derived from criminal activity. While we agree with the High Court that section 71(2) does not impose any obligation on the accused person to prove any ingredient of the offence under section 71 (1), it does afford the accused an opportunity to explain the absence of reasonable grounds on his part, for suspecting that the property he was found in possession of under section 71(1) was proceeds of crime.

The Australian case of **DPP v. Sharon Lee Brown**[8] which has been heavily relied upon by both parties, involved the interpretation of section 82 of the Proceeds of Crime Act, 1987 of Australia, which is *parimateria* with the section 71 of the Zambian Act. The High Court formed the view that the test put forward in that case deals with, and interrogates the accused person's state of mind as to whether or not he had suspicion that the money could have been proceeds of crime, which question is only resolved by interrogating the source or manner it came into the accused's possession.

With utmost respect to the High Court, we do not think that the case of **DPP v. Sharon Lee Brown**[8] developed any such test as was stated by the High Court. We accept the appellant's

submission that what was involved in that case was the interpretation of section 82 (2), the equivalent of section 71 (2) of the Zambian Act. The issues on appeal in the **Sharon Brown**[8] case were confined to the defence which the accused person sought to raise under subsection 2 of the Act, after the prosecution adduced evidence in support of the charge under section 82 (1). In the present case, the respondent opted not to avail himself of the defence available under section 71 (2). We agree with the submissions on behalf of the appellant that the High Court misconstrued the *ratio decidendi* in **DPP v. Sharon Lee Brown**[8] and applied the test under subsection (2) as if it were the test required under subsection (1) of section 71. This was a misdirection. We accordingly uphold ground two of the appeal.

In ground three, the appellant alleges a misdirection on the part of the High Court when it held that the prosecution's burden of proof under section 71 (1) of the Forfeiture of Proceeds of Crime Act was not discharged as the prosecution failed to adduce evidence upon which an inference could be drawn that the money could reasonably be suspected to be proceeds of crime.

It is clear to us that this ground is not materially dissimilar to the first two grounds. The gamut of the appellant's argument under this ground is that the High Court misconstrued the import of section 71 (1) of the Forfeiture of Proceeds of Crime Act. It was submitted on behalf of the appellant that under section 71(1) the prosecution bears the burden only to show that the property found

in the possession of the accused my reasonably be suspected of being proceeds of crime. Adopting the words used in **DPP v. Sharon Lee Brown**[8] (paragraph 23) counsel for the appellant submitted that the evidentiary onus ends once the prosecution establishes that 'there are objective indications of unlawful activity in relation to the money or property.' It was counsel's contention that indications of unlawful activity can result from a combination of particular facts and circumstances, even if each is individually innocuous. In the present case, the court should have looked at the totality of circumstances, rather than one circumstance, to determine whether reasonable suspicion existed to support the fear that the money may be proceeds of crime.

Counsel fervidly submitted that where, as in the present case, the offence relates to possession of cash, the factors indicating that cash is related to criminal activity may include the quantity, packaging, circumstances of discovery, or method by which the cash is kept, including concealment. Counsel then went on to elaborate on the circumstances which, in counsel's view, contributed to reasonable suspicion in the present case, that the money in issue may be proceeds of crime. While acknowledging that many people do keep lawfully earned money at home, the learned counsel argued that the quantity of the money, if excessive, should raise suspicion. They adverted to **section 295** of the **Proceeds of Crime Act, 2002**[2] of the United Kingdom. The amount involved in the present case, was so high as to arouse reasonable suspicion. Counsel referred us to, and quoted a passage

from the judgment of Sullivan J, in **The Director of Asset Recovery Agency & Others v. Green & Others**[15], and that of King J, in the case of case **Asset Recovery Agency v. Jackson and Smith**[18]**.**In the former case, it was stated by Sullivan J at paragraph 33 and 34 of the judgment that:

> **"Just as the law-abiding citizen normally has no need to keep large amounts of bank notes in his possession, so the criminal will find the property in that particular from convenient as an untraceable means of funding crime... The four decisions do no more than recognize that conduct consisting in the mere fact of having a large sum of cash in the form of bank notes in one's possession in certain circumstances...may provide reasonable grounds for suspicion and demand an answer....the circumstances which the cash is found may well be sufficient to require an explanation because, for example, absent any explanation, the large amount of cash is being necessarily exposed to the risks..."**

The learned counsel also submitted that the method of concealment of the cash in the present case should raise reasonable suspicion that the source of the money was probably illicit activity. The money, in the present case, was found hidden at a farm house where the respondent did not ordinarily reside; the money was hidden in trunks buried underground beneath two concrete slabs. According to counsel for the appellant, this unusual way of keeping one's money raised reasonable suspicion. The fact that the cash was concealed in a recently constructed building, which was built only after the general elections of 2011, means by necessary indication that the money was buried after the elections. The respondent held a cabinet portfolio immediately before those elections. These circumstances, according to the learned counsel for the appellant, raised suspicion, as did also the modest income of

the respondent from his salary and his business activities. In the absence of any satisfactory explanation to the contrary, the only inference that could be made was that the money was sourced from illegal activities.

In rebutting the appellant's arguments under ground three, the respondent's counsel contended that ground three sought to challenge a finding of fact established by the High Court. That finding of fact, according to the appellant's counsel, was that the court took judicial notice of the fact that it is common for people in Zambia to keep money in the manner the respondent kept the money found in his possession. Therefore, to raise an argument premised on finding of fact was contrary to the provisions of **section 8** of the **Supreme Court Act[3],** chapter 25 of the laws of Zambia which proscribes appeals on points of fact. The respondent's counsel beseeched this court to dismiss ground three accordingly.

Having so submitted, the respondent's counsel, nonetheless went on to respond to the argument made by the appellant's counsel on this ground in the alternative. It was contended that the respondent, being in possession of the quantity of cash that hehad, was not itself proof of reasonable suspicion.

As regards the appellant's arguments on the method of concealment employed by the respondent, the learned counsel for the respondent submitted that the argument was not supported by the evidence on the record and, wasin any case, not raised at the

hearing of the appeal in the High Court. It could accordingly not be raised on appeal in keeping with the guidance of this court in the case of **MususuKalenga Building Limited & Another v. Richman's Money Lenders Enterprises**[13]. The same argument was advanced in relation to the appellant's argument regarding the absence of a bank trail of the subject money and the respondent's modest income. Counsel submitted that PW6, Isaac Musonda, who claims to have investigated the appellant's financial standing, did not produce the respondent's bank statements and payslips for the period between January 2010 and November 2011. The learned counsel quoted from the case of **John NyambeLubinda v. The People**[19]where we stated that:-

> **"where evidence available only to the police is not placed before the court, it must be assured that had it been produced, it would have been favorable to the accused."**

The learned counsel for the respondent reiterated their submission that for offences such as the one create by section 71 (1) of the Forfeiture of Proceeds of Crime Act, an inference of guilt can only be established by clear evidence of criminal conduct in relation to the accused or indeed the money or property subject of the offence. The case of **Chimbini v. The People**[20]was cited as authority for the position that where evidence against an accused person is purely circumstantial and his guilt is a matter of inference, an inference of guilt may not be drawn unless it is the only inference which can be drawn from the facts.

The learned counsel for the respondent ended their submissions on ground three by imploring the court to dismiss this ground of appeal.

We have mulled the arguments submitted to us by the parties under this ground. The appellant impugns the High Court's finding that the prosecution's burden of proof under section 71 (1) of the Forfeiture of Proceeds of Crime Act was not discharged. We have already addressed the issues that are raised in this ground of appeal when we considered the arguments under ground one and two. We stated that the prosecution in the present case did, in fact, discharge the burden of proving the ingredients of the offence in section 71 (1). Possession of the money was clearly proved, and in our view, there is no doubt still lingering in that regard. Reasonable suspicion was equally proved, on a lesser standard than beyond reasonable doubt.

In our understanding, the framers of the Forfeiture of Proceeds of Crime Act did not intend to make proof of the crime under section 71(1) of the Act, to be beyond reasonable doubt. We are fortified in this regard by the clear provisions of section 78 of the Act, which, most surprisingly, neither of the parties referred us to. That section states that:-

> **"Save as otherwise provided in this Act, any question of fact to be decided by the court in proceedings under this Act is to be decided on the balance of probabilities."**

It was incumbent upon the respondent to raise the defence under section 71 (2) of the Act. The prosecution did not have to prove that the respondent did not have reasonable grounds for suspecting that the money was derived from unlawful activity. The respondent, however, chose not to avail himself of that defence, opting instead to exercise his constitutional right to remain silent. The trial Magistrate made an inference that the money the appellant was found in possession of could have been derived from unlawful activity. She stated as follows:

> **"I find the circumstances surrounding the commission of this offence by the accused, gave rise to the irresistible inference that the money in issue could have been derived from a crime."**

In our considered opinion, that was a reasonable inference for the learned trial Magistrate to make on the evidence before her. We stated in the case of **Simutenda v. The People**[7] that:-

> **"there is no obligation on an accused person to give evidence, but where an accused person does not give evidence, the court will not speculate as to possible explanation for the event in question; the court's duty is to draw the proper evidence before it."**

In the case of **David Dimuna v. The People**[21], we stated that:-

> **"whilst the court must not hold the fact that an accused remain silent against him, there is no impropriety in a comment that only the prosecution evidence was available to the court...**
>
> **When the prisoner, who is given the right to answer this question, chooses not to do so, the court must not be deterred by the incompleteness of the tale from drawing inferences that properly flow from the evidence it has got..."**

We are satisfied that ground three has merit. We uphold it accordingly.

In ground four, the appellant raises the issue of the intention of the Legislature in passing the Forfeiture of Proceeds of Crime Act. According to counsel, the lower court erred when it construed section 71 of the Act in a manner which defeats the intention of the Legislature as is discernable from the preamble of the Act. After quoting verbatim the preamble to the Forfeiture of Proceeds of Crime Act, the learned counsel for the appellant stressed that the Act is intended to, among other things, domesticate the United Nations Convention on Corruption. It was counsel's submission that by intending to domesticate the United Nations Convention on Corruption, the Act aims to bring international standards in the application of the law in this country. Counsel cited **Article 5** paragraph 7 of **the United Nations Convention against Illicit Traffic of Narcotic Drugs and Psychotropic Substances, 1988,** and the **United Nations Convention Against Transnational Organized Crime, 2000**, both of which urge states parties there-to to consider a reversal of the burden of proof regarding the lawful origin of alleged proceeds of crime. According to the learned counsel for the appellant the High Court did not take these standards into account. We were urged to have such international standards in mind as we interpret section 71 of the Act.

The respondent opposed ground four of the appeal arguing that the construction of section 71 of the Act by the High Court was consistent with authorities established in leading Commonwealth jurisdictions and the criminal law generally. Counsel for the respondent argued the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998 has not been domesticated in Zambia and is therefore inapplicable. They essentially reiterated previous submissions to the effect that section 71 of the Act requires reasonable suspicion to be proved beyond reasonable doubt.

We have considered the arguments advanced under this ground of appeal. The appellant's grievance is that the court below did not construe section 71 of the Forfeiture of Proceeds of Crime Act in a manner that would render it possible to give effect to the intention of the Legislature. The learned counsel for the appellant made reference to international conventions which appear to call upon states to reverse the burden of proof when it comes to the origins of suspected proceeds of crime.

We feel inclined to give the background, albeit, briefly, to theenactment of forfeiture of proceeds of crime laws to the extent that this is relevant to the understanding of the intention of the Legislature in passing the Forfeiture of Proceeds of Crime Act.

Forfeiture legislation was prompted in large measure by the desire to circumvent the difficulties encountered in proving and dealing with serious offences such as money laundering and drug

trafficking. Writing in the **Journal of Money Laundering**[7], Justice Anthony Smellie, QC, Chief Justice of the Cayman Islands, made the following pertinent observations:-

> **"the worldwide adoption of laws which enable the confiscation of the proceeds of crime reflects the acknowledged importance of depriving the criminal of his profits. These laws recognize that organized criminals use their proceeds of crime to insulate themselves by the use of intermediaries, from detection and arrest. They acknowledge that the more profitable the crime, the more difficult it becomes for law enforcement the link the criminal to it. The proceeds of crime become the very means by which the bastions of organized crime can be treated and sustained."**

This statement captures succinctly, the thinking which quickly permeated international debate on the subject or proceeds of suspected crime. Various international conventions were made to provide flexible standards on the burden of proof, those referred to be the appellant being some of them.

In many jurisdictions, it is now a common occurrence for the burden of proof to shift, or to be lowered during confiscation or forfeiture proceedings of property reasonably suspected to be proceeds of crime.In the case of **McIntosh v. Lord Advocate**[22], Lord Hope of the Privy Council stated as follows:

> **"The essence of drug trafficking is dealing or trading in drugs. People engage in this activity to make money, and it is notorious that they hide what they are doing. Direct proof of the proceeds is often difficult, if not impossible. The nature of activity and the harm it does to the community provide a sufficient basis for the making of these assumptions. They serve the legitimate aim in the public interest, of combating that activity. They do so in a way that is proportionate. They relate to matters that ought to be within the accused's knowledge, and they are rebuttable by him at a hearing**

before a judge on a balance of probabilities. In my opinion, a fair balance is struck between the legitimate aim and the rights of the accused"

It is clear to us that there would be no justifiable basis for making a distinction between proceeds of drug trafficking referred to by Lord Hope in **McIntosh v. Lord Advocate**[22] and other serious crimes for purposes of forfeiture of property reasonably suspected to be proceeds of crime.

We take judicial noticethat Zambia ratified the United Nations Convention Against Corruption on 7th December, 2007, the United Nations Convention Against Illicit Substances on 28th May, 1993, and acceded to the United Nations Convention against Transnational Organized Crime on 24th April, 2005. All these conventions sought to introduce international standards in the fight against corruption, illicit trafficking in drugs and psychotropic substances, and transnational organized crime. Zambia's ratification and accession to these instruments evinces the direction that the country is taking. In our considered view, the Forfeiture of Proceeds of Crime Act No. 19 of 2010, does domesticate,though not entirely, some tenents of these conventions by making provision on forfeiture of suspected proceeds of illicit activity and lowering the standard of proof.

The passage of the Forfeiture of Proceeds of Crime Act in 2010 was therefore, a deliberate act of the State, sequel to international clamour in this regard, to restate the burden and the standard of

proof in proceedings relating to forfeiture of proceeds of crime. The framing of section 71 (1), (2) and (3) was a conscious and deliberate desire to change the standard of proof and the evidentiary burden of proof. Section 78 of the Act, which we have earlier on quoted, makes the intention of the Legislature quite evident. We do not think that the circumstances here can be equated to one where an Act creates a *casus omissus*where we must be 'legislators' in interpreting the particular Act. We see our role, as being that stated by Viscount Dilhorne in **Stock v. Frank Johns (Tipton) Ltd,**[23]offinding the intention of the legislature as expressed in the words used. To use the words of Lord Reid in **I.R.C. v. Hinchey**[24]

> **"we can only take the intention of Parliament from the words which they have used in the Act."**

Having said the foregoing, therefore, we believe that the intention of the Legislature,in the fullness of its wisdom, and as evinced in section 78 of the Act, was to lower the standard of proof in the establishment of the cases envisioned by section 71 of the Act, as well as to reverse,to a certain extent, the burden of proof as suggested in section 71 (2) of the Act.

We agree, therefore, with the learned counsel for the appellant that the High Court, apparently oblivious of the background milieu that prompted the passing of the Forfeiture of Proceeds of Crime Act, adopted an approach which would never give effect to the intention of the Forfeiture of Proceeds of Crime Act. Ground four of the appeal also succeeds.

The net result is that this appeal succeeds on all grounds. The judgment of the High Court is set aside. We confirm both the conviction and the sentence passed by the learned Magistrate together with the order of forfeiture.

APPENDIX III ACTION PLAN

Number	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Ineffective international cooperation	Admission to Egmont Group of FIUs .	FIC	Appear before the Legal Working Groups to assess membership	Admission to Egmont granted	Exchange of information on Egmont Secure Web (ESW) System
		Enhance relationships with other foreign competent authorities were MoUs have been signed.		On going	Ongoing	Ongoing
2.	Quality of AML Policy and Strategy	Revision of the AML/CFT strategy in line with the findings of the National Risk Assessment	AMLA/ NTFSO	Development of AML/CFT policy	Implementation of AML/CFT policy	Implementation of AML/CFT policy
		Develop a comprehensive AML/CFT policy	AMLA/ NTFSO	Revision of AML/CFT strategy	Implementation of AML/CFT Strategy	Implementation of AML/CFT Strategy
3.	Inadequate capacity and resources for financial crime investigations/ prosecutions	Strengthen the capacity of investigators by providing training in financial crime investigations, forensics and other related AML matters	FIC/ LEAs	Training in financial crime investigations, forensics and other AML related matters	On-going training	Review of training undertaken
		Financial, human and technical resources including ICT equipment, vehicles and forensic skills should be increased in order to enhance the effectiveness of financial crime investigations/ prosecutions	Ministry of Home Affairs /Ministry of Justice	Lobby Government and other cooperating partners for funds.	Procurement, recruitment & training	Review of actions undertaken.
4.	Quality of FIU intelligence gathering and processing	Integration of information systems with LEAs and SAs	FIC	Integration with ZRA and PACRA	Integration with RTSA, PIA, BOZ and SEC	Integration with Immigration, Lands
		Specialised training in AML/CFT		Specialised training in AML	Specialised training in TF	Specialised training in PF
		Recruitment to enhance the staff compliment		Recruitment	Recruitment	Recruitment
		Receipt of Currency Transaction Reports (CTRs) and automate the information sharing regarding Cross Border Currency Declarations (CBCDs)		Receipt of CTRs and CBCDs	Receipt of CTRs and CBCDs	Receipt of CTRs and CBCDs
		Inspections in DFNBPs & Financial Sector		Development of an inspection framework, training and commence inspection	Conduct inspections	Conduct inspections

ML National Threat Action Plans						
No.	**Deficiencies / Weaknesses**	**Action Required**	**Responsible Institutions**	**Period**		
				Year 1	**Year 2**	**Year 3**
1.	Ineffective Border controls due to inadequate capacity and lack of natural boundaries	Train LEAs staff to faciliate stringent mechanisms of Border Controls in order to minimise smuggling of goods and cash. Enhance capacity of staff on AML/CTF issues.	ZRA/Ministry of Defence/Ministry of Home Affairs/Intelliegence Service	Assessment of training needs.	Undertake training	Undertake training
		Enhance Immigration Law to provide for stiffer penalties for illegal entry and stay in the country.	Department of immigration/Ministry of Justice	Review the current legal framework	Draft amendments	Enactment
2.	Lack of elecronic Data Bases in LEAs for proper data storage & management. Manual processing of cases files (dockets) in Law Enforcement Agencies to facilitate monitoring/detecting ML/TF issues. Law Enforcement Agencies not sending crime data to the National Crime Bureau	1) Procure Electronic data and sychronized Case Management Systems. 2) Law Enforcement Agencies to process dockets electronicaly through the Electronic Occurrence Book (EoB) using the National Fiber Network	LEAs	Assessment of available systems in each LEA	Procure systems, interconnectivity and conduct training	Implementation of integrated systems
3.	Lack of proper coordination and communication amongst LEAs on AML/CFT matters.	Establishment of AML/CFT committee on investigations, prosecutions and forfeiture.	LEAs/NPA/Ministry of Finance/Ministry of Home Affairs	Appointment of committee members and development of terms of reference (ToRs to prioritise measures to repond to high value financial crimes)	The AML/CFT Committee on investigations, prosecutions and forfeiture commence cooperation and coordination	Review effectiveness of cooperation and coordination.

Banking Sector Action Plans						
No.	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Ineffective Suspicious Activity Monitoring and Reporting	Monitor and ensure commencial banks acquire apprporiate customer screening , AML monitoring and STR reporting systems or improve the existing systems.	BOZ/FIC	Strengthen supervisory capacity through recruitment and training of staff.	Conduct risk based examinations to monitor and ensure commercial banks procure/ improve the systems for suspicious activity monitoring and reporting by commencial Banks	Review effectiveness of the suspicious activity monitoring and reporting in commercial banks.
2.	Ineffective Compliance System	Monitor and ensure commercial banks establish an independent well-resourced compliance function	BOZ / Financial Intelligence Centre	Strengthen supervisory capacity through recruitment and training of staff.	Conduct risk based examinations to monitor and ensure commercial banks develop and implement AML/CFT compliance programmes in line with the legal framework	Review effectiveness of the AML/CFT compliance functions in commercial banks
3.	Availability and Enforcement of administrative Sanctions	BoZ/FIC to implement enforcement of administrative sanctions on reporting entities which are not compliant with AML legal framework	BOZ and FIC	1. FIC to scale up inspection capacity. 2. Review the BoZ Legal Framework to include AML/CFT administrative sanctions 3) Implementing effective risk based AML/CFT on-site and off-site inspections 4) Apply administrative sanctions	1) Implementing effective risk based AML/CFT on-site and off site inspection. 2) Apply administrative sanctions	1) Implementing effective risk based AML/CFT on-site and off site inspection. 2) Apply administrative sanctions
		BoZ to incooperate administrative sanction on AML/CFT in the Banking and Financial Services Act.				
		Develop a database for keeping record of corrective actions and sanctions.				
		Strengthen capacity of FIC officials responsible to carry out inspections in order to effectively enforce administrative sanctions				
4.	Availability of reliable identification infrastructure	Expedite and extend the implementation of bio-metric identification system	Ministry of Finance/Ministry of Home Affairs	AML/CFT National Task Force to engage Ministry of Finance and Minstry of Home Affairs to expedite and extend bio-metric system	Implementation of bio-metric identification system	Implementation of bio-metric identification system

5.	Availability and access to beneficial ownership information	Amend the Companies Act and other legislation to make it mandatory to disclose beneficial ownership information at the time companies are being registered and that the information should be made public for ease of access.	Patents and Companies Registration Agency/Ministry of Commerce/ Ministry of Finance/ Ministry of Justice/Registrar of Cooperatives	Review the legal framework to include requirements on disclosure of beneficial ownership information.	Enactment of appropriate legislation.	Implementation of the laws.

Securities (Capital Market) Action Plans

No	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Ineffective supervision procedures and practices	Conduct joint inspections aimed at improving AML/CFT supervision in the securities sector institutions	SEC/ FIC	Develop risk based AML/CFT compliance strategy, draft onsite and offsite inspection procedures	Recruitment of AML/CFT inspectors	Review and analyse the outcomes of the inspections.
2.	Ineffective Suspicious Activity Monitoring and Reporting	Monitor and ensure Securities companies acquire apprporiate customer screening , AML monitoring and STR reporting systems or improve the existing systems.	SEC/FIC	Strengthen supervisory capacity through recruitment and training of staff.	Conduct risk based examinations to monitor and ensure securities companies procure/ improve the systems for suspicious activity monitoring and reporting by securities companies	Review effectiveness of the suspicious activity monitoring and reporting in Securities Companies
3.	Ineffective Compliance Function (Organisation)	Monitor and ensure securities companies establish effective compliance function	SEC/FIC	Strengthen supervisory capacity through recruitment and training of staff.	Conduct risk based examinations to monitor and ensure securities companies develop and implement AML/CFT compliance programmes in line with the legal framework	Review effectiveness of the AML/CFT compliance functions in Securities companies
4.	Unavailability of AML/CFT administrative sanctions	Amendment of the Securities Act to include comphrehensive administative sanctions	SEC	Presidential assent to the amended Securities Act	Implementation of the Securities Act	Implementation of the amended Securities Act
5.	Inadequate AML/CFT knowledge of staff in securities firms	Monitor and ensure that securities firms undertake training in ML/TF preventative measures	SEC/FIC	Train Stock brokers and Dealers.	Train Investment Advisors, Securities Exchanges and Fund Managers.	Conduct overall review.

Insurance Sector Action Plans						
No.	**Deficiencies / Weaknesses**	**Action Required**	**Responsible Institutions**	**Year 1**	**Year 2**	**Year 3**
1.	Lack of a comprehensive AML supervisory and monitoring framework	Strengthen capacity of PIA for risk based AML/CFT supervision. PIA to develop and implement a comprehensive, risk-based supervisory framework on AML compliance	PIA	Capacity building in AML compliance in PIA	Develop risk based supervisory AML compliance framework	Ongoing AML monitoring and supervision
2.	Low level of knowledge on AML among staff in the industry	Conduct AML/CFT training for Reporting Entities under PIA	PIA and FIC	Conduct AML/CFT training	Ongoing awareness training	Review the training
3.	Lack of AML compliance function and STR reporting	monitor and ensure Insurance companies establish Compliance functions and commence reporting STRs	PIA/FIC	strengthen supervisory capacity through training and recruitment of staff	Conduct risk based inspection on AML/CFT	Review effectiveness of the complinance function in Insurance companies
		Enhance supervisory oversight on reporting entities	PIA/FIC	Conduct risk based inspection on AML/CFT	Conduct risk based inspection on AML/CFT	Review the outcomes of the inspections
4.	Non availability of administrative sanctions	Expedite the introducion of amended Pension Scheme Regulation Bill and the Insurance Bill to Parliament.	PIA/AML/CFT National Task Force/Ministry of Justice	PIA to liaise with Ministry of Justice to ensure the bills are enacted.	Implementation the Acts	Review implementation of the Act.

Other Financial Institutions Action Plans						
Number	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Insuffient AML Knowledge of Business / Institutional Staff	Conduct extensive AML awareness and sensitization for the Other FIs category which should be focused on the requirements to implement AML compliance programmes.	BoZ / FIC	Develop relevant literature on AML/CFT	Conduct awareness with board and staff of other financial institutions	Review the implementation of the action plan
		AML/CFT training of staff for Other Financial Institutions		Incoparate training needs in the annual work plans	Incoparate training needs in the annual work plans.	Review the implementation of the action plan
2.	Ineffective Suspicious Activity Monitoring and Reporting	Monitor and ensure non bank financial institutions acquire appropriate customer screening , AML monitoring and STR reporting systems or improve the existing systems.	Bank of Zambia / Financial Intelligence Centre	strengthen supervisory capacity through training and recruitment of staff	Conduct Risk Based examininations to monitor and ensure non-bank financial institutions acquire approprite systems for monitoring and reporting of STRs	Review effectiveness of the suspicious activity monitoring and reporting in non bank financial institutions
3.	Ineffective Compliance Function (Organisation)	Monitor and ensure non bank financial institutions establish effective compliance function	FIC/BoZ	strengthen supervisory capacity through training and recruitment of staff	Carry out Risk Based examinination to monitor and ensure compliance function are effective	Conduct overall review of the compliance functions
4.	Integrity of Business/Institution Staff	Monitor and ensure non-bank financial institutions develop measures to promote integrity of staff	BoZ/FIC	strengthen supervisory capacity through traning and recuritment of staff	Carry out Risk based examination to monitor and ensure that Non-Bank Financial Institution	Conduct overall review to monitor compliance
5.	Ineffective Supervision / Oversight Activities	improve AML/CFT supervisory capacity	BoZ / FIC	Draft & adopt Off/On-Site AML/CFT Examination Procedures	Develop AML/CFT examination plans	Review
				Recruitment of additional Examiners	Conduct AML/CFT Examinations	
				AML/CFT training of examiners		

DNFBPs Action Plans						
Number	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Insufficient AML Knowlegde of Business/Institutional Staff	Conduct extensive AML awareness and sensitization for the DNFBPs Sector which should be focused on the requirements to implement AML compliance programmes	Respective Supervisory Authorities/FIC	Develop appropriate AML training materials for DFNBPs	Conduct awareness with supervisory authorities and reporting entities	Review the level of AML knowledge
2.	Ineffective Supervision/Oversight Activities	Capacitate LAZ, ZIEA, and ZICA for effective supervision	LAZ/ ZIEA/ ZICA	Draft & adopt: • Risk-based AML/CFT Supervisory Framework • Off-Site AML/CFT Inspection Procedures • On-Site AML/CFT Inspection Procedures	AML/CFT inspections commenced in accordance with inspection procedures for ZIEA, LAZ and ZICA.	LAZ, ZIEA, FIC and ZICA to conduct overall review & analysis of supervisory compliance system to weaknesses, recommend & implement improvements.
		In relation to Casinos, operationalise and capacitate the Licensing Committee for AML effective supervision	Ministry of Tourism & FIC	FIC to engage Ministry of Tourism on the operationalisation of the Licensing Committee and recruitment of inspectors	Capacitate the Licensing Committee for AML supervision under Ministry of Tourism	The Casinos appoint inspectors and commence inspections and collect statistics on inspections
		The FIC to supervise dealers in Metals and Precious Stones and dealers in Motor Vehicle for AML temporarily and to transition the AML compliance functions to the licensing authority.	Ministry of Mines and FIC	FIC to engage Ministry of Mines on the Operationalisation of the Licensing Committee and recruitment of inspectors.	Develop AML/CFT inspection procedures.	Commence conducting AML/CFT inspections.
3.	Ineffective Compliance Function (Organisation)	Monitor and ensure DNFBPs establish independent well-resourced compliance function	FIC and SAs	strengthen supervisory capacity through training and recruitment of staff	Conduct Risk Based examination to monitor and ensure DNFBPs establish compliance functions	Conduct overall review of the compliance function to monitor effectiveness

4.	Ineffective Suspicious Activity Monitoring and Reporting	Monitor and ensure DNFBPs enhance their record keeping and skills in effective customer screening, identification of suspicious activities.	FIC and SAs	strengthen supervisory capacity through training and recruitment of staff	Conduct RisK Based examination to monitor and ensure DNFBPs develop/aquire systems for transaction monitoring and reporting	Review reporting levels of DNFBPs
5.	AML Legal Framework	To provide for AML/CFT in the enabling Laws for the DNFBPs	FIC, SAs and MOJ	Engage the DNFBPS and their supervisory authorities on the need to amend their Laws.	Review and draft the amendment bills	Enactment of the Laws
6.	Availability and effectiveness of entry controls	Enhance enforcement of the Law in relation to persons operating as real estate agents without licensing with ZIEA	ZIEA and FIC	Prosecution of persons operating without a licence and publicising of same.	Prosecution of persons operating without a License and keep statistics on the same	Outreach to would be member.
		Operationalise the Licensing Committee for the Casinos	FIC and Ministry of Tourism	Engage Ministry of Tourism	Tourism to develop a comprehensive Legal Framework for licensing of Casinos.	Review of Licensing procedures for the Casino sector.
		Implementation of the registration systems for motor vehicle dealers under the FIC Act	FIC	1) Develop registration system 2) Carry out awareness on registration system.	Implementation of the registration system	Implementation of the registration system
		Improve licensing procedures to include AML/CFT requirements for dealers in Precious Stones and Metals	FIC and Ministry of Mines	Engage Ministry of Mines	Develop AML inclined licensing procedures	Capacitate the Licensing Authority and commence implementation of the revised licensing procedures
7.	Availability and effectiveness of administrative sanctions	Amend enabling Laws for DNFBPs to include administrative sanctions for AML	SAs and FIC	Engage the supervisory authorities on the need to include the administrative sanctions in the enabling Laws	Draft the amendment bills	Enactment of the bill into Law
		Enforcement of AML administrative sanctions for AML breaches as provided for in the FIC Act		The FIC to commence enforcement of admnistrative sanctions	FIC to collect statistics on enforcement actions	Review on enforcement of administrative sanctions

Terrorist Financing Action Plans						
Number	Deficiencies / Weaknesses	Action Required	Responsible Institutions	Period		
				Year 1	Year 2	Year 3
1.	Adequacy of Resources	• Specialized training in countering terrorist financing needs to be conducted in order to build capacity and raise awareness among law enforcement personnel. • Increase the staffing levels in LEAs to effectively counter terrorist financing, especially in border areas and airports. • Upgrade the existing ICT infrastructure and install modern ICT systems where they are non-existent for effective monitoring, analysis and detection of TF by LEAs • Integrate ICT systems amongst law enforcement agencies to facilitate quick information sharing and collaboration • Increase budgetary allocation to LEAs in order to accommodate counter terrorist financing activities and terrorism in general • Equip all border posts with body scanners and currency detectors to curb cash smuggling	LEAS/ Minsitry of Finance/ BoZ/ FIC	Budgetary allocation to LEAS increased, Staffing levels increased in LEAs	LEAS personel trained, Border posts equiped with body scanner and currency detectors, ICT infrastructure upgraded, Modern ICT systems installed, Sustained budgetary allocation	ICT systems intergrated amongst LEAS, Continuous capacity building, Sustained budgetary allocation
2	Awareness and commitment to fight Terrorist Financing	• Increase awareness programs on countering terrorist financing and terrorism among LEAs NPOs and the general public. In addition, individual LEAs should have deliberate awareness activities for its personnel.	LEAS, Financial Intelligence Centre, NATC, ZSIS	Conduct specialised TF training	On-going awareness programs	Review of the effectiveness of awareness programmes
		• Clearly outline reporting channels on matters related to terrorist financing and terrorism amongst the LEAs.	FIC, NATC	Reporting channels communicated to competent authorities	Implementation	Review of the effectiveness of reporting channels
		• Expedite the establishment of the National Anti-Terrorism Centre (NATC)	Ministry of Home Affairs and Cabinet Office	NATC operationalised	NATC operationalised	implementation of the mandate of NATC
3	Geographic Factors	• Clearly mark Beacons in border areas in order to facilitate smooth control and curb illegal activities that could be exploited for terrorist financing and terrorism in general.	Ministry of Finance, Ministry of Lands (Surveyor General), Ministry of Defence, Ministry of Home Affairs	Engage Govemment on the proposed project	Lobby Government for resource allocation	Implementation
		• Erect secure fences and install surveillance cameras in strategic locations along borderlines to monitor and curb the use of undesignated routes.	Ministry of Works and Supply, Ministry of Defence, Ministry of Home Affairs	Engage Govemment on the proposed project	Lobby Government for resource allocation	Implementation

4	Money Value Transfer Sector	• Enhance supervision of money value transfer operators to ensure compliance to AML/CFT regulatory requirements • Carry out adhoc inspections to ensure compliance • Carry out awareness and training amongst the operators to enhance their understanding of terrorist financing and how their products could be exploited for terrorist financing. X) Carry out a typology on the alternative money value transfer operators	FIC, BoZ and NATC	Awareness training in AML/CFT for MVTs	1) Conduct typology on alternative money value transfer operators 2) Implement supervision of money value transfer operators	1) Share outcome of the typology with stakeholders for policy formulation 2) Ongoing supervision
5	Quality of Legislation	• Amendment of the regulation that implements the UNSCRs 1267 and 1373 (and their successor resoutions) to address deficiencies on the definition of funds and procedures on freezing/ unfreezing of assets	Ministry of Justice, FIC, NATC and AML/CFT National Task Force of Senior Officials	Draft amendments to the regulations and seek approval from the Minister	Issuance of regulations	Implementation of the Regulation

APPENDIX III:PARTICIPATING INSTITUTIONS ON THE ML/TF NATIONAL RISK ASSESSMENT

NO.	NAME OF INSTITUTION
1	Financial Intelligence Centre
2	Bank of Zambia
3	Pensions and Insurance Authorities
4	Securities and Exchange Commission
5	Patents and Companies Registration Agency
6	Zambia Institute of Estate Agents
7	Casino Association of Zambia
8	Law Association of Zambia
9	Zambia Institute of Chartered Accountants
10	Insurers Association of Zambia
11	Bankers Association of Zambia
13	Lusaka Stock Exchange
14	Zambia Police Service
15	Zambia Security and Intelligence Service
16	Drug Enforcement Commission
17	Anti-Money Laundering Investigations Unit
19	Immigration Department
20	Anti-Corruption Commission
21	Zambia Revenue Authority
22	National Prosecution Authority

23	The Judiciary
24	Ministry of Defence
25	Ministry of Finance
26	Ministry of Justice
27	Ministry of Foreign Affairs
28	Selected Commercials Banks
29	Zambian Association of Bureau de Change
30	National Savings and Credit Bank
31	Association of Micro Finance Institutions in Zambia
32	Zambia Environmental Management Authority
33	Competition and Consumer Protection Commission
34	Stock Brokers of Zambia
35	Alexander Forbes Financial Services Limited
36	Financial Sector Deepening Zambia

Note:

- The Financial Intelligence Centre was a lead Agency on NRA
- On all nine (9) established NRA working Groups, secretarial work wasprovided by the officials from the Financial Intelligence Centre

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