Mutual Evaluation/Detailed Assessment Report

Anti Money Laundering and Combating the Financing of Terrorism

Republic of Namibia

MAIN REPORT

August, 2007

The AML/CFT Assessment of Republic of Namibia has been undertaken by the World Bank under the FSAP. In line with agreed procedures for ESAAMLG Mutual Evaluations the Detailed AML/CFT Report and the Executive Summary were adopted by the Task Force of Senior Officials and the Council of Ministers in August 2007.

ESAAMLG SECRETARIAT

The World Bank

DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Namibia

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ACRONYMS

ACA	Anti-Corruption Act, 2003
ACC	Anti-Corruption Commission
AML	Anti-Money Laundering
AMLC	Anti-Money Laundering Advisory Council
AML/CFT	Anti-Money Laundering/ Combating the Financing of Terrorism
AUM	Assets Under Management
BIA	Banking Institutions Act
BID	Determinations under the Banking Institutions Act
BoN	Bank of Namibia
C	Complaint
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CPA	Criminal Procedure Act (1977 & 2004)
DNFBPs	Designated Non-Financial Businesses and Professions
ESAAMLG	Eastern and Southern African Anti-Money Laundering Group
FATF	Financial Action Task Force
FI Bill	Financial Intelligence Bill
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
GIPF	Government Institution Pension Fund
GoN	Government of Namibia
ICAN	Institute of Chartered Accountants of Namibia
ICCM	International Co-operation in Criminal Matters Act, 2000
IEAN	Institute of Estate Agents of Namibia
KYC	Know Your Customer
LC	Largely compliant
LPA	Legal Practitioners Act
LSN	Law Society of Namibia
Merida Convention	United Nations Convention Against Corruption (2003)
ML	Money Laundering
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty
MoF	Ministry of Finance
MoJ	Ministry of Justice
MOU	Memorandum of Understanding
MVT	Money or Value Transfer
NAMCO	Namibia Minerals Corporation

NAMFISA	Namibia Financial Institutions Supervisory Authority
NAMIBRE	Namibian National Reinsurance Corporation
NBFIs	Non-bank Financial Institutions
NC	Non-compliant
NPO	Non-Profit Organizations
NSX	Namibia Stock Exchange
Palermo Convention	United Nations Convention Against Transnational Organized Crime (2000)
PC	Partially compliant
PEPs	Politically Exposed Persons
POCA	Prevention of Organized Crime Act, 2004
PS	Permanent Secretary
SACU	Southern African Customs Union
SADC	Southern African Development Community
SARPCCO	Southern African Regional Police Chiefs Cooperation Organization
SRO	Self-regulatory Organization
ST	Suspicious Transaction
STR	Suspicious Transaction Report
UN	United Nations
UNSCR	United Nations Security Council Resolution
Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

A. PREFACE

1. An assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Namibia was conducted based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and prepared using the AML/CFT Methodology 2004. The assessment considered the laws, regulations and other materials supplied by the authorities, and information obtained by the assessment team during its mission from October 24-November 3, 2005. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the agencies met is set out in Annex 1 to the detailed assessment report.

2. The assessment was conducted by a team of assessors comprising World Bank staff and a consultant. The evaluation team was led by Isabelle Schoonwater, Financial Sector Specialist, with other members being Stuart Yikona, Financial Sector Specialist, Yonghuan Wang, Financial Sector Specialist and John McDowell, Consultant. The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines, practices and other measures and systems in place to deter money laundering (ML) and the financing of terrorism (FT). In terms of institutions, the team covered both the financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The team also assessed the capacity, the implementation and the effectiveness of all measures and systems relating to AML and CFT in Namibia.

3. This report provides a summary of the AML/CFT measures in force in the Republic of Namibia on November 2, 2005 or shortly thereafter. It describes and analyzes those measures, sets out Namibia's level of compliance with the FATF 40+9 Recommendations (see Table 2) and provides recommendations on how certain aspects of the system could be strengthened (see Table 3). The report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of the Republic of Namibia. It was also presented to the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG) and endorsed by this organization on its plenary meeting of August 22, 2007.

B. Executive Summary

Introduction

4. This Report on the Observance of Standards and Codes for the FATF Forty recommendations (2003) on Anti-Money Laundering and the Nine Special Recommendations (2001 and 2004) on Terrorist Financing (FATF 40 + 9) was prepared by a team composed of staff and consultant of the World Bank, using the 2004 AML/CFT Methodology.

5. This Report provides a summary of the level of compliance with the FATF 40+9, and provides recommendations to improve compliance with the prevailing context of Namibia. The views expressed in this document are those of the assessment team and do not necessarily reflect the views of the Government of Namibia or the Boards of the International Monetary Fund (IMF) and the World Bank.

Information and methodology used for the assessment

6. In preparing the detailed assessment, World Bank staff reviewed the institutional framework, the laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and designated non-financial businesses and professions (DNFBPs), as well as examined the capacity, the implementation and the effectiveness of all these systems. This Report contains a summary of the AML/CFT measures in effect in Namibia on April 21, 2006.

Main Findings

7. The Prevention of Organized Crime Act, which criminalizes money laundering, was passed in parliament in December 2004, but has not been put into effect by the Ministry of Justice. The Financial Intelligence Bill that will establish the Financial Intelligence Unit was tabled in parliament in February 2006.[1] Given the absence of an AML/CFT framework, the Bank of Namibia (BoN) has exercised its powers under the Banking Institutions Act (BIA) to issue general anti-money laundering related determinations and circulars to address aspects of money laundering, but with limited success. Nevertheless, they fall short of compliance with the international standards and are not sufficient to ensure industry compliance. Meanwhile, all South African owned banks and larger insurance companies have adopted home office AML/CFT policies to some degree.

8. With respect to combating the financing of terrorism (FT), Namibia has neither criminalized FT nor provided for the legislative, regulatory framework and institutional mechanism for the freezing, seizing and confiscation of terrorism related funds pursuant to the UN Security Council Resolutions 1267 and 1373.

General

General Situation of Money Laundering and Financing of Terrorism

[1] The Bill was only enacted into law as the Financial Intelligence Act, 2007 on July 5, 2007. However, for it to become operational it will have to be gazetted by the Ministry of Finance. Additionally, the authorities have taken administrative steps to begin setting up the FIU housed in the Bank of Namibia.

9. Criminal activities have a regional as well as domestic dimension to them. However, with respect to the regional dimension law enforcement authorities advise that Namibia is mainly used as a transit point.

10. Those with a regional dimension relate to falsification of identity documents or illegally obtained identity documents as well as customs forms with false information, including falsified invoices; theft of motor vehicles mainly from South Africa and brought into Namibia to be resold again on the market. Criminal syndicates are believed by the Namibia law enforcement agencies to operate this organized activity using Namibia as a transit point to support operations in South Africa, Angola and international networks transiting through Dubai.

11. There seem to be a clear route for hard drugs that come from South America and Asia into Southern Africa. Some of the hard drugs destined for Europe from these regions come through South Africa for re-routing to the European region and sometimes to Canada. Some of the drugs are routed to South Africa through Luanda and Dar Es Salaam. Namibia is more a transit country than a consumption one, except at a low level for ecstasy and cocaine, and is not a production zone. There have been seizures of cocaine at the Namibian International Airport, which was being smuggled from Brazil and destined for Angola. West African syndicates have been identified in some cases as coordinating part of these activities.

12. On the domestic front the real estate sector is a concern. Possible fraudulent investments in game resorts and lodges were identified by law enforcement agents as vehicles for money laundering patterns. Furthermore, there are various informal activities in some small businesses like shebeens, such as gambling and remittances which are vulnerable to abuse by money launderers.

13. With respect to the diamond industry, despite a strict legal and enforcement framework, authorities advised that there are diamonds or precious stones smuggling activities at a small scale.

14. The authorities assess that there is a low risk of terrorist activity occurring within Namibia particularly with the ending of civil war in Angola.

Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)

15. Namibia has one of the most highly developed financial systems in Africa. The system consists of four private commercial banks, about 30 insurance companies, 500 pension funds, a stock exchange, a number of asset management and unit trust management companies, several specialized lending institutions, and a large number and variety of micro-lending institutions. Most of these institutions are private with strong ownership links to South African institutions.

16. The DNFBP sector includes accountants, lawyers, real estate agents and casinos but does not cover dealers in precious stones and metals as accountable institutions. There are approximately 14 accounting firms operating in Namibia. With respect to lawyers, there are currently 88 private law firms in Namibia; 390 licensed practitioners out of which 190 are in private practice. About 70% of the law firms are sole practitioners.

17. Namibia is one of the leading producers of diamonds in the world, with the diamond industry contributing significantly to the GDP. A number of diamond companies operate in Namibia. The market leaders are Namdeb Diamond Corporation (Pty) Ltd, a joint venture between the Namibian Government and De Beers of South Africa; and Namibia Minerals Corporation (NAMCO), in which the Namibian government holds some shares. There are numerous other smaller operators holding mining licenses that authorize them to carry out mining operations. Namibia being a signatory to and participant in the

Kimberly Certification Process of rough diamonds has ensured that the security of the diamonds is of international standards.

18. There are currently four casinos in Namibia with a total of 600 machines. They are all in hotels as under the existing regulatory regime casinos can only be operated in a rated hotel with specified rooms. In this regard, for Windhoek the capital city, the required rating is a 4 star with at least 100 rooms, while hotels outside Windhoek require a 3 star rating with at least 50 rooms. There are licensed by the Casino Board under the Ministry of Environment and Tourism. Nevertheless, informal and then unmonitored gambling activities have been described by our counterparts. A new regulation for casinos and gambling activities that would have a larger coverage is currently being drafted by the Board.

Legal System and Related Institutional Measures

19. Criminalization of money laundering is dealt with in the Prevention of Organized Crime Act, 2004 (POCA) passed by parliament in December 2004. It will be the primary legislation that criminalizes money laundering. When the POCA comes into effect, money laundering will be criminalized under Chapter 3 of the POCA. The offence of ML is defined in a manner which is generally consistent with the Vienna and Palermo Conventions although Namibia has not ratified the Vienna Convention. Namibia adopts a list and threshold approach to define the predicate offences, which includes any offence punishable by more than 12 months. The authorities advise that the offence of ML as currently provided in POCA applies to persons who commit a predicate offence and can be prosecuted for laundering of one's own illicit funds. There are penal and financial sanctions available for the ML offence, which are applicable to both natural and legal persons and proportionate and dissuasive.

20. Namibia has not criminalized FT and none of the provisions of the POCA cover FT. Moreover, Namibia has signed but not ratified the UN International Convention for the Suppression of the Financing of Terrorism. There is an Anti-Terrorism Activities Bill with no time frame as to when it will be tabled before parliament for debate and passage. The Bill does not however, provide for liability for legal persons which are used to facilitate terrorist financing or terrorist activities. Furthermore, there is no legislative, regulatory or institutional framework for freezing and seizing terrorist funds or other assets of persons.

21. The legal provisions for the identification, tracing and evaluating property subject to confiscation, seizing and freezing, confiscation and forfeiture of property are provided for in the POCA and are comprehensive. Under the POCA, confiscation refers to a criminal based process dependent on the conviction of an accused person, while forfeiture refers to a civil based process regardless of whether an accused person is prosecuted. However, in the absence of the coming into effect of the POCA, the legal framework for the confiscation, freezing and seizing of the proceeds of crime are governed by the Criminal Procedure Act, 1977 and soon by the Criminal Procedure Act, 2004 which will replace the 1977 statute.

22. There is no Financial Intelligence Unit in Namibia. The version of the Financial Intelligence Bill provided to the assessors confers on the BoN the power to perform the functions of an FIU in Section 5. The interpretative note related to FATF Recommendation 26 requires independence of the FIU. It is not clear how this will be addressed in a department within the BoN. Financing of terrorism does not come within the scope of the BoN's jurisdiction. Otherwise, as defined in the current draft the functions and powers are consistent with the international standards.

23. Currently, the Ministry of Finance (MoF), the Ministry of Justice (MoJ) and the BoN are the lead institutions responsible for developing the AML/CFT policy, legislation, and agenda and will oversee its implementation. The Ministry of Justice championed the POCA and is responsible for preparing the regulations which will bring this Act into operation. The Ministry of Finance is sponsoring the Financial

Intelligence Bill and will be responsible for tabling it before parliament. With regard to the BoN, the authorities have made a decision to house the Financial Intelligence Unit in the BoN.

24. The Prosecutor General, the Namibian Police and the Namibia Revenue Authority under the Customs and Excise Department will be involved in conducting money laundering investigations. However, in discussions with these agencies it was evident that these agencies suffer from both human and logistical constraints and require training in conducting financial crime investigations.

25. The Customs and Excise Act, 1998 (Customs Act) establishes a declaration and disclosure framework for the physical transportation of all goods including cash or other monetary instruments which is imported or exported out of Namibia. In Namibia, the authorities advise that the reason why cash has to be declared or disclosed if requested to do so by a customs officer is not only that this is required under existing Exchange Control regulations, but under the Customs Act, money in whatever form is deemed to be goods for customs declaration purposes. The declaration or disclosure is required of all persons regardless of country of citizenship. There is no threshold amount that is prescribed when bringing in currency into Namibia. On the other hand, there is a threshold amount of N$160,000 for individuals and N$750 million for corporate entities for taking currency out of Namibia.

26. Mechanisms for the collection of AML/CFT related statistics have not been developed due to the lack of implementation of the POCA.

Preventive Measures – Financial Institutions

27. Absent an appropriate AML/CFT framework, the BoN has exercised its powers under the Banking Institutions Act, 1998 (BIA) to issue general anti-money laundering related Determinations and Circulars to address aspects of money laundering until such time as the POCA is brought into effect or the Anti-Terrorism Activities Bill and Financial Intelligence Bill are enacted and brought into effect. In this regard, the BoN issued in June 1998, Determinations on Money Laundering and "Know Your Customer Policy" BID-3 (BID-3), which requires banking institutions to keep records relating to their customers. A complementary Circular, BIA 2/02 was issued by the BoN in June 2002. This 2002 Circular is an attempt to provide guidance regarding the prevention, detection and control of possible money laundering activities. However, the specific authority under the BIA and the Determination and Circular issued do not meet international standards for AML/CFT.

28. But in the absence of the POCA, the Determination and Circular have a weak legal basis to the extent that there are issued under the BIA which does not explicitly cover AML/CFT. The likelihood of this power being challenged in a court of law is high and for this reason the authorities indicated in discussions with the assessment team that no attempt has been made to enforce these directives or integrate them in the conduct of their annual examinations of banking institutions. Furthermore, in view of the sophistication and developed nature of the financial system of Namibia, a strong and robust legal and institutional AML/CFT framework is an imperative.

29. The non-bank financial institutions sector is supervised by the Namibia Financial Institutions Supervisory Authority (NAMFISA). NAMFISA was created in 2001 to regulate the NBFI sector. Entities covered by NAMFISA include pension funds, insurance companies, asset managers, the capital markets, micro-lenders, public accountants and auditors, friendly societies, unit trusts and trust companies. NAMFISA has not issued any AML/CFT rules, guidelines, circulars or requirements to its supervised institutions. Currently there are no AML/CFT requirements for the non-bank financial sector to comply with international standards. Some institutions, such as larger insurance companies, have adopted parent company AML/CFT safeguards as a part of group policies.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

30. There are currently no AML/CFT measures imposed on designated non-financial businesses and professions. Further, a review of the proposed FI Bill while including most DNFBPs as required by international standards does not cover dealers in precious stones and metals as accountable institutions. On the other hand, Namibia has fully participated and cooperated in the Kimberly Process.[2] Namibia underwent a review of its processes in 2005. The feedback from the Kimberly Process assessors was that the systems currently in place are such that they do reduce the risk of illegal peddling of diamonds from Namibia. There has been no record that links Namibia's diamond resources to money laundering or terrorist financing.

31. The authorities have not considered how the DNFBPs will be supervised with regard to their AML/CFT obligations. Some professions such as car dealers or dealers in semi-precious stones do not have any supervisory body. Therefore specific monitoring should be developed. There is no staff expertise on this issue in NAMFISA.

Legal Persons and Arrangements and Non-Profit Organizations

32. The office responsible for the registration of all companies and other business entities in Namibia is the Companies and Patents Registration Office (Registrar of Companies). As part of the registration process, prospective companies through their promoters are required to submit the Memorandum and Articles of Association with the Registrar of Companies. A list of shareholders including their full names, occupation and residential, business and postal address must be submitted together with the documents of incorporation. Every company including a foreign one is required to have a physical and postal address in Namibia. Public companies can issue bearer shares. However, it is not clear from the Companies Act whether private companies can also issue bearer shares. Moreover, there is no mechanism to monitor and control the issuance of bearer shares or ensure that the companies know who the holders of the shares are.

33. The Registrar of Companies is the central authority that registers and maintains all company records. All the records kept by the office are available for inspection subject to a minimal fee.

34. The Registrar of Companies has no mechanism by which to determine who else has beneficial interest in a registered company other than those that are submitted to the office and are indicated on the documents submitted by the company upon incorporation or whenever there are changes in the composition of shareholders, directors or change in location. The authorities advised that the office cannot go beyond any information presented, because information submitted to the office is presumed to be made in good faith.

[2] "The Kimberley Process is a joint government, international diamond industry and civil society initiative to stem the flow of conflict diamonds - rough diamonds that are used by rebel movements to finance wars against legitimate governments. The trade in these illicit stones has contributed to devastating conflicts in countries such as Angola, Cote d'Ivoire, the Democratic Republic of Congo and Sierra Leone. The Kimberley Process Certification Scheme is an innovative, voluntary system that imposes extensive requirements on Participants to certify that shipments of rough diamonds are free from conflict diamonds. The Kimberley Process is composed of 45 Participants, including the European Community. Kimberley Process Participants account for approximately 99.8% of the global production of rough diamonds." See, http://www.kimberleyprocess.com

Non-Profit Organizations (NPOs)

35. Registration of NPOs in Namibia is mandatory in that all associations seeking to operate as NGOs are required to incorporate their entities under section 21 of the Companies Act, 1973 (the provision will remain the same under the 2004 Act). There are an estimated 480 section 21 companies in Namibia. The Registrar of Companies is responsible for registering NPOs. However, while the Companies Act provides an adequate framework for NPOs, the authorities acknowledged in discussions with the mission team that there is no monitoring mechanism for NPOs. Indeed, no follow up is made by the Registrar to monitor their activities and determine whether they are undertaking activities reflected in the Memorandum of Association submitted to the company registry.

National and International Cooperation

36. Money Laundering is not yet an extraditable offence. In addition, even though Namibia has ratified the Palermo Convention it excluded the application of the Convention as the basis of extradition from applying to Namibia. Further, the provisions of the Vienna and Palermo Conventions have not been fully implemented in domestic law. The Ministries of Finance and Justice are the principal institutions responsible for coordinating the government's AML/CFT policies both domestically and internationally. There is a Task Force on AML/CFT established in 1999 through a Cabinet decision. It was constituted within the framework of Eastern and Southern African Anti-Money Laundering Group's (ESAAMLG's) MOU signed by the government of Namibia. It currently reports to the Ministry of Finance and has been chaired by NAMFISA. However, at the time of the assessment, the authorities advised that the BoN would soon take over the responsibility of chairing the Task Force.

C. GENERAL

General information on Namibia

37. Namibia is a unitary republic with a multiparty democratic system**.** It gained its independence in March 1990 from South African control. The 1990 constitution provides the basis for Namibia's legal and administrative system and contains entrenched clauses protecting fundamental human rights and freedoms that cannot be amended without invalidating the entire constitution. The constitution has safeguards for an independent Judiciary.

38. Namibia is divided into 13 regions: Caprivi, Erongo, Hardap, Karas, Khomas, Kunene, Ohangwena, Okavango, Omaheke, Omusati, Oshana, Oshikoto, and Otjozondjupa. Each region has several local governments elected by the community to take care of community matters. The land area is 824 269 sq km, with a total of 1.93 m people (2003 population and housing census). The total of land boundaries is 3936 km and borders countries are Angola (1376 km), Botswana (1360 km), South Africa (967 km), Zambia (233 km), with a coastline of 1572 km . Namibia has a low average population density of 2.2 per sq km and an average household size of 5.1 persons. An estimated 39% of Namibians are aged 15 or less. The Khomas region which includes Windhoek and its area is the most highly populated region with 200.000 inhabitants. The fastest growth rate is recorded in Kavango region, owing to the immigration of a large number of Angolans in the region's capital Rundu. A high per capita GDP, relative to the region, hides a great inequality of income distribution.

39. According to the International Monetary Fund Article IV report of 2004, Namibia has enjoyed good macroeconomic stability since independence in 1990. The country has developed a market oriented economy. A stable political and legal environment has also been conducive to economic activity. Real GDP growth has averaged 4.5 percent in the last five years driven by construction, diamond and other mining, transport and communications. However, economic growth has been insufficient to generate a reduction in unemployment and poverty. The income distribution is highly skewed, reflecting an uneven distribution of land and rigid segmentation between highly developed services and primary production industries and a large informal sector.

System of Government

40. The Executive power in Namibia vests with the President and the Cabinet. The President is therefore the Head of State and Government. He is elected directly by the people every five years in which he must win more than 50% of the votes. The Country is divided into regional and local units. The Legislative branch of Government is the Parliament, which consists of two different chambers, the National Assembly and the National Council. Articles 78 to 83 of the Constitution establish the judicial structure of Namibia consisting of: the Supreme Court, the High Court and Lower Courts. The Constitution has established the office of the Ombudsman. The Ombudsman is appointed by the President to guard against corruption and injustice in the Government and to help protect fundamental rights.

Legal System

41. The legal system of Namibia is administered by the Ministry of Justice. The Ministry of Justice is charged with running the court system and other ministries needed for the administration of justice in accordance with Article 10 of the Constitution. These other ministries include; the Directorate of Legislative Drafting, responsible for helping to produce and review legislation, the Office of the Attorney General, the principle legal advisor to the government and head of the office of the prosecutor-general, and the Office of the Ombudsman, which is responsible for investigating and reporting on

government maladministration and human rights abuses.

42. In 1990 the new government inherited the South African legal system. This system was a common law system similar to the British system. This system also almost completely ignored areas outside of the capital. There were no permanent magistrates in the “homelands” prior to independence. After independence this was a problem quickly addressed. As of 1996, there were fifty-five magistrates located in twenty-five offices, thus bringing courts to all regions of the country.

Transparency, good governance, ethics and measures against corruption

43. At the core of Namibian Government’s policy is a "zero tolerance" for corruption. In keeping with this central policy, the government enacted the Anti-Corruption Act (ACA) in May 2003 pursuant to which an Anti-Corruption Commission was established. In October 2005 as required by the ACA, the director and deputy director of the resulting Anti-Corruption Commission were appointed by parliament. The Commission will complement civil society’s anti-corruption programs and support existing institutions such as the Ombudsman's Office and Attorney General. In addition to this, Transparency International ranked Namibia 49 out of 159 countries in their 2005 corruption perceptions index, which measures business and country analysts’ perceptions of the degree of corruption in a country. A score of 10 reflects a "highly clean" and 0 reflects a "highly corrupt" nation. Namibia scored 4.3 just behind South Africa’s score of 4.5. Only two sub-Saharan African countries (Botswana and South Africa) ranked higher.

44. Although corruption continues to surface, particularly in the parastatals, the judiciary is investigating several widely publicized cases. There has been a welcomed amount of transparency and media attention surrounding these cases. In 2004, the government took action against corrupt officials. In September a high ranking government official resigned due to allegations of corruption and had to relinquish his parliamentary seat. In December the government dismissed and brought charges of misappropriation against the director of the state-run corporation.

45. Namibia has signed and ratified the UN Convention against Corruption and the African Union’s African Convention on Preventing and Combating Corruption. Namibia signed the Southern African Development Community’s Protocol against Corruption.

General Situation of Money Laundering and Financing of Terrorism

46. In discussions with the authorities they advised that there are indications of the existence of organized crime activity in the Southern African region which creates a potential for money-laundering possibilities in Namibia. There is a growing problem both in terms of consumption and transiting in heroin, cocaine, hashish, ecstasy and mandrax. The presence of crime syndicates in the region is linked to the expansion of these activities. The authorities advise that in some of the seizures made, they have been apparent links to such syndicates. They seem to be taking a management role as more people are being used as couriers. But law enforcement authorities advise that Namibia is mainly used as a transit point.

47. There seem to be a clear route for hard drugs that come from South America and Asia into Southern Africa. Some of the hard drugs destined for Europe from these regions come through South Africa for re-routing to the European region and sometimes to Canada. Some of the drugs are routed to South Africa through Luanda and Dar es Salaam. Namibia is more a transit country than a consumption one, except for ecstasy and cocaine, and is not a production zone. There have been seizures of cocaine at the Namibian International Airport, which was being smuggled from Brazil and destined for Angola.

48. On the domestic front the real estate sector is a source of concern. In discussions with law enforcement agencies, possible fraudulent investments in game resorts and lodges were identified as vehicles for money laundering.

49. The authorities assess that there is a low risk of terrorist activity occurring within Namibia particularly with the ending of civil war in Angola.

Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBPs)

50. **General:** The formal financial sector consists of four private commercial banks, about 30 insurance companies, 500 pension funds, a stock exchange, a number of asset management and unit trust management companies, several specialized lending institutions, and a large number and variety of micro-lending institutions. Most of these institutions are private with strong ownership links to South African parent companies.

51. **Banking:** Three of the commercial banks are subsidiaries of South African banks, First National Bank of Namibia Limited, Standard Bank Namibia Limited and Nedbank Namibia Limited. The fourth commercial bank, Bank Windhoek Limited, is locally owned bank. Commercial Banks account for more than 40 percent of total financial assets. Loans and advances constitute by far the largest proportion of total assets, while demand, savings and time deposits make up a large part of total liabilities. Around 90 percent of total credit to the private sector is provided by the commercial banks.

52. The two main commercial banks, First National and Standard, still dominate the banking industry in Namibia. They account for close to 62 percent of the total assets and close to 60 percent of total deposits and loans in the system. They also control the majority of the personal retail banking sector. Presently, there are 85 commercial bank branches in the country. The number of branches increased considerably during the 1990s - at independence in 1990 there were only 39 branches. Despite this growth in the number of branches, most rural areas remain without any financial intermediary. Most bank branches are still located in the urban areas and the capital, Windhoek, accounts for about 35 percent of the total.

53. The distribution of ownership of bank branches is also skewed - Standard Bank and First National Bank account for more than 50 percent of the branches. From an ownership perspective the Namibia banking sector has strong links with South Africa. Indeed Standard Bank is 100 percent South African owned. South African ownership in the three other banks ranges from 43.6 percent (Bank Windhoek) and 93 percent (NedBank of Namibia), to 78 percent (First National Bank).

54. **Non-Bank Financial Institutions:** The non-bank financial institutions sector is supervised by the Namibia Financial Institutions Supervisory Authority (NAMFISA). NAMFISA was created in 2001 to regulate the NBFI sector. Entities covered by NAMFISA include pension funds, insurance companies, asset managers, the capital markets, micro-lenders, public accountants and auditors, friendly societies, unit trusts and trust companies.

55. **Designated Non-Financial Businesses and Professions:** The DNFBP sector includes accountants, lawyers, real estate agents and dealers in precious metals and precious stones. There are no trust and company service providers.

56. **Public accountants and auditors:** There are approximately 14 accounting firms operating in Namibia. NAMFISA has oversight over public accountants and auditors through the SRO. Under the NAMFISA Act, the definition of financial institution includes a person registered in terms of section 23 of the Public Accountants' and Auditors' Act, 1951, and who is a member of the Institute of Chartered Accountants of Namibia referred to in that Act.

57. **Lawyers:** Lawyers, notaries and other independent legal professions are governed by the Legal Practitioners Act, 1995 (LPA) and the rules and guidelines issued by the Law Society of Namibia (LSN) pursuant to the LPA. There are currently 88 private law firms in Namibia; 390 licensed practitioners out of which 190 are in private practice. About 70% of the law firms are sole practitioners. The largest law firm has 11 partners although at the time of the mission, the LSN advised that this law firm was on the verge of being dissolved.

58. **Real Estate Agents:** This is a statutory regulator of the estate agency industry, the members of which are appointed by Cabinet through the Ministry of Trade and Industry. The board consists of not fewer than 7 members, 4 of which shall be practicing estate agents whose names shall be nominated by the Institute of Estate Agents. The final appointment of these members lies with Cabinet. There is the Institute of Estate Agents Namibia (IEAN) comprising of registered estate agents. The IEAN is responsible for making sure that its members are both professional and ethical by setting standards of professionalism for its members and assist them to remain ethical and well informed.

59. **Dealers in Precious Stones and Metals:** Namibia is one of the leading producers of diamonds in the world, with the diamond industry contributing significantly to the GDP. A number of diamond companies operate in Namibia. The market leaders are Namdeb Diamond Corporation (Pty) Ltd, a joint venture between the Namibian Government and De Beers of South Africa; and Namibia Minerals Corporation (NAMCO), in which the Namibian government holds some shares. There are numerous other smaller operators holding mining licenses that authorize them to carry out mining operations.

60. **Casinos:** There are currently four casinos in Namibia with a total of 600 machines. They are all in hotels as under the existing regulatory regime casinos can only be operated in a rated hotel with specified rooms. In this regard, for Windhoek the capital city, the required rating is a 4 star with at least 100 rooms, while hotels outside Windhoek require a 3 star rating with at least 50 rooms. Specifically, casino's are not subject to a comprehensive regulatory and supervisory regime.

Overview of commercial laws and mechanisms governing legal persons and arrangements

61. The office responsible for the registration of all companies, business entities and non-profit organizations in Namibia is the Companies and Patents Registration Office (Registrar of Companies). This office is a Directorate of the Ministry of Trade and Industry. The office is responsible for administering the Companies Act 61 of 1973. However, the 1973 Act will be replaced by the Companies Act, 2004 as soon as the implementing regulations are issued by the Minister of Trade and Industry.

62. As part of the registration process, prospective companies through their promoters are required to submit the Memorandum and Articles of Association with the Registrar of Companies. A list of shareholders including their full names, occupation and residential, business and postal address must be submitted together with the documents of incorporation (Memorandum and Article of Association). In addition, particulars of the directors of the company and statement by the directors regarding adequacy of the share capital should also be submitted. Every company including a foreign one is required to have a physical and postal address in Namibia.

63. In Namibia, trust arrangements are primarily done for estate purposes. The office of the Master of the High Court is responsible for the administration of deceased estates in terms of the Administration of Estates Act, 1995 (Act 66 of 1995); the administration of insolvent estates in terms of the Insolvency Act, 1936 (Act 61 of 1936), the Companies Act, 1973, and the Trust Moneys Protection Act, 1934 (Act 34 of 1934). The preparation of trusts is primarily done by legal practitioners. Legal practitioners and auditing firms assist clients in the drafting and preparation of Trust Deeds. There are, however, no prescribed formalities, and a trust can even be constituted orally. The Trust Deed needs to specify the

beneficiaries, or, as in charitable trusts, a class of beneficiaries, with sufficient particularity that they can readily be identified.

Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

64. Namibia has prepared a draft National AML/CFT strategy. The document was prepared with assistance from the Commonwealth Secretariat under the auspices of the Eastern and Southern Africa Anti-Money Laundering Group. The main priorities are to enact comprehensive anti-money laundering and terrorist financing laws and develop requisite capacity among relevant public sector bodies to ensure effective implementation of the laws and regulations when effected.

b. The Institutional framework for combating money laundering and terrorist financing

65. **Bank of Namibia:** The Bank of Namibia (BoN) acts as banker, fiscal agent and financial adviser to the government of Namibia. BoN is also responsible for bank supervision, including licensing and regulating financial institutions authorized under the provisions of the Banking Institutions Act, 1998 (BIA). Supervisory functions are carried out by the Banking Supervision Department comprising of 10 examiners. Currently there are no AML/CFT examination procedures and little or no compliance work on AML/CFT is undertaken.

66. **Prosecutor General's Office:** The Prosecutor General (PG) is established under Article 88 of the Constitution. The PG has responsibility to prosecute all criminal cases. The Office has a staff of about 97 prosecutors serving all the regions in Namibia including the central office in Windhoek**.** The PG works closely with law enforcement agencies particularly the police. In discussions with the PG, the assessors were advised of plans that are being developed to establish specialized units within the office to deal with different areas of offences including money laundering. As a result, one of the critical areas identified by the authorities is the need to enhance the capacity of the prosecutors and police to understand the nature of complex financial transactions; the ability to collect forensic financial evidence and lead such evidence in court.

67. **Judiciary:** The judicial system is established under Article 78 of the Constitution. Pursuant to this article, judicial powers are vested in the Courts of Namibia, which consist of, the Supreme Court, High Court, and Lower Courts. Lower Courts are presided by magistrates or other judicial officers. The judiciary comprises 54 magistrates. There are two permanent judges in the Supreme Court, others being ad hoc. 7 are in the High Court (4 are acting).

68. **Namibian Police:** The Inspector General of the Namibian Police is appointed by the President of the Republic as the commander in chief of the armed forces. The Inspector General has the powers to determine their functions, their powers and duties, to institute disciplinary proceedings, to increase penalties for certain offences, to submit criminal statistics, to establish a Police Advisory Board, to provide for municipal police.

69. The Namibian Police comprises the Crime Investigation Division which deals with crime administration and has the following specialized units: Commercial Crime Investigation Unit, Drug Law Enforcement Unit, Crime Information Unit (C.I.U), Anti-terrorist Unit, Protected Resources unit, Crime Investigation Support Unit, Motor Vehicle Theft Unit, Fire Arms Unit, Namibian Police Criminal Records Center (N.P.C.R.C), Namibian Forensic Science Institute, Scenes of Crimes Units, Serious Crime Investigation Unit, Women and Child Protection Unit. The Commercial Crime Unit would be in charge of ML and FT cases.

70. **Customs and Excise Department:** The Customs and Excise department is governed by the Customs and Excise Act No 20, 1998. It falls under the Ministry of Finance (MoF) and is responsible for *inter alia* controlling movement of goods at major entry points, and among others the physical transportation of cash and other monetary instruments to and from Namibia. Through BoN regulations, the Customs Department has the power to seize undeclared currency and to hand over such cases to the police, as well as for other goods. The Department has a close cooperation with the BoN on currency issues. It has approximately 400 staff.

71. **Anti-Corruption Commission:** The Anti-Corruption Commission recently constituted under the ACA 2003 is headed by a Director and Deputy Director. It is responsible for the initiation and investigation of allegations of corrupt practices in the public and private sectors and to take measures aimed at preventing corruption in public and private bodies.

72. **Ministry of Justice:** The Ministry of Justice (MoJ) is responsible for the administration and implementation of the framework for international cooperation as it relates to mutual legal assistance and extradition. This is conducted through the Extradition and Mutual Legal Assistance Unit of the MoJ.

c. Approach concerning risk

73. The authorities have not considered developing or adopting a national risk based approach to combating ML and FT.

d. Progress since the last ESAAMLG mutual evaluation

74. Since the last ESAAMLG mutual evaluation, which took place in July 2004, the Namibian authorities have taken measures to strengthen the AML/CFT framework. The changes have been primarily the promulgation of legal measures. This section reports only on the changes made with respect to the recommendations of the 2004 ESAAMLG report on Namibia.

75. **The money laundering offence:** Money laundering is still not an offence as the POCA, 2004 has not yet been brought into effect through regulations which are still being prepared.

76. **Financing of Terrorism:** There has been no progress in enacting the Anti-Terrorism Activities Bill and consequently, terrorist financing is still not covered. Furthermore, there are still no mechanisms for fully implementing United Nations Security Council Resolutions.

77. **Confiscation and provisional measures:** With the implementation of the POCA, 2004 still pending, the confiscation and forfeiture frameworks are still inadequate. The Criminal Procedure Act, 2004 is also awaiting implementing regulations in order to be given effect to.

78. **Financial Intelligence Unit and the reporting mechanisms:** The FIU has yet to be established. The Financial Intelligence Bill which was tabled in February 2006 will provide for the establishment of the FIU within the BoN. This Bill, which also criminalizes money laundering, will complement the POCA.

79. **Statistical data:** There are still no statistics readily available from law enforcement agencies, the prosecution office and other relevant agencies. This is an area which will need technical assistance in order to enable the authorities to establish appropriate data bases.

D. DETAILED ASSESSMENT

Table 1: Detailed Assessment

1. Legal System and Related Institutional Measures

1.1 Criminalization of Money Laundering (R.1 & 2)
Description and analysis
Relevant Legal Provisions: 80. At the time of the assessment, the law that criminalizes money laundering, the Prevention of Organized Crime Act, 2004 (POCA) has not yet been put into effect. Under Namibia's legal system, the responsible Minister gives notice in the Gazette the date on which a law passed by parliament will come into effect and at the same time issue implementing regulations. In discussions with the authorities, the mission was advised that the Ministry of Justice were already drafting the regulations. When the POCA comes into effect, money laundering will be criminalized under Chapter 3 of the Prevention of Organized Crime Act, 2004 (POCA). On a general level, the POCA: (a) criminalizes racketeering and creates offences relating to activities of criminal gangs; (b)criminalizes money laundering in general and also creates a number of serious offences in respect of laundering and racketeering; (c) contains a general reporting obligation for businesses coming into possession of suspicious property; and (d) contains mechanisms for criminal confiscation of proceeds of crime and for civil forfeiture of proceeds and instrumentalities of offences. 81. Money laundering is defined as doing any act which constitutes an offence under Sections 4, 5 and 6 of the POCA. The offences are committed when acts are performed in respect of the "proceeds of unlawful activities". "Proceeds of unlawful activities" is defined in section 1 of the POCA as any property or any service, advantage, benefit or reward that was derived, received or retained, directly or indirectly in Namibia or elsewhere, in connection with or as a result of any unlawful activity carried on by any person. Further, proceeds of unlawful activities include any property representing property so derived and include property which is commingled with property that is proceeds of unlawful activity. It covers proceeds derived directly or indirectly at any time before or after the commencement of the POCA. "Unlawful activity" is defined in section 1 of the POCA as any conduct which constitutes a crime or which contravenes any law irrespective of whether or not such conduct occurred before or after the commencement of the POCA and whether it occurred in Namibia or elsewhere as long as that conduct constitutes an offence in Namibia or contravenes ANY law of Namibia. 82. With respect to "property", section 1 of the POCA, defines the term broadly as money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest in the property and ALL proceeds from the property. 83. The POCA establishes two aspects of the money laundering. The first one is related to proceeds of all forms of crimes, while the other involves proceeds stemming from a pattern of racketeering. **General money laundering offence** **The Physical and Material Elements of the Offence:** 84. Specifically, in regard to the first aspect, the POCA provides three elements to the offence of money laundering: 85. Firstly, section 4 of the POCA makes it an offence to disguise the unlawful origin of property. It provides that a person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities, commits an offence in terms of section 2 if he enters into any agreement, arrangement or transaction (whether legally enforceable or not) in connection with the property; or performs any other act in connection with the property, which has the effect or likely to have the effect, (i) of concealing or disguising the nature, location, disposition or movement of the property or the ownership of the property or any interest in the property; or (ii) of enabling or assisting any person who committed an offence to avoid prosecution or to remove or diminish any property acquired as a result of an offence, whether in Namibia or elsewhere. 86. Secondly, section 5 of the POCA makes it an offence to assist a person to benefit from proceeds of unlawful activities. It provides that a person commits an offence, who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and enters into any transaction, agreement or arrangement

whereby, the retention or control by or on behalf of that other person of the proceeds of unlawful activities is facilitated, or the proceeds are used to make funds available to that person or to acquire property on his or her behalf or to benefit him or her in any other way.

87. Finally, the third aspect under section 6 of the POCA makes it an offence to acquire, possess or use proceeds of unlawful activities. It provides that a person commits an offence that acquires, uses, has possession of, or brings into or takes out of Namibia, property and knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities.

88. The provisions that will criminalize money laundering are consistent with the requirements of the Palermo Convention.

The Laundered Property:

89. As indicated above, the offence of money laundering is extended to any type of property, regardless of its value, that represents property so derived and includes property which is commingled with property that is proceeds of unlawful activity – that is, "the proceeds of proceeds". Under sections 4, 5 and 6 of the POCA there is no requirement that a defendant be convicted of any related predicate offence in order to prove that property is the proceeds of crime.

The Scope of the Predicate Offences and Extraterritorially Committed Predicate Offences:

90. Under the POCA, predicate offences for money laundering apply to all underlying "unlawful activities" irrespective of whether committed in Namibia or elsewhere. It also covers offences that are provided for in Schedule 1 to the POCA. The scope of the offences as enumerated in the Schedule is wide enough to include the designated list of offences as enumerated in the FATF standards. The list includes murder; rape; kidnapping; arson; public violence; robbery; assault with intent to do grievous bodily harm; indecent assault; indecent violation of a minor; offences related to gambling, gaming or lotteries; extortion; child stealing; burglary; malicious injury to property; theft; fraud; forgery or uttering a forged document; offences related to coinage; smuggling of arms and other related military type of weapons; trafficking endangered species including plants; dealing in precious metals or stones; obstruction of justice; perjury; subornation of perjury; any offence punishable by more than 12 months; corruption; conspiracy, incitement or attempt to commit any offence provided for in the Schedule. Furthermore, the language in paragraph 28 of the Schedule includes any offence punishable by imprisonment for a period of 12 months or more. In discussions with officials in the Prosecutor-General's office, they advised that this language would encompass an act or omission punishable by law. This interpretation it was suggested is consistent with section 1 of the CPA, 1977 which defines an offence to mean "an act or omission punishable by law."

Laundering One's Own Illicit Funds:

91. Under current law, a person can be prosecuted for dealing in property arising out of a criminal offence. This could apply for instance in the case of selling stolen property or the sale of drugs. The act of selling such tainted property will be considered as dealing in property. Therefore, it will be possible in theory for a person to be charged with self-laundering. However, since the POCA is not in effect and it may be a while before its provisions are tested in court, it only remains a theoretical possibility based on the current experience with the offence of dealing in stolen property.

Ancillary Offences:

92. Paragraph 30 of the Schedule to the POCA will establish the offence of conspiracy, incitement or attempt to commit any offence under the POCA when it comes into effect. In addition to this offence, the authorities in the Prosecutor-General's office advised that under Namibia's common law principles, there is an offence of conspiracy to commit, facilitate and aid and abet the commission of an offence.

The Mental Element of the ML Offence:

93. The offence of money laundering under sections 4, 5 and 6 can only be committed by a person who knows or ought reasonably to have known that the property concerned constituted the proceeds of unlawful activities. For purposes of the POCA under section 1(2), a person has knowledge of a fact if (a) that person (accused) actually knew that fact, or (b) the court is satisfied that the person (accused) believed that there was a reasonable possibility of the existence of that fact and then failed to obtain information to confirm or disprove the fact.

Liability of Legal Persons:

94. Under section 7 of the POCA, legal persons can be held liable for engaging in or facilitating a money laundering offence. Where a money laundering offence is committed by a corporate body, in addition to the corporate being liable, every person who, at the time of the commission of the offence acted in an official capacity for or on behalf of that body of persons, whether as a director, manager, secretary or other similar office, or was purporting to act in that capacity, will be liable. Section 356 of the CPA establishes the prosecution of corporations and members of associations whether an offence is committed under statute or common law. An act done by a director or employee of a corporate body to further the interests of the corporate body is deemed to have been performed by such body. Provisions of the Companies Act, the Insolvency Act and similar laws apply in imposing legal liability on a legal person. In prosecuting a corporate entity, the authorities indicated that in addition to the provisions of the CPA, reference has to be made to the Companies Act under which a corporate entity was incorporated.

Sanctions:

95. Money laundering offences are punished by imprisonment for up to 30 years or fines not exceeding N$100 million (US$16 million), which can be considered to be effective, proportionate and dissuasive.

Other Relevant Features: Pattern of Racketeering and money laundering

96. With respect to the second aspect of the money laundering offence related to a pattern of racketeering, chapter 2 of the POCA provides for offences related to racketeering activities.

97. The POCA does not define the term "racketeering" but provides a definition for the phrase "pattern of racketeering activity". Under section 1 of the POCA, this refers to planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of the POCA and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1. Therefore, in terms of the definition as provided, a pattern of racketeering is established when at a minimum, two of the listed offences are committed, (1) the last offence occurred within 10 years (excluding any period of imprisonment); and (2) one of the offences occurred after the commencement of the POCA.

98. Importantly, the money laundering offences are committed when the proceeds of a pattern of racketeering activity are invested in or on behalf of an "enterprise". This is defined in section 1 as any individual, partnership, corporation, association or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity.

99. In particular, section 2 provides a number of acts which constitute offences if the person knows or ought reasonably to have known that the property is derived, directly or indirectly, from a pattern of racketeering activity. These offences like the general money laundering offences, are extra-territorial in nature. That is, it is irrespective of whether there are committed in Namibia or abroad. The following acts constitutes offences, if a person:

(a) receives or retains any property derived, directly or indirectly, from a pattern of racketeering;
(b) knows or ought reasonably to have known that that property is so derived; and
(c) uses or invests, directly or indirectly, any part of that property in the acquisition of any interest in, or the establishment or operation or activities of, any enterprise (section 2(1)(a) – (c)); or
(d)receives or retains any property derived, directly or indirectly, on behalf of any enterprise; and
(e)knows or ought reasonably to have known that that property derived or is derived from or through a pattern of racketeering activity (section 2(2)); or
(f)uses or invests any property, directly or indirectly, on behalf of any enterprise or in the acquisition of any interest in, or the establishment or operation or activities of any enterprise; and
(g)knows or ought reasonably to have known that that property derived or is derived from or through a pattern of racketeering activity (section 2(3)); or
(h)any person who acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity (section 2(4)); or
(i)any person who, whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of that enterprise's affairs through a pattern of racketeering activity (section 2(5)); or
(j)any person who manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of that enterprise's affairs through a pattern of racketeering activity (section 2(6)).

100. In addition to the offences outlined above, there is a conspiracy offence under section 2(7) with respect to the offences in subsections (1) to (6) of the POCA.
101. In contrast to the penalties for a money laundering offence, a person convicted for engaging in a pattern of racketeering activity is liable on conviction to a fine not exceeding N$1 billion (US$ 159 million) or imprisonment of up to 100 years, or to both.

Analysis of effectiveness

102. Since it is a new law and has not come into effect any discussion on the effectiveness of enforcement can only be theoretical.

Recommendations and comments

103. Although the POCA has been passed by parliament, it is not yet in force as the Ministry of Justice has not issued the regulations to bring the POCA into effect. As a consequence, money laundering is not yet criminalized notwithstanding that when the POCA comes into operation the provisions criminalizing money laundering will satisfy the requirements of the Palermo Convention to which Namibia is a party. The authorities are encouraged to expedite the bringing into operation of the POCA.
104. While paragraph 28 of the Schedule does appear to cover any offence that may be committed under Namibian law, the authorities may wish to consider adding to the schedule offences related to the environment; terrorism and terrorist financing; and drug trafficking.
105. Although there have been high profile cases that have been referred to the Prosecutor-General's office, no money laundering cases have been prosecuted.

Compliance with FATF Recommendations 1 & 2

	Rating	Summary of Factors underlying rating
R.1	**PC**	• Though POCA crminalizes money laundering it is not yet in force.
R.2	**PC**	• Though POCA crminalizes money laundering it is not yet in force.

1.2 Criminalization of terrorist financing (SR.II)

Description and analysis

Relevant Legal Provisions:

106. *The proposed Combating of Terrorist Activities Bill, 2003 (Terrorism Bill), will establish various terrorism offences and activities under Chapter 2 of the Bill. It defines in section 1 of the Terrorism Bill the terms "combating terrorism"; "funds"; "material support or resources"; "property"; "terrorism"; and "terrorist organization"*[3]. The Bill satisfies the requirements under the International Convention for the Suppression of the Financing of Terrorism of 1999.

Definition of the offence

107. Although the definition of the offence of financing of terrorism as a separate and autonomous offence has not been provided for in the Terrorism Bill, sections 11, 12 and 13 of the Terrorism Bill create offences related to financing of terrorism. Section 11 deals with fund raising for purposes of terrorism; section 12 deals with entering into or becoming involved in a financing arrangement with other persons; and section 13 deals with the use and possession of money or property by any person for purposes of terrorism.

108. Under section 11 it is an offence when any person invites another to provide money or other property; or receives money or other property; or provides money or other property; and intends that such money or other property or any part thereof to be used or ought to have known, or suspected that the money or other property or any part thereof may be used, for the purposes of terrorism. This money or property can either be given, lent or

[3] Italized comments regarding the Combating of Terrorist Activities Bill, 2003 are for informational and guidance purposes and is not considered or included in the assessment rating process since the Bill has not yet been enacted.

otherwise made available for the purposes of terrorism. It further goes on to provide that for an act to constitute an offence under the provision, it is not necessary that the funds or property were actually used to commit the said offence.

109. *Under section 12, it is an offence for any person who enters into or becomes concerned in an arrangement as a result of which money or property is made available to another and he or she knows or ought to have known or suspect or ought to have suspected that it will or may be used for the purpose of terrorism.*

110. *Under section 13, it is an offence for any person to use or attempt to use money or other property or any part thereof for purposes of terrorism; or possesses money or other property or part thereof; and intends that the money or property or part thereof be used, or ought to have known or suspect that the money or property or part thereof may be used or attempted to be used for purposes of terrorism. However, there is no provision to the effect that such money or property should not necessarily be actually used in facilitating a terrorist act. As in the case of fund raising under section 11, it should be sufficient that there was an attempt to use the money or property.*

111. *Overall, the elements or ingredients required under Article 2 of International Convention for the Suppression of the Financing of Terrorism appear to have been met by the three sections outlined above*

112. *Further, terrorism is defined to include acts or threats of action in or outside Namibia which involves serious bodily harm to a person; damage to property; endangers a person's life; the use of firearms or explosives; or creates a serious risk to the health or safety of the public or a section of the public; or is made for the purpose of achieving or advancing a political, ideological or religious cause. It also extends to disruption of the banking or financial services; or any public service. There is however, an exception when an act is committed in pursuance of a protest, demonstration or stoppage of work. Such actions or threats of actions are not deemed to be terrorist acts. "Terrorist organization" means a person, group, trust, partnership, fund or an unincorporated association or organization which has one of its purposes to carry out, is carrying out or plans to carry out or causes to be carried out terrorism; promotes or encourages terrorism; facilitating activities of terrorism; or a proscribed organization.*

113. *"Funds" mean cash, assets or any other property, tangible or intangible, however acquired and any type of financial resource, including cash or the currency of any state, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form. "Property" means real or personal property of any description, and whether tangible or intangible and includes an interest in any real or personal property and funds.*

114. *Pursuant to section 36 of the Terrorism Bill, any person who aids and abets the commission of an offence under the Terrorism Bill; or attempts to commit an offence under the Terrorism Bill; or conspires to commit, or counsel or procures the commission of an offence under the Terrorism is guilty of an offence.*

115. *Section 2 of the Terrorism Bill makes it an offence if a person whether in Namibia or elsewhere, commits an act of terrorism. The act punishable by life imprisonment. Where an organization is engaging in acts of terrorism or encouraging such acts, section 3 empowers the responsible Minister may by notice in the Gazette, proscribe such an organization as a terrorist organization. However, within 30 days the proscribed organization may make an application to the Minister for the revocation of the order of proscription. But before making such a decision, the Minister has to consult with the Security Commission.*

Scope of the offence and money laundering

116. *Terrorist financing is not provided for specifically as a predicate offence for money laundering. However, under the POCA, Schedule 1, one of the predicate offences is "any offence which is punishable by imprisonment for a period of 12 months or more". The offences related to terrorism under the proposed Terrorism Bill all carry a penalty of more than 12 months. The offences committed also apply to acts done in or outside Namibia. In discussions with the authorities the mission was advised that under Namibian law, reference to any offence which is punishable by imprisonment for a period of 12 months or more, would invariably include financing of*

terrorism should the Terrorism Bill be enacted as proposed (see the discussion on this issue in paragraph 90 above).

117. *Use of Funds: Section 11 of the Terrorism makes it an offence to provide or receive property, or the intention of doing both, which can be actual or circumstantial. It further goes on to provide that for an act to constitute an offence under the provision, it is not necessary that the funds or property were actually used to commit the said offence.*

Liability of legal persons

118. *There is a duty imposed on financial institutions to disclose information relating to property of terrorist organizations in section 37, and this is the only place were liability of legal persons is provided for under the Terrorism Bill. The scope of liability of legal persons is consequently limited under the Terrorism Bill as currently drafted and is not provided for as is the case for example in the POCA.* It is recommended that the authorities should provide for the liability of legal persons under the Terrorism Bill.

Jurisdiction

119. *Section 46 of the Terrorism Bill gives the Namibian High Court the original jurisdiction to try a person in respect of any offence committed under the Terrorism Bill. It shall have jurisdiction if (a) the perpetrator of the act is arrested in the territory of Namibia; (b) the act or any part of such act is committed, (i) in the territory of Namibia and the perpetrator is arrested in the territory of Namibia, or committed elsewhere, if the act is punishable in terms of the domestic laws of Namibia or in terms of the obligations of Namibia under a treaty, international arrangement or international law; (ii) on board a vessel or a ship or fixed platform flying the flag of Namibia or an aircraft which is registered under the laws of Namibia at the time the offence is committed; (iii) by a national or group of nationals of Namibia; (iv) against a national of; against Namibia or a government facility of Namibia abroad, including an embassy or other diplomatic or consular premises, or any other property of Namibia; (v) by a stateless person or refugee who has his or her habitual residence in the territory of Namibia; or (vi) against the security of Namibia.*

Mental Element:

120. *With respect to the mental element of offences under the Terrorism Bill, section 1(2) provides a subjective and objective test. First a person has knowledge of a fact if he or she has actual knowledge of that fact; or the court is satisfied that the person believes that there is a reasonable possibility of the existence of that fact, and the person fails to obtain information to confirm or refute the existence of that fact. Second, a person has knowledge of a fact if that person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both the general knowledge, skill, training and experience that may reasonably be expected to a person in his or her position.*

Sanctions:

121. *The proposed Terrorism Bill imposes life imprisonment for acts of terrorism as well as the aiding and abetting of such actions. However, there are no provisions for the confiscation of assets or instrumentalities that are proved to have been used in any way in relation with the commission of a terrorism offence.*

Analysis of effectiveness

122. *Since there the Terrorism Bill has not been enacted, the effectiveness of enforcement of terrorism related laws cannot be assessed.*

123. On the other hand, it is important that terrorist financing is criminalized because the authorities mentioned that in view of the upcoming 2010 World Cup event in South Africa, SADC is already discussing the challenges that will be faced by the region including terrorism and it's financing through front companies and how to address

these challenges. Having an adequate and appropriate legislative and regulatory framework to combat terrorism will be a critical component of the way in which the challenges are addressed.

Recommendations and comments

124. The Combating of Terrorist Activities Bill is still in draft form and there is no time frame as to when it will be tabled before parliament for debate and passage. The authorities should expedite the tabling and enactment of the Terrorism Bill as described above, satisfies the requirements of SR II. The absence of an Anti-Terrorism law can make it difficult for a requesting country to satisfy the condition of dual criminality. Expediting of the passing of the Terrorism Bill will strengthen the existing international cooperation framework.

125. Provision should be made to hold legal persons liable under the Terrorism Bill as in the case under the POCA.

Compliance with FATF Recommendations II

	Rating	Summary of Factors underlying rating
SR.II	**NC**	• **Terrorist financing has not been criminalized and the Terrorism Bill is still in draft form and there is no time frame as to when it will be tabled in parliament.**

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

Description and analysis

Relevant Legal Provisions:

126. The legal provisions for the identification, tracing and evaluating property subject to confiscation, seizing and freezing, confiscation and forfeiture of property will be provided for in the POCA and will be comprehensive. The provisions will be provided for under chapters 5 and 6 of the POCA in sections 17 through 68. Under the POCA, confiscation refers to a criminal based process dependent on the conviction of an accused person, while forfeiture refers to a civil based process regardless of whether an accused person is prosecuted. However, in the absence of the coming into effect of the POCA, the legal framework for the confiscation, freezing and seizing of the proceeds of crime are governed by the Criminal Procedure Act, 1977 and soon by the Criminal Procedure Act, 2004 which will replace the 1977 statute. The POCA replicates the provisions in the CPA dealing with the seizure and freezing powers. The relevant provisions of the 1977 Act will be discussed below under the heading dealing with provisional measures in paragraph's 134-135.

127. The confiscation and forfeiture regime proposed is based on two pillars of (i) criminal confiscation; and (ii) civil forfeiture. Chapter 5 of the POCA deals with confiscation procedures and other provisional measures that have to be followed to confiscate the proceeds of unlawful activities. In chapter 6 of the POCA, the law provides for a civil forfeiture procedure. The differences between these two regimes includes the following:
(a)The criminal confiscation procedure focuses on the criminal benefit that a person obtained through unlawful activities. Civil forfeiture can also be used to forfeit such criminal benefit. However, in addition to this, under the civil forfeiture system, property that aided the commission of an offence or the instrumentality of the offence can be forfeited.
(b) The criminal confiscation procedure follows upon the conviction of a person for a predicate offence that gave rise to criminal benefit. On the other hand, no conviction or even prosecution of any person is required for tainted property to be forfeited.
(c) Under the criminal confiscation framework, where there is a successful prosecution of a defendant, a court can make an order requiring the convicted defendant to pay a specific amount to the State. With respect to civil forfeiture, an order can only be made forfeiting the specific property which is the subject of the forfeiture proceeding to the State.

Confiscation of Property Process:

128. Under section 35 of the CPA, 1977, a court which convicts an accused of any offence may, without notice to any person, declare any weapon, instrument or other article by means whereby the offence was committed or which was used in the commission of the offence, or if the conviction is in respect of an offence in which a vehicle, container or article was used, be forfeited to the State. Although this authority under the CPA, 1977 is broad as it

does not require a notice to be given to any person, section 35(3) requires property which is subject to be forfeited to the State to be kept for a period of 30 days with effect from the date of declaration of forfeiture. This provision under section 35 is retained under the CPA, 2004.

129. On confiscation of an instrument that has been used in the commission of an offence or is the proceeds of an offence, section 35 gives broad powers to the State to have forfeited an instrument or article that was used in the commission of an offence.

130. The provisions under the CPA, 1977 and 2004 will be complemented under the POCA. Section 32 of the POCA provides for the confiscation of property where a defendant, who is convicted, may have derived any benefit from an offence of which he or she is convicted, or any other offence of which the defendant has been convicted, or any criminal activity which the court finds to be sufficiently related to the offences for which the defendant has been convicted. Pursuant to section 32(2) of the POCA, a court holding an enquiry into whether there has been a benefit accruing to the defendant, once it establishes such a finding, may make a confiscation order against the defendant for the payment to the State of any amount it considers appropriate. However, section 32(6) of the POCA provides that, where a court makes an order for a defendant to pay the State, the amount cannot exceed the value of the defendant's proceeds of the offences or related criminal activities.

131. With regard to confiscation of property that has been laundered or which constitutes proceeds from, or instrumentality used in, or instrumentality intended for use in, the commission of a money laundering or other predicate offences, section 61 under chapter 6 of the POCA which deals with civil forfeiture, provides for the High Court to make a forfeiture order of property that (i) is an instrumentality of an offence referred to in Schedule 1; or (ii) is the proceeds of unlawful activities. Section 1 of the POCA defines "instrumentality of an offence" as any property which is concerned in the commission or suspected commission of an offence whether committed within Namibia or elsewhere.

132. Therefore, when chapters 5 and 6 are read together, the confiscation framework in Namibia covers not just laundered property but any proceeds or benefit accruing to a defendant as a consequence of the underlying offence from which the proceeds of unlawful activities arise. As discussed earlier under criminalization of money laundering, the proceeds of unlawful activities extends to property commingled with property that is proceeds of unlawful activities including any service, advantage, benefit or reward, derived directly or indirectly, from any unlawful activity.

133. The proceedings for civil forfeiture are civil proceedings and not criminal proceedings. As such, the rules applicable in civil proceedings apply to the forfeiture proceedings.

Provisional Measures:

134. At present the powers to search and seize proceeds of unlawful activity are contained in Chapter 2 of the Criminal Procedure Act, 1977 (CPA) dealing with search warrants, entering of premises, seizure, forfeiture and disposal of property connected with offences. In particular sections 19 through 34 of the CPA deals with provisional measures. In discussions with the authorities the mission was advised that the provisions in the CPA have been replicated and enhanced in the POCA.

135. These powers will be complementary to the provisions, to be discussed later under the POCA. This section provides that the State may seize any article which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Namibia or elsewhere; which may provide evidence of the commission or suspected commission of an offence, within or outside Namibia; or which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence. The section gives general powers to the GoN to seize certain articles in order to obtain evidence for the institution of a prosecution or the consideration of instituting such prosecution. The powers under section 20 are given effect to by section 21 of the CPA, which is the authority to seize any article by virtue of search warrant issued by the courts. Where a search warrant is issued under section 21 of the CPA, a law enforcement official is authorized to search any person identified in the warrant, or to enter and search any

premises identified in the warrant and to search any person found on or at such premises. The CPA also provides for circumstances when an asset related to the commission of an offence can be seized without a search warrant. This can be done where the person to be searched consents to such search; or the law enforcement official has reasonable grounds to believe that a search warrant will be issued if applied for, and that a delay in obtaining such warrant would defeat the object of the search. According to the authorities interviewed during the assessment and Namibian case law, whether reasonable grounds were present is an objective question, which is answered by looking to all facts before the court.

136. Section 24 of the POCA provides that, where a prosecution for an offence has been instituted against a defendant; or either a confiscation order has been made against a defendant or it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against a defendant; or that proceedings against a defendant have not been concluded; or that a person has been charged with an offence, and that there are reasonable grounds for believing that a confiscation order may be made against that person; then the High Court may make a restraint order upon application by the Prosecutor-General.

137. Under section 25, if the High Court is satisfied with the application made by the Prosecutor-General, it must, on an *ex parte* basis, make an order having immediate effect, in respect of such realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being made; or in respect of all realisable property held by such person, whether it is specified in the restraint order or not; and in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.

138. Section 20 of the POCA defines realisable property as any property held by the defendant concerned; or any property held by a person to whom that defendant has directly or indirectly made any affected gift; or the instrumentality of an offence attributable to the defendant.

139. When the POCA comes into effect, before an application is made for a forfeiture order, the Prosecutor-General may apply, under section 51 of that Act, to the High Court for a preservation order prohibiting any person from dealing in any manner with any property which is the subject of the application. The application is accompanied by an affidavit indicating that the deponent has sufficient information that the property concerned is an instrumentality of an offence or the proceeds of unlawful activities. If the High Court is satisfied on a preponderance of probabilities with the evidence submitted that the information shows prima facie that there are reasonable grounds for that belief, the Court must make a preservation order. There is no requirement to give notice to any other person or the adduction of any further evidence from any other person.

140. When the High Court makes a preservation of property order it is required at the same time to make an order authorizing the seizure of the property concerned by a member of the police, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order. The property seized has to be dealt with in accordance with the directions of the High Court.

141. According to the provision in section 52, it is only after the High Court has made the preservation of property order that the Prosecutor-General is required as soon as practicable after the making of the order to (i) give notice of the order to all persons known to the Prosecutor-General to have an interest in the property which is the subject of the order; and (ii) publish a notice of the order in the Gazette.

142. Chapter 9 of the POCA provides the framework for the identification and tracing of property. The Prosecutor-General, if satisfied that there are reasonable grounds for believing that a person is committing, has committed or is about to commit an offence referred to in Schedule 1, may apply to court for an order for the identification, locating or quantifying any property, or identifying or locating any document necessary for the transfer of any property to be delivered to law enforcement agents.

143. There are general powers of search warrants under section 86 where there are reasonable grounds to believe that tainted property is present on a premise, building, vehicle, vessel, train or aircraft.

144. Pursuant to section 55 of the POCA, where the High Court has made a preservation of property order, a *curator bonis* is appointed and has responsibility under the POCA to manage the seized assets. He assumes control over the property, takes care of it, administers the property and where the property is a business or undertaking, carries on the operations of the business or undertaking. Currently, the management of seized assets is done by the police although discussions with the authorities revealed that when it comes to dealing with management of currency or cash, this posed a challenge.

Assets Held by Third Parties:

145. The CPA, 1977 under section 20 and 21 permits the seizure of any weapon, instrument or other article by means of which an offence was committed whether in the possession of the defendant or a third party. Moreover, section 35 of the CPA 1977 permits the forfeiture of such property. Furthermore, as discussed in paragraph 138, the POCA permits the confiscation and restraint of assets held by third parties (section 20 and 22).

Rights of Third Parties:

146. Sections 30, 31 and 35 of the CPA, 1977 provides protection for third parties who may or do have an interest in seized property or property that may be subject to forfeiture. According to case law developed by the Namibian courts, third parties should be informed of the intention to forfeit in order to afford a third party the opportunity to address the court and to lead evidence if he or she so wishes. Further, there is a comprehensive framework under the POCA for the protection of interests of third parties in forfeited property.

147. Section 65 of the POCA provides that any person affected by a forfeiture order who was entitled to receive notice of the application for a forfeiture order, but did not receive such notice, may, within 30 days after the notice of the making of the order is published in the Gazette, apply for an order excluding his or her interest in the property concerned from the operation of the order, or varying the operation of the order in respect of that property. However, the third party affected has to demonstrate *inter alia* the nature and extent of the applicant's right, title or interest in the property concerned; and the time and circumstances of the applicant's acquisition of the right, title, or interest in the property.

148. Where a third party who furnishes an affidavit to support their application to exclude their interest from the operation of the order, makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, he or she commits an offence and is liable on conviction to a fine of N$100,000 (US$16,000) or to imprisonment for up to five years, or to both.

Power to Void Actions:

149. There is no provision under the CPA, 1977 or 2004 for voiding contracts. It was not clear from discussions with the authorities whether this could be done under common law.

Confiscation of Property of Criminal Organizations:

150. There is no explicit provision under the CPA to confiscate property of criminal organization. On the other hand, to the extent that it is established that property belongs to individuals found to have committed a racketeering offence under Chapter 2 of the POCA, these will be confiscated since organizations primarily criminal in nature are more likely than not to be engaged in a pattern of racketeering activity.

Burden of Proof in Confiscation Cases:

151. Chapter 6 of the POCA will establish the framework for the civil forfeiture of instrumentalities of offences as well as the proceeds of unlawful activities. Section 50 of the POCA provides for all proceedings under Chapter 6 to be conducted as civil proceedings meaning that the standard of proof is on the preponderance of probabilities. In addition, the rules of evidence applicable in civil proceedings apply to proceedings under Chapter 6.

Statistics on confiscated and forfeited property:

152. There are no statistics related to confiscated property and no database is maintained by the authorities. The statistics available are limited to the number of convictions, acquittals and the type of offences for which convictions are given.

Recommendations and comments

153. The current CPA provides adequate powers for law enforcement agencies. However, the proposed framework for confiscation and provisional measures as envisaged under the CPA, 2004 and POCA will strengthen the existing system. Consequently, the authorities should expedite the coming into effect of the 2004 Act and the POCA.

154. The authorities should provide for the power to void actions such as contracts related to criminal activities.

155. The authorities should establish a database on statistics dealing with confiscated and forfeited property.

Compliance with FATF Recommendations 3

R.3	**PC**	• The CPA, 1977 does not provide Namibia with a comprehensive legal regime for confiscation. • There are no provisions dealing with the tracing and identification of proceeds of crime. • The POCA though enacted is not in force.

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

Description and analysis

Freezing, Seizing and Confiscation of Terrorism-Related Funds:

156. There is no legal framework yet for the freezing, seizing and confiscation of terrorism-related funds. At the present moment, in the absence of legislation to implement the Security Council resolutions, the authorities use the BIA, the CPA and common law, to require all commercial banks to report to the BoN any suspicious transactions related to terrorism or terrorist activities and to advise on whether any persons on the UN List of suspected terrorist or terrorist organizations have accounts in Namibia. As mentioned in paragraph 35, the BoN has issued two Exchange Control Circulars (BoN 01/19 of November 2001 and BoN 02/08 of March 2002) to commercial banks, who are the authorized dealers in foreign exchange. There are required to report any foreign transactions involving identified persons and institutions to the BoN. The BoN has the power under Regulation 4 of the Exchange Regulations to freeze accounts of residents transferring funds identified to persons and organizations on the UN List. No such cases have been reported. Further, where for instance, assets of suspected terrorists or terrorist organizations were to be identified in Namibia, they would be frozen pursuant to section 20 of the CPA, 1977.

157. The mission was further advised that currently the United Nations List was received through the American Embassy or the Ministry of Foreign Affairs. At present because of the absence of any framework whether administrative or otherwise to deal with the freezing, seizing and confiscation of terrorism related funds. This is compounded by the absence of a law criminalizing financing of terrorism which will give the authorities the power to freeze, seize and confiscate funds. Indeed, the mission was advised by the authorities that it would be difficult for Namibia to deal with a situation in which names on the UN List were found to have accounts in the banks operating in Namibia. There is no mechanism by which to enforce the United Nations obligations as mandated by the UN Security Council.

Freezing Assets under S/Res/1267:

158. Besides the actions taken under the Exchange Control powers, the authorities advised that Namibia does not have any legal and institutional system to implement the freezing and seizing obligations under the Security

Council Resolutions.

Freezing Assets under S/Res/1373:

159. See the discussion in paragraph 156. The authorities advised that Namibia does not have any legal and institutional system to implement the freezing and seizing obligations under the Security Council Resolutions. This is not helped by the absence of the Terrorism law. Indeed, in Namibia's report to the Security Council on how they have implemented this resolution, it was indicated that "currently there is no law which complies with this aspect of the Resolution."

Freezing Actions Taken by Other Countries:

160. The authorities advised the mission that they have not received any lists of designated by other countries other than those submitted by the US Embassy. Further, there is no specific provision under any law that Namibia can freeze funds suspected of being related to terrorism at the request of another state.

The Definition of Funds:

161. There is currently no definition of what constitutes funds. However, this will be provided for once the Terrorism Bill is enacted by Parliament.

Communications with the Financial Sector:

162. As mentioned earlier, there is no mechanism for implementing the Resolutions. In this regard therefore, there is no laid down procedure on the manner of communicating to the financial sector on any freezing action that may be taken in giving effect to the Resolutions.

Guidance to Financial Institutions:

163. There has been no guidance to financial institutions with respect to the obligations under the Resolutions.

De-Listing:

164. Namibia has not designated domestically any persons or entities for the purposes of freezing assets related to terrorism and therefore, it has not taken any action to de-list any persons or entities nor is there a procedure for de-listing of listed persons or entities.

Unfreezing Procedures:

165. No process exists for unfreezing funds that may have been mistakenly frozen.

Access to frozen funds for expenses and other purposes:

166. In view of the fact that there has been no implementation of the Resolutions and no funds have been frozen as yet in Namibia, the issue of access to frozen funds for expenses and other purposes has not been dealt with by the authorities. There is nevertheless no procedure in place to authorize access to frozen funds.

Review of Freezing Decisions:

167. There is no mechanism by which the authorities can review freezing decisions made pursuant to the UN Resolutions.

Enforcing the Obligations under SRIII:

168. Namibia has no system as yet by which it can enforce the obligations under SR III. With the exception of drafting a Terrorism Bill and actions taken under the Exchange Control powers, the authorities have not made an effort in establishing a comprehensive mechanism by which the Resolutions can be implemented. As the situation currently stands, there is no system for implementing the Resolutions and enforcing the obligations envisaged by SR III.

Recommendations and comments

169. Absent an Anti-Terrorism law, the authorities should consider the following:
170. The authorities should establish a comprehensive system for implementing all the requirements of the Resolutions.
171. Within the comprehensive system, establish the process by which funds can be frozen and unfrozen and how

these decisions are to be made.

172. Provide for the process of reviewing decisions that are mistakenly made with regard to freezing of funds.

173. Establish a mechanism to communicate effectively with the financial sector with respect to the UN obligations as reflected in the Resolutions.

Compliance with FATF Recommendations III

SR.III	**NC**	• **There is no legal system for the freezing, seizing and confiscation of terrorism-related funds and implementation of the Resolutions.** • **Namibia does not have an institutional framework to effectively provide assistance to another jurisdiction pursuant to UNSCR 1373.** • **There is no mechanism to communicate effectively with the financial sector.**

1.5 The Financial Intelligence Unit and its functions (R.26, 30 & 32)

Description and analysis

Establishment of Central Agency:

174. There is no established operational central national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information, concerning suspected proceeds of crime and potential financing of terrorism, or other information required by domestic law. In the absence of an FIU, banking institutions are required to report suspicious transactions to the BoN. The commercial banks have submitted 10 STRs, all of which have been referred to the police for further investigations. The Police did not give any feed back for these STRs and no investigations have taken place as a result for such reports. At the moment there is no special unit within the BoN to deal exclusively with STRs. There is no specific mechanism and capacity to deal with the investigation or analysis of STRs or other related information. There is no dedicated coordination between the BoN and concerned law enforcement agencies, and moreover no formal mechanism for information sharing with FIU's in other countries.

175. It was mentioned by the ESAAMLG team in their mutual evaluation report that Namibia had a draft Financial Intelligence Bill (FI Bill), establishing a financial intelligence directorate (FIU) within the BoN. Since the assessment in July 2004, the draft Financial Intelligence Bill has not yet been passed into law but was tabled before Parliament on February 22, 2006. The authorities provided the mission team with the FI Bill that was approved by Cabinet.

176. The FI Bill as proposed is intended to provide a complimentary legal and institutional framework for combating money laundering and financing of terrorism; to establish an Anti-Money Laundering Advisory Council; to provide the BoN with the necessary powers to collect, assess and analyze financial intelligence data which may lead or relate to money laundering and financing of terrorism; and to impose certain duties on institutions and other persons who may be used for money laundering and financing of terrorism purposes.

***FIU's Powers**:*

177. *Section 5 of the FI Bill designates the BoN as the national central agency for collecting, processing, analyzing and assessing all reports and information received, and disseminating information to the competent authorities.*

178. *The BoN compiles statistics and records, disseminates information within Namibia or elsewhere and makes recommendations arising out of any information received. It coordinates the activities of the various persons, bodies or institutions involved in the combating of money laundering. It informs, advises and cooperates with investigating authorities and the intelligence services. It supervises compliance with the Act by accountable institutions and gives them guidance.*

179. *In order to attain its objectives and perform its functions as an FIU, the BoN will have the following powers:*

(a)It may call for and obtain further information from persons or bodies that are required to supply or provide

information, the BoN has an immediate access to records kept (at least five years) by an accountable institution or a supervisory body and may examine, get copies of these records.
(b)It may request for information from any government agency and supervisory body. Nothing is said concerning the limits of this access to information from law enforcement and others.
(c)It can direct any accountable institution or supervisory authority to take such steps as may be appropriate in relation to any information or report received by the Bank; enforce compliance or facilitate any investigation anticipated by the BoN; issue determinations to any supervisory body; in consultation with supervisory bodies, issue guidelines, directives, circulars or notices to accountable institutions.

(d)The BoN conducts research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism activities.
(e) It exercises any other power or does any other thing not inconsistent with the FI Act, which is necessary to achieve the objectives of the Act.

(f) In sections 27 and 28 of the FI Bill, even if an accountable institution has made a report, it may continue with and carry out the transaction. However, the BoN will have the power to direct the institution, in writing, not to proceed with the transaction for a period that it determines, but not for more than five working days.
(g)The BoN has in the AML/CFT field the powers and duties in all respects corresponding to the powers and duties conferred on a registrar by the Inspection of Financial Institutions Act, 1984 (Act No 38 of 1984).
(h)The BoN in section 5, (2) has the power of disseminating information within Namibia or elsewhere (b), furthermore it must (section 34) disclose an information to an investigating authority inside Namibia and to the Intelligence Service, when it has reasonable grounds to suspect that information to be relevant to the national security of Namibia. However, it is not very clear under the FI Bill, if the BoN has to disseminate systematically analyzed information originated in STR's to law enforcement agencies or to the prosecutor or both, and on which grounds or level of suspicion.
(i)Apart from that, the BoN can disseminate information to foreign counterparts with similar powers and duties on such terms and conditions as are set out in an MOU signed between the BoN and the foreign agency.

Independence of FIU:

180. *The FI Bill states that all financial matters of the BoN relating to the Bank's performance of its duties under the FI Act must be kept separately from the BoN's other financial matters under the Bank of Namibia Act, 1997, Act No 15 of 1997(7 (2)). Furthermore the governor may delegate, in writing, any of the powers entrusted to the Bank in this Act to an officer or officers of the BoN. A ministry, an agency or an office may, after consultation with the bank, second a staff member to the BoN. For this purpose the person is considered as an employee of the BoN. Moreover in section 5 (5, 6), the law states that a person must not unduly influence or interfere with the BoN in exercising its functions, responsibilities and making decisions. Any person who contravenes this provision commits an offence and is liable to a fine or to imprisonment or both. Nevertheless, nothing is said more precisely about the operational independency of a specific department that would be in charge of the FIU's functions, if any, within the BoN.*

181. *At the same time, the FI Bill creates an Anti-Money Laundering Advisory Council (Part 3). This Council will advise the Minister on policies and measures to combat money laundering and financing of terrorism, to act as a forum in which the BoN, associations representing categories of accountable institutions, organs of State and supervisory bodies can consult one another. The Minister of Finance will be responsible for appointing its members, who are the Governor, the Permanent Secretary of the Ministry of Finance, the Inspector-General of the Namibian police force, the Permanent Secretary of the Ministry of Trade and Industry, the Permanent Secretary in the Ministry of Justice, a Director in the Ministry responsible for Intelligence Services, the Chief Executive Officer of the Namibia Financial Institutions Supervisory Authority (NAMFISA), the president of the bankers association, one person representing associations, one person representing supervisory bodies and one more designated person. The Governor of the BoN will chair the AMLC.*

Confidentiality of Information:

182. *Sections 32 and 33 of the FI Bill provide adequate mechanism to protect the information reported to the BoN, and has a process by which such information is to be disseminated. This process is intended to maintain the integrity of the information in the custody of the BoN. In addition, no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from common law or agreement, affects compliance with a provision of the FI Bill. However, there is a specific provision concerning the common law right to professional privilege (30, (2), see DNFBP's comments).*

Periodic Reports:

183. No obligation to make periodic reports on statistics, typologies and trends in ML and FT as well as any other information related to its activities is specified in the draft. This responsibility has not been included in the provisions of the FI Bill.

Structure and function:

184. As the BoN has not yet began functioning as the financial intelligence unit, consideration has not yet been given to structural, staffing and funding issues. However, on the funding matter, section 6 of the FI Bill provides that the BoN may request the Minister to appropriate funds to the Bank in order for the BoN to exercise its duties and functions under the FI Bill. Further, the BoN can accept any other money legally acquired. On staffing issues, as described previously section 6 of the FI Bill gives the BoN the authority to second its staff to perform the functions of a FIU as envisaged under the Bill. The secondment is subject to any conditions the BoN may impose, and retains control over any decision taken by a seconded staff member. The BoN does not yet a precise view of the staff profiles to be dedicated to the FIU's functions. They expect to start operating with 7 or 8 persons**.** The BoN has already worked on the necessary IT system.

Recommendations and comments

185. Therefore the FIU should be established with an adequate budget and other relevant resources. Given that the FI Bill has already been tabled, practical steps should be taken towards establishing the FIU such as the development of an implementation plan.
186. Adequate experience should be required from staff in essential fields such as law enforcement and financial matters.
187. Structured training programs for staff should be implemented.
188. The independence of the Unit in charge of the FIU's functions within the BoN should be strongly worked out in order to comply with recommendation 26, particularly concerning the decision process and status of staff. An independent structure should be created within the BoN exclusively dedicated to the FIU work with specific staff, premises and equipment.
189. Protection and Integrity of staff should be guaranteed.
190. Exchanges of information with state agencies and with prosecutors and judiciary should be organized in order to facilitate the BoN's analysis of STRs and optimize its work.
191. Destination of analyzed STRs that reveal a criminal activity should be clarified (Police, Prosecutor's office), as well as feed back for the FIU.
192. When the FIU is operational, statistical and analytical tools should be put in place to understand money laundering and financing of terrorism patterns in Namibia, to be able to analyze the efficiency of the AML/CFT framework, and to improve the advising role of the FIU and the Advisory Council. Annual reports are recommended.
193. The Combating of Terrorist Activities draft Bill should be passed, so financing of terrorism would be under the scope of the reporting process.

194. Compliance with FATF Recommendations 26, 30 & 32

R.26	**NC**	• **The law establishing the FIU has not been enacted**
R.30	**NC**	• **There is no FIU and no specific investigating unit in charge of ML and FT cases**
R.32	**NC**	• **There were no statistics available.**

1.6 Law enforcement, prosecution and other competent authorities–the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

Description and analysis

Relevant Legal Provisions:

195. The Criminal Procedure Act 25 of 2004 organizes proofs of entries in accounting records and documentation of banking institutions (s. 267, 268), even in countries outside Namibia as well as use of traps and undercover operations and admissibility of evidence so obtained (section 282). Under the POCA, law enforcement authorities are responsible for investigation of serious and money laundering offences. The investigating powers are exclusively for authorized members of the police as per section 2 of the Police Act 19, 1990. The POCA, in chapter 9, (see sections: Criminalization of ML, R1, 2, Confiscation…, R 1, 2) addresses investigations, property tracking orders, warrant to search for and seize tainted property, powers conferred by warrant, request for information, sharing of information. For example, an order can be issued by Court that a financial institution immediately produce to an authorized member of the police all information about any transaction conducted by or for that person with the institution during any period before or after the date of the order. An authorized member of the police may request any person employed in or associated with an agency, office or ministry or statutory body to furnish him free of charge and within a period specified in the request, with all information that may reasonably be required for any investigation in terms of the POCA.

196. Moreover, with a view to mutual cooperation and the sharing of information, the Minister of Finance or any official designated by him for this purpose must be notified of an investigation related to organized crime, or of an investigation into the property, financial activities, affairs or business of any person, notwithstanding the Income Tax Act, 1981. Investigating techniques have been added in the Anti-terrorist Activities Draft Bill, such as possibilities to disclose information to an appropriate authority of a foreign State concerning terrorist properties or transactions, easier interception of communications, and issuance of directions for investigations to members of the Police.

Justice:

197. Judicial powers are vested in the Courts of Namibia, which consist of, the Supreme Court, High Court, and Lower Courts. Lower Courts are presided by magistrates or other judicial officers. The Attorney General and the Prosecutor General are the chief law enforcement officers in the government. The two offices are political appointments whose terms expire with that of the government they were appointed by. The judiciary comprises 54 magistrates. There are two permanent judges in the Supreme Court, others being ad hoc. 7 are in the High Court (4 are acting). There are 97 prosecutors, with a total of 119 staff in the prosecutors' offices.

198. The law enforcement agencies in Namibia includes the Namibian Police, the Customs and Excise Department and the Immigration Department

Police:

199. The Inspector General of the Namibian Police is appointed by the President of the Republic as the commander in chief of the armed forces. The Inspector General has the command powers and accountability to discharge members, to determine their functions, their powers and duties, to institute disciplinary proceedings, to increase penalties for certain offences, to submit criminal statistics, to establish a Police Advisory Board, to provide for municipal police.

200. The Namibian Police comprises the Crime Investigation Division which deals with crime administration and has the following specialized units: Commercial Crime Investigation Unit, Drug Law Enforcement Unit, Crime Information Unit (C.I.U), Anti-terrorist Unit, Protected Resources unit, Crime Investigation Support Unit, Motor Vehicle Theft Unit, Fire Arms Unit, Namibian Police Criminal Records Center (N.P.C.R.C), Namibian Forensic Science Institute, Scenes of Crimes Units, Serious Crime Investigation Unit, Women and Child Protection Unit. The Commercial Crime Unit would be in charge of ML and FT cases.

201. Despite requests by the assessors no data have been communicated to the mission concerning number of staff, equipments and moreover kind of criminal investigations handled by the Namibian Police (NAMPOL) or any

statement of criminal activity in Namibia.

202. The Namibian police employ many techniques to access records in the course of an investigation. They can engage in an undercover operation in order to detect, investigate or uncover the commission of an offence. They can use informers, electronic surveillance, interception and monitoring of telecommunications under the Police Act, 1990. They have the power to search persons and any vessel under section14 of the Police Act. Under the CPA they can seize property suspected to be proceeds of crime. (see the discussion in paragraph 134-135 on provisional measures)

203. According to the authorities, the main crimes investigated by NAMPOL are robbery, fraud, motor vehicle theft, forged documents and drug trafficking. Most inquiries stop at the first levels, due to difficulties to be able to trace leaders of a syndicate. The main reasons are the lack of trained staff, insufficient number of staff and adequate resources. At the moment, investigative techniques and methods of obtaining evidence do not apply to money laundering and financing of terrorism.

204. The authorities do not keep statistics or analyze typologies, or criminal schemes related to money laundering and its predicate offences and financing of terrorism. International cooperation will be described in the section on O*ther forms of international cooperation.*

205. Training is provided mostly through the Southern African Regional Police Chiefs Cooperation (SARPCCO) and Interpol. However, no specific information was provided concerning these training programs (number, sequence).

Customs and Excise Department

206. The Customs and Excise department is governed by the Customs and Excise Act No 20, 1998. It falls under the Ministry of Finance (MoF) and is responsible for *inter alia* controlling movement of goods at major entry points, and among others the physical transportation of cash and other monetary instruments to and from Namibia. Through BoN regulations, the Customs Department has the power to seize undeclared currency and to hand over such cases to the police, as well as for other goods. The Department has a close cooperation with the BoN on currency issues (see section: *SR IX on Cash couriers).*

207. The list of prohibited goods or submitted to restrictions is wide, including live animals, tobacco, minerals, compounds of precious metals, second hand goods, all luxury goods, minerals. Smuggling is an offence.

208. The system relies on the declarations made by owners of goods being brought into Namibia.

209. The Customs Department, which falls under the Ministry of Finance, has approximately 400 staff. It is responsible for *inter alia* controlling the physical transportation of cash and other monetary instruments to and from Namibia. It has a performing secured IT network (Asycuda system) which includes analytical software.

210. All relevant customs officers have law enforcement powers for customs offences. Nevertheless, under section 4(2) of the Customs Act, no customs officer can disclose information relating to any person, concern or business unless it is for the purpose of enforcing the provisions of the Act, except when required to do so as a witness giving evidence in court. Therefore they can only disclose to the police information related to Customs offences.

211. Lack of professional skills, especially for officers at the borders, coupled with the 3936 km land boundaries and the four border countries make it hard for the customs to be plainly efficient. Agents are facing difficulties in evaluating goods, particularly at the borders when the value of goods has to be checked in comparison with Customs forms and invoices. Therefore there is an opportunity for criminals to over value or undervalue goods, for the purpose of different kinds of trafficking, including money laundering objectives. On the other hand, the strong incentives for import-export activities create a need for a good balance between efficient controls and flexible cross border commercial activities.

212. Customs representatives have mentioned as main fraudulent typologies, smuggling (drugs, diamonds, precious

stones, luxury goods), "round tripping" or "carousel" for VAT frauds and trafficking of second hand goods like cars. Cars' trafficking is a concern and joint operations at a national level with the dedicated agencies, and at the regional level in the Southern Africa Customs Union (SACU) network have been successfully organized. Apart from the latest scheme and smuggling, tax fraud is often the motive, like in "VAT carousel" patterns. Sensitive zones are mostly the north with the "Angolan market", and the southern border. A strong cooperation exists between Customs, Tax administration, Police, and the BoN. International and regional cooperation will be treated in section: *Other forms of international cooperation*.

213. No data have been communicated on seizures and customs offences.

Home Affairs and Immigration:

214. The ministry has an important on-going project in order to avoid replication, counterfeiting and falsification of official ID documents. The aim is to centralize in a computerized system ran by the Home Affairs, fingerprints, ID information and identification documents references. Databases are located in South Africa. The Ministry is working on the possibility to answer to requests from the private sector, like banks, to check information on clients, taking into account the KYC obligations. Private sector would be charged for this service.

215. It is important to mention that in Namibia a laser engraved national ID card is mandatory for a Namibian citizen at the age of 16. Moreover the Home affairs are working on improving the safety of birth certificate delivery. Immigration officers are also sensitized to forged documents. Namibia has been presented as a gateway between Angola and South Africa. Immigration is a real concern with a million Angolans crossing the northern border into Namibia with a majority of these being women. It is not clear if this is due to human trafficking or immigration of individuals looking for economic opportunities. Home Affairs mentioned also that they are facing a mushrooming of churches, which is considered as a real problem as far as there is a loophole in the control of these organizations. At the moment, Non profit organizations are registered with the Trade and Industry Ministry but the Ministry of Home Affairs could be designated to cover these activities and work on strengthening controls. Currently there is no crosschecking with the Registrar of Companies.

Recommendations and comments

216. Training for all law enforcement agencies, prosecutors and magistrates should be organized on investigating techniques, on organized crime typologies, including money-laundering and financing of terrorism.
217. Staffing and resources should be adequate to entitle all parties to handle properly ML and FT cases.
218. Inter agencies cooperation should be improved regarding exchange of information, joint operations, feed back.
219. Access to useful databases should be facilitated and, when applicable, particularly with the FIU.
220. Statistical and Analytical tools should be in place in the different concerned administrations with sharing of information.
221. IT should be promoted. (databases and IT systems)

Compliance with FATF Recommendations

R.27	**PC**	• **Namibia has designated law enforcement authorities to be responsible for investigating ML and FT offences, however, as such offences are not criminalized yet, such measures are not in effect.** • **Criminal procedure tools exist but rarely used. Complex investigations seem rare. No precise data on nature and number of investigations.**
R.28	**PC**	• **Legal tools exist but rarely used.** • **POCA and CPA though enacted are not yet in force.**
R.30	**PC**	• **FIU not in place, lack of specialized skills, no precise data available on staffing.**
R.32	**NC**	• **No statistics are available.**

1.7 Cash couriers (SR.IX)

Description and analysis

Relevant Legal Provisions:

222. The Customs and Excise Act, 1998 (Customs Act) establishes a declaration and disclosure framework for the physical transportation of all goods including cash or other monetary instruments which is imported or exported

out of Namibia. In Namibia, the authorities advise that the reason why cash has to be declared or disclosed if requested to do so by a customs officer is not only that this is required under existing Exchange Control regulations, but under the Customs Act, money in whatever form is deemed to be goods for customs declaration purposes. The declaration or disclosure is required of all persons regardless of country of citizenship. There is no threshold amount that is prescribed when bringing in currency into Namibia. On the other hand, there is a threshold amount of N$160,000 for individuals and N$750 million for corporate entities for taking currency out of Namibia.

223. The authorities did not indicate what type of information is required when making a declaration or disclosure.

Customs and Excise Department

224. See paragraphs 206 and 209 on the structure of the Customs department. All relevant customs officers have law enforcement powers and work closely with the Inland Revenue, the BoN and the police.

225. Under section 4(2) of the Customs Act, no customs officer can disclose information relating to any person, concern or business unless it is for the purpose of enforcing the provisions of the Act; or when required to do so as a witness giving evidence in court. However, in discussions with the customs officials, the mission was advised that although the department is bound by secrecy, they can disclose information if there detect criminal activities or a person is reasonably believed to have for example, failed to declare or disclose the fact that there are bringing into Namibia currency. It was therefore indicated that the department will have no difficulty in working with a FIU once it is established especially with respect to exchange of information. At present however, there is no system in place whereby the BoN receives information on cross border transportation of currency from the customs office.

226. In discussions with the customs officials, it was revealed that they have had no experience in seizing physical currency. It was speculated that the reason for this might be because money intended to be used for investment purposes is done through the commercial banks. Discussions with the Inland Revenue authority, the BoN, the LSN and banking institutions indicate that because of the existence of exchange control regulations, transactions involving significant sums of money are done through commercial banks.

227. The authorities have the power under section 98 of the Customs Act to seize and detain any currency brought into Namibia in violation of the Customs Act or any regulations issued under the Act. But as indicated in paragraph 228, this power has not been used by the authorities. Since the POCA is not yet in effect and the FI Bill has not been enacted, the customs officials do not *per se* look at money laundering or terrorist financing cases as a matter of practice. This arises only because failure to declare or a false declaration of goods may lead to suspecting that a person is engaged in criminal activities. Indeed, in discussing with the customs officials, this is one area in which they lacked the capacity to profile money laundering cases. Although the Customs Act appears to provide adequate powers to the customs department to seize and detain currency, there is a dearth of information on effective enforcement of the provisions of the Act as they relate to monitoring of cross border transportation of currency.

228. Where a person makes a false declaration to a customs officer and an officer upon further inquiry establishes that this is the case, and then the currency is liable to forfeiture to the State. On the other hand, the mission was advised that where a person admits guilt for violating any provision of the Customs Act such as a false declaration, the Commissioner may after considering the admissions made by the person determine the matter summarily and not institute criminal proceedings. This action can be by way of forfeiture to the State of the entire amount or an amount agreed upon with the customs officials.

229. Domestic coordination among customs, immigration and other related competent authorities is ad hoc. There are no formal coordination meetings held among these agencies. However, during the discussions with the customs and tax authorities an example of some measure of coordination was given in which the Ministry of Finance, the Police, the Immigration office and the Customs department worked well together in investigating some investors in the Northern part of Namibia.

230. With respect to international cooperation, the customs department participates fully in the South African Customs Union (SACU) and within the context of SADC under the Trade Protocol. Notwithstanding this level of cooperation driven largely by trade issues when it comes to monitoring of smuggled goods, there is no mechanism to report to countries from which such good originate. 231. There are no statistics available on seizures of currency by customs officials.
Recommendations and comments
232. A monitoring mechanism of cross border transportation of currency should be put in place. 233. In addition to the cooperation the customs department has with the Inland Revenue, domestic coordination with other competent authorities should be enhanced and strengthened.
Compliance with FATF Recommendations

SR.IX	**PC**	• **There is a lack of effective implementation of SR IX and no monitoring mechanism of transportation of currency.**

Preventive Measures–Financial Institutions

2.1 Risk of money laundering or terrorist financing
Description and analysis
234. Currently there is no AML/CFT framework in place in Namibia; however, coverage of AML/CFT will be significantly enhanced if the Financial Intelligence Bill (FI Bill) is enacted as it includes requirements for bank and non-bank financial institutions. Namibia has not yet developed risk based requirements for its proposed AML/CFT regime but is considering such an approach.
2.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)
Description and analysis
Banking Sector 235. There are four Namibian commercial banks that are supervised by the Bank of Namibia (BoN) and governed by the BIA. Three of the commercial banks are subsidiaries of South African banks, the First National Bank of Namibia Limited, Standard Bank Namibia Limited and Nedbank Namibia Limited. The fourth commercial bank, Bank Windhoek Limited, is locally incorporated. The banks that are subsidiaries of South African banks utilize some parts of their home office AML/CFT policies, but since AML/CFT has not been criminalized in Namibia, the use of home office AML/CFT policies is very limited in most cases. All of the banking institutions are in the process of examining and enhancing their AML/CFT programs in order to meet the expected changes in the Namibian law. 236. Absent an AML/CFT framework the BoN has implemented some rudimentary measures to safeguard against ML/TF activities. The BIA, while covering a variety of prudential bank supervision issues does address a couple of issues indirectly related to AML/CFT. Under Part VII of the BIA, basic record keeping requirements are addressed along with the required reporting of certain suspicious transactions. 237. In an effort to bolster AML/CFT measures in the banking sector, until legislation is enacted, the BoN has issued two documents that provide policy guidance to the banking industry regarding AML/CFT. 238. **(1) BID-3 -** Pursuant to the powers vested on the BoN under section 71(3) of the BIA, the BoN does by notice in the Gazette make determinations on any matter which is required or permitted by the BIA and all other matters which the BoN considers necessary or expedient to determine for the conducting of banking business in a prudent manner and consistent with the best standards and practices of corporate governance and sound financial management. In this regard, the BoN issued on 2 June 1998, Determinations on Money Laundering and "Know

Your Customer Policy" BID-3, which became effective 1 July 1998 under the Banking Institutions Act, 1998. The Determination covers KYC policy development, opening of accounts, record keeping, Basle Statement of Principles, reporting of suspicious transactions, adequate internal control procedures, designation of a compliance officer at the management level, training and staff awareness, account monitoring, anonymous accounts and funds transfers. There is a question of whether this Determination can be enforced since ML/TF has not been criminalized. The reading of section 71(3) of the BIA requires that the Determination or Circular issued must be for purposes of implementing specific provisions or any matter required or permitted under the BIA such as for example large loan exposures, or appointment of directors and officers, or appointment of bank auditors. This is not the case with BID-3 and Circular – BIA 2/02 which is not cross referenced with any specific provision in the BIA or any other law for that matter for purposes of enforcing AML or TF obligations. It is therefore, the view of the assessors that there is sufficient uncertainty on the enforceability of these instructions to render them ineffective. Consequently, BID-3 does not fall in the category of legal instrument that is enforceable by law, regulation or other enforceable means with the requisite sanctions.

239. **(2) Circular – BIA 2/02 -** The second issuance was a Circular – BIA 2/02 issued 5 June 2002. This circular has four main purposes: (1) to address the issue of money laundering on an interim basis until definitive legislation is enacted; (2) to provide guidance regarding the prevention, detection and control of money laundering activities ; (3) to remind boards of directors and managements of financial institutions of their responsibility to establish appropriate policies and procedures and train staff to assure adequate identification of customers and their sources of funds; and (4) to complement BID-3. The circular reinforces BID-3 and provides further KYC identification procedures, requires adoption of money laundering policies and procedures, suspicious transaction reporting procedures, and confidentiality requirements. As in BID-3, the enforceability of this Circular is in question for the same reason offered in paragraph 238.

240. Although the BoN has issued BID-3 and Circular BIA – 2/02 to help combat money laundering, they apparently lack sufficient enforceability to be effective. It was the view of the authorities that attempting to enforce these policy guidelines now may be met with court challenges and the potential for a court to find the BoN lacks enforcement power. This could have a serious and devastating impact on Namibia's future AML/CFT program. Both BID-3 and Circular – BIA 2/02 only apply to banking institutions and not to NBFIs.

Anonymous accounts/accounts in fictitious names

241. The Determinations on Money Laundering and "Know your Customer Policy" (BID-3) addresses the issue of anonymous accounts. Section 3.2, Opening of Accounts, notes that banking institutions should not keep anonymous accounts or accounts in obviously fictitious names. All Namibian banks indicated that they do not maintain anonymous accounts.

242. The FI Bill under Part IV, Money Laundering Control Measures Duty to Identify Clients, covers anonymous accounts under paragraph (5). An accountable institution must maintain the accounts in the name of the account holder; and must not open, operate or maintain any anonymous account or any account which is fictitious, false or incorrect name.[4]

When CDD is required

243. BID-3, under section 3.2, Opening of Accounts, notes that banking institutions should ensure proper identification of their customers at the time a relationship is established, particularly when opening a deposit account or when offering a safe custody facility in order to prevent the creation of fictitious accounts. BID-3 goes on to provide that a business relationship with a banking institution should never be established until the identity of a potential customer is satisfactorily established. If a potential customer refuses to produce any of the requested information,

[4] Italicized comments regarding the FI Bill are for informational and guidance purposes and is not considered or included in the assessment rating process since the Bill has not yet been passed or enacted.

any relationship already begun is required to be terminated.

244. Circular – BIA 2/02 also covers some KYC requirements when customers open accounts. Neither BID-3 or Circular – BIA 2/02 completely addresses CDD requirements that meet international standards.

245. The FI Bill under Part IV, Money Laundering Control Measures Duty to Identify Clients, covers the Identification of clients when business relationships are established or single transactions concluded under paragraph (13) and (14), but doesn't completely address the above requirements for CDD. Before establishing a business relationship or concluding a single transaction the FI Bill will require an accountable institution to take reasonable steps to establish the identity and address of the prospective client or the beneficial owner. Additionally, where a business relationship was established before the FI Bill is enacted; the accountable institution will be expected to take reasonable steps to establish the identity and address of the client or the beneficial owner. The threshold amount for a single transaction should be specified by the BoN.

Required CDD measures

246. BID-3, under section 3.2, Opening of Accounts, indicates that banking institutions should ensure proper identification of their customers at the time a relationship is established, particularly when opening a deposit account or when offering a safe custody facility in order to prevent the creation of fictitious accounts. Apart from official identification documents, a good form of verification of identity is by way of personal introduction from a known and respected customer and/or a member of staff. BID-3 also requires account monitoring and notes that banking institutions should exercise due diligence by paying special attention to all complex, unusual large transactions, especially substantial cash deposits or withdrawals, and all unusual patterns of transactions which have no apparent economic or visibly lawful purposes. There is no specific requirement on how to deal with legal persons, legal arrangements, trusts or the identification of beneficial owners or to determine the purpose of the business relationship. Also there is no requirement for banks to ensure CDD information is kept up-to-date.

247. Circular – BIA 2/02 covers KYC requirements when customers open accounts and includes obtaining and maintaining proper identification of customers wishing to open accounts or make transactions whether directly or through proxy. Minimum information includes nationality and date of birth evidenced by photo ID, national passport or national identity documents. Further, addresses, employment, source of income and prior bank relationships must be verified. In practice, banks in Namibia utilize country identification cards, passports and birth certificates as some of the documents used for account opening to identify clients. Additional verification requirements for corporate, partnerships, sole trader, etc are also included in Circular – BIA 2/02. No requirements for identifying beneficial owners, obtaining the purpose of the business relationship or ongoing due diligence on the business relationship is included in BIA 2/02.

248. In the FI Bill, accountable institutions will be required to identify prospective clients' identity and address. However, the FI Bill does not specify the nature of the identification documents required to be produced by the prospective client. The FI Bill also addresses situations involving legal entities and requires verification of the entity, legal form, address, directors, owners and beneficiaries and provisions regulating the power to bind the entity and to verify that any person purporting to act on behalf of the legal entity is so authorized. However, the FI Bill does not address requirements for ongoing due diligence on business relationships and the need to ensure documents and data collected under the CDD process is kept up-to-date.

249. Where a person is acting on behalf of another, the FI Bill provides that, if the prospective client is acting on behalf of another person, then the identity and address of the beneficial owner, and the authority of the prospective client to establish the business relationship on behalf of the beneficial owner or to conclude a single transaction on behalf of the beneficial owner, needs to be verified. However, as in the case of identification documents, how the authority is to act on behalf of the beneficial owner is to be established has not been provided for. Further, where another person is acting on behalf of a prospective client who is the beneficial owner, then the identity of the person so acting needs to be established.

Risk

250. There are no laws, regulations or policy statements that require FIs to perform enhanced due diligence for higher risk categories of customer, business relationships or transactions. Further, no guidelines have been issued to permit banks to apply simplified or reduced CDD measures. Neither BID-3 nor Circular – BIA 2/02 addresses a risk based approach. During discussions with the BoN it was indicated that the development of a risk based approach was being considered.

251. The FI Bill does not address risk based provisions or requirements for accountable institutions.

Timing of verification

252. BID-3, under section 3.2, Opening of Accounts, indicates that banking institutions should ensure proper identification of their customers at the time a relationship is established, particularly when opening a deposit account or when offering a safe custody facility in order to prevent the creation of fictitious accounts. BID-3 goes on to provide that a business relationship with a banking institution should never be established until the identity of a potential customer is satisfactorily established. If a potential customer refuses to produce any of the requested information, any relationship already begun is required to be terminated.

253. Circular – BIA 2/02 covers KYC requirements when customers open accounts. The issue of occasional customer transactions is not covered by legislation or policy guidance. No specific guidance concerning the timing of verification of customers, beneficial owners or conducting transactions for occasional customers is provided in the following circumstances: (a) verification of the identity of the customer and beneficial owner following the establishment of the business relationship; and (b) circumstances where a customer is permitted to utilize the business relationship prior to verification.

254. The FI Bill under Part IV, Money Laundering Control Measures Duty to Identify Clients, covers the Identification of clients when business relationships are established or single transactions concluded under paragraph (13), but doesn't address the above timing issues.

Failure to satisfactorily complete CDD

255. BID-3, under section 3.2, Opening of Accounts states that a business relationship with a banking institution should never be established until the identity of a potential customer is satisfactorily established. If a potential customer refuses to produce any of the requested information, any relationship already begun is required to be terminated. BID-3 also requires the reporting of suspicious transactions an amount of N$50,000 or more. BID-3 lists examples of suspicious transactions including the reluctance to provide normal information when opening an account, providing minimal or fictitious information or, when applying to opening account, providing information that is difficult or expensive for the banking institution to verify.

256. Circular – BIA 2/02 does not provide guidance to banks when there is a failure to satisfactorily complete CDD. However, it does require the reporting of suspicious transactions in cases when there is a reluctance to provide reasonable information and documentation when opening an account or in connection with a requested transaction, investment or advice or service, or the providing of information which is unreasonably difficult or expensive to verify.

257. The FI Bill under part IV states that an accountable institution must not establish a business relationship or conclude a single transaction with a prospective client unless that accountable institution has taken reasonable steps to establish the identity of the client. Further, an accountable institution must report to the BoN any transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the accountable institution reason to suspect that the transaction involves proceeds of an unlawful activity.

Existing customers

258. Neither BID-3 nor Circular – BIA 2/02 addresses the issue of CDD for clients existing as at the date that national requirements are brought into force.

259. Section 14 of the FI Bill provides that where a business relationship was established before the FIB is enacted, the accountable institution must, within a period of six months after the commencement of the Act, take reasonable steps to establish the identity of the client or the beneficial owner. If the client acted on behalf of a beneficial owner, the accountable institution is required to establish the identity and address of the beneficial owner and the client's authority to conclude the transaction on behalf of the beneficial owner. If another person acted on behalf of the client, then the identity and address of that person and the authority of that person to act on behalf of the client needs to be established by the accountable institution. Furthermore, the accountable institution is required to trace all accounts at such institution that are involved in transactions concluded in the course of that business relationship. In the event that an accountable institution is unable within a reasonable period to establish to its reasonable satisfaction the identity of any person as required under the FI Bill, it may not conclude any further transaction in the course of that business relationship and is required to report to the BoN.

260. Where a business relationship with a client was ended prior to the enactment of the FI Bill, the accountable institution is not required to establish the identities of such a client. However, if the accountable institution seeks to recommence a business relationship, then it is required to take reasonable steps to, trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship, and establish the identities of the client or beneficial owners.

Politically exposed persons (PEPs)

261. There are no specific CDD measurers for PEPs included in BID-3, Circular BIA – 2/02 or the Banking Institutions Act, 1988. Meetings with the four Namibian banks indicated that generally no special CDD procedures or measures were in place to deal with PEPs.

262. The FI Bill currently does not contain any special provisions or measurers regarding CDD for PEPs. While requirements for PEPs were included in the previous FI Bill, it has subsequently been removed. It is recommended that CDD measures for foreign PEPs be included in the FI Bill, at a minimum, to meet the requirements of FATF Recommendation.

Cross-border correspondent banking

263. There are no specific requirements to be taken by FIs with respect to cross-border correspondent banking in BID-3, Circular BIA – 2/02, the Banking Institutions Act, 1988, or in any other law. Namibian banks generally obtain home office approval when entering into relationships with respondent banks.

264. The FI Bill does not contain any special provisions or measurers regarding cross-border correspondent banking, however, the FI Bill when enacted will regulate the cross border physical transportation of cash to and from Namibia. The FI Bill will provide that a person intending to convey an amount of cash in excess of a prescribed amount to or from Namibia must, before that person conveys the cash into or out of Namibia, report the prescribed particulars concerning that conveyance to a person authorized by the BoN for this purpose.

Non-face-to-face relationships and new technologies

265. There are no specific requirements to be taken by FIs with respect to non-face-to-face relationships and new technologies in Namibia. Non-face-to-face transactions and transactions utilizing new technologies pose different risks for financial institutions and may require a higher level of attention. Namibian banks generally require face-to-face CDD but do offer Internet banking, although such activity is limited in Namibia.

266. The FI Bill does not contain any provisions that deal with non-face-to-face relationships and new technologies.

The Non-bank financial institutions sector (NBFIs)

267. Namibia has one of the most sophisticated and highly developed financial systems in Africa. The system not only consists of four private commercial banks mentioned above, but about 30 insurance companies, 500 pension funds, a stock exchange, a number of asset management and unit trust management companies, several specialized lending institutions, and a large number and variety of micro-lending institutions. Most of these institutions are private with strong ownership links to South African institutions.

268. Pension funds are the largest institutional investors, with the Government Institution Pension Fund (GIPF) dominating the sector. Assets under management (AUM) of the GIPF, which is a defined benefit fund, totaled N$19 billon at end-2004 (about 70 percent of total AUM in pension funds; 50 percent of GDP). The remaining N$5 billion of AUM are held by various smaller funds, the bulk of which are defined contribution funds. There are five pension fund administrators who provide basic administration, legal and specialized functions such as actuarial services but are not regulated. Pension funds generally rely on assets managers and insurance companies to deal with AML/CFT safeguards.

269. The insurance industry is well-developed and highly concentrated. While there are 16 long-term insurers, 14 short-term insurers and one reinsurer, the top three insurers account for 85 and 86 percent of total gross premiums written for long-term and short-term insurance in 2004, respectively. Total assets of the insurance sector amounted to N$14.5 billion (40 percent of GDP), with gross premiums about 6 percent of GDP. In some cases larger Namibian insurance companies are subsidiaries of significant companies and follow group AML/CFT policies to some degree.

270. The Namibia stock exchange (NSX) plays a relatively small role in the country's economy. It lists 9 local companies with a market capitalization of only 3.5 percent of GDP in 2004 and a turnover ratio of 9 percent. The value of traded local equities was 0.3 percent of GDP. The exchange also lists several dual listed, mostly South African, companies with operations in Namibia. Trading of these dual listed issues is much greater, but still only corresponded to 7.4% of GDP in 2004. There are also a small number of listed corporate bonds. The exchange has reasonably modern rules on listing and an efficient infrastructure for trading and settlement. The economic contribution of the NSX has remained small because of the lack of interest by most local companies to list on the exchange. Trades are conducted through the London stock exchange by way of the Johannesburg stock exchange. Brokers utilize company KYC standards. Up to N$5,000 cash transactions are allowed, but no foreign cash transactions are permitted for trades.

271. There are 24 registered asset managers with AUM of N$31.2 billion sourced mainly from pension funds and insurance companies. Asset management services are also highly concentrated and provision of these services is dominated by a handful of companies. Many do not have sufficient local expertise and draw on their South African parents to fill gaps.

272. Driven by money market portfolios and the tax free status, the unit trust industry has grown rapidly. While there is no requirement for localization of investments in unit trust schemes, management companies generally observe the 35 percent domestic asset requirement in order to attract investments from institutional investors. Corporate investors also invest in money market unit trusts, mainly for tax reasons. There are eight registered unit trust management companies which have AUM of N$8 billion, N$7 billion in money market portfolios and the balance in equity and balanced portfolios. Management companies controlled by 2 domestic commercial banks have a 60 percent market share of AUM.

273. There appear to be limited leasing and factoring activities. Most are carried out by retailers or auto companies. There are few specialized or independent factoring and leasing companies nor is there specific consumer credit legislation that governs these activities.

274. The Namibian Financial Institutions Supervisory Authority (NAMFISA) has overall supervisory responsibility for NBFIs and some DNFBPs, a function previously undertaken by the Ministry of Finance. The entities under

NAMFISA oversight, include public accountants and auditors; pension funds; friendly societies; money lenders; unit trusts; stock brokers; insurance companies including agents, brokers and reinsurance brokers; trust companies; and any other person that renders a financial service as a regular feature of the business. Section 1 of the NAMFISA Act defines a financial service as any financial service rendered by a financial institution to the public or to a juristic person and includes any service rendered by any other person and corresponding to a service normally rendered by a financial institution. Section 3 of the NAMFISA Act grants authority to NAMFISA to exercise supervision in terms of the Act or any other law, over the business of financial institutions and over financial services. Pursuant to section 4 of the NAMFISA Act it has the authority to investigate any matter falling under its jurisdiction including the power to call to its assistance any person or persons to assist it in the performance of its functions.

275. However, this sector is unsupervised for AML/CFT. NAMFISA has not issued any AML/CFT laws, regulations, guidelines, circulars or requirements to its supervised institutions nor supervises them for AML/CFT compliance with FATF international standards. Some NBFIs, such as larger insurance companies, have adopted home office AML/CFT safeguards as part of group policies. Also some insurance companies, micro-lenders and other non-bank subsidiaries of commercial banks may follow company AML/CFT policies to some degree.

276. The FI Bill addresses NBFIs and some DNFBPs and defines several terms that are important for purposes of the scope and application of the proposed Bill to money laundering and terrorist financing. The institutions covered under the FI Bill are referred to as "accountable institutions." These are defined as a person or institution provided for in Schedule 1 of the Bill and includes branches, associates or subsidiaries outside Namibia of that person. A person refers to legal or natural persons. The list of accountable institutions or persons covers, (i) Legal practitioners as defined under the Legal Practitioners Act, 1995; (ii) a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988; (iii) an estate agent; (iv) a financial instrument trader; (v) a management company as defined under the Unit Trusts Control Act, 1981; (vi) a person who carries on the business of bank as defined under the BIA, 1998; (vii) a person other than a bank, who carries on the business of collecting money from other persons into an account or a fund; and depositing the money in such an account or fund into a bank account on behalf of the persons from whom that person had collected the money; (viii) a person who carries on the business of a casino or gambling institution; (ix) a person who carries on the business of car dealership; (x) a person who carries on the business of second hand goods; (xi) a person who carries on the business of antiques, jewelry and art trade; (xii) a person who carries on the business of dealing in foreign exchange; (xiii) a person who carries on the business of lending money against the security of securities; (xiv) a person who carries on the business of rendering investment advice or investment brokering services; (xv) a person who issues, sells or redeems travellers' cheques, money orders or similar instruments; (xvi) the Post Office Savings Bank; (xvii) a public accountant; (xviii) a member of a stock exchange; (ix) a betting service; (ix) any institution designated by the Minister under the BIA; (xx) a person approved by the Registrar of Stock Exchanges; and (xxi) an institution under the NAMFISA Act.

Recommendations and comments

277. The authorities should enact an appropriate legal framework and develop an AML/CFT regime in line with FATF Recommendations. The following recommendations focus on CDD issues:

278. The authorities need to establish in law or regulation when CDD is required for financial institutions (FIs). Coverage should include circumstances when establishing business relations; carrying out occasional transactions above the applicable designated threshold (USD/€15,000), including in a single operation or in several operations that appear to be linked; carrying out occasional transactions that are wire transfers; there is a suspicion of money laundering or terrorist financing, regardless of any exceptions or thresholds; and when the FI has doubts about the veracity or adequacy of previously obtained customer identification data.

279. Need to establish and clarify in law or regulation that FIs are required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. The required identification documentation should be specified.

280. Law or regulation should specify that FIs should be required to identify the beneficial owner using relevant information or data obtained from a reliable source. For all customers, the FI should determine whether the customer is acting on behalf of another person and take reasonable steps to obtain sufficient identification data to

verify the identity of that other person. Also for customers that are legal persons or legal arrangements, the FI should be required to take reasonable measurers to understand the ownership and control structure of the customer and determine who are the natural persons that ultimately own or control the customer. 281. FIs should be required by law or regulation to conduct ongoing due diligence on business relationships. This would include scrutiny of transactions undertaken throughout the course of the relationship to ensure transactions being conducted are consistent with the FI's knowledge of the customer, their business and risk profile and source of funds. Further FI's should ensure that documents and data collected under the CDD process is kept up-to-date and relevant. 282. FIs should be required to perform enhanced due diligence for higher risk customers such as non-resident customers, private banking, legal persons and companies that have nominee shareholders or shares in bearer form. 283. FI's should be required to put into place risk management systems to determine if customers are politically exposed persons (PEPs). Some safeguards should include senior management approval to establish relationships with PEPs, establish the source of wealth, source of funds and conduct enhanced account monitoring. 284. FIs should be required to obtain sufficient information about cross-border respondent institutions to understand their business, reputation, quality of supervision and if it has been subject to a ML/TF investigation or regulatory action. Assess AML/CFT controls, obtain senior management approval before establishing new correspondent relationships, document responsibilities of each institution and if payable-through accounts are permitted determine if the respondent FI is able to provide relevant customer identification information and that they have performed all normal CDD obligations. 285. FIs should be required to have policies to prevent misuse of technological developments in ML/TF schemes. Policies should address risks associated with non-face to face business relationships and measurers for managing the risks.		
Compliance with FATF Recommendations 5 to 8		
R.5	**NC**	• **The existing requirements in the banking sector are neither law/regulation nor other enforceable means.** • **There are no CDD requirements in law or regulation for NBFIs, including insurance companies and the securities sector.** • **No requirement in law or regulation for FIs to detail when CDD is required, particularly when conducting occasional transactions above thresholds, occasional transactions that are wire transfers, suspicious transactions and when the FI has doubts about previously obtained identification data.** • **No requirements in law or regulation for FIs to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. The required identification documentation should be clarified and detailed.** • **No requirement in law or regulation for FIs to identify beneficial owners using relevant information or data obtained from a reliable source. For legal customers the FIs are not required to understand the ownership and control structure nor determine who are the natural persons the ultimately own or control the client.** • **No requirements in law or regulation for FIs to ensure that identification documents collected for CDD are kept current and to conduct ongoing due diligence on business relationships, sources of funds, transactions and risk profile.** • **FIs are not required to perform enhanced due diligence for higher risk customers.** • **There are serious doubts with regard to the implementation of CDD requirements within the banking sector.** • **No measures in relation to occasional customers are in place**
R.6	**NC**	• **There are no requirements for FIs to put into place risk management**

		systems to determine if customers are PEPs, require senior management approval to establish relationships with PEPs or initiate other safeguards as required by the FATF.
R.7	**NC**	• **FIs are not required to obtain information, or obtain senior management approval, about cross-border respondent institutions in order to understand their business, reputation, quality of supervision and if it has been subject to a ML/TF investigation or regulatory action.**
R.8	**NC**	• **FIs are not required to have policies to prevent misuse of technological developments in ML/TF schemes or deal with non-face to face business relationships.**

2.3 Third parties and introduced business (R.9)

Description and analysis

286. Namibian law does not address a FI's ability to rely on third parties and introduced business to perform some the CDD process. In practice, however, financial institutions in Namibia do not generally rely on intermediaries or other third parties to perform the CDD process.

287. *The FI Bill does not address the issue of third parties or intermediaries in regard to the CDD process.*

Recommendations and comments

288. The authorities should consider clarifying whether FIs can or cannot rely on intermediaries or other third parties to perform some of the elements of the CDD process. If it is decided to allow this practice then the following safeguards should be required of FIs:
289. Financial institutions should be required to satisfy themselves that copies of identification data relating to CDD will be made available upon request and without delay.
290. Financial institutions should be required to satisfy themselves that the third party is properly regulated and supervised and has measurers in place to comply with appropriate CDD requirements.
291. Competent authorities should take into account information on whether FATF Recommendations are adequately applied when determining in which countries the third party is based.

Compliance with FATF Recommendation 9

R.9	**NC**	• **The authorities have not clarified whether FIs can rely on intermediaries or other third parties to perform some of the CDD process.**

2.4 Financial institution secrecy or confidentiality (R.4)

Description and analysis

292. The issue of financial institution secrecy is covered in Section 9(5) of the POCA which overrides any secrecy or confidentiality obligations imposed on financial institutions. It provides that no obligation as to secrecy and no other restriction on the disclosure of information as to the affairs or business of another, whether imposed by any law, the common law or any agreement, affects any obligation imposed by the requirement to disclose reporting of suspicion regarding proceeds of unlawful activities or to permit access to any registers, records or other documents. Subsection 7 of section 9 further provides that no liability based on a breach of an obligation as to secrecy or any restriction on the disclosure of information, whether imposed by any law, the common law or any agreement, arises from a disclosure of any disclosure of information in good faith and in compliance with any obligation imposed by section 9. Outside the POCA framework, there are no legislative or regulatory measures that address the issue of confidentiality as it relates to financial institutions.

293. BID-3 also notes at 3.1 that The Bank of Namibia Act 1997 (Act 15of 1997) prohibits any person to directly or indirectly disclose to another person any information that he or she has acquired in the performance of his or her duties or function for or on behalf of the Bank, except for the purpose of the performance of his or her duties or functions in terms of that Act or when required to do so by a court of law or under any law or on authority of the

Board of Directors of the Bank. The question of breaching customer confidentiality is thus well provided for.

294. The FI Bill under - Reporting duty not affected by confidentiality rules - section 30 (1) will provide that no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement , affects compliance with a provision of this Act.

Recommendations and comments

295. Bring into effect the POCA and pass the FI Bill to ensure that no financial institution secrecy law inhibits the implementation of the FATF Recommendations.

Compliance with FATF Recommendation 4

R.4	**PC**	• The POCA though enacted is not yet in force**..** • **There is no measure to ensure that no financial secrecy law can inhibit the implementation of the existing AML/CFT requirements.**

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

Description and analysis

Recordkeeping

296. Section 46(1) of the Banking Institutions Act, 1998 (BIA) obliges all banking institutions to keep all relevant banking records. Specifically, it requires banks to keep such accounting and "other banking records" as are necessary to reflect the true and fair state of its affairs and to explain its transactions and financial position in such a manner as to enable the Bank of Namibia (BoN) to ascertain whether the bank is complying with the BIA. Section 46(2) in particular requires a bank to comply with section 284 of the Companies Act and requirements of the BoN, and shall keep and maintain the records for a period of not less than five years after the date of the last entry in such record. Section 46(4) of the BIA defines other banking records as any book, record, report, statement or other document relating to the business, affairs, transactions, conditions, property, assets or liabilities of a banking institution. While the BIA, 1998 deals with some general recordkeeping requirements they do not specifically address AML/CFT recordkeeping requirements that deal with information requests for the competent authorities. Record keeping requirements do not address the need for FIs to comply swiftly with information requests from the competent authorities.

297. BID-3 requires banking institutions to keep records relating to their customers. Documents may be retained by way of original documents, microfiche or in computerized form. Banks are required to keep a copy of references of a customer's identification document, such as, a Namibian identity card or passport, as well as records of transactions such as account ledgers, credit/debit vouchers and cheques. However, the instruction from the BoN does not provide guidance on how long the records should be kept by the banks. (see the discussion in paragraph's 238-240 on the enforceability of BID-3).

298. In practice banking institutions in Namibia advised during interviews that they maintain account records for a minimum of five years.

299. NAMFISA has not issued any regulations or guidance for NBFIs that provide recordkeeping requirements.

300. The FI Bill covers record keeping requirements in sections 15-18 and states whenever an accountable institution establishes a business relationship or concludes a transaction with a client, it is required to keep a record of the identity and address of the client; the identity and address of the beneficial owner and a record of the authority to act for the beneficial owner; the manner in which the identity of the client, beneficial owner or the agent of the beneficial owner was established; the nature of the business relationship or transaction; all accounts maintained by the accountable institution that are involved in transactions whether concluded in the course of the business relationship or not, or it is in a single transaction; and the name of the person who obtained the information on behalf of the accountable institution. In addition, the following information for each transaction is required: (a) the identity and address of the person in whose name a transaction is conducted; (b) the identity of the accounts affected; (c) the type of transaction involved such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's cheques or money orders or other payment or transfer by, through, or to the accountable institution; (d) the identity of the accountable institution where the transaction occurred; and (e) the date, time

and amount of the transaction. The BoN has the power to specify any other information that should be included in the records of accountable institutions. The records can be kept in electronic form if the accountable institution so determines.

301. Records are required to be kept for at least five years either from the date on which the business relationship is terminated, or from the date on which that transaction is concluded. Further, accountable institutions are expected to maintain records to enable the reconstruction of any transaction in excess of such amount as the BoN specifies, for a period of not less than six years from the date the transaction has been completed or terminated.

302. *Accountable institutions will be required to cooperate fully with the BoN in providing all information kept in their records.*

Wire transfers

303. The BoN has required banking institutions in BID-3, section 3.9 Funds Transfers, when effecting funds transfers, to ensure that the names, addresses and account numbers of both the ordering customer and the beneficiary are identified. The name of the banking institution acting for the ordering customer should also be identified.

304. NAMFISA has not issued any guidance or requirements for documentation to be included in wire transfers for the NBFI sector.

305. In addition to banking institutions, individuals do transfer funds and remit money both domestically and internationally, through the Namibia Post Office Savings Bank (NamPost). This is effected by purchasing a money order sent to a beneficiary. In most cases the amounts of transfers involved are small of not more than N$300 (US$50). NamPost, with 120 service outlets, has been responsible for postal and savings bank services, catering mainly for middle- and low-income earners, pensioners and those operating in the informal sector.

306. With respect to UNSCRs 1267 and 1373, Namibia has not yet promulgated legislation to implement the requirements of the UN Security Council resolutions. However, at the present moment in the absence of legislation to implement the Security Council resolutions, the authorities use the BIA, the CPA and common law, to require all commercial banks to report to the BoN any suspicious transactions related to terrorism or terrorist activities and to advise on whether any persons on the UN List of suspected terrorist or terrorist organizations have accounts in Namibia. The BoN has issued two Exchange Control Circulars (BoN 01/19 of November 2001 and BoN 02/08 of March 2002) to commercial banks, who are the authorized dealers in foreign exchange. There are required to report any foreign transactions involving identified persons and institutions to the BoN. The BoN has the power under Regulation 4 of the Exchange Regulations to freeze accounts of residents transferring funds identified to persons and organizations on the UN List. No such cases have been reported. Further, where for instance, assets of suspected terrorists or terrorist organizations were to be identified in Namibia, they would be frozen pursuant to section 20 of the CPA, 1977.

307. *The FI Bill in the section, Electronic transfers of money to or from Namibia, notes that if an accountable institution through electronic transfer sends money in excess of a prescribed amount out of Namibia; or receives money in excess of a prescribed amount from outside Namibia on behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer together with the prescribed particulars concerning the transfer to the Bank. No further details regarding what the prescribed particulars are or when they need to be reported were available.*

Recommendations and comments

308. By law or regulation FI should be required to maintain all necessary records on transactions, both domestic and international, for at least 5 years following completion of the transaction.
309. The authorities through law or regulation should require FIs to maintain records of the identification data, account files and business correspondence for at least 5 years following the termination of an account.
310. FIs should be required by law or regulation to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.
311. The authorities should introduce requirements for FIs, in addition to banks, to obtain and maintain complete originator information and verify its accuracy for all wire transfers.
312. FIs should be required to include full originator information in the message or payment form accompanying the wire transfer for cross-border wire transfers.
313. For domestic wire transfers FIs should include full originator information in the message or the originators account number.
314. Intermediary FIs should be required to maintain all the required originator information with the accompanying wire transfer.
315. Beneficiary FIs should be required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Compliance with FATF Recommendations

R.10	**NC**	• **In the Banking sector the existing provisions are insufficient to meet FATF standards.** • **For NBFIs, there is no record keeping requirements.** • **There are serious doubts with regard to the implementation of CDD requirements within the banking sector.**
SR.VII	**NC**	• **There are no requirements for FIs to ensure that complete originator information is included in outgoing wires and that each FI in the payment chain maintains all the originator information.** • **FIs are not required to ensure that non-routine transactions are not batched.** • **No requirements for beneficiary FIs to adopt effective risk-based procedures for identifying wire transfers not accompanied by complete originator information.** • **There are serious doubts with regard to the implementation of the wire transfer record requirements.**

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

Description and analysis

Monitoring of transactions

316. There is only one provision for account monitoring in Namibia and it is contained in BID-3 which covers banking institutions.

317. A suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. Therefore, the first key to recognition, is knowing enough about the customer's business to recognize that a transaction, or series of transactions, is unusual.

318. BID-3 has no specific requirements to examine the background and purpose of such transactions and document the findings in writing. Further, there is no requirement to keep the written findings for competent authorities and auditors for at least 5 years.

319. NAMFISA has not issued any regulations or guidance for NBFIs that require the monitoring of transactions.

320. The FI Bill does not contain any requirements to monitor transactions.

Relationship with non cooperative countries

321. There are no requirements for FIs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. Neither the BoN nor NAMFISA have addressed this issue for their supervised institutions.

322. *The FI Bill does not contain any requirements for FIs to give special attention to relationships emanating from countries which insufficiently apply the FATF Recommendations.*

Recommendations and comments

323. FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.
324. FIs should be required to examine unusual transactions and patterns, document the findings in writing and maintain the records for at least 5 years.
325. Those transactions in non cooperating countries with no apparent economic purpose should be examined and the findings documented in writing.
326. Namibia should be able to apply appropriate counter-measures to countries that continue not to apply FATF Recommendations.

Compliance with FATF Recommendations 11 & 21

R.11	**NC**	• **In the Banking sector the existing provisions are not binding and insufficiently address the FATF requirements.** • **There is no measure that obliges the NBFIs to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.** • **There are serious doubts with regard to the implementation of the existing requirement within the banking sector.**
R.21	**NC**	• **No measures to advise FIs of AML/CFT concerns in other countries.** • **No requirements to give special attention to business relationships emanating from non cooperating countries and document the findings.**

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

Description and analysis

Requirement to Report STRs

327. The requirement to report an STR is contained in several documents. First, the Banking Institutions Act, 1998 in section 50, Reporting of certain transactions by banking institutions, requires banking institutions to report to the BoN, or to any other person or authority the BoN may specify, any money transaction which it becomes aware of and which indicates or arises a suspicion that the person conducting, or any person involved in, the transaction may be engaged in an illegal activity. No further reporting guidance or forms are provided and the requirement is focused on prudential banking institution matters rather than an AML/CFT obligation.

328. BID-3 also addresses the reporting of suspicious transactions. Section 3.5, Reporting of Suspicious Transactions, requires banking institutions to report immediately to the BoN all cases of suspicious transactions involving an amount of N$50,000 or more. The obligation to report is on the individual who becomes suspicious. At 3.6, Annexure C, there is a standard format which is to be used for reporting suspicious transactions. In the event that urgent disclosure is required in a "live" situation, particularly when the account concerned is part of an on-going investigation, an initial notification should be made to the Supervision Department of the BoN by telephone. FATF Recommendations require that all suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. BID-3 limits reporting only to those transactions over N$50,000.

329. Circular – BIA 2/02 provides examples of suspicious activities and under section E., Reporting suspicious activities or transactions, and requires that if the board of directors, management or staff of a financial institution become aware of suspicious activities or transactions which indicate possible money laundering activities, the board shall ensure that a Suspicious Activities or Transactions Report (SATR) is submitted to the BoN, Bank Supervision Department, and the criminal prosecuting authority within five business days. The report shall provide sufficient details regarding the activities or transactions so that regulatory authorities can properly investigate and, if warranted, prosecute the activities. A new reporting form is attached to the Circular, replacing Annexure C in BID-3. The requirement does not provide reporting guidance in those cases where the transactions are thought to involve tax matters.

330. NAMFISA does not have any laws, regulations or guidance for NBFIs that require the reporting of STRs.

331. Further suspicious transaction reporting requirements can be found in section 9 of the POCA. The obligation to report is imposed on any person who carries on a business or is in charge of, or manages a business undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that property coming into their possession forms part of the proceeds of unlawful activities; a transaction to which the person or the business undertaking is a party will facilitate the transfer of the proceeds of unlawful activities; or a transaction to which a person or the business undertaking is a party and is discontinued, may have brought the proceeds of unlawful activities into the possession of the person or business undertaking, or may have facilitated the transfer of the proceeds of unlawful activities, if the transaction had been concluded. However, the POCA does not define what the term "business" or "business undertaking" means either within the entire context of the POCA, or section 9. Notwithstanding this lack of guidance, the suspicious reports are required to be made without unreasonable delay to the BoN. However, this requirement is not a mandatory obligation as the provision only requires a person or business entity to take all reasonable steps to discharge this obligation.

332. The FI Bill, in section 21, makes it mandatory for accountable institutions to report all suspicious transactions within such period as will be prescribed in the regulation. The Bill, if passed and enacted, will require an accountable institution to report to the BoN any suspicious transaction which, it suspects or believes that there are reasonable grounds to suspect that, as a result of such a transaction concluded by it, it has received or is about to receive the proceeds of criminal conduct or has been used or is about to be used in any other way to be used for money laundering. But the FI Bill does not specifically appear to cover financing of terrorism, although under section 23 of the FI Bill supervisory bodies have an obligation to report suspicious transactions related to money laundering and the financing of terrorism. Further, the financing of terrorism is used elsewhere in the FI Bill in tandem with money laundering therefore, section 21 does not impose any obligation on accountable institutions to report transactions related to financing of terrorism. The authorities should review this apparent dichotomy and strengthen the provision under section 21 of the FI Bill so as to cover reporting of financing of terrorism related suspicions.

333. Despite these many efforts to ensure the reporting of suspicious transactions the result has been largely ineffective. Meetings with the BoN and commercial banks indicate that few STRs have actually been submitted to the BoN for analysis. Over the past few years only 14 STRs have been forwarded to the BoN by the banking institutions. No statistical information is maintained by the BoN regarding these STRs, no known action has been taken concerning these reports and no feedback to the reporting banks by the authorities has been undertaken. None of the STR reporting requirements include an obligation to prepare an STR when there are reasonable grounds to suspect the funds are to be used for terrorism, terrorist acts or by terrorist organizations. Also requirements do not address situations of attempted transactions or tax matters.

Waiver from civil and criminal liability

334. There are no protections in BID-3, Circular – BIA 2/02 or the Banking Institutions Act, 1998 for FIs, their directors, officers and employees to protect against criminal or civil liability for a breach of any restriction on disclosure of information when reporting suspicious transactions.

335. However, Section 9(7) of the POCA gives protection to persons or businesses undertaking the making of

suspicious transaction reports. It provides that no liability based on a breach of an obligation as to secrecy or any restriction on the disclosure of information, whether imposed by any law, the common law or any agreement, arises from a disclosure of any information in good faith and in compliance with the obligation under section 9. But this is limited to actions taken under this specific section and does not cover actions taken outside the provisions of section 9.

336. The protection from liability that will be provided under the FI Bill, if passed and enacted in its present form, will be broader than what is granted under the POCA. The FI Bill provides that "no action, whether criminal or civil, lies against an accountable institution, supervisory body or person complying in good faith with a provision of Part IV of the Bill, which deals with anti-money laundering measures, including any director, employee or other person acting on behalf of such accountable institution, supervisory body or person."

Tipping Off

337. Circular - BIA 2/02, at section F: Confidentiality of Information, requires banking institutions which obtain or become aware of information which is suspicious or indicates possible money laundering activities shall not disclose such information except to report it to the proper authorities as required at paragraph A(4). There are no other provisions regarding tipping off in BID-3 or the Banking Institutions Act, 1998.

338. NAMFISA has not issued any regulations or guidance for NBFIs that prohibits tipping off.

339. There is no provision to prohibit tipping off in the POCA.

340. However, the FI Bill will prohibit tipping-off. It prohibits any person who knows or has reason to suspect that an authorized officer is acting, or is purporting to act, in connection with an investigation, to disclose information to a third party or any other matter which is likely to prejudice the investigation or potential investigation. In addition, the FIB notes that A person who knows or suspects that a report has been or is to be made in terms of this section (Suspicious transactions) must not disclose that knowledge or suspicion or any information regarding the contents or suspected contents of that report to any other person, including the person in respect of whom the report is or is to be made.

Confidentiality

341. There are no laws, regulations or policy guidance that requires the protection of the identity of reporting parties and that ensures the names and personal details of staff of FIs that make an STR are kept confidential.

342. The FI Bill in the section, Protection of persons making reports, seems to partly address the issue. Part (3) states No evidence concerning the identity of a person who made a report in terms of this Part or the contents of that report, or the grounds for that report, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings. Part (4) notes that No evidence concerning the identity of a person who initiated or contributed to a report in terms of this Part is admissible as evidence in criminal proceedings unless that person testified at those proceedings.

Reporting Cash Transactions above a Certain Threshold

343. Namibia does not require the reporting of large cash transactions above a fixed threshold. The authorities have considered having such a system and have provided for it in the FI Bill as indicated in the next paragraph.

344. However, the FI Bill if enacted will regulate the cross border physical transportation of cash to and from Namibia. The FI Bill will provide that a person intending to convey an amount of cash in excess of a prescribed amount to or from Namibia must, before that person conveys the cash into or out of Namibia, report the prescribed particulars concerning that conveyance to a person authorized by the BoN for this purpose. Also, Cash transactions above prescribed limits, require that accountable institutions must, within the prescribed period, report to the Bank the prescribed particulars concerning a transaction concluded with a client if in terms

of the transaction an amount of cash in excess of the prescribed amount that is paid by the accountable institution to the client or is received by the accountable institution from the client. The FI Bill does not prescribe the transmission of the reports to a national central agency with a computerized data base.

Guidelines and Feedback

345. While Namibia does not have an AML/CFT framework or an FIU, it has issued some guidance to its banking institutions regarding ML. BID-3 provides a brief overview of the stages of ML, KYC policy, record keeping, reporting of suspicious transactions, adequate internal controls, staff awareness issues, funds transfers and at Annexure B provides examples of suspicious transactions. Also Circular – BIA 2/02 provides background information on ML, policy development, KYC, and provides a list of suspicious activities. No guidelines have been issued yet for NBFIs by NAMFISA.

346. The BoN has not provided its supervised banks with adequate and appropriate feedback in regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

SR.IV

347. See discussion in paragraph 333.

Recommendations and comments

348. The authorities should give effect to the POCA and pass the FI Bill to require the reporting of STs, make it applicable to terrorist acts, and include situations of attempted transactions and those situations asserting that they are tax matters.
349. The authorities should prohibit by law tipping off by FIs, their directors, officers and employees.
350. The authorities should ensure that FIs are required by law or regulation to report STRs in situations involving terrorism, terrorist acts, by terrorist organizations or those who finance terrorism as required by Special Recommendation IV.

Compliance with FATF Recommendations 13, 14, 19 and 25 (c 25.2) and SR IV

R.13	**NC**	• **ST reporting requirements in law or regulation for FIs that includes terrorist acts or that address attempted ML/TF transactions.** • **No ST reporting requirements for NBFIs.** • **Existing requirement in the BIA to report any transaction suspected to be linked to a criminal activity is very general and raises serious issues of implementation by the banking institutions.**
R.14	**PC**	• **The POCA though enacted is not yet in force.** • **No law prohibiting tipping off by FIs and their employees.**
R.19	**C**	
R.25	**PC**	• **No guidelines have been issued yet to assist NBFIs to implement and comply with AML/CFT requirements.** • **The BoN does not provide feedback to banking institutions reporting STs.**
SR.IV	**NC**	• **No law or regulation requiring FIs to report STs involving terrorism.**

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

Description and analysis

Relevant Legal Provisions:

351. Under the general banking prudential requirements, section 27 of the BIA requires banking institutions, its holding company in respect of its activities conducted in Namibia or its subsidiaries shall, in accordance with guidelines or notices issued by the BoN, conduct its business in a prudent manner and consistent with the best standards and practices of corporate governance and sound financial management. They are further required to comply with the standards of corporate governance generally practiced, or required to be practiced by companies listed on the NSX.

352. Furthermore, section 41(7) of the BIA obliges the board of directors of a banking institution to ensure that the internal controls and systems of the banking institution (i) are designed to provide reasonable assurance as to the integrity and reliability of the financial statements of the banking institution, and to adequately safeguard, verify and maintain accountability of its assets; (ii) are based on established and written policies and procedures, and are implemented by trained and skilled officers with an appropriate segregation of duties; and (iii) are continuously monitored, reviewed and updated by the board of directors to ensure that no material breakdown occurs in the functioning of such controls, procedures and systems.

353. BID-3 addresses some issues regarding the requirement to maintain internal controls in banking institutions. Section 3.0, Implementation of Know Your Customer Policy sets the minimum safeguards for banking institutions to detect and combat ML activities and that banks shall include the development of a KYC Policy incorporating the following concepts, procedures and controls:

(a)Record keeping,
(b)Knowledge of Customer's Activities;
(c)Reporting of Suspicious Transactions;
(d)Adequate Internal Control Procedures (including a compliance officer at the management level);
(e)Staff Awareness (training); and
(f)Funds Transfers policies.

354. Further, Circular – BIA 2/02 reminds boards of directors and managements of financial institutions of their responsibility to establish appropriate policies and procedures and train staff to assure adequate identification of customers and their sources of funds. Section A. Interim measures at (1) notes that FIs are expected to formulate and adopt written policies and procedures and also train staff to assure the effective prevention, detection and control possible money laundering activities.

355. These policies do not include material guidance or advice on how to develop these policies and are not detailed, but provide more general guidance. The guidance does not include requiring FIs to put in place screening procedures to ensure high standards when hiring employees and lacks specific guidance on expected ongoing employee training to ensure they are kept informed of new developments, requirements and ML techniques, methods and trends.

356. In practice, not all banks have appointed an AML/CFT compliance officer, but have identified certain individuals to handle AML/CFT issues in the corporation. Reporting lines vary considerably and all subsidiary banks follow home office AML/CFT policies to some degree. Further, policy requirements do not address the need for FIs to have an adequately resourced independent audit function and the need for appropriate testing for compliance with policies.

357. With regard to the BIA Internal Control provisions cited in paragraph's 351-355, they do not address AML/CFT controls but are only designed for general prudential banking matters.

358. The FI Bill at section 25. Obligations of accountable institutions requires at (1)(2) accountable institutions to adopt, develop and implement internal rules, programmes, policies, procedures and controls to guard against any offence under the Act. The programme must include the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees; on-going training programs, such as KYC programmes, and instructing employees with regard to responsibilities under this Act; and an independent audit function to check compliance with those programmes. Paragraph (3) Requires the designation of compliance officers at the management level in each branch and subsidiary to be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions. Paragraph (5) An accountable institution must develop audit functions to evaluate any policies, procedures and controls developed under this section to test compliance with the measurers taken by the accountable institution to comply with this Act and the effectiveness of those measurers.

Application of AML/CFT requirements to branches and majority-owned subsidiaries located abroad

359. Banking institutions and NBFIs in Namibia do not maintain foreign subsidiary operations although plans for foreign subsidiaries and branches are being considered by some FIs. Section 14 of the BIA requires that banks shall not, without the prior approval of the BON establish or acquire a subsidiary, open a branch outside Namibia, acquire any direct or indirect interest in any undertaking outside Namibia or establish a representative office outside Namibia.

360. *The FI Bill at section 25. Obligations of accountable institutions, paragraph (4) require accountable institutions to implement compliance programmes at their branches and subsidiaries within or outside Namibia. There are no requirements to pay particular attention that this is followed if the branches are located in countries which do not apply the FATF Recommendations or to apply the higher standard where the AML/CFT requirements of the home and host country differ. Further, there is no requirement to inform the home country supervisor when a foreign branch is unable to observe appropriate AML/CFT measures because it is prohibited by local laws.*

Recommendations and comments

361. The authorities should enact measures to require FIs to develop appropriate compliance management arrangements and at a minimum the designation of an AML/CFT compliance officer at the management level. The compliance officer should have timely access to KYC data and other CDD information.
362. Require FIs to maintain an adequately resourced and independent audit function to test compliance.
363. Require FIs to establish ongoing employee training to ensure that employees are kept informed of new developments, including current ML/TF techniques, methods and trends.
364. FIs should be required to put in place screening procedures to ensure high standards when hiring employees.

Compliance with FATF Recommendations 15 & 22

R.15	**NC**	• **Insufficient or no requirements to develop appropriate compliance management arrangements in FIs.** • **No specific provisions for FIs to adequately resource an independent audit function and to test compliance.** • **No specific provision to require the establishment of ongoing employee training programs for ML/FT techniques.** • **No employee screening requirements for FIs.** • **There are serious doubts with regard to the implementation of the existing requirement within the banking sector.**
R.22	**N/A**	• **There are no known foreign subsidiaries or branches in operation.**

2.9 Shell banks (R.18)

Description and analysis

365. Part III of the BIA provides for the criteria for establishing a banking institution in Namibia. Under section 5 of the BIA a person is prohibited from conducting banking business unless authorized to do so. "Banking business" is defined under section 1 of the BIA as receiving of funds from the public and using those funds for loans and investments, any activity authorized by law or banking practice and any other activity approved by the Minister of Finance. A "banking institution" is defined under section 1 of the BIA as a public company authorized under the BIA to conduct banking business. Section 9 of the BIA requires that all persons conducting banking business to be incorporated as a public company under the Companies Act. Furthermore, under section 11 of the BIA, when considering an application to undertake banking business, the BoN is required to ascertain the financial history, policies and strategies relating to the future development of the banking business of the applicant; whether the applicant has an adequate capital structure; the integrity of the applicant and competence to conduct banking business; the ability of the applicant to comply with the provisions of the BIA; whether the directors and officers of the applicant are fit and proper persons; whether the granting of the authorization will be in the economic interest of Namibia; and whether the applicant will be able to apply or maintain adequate, effective and proper internal control systems when conducting the banking business in terms of the authorization. The requirements of section 11 do not explicitly prohibit the establishment of a shell bank in Namibia. In addition, section 19 of the BIA prohibits the opening of a representative office in Namibia by a foreign banking institution without prior

approval of the BoN.

366. In practice, commercial banks in Namibia do not operate shell banks. FIs, however, do not satisfy themselves that their respondent financial institutions in foreign countries do not permit their accounts to be used by shell banks.

Recommendations and comments

367. The authorities should clearly prohibit the establishment of shell banks.
368. Measures should be put into place to prohibit FIs to enter into, or continue, correspondent banking relationships with shell banks.
369. FIs should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Compliance with FATF Recommendation 18

R.18	**NC**	• **No specific prohibition for FIs to establish shell banks.** • **No specific prohibition for FIs to enter into or continue correspondent banking relationships with shell banks.** • **FIs are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.** • **The effective implementation of shell bank oversight is further undermined by a total lack of supervisory efforts over AML/CFT in FIs.**

2.10 The supervisory and oversight system–competent authorities and SROs: Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 30)

Description and analysis

370. Authorization, registration and supervisory responsibilities for banking institutions and NBFIs are divided between the BoN and NAMFISA. NAMFISA, the Ministry of Mines and Energy, the LSN and other SROs for supervision of DNFBPs will be discussed in the DNFBP section later in the Report.

371. The BoN is responsible for supervising and monitoring all institutions authorized to operate as banking institutions. The BoN can authorize an applicant to operate as a bank upon the applicant satisfying the BoN that all the capital requirements are met; fit and properness of shareholders, directors, and officers of the applicant; permission from home country supervisor; the structure and shareholding of the group of companies of which the applicant is a part or intends to form a part; and whether it is in the economic interest of Namibia. The objectives of the BoN are to promote and maintain a sound monetary, credit and financial system in Namibia and sustain the liquidity, solvency and functioning of the financial system; to promote and maintain internal and external monetary stability and an efficient payments mechanism; to foster monetary, credit and financial conditions conducive to the orderly, balanced and sustained economic development of Namibia; to serve as the Government's banker, financial advisor and fiscal agent; and to assist in the attainment of national economic goals. It derives its supervisory and regulatory powers from the BIA. It has the authority to issue determinations relating to prudential requirements including anti-money laundering and fraud and economic crime. The Bank has Memoranda of Understanding (MOUs) with other supervisors both at home and abroad. Within this context the BoN has the authority to monitor AML/CFT compliance in all authorized institutions; however, the BoN does not examine or monitor its supervised banking institutions for compliance with AML/CFT measures. The BoN has no examination procedures for AML/CFT and does not ensure that FIs are effectively implementing laws, rules, policy guidance or the FATF Recommendations.

372. The BIA under section 56 provides the BoN with a few options to achieve remedial action at banking institutions. If the BoN is satisfied that a banking institution, or an affiliate or associate of the banking institution is in breach of the BIA or any other law applicable to the bank, the BoN can require the banking institution to take action or steps, or to discontinue any action. An array of sanctions is available culminating with the imprisonment of officers, employees or agents of the banking institutions convicted of an offence under the BIA. The BoN is responsible for taking supervisory action to resolve problems with an authorized bank, including, if necessary, applying to the Courts for a winding up order and ultimate withdrawal of the banking license. Section 15 of the

BIA provides that any cancellation of the banking license can, however, only be effected after consultation with the Minister of Finance.[5] Although the BoN has sanctioning powers over banks it is questionable whether they would prevail regarding enforcement of AML/CFT measurers since there is no current AML/CFT framework in place. BoN management indicated that because of this concern they have not supervised banks for compliance with AML/CFT measures nor have they undertaken any AML/CFT enforcement actions.

373. The NAMFISA has overall responsibility for NBFIs and some DNFBPs, a function previously undertaken by the Ministry of Finance. The NBFIs under the NAMFISA oversight, include public accountants and auditors; pension funds; friendly societies; money lenders; unit trust; stock brokers; insurance companies including agents, brokers and reinsurance brokers; trust companies; and any other person that renders a financial service as a regular feature of the business. Section 1 of the NAMFISA Act defines a financial service as any financial service rendered by a financial institution to the public or to a juristic person and includes any service rendered by any other person and corresponding to a service normally rendered by a financial institution. Although NAMFISA has supervisory responsibilities for the NBFI sector, it does not supervise any of the NBFIs or DNFBPs for AML/CFT compliance and does not ensure that NBFIs and DNFBPs are effectively implementing the FATF Recommendations.

374. Section 3 of the NAMFISA Act grants authority to NAMFISA to exercise supervision in terms of the Act or any other law, over the business of financial institutions and over financial services. Pursuant to section 4 of the NAMFISA Act it has the authority to investigate any matter falling under its jurisdiction including the power to call to its assistance any person or persons to assist it in the performance of its functions. The NAMFISA Act does not specify effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with natural or legal persons to deal with entities that fail to comply with national AML/CFT requirements or other prudential compliance matters. Prudential supervision and sanctions are generally contained in individual Acts for the specific NBFI sector. As noted in paragraph 340, NAMFISA has not issued any AML/CFT requirements for its supervised entities.

Preventing Criminals from Controlling Financial Institutions

375. Section 27 of the BIA provides the benchmark of how banking institutions are to be managed. It provides that the business of banking institutions is to be conducted in a prudent manner and consistent with best standards and practices of corporate governance and sound financial management. Determinations on the Appointment, Duties and Responsibilities of Directors and Principal Officers of Banking Institutions, BID-1 of 1998 (BID-1), provides that the management of a banking institution must exhibit impeccable integrity and professionalism in their conduct so as to engender public confidence in the safety of their deposits. It goes on to further provide that the board of directors of a banking institution must comprise technically competent persons of integrity with a strong sense of professionalism, fostering and practicing the highest standards of banking and finance in the country. Further, there are elaborate requirements under the application and notification procedures for establishing banking operations, require that a director or officer of a banking institution submit a statement declaring among other things that they have not at any time been convicted of any criminal offence, censured, disciplined, warned or made the subject of a court order at the instigation of any regulatory authority or professional body to which they belong or belonged. The acts committed by the potential director or officer are relevant regardless of whether committed in Namibia or outside Namibia. The declarations made by a potential director or officer are required to be made under oath.

376. BID-1 paragraph 2 obliges banking institutions to appoint directors and principals officers that are only "fit and proper" persons. In determining whether a persons is "fit and proper", banking institutions are required to have due regard to the persons probity, competence and soundness of judgment; and high standard of integrity, objectivity and professionalism. Further, the paragraph prohibits banking institutions from appointing persons

[5] Whether by consultation it means that the Minister can override a decision made by BoN, or not go along with a recommendation made by BoN is not provided for in the BIA.

who have at any time committed an offence involving fraud or other dishonesty, or any other relevant criminal offence; or engaged in any business practices that may be regarded as being deceitful or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on the persons method of conducting business. These requirements provide the authorities with sufficient powers to ensure that criminals do not assume direct or indirect control of banking institutions.

377. The NAMFISA Act does not specify any specific measures regarding evaluating directors and senior managers of NBFIs. Supervisory powers and licensing requirements are contained in specific Acts that provide the authority for registration and operation of NBFIs such as unit trusts, insurance, etc. Supervisory manuals and handbooks for the NBFI sectors were not provided. In practice NAMFISA officers indicated that for some NBFIs they obtain curriculum vitae's and crime certificates for principle officers and some directors. Little background or police checks are undertaken.

Money or Value Transfer System

378. The BoN licenses and monitors return's from the Bureau De Change which operates a foreign exchange business that includes an airport branch. Operations are monitored by the BoN with on site inspections to audit reported transactions and compliance systems. However, inspectors do not supervise or monitor for compliance with AML/CFT requirements.

Inspection and Access to Records

379. The BIA in section 52 grants general powers of examination to the BoN to determine whether a banking institution is in a sound financial condition and whether the provisions of the BIA or any other legal requirements pertaining to the banking business have been and are being complied with by the banking institution. Section 53 of the BIA obligates a banking institution to produce all records including cash or other liquid assets, minutes, books, vouchers, accounts, deeds, securities and other documents in possession or custody of the banking institution and relating to the business of the banking institution and all other information concerning the business of the banking institution. The authority to access these documents by the BoN does not require prior court order. Indeed, the BoN can issue a "search warrant" to search and seize any books, documents or information relating to any alleged violation of the BIA.

380. The NAMFISA Act does not specify examination powers to monitor and ensure compliance with laws, regulations and policies within its supervised FIs. Inspection powers are contained in each respective NBFI Act and in addition, the Inspection of FIs Act 38 of 1984. The 38 Act allows for the production of records, documents or information relevant to monitoring compliance; however, the permission of the Registrar is necessary in some cases to obtain customer accounts. Discussions with insurance industry executives indicated that account records could not be released without the approval of the client indicating some question whether NAMFISA has adequate authority to supervise for AML/CFT activity.

Technical and Other Resources

381. Since Namibia does not have an AML/CFT framework, FIU or regime in place there are only minimal skills available in law enforcement and prosecution agencies to deal with these issues. No special training or educational programmes are provided for judges and courts concerning ML and FT offences, and the seizure, freezing and confiscation of property that is the proceeds of crime or is to be used to finance terrorism. In addition, there are virtually no AML/CFT staff skills available at the BoN or NAMFISA to perform any AML/CFT supervisory functions in FIs. In both the BoN and NAMFISA, staff members clearly lack technical and other resources and training to fully and effectively perform AML/CFT compliance inspections.

382. The BON supervisory staff total 18 professionals, plus two support staff, which would seem sufficient for their current responsibilities, but is likely to be insufficient to assume the burden of AML/CFT compliance supervision when the new regime becomes operational. Staff appear professional in their approach and have appropriate academic qualifications. Budgets appear adequate for travel and training, but suffer from some equipment

shortages, such as laptops. Additional budget will be necessary to implement the new AML/CFT regime.

383. NAMFISA staff lacks skills, training and capacity to adequately perform their current responsibilities. Once the POCA is put into effect and the FI Bill is passed and implemented substantial training, technical assistance and resources will be necessary for all competent authorities in order to operationalize Namibia's new AML/CFT regime into an effective system.

384. The FI Bill when passed will cover some of these issues. Part III identifies accountable institutions and supervisors responsible for AML/CFT compliance. The FI Bill imposes on the BoN the responsibilities and duties to monitor and ensure that accountable institutions comply with the Act, part IV, Money Laundering Control Measurers Duty to Identify Clients. Part IV covers rules for CDD, anonymous accounts, record keeping, BoN's access to records, cash transactions, suspicious transactions, electronic transfers, obligations of and reporting by supervisory bodies, cross border cash transactions, obligations of accountable institutions, reporting procedures and other administrative requirements.

Recommendations and comments

385. Authorities should enhance and clarify the NAMFISA Act to include effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with AML/CFT compliance matters.
386. Authorities should ensure that FIs are effectively implementing the FATF Recommendations and that a designated competent authority has responsibility for ensuring that FIs adequately comply with the requirements to combat ML/TF.
387. Authorities should ensure that directors and senior management of FIs are properly evaluated, on the basis of fit and proper criteria if appropriate, including those relating to expertise and integrity and ensure that criminals are prevented from ownership and management functions.
388. The money changing service (Bureau De Change) Namibia should be subject to effective systems for monitoring and ensuring compliance with national requirements to combat ML/TF.
389. Authorities should provide AML/CFT training to all competent authorities involved in combating ML/TF. Specific training is necessary initially for BoN and NAMFISA regulators.
390. The BoN and NAMFISA AML/CFT compliance functions needs to be provided with adequate staffing, expertise and training.

Compliance with FATF Recommendations 17, 23 (c 23.2, 23.4, 23.6-23.7), 29 & 30

R.17	**PC**	• **BoN and NAMFISA lack effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with enforcement of FATF Recommendations.**
R.23	**NC**	• **The BoN and NAMFISA do not ensure FIs are effectively implementing the FATF Recommendations.** • **NBFIs have not been designated a competent authority to ensure that FIs adequately comply with the requirements to combat ML/TF.** • **Directors and senior officers of NBFIs do not undergo necessary legal or regulatory measures to prevent criminals from ownership or management functions.** • **The BoN does not supervise the money exchange service (Bureau De Change operators) for compliance with AML/CFT requirements.**
R.29	**LC**	• **BON and NAMFISA do not have clear authority to compel the production of or to obtain access to all records, documents or information relevant to monitoring AML/CFT compliance.**
R.30	**NC**	• **The BoN and NAMFISA have not trained its staff on AML/CFT issues or supervisory responsibilities to ensure compliance in FIs.** • **NAMFISA lacks appropriate skills, training and capacity to carry out their current responsibilities.**

Financial institutions–market entry and ownership/control (R.23)

Description and analysis

Banks

391. Criteria for the licensing of banking institutions are set out in the BIA, which also authorizes the licensing authority (the BON) to set additional criteria, section 11of the BIA. The criteria set by the BIA and by the "application and notification procedures" issued by the BON are comprehensive (suitability of major shareholders, ownership structure, fit and proper test for directors and officers, internal control, capital adequacy, etc.). An initial capital of ND10 millions (or 10 percent of risk weighted assets when it exceeds ND10 millions) is required at section 28 of the BIA). Although the ability of the shareholders to supply additional financial support is assessed by the BON, it does not require any formal commitment from a parent company to support its subsidiary.

392. Before taking any decision, the BoN must consult with the Minister of Finance. After this consultation, the Bank can refuse the application, grant it or grant it subject to conditions, sections 11(3) & 11(4). The license can be revoked if its approval proves to be based on false information. See paragraph 285 above on the effect of the consultation with the Minister.

393. With regard to prevention of criminals from controlling financial institutions, see discussion above in paragraph's 374-375.

NBFIs

394. The NAMFISA Act does not specify any specific measures or fit and proper tests regarding evaluating directors and senior managers of NBFIs. Supervisory powers and licensing requirements are contained within each specific Act that provides the authority for registration and operational requirements for each NBFI sector, such as insurance, unit trusts etc. Supervisory manuals and handbooks for the NBFI sectors were not provided. In practice NAMFISA officers indicated that for some NBFIs they obtain curriculum vitae's and crime certificates for principle officers and some directors. The crime certificate is provided to the requesting party (directors and officers) by the police and certifies that there are no police records. NAMFISA management undertakes little, if any, background or police checks.

Recommendations and comments

395. Authorities should ensure that directors and senior management of FIs are properly evaluated, on the basis of fit and proper criteria if appropriate, including those relating to expertise and integrity and ensure that criminals are prevented from ownership and management functions.
396. Authorities should ensure that FIs are licensed or registered and appropriately regulated and subject to supervision or oversight for AML/CFT purposes, having regard to the risk of ML or TF in that sector.

Compliance with FATF Recommendation 23 (c 23.1, 23.3-23.5)

R.23	**NC**	• **Directors and senior officers of NBFIs are not adequately evaluated to ensure that criminals do not hold significant ownership interests or management functions.** • **NBFIs are not appropriately licensed, registered and regulated for AML/CFT purposes.**

AML/CFT Guidelines (R.25)

Description and analysis

397. While Namibia does not have an AML/CFT framework or an FIU, it has issued some guidance to its banks regarding ML. BID-3 provides a brief overview of the stages of ML, KYC policy, record keeping, reporting of suspicious transactions, adequate internal controls, staff awareness issues, funds transfers and at Annexure B provides examples of suspicious transactions. Also Circular – BIA 2/02 provides background information on ML, policy development, KYC, and provides a list of suspicious activities.

398. No guidelines have been issued for NBFIs by NAMFISA. The LSN has not issued any AML/CFT related guidelines.

399. The BoN has not provided its supervised banks with adequate and appropriate feedback in regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons. Namibian banking institutions indicated that they have not received any feedback from the BoN regarding submitted STRs.

400. *The proposed FI Bill requires at section 23 (7)(C) Obligations of and reporting by supervisory bodies, requires that the relevant supervisory body of an accountable institution to issue guidelines to assist accountable institutions in detecting suspicious patters of behavior in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for reporting institutions personnel. Part III, paragraph 5. requires the BoN at (2)(a) to collect, process, analyze and assess all reports and information received in terms of this Act or in terms of any law; and (b) to compile statistics and records, disseminate information with Namibia or elsewhere and make recommendations arising out of any information received.*

Recommendations and comments

401. The authorities should establish and issue guidance to NBFIs and DNFBPs that will assist them in implementing and complying with AML/CFT requirements.
402. The BoN should provide banks that report suspicious transactions, with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.

Compliance with FATF Recommendation 25 (c25.1)

R.25	**PC**	• **No guidelines issued yet to assist NBFIs and DNFBPs to implement and comply with AML/CFT requirements.** • **The BoN does not provide feedback to banks reporting STs.**

Ongoing supervision and monitoring (R.23, 29 & 32)

Description and analysis

403. See discussion above in paragraph's 374-378.

2.11 Money or value transfer services (SR.VI)

Description and analysis

404. Money or value transfer services (MVT) are limited to the four commercial banks licensed and supervised by the BoN. Banking institutions use the S.W.I.F.T system to conduct wire transfers. In addition the Post Office Savings Bank may issue domestic money orders. No other money or value transfer services currently operate in Namibia. The BoN does not ensure that MVT service operators are subject to the FATF Recommendations and the Nine Special Recommendations nor does it have systems in place monitoring compliance. Measurers set out in the Best Practices Paper of SR VI have not been implemented.

Recommendations and comments

405. The competent authorities need to ensure that MVT service operators comply with the FATF 40 + 9 Recommendations and monitor their compliance.

Compliance with FATF Recommendation SR VI

SR.VI	**NC**	• **No policies, procedures in place to ensure compliance by MVT operators.** • **No monitoring of MVT operators to ensure compliance with the FATF 40 + 9 Recommendations.** • **No requirements for MVT service operators to maintain a current list of its agents.**

Preventive Measures–Designated Non-Financial Businesses and Professions

3.1 Customer due diligence and record-keeping (R.12) (applying R. 5 to 10)
Description and analysis
Relevant Legal Provisions: 406. There are currently no AML/CFT measures imposed on designated non-financial businesses and professions. However, under the proposed FI Bill relevant DNFBPs will be covered as accountable institutions including lawyers, accountants, estate agents and casinos. The coverage will be broad enough to include car dealers and dealers in second hand goods. However, dealers in precious stones and metals will not be covered. As this is a significant industry in Namibia, the authorities should include the sector under the FI Bill because not doing so will create a loophole in the AML/CFT framework. In discussions with the authorities it is not sufficiently clear yet how this will be implemented with respect to DNFBPs that do not fall under any supervisory regime of some kind such as the car dealers and dealers in second hand goods. *Public accountants and auditors* 407. There are approximately 14 accounting firms operating in Namibia. NAMFISA has oversight over public accountants and auditors through the SRO. Under the NAMFISA Act, the definition of financial institution includes a person registered in terms of section 23 of the Public Accountants' and Auditors' Act, 1951, and who is a member of the Institute of Chartered Accountants of Namibia referred to in that Act. Currently neither NAMFISA nor the SRO has issued any CDD or any other AML/CFT requirements for accountants and auditors nor do they inspect accountants or auditors for compliance with the FATF 40 Recommendations. Discussions with a major accounting firm indicated that AML reviews and testing are conducted in the normal course of auditing clients. Irregularities are reported to the Accountants and Auditors Board for disposition. *Lawyers* 408. Lawyers, notaries and other independent legal professions are governed by the Legal Practitioners Act, 1995 (LPA) and the rules and guidelines issued by the Law Society of Namibia (LSN) pursuant to the LPA. There are currently 88 private law firms in Namibia; 390 licensed practitioners out of which 190 are in private practice. About 70% of the law firms are sole practitioners. The largest law firm has 11 partners although at the time of the mission, the LSN advised that this law firm was on the verge of being dissolved. 409. The LPA and the rules and guidelines reviewed do not to impose any anti-money laundering and anti-terrorist financing obligations on legal practitioners. There are no guidelines that have been issued by the LSN on how lawyers should deal with issues related to ML or TF. There is no requirement to verify the identity of their clients; keeping of records and in what form the records must be retained; paying close attention to non- face to face business relationships or transactions; and paying attention to unusual or complex transactions. 410. In discussions with the LSN, it was stated that applying CDD requirements in their work would not create any difficulties as this is something similar to that which lawyers do in practice before taking on a client. Details of the potential client's background are taken including identification documents, the residential or business addresses as well as details of the nature of the transactions in which a potential client wishes a lawyer to act on their behalf. However, as discussed under Recommendation 34 on Access to beneficial ownership, a lawyer preparing a trust for a client is not in a position to know the ultimate beneficiary under the trust in part because lawyers do not apply the CDD to any of their transactions. It is therefore critical that CDD is applied before agreeing to represent a potential client. 411. When the FI Bill is enacted and comes into effect, the legal profession will be obliged to undertake CDD in their business activities. *Dealers in precious stones and metals*

412. Namibia is one of the leading producers of diamonds in the world, with the diamond industry contributing significantly to the GDP. A number of diamond companies operate in Namibia. The market leaders are Namdeb Diamond Corporation (Pty) Ltd, a joint venture between the Namibian Government and De Beers of South Africa; and Namibia Minerals Corporation (NAMCO), in which the Namibian government holds some shares. There are numerous other smaller operators holding mining licenses that authorize them to carry out mining operations. Namibia being a signatory to and participant in the Kimberly Certification Process of rough diamonds has ensured that the security of the diamonds is of international standards. As the diamonds are recovered up from the restricted diamond mining areas up until they are valued by the officially appointed Government Diamond Valuator, they remain under strict security. After valuation, the diamonds are sealed in parcels and issued with Kimberly Process Certificate and export permit, which indicate the number of stones, carats and the corresponding value in Namibia dollars. The Kimberly Process Certificate and the export permit values (number of stones, carats and price) are supposed to and must be the same. Furthermore, in discussions with the Diamond Commissioner, he indicated that the destination of the diamonds being exported must be the same on both documents.

413. The Kimberly Process Certificate (specimen copies were provided to the team) are specially designed and printed to prevent any forgery and only three senior officials in the Ministry of Mines and Energy are authorized to sign.

414. And yet notwithstanding the fact that the diamond industry is a major sector in Namibia and vulnerable to ML, it has not been included to the list of accountable institutions subject to the FI Bill.

415. The Ministry of Mines and Energy employs a large number of diamond inspectors who are equipped with wide powers. However, they cannot police the vast geographical area covered by diamond prospecting and mining operations. Because of this challenge, some of the operators in the diamond industry do not comply with the regulatory obligations imposed on them.

Unit trust and asset management

416. There are 24 registered asset managers with assets under management (AUM) of N$31.2 billion sourced mainly from pension funds and insurance companies. Asset management services are also highly concentrated and provision of these services is dominated by a handful of companies. Many do not have sufficient local expertise and draw on their South African parents to fill gaps.

417. Driven by money market portfolios and the tax free status, the unit trust industry has grown rapidly. While there is no requirement for localization of investments in unit trust schemes, management companies generally observe the 35 percent domestic asset requirement in order to attract investments from institutional investors. Corporate investors also invest in money market unit trusts, mainly for tax reasons. There are eight registered unit trust management companies which have AUM of N$8 billion, N$7 billion in money market portfolios and the balance in equity and balanced portfolios. Management companies controlled by 2 domestic commercial banks have a 60 percent market share of AUM.

418. NAMFISA has overall supervisory responsibility for public accountants and auditors; pension funds; friendly societies; money lenders; unit trust; stock brokers; insurance companies including agents, brokers and reinsurance brokers; trust companies; and any other person that renders a financial service as a regular feature of the business. Section 1 of the NAMFISA Act defines a financial service as any financial service rendered by a financial institution to the public or to a juristic person and includes any service rendered by any other person and corresponding to a service normally rendered by a financial institution. Section 3 of the NAMFISA Act grants authority to NAMFISA to exercise supervision in terms of the Act or any other law, over the business of financial institutions and over financial services. Pursuant to section 4 of the NAMFISA Act it has the authority to investigate any matter falling under its jurisdiction including the power to call to its assistance any person or persons to assist it in the performance of its functions.

419. However, as noted, these entities are unsupervised for AML/CFT. NAMFISA has not issued any AML/CFT regulations, guidelines, circulars or requirements to its supervised institutions nor supervises the sector for AML/CFT compliance with international standards. Some entities, such as larger insurance companies, have

adopted home office AML/CFT safeguards as part of group policies. Also some insurance companies, micro lenders and other non-bank subsidiaries of commercial banks may follow company AML/CFT policies to some degree. Namibia has undertaken measures to develop an AML/CFT framework to deal with the DNFBPs and NBFIs through passage of the POCA and the FI Bill which when passed will address many deficiencies in these sectors.

Real estate agents

420. The Estate Agents Board is established in terms of the Estate Agents Act, 1976 (Act No 112 of 1976). It is considered as the supervisory body of the profession and integrated as such in the FI draft bill. No specific incentive has been given to professionals in order to be cautious on possible ML patterns. There has not been any awareness raising sessions to inform professionals of the need for an AML/CFT framework and of the possible risks in their sector. The key issues in this sector are the possibility of cash transactions and the absence of real controls. KYC does not seem to be a priority. No more information has been delivered by the authorities.

Casinos

421. The Casinos and Gambling Houses Act, No 32, 1994 covers the activity. The assessors were advised that a draft law has been prepared to amend the 1994 Act but the assessors were not availed of the draft. It has not been communicated to the mission despite our request. There is no provision in the Act requiring specific diligence towards clients except for minors, particularly concerning customer identification, payments of gains or exchanges of chips, such as thresholds for cash. (See following section: supervision, regulation, monitoring).

Recommendations and comments

422. The application of CDD requirements should be imposed on lawyers when they prepare or carry out transactions for their clients.
423. The authorities should develop CDD requirements for public accountants and auditors, specifically when they prepare for or carry out transactions for a client such as management of bank, savings or securities accounts.
424. FATF CDD requirements should be developed by the authorities for trust and company service providers.

Compliance with FATF Recommendations

R.12	**NC**	• **There are no AML/CFT measures imposed on DNFBPs**

Monitoring of transactions and relationships (R.12) (applying R. 11 & 21)

Description and analysis

425. See above, description and analysis under customer due diligence and record keeping. There are no AML/CFT measures imposed or applicable to DNFBPs to monitor transactions and relationships. The LSN does conduct annual inspections of some law firms to ensure that there are complying with the LPA and the LSN rules. There is nevertheless no AML/CFT monitoring of transactions and relationships required of lawyers other than the expected professional ethics and standards that there are to observe in the course of their business.

Recommendations and comments

426. The authorities should impose on relevant DNFBP the obligation to closely monitor transactions and business relationships in respect of AML/CFT.
427. The authorities should develop and implement FATF requirements for the monitoring of transactions as required by Recommendation 12 for lawyers, accountants and auditors and trust company service providers.

Compliance with FATF Recommendations

R.12	**NC**	• **No laws, regulations or policies that require account monitoring.**

3.2 Suspicious transaction reporting (R.16) (applying R.13 & 14)

Description and analysis

428. There are no reporting requirements imposed on DNFBPs. Further, there is no obligation on DNFBPs to monitor or pay special attention to transactions with persons legal or natural from countries which do not have adequate AML/CFT systems in place. In discussions with the DNFBPs it was not clear whether even in the absence of a legal obligation they do in practice pay attention to such transaction. On the other hand, from discussions with the DNFBPs it was clear that a significant number of transactions involve domestic customers and may marginally involve a foreign jurisdiction.

Lawyers

429. Section 9(6) of the POCA preserves the sanctity of the attorney-client privilege. In discussions with the Law Society of Namibia (LSN), there was concern that the FI Bill being proposed by the authorities will not only undermine the attorney-client privilege but remove it completely when a requirement to report STR is imposed on the legal profession under the FI Bill. It was argued that lawyers should not be made to be investigators and monitors of their client's conduct unless there is actual knowledge by a lawyer that a transaction involving a client has a criminal element to it. The only incidents lawyers in Namibia have had with transactions having a suspicious element to them are the 419 scams originating from Nigeria.

430. In discussions with the LSN, it was suggested by the LSN that rather than having reporting obligations imposed on the legal profession, it was best to leave this aspect to the professional body itself. The first argument for suggesting such an approach was that the LSN under the LPA and its rules has unqualified access to all documents of law firms and all accounts of the law firms in Namibia are required to be audited by qualified auditors. Secondly, the LSN in discussions with the assessors advised that the legal practitioners have in the past asked for guidance from the governing Council of the law society on cases involving clients with which, there were not comfortable or where suspicious about. By way of illustration, two incidents of suspicious transactions in the past year were reported by two law firms to the LSN. Guidance was sought on whether to proceed with such transactions and after deliberations with the Council, the law firms decided against going through with the suspicious transactions. It was therefore felt that suspicious transaction issues should be dealt with by the LSN itself as the body responsible for monitoring the professional conduct of its members. This it was suggested would maintain the sanctity of the attorney-client privilege. However, these were the only two examples given and therefore judgment cannot be made on whether this is a general practice by legal practitioners. The third argument advanced was that in any case, in Namibia, the largest percentage of money coming into law firms is through banking institutions. The point with this argument was that the transaction would already have been scrutinized by the banking institution itself under their procedures for dealing with their customers.

431. Should the authorities determine that lawyers can report to the LSN, then appropriate mechanisms to facilitate cooperation with the FIU should be put in place. This will enable the LSN to be able to report STs to the FIU after making their analysis on whether or not a transaction reported by a lawyer has information that is privileged. If it is, then the information cannot be forwarded to the FIU. On the other hand, if it is not privileged information, then it would have to be sent to the FIU. Indeed, the LSN suggested that if the reporting obligation to the FIU is imposed on the lawyers, consideration will be made on asking the courts to review the constitutionality of such an obligation. As discussed below under Regulation, supervision and monitoring, the LSN has demonstrated that it can enforce its rules and guidelines if a lawyer is suspected to or they are allegation of professional misconduct.

Recommendations and comments

432. Reporting requirements should be imposed on casinos, lawyers, dealers in precious stones and metals, real estate agents and public accountants. 433. It is recommended that should the authorities determine that the lawyers should report to the LSN, then appropriate mechanisms such as entering into MoUs with the FIU – when created – should be established. This will facilitate the exchange of information between the LSN and the FIU. 434. DNFBP should have systems in place by which they are able to monitor transactions involving persons from jurisdictions with weak AML/CFT systems.		
Compliance with FATF Recommendation 16		
R.16	**NC**	• **No laws or regulations enacted requiring the reporting of STs by DNFBPs.**
Internal controls, compliance & audit (R.16)		
Description and analysis		
435. See above description and analysis under customer due diligence and record keeping. They are no internal control obligations imposed on DNFBPs. The DNFBPs do not have systems to conduct audit test of internal control processes; they do not conduct employee training related to money laundering and terrorist financing; and have no screening procedures to ensure high standards when hiring employees.		
Recommendations and comments		
436. The authorities should develop requirements for the establishment and maintenance of internal procedures, policies and controls to prevent ML/TF in accountants and auditors and trust company service providers. The procedures should cover CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation. 437. Further, DNFBPs should be required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and TF techniques. 438. DNFBPs should be required to have screening procedures to ensure high standards when hiring employees.		
Compliance with FATF Recommendations		
R.16	**NC**	• **No requirements for appropriate AML/CFT compliance management, audit, employee training programs or employee screening for lawyers, accountants and auditors and trust company service providers.**
3.3. Regulation, supervision and monitoring (R.17, 24-25)		
Description and analysis		
439. There is no supervisory framework for DNFBPs for AML/CFT purposes. There are no AML/CFT guidelines that have been issued to assist DNFBPs to implement and comply with AML/CFT measures. *Casino's* 440. There are currently four casinos in Namibia with a total of 600 machines. They are all in hotels as under the existing regulatory regime casinos can only be operated in a rated hotel with specified rooms. In this regard, for Windhoek the capital city, the required rating is a 4 star with at least 100 rooms, while hotels outside Windhoek require a 3 star rating with at least 50 rooms. Specifically, casino's are not subject to a comprehensive regulatory and supervisory regime that will ensure that they implement necessary AML/CFT measures once the FI Bill is enacted and brought into effect casino's will be covered. 441. In discussions with the Casino Board, the mission was advised that it would be expensive to have a monitoring system and could entail increasing the licensing fees. The only due diligence process performed when registering		

casino's is to have the police do a routine background check. This background check however has nothing to do with whether the proprietors are fit and proper or ensuring that there are not criminals but rather it is for purposes of acquiring a liquor license. Indeed, the authorities advise that there is no police clearance required to approve an applicant.

442. Notwithstanding the foregoing discussion, the authorities advised that they do have 4 inspectors who visit the existing 4 casinos. It was not clear however from the discussion on the nature and extent of the inspections undertaken and for what purpose as the Board has no inspection manual. What was evident was that the Board does not have adequate powers to monitor and sanction casinos and lacks sufficient technical and human resources to perform its functions.

Lawyers

443. The Legal profession is self-regulated through the LSN pursuant to the LPA and the rules issued thereunder.

444. The LSN has a rigorous monitoring regime of their members although not related to AML/CFT matters or related to monitoring specific AML/CFT transactions. Because of the attorney-client privilege and the need to maintain confidentiality of information in their custody, it is not possible for the LSN governing body to monitor transactions. However, this is possible where there is an investigation into the misconduct of a lawyer. On the hand, the LSN does undertake annual visit to every law firm to monitor their operations. Currently, 50% or 44 law firms are visited every year by the LSN. They check compliance of law firms to their obligations under the LPA and the rules thereunder including ensuring that law firms keep accurate and up to date records and maintain proper trust accounts. In order to maintain the integrity of the legal profession, the LSN organizes training programs for their members. These seminars and workshops cover issues related to managing client accounts or trust accounts as there are referred to in Namibia; how to maintain proper accounts through efficient bookkeeping skills; and auditing of law firm accounts. They have not done any training on money laundering or terrorist financing.

445. Where a lawyer violates the rules of the LSN, the Governing Council has a range of sanctions it can impose to discipline the lawyer. The sanctions range from a fine, to denial of a fidelity certificate which entitles a partner of a law firm to accept client's money, and in egregious cases, debarring and where applicable criminal proceedings. Where a compliant is made to the LSN of alleged misconduct or practices that violate the rules of the LSN, the LSN carries out its investigation within a month. If a prima facie case is established, it is referred to the Governing Council for further consideration and action by the Disciplinary Committee.

446. A number of cases have been dealt with by the LSN resulting in numerous members of the LSN being disciplined for professional misconduct. In discussions with the LSN, the mission was advised that there were several ongoing investigation of lawyers alleged to have violated the rules of the LSN.

Recommendations and comments

447. The Casino Board in collaboration with the casino industry should develop an appropriate AML/CFT supervisory mechanism in the light of the fact that the industry will be covered by the FI Bill.

448. In view of the Casino Boards concern on the increased cost of introducing a monitoring system, it is recommended that a self-regulatory mechanism for the industry could be devised. Once the FI Bill is enacted, the Board will not have the capacity to ensure that casinos implement the AML/CFT measures.

449. The Casino Board should develop an inspection manual. Technical assistance will be necessary in developing an appropriate manual for the casino industry.

450. The Casino Board should develop an appropriate mechanism for checking whether prospective operators or managers of casinos do not have a criminal background.

451. The Casino Board and the LSN should issue AML/CFT guidelines to their respective institutions and members under their jurisdiction.

452. The competent authorities should ensure effective, proportionate and dissuasive criminal, civil or administrative sanctions are available to deal with persons covered by the FATF Recommendations that fail to comply with AML/CFT requirements.

453. Authorities should designate an authority empowered to apply these sanctions.

454. The competent authorities should ensure compliance with FATF Recommendations 17, 24-25.

Compliance with FATF Recommendations 17 (DNFBP), 24 & 25 (c 25.1, DNFBP)		
R.17	**PC**	• **Lack of sanctions to deal with AML/CFT matters and no designated authority designated to apply sanctions for accountants and auditors and trust company service providers. While other DNFBPs do not have an appropriate regulatory and supervisory framework including a sanctioning regime, the legal profession has a rigorous monitoring system.**
R.24	**NC**	• **DNFBPs are not subject to effective regulatory and supervisory regimes in the AML/CFT area.**
R.25	**NC**	• **No AML/CFT guidelines issued to accountants and auditors and trust company service providers to assist them in compliance.** • **There are no AML/CFT guidelines that have been issued to assist DNFBPs to implement and comply with AML/CFT measures.**

3.4 Other non-financial businesses and professions—Modern secure transaction techniques (R.20)

Description and analysis

455. The authorities have considered applying the AML/CFT obligations to other non-financial business and professions such as car dealers and Shebeens. There are approximately 260 registered Shebeens in Namibia with an estimated 1,600 slot machines. The Casino Board is responsible for a fee for registering the Shebeens. The Shebeens are required to pay an annual registration fee and monthly payments on their returns calculated at 15% of the monthly turnover. In addition to the annual registration fee, the Shebeens are required to have a proper venue, have adequate security, have a valid liquor license, and not allow children to enter the Shebeen premises.

456. There are no AML/CFT measures that are imposed on these gambling houses although they do pose a risk to being used for money laundering purposes. In discussions with the Casino Board, which licenses the Shebeens the mission was advised that there are a significant number of Shebeens that operate illegally. But the Board has no control over these as the Police are the one's responsible for enforcement of the Gambling Act.

457. Under the FI Bill, AML obligations will be extended to other professions and activities besides those that have been discussed in detail in this report. These professions are car dealers, trading in second hand goods, business of antiques, jewelry and art trade and investment brokering services. It however is not clear how the application of AML/CFT measures will be applied to these professions. From discussions with the authorities' particular the Inland Revenue and customs department, there was concern with businesses that involve second hand goods and used cars brought in from outside Namibia.

458. With regard to the use of modern secure transactions, Namibia has extensive electronic payment systems in place such as the use of debit, credit and mobile phone value transfer system. In addition, in major transactions such as the sale and purchase of real property, parties are required to execute the transaction through a regulated financial institution.

Recommendations and comments

459. The Shebeens pose a money laundering risk and should be brought under the AML/CFT regime. In view of their size and how the business is conducted a self-regulatory framework might be appropriate.

Compliance with FATF Recommendation 20		
R.20	**LC**	• **No AML/CFT measures apply to Shebeens although they pose a money laundering risk.**

Legal Persons and Arrangements & NonProfit Organizations

4.1 Legal Persons–Access to beneficial ownership and control information (R.33)
Description and analysis

460. **Beneficial ownership and control of legal persons**: The office responsible for the registration of all companies and other business entities in Namibia is the Companies and Patents Registration Office (Registrar of Companies). This office is a Directorate of the Ministry of Trade and Industry. The office is responsible for administering the Companies Act 61 of 1973. However, the 1973 Act will be replaced by the Companies Act, 2004 as soon as the implementing regulations are issued by the Minister of Trade and Industry. The office is responsible for filing and maintenance of all documents submitted to the office; deregistration of companies on request, by court order or initiated by the office due to non-payment of dues; and updating of the register. The office is not *per se* responsible for anti-money laundering issues. The office of the Registrar is in the process of computerizing their record and filing system. This will enhance the efficiency and management of company information. This will further facilitate the ability of law enforcement agencies to access the information in a timely manner.

461. As part of the registration process, prospective companies through their promoters are required to submit the Memorandum and Articles of Association with the Registrar of Companies. A list of shareholders including their full names, occupation and residential, business and postal address must be submitted together with the documents of incorporation (Memorandum and Article of Association). In addition, particulars of the directors of the company and statement by the directors regarding adequacy of the share capital should also be submitted. Every company including a foreign one is required to have a physical and postal address in Namibia.

462. The Registrar of Companies is the central authority that registers and maintains all company records. All the records kept by the office are available for inspection subject to a minimal fee. However, in discussions with the office, the mission was advised that the documents regarded as “closed files” are only accessible with permission from the shareholders. In other words, competent authorities cannot have access to these files unless authorized to do so by the shareholders.

463. All companies registered are as soon as practicable sent to the Inland Revenue as proof of registration. In this way the Inland Revenue is able to track the companies so registered for tax purposes.

464. The authorities advised that law enforcement agencies such as the police have from time to time requested information on companies from the Registrar of Companies. What type and for what purpose the information was requested was not indicated by the authorities. For example, in the case of “closed files” the authorities did not provide any information on what has been done when a request for information from such files has been requested. However, the fact that there is such cooperation in place suggests that information is readily available for law enforcement agencies if so requested.

465. Public companies can issue bearer shares. However, it is not clear from the Companies Act whether private companies can also issue bearer shares. Moreover, there is no mechanism to monitor and control the issuance of bearer shares or ensure that the companies know who the holders of the shares are.

466. The Registrar of Companies has no mechanism by which to determine who else has beneficial interest in a registered company other than those that are submitted to the office and are indicated on the documents submitted by the company upon incorporation or whenever there are changes in the composition of shareholders, directors or change in location. The authorities advised that the office cannot go beyond any information presented, because information submitted to the office is presumed to be made in good faith.

467. As there is no mechanism to determine beneficial interest or ownership in a company, law enforcement agencies, other competent authorities as well as financial institutions do not have the ability to obtain such information.

Recommendations and comments		
468. It is recommended that the authorities ensure that inspection of documents regarded as "closed files" should be accessible to law enforcement agencies notwithstanding the requirement of getting permission from the shareholders. 469. The Registrar of Companies should consider a mechanism by which to determine who else has beneficial interest in a registered company other than those that are submitted to the office. 470. The authorities should consider a mechanism by which to monitor and control the issuance of bearer shares.		
Compliance with FATF Recommendation 33		
R.33	**NC**	• **Access to all documents kept by the Registrar should be made available irrespective of the type of companies.** • **They should be a mechanism to check beneficial interests in companies.**

4.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)

Description and analysis

471. In Namibia, trust arrangements are primarily done for estate purposes. The office of the Master of the High Court is responsible for the administration of deceased estates in terms of the Administration of Estates Act, 1995 (Act 66 of 1995); the administration of insolvent estates in terms of the Insolvency Act, 1936 (Act 61 of 1936), the Companies Act, 1973, and the Trust Moneys Protection Act, 1934 (Act 34 of 1934); the protection of minors and legally incapacitated persons, the protection and administration of the funds of minors and contra-incapacitated and absent heirs that have been paid into the Guardians Fund; the handling of liquidation of companies and close corporations in terms of the Companies Act, 1973; determination and assessment of estate duty; and the supervision of trusts in terms of the Trust Moneys Protection Act, 1934.

472. The preparation of trusts is primarily done by legal practitioners. Legal practitioners and auditing firms assist clients in the drafting and preparation of Trust Deeds. There are, however, no prescribed formalities, and a trust can even be constituted orally. Further, any person can draw up a trust deed, just as in the case of a normal commercial contract. In view of the attorney-client privilege competent authorities cannot obtain, nor have access to the information on beneficial owners under a trust. Indeed, in further elaborating on this issue, the LSN advised that a legal practitioner or auditor may also not be aware of the ultimate beneficiary, if there is another "trust" relationship between the beneficiaries whose names appear in the Deed, and the actual beneficiaries whose names may not appear.

473. Trusts are established for estate planning purposes, whereby a wealthy individual might transfer his or her assets to the trust so that the assets no longer formed part of his or her estate. A trust is a form of legal arrangement that vests legal interest in certain assets on the trustees who hold and apply the assets in accordance with the terms of the trust deed. Typically a trust deed will contain detailed provisions relating to the administration of the trust and the duties and powers of the trustees. A deed will typically also indicate the minimum number of trustees to be in office, and what happens if the number falls below the minimum, proceedings at meetings of trustees and the manner in which trustees can exercise their functions. The trustee has to act in accordance with the requirements in the trust deed. The Trust Deed needs to specify the beneficiaries, or, as in charitable trusts, a class of beneficiaries, with sufficient particularity that they can readily be identified.

474. The Trust Moneys Protection Act protects trust money. The Trust Deed should be filed with the Master of the High Court, and as such becomes a public document, and anyone can access it, including the competent authorities. Where a trust acquires real property, this would be registered with the Deeds Registry. Some of the information required to be provided when registering the trust instrument include the property which the trustee holds in his or her capacity as a trustee; make any account or investment at a financial institution identifiable as a trust account or trust investment; and make any other property identifiable as trust property. However, information on the ultimate beneficial interest under a trust is not available to the public.

475. Under the 1934 Act, whenever a person receives money in his or her capacity as trustee, he or she is required by law to deposit such money in a separate trust account at a banking institution. But as discussed in the preceding paragraph, the trustee has to indicate that the account is a trust account.

476. With respect to custody of documents, a trustee is prohibited from destroying any document without the written

consent of the Master of the High Court which serves as proof of any investment, safe custody, control, administration, transfer or distribution of trust property before the expiration of a period of 5 years from the termination of a trust.

477. With regard to lawyers preventing the unlawful use or abuse of trusts, the LSN advised that legal practitioners are officers of the court, and undertake to uphold the Constitution of Namibia. As such they are not allowed to aid the commission of an offence, and must guide their clients to act within the law. There is no list of prescribed mechanisms used by legal practitioners to ensure that a trust is not used for unlawful purposes. Once the trust is set up, the legal practitioner would in any event fall out of the picture. However, while this is the case, nevertheless the LSN should make reasonable efforts to carry out CDD on clients seeking to set up trusts.

Recommendations and comments

478. The authorities should impose obligations on lawyers to know who the ultimate beneficiary is under a trust and prevent the abuse of trusts for unlawful purposes.
479. Competent authorities should be given adequate powers to obtain or access information on the ultimate beneficial owners under a trust.
480. While the legal practitioners may not have control on their client's actions under a trust, the LSN should consider providing guidance on the type of CDD that may be carried out to ameliorate the risk of abuse of trusts.

Compliance with FATF Recommendations

R.34	**NC**	• **Competent authorities have no access to information related to the ultimate beneficial owners under a trust.** • **No measures have been taken to prevent the unlawful use of trusts in relation to ML and FT.**

4.3 Nonprofit organizations (SR.VIII)

Description and analysis

481. **Registration of NPOs:** Article 21 of the Constitution guarantees the fundamental right to freedom of association, which includes the freedom to form and join associations or unions, including trade unions and political parties. Registration of NPOs in Namibia is mandatory in that all associations seeking to operate as NGOs are required to incorporate their entities under section 21 of the Companies Act, 1973 (the provision will remain the same under the 2004 Act). Hence they are described as section 21 Companies. In the experience of Namibia these kinds of companies are suitable for associations with the main object of promoting religion, art, sciences, charity, recreation, or any other cultural or social activity or communal group interests. There are an estimated 480 section 21 companies in Namibia. This estimate is based on an extrapolation of the number of NPOs registered in the last 5 years which according to the Ministry of Trade and Industry 2004 annual report was 158. The 480 assumes that these have been registered since 1990, which is Namibia's independence. There is no information available on the actual number of NPOs operating in Namibia both foreign and domestic hence the extrapolation. Section 21 companies do not automatically receive tax exemptions. These have to be applied for in terms of the relevant legislation.

482. **Legal and Supervisory framework:** The Registrar of Companies is responsible for registering NPOs. In order to register, a NPO needs to reserve a proposed name and state the main object of the NPO which as mentioned above has to advance causes for the betterment of Namibian society. Once the name is approved, as in the case of a company for profit, the Memorandum and Articles of Association have to be prepared and submitted to the Registrar of Companies. A section 21 company is as a matter of practice limited by guarantee as to the amount contributed by each member. No shares are issued although the list of all subscribers of the NPO has to be submitted to the Registrar. As the NPO is a public company, all provisions in the Companies Act dealing with public companies, other than those provisions pertaining to the shares or share capital of a company, apply. This is because the NPOs are not primarily commercial in purpose and do not distribute profits to a set of directors, shareholders or managers.

483. Under the Companies Act, the section 21 company must have a minimum of 7 members and at least 2 directors. There is no legal impediment to foreign members or directors but these have to be identifiable. Before incorporation, the written consent of a Namibian auditor is required. Importantly the registered address of the

company in Namibia has to be provided preferably the address of the attorneys or auditors. Because the NPO is registered as a public company, they are required to submit on an annual basis audited financial statements and render income tax returns. Indeed, a NPO is required to appoint a public officer appointed pursuant to the Income Tax law, who is a person responsible for dealing with the Ministry of Finance. This provides a measure of accountability and monitoring of the activities of the NPO. Further, as in the case of profit making companies, all section 21 companies registered are sent to the Inland Revenue, which is proof of registration.

484. However, while the Companies Act provides an adequate framework for NPOs, the authorities acknowledged in discussions with the mission team that there is no monitoring mechanism for NPOs. Indeed, no follow up is made by the Registrar to monitor their activities and determine whether they are undertaking activities reflected in the Memorandum of Association submitted to the company registry. Only when they is an allegation of misconduct by an NPO does the Registrar check what activities they have been engaged and whether there has been any violation of any law. On the other hand, it is not necessarily clear who has oversight on the activities of NPOs as the mission was advised that the National Planning Commission monitors the activities of NPOs to oversee their projects.

485. **Sanctions:** NPOs can be de-registered for failure to pay their annual dues to the Ministry of Trade and Industry to keep their company operational and any other serious violations of the companies' law or other law of Namibia. No NPO has been de-registered or sanctioned in any manner by the Registrar's office.

486. **Terrorist Financing:** There are currently no measures in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations. Indeed, the office of the Registrar of Companies advised that they do not check whether the NPOs have funds when registering or where their funding is coming from. This is a potential loophole for either money laundering or terrorist financing abuse since the sources of funding are not checked, or inquired into. The reason given was that NPOs are considered to be charitable organizations and will not make any profits. This is an area where the authorities should find ways of strengthening the registration and post registration mechanisms.

487. No AML/CFT guidance has been given to NPOs by any competent authority in Namibia.

Recommendations and comments

488. The Registrar's office should ensure that it has verifiable and timely information on NPOs operating in Namibia.
489. In the light of the computerization process underway, the information on NPOs should be maintained separately from profit making companies.
490. An appropriate monitoring mechanism for NPOs with a specific responsible body should be established including the ability to monitor sources of funds for NPOs.
491. As AML/CFT guidelines are developed for accountable institutions, those related to NPOs should be as well.

Compliance with FATF Recommendations

SR.VIII	**PC**	• **There is no appropriate effective monitoring mechanism for NPOs including the ability to monitor sources of funds for NPOs.** • **No AML/CFT guidelines have been issued for NPOs.**

National and International Cooperation

5.1 National cooperation and coordination (R.31)

Description and analysis

492. The Ministries of Finance and Justice are the principal institutions responsible for coordinating the government's AML/CFT policies both domestically and internationally.

493. There is a Task Force on AML/CFT established in 1999 through a Cabinet decision. It was constituted within the framework of ESAAMLG's MOU signed by the government of Namibia. It currently reports to the Ministry of Finance and has been chaired by NAMFISA. However, at the time of the assessment, the authorities advised that

the BoN would soon take over the responsibility of chairing the Task Force. Its mandate is to advise government on AML/CFT matters, and work with ESAAMLG on mutual evaluation exercises. The Task Force worked well with government until in 2003 when there was a change of administration. The challenge then was to raise AML/CFT awareness for the new Ministers of Finance, Justice and Safety and Security to bring them up to speed with AML/CFT issues.

494. The members of the Task Force are: Ministries of Finance, Justice, and Safety & Security; the Attorney General; BoN; NAMFISA; and a representative of the commercial banks.

495. While progress has been made in enacting legislation or preparing Bills to address AML/CFT issues, much remains to be done by way of setting up effective mechanisms which will enable the BoN (designated to be the FIU), law enforcement agencies and NAMFISA to cooperate in the implementation of policies and activities to combat money laundering and terrorist financing. This will be especially critical in the area of sharing of information among the agencies but with regard to the FIU, to act as an interface between the law enforcement agencies and the accountable institutions.

496. The Task Force is a strong foundation which will be instrumental in facilitating consultations between the competent authorities, the accountable institutions including DNFBP once the AML/CFT measures are put in place. In discussions with some member of the private sector, concern was expressed at their lack of involvement in contributing to the development of the AML/CFT legal and institutional framework in Namibia. In particular, there were concerns that there was less consultation on the FI Bill.

497. With regard to the membership of the Task Force, the LSN, dealers in precious stones and the accountants are not represented on the Task Force. As they are important stakeholders in the AML/CFT framework the authorities should invite them to participate in the Task Force.

Recommendations and comments

498. Membership on the Task Force should be increased to include the LSN and dealers in precious stones as they are important stakeholders in the AML/CFT framework.
499. The BoN, law enforcement agencies such as the prosecution office and the police, and NAMFISA should establish clear operational mechanism for purposes of implementing the policies and activities to combat money laundering and terrorist financing.

Compliance with FATF Recommendation 31

R.31	**LC**	• **They should be appropriate operational mechanism by which the various AML/CFT stakeholders including the private sector will cooperate as this is currently lacking.**

5.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

Description and analysis

500. Namibia is not a party to the Vienna Convention of 1988. However, it has ratified the Palermo Convention in 2002 although it has not fully implemented the requirements of convention notwithstanding the passing into law of the POCA and the ACA. One of the areas not implemented yet is instituting a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies susceptible to money laundering; and using existing special investigative techniques such as controlled delivery, electronic or other forms of surveillance in money laundering or terrorist financing activity. Its criminalization, law enforcement, international cooperation as it relates to extradition and AML/CFT system have deficiencies as discussed in this report (see discussion below on Extradition under R37, 39 and SR V).

501. Namibia is signatory to the International Convention for the Suppression of the Financing of Terrorism but has not yet ratified the instrument. Further, it has not implemented the requirements of the convention although there is, as discussed, a Terrorism Bill pending. No time frame has been set for ratifying the convention.

502. The GoN is actively giving due consideration to the twelve existing anti-terrorism conventions with a view to

ratifying all of them. Out of the twelve, Namibia has ratified the following conventions:
(a)Convention on Physical Protection of Nuclear Material, September 2002;
(b)Convention for the Suppression of Unlawful Acts against Safety of Maritime Navigation, April 2004;
(c)Convention for the Suppression of Unlawful Seizure of Aircraft, November 2005;
(d)Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, November 2005; and
(e)Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, December 2005.

503. With respect to the UNSCRs 1267 and 1373, Namibia has not yet promulgated legislation to implement the requirements of the UN Security Council resolutions. (see discussion under R 10 and SR VII)

504. The authorities did advise that in view of the upcoming 2010 World Cup even in South Africa, SADC is already discussing the challenges that will be faced by the region and how to address these challenges. Namibia is the current chair of the sub-committee looking at this subject matter. There is particular concern that terrorists and terrorist organization might take advantage of this world gathering either through setting up of "businesses" or other means as fronts to perpetrate their acts. It is for this reason that the authorities should expedite the full implementation of all the UN obligations as discussed above.

Recommendations and comments

505. Namibia should use existing special investigative techniques such as controlled delivery, electronic or other forms of surveillance in money laundering or terrorist financing activity.
506. Namibia should expedite the ratification of all the remaining relevant anti-terrorism related conventions.
507. Namibia should establish a framework or appropriate mechanism to fully implement the UN Security Council resolutions.

Compliance with FATF Recommendation 35 and SR I

R.35	**NC**	• **Lack of implementation of the Vienna Convention** • **Although the Palermo convention has been ratified, most of its provisions have not been fully implemented yet. In addition, other UN Conventions and Resolutions have not been ratified and implemented.**
SR.I	**NC**	• **The Terrorist Financing Convention has not been ratified nor its provisions implemented. There is a Terrorism Bill pending.** • **The UN Resolutions have not been fully implemented.**

5.3 Mutual Legal Assistance (R.32, 36-38, SR.V)

Description and analysis

508. **Relevant Legal Provisions and Framework:** The principal legal instrument providing the basis for international cooperation in Namibia is the International Co-operation in Criminal Matters Act No. 9, 2000 (ICCM). The other laws complimenting the ICCM are the Criminal Procedure Act No. 51, 1977 (CPA, 1977). Parliament has passed a new CPA, 2004, which when it comes into effect will repeal the 1977 statute. It will however, not affect the provisions that deal with international cooperation.

509. The ICCM is the law that facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of proceeds of crime between Namibia and foreign states. The Ministry of Justice is responsible for the administration and implementation of the requirements of the ICCM. The ICCM applies to and facilitates international cooperation with countries within the Southern African Development Cooperation (SADC) namely, Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.[6] Section 27 gives authority to the Minister to enter into an agreement with any State outside the SADC region for the provision of mutual assistance in criminal

[6] In August 2005, Madagascar was admitted as a member of this regional grouping. However, it has not been added to the Schedule 1 of the ICCM listing the SADC countries. Seychelles temporarily withdrew as a member of SADC.

matters.

510. Under the ICCM, Namibia's international cooperation in mutual legal assistance or extradition has to be established by way of entering into bilateral or multilateral agreements with other countries, or by designating specific countries to which MLA or extradition may be effected, as is the case with SADC countries. The authorities did however, advise that MLA can be facilitated on the basis of reciprocity as will be seen later in the requests that have been made either by Namibia to another country or from another country to Namibia.

511. There are currently no formal agreements between Namibia and other countries that address the issue of international cooperation in criminal matters. In discussions with the authorities, they advised that there were in the process of negotiating treaties with several countries. However, the Namibian law enforcement agencies have informal agreements with other SADC countries that provide mutual legal assistance and cooperation in criminal matters. This is for example done through Interpol and the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO). But since these agreements are informal and cannot be enforced in a court of law, there a need for formal legal initiatives to strengthen regional law enforcement cooperation.

512. *Process of providing MLA:* In section 2 of the ICCM, a judge in chambers or a magistrate can, on application made to him or her, issue a letter of request in which assistance from a foreign state is sought in obtaining information as is stated in the letter of request for use in an investigation relating to an alleged offence. In order to issue the letter of request, there have to be reasonable grounds for believing that an offence has been committed in Namibia or that it is necessary to determine whether an offence has been committed. The Permanent Secretary (PS) of the Ministry of Justice is responsible for sending the letter of request to the court or body specified in the letter of request, with jurisdiction in the area or place where the evidence or information is to be obtained. Once a letter of request is issued by the court, the registrar or clerk of the court is required to notify the PS in writing without any delay of such decision and furnished with a copy of the letter.

513. In matters requiring urgent attention, a letter of request may be sent directly to the court or competent body. However, a follow up notification of this urgency is required to be sent to the PS in writing by the registrar or clerk of the court and furnished with a copy of the letter of request.

514. Section 5 of the ICCM provides that evidence obtained by a letter of request is admissible as evidence in any proceedings related to the offence alleged for which the evidence was obtained.

515. With regard to foreign requests to Namibia for assistance, section 7 of the ICCM provides that a request has to be submitted to the PS, or in case of an emergency, it can be made directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is living. Where a request is received by the PS, the PS is required to forward this to the appropriate court; where it is the court receiving the request, the PS has to be notified without delay. The assistance can be provided either where the proceedings have been instituted in a court or tribunal in the requesting State; or there are reasonable grounds for believing that an offence has been committed in the requesting State, and an investigation is being conducted in the requesting State.

516. The ICCM in section 8 further provides that when a request for assistance is granted, a magistrate if satisfied that the assistance is necessary, shall cause the person whose evidence is so required, to be subpoenaed to appear and give evidence or produce any book, document or object before him or her, and upon the appearance of such person, the magistrate shall administer an oath to or accept an affirmation from him or her and take his or her evidence upon interrogatories or otherwise as requested, as if such person were a witness in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

517. Section 20 of the ICCM provides a framework for assistance in enforcing foreign confiscation orders. In giving effect to such order, the PS has to be satisfied that such order is final and no longer subject to review; that the person against whom such order was made had an opportunity to defend during the proceedings in which that order was made; that such order cannot be satisfied in full in the foreign State in which it was made; that such order is enforceable in the requesting State concerned; and that the person concerned holds property in Namibia. However, the PS has to submit such request to the Minister of Justice for approval to enforce such order in Namibia. Once the

Minister gives the approval, the PS has to lodge the order with the clerk of a magistrate court in Namibia a certified copy of the foreign order to which the approval relates. The court then issues a notice to the person against whom the order has been made and that such order has been registered at the court concerned The person may within a prescribed period and in a prescribed manner apply to court for setting aside such an order. The notice is served on the person in a prescribed manner. But where the person is not present in Namibia, the notice is served in the person having effective control of the relevant property in Namibia.

518. Section 24 of the ICCM is the provision that deals with foreign restraint orders. The process of giving effect to such order is the same to the one dealing with confiscation order except that this is done in the High Court as opposed to the magistrate court.

519. The ICCM does not limit provision of other assistance. Indeed, section 30 provides that nothing in the ICCM shall be construed as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international cooperation in criminal matters.

520. **Statistics:** Namibia has made 4 requests (which were also processed) for MLA to Latvia, Poland, South Africa and the United Kingdom. The requests to Latvia, Poland and the United Kingdom were made on the basis of reciprocity. The authorities indicated that the GoN committed themselves to providing assistance to these countries notwithstanding the absence of any formal agreement or designation. On the other hand, Namibia has received and processed 3 requests from Angola, Botswana and South Africa. In the past years, the authorities had refused to process a request from a designated country for failure to satisfy Namibia MLA requirements.

521. **Range of Mutual Assistance:** As discussed above, the scope of mutual legal assistance is defined in the ICCM, the CPA and other laws. Discussions with the authorities indicated that assistance can be provided on the basis of the principle of reciprocity. However, it is not clear whether MLA can be provided where the request relates to property of corresponding value.

522. **Secrecy and Confidentiality:** It was indicated to the authorities, that in view of the fact that the POCA has not yet come into effect, it would be difficult to effect a request for MLA were secrecy or confidentiality issues arise. For example, it was suggested that absent a court order directing a bank to share information, the GoN cannot facilitate MLA to another country seeking information from a bank. This would also be the case with respect to tax offences. But in discussions with the tax authorities, they advised that while they would oppose any request for tax information on individuals or companies, they would and have complied with court orders requiring them to do so. On the other hand, there has been no MLA case involving a secrecy or confidentiality matter that has been dealt with by the authorities.

523. **Efficiency of Processes:** The process of executing MLA requests is laid down in the ICCM. The Ministry of Justice is the Central Authority for processing all requests to and from Namibia. The officials at the Ministry of Justice responsible for international cooperation advised that as at the time of the assessment, requests made by Namibia to other countries take a minimum of a year or more to be processed. Requests received and processed by Namibia have taken a minimum of 3-6 months. This is within the reasonable time frame that most jurisdictions around the world would take to process a request. In fact, the time within which Namibia processed the requests received appears to be faster than the time it took for their request to be processed.

524. **Direct Judicial Cooperation between Competent Authorities:** The primary channel for judicial cooperation is through the Ministry of Justice. Police and other Law Enforcement cooperation are facilitated through Interpol and the SADC protocols.

525. **Dual Criminality:** There is no requirement for dual criminality in providing MLA to a country. MLA will be granted if it satisfied Namibia law as indicated above in discussing the process of MLA, and it is not necessary that the offence for which MLA is requested be an offence in Namibia as well. Indeed, MLA has been provided to countries with which Namibia has no treaty or agreement. This has been done on the basis of the principle of reciprocity. As will be discussed later under the recommendation dealing with Extradition, dual criminality is required in extradition cases. Providing assistance in extradition cases may be a challenge where an offence which

is the basis of the request is not recognized in Namibia.

526. **Confiscation Procedures:** Under section 20 of the ICCM, the authorities advised that what the GoN does is to give effect to or enforce a confiscation order made in the requesting country. There is no other procedure that is required to undertaken with respect to confiscation of proceeds of crime or instrumentality. In other words, authorities from a requesting country cannot commence confiscation proceedings in Namibia as this is not provided for under the ICCM. The obligation the GoN has under the ICCM is to only enforce an order when the authorities are satisfied pursuant to the provisions of the ICCM that all the procedures as provided for are met.

527. **Terrorist Financing:** Currently there is no legislative framework for facilitating MLA for matters related to terrorism generally and terrorist financing in particular. This might make it difficult for Namibia to provide MLA to a requesting country due to the absence of an Anti-Terrorism law. However, the authorities at the MoJ raised the possibility that the assistance can be facilitated under the provisions of the CPA. Specifically, section 20 of the CPA was cited as the provision that can be used in this regard. This section provides that the State may seize any article which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Namibia or elsewhere; which may provide evidence of the commission or suspected commission of an offence, within or outside Namibia; or which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence. The section gives general powers to the GoN to seize certain articles in order to obtain evidence for the institution of a prosecution or the consideration of instituting such prosecution. The powers under section 20 are given effect to by section 21 of the CPA, which is the authority to seize any article by virtue of search warrant issued by the courts. But in the absence of an Anti-Terrorism law, the power under the CPA may be limited in its effect, for example when it comes to confiscation of terrorist related assets which is different from searching and seizing such assets.

528. **Forfeiture Fund:** Currently there is no asset forfeiture fund into which all or a portion of confiscated property will be deposited. But the POCA provides for the establishment of the Criminal Assets Recovery Fund. Once the POCA comes into effect and the institutional framework for the Fund is created, all moneys derived from confiscation and forfeiture orders as well as the balance of all moneys derived from the execution of foreign confiscation orders will be paid into the Fund. The Fund as provided by the POCA will be used for purposes of supporting law enforcement agencies. There are currently no arrangements for coordinating seizure and confiscation of actions with other countries.

Recommendations and comments

529. Namibia should develop mechanisms by which they can coordinate seizure and confiscation operations with other countries. This should be done by establishing a forfeiture fund into which confiscated property should be deposited.
530. The authorities should ensure that provision of MLA covers property of corresponding value where tainted property which is found to be the proceeds of crime is not available to be confiscated.
531. The authorities should expedite the enactment of the Terrorism Bill so as to ensure that MLA for terrorism, even if provided on a reciprocal basis, is not impeded by legal technicalities such as a lack of existence of an anti-terrorism legislative framework.

Compliance with FATF Recommendation 32, 36-38 and SR V

R.32	**NC**	• **There were no statistics available.**
R.36	**LC**	• **In the absence of the AML law, confidentiality requirements may be an impediment to providing appropriate MLA to a requesting country.**
R.37	**C**	
R.38	**LC**	• **It is not clear whether requests for MLA as it relates to property of corresponding value can be provided. Further, there is no mechanism for coordinating seizure and confiscation operations with other countries.**
SR.V	**LC**	• **MLA is not restricted by dual criminality and assistance can be rendered on the basis of reciprocity.**

5.4 Extradition (R.32, 37 & 39, & SR.V)

Description and analysis

532. **Relevant Legal Provisions:** International cooperation as it relates to extradition is governed by the Extradition Act, 1996. It is also based on a legal relationship between Namibia and another country. The relationship, as in the case of MLA, is either facilitated by treaty or designation. At the time of the assessment, the following countries have been designated for extradition purposes, namely, Australia, Botswana, Brazil, Canada, Germany, Ghana, India, Italy, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Malta, Mauritius, Mozambique, New Zealand, Nigeria, Seychelles, Sierra Leone, Singapore, South Africa, Sri Lanka, Swaziland, Tanzania, Uganda, The United Kingdom and Northern Ireland, Zambia and Zimbabwe.[7]

533. With regard to specific provisions in the Extradition Act, sections 2 and 4 of this Act subjects any person in Namibia other than Namibian citizens to be subject to extradition. The extradition is subject to the accused having committed an extraditable offence within the jurisdiction of any country which has entered into an extradition agreement with Namibia, or any other country including a Commonwealth member country, which has been specified by proclamation (or designated) in the Gazette. An extraditable offence is defined in section 3 to mean an act, including an act of omission, committed within the jurisdiction of a country as provided for in section 4, which constitutes under the laws of that country an offence punishable for 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable for the same period.

534. *Process of providing extradition assistance:* Pursuant to section 7 of the Extradition Act, requests for extradition are made to the MoJ in a manner specified in an extradition agreement; or by a diplomatic or consular representative of the requesting country accredited to Namibia. In addition, to the request being made in terms of an agreement, section 8 requires the request to be accompanied by (a) full particulars of the person whose return is requested, and information, if any, to establish the person's location and identity; (b) full particulars of the offence of which the person is being accused or was convicted, relevant provisions of the law of the requesting country which was breached, and a statement of the penalties which may be imposed for such offence; (c) statement containing which set out prima facie evidence of the commission of the offence. In discussions with the authorities, it was made clear that the requirement to set out prima facie evidence is an important ingredient without which a request for extradition can be denied; (d) the original or authenticated copy of the external warrant issued in relation to the person whose return is requested; and (e) in the case of a person who is a fugitive after conviction of an extraditable offence, provide an original or authenticated copy of the record of conviction and sentence and a certificate stating any outstanding period of any such sentence, or if no sentence has been imposed, by the original or authenticated copy of the record of the conviction and a statement by a competent judicial or public officer of the requesting country affirming that a competent court intends to impose a sentence. When appropriate and applicable, the Minister of Justice can at his or her discretion request for further particulars within a prescribed time as the Minister may determine.

535. When the MoJ is satisfied that all the requirements are met, it sends the request to a magistrate and issues to the magistrate in the area in which person being sought resides an authority in writing to proceed with the matter. Without such an authority, the magistrate cannot proceed with any hearing related to the person being sought for extradition. The magistrate if satisfied that an external warrant is authenticated as required by the law, will endorse such warrant, which can be executed in a manner contemplated by the Namibian laws related to criminal procedure. In executing the warrant and where a person is arrested, the provisions of the Namibian constitution dealing with due process apply.

536. Urgent extradition requests can be made, provided that a requesting country makes a formal application in writing within a month from the date of the request.

[7] The list of countries which Namibia has designated for extradition purposes was submitted to the United Nations Counter-Terrorism Committee in the report of the GoN of April 2003 pursuant to the UNSCR 1373 (2001).

537. **Statistics:** Between 2002 and 2005, the authorities received 9 extradition requests from Botswana (2); South Africa (4); and the Czech Republic (3). However, one of the requests from Botswana was not processed due to non-compliance with Namibian law. And in the period between 2003 and 2004, the authorities sent 10 requests to Botswana (1) and South Africa (9). As at the time of conducting the assessment, there were no extradition requests made by the authorities to other countries. It was suggested that the reason for the many requests between Namibia and South Africa is because of their close economic relationship.

538. **Dual Criminality:** For the GoN to assist a requesting country, the law requires that the extraditable offence also be an offence under the laws of Namibia. This is applicable under section 2 of the Extradition Act.

539. **Extraditable Offences:** An extraditable offence is defined in section 3 to mean an act, including an act of omission, committed within the jurisdiction of a country as provided for in section 4, which constitutes under the laws of that country an offence punishable for 12 months or more and which, if it had occurred in Namibia, would have constituted under the laws of Namibia an offence punishable for the same period. There is an in-built flexibility in the interpretation of this provision, in that all the surrounding circumstances pertaining to the alleged conduct are taken account. In other words, it will not matter that the terminology or language is different in describing the conduct, or the offence for which extradition is sought pertains to taxation, customs duty, exchange control or any other form of fiscal regulation. What is important is that the request made complies with the laws of Namibia including the provisions of the Extradition Act and that there be a treaty or extradition agreement with the requesting country. However, since money laundering or terrorist financing are not yet offences under Namibian law, it will not be possible to extradite a person who may have committed an alleged money laundering or terrorist financing offence in the requesting country.

540. Further, since Namibia has not ratified the Vienna Convention, and has elected not to use the Palermo Convention, which it has ratified, as a legal basis of cooperating with other state parties on Extradition matters, absent a treaty or agreement, its ability to effectively provide extradition assistance will be limited. The authorities did indicate that the issue of making the Palermo convention a basis for extradition in the absence of an agreement is being explored and any advice that can be provided by experts in international law will be welcomed in the light of the fact that the ratification instrument has been deposited with the UN Secretariat. It was not clear how under Namibian law this can be facilitated.

541. **Extradition of Nationals:** Section 6 of the Extradition Act precludes Namibian nationals from being extradited to a requesting country. But where a country requests their extradition, the authorities are obliged to institute the prosecution and if convicted their punishment in accordance with the laws of Namibia. Notwithstanding this provision, it is possible for a Namibian national to be extradited. For this to happen, the Minister of Justice may give a waiver by in writing authorizing a magistrate to proceed with the extradition process against a Namibian citizen whose return has been requested. The Minister has to satisfy himself or herself with either of three situations: (a) the seriousness of the extraditable offence such as acts of treason against a government of another country; or (b) the cost involved in bringing the necessary witnesses and other evidence to Namibia; or (c) any other circumstance justifying extradition, although it is not clear what these circumstances would be.

542. **Terrorist Financing:** Since there is no legislative framework to criminalize terrorist financing, it may be difficult to process the extradition of a person living in Namibia due to the dual criminality requirement under the Extradition Act. This difficult has also been discussed with regard to extraditable offences.

Recommendations and comments

543. The authorities should consider ways in which they can make the Palermo Convention the basis of extradition even though this provision of the convention was excluded at the time of ratification. For example, they could notify the UN Secretary General of their intention to change their position as originally indicated at the time of depositing the instrument of ratification.
544. The authorities should expedite the criminalization of terrorist financing to prevent potential impediments to extradition in view of the dual criminality requirement.

Compliance with FATF Recommendations

R.32	**NC**	• **No statistics are available**
R.37	**C**	
R.39	**NC**	• **Money Laundering is not yet an extraditable offence. In addition, even though Namibia has ratified the Palermo Convention it excluded the application of the Convention as the basis of extradition from applying to Namibia.**
SR.V	**NC**	**Terrorist Financing is not an extraditable offence.**

5.5 Other Forms of International Cooperation (R.32 & 40, & SR.V)

Description and analysis

545. In discussions with the authorities responsible for issues related to national, regional and international security, the assessors were advised that there is bilateral and multilateral cooperation between Namibia and countries in the region. Within the SADC context, there are protocols dealing with defense and security matters which includes cross border issues. SADC member states meet annually and whenever necessary to discuss issues of regional concern. They have adopted early warning systems related to security matters. At the bilateral level, Namibia has entered into joint permanent commissions with several neighboring countries including Angola, Botswana, South Africa, Zambia and Zimbabwe which meet annually. These commissions in addition to discussing security issues of mutual concern are also a mechanism to resolve any cross border issues and facilitate bilateral cooperation including extradition matters.

546. The BoN has Memoranda of Understanding (MOUs) with other supervisors both at home and abroad. For example it has MOUs with Central Banks from SADC member states.

547. NAMFISA has signed a MOU with the Micro Finance Regulatory Council (MFRC) of South Africa. The MOU is the basis upon which the two Authorities provide mutual assistance and the exchange of information for the purpose of facilitating the performance of their functions under their respective laws.

548. The police through Interpol and the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) engage in informal international and regional cooperation.

549. As the FIU is not in existence, there is no FIU to FIU cooperation.

Recommendations and comments

Compliance with FATF Recommendations

R.32	**NC**	• **No statistics were available.**
R.40	**LC**	• **Within the region there is extensive cooperation through the SADC and SARPCCO framework. However, there is not much activity outside the SADC region.** • **No FIU to FIU cooperation**
SR.V	**PC**	• **Within the region there is extensive cooperation through the SADC and SARPCCO framework. However, there is not much activity outside the SADC region.**

TABLE 2: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Complaint (NC), or could, in exceptional cases, be marked as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	Partially Compliant	• Though POCA crminalizes money laundering it is not yet in force.
2. ML offence–mental element and corporate liability	Partially Compliant	• Though POCA crminalizes money laundering it is not yet in force.
3. Confiscation and provisional measures	Partially Compliant	• The CPA, 1977 does not provide Namibia with a comprehensive legal regime for confiscation. • There are no provisions dealing with the tracing and identification of proceeds of crime. • The POCA though enacted is not in force.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	Partially Compliant	• The POCA though enacted is not yet in force. • **There is no measure to ensure that no financial secrecy law can inhibit the implementation of the existing AML/CFT requirements.**
5. Customer due diligence	Non-compliant	• **The existing requirements in the banking sector are neither law/regulation nor other enforceable means.** • **There are no CDD requirements in law or regulation for NBFIs, including insurance companies and the securities sector.** • **No requirement in law or regulation for FIs to detail when CDD is required, particularly when conducting occasional transactions above thresholds, occasional transactions that are wire transfers, suspicious transactions and when the FI has doubts about previously obtained identification data.** • **No requirements in law or regulation for FIs to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. The required identification documentation should be clarified and detailed.** • **No requirement in law or regulation for FIs to identify beneficial owners using relevant information or data obtained from a reliable source. For legal customers the FIs are not required to understand the ownership and control structure nor determine who are the**

		natural persons the ultimately own or control the client. • **No requirements in law or regulation for FIs to ensure that identification documents collected for CDD are kept current and to conduct ongoing due diligence on business relationships, sources of funds, transactions and risk profile.** • **FIs are not required to perform enhanced due diligence for higher risk customers.** • **There are serious doubts with regard to the implementation of CDD requirements within the banking sector.** • **No measures in relation to occasional customers are in place**
6. Politically exposed persons	Non-compliant	• There are no requirements for FIs to address PEPs.
7. Correspondent banking	Non-compliant	• There are no AML/CFT requirements for correspondent bank relationships in FIs.
8. New technologies & non face-to-face business	Non-compliant	• No requirements for FIs regarding non-face to face business relationships or new technologies.
9. Third parties and introducers	Non compliant	• While FIs are not specifically prohibited from using third parties they do not utilize them at this time. No regulations or policies address this issue.
10. Record keeping	Non-compliant	• **In the Banking sector the existing provisions are insufficient to meet FATF standards.** • **For NBFIs, there is no record keeping requirements.** • **There are serious doubts with regard to the implementation of CDD requirements within the banking sector.**
11. Unusual transactions	Non-compliant	• **In the Banking sector the existing provisions are not binding and insufficiently address the FATF requirements.** • **There is no measure that obliges the NBFIs to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.** • **There are serious doubts with regard to the implementation of the existing requirement within the banking sector.**
12. DNFBP–R.5, 6, 8-11	Non-compliant	• There are no CDD requirements in law or regulation for DNFBPs including public accountants and auditors and trust and company service providers. • There are no requirements for DNFBPs to put into place risk management systems to determine if customers are PEPs or require senior management approval to establish relationships with PEPs. • DNFBPs are not required to have policies to

		prevent misuse of technological developments in ML/TF schemes or deal with non-face to face business relationships. • There is an absence of laws and regulations that require DNFBPs to maintain proper record keeping. • No laws, regulations or policies that require account monitoring. • Absence of an effective enforceable requirement to monitor transactions in FIs. • No requirement to document unusual transactions and maintain the records for a minimum of 5 years in FIs.
13. Suspicious transaction reporting	Non-compliant	• **ST reporting requirements in law or regulation for FIs that includes terrorist acts or that address attempted ML/TF transactions.** • **No ST reporting requirements for NBFIs.** • **Existing requirement in the BIA to report any transaction suspected to be linked to a criminal activity is very general and raises serious issues of implementation by the banking institutions.**
14. Protection & no tipping-off	Partially Compliant	• **The POCA though enacted is not yet in force.** • No requirements to prohibit tipping off by FIs and their employees.
15. Internal controls, compliance & audit	Non-compliant	• **Insufficient or no requirements to develop appropriate compliance management arrangements in FIs.** • **No specific provisions for FIs to adequately resource an independent audit function and to test compliance.** • **No specific provision to require the establishment of ongoing employee training programs for ML/FT techniques.** • **No employee screening requirements for FIs.** • **There are serious doubts with regard to the implementation of the existing requirement within the banking sector.**
16. DNFBP–R.13-15 & 21	Non-compliant	• There are no obligations for DNFBPs to monitor transactions and business relationships. • No laws or regulations enacted requiring the reporting of STs in DNFBPs. • There are no reporting requirements imposed on DNFBPs. • There are no mechanisms to monitor transactions involving jurisdictions with lax AML/CFT systems. • No requirements for appropriate AML/CFT compliance management, audit, employee training programs or employee screening for accountants and auditors and trust company service providers.

17. Sanctions	Partially Compliant	• **BoN and NAMFISA lack effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with enforcement of FATF Recommendations.**
18. Shell banks	Non-compliant	• No specific prohibition for FIs to enter into or continue correspondent banking relationships with shell banks and FIs are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. • The effective implementation of shell bank oversight is further undermined by a total lack of supervisory efforts over AML/CFT in FIs.
19. Other forms of reporting	Compliant	
20. Other NFBP & secure transaction techniques	Largely compliant	• No AML/CFT measures apply to Shebeens although they pose a money laundering risk.
21. Special attention for higher risk countries	Non-compliant	• No measures to advise FIs of AML/CFT concerns in other countries and no requirements to give special attention to business relationships emanating from non-cooperating countries and document the findings.
22. Foreign branches & subsidiaries	Not Applicable	• **There are no known foreign subsidiaries or branches in operation.**
23. Regulation, supervision and monitoring	Non-compliant	• **The BoN and NAMFISA do not ensure FIs are effectively implementing the FATF Recommendations.** • **NBFIs have not been designated a competent authority to ensure that FIs adequately comply with the requirements to combat ML/TF.** • **Directors and senior officers of NBFIs do not undergo necessary legal or regulatory measures to prevent criminals from ownership or management functions.** • **The BoN does not supervise the money exchange service (Bureau De Change operators) for compliance with AML/CFT requirements.**
24. DNFBP - regulation, supervision and monitoring	Non-compliant	• **DNFBPs are not subject to effective regulatory and supervisory regimes in the AML/CFT area.**
25. Guidelines & Feedback	Partially compliant	• No guidelines have been issued yet to assist NBFIs to implement and comply with AML/CFT requirements. • The BoN does not provide feedback to banking institutions reporting STRs.
Institutional and other measures		
26. The FIU	Non-Compliant	• The FIU has not been established yet.
27. Law enforcement authorities	Partially Compliant	• **Namibia has designated law enforcement authorities to be responsible for investigating ML and FT offences, however, as such offences are not criminalized yet, such measures are not in effect yet.**

		• Specialized Police Units are in place but offences of money-laundering and financing of terrorism do not exist yet.
28. Powers of competent authorities	Partially Compliant	• **Legal tools exist but rarely used.** • **POCA and CPA though enacted are not yet in force.**
29. Supervisors	Largely Compliant	• **BON and NAMFISA do not have clear authority to compel the production of or to obtain access to all records, documents or information relevant to monitoring AML/CFT compliance.**
30. Resources, integrity and training	Non-Compliant	• Expertise enough staff resources are needed. Relevant training is lacking to combat efficiently ML and FT. Status of staff regarding integrity and independence should be worked out.
31. National co-operation	Largely Compliant	• There should be appropriate operational mechanism by which the various AML/CFT stakeholders including the private sector will cooperate as this is currently lacking.
32. Statistics	Non Compliant	• There are no comprehensive statistics available.
33. Legal persons–beneficial owners	Non Compliant	• Access to all documents kept by the Registrar should be made available irrespective of the type of companies. • They should be a mechanism to check beneficial interests in companies.
34. Legal arrangements – beneficial owners	Non Compliant	• **Competent authorities have no access to information related to the ultimate beneficial owners under a trust.** • **No measures have been taken to prevent the unlawful use of trusts in relation to ML and FT.**
International Cooperation		
35. Conventions	Non Compliant	• Although the Palermo convention has been ratified, most of its provisions have not been fully implemented yet. In addition, other UN Conventions and Resolutions have not been ratified and implemented.
36. Mutual legal assistance (MLA)	Largely Compliant	• In the absence of the AML law, confidentiality requirements may be an impediment to providing appropriate MLA to a requesting country.
37. Dual criminality	Compliant	
38. MLA on confiscation and freezing	Partially Compliant	• It is not clear whether requests for MLA as it relates to property of corresponding value can be provided. Further, there is no mechanism for coordinating seizure and confiscation operations with other countries.
39. Extradition	Non Compliant	• Money laundering and terrorist financing are not extraditable offences. Further, even though Namibia has ratified the Palermo Convention it excluded the application of the ratification provisions in the Convention from applying to Namibia.

40. Other forms of co-operation	Largely Complaint	• Within the region there is extensive cooperation through the SADC and SARPCCO framework. However, there is not much activity outside the SADC region.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	Non Compliant	• The Terrorist Financing Convention has not been ratified nor its provisions implemented. There is a Terrorism Bill pending. • The UN Resolutions have not been fully implemented.
SR.II Criminalize terrorist financing	Non Compliant	• Terrorist financing has not been criminalized and the Terrorism Bill is still in draft form and there is no time frame as to when it will be tabled in parliament. • Legal liability for legal persons under the Terrorism Bill should be provided for.
SR.III Freeze and confiscate terrorist assets	Non Compliant	• There is no legal or administrative framework for the freezing, seizing and confiscation of terrorism-related funds and implementation of the Resolutions. • **Namibia does not have an institutional framework to effectively provide assistance to another jurisdiction pursuant to UNSCR 1373.** • There is no mechanism to communicate effectively with the financial sector.
SR.IV Suspicious transaction reporting	Non-compliant	• No law or regulation requiring FIs to report STs involving terrorism.
SR.V International cooperation	Partially Compliant	• Since MLA is not restricted by dual criminality and assistance can be rendered on the basis of reciprocity, the absence of an Anti-Terrorism law cannot be a major impediment. • Terrorist Financing is not an extraditable offence. • Within the region there is extensive cooperation through the SADC and SARPCCO framework. However, there is not much activity outside the SADC region.
SR.VI AML requirements for money/value transfer services	Non-compliant	• No policies, procedures in place to ensure compliance by MVT operators and no monitoring of MVT operators to ensure compliance with the FATF 40 + 9 Recommendations. • No requirements for MVT service operators to maintain a current list of its agents.
SR.VII Wire transfer rules	Non-compliant	• There are no requirements for all FIs to ensure that complete originator information is included in outgoing wires and that each FI in the payment chain maintains all the originator information. • FIs are not required to ensure that non-routine transactions are not batched. No requirements for beneficiary FIs to adopt effective risk-based

		procedures for identifying wire transfers not accompanied by complete originator information. • **There are serious doubts with regard to the implementation of the wire transfer record requirements.** • The effective implementation of wire record keeping requirements is further undermined by a total lack of supervisory oversight over AML/CFT efforts in banking institutions and the lack of enforceability of BoN requirements.
SR.VIII Nonprofit organizations	Partially Compliant	• There is no appropriate effective monitoring mechanism for NPOs including the ability to monitor sources of funds for NPOs. • No AML/CFT guidelines have been issued for NPOs.
SR.IX Cross Border Declaration & Disclosure	Partially Compliant	• There is a lack of effective implementation of SR IX and no monitoring mechanism of transportation of currency.

TABLE 3: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2 & 32)	• There is need to maintain a comprehensive record of statistics on confiscation, criminal cases and other related law enforcement matters. Creating a mechanism to compile such statistics in a systematic manner is critical for purposes of policy formulation on AML/CFT matters. • The authorities are encouraged to expedite the bringing into force the POCA.
Criminalization of Terrorist Financing (SR.II, R.32)	• The authorities should expedite the enactment of the Terrorism Bill. • Legal liability for legal persons under the Terrorism Bill should be provided for.
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	• There is need to maintain a comprehensive record of statistics on confiscation, criminal cases and other related law enforcement matters. Creating a mechanism to compile such statistics in a systematic manner is critical for purposes of policy formulation on AML/CFT matters.
Freezing of funds used for terrorist financing (SR.III, R.32)	• The authorities should expedite the establishment of mechanism to fully implement UN Security Council Resolutions 1267 and 1373. The authorities should consider requesting TA if necessary for the purpose of getting the appropriate assistance to comply with the UN obligations. • There is need to maintain a comprehensive record of statistics on confiscation, criminal cases and other related law enforcement matters. Creating a mechanism to compile such statistics in a systematic manner is critical for purposes of policy formulation on AML/CFT matters.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Provide core AML/CFT capacity to all relevant agencies in order to ensure that the FIU to be established will be effective.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Provide core AML/CFT capacity building for law enforcement agencies and prosecutors office. • In addition, individual agencies should seek specialized ML/FT training appropriate to the agency.

3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	• The authorities should consider developing and implementing a risked based approach to its proposed AML/CFT regime.
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• The authorities should require in law or regulation where appropriate or by other enforceable means CDD requirements in line with FATF Recommendations with a focus on the following: • The authorities need to establish in law or regulation when CDD is required for financial institutions (FIs). Coverage should include circumstances when establishing business relations; carrying out occasional transactions above the applicable designated threshold (USD/€15,000), including in a single operation or in several operations that appear to be linked; carrying out occasional transactions that are wire transfers; there is a suspicion of money laundering or terrorist financing, regardless of any exceptions or thresholds; and when the FI has doubts about the veracity or adequacy of previously obtained customer identification data. • FI's should be required to put into place risk management systems to determine if customers are politically exposed persons (PEPs). Some safeguards should include senior management approval to establish relationships with PEPs, establish the source of wealth, source of funds and conduct enhanced account monitoring. • FIs should be required to perform enhanced due diligence for higher risk customers such as non-resident customers, private banking, legal persons and companies that have nominee shareholders or shares in bearer form. • Need to establish and clarify in law or regulation that FIs are required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information. The required identification documentation should be specified. • Law or regulation should specify that FIs should be required to identify the beneficial owner using relevant information or data obtained from a reliable source. For all customers, the FI should determine whether the customer is acting on behalf of another person and take reasonable steps to obtain sufficient identification data to verify the identity of that other person. Also for customers that are legal persons or legal arrangements, the FI should be required to take reasonable measurers to understand the ownership and

	control structure of the customer and determine who are the natural persons that ultimately own or control the customer. • FIs should be required by law or regulation to conduct ongoing due diligence on business relationships. This would include scrutiny of transactions undertaken throughout the course of the relationship to ensure transactions being conducted are consistent with the FI's knowledge of the customer, their business and risk profile and source of funds. Further FI's should ensure that documents and data collected under the CDD process is kept up-to-date and relevant. • FIs should be required to obtain sufficient information about cross-border respondent institutions to understand their business, reputation, quality of supervision and if it has been subject to a ML/TF investigation or regulatory action. Assess AML/CFT controls, obtain senior management approval before establishing new correspondent relationships, document responsibilities of each institution and if payable-through accounts are permitted determine if the respondent FI is able to provide relevant customer identification information and that they have performed all normal CDD obligations.
Third parties and introduced business (R.9)	• The authorities should clarify whether FIs can or cannot rely on intermediaries or other third parties to perform some of the elements of the CDD process. If it is decided to allow this practice then the FATF Recommendation 9 requirements should be adopted.
Financial institution secrecy or confidentiality (R.4)	• Give effect to the POCA and pass and implement the FI Bill to ensure that no financial institution secrecy laws inhibit the implementation of the FATF Recommendations.
Record keeping and wire transfer rules (R.10 & SR.VII)	• By law or regulation FI should be required to maintain all necessary records on transactions, both domestic and international, for at least 5 years following completion of the transaction. • The authorities through law or regulation should require FIs to maintain records of the identification data, account files and business correspondence for at least 5 years following the termination of an account. • FIs should be required by law or regulation to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority. • The authorities should introduce requirements for FIs, in addition to banks, to obtain and maintain complete originator information and verify its accuracy for all wire transfers.

	• FIs should be required to include full originator information in the message or payment form accompanying the wire transfer for cross-border wire transfers. • For domestic wire transfers FIs should include full originator information in the message or the originators account number. • Intermediary FIs should be required to maintain all the required originator information with the accompanying wire transfer.
Monitoring of transactions and relationships (R.11 & 21)	• The competent authorities should implement effective measurers to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. • FIs should be required to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations. • Those transactions in non cooperating countries with no apparent economic purpose should be examined and the findings documented in writing. • FIs should be required to examine unusual transactions and patterns, document the findings in writing and maintain the records for at least 5 years. • Namibia should be able to apply appropriate counter-measures to countries that continue not to apply FATF Recommendations.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The authorities should give effect to the POCA and pass and implement the FI Bill to require the reporting of STs, make it applicable to terrorist acts, and include situations of attempted transactions and those situations asserting that they are tax matters. • The authorities should be sure that FIs are required by law or regulation to report STRs in situations involving terrorism, terrorist acts, by terrorist organizations or those who finance terrorism as required by Special Recommendation IV. • The authorities should prohibit by law tipping off by FIs, their directors, officers and employees. • The development of a large cash reporting system above a fixed threshold and a computerized data base should be considered.
Cross Border declaration or disclosure (SR.IX)	• Provide AML/CFT core capacity training for customs officials. The customs department should seek specialized training in risk profiling and other matters specific to the

	customs officials.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• The authorities should enact measurers to require FIs to develop appropriate compliance management arrangements and at a minimum the designation of an AML/CFT compliance officer at the management level. The compliance officer should have timely access to KYC data and other CDD information. • Require FIs to maintain an adequately resourced and independent audit function to test compliance. • Require FIs to establish ongoing employee training to ensure that employees are kept informed of new developments, including current ML/TF techniques, methods and trends. • FIs should be required to put in place screening procedures to ensure high standards when hiring employees.
Shell banks (R.18)	• The authorities should clearly prohibit the establishment of shell banks. • Measures should be put into place to prohibit FIs to enter into, or continue, correspondent banking relationships with shell banks. • FIs should be required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	• Authorities should ensure that FIs are effectively implementing the FATF Recommendations and that a designated competent authority has responsibility for ensuring that FIs adequately comply with the requirements to combat ML/TF. • Authorities should ensure that directors and senior management of FIs should be properly evaluated, on the basis of fit and proper criteria where appropriate, including those relating to expertise and integrity and ensure that criminals are prevented from ownership and management functions. • Authorities should provide AML/CFT training to all competent authorities involved in combating ML/TF. Specific training is necessary initially for BoN and NAMFISA regulators. • The BoN and NAMFISA AML/CFT compliance functions needs to be provided with adequate staffing, expertise and training. • Authorities should enhance and clarify the NAMFISA Act to include effective, proportionate and dissuasive criminal, civil or administrative sanctions to deal with AML/CFT compliance matters. • The money changing service (Bureau De Change) in Namibia should be subject to effective systems for monitoring and ensuring compliance with national requirements to combat ML/TF.

Money value transfer services (SR.VI)	• The competent authorities need to ensure that MVT service operators comply with the FATF 40 + 9 Recommendations and monitor their compliance.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• FATF CDD requirements should be developed by the authorities for trust and company service providers. • The authorities should develop FATF CDD requirements for lawyers, public accountants and auditors, specifically when they prepare for or carry out transactions for a client such as management of bank, savings or securities accounts. • Dealers in precious stones and metals should be covered under the AML/CFT framework. As this is a significant industry in Namibia, the authorities should include the sector under the FI Bill because not doing so will create a loophole in the AML/CFT framework.
Monitoring of transactions and relationships (R.12 & 16)	• The authorities should develop and implement FATF requirements for the monitoring of transactions as required by Recommendations 12 and 16 for lawyers, accountants and auditors and trust company service providers.
Suspicious transaction reporting (R.16)	• Reporting requirements should be imposed on Casino's, lawyers, dealers in precious stones and metals, real estate agents and public accountants. • The authorities should develop requirements for the establishment and maintenance of internal procedures, policies and controls to prevent ML/TF in accountants and auditors and trust company service providers. • The authorities should give effect to the POCA and other AML/CFT laws and regulations to require the reporting of STs, make it applicable to terrorist acts, and include situations of attempted transactions and those situations asserting that they are tax matters. • Laws and regulations should be enacted to require reporting of STs in line with FATF requirements for lawyers, accountants and auditors and trust company service providers.
Internal controls, compliance & audit (R.16)	• The authorities should develop requirements for the establishment and maintenance of internal procedures, policies and controls to prevent ML/TF in accountants and auditors and trust company service providers.
Regulation, supervision and monitoring	• The Casino Board in collaboration with the casino industry

(R.24-25)	should develop an appropriate supervisory mechanism in the light of the fact that the industry will be covered by the FI Bill. However, in view of the Casino Boards concern on the increased cost of introducing a monitoring system, it is recommended that a self-regulatory mechanism for the industry could be devised. Once the FI Bill is enacted, the Board will not have the capacity to ensure that casinos implement the AML/CFT measures. • The Casino Board should develop an appropriate mechanism for checking whether prospective operators or managers of casinos do not have a criminal background. • The Casino Board and the LSN should issue AML/CFT guidelines to their respective accountable bodies under their jurisdiction. • The competent authorities should ensure that accountants and auditors and trust company service providers are subject to effective systems for monitoring and compliance with AML/CFT requirements and issue guidelines to assist them in complying. • The competent authorities should ensure effective, proportionate and dissuasive criminal, civil or administrative sanctions are available to deal with persons covered by the FATF Recommendations that fail to comply with AML/CFT requirements. • Authorities should designate an authority empowered to apply these sanctions. • The competent authorities should ensure compliance with FATF Recommendations 17, 24-25.
Other designated non-financial businesses and professions (R.20)	• The Shebeens pose a money laundering risk and should be brought under the AML/CFT regime. In view of their size and how the business is conducted a self-regulatory framework might be appropriate.
5. Legal Persons and Arrangements & Non-Profit Organizations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• It is recommended that the authorities ensure that inspection of documents regarded as “closed files” should be accessible to law enforcement agencies notwithstanding the requirement of getting permission from the shareholders. • The Registrar of Companies should consider a mechanism by which to determine who else has beneficial interest in a registered company other than those that are submitted to the office.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• The authorities should impose obligations on lawyers to know who the ultimate beneficiary is under a trust. • Competent authorities should be given adequate powers to obtain or access information on beneficial owners

	under a trust. • While the legal practitioners may not have control on their client's actions under a trust, the LSN should consider providing guidance on the type of CDD that may be carried out to ameliorate the risk of abuse of trusts.
Non-Profit Organisations (SR.VIII)	• The Registrar's office should ensure that it has verifiable and timely information on NPOs operating in Namibia. • In the light of the computerization process underway, the information on NPOs should be maintained separately from profit making companies. • An appropriate monitoring mechanism for NPOs with a specific responsible body should be established including the ability to monitor sources of funds for NPOs. • As AML/CFT guidelines are developed for accountable institutions, those related to NPOs should be as well.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	• Membership on the Task Force should be increased to include the LSN and dealers in precious stones as they are important stakeholders in the AML/CFT framework. • The BoN, law enforcement agencies such as the prosecution office and the police, and NAMFISA should establish clear operational mechanism for purposes of implementing the policies and activities to combat money laundering and terrorist financing.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Namibia should use existing special investigative techniques such as controlled delivery, electronic or other forms of surveillance in money laundering or terrorist financing activity. • Namibia should expedite the ratification of all the remaining relevant anti-terrorism related conventions. • Namibia should establish a framework or appropriate mechanism to fully implement the UN Security Council resolutions.
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	• Namibia should develop mechanisms by which they can coordinate seizure and confiscation operations with other countries. This should be done by establishing a forfeiture fund into which confiscated property should be deposited. • The authorities should ensure that provision of MLA covers property of corresponding value where tainted property which is found to be the proceeds of crime is not available to be confiscated.

Extradition (R.39, 37, SR.V & R.32)	• The authorities should consider ways in which they can make the Palermo Convention the basis of extradition even though this provision of the convention was excluded at the time of ratification. For example, they could notify the UN Secretary General of their intention to change their position as originally indicated at the time of depositing the instrument of ratification. • The authorities should expedite the criminalization of terrorist financing to prevent potential impediments to extradition in view of the dual criminality requirement.
Other Forms of Co-operation (R.40, SR.V & R.32)	

7. Other Issues	
Other relevant AML/CFT measures or issues	
General framework – structural issues	

AUTHORITIES' RESPONSE TO THE ASSESSMENT

ANNEX 1 – LIST OF MEETINGS CONDUCTED

Public Sector

Attorney-General's Chambers
Bank of Namibia
Casino Board
Government Institutions Pension Fund
Ministry of Defense
Ministry of Finance (incl. Customs Office & Commissioner of Inland Revenue)
Ministry of Home Affairs and Immigration
Ministry of Justice
Ministry of Mines and Energy (incl. Diamond Commissioner)
Ministry of Trade & Industry (Registrar of Companies)
Ministry of Trade & Industry (Offshore Development Company Ltd)
Namibia Financial Institutions Supervisory Authority
Namibia Police
Office of Prosecutor-General
Task Force on Anti-Money Laundering and Combating the Financing of Terrorism

Private sector

Bank Windhoek
Deloitte & Touche Chartered Accountants
DTC Valuations Namibia (Pty) Ltd
First National Bank
Law Society of Namibia
Micro-lending and Credit Agreements
Namibian Stock Exchange
Nedbank
Old Mutual Group
Sanlam Insurance Company
Standard Bank

ANNEX 2 - LIST OF LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED

Laws

1. Prevention of Organized Crime Act, 2004
2. Companies Acts 1973 & 2004
3. Anti-Corruption Act, 2003
4. Banking Institutions Act, 1998
5. Bank of Namibia Act 15 of 1997
6. Export Processing Zone Act, 1995
7. Combating of Terrorist Activities Bill, 2003
8. Drug and Drug Trafficking Bill, 2002
9. Use of Electronic Communications & Transactions Bill
10. Legal Practitioners Act 15 of 1995
11. Public Accountants and Auditors Act 51 of 1951
12. Namibia Financial Institutions Supervisory Authority Act 3 of 2001
13. Friendly Societies Act 25 of 1956
14. Stock Exchanges Control Act 1 of 1985
15. Unit Trusts Control Act 54 of 1981
16. The Constitution of the Republic of Namibia
17. Legal Practitioners' Fidelity Fund Act 22 of 1990 (Prior to Repeal by Act 15 of 1995)
18. Financial Intelligence Bill 2004
19. Short-Term Insurance Act 4 of 1998 (Part 1)
20. Short-Term Insurance Act 4 of 1998 (Part 2)
21. Participation Bonds Act 55 of 1981
22. Long-Term Insurance Act 5 of 1998
23. Inspection of Financial Institutions Act 38 of 1984
24. Financial Institutions (Investment of Funds) Act 39 of 1984
25. Usury Act 73 of 1968
26. Schedule 1 and 2 of the Prevention of Organized Crime Act, 2004
27. Extradition Act 11 of 1996
28. Transfer of Convicted Offenders Bill
29. Notice in Terms of Section 15A of the Usury Act, 1968
30. Criminal Procedure Act 25 of 2004
31. International Co-operation in Criminal Matters Act 9 of 2000
32. Criminal Procedure Act 51 of 1977 (only sections 19-36). This is the only other act that compliments the provisions of the International Co-operation Act.

Subsidiary regulations, circulars, directives and instructions

1. BID - 1 Determinations on the Appointment, Duties and Responsibilities of Directors and Principal Officers of Banking Institutions
2. BID – 2 Determinations on Asset Classification, Suspension of Interest and Provisioning
3. BID - 3 Determinations on Money Laundering and Know Your Customer Policy, 1998
4. BID – 4 Determinations on Limits on Exposures to Single Borrowers
5. BID - 5 Determinations on Capital Adequacy
6. BID - 6 Determinations on Minimum Liquid Assets
7. BID - 7 Determinations on Minimum Local Assets

8. BID – 8 Determinations on Fees Payable in Terms of Section 64(6) of the Banking Institutions Act, 1998
9. BID - 9 Determinations on Fraud and Other Economic Crime
10. BID - 10 Determinations on the Appointment, Duties and Responsibilities of An Independent Auditor of a Banking Institution
11. BID – 13 Determinations on the Disclosure of Bank Charges, Fees and Commissions
12. BID – 14 Determinations on Minimum Insurance for Banking Institutions
13. BID – 15 Determinations on Limits on Inter-bank Placements
14. BID – 16 Determinations on Foreign Currency Exposure Limits
15. Rules of the Law Society of Namibia (Part 1 and 2)
16. Application and Notification Procedures, Bank Supervision Department document.

Miscellaneous reports

1. UN Security Council reports to the CTC
2. The Structure and Nature of Savings in Namibia, BoN Research Department
3. Viability of Commercial Bank Branches in Rural Communities in Namibia, BoN Research Department
4. Efficiency of Commercial Banks in Namibia, BoN Research Department
5. Private Equity: Lesson for Namibia, BoN Research Department
6. Promoting Microfinance activities in Namibia, BoN Research Department
7. Basel Core Principles Assessment Questionnaire
8. Namibia Mutual Evaluation Report 2004
9. Estimating the Demand for Money in Namibia
10. Central Government Debt Sustainability
11. Namibia Compliance with the Core Principles for Effective Banking Supervision Self-Assessment Report January 2004
12. Documents from the Bank Examinations Division, Bank of Namibia, which includes the 1) Procedure Manual Action Plan for unlawful schemes; 2) Administrative Procedures Manual; and 3) Job descriptions for the Examiner, Assistant Examiner, Manager Examinations, and Senior Examiner.
13. Documents on the Examinations Procedure Manual in the areas of Asset Quality, Capital, Earnings, Liquidity, Management, Planning, and Other Assets.
14. Procedures Manual for Supervisory Actions
15. Bank Regulations and Analysis Division, Banking Supervision Department, Bank of Namibia Procedures Manual
16. Materials and data on insurance and pension funds received from NAMFISA
17. Procedure when responding to the Examination Report