



Anti-money laundering and counter-terrorist financing measures **Namibia**

Mutual Evaluation Report

September 2022





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MUTUAL EVALUATION REPORT

OF

REPUBLIC OF NAMIBIA

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Executive Summary

1. This report summarises the AML/CFT measures in place in Namibia as at the date of the on-site visit conducted on 27 September to 08 October 2021. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Namibia's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- (a) Namibia has a good understanding of ML threats emanating largely from proceeds of serious fraud, tax crimes, wildlife crimes and corruption and bribery. Namibia faces domestic ML threat with the proceeds laundered within and outside of the country. The scale/magnitude of the proceeds are unknown. The most vulnerable sectors are mainly FIs and a few DNFBPs.
- (b) As a statutory policy coordinating structure, the Council has been successful in coordinating AML/CFT developments including legislative changes, NRA and AML/CFT Strategy in Namibia. However, the Technical Committee which support the Council has demonstrated poor coordination of policy and priorities implementation by competent authorities at operational level.
- (c) National AML/CFT policies and priorities addressed ML risks to some extent and TF risks to a limited extent due to resource constraints, RBA being at infancy stage and focus on predicate offences than ML and TF.
- (d) Namibia has a limited TF risk understanding except for the NISS (Namibia Intelligence and Security Service) and the FIC. Further, Namibia's Counter Terrorism Strategy has limited TF focus and therefore mitigates TF risks to the extent it is understood.
- (e) The FIC produces fairly good quality financial intelligence, but LEAs use it more for predicate offences than ML and TF investigations and prosecutions owing to capacity issues. The focus on types of predicate offences is consistent with the country's risk profile but less so for ML threats as only self-laundering is pursued.
- (f) Namibia formed Integrated Investigations Task Force (IITF) which has been successful in coordinating the efforts of the LEAs and the FIC to proactively identify, investigate and prosecute complex ML cases as demonstrated by the ongoing Fishrot corruption case.
- (g) Sanctions issued by the courts for predicate offences and ML are to a lesser extent proportionate, dissuasive and effective as most are non-custodial and suspended sentences. Provisional and confiscation measures are applied to some extent owing largely to LEAs not proactively pursuing ML cases.
- (h) Namibia does not implement TFS measures and does not use the UNSCRs freezing measures in its overall strategy to combat TF and PF. In addition, a review of the NPO sector to identify those NPOs that are vulnerable to TF abuse has not been done hence no risk-based supervision and monitoring of nor sanctions in the sector.
- (i) FIs and DNFBPs covered by the FATF Standards are present in Namibia (except for VASPs) and are subject to full AML/CFT obligations. In general, FIs and DNFBPs have a fairly good understanding of ML and AML/CFT obligations but are underdeveloped on TF. Large FIs are better at applying EDD, BO and TFS on TF obligations than other FIs and DNFBPs. The diversity of entities filing STR is very narrow, with banks overwhelmingly dominant. FIs and

DNFBPs have low number of personnel in compliance functions, though the majority of FIs have automated systems in place.

- (j) NAMFISA (NBFIs) and FIC (banks, MVTS and DNFBPs) are the two AML/CFT supervisors in Namibia and have demonstrated a fairly good ML/TF risk understanding but have used it to a limited extent since RBA is at infancy stage and the supervisors have resources constraints. Supervisors do not apply commensurate sanctions and / remedial actions and have seen limited compliance behaviour changes by FIs and DNFBPs. The supervisors have been successful in raising awareness to promoting the understanding of the ML/TF risks and the AML/CFT obligations by the FIs and DNFBPs in Namibia except on BO.
- (k) Namibia does not keep BO information on transparency of legal persons and arrangements due to: (i) weak legal framework, (ii) poor resources availability and (iii) poor understanding of BO responsibilities by BIPA for companies and the Master of the High Court for trusts. Namibia has not assessed and taken mitigating measures on ML/TF risks associated with legal persons and arrangements. There is no evidence of compliance failures identified nor proportionate, dissuasive and effective sanctions issued nor BO information by LEAs and other competent authorities accessed.
- (l) Namibia has to a large extent applied MLA and extradition and other forms of cooperation to pursue proceeds of predicate crimes; ML to some extent, and TF and BO to a negligible extent. The Central Authority lacks adequate resources and an effective case management system for tracking of MLA and extradition requests.

Risks and General Situation

2. Namibia has a low crime situation with few crime types generating the most proceeds for laundering or use in TF. Most of the illicit proceeds leave than enter the country. However, the magnitude of the ML threats is unknown¹. In recent years, Namibia experienced a rise in serious fraud, grand corruption, tax crimes, and wildlife crimes as the major ML threats generating the most proceeds. The crimes are largely committed by high-profile persons often holding influential government positions in cohorts with the private sector. Both have strong links outside of the country which facilitates outward flow of the proceeds. However, the flow of foreign proceeds into Namibia is low. Namibia has high use of cash and presence of informal sector. Namibia has capacity constraints to combat the identified ML/TF threats effectively.

3. Namibia undertook major AML/CFT reforms of its legal and institutional frameworks to address the deficiencies identified in the 2009 Mutual Evaluation Report (MER). Since 2012, competent authorities have used the three versions of the NRA and AML/CFT Strategy to implement objectives and activities against ML/TF risks identified.

4. RBA is evolving in Namibia. The country has identified banks, MVTS, asset management companies, legal practitioners, and trust and company service providers as the most vulnerable channels for laundering of the proceeds. Namibia is strengthening public-private sector partnership for coordination of mitigation efforts against high-risk cases as seen in the *Fishrot* corruption case.

¹ Namibia 2021 NRA report – Page 32

5. Namibia has determined ML threat at medium-high which is consistent with the rising number of serious economic crimes including high-profile corruption and serious fraud cases in recent years as demonstrated by the *Fishrot* and SME Bank cases.

6. Namibia is exposed to TF, mostly from outside perpetrators wishing to use the country to mobilise resources. However, the CFT strategy has not prioritised this risk. Namibia has not identified the scale/magnitude of the TF threats. The rating of low for TF appears not to be well supported. The authorities could not provide a plausible explanation for downgrading TF level from medium in the previous NRA to low in the 2020 NRA especially since the broad underlying factors appear not to have changed significantly.

Overall Level of Compliance and Effectiveness

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

7. Namibia demonstrated a good understanding of ML threats which originate from domestic rather than foreign sources. Corruption and bribery, tax crimes, serious fraud and wildlife crimes are understood as the major threats for generating proceeds. Namibia is yet to assess and understand the scale magnitude of the proceeds. The most vulnerable sectors are banks, asset management companies, MVTS, real estate, legal practitioners and trust and company service providers.

8. Namibia faces outside TF threats. Competent authorities demonstrated low TF understanding bar the NISS and the FIC. The country's National Counter-Terrorism Strategy prioritises terrorism over TF; as a consequence, competent authorities focus on TF to the extent of their limited understanding. Namibia has not had a terrorism or TF incident since independence in 1990 and the country is situated in a region with relative peace and security. Namibia has determined TF risk at low in the 2020 NRA, a drop from medium in the previous NRA. Based on the assessment of underlying factors in the NRAs, the downgrade to low appears unjustified.

9. The Council has been successful in coordinating AML/CFT/CPF policy in Namibia as shown by completion of NRAs and development of national AML/CFT Strategies for over a decade. The Council is supported by a Technical Committee which is a mechanism for coordinating priorities and activities of competent authorities at operational level. However, the Committee has not coordinated effectively. Risk understanding and coordination as mitigating strategies have been affected by resource constraints across the competent authorities. Namibia established structures for cooperation in areas of law enforcement on complex cases and supervisors on effective RBA but are yet to achieve the desired outcomes.

10. Namibia has just recently started with RBA. In general, FIs and DNFBPs apply EDD and SDD in accordance with ML/TF risks identified. Namibia is applying RBA for an inclusive financial sector capable of reducing the extensive use of cash and the informal sector.

11. While all FIs and DNFBPs as per the FATF Standards have presence in Namibia, VASPs are not regulated nor supervised for AML/CFT obligations. The decision is not based on any risk assessment. Namibia is carrying out feasibility study for regulation and supervision of VASPs for prudential and AML/CFT purposes.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

12. Namibia makes use of financial intelligence a key component in the fight against proceeds of predicate offences, ML and TF. The FIC is the designated agency for receipt and analysis of transactions reports and dissemination of financial intelligence and other information to law enforcement and intelligence agencies. The LEAs appreciate the FIC intelligence in supporting investigation and

prosecution of ML and TF. The agencies indicated that the FIC has shared useful financial intelligence spontaneously and upon request. However, the financial intelligence has been used on predicate offences to a large extent, ML to some extent and TF to a limited extent. Namibia has been successful, to some extent, in provisional and confiscation measures albeit mostly on proceeds from predicate offences due to resource constraints. While Namibia has demonstrated good coordination and collaboration on ML investigations and prosecutions through the Integrated Investigations Task Force (IITF) for Fishrot matters and the Blue Rhino Task Force for wildlife crimes, there is coordination challenges, as seen with the *Fishrot* corruption cases, between NAMPOL (designated agency for ML investigation) and ACC (designated agency for corruption investigation) on referral of ML cases arising from proceeds of corruption to NAMPOL for ML investigation as the ACC is of the position that such ML cases should be investigate by them and not by NAMPOL.

13. Namibia has a strong legal framework for competent authorities to conduct investigation and prosecution of serious crimes and ML cases, but have resource constraints. Namibia has pursued predicate offences to a large extent and ML to some extent, with more focus on self-laundering. Namibia applies parallel financial investigations (PFI) but have been slow in identifying and investigating major cases as demonstrated in the *Fishrot* corruption cases and associated ML taking into account that the matter emerged as far back as 2012 but arrests were only done in 2019 following a whistle-blower's public release of the corruption. The cases are ongoing but slow, since most of the proceeds are outside Namibia and require extensive resources and international cooperation. Namibia pursues investigation and prosecution of predicate offences is to a large extent consistent with the country's risk profile, this is not true for ML as the focus is on self-laundering at the exclusion of third-party laundering and stand-alone laundering. Overall, the sanctions applied are less effective, proportionate and dissuasive as demonstrated by the sentences imposed being mostly non-custodial and/or suspended sentences for ML offence. Namibia has demonstrated that it employs alternative criminal justice measures in ML cases to some extent despite having a range of options when it is not possible to secure a ML conviction especially by taking civil based confiscation measures. These processes, overall, work parallel with the ML investigation and continue regardless of any criminal prosecution for the ML offence.

14. Namibia pursues confiscation of proceeds of crime based on its legal framework and in practice and has achieved success to some extent. While the Asset Forfeiture Unit in the OPG has the legal tools to do its work, it has resource constraints which has affected its ability to seize (and eventually forfeit) property in a timely manner to avoid possible dissipation or flight of funds and assets. This is demonstrated by the delays in confiscation/forfeiture of assets and other proceeds of crime connected to the *Fishrot Scandal* as criminal trials had not yet commenced over a relatively long period of time as at the time of the onsite mission. There have been to some extent recovery of proceeds of crime related to fraud, corruption, tax crimes including VAT fraud, theft, illicit wildlife trade, and drug dealing which are consistent with the risk profile of the country. There has been limited pursuit and success in recovery of assets that have been moved to foreign jurisdictions. Repatriation, sharing or restitution of proceeds or instrumentalities of crime with other jurisdictions has only been done to a very limited extent. Namibia has a low rate of detection of cash and BNIs at ports of entry and exit and therefore such cases, when detected, have had limited to no investigation, prosecution and sanction. The Authorities appear to be focusing on verifying legitimacy of source of non-declared funds and tax compliance.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

15. Namibia has the legal and institutional frameworks in place to investigate and prosecute TF activities. However, TF offence is not criminalised in a manner consistent with the FATF Recommendation and Namibia does not have the ability to fully apply measures to ensure that the entire scope of TF and associated predicate offences can be effectively prosecuted. Namibia has registered a few incidences of TF related matters. There have been two TF investigations but has not prosecuted any TF case during the period of review and as such, it was difficult to determine the level of effectiveness of

convictions and sanctions. The NAMPOL and OPG should increase their resources (including human resources) to efficiently identify, investigate and prosecute TF offences. The authorities should also ensure that TF investigations are identified, prioritised and integrated into the National Counter-Terrorism Strategy.

16. Namibia has the legal and institutional frameworks to implement TFS relating to TF and PF. Guidance has also been issued by the FIC to assist FIs and DNFBPs in understanding their TFS obligations. However, the existing legal framework and guidance are not in line with the requirements of the FATF Standards largely in respect of ‘without delay’. The authorities should improve the existing legal frameworks, mechanisms and communication procedures to facilitate implementation of TFS without delay. There has not been any designation pursuant to UNSCR 1373 which appear to be consistent with its TF risk profile.

The authorities should also sensitise the reporting entities to assist them in understanding their TFS obligations on TF and PF. Namibia should sensitise the FIs and DNFBPs on and effectively monitor compliance with TFS obligations on TF and PF.

17. The authorities should undertake a full review of the regulation of the NPO sector and carry out a risk assessment to identify the subset of NPOs which are most vulnerable to NPOs to TF abuse and take appropriate measures to mitigate the TF risk. Namibia should designate NPO regulator and provide adequate capacity necessary for risk-based supervision and monitoring of the activities of NPOs.

Preventive measures (Chapter 5; IO.4; R.9–23)

18. The Financial Intelligence Act, 2012 is the primary legislation setting out the framework for application of preventive measures by FIs and DNFBPs in Namibia. Broadly, FIs and DNFBPs showed uneven understanding of the ML and TF risks, with FIs better than DNFBPs. Large domestic and foreign-owned banks showed adequate understanding of the ML risks and, to some extent, TF risks. The understanding of AML/CFT preventive measures by large FIs is good across the board but the understanding of BO and TFS is a major challenge. Smaller FIs and DNFBPs showed a basic understanding of the ML/TF risks and therefore focus on compliance with controls. Large FIs appreciated BO, TFS and EDD better than other FIs and DNFBPs and have demonstrated a better application of the measures on high-risk business relationships such as PEPs and transactions such as trade finance. Banks report about 90 percent of the STRs, distantly followed by MVTs while limited reporting is done by the rest of the FIs and DNFBPs.

19. ML/TF risk understanding and AML/CFT obligations relating to VA and VASPs are not applied in Namibia as no regulation exists and the exclusion is not based on a risk assessment.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

20. Regulators of FIs and DNFBPs apply market entry rules. NAMFISA, BoN and the regulators of casinos and accounting/auditing demonstrated stronger market entry practices. They have fit and proper procedures and thresholds for controlling interest and BO. While the regulators obtain BO information through self-declarations, they have gaps in relation to verification of BO information of applicants; however, BoN, NAMFISA and regulators of casinos and accounting/auditing fare better at taking reasonable measures to verify the BO information of applicants and, to some extent, prevent criminals from owning or controlling FIs and DNFBPs. Generally, the regulators appear to place more reliance on BIPA as a company registry and Master of the High Court as a trust registry but no accurate and reliable BO information is obtained and maintained for their use in verification of applicants.

21. The FIC (banks, MVTs & DNFBPs) and NAMFISA (securities, insurance, pension funds and micro-lending) are the only AML/CFT supervisors in Namibia. Both NAMFISA and FIC have a good understanding of ML/TF risks facing their supervised entities due mainly to the completed NRAs,

sectoral risk assessments and entity risk profiles. However, application of RBA is at early stages and therefore risk-based supervisory action is limited. NAMFISA and FIC have resource constraints. The supervisors identified through inspections CDD, TFS, STR and independent review of compliance function including staffing as the major non-compliance areas. Remedial actions and sanctions imposed are not proportionate, dissuasive and effective owing to the small monetary penalties which are mostly suspended by half regardless of the gravity of the violation. Consequently, the impact of the remedial actions and sanctions undertaken have changed the compliance behavior of the FIs and DNFBPs to a limited extent. Both supervisors have been successful in promoting the understanding of ML/TF risks and AML/CFT obligations.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

22. Different types of legal persons can be created in Namibia ranging from private companies to trusts. The BIPA and Master of the High Court play critical roles in the formation of any legal person and arrangement respectively. Information relating to creation of the different types of legal persons and trusts is publicly available physically from the relevant offices and online. The registries have limited understanding of BO requirements and their roles and responsibilities in relation to promoting the transparency of legal persons and arrangements as trust and company registries due to their recent nature and resource constraints. Namibia has not assessed the ML/TF risks of transparency of legal persons and arrangements and as such, the understanding of the risks is limited. The NRA has identified misuse of legal persons and arrangements for ML schemes and not for TF, but it is limited on assessing the nature and extent of the abuse. Adequate, accurate and current BO information is not obtained at the preliminary stages of creation of a legal person or arrangement. Although there are requirements to update BO information, compliance is not monitored and no sanctions were applied for failure to comply with information requirements.

International cooperation (Chapter 8; IO.2; R.36–40)

23. Competent authorities in Namibia have the legal basis for providing and seeking MLA and extradition as well as other forms of international cooperation. MLA and extradition matters are channeled formally through: (i) the Ministry of Justice as the Central Agency, (ii) Ministry of International Relations and Co-operation, and (iii) Namibia's foreign diplomatic missions abroad. The other forms of cooperation are processed through counterpart-to-counterpart channels. Namibia has not yet established an effective case management system necessary for the implementing agencies to identify and track progress made on a request received. Namibia has been successful to some extent in making requests to and responding to requests from jurisdictions across the world, with African countries dominant which appears consistent with the risk profile of the country. In the main, Namibia has received fairly good feedback from the global network regarding provision of international cooperation.

Priority Actions

- (a) Namibia should take urgent steps to assess the scale/magnitude of ML/TF threats to better inform resource allocation to key AML/CFT agencies.
- (b) Namibia should implement its AML/CFT policies and priorities to proactively address ML/TF threats in a risk-sensitive manner and ensure that the objectives and priorities of the competent authorities are aligned. The Council should ensure that the Technical Committee is active at operational level and that the AML/CFT objectives progress monitoring framework set out in the FIA is implemented effectively as a matter of urgency.
- (c) NAMPOL and ACC should work closely with the FIC and OPG in the use of financial intelligence to proactively pursue complex ML case such as Fishrot corruption by focusing on stand-alone and third-party laundering including professional enablers and organised criminal networks and ensure confiscation of criminal property.
- (d) Review the Counter-Terrorism Strategy to provide for TF as stand-alone pillar and implement a mitigating strategy which should include proactive identification and investigation of TF activities and the use of TFS measures to combat TF.
- (e) Namibia should identify the features of the NPOs with potential for high TF abuse and designate a regulator with adequate resources which will apply a targeted approach to supervision of high risk NPOs for TF.
- (f) Namibia should amend the TFS regulations and ensure implementing regulations and mechanisms for UNSCRs relating to TF and PF are without delay. Guidance should be provided to FIs and DNFBPs and ensure they are effectively monitored for compliance. Namibia should provide capacity including training to competent authorities responsible for TFS on TF and PF.
- (g) Increase the diversity of STRs by ensuring non-reporting NBFIs and DNFBPs start reporting to the FIC through issuance of specific written guidance, outreach and inspections.
- (h) FIs and DNFBPs should enhance application of EDD, BO, TFS and increase staff compliment in compliance functions.
- (i) Namibia should regulate VASPs and subject them to AML/CFT supervision unless the exclusion is justified by risk assessment.
- (j) NAMFISA and FIC should be provided with adequate resources and continue implementing RBA.
- (k) Authorities should conduct ML/TF risk assessment of legal persons and arrangement and ensure BIPA and Master of High Court have resources, understand their BO responsibilities, obtain and maintain accurate and updated BO, and put in place mechanisms for access of BO information by competent authorities and the private sector.
- (l) Namibia should continue using formal MLA, extradition and informal channels to pursue Fishrot cases including the proceeds in foreign jurisdictions based on the risk profile of the country. In addition, the

Central Authority should develop and implement integrated case management system and increase staffing resources at the Central Authority.

- (m) Namibia should take measures to increase financial inclusion to reduce the risks associated with cash usage and informal sector.
- (n) Namibia should provide adequate resources to key AML/CFT agencies and develop capacity-building programmes to enhance their ability to prioritise complex ML and TF risk understanding and investigation aimed at confiscation of assets.
- (o) Namibia should enhance the capacity of law enforcement agencies to identify, investigate and prosecute ML, TF and associated predicate offences. Particular emphasis should be placed on enhancing the capacity of NAMPOL, ACC and OPG and also, ensuring that investigations, including the use of provisional confiscation measures and prosecutions which should also prioritise confiscations, are aligned with the risk profile of Namibia.

Effectiveness & Technical Compliance Ratings

Table 1. Effectiveness Ratings

IO.1	IO.2	IO.3	IO.4	IO.5	IO.6	IO.7	IO.8	IO.9	IO.10	IO.11
ME	ME	LE	ME	LE	ME	ME	ME	LE	LE	LE

Note: Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

Table 2. Technical Compliance Ratings

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	LC	LC	LC	PC	PC	PC	NC	C	LC
R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
LC	NC	PC	LC	NC	LC	LC	PC	PC	PC
R.21	R.22	R.23	R.24	R.25	R.26	R.27	R.28	R.29	R.30
C	PC	PC	PC	PC	LC	C	LC	PC	C
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
PC	LC	PC	LC	LC	C	LC	LC	PC	PC

Note: Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

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

25. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 27 September – 08 October 2021.

26. The evaluation was conducted by an assessment team consisting of:

Assessment Team

- Mr. Kennedy Mwai, Financial Intelligence Unit, Kenya (Law Enforcement Expert)
- Ms. Brenda Mahoro, Financial Intelligence Authority, Uganda (Legal Expert)
- Mr. Tirivafi Nhundu; Securities and Exchange Commission, Zimbabwe (Financial Expert)
- Mr. Peter Sekgothe, FIC, South Africa (Financial Expert)
- Ms. Mary Chirwa, FIU Zambia (FIU Expert)
- Ms. Liya Tembo, FIU Zambia (FIU Expert)

Observers

- Louis. Henning, South African Police Service, South Africa (Law Enforcement)
- Motsisi Mongati, Non-Bank Financial Institutions Authority, Botswana (Financial Expert)

ESAAMLG Secretariat

- Phineas R Moloto (Team Leader)
- Joseph Jagada, Principal Expert (Law Enforcement Expert)
- Muluken Yirga Dubale, Senior Legal Expert (Legal Expert)
- Bhushan Jomadar, Financial Sector Expert (Financial Expert)

27. The report was reviewed by Mr. Amon Chitsva, Zimbabwe; Simon Ogwal Kajura, Uganda and the FATF Secretariat.

28. Namibia previously underwent a FATF Mutual Evaluation in 2007, conducted according to the 2004 FATF Methodology. The 2007 Mutual Evaluation Report has been published and is available at www.esaamlg.org.

29. That Mutual Evaluation concluded that the country was compliant with one Recommendation; largely compliant with 5; partially compliant with 11; and non-compliant with 29. One Recommendation was rated not-applicable. Namibia was rated compliant or largely compliant with none of the 16 Core and Key Recommendations and was placed under enhanced follow-up process Namibia exited the enhanced follow-up in September 2017.

Chapter 1. ML/TF RISKS AND CONTEXT

30. Namibia is a large country in Southern Africa that border the South Atlantic Ocean, between Angola to the north, Botswana to the east, Zambia to the northeast and South Africa to the south. The Republic of Namibia gained its independence in March 1990 from South African control. The capital is Windhoek. Namibia is a member of the Africa Union (AU), Southern Africa Customs Union (SACU), Common Monetary Area (CMA) with Lesotho, Eswatini and South Africa (The South African Rand (ZAR) is the legal tender within the CMA), Southern Africa Development Community (SADC), Commonwealth of Nations, Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the United Nations (UN), among others.

31. With a surface area of 824 290 square kilometers, Namibia has a small population of 2.5 million people and is one of the least densely populated countries in sub-Saharan Africa with an average density of approximately 2.4 people per square kilometer. Namibia is divided into 14 regions: Zambezi, Erongo, Hardap, Karas, Khomas, Kunene, Ohangwena, Kavango East, Kavango West, Omaheke, Omusati, Oshana, Oshikoto, and Otjozondjupa. 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.

32. Namibia is a middle-income country. There is high level of inequality, unemployment and poverty challenges in Namibia. In 2021, the economy was estimated to have grown by 0.9% in NAD and 12.4% in USD term with real gross domestic product (GDP) of NAD 134 billion and USD 9 billion. In the last three decades, the average economic growth rate and unemployment were 3.09 percent and 23.3 percent respectively. The Namibian currency is Namibian Dollar (NAD). In terms of industry performance and contribution to the GDP, tertiary industries including whole-sale and retail trade and tourism remained the biggest contributors to GDP in 2020 with 59.1%. This is followed by primary industries including mining, agriculture and fishing that contributed 18.8% to the GDP in the same year.

33. Namibia is a member of a Common Monetary Union (CMA) along with Eswatini (formerly The Kingdom of Swaziland), Kingdom of Lesotho, and South Africa. Namibia is part of Southern Africa Customs Union (SACU), established in 1910, along with the CMA members plus Botswana. Namibia is a member state of the Southern Africa Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA) established to promote regional integration on trade and development.

34. The Constitution of Namibia provides for separation of powers (Legislative – Lawmakers; Executive – Government; and Judiciary – Courts). The Legislative branch of Government is the Parliament, which consists of the National Assembly and the National Council. There are three judicial structures consisting of the Supreme Court, the High Court and the Lower Courts. The Executive power vests with the President and the Cabinet. Therefore, the President is both the head of the State and the Government.

35. Namibia has an uncodified legal system. This means that there is no single primary source where the law originates. The sources of law in Namibia are the Constitution; Statutes, Case Law (court decisions); Common Law; Customary Law; International Law (to the extent that it is not in conflict with the Constitution or acts of Parliament) and, old writers or authors. The Constitution is the supreme law, meaning that all law or conduct inconsistent with it is unlawful and invalid.

36. Previous judicial decisions are authoritative and therefore constitute legal precedent. This means that the courts are bound to follow the decision taken by a superior court. Prior to independence in 1990, the South African legal system applied fully in Namibia and still maintain a great influence on the interpretation and application of law in Namibia. To guard against a lacuna in the law at independence

Namibia declared that all laws in force prior to independence shall remain in force until repealed or amended by an Act of Parliament or until declared unconstitutional by a competent court.

37. The Supreme Court is the highest court in all constitutional matters and deals with constitutional issues (e.g., constitutional validity of an Act of Parliament or conduct by an organ of state) and other matters of material public interest. It hears appeals which involve the interpretation, application and upholding of the Constitution. The decisions of the Supreme Court are binding on all persons including organs of state, and on all other courts unless the decisions are reversed by the court itself or an Act of Parliament.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

38. Namibia has a sophisticated financial system co-existing with significant use of cash and presence of informal economy. Namibia faces significant domestic ML threats than international sources. While Namibia has a significant exposure to potential foreign proceeds largely because of its sophisticated financial sector with global reach, the assessors could not find sufficient evidence of foreign proceeds being laundered or used for TF in Namibia. By contrast, a significant amount of proceeds generated in Namibia are laundered outside of the country and the nature of the threats appears more organised but less transnational. However, Namibia experiences a significant outflow of proceeds channeled through the financial system while foreign proceeds into Namibia are limited.

39. The major proceeds-generating crimes are tax crimes, corruption and bribery, fraud, and wildlife crimes. Other proceed generating crimes such as pyramid schemes and environmental crimes have grown in prevalence and prominence. Environmental crimes include illegal wildlife trade, such as illicit trafficking in rhino horn, elephant ivory, as well as timber trafficking with East and Southeast Asia as main market destination. The most vulnerable sectors are banks, asset management companies, real estate, and legal practitioners and trust and company service providers playing a significant role in the abuse of the sectors. Namibia has weak UBO and LEA capacities to effectively mitigate the rising of misuse of legal persons for both predicate offences and ML. Consistent with Namibia assessment and conclusion of ML risks, the overall actual nature of ML risk is well supported at Medium-High level.

40. Namibia faces higher TF risks from foreign rather than domestic sources. There has been no known terrorism case in Namibia since independence from South Africa in 1990. Engagements with the LEAs and intelligence community suggest potential use of Namibia for raising, storing and moving funds for foreign terrorism. TF appreciation is low except for NISS and FIC. Namibia's TF mitigation strategy is inadequate due to limited attention to TF.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

41. Between 2012 and 2021 Namibia conducts three NRAs to identify and assess national ML/TF risks. The NRAs analysed the ML threats to which Namibia is exposed and the major predicate offences that generate larger amounts of criminal proceeds, and the level of terrorism and TF threats faced by the country. It also examined the country's ML/TF combating ability and the vulnerabilities of the financial sector as well as DNFBPs to ML/TF abuse, financial inclusion and the TF risks of the NPO sector to some extent.

42. The assessment team received and reviewed several material from the authorities on their AML/CFT system. In deciding what issues to prioritise for increased focus, the assessors relied on the findings of the revised NRA, open-source information from reliable institutions/organisations and the previous MER as well as post-evaluation progress reports within the context of the ESAAMLG Follow-up Process. Apart from issues of ML/TF risks, assessors also targeted issues which they consider to be

important for assessing the effectiveness of the AML/CFT system in Namibia. The assessors focused on the following priority issues:

Financial inclusion measures, use of cash and cross-border cash couriers: Assessors focused on financial inclusion, including discussing with the authorities on measures to promote financial inclusion and reduce cash use. They further explored suppressive and preventive efforts to combat ML/TF in the informal sector and how well financial inclusion products/services were used to promote usage of the formal financial sector. The focus included how cash flows through the MVTS and mobile money services sectors, their materiality and the effectiveness of control measures in these sectors. There was also a focus on the effectiveness of customs and border controls to detect and deter cash smuggling in and outside Namibia demonstrated by specific cases handled by the authorities.

Supervision and monitoring of high-risk sectors: The Assessors focused on how well supervisors applied supervisory measures to ensure compliance with AML/CFT obligations by regulated entities such as banks, real estate, and gate keepers such as lawyers. They also found that application of commensurate CDD and other AML/CFT obligations by regulated entities with specific focus on those identified as high risk in addition to transactions (e.g., cross-border) and business relationships (e.g., companies and PEPs) posed high risks.

Use of financial intelligence by LEAs: The Assessors focused on proactive use of financial intelligence by LEAs to identify potential ML and TF cases and initiate or support investigations and prosecutions of such cases.

Handling ML cases arising from predicate offences generating the most proceeds: The 2021 NRA has identified serious cases of laundering of proceeds from corruption, tax crimes, fraud and environmental crimes. The Assessors prioritised the extent to which Namibia identified, investigated, and prosecuted the laundering of proceeds from the high-risk predicate offences. The Assessors also focused on assessing measures in place to identify and confiscate criminal proceeds in addition to other useful measures being implemented by Namibia to combat ML and TF in general. Namibia was experiencing a rise in complex ML cases largely in state-owned enterprises involving complex cross-border transactions facilitated through gatekeepers and banks. The Assessors thus focused on how well the Authorities were applying special investigation and prosecution measures proportionate to the magnitude and extent of the ML cases such as the *Fishrot* scandal.

Financing of terrorism: While the NRA 2021 rates TF risk in Namibia as Low, the Assessors focused on (i) the capacity of the agencies mandated with TF investigations and prosecution; (ii) how Namibia identifies, investigates and prosecutes TF in line with the risk profile of the country; (iii) how well the competent authorities mandated to carry out TF investigation and prosecutions coordinate and cooperate with each other including on foreign terrorist fighters; (v) Risk based supervision of NPOs; and (vi) possible misuse of money or value transfer services (MVTS).

Access to beneficial ownership information: which is linked to lack of reliable identification infrastructure and independent information sources for beneficial ownership. In this regard, the vulnerability created by the absence of adequate or access to beneficial ownership information was determined.

43. The Assessment Team had less areas of focus on precious stones and metals, life insurance, and non-deposit takers since they were having low ML/TF risk exposures and less contribution for the country's GDP.

1.2. Materiality

44. Namibia has one of the largest and sophisticated financial sectors in southern Africa region. After South Africa, Namibia has the second largest financial sector within the Common Monetary Area.

Financial sector assets amounted to 253 percent of GDP in 2019. Non-bank financial institutions hold about NAD 316.3 billion of financial assets which represents 174.6 percent of the GDP. The banking sector comprising 8 commercial banks accounts for NAD 142.2 billion of financial assets representing 78.5 percent of the GDP in 2019.

Structural Elements

45. Namibia has key structural elements for adoption and implementation of effective AML/CFT system. These include political and public administration stability, rule of law, independent judiciary and respect for private property. The Anti-Money Laundering and Countering Financing of Terrorism and Proliferation Council coordinates policy formulation while the Technical Committee facilitates coordination at operational level. However, there are concerns about coordination of priority setting and implementation by competent authorities at the Committee level as well as provision of resources to key AML/CFT agencies/institutions.

1.3 Background and Other Contextual Factors

46. Namibia has socio-economic challenges precipitated by prolonged low economic growth, rising numbers of unemployment, crime, poverty and inequality.

47. Since the last MER in 2007, Namibia undertook significant AML/CFT/CPF reforms through several changes to legislative and institutional arrangements. Of significance are the introduction of the Financial Intelligence Act, 2012; Prevention of Organised Crime Act, 2004; and Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) (PACOTPA) as anchor legislation for AML/CFT/CPF in Namibia. Namibia strengthened institutional arrangements by creating new institutions and, in most cases, AML/CFT specialised divisions to develop dedicated capacity. Most of these reforms were evident during the increased monitoring process of Namibia by the International Cooperation Review Group of the FATF.

48. In recent years, Namibia suffered major fraudulent and corruption scandals (e.g., collapse of SME Bank and *Fishrot* corruption) which generated significant proceeds mostly externalised to foreign jurisdictions. Further, Namibia experienced challenges in key AML/CFT institutions due to inadequate domestic cooperation and resource constraints amidst a low domestic economic growth.

1.3.1. AML/CFT Strategy

49. With every release of the findings of the NRAs since 2012, Namibia produced corresponding AML/CFT strategies to address the identified risks. Namibia revised its AML/CFT strategy, which expired in 2018, to consider the results of the 2020 NRA. While the Strategy is awaiting the Government approval as at the time of the onsite, the authorities had started implementing some parts of the Strategy. It focuses on eleven priority areas: (a) streamline AML/CFT/CPF policy, legislative and implementation regime; (b) enhance understanding and alignment of ML/TF/PF mitigation strategies; (c) enhance information sharing; (d) ensure AML/CFT/CPF powers, procedures and tools to operate effectively, to mitigate threat exposure; (e) enhance AML/CFT/CPF combatting capabilities; (f) enhancing Namibia's combatting response to high-risk profit generating crimes as per the 2020 National ML/TF/PF risk assessment; (g) transforming the suspicious activity reporting (SAR) and suspicious transactions reporting (STR) regime; (h) enhance AML/CFT/CPF risk-based supervision and risk management; (i) ensure transparency of beneficial ownership reforms; (j) enhancing national, regional and international AML/CFT/CPF cooperation and collaboration; and (k) enhancing AML/CFT/CPF prevention and combating governance. Competent authorities are required to use the relevant thematic priority areas to develop and implement agency/institutions priorities and objectives. The Strategy and the NRA combined provide monitoring and evaluation of implementation framework with each agency/institution

required to file regular progress reports to the FIC as the Secretariat to the Council. However, there is no information evidencing filing of such progress reports to the FIC and the use of the same to track progress on the priority areas.

1.3.2. Legal & Institutional Framework

50. From the time of the adoption of its first MER in 2007, Namibia has been taking steps to address the legal and institutional deficiencies identified in the report. The enactment of POCA, FIA and PACOTPAA improved the criminalisation of ML and TF offences, provided for identification and verification of BO, broadened the scope of sanctions, among other requirements. The FIA created and expanded the operations of the FIC and established a National AML/CFT Task Force; ICCMA, which provides for international cooperation; and the PACOTPAA, which provides for implementation of UNSCRs on TF and PF.

51. Several institutions make up the AML/CFT institutional framework of Namibia. At the centre of the institutions is the Ministry of Finance, with the FIC responsible for directing and coordinating the AML/CFT activities. Mainly, the institutions involved in the AML/CFT implementation are ministries and different agencies which are as follows:

Policy Coordination Bodies

52. **Anti-Money Laundering & Combatting the Financing of Terrorism and Proliferation Council** is the highest AML/CFT/CPF policymaking and coordination body in Namibia comprising key agencies/institutions. It is chaired by BoN and the FIC acts as the Secretariat.

Ministries

53. **Ministry of Finance:** The Minister of Finance is the line ministry responsible for the FIC and holds responsibility for all Policy and Strategy issues related to AML/CFT/CPF in the country.

54. **Ministry of Justice:** is a key role player in the Mutual Legal Assistance and Extradition Regime. The Ministry is also responsible for the gazetting of UNSC sanctions lists and the enactment or amendment of all legislation.

55. **Ministry of Home Affairs, Immigration, Safety and Security:** administers the anti-terrorism law and plays a central role in implementation of targeted financial sanctions.

56. **Ministry of International Relations and Cooperation:** exercises its role as it relates to Mutual Legal Assistance and Extradition, as well as the Circulation of the UN Sanctions list.

Criminal Justice and Operational Agencies

57. **Financial Intelligence Centre:** is Namibia's FIU responsible for receipt and analysis of transactions from reporting entities, and dissemination of financial intelligence to support LEAs.

58. **Namibian Police Force:** is the national police force of Namibia. It was established by the Namibian Constitution and operationalised by an act of Parliament. It is responsible for the investigation of ML, TF and PF offences.

59. **Anti-Corruption Commission:** is an agency of the executive branch of the Government of Namibia. It was established under section 2 of the Anti-Corruption Act 8 of 2003 and serves as the lead agency in the combatting and prevention of corruption in Namibia and the investigation of corruption offences.

60. **Office of the Prosecutor General:** institutes criminal proceedings on behalf of the State and ensures all offences related to ML/TF/PF are prosecuted. It has an Asset Forfeiture arm that serves to implement freezing and forfeiture orders in respect to proceeds and instrumentalities of crime.

61. **Namibian Revenue Agency** is responsible for administering tax laws and customs and exercises matters in Namibia.

62. **Namibia Central Intelligence Service (NCIS)** is responsible for gathering and analysing domestic and foreign intelligence and applying counter-intelligence security measures to safeguard Namibia.

Financial Sector Competent Authorities

63. **Bank of Namibia:** The Banking Supervision Department is the prudential authority for the licensing and supervision of all banking institutions. The Exchange Control and Legal Services Department licenses and supervises ADs and ADLAs, while the National Payment System Department administers compliance with the Payment Systems Management Act and licenses all entities that offer payment services.

64. **Namibia Financial Institutions Supervisory Authority:** is an independent institution established by virtue of Act No. 3 of 2001, as amended. It serves as the AML/CFT Supervisor for all non-banking financial institutions other than MVTS.

DNFBP Competent Authorities and Self-Regulating Bodies

65. **Law Society of Namibia (LSN)** is a self-regulating body created in terms of the Legal Practitioners Act (1995) which serves the legal profession and the public by promoting justice, protecting the independence of the judiciary and upholding the Rule of Law.

66. **Namibia Estate Agents Board** was established in terms of the Estate Agents Act, 112 of 1976 and regulates the estate agency profession by ensuring that all persons carrying out the activities of an estate agent as a service to the public are registered with the NEAB.

67. **Public Accountants and Auditors Board** is the statutory body, established by an Act of Parliament, the Public Accountants' and Auditors' Act No 51 of 1951 (as amended), mandated with regulatory oversight of public accountants and auditors who offer services to the public.

65. **Ministry of Mines and Energy** performs the functions of the licensing authority for all dealers in precious metals and stones.

66. **Ministry of Environment, Forestry and Tourism** is the line Ministry responsible for the Casino Board of Namibia, which is responsible for the regulation of the gambling industry including casinos.

Legal Persons and Arrangements Competent Authorities

67. **Business and Intellectual Authority** registers companies and close corporations.

68. **Master of the High Court** registers trust instruments and registers *inter vivos* and testamentary trusts.

1.3.3. Financial sector, DNFbps and VASPs

Financial Institutions

69. The financial sector in Namibia comprises banks and NBFIs. Banks, MVTS and ADLAs are regulated by the BoN for prudential purposes while the FIC is the AML/CFT supervisor. In Namibia, NBFIs have more asset value than banks.

70. Banking, commercial banks in particular, dominates the processing of financial transactions in Namibia. There are eight banking institutions in Namibia comprising seven commercial banks and a representative office of a foreign bank. These are: (a) Standard Bank, (b) FirstRand Group includes First National Bank and Rand Merchant Bank, (c) Nedbank, (d) Letshego Bank – a micro financing institution, (e) Trustco Bank, (f) Bank BIC, and (g) Bank Windhoek. Four banks, namely, Standard Bank, First National Bank, Bank Windhoek and Nedbank Bank dominate the banking sector in terms of provision of general financial services, investment banking, wealth/asset management and insurance. The four largest commercial banks enjoy significant market share, clientele and footprint of branches countrywide. The commercial banks are the primary mobilisers of funds from the public and the main sources of financing which support business operations and economic activities in Namibia.

71. The assets of the banking sector were valued at NAD 142 billion (liabilities NAD 125 billion) in 2019 as compared to NAD 67 billion in 2012. The client base was estimated in excess of 1 million. Banking contributed 6 percent to GDP in 2019, with over 70 percent of the assets emanating from loans and advances dominated by residential mortgage loans. This has generally been the trend over the years. The banking sector in Namibia is closely tied to the South African banking sector, with three of the four largest banks being subsidiaries of South African banks.

Table 3- Commercial Bank Ownership in Namibia, 2020

Name of Bank	% Local shareholding	% Foreign shareholding
First National Bank	41.61	58.39 (South Africa)
Bank BIC	0	100 (Angola)
Bank Windhoek	100	0
Letshego Bank	22	78 (Botswana)
Trustco Bank	63.4	36.6 (USA)
Nedbank	0	100 (South Africa)
Atlantico Europa SA	0	100 (Portugal)
Standard Bank	24.10	74.90 (South Africa)

Source: National Risk Assessment, 2020

72. The assessment team weighted the implementation of preventive measures as **heavily** for large FIs in banking and securities sectors including asset management companies; **most heavily** for large MVTS and real estate; **heavily for** legal practitioners and trust and company services providers, casinos; and **less heavily** for life insurance and medium-sized FIs and DNFbps such as dealers in precious metals and stones, and accountants. The details of the weighting of each sector are found in Chapter 1.

73. Public FIs operating in Namibia, though not material in terms of size, are relevant due to their customer numbers and the access to the financial infrastructure they provide. These include NamPost, the banking division of the Namibian Post Office which is a state-owned enterprise. Namibia does not have a legal framework for licensing VASPs and the BoN has issued a notice warning the public about the risks of investing in virtual assets.

Table 4- Size and Composition of the Financial Sector as at December 2020

Type of Institution	No. of Institutions	No. of Licensed/ Registered Institutions	Total Sectoral assets as at end 2020 (NAD)	Subject to AML/CFT	AML/CFT Supervision
Banks (including ADLAs, MVTs & Lending sector*)	7 fully licensed banks, 1 branch and 1 representative office, 2 credit bureaus	8 banks, plus 1 rep office and 2 credit bureaus	144.1 billion Credit bureaus are excluded	Y	FIC
ADLAs*	9	9	43 million	Y	FIC
MVTs*	4	4	8.6 billion	Y	FIC
Lending sector*	5	5	5.9 billion	Y	FIC
Non-banking financial institutions (NBFI)	643	643	370.6 billion	Y	NAMFISA
Total assets of financial sector			514.6 billion		
Nominal GDP in 2020			174.8 billion		
% of GDP – Banking sector			82.4		
% of GDP – NBFI sector			212.0		
% of GDP – Financial services sector			294.4		

Source: NSA Annual National Accounts Report 2020

74. NBFIs (other than MVTS) are licensed and supervised for AML/CFT by NAMFISA. The total asset value of NBFIs is more than of the banks (NAD 144 billion) at NAD 370.6 in 2020. The long-term insurance sector occupies 19 percent, which represents 33 percent to GDP (greater than banks at 6 percent).

Table 5 – Breakdown Number of NBFIs by industry, December 2020

Financial activity	Number
Active pension funds	179
Long-term insurance (intermediaries)	4
Short-term insurance (intermediaries)	4
Unit trust management companies	17
Special purpose vehicles	23
Investment managers	30
Unlisted investment managers	26
Micro-lenders	350
Re-insurance of long and short term insurance	1
Linked investment service providers	4
Stockbrokers, including sponsors	4
Stock exchange	1

Source: NAMFISA Annual Report 2021

75. Total investments in unlisted companies as at 31 December 2020 stood at NAD 1.95 billion, total assets under management in respect of collective investment schemes increased by 8.7 percent to NAD 76.1 billion as at 31 December 2020 when compared with the same period in 2019. The bulk, i.e., 62.4 percent, of the funds in collective investment schemes was invested in Namibia, followed by 30.6 percent in the CMA,

6.8 percent in offshore markets and 0.1 percent in Africa outside of the CMA. Investment managers' assets under management increased by 4.9 percent to NAD 189.2 billion as at 31 December 2020 when compared with 31 December 2019.

76. The overall market capitalisation of the companies listed on the NSX decreased by 10.5 percent in comparison with the previous year, ending at NAD 1.74 trillion as at 31 December 2020. In line with this downward trend adjustment, NSX Indices, both Overall and Local, also decreased over the one-year period to 31 December 2020. The Overall Index was relatively flat with a decrease of 5.67 percent to end at 1,232.3 points, while the Local Index retreated by 25.7 percent, ending at 456.3 points. Investment managers' assets under management increased by 4.9 percent during the period under review to end at NAD 189.2 billion as at 31 December 2020, up from NAD 180.4 billion as at 31 December 2019. Investment managers play an important role in integrating the financial system, linking institutional investors to financial markets and banks. They manage funds on behalf of pension funds, insurance companies, collective investment schemes, medical aid funds and other wholesale investors. Investment managers continue to be the main conduit between NBFIs and other sectors within the financial system.

77. The value of the loan book for micro-lending (outstanding value) declined in comparison with 31 December 2019, by 19.1 percent, to register at NAD 6.1 billion for 31 December 2020. Long term insurance the industry's total assets increased by 2.5 percent to NAD 61.7 billion as at 31 December 2020 compared with the previous review period (Figure 15).

78. NBFIs, which are: Unit Trust Managers; Stockbrokers; Investment Managers; Linked Investment Service Providers; Long term and Short-term Insurance service providers; Unlisted Investment Managers and Special Purpose Vehicles; Micro-lending institutions and Friendly societies.

Table 6-Size and composition of the DNFBP Sector

STRUCTURE AND SIZE OF DNFBPs AS AT DECEMBER 2020					
Type of DNFBPs	Number of DNFBPs	Total Revenue (USD millions)	Local Majority Owned	Foreign Majority Owned	AML/CFT Supervisor
Auctioneers	19	387,636,612	Unknown	Unknown	FIC
Casinos	8	120,970	40%	60%	
Legal Practitioners	175	50,247,427	100%	0%	
Real Estate Agents	380	136,612,022	Unknown	Unknown	
Customs Clearing and forwarding agents	172	525,956,284	83%	17%	
Accounting firms	60	35,000,000	100%	0%	
Dealers in precious stones and metals ²	50	89,000,000	100%	0%	

Source: Namibian authorities and NRA

79. Namibia has full coverage of DNFBPs as required by the FATF. In addition, Namibia has designated auctioneers, customs and forwarding clearing agents and motor vehicle dealers as DNFBPs for purposes of AML/CFT. All DNFBPs have prudential regulators, with the FIC as the AML/CFT supervisor. The greatest ML risk exposure is real estate agents and legal practitioners, with the latter's

² The AT could not make a determination of the size of the DPMS since the sector is captured under Dealers in Jewellery, Arts and Antiques.

risk exposure emanating from provision of trust and company services and conveyancing. In general, TF risk is negligible in the DNFBP sector.

Virtual Asset Service Providers

80. Namibia has negligible number of VASP operating without regulation. There are two known VASPs, namely, Bitcoin (most dominant) and Crypto Kiosk Investment CC present in Namibia. The two VASPs have voluntarily registered with the FIC for AML/CFT. In terms of volume and value of transactions, Namibia has presence of small-scale operations of virtual asset providers with noticeable rise in transactions in late 2018. As at the time of the onsite, the value of the transactions was determined at about NAD 11 million.

81. In assessing the effectiveness of the preventive measures and the AML/CFT supervision, the Assessment Team paid more attention to banks, asset management companies, real estate, MVTS, legal practitioners, and trust and company service providers. Less attention was given to life insurance, dealers in precious stones and metals and casinos. Negligible to no attention was given to sectors classified as DNFBPs in Namibia but fall outside of the FATF Standards (for instance, MVDs and Customs Clearing and Forwarding Agents).

1.3.4. Preventive Measures

82. Namibia introduced the Financial Intelligence Act in 2009 as the first-ever primary legislation in the country which set out AML/CFT obligations for FIs and DNFBPs to comply with. The Act was repealed in 2012 primarily to enhance the existing obligations by introducing risk-based approach in the implementation of AML/CFT obligations, enhanced CDD and record-keeping measures, and aligned TF and TFS on TF and PF obligations with the CFT legislation. Additionally, Namibia issued other enforceable means (OEMs) such as Regulations and Directives pursuant to the provisions of the FI Act for AIs and RIs to comply with their obligations. However, the AML/CFT obligations do not apply to PEPs (See Rec 12) and VASPs (See R.15), and do not adequately cover suspicious transaction reporting requirements (See R.20), targeted financial sanctions relating to TF (See R.6) and PF (See R.7). Based on the risks identified in the NRA, Namibia extended the scope of DNFBPs to customs clearing and forwarding agents and motor vehicle dealers to comply with reporting obligations. Although the FI Act gave the Minister of Finance powers to exempt AIs and RIs from complying with the obligations in full or in part, there was no exemption applied for and therefore granted. Furthermore, there was no impact of the exemption provision on the full application of the AML/CFT obligations by AIs and RIs in Namibia. As at the time of the onsite, the power of the Minister to issue an exemption was repealed.

1.3.5. Legal Persons and Arrangements

83. The Business and Intellectual Property Authority (BIPA) is a statutory body responsible for registration of businesses and intellectual property in Namibia. Information on how to register a legal person is easily accessible on the BIPA website <https://www.bipa.na/business-registration/> which provides links to downloadable registration forms, with application done either physically at BIPA offices or electronically. In the alternative, members of the public can visit the BIPA Offices where they can request for the information in person. The BIPA, through its Marketing and Customer Care Department often carries out public awareness-raising on how to create legal persons. Both measures provide information on the types of legal persons that can be created. The BIPA registers private companies, closed companies, foreign companies, as follows:

Table 7- BIPA active entities as at 1st October, 2021

Entity type	Number	Percentage
Public/Non-Profit	2,361	1.2
Closed corporation	164,118	84.6
Private entity	23,764	12.3
Sole proprietorship	3,256	1.7
Foreign	383	0.2
Total number	193,882	100

84. To a large extent, Competent Authorities in Namibia can access basic information on legal persons and legal arrangements from the company registry or Master's Office respectively. Both the Master of High Court and BIPA Registries are obliged to collect and keep up-to-date basic and beneficial ownership information in terms of the FIA. However, they do not as yet have the capacity to implement the BO requirements. The understanding of the concept of BO and BO information varies across competent authorities.

85. There are many types of NPOs operating in Namibia. The most common and easiest to create is a Voluntary Association. It does not have to register with the Namibian Government. However, organisations that (a) engage in certain "public welfare" activities and (b) intend to request donations from government at national, regional or local level or to collect money from the general public, must usually register as Welfare Organisations. Alternative method of establishing an NPO in Namibia is also through a Trust, which can be either charitable or non-charitable. A Trust can be formed (1) for the purpose of benefiting a particular person or class of persons, or (2) for the purpose of carrying out some goal, usually something which will help some segment of the community. The object and structure of the Trust must be written in a Deed of Trust and registered with the Master of the High Court. Some non-profit groups may decide to register as a Non-Profit Company, usually known as Section 21 Company. There are also companies limited by guarantee which refer to the fact the parties involved do not remove the profit from the company as per Section 46 of the Companies Act. As at 31 August 2016, there were 1,942 registered NPOs excluding charitable trusts in Namibia (See Table below). The authorities have not identified Charitable trusts and companies limited by guarantees as NPOs though they fulfil the definition of NPO for the purpose of the FATF Standards. They have not also provided statistics on the number of charitable trusts and companies limited by guarantee which are registered in Namibia. The FIC regulates the NPOs for AML/CFT purposes in Namibia in terms of the FIA.

Table 8- Types of NPOs

Type	Number	Activities/Objectives	Legal Framework	Regulator
Section 21 Companies	628	Churches and Church Centres	Companies Act	Registrar of Companies
	23	Culture, Recreation radio, Entertainment and other recreational type		
	19	Law, advocacy and politics		
	786	Various (Cultural causes, Medical causes, Educational causes, etc.)		
Residential Child Facilities	22	Residential Child Facilities	Minimum Standards for Residential Child care Facilities	Ministry of Gender, Equality and Child Welfare
Various causes	464	Various Welfare organisations	Welfare Organisation	Ministry of Health
None	-	Voluntary Association	Voluntary Association	None

Source: NPO Risk Assessment of Namibia, updated in 2020

1.3.6. Supervisory arrangements

86. The FIC and NAMFISA are tasked with AML/CFT supervisory responsibility under the FI Act:

- **NAMFISA** – supervises insurance (includes life insurers), capital markets (includes all intermediaries), money lending (other than banks and deposit-taking institutions) and pension funds.
- **FIC** – supervises all DNFBPs and banks, deposit-taking institutions and MVTs.

87. For all DNFBPs and entities regulated BoN, the licensing and registration requirements are set out in different legislations and applied by a range of regulatory bodies including BoN, Public Accountants and Auditors Board, Casino Board, Ministry of Mining, Law Society of Namibia and Namibia Estate Agents Board.

88. MVDs and Customs Clearing and Forwarding Agents are supervised for AML/CFT purposes by the FIC.

89. VASPs are not subject to prudential and AML/CFT regulation in Namibia. The only two known VASPs operating in Namibia have voluntarily registered with the FIC for possible AML/CFT engagement.

1.3.7. International Cooperation

90. Competent authorities in Namibia have the legal basis for providing and seeking MLA and extradition as well as other forms of international cooperation. MLA and extradition matters are channeled formally through the Ministry of Justice as the Central Agency, Ministry of International Relations and Co-operation and Namibia's foreign diplomatic missions abroad while other forms of cooperation are processed through counterpart-to-counterpart channels. Namibia has a case management system which largely assists in identifying and tracking progress of a request including implementing agencies. In the main, Namibia has received fairly good feedback from the global network regarding provision of international cooperation. Namibia has been successful in making requests to and responding to requests from jurisdictions across the world with African countries dominant which is largely consistent with the risk profile of the country.

Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key findings

- (a) Namibia has, to a large extent, demonstrated an understanding of ML risks supported by the understanding of the threats from corruption and bribery, fraud, tax crimes and wildlife crimes as the major proceeds-generating crimes. However, ML/TF risks from VASPs and legal persons and arrangements, and TF risk from NPOs are not understood. TF is understood to a limited extent by all competent authorities except the NISS and the FIC which demonstrated a good understanding. However, the relative scale/ magnitude of the ML/TF threats are not yet determined.
- (b) The Council on AML/CFT/CPF has been successful in promoting coordination and collaboration of the competent authorities responsible for AML/CFT as demonstrated by the completion of the NRA versions and the corresponding AML/CFT/CPF Strategies. The Technical Committee, which supports the Council, does not coordinate agencies at operational level outside of the meetings of the Council.
- (c) There is uneven alignment of competent authorities' priorities and objectives to the ML/TF risks identified in the NRA and national priorities and objectives set out in AML/CFT Strategy as demonstrated by the high focus on: (i) terrorism instead of TF and (ii) predicate offences than high-impact/complex ML, while the supervisors' RBA to AML/CFT is at nascent stage.
- (d) Namibia has good inter-agency cooperation and coordination as demonstrated by Integrated Investigation Task Force and Blue Rhino Task Force which focus on complex financial investigations including Fishrot corruption and wildlife crimes. However, the competent authorities suffer from resource constraints.
- (e) Coordination and collaboration mechanisms for CFT strategy and policies do not prioritise TF. Namibia's focus on TF investigation and prosecution, implementation of targeted financial sanctions and monitoring of high risk NPOs is poor.
- (f) Based on the ML/TF risks identified in the various risk assessments, supervisors coordinate policies and priorities for supervision and preventative measures particularly EDD and SDD measures to mitigate and manage risks.
- (g) Namibia has limited coordination and cooperation of LEAs and intelligence services on PF operational matters.
- (h) Namibia has adequately promoted ML/TF risk awareness among FIs and DNFBPs using the findings of the NRA and SRAs.

Recommended Actions

- (a) Namibia should take necessary steps to collect information necessary to assess and understand the ML/TF scale/magnitude through review of the NRA or any other risk assessment process including risks from VASPs, legal persons and arrangements and NPOs.
- (b) The Technical Committee should develop and implement coordination and collaboration mechanism and meet regularly at an operational level (outside of the Council) to drive implementation of priorities and activities of the competent authorities at a multi-agency and agency level.
- (c) Namibia should complete the feasibility process on regulation of VASPs and subject them to AML/CFT supervision unless there is proven low risk, in which case, Namibia should take necessary actions to identify illegal VASPs and subject them to stringent enforcement action.
- (d) Namibia should ensure the key agencies' priorities, objectives, and performance targets are aligned to address ML/TF risks identified in the NRA and implement the AML/CFT strategy, with heightened focus on investigation and prosecution of complex ML, and application of RBA
- (e) The Council should ensure that each competent authority develops and implements an action plan informed by national policies and priorities and submit regular progress reports to the FIC for the Council's consideration as a monitoring mechanism in accordance with Namibia's National Action Plan under the AML/CFT Strategy.
- (f) Namibia should promote closer coordination and cooperation between the ACC and NAMPOL by ensuring that the ACC transfers ML cases arising from proceeds of corruption to NAMPOL for investigation.
- (g) Namibia should put in place coordination and collaboration mechanisms/structures for PF and TF priorities and activities at operational level.
- (h) Namibia should allocate adequate resources (human, financial and technical) to competent authorities informed by the ML/TF risks identified and the objectives of the AML/CFT Strategy.

91. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

92. **Namibia has taken significant efforts to promote and deepen the understanding of ML/TF risks by completing risk assessments at national and sectoral levels. The main ML threats identified by Namibia through the risk assessments are: tax crimes, fraud, wildlife crimes, and corruption and bribery.** The last NRA indicates that pyramid (Ponzi) schemes, illegal virtual asset transactions and trade-based money laundering (TBML) have gained prevalence and prominence in Namibia. TBML has significant cross-border dimension facilitated by illicit cross-border remittances. Corruption manifests in the form of abuse of power and procurement irregularities in the public sector as evidenced by the *Fishrot scandal* (large-scale corruption in the fishing industry orchestrated by local and international organised criminal group including local PEPs which resulted in large revenue losses to the State and communities concerned).

93. **Namibia has demonstrated a good understanding of the ML risks it faces as well as the channels used to raise and launder the proceeds and that the proceeds are laundered inside and outside of the country but could not demonstrate their scale/magnitude. ML threat is determined at high.** This means that Namibia is more of a source than a destination country for ML. Namibia placed heavy reliance on the values of the suspected proceeds in the suspicious transaction reports filed by Accountable Institutions to the FIC for assessing the scale/magnitude of the proceeds owing to unavailability of comprehensive information from the competent authorities as recognised since the 2012 NRA. Using the three major criminal cases which generated the most proceeds, namely, Fishrot Scandal (serious corruption and bribery in Namibia fishing industry), Value-Added Tax (VAT) scam (tax and related crimes) and SME Bank fraud, Namibia drew lessons on how criminals abuse the system. Most of the proceeds were laundered through banks, unit trust schemes and asset management related financial services. Trust and company services providers, lawyers and real estate agents were found to have a high ML vulnerability in the DNFBP sector and were also central to the high-profile cases. In addition, Namibia identified typologies of significant abuse of Customs Clearing and Forwarding Agents and motor vehicle dealers in respect of cross-border remittances and tax-related offences. Namibia has identified abuse of legal persons and legal arrangements for ML purposes, though at a basic level.

94. Namibia has porous borders resulting in the NRA concluding that the ML threat from cross-border activities is high. Namibia understands that organised criminal groups engage in trafficking and smuggling activities particularly of goods to neighboring countries and that the proceeds are less likely laundered in Namibia. The assessors are, however, not convinced that Namibia has fully assessed the risks associated with the informal and underground channels to raise and launder the proceeds in the absence of any supporting information such as case examples and data.

95. Namibia has determined virtual assets as a growing avenue for generating and laundering of proceeds, with the banking sector being the major target but is yet to conduct a risk assessment of the potential risk of misuse of virtual currencies in the country. Namibia is in the process of developing a policy framework on regulation of virtual assets and virtual asset service providers. The FIC, BoN and NAMFISA are quite aware of the risks arising from illegal virtual asset activities and, under the direction of the Council, have formed a technical team for assessing the feasibility of prudential and AML/CFT regulation of the sector. Similarly, discussions with the banks demonstrated a good appreciation of the ML/TF risks emanating from VA transactions based on their own and global typologies, with most banks indicating that they have identified through clients' bank statement analysis that some clients are engaging in virtual asset transactions.

96. **Namibia recognised a strategic deficiency in the “financial intelligence-investigation-prosecution-confiscation” value-chain within the AML/CFT system because of lack of prioritisation of parallel financial investigations and prosecution of sophisticated predicate offences and ML cases and resources.** This has not only affected the overall effectiveness of the AML/CFT system but has also significantly undermined Namibia's efforts to quantify and understand the scale or magnitude of unlawful proceeds and ML.

97. Despite the ongoing misuse of legal persons and arrangements in serious predicate offences and ML cases, Namibia has a poor risk understanding of the sector and weak institutional capacity at the registries responsible for obtaining and maintaining beneficial ownership information. This has resulted in Namibia experiencing challenges in successfully pursuing ML cases involving legal persons and arrangements. The ongoing *Fishrot* corruption case bears testimony.

98. **Namibia has underdeveloped TF risk understanding and is reactive in pursuit of TF cases. The NRA found that domestic TF was non-existent and was rated low because, as at the time of the onsite, there were no known terrorist activity and that the country is situated in the Southern Africa region which has experienced relative peace and security.** The NISS and the FIC demonstrated a good understanding of the possible sources of TF risks that are likely to emanate from terrorist activities in Mozambique such as raising and moving cash and remittances through illegal means. The TF case examples shared with the assessors revealed that Namibia applied a reactive, passive

and conservative approach to detecting and investigating potential domestic and foreign-linked TF cases. This has seriously affected the ability of the Authorities to fully appreciate the nature and level of TF from domestic and foreign sources facing Namibia. Based on the discussions, the Assessors are of the view that the TF risk in Namibia is higher than low. For example, Namibia rated TF low in the 2020 NRA from medium in the 2015/16 NRA without providing plausible justification for the change in the rating despite the understanding of the risk and contextual factors remaining largely unchanged as at the time of completion of the NRA.

99. Some levels of weakness were identified in the Namibian authorities AML/CFT regime. There is a relative low number of TF and ML prosecution and convictions on high proceed generating crimes, which represents the weakest aspect of the regime. The limited number of the cases investigated and prosecuted also adds to the challenge of understanding the scale/magnitude of the ML/TF risks in Namibia.

2.2.2. National policies to address identified ML/TF risks

100. **Namibia's national AML/CFT policies and activities addressed the identified ML/TF risks, to some extent, with implementation of the risk mitigation measures uneven and constrained by resources availability across the competent authorities.** Some competent authorities (e.g., FIC, NAMFISA and BoN) have robust strategies and policies in place and were better at combatting ML/TF than others (e.g., company and trust registries and some law enforcement agencies) on combatting ML/TF. In addition, Namibia appreciated the risks posed by limited domestic cooperation and coordination at operational level (e.g., LEAs) and capacity/resource constraints to effectively implement its AML/CFT policies and activities to address the identified risks. This has impacted on the country's ability to implement a holistic and effective AML/CFT approach at a national level. To improve implementation of investigation and prosecution of high-impact and complex ML cases, Namibia established Integrated Investigation Task Force (IITF) and the Blue Rhino Task Team comprising LEAs and the FIC to harness resources and coordinate prioritisation of investigation and prosecution of *Fishrot* cases and wildlife crimes respectively. The majority of the cases are yet to be completed to enable the Assessors to gauge effectiveness of the reform, but most are at advanced investigation stage and some before court.

101. The priority for Namibia's risk-based mitigation strategy was (a) legal and institutional enhancements following the 2009 MER findings, (b) sustain gains from the increased monitoring by the FATF under ICRG process ending in 2014, (c) and determination to implement the revised 2012 FATF Standards. The Assessors noted that the policies and activities have a heavy focus on pursuing proceeds of predicate offences than ML, and TF to a negligible extent.

102. Namibia has a holistic and coordinated approach to policymaking and oversight under the Ministry of Finance. The Ministry is responsible for AML/CFT policies and overseeing activities via the Council chaired by the BoN, with the FIC as the coordinating agency and the chair of the Technical Committee.

103. **The cooperation and coordination mechanism has led to successful major AML/CFT developments since the last assessment of Namibia in 2009:**

- **Namibia conducted a series of ML/TF risk assessments** which are the basis for the existing risk understanding and the findings of the risk assessments have been used to develop and implement AML/CFT policies and actions.
- **Namibia introduced the Financial Intelligence Act, 2012** and amended it on a few occasions ever since to align it to international AML/CFT developments. These included expanding the scope of preventative measures and introducing a risk-based approach to

supervision and preventative measures as well as requirement for BIPA and the Master of the High Court to obtain and maintain BO information.

- **Transferred AML/CFT supervision responsibilities from the FIC to NAMFISA once it was established.** NAMFISA is responsible for securities, micro-lending, insurance and pension. NAMFISA's AML/CFT supervision unit is strengthening its capacity including staffing and risk-based approach.
- **Namibia established Anti-Money Laundering and Combating of Financing of Terrorism Division** under the Criminal Investigation Directorate within the Namibia Police Force (NAMPOL). The Directorate comprises three sub-divisions namely, Financing of Terrorism Investigation Sub-Division, Asset Recovery Sub-Division and Money Laundering Investigation Sub-Division. To some extent, the ML and forfeiture new divisions successfully addressed investigations priorities by focusing on major proceeds-generating and ML cases. Proactive identification and investigation of TF cases remain a challenge for the TF division.
- **Namibia established Asset Forfeiture Unit** in the Office of the Prosecutor General in 2011 as a specialised unit provisional and confiscation measure. The Unit is in the process of strengthening capacity to enable effective forfeiture and confiscation of criminal asset.
- **Namibia established Business Intellectual Property Authority (BIPA)** which is a company registry through enactment of Business Intelligence Property Act, 2016. Like most competent authorities in Namibia, BIPA lacks capacity to fulfil its mandate including obtaining and maintaining reliable BO information.
- **Namibia introduced PACOPTA to criminalise TF and implement procedures for TFS on TF and PF.** However, implementation of TFS obligations remains a challenge due to weaknesses in the regulations and poor coordination.
- **Namibia established Anti-Corruption Commission** in 2006 to investigate and prosecute proceeds from corruption and bribery. There is lack of legal and operational certainty over whether the ACC has power to prosecute or should transfer ML cases arising from proceeds of corruption to NAMPOL.
- **Namibia voluntarily brought into AML/CFT framework additional risky sectors** outside the FATF scope, Customs Clearing and Forwarding, to address rising trade-based money laundering (TBML) risks.
- **NPOs were designated as DNFbps and are subject to the full AML/CFT obligations** in the absence a dedicated regulator to address TF and ML concerns. This may raise questions about unintended consequences of R.8 measures.

104. Overall, Namibia has AML/CFT policy direction for addressing the ML/TF risks identified in the NRA. Namibia is, however, facing resources constraints which have, to a large extent, undermined the effectiveness of the AML/CFT policies.

105. **Namibia's approach to combating TF is not proactive enough to address the prevailing TF risks. The country's anti-terrorism strategy pays little attention to TF, with bias towards terrorism.** Based on the terrorism cases discussed with the Authorities, it was clear that TF is not fully embedded in the operations of LEAs except for the NISS and the FIC. Furthermore, Namibia has not demonstrated that TFS measures are integral part of its CFT strategy and operations.

2.2.3. Exemptions, enhanced and simplified measures

106. **Namibia has covered all FIs and DNEBP activities in its AML/CFT legislation consistent with the FATF glossary of activities subject to the FATF Standards.** The AML/CFT legal and regulatory framework previously provided Ministerial Exemption for the Minister of Finance to modify or exclude from the application the AML/CFT obligations to Accountable Institutions. This legal provision did not require risk-based decisions to apply. However, no exemption was ever applied for and granted to any entity or class of entities to which the AML/CFT obligations applied. Namibia withdrew the exemption during the onsite visit through a government notice dated 12 October 2021. The Assessors noted that the exemption clause had no impact on the overall effectiveness Namibia's AML/CFT regime since it was never applied.

107. **Namibia AML/CFT legislation permits application of simplified and enhanced measures as part of a risk based CDD application under risk-based decisions in relation to products, customers, transactions and delivery channels but none was singled out as high or low risk to apply enhanced or simplified measures.** As at the time of the onsite mission, Namibia had not issued any directive or guidance on specific high-and-low risk scenarios to Accountable Institutions to promote uniform application of the simplified and enhanced measures in the legislation. The NRA or the sectoral risk assessments do not specifically identify specific risk scenarios for application of simplified and enhanced measures. Accountable Institutions have a discretion predicated on entity risk assessments proving existence of scenarios for simplified and enhanced measures. The legislation prohibits application of simplified measures in circumstances where there is doubt on the veracity of CDD information and where there is suspicion for ML and TF. Assessors noted that the supervisors have in place measures to monitor effectiveness and take appropriate enforcement action for non-compliance with the measures to some extent.

2.2.4. Objectives and activities of competent authorities

108. **To some extent, the priorities of the competent authorities to address the identified ML/TF risks are at varying rates and negligible in some cases, which reflects their different ML/TF risk understanding.** Namibia developed the AML/CFT Strategy 2016-2018 as the basis for competent authorities to develop and implement their own objectives, priorities and activities to combat ML and TF risks identified in the NRA at agency and national levels. As at the time of the onsite, Namibia had not yet updated the Strategy in line with the 2020 NRA findings, though the competent authorities have started a review of their objectives and activities. The NRAs have Action Plans component which sets out the priority areas for competent authorities to combat ML/TF. Overall, the Assessors noted that the Action Plans are largely similar in nature and each Action Plan seeks to sustain the gains of the previous one. Furthermore, the Action Plans set out a three-year target for each competent authority to address the priority actions and then file annual progress reports for review to the FIC for submission to the Council. The Action Plan have a template for monitoring of progress made by competent authorities. However, there is no evidence of progress reports filed with the FIC as part of the monitoring process.

109. Some ML cases have been identified, but overall, the OPG and the LEAs have focused mainly on predicate offenses rather than ML. The Namibian Police Force (NAMPOL) has a Strategic Plan 2017-2022, but no aspects of ML elements are addressed except for Organised Crime, which category the authorities say ML falls under. The Strategic Plan is based on three pillars, Pillar 1: deals with effective policing. Pillar 2: deals with building partnerships and Pillar 3: deals with organisational excellence. A guideline circular has also been circulated to all regional heads guiding commanders and investigating officers on the identification and investigation of ML and Asset recovery. Looking at statistics of predicate offences being investigated, and the small number of convictions on ML, the Namibian Police Force (NAMPOL) is placing more emphasis on the investigation of predicate offenses than identification and investigation of ML networks and professional enablers. The ACC does not have a Strategic Plan that recognises ML in its performance environment despite corruption being on the rise in the recent

years. The OPG has a Strategic Plan in the form of guidelines on policy to the prosecutors on how to identify ML or prosecution and how to deal with those cases. This is aimed at assisting with improving performance including ML prosecutions of all types. Looking at the statistics, some key performance indicators might have encouraged undue focus on small and simple cases with low values and might have diverted the efforts away from complex and higher risk ML activities. The objectives and activities of the OPG, NAMPOL and the ACC are coordinated through various MOUs; however, this is only limited to high priority cases and or on a case-by-case basis. There are some coordination challenges between the ACC and NAMPOL in respect of prosecution of ML cases arising from corruption proceeds in that both agencies hold a view that they are responsible for such cases.

110. As at the time of the onsite mission, the supervisors were at the early stages of implementation of RBA framework in line with the risks identified. However, the extent of implementation of the priorities were affected by low resource allocation. For instance, the supervisors had to reprioritise supervision resources to focus on FIs and DNFBPs implicated in the Fishrot corruption case. Therefore, the RBA is implemented to a limited extent.

111. BIPA and Master of the High Court's priorities are yet to focus on BO transparency of legal persons and legal arrangements. This is attributed to the limited ML/TF risk understanding by the registries in respect of BO transparency. As a result, Authorities had not allocated resources to the registries to develop and implement the required infrastructure for reliable, accurate and up-to-date BO registries.

112. The FIC has developed and implemented objectives and activities which prioritise high-risk predicate offences to a large extent in relation to analysis and dissemination of financial intelligence and other information. However, the financial intelligence and other information has only been used to a large extent to pursue predicate offences, ML to some extent and TF to a limited extent. Resource allocation has been to some extent provided in line with the analysis priorities of the FIC, though more is required for the analysis function and to train LEAs on the use of the FIC financial intelligence.

2.2.5. National coordination and cooperation

113. The strength of Namibia's ML/TF/PF coordination and collaboration is its policy direction and operational oversight done by the Council which reports directly to the Minister of Finance. The Council is a statutory structure comprising agencies responsible for policy, investigations and prosecutions, supervision, and international cooperation on AML/CFT in Namibia. The banking association is the only member from the private sector. The Council established a Technical Committee, which operates through Terms of Reference, for policy advice and implementation. Its membership mirrors the Council's. While there is sufficient information demonstrating the significant achievements of the Council on policy matters, information on the operations and performance of the Committee is scanty. Namibia indicated that the Committee does not have its own implementing programme per se and, as such, it participates in all meeting of the Council. This made it difficult to assess the impact of the Committee on coordination and collaboration.

114. To a large extent, the Council has been effective in promoting coordination and collaboration at national and agency levels through risk understanding activities and setting out of mitigation priorities for implementation by a group of agencies/institutions and individual agencies. For instance, the Council continually reviewed the NRA and Strategies since 2012 and have been used competent authorities. Further, the Council has been successful in setting out policy direction including initiating AML/CFT legislative reviews.

115. As at the time of the onsite mission, the Council had established a technical committee comprising the FIC, BoN and NAMFISA to study the feasibility of regulation of VA and VASPS.

116. Competent authorities have been successful in entering into MoUs with each other for exchange of information in a coordinated and collaborative manner and are using the mechanisms in a constructive manner. As the national coordinator, the FIC has played a pivotal role in driving domestic exchange of information between and amongst law enforcement, supervisors, FIC and private sector.

117. Law enforcement agencies in Namibia have to a greater extent used the coordination and collaboration mechanisms to pursue investigation and prosecution of proceeds of predicate offences and to some extent ML (See IO.7) and TF to a limited extent (IO.9). Namibia established an Integrated Investigation Task Force (IITF) comprising LEAs (OPG, NAMPOL, Asset Forfeiture of the OPG and NAMRA) and the FIC to pursue complex ML cases arising mainly from the Fishrot cases. Namibia successfully coordinated and collaborated on the investigations and prosecutions of wildlife crimes under the Blue Rhino Task Force. While there has been noticeable focus on ML following the Fishrot corruption, the results are improving – though from a low base. Cooperation by law enforcement agencies has one challenge relating to the uncertainty between the ACC and NAMPOL in respect of referral of ML cases arising from proceeds of corruption, which, in terms of the law, it appears NAMPOL should be the ones investigating such cases. Namibia should urgently resolve this situation to avoid competition between the two agencies by taking active steps to foster cooperation and coordination between the two agencies responsible for the fight against corruption and associated ML.

118. The supervisors have worked closely together on risk-based supervision framework and guidance on ML/TF risk and AML/CFT obligations (See IO.3). The AML/CFT supervisors shared sectoral risk assessments, methodologies and processes. NAMFISA shared with the FIC its inspections findings and enforcement actions. In addition, the supervisors conduct joint outreach and training activities of the entities especially as regards the NRA.

119. While coordination and collaboration structures are in place and being implemented, monitoring mechanisms set out in the AML/CFT Strategy (which require each agency/institution to submit a remediation progress report to the FIC for submission to the Council) are not complied with.

120. Namibia has not demonstrated that it has operational structures which routinely promote coordination and collaboration on PF and on intelligence gathering, investigation, and prosecution on TF. Authorities indicated that the relevant agencies work together on an ad hoc basis.

2.2.6. Private sector's awareness of risks

121. Namibia has successfully undertaken several outreach activities to the private sector to promote awareness of ML/TF risks identified in the NRAs and sectoral risk assessments. The private sector participated actively in specific industry working groups of the NRA and with their supervisors during the risk assessments processes. On completion of the NRAs, the FIC communicated the results of the NRAs and SRAs through its website for access by the private sector. Furthermore, Namibia has issued guidance notes to promote risk awareness on specific preventive measures covering politically exposed persons, CDD measures relating to intermediaries, cross-border remittances; and ML trends and typologies on proceeds from cross-border remittances, tax crimes, fraud, wildlife and corruption.

Overall Conclusion on IO.1

122. Namibia completed three NRAs in the last decade to assess and promote understanding of ML/TF risks. Namibia has been successful in developing AML/CFT Strategies informed by the NRAs findings. The NRA identified corruption and bribery, tax crimes, fraud, and wildlife as the predicate offences generating the most proceeds. It also identified the channels for misuse which include banks, MVTS, asset management companies, lawyers and real estate for laundering the proceeds, though there are limitations on assessing the scale/magnitude of the ML/TF threats. Except for the FIC and NCIS, competent authorities have a low TF risk understanding. As a result, Namibia's national CFT Strategy pays little attention to TF. The priorities and activities of competent authorities are aligned to the risks identified to some extent, though resource allocation is a challenge for implementation. While Namibia has a good policymaking coordination and collaboration mechanism for PF and TF through the Council, there is little evidence of the same at operational levels though the responsible agencies coordinate with each other but on an ad hoc basis. Namibia has been successful in raising awareness for promotion of risk understanding by the private sector.

123. **Namibia is rated as having a Moderate level of effectiveness for IO.1.**

Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1 Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- (a) With the added AML/CFT supervision responsibilities for banks, MVTS and DNFBPs, the FIC has resources constraint to effectively carry out its core mandate as an FIU.
- (b) The FIC produces fairly good quality financial intelligence. However, there are concerns over the Director's authority to obtain and deploy the resources needed to carry out the FIC functions which needs to be better enshrined and safeguarded. The FIC is not adequately capacitated to manage its own IT systems and infrastructure to ensure security of information.
- (c) Authorities in Namibia, particularly NAMPOL and ACC, routinely use financial intelligence to help investigate predicate crimes and trace criminal assets, primarily related to fraud, wildlife crimes and corruption to a large extent and has been used to proactively investigating ML to some extent and TF to a limited extent. The focus on types of predicate offences is consistent with the country's risk profile but less so for ML threats as only self-laundering is pursued.
- (d) The FIC responds to requests for information from LEAs as well as making proactive disclosures to LEAs based on their own analysis of reports from AIs and RIs. During the period under review, the FIC intelligence was used by LEAs to successfully prosecute eight ML (8) cases and for freezing and forfeiture mostly of proceeds of predicate offences. To some extent, the OPG: AFU works with NAMPOL in utilising financial intelligence for asset confiscation purposes.
- (e) The FIC makes effective use of its powers to obtain additional information from reporting entities and uses it in its analysis to follow the money and criminal proceeds and provides proactive and reactive disclosures to LEAs.
- (f) The FIC, NAMPOL and the ACC formed the 'Integrated Investigation Task Teams' (IITTs) to address complex predicate offences and ML while the FIC membership provided intelligence which has been successfully used in supporting investigations including locating assets outside the country.
- (g) Effective use of financial intelligence on ML cases associated with corruption is a challenge, to some extent, because of the uncertainty between NAMPOL and the ACC over which agency is, by law, responsible for such cases.
- (h) To a large extent, the FIC cooperates and coordinates well on provision of financial intelligence with the LEAs particularly with NAMPOL and the OPG.
- (i) It could not be demonstrated that the strategic reports produced by the FIC focused on analysis of typologies and trends relating to predicate crimes, ML and TF that support LEA's operational needs.
- (j) The FIC provides feedback to FIs and DNFBPs on cases that have strong indications of successful investigation but does not have an established mechanisms in place to provide

general feedback. In addition, the FIC receives ad hoc feedback from the LEAs and other competent authorities on the use of its financial intelligence.

- (k) The overwhelming majority of suspicious transaction reports analysed by the FIC are from commercial banks. There is limited or no filing of suspicious transactions reports by the NBFIs and DNFBPs despite the NRA identifying most of them (e.g., real estate, legal practitioners, asset managers) as high risk for ML. Thus, the diversity of the STRs filed is relatively not sufficiently broad to enable production of financial intelligence in line with the risk profile of the affected sectors.

Immediate Outcome 7

- (a) The authorities identify and investigate ML cases to some extent with emphasis placed more on the investigation of predicate offenses. Parallel financial investigations (PFI) are undertaken by the Namibian Police Force (NAMPOL): CID in all cases where an element of ML is identified. The Anti-Corruption Commission (ACC) conducts parallel financial investigation (PFI) on corruption cases but have not sufficiently demonstrated the proactive identification and investigation of ML cases as a primary objective.
- (b) Investigation of ML activity is, to some extent, consistent with Namibia's risk profile. The bulk of ML cases investigated relates to fraud, corruption and environmental crimes.
- (c) Most ML prosecutions and convictions relate to fraud, with other high-risk areas such as tax, corruption and environmental crimes having very few prosecutions and convictions which are to a lesser extent consistent with Namibia's risk profile.
- (d) Corruption cases referred to the Prosecutor-General (OPG) by the Anti-Corruption Commission (ACC) have not been dealt with expeditiously with very few ML convictions on corruption dealt by the Anti-Corruption Commission (ACC). Both ML and corruption cases arising from the 'Fishrot scandal' have not been proactively pursued as there are no prosecutions or convictions yet, if account is taken that the first intelligence on the scandal surfaced in 2012.
- (e) Investigation and prosecution of self-laundering cases were pursued to some extent. However, investigation, prosecution and conviction on the other types of ML offense has not been pursued. The proactive identification and investigation of ML networks and professional enablers is still not happening to a large extent as there is more focus on investigation of predicate offences. Wider ML activities by organized crime syndicates, including from outside Namibia, are not being sufficiently identified and investigated. One of the reasons for not having cases of foreign predicate ML offenses that most of the proceeds generating crimes are being committed and their proceeds laundered within Namibia.
- (f) The Namibian authorities are coordinating to some extent through special task forces used in dealing with complex crimes such as corruption and wildlife crimes.
- (g) Most sanctions imposed against natural persons by the courts involve non-custodial and or suspended sentences for the ML offense and therefore can be effective, proportionate and dissuasive to a lesser extent. No sanctions have been applied against legal persons.
- (h) There are inadequate resources and capability within the NAMPOL, ACC and OPG. The shortage of sufficient financial investigators has a detrimental effect on the number of parallel financial investigation on ML. Without sufficient prosecutors to assist LEA in

prosecutor guided investigations, the number of investigation and prosecutions is unlikely to increase but the convictions will continue at low.

- (i) Namibia does employ alternative criminal justice measures to some extent on ML cases and has a range of options when it is not possible to secure a ML conviction.

Immediate Outcome 8

- (a) Namibia to some extent pursues confiscation of proceeds of crime as a policy objective and has achieved some success. The Asset Forfeiture Unit within the OPG places emphasis on its given powers under the POCA, and targets proceeds and instrumentalities of crime. However, there is need for investigations and prosecutions to be carried out and concluded timeously to avoid dissipation or flight of funds and assets with potential to be confiscated.
- (b) Only a few staff members of LEAs have received specialized training to enhance and broaden their capacity to conduct parallel financial investigations to identify and trace proceeds of crime.
- (c) There have been to some extent recovery of proceeds of crime in the areas of fraud, corruption, VAT fraud, theft, illicit wildlife trade, and drug dealing which is consistent with the risk profile of the country. There has been limited pursuit and, or success in recovery of assets that have been moved to foreign jurisdictions or their identification. Repatriation, sharing or restitution of proceeds or instrumentalities of crime or property of corresponding value with other jurisdictions has only been done to a very limited extent.
- (d) There is a low rate of investigation and prosecution of suspects for committing the offences relating to failure to declare and/or false declaration of cross border movement of currency and BNIs, as the focus appears to be on verifying the legitimacy of source of non-declared funds and tax compliance. Namibia has demonstrated a low rate of sanctions that are proportionate, dissuasive and effective in respect of cash/BNI declaration at ports of entry and exit.
- (e) Namibia's confiscation rates are consistent with the ML risks and national AML/CFT Policies. Dealing in drugs, fraud, tax evasion, wildlife trade is indicated as high risk, the rates of confiscation on the same are low.

Recommended Actions

Immediate Outcome 6

- (a) Namibia should provide additional funding to the FIC to enable it to enhance its analytical capability which is essential for the FIC to support the pursuit of complex financial crimes such as the Fishrot case.
- (b) NAMPOL and ACC should increase their skills and resources so that they can much better use financial intelligence in their investigations.
- (c) Authorities should safeguard the operational independence and autonomy of the FIC by amending the FIA to protect the FIC Director security of tenure from the Governor of the BoN and to provide the FIC Director with full authority to obtain and deploy the resources needed to carry out the FIC functions by not requiring the concurrence of the Governor of BoN to do so.
- (d) The FIC should be enabled to manage its IT systems and infrastructure and discontinue its reliance on BoN IT systems and infrastructure to ensure confidentiality and security of information held by it.
- (e) Namibia should improve domestic cooperation and exchange of information between the FIC and LEAs with a deliberate focus on the ACC and the NCIS to use of financial intelligence to pursue ML/TF investigations and prosecutions, as well as identification and tracing of property subject to confiscation.
- (f) Namibia should resolve the uncertainty between ACC and NAMPOL in respect of the power to investigate ML from corruption proceeds. The Authorities to enhance cooperation between the agencies.
- (g) The FIC should strengthen mechanisms to get feedback from the LEAs on the usefulness of the financial intelligence and information disseminated to them.
- (h) The authorities should increase the diversity of reports from reporting institutions (including by conducting outreach and issuing guidance and typologies) consistent with the risk profile of the country.
- (i) The FIC should develop in-depth strategic reports which focus on typologies and trends relating to predicate crimes, ML and TF to support LEA's operational needs.

Immediate Outcome 7

- (a) Namibia should enhance coordination between LEAs, particularly between the NAMPOL and the ACC, and other role players for identification, investigation, and prosecution of ML focusing: High-end/complex ML cases, Serious corruption, Tax crimes, Professional enablers, Third-party launderers, and Stand-alone ML.
- (b) The OPG should introduce a mechanism for managing ML cases identified and guidance provided to investigating officers and monitor those cases by prosecutors to enable easy follow-up of the cases and eventual prosecution thereof for ML.
- (c) Provide adequate operational capacity (financial, human and technical resources) to LEAs including:

- Specialised staff to NAMPOL and the ACC to investigate ML and to the OPG to prosecute ML cases. These resources should include attracting and retaining skilled staff and expertise especially financial investigators; and
 - Specialised continuous training on high end/complex financial investigations and prosecution including parallel financial investigations and effective application of special investigative techniques.
- (d) Develop and implement an efficient case management system within all agencies that will record all investigations, prosecutions and convictions on ML cases in order to have a better record keeping system necessary to assess the effectiveness of the regime. The case management system will assist in keeping track of high-profile cases e.g., Fishrot scandal.
- (e) Namibia should use the results of the NRAs to promote prioritisation of investigation and prosecution of cases in accordance with the identified risks in Namibia. It should also ensure that LEAs pursue different types of ML cases and criminal proceeds consistent with the ML and associated predicate offences risks facing the country.
- (f) Namibia should ensure that the ACC focuses on conducting parallel financial investigations to identify and investigate corruption and ML cases arising from the proceeds of corruption.
- (g) NAMPOL should strengthen its efforts in identifying and investigating more complex and high proceeds generating offenses and ML by proactively conducting parallel financial investigations and applying special investigative techniques.
- (h) Namibia should keep comprehensive statistics relating to ML investigations and prosecutions as well as convictions to enable adequate assessment or review of the effectiveness of the AML/CFT regime in the country.
- (i) In order to improve the effectiveness, dissuasiveness and proportionality of the sanctions regime in Namibia, the level of awareness on combatting ML and high proceeds generating crimes should be increased among the magistrates and judges.
- (j) Namibia should consider looking at prosecuting legal persons and all types of laundering and thus improve the overall dissuasive impact of their approach to ML.

Immediate Outcome 8

- (a) Namibia should provide adequate financial and human resources, including training to enable the competent authorities including the AFU with the OPG to speedily identify, trace, investigate, and confiscate/forfeit proceeds of crime. More effort should be made to finalise the cases pertaining to the Fishrot scandal so that confiscation/forfeiture processes pertaining to the assets connected to the cases can be concluded.
- (b) Competent authorities in Namibia should increase their level of international cooperation, and, or with their foreign counterparts in order to enhance levels of repatriation, sharing or restitution of proceeds or instrumentalities of crime arising from domestic or extraterritorial cases.
- (c) Namibia should take steps to apply proportionate and dissuasive sanctions for failure and or false declarations of currency and NBIs by prioritizing prosecution of offenders for non-declaration of movement of currency and NBIs, confiscation of such funds and enhance identification of instances where such funds could be intended for laundering or TF.

- (d) Namibia should prioritise cases to pursue in the recovery of proceeds of crime based on the risk profile of the country and have a proper case management system to assess efforts in place to deprive criminal property effectively.
- (e) Namibia's should enhance the rates of confiscation of proceeds of crime consistent with the ML risks and national AML/CFT Policies.

124. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)

Background and Context

125. Namibia has a developed administrative-type Financial Intelligence Unit (FIU), known as Financial Intelligence Centre (FIC). The FIC has some capacity to exercise its core functions on receipt and analysis of transaction reports, and dissemination of financial intelligence and other information to LEAs to identify potential cases of ML, TF and associated predicate offences.

Table 9- FIC Staff as at 31 December 2021

Division	Post Available	Post Filled
Director	1	1
Financial Investigation and Analysis Division	14	13
Compliance Monitoring & Supervision and Strategic Analysis Division	12	10
Legal Policy and Enforcement Division	3	2
Total	30	26

126. The FIC has been a member of the EGMONT Group of FIUs since 2014 and has therefore a wide network of FIUs with which it is able to exchange information. The FIC is housed within the BoN and has adequate physical security with clear demarcation of its offices from those of the BoN. Although the FIC office was well equipped and had an up-to-date IT system with adequate storage space and filing system to secure its intelligence reports, the FIC relies on BoN for its IT systems and infrastructure. The servers were secured in a specific area to which access was controlled but accessible to BoN IT staff. Furthermore, all administrative rights for the IT systems lie with the BoN. These raises concerns in terms of security of information. It was also noted that the budget, which is insufficient, for the FIC has fluctuated in the period under review with a reduction from 2020 to 2021.

3.2.1. Use of financial intelligence and other information

127. The LEAs (especially NAMPOL) obtain and use financial intelligence and other information to identify and support investigations of predicate offences to a large extent and ML to some extent and TF to a limited extent. The main focus of the use of intelligence of FIC by LEAs is on the pursuit of proceeds of crime involving PEPs, legal entities and trusts in the ongoing Fishrot case. This information obtained by LEAs from the FIC is additional to querying the FIC database, search on external databases, and collection of bank statements where needed and conduct financial analysis on entities and individuals. The table below indicates that more than two-thirds of the disclosures made by the FIC to

LEAs is on predicate offences generating the most proceeds with tax evasion dominant followed by fraud, corruption and ML cases which is in line with the country's risk profile (Chp.2 for details).

Table 10- FIC Spontaneous Disclosures (per crime type)

Crime type	Number of Spontaneous Disclosures	Percentage of Spontaneous Disclosures
Tax Evasion	567	47.61
Fraud Related Crimes	122	10.24
Corruption	91	7.64
Exchange Control Contravention	62	5.21
ML	60	5.04
Pyramid Schemes	40	3.36
Environmental Crimes	20	1.68
PF (same SD simultaneously)	18	1.51
Theft	16	1.34
TF	9	0.76
Drug Related Crimes	8	0.67
Human Trafficking	4	0.34
Illegal Diamond Dealing	3	0.25
Others (Including OPG-AFU)	171	14.36
Total	1191	100.00

Table 11- Requests to FIC from LEAs and responses thereto:

	2016	2017	2018	2019	2020	Total	
Request for information	82	48	90	77	71	368	73.6
Responses to requests for information	47	44	69	69	92	321	64.2
Average working days to respond	4 weeks						

128. Namibia competent authorities, particularly NAMPOL, use financial intelligence to help investigate predicate crimes, ML and TF, while the PG: AFU uses financial intelligence to identify and trace criminal assets. The Office of the Prosecutor General (OPG) Unit for Asset Recovery uses the FIC intervention and start their own proceedings of drafting applications for freezing orders. The FIC produces both Reactive Disclosures (ones in response to a request for information) and Proactive Disclosures (unsolicited). Over the five-year period from 2016 to 2020, Namibia competent authorities made 368 requests to the FIC for financial intelligence and other information relating to ongoing cases mainly predicate offences. Most of these requests (83.70 percent) were for predicate crimes, with ML (16.30 percent), TF (1.0 percent) as financial intelligence and other information is used to a large extent to support investigations of predicate offenses and is only being used to some extent to develop evidence and proactively identify ML offenses. During the period under review, NAMPOL used the FIC information to secure convictions in eight (8) ML cases while (ten) 10 are before the courts.

129. There are direct and indirect channels through which the information is accessed by the FIC and the LEAs. The FIC applies the broad range of powers to access relevant information held both in the public and private sectors. The FIC has direct connectivity to the Business and Intellectual Property - BIPA – Company registry, National Traffic Information System-NATIS- Vehicle registry, Customs Asycuda System, and the Deeds Office (direct access-search on computer-access code in private office, files also physically inspected, making of copies etc.)- Direct access from desktop in process. The FIC also makes use of commercial databases to which it subscribes and has direct access. The OPG accesses financial intelligence and other information from the FIC and LEAs for purposes of tracing criminal

property and effecting civil forfeiture. Moreover, financial intelligence is also obtained from foreign counterparts, with the FIC leading the LEAs in accessing information through spontaneous and upon request disclosures using bilateral and the Egmont Group of FIUs Secure Website (See IO.2 for details).

130. The top four predicate offenses for which LEAs are requesting financial intelligence from the FIC seems to be generally in line with the proceeds generating crimes that cause the most significant risk to the Namibian economy and therefore consistent with the risk profile of the country.

131. The FIC receives feedback on disclosures from LEAs on a case-to-case basis often upon request by the FIC. There does not seem to be a system in place for continuous feedback or update on the quality of information provided to LEA on disclosures. Available statistics from LEAs do not readily indicate closures of disclosures where information is not pursued further, nor the reason why the disclosures are not pursued. A consistent, updated and readily available record of statistics would assist to indicate how useful the FIC disclosures were.

132. In addition to the interactions with the FIC, NAMPOL also make use of financial intelligence from evidence obtained through the execution of section 179 CPA subpoenas (see Table 12). Such intelligence will often result in new leads being identified prompting additional grounds to obtain further section 179 subpoenas. In more complex cases, this process can be repeated multiple times. In addition to the interactions with the FIC, the ACC also make use of financial intelligence from evidence obtained through the execution of section 21 and section 27 of the ACC Act.

Table 12- Section 179 Subpoenas Obtained by NAMPOL (2016-2020)

Year	2017	2018	2019	2020	Average
Section 179 Subpoenas by NAMPOL	1179	1620	1944	1606	1479.6

133. The range of information and databases available to the FIC and the competent authorities is reasonable to enable them to generate relevant financial intelligence and other information for criminal proceeds and TF to some extent. The FIC benefits from direct connectivity with NAMRA (customs and CBCDRs related data) and BoN on wire transfer information.

134. In the period under review, the FIC responded to 368 requests for information from LEAs (See Table 13). The responses revealed several predicate offences (in some cases more than one predicate offence in a particular disclosure). Also, note that multiple responses are possible in one request. Disclosures on requests for financial intelligence from the LEAs on on-going cases comprise 41 related to ML, and 362 to predicate offences (combination of ML and predicate offences) and 2 specifically to TF. It is noted that the actual FIC intelligence disclosures upon request from LEA were 321 while the offences underlying those disclosures amounted to (405) i.e., 41 related to ML, and 362 related to predicate offences (combination of ML and predicate offences and Terrorism).

Table 13- Responses to Domestic Requests for Information – Offence

	2016	2017	2018	2019	2020
	Money Laundering (7)	Money Laundering (7)	Money Laundering (11)	Money Laundering (13)	Due Diligence (25)
	Terrorist Financing (2)	Fraud (7)	Fraud (33)	Fraud (17)	Drug Dealing (3)
	Fraud (9)	Corruption (3)	Corruption (4)	Corruption (10)	Money Laundering (3)
	Corruption (3)	Drug Related (4)	Drug Related (4)	Theft (12)	Fraud (28)
	Drug Related	Poaching (6)	Poaching (3)	Terrorism (1)	Corruption (1)

Predicate offences	(7)				
	Rhino Poaching (5)	Excon Violation (2)	Terrorism (3)	Human Trafficking (3)	Theft (12)
	Tax offences (3)	Due Diligence (2)	Human Trafficking (2)	Tax Evasion (2)	Wildlife crime (12)
	Diamond dealing (2)	Theft (5)	Tax Evasion (7)	Poaching (1)	Terrorism (2)
	Due Diligence (1)	Human Trafficking (2)			Human Trafficking (2)
	Theft (4)	Immigration Violation (1)			Tax evasion
	Human Trafficking (2)	BIA Violation (1)			

135. The LEAs are more successful in pursuing fraud, corruption and tax related crimes as the major proceeds-generating crimes causing the most significant damage to Namibia than on ML and TF. The requests to the FIC from the LEAs generally follow this pattern. The table above demonstrates that the majority of the requests (83 percent) were for predicate crimes, distantly followed by ML (16 percent) and TF (1 percent) indicating that while the use of financial intelligence is, to a large extent, for supporting investigation of predicate offences, it is only being used to some extent to develop evidence and proactively identify ML and to a limited extent on TF offences. The table below indicates the use of the FIC intelligence and other information to support investigations, prosecutions and confiscations.

Table 14-Use of FIC Intelligence by LEAs, 2016 - 2020

FIC products	2016	2017	2018	2019	2020	Total
Overall Disclosures	188	287	315	324	398	1512
FIC interventions	34	149	35	49	18	285
Value of intervention (NAD millions)	110.34	59.19	20.01	486.77	11.47	755.22
Preservation Orders OPG	4	6	9	5	1	25
Value of Preservation Order OPG	2,545,802	15,097,350	23,688,107	4,878,074	691,440	46,900,773
Number of Forfeitures Orders	4	2	3	8	2	19
Values of Forfeiture Orders	20,524,112	3,021,707	1,452,326	3,345,652	126,203	28,470,000
NAMPOL	60	96	76	66	47	345

3.2.2. STRs and SARs received and requested by competent authorities

136. The overwhelming majority of suspicious transaction reports analysed by the FIC are from commercial banks and there is limited or no filing of transactions reports by the NBFIs and DNFBPs despite the majority (e.g., real estate, legal practitioners, asset managers) of which being high risk for ML. According to available statistics, the Banking sector accounts for over 90% of STRs and SARs, while DNFBPs account for 10% of STRs and SARs as per table 15 below.

137. In total, 6, 975 STRs and SARs were received by the FIC in the period 2016 - 2020 from the banking sector with the MVTS contributing 16 STRs and SARs. (See IO4 for details).

Table 15- STRs and SARs, 2016 - 2020

	2016	2017	2018	2019	2020	Total
STRs	723	1254	1325	1152	1582	6036
SARs	127	151	255	233	173	939
Total	850	1405	1580	1385	1755	6975

138. Thus, the diversity of the STRs filed is relatively not sufficiently broad (see IO4 for details). Further, the FIC receives STRs related to the Fishrot case from as far back as 2014 but action on the case started around 2019 after a whistle-blower revealed the crime through an international media channel. It was after this that the FIC and the LEAs started prioritising the Fishrot case, with the FIC providing useful financial intelligence, which was used to effect arrests, seek MLA and freeze assets. While the number of reports the FIC can rely on to draw financial intelligence are numerous, the fact that very few reports are received from some high-risk sectors within the DNFBPs means some useful intelligence is being missed out in the value chain. STRs are reported to the FIC via the goAML platform and banks, insurance, MVTs and some DNFBPs had already been connected to the platform while a good number of the smaller DNFBPs are yet to be connected.

139. The FIC has received or accessed very few (115) cross-border currencies and BNIs reports above NAD 100 000.00 (USD6500) threshold or from the customs and excise officers during the period under report. The FIC uses the cross-border currency and BNI information for operational and strategic analysis to a limited extent and shares with the LEAs via its website or bilateral sessions, when necessary.

140. In general, the FIC gives feedback to FIs and DNFBPs on specific STRs and SARs where the analysis by the FIC show strong indications of actionable intelligence and was shared with relevant LEAs. Together with the trainings, the FIC indicated that this feedback has resulted in improvements to the quality of STRs and SARs including the description of the grounds for the reports. (See detailed analysis in IO4).

141. The LEAs provide feedback to the FIC on an ad hoc basis in the absence of a regular mechanisms. Information submitted by the authorities indicates that proactive intelligence from the FIC has had a positive contribution in investigations, prosecutions and convictions.

142. In addition to STRs and SARs, the FIC receives other mandatory reports, namely, Cash transaction Reports (CTRs), Electronic Fund Transfers (EFTs), International Fund Transfers (IFTs), Additional Information Files (AIFs) and Cross Border Cash and BNI Reports (CBCRs). These reports serve as a reservoir of transactional information for analysts to use them to request for additional information from the FIs and DNFBPs to enrich the quality of reports produced. The FIC indicated that it has been successful in making follow-ups and drawing linkages with any STRs or SARs that the FIC analyses for possible dissemination to LEAs. The reports are also used for strategic analysis reports which have been shared with LEAs.

Table 16-Mandatory Transactions Report, 2016 - 2020

	2016	2017	2018	2019	2020
Report Type	Number of Reports				
AIFs	385	257	1,545	1,958	1,872
CBMCR	7	76	12	17	3
CTRs	110,051	73,307	73,609	60,751	55,636
EFTs	310,319	1,757,237	1,558,204	485,797	428,323
IFTs	811,506	1,428,825	1,157,799	957,571	1,194,773

3.2.3. Operational needs supported by FIU analysis and dissemination

143. The FIC responds to requests for information from LEAs as well as making proactive disclosures to LEAs based on their own analysis of reports from AIs and RIs. During the period under review, the FIC intelligence was used by LEAs to successfully prosecute eight (8) ML cases while ten (10) are pending. Further, the financial intelligence of the FIC has been used for freezing and forfeiture mostly of proceeds of predicate offences. The OPG: AFU works with NAMPOL in utilising financial intelligence for asset confiscation purposes. In the period under review, the AFU relied on FIC intelligence to intensify tracing and freezing of assets particularly in relation to Fishrot cases.

144. The FIC receives requests for information from domestic LEAs to support investigations and has been able to respond and exchange information with these agencies. The FIC disseminated 1,512 intelligence products to domestic LEAs between 2016 to 2020. The number of spontaneous disclosures is more than upon request. The number of requests to the FIC from the LEAs has not been increasing much over the period under review, noting that approximately 20 requests for 2020 are attributed to the Fishrot case.

145. The FIC has responded by providing the required information by the LEAs. The FIC also provides spontaneous disclosures for use in investigations, prosecutions and confiscation.

Table 17- Requests Made to the FIC and responses by FIC

	2016	2017	2018	2019	2020	Total	
Request for information	82	48	90	77	71	368	73.6
Responses to requests for information	47	44	69	69	92	321	64.2
Average working days to respond	4 weeks						

146. The FIC's average response time to information requests from LEAs is around 4 weeks. In complex matters, the FIC often provides a preliminary report to ensure usefulness and timeliness of the provision of financial intelligence. The FIC will then continue with its analysis before disclosing a more comprehensive report. In some urgent cases, it can take between one and four days. Moreover, where funds are to be restricted the FIC employs measures to expedite the determination of indicators and grounds to suspect ML/TF and restricts funds on an accelerated basis. In addition, the FIC conducts in-person briefing sessions with the LEAs on sensitive and complex matters to explain the disclosure provided to the LEAs. This process helps to clarify any possible misunderstandings on the value and usefulness of the information disseminated.

NAMPOL

147. NAMPOL is the main recipient of the FIC intelligence as the agency responsible for criminal investigations.

Table 18- FIC disclosures to and investigations by NAMPOL

Year	Spontaneous Disclosures	Investigations	Responses to request for information	Investigations	FIC Total Disclosures	Total Investigations
2016	37	33	32	27	69	60
2017	62	70	31	26	93	76
2018	42	35	54	41	96	76
2019	63	32	40	34	103	66
2020	48	25	49	22	97	47
Total	252	195	206	150	458	345

148. In the period under review, NAMPOL received and used 365 disclosures from the FIC to support investigations which suggests appreciation of the FIC intelligence to support the police's operational needs. During the same period, the FIC intelligence was used by LEAs to successfully prosecute eight (8) ML cases while ten (10) are pending. As the responsible agency for ML investigations, NAMPOL is not requesting enough financial intelligence from the FIC to target ML offenses. NAMPOL's requests are most of the times on predicate offences, although responses from the FIC include financial/transactional analysis which would help investigators to pursue ML cases and predicate offences. As a result, NAMPOL has not been able to demonstrate that it uses the FIC intelligence to pursue other ML types such as third-party laundering but rather focused on self-laundering investigations (see IO.7).

149. Although the FIC disseminated two financial intelligence reports related to TF to the NCIS, the initial inquiries did not lead to a TF investigation (See IO.9).

Case Box 1. Use of FIC Intelligence by ACC

An investigation carried out by Sub-Division MLI initiated on information provided by the FIC: **S v Manale (CC 9/2018) (2019) NAHCMD 29 (20 February 2019) – Fraud: Value NAD 5 055 563.15**

An Estate Accounts Bank employee defrauded the estate accounts through manipulation of the request and payment system, by making phone request from the implicated Estate Accounts and then authorizing payment of proceeds into a specific account (personal account). NAMPOL instituted an investigation as per Windhoek CR 599/01/2015 and (through Section 179 of Criminal Procedure Act (CPA)) obtained bank statements of the suspect. The suspect was arrested and upon finalisation of the investigation the case was handed to the OPG. Charges added on the charge sheet were as follows: Fraud, Alternatively Theft by False Pretences, or Theft Alternatively Contravention of Section 6 (a); (b) and (c) as read with Section 1, 8 and 11 of POCA.

The accused pleaded guilty and was convicted on 20 February 2019 as follows: Fraud – Counts 1 to 147 with actual prejudice of NAD5 055 563.15; and Count 148 of ML (C/s 6 of POCA). He was sentenced on 25 April 2019 as follows: Counts 1-147 taken together for purposes of sentence- 17 years imprisonment of which 2 years were suspended for 5 years on condition that the accused is not convicted of a crime of fraud or any offence of which dishonesty is an element committed during the period of suspension. . On Count 148 (Money laundering) – he was sentenced to 5 years imprisonment which was to run concurrently with the sentence on Counts 1-147. The following assets were recovered: a VW Polo motor vehicle; accused's pension money at Standard Bank; and a house he was renovating.

ACC

150. The ACC can only investigate cases reported to the ACC in terms of enabling legislation (Act no.8 of 2003), as such they made fewer requests. This, however, entails that they have been no proactive requests by the ACC which has the primary authority to investigate corruption. Further, the FIC disseminated few disclosures to the ACC when the NRA determined corruption as one of the main predicate offences generating the most proceeds in Namibia.

Table 19 - Predicate c -Offences - FIC disclosures and investigations by ACC

Year	FIC Disclosures		Investigations by ACC	
	Spontaneous Disclosures	Upon request	Spontaneous Disclosure	Upon request
2016	3	5	2	1
2017	8	5	9	2
2018	10	2	4	1
2019	10	2	15	2
2020	40	2	31	7
Total	71	16	61	7
	87		68	
Predicate offences	Corruption		Corruption	

151. The ACC had a significant number of disclosures in 2020. The disclosure by the FIC was based on the ongoing Fishrot corruption and associated ML investigations. While the ACC has not yet investigated ML case arising from proceeds of corruption, it has not referred ML cases to NAMPOL as the former is of the view that it also has a mandate to investigate such cases. By contrast, NAMPOL believes that, by law, it is the only LEA responsible for ML investigations regardless of the underlying predicate offence in Namibia. This became clear during discussions with the Assessors about the progress made in respect of Fishrot cases. Namibia should resolve the matter urgently as this will improve the use of FIC intelligence to support investigation of serious corruption and its associated ML.

NAMRA

152. NAMRA uses the FIC information for auditing purposes as it does not have criminal investigations powers. The FIC made 565 domestic disclosures related to tax offences which has led to tax collected amounting to NAD 80.31 million over the period of the assessment. Where NAMRA identifies tax offenses, it refers them to NAMPOL. NAMPOL has seconded officers to work with NAMRA to identify possible tax evasion cases. This has resulted in NAMRA referring 94 cases to NAMPOL for investigation during the period under review.

OPG

153. The financial intelligence of the FIC has been used for freezing and forfeiture mostly proceeds of predicate offences. The OPG: AFU works with NAMPOL in utilising financial intelligence for asset confiscation purpose. The Unit has officers seconded from NAMPOL to trace assets and develop evidence. In the period under review, the AFU relied on FIC intelligence to intensity tracing and freezing of assets particularly in relation to Fishrot cases.

Table 20-FIC Intelligence supports OPG: AFU

	2016 (NAD)	2017 (NAD)	2018 (NAD)	2019 (NAD)	2020 (NAD)	Total (NAD)
Confiscation	14,000	0	0	0	379,080	393,080
Preservation	11,883,760	23,143,481	23,918,852	3,689,424	18,097,199	80,732,716
Forfeitures	22,936,253	2,352,186	5,083,238	2,665,904	1,871,562	34,909,143
Total						116,034,939

154. While the FIC has produced strategic analysis reports, the authorities could not demonstrate their usefulness to support the operational needs of LEAs.

3.2.4. Cooperation and exchange of information/financial intelligence

155. The cooperation between the FIC and the LEAs is largely managed through the basis of ‘upon request’ and ‘spontaneous disclosure’ on the part of both the FIC and the LEAs has led to successful completion of predicate offences cases and a ML case, as well as confiscations. Generally, the FIC and the LEAs coordinate and cooperate on exchange of information and financial intelligence and investigations largely facilitated through MoUs and operational committees to ensure confidentiality of the engagements to some extent.

156. The FIC cooperates with LEA and exchange financial intelligence to develop the intelligence into evidence in support of investigations, and trace criminal proceeds related to ML/TF and associated predicate offenses. Joint task teams, inclusive of the FIC and the LEAs, are created to address specific types of cases. One of these task teams is the Integrated Investigation Task Team (IITT) targeting which has been successful in coordinating the LEAs and the FIC efforts high priority investigation. Major

investigations often involve a task team approach, where a FIC analyst will be assigned to assist with the investigation by providing ongoing financial intelligence. The involvement of FIC analysts on investigative teams is a strong indicator of how the FIC analysis and dissemination supports the operational needs of competent authorities where FIC intelligence was used to initiate criminal proceedings.

157. The table shows case where FIC generated intelligence from STR (Spontaneous Disclosure) which was used to register a criminal case and investigated under the Integrated Investigation Task Team (IITT) approach (See Case Box 8 in IO.7 for details)

Case Box 2- Fishrot serious corruption investigation (For details, see Case Box 8 in IO.7)

FIC

The FIC made Requests (28) to foreign jurisdictions (FIUs). The FIC intervened in the bank's accounts Section 42 of involved individuals and entities. They assisted in the analysis accounts of individuals and entities and also provided valuable information received from their counterparts in foreign countries.

OPG

Provided a prosecution guided investigation and assisted in the recoveries/restrains of assets acquired from the proceeds of the concerned case. Furthermore, the PG's office prioritized the case and was able to make a decision on the case timely.

Ministry of Justice

To date, ten (10) MLA's requests were forwarded to requested states; viz: Angola, Republic of South Africa (RSA), Botswana, Mauritius, United Kingdom (UK), Cyprus, Norway, Spain, United Arab Emirates (UAE) and Republic of Marshall Islands to provide the ACC with evidence and extradition process. Through the evidence gathered, the Prosecutor-General decided to arraign three (3) Samherji officials (Icelandic nationals) and one (1) Namibian/RSA national currently in RSA.

NAMPOL

Namibian Police supported the ACC in various forms throughout the investigations of the concerned case. Some of the activities executed by the police among others were; assisting with arrests and charging of suspects, assist in conducting searches, taking fingerprints and compiling of photo plans. It is important to state, that the Police and the OPG were very instrumental in the enforcement of POCA.

158. The FIC and the LEAs hold regular meetings to give each other feedback and share progress of the cases disseminated

159. It was noted during the onsite that cooperation between the FIC, NAMPOL and the OPG is quite effective and has led to not only successful investigations and prosecutions of ML and predicate offences but forfeitures as well. NAMRA has shown successful cooperation cases in which the FIC information was used for tax audit to identify possible tax crimes.

160. Based on exchange of information, cooperation between the FIC and the ACC is increasing, though from a low base, due to the recent serious corruption and ML cases related to the Fishrot case in Namibia.

Table 21- FIC Spontaneous Disclosures (per crime type) made to Namibian LEAs

Crime Type	Number of Spontaneous Disclosures	Percentage of Total Spontaneous Disclosures
Tax Evasion	567	47.61
Fraud Related Crimes	122	10.24
Corruption	91	7.64
Exchange Control Contravention	62	5.21
ML	60	5.04
Pyramid Schemes	40	3.36
Environmental Crimes	20	1.68
PF (same SD simultaneous)	18	1.51
Theft	16	1.34
TF	9	0.76
Drug Related Crimes	8	0.67
Human Trafficking	4	0.34
Illegal Diamond Dealing	3	0.25
Others (Including OPG-AFU)	171	14.36
Total	1191	100.00

161. The FIC has a strong working relationship with the LEAs. Major investigations often involve a task team approach, where an FIC analyst from the FIC will be assigned to assist with the investigation by providing ongoing financial intelligence. The involvement of the FIC analysts on investigative teams is a strong indication of how the FIC analysis and dissemination supports the operational needs of competent authorities where FIC intelligence was used to initiate criminal proceedings at agency and task team levels.

Overall conclusion on IO.6

162. The FIC produces quality financial intelligence for use by LEAs authorities, but LEAs use the information to a large extent for predicate offences than ML (to some extent) and TF (to a limited extent). The spontaneous disclosures made to and used by LEAs show dominance of tax evasion, distantly followed by fraud, corruption and ML which is consistent with the risk profile of the country. There is adequate IT analysis capability and SOPS for receipt and analysis of transactions reports, and dissemination of information in secured and protected manner. The FIC provides feedback to FIs and DNFBPs during outreach to assist improve the quality of and typologies from the STR and SAR reporting including investigations and forfeitures. The FIC has established coordination mechanisms with the LEAs to facilitate exchange of information and participate in inter-agency forums such as IITT and Blue Rhino. The FIC is a member of the Egmont Group which increases the chance of global reach for information. However, there are concerns over the Director's authority to obtain and deploy the resources needed to carry out the FIC functions which needs to be better enshrined and safeguarded. The FIC should further be capacitated to manage its own IT systems and infrastructure to ensure security of information.

163. **Namibia is rated as having a Moderate level of effectiveness for IO.6.**

3.3 Immediate Outcome 7 (ML investigation and prosecution)

Background

164. The POCA, FIA and CPA set down solid frameworks for investigation and prosecution of money laundering offence in Namibia (See R.30-31). The NAMPOL is the main agency responsible for investigating ML offences. The ACC has a mandate to identify and investigate corruption and associated ML offences specific to the mandate bestowed upon them by the ACA. The NAMRA does not have investigative power and it rather refers predicate offenses (mainly tax crimes) and related money laundering cases to the NAMPOL. While other Agencies refer money laundering and associated predicate cases to the NAMPOL or ACC depending on the nature of the predicate offence. The Office of the Prosecutor General institutes criminal proceedings on behalf of the State and ensures all offences related to ML/TF/PF are successfully prosecuted.

3.3.1 ML identification and investigation

165. The authorities identify and investigate ML cases to some extent. Emphasis is placed on the investigation of predicate offenses as described below:

Namibia Police (NAMPOL)

166. The NAMPOL has several Directorates investigating crimes. Among them is the Criminal Investigation Directorate (CID) which is responsible for the investigation of predicate offences as well as ML. The CID has nine (9) Divisions and of importance is the Anti-Money Laundering and Combating the Financing of Terrorism Investigation Division (AML/CFT ID) which was formed in 2016 and has got three sub-divisions: a) Money Laundering Investigation, which is responsible for investigating ML as well as carrying out parallel financial investigations; b) Asset Recovery Investigation which is responsible for both asset recovery and asset management; and c) Financing of Terrorism which is responsible for TF investigation and does conducts parallel investigations to TF related predicate investigations.

167. ML is identified and investigated by the Anti-Money Laundering and Combating the Financing of Terrorism Division within the Namibian Police Force and consists of three subdivisions: Sub-Division: Money Laundering Investigation. They are also responsible for Tax Evasion Investigation and seconded two members to Tax Intelligence and Investigation Unit-Ministry of Finance. Sub-Division: Asset Recovery Investigation (accommodated within the Asset Forfeiture Unit at the Office of the Prosecutor General) and Sub-Division: Financing of Terrorism. The Money Laundering Sub-Division consists of Suspicious Transaction Reports (STR's) Investigation Unit and Tax Evasion Investigation Unit.

168. Potential cases of ML are referred to the Money Laundering Investigation Sub-Division (MLI Sub-Division) where they conduct Parallel Financial Investigations (PFI) separate from the predicate offences. Referred cases are from the General Crime Investigation Division of the NAMPOL, NAMRA, and the FIC. Some of the 9 Divisions of the CID and their sub-divisions, are replicated in the fourteen (14) Regional offices of NAMPOL. However, not all specialised CID sub-Division structures have not been replicated, for example, the Division of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT). For those that have not been duplicated in the regional offices, a coordinator has been appointed. The cases with potential ML are either investigated at the local region or referred to the concerned Divisions' respective Head Offices. If a case is investigated in the regional offices, where the Division of AML/CFT Investigation is not represented, the Inspector General can appoint any criminal

investigator responsible for the investigation of the predicate offence, to also conduct the ML investigation consistent with section 83 (1) of POCA.

169. Table 23- illustrates the cases identified and investigated by NAMPOL as proceeds generating (predicate) offences for the period from 2016 to 2020 and indicate that the MLI Sub-Division to some extent identifies and investigates ML activities based on its own analysis and or investigation. The lack of in-house forensic accounting expertise (financial investigation capacity) has led the MLI Sub-Division rely on the FIC to assist with the analysis on the flow of funds pertaining to a financial investigation (see IO6). The Customs normally refer suspected criminal activity (predicate office) to the police for investigation. The FIC also identifies criminal activities with ML potential to LEA. ML cases are largely identified and investigated based on evidence arising from the specific predicate offense, rather than based on a broader identification of ML activities particularly in major proceeds-generating offenses. Case Box 3 below provides examples of an investigations carried out by the MLI Sub-Division initiated on information provided by the FIC.

Case Box 3. An investigation carried out by Sub-Division MLI initiated on information provided by the FIC: **S v Manale (CC 9/2018) (2019) NAHCMD 29 (20 February 2019) – Fraud: Value NAD 5 055 563.15**

An employee of Standard Bank of Namibia, employed as an Estate Accounts Clerk defrauded the estate accounts through manipulation of the request and payment system, by making phone request from the implicated Estate Accounts and then authorizing payment of proceeds into a specific account (personal account). NAMPOL instituted an investigation as per Windhoek CR 599/01/2015 and (through Section 179 of Criminal Procedure Act (CPA)) obtained bank statements of the suspect. The suspect was arrested and upon finalisation of the investigation the case was handed to the OPG. Charges added on the charge sheet were as follows: Fraud, Alternatively Theft by False Pretences, or Theft Alternatively Contravention of Section 6 (a); (b) and (c) as read with Section 1, 8 and 11 of POCA.

The accused pleaded guilty and was convicted on 20 February 2019 as follows: Fraud – Counts 1 to 147 with actual prejudice of NAD5 055 563.15; and Count 148 of ML (C/s 6 of POCA). He was sentenced on 25 April 2019 as follows: Counts 1-147 taken together for purposes of sentence- 17 years imprisonment of which 2 years were suspended for 5 years on condition that the accused is not convicted of a crime of fraud or any offence of which dishonesty is an element committed during the period of suspension. . On Count 148 (Money laundering) – he was sentenced to 5 years imprisonment which was to run concurrently with the sentence on Counts 1-147.

The following assets were recovered: a VW Polo motor vehicle; accused’s pension money at Standard Bank; and a house he was renovating.

170. In Namibia, LEAs can use a range of special investigative techniques as analysed in R. 31 in identifying and investigating crimes. Although there are limitations on some of these special investigation techniques, NAMPOL has successfully used some of these investigative techniques. See Case Box 4 and Case Box 5 for case examples where undercover operations were conducted, and Case Box 6 on interception, an example of the task team approach and cooperation between the relevant authorities, is the Blue Rhino task team investigation as per Box 6.

Case Box 4. Case Example - Undercover operations

S v Theron (CC 27 – 2012) (2019) NAHCMD 237 (11 July 2019)– Corruption Value NAD 1 000.00

The accused, a former magistrate from Oshakati Magistrate court, was involved in allegations that she was taking money from traffic offenders in exchange of cancelling tickets issued to traffic offenders, and that in some instances recorded on court record that the cases against the traffic offenders were withdrawn or that they had been cautioned after pleading guilty, while they in fact had not appeared in court.

The Police initiated an investigation against the magistrate. During an undercover the suspect was arrested for contravening section 35 (1) of Act 8 of 2003 and found guilty of contravening section 43 (1) of Act 8 of 2003. The accused was convicted and sentenced on nineteen counts to four years imprisonment of which two years were suspended. No ML conviction

The case was submitted to demonstrate that undercover operations are used as an investigative technique and accepted under common law for all offences.

Case Box 5. Case Example - Undercover operations**S v Siyong Xu and Haifen Yang (HC-MD-CRIMINALI-APP-CAL-2018/64) (2018) NAMCMD 409 (14 December 2018)– Corruption Value NAD 4 000.00**

The suspect Haifen Yang was arrested for the contravention of Exchange Control Act and the case was investigated by ACC. Suspect Siyong Xu called the investigating officer and wanted to meet her for tea to discuss the case against Haifen Yang. The investigating officer suspected a possible attempt to bribe her and with the assistance of the Division of Organised Crime, a covert operation was arranged. On the next day the accused person again called the meet the investigating officer at her office. A device was placed in the investigating officer's office to record the conversation. Siyong Xu arrived at the said office and offered a gratification of NAD 4 000.00 for her good work and he requested the police officer to stop the investigation, this offer was turned down. A couple of days later the suspect called the investigating officer again and requested a meeting. A meeting was scheduled and the suspect paid the amount of money for which he was arrested for contravening several sections of the Anti-Corruption Act. The suspects appeared in court and pleaded guilty. Siyong Xu and Haifen Yang were convicted and sentenced to 24 months imprisonment without the option of a fine.

Case Box 6. Case Example – Conspiracy/interception/MLA/ and cooperation between agencies, Case is still going.**S v Mwabi (BNCB 114/33/01/09/18 (43) – conspiracy to inducing another person to commit an offence**

The Blue Rhino Task Team were acting on credible intelligence about a planned rhino poaching expedition. A search was obtained to track the suspect's movement through cell. The suspect was intercepted and, in their possession, the police discovered several items associated with rhino poaching (poaching paraphernalia), including a 375-calibre hunting rifle with ammunition, axes, large knives, silver foil to cover the rhino horns and several pay as you go Cell phone cards, tinned food, bread, and containers with water. The four suspects were arrested. During the interview one of the suspects, the owner of the firearm, revealed that he was involved in the poaching of two rhinos in Botswana which had occurred a few weeks before, using the same firearm. The NAMPOL relayed the information to their Botswana counterparts, who confirmed the poaching of the two rhinos in the area described by the Namibian suspects. Through Interpol and the Central Authorities of the two countries a meeting to enhance cooperation during the investigation. Ballistics later matched the firearm with the poaching in Botswana. Further statements were obtained through MLA. The case is still on-going. Namibian received a request for extradition (See IO 2 for more information on the case).

171. Data provided by the NAMPOL indicates that the largest category of proceed generating predicate offences investigated for ML offences and activities are fraud, corruption, environmental crimes and drugs which shows that, to some extent, they are in line with the risk profile of Namibia. On the other hand, as illustrated in Table 23 below, the identification and investigation of corruption and tax related offences identified as ML threats in the NRA is addressed to a lesser extent.

Table 23: The highest proceed generating predicated offences identified and investigated by NAMPOL

Predicate offence	2016	2017	2018	2019	2020	Total
Fraud	45	60	56	38	43	242
Corruption	5	11	5	52	32	105
Environmental crimes	16	8	12	19	18	73
Illicit trafficking in drugs	19	9	14	13	11	66
Robbery and Theft	7	27	7	20	5	66
Tax offences	4	3	0	0	0	7

Anti-Corruption Commission (ACC)

172. The Anti-Corruption Commission (ACC) is involved in the identification and investigation of corruption and ML. The Anti-Corruption Commission (ACC) which is an independent and impartial body formed in terms of the Namibian Constitution to investigate cases of corruption. If the ACC identifies any other criminal activity, including ML offences, during the investigation of a corruption case (the predicate offence) it can proceed (in terms of the ACC Act, section 31 (1)) to investigate the ML case. This means that they do not necessarily conduct Parallel Financial Investigations (PFI) in all their investigations. The ACC makes a submission to the OPG who decides on the prosecution of the ML offence. Table 24- illustrates that ACC have identified and investigated corruption cases as proceeds generating (predicate) offences for the period from 2016 to 2020. The ML cases investigated on predicated corruption are identified and investigated to some extent. Cases are referred to the ACC by NAMPOL, the FIC and whistle blowers. The coordination between the Sub-Division MLI and the ACC is limited. Because it is part of ACC mandate to investigate corruption and any and crime identified during the corruption investigation the ACC does not refer any cases of ML arising from proceeds of corruption to NAMPOL. Due to the limited pool of skilled financial investigators within the ACC, it is expected that there would be better cooperation between the Sub-Division MLI and the ACC with the objective of conducting more ML investigations that could in turn lead to better identification, investigation and prosecution results on corruption cases. Box 7 below provides examples where ML investigations were identified and pursued by the ACC.

Case Box 7. ACC investigation that was initiated using FIC information

S v Nuuyoma (Aveshe case) (CC 17/2018) (2021) NAHCMD 128 (01 March 2021) – Fraud (VAT fraud), Forgery and Uttering Value of crime NAD 203 million

ACC received a spontaneous disclosure report (STR) from the FIC identifying some Namibian citizens who were conniving with Angolan Nationals in submitting inflated VAT claims at the Ministry of Finance through a consultant Aveshe in order to defraud the Government of Namibia. The ACC investigated the matter from November 2015 to January 2018 with the assistance of other stake holders. The Financial Intelligence Centre (FIC) assisted in the identification of assets, like houses and vehicles purchased from the proceeds of the crimes. NAMPOL assisted in the arrests and execution of search warrants. The NAMPOL – Asset Forfeiture Unit also played a crucial role by supervising and controlling the properties placed under a restraint order. The Ministry of Finance (Customs and Excise) assisted with the identification and determination of the depth of tax violations. Some of the suspects were arrested during a sting operation and some through straight arrests. A total of 18 arrests was made. The docket was referred to the OPG by the ACC.

As the money generated from the crimes was paid into local bank accounts of the accused persons and the proceeds spent in Namibia, the authorities felt that there was no need to seek MLA from the Angolan Government.

Two accused persons out of 18 accused persons convicted were convicted for offences related to money laundering, namely- Accused 5 – (Angolan national) was convicted on fraud and one charge of money laundering of 2.5 million and accused 14 – (Namibian national) was only convicted of one charge of money laundering for the same 2.5 million. Both accused persons got 5 years' imprisonment for money laundering (Section 4(b)(ii) of Organised Crime Act 29 of 2004).

Forfeiture order for NAD20 million obtained under chapter 6 of POCA (civil forfeiture). Suspects used the ill-gotten proceeds to buy luxury houses, vehicles for themselves and their relatives, they were living extravagant lifestyles. Their personal and business accounts were found with positive cash balances of over NAD 203 million. All assets which were recovered. The court ordered the said amount to be paid into the bank account of the Asset Recovery held with Standard Bank Namibia. The two houses, six vehicles and a trailer were ordered to be sold at an auction and the proceeds paid in the Asset Recovery bank account.

NAMRA

173. NAMRA does not have any criminal investigative powers other than an administrative mandate carried out through assessments of individuals and entities tax returns. If during an assessment, a criminal activity is identified, the matter is referred to the Tax Intelligence and Investigation Unit (TIICU) and Forensics Audit Division (FAD) of NAMRA, which has an Audit team and two seconded Police officers from the Tax Evasion Investigation Unit of NAMPOL. NAMRA initiate internal processes to access information and the seconded Police officers, will obtain the relevant affidavits and collect the necessary evidence. The matter and the collected information will then be handed over for investigation to the CID Tax Evasion Investigation Unit, which falls under the Division of AML/CFT Investigation CID. However, NAMRA started its operations recently (2020) and for the period of review only seven cases were referred for ML investigation with no prosecutions.

174. The Sub-Division MLI within NAMPOL and ACC investigators have received domestic and international training on financial analysis, financial crimes investigative techniques and investigating ML cases. The different types of training provided are relevant and have enhanced the officers' skills and capacity to identify and investigate ML cases. The training of NAMPOL detectives is however limited. Considering that the majority of ML investigations are conducted by general detective investigators in the various regions, more ML-specific training should be provided. Prosecutors from the OPG have also received training on money laundering and are able to assist investigators with the identification of ML, although the number of prosecutions is limited, and more prosecutors need to be

adequately trained to deal with ML. This training still needs to be extended to provide the investigation officers with prosecution guided direction.

175. The OPG, the Sub-Division MLI and the ACC utilize the methodology of prosecution guided investigation in terms of which the prosecutor and the investigator work together from when a case is submitted to the prosecutor after the arrest of a suspect till the court proceedings have been finalised. In cases where task teams have been formed after the identification of serious cases, regular meetings between a prosecutor and an investigating officer takes place. However, in some cases this approach is affected by the lack of adequate prosecutors, (country wide there are only 164 prosecutors at the time of on-site) to provide such assistance when needed.

176. Although, several investigative tools are available to investigate money laundering offences, the NRAs noted that there is a lack of capacity among investigators. During the on-site visit, the competent authorities stated that investigators received training soon after the gaps were identified and the LEAs, demonstrated that they have started to carry out good joint and multi-agency investigations and use powers to investigate crimes when required. There is still a need to strengthen its investigation and prosecution capacity and further encourage a culture of introducing parallel financial investigations with every high-risk predicate offence investigation.

177. In general, the legal framework to identify and investigate general crime, predicate offences as well as ML, is well established and is supported to some extent by varying powers to enable identification and investigation of high- risk predicate and ML offences. However, all the ML investigations are investigated with the predicate offence and subsequently the ML convictions were obtained in cases where a predicate offence was tried together with the ML offence.

3.3.2 Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

178. According to the NRAs undertaken between 2012 and 2021, Namibia experienced a rise in major ML threats arising from major proceeds-generating predicate offences such as serious fraud, corruption, tax crimes, and wildlife crimes and drug related crimes. The flow of foreign proceeds into Namibia was determined insignificant. Based on the findings of the NRA, Namibia has formulated an Action Plan to implement recommendations of the NRA. The Action Plan had a general approach to combating ML/TF and its main aim was to develop and strengthen the AML/CFT regime in Namibia to protect the integrity of the financial system and the economy at large. The Action Plan focuses on capacity building and training at high level and did not necessarily provide a strategic direction for Namibia's LEAs based on specific high ML/TF risks identified. In any event, most of the LEAs were struggling to get sufficient resources to conduct ML investigations and prosecution.

179. Namibia is informed by AML policies to pursue ML investigations. There is a new Task Force approach driven by the FIC to increase ML investigations, prosecutions and convictions. As a result, 2019 saw a significant increase in ML convictions. As stated above, NAMPOL, FIC, ACC and the OPG joined forces, as far back as 2015, in several high-risk ML cases to drive the investigation to a conclusion for prosecution purposes. The FIC had also launched a Public-Private-Partnership to ensure that all available skills in the public and private sector are used optimally to investigate and prosecute high – risk cases. The IITT approach have been used in the investigation of high priority cases, for example, the Fishrot cases and Blue Rhino Task Team and did not have a significant influence on the majority of general investigations on high proceed generating crimes. Although ML conviction increased in 2019 to 46, this momentum did not continue with only 15 convictions being recorded in 2020.

180. Fraud, corruption, environmental crimes and drugs are identified as ML threats in the NRA and are investigated to some extent. Data provided by the authorities indicates that the largest category of main proceed generating predicate offences investigated under which ML offences and activities

committed is fraud. However, there is much emphasis given on self-laundering than any type of ML. The authorities provided case examples on investigations of ML relating to foreign predicate offences. However, the extent to which the authorities were investigating foreign predicate ML offenses could not be determined since they were in process. Nevertheless, the identification and investigations of ML from high proceed generating offences such as fraud, corruption, forgery and uttery and theft identified as ML threats are to some extent in line with the risk profile of Namibia. Despite this the prosecution and convictions secured on similar types of crimes are not in line with the risk profile of the jurisdiction except in the case of fraud. On the other hand, the investigation and prosecution of tax related crimes as prevailing offenses in terms of generating proceeds is to a lesser extent. This is mainly due to inadequate resources and capacity issues. See Table 24 below.

Table 24- ML cases identified, investigated, prosecuted and convicted arising from high-risk proceeds generating (predicate) offences

Predicate Offense	Total		
	Number of ML investigations	Number of ML prosecutions	Number of ML convictions
Participation in an organised criminal group and racketeering	0	0	0
Terrorism, including terrorist financing	1	0	0
Trafficking in human beings and migrant smuggling	7	0	0
Sexual exploitation, including sexual exploitation of children	0	0	0
Illicit trafficking in narcotic drugs and psychotropic substances	66	9	8
Illicit arms trafficking	0	0	0
Illicit trafficking in stolen and other goods	4	0	0
Corruption	105	3	1
Fraud	242	28	14
Counterfeiting currency	1	0	0
Counterfeiting and piracy of products	11	2	0
Environmental crime	73	2	2
Murder, grievous bodily injury	2	0	0
Kidnapping, illegal restraint and hostage-taking	1	0	0
Robbery or theft	66	29	27
Smuggling (including in relation to customs and excise duties and taxes)	15	3	2
Counterfeiting and piracy of products	16	0	0
Tax crimes (related to direct taxes and indirect taxes) NAMPOL	10	0	0
Extortion	0		0
Forgery	0	0	2
Piracy	0	0	0
Insider trading and market manipulation	0	0	0
Total	625	80	56

181. Through case examples, the authorities demonstrated that they, to some extent, are able to carry out good joint and multi-agency investigations and use powers to investigate all crimes when required. For more complex cases, the Integrated Investigation Task Team (IITT) established by an Inter-Agency

Memorandum of Cooperation between LEA and non- LEAs, comprising NAMPOL, ACC, OPG, Ministry of Finance (MoF), Ministry of Home Affairs, Immigration, Safety and Security (MHAISS), NCIS and the FIC. The stakeholders agreed to adopt a strategic approach towards financial investigation with the understanding that particularly in large, complex financial investigations, it is important to assemble an inter-agency multidisciplinary Task Team to ensure the effective handling of investigation, prosecution and eventual forfeiture/confiscation of proceeds and instrumentalities of crime. The Stakeholders as part of their mandate agreed to jointly conduct timely and effective financial investigations related to criminal conduct. The objective of the financial investigation involved collection, collation and analysis of all available information with a view of assisting in the prosecution of crimes and the deprivation of the proceeds and instrumentalities connected to crimes. A case selection criterion, consisting of the following elements had to be used: Monetary value of the case; Complexity of the case; Public interest of the case; and National impact of the case. In practice, the FIC assist LEAs in identifying and tracing the flow of funds during PFI conducted by NAMPOL and the ACC and plays a significant role in these ML investigations. See Box 8 “Fishrot case “where FIC generated intelligence from STR (Spontaneous Disclosure) which was used to register a criminal case and investigated under the Integrated Investigation Task Team (IITT) approach. Another example of the task team approach and cooperation between the relevant authorities, is the Blue Rhino Task Team investigation as per Box 6.

Case Box 8. S v Aqua (Namgomar & Fishcor) aka “Fishrot scandal”

An employee of one of Iceland's largest fish industry companies, Samherji, indicated that the company had paid hundreds of millions to high-ranking politicians and officials in Namibia with the objective of acquiring the country's coveted fishing quota. The initial information was shared in 2012 from the fishing industry when a complaint was levelled against the former Minister of Fisheries and Marine Resources (PEP) for being involved in corruption activities. It was alleged that, he was engaging himself in corrupt practices and had irregularly appointed his son-in-law's relative as a Chairperson of Fischor, a State-owned company.

Investigations indicated that, on hindsight Namibia and Angola entered into a Memorandum of Understanding (MoU) or bilateral agreement in respect of cooperation in the areas of fisheries and aquaculture in 2014. The agreement had been entered into on behalf of the two countries by their respective Ministers of Fisheries and Marine Resources. The bilateral agreement had been manipulated to create undue gratification for certain individuals in Namibia and Angola, but mostly for Namibians.

A number of front companies were used to falsify information, by Esja Holdings (Pty) Ltd Limited (a subsidiary company of the Samerji Group), and Paw Print Investments (Pty) Ltd/Namgomar Pesca Namibia Pty Ltd. The prices in the agreement were misrepresented, i.e. the price of quotas was cited as NAD500.00 per metric ton, whilst the going rate at the time in Namibia was NAD3000.00 per metric ton. Strategically, the pricing was arranged to enable the NAD500.00 to be paid in Namibia whilst the undisclosed balance of NAD2,500.00 was paid in the accounts of the parties involved held outside Namibia (*the amount of NAD2,500.00 was the gratification received by the parties involved*).

In 2015 a new whistle blower came forward with information of what was going on and that is when the ACC initiated a criminal investigation. Nine (9) accused persons were arrested. Their cases were referred to the office of the Prosecutor General. The Prosecutor-General decided to arraign all the nine (9) accused persons that were arrested on multiple charges of corruption and fraud in the High Court:

Charges	Frequency (counts)
Fraud	4
Money Laundering	4
Racketeering	7
Corruption	12
Income Tax Act 24/1981	2
Riotous Assemblies Act 4/1981	2
Section 332(3) CPA 51/1977	2
Tax evasion	2

To date, ten (10) MLA requests have been forwarded to requested states: viz: Angola, Republic of South Africa (RSA), Botswana, Mauritius, United Kingdom (UK), Cyprus, Norway, Spain, United Arab Emirates (UAE) and Republic of Marshall Islands, to provide the ACC with witnesses' affidavits and required evidence.

A total of one hundred and forty-two (142) summons were issued to financial institutions, business entities, potential witnesses and accused persons to appear before ACC authorised officers and to be questioned and where necessary to provide statements with supporting documents. ACC forensic investigating officers worked together with forensic officers of DeLoitte & Touche, an auditing company that was contracted to assist with mammoth forensic analyses of suspected financial transactions.

Assets involved: include immovable property to the value of NAD 95 984 875.00 and movable property to the value of NAD 4 066 900.00 as well as the freezing of bank accounts to the value of NAD 21 948 027.06

The Integrated Investigation Task Team (IITT) members include FIC, OPG, Ministry of Justice, NAMPOL.

182. The prosecution of all cases, predicate as well as ML, is done by prosecutors under the OPG. All ML trial cases are handled by the subordinate courts at the first instance. However, with an estimate of 164 prosecutors' country-wide, the lack of human resources could be a challenge in adequately assisting in the prosecution of ML where such cases are complex. In addition, there are no specialised courts to handle financial crimes as has become best practice with most countries in the ESAAMLG Region. Although the authorities managed to demonstrate that they have been prosecuting ML, it is to a lesser extent consistent with Namibia's risk profile.

Table 25 - The highest proceed generating predicated offences prosecuted by OPG

2016	2017	2018	2019	2020
Fraud (3 cases)	Drugs (2)	Exchange Control (2)	Theft (12)	Drugs (1)
Robbery (1 case)	Exchange control (1)	Fraud (3)	Counterfeit goods (1)	Theft (7)
Theft (1 case)	Theft (4)	Theft (4)	Drugs (3)	Housebreaking (4)
	Fraud (2)	Drugs(3)	Fraud (14)	Importing Medicine without license (1)
	House breaking (1)	Corruption (1)	Operating a business without a permit (1)	Counterfeit goods (1)
			Housebreaking (4)	Fraud (6)
			Corruption (2)	
			Wildlife (2)	

183. The prosecution of cases, predicate as well as ML, is done by prosecutors under the OPG. The handling of ML cases is done in conjunction with the predicate offence with no specialization.

184. Table 26 is a summary of all high proceed generated crimes been investigated, prosecuted and convicted in Namibia for the assted period. The table also gives a break down on the type of ML cases convicted.

Table 26 - Number of ML Investigations, Prosecutions, and Convictions

Year Ending	2016	2017	2018	2019	2020	Total	Average
Number of ML investigations	106	143	111	151	114	625	125
Number of ML Prosecutions (Cases)	6	13	13	41	21	94	18.8
Number of ML Convictions (Cases)	1	2	6	46	15	70	14
Percentage of investigations leading to convictions (Cases) (%)	0.95	1.40	5.41	9.94	13.16	11.20	6.17
Number of legal persons Convicted	0	0	0	0	0	0	0
Convicted for Self ML	1	2	6	46	15	70	14
Convicted for Third party ML	0	0	0	0	0	0	0
Convicted for Stand-alone ML	0	0	0	0	0	0	0
Convicted for Foreign Predicates	0	0	0	0	0	0	0

185. The average time it takes from the investigation to conviction is approximately 16.5 months. The majority of these cases are however not complex or high-end investigations but rather low value cases. A correlation can then be made between the capacity of financial investigators available to LEA and a shortage of prosecutors and the convictions achieved. All these factors have an impact on the operational efficiency to investigate and prosecute ML cases.

186. Analysis of the statistics provided on investigation, prosecutions and convictions of ML cases, demonstrate that the action plan to implement the recommendations of the NRA has to a lesser extent been effective in terms of securing more ML prosecutions and convictions of proceed generating offences identified as posing the high threats and/or risk.

187. Table 27 is a breakdown of the predicate offences on the ML convictions. The ML convictions are of low monetary value, and are of medium to low-risk crimes compared to the NRA's findings. The statistics indicate that the authorities are not focusing on complex cases but on cases that are easier to prosecute. Serious cases such as corruption and tax related offences are not adequately pursued.

Table 27 - Type of predicate offence from ML convictions

Type of predicate offence	Count
Controlled Wildlife Products	1
Corruption	1
Dealing in Drugs	4
Exchange Control	2
Fraud	14
Housebreaking	5
Possession of Drugs	4
Robbery	1
Stock theft	5
Theft	26
Tourism Board Act	1
Possession of suspected stolen stock	4
Hunting able game	1
Possession of suspected stolen property	1
Grand Total	70

188. Although Namibia has taken reasonable steps to deal with high-risk predicate and ML offences, there is still a need to strengthen the investigation and the prosecution capacities and to further encourage a culture of introducing parallel financial investigations with every high-risk predicate offence investigation. Based on the analysis of statistics and the other information provided by the authorities, ML prosecutions are only being pursued to a limited extent on some of the high-risk offences which generates significant proceeds such as tax offences. Namibia is also pursuing crimes such as wildlife trafficking, rhino poaching and logging, yet ML investigations into these offences are relatively low compared to those of other crimes like stock theft. The lack of ML prosecutions arising from foreign corruption predicate offences is consistent with Namibia's risk profile as most of the proceeds are from within Namibia. The Taking statistics from the authorities into account, it is clear that investigation and prosecution of some of the major the high-risk predicate offences are to a lesser extent in line with the countries risk profile. This shows that there is a gap in the system that need to be addressed

3.3.3 Types of ML cases pursued

189. The authorities have to a lesser extent been able to demonstrate the ability to prosecute different types of ML cases, this can be seen in the prosecution outcomes, namely convictions as shown in Table 28. ML convictions are mostly focused on self-laundering with third-party laundering or and standalone laundering being close to nil. This could be because of Namibia pursuing ML cases relating to minor offences rather than identifying and investigating ML networks and professional enablers. This creates the vulnerability of more complicated ML offences continuing to take place without being addressed with the authorities concentrating mainly on self-laundering cases.

Table 28- Types of ML Convictions

	2016	2017	2018	2019	2020	Total
Self -laundering	1	2	6	46	15	70
Standalone ML	0	0	0	0	0	0
3rd party laundering	0	0	0	0	0	0
ML on Foreign Predicate Offence	0	0	0	0	0	0

190. There were investigations into legal persons and they were subsequently prosecuted, but there were no convictions of ML on legal persons.

191. Many of the ML cases charged, were cases of self-laundering which were prosecuted in conjunction with the predicate offense. The ML aspect charged was frequently the immediate dealing in the proceeds of the predicate offense committed by the defendant or a close associate. The evidence developed by the parallel financial investigation (PFI) related to confiscation or forfeiture applications is thus largely the same evidence used for the ML offense. As a result of this narrow focus on the predicate offenses, the authorities have not been effective in dealing with the wider types of ML activities including third- party ML, stand-alone ML and ML involving foreign predicate offences. This is also exacerbated by the legal gap observed on the non-criminalisation of standalone ML which would have a direct impact on the efforts made by the authorities investigating and prosecuting standalone ML (See R.3). The risk profile indicates that the proceed generating crimes are committed within Namibia and it is therefore self-laundering is most prevalent.

3.3.4 Effectiveness, proportionality and dissuasiveness of sanctions

192. **The majority of sentences imposed by the courts involve non-custodial and or suspended sentences for the ML offense and therefore cannot be considered to be effective, proportionate and dissuasive.** The statutory maximum penalties for a ML conviction have not been applied. A review of

the sanctions applied for ML cases noted a number of cases where suspended sentences were imposed by the courts, even for serious organised crime syndicate cases, which raises the concern of whether the serious criminal conduct and the impact the cases have on Namibia is considered by the courts during sentencing.

193. The authorities did not provide any sentencing guidelines or principles that the Magistrates refer to when determining appropriate sentences. Therefore, sentencing is left to the sole discretion of the Magistrates in the subordinate courts without necessary guidance to inform them of the sentence which might be appropriate for the different circumstances obtaining in different ML cases. Such guidance would help to balance a number of the contextual issues and probably ensure proportionate, effective and dissuasive sentences being applied for serious ML cases. In most of the sanctions for ML reviewed, the sanctions were linked to the sanction of the predicate offence. Of the 16 of the sanctions on 70 ML convictions reviewed, the sentences were ordered to run concurrently with the sentence of the predicate offence (which included non-custodial sanctions). The challenge this approach poses is trivialising the ML offences as the sanctions are not distinct from those of the predicate offence. Custodial sentences imposed on natural persons committing ML were at a lower level than for the predicate offences reviewed. There was no consistency of the sanctions in terms of dissuasiveness for the same type of ML offences with similar circumstances. More awareness needs to be created with the judiciary to appreciate the concept of ML as a distinct offence from the predicate offence and having a uniform guideline for sanctions of ML cases.

194. Sanctions applied against natural persons convicted of ML offenses are to some extent effective, and dissuasive. The highest sentence which has been handed down in a ML case (*S v Wang Hui* described below in Case Box 10) was of 20 years which, in itself, is dissuasive, however it was the exception of the sanctions applied in ML cases. In the described case, the trial court discharged the accused persons on the charge of ML. When the accused appealed against their sentence, the Appeal Court overturned the decision of the lower court and found the accused guilty of ML and all sanctions were upheld against all the accused. The majority of the 19 custodial sanctions reviewed, imposed on ML were on average 4 years.

195. During the period under review, no legal person had been convicted and sentenced for a ML offense or any predicate offence linked to the offence of ML, even though some of the sample cases provided by the authorities to the Assessors show involvement of legal persons in the commission of some of the ML offences. There was one case where a suspect, a Director of an Estate agent and Auctioneers was convicted, but the entity itself was not charged, although the circumstances of the case were of such that the legal person was used to facilitate the commission of the offences should have also been charged and possibly convicted of the same offences. See *S v Sprangers*, Case Box 9. This indicated less to no attention being paid to legal persons being used as vehicles to launder proceeds of crime or to commit other predicate offences. See Table 29 Sanctions Imposed for Persons Convicted of ML.

Table 29 - Sanctions Imposed for Persons Convicted of ML

Description	Data
Number of persons convicted of ML only	95
Of which received suspended sentences	9
% Suspended	9.5%
Of which received non-custodial sentence	53
% Non-custodial	55.79%
Number receiving custodial sentences	19
Average years of imprisonment	4.34
Max years of imprisonment	20
0 to 2 years	7
2 to 5 years	6
5 to 10 years	5
20 to 30 years	1

Case Box 9. Trust account of Estate Agency & Auctioneers

S v Sprangers (CC14/2016) (2020) NAHCMD 410 (11 September 2020) (ML conviction) Value USD 900 000-00 (NAD8.5 million)

The complainant, a DRC Army General, deposited USD 900 000-00 (NAD8.5 million) into a trust account of Estate Agency & Auctioneers in Swakopmund for purposes of purchasing immovable properties Erf 4136 and Erf 4120. The accused person then sold the 2 plots to a third part and when the complainant requested his money back, he only received USD 50,000-00 (NAD 850 000-00) back.

The accused was found guilty of 5 counts of theft by conversion and one charge of money laundering based on disguising unlawful origin of property on diverse occasions. The conviction was in connection with money transferred into the trust account of Estate Agency & Auctioneers of the accused to the amount of USD 900 000 (NAD8.5 million) Counts 2 – 7: Theft by conversion: 14 years’ imprisonment of which 6 years’ imprisonment suspended for a period of 5 years on condition that the accused is not convicted of theft (without the option of a fine), committed during the period of suspension.

Count 8: Money-laundering (c/s 4 of Act 29 of 2004): 6 years’ imprisonment. The court ordered that the sentence imposed on count 8 to be served concurrently with the sentence imposed on counts 2 – 7.

Only the director was convicted and not the legal person

Case Box 10. - S v Wang Hui (Hosea Kutako 13/03/2014)– Wildlife – Rhino horn and leopard skin Value NAD2 384 250.00 (Money laundering conviction/ on Appeal)

On 24 March 2014 at the Hosea Kutako International Airport, the NAMPOL scanner section was alerted to a possible illegal contraband. After further investigation fourteen Rhino horns were recovered, concealed in pieces of garments in blue suitcases and a leopard skin in a brown suitcase. A total of three Chinese nationals were arrested. After interviews were conducted it was determined that two of the suspects were “mules” and they admitted to the offences. A third suspect was identified to be the “supervisor”. The three suspects had stayed together the previous night in a local hotel before traveling to the airport the following morning. The investigating officer viewed the CCTV footage provided by the hotel and a fourth Chinese suspect was identified. The fourth suspect was the facilitator or organiser. He hosted the other three suspects at his place of residence upon arrival in the country, had purchased the airline tickets for the suspects and arranged for their hotel accommodation during the night before the departure to the airport and their travel to the airport. The fourth suspect was identified and arrested. The suspects were charged with contravention of sections of the Controlled Wildlife Act and ML.

196. Namibia has made use of their civil asset forfeiture regime as an alternative criminal justice measure where a ML investigation and prosecution has not been successful or possible for justifiable reasons to a limited extent. In terms of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) (POCA), as amended, Namibia can make use of their civil asset forfeiture regime as an alternative criminal justice measure where a ML investigation and prosecution has not been successful or possible

for justifiable reasons. The OPG actively pursues asset recovery through civil forfeiture measures (Chapter 6 of POCA) (see IO8). The ACC also pursues recovery of State losses through its available remedies in civil litigation (see IO8). These processes, overall, work parallel with the ML investigation and continue regardless of any criminal prosecution for the ML offence. The ML offence is considered in all cases investigated by MLI Sub-Division and the OPG also considers charging persons for other offences when the ML offence cannot be pursued.

Overall conclusion on IO.7

197. ML activities, in particular major proceeds generating offenses, are identified and investigated, and is to some extent consistent with Namibia's risk profile. A reasonable number of prosecutions and convictions on major proceeds generating offenses have been achieved. Although there is a greater emphasis in most, if not all the ML convictions linked to the prosecution of the predicate offense and frequently involve self-laundering. The authorities have not addressed third-party ML and stand-alone ML. There is low capacity to identify and investigate and prosecute ML activities focusing on organized crime syndicates and money laundering enablers. Sanctions set by law are solid and severe to be effective and proportionate, but in practice non-custodial or suspended sentences are often imposed and the sanctions can only be effective, proportionate and dissuasive to a lesser extent. Authorities have been able to employ alternative criminal justice measures in ML cases when it is not possible to secure a ML conviction and there is a policy objective for pursuing confiscation of criminal proceeds, instrumentalities and property of equivalent value pursued to some extent as an alternative measure.

198. **Namibia is rated as having a Moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

3.4.1 Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

199. Namibia has in place a legal and institutional framework supported through specific administrative arrangements for pursuit of confiscation of proceeds, instrumentalities and property of equivalent value. The POCA provides for the establishment of a Criminal Assets Recovery Fund and a Criminal Assets Recovery Committee which structures were introduced to provide a framework for enhancing the arrangements for dealing with proceeds of crime and incidental matters.

200. The POCA is the main law that provides competent authorities with powers to confiscate proceeds of ML and the associated predicate offences. The powers range from searches, seizures, freezing, preservation, confiscation and forfeiture (see R. 31). It defines competent authority widely to cover all the LEAs in the country. The POCA provides for both conviction-based (criminal) confiscation and non-conviction-based (civil) asset forfeiture. It further empowers the court to order compensation of victims of the financial crime, to make any determination regarding the identification of tainted property and further allows the court to give any directions necessary or convenient for giving effect to confiscation orders made.

201. The PACOTPA provides for measures to freeze and confiscate TF and PF assets.

202. Other laws which provide for asset forfeiture are ACC Act and the Criminal Procedure Act. The forfeiture laws extend to: proceeds and instrumentalities of ML and its predicate offenses; profits derived from those offenses; and property of corresponding value held by the criminal defendant or

third parties. Depending on the type of the predicate offense, the competent authorities are responsible for the identification, tracing and the seizure of proceeds of crime. All the powers provided in these various laws have been frequently used by the Competent Authorities to identify and handle proceeds of crime and illicit assets.

203. The OPG comprises seven specialised units (see IO. 7) and some of the Units are: Commercial Crimes Unit, Anti-Corruption Unit, Serious Crimes Unit, Priority Crimes Unit, Human Trafficking / Sexual Offences Unit, General Crimes Unit, Asset Recovery Unit. Of importance to this Immediate Outcome is the Asset Forfeiture Unit which was set up administratively to implement the above cited laws and improve on effective confiscation/forfeiture of all types of proceeds of crime focusing more on civil-based asset recovery. The Unit makes civil asset forfeiture applications on cases handled by the OPG as well as those from other LEAs. Namibia has issued Asset Management guidance to Prosecutors and Investigators wherein the main objective is to deprive criminals of the benefit of illicit activities by confiscating/forfeiting any assets that are garnered from proceeds of crime. The tools/mechanisms used in terms of the POCA and the guidance are applications for restraint orders and preservation of property orders.

204. Namibia being a jurisdiction that always relied on conviction-based confiscations (Chap 5), introduction of non-conviction/civil based forfeiture (Chap 6) in terms of POCA has not been easy for the PG's Office. Most orders of the lower courts on civil forfeiture have been challenged till the highest court which is the Supreme Court. However, with more appeals being brought before this court and the OPG having won most of the cases, the courts have now established firm precedent and well-developed jurisprudence on non-conviction-based forfeitures which is now making the handling of such applications effective. The Asset Forfeiture Unit of the OPG demonstrated that it uses non-conviction based/civil forfeiture more often than conviction-based confiscation since it is a much quicker process.

205. To improve on the skills of the Asset Recovery Unit in the OPG in assisting LEAs to identify and trace proceeds of crime and eventually prosecute the confiscation applications, the staff in the Unit have been trained on issues of money laundering and confiscation. The training has been provided by UNODC which assisted by providing an in-house legal expert to help with setting up the Asset Forfeiture Unit in the OPG; ARINSA; NAMPOL; and the Asset Forfeiture Unit of the National Prosecuting Authority (NPA) of South Africa. Also, some of the Asset Recovery Unit officers were attached to the NPA of South Africa on a Prosecutor Placement Program to train in various aspects of asset forfeiture. The OPG has signed an MoU with the NPA of South Africa covering various aspects of prosecution, including assistance in building asset forfeiture capacity. However, no information was provided by the authorities to determine what guides the needs for training and the frequency. Information provided by the authorities on how many of the staff members in the Asset Recovery Unit have been trained on asset forfeiture indicated low levels of staff training as shown below.

206. The statistics pertaining to the specialised asset forfeiture training received by prosecutors in terms of the MoU between Namibia and South Africa are as shown in Table 30 below:

Table 30 - The Specialised Asset Forfeiture Training Received by Prosecutors

2015	2016	2017	2018	2019
2	1	1	0	2

207. To ensure that proceeds of crime and illicit assets are quickly identified, traced and stopped from being dissipated, the Criminal Investigation Directorate (CID) of the NAMPOL has set up an Asset Recovery Sub-Division Unit. The Unit has been set up administratively to specialise in pursuing proceeds of crime and illicit assets. At the time of the on-site, the Unit had 7 officers.

208. In terms of an MOU entered between the OPG and the AG, an Intersectoral National Justice Forum (Forum) was established by Cabinet in 2013 and comprises stakeholders in Namibia's criminal justice system. The objective of the forum is to improve the administration of criminal justice in

Namibia. By virtue of this MOU an arrangement has been made for the Asset Recovery Sub-Division of the CID to work with the FIC and the Asset Forfeiture Unit in the Office of the Prosecutor-General daily to expeditiously identify, trace and initiate freezing and seizing of property that is, or may become subject to confiscation, or is suspected of being proceeds of crime.

209. The POCA directs that there be a framework for managing confiscated funds. To comply with this directive, Namibia has established a Criminal Asset Recovery Fund (Fund). The Fund is maintained by the Ministry of Justice. The Fund is run by an Accounting Officer. The Auditor General of Namibia on an annual basis conducts audit of the Fund for transparency and good governance. The Accounting Officer makes recommendations to the Asset Recovery Committee on the disposal of the funds which considers the recommendations before making proposals to Cabinet for decisions to be made. The POCA further allows for appointment of a staff member to take care of preserved property e.g., if it is a car to clean it, service it and maintain it in good order until a final order is obtained. Once the final forfeiture order is obtained the same person is then appointed to take the car to the appointed auctioneers to have it sold with the proceeds surrendered into the Asset Recovery Fund. As indicated in the tables below, during the period under review, approximately NAD 37,251,733 was paid into the fund because of civil forfeiture, and NAD 2,376,705 paid into the fund as a result of convictions. It is notable that higher percentage of funds was achieved through forfeiture in comparison to confiscations.

Funds Deposited in Criminal Asset Recovery Funds

Table 31 - Funds forfeited in terms of Chapter 6 of POCA (Civil forfeiture)

Period	2015	2016	2017	2018	2019	2020
Amount (NAD)	1,380,052	25,462,013	1,856,273	4,031,999	4,355,850	165,546

Table 32- Funds confiscated in terms of Chapter 5 of POCA

Period	2015	2016	2017	2018	2019	2020
Amount (NAD)	140,270	5,000	2,214,947	0	0	16,488

210. A number of mechanisms have been put in place to pursue proceeds of crime as either policy or in terms of the law but what is not coming out clearly is how these mechanisms have been used to confiscate criminal proceeds, instrumentalities and property of corresponding value to demonstrate effectiveness of the AML/CFT systems. The statistics on confiscations after conviction, as shown in the next core issue are very low.

3.4.2. Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

211. The criminal offences underlying the confiscations ranged from fraud, VAT fraud, theft, illicit wildlife trade, drug dealing to corruption which are commensurate with the risk profile of Namibia as determined by the NRA. Interviews with most of the Competent Authorities indicated that a low rate of Criminal Confiscations under the POCA had occurred in Namibia due to the low number of finalized cases before 2019. During the period under review a total of 13 conviction-based confiscations were achieved. Most of the conviction-based confiscations which have taken place, have been in terms of the Criminal Procedures Act, 1977.

212. During the period under review, the authorities managed to identify and successfully apply for a total of 45 preservation orders in respect proceeds, instrumentalities and other illicit assets. Cases of forfeiture presented by the authorities for the same period showed that there was reasonable success with pursuing civil forfeitures. A total of 54 non-conviction-based forfeitures had been successfully pursued and concluded. The criminal offences underlying the confiscations ranged from fraud, corruption, illicit foreign exchange trade, and theft. Table 33 below show values of criminal confiscations, preservation orders and finally, the civil forfeitures for the period under review.

Table 33 - Criminal Confiscations, Preservation and Civil Forfeitures

	2016	2017	2018	2019	2020
Criminal Confiscation values (NAD)	14,000	0	0	0	379 080
Preservation (NAD)	11,993,400	58,532,400	20,243,352	11,284,562	128,564,882
Forfeitures (NAD)	22,936,253	2,352,186	5,083,238	2,665,904	1,871,562

213. During the period under review, preservation orders to the total value of NAD 347,347,159.91 as follows: a) year 2016 – NAD 11,993,400.19; b) year 2017 – NAD 58,552,400.25; c) year 2018 – NAD 20,234,352.35; d) year 2019 – NAD 11,284,561.99; e) year 2020 – NAD 128,564,881.27; and during the first half of year 2021 – NAD 152,000, were secured through the courts. Table 34 below provide examples of some of the high-value cases where preservation orders were obtained from the courts.

214. Namibia demonstrated as indicated in the table below the extent to which preservation orders were successfully used during the reporting period and for which predicate offences.

Table 34- of statistics of preservation orders during the reporting period

Agency	Date	Ref No.	Brief Facts	Offence Type
FIC/ NAMPOL	5-Feb-19	POCA-2019-00034	The USD 9 991.10 held in favour ofin suspense account number005 held int eh name ofat Bank BIC Namibia Limited	Fraud
FIC/ ACC	25-Oct-19	Omeya situated in the Municipality of Windhoek registration division K etc	Corruption
NAMPOL	26-Sep-18	POCA 2018/00332	The positive balance held in the current of Namibia account number held in the name of	Fraud
FIC/NAMPOL	30-Aug-18	POCA 2018/00299	The positive balance held in theCheque account number in the name of Investment Club	Fraud
NAMPOL	7-Dec-18	POCA-2018/00410	Awith registration number....., engine number etc held in the name of.....	Fraud
NAMPOL	7-Dec-18	POCA-2018/00409	The positive balance inaccount numberheld in the name of.....	Drugs

215. The statistics indicate that the recoveries and confiscations relate mostly to fraud which appears to be the most prevalent predicate offence. Low rates of confiscations were indicated for the other high risk predicate offences identified by the NRA such as corruption, drug smuggling and illicit wildlife trade. The cases did not include any of ML, showing proving limitations in identifying and tracing proceeds relating to such offences. Table 35. below, illustrates examples of the high-value properties against which preservation orders were obtained. A total value of properties amounting to NAD 50,407,607.97 were preserved.

Table 35- Examples of Preservations Orders on High-Value Properties

DATE	DESCRIPTION	VALUE
9-Dec-20	Immovable property	4,780,000
22-Jul-19	Funds	3,400,000
12-Jun-19	Funds	2,150,000
1-Feb-19	The Prosecutor-General vBank Namibia Limited	1,117,3673
7-Dec-18	Cash incl foreign currency	847,3703
25-Jul-18	Funds	2,900,000
16-Mar-18		2,528,200
25-Oct-17		994,1301
8-Sep-17		1,256,397
21-Jun-16		20,279,000
27-Apr-16		4,780,000
20-Apr-16		2,600,000
22-Jan-16		1130 cigarettes, heavy duty Truck

216. For the period 2016-2020, a total of forty-five (45) applications of conviction (Chapter 5, POCA) and non- conviction-based forfeiture (Chapter 6, POCA) were brought by the Prosecutor General. The FIC provided information to a total of 37 of the applications for intervention orders restricting funds in bank accounts, preservations of motor vehicles and residential property. Although the statistics showed that Namibia had registered successes in using civil based forfeiture, the numbers of the finalised civil based forfeiture cases combined were still much lower than cases in which the authorities had applied for preservation orders. The Authorities indicated that the difference in the numbers was caused by some of the cases still being deliberated in courts. This could have been correct as generally it took longer to finalise big cases in courts. A good example of such cases is those emanating from the Fishrot scandal. The fear which arises from such length litigation processes is the possible dissipation of illicit assets and funds as well as those accused of such crimes filing continuous applications in courts to ensure that they are not deprived of the ill-gotten proceeds as is already happening with some of the Fishrot cases. Table 36 below depicts ML Criminal Confiscations, Preservation and Forfeitures.

Table 36 - ML Criminal Confiscations, Preservation and Forfeitures.

	2016	2017	2018	2019	2020	Total
Criminal Confiscations	2	0	1	1	2	9
Preservations	14	10	9	9	3	45
Forfeitures (includes where preservation orders had been obtained)	20	9	8	12	5	54

217. Other than one case which started in Namibia and transcended to South Africa concerning virtual assets (see Case Box 11 below) 4, Namibia had recorded some cases relating to confiscations involving proceeds from foreign predicate offences, foreign instrumentalities or where proceeds were located abroad or shared from abroad. Potential cases were still under investigation e.g., the Fishrot case. In addition, Namibia had not shared any assets with other jurisdictions as no such cases had been identified. Given the high activity and traffic between Namibia and its neighbouring countries of South Africa and Angola, much higher figures of identification and confiscation/forfeiture of proceeds of crime generated from foreign predicate offences were expected. The next to nil numbers of cases which are foreign predicates reflects limited capacity to identify such cases. This is consistent with Namibia's risk profile in terms of proceeds from foreign predicates finding their way into Namibia and being laundered.

218. Namibia demonstrated through the case described in Case Box 11 below that the Asset Recovery Fund and effective international cooperation, it had the capacity to repatriate funds back to Namibia. The FIC and LEAs in Namibia cooperated with their counterparts in South Africa to achieve the recovery and repatriation.

Case Box 11 Example: Recovery and repatriation of funds from South Africa to the victims in Namibia arising from Virtual Asset Fraud – (This case is reported at page 64, Box 3.7 of the South African MER)

Success hinged on FIU International cooperation: Financial Intelligence Centre Namibia received a request for information on 30th August 2017 from the Criminal Investigation Unit of the Namibian Police Force in Walvis Bay.

The case related to the hacking of two bank accounts held with First National Bank of Namibia Limited in the name of two different business entities based in Walvis Bay, Namibia. The money was transferred to a fraudulently opened South African bank account in the amount of N\$750 000 and N\$500 000 respectively. Upon analysis conducted by FIC Namibia, a spontaneous disclosure/request for information was immediately shared with the FIC South Africa on 01 September 2017.

The FIC South Africa acted on the request from Namibia and referred the case to the NPA: Asset Forfeiture Unit on September 22, 2017. The analysis determined the perpetrators created trading accounts with Altcoin Trader, a Virtual Currency Service Provider registered, and conducting business in South Africa. Two trading accounts were created fraudulently using the credentials of two Namibian citizens.

The money transferred to the bank account in South Africa was used to buy Bitcoin, Bitcoin Cash, and Ripple crypto currencies on the Altcoin Trader platform. One Crypto Wallet was created for each of the accounts. By the time the fraud was discovered one wallet was already transferred from the Altcoin Trader platform. FIC instructed Altcoin Trader not to proceed with the transfer of the other wallet in terms of the FIC Act, s.34. The NPA: AFU obtained a preservation order to the value of R343 000 (\$23300) on October 5, 2017, and a forfeiture order for R954 356 (\$64 900) on February 2, 2018 (the increase in value of the VAs over that period). An amount of R961 654 (\$65 400) was recovered and repatriated to the victims in Namibia on 2nd March 2018.

The FIC Namibia shared the information with the Namibian Police to supplement their ongoing investigations

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219. In Namibia bona fide victims can obtain compensation (s. 63 of POCA). It provides for the innocent owner defence/exemption by enabling any person who has an interest in property that is subject to a forfeiture application to apply to have their interest in the property excluded from operation of the forfeiture order. The Court may exclude the interest if it is satisfied that the interested person has a legitimate interest in the property and that he or she neither knew nor had reasonable grounds to suspect that the property in which his or her interest is held is proceeds of unlawful activities. Reviewed data demonstrated that Namibia has registered some success in implementing a mechanism of allowing for refund or compensation of third-party victims of predicate crimes. The compensation is paid out from the Asset Recovery Fund and statistics provided by the Authorities indicate that over the reporting period a

total of NAD 8,872,925 has been paid to 3rd party victims. Table 37 below indicates the payments that have been made to 3rd party victims from the Asset Recovery during the period under review.

Table 37 - Payments to 3rd Party victims from Asset Recovery fund

	2016	2017	2018	2019	2020
	371615	-	210000	1000000	21000
	-	-	2500000	3000000	1080
	-	-	143000	1100000	22080
	-	-	14000	35000	280000
	-	-	4600	5800	-
	-	-	161600	3000	-
	-	-		150	-
TOTAL	371615	-	3033200	5143950	324160

220. Despite Namibia demonstrating that mechanisms such as restraint and preservation orders are used, their success is hampered by delayed investigations and prosecutions. Authorities cited the Fishrot cases to demonstrate the successful restraint of funds worth NAD 600 million in 2020. However, to date the matter is still under litigation and funds cannot be forfeited until the case is concluded. Resultantly, repatriation of any proceeds generated from the Fishrot cases existing outside of Namibia are equally delayed, or efforts stagnated.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

221. **Namibia's declaration system for cross-border transportation of currency or bearer negotiable instruments (BNI) under the FIA is in general inadequate and is being accessed and used to a lesser extent by the FIC and the LEAs.** The Act requires travelers entering or leaving Namibia with an amount of money or BNI above the value of NAD 100 000.00 to declare it to Customs and Excise Officials. The FIA criminalizes false declarations and non-declarations. Sanctions for false declaration and non-declaration are applicable upon conviction, but the FIA also provides for an administrative process for forfeiture of funds not declared or falsely declared (see R. 32).

222. Authorities in Namibia are allowed under the FIA to seize and detain any currency or BNI above the value of NAD 100 000.00 which are either not declared or falsely declared, or suspected to have been derived from an offence or intended for use in the commission of an offence. In spite of this empowerment, and the criminalisation interactions with the authorities indicated a low rate of prosecution, conviction and confiscation for non-compliance. Authorities indicated that in instances of detection of none / false declarations, more focus seemed to be placed on establishing the legitimacy of the funds in possession of the suspect, and tax compliance status. Prosecution and or sanctioning for the non-declaration or false declaration was not demonstrated as a priority.

223. The Commissioner of Customs is required to report all cross-border declarations of cash to the FIC within a prescribed time (s.36 of the FIA). The obligation was however, implemented from 2016 when trainings was provided to customs officials countrywide by FIC. The training was accompanied by the development of cash declaration forms, and posters/banners place and border posts. Currently, all declarations are transmitted to the FIC by Customs through the goAML system on a weekly basis.

224. The key entities that are involved in monitoring compliance with the requirement to declare currency or BNIs are the Revenue Authority and the Police and Immigration at some land borders. The Revenue Authority enforces this through its Customs Office. The enforcement of declaration requirements at the 7 most busy border posts of Namibia, including the land border post between Namibia and Angola (Oshikango) which is one of Namibia's busiest land border posts is assisted through use of scanners and sniffer dogs for both cash and drugs. Customs Officers are also equipped with mobile scanners for mobility at busy border posts. In addition to the gadgets, Customs and Police

Officers manning borders often carry out body searches which they are empowered to do in terms of their respective laws. However, the figures of reports of failure to declare and false declarations provided by the authorities (see Table 38 below) do not seem to show that these resources are being put to good use, as the reports are quite low, possibly with the risk of currency being transported across the borders remaining high. The authorities did not report incidences of restraining of legitimately declared currency where there is suspicion of ML/TF for purposes of ascertaining whether there could be any evidence of ML/TF.

225. The authorities indicated that they registered some success in intercepting undeclared currency. This has been attributed to the good collaboration between the competent authorities. However, there has been limited success in conclusively having the cash forfeited. Statistics from the authorities indicated in Table 38 below, show that over 80% of the undeclared currency are yet to be forfeited as the matters are still pending, and in some instance, funds were returned to the perpetrator.

Table 38 - Confiscation of Non-Declared or Falsely Declared Cash/BNI

Date Funds Detained	Amount & Type of currency involved	Amount Forfeited	Custody	Funds Returned
27/9/19	NAD186,100 and ZAR32,100 (NAD218,200)	None	FIC - funds held at BoN	Investigation
15-Oct-19	(USD10,405 and NAD690)	None	FIC - funds held at BoN	Auditing
	ZAR150,000	None	FIC - funds held at BoN	Case finalized. Tax owed
4-Nov-19	ZAR178,000	Funds not yet forfeited	FIC - funds held at BoN	Case finalized. Tax owed
	USD10,791	Funds returned to the owner	Private bank	Funds returned to the owner
27-Jun-19	NAD264,400	None	Private bank	Case finalized. Funds to be paid over to State
12-Jul-19	NAD168,166	None	Private bank	Matter finalized. Funds to be paid over to State
12-Jul-19	NAD201,200		Private bank	
12-Jul-19	NAD54,790		Private bank	
04 Dec-19	USD54,150 NAD790,049	None	FIC - funds held at BoN	Fine or imprisonment
04 Dec-19	USD45,400 (NAD662,386) and EUR6520 (NAD105,441)	None	FIC - funds held at BoN	
04 Dec-19	USD50,550 (NAD737,525) and NAD4,080	None	FIC: Funds held at BoN	
18-March 20	ZAR250,000	None	FIC - funds held at BoN	Pending

226. The cross-border movement of cash/NBIs reporting framework is inadequate, especially at border posts. The country largely depends on voluntary traveller declarations. The absence of mechanisms to properly avail all travellers with cash declaration forms undermines the effective functioning of cross border cash declarations. There is thus no assurance that Namibia has adequate record of cash smuggled or legitimately moving into and out of the country, via the official points of entry. In a case of the Angolan ladies cited below, it is reported that the ladies had been using the Ushikango border frequently until the day they were apprehended. There are high chances that the ladies had been using the same modus of transporting cash illegally during the other occasions as there appears to have been no proactive measures taken to monitor them for compliance with the declaration to declare, no mechanisms to screen and detect the cash at the border posts were effectively used until the ladies were arrested at the international airport. This is further compounded by the intensive use of cash in Namibia's economy which was identified by the NRA as high risk for ML.

Case Box 12. Attempted cash smuggling through HKIA

In early December 2019, three Angolan ladies, intending to travel to China through Namibia, were arrested after being found with undeclared cash amounting to NAD 2,299,480.44 at the Hosea Kutako International Airport. Method of concealment. The discovery of the funds was triggered by the traveller screening machines that detected foreign objects on the body of one subject, as she passed through the screening platform. Thereafter, she and her travelling partners were subjected to a body search. The search found cash amounting to NAD 2,299,480.44 on the bodies of the subjects, concealed in underwear (adult diapers), bras and shoes. The money was in various currencies as per table below:

Accused person	Amount recovered: USD/EUR	Converted Namibian Dollar Value
1	USD 54,150.00	790,048.50
2	USD 45,400.00	662,386.00
	EUR 6,520.00	105,441.44
3	USD 50,550.00	737,524.50
		4,080.00
TOTAL	USD 150,100 EUR 6,520	2,299,480.44

The subjects were arrested and charged under section 36(1) of the FIA [read with Regulation 31(1)] and the Exchange Control Regulations. The cash was confiscated and remains in Police custody. Investigations further revealed that the subjects entered Namibia by road via the Oshikango border post a few days prior to their attempted departure via the international airport. There is no record of declaration of the funds upon entry into Namibia by the three subjects, however immigration records indicate that the subjects frequently visit Namibia from Angola. Eventually, the three subjects pleaded guilty in December 2020. The three subjects were all given a fine of NAD 50,000.00 for contravening the FIA, and a fine of NAD 15,000.00 each for contravening the Exchange Control Act. A decision on whether the funds will be forfeited to the state is pending at the time of reporting.

227. Statistics provided also indicate a low level of reporting. Table 39 below demonstrates the low levels of reporting during the period under review compared to the high levels of traffic flow. For instance, as illustrated in the table below the highest number of declarations of cross border movement of cash was recorded in 2017 (66 declaration) and the least declarations made in 2020 (only three). This is an indication that Namibian authorities are not proactively implementing initiatives to ensure that travellers declare movement of cash and BNIs, especially at border points, and non-compliance may be high and undetected by authorities.

Table 39 - Cross Border Cash Declaration Reports received by FIC from Customs and Excise Officers on goAML

	2016	2017	2018	2019	2020
Oshikango Border Post	0	1	7	10	2
Ariamsvlei Border Post	0	0	0	0	0
Noordoewer Border Post	0	0	0	1	0
Transkalahari Border Post	4	11	1	0	0
Walvis Bay Port	0	0	0	0	0
Mohembo	0	1	0	0	0
Hosea Kutako International Airport	3	53	4	0	1
Total	7	66	12	11	3

228. Upon conviction, persons guilty of offences can be subjected to fines not exceeding NAD 8,000 for less serious offences or not exceeding NAD 20,000 or three times the value of the goods involved in serious offences; or imprisonment not exceeding 2 years for less serious offences, or not exceeding 5 years in more serious offences, or both imprisonment and a fine. In the majority of the cases, these sanctions were not effectively implemented as fines were prescribed with the seized amounts being returned to the perpetrator of the offence and not being confiscated. In the case of the Angolan ladies cited above, the ladies were each fined NAD 15,000 and it has been indicated that the monies that were seized are yet to be confiscated because the court case to determine the same is still pending. Namibia is therefore not proactively implementing the prescribed sanctions for non-compliance, nor pursuing confiscation of falsely or non-declared currency in a timely manner.

3.4.4 Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

229. A sample of the statistics of preservation orders obtained from court during the period under review indicates consistency with Namibia's profile of high-risk predicate offences underlying the ML offence, but with low confiscation rates except for fraud. The high prevalent offences which were frequently prosecuted and had preservation orders applied for were identified as fraud, tax evasion, corruption/bribery, stock theft; theft, poaching and illegal sale of cannabis consistent with Namibia's ML/TF risk profile. A high prevalence in levels of risks related to fraud, followed to a limited extent by tax evasion, theft and illicit wildlife trade/poaching. Table 40 illustrates the total number of preservation orders obtained on some of the high-risk offences during the period under consideration. The preservation orders obtained seem to be in the main addressing the high risk if fraud.

Table 40 - Preservation orders obtained on some of the high-risk offences

High risk Predicate offence	Total Preservation Orders obtained per Year					Total
	2016	2017	2018	2019	2020	
Fraud	8	10	2	4	2	26
Tax Evasion	0	0	0	0	0	0
Drugs	3	1	1	1	0	6
Theft	1	0	1	1	1	4
Wildlife	1	0	0	0	0	1

230. The cases summarised in the boxes below also demonstrate the extent to which the confiscations are consistent with ML risks highlighting dealing in cannabis, fraud, theft and corruption. However, not necessarily the TF risk.

Case Box 13. PG v Kano Santos demonstrates an instance where court granted a confiscation order of assets valued at N\$ 13,288.00 in respect of the offence of dealing in cannabis. This case also exposes the risk of people using undesignated entry points

PG applied for a confiscation order against Mr Santos after he was convicted of dealing in cannabis in contravention of the relevant laws. Entering Namibia at a place other than the port of entry in contravention of the Immigration Control Act; and Money Laundering offences.

The confiscation order, granted on 15 January 2019, was made in respect of the defendants' realizable property to the value of N\$13 288.00.

Case Box 14. PG v Stephanie Serfontein demonstrates how the Authorities were able to achieve a confiscation order for the value of N\$ 4,000,000.00 for offences relating to fraud.

PG applied for a confiscation order against Mrs Serfontein to the value of N\$4 million which represented the benefit she retained as a result of her fraudulent activities. The confiscation order to the value of N\$ 4 000 000.00 was granted on 9 May 2019. The defendant only had realizable property to the value of N\$43 000.00 at the time of confiscation. However, this did not preclude the State from realizing anymore property that may be obtained by the Defendant in the future. The order remains enforceable until it is satisfied.

Case in Box 15. S v Majiedt demonstrates how a confiscation order was successfully applied for however funds had already been exhausted

S v Majiedt (CC 11-2013) [2015] Nahcmd 289 (1 December 2015) AfriSam cement fraud scam – (NAD 71 321 647.00)

Summary - Case involved a former employee (Team Leader) of AfriSam Cement Namibia, Esmerelda Martina Majiedt (key accused) who allegedly received various payments in her personal capacity from customers of, AfriSam Cement. She created dump payments (fake payments) in AfriSam Cement accounting system (SAP) purporting that the customers indeed had paid their load of cement while knowing that they had paid cash directly to her in order for the cement to be released. This resulted in AfriSam Cement Namibia losing an actual amount of N\$71, 321 647.00. The crime was committed over a period of five years and was only discovered during an audit of March 2011 by which time she had already resigned and joined another cement producing company called Ohorongo Cement. The initial charges that were levelled against Ms Majiedt was in contravention of section 35(3) of the Anti-Corruption Act (Act No.8 of 2003) since as an agent of AfriSam Cement; she knowingly used documents which her employer had an interest in and the documents contained false information aimed at misleading her employer. The matter was investigated as from March 2011 to October 2012. Majiedt faced a total of 630 charges of fraud, theft and corruption of which after trial she was found guilty of 396 counts of fraud valued at N\$56 million. She was sentenced to 25 years imprisonment, of which 8 years suspended on good conduct. No assets could be recovered as she had squandered all her loot.

231. Confiscations arising from cases of ML were still quite low. Although, the authorities had managed to apply for preservation and restraint orders in ML cases pertaining to the Fishrot scandal, no cases were finalised. This was mainly because prosecutions in the cases had commenced (see IO 7). The length taken by the authorities to finalise the cases pertaining to the Fishrot scandal where preserved/restrained assets (cars, farms immovable assets) are involved is of concern as they might depreciate in value or become too costly to maintain.

Overall conclusion on IO.8

232. Namibia to some extent implements a legal and policy framework to ensure that proceeds and instrumentalities of crime are confiscated. This applies for both conviction-based confiscations and non-conviction-based forfeitures. Authorities have demonstrated ability to restrain and confiscate assets using various instruments including conservation orders, forfeiture orders, seizures, confiscations and forfeiture orders. The predicate offences for which the confiscations are applied are consistent with the risk profile of the country and range from fraud, corruption to dealing in cannabis. There have been indicators that cross-border movement of cash is prevalent especially at the border points which are porous thus making it difficult to detect. Authorities have demonstrated a limited ability to seize undeclared / falsely declared sums of currency and arrest suspects for non-compliance, leading to the rate of prosecution for non-compliance being low, and has resulted in low confiscation rates. There has also been limited success in the undeclared cash being forfeited due to lengthy timeframes in concluding investigations or prosecutions that follow. Reviewed data indicated that to a great extent seized cash was yet to be forfeited as investigations, or court processes to decide on the currency. There has been limited pursuit and, or success in recovery of assets that have been moved to foreign jurisdictions or their identification. Repatriation, sharing or restitution of proceeds or instrumentalities of crime or property of corresponding value with other jurisdictions has only been done to a very limited extent. Namibia is yet to address the risk associated with proceeds of foreign predicate crime being laundered in Namibia. There was limited information to indicate the extent to which foreign proceeds of crime laundered into Namibia have been seized or confiscated. Namibia's confiscation rates are consistent with her ML risks and national AML/CFT Policies. However, the confiscation results on the same are low.

233. **Namibia is rated as having a Moderate level of effectiveness for IO.8.**

Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1 Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- (a) Namibia has not criminalised consistent with the FATF Standards. As such Namibia does not have the ability to fully apply measures to ensure that the entire scope of TF and associated predicate offences can be effectively investigated and prosecuted.
- (b) Namibia has to some extent institutional framework in place to identify, investigate and prosecute TF activities in line with its understanding of TF risks. The FIC, NIS and LEAs to some extent coordinate domestically and cooperate with their counterparts in identification of TF offences.
- (c) Namibia's counterterrorism strategy is not informed by the TF risks in the country and comprehensive enough to cover all FT elements. Since there was no completed TF investigation and prosecution, it was difficult to determine to what extent the investigation and prosecution of TF is integrated with the Strategy. The knowledge of terrorism is present among different competent authorities but the understanding of TF in the country is not well established amongst them (except for NCCT and FIC) thus hampering the country's ability to identify and investigate TF activities.
- (d) Though there is low TF risk in Namibia, the NAMPOL and OPG have no adequate capacity and resource to coordinate, identify and carry out potential TF investigations and prosecutions. Due to non-prioritisation of TF within the NAMPOL and OPG, there has been no threat analysis related to TF so as to activate investigations, prosecutions and disruptions. As a result, TF cases are not being proactively identified, investigated, prosecuted and disrupted.
- (e) There has been no TF case prosecuted in Namibia and therefore the extent which sanctions are proportionate, dissuasive and effective could not be determined.

Immediate Outcome 10

- (f) Namibia does not effectively implement targeted financial sanctions (TFS) without delay in terms of UNSCRs 1267 and 1373, mainly because of serious technical deficiencies as described under R.6.
- (g) FIs and DNFBPs are not fully aware of their TFS obligations especially on the need to identify and freeze assets mainly on the assumption that terrorism risk in Namibia is low. Though some FIs and DNFBPs are aware of sanction screening tool issued by the FIC, they did not demonstrate the use of such tools to screen for TF in practice.
- (h) Namibia has not conducted a comprehensive review of NPOs to identify which NPOs meet the FATF definitions to enable applying targeted approach and monitoring activities of high risk NPOs for any possible TF abuse. Thus, supervision of the NPO sector for TF is still lacking.

- (i) Due to lack of TF cases, the level of TF risk in the country and the extent to which terrorists, terrorist organizations and terrorist financiers are deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities could not be determined.

Immediate Outcome 11

- (j) Namibia does not effectively implement targeted financial sanctions (TFS) without delay in terms of UNSCRs 1718, 1737 and other relevant Resolutions on PF, mainly because of serious technical deficiencies described under R.7.
- (k) The supervisory authorities have not established effective mechanisms to outreach and monitor the implementation of CPF obligations by most of the FIs, DNFBPs and VASPs under.
- (l) UNSCRs on combating PF are not being implemented adequately by all national bodies, financial institutions, VASPs and DNFBPS. This is due to the absence of comprehensive necessary procedures, instructions or mechanisms and weak awareness of the TFS system in relation to PF.
- (m) There are no administrative or voluntary mechanisms in place for FIs, DNFBPs and VASPs to apply measures relating to identified assets and funds held by designated persons or entities.
- (n) There is a low level of understanding in regards to implementation of TFS relating to PF amongst the FIs, DNFBPs and VASPs in Namibia.

Recommended Actions

Immediate Outcome 9

- (a) Namibia should revise its legal framework with regard to the TF offence in order to make it consistent with the FATF Standards which would in turn allow authorities to be able to detect, prosecute and disrupt the full scope of TF and associated predicate offences.
- (b) Namibia should establish a more effective coordinated structure comprising of all relevant entities to address issues of TF.
- (c) Namibia should collect and keep better statistics and case management in relation to TF investigations.
- (d) Namibia should ensure that TF component is enshrined in the national CT strategy outlining clear goals for identifying the collection, movement and use of terrorist funds.
- (e) Namibia should build its operational capacity to identify, investigate and prosecute TF cases through provision of adequate financial and human resources as well as specialised trainings for its investigators with the aim to pursue financial investigations including conducting parallel financial investigations in terrorism cases with the aim of identifying terrorist financiers, their modus operandi and financing networks. This training should also extend to the prosecutors as well.
- (f) Namibia should update its TF risk assessment for comprehensive understanding by all LEAs of risk relating to raising, storing and moving funds and the exploitation of various sectors and channels of abuse for TF purposes.

Immediate Outcome 10

- (g) The legal framework and the existing communication procedures should be revised to effectively coordinate and implement the UNSCRs without delay by amongst others, ensuring that all FIs, DNFBPs and VASPs are made aware of their obligations regarding TFS and that TFS on TF is implemented without delay.
- (h) The Authorities should undertake a detailed study of the NPO Sector to identify the vulnerability of the sector to TF risk, identify NPOs which might be most vulnerable to TF abuse and take appropriate measures to mitigate their exposure to the TF risk. Based on the results, the authorities should develop outreach and monitoring plans for higher risk NPOs.
- (i) Namibia should ensure that all the NPO regulators have adequate capacity to supervise the sector for possible TF abuse.
- (j) Namibia should ensure that FIs, DNFBPs and other persons understand their obligations regarding TFS relating to TF and comply with the requirements of UNSCRs 1267 and 1373.

Immediate Outcome 11

- (k) Namibia should put in place a mechanism to implement, without delay, TFS relating to PF. In the interim, the FIs, DNFBPs and VASPs with knowledge of TFS relating to PF should be encouraged to voluntarily implement the UNSCRs on PF with appropriate guidance from the authorities.
- (l) The supervisory authorities should ensure that FIs, VASPs and DNFBPs understand their

obligations regarding TFS relating to PF and comply with these requirements.

- (m) Competent authorities should monitor and ensure FIs, VASPs and DNFBPs compliance with their obligations regarding TFS relating to PF. There are no administrative or voluntary mechanisms in place for reporting entities to apply measures relating to identified assets and funds held by designated persons or entities.

234. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

Background and Context

235. The laws dealing with TF in Namibia are PACOPTAA, the FIA and the POCA. Namibia has also acceded to or ratified the relevant UN instruments in relation to the countering of terrorism and financing. These laws empower the NAMPOL to investigate terrorism and TF in Namibia while the OPG has powers to prosecute for terrorism and TF in Namibia. Besides, the FIC, National Counter Terrorism Centre (NCTC) and Namibia Intelligence and Security Service (NCIS) are also designated to deal with issues in relation to terrorism and TF.

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

236. The OPG has the legal powers for prosecution of TF and related matters. The OPG has the discretion to decide whether to proceed with a prosecution or to withdraw it, subject to the provisions of the Constitution (Article 88(2)). Section 4 CPA sets out the Prosecutor-General's powers to withdraw charges before the accused has pleaded, and to stop proceedings thereafter. A prosecution can only be stopped with the written consent of the Prosecutor-General or any other authorised person. As at the time of the onsite mission, the OPG has 7 (seven) specialised units with 200 prosecutors among which the Priority Crimes Unit deals with terrorism issues. The Unit is headed by a Deputy PG with no dedicated staff members trained on TF.

237. **Namibia has not prosecuted any TF case. TF prosecutions has not occurred in the country given that different LEAs are unable to identify TF activities even in cases where it was evident that there are potential TF activities** (See CASE 1 involving FTFs). This inability to identify TF activities for prosecution stems from the LEAs approach to TF investigations which focuses on CT as opposed to TF.

238. Namibia's latest NRA report classifies TF risk as low. This is a lower rating compared to the previous NRA reports which classified TF risk as medium. The authorities did not give clear reasons for lower risk ratings in the NRA report despite highlighting areas of potential TF risks particularly in the remittance sector. The assessors could not determine how far are these areas of risks in the 2020 NRA report have been identified and prosecuted. The assessors could therefore not determine the consistency of prosecution and convictions with the country's TF risk-profile or that if TF was to happen it would be successfully investigated and prosecuted.

4.2.2. TF identification and investigation

239. The AML-CFT Division within the CID of NAMPOL is responsible for identification and investigation of TF. NAMPOL has three other units which are mainly focused on CT investigations. The three units are: - the Special Branch which provides the necessary intelligence support and enable effective investigations of TF cases, the High Treason and Combating Terrorism Unit dealing with offences related to high treason and the Counter-Terrorism Police Reserve Unit that deals with

combating of terrorism. Namibia's intelligence agency, the NCIS plays a key role in identifying possible TF and counter-terrorism targets. The NCIS has a dedicated unit that deals with terrorism including TF where the agency regularly shares its intelligence on security threats, including domestic and foreign TF links with investigative agencies. The FIC is responsible for gathering and analysing TF intelligence based on suspicious transactions and other financial information (See IO.6 for details).

240. **TF cases are not routinely identified and investigated. The knowledge of terrorism is present among different LEAs but the understanding of TF in the country is not well established** (save for the NCIS and the FIC) given that different LEAs are unable to identify TF and investigate TF activities even in cases where it was evident that there are potential TF activity (See Table 41 below).

Table 41 - Number of TF investigations conducted

Year	FTF Inquiries	Investigations Arising from Inquiries
2015	1	None
2016	3	None
2017	1	None
2018	3 (1 as a follow up of 2016)	None
2019	2-from a follow up of 2018	None
2020	1-from a follow up of 2018	1 person arrested but released by the LEAs hence no prosecution was preferred given that the authorities indicated lack of evidence to take the accused to court
2021	none	None

241. This stems from the LEAs approach to TF investigations where the authorities mandated to investigate and prosecute TF appears to have inadequate ability to identify and investigate TF cases even in clear instances where TF is manifested. The AML-CFT Division under Namibia's CID is currently understaffed with only one officer, the other having been transferred. This officer has undergone general criminal investigation trainings but no specialised training on TF. Therefore, the limited understanding of TF manifestations by the LEAs, except for NCIS and FIC, owing to severe resources constraints including trained staff hampers effective identification and investigation of potential TF incidences specifically on the financial aspects. This is the underlying reason for Namibia's inability to proactively identify, investigate and prosecute TF cases.

242. Namibia pursues international cooperation on CT and TF well in keeping with its risk profile. At the time of the assessment, the FIC had disseminated 2 cases relating to terrorism and terrorism financing which resulted into LEAs initiating TF inquiry in 2017. However, this case proceeded to prosecution but was withdrawn due to lack of sufficient evidence. Other 2 potential TF cases that LEAs inquired into arose from intelligence reports and through INTERPOL. The NCIS cooperates effectively with key jurisdictions on TF identification and routinely shares intelligence with high-risk countries from which Namibia faces FTF threats.

243. At a domestic level, the FIC, NAMPOL and the NCIS regularly exchange information on TF risks and potential TF inquiries. The FIC's financial intelligence and other information on TF disseminations to LEAs forms a key pillar of support in TF investigations. The Special Branch of NAMPOL also works very closely with the NCIS to facilitate inquiries into financial aspects of terrorism investigations.

CASE Box 16. ML Case involving Transnational Elements

This case started as a ML case in 2016 involving transnational elements. However, the authorities later learnt that there were possible TF links as the subject had sent money to multiple jurisdictions across the globe over a span of two years. The trigger to the authorities was that some of the jurisdictions were of high-risk and known battleground for ISIS. The authorities involved their counterparts in some of the jurisdictions (including conducting joint operation) and sought MLAs to support its domestic investigations. The authorities also shared with these jurisdictions the TF risks based on the profile of the subject. However, the authorities were unable to inform the assessors whether they were able to decipher, identify and investigate the usage of funds that were transmitted given that some were of significantly low value that may not make economic sense to send across borders.

Through monitoring, Intelligence learned about the possible threat planned by the Subject W on the security of the country and the activity was disrupted or defused by having him arrested on a different case not related to the case under investigation.

After evaluation of intelligence by the Intelligence community, the matter was referred to the Criminal Investigation Directorate for further investigation whereby a criminal case on Contravention of Section 2 of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act. No. 14 of 2014) with regards to the offence of terrorism and terrorist funding of terrorist activities, was opened.

CASE Box 17. Involving FTFs

The case involves two brothers who had travelled to a foreign jurisdiction to join jihad. At first, one of the brothers (subject X) travelled to neighbouring jurisdiction where he is believed to have been radicalized. On return, the subject X moved out of Namibia to join ISIS. The travel of X to fight for ISIS in the foreign jurisdiction came to the attention of the authorities when he posted pictures on social media bearing arms and professing jihad. This prompted intelligence inquiries that was shared with NAMPOL to commence its investigations. While NAMPOL was still making inquiries, X was joined by his brother Y in about three months. The authorities believe that Y was recruited by X while he was out of the country on Jihad mission and that Y maintained contacts with the person who radicalized X in the first instance. However, the authorities didn't know that Y could be vulnerable until long after he had travelled. Subsequently within six months, X and Y were joined by their mum and sister who got financing from another jurisdiction to travel, at first by road outside Namibia, where it is believed they took a flight to join ISIS camp. Investigations in this case was abandoned after all the subjects left Namibia. As a result, the circumstances relating to the financing of their travel for jihad could not be established. The authorities believe that the subject had died in the battlefield around 2016.

4.2.3. TF investigation integrated with –and supportive of- national strategies

244. TF investigation is not integrated and used to support the National CT Strategy. The NCIS is the custodian of Namibia's CT Strategy. However, the Strategy does not have dedicated pillars to deal with TF matters. However, the authorities did not conduct proper TF investigations in any of these cases. From the four cases, the authorities pursued only three cases for disruption purposes. TF investigations are also hampered by deficiencies identified in Rec.5.

245. During on-site, the assessors had sight of the CT Action Plan in which there were elements of TF prevention. However, the Action Plan is not anchored on the National Strategy and the scope of TF prevention does not extend to the identification and investigation of TF but rather the prevention thereof. The country has not designated nor supported designation of a terrorist, a terrorist organisation or a support network.

246. In terms of national coordination on TF investigations, the country has a high-level forum comprising the NCIS, the Special Branch of NAMPOL and the Defence which meets regularly and for

deliberating and determining strategies for combating terrorism and TF. In October 2020, Namibia constituted an Inter-Agency Memorandum of Cooperation known as the Integrated Investigative Task Team (IITT) comprising the FIC, the NAMPOL and other LEAs with a mandate to cooperate domestically on AML/CFT investigations. The IIT framework may be used to prioritize TF identification and prosecution in future although at the time of the onsite, the IITT was yet to be seized of any matter involving TF activity.

247. In the 2021 NRA results, TF risk in Namibia is rated as low which is a downgrade from the previous NRA results which rated TF medium risk. The assessors did not get indication on investigative measures Namibia is implementing on the NRA results to combat TF in line with the country's strategies. To this extent, TF investigations is not in supportive of national strategies.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

248. Namibian legal framework allows for the prosecution of both natural and legal persons engaging in TF activities to either a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years. The effectiveness and dissuasiveness of the sanction's measures could not be determined since there has been no TF prosecutions in Namibia. Only one of the cases under inquiry and investigations has proceeded to court. However, the accused was discharged due to insufficient evidence.

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

249. Law Enforcement Authorities are able to deploy disruptive measures against TF activities. In one such instance, the authorities arrested the suspect on alternative criminal charges. In another example given to the assessors, the authorities indicated that they had managed to deport a subject of interest who was engaged in radical teachings on account of migration rules violation. In one instance only, they organised a sensitization programme on countering violent extremism for targeted population. The authorities also indicated that they are able to monitor and track the activities of individuals on its watch-list although the assessors are of the view that this is only applied to a limited extent given the admission of lapse of effective monitoring in some of the cases handled which could have led to other criminal justice measures. The level of monitoring is also hampered by the deficiency in Namibia's legislation which limits the scope of special investigative techniques relating to access to computer systems and communications.

Overall conclusions on IO.9

250. The scope of legal framework for criminalisation of TF suffers deficiencies relating to financing of travel, individual terrorists and organisations. Namibia's understanding of TF and TF risk is not well established amongst LEAs thus hampering the country's ability to identify and investigate different types of TF activities. Competent authorities lack adequate resources and skilled human capital to effectively identify and investigate TF offences. Namibia has not applied sanctions on TF due to lack of successful prosecution and therefore it was difficult to determine the extent to which the sanctions are proportionate, dissuasive and effective. Namibia's CT Strategy does not have dedicated pillars for dealing with TF matters while the scope of TF prevention in the Action Plan does not extend to the identification and investigation of TF but rather the prevention thereof. Law Enforcement Authorities are able to deploy disruptive measures against TF activities although the assessors are of the view that this is only applied to a limited extent.

251. **Namibia is rated as having a Low level of effectiveness for IO.9.**

4.3 Immediate Outcome 10 (TF preventive measures and financial sanctions)

Background and Context

252. In Namibia, the Security Commission is mandated to implement TFS pursuant to UNSCRs 1267 and 1373. The Security Commission is established under Article 114 of the Namibian Constitution and has the statutory responsibility for designating individuals as well as implementing relevant sanctions measures circulated by the UNSC against individuals and entities who meet the criteria for designation. The Security Commission deals with both listing and de-listing of designated individuals and entities pursuant to relevant UNSCRs.

4.3.1. Implementation of targeted financial sanctions for TF without delay

253. The implementation of TFS pursuant to UNSCR 1267 in Namibia is not without delay hampered by regulatory and practical challenges. The statutory time limit for implementing TFS element of “Without delay” is 48 hours at every stage of the process as provided under PACOTPAA Regulations. Therefore, the time taken by the Namibian to implement TFS is not within the context of without delay as provided for under the FATF Glossary (i.e., ideally within hours).

254. However, in practice the implementation of TFS is hampered by the long procedure requirement that TFS implementation takes effect only upon the publication in the Gazette of a freezing order by the Minister responsible for Home Affairs, Immigration, Safety and Security. Once received from Namibia’s Permanent Mission in New York, the Ministry of Foreign Affairs has 48 hours to transmit the 1267 designations to the Minister responsible for Security and Safety who also has another 48 hours to publish the sanctions list by notice in the Gazette and issue the freezing order. The assessors verified that publications of UNSCRs Gazettes is done to circulate Sanction Lists. One of the publications shared with the assessors was done 4 months after the UN Sanctions List was updated which doesn’t meet the requirements of the Standards.

255. This procedure for circulating the UNSCR 1267 Sanctions List is long and hampers the effective implementation of TFS. There is a parallel process for circulation of the sanction list to obliged institutions and entities in Namibia where the Ministry of Foreign Affairs circulates the designations or sanctions list to the Director of Financial Intelligence Centre within 48 hours of the receipt of such list from the Permanent Mission in New York. The Director will then have 48 hours to circulate the same to all accountable institutions, supervisory and regulatory bodies in Namibia. While this could technically reduce the time of circulation to meet the TFS requirement of without delay, it would still not be effective given that the laws of Namibia require such circulation to be published in a gazette in order to take effect.

256. To overcome this challenge, the FIC has subscribed to the UN Sanctions Mailing List and often downloads the UNSCR lists and circulates the same to FIs and DNFBPs. Thus, the UN List is posted on FIC’s website as a free alert notification with Guidance Notes directing Accountable Institutions to implement sanction measures. As at the time of the onsite, the assessors verified that in practice the circulation by the FIC has enabled the FIs and DNFBPs receive email updates of sanctions list from the UN Security Council although FIC circulates the same with considerable delays but it was not possible to determine how many AIs had subscribed to this email notification system and therefore received and acted on the List. Be that as it may, there is no obligation for obliged persons’ institutions under FIA to download the Sanctions List from the FIC website without delay and implement it. Table 42- below shows the implementation timelines as per Circulars issued by FIC.

Table 42 - Sanction List circulations by Namibia

UNSC Lists Circulars	Date of update of UNSCR	Year	Date of issuing of Circular by FIC	Date Posted on FIC website	Days Taken to Post
FIC Circular 05 of 2021	17/06/2021	2021	18/06/2021	25/06/2021	7
FIC Circular 04 of 2021	06/04/2021	2021	07/04/2021	07/04/2021	0
FIC Circular 02 of 2021	23/02/2021	2021	07/04/2021	07/04/2021	0
FIC Circular 03 of 2021	23/03/2021	2021	23/03/2021	07/04/2021	15
FIC Circular 01 of 2021	19/02/2021	2021	22/02/2021	07/04/2021	44
FIC Circular 15 of 2019	05/11/2019	2020	06/11/2019	30/04/2020	176
FIC Circular 05 of 2020	24/03/2020	2020	26/03/2020	30/04/2020	35
FIC Circular 04 of 2020	04/03/2020	2020	06/03/2020	30/04/2020	55
FIC Circular 03 of 2020	23/02/2020	2020	24/02/2020	30/04/2020	66
FIC Circular 02 of 2020	18/02/2020	2020	19/02/2020	30/04/2020	71
FIC Circular 01 of 2020	04/02/2020	2020	06/02/2020	30/04/2020	84

257. FIC has issued a Sanctions screening Tool to enable Accountable Institutions comply with their obligation under the freezing mechanism. The assessors also found that FIC has not monitored the implementation of TFS by the Accountable Institutions.

258. Namibian law does not provide for legal measures to allow (or not) its status to be made known as a Designating State to the UN member States. Namibia has not proposed the designation any individual or organisation with respect to UNSCR 1267. There are no assets or funds which have been frozen in Namibia pursuant to UNSCR 1267.

259. Namibia has not designated any individual or entity under the UNSCR 1373 mechanism nor has the country received any such request from another country. The authorities indicated to the assessors that no such requests for proscription have been received from any another jurisdiction since the PACOTPAA and its Regulations were promulgated. As per the law, domestic proscription in Namibia is done by the Security Commission. Proscription is initiated by the Minister for Immigration, Safety and Security who, where reasonable grounds to proscribe exists, requests the Security Commission to proscribe the person or organisation. In cases of request from other countries, the request would come through the diplomatic channels to the Ministry of International Relations and Cooperation who then forwards the same to the Minister for Justice. The Minister for Justice then sends the request to the Minister for Immigration, Safety and Security. Thereafter, the circulation would then be the same as discussed under the 1267 framework.

260. The implementation of UNSCR 1373 is likely to suffer suffers the same deficiency on the without delay element of TFS as discussed under UNSCR 1267 above. Since Namibia has not proscribed any individual or organisation either at its own behest, or at the request of another country, it was not possible to measure the effectiveness of their TFS measures on the implementation of without delay as per the UNSCR 1373. Much like the UNSCR 1267 obligations, the country has not frozen any assets or funds belonging to a designated person as there have been no such designations in Namibia.

261. Namibia's TFS measures under the 1267 and 1373 suffers deficiencies related to the scope of application given that Namibian laws provide that TFS must be linked to specific terrorist activity. This limits the types of assets and funds of designated entities that can be frozen and types of transactions that

can be prohibited in that they must be those that can be identified in support of a terrorist activity. Additionally, TFS cannot be applied to suppress the financing of travel of individuals to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training since financing of FTFs are not criminalised in Namibia. This requirement impacts negatively on designations made pursuant to another jurisdiction's request as such a jurisdiction would have to prove a direct link with a terrorist activity.

262. FIs and DNFBPs have mixed understanding of TFS related to TF. Bigger FIs with cross-border affiliations show a good understanding of their obligations in relation to TFS for TF and implement them at their own motion mainly due to their global business requirements of strict screening clients against UNSCRs sanction lists. Other FIs and DNFBPs have a limited understanding of their TFS obligations for TF and therefore do not implement them effectively. This can mainly be attributed the lack of outreach/awareness and supervisory action of TFS obligations and the assumption that Namibia is a low risk for terrorism. The other persons including the NPOs lack the understanding of their TFS obligation on TF. The lack of awareness and understanding is compounded by the fact that Sanction Lists are not communicated to all the FIs and DNFBPs as well as other persons in a timely manner to allow for their implementation without delay. The assessors could not determine the level of compliance of VASPs with TFS obligations given that VASPs are not registered and monitored for TFS obligations in Namibia.

263. Namibia's TFS measures under the 1267 suffers deficiencies related to the scope of application given that Namibian laws provide that TFS must be linked to specific terrorist activity. This limits the types of assets and funds of designated entities that can be frozen and types of transactions that can be prohibited in that they must be those that can be identified in support of a terrorist activity. Additionally, TFS cannot be applied to suppress the financing of travel of individuals to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training since financing of FTFs are not criminalised in Namibia.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

264. Namibia is yet to identify a subset of NPOs which are likely to be abused for TF and apply targeted risk-based supervision and monitoring to mitigate and manage the TF risks identified. The focus is more on ML since NPOs are classified as DBFBPs in Namibia.

265. Namibia has a fragmented institutional arrangement for registration of NPOs with BIPA, Master of the High Court, Ministry of Health all responsible for some form of NPO. Basic registration controls applied to the NPOs appear weak given that there is no centralised agency to conduct registration and no centralised database for NPOs. As such, an NPO may have been registered and became inactive without the authorities' awareness. It is therefore not possible to establish how monitoring and oversight on funding sources and proper utilisation of NPOs posing higher TF risks is conducted in Namibia. The NPOs that are registered on goAML platform with the FIC as DNFBPs (not for R.8 purposes) do give out forms for all their donors to indicate sources of funding. The assessors were also informed that all donations as a policy must be channelled through a bank account. Interview with the authorities demonstrated the authorities' limited ability to distinguish different types of NPOs (domestic and foreign) operating in the country and therefore comprehensively identify those NPOs that are likely to be misused for TF. However, foreign NPOs require police clearance from their jurisdictions of origin before they register and operate in Namibia.

266. Though Namibia has undertaken a risk assessment on NPOs, it has not identified the subset of the NPOs likely to be at higher TF risk, the authorities maintained that NPOs present low TF risk for abuse. From the latest NRA report on NPOs updated in August 2020, the NPOs considered most vulnerable were the Section 21 registered companies, faith-based organisations, residential and child welfare facilities and welfare organisation. The vulnerability of these types of NPOs was identified to be

mainly for money laundering purposes due to their involvement in cross-border remittances. Namibia conducted the sectoral risk assessment on the NPO sector in 2018 and NRA in 2020. The 2020 NRA rated TF threat as low. The NRA findings have noted the activities in neighbouring jurisdictions in terms of its contribution to the TF threat level in Namibia mainly due to free movement of immigrants and cross-border with its neighbouring countries. Interview with the authorities indicated that the factors considered for the assessment of TF risk and vulnerabilities in the sector relied heavily on bank details to understand transaction behavior and questionnaire to the NPOs. The outcome of the 2020 risk assessment indicated that NPOs in the remittance sector are vulnerable for TF abuse. However, the assessment does not indicate how authorities came to this understanding of risk given that the analysis does not provide details on how the authorities identified which subset of the NPOs meets the FATF Standards and, more specifically, how NPOs have misused remittances channels for TF purposes.

267. Namibia has not applied appropriate targeted risk-based supervision and monitoring to the NPOs suspected of TF abuse to a lesser extent. At the time of the onsite, not much targeted risk-based supervisory and monitoring activities including the regular collection of and access to annual returns, issuing guidance, outreach and monitoring have been undertaken by the FIC and the other relevant authorities on the NPO sector for CFT purposes. FIC had developed a supervisory framework for conducting inspections and monitoring the accountable institutions' compliance with their AML/CFT obligations which it aimed to apply on NPOs since they are DNFBPs under the FIA. Though the NPOs are required to provide annual returns to BIPA and Master of High Court, the returns are not used for the analysis of patterns of transactions that may indicate exposure to TF abuse. Overall, the Authorities did not provide information evidencing imposition of sanctions on NPOs for failure to comply with regulatory requirements consistent with R.8.

4.3.3. Deprivation of TF assets and instrumentalities

268. **While Namibia has a good legal regime for confiscation which it can use to potentially deprive terrorists of assets, this has not been applied.** The legal regime contains provisions that would allow both criminal and administrative deprivation of assets relating to TF. The implementation of this regime, however, faces challenges highlighted in the foregoing paragraphs. Namibia has not frozen assets or instrumentality associated with designated individuals and organisations. Namibian authorities indicated to the assessors that there is currently only one case related to terrorism but the investigations are still ongoing to establish if this case has TF elements. Based on the information available to the assessors, there is no case that warranted freezing action on assets or instrumentality relating to TF. However, as has been discussed in other parts under IO.9, the assessors were able to identify more than one instance of TF related activities that the authorities could have identified and investigated during the review period. The investigation of these cases would have been relevant to evaluate the presence in Namibia of assets or instrumentalities which may become subject of freezing action. In the absence of any freezing and/ or confiscation of funds, financial assets or properties or any freezing, seizure or confiscation pursuant to the UNSCRs 1267 and 1373, the regime has not been tested and the Assessors could not at this stage determine its overall effectiveness.

4.3.4. Consistency of measures with overall TF risk profile

269. **Namibia's measures on TFS and NPOs are inconsistent with the TF risk profile of the country.** Though the NRA rates overall TF risk in Namibia low, the measures described by the NCIS discussed under IO. 9, seem to indicate some of the TF risks that Namibia might be exposed to. And some of the measures taken like monitoring of movement of persons from some of the categorised jurisdictions, seem to show general implementation of measures related to TFS. As discussed under IO.1, apart from NCIS and FIC, the LEAs did not appear to have adequate understanding of TF risks. Therefore, the assessors are of the view that measures being taken are not consistent with TF risk profile of Namibia. The inconsistent data relating to the identification and investigation of TF cases also discounts any measures that the country applies to mitigate TF risks.

Overall conclusions on IO.10

270. Namibia does not implement TSF on TF adequately and without delay owing to poor regulation and institutional coordination mechanisms. Namibia does not have a comprehensive legal framework and procedures to implement the UNSCRs, a situation which has led to delays in circulating the UNSC Sanctions Lists to FIs and DNFBPs as well as other persons. The authorities are not in a position to act with the expediency required against terrorism and TF. The current freezing mechanism is therefore considered ineffective. Most of the authorities and reporting entities do not seem to have sufficient awareness to the procedures that should apply with respect to UNSCR 1267 and 1373. Authorities have not adequately reviewed the NPO sector to identify members which are at risk of abuse for TF purposes and have not applied focus monitoring and supervision measures on high TF risk NPOs identified. With the exception of large FIs and those with group affiliation, FIs and DNFBPs broadly do not apply TFS on TF as required by the Standards.

271. **Namibia is rated as having a Low level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

4.4.1. *Implementation of targeted financial sanctions related to proliferation financing without delay*

272. Mechanisms in place to implement TFS related to proliferation financing are without delay based on Namibia's legal and practical challenges. There is a legal framework for the implementation of TFS on PF as provided pursuant to an amendment to Section 63 PACOTPAA which extends all the preventative measures applicable to ML/TF to proliferation activities. However, all the shortcomings indicated on R.7 affected the effective implementation of TFS on PF without delay.

273. The deficiencies relating to the implementation of TFS without delay pursuant to UNSCR 1267 also apply to the implementation of targeted financial sanctions relating to UNSCRs 1718 and 1737 on proliferation matters (see IO 10.1). The Ministry of Safety and Security in Namibia is responsible for implementing TFS relating to proliferation including circulating sanction lists from the relevant UN Security Council Committees. FIC is responsible for circulating the list of designations to all Accountable Institutions in Namibia. To this extent, FIC has been posting on its website updates from the UNSC which serves the purposes of circulation of designations to AIs. With each post, FIC issues a Circular to offer guidance to AIs and RIs to report actions taken pursuant to TFS. The Circulars creates obligations for the AIs to report to FIC any action under the freezing mechanism. At the time of the Onsite, the Assessors determined that Publication of UN Sanctions takes average of 45 days to circulate. Under such interpretation of the law, Namibia implements TFS on PF within more than six days. The implementation of targeted financial sanctions related to proliferation financing in Namibia is therefore not without delay as defined by the FATF Glossary (i.e., ideally within a matter of hours).

4.4.2 *Identification of assets and funds held by designated persons/entities and prohibitions*

274. Namibia identified PF-related cases following STRs and SARs from FIs which were analysed and shared with competent authorities by the FIC but there is no evidence of frozen assets and funds held by designated persons/entities relating to PF during the period under review. Nonetheless, the FIs and DNFBPs are required to report when holding funds or other assets of designated persons and entities. They are also required to report to the FIC any actions applied against such funds or assets. During the period under review, FIC received a total of 27 STRs and 3 SARs relating to PF. All these cases

pertained individuals and entities linked to one entity with subsequent associates' entities and subjects who were adversely mentioned in the press in 2017 as being linked to PF sanction violations. Consequently, the FIC shared a total of 18 disclosures with NAMPOL, NCIS and Ministry of Safety and Security (MOSS) for further dealing.

275. The authorities submitted that the matters relating to PF sanctions violations that formed the basis of the above mentioned STRs and SARs were finally resolved. It is unclear to the assessors what happened to the assets and funds subject of such resolution. Larger Financial Institutions with regional reach do screen against UN lists to some extent using commercially available databases and independent of the Namibia circulated list. Smaller FIs and DNFBBs, on the other hand, could not confirm to the assessors whether they conduct regular screening of UN Sanctions List related to PF against their own databases except for making reference to the FIC website for accessing the list. Therefore, the FIs and DNFBBs are not able to effectively identify assets and funds held by designated persons or entities relating to proliferation financing nor able to prevent such persons and entities from operating or executing financial transactions within their institutions.

276. While the legal framework is sufficient to aid in the identification of funds and assets of designated persons, the Assessors established during onsite that the FIs and DNFBBs are not routinely conducting sanctions screening relating to PF neither do they receive prompt circulation of UNSCRs updates from FIC to enable them to confirm with their databases positive matches that can help them identify and apply measures on designated persons and entities related to PF. In terms of measures taken by FIs and DNFBBs relating to legal persons and legal arrangements who may be used for sanctions evasion, it is unclear whether they are able to properly identify the ultimate beneficiary of a customer or related transactions by such UBOs who may be subject of PF prohibitions given the limitations identified in IO4 and IO5.

277. The UNSC Panel of Experts established pursuant to Resolution 1874 (2009) (hence: DPRK PoE) publishes annual updates on the implementation of DPRK-related sanctions, including the financial provisions of relevant UNSCRs that have been incorporated into the FATF Standards. Based on these updates, it appears that there is room for improvement regarding the identification of assets and funds held by designated persons and entities. The DPRK PoE reports cite examples of accounts, funds or assets held by designated entities in Namibia, and (front) companies run by designated entities in Namibia, some of which acted as construction and mining companies in Namibia, until detected. Furthermore, it does not appear that there is sufficient nexus between the import-export control regime and the AML/CFT regime or enough collaboration between the relevant agencies with respect to PF matters.

4.4.3 FIs, DNFBBs and VASPs' understanding of and compliance with obligations

278. There is disparity in the level of awareness, understanding and application among AIs and RIs and other responsible persons with their obligations to apply TFS without delay related to PF with big FIs more advanced. Financial institutions, particularly the larger international banking institutions maintain sanctions screening system and appear to understand and comply with targeted financial sanctions relating to PF to the extent that these institutions screen against the lists of sanctioned entities. However, smaller financial institutions do not appear to have sufficient awareness of their obligations to implement PF-related sanctions. The DNFBBs' understanding of proliferation risks and the TFS related to proliferation is quite limited. The level of understanding of PF risk in the country could not be determined given that there were no known registered VASPs in Namibia.

279. In terms of compliance, interviews with the supervisors indicated that one of the biggest commercial banks terminated a relationship with an entity which was suspected to be associated with a PF designated entity. There were also 2 insurance companies that terminated entity and individual accounts on short term insurance business relationship. However, these were done on existing customers who were having a business relationship with the bank and the insurance companies for a long period.

The level of compliance is at embryonic stage in the case of smaller FIs without regional presence and the DNFBPs sector. In the case of VAPs, the compliance situation could not be determined due to lack of registered VASPs in the country. The assessors therefore concluded that the understanding of AIs, RIs and other responsible persons of their TFS obligations is limited.

4.4.4 Competent authorities ensuring and monitoring compliance

280. **FIC and NAMFISA do not carry out supervision and monitoring for compliance with the TFS on PF by entities under their purview owing largely to lack of specific supervisory tools and expertise.** In general, the measures Namibia applies on TFS PF are similar to TFS on TF. The inspections do not address wider PF-issues (e.g., inspections of trade finance activities or methods of sanctions evasion). Though the authorities indicated that FIC provides guidance to the AIs and RIs by way of Circulars which are issued whenever there are any changes to UNSCR designations, the assessors could not ascertain the extent to which compliance has been achieved.

Overall conclusion on IO.11

281. Implementation of TFS on PF in Namibia suffers from inadequate regulatory and practical implementation of TFS on PF across the spectrum. There are long delays of distributing the list, generally weak application by FIs and DNFBPs and compliance monitoring by supervisors. Consequently, Namibia has demonstrated poor implementation of TFS on PF obligations due mainly to a mechanism which has significant delays and implementation capacity across the stakeholders.

282. **Namibia is rated as having a Low level of effectiveness for IO.11.**

Chapter 5. PREVENTIVE MEASURES

5.1 Key Findings and Recommended Actions

Key Findings

- (a) Large FIs (banks and NBFIs) have a fairly good understanding of ML risks and mitigating controls compared to smaller FIs and DNBFBPs; with large banks, asset management companies, MVTS, casino, and accounting/auditing firms at an advanced level. To some extent, large FIs especially banks and asset management companies and MVTS understand TF risks. The rest of the regulated sectors demonstrated a basic TF risk understanding.
- (b) Large FIs particularly banks, asset management companies, and MVTS have implemented RBA to a large extent while the rest of the FIs and large casino and accounting/auditing firms have implemented RBA to some extent. The other FIs and DNBFBPs are at early stages of transitioning from rules-based to RBA.
- (c) While FIs and DNBFBPs showed a good understanding of general CDD obligations for business relationships and transactions, only large FIs especially banks and asset management companies have robust EDD measures and take reasonable measures on UBO verification, but are weakened, to a large extent, by unavailability of BO information at the relevant registries. These entities have however been successful, to some extent, to verify BO information using commercially available databases and, where applicable, group networks.
- (d) While large FIs generally demonstrated a good understanding of PEPs and application of EDD measures, Namibia has major shortcomings in PEPs obligations and weak application of EDD measures by lawyers as TCSPs, both of which played major roles in recent grand corruption cases.
- (e) Large banks and MVTS have put in place adequate automated transactions detection and monitoring systems which have assisted the FIs to identify and file STRs to the FIC. The banks file more than 90 percent of the STRs with the rest of reporting entities, including high-risk sectors, showing negligible reporting patterns. FIs are not filing STRs promptly since they apply the FIA requirement to submit STRs “within 15 days” after the suspicion was formed.
- (f) Large FIs especially banks, asset management companies and MVTS as well as accounting/auditing firms have demonstrated, to a large extent, good implementation of TFS through automated screening systems and processes for individuals and entities, with the foreign-owned and controlled FIs using group networks.
- (g) Preventive measures applicable to VASPs could not be assessed because of absence of framework for prudential regulation and AML/CFT supervision of the sector in Namibia.

Recommended Actions

Namibia should ensure that:

- (a) FIs (especially Smaller FIs) should continue to develop ML/TF risk understanding and use it to implement RBA to mitigating controls effectively.
- (b) FIs and DNFBPs are required to, and in practice, file STRs promptly after forming a suspicion, and implement appropriate guidance on STR issued by FIC.
- (c) Enhance the understandings, and use of EDD, and UBO obligations on high-risk clients including PEPs, across small-medium FIs and at-risk DNFBPs.
- (d) Small to medium-sized FIs and DNFBPs (except for large accounting/auditing firms) implement automated TFS screening on individuals and entities on UNSCRs on TFS on TF and PF.
- (e) Introduce and enforce PEPs obligation to FIs and DNFBPs.
- (f) All FIs and DNFBPs have adequate staffing levels commensurate to their size and complexity of the business, and offer tailored training on an ongoing basis.
- (g) Appropriate prudential regulatory and AML/CFT supervisory framework for VAPS unless there is proven low risk.

283. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

5.2 Immediate Outcome 4 (Preventive Measures)

Background Information

284. All FIs and DNFBPs under the FATF Standards are present and covered in the AML/CFT framework of Namibia. The FIA requires FIs and DNFBPs to assess and understand ML/TF risks of business relationships and transactions they engage in and apply AML/CFT obligations commensurate with the risk identified.

285. The financial sector in Namibia is largely concentrated in the banking sector in terms of total assets and has a significant ownership and control of NBFIs especially in the securities, insurance and MVTS. From a materiality perspective, the financial sector has heavy dominance by South African-linked banks and NBFIs and far less by domestic FIs. This means that the banking sector – foreign-owned or controlled in particular – is vitally important in the overall application of preventive measures in Namibia.

286. The assessment team weighted the implementation of preventive measures as heavily for large FIs in banking and securities sectors including asset management companies; most heavily for large MVTS and real estate; heavily for legal practitioners and trust and company services providers, casinos; and less heavily for life insurance and medium-sized FIs and DNFBPs such as dealers in precious metals and stones, and accountants. The details of the weighting of each sector are found in Chapter 1.

5.2.1 Understanding of ML/TF risks and AML/CFT obligations

287. There is generally a good understanding of ML risks and AML/CFT obligations of business relationships and transactions across FIs and larger DNFBPs. TF is understood to some extent by FIs and

to a negligible extent by DNFBPs. Generally, the understanding of ML and TF risks and AML/CFT obligations is underpinned by a combination of factors including exposure to NRA/SRA participation and risk findings, foreign or domestic ownership and control, size of market share, international links with counterparts and sophistication of products/services, as well as frequency of supervisors' supervisory actions on entities.

288. FIs demonstrated a good understanding of ML/TF risks and AML/CFT obligations than DNFBPs. Within the financial sector, the large FIs comprising local and foreign banks and NBFIs have a comprehensive understanding of ML and, to a lesser extent, of TF threats and vulnerable sectors. In most cases, the understanding is informed by the NRA, SRA and, for some, entity risk assessment findings. The threats generating the most proceeds are understood as corruption and bribery, tax crimes, fraud, and wildlife crimes while vulnerable sectors are also well understood. The understanding of ML/TF risks and AML/CFT by large FIs is largely due to a number of factors including through internal ML/TF risk evolving in the NRA versions, supervisory actions and international links at the group and/or correspondent relationships.

289. A few large DNFBPs especially in the accounting and casino sectors demonstrated a better understanding of ML and, to a lesser extent, of TF risks, and understanding of AML/CFT obligations than the small to medium sized entities. Overall, large FIs have a better appreciation of ML/TF risks as the basis for implementation of AML/CFT obligations than DNFBPs.

290. The risks and obligations associated with VASPs were not assessed in the absence of prudential regulation and AML/CFT monitoring of VASPs in Namibia.

Financial Institutions

291. To a large extent, the large FIs in banking, asset management, insurance and cross-border MVTS demonstrated a good understanding of ML and, to some extent, of TF risks which enabled them to better understand the specific threats and vulnerabilities facing their business activities and demonstrated a good understanding of AML/CFT obligations. The rest of the FIs demonstrated understanding of ML and, to a negligible extent, TF risks while showing understanding of controls to some extent. The banks and asset management companies demonstrated advanced risk assessment methodologies and processes which focused more on detailed analysis of core risk factors including customers, transactions, delivery channels and geographical location. Large banks and asset management companies have specialised products often with global outreach which attract high-net worth clients with cross-border interests. Before launching such products, they conduct detailed analysis of inherent ML and, to some extent, of TF risks and monitor changes in risk trends and patterns which they use to adjust risk understanding and mitigating controls. For instance, they conduct detailed inherent ML and, to some extent, TF risks on specialized and tailored products and services such as private banking for high net-worth clients prior to assessing impact of controls on identified risks.

292. This approach has seen the FIs demonstrate the understanding of specific risks and controls to certain type of clients (e.g., PEPs), country of origin (i.e., business relationships and transactions identified by the FI as posing high-risk), transaction types (e.g., gift cards cross-border remittances) and delivery channel (e.g., use of intermediaries in securities sector) since they are inherently regarded as posing high ML/TF risks.

293. Large FIs such as banks and asset management companies regularly review risk assessments and controls at least once a year or whenever there are material changes in the business environment such as introduction of new products/services or regulatory requirements. The FIs carried out comprehensive review of their risk methodologies and identified emergence of new trends and typologies from the Fishrot corruption case and enhanced their understanding of controls in place. For example, large banks carried out considerable client profile reviews which led to changes in risk rating of clients and better understanding and application of controls. Furthermore, cross-border MVTS providers maintain lists of

red flags on transactions, clients and geography and use relevant FIC typologies including on focusing on origin and destination of transactions to identify potential ML/TF risks and adjust controls.

294. The rest of the FIs completed risk assessments and demonstrated a fair understanding of ML/TF risks and obligations, though are yet to fully apply mitigating controls in a risk-based manner.

Designated Non-Financial Business and Professions (DNFBPs)

295. **DNFBPs have a basic understanding of ML/TF risks and AML/CFT obligations, except for accounting/auditing firms.** The DNFBPs described the general risks in the NRA and a few trainings by the FIC on the results of the NRA. Most DNFBPs could associate some NRA risk factors or sectors to their activities, without a clear picture on how they could be abused for ML/TF. The majority of the DNFBPs have not conducted ML/TF institutional risk assessments for ML/TF risks understanding. Lawyers which are associated to formation of legal persons and legal arrangement within Namibia, demonstrated basic knowledge of the ML/TF risks inherent in their sectors although they showed some understanding of their obligations when reference was made to allegation of abuse of law firms in the Fishrot corruption case. Dealers in precious stones and metals had limited appreciation of ML/TF risks and AML/CFT obligations.

296. Overall, lack of sector specific guidance and awareness coupled with inadequate supervision contributed to DNFBP sector's basic ML/TF risk and obligations understanding despite the NRA identifying most of them as posing high risk for ML.

5.2.2 Application of risk mitigating measures

Financial Institutions

297. In general, FIs particularly large ones apply risk understanding to implement risk-based control measures within entity-wide compliance programmes. Business units tailor their procedures and processes to managing business relationships and transactions. Large FIs (including cross-border MVTS) implement mitigating measures commensurate with their internal ML/TF risk assessments and demonstrated a good application of the AML/CFT measures. The majority of the large FIs have AML/CFT policies and procedures and apply robust mitigating measures taking into account the risk profile of the business relationships and transactions while the small-medium sized entities have basic controls in place. The measures applied include senior management approval and sophisticated ICT software for on-going screening, monitoring and detection of illicit transfer of funds, access to client information held by intermediaries, PEPs and high net-worth relationships management, foreign nations from jurisdictions known for high risks, and vulnerable sectors such as real estate. For example, the large FIs interviewed indicated that they were aware of the risks posed by company executives using their personal accounts to transact business transactions with a view to evading paying domestic taxes and are therefore considered as high-risk clients.

298. All FIs especially large ones have compliance functions which are not adequately staffed commensurate with the size of business operations and ML/TF risks. The FIs interviewed indicated that their respective senior management are aware of the human resources constraint and there are plans in place addressing them.

Designated Non-Business Financial Professionals

299. In general, DNFBPs have basic mitigating controls in place largely due to inadequate supervision and risk understanding. Risk mitigation in the DNFBP sector is not applied evenly across the sectors. The large law firms and accounting firms (with international nexus) apply to a moderate extent appropriate mitigating controls informed by their understanding of ML/TF risks, although the measures are carried out at the Group level in a centralised manner. The mitigating controls include maintaining internal policies and procedures which allow them to screen customers.

300. The smaller DNFBPs indicated that their supervisors have assisted them to implement mitigating controls through supervisory actions such as inspections and training. Their understanding of the ML/TF risks is basic and is also based on the outreach that have been carried out by the FIC.

5.2.3 Application of CDD and record-keeping requirements

301. To a large extent, FIs and DNFBPs apply basic CDD to establish identity of customers (whether establishing or conducting a transaction) and maintain records of all information/data obtained for a minimum of five years following termination of a business relationship or conclusion of a single transaction. The basic CDD information obtained and kept include the full name, date and place of birth, physical address of a natural person. In order to establish the true identity of a customer who is a natural person, the FIs and DNFBPs use, inter alia, police clearance certificate, or some a reference letter from the individual's employer (to determine source of income); an original or certified true copy of the latest council or applicable rates, or utility bill receipt. For foreign (or non- Namibian) customers, passport, valid residence, or work permit are used to establish the identity of the customer.

Financial Institutions

302. Although at varying degrees, FIs have taken reasonable measures to comply with the CDD obligations set out in the FIA and, based on the risk understanding, have categorized their customers into risk levels for purposes of applying risk-based CDD measures. In addition, the FIs apply identification measures during on-boarding process, when conducting a one-off transaction and on an ongoing basis for when there is a change in customer profile. Most FIs have extensive CDD database and use different sources of information to conduct customer due diligence procedures such as EDD, on-going due diligence and transactions monitoring in respect of high-risk customers. However, FIs do not have access to reliable public BO information registries to adequately verify the natural persons, controlling legal persons and arrangements but the large FIs have taken reasonable steps to verify the true identity of the clients, they have been successful to some extent on BO verification by using their own information networks.

303. In respect to legal persons, the CDD information obtained by FIs include certificate of incorporation to establish the identity of the legal persons including the ownership and control structure, memorandum of association, articles of association, taxpayer certificate issued by the NAMRA, board resolution and a certified company structure from the company secretary.

304. The majority of the FIs interviewed were aware and take appropriate decisions to refuse or terminate business relationships or transactions where CDD information is incomplete or the veracity thereof is questionable. Non-banking FIs operating in the insurance sector pointed out that they do not execute certain transactions neither do they pay out unless details of the beneficiary have been provided.

305. In terms of on-going transaction monitoring, the large FIs (mostly banks and MVTS), met on-site indicated that they have in place robust automated transaction monitoring systems which detect and identify unusual patterns of transactions mostly where the client's profile has changed. The automated system flags the unusual behaviour and generates alerts which are independently reviewed and investigated by analysts to determine if the transaction(s) flagged is in line with the knowledge of the client. Otherwise, the transaction is reported to the FIC as a suspicious transaction.

306. Identification and verification of UBO is applied at varying degrees, this is due to the fact that the concept of beneficial ownership is not clearly understood in addition to the non-availability of BO information. FIs take reasonable steps to establish UBO in respect of a business relationship or a transaction. They indicated that they would request CDD information up to the ultimate natural person behind the customer and where complex structures are involved. They take reasonable steps such as using commercially available databases including at group level, where relevant, to verify self-declarations by clients such as from company secretaries. The risk appetite on BO and controlling interest averages 20 percent shareholding threshold as per FIA in the sectors, though some have indicated that they go even lower depending on the nature of the client and the risk they presented.

DNFBPs

307. The application of CDD requirements in the DNFBPs sector varied. It was observed that, in general, the DNFBP sector apply basic CDD measures irrespective of the nature and extent of the ML/TF risk exposure by a customer or a transaction. Furthermore, there is uneven application of CDD measures in the real estate sector since some real estate agents accept customers who do not meet the CDD requirement. Dealers in precious metals and stones demonstrated basic application of CDD measures. In case of lawyers and accountants that offer TCSPs, the DNFBPs interviewed have a better understanding of CDD requirements by obtaining trust deeds and constitution for societies. In terms of independent verification of legal persons, shareholders, directors, ultimate beneficial owners' majority of the DNFBPs accept documents supplied by their customers at face value.

308. The DNFBPs such as dealers in precious metals and stones do not generally take reasonable steps to identify and verify UBOs. They, however, do not make any further efforts even in circumstances where the information obtained from BIPA is insufficient to prove UBO. In most cases, it appears the concept of UBO is not well appreciated as often as it is mistaken to mean the shareholders, irrespective of whether a shareholder is not a natural person (refer also to IO.5).

5.2.4 Application of EDD measures

Financial Institutions

309. **Based on the understanding of ML/TF risks, FIs have demonstrated a good appreciation of EDD measures and understanding of high-risk customers identified in their own institutional ML/TF risk assessments, with large FIs more advanced.** For instance, the majority of FIs identified among others; PEPs (although the limited scope for domestic PEPs identified), non-resident customers, and high network clients, as high-risk category of customers upon which EDD measures must be applied.

310. While large FIs (including MVTS) employ automated systems in some cases supported by highly trained personnel to apply EDD and on-going monitoring (e.g., transactions monitoring) on high-risk customers and transactions identified. Similarly, EDD measures are applied by this category of FIs in respect of transactions and business relationships emanating from high-risk jurisdiction mostly identified by the FATF and other lists. The large FIs interviewed have commensurate risk mitigation measures including senior management approvals and scrutiny of transactions by dedicated officers which are applied where such customers or transactions are on-boarded.

311. The application of EDD measures by small-medium size FIs is not commensurate with the ML/TF risk. Further, the majority of small-medium size FIs failed to distinguish between CDD and EDD mitigating measures, and applied normal CDD measures on high-risk customers.

DNFBPs

312. **DNFBPs have little understanding and application of EDD in high-risk situations largely because of weak risk assessment and understanding owing to inadequate supervisory actions. While identified as high-risk sectors, real estate agents, law firms, and casinos fail on EDD in high-risk scenarios.** For example, most DNFBPs knew PEPs as inherently high-risk clients but applied standard CDD.

On-going Due Diligence

Financial Institutions

313. **To a large extent, large FIs apply ODD on business relationships and transactions using a network of data and risk identification tools than the rest of the FIs.** When interviewed, the large FIs considered several factors for ODD including high risk jurisdictions cited by the FATF or EU list, nature of transactions, size of business operations of a client, UNSCRs targeted sanctions entities and individuals, nature of industry, ML/TF risk profile of a country and open-source information such as adverse media report. They indicated that these risk factors are embedded in the FIs institutional ML/TF risk assessments and form the basis for risk categorisation and therefore application of commensurate on-going due diligence measures. It was observed that the on-going due diligence measures are subject

to change based on the changes in the trends of the relationships and transactions of a client. The FIs shared experiences where non-face-to-face transactions were considered inherently high risk and were therefore continuously monitored more rigorously than others. They also indicated that outlier transactions were detected and alerts were generated by automated systems. Further, the system has identified VA-related transactions within the FIs.

314. The small-medium-sized FIs (mostly micro-insurance companies, asset management firms and stockbroking firms) continually apply due diligence on a lower scale than the big FIs but it appears some of the measures are commensurate with the size of the business activities, ML/TF risks and nature of transactions or customers.

DNFBPs

315. **There was little understanding and application of on-going due diligence measures in respect of customers posing higher ML/TF risks by DNFBPs due to lack of sufficient guidance and awareness.** The other major constraint in the sector was attributed to the low level of understanding of ML/TF risks that apply to them due to the absence of institutional ML/TF risk assessment by the DNFBPs.

Record Keeping Measures

Financial Institutions and DNFBPs

316. **FIs and DNFBPs generally appreciate and apply record-keeping obligations in respect of information/data generated through customer interaction, for instance, conducting of CDD and transactions, taking into account the importance of the duration and accessibility of the records kept. The FIs and DNFBPs interviewed keep records in electronic and hardcopy formats for at least 5 years from termination of the transaction or relationship with the customer.**

317. In respect of third party or introduced businesses, principal companies rely on brokers and agents such as in the insurance and securities industries for CDD and maintenance of records. In addition, it was observed that the third party or introduced business providers do appreciate their record keeping duties and keep the records as part of their own obligation under the FIA. The insurers indicated to the assessors that they take ultimate responsibility to ensure that all the records are kept and maintained by brokers and third parties in line with the legal requirements.

Application of EDD measures

318. Application of EDD measures is varied and largely dependent on the size and international exposure of the FI and DNFBP. The large, foreign-owned, sophisticated FIs and DNFBPs have invested in screening tools to identify PEPs and persons designated under TFS. Smaller FIs and DNFBPs may undertake PEP and sanction checks manually from the relevant websites. The FIs interviewed are aware of the requirements with respect of dealing with customers from higher risk jurisdictions and implemented controls to comply with such requirements.

319. One concern around implementation of EDD is that the scope of PEPs is narrow as it does not include senior public officials such as secretary to cabinet, executive directors, deputy executive directors, and regional directors in Namibia. These are some of the individuals involved in high-profile predicate offences generating the most proceeds and ML threats as demonstrated by the Fishrot case.

Application of EDD Measures-(a) PEPs

320. Large FIs appear better in identifying PEPs and applying EDD measures than the rest, though some challenges remain. FIs and DNFBPs fully understands the additional measures to treat PEPs as high-risk clients whenever they are identified at the beginning or during the business relationship and when they conduct transactions notwithstanding that the FIA does not provide for PEPs obligations; instead, the FIC issued a directive which is not enforceable. Although there appears to be a reasonably shared level of understanding of the risks posed by PEPs, there is generally variance between DNFBPs

and FIs regarding application of risk management systems. This is the same for large FIs and small-to-medium FIs. Within the FIs, large banks and asset management companies are the most advanced in application of EDD measures against PEPs. Large FIs that are operating as a subsidiary or a branch of a parent company rely on their group compliance system to carry automated screening and transactions monitoring systems mostly for foreign PEPs. They have also subscribed to some commercial databases to identify and screen PEPs as part of enhanced due diligence and ongoing monitoring measures. In addition, the large banks have created institutional domestic PEP lists for screening of customers.

321. There are generally weaknesses in risk management and compliance systems of PEPs in the DBFBP sector except for one accounting firm which shared with the assessors its organically developed automated screening system which was found to be reasonable enough to screen high-risk clients including PEPs in real-time. Furthermore, it was noted that large law firms which are service providers to commercial banks and insurance companies take reasonable PEPs screening measures prior to introducing the client or transaction to bank or insurance companies. The FIs do not place reliance on the referral but also subject the PEP to their own PEPs measures as outlined above.

322. Most small-medium FIs and DNFBPs generally lack appreciation of the obligation to apply EDD measures in general including on family members and close associates of PEPs due to inadequate supervisory actions such as provision of sector specific guidance and outreach. In addition, they face several challenges in identifying PEPs due to not having electronic databases and other such systems to identify PEPs.

Application of EDD Measures-(b) Correspondent banking relationship

323. Banks in Namibia apply robust EDD measures in correspondent relationship, with the majority leveraging off at group level. Banks with CBRs demonstrated adequate policies and procedures with sufficient information gathering, approval and oversight mechanisms in relation to carrying out of due diligence before and during the relationship. The dominance of foreign-owned or controlled banks has benefitted Namibia on managing risks associated with CBRs. These banks use CBR management systems at group level, which approve the relationships. As part of information gathering tool, banks use Wolfsberg CBR Questionnaire which has extensive information requirements reasonably sufficient for assessing possible risks from forming CBR relationships. The banks indicated that in most cases they conduct onsite visits prior to establishing and during the CBR. In some cases, banks indicated that they had partners coming to Namibia to assess their operations for continued suitability to the relationships. Namibia indicated that there was one closure of operations of an FI during the first half of 2018 mainly due to de-risking as also indicated in the ESAAMLG De-risking Report, 2021. However, the banks and the Authorities indicated that there was no termination of CBR on account of AML/CFT concerns by Namibia or a foreign institution.

Application of EDD Measures- (c) New Technologies

324. FIs apply EDD measures in respect of business relationships and transactions conducted through new technologies to some extent owing largely to inadequate risk assessments, regulation and compliance monitoring. FIs appreciate the potential ML/TF risks associated with new technologies especially VASPs and clients selling financial inclusion products. The banks have used the provision of the Basic Bank Account Act to allow access to financial services using FinTech solution within the scope of compliance with AML/CFT obligations. The provision of products/services via new technologies such as mobile money services is subject to strict conditions such as thresholds based on risk assessment by the Authorities. Overall, banks conduct risk assessments whenever new products/services are launched and whenever there are triggers for review of the risk assessment. Since VAPS are not regulated, banks have taken a position of not onboarding them and have implemented measures to identify such activities including on the possibility that some of their client could engage in VA transactions. Banks in Namibia are aware of the presence of two VAPS in the country and are also aware of transactions which points to their clients engaging in VA transactions within Namibia and the CMA area. They have indicated that they have identified and alerted the FIC. In general, banks have

adopted a zero-tolerance approach by not exposing themselves to VAPS in the absence of prudential regulation and AML/CFT supervision of VASPs in Namibia.

Application of EDD Measures- (d) Wire transfers

325. Banks and MVTS providers have full appreciation and application of high-risk situations from wire transfers especially cross-border and apply robust EDD especially against transactions (e.g., trade finance) from and to high-risk jurisdictions. Banks and MVTS offer domestic and cross-border wire transfers within CMA and beyond. Namibia uses SWIFT for transactions and a domestic payment system for domestic transactions. In all cases, there are mandatory fields which capture sufficient information including originator information. Interviews conducted with banks and MVTSs demonstrated that there are measures in place to continuously monitor wire transfer transactions for verification of adequacy of information contained in the transaction instruction particularly in relation to originator and beneficiary information such as sending and receiving customer details, account number, or in the absence of account number, a unique reference number, address, date and place of birth. When mandatory information is not available, the system will automatically reject the instruction and the FI have generally filed STRs due to insufficient information. The banks and MVTSs advised of application of transactions limits for both domestic and international transactions and may require additional information on a case-by-case basis. Most of the incoming transactions were from South Africa and USA, while outgoing transactions were mostly to China. It was indicated that Namibians order goods from China for business hence outgoing transactions being more for that jurisdiction.

Application of EDD Measures- (f) High-risk countries

326. Large FI, compared to other FIs and DNFBP, have demonstrated good appreciation ML/TF risks from high-risk jurisdictions and have applied robust EDD measures proportionate to the client risks including those identified by the FATF. In line with the FIC guidance, FIs regularly check the FATF website for high-risk jurisdictions and have their own lists particularly those with international nexus. The FIs indicated that the screening databases in place have in-built capability which incorporates the FATF ICRG List. The screening databases used by the rest of the FIs and DNFBPs have limited application of EDD on business relationships and transactions with natural and legal persons from countries for which this is called for by the FATF. While the FIC issues circulars on high-risk jurisdictions, these circulars are not regularly updated.

327. The majority of DNFBPs do not apply EDD measures in respect of transactions and business relationships emanating from the jurisdictions identified by the FATF. This is mainly due to the basic understanding of ML/TF risks and AML/CFT obligations. Most DNFBPs interviewed indicated that they screen customers using the FIC system, the assessment team could not determine which system or list those entities screened against.

5.2.5 Reporting obligations and tipping off

328. Banks reports almost all STRs in Namibia, distantly followed by MVTS providers, while the rest of the NBFIs and DNFBPs either submit negligible or no STRs. Large Banks have demonstrated a good understanding of reporting obligations and have put in place automated transactions detection and monitoring systems for transactions reporting to the FIC.

329. Banks have reported more than 90 percent of STRs to the FIC. Albeit, the small-to medium FIs and DNFBPs have made a negligible contribution to the STRs filed to the FIC, there is reasonable understanding among small to medium FIs and DNFBPs of the obligation to file STRs on suspected ML but not so much in relation to TF. The reporting period of “within 15 working days after the suspicion or belief concerning the transaction or activity” (see cr.20.1) has had an adverse impact on the promptness of analysing and submitting suspected transactions reports to the FIC.

Table 43- STRs and SARs received from the banking sector

	2016	2017	2018	2019	2020	Total
STRs	723	1254	1325	1152	1582	6036
SARs	127	151	255	233	173	939
Total	850	1405	1580	1385	1755	6975

330. The table below indicates STR filed between 2016 to 2020 by non-bank financial institutions and DNFBPs. Except for ADLAS, there is either infrequent or low level of STR across the NBFIs and DNFBPs. Reporting institutions expressed the need for more guidance on identifying ML/TF suspicious activities including sector specific guidance and specific ML/TF red flags or indicators.

Table 44 – STRs per sector

AIs/RIs	2016	2017	2018	2019	2020
Accounting Firms	0	0	0	0	0
ADLAs	23	99	175	262	168
Asset Managers	4	4	2	8	25
Lawyers	1	3	9	13	32
Casino	0	5	7	4	3
DPMS	0	0	0	0	0
Investment/Insurance Broker	10	60	60	0	2
Lending	1	2	10	13	6
Insurance	0	2	3	2	4
MVTS	0	6	18	0	1
Real Estate agents	0	1	0	1	0
Stockbrokers	0	7	0	0	1
Unit Trust Scheme	0	0	1	1	12
Total	39	189	285	304	254

Source: Series of annual report – <https://www.fic.na>

331. Some AIs/RIs entities interviewed indicated that FIC does not give enough feedback on STRs filed. The FIC was, however, able to demonstrate that they give feedback to AIs/RIs on specific STRs and SARs whose analysis present strong indicators of actionable intelligence. The FIC indicated that this feedback has resulted in improved quality of STRs and SARs. However, there is inadequate awareness and sector specific guidance on STR identification which impact the quality of STRs reported. The number of STRs relating to TF is negligible.

332. STRs are reported to the FIC via the goAML platform and banks, insurance, MVTS and some DNFBPs had already been connected to the platform while a good number of the DNFBPs are yet to be connected (see IO 6).

333. At the time of the onsite, it was not possible to determine what offences most of the STRs filed were premised on and whether the suspicions reported were consistent with the most prevalent predicate offences in Namibia. There were no statistics provided indicating what the STRs relate to. The FIA also requires AIs/RIs to report SARs, CTRs, Electronic Fund Transfers (EFTs), and International Fund Transfers (IFTs). As at time of the onsite, the statistics provided indicated that FIs have been submitting these reports without major challenges. There is generally a good understanding of tipping-off prohibition obligations across the AIs/RIs, with the majority of the FIs having systems and training for employees on it. However, the same was not apparent in the DNFBP sector. As at the time of the onsite mission, there was no violation of tipping-off provisions known in Namibia.

Targeted financial sanctions relating to TF

334. **Large FIs and accounting/auditing firms have in place sanctions screening software which generates alerts for possible matches of individuals and entities on the UNSCRs Lists. They use the automated sanctions screening software to run the UNSCR List against their customer database and transactions for any possible match.** The rest of the FIs and DNFBPs have basic application of UNSCRs sanctions screening requirements, with the majority of them indicating that they use the FIC website to conduct screening of sanctioned individuals and entities. The large FIs and accounting/auditing firms apply the UNSCRs sanctions screening for profiling of customers during on boarding and throughout the relationship and on every transaction. All alerts are subject to further investigations by compliance team. Overall, small and medium-sized FIs and DNFBPs have major challenges of complying with the TFS obligations. There has been no matches of individuals and entities in Namibia during the period under review. However, there has been false positives identified by banks which, upon investigation, were found to be legitimate transactions.

5.2.6 Internal controls and legal/regulatory requirements impending implementation

335. **Application of internal controls is varied, with large FIs more advanced than the rest of the FIs and DNFBPs but suffer from low number of staff compliment in compliance function which is a concern given the size of business, ML/TF risks and systemic importance to Namibia's financial system.** The details of the compliance function, which is responsible for internal control procedures and procedures, cover Boards or equivalent structure approvals, appointment of compliance officer at senior level, and training; risk assessments; procedures for CDD, STR and recordkeeping; high-risk customers including PEPs; and TFS screening.

336. The extent of the risk management and compliance systems implemented by the FIs and DNFBPs is directly linked to the ownership or control structure (i.e., foreign or domestic); size and complexity of business operations (i.e., type products/services offered); frequency of supervision activities by supervisors; and oversight of compliance programmes (large entities use external assurance more than smaller entities).

337. Large FIs especially banks and asset management companies and a few large DNFBPs have in place reasonably robust risk management systems appropriate for the risk they face based on materiality and nature of business operations. Although not as robust as the large entities, small to medium entities appear to have compliance programmes which focus more on complying with the obligations than tailoring them to risks. This is because these entities are at early stages of refining their entity risk assessments – a necessary process for RBA to establishing internal controls to meet legal and regulatory requirements.

338. A major concern for large FIs especially banks is the significantly low number of head count in the compliance function. All banks interviewed recognized the need to increase the staff head count in the compliance departments to ensure that there is adequate balance between the advanced technologies in place and the human factor in the detection and combating of ML/TF. As a result, implementation of the compliance function is less effective at many of the smaller-medium FIs and DNFBPs due to a combination of understaffing, unsophisticated monitoring systems, and an inadequate RBA.

339. Some large law firms, accounting firms and casinos apply internal controls to some extent while the remaining DNFBPs such as dealers in precious metals and stones generally had inadequate AML/CFT controls in place.

Overall conclusions on IO.4

340. Overall, large FIs have a fairly good understanding of ML and TF risks to some extent and AML/CFT obligations compared to smaller FIs and DNFbps. In terms of size, large domestic and foreign owned/controlled banks showed superior measures in place than the rest of the FIs. Except for casinos and accounting/auditing sectors, the rest of the DNFbps demonstrated a low level of understanding of ML and limited level of understanding on TF. Large FIs have implemented RBA to a large extent while the rest of the FIs and DNFbps focus on compliance with the controls. CDD including EDD and ODD are well understood and applied by large FIs on high-risk clients and transactions such as those from high-risk jurisdictions, though BO is to some extent a challenge. Measures against PEPs and TFS are applied by large FIs and accounting/auditing sector aided by automated systems have challenges. Banks dominate STR submissions but there are concerns about the timeliness. Compliance function by large FIs are well implemented with some concerns about the size staffing.

341. **Namibia is rated as having a Moderate level of effectiveness for IO.4.**

Chapter 6. SUPERVISION

6.1 Key Findings and Recommended Actions

Key Findings

- (a) Supervisors of FIs (FIC and NAMFISA) and DNFBPs (FIC) suffer from resources constraints including personnel to supervise and monitor compliance with AML/CFT obligations effectively.
- (b) To a large extent, NAMFISA and BoN have good fit and proper requirements which include verification of applicant information such as verification of criminal records, professional integrity and sources of capital. The regulators have been successful in verifying controlling interest but have gaps in relation to verifying BO due to the lack of reliable sources of information such as the company registry, BIPA. DNFBP regulators apply market entry on fit and proper well to identify controlling interest but have challenges verifying BO information as they confuse it with shareholding.
- (c) Supervisors have a good understanding of ML risks derived from NRA and SRA findings which provided risk categorisation of entities. Further, NAMFISA has a developed understanding of inherent ML risks based on entity risk assessment results which provided granular details on clients, products, delivery channels and geography which led to entity risk categorisation. FIC's entity risk profiling is underdeveloped. TF is understood to some extent by the supervisors due to lack of granular details related to the risk.
- (d) RBA is not sufficiently developed for the supervisors to apply risk-based supervisory actions including inspections as it is at infancy stage.
- (e) Supervisors identified non-compliance with obligations such as EDD, TFS and STR, though the remedial actions and sanctions applied were not proportionate, dissuasive and effective.
- (f) The impact of supervisory actions on the behaviour of the entities is limited as most of the entities were not receiving inspections outcomes on time and this delayed the start of remediation process with most missing remediation deadlines without enforcement action taken.
- (g) Both NAMFISA and FIC have, to a large extent, taken sufficient measures to promote the understanding of ML/TF risks and AML/CFT obligations.
- (h) VASPs are not supervised for AML/CFT since they are not licensed nor registered in Namibia.

Recommended Actions

- (a) Provide FIC and NAMFISA with sufficient resources to supervise and monitor compliance effectively.
- (b) DNFBP Regulators should strengthen market entry requirements by ensuring verification of beneficial owners and protect the sector against criminals and their associates from owning or controlling DNFBPs.
- (c) FIC should develop a comprehensive entity risk profile tool for DNFBPs and enhance risk understanding by carrying out risk profiles at a granular level.
- (d) NAMFISA and FIC should enhance TF risk understanding.
- (e) NAMFISA and FIC should take immediate steps to implement RBA with a particular focus on improving the frequency and extent of inspections, ensuring there is adequate resourcing to enable the supervisors to carry out their duties effectively especially inspections.
- (f) FIC and NAMFISA should increase coverage of inspections with specific focus on high-risk FIs and DNFBPs and apply proportionate, dissuasive and effective remedial actions and / sanctions to effectively change the compliance behaviour of FIs and DNFBPs. Inspections and enforcement action should take place in a timely manner.
- (g) FIC must issue targeted guidance including outreach activities on promptness of STRs submission after amending the provision, PEPs, EDD and beneficial ownership. Further, FIC and NAMFISA should issue guidance that are specific to the sector that they regulate depending on the requirements of their entities.
- (h) VASPs should be regulated and monitored for AML/CFT purposes. However, if excluded for any reason, Namibia should take necessary steps to identify illegal VAPS and take enforcement actions against them.

342. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

Background

343. The FIC and NAMFISA are the only two statutory bodies designated under the FIA for AML/CFT supervision in Namibia. The FIC is responsible for AML/CFT supervision of all DNFBPs, banks and MVTS. NAMFISA is responsible for all NBFIs licensed by it such as insurance, securities and micro-lending. Licensing or registration of banks and MVTS is done by BoN. Licensing or registering of DNFBPs is done by respective statutory bodies. While the FIC has the power under the FIA to enforce compliance with the AML/CFT obligations by banks, MVTS and DNFBPs, the respective prudential regulators enforce compliance with market entry requirements for licensees under their respective purview.

344. The assessment team placed emphasis heavily on large FIs in banking and securities sectors including asset management companies; most heavily on large MVTS and real estate; heavily on legal practitioners and trust and company services providers, casinos; and less heavily on life insurance and medium-sized FIs and DNFBPs such as dealers in precious metals and stones, and accountants.

345. There is no prudential regulation and AML/CFT supervision of VASPs in Namibia. As at the time of the onsite visit, there were two known VASPS operating without license in the country.

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

346. Regulators of FIs and DNFBPs have and apply the legal basis and procedures/processes to license or register market participants to some extent but challenges to independently verify BO information of applicants, albeit at varying degrees. BoN, NAMFISA, Casinos and Accounting/Auditor regulators apply fairly comprehensive licensing rules on shareholding and are able to verify BO to some extent. BoN and NAMFISA do take reasonable steps to verify BO self-declarations and have been largely successful in less complicated structures and less so in complex ones. Both use a shareholding threshold of less than 20 percent, though in practice they seek to verify every beneficial owner. For a beneficial owner who is in a foreign country, BoN and NAMFISA have approached their foreign counterpart. Regulators have fit and proper procedures which verification of professional integrity and criminal checks which is check against the Namibian Police Force database.

Bank of Namibia

347. BoN performs adequate fit and proper procedures for licensing of banks and MVTS on both domestic and foreign applicants and take reasonable steps to verify BO information. The licensing requirements are detailed and require the applicant to submit: articles of incorporation, business plan including the activities to performed, geographical distribution, organisational structure and human, technical and material resources to be used; documents of identification of the founding shareholders and specification of the capital subscribed by each of them, together with a declaration that the funds are not from illicit or criminal sources. The processing of an application for license is preceded by pre-filing meeting that is held with the applicant during which the adequacy of the documents to support the application is discussed.

348. The BoN consults with the FIC and LEAs and with the foreign supervisory authorities should the shareholder be a non-resident to establish the good standing of the shareholder(s). The fitness and propriety evaluation is carried out on the directors, shareholders including the assessment of integrity, competence, financial soundness and the proof of the source of funds. This will normally include the vetting of the applicant and requesting police clearance certificate for the shareholders, board of directors and senior management. The BoN also require approval of senior management functions and founding shareholders with 5% or more of the share capital at both market entry and on an ongoing basis. Applicants are required to disclose whether they have been declared bankrupt or insolvent or been in a senior management position whereby the business has been declared bankrupt or insolvent.

349. The BoN takes reasonable measures to independently verify applicant information during the licensing process. Moreover, for subsequent changes of a legal entity or natural persons, BoN takes reasonable measures to establish the ultimate BO and has a threshold of 5% shareholding requirement.

350. The licensing process for forex bureau is like the licensing of a bank whereby the shareholders, directors and senior management are vetted by the BoN and then a license is granted or denied. Although the entry requirements are not as rigorous as that of a bank, the process is the same within the BoN for the issuance of an operating license. Where the forex bureau does not meet all the requirements, they are provided with 4 weeks to complete the application whereby they will need to submit the outstanding information/ address concerns raised.

351. Based on the licensing criteria adopted by BoN, there are exchanges of communication and even preliminary meetings with the applicants' representative where BoN staff guide an applicant on the process to ensure that an application is submitted with all relevant information.

352. The BoN is responsible for the prudential supervision of banks and monitors their conduct in accordance with the type of license issued. Should the BoN determine that information that was

submitted at the time of licensing was false and misleading or the licensee is failing to meet the prudential requirements, the license of that entity can be revoked and struck off the list of licensees.

353. All applications are subject to PEPs and TFS screenings using independent reliable sources of information such as commercially available databases.

NAMFISA

354. NAMFISA performs adequate fit and proper procedures for licensing of applicants on both domestic and foreign applicants and take reasonable steps to verify BO information owing to BO registries challenges. NAMFISA is the regulator for the non-banking sector which includes entities in the capital markets (including collective investment schemes), insurance, pension funds and micro-lending. NAMFISA performs adequate fit and proper assessments in respect of persons participating in the non-banking sector. Information in relation to the licensing requirements are publicly available and is posted on NAMFISA website. The process requires applicants to submit various documentation for the merit of the applicant which includes a number of controls to prevent criminals or their associates from owning or controlling an entity operating under the purview of NAMFISA. Assessment is carried out on significant shareholders (20 per cent or more voting rights), who should be fit and proper and financially sound and any applicant from the threshold is considered a beneficial owner for purposes of licensing.

355. To ensure that persons operating within the sector are fit and proper, NAMFISA requires a police clearance certificate and request information from the FIC and other LEAs. In cases, where the proposed shareholder is a foreign-based institution, NAMFISA writes to the foreign supervisory authorities for the suitability of the shareholder and its criminal record. Further, NAMFISA requests for information from the FIC. This process is done for all categories of prospective licensees (asset managers, CIS, managers and administrators of pension funds, insurance companies, securities brokers and agents, etc.)

356. Persons occupying senior management position are vetted for fitness and probity which includes the assessment of the individual's professional, employment history and ethics by obtaining references, police clearance certificate and confirmation from sister supervisors and LEAs. With regards to foreign directors and shareholders, the requirements are the same as that for the domestic one, in addition request is also made to the foreign supervisor and the good standing from the police or LEAs.

357. NAMFISA conducts on-going monitoring of all the entities under its purview and requires those entities to seek prior approval for any change in business conduct or change in management and ownership structure to ensure that shareholders, directors and senior management remain fit and proper.

358. All applications are subject to PEPs and TFS screenings using independent reliable sources of information such as commercially available databases.

359. NAMFISA has declined 104 applications during the period after review for failures to comply with market entry requirements including fit and proper. The common reasons for declining applications are the following: no proof of source of funds provided, information on source of funds availed is inadequate, Fit and Proper (FAP) Questionnaire/Form not dully completed, Identity documents not certified, FAP form not initialed by the commissioner of oath on all pages other than the signature page, Incorrect information provided; and Certificate of Conduct (Police Clearance Certificate) not submitted.

DNFBPs

360. The DNFBPs licensing and registration authorities have procedures and processes in place on market entry requirements in respect of the regulated entities but application of fit and proper procedures varies from one authority to the other. Most of the DNFBPs licensing and registration authorities determine fitness and propriety of persons to a large extent but suffer from BO verification challenges often due to viewing shareholders and beneficial owners as similar. Therefore, the regulators do not

apply robust verification on BO when licensing. The licensing authorities indicated that they reach out to the FIC for the implementation of the UNSCRs screening prior to approvals.

361. An application for a casino license has to be submitted to and considered by the Gaming Board. The due diligence is carried out by the Gaming Board who indicated they have the technical expertise to undertake the assessment during the licensing process, however, they also indicated that much reliance is given to the checks that is carried out by the FIC. Where there are changes to the shareholders/ownership of the casino those changes are not captured by the Gaming Board.

362. The Real Estate Board requires criminal records and submission of a fidelity certificate on applicant to be considered for real estate agents. Lawyers and accountants engaged in the provision of TCSP are first licensed by their professional body and are registered with the law society and the association of accountants. Dealers of Precious Stones and Metals are licensed by the Ministry of Mines and Energy, however, most of the activities are offshore and is strictly controlled by Government. The regulators, save for the Namibia Estate Agency Board (NEAB), could not demonstrate if they detect illegal operators within their regulating environment.

363. The main factors which the DNFBBs face are the absence of legal measures for effective vetting of UBO information and the lack of understanding of UBO information of market participants. Moreover, the market participants face the challenges of TFS screening and PEP verification, the DNFBBs rely on the FIC for screening purposes, however, the assessment team could not determine against which lists the DNFBBs or the FIC is carrying out those screening exercises.

6.2.2 Supervisors' understanding and identification of ML/TF risks

364. Supervisors demonstrated a good understanding of ML and /TF risks facing their entities from the results of the NRA, SRAs and entity risk profiles. The active participation of NAMFISA and FIC in the NRA process has provided sufficient scope for the supervisors to build an understanding of ML/TF risks facing their supervised entities. While the scope and weighting in the risk methodology of NAMFISA was more comprehensive than the FIC, both supervisors demonstrated robust appreciation of risks not only specific to their supervised entities but also to related entities outside of their supervision purview. For instance, in conducting ML/TF risk assessments, the supervisors sought to also identify and understand the spread of the ML/TF risks across the products/services given the strong linkages between NAMFISA and FIC supervised entities.

365. The risk assessments focused on threats and vulnerabilities with the core risk factors of client type, transactions, delivery channels and geographical location central to collection and analysis of information for ML/TF risks understanding. Both supervisors understand the threats arising from proceeds of tax evasion, corruption, serious fraud and wildlife crimes that could be generated and laundered through its supervised entities, albeit at varying risk exposure. Banks, MVTS, lawyers, real estate agents, and accountants were identified as FIs and DNFBBs with higher vulnerability. This approach has enabled both supervisors to identify and understand inherent high-risk clients, products, delivery channels and geography. For instance, the supervisors identified PEPs, corporate structures, unit trusts, cross-border remittances and wire transfers, private banking, online banking and non-face-to-face transactions, VAs and VASPs, trade and finance and non-resident clients as vulnerable to ML and TF abuse. To some extent, the FIC and NAMFISA appreciate granularity of TF and foreign proceeds risks emanating from transactions and business relationships emanating from high-risk jurisdictions.

Table 45: NAMFISA Risk Ratings of regulated sectors

Industries	ML risk		TF risks		PF risks	
	Inherent risk rating	Residual risk rating	Inherent risk rating	Residual risk rating	Inherent risk rating	Residual risk rating
Unit Trust Managers	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
LISPs	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
Stockbrokers	Medium-high	Medium-high	Medium-low	Medium-low	Medium-low	Medium-low
Investment Managers	Medium-low	Medium-low	Medium-low	Medium-low	Medium-low	Medium-low
Top 52 Microlenders	Low	Medium-low	Low	Medium-low	Low	Medium-low
UIMs & SPVs	Low	Low	Low	Low	Low	Low
Friendly Societies	Low	Low	Medium-low	Medium-low	Low	Medium-low
Long-term Insurance	Medium-low	Medium-low	Medium-low	Medium-low	Medium-low	Medium-low
Short-term Insurance	Low	Low	Low	Low	Low	Low

366. The table above indicates high risk sectors such as unit trust managers, stockbrokers and investment managers for ML while the sectors were rated medium-low on TF. NAMFISA has went further to conduct entity risk assessment for most of its regulated entities having regard to materiality and risk of the entities. NAMFISA has used the findings of the sectoral risk assessment to develop RBA framework, which is at early stages of implementation as at the time of the onsite mission.

367. The Assessors gave little to no weighting to sectors outside the scope of the FATF Standards such as motor vehicle dealers.

6.2.3 Risk-based supervision of compliance with AML/CFT requirements

368. **Both the FIC and NAMFISA are not well resourced to effectively perform their respective supervisory responsibilities under the FIA. The seriousness of the staffing constraints was demonstrated from 2019 when both the FIC and NAMFISA paused all planned inspections to redirect resources towards inspections of entities alleged to have been misused by Fishrot corruption case perpetrators and to prepare for this mutual evaluation.** Since being designated as AML/CFT supervisor in 2012, NAMFISA established a dedicated AML/CFT unit with six officers responsible for its licensees. The FIC has inadequate staff in the compliance (10 officers) and enforcement (2 officers) units which are responsible for banks, MVTs and DNFbps for the whole country. In addition, the FIC is the national AML/CFT coordinator including of NRAs and performs secretariat functions for the Council and the Technical Committee.

369. **The supervisors developed risk-based supervision manuals and supervision plans for inspections but were at infancy stage of implementation.** Prior to developing the 2020 RBA tools, NAMFISA applied, to a limited extent, risk-based approach not anchored on any risk assessment. This approach was inadequate to tailor and prioritise at-risk NBFIs and subject them to supervision effectively.

370. **To some extent, the FIC's selection of banks and MVTs for inspection is informed by both sectoral and entity risk profiles, though entity risk profiling is not comprehensive and therefore not useful for risk-based inspections.**

FIC

371. **The FIC uses a three-year compliance plan from which an annual supervision plan for selection of entities for inspection is drawn.** The three-year cycle is determined by the FIC's SRA, with the first completed in September 2018 and updated in July 2020. The plan included the following sectors; Banking, ADLAs, Casino, Auctioneers, Legal Practitioners, Motor Vehicle Dealerships, Money Value Transfers, NPOs, Custom Clearing Agents, Trust and Company Service Providers, Real Estate Agents and Dealers in Precious Metals and Stones with different risk ratings.

372. The FIC indicated that it does not conduct risk recalibration following inspections but uses the entity risk profiles (which are less comprehensive and not useful for risk understanding) to conduct reviews annually when plans are set for inspections. The FIC shared its May 2020 – October 2023 Onsite Assessments Three-Year Plan which had a heavy focus on banks, real estate agents and lawyers. Since the FIC has entity risk ratings for all banks and MVTS and not for DNFBPs, it was difficult to determine how real estate agents and law firms were prioritised ahead of casinos and TCSPs.

373. The FIC RBA provides for risk level of entity, supervision interval and type of inspection. For high and medium-high risk entities, the frequency is two years and three years respectively. For both risk levels, only onsite inspection can be conducted and therefore are not subject to off-site reviews. For medium and medium low, the frequency is between 3 to 5 years but provides for both onsite and offsite inspections. Low risk entities are subject to offsite inspection only, every five years. The assessors noted that except for MVTs and banks, the FIC has yet to complete risk categorisation of the DNFBPs necessary for effective risk-based inspections. The FIC conducted 120 on-site inspections on DNFBPs (6 offsite) and 65 onsite inspections (33 offsite) on Banks and MVTS between 2016 to 2020 (see Tables 4 and 6 for size of the sectors). In most cases, it is difficult to determine the risk level of the entity inspected due to the lack of comprehensive information coupled with the significant deficiencies identified in the FIC's entity risk profiling tool.

374. **There is no information on the risk categorisation of the entities inspected to determine how the FIC uses its supervision tools to decide on the frequency and intensity of the inspections.** This is explained by the formative stage of the FIC's RBA and resource constraints.

Table 46- FIC onsite inspections, 2016 - 2020

Year	2016	2017	2018	2019	2020	Total
Sector						
Financial Institutions	14	23	11	11	7	65
Banks	8	13	3	9	5	38
MVTS	6	10	8	2	2	22
DNFBPs	31	48	27	29	14	120
Casinos	1	2	0	0	0	3
Real estate agents	14	19	14	14	5	66
DPMS	0	2	1	0	0	3
Lawyers	16	25	12	15	9	77
TCSP	0	0	0	0	0	0
Total	45	61	33	40	21	

Source: FIC Statistics

375. The table above shows infrequent onsite inspections by the FIC which is consistent with the formative stage of its RBA and resource constraints. The accountant/auditors (5 firms) were identified by the FIC on their three-year on-site plan but were never inspected and accountants were identified as DNFBP with higher vulnerability.

376. The table below shows limited use of offsite inspections for compliance monitoring during the period under review. The authorities did indicate that Covid 19 had negative impact on their planned inspections.

Table 47- FIC Offsite inspections, 2016 – 2020

Year	2016	2017	2018	2019	2020
Sector					
Financial Institutions	0	0	16	17	33
Banks	0	0	9	9	0
MVTS	0	0	7	8	1
DNFBPs	1	2	0	0	3
Casinos	1	2	0	0	3
Real estate agents	0	2	0	0	4
DPMS	0	0	0	0	0
Lawyers	0	0	0	0	0
TCSPs	0	0	0	0	0

Source: FIC Statistics

NAMFISA

377. **NAMFISA has a nascent RBA and resource constraints for meaningful inspections. Its inspections are infrequent and limited in the coverage of its regulated entities for both onsite and offsite.** The inspections focused mostly on entities in the asset management industry with investment managers and unit trust managers being the main focus for NAMFISA. This appears consistent with the risk profile of the sector as determined by the SRA. Overall, the inspections are infrequent and conducted to a limited extent in terms of coverage of the sector and (see Table 5 in Chp. 1).

Table 48 -NAMFISA AML/CFT inspections under the FIA, 2016 - 2020

	2016		2017		2018		2019		2020		Total	
	On	Off	On	Off	On	Off	On	Off	On	Of	On	Off
NBFIs inspections	1	2	12	0	0	9	4	8	0	2	17	21
Long-term Insurance Companies												
Short-term Insurance Companies	2	10	6	0	0	0	3	4	0	1	11	15
Special purpose vehicles	0	0	0	0	1	3	0	0	0	2	1	5
Collective investment schemes	0	0	1	0	0	0	0	0	0	0	1	0
Unit trust management companies	5	10	13	0	0	2	6	12	4	2	28	26
Investment Managers	7	10	7	1	0	4	-	0	0	0	14	15
Unlisted investment managers	0	0	1	0	1	3	-	2	0	0	2	5
Micro-lending	0	70	3	0	1	2	2	2	0	0	6	74
Reinsurers for long and short-term insurance	0	0	1	0	0	1		0	0	0	1	1

Linked investment services providers	0	0	0	0	0	1	1	0	0	0	1	1
Stockbrokers, including sponsors	0	0	4	0	0	2	2	0	0	2	6	4
Total	15	102	58	1	3	27	18	28	4	9		

6.2.4 Remedial actions and effective, proportionate, and dissuasive sanctions

378. **The supervisory bodies have powers to issue enforcement actions under the current AML/CFT legislative framework but have only imposed sanctions and remedial actions to a limited extent.** The sanctions can be applied to AIs/RIs and/or their directors, senior management, managers and key employees with the enforcement actions include fines, remedial actions and warnings. Given that the supervisors delay in sharing the inspection report to the licensees, there is no close follow-up on the deficiencies highlighted. In one example, the results of the inspection report were shared with the inspected entity after more than a year after the inspections. The assessors observed during the review of inspection reports that some of the deficiencies were not rectified nor sanctioned but will undergo another inspection.

379. Even though there have been several incidents of non-compliance identified during inspections that would ordinarily attract appropriate sanctions, the supervisors did not impose monetary penalties, but instead opted to give the institutions time to remedy the deficiencies. These included directing FIs to establish compliance function, remediating KYC, training, record keeping, sanction screening, EDD for PEPs, customer risk rating and statutory reporting. The assessors are of the view that given the significance of the failures, the supervisors should have given the gravity of the violations more weight when issuing sanctions.

380. Some of the breaches identified by the supervisors over the reporting period, were inadequate board oversight, lack of AML/CFT policies, ineffective compliance function, failure to identify high risk customers, poor record keeping, inadequate filing of suspicious transactions and failure to conduct employee training.

381. Both supervisors have applied sanctions from on-site inspections and off-site monitoring.

Table 49- Sanctions issued by FIC

Sector	Violation	Period	Action taken
Bank 1	Non-Compliance with Section 42 of the FIA	2019- 2020	5 Million of which 4 Million is suspended for a period of 5 years
Bank 2	Non-compliance with sections 21, 22, 23, 24, 26 and 33 of the FIA	2019- 2020	5 Million of which NAD2 Million suspended for 2 years
Bank 3	Non-Compliance with sections 21, 22, 23, 24, 26, 32 and 39 of the FIA	2019 -2020	7 Million of which 3 Million is suspended for 2 years

Source: FIC Statistics

382. The table below shows sanctioning approach of the NAMFISA. It shows that NAMFISA applies financial penalties in a similar way in terms of the quantum and leniency regardless of the gravity of the contraventions. Therefore, the sanctions are not proportionate, dissuasive and effectiveness to have a desired change in compliance behavior by the entities.

Table 50- Selected NAMFISA sanctions against NBFIs

ENTITY	FIA CONTRAVENTIONS	PERIOD	ACTION TAKEN
Investment Management firm	Inadequate risk management processes; Weakness in CDD and EDD controls; Failure to monitor transactions, and STRs; UNSC sanctions lists screening; recordkeeping; and Failure to adhere to directives	2018	NAD 5 Million suspended NAD 2 Million (5 years)
Unit Trusts management firm	Failure to conduct CDD and EDD, STRs, UNSCRs Sanctions screening; entity risk assessment and independent review.	2018	NAD 5 Million suspended NAD 4 Million
Securities	Failure to conduct adequate ODD, transactions monitoring, independent review, entity risk assessment and staff training.	2019	NAD 2 Million suspended NAD 1 Million

Source: NAMFISA Statistics

383. The FIC has issued administrative penalties to banks for failure to comply with AML/CFT obligations. The table above indicates that that the violations are during the same year and largely involved similar violations. The sanctions taken do not appear proportionate and dissuasive for the size, materiality and impact of the banking system in Namibia. The FIC sanctions issued are low and more than 50 percent of the penalties are suspended.

384. Generally, the FIC delays closing inspections and, if they do, it is over a period and suffers from taking appropriate and timely enforcement action.

6.2.5 Impact of supervisory actions on compliance

385. **Although the FIC and NAMFISA conducted inspections and imposed some sanctions and remedial actions, they demonstrated the impact of their supervisory actions on compliance by FIs and DNFBPs to a limited extent.**

NAMFISA

386. NAMFISA provides feedback to their inspected licensees on their compliance status which assists AIs/RIs to know when deficiencies have been resolved. In terms of awareness programs, NAMFISA conducted several them targeting micro-lenders which are low risk as opposed to targeting the ones that pose higher risk such as those in the security sector. Hence the lack of improved compliance in the high or medium risk sectors.

387. The lengthy enforcement process relating to the NBFIs under NAMFISA's regulatory purview and the requirement of the FIC to decide in relation to a financial penalty impacts NAMFISA's ability to effectively and independently enforce AML/CFT compliance.

388. FIC does not give feedback to AIs/RIs on their compliance status, and this makes it challenging for AIs/RIs to know their compliance status.

6.2.6 Promoting a clear understanding of AML/CFT obligations and ML/TF risks

389. **Supervisors have carried outreach and awareness-raising activities and issued a number of guidance to promote understanding of ML/TF risks and obligations to some extent.** Assessors have noted that most of the Guidance issued by the FIC are general in nature and not yet focused on the subset of obligations such as enhanced due diligence and beneficial ownership. NAMFISA has not issued any guidance to the AIs/RIs under its supervision; instead, disseminated the guidance issued by the FIC. NAMFISA conducted several road shows across the country targeting micro-lenders which are low risk

as opposed to targeting the ones that pose higher risk such as those in the security sector. The aim of the workshop was to raise awareness and promote the understanding of obligations by the FIs.

Overall conclusion on IO.3

390. To some extent, the regulators apply adequate fit and proper market entry measures grounded on verification of criminal records, professional integrity and sources of capital. Although the regulators have challenges on BO, NAMFISA and BoN are better at taking reasonable measures to verify the identity of a beneficial owner, they both identify and take reasonable steps to verify a BO for even 5% shareholding interests. NAMFISA and FIC have good understanding of ML and, to some extent, TF risks, they have yet to apply it for RBA as it is at infancy stage and therefore the inspections are not yet fully risk based. As such, the frequency and intensity of inspections are not yet fully informed by the risks within the sectors and the entities. The remedial actions/sanctions are, to a limited extent, proportionate, dissuasive and effective to influence positive compliance behavior. The supervisors have been successful in carrying out awareness campaigns and issue guidance to promote ML/TF risk and AML/CFT obligations. Both NAMFISA and FIC require significant resources to conduct supervisory responsibilities effectively. VASPs are not regulated and supervised and therefore no effectiveness could be determined.

391. **Namibia is rated as having a Low level of effectiveness for IO.3.**

Chapter 7. LEGAL PERSONS AND ARRANGEMENTS

7.1 Key Findings and Recommended Actions

Key Findings

- (a) Namibia is yet to assess the ML/TF risks associated with legal persons and arrangements. As such, the potential level for abuse of legal persons and arrangements for ML/TF is not known, but indicators of the use of legal entities in the Fishrot case for bribery suggest that the existing framework has weaknesses which are being exploited for ML and other predicate offences.
- (b) Competent authorities do not fully appreciate the concept of BO information and do not require that sufficient BO information be obtained at registration and during information updates. Legal ownership is mostly misunderstood for BO information.
- (c) The current requirements only require legal persons to provide BO information when submitting their annual returns and not at the time of registration of the legal person. Hence no information is obtained on BO at the time of registration. The BIPA has still not started collecting BO information even when annual returns are filed and such information is not collected and updated. This greatly undermines the adequacy of the basic and BO information accessed and or requested by the public, competent authorities.
- (d) The FIA designates the BIPA and Master of the HC as supervisory authorities to enforce the requirements to obtain BO ownership and keep the information accurate and updated, however this mandate has hardly been exercised. No initiatives have been undertaken by the authorities to establish the level of compliance, and as such the quality and efficacy of the information held at registries is undermined and may not be of great use to persons who access or request it.
- (e) In Namibia no sanctions have been applied for non-compliance with the requirements to keep BO information accurate and updated. Whereas this may be attributed to a lack of awareness of the authorities of their designated mandate, or challenges relating to limited resources including staffing, the state of affairs gives room for any ongoing abuse for ML/TF to continue undetected.
- (f) Namibia permits the use of bearer shares but has not developed or implemented any mechanisms to prevent their abuse for ML/TF.

Recommended Actions

- a) Namibia should conduct a ML/TF risk assessment of legal persons and arrangements in order to understand the ways in which they are likely to be abused for ML/TF. Based on the risk assessment findings, Namibia should take informed steps to mitigate and address the ML/TF risks identified during the risk assessment.
- b) Namibia should build the capacity of BIPA and the Master of High Court on understanding and obtaining of BO information to promote a shared understanding across the board. Further, the authorities should review the current requirements relating to obtaining of basic and BO information with a view to enhancing them to ensure correct basic and BO information is being required and collected at registration and frequently updated.
- c) The BIPA and Masters of the High Court should begin exercising their mandate under sections 4 and 5 of the FIA so as to enforce the requirements to collect, update and ensure accuracy of BO information.
- d) The BIPA and the Master of the High Court should monitor compliance relating to BO information requirements and obligations to identify non-compliance and apply dissuasive and proportionate sanctions for any identified violations. BIPA should also be given the powers to impose administrative sanctions for violations by legal persons of the Companies Act in order to make the regime more effective.
- e) Namibia should develop and implement measures or mechanisms to ensure that bearer shares are not abused for ML/TF.

392. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25, and elements of R.1, 10, 37 and 40.

7.2 Immediate Outcome 5 (Legal Persons and Arrangements)

7.2.1 Public availability of information on the creation and types of legal persons and arrangements

393. There is a wide range of public information about the types of legal/ juristic persons and arrangements which can be created in Namibia and how to create them that can be accessed in various ways from BIPA. The Business and Intellectual Property Authority (BIPA) is established as the focal point for the registration of business and intellectual property. BIPA is established by section 3 of the BIPA Act, 2016 (Act No.8 of 2016) and is a Public Enterprise as defined in the Public Enterprises Governance Act, 2019 (Act No.1 of 2019). Information on how to register a legal person is easily accessible on the BIPA website <https://www.bipa.na/business-registration/> which provides links to the registration forms for creation of different types of legal persons which can be downloaded, filled out and physically submitted at the BIPA Offices. In the alternative, members of the public can visit the BIPA Offices and request for the information in person. The information on the creation of legal persons and the requirements to be complied with after registration is also available in the Companies Act which can be accessed by members of the public at the BIPA offices or online, at a fee. The BIPA, through its Communications and Client Services Department often carries out public awareness-raising on how to create legal persons and the types that can be created. The information publicly available pertains to the creation of two types of legal persons which are companies and closed corporations. In typologies identified by the FIC, evidence of abuse of legal persons and arrangements has been identified and is

continuing, even though the provisions contained in the FIA (sections 4 and 5) has been implemented. This is mainly in respect of legal persons and arrangements that were registered before the enactment of the FIA, but not to the exclusion of those registered after the enactment.

7.2.2 Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

394. Namibia has not yet conducted ML/TF risk assessment to identify and understand the exposure facing legal persons. Whereas the National ML/TF Risk Assessment of Namibia had recently been updated, and a report issued in September 2021, it was noted that the NRA undertaken did not include a ML/TF risk assessment of all types of legal persons and arrangements created in Namibia, hence the NRA did not include findings on the sector. Therefore, the ML/TF risks and vulnerabilities of legal persons have not been identified, neither are they understood in line with the high-risk areas identified during the NRA.

395. BIPA officials indicated that there was a tendency for legal persons created in Namibia (especially close corporations) to be used in the fraudulent transfer of land based on complaints filed with BIPA, and requests from the Police seeking information on beneficial ownership. However, since no risk assessment of the sector has been done, the extent of this abuse is not known. Further, it has not been identified which types of the legal persons created in Namibia are vulnerable to ML/TF risks. Authorities indicated that a comprehensive ML/TF vulnerability assessment of legal persons created in Namibia has not yet been undertaken. However, the methods of using front and shelf companies, with some of them ultimately owned or controlled by Government Ministers, (used to commit the Fishrot cases (see IO 7)) is seen as a one of the risks pertaining to legal persons. In the Fishrot case, the shelf companies were used to receive the bribes and any other payments for the benefit of the implicated government officials. Although, an indication was made that ML risks and possible abuse of legal persons was on the high side in Namibia, the nature of legal persons vulnerable to such abuse was not described. The slight understanding which could be there of the risks posed by potential abuse of legal persons is mainly based on the experiences of the Authorities arising from criminal offences committed, like the Fishrot case. Therefore, the extent of understanding the risks based on such experiences could not be properly determined.

396. Based on the circumstances of the Fishrot case, one area of huge risk which has not been determined to what extent it is prevalent is the abuse of shelf companies in the commission of serious crimes, ML included. BIPA did not demonstrate that after the Fishrot cases, it had proceeded to take reasonable steps to determine to what extent shelf companies were being abused to facilitate commission of serious crimes. Connected to the risks posed by shelf companies, are the risks associated with the use of nominee shareholders and nominee directors which still have not been assessed nor are they understood by the authorities. Further, the authorities did not demonstrate the measures which have been put in place that if there are any risks associated with the use of nominee shareholders and directors, these are assessed, understood and monitored as they evolve.

7.2.3 Mitigating measures to prevent the misuse of legal persons and arrangements

397. Overall, the measures implemented to prevent the misuse of legal persons and arrangements for ML/TF purposes still leave companies and trusts vulnerable to ML/TF abuse due to several factors. The measures are not comprehensive, in part due to the lack of a proper assessment of the ML/TF vulnerabilities. LEAs could not demonstrate through the cases they have finalised their ability to identify BO in complex company or trust structures which indicate that there should be better engagement and training on this area to LEAs. ML cases in Namibia also suggest that companies are abused for ML purposes (see IO 7). In addition, public information from inquiries into “Fishrot corruption scandal” also suggest that companies could be abused to facilitate corruption in the awarding of government tenders and soliciting of favours and the subsequent laundering of the proceeds. The extent to which companies and trusts are abused for TF, and hence, how well measures are implemented to prevent such abuse is unknown.

398. Further, the reporting entities which are under obligation to obtain BO information when entering into a business relationship with a legal person/arrangement (see IO 4) mostly rely on the client to provide the BO information and from the interaction with the banks, this process in some cases is not exhaustive in terms of ensuring that the reporting entity obtains reliable BO information in such circumstances. Again, some of the financial institutions met indicated that in some cases, the BO information provided by the client is taken at face value and is not verified, particularly where complex structures of ownership of the company/trust are concerned. In cases where BO information is then required by Competent Authorities, there is no assurance that this information would be reliable and accurate (see CI 7.2.4).

399. Namibia is not implementing any measures to prevent the misuse of legal persons and arrangements for ML/TF purposes informed by the results of a risk assessment. Namibia is yet to assess ML/TF risks of legal persons and legal arrangements and determine what measures to implement and the resources required to prevent abuse.

400. It was indicated that in a bid to address the vulnerabilities identified in the NRA and updates thereto, the BIPA and the Master of the High Court were designated to oversee the effective implementation of the FIA on the collection, updating and ensuring the accuracy of BO information relating to legal persons and arrangements (ss. 4, 5 of the FIA). The obligations of the BIPA and Master of the HC are:

- (a) annual collection of accurate and updated prescribed information in respect of members, directors, shareholders and beneficial ownership of companies.
- (b) collect and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and *inter vivos* trusts (s. 5(b) of FIA).

401. The BIPA and the Master of the High Court have not established the level of compliance with the requirements to obtain and maintain beneficial ownership information as well as the other obligations of the entities which are under their purview. Authorities indicated that reliance has been placed on the relevant companies, corporations and trusts to update their information (including BO information) on an annual basis. However, both BIPA and the Master of the High Court indicated that no initiatives have been undertaken to establish the level of compliance, therefore it is not determined if the basic and BO information on all the companies, corporations and trusts is accurate, and or updated.

402. Both BIPA and the Master of the High Court did not demonstrate that they were fully familiar with their obligations to enforce and monitor compliance with beneficial ownership information requirements as provided under the FIA and to that extent they had not started obtaining this information. Interactions with the other competent authorities also seem to confirm that the initiative of designating the BIPA and Master of the HC as the implementers of the BO requirements under the FIA had not been effective due to both authorities not having been fully oriented on their new obligations as introduced by the FIA and establishing BO registries.

403. The FIA (s. 4(7)), further provides that if a company or close corporation refuses or fails to provide the information required within a specified period, the company or close corporation commits an offence and is liable to a fine not exceeding NAD10 million, or where the commission of the offence is attributable to a representative of the company or close corporation, to such fine or imprisonment not exceeding a period of 10 years, or to both such fine and such imprisonment, and in addition the Registrar must de-register the relevant company or close corporation. BIPA officials indicated that no such sanctions have been imposed on any entity nor any company de-registered for non-compliance with the requirements of the law.

404. It was noted that whereas the FIA prescribed dissuasive sanctions for non-compliance (s. 5 of the FIA) there was no evidence to demonstrate that they are imposed by the relevant authorities. The Master of the HC indicated that no such sanction has been issued against any entity for non-compliance. Therefore, the mitigation measures provided by the legal framework of Namibia to ensure that ML/TF risks posed by the abuse of legal persons/arrangements are mitigated are not being fully implemented.

405. The use of bearer shares is permitted in Namibia; however, no mechanisms have been implemented to guard against them being abused for ML or TF.

406. There are currently no controls or due diligence measures in the application or registration processes that prevent criminals from being part of a legal person. Contraventions of the Act are regarded as offences which attract criminal sanctions. The law does not make provision for administrative penalties which the Registrar can impose without being required to approach a court of law. However, the introduction of electronic records at both the BIPA and Masters of the High Court, although there are still challenges with the information retained, it has helped in the updating of the information kept by the two institutions (see CI 5.4 on challenges pertaining to the information retained).

407. Sections 149, 226, 227, 257-259 of the Companies Act, penalizes contraventions of that Act, however enforcement is only possible through recourse to the Magistrates Courts as the office of the Registrar does not have any control over the enforcement process.

7.2.4 Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Legal Persons (BIPA)

408. Any person in Namibia, upon payment of a prescribed fee is entitled to inspect the documents lodged with the Registrar under the Companies and Close Corporations Acts and obtain a certificate from the Registrar as to the content or part of the contents of any document kept by the Registrar or obtain a copy of or extract from that document (s.8 of the Companies Act, s. 5 of the Close Corporations Act). Such access is given to all information on the register except for company information that has been prohibited from disclosing (s. 14(1) of the Companies Act). The information requested by the public is provided within 1- 4 working days, which is considered timely. However, given some of the observations already highlighted under CI 7.2.3, it could not be demonstrated that the information when provided it would be current and or accurate.

409. The accountable and reporting institutions can request for information at a fee, and it takes 1-7 working days for the information to be provided depending on the magnitude of the request. However, the information retained by BIPA does not include that on BO as it has not started collecting such details. The FIC has direct access to the business registration system of BIPA.

410. Basic information for legal persons may not always be accurate as only information about Namibia directors is verified. The FIC and some LEAs at the time of the onsite indicated that information obtained at the time of creating/registration of legal persons only relates to the legal person and not the actual beneficial owner. It was indicated that the time taken for accessing the information on beneficial ownership varies from one competent authority to the other, with some LEAs indicating they can access the information within few working days while others faced the challenge of waiting for a longer period.

411. To a large extent Competent Authorities in Namibia can access basic information on legal persons and legal arrangements from the company registry or Master's Office, respectively. Both the Master of High Court and BIPA Registrars are obliged to annually collect and keep up-to-date

beneficial ownership information. However, challenges exist relating to updated and accurate information especially as it relates to BO information as the full requirements on information to be accessed by Competent Authorities are not met. Also, with the basic information, although the BIPA indicated that it had started keeping the information in electronic form which would mean quick access by LEAs, the updating of such information for it to be current is not always monitored. This has contributed to none of the companies in the event of failing to comply with the submission of returns requirement not being de-registered during the period under review.

412. The understanding of the concept of BO and BO information is not well understood by competent authorities resulting in inadequate BO information being required and obtained at registration and or incorporation. This is compounded by the fact that measures are not taken to ensure compliance of the requirements to update and ensure accuracy of BO information. Namibia's NRA completed in 2021 identified that at incorporation companies are required to provide information on shareholding, beneficial ownership and directorship. However, it could not be demonstrated that there is a requirement for BIPA to obtain BO information at the time of creation/registration of a legal person but only when annual reports are being submitted. This gap creates a vulnerability for abuse of legal persons and legal arrangements for ML/TF, which ML/TF risks have also not been assessed. In addition, information on BO is not available soon after the registration of the legal person until at the time when the legal person submits its annual return as required by the law, not mentioning that BIPA has not started implementing this requirement.

413. Companies are required to lodge annual returns with the Registrar not later than one month after the end of their financial year. However, this was not being strictly monitored to ensure that companies were complying with the requirement. The form (Form CM 23) used to submit such information had been recently amended to include a new section (Part C) where shareholder/nominee shareholder/ BO information is to be provided at the time of submitting the annual returns. Previously such information was not required and if compliance with such a requirement is monitored, which is not currently happening, then it would have mitigated challenges in accessing BO information and the risks posed by having nominee shareholders/directors.

414. The authorities reported that it is possible to register shelf companies in Namibia, however, they did not know about the extent to which shelf companies can be used for ML/TF abuse; and the vulnerabilities thereof have not been assessed.

415. The law enforcement investigators do not have direct access to information on legal persons. They request such information through their legal department, which then speeds up securing the information and providing accompanying affidavits confirming the information provided. Depending on the complexity of the information requested, it can take 1-7 working days for the information to be availed to LEAs by BIPA.

416. The reporting entities met during the on-site, particularly some of the banks, indicated to the assessors that they were not clear when exactly the LEAs require information on either basic or BO on legal persons/arrangements from them as they only ask for the account opening documents. As to what kind of information the investigators would be intending to extract, that is not communicated to them. The banks further indicated that on average they provide such information within 3 – 7 days. Although some of the LEAs indicated that they have requested for both basic and BO information from the reporting entities, this was not confirmed by the reporting entities. Also, some of the banks informed the assessors, that it was not in all cases that they manage to get full information on BO of the legal persons they deal with as in some cases they mostly rely on the client to provide such information and when it is provided there are challenges in verifying it when such a need arises as sources to do so are also limited. Therefore, it could not be demonstrated that it is in all cases that LEAs get adequate, accurate and current BO information.

7.2.5 Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

Legal Arrangements (MASTER's of HIGH COURT OFFICE)

417. The public can obtain information relating to the requirements on creation and types of trusts which can be created physically from the Master's Office and from the website of the Master's Office. Other information that can be obtained includes the name of a trust, the founder and auditor of the trust. Additional information can be obtained only via written request and must explain why such information is needed. If the request is approved, information is provided within 5 working days. The timelines within which the information is provided are reasonable.

418. LEAs and prosecutors can access information for free directly from the Master of the High Court by making a written request. The authorities indicated that the Master of The High Court usually provides the information within two days, depending on the nature of the request. NAMPOL, FIC and NAMRA request information from the Master of the High Court using section 179 of the CPA to request information relating to beneficial ownership (BO). The Authorities indicated that in instances where a formal request is made, it is made by way of a letter to which a written response is provided. It was indicated that in instances where the level of coordination is high, responses may be provided informally by way of a phone call or an email. In addition, the Master of the High Court indicated information can be obtained from their website which is open to the public at <http://www.mohc.moj.na/> however it was clarified that it is mainly basic information that can be obtained, with limited information beneficial ownership information of beneficiaries. Any further detailed information to the one on the website can be obtained by competent authorities through further detailed requests for information to the Master of the High Court. It was noted that initial or further requests for information is likely to be negatively impacted by poor enforcement of the requirement to keep BO information accurate and updated.

419. Competent authorities can also access basic and shareholder information from the companies themselves to the extent that the information is accurate and available. Where LEAs find that not to be the case, they notify the Master of the High Court. Legal arrangements are meant to keep information up to date by filing annual returns and notices of any changes with the Master of High Court. However, these requirements are not proactively enforced by the Master of HC as mentioned earlier, they only inform the Masters of the HC. Authorities indicated that reliance is placed on the trusts to update their information, and that no initiatives have been undertaken to establish the level of compliance. It was indicated that a circular was issued by the Master of the HC requiring all trusts to update and verify the accuracy of their basic and BO information, however, the circular did not provide a deadline by which all trusts were required to comply. This state of affairs negatively impacts the veracity and sufficiency of the basic and BO information held by the Master of HC as it may be both inaccurate and outdated. However, for those trusts which have updated the information after the circular was issued it could be somewhat reliable information. The only challenge is that the Master's Office can only check on this when it is approached by the trustee when there is need to make a change to the trust deed, for example the bank account of the trust or founder. If such a need has not occurred, the information might remain not updated for a much longer time.

420. LEA obtains BO information on legal arrangements by applying for a subpoena (CPA, s. 179) that it serves directly or through the FIC on the reporting entity of interest (most often a bank). Subpoenas are often issued within half a day and state the timeline for providing the BO information. Normally the LEAs received feedback from MoHC on request for information within 3-5 working days, which is deemed to be reasonable.

421. The FIC and LEA's do not have direct access to the Master's online system yet. Information is provided upon request to authorities. Information is normally provided the same day or within a day, information is available on the online system and is easy to access.

7.2.6 Effectiveness, proportionality and dissuasiveness of sanctions

422. Sections 4 & 5 of the FIA, respectively, make it a criminal offence for legal persons and trusts not to provide information required by these sections to BIPA and the Master of the High Court. However, there is no information demonstrating that a legal person or a trust has been sanctioned or prosecuted to date in respect of such a failure. Additionally, neither the BIPA nor the Master of the HC has imposed any administrative sanctions for such breach. Therefore, the authorities could not demonstrate the effectiveness, proportionality or dissuasiveness of sanctions imposed on legal persons or arrangements. As the inadequate implementation of sanctions relating to legal persons/arrangements also affects measures which are in place to mitigate the abuse of legal persons/arrangements for ML/TF purposes, it would also be important to refer to the observations relating to non-implementation of the sanctions provided under the laws regulating both legal persons and arrangements.

Overall conclusion on IO.5

423. Namibia has not carried out a risk assessment to determine the ML/TF risks associated with legal persons and legal arrangements, as such the risks are not known, and no mitigating measures are in place to address them where they exist. Information on creation of legal persons and arrangements is available at the offices of the BIPA and Master of the High Court and is available online to some extent. Sufficient mechanisms exist to ensure that basic information is required and obtained at the incorporation/registration incorporation / registration stage of legal persons and arrangements, however this is not so for BO information. It was established that mechanisms are in place to capture basic information upon registration, however authorities demonstrated that BO information is submitted when annual reports are filed. Gaps exist among the authorities on the understanding of BO information, this has limited the efficiency and quality of the BO information required and obtained by authorities, and in some instances legal ownership information was being required /accepted in place of actual BO information. Weaknesses exist in enforcement of requirements for BO information to ensure the accuracy, and update of BO information. Whereas the FIA designated BIPA and Master of the HC to ensure the collection, accuracy, and update of BO information, the authorities have not taken steps to establish or monitor the level of compliance, nor have they applied any sanction or remedial actions for non-compliance. The authorities indicated a few incidences of abuse of legal persons for predicate offences and possible ML such as the Fishrot case, where it further noted that shelf companies were used in the abuse. It was not clear what steps were being taken to prevent such future abuse. Whereas the authorities did not indicate whether any misuse of bearer shares for ML/TF have occurred, Namibia is yet to decide whether to permit the continued use of bearer shares, and what mechanisms to put in place to mitigate their abuse for ML/TF. The authorities indicated that although the use of bearer shares was allowed, in practice these were hardly used.

424. **Namibia is rated as having a Low level of effectiveness for IO.5.**

Chapter 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- (a) Namibia has a legal framework on international cooperation and has several bilateral and multilateral agreements on the provision of international cooperation and exchange of information.
- (b) The staff at Central Authority responsible for MLA and extradition requests have been trained to some extent to handle requests in a timely manner especially complex matters.
- (c) Namibia has manual registries at the relevant Ministries for processing and tracking progress of MLA and extradition requests which has allowed Namibia to provide constructive and timely international cooperation to some extent, with keeping of comprehensive statistics and prioritisation a challenge.
- (d) Namibia provides timely and generally constructive assistance across the range of requests for associated predicate offenses on mutual legal assistance (MLA) with no assistance provided on ML/TF cases during the review period. The feedback received from foreign partners is generally positive and shortcomings have only been highlighted in very limited instances.
- (e) To some extent, Namibia has used its international cooperation formal channels to seek MLA to pursue high-risk predicate offences and ML. It has not sought any assistance on TF.
- (f) Namibia has a legal framework for extradition; however, Namibia has requested extradition only on predicate offenses and not ML which is not consistent with the risk profile of the jurisdiction. Though Namibia has requested extradition on 2 TF cases, the cases were pending, therefore, the efficacy of the framework has not been tested.
- (g) To some extent, competent authorities (FIC, BoN, NAMFISA, NAMPOL and NAMRA) have mechanisms for cooperation and exchange of information with foreign counterparts and are able to render assistance informally both on an individual basis and through associations to which they are members of.
- (h) There is no systemic prioritisation while dealing with incoming MLA and extradition requests. Besides, international assistance sought by Namibia is not prioritized in terms of high-risk predicate offence prevalent in the country and therefore not consistent with country's ML/TF risk profile.
- (i) Namibia does not maintain comprehensive statistics on MLA and extradition and other forms of cooperation necessary to demonstrate the extent to which Namibia provides timely international cooperation and exchange of information.
- (j) Namibia does not have a legal framework or mechanism for sharing of assets in Namibia with other jurisdictions.
- (k) Competent authorities in Namibia are able to provide basic ownership information on legal persons and legal arrangements registered to some extent while provision of BO information is a major challenge.

Recommended Actions

- (a) Namibia should enhance its capacity to handle MLA/Extradition requests through increasing expertise of its officers.
- (b) Namibia should establish an efficient case management system in the Ministry of Justice for the collection and dissemination of MLA and extradition information including requests made, requests received, actions taken, and quality of the information obtained as well as the duration of the response to improve collection of statistics on international cooperation.
- (c) The MoJ should document its prioritisation strategy while other competent authorities should develop a documented strategy/policy to prioritise requests and provide international cooperation in a timely and constructive manner in consistent with the ML/TF risk profile of Namibia.
- (d) The Competent authorities should spontaneously exchange information with their foreign counter parts for AML/CFT purposes commensurate to the risks where such information is available for sharing.
- (e) Namibia should establish and implement mechanisms for sharing of assets with other jurisdictions.
- (f) The LEAs and other competent authorities should develop and implement proper processes, procedures and case management system and maintain proper AML/CFT statistics in relation to other forms of international cooperation necessary to review the effectiveness of the measures relating to provision of international cooperation and exchange of information.
- (g) Namibia should put in place mechanisms to identify and keep beneficial ownership information relating to legal persons and legal arrangements for the purposes of international cooperation.

425. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

8.2 Immediate Outcome 2 (International Cooperation)

Background

426. Namibia's international cooperation on ML is mainly undertaken with its neighbouring jurisdictions and with countries to which it has significant trade relationships given the nature of cross-border ML threats facing Namibia. With respect to TF, Namibia broadly engages with jurisdictions that do not share trade or geographical proximity. According to the country's NRA of 2021, the cross-border ML threats facing Namibia emanates from both regional and domestic criminal activities involving customs violations, trafficking of wildlife products, illegal drugs and stolen vehicles. Namibia also a transit point for smuggled goods destined to neighboring jurisdictions with proceeds mainly laundered locally through Namibian financial institutions and more particularly exploiting the remittance sector.

427. Namibia has the requisite legal framework to provide both formal and informal international assistance. The International Cooperation in Criminal Matters Act 2000 provides the legal basis for making and receiving international request for assistance. Formal mechanisms are also conducted through MoUs, bilateral agreements and multilateral arrangements to which Namibia is party. The

country is also able to provide other forms of international cooperation through administrative arrangements with counterparts and using the existing legal frameworks. The Ministry of Justice is the competent authority for handling both inward and outward MLA and Extradition requests and responses. The Central Authority is the Executive Director (administrative head of the Ministry) in the Ministry of Justice or such other official designated by the Minister for Justice by notice in the Gazette.

428. The Directorate of Legal Affairs under the Executive Directorate within the Ministry of Justice is the focal contact for handling all requests, incoming and outgoing. The Directorate is headed by the Executive Director and is equipped with 8 staff members. Any of the officers at the Directorate handle MLA/Extradition and other forms of cooperation requests and responses.

8.2.1 Providing constructive and timely MLA and extradition

429. To some extent, Namibia has provided constructive and timely MLA and extradition for predicate offences only, but no ML or TF requests were made during the period under review.

430. Namibia has uses manual registries for processing MLA and extradition requests. The process of receiving MLA requests in Namibia is through the Ministry of International Relations and Cooperation (MIRCO) who receives inbound MLA requests through normal diplomatic channels which it transmits to the Central Authority for further processing at the Ministry of Justice. The MIRCO has a general registry for recording all incoming mails and index book registry administered by Directorate of Legal Affairs.

431. At the MoJ, the requests are sent from the general registry and dispatched to the Directorate of Legal Service which oversees handling treaties and agreement, where the docket of MLA and Extradition requests falls. The Chief: Legal Service allocates appropriate officers to deal with the request and are given instructions on how to handle the request. While Namibia may reject request for MLA, the grounds for refusal have been found not to be unreasonable by the assessors.

432. Upon receipt from MIRCO, the Executive Director marks the request to the Chief: Legal Service (CLS) who acknowledges the receipt by stamping on the request. The CLS analyses the content of the request to determine if it meets Namibia's legal requirements and then allocates a file number and registers the same in the third registry. Once the request has been allocated a file number, the CLS assigns the request to an officer who will liaise with the implementing agency to process the request. The assigned officer has his/her daily workflow register where he/she maintains his/her own records of all matters assigned to him/her, the actions he/she has taken on the assigned matters and the status of each case.

433. Namibia is able to prioritise urgent requests. The country adopted an unwritten policy for fast-tracking requests which is informed by the nature of the request such as whether the requested information requires attendance of witnesses, the risk of evidence loss, provisional warrant of arrest, INTERPOL-NCB red notice or where a subpoena needs to be served. To demonstrate the level of fast tracking of making requests, Namibia used the requests relating to Fishrot case, in which the country was able to send and receive multiple requests to various jurisdictions to assist in the investigation of the cases. In terms of processing of international assistance from other countries, the authorities also submitted that as a general practice, all international requests are prioritised.

434. Namibia has provided six (6) MLAs since 2016. The nature of assistance provided relates to predicate offences with no assistance provided on ML cases during the review period. Namibia provided MLAs to Swaziland, Botswana, the United Kingdom and the Netherlands as indicated in the table below.

Table 51: List of Mutual legal assistance provided

Year	Number of Requests (incoming)	Number of requests responded to	Type of Requests	Average timelines
2016	3	3	Illicit trafficking in stolen and other goods	40 days
2017	1	1	Robbery and theft	12 days
2018	1	In process	fraud	In process (given that this request was received in 2018, there is inordinate delay in processing the request)
2019	None	None	None	none
2020	1	1	Not provided unknown?	40 days

435. Namibia has a performance management system within the Ministry of Justice which is extracted from the general Performance Contracting System introduced by the Prime Minister for assessment of status of requests to evaluate whether the request is processed on a timely manner. This system allows for quarterly performance reviews of all requests where the Chief Legal Clerk would present status of each request indicating status and turnaround times for processing requests. The authorities indicated that they often receive positive feedback from other countries on the assistance that they provide. It is the view of the assessors that effectiveness of the system has been improved greatly by enhancing the capacity to track the status of requests using the performance management framework.

436. Namibia received no MLA requests on TF within the review period.

Extradition

437. The process of handling extradition is similar to the one for MLAs as discussed above. In case of urgency, the requesting country may send inbound requests directly to the Central Authority at Ministry of Justice. Once received at MIRCRO, the request is sent to the Executive Director at the Directorate of Legal Affairs in charge of treaties and agreement. The Directorate currently has a Director and 2 Chief Foreign Relations Officers who handle requests. Any of these officers can be assigned to handle extradition requests. All requests are transmitted to Ministry of Justice where the Directorate of Legal Affairs is responsible for coordinating with the court on execution of the requests. The DLA is also responsible to forward the request to the Prosecutor General who presents the evidence before the Magistrate's court for enforcement together with the relevant documents. Once determined by the Magistrate, the request proceeds to the NAMPOL for enforcement of warrants.

438. There is no specific registry at the legal affairs Directorate dedicated for extradition matters. The Directorate uses a manual system of record keeping where all matters assigned to the officers as registered including extradition requests as well as other matters.

439. The average time taken to process extradition requests could not be determined since the records provided do not indicate the status of the cases. However, one of the requests seen by the assessors took 5 months to process. The assessors are of the view that in the absence of statistics indicating timelines for handling requests, a timeline of 5 months (excluding court processes) is realistic reasonable? given the country's profile.

440. Namibia makes follow up on extradition requests provided. At times Namibia authorities made phone calls with their close partners especially South Africa to discuss extradition requests. The country does provide advance copy to the requesting jurisdiction in urgent matters while awaiting formal diplomatic transmission of the Extradition requests. Besides, the country uses other simplified mechanisms for surrender of suspects based on mutual arrangements especially with its neighbouring countries. Below is a table of incoming extradition requests to Namibia for the review period.

Table 52: Incoming Extradition Request

Year	Number of Requests	Status
2016	0	-
2017	0	-
2018	1	Fugitive left the country hence request could not be executed
2019	0	-
2020	2	1 pending while the other is executed

8.2.2 Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

Mutual Legal Assistance:

441. **To some extent, Namibia has used its international cooperation formal channels to seek MLA to pursue high-risk predicate offences, ML and financing of terrorism.** The top predicate offences in Namibia are fraud, environmental crimes, drugs and corruption. The requests relating to other predicate offences are more in value terms compared to the prevalent proceeds generating crimes occurring in Namibia. The assessors are of the view that this is not consistent with the ML/TF risk profile of the country since the outbound MLA requests do not correspond with the top prevalent offences posing serious risk to the country.

442. When it becomes apparent that there is need to request for MLA in criminal matters, the competent authorities will liaise with the OPG who guides on the issues to be inquired from foreign jurisdictions including relevant evidence and supporting documents. The request along with all supportive documentation will then be submitted by the competent authorities to the Central Authority. The Central Authority determines if the request is in the correct format and bears all the relevant information as required by the standards of the receiving State and then sends to the request to the MIRCO for onward transmission to the requesting State using the formal diplomatic channels. However, in most cases where the country requested MLA, the Namibian Authorities have not received feedback on the information requested. Some of the requests made by foreign jurisdiction have been rejected due to inadequate information prompting other jurisdictions to request further information thereby delaying response. To overcome this challenge, the Central Authority had developed working relationships with close counterparts where they could even discuss draft requests informally, prior to making a formal request, to ensure that it meets the standards of the receiving jurisdiction.

Table 53: MLAs requested by Namibia

Year	No. of outgoing requests	Countries to which requests were sent	Nature of requests	Status of the request
2016	9	UK, Bulgaria and Canada, South Africa, Italy, Hong Kong,	Trafficking in human beings and migrant smuggling, Fraud	1 rejected on account of inadequate information (in this case, the authorities submitted that the rejection related to the lack of information caused by poor drafting of the request which was not in a manner that could be acted upon by the receiving authority), 7 requests are pending response while 1 request was processed
2017	4	South Africa, Botswana, and Zimbabwe	Fraud	No response received yet
2018	2	South Africa	Fraud	No response received yet
2019	4	Angola, Mauritius, USA	Money laundering	Received 1 response which was helpful to the Namibian Authorities
2020	12	Zambia, South Africa, Netherlands, Iceland, Mauritius, Cyprus, Norway, UK, Spain, Botswana	Money laundering, THB & Migrant Smuggling, Sexual exploitation, including sexual exploitation of children, Corruption and Bribery	4 requests required further information from the Namibian authorities hence pending response (the reason given by the authorities is that there were quality issues due to poor drafting of the request leading to request for further information by the receiving authorities), Response received on 1 request which was helpful to Namibian authorities, 7 requests are still pending response from other countries

Statistics of outgoing requests

443. Namibia has made two MLA requests relating to terrorism financing in the year 2019. Although this is in line with the TF profile of the country, the assessors are of the view that the limited requests relating to TF are due to lack of comprehensive understanding of TF which hampers the identification and investigation of TF cases (see IO.9). Consequently, the authorities are unable to seek timely MLAs to pursue TF cases at the domestic level. The Authorities indicated that they received positive response on the two outgoing requests.

Extradition

444. The procedure for sending extradition request to other jurisdictions is like the process for requesting MLAs. Namibia has sent 3 Extradition requests during the review period mainly to South Africa, and Zimbabwe. None of the requests related to ML which is inconsistent with the country's risk profile.

445. The country sent 2 requests in 2019 relating to TF to the USA. The table below shows the number of Extradition requests made by Namibia to other jurisdictions. Namibia has not made any extradition request on the Fishrot case during the onsite visit.

Table 54: Number of extradition requests to other jurisdictions

2016	1	Fraud	Pending
2017	1	Robbery and theft	Executed
2018	1	Murder, greivous bodily harm	Pending
2019	2	TF	Pending
2020	0	0	0

8.2.3 Seeking other forms of international cooperation for AML/CFT purposes

446. Competent authorities in Namibia have, to some extent, sought other forms of cooperation to exchange information with foreign counterparts on AML/CFT matters. Competent authorities are able to cooperate informally with their counterparts through signing of Memorandum of Understanding and bilateral and multilateral arrangements. Competent authorities also do exchange information through the membership to various international cooperation mechanisms such as INTERPOL NCB (National Central Bureau), Action Against Prohibited Conduct (AAPC), African Prosecutors Association (APA), Asset Recovery Inter-Agency Network for Southern Africa (ARINSA) and EGMONT Group of FIUs. Despite the lack of proper statistics, some competent authorities were able to demonstrate informal exchange information they have undertaken. Below is a case demonstrating how the Namibian Competent Authorities engage in informal exchange of information.

CASE BOX 18 - INVOLVING OTHER FORMS OF INTERNATIONAL COOPERATION

This matter involves a foreign national that received USD400, 000.00 from another jurisdiction which money was wired into a local Namibian bank account. The money was restricted by the FIC after receiving intelligence that it was possibly proceeds of unlawful activities. FIC disseminated the intelligence to NAMPOL who sought MLA through the OPG to aid in its investigation.

Consequently, the PG brought a preservation application under chapter 6 of POCA, based on the information received from the foreigner's country using ARINSA and APA channels. The jurisdiction confirmed that the payment was done to the prejudice of that country. Based on this confirmation, the OPG secured a provisional preservation order. The matter is currently at the

8.2.4 Providing other forms international cooperation for AML/CFT purposes

447. Namibia provides other forms of international cooperation on AML/CFT matters with foreign counterparts to some extent with competent authorities using bilateral arrangements to secure information on high-risk cases such as on corruption and fraud and money laundering.

FIU

448. Financial Intelligence Unit in Namibia performs a dual function of providing financial intelligence and being a AML/CFT supervisor of banks, MVTS and DNFBPs. The FIC is a member of the EGMONT Group of FIUs and therefore is able to exchange financial intelligence and other information spontaneously and upon request through the EGMONT's Secure Web. Additionally, the FIC is able to share information with other FIUs that are not part of the EGMONT membership through MOU's and bilateral/multilateral agreements. The assessors are of the view that these cooperation mechanisms with other jurisdictions is in line with Namibia's ML/TF risk profile. The Following are the list of countries with which the FIC has MoUs. The AT is of the considered opinion that the countries with which MoUs were concluded are in line with the transnational ML/TF risks.

Table 55: MoU concluded by FIC

No.	COUNTRY AND AGENCY	DATE SIGNED
1	MoU between FIC Namibia and FIU Angola	2014
2	MoU between FIC Namibia and FIU Bangladesh	2017
3	FIC Namibia and FIU Mozambique	2015
4	FIC Namibia and FIU Lesotho	2015
6	FIC Namibia and FIU of China/People's Bank of China	2018
7	FIC Namibia and Iceland	20-Aug-19
8	FIC Namibia and FIU Democratic Republic of Congo (CENAREF)	05-Mar-19
9	FIC Namibia and FIU of the UAE	29-Jan-20
10	MoU between FIC Namibia and the National Financial Information Processing Unit	01-Feb-17
13	MoU between FIC Namibia and the FIU Nigeria	11-Jun-15
14	Mou between FIC Namibia and the FIC Zambia	12-Feb-15
15	MoU between FIC Namibia and the Financial Intelligence Authority of Uganda	27-Mar-15
16	MoU between FIC Namibia and the Financial Reporting Centre of Kenya	27-Mar-15
17	MoU between FIC Namibia/Bank of Namibia and the FIU of Tanzania	17-Jan-13
18	MoU between the FIC Namibia /Central Bank of the Kingdom of Swaziland	28-Nov-11
19	MoU between the FIC Namibia/FIC South Africa	24-Jul-09
20	MoU between the FIC Namibia/ FIU Malawi	31-Aug-09
21	MoU between FIC Namibia and the Joint Financial intelligence Unit of Hong Kong	Not in force
22	MoU between FIC Namibia and Madagascar	Not in force

449. The nature of the cooperation that FIC engages in relates mainly to the provision of Financial Intelligence on identification, tracing and freezing of assets. A case in point is where the FIU provided such assistance in the matter of Fishrot which is the biggest corruption scandal to have affected Namibian economy. In this matter, the FIU was instrumental in following the money lost to other jurisdictions through FIU-FIU cooperation. LEAs interviewed indicated that the support they had from the information obtained by the FIC from other jurisdictions was very helpful. During the review period, the FIC has been able to seek and assist foreign counterparts under in the manner indicted in the table below.

Table 56- International Assistance provided by the FIU for the period under review

International assistance provided by the FIU during the review period					
Requests to FIU from other FIUs	2016	2017	2018	2019	2020
Number of requests received	9	13	11	11	3
Number of requests granted	9	13	11	11	3
Number of requests refused	0	0	0	0	0
Spontaneous referrals					
Average response time	4 weeks				
Requests by FIU to the other FIUs	2016	2017	2018	2019	2020
Number of requests sent	18	27	13	41	21
Number of requests granted	18	27	13	49	19 (2 pending response in 2020)
Number of requests refused	0	0	0	0	0
Spontaneous referrals received	0	0	0	0	0
Average response time	4 weeks				

450. The case box 19 below indicate the nature of international cooperation involving the famous case of fishrot corruption provided information via INTERPOL to other jurisdictions to aid in the investigations and combating of predicate offences to ML. LEAs submitted that they are currently investigating one potential TF case involving financial transactions to high-risk countries. In this case, LEAs have been able to liaise with their counterparts to trace financial linkages related to the TF suspect in other jurisdictions (See IO.9). The table below shows the statistics relating to international cooperation that NAMPOL engages in.

Case Box 19 - The case in which a former Minister of Fisheries and Marine Resources is being investigated for contravention of section 43(1) of the Anti-Corruption Act (Act No.8 of 2003) for his alleged involvement in corruption through a State-owned company. The offence is alleged to have been committed in both Namibia and Angola in 2014 where the offenders hatched a scheme to obtain undue gratification for certain individuals in Namibia and Angola. In this case, a total of N\$500.00 per metric ton of fish was paid in Namibia whilst an amount of N\$2,500.00 was paid in favour of other parties through accounts held outside Namibia. Investigations led to the arrest of 9 accused persons. The authorities were able to request for international assistance through Mutual Legal Assistance (MLA) to 10 jurisdictions including Angola, South Africa, Botswana, Mauritius, United Kingdom, Cyprus, Norway, Spain, United Arab Emirates and Republic of Marshall Islands. The nature of requests mainly related to providing the Anti-Corruption Commission with witnesses' affidavits and required evidence. The requests also led to arraigning of three (3) foreign nationals before the Namibian courts. Additionally, the request for assistance also led to tracing and preservation of assets totaling about N\$ 121, 999, 802.06.

NAMPOL

451. NAMPOL shares information through INTERPOL and SARPCCO. Additionally, NAMPOL carries out joint investigations with their foreign counterparts especially from South Africa in instances of cross-border crimes. During the period under review, NAMPOL requested information as per the table below from INTERPOL.

Table 57- Request sent via Interpol from Namibia

Year	Number of requests sent via Interpol	Status
2016	0	Unknown
2017	1	Responded to
2018	0	Unknown
2019	0	Unknown
2020	2	Both responded to

ACC

452. The ACC has used other forms of cooperation along with MLA to pursue corruption and ML related to corruption cases in the Fishrot case. The ACC has indicated that they have direct contact with some of its counterparts especially within the neighboring jurisdictions where it uses the close ties to engage in informal cooperation which have been useful to the authorities. To this extent, the assessors are convinced by the level of effectiveness of the international cooperation that the ACC engages in.

NAMFISA

453. To a large extent, NAMFISA shares information with their foreign counterparts through bilateral and multilateral arrangements. NAMFISA has for purposes of information exchange have MoUs with the following foreign entities:

Table 58- Requests Made to NAMFISA

Predicate offence type	2016	2017	2018	2019	2020	2021	Status	Average time taken to process the request
Fraud					1		Completed	27 working days
Corruption					1		Completed	10 days
Licensing (FAP) confirmations			1				Completed	7 working days
Licensing (FAP) confirmations				1			Completed	6 working days
Licensing (FAP) confirmations						1	Completed	10 working days
Technical Assistance					1		Completed	21 working days

454. To demonstrate the nature of cooperation that NAMFISA provides, the assessors were informed of a case in 2018 where NAMFISA was able to request for information from its counterpart in South Africa relating to beneficial ownership of an Accountable Institution. This information was responded to within seven (7) working days. The assessors are satisfied that NAMFISA requests and receives assistance from other jurisdictions.

455. Competent authorities provide other forms of international cooperation whenever requested by their counterparts to a large extent. NAMPOL demonstrated that it regularly provides information to other jurisdictions mainly through INETRPOL. In all the requests, NAMPOL has been able to effectively respond to their counterparts as indicated in the table below.

Table 59- Request sent via INTERPOL to Namibia

Year	Number of requests received via Interpol	Status
2016	7	all 7 responded to
2017	12	all 12 responded to
2018	14	all 14 responded to
2019	5	all 5 responded to
2020	11	all 11 responded to

456. NAMRA provides information to its counterparts. NAMRA has demonstrated to the Assessors five instances where it provided information to other countries particularly in relation to custom matters involving shipping of goods through Namibia to other jurisdictions.

457. Namibia shares confiscated assets with its counterparts across the region as demonstrated by a case study shared with the assessors. This is done through agreements and arrangements between Namibia and the concerned country pursuant to 21(3) of the ICCMA Act, 2000. However, it remains to

be established if Namibia can share assets with non-counterparts where there are no established mechanisms for doing so which may impede the extent to which Namibia engages in international cooperation in respect of sharing of assets.

8.2.5 International exchange of basic and beneficial ownership information of legal persons and arrangements

458. Namibia has basic information available but has challenges on beneficial ownership largely due to companies and trust registries not obtaining and keeping accurate and up-to-date BO information. BIPA and the Master of High Court keep basic information relating to legal persons and trusts respectively. Neither BIPA nor the Masters of High Court are required to keep beneficial ownership information during registration of legal persons and legal arrangements. Access to basic information is done upon request by competent authorities especially during any ongoing inquiry. The authorities provided that it takes about three days to obtain and share basic information of legal persons and arrangements from BIPA and the Master of the High Court whenever requested for the purposes of information exchange. The assessors affirm this position. However, Namibia is not able to share beneficial ownership information with foreign jurisdictions given that the competent authorities do not obtain and keep records of beneficial ownership. Therefore, the assessors were not able to establish whether indeed Namibia collects beneficial ownership information and if at all, how many requests relating to BO information have been provided by the authorities and the status of such requests.

Overall conclusions on IO.2

459. Namibia uses international cooperation and exchange of information at formal and informal levels to pursue high-risk predicate offences and ML to some extent consistent with the country's risk profile. Namibia has recently increased its requests for assistance in support of investigations and prosecution of Fishrot cases. However, timelines to response to MLA and Extradition requests remains a concern. Namibia has not made nor received MLA or extradition request in respect of TF, which appears in line with the TF risk profile of Namibia. While Namibia requires improvements on its case management system, the country has performance tracking system which enables Namibia to determine the flow of requests throughout its value-chain. Challenges relating to resources constrains in many of competent authorities and record keeping at times has, to some extent, affected the quality and ability of the country to provide international assistance in a constructive and timely manner. The quality of international cooperation is also affected by the lack of skills within the Central Authority which affects the quality of requests sought by Namibia.

460. **Namibia is rated as having a Moderate level of effectiveness for IO.2.**

Annex A. Technical Compliance

1. This section provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2007. This report is available from https://www.esaamlg.org/reports/Namibia_detailed_report.pdf.

Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new Recommendation which came into force after completion of the First Round of Mutual Evaluations and therefore there was no requirement to assess Namibia on this in 2007

Criterion 1.1 – (Met) - Namibia conducted its first National Risk Assessment (NRA) in 2012 using a comprehensive ML/TF risk assessment methodology. The NRA was updated in 2014/15 and in 2020. Additionally, the supervisory bodies (FIC and NAMFISA) carried out their own sectoral risk assessments in 2018 and were updated in 2020.

Criterion 1.2 - (Met) The FIC is designated by the AML/CFT Council which responsible for coordination of national ML/TF risk assessment.

Criterion 1.3– (Met) The latest NRA update was in 2020, following 2015/16 updates.

Criterion 1.4 – (Met) The NRA results were shared with competent authorities and private sector through publication on the FIC website and workshops.

Risk mitigation

Criterion 1.5 – (Partly Met)- The NRAs contained action plans for addressing ML/TF risks identified. Namibia developed a National Strategy, 2018-2025 which had risk-based resource allocation as one of its seven objectives, but there is little evidence supporting resources prioritisation to competent authorities responsible for addressing high ML/TF risks.

Criterion 1.6 (a) & (b) – (N/A)- Namibia applies full range of AML/CFT obligations on FIs and DNFBPs covered by the FATF Standards.

Criterion 1.7 – (Met) Namibia has identified higher risks situations in its AML/CFT regime through NRAs and SRAs. Section 24 of the FIA and Regulations 15 of the FIA Regulations requires FIs and DNFBPs to have risk management systems to address high risk situations through enhanced and on-going measures.

Criterion 1.8 – (Met) Namibia AML/CFT regime provides for the FIC to consider the type and extent of measures FIs and DNFBPs may apply in respect of each requirement having regard to the risk of ML or TF or PF in terms of Section 39 of the FIA. Namibia applied simplified measures in respect of some products such as Basic Account which encouraged unbanked to access banking services.

Criterion 1.9 – (Met) Supervisors and SRBs are required to ensure that FIs and DNFBPs are implementing their obligations under R.1 (see sections 1, 23, 24 and 39 of the FI Act as read with Regulation 1, 15, 16 and 24 of the FIA Regulations).

Risk assessment

Criterion 1.10 – (Met) FIs and DNFBPs are required to take appropriate steps to conduct risk assessments by:

Criterion 1.10(a) – (Met) Regulation 24 of the FIA Regulations as read with Section 39 of the FIA requires FIs and DNFBPs to document their ML/TF risk assessments, have senior management approval and document the methodology used for the risk assessments.

Criterion 1.10(b) – (Met) Section 39(1) of FIA requires FIs and DNFBPs when conducting ML/TF risk assessments, to consider the risk factors, notably: the nature of clients, products and services, distribution/delivery channels, and geographical area from where clients and business dealings originate.

Criterion 1.10(c) – (Met) Section 39(1) of the FIA and Regulation 24(2) requires FIs and DNFBPs to conduct regular risk assessments to keep them up to date.

Criterion 1.10(d) – (Met) Regulation 24(4) of the FIA Regulations provides for the risk assessment information to be made available within five working days when requested by competent authorities and SRBs

Risk mitigation

Criterion 1.11 - (Met)

Criterion 1.11 (a)– (Met) Section 39(3) and 39(4) of the FIA, further read with Regulation 24(3) and Regulation 26 of the FIA Regulations, FIs and DNFBPs are required to develop, adopt and implement a customer acceptance policy, internal rules, programs, policies, procedures and controls, to effectively manage and mitigate the risks of ML/TF.

Criterion 1.11 (b)– (Met) Section 24(5) requires FIs and DNFBPs to regularly review and monitor implementation of the controls.

Criterion 1.11 (c)– (Met) Section 24 of the FIA as read with Regulation 15 of the FIA Regulations requires FIs and DNFBPs to take enhanced measures to manage and mitigate the high-risk areas.

Criterion 1.12 – (Not Met) Namibia AML/CFT legislative framework does not have specific measures for application of simplified CDD in low-risk situations. The power of the Minister to grant Exemptions to FIs and DNFBPs from AML/CFT obligations was revoked during the onsite visit.

Weighting and Conclusion

There are some minor deficiencies with regards to full circumstances for simplified due diligence and risk-based resources decisions in Namibia.

Namibia is rated Largely Compliant with R. 1.

Recommendation 2 - National Cooperation and Coordination

In its MER under the First Round of MEs, Namibia was rated Largely Compliant with this Recommendation (formerly R 31). The only shortcoming that was there was a lack of operational mechanism by which the various AML/CFT stakeholders including the private sector to cooperate. The FATF has revised the new Recommendation to require countries implement domestic cooperation in relation to the combatting of proliferation financing and which clarify the need for compatibility of AML/CFT requirements and data protection and privacy rules and build on the conclusions of FATF's report on inter-agency CT/CFT information sharing.

Criterion 2.1 – (Mostly Met) Namibia has developed and implemented the 2018 AML/CFT Strategic Plan addressing ML/TF risks in the 2018 NRA updates. As at the time of the onsite, the Plan was awaiting government approval. The Strategy awaiting approval does not differ markedly from the 2018 Strategy and the Authorities have started implementing the Strategy.

Criterion 2.2 – (Met) The Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation Council (the Council) is the policy coordinating body in terms of Sections 17 and 19 of the FIA.

Criterion 2.3 – (Met) There are different cooperation platforms/mechanisms for policy makers and operations involving LEAs, supervisors and other key competent authorities.

Criterion 2.4 – (Met) The Council and Technical Committee are responsible for cooperation on proliferation financing matters at policy and operational level.

Criterion 2.5 – (Partly Met) There is limited evidence of cooperation and coordination between relevant authorities beyond legal provisions overriding confidentiality to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions. Namibia has no specific law on data privacy and protection law. There various sector-specific legislation dealing with protection of client information. The right to privacy legislation in the various sector-specific legislation provides for mechanisms under which information can be accessed by competent authorities as required by law and in the interest of protecting: national security and public safety as well as against disorder and crime. Namibia cited Section 75 (d)(i) of the Communications Act, 2009, which provides for disclosure of information under any law such as the FI Act and POCA.

Weighting and Conclusion

Namibia established a National Council and Technical Committee are responsible for policy and operations on AML/CFT/CFP respectively. While the revised Strategy consistent with the 2020 NRA awaits approval, the Assessors noted that it builds on the gains of the 2018 Strategy and the Authorities had started implementing it. There are deficiencies relating to data protection and privacy which present minor deficiencies.

Namibia is rated Largely Compliant with R. 2.

Recommendation 3 - Money laundering offence

In the MER under the First Round of MEs, Namibia was rated Partially Compliant with this recommendation (formerly R.1 and R.2). The main technical deficiencies were that although the POCA criminalises money laundering that legislation was not yet in force.

Criterion 3.1 – (Mostly Met)- ML is to a large extent criminalized in line with the relevant provisions of the Vienna and Palermo Conventions (See Sections 4-6 of the POCA). However, the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property is not covered under the law. A minor shortfall exists for stand-alone laundering. Ancillary offenses are available: see c.3.11.

Criterion 3.2– (Mostly Met)- Namibia adopts an all-crimes approach for the purpose of predicate offence to ML. Sec 1 POCA “unlawful activity” means any conduct which constitutes an offence, or which contravenes any law whether that conduct occurred before or after the commencement of this Act and whether that conduct occurred in Namibia or elsewhere as long as that conduct constitutes an offence in Namibia or contravenes any law of Namibia. However, the predicate crimes such as illicit trafficking in stolen goods and piracy are not criminalised.

Criterion 3.3 (N/A)- Namibia applies an all-crimes approach for predicate offenses.

Criterion 3.4 - (Met) The offence of ML extends to any property in Namibia which includes money, movable or immovable, corporeal or incorporeal things including rights, privileges, claims and securities, any interest in the property and all proceeds from the property. The definition of proceeds of unlawful activities, is again wide enough to include all types of property received or retained directly or indirectly in Namibia or elsewhere in connection with or as a result of any unlawful activity and even extends to property that is mingled with property that is proceeds of unlawful activity (s. 1 of POCA)

Criterion 3.5 - (Not Met) - The Law requires all the time that when proving that property is the proceeds of crime, it should be necessary that a person be convicted of a predicate offence (Ss.4-6 POCA).

Criterion 3.6 – (Met) Predicate offences for money laundering extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence in Namibia, had it occurred in Namibia (ss. 4 & 8 of POCA.)

Criterion 3.7 - (Met) The offence of ML applies to any person who commits the predicate offence and self-laundering is specifically provided for under the law (s. 4 of POCA).

Criterion 3.8 - (Met)- The concept of inference being drawn from circumstances is acceptable in Namibia. The ML offenses in the POCA, ss. 4 to 6, apply to any person who “knows” or “ought reasonably to have known” that the property is or forms part of the proceeds of unlawful activity: s.1(2) & (3) POCA for the mental element of the offense.

Criterion 3.9 - (Met) Proportionate and dissuasive criminal sanctions apply to the ML offenses in the POCA, ss. 4 to 6. Offenses are punishable with a fine not exceeding NAD100 million (\$6.4 million) or imprisonment for a period not exceeding 30 years (POCA, s.11).

Criterion 3.10 – (Met) Section 332 of CPA establishes the prosecution of corporations and members of associations whether an offence is committed under statute or common law. The sanction for the ML offence committed by a corporate body is liable to a fine not exceeding NAD100 million, or to imprisonment for a period not exceeding 30 years.

Criterion 3.11 – (Met) Namibian law recognizes the concept of ancillary offences including conspiracy, incitement, and attempts applicable to the ML offences under POCA, Section 18 of the Riotous Assemblies Act 17 of 1956 and s 256 of the CPA. NAM law also recognizes the concept of ancillary offences including conspiracy, incitement, and attempts applicable to the ML offences under POCA, ss. 4 to 6 In addition, Section 18 of the Riotous Assemblies Act 17 of 1956.

Weighting and Conclusion

Namibia criminalised ML and meets all criteria except, for the shortfall exists for the criminalisation of stand-alone laundering as referred to the legal challenge on section 6 of POCA and the predicate crimes such as illicit trafficking of stolen goods and piracy are not criminalised.

Namibia is rated Largely Compliant with R. 3.

Recommendation 4 - Confiscation and provisional measures

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R.3). The main technical deficiencies were that:

The CPA 1977 does not provide a comprehensive legal regime for confiscation; there were no clear provisions dealing with the tracing and identification of proceeds of crime; the POCA although was enacted, however, it was not yet in force.

Criterion 4.1 – (Mostly Met)

Criterion 4.1(a)– (Met) The POCA provides for criminal (conviction based) confiscation and civil (non-conviction based) forfeiture under ss. 32(1) and 59(1) of (Chapters 5 and 6) POCA, respectively. Chapter 5 of POCA provides for post-conviction confiscation of proceeds of offences and related criminal activity, including predicate offences, ML and TF, whilst under Chapter 6, non-conviction-based forfeiture is provided. Both confiscation and forfeiture orders (under Chapter 5 & 6 of POCA) are civil in nature and are therefore proved on the Civil threshold of a “balance of probabilities” and not “proof beyond reasonable doubt”.

Criterion 4.1(b) (Mostly Met) The POCA adequately provides for confiscation or forfeiture of all proceeds retained or received because of commission of an offence or resulting from a criminal activity based on conviction (s. 32 as read with (a.r.w) s. 17(3) of POCA) or non-conviction (ss. 59, 61 of POCA). However, the definition of instrumentality provided in s. 1 of POCA is deficient as it does not cover instrumentalities *intended to be used* in committing a ML or predicate offence. It only covers instrumentalities used or suspected to have been used in the commission of a ML or predicate offence. Any “proceeds of unlawful activities” may be confiscated following a conviction for ML or a predicate offence.

Criterion 4.1(c) (Mostly Met) Property that is proceeds of, or used in the financing of terrorism, terrorists acts or terrorist organisations can be confiscated in terms of s. 32 a.r.w s. 17 (3) of POCA which is of general application and is conviction based, or ss. 59(1), 61(1) of POCA which provide for non-conviction based forfeiture. However, these sections do not cover property intended to be used in the commission of those offences.

Criterion 4.1(c) (Mostly Met) Property that is proceeds of, or used in the financing of terrorism, terrorists acts or terrorist organisations can be confiscated in terms of s. 32 as read with s. 17 (3) of POCA which is of general application and is conviction based, or ss. 59(1), 61(1) of POCA which

provide for non-conviction based forfeiture. However, these sections do not cover property intended to be used in the commission of those offences.

Criterion 4.1(d) – (Met) establishes that a person convicted it may make Namibia laws provide for forfeiture of property of corresponding value. If a court derived any benefit from the commission of any offence for which he has been a confiscation order for payment to the State by the person of any amount considered appropriate by the court. The amount may be realised from the person’s property subject to a restraint order or any other realizable property of the person (s.32(2), (6) of POCA). S. 21(1) of POCA further provides for confiscation of such property even if held by a third party.

Criterion 4.2 (a) - (Met) - Namibia has laws which enable competent authorities, particularly the Inspector General of Police where he has believe that any person or enterprise may be in possession, custody or control of any documentary material relevant to an alleged offence to appoint an officer through written authority to commence an investigation and the officer can exercise any power under any law relating to the investigation of crime and the obtaining of information in the course of that investigation, which can be for the purposes of enabling the Prosecutor-General to institute and conduct proceedings in terms of POCA (s. 83 of POCA). The Prosecutor General, where he is satisfied of reasonable grounds of an offence being, or has been or is about to be committed, can apply for a court order for any document that will enable identification, location or quantification of any property, or identification/location of any document necessary for the transfer of any property belonging to, or in possession or under the control of that person to be surrendered to the police. Financial institutions are also equally under obligation to provide all information on transactions conducted by the person or for him, to the police in terms of an order obtained by the Prosecutor General (s. 84 of POCA). Sections 83 read with 84 of POCA as well as in terms of sections 20 read with sections 25 and 30 of the Criminal Procedure Act, 1977 as amended.

Criterion 4.2 (b) - (Met) – Competent authorities can use various measures under the law to carry out provisional measures. The Prosecutor General may apply for a restrain order prohibiting any person on conditions set out in the order from dealing with any property (s. 25(1) of POCA). A police officer may seize any property if under the belief that the property may be disposed of before a restraint order is issued (s. 28 (1) of POCA). A Public Prosecutor on the authority of the Prosecutor General, upon conviction of a person, may proceed to apply for an anti-disposal order from the Courts to safeguard any property that might be confiscated (s. 33 of POCA). All above processes relate to a conviction-based confiscation. As for civil forfeiture, the Prosecutor General may proceed to apply for a preservation of property order prohibiting any person as per the conditions set out in the order from dealing with the property, including instrumentalities of the crime (s. 51 of POCA). S. 54 of POCA provides for seizure property that is subject to a preservation order to avoid disposal of the property.

Criterion 4.2 (c) – (Met) – In terms of section 89 of POCA, offence provisions exist relating to the misuse of information, failure to comply with court orders and hindering persons in the performance of their function to ensure property subject to confiscation will not be dissipated.

Criterion 4.2 (d) - (Met) - A police officer may request any person employed or associated with an agency, office, ministry or statutory body, notwithstanding any restrictions imposed by law, to provide within a specified period of time all information that may be required for any investigation in terms of POCA (s. 87(1) of POCA). Also refer to R. 31 for some of the additional investigative measures.

Criterion 4.3. - (Met) - Confiscation orders under Chapter 5 POCA are made against the defendant’s property. The interests of third parties such as creditors are protected in this process. For confiscation orders under Chapter 6 POCA, the court may exclude the interests of a third party who can show that he or she did not receive property as a gift and did not have reasonable grounds to suspect that was the proceeds of unlawful activity.

Criterion 4.4. - (Met) - The legal framework in Namibia provides for the appointment of a *Curator Bonis* to safeguard, maintain and manage assets that are subject of a restraint or preservation order (ss. 29(1), 55(1) of POCA). This process includes liquidation of the assets once a confiscation or forfeiture order is made. The funds realized are either paid into the Criminal Assets Recovery Account or to the victim depending upon the court order. Monies paid to the Criminal Assets Recovery Account may be utilized for allocation to LEAs, to organizations which render assistance to victims or crime, and for administration of the account. Section 81 of POCA provides for the functions and powers of the Criminal Assets Recovery Committee. Section 81(c) authorizes the Committee to make recommendations to Cabinet regarding the allocation of property and moneys from the Fund to any institution, organization or fund envisaged in section 80(c). The institution, organization or fund contemplated in section 80(c) is an institution, organization or fund created with the aim to provide assistance in any manner to witnesses, including protected witnesses and victims of crime.

Weighting and Conclusion

Namibia meets all the criteria except there is a minor gap for confiscation of instrumentalities intended for use in ML, predicate, and TF offenses.

Namibia is rated Largely Compliant with R. 4.

Recommendation 5 - Terrorist financing offence

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly SR II). The main technical deficiencies were that terrorist financing has not been criminalised in the Namibian law and the Terrorism Bill was still at the draft stage and the authorities did not provide a time frame as to when it will be tabled in Parliament; that legal liability for legal persons should be provided for under the Terrorism Bill.

Criterion 5.1- (Met) - Namibia has criminalised terrorism financing (TF) consistent with Article 2 of the International Convention for the Suppression of the Financing of Terrorism (Section 1 PACOTPAA).

Criterion 5.2- (Not met)

Criterion 5.2(a)- (Not met) Section 2(1) of the PACTOPAA criminalises the offence of TF to a person who directly or indirectly provides or collects funds to carry out a terrorist act. However, the provision does not criminalise the wilful provision of funds or other assets in the knowledge or the unlawful intention that they are to be used in full or in part to carry out a terrorist act required by criterion 5.2.

Criterion 5.2(b) - (Not met) The Law does not criminalise the provision of funds to and collection of funds for individual terrorists and terrorist organizations.

Criterion 5.2bis (Not met) - PACOTPAA under Section 2(2) does not include financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. Further, the definition of “Specified Offences” as provided for under Section 4 PACOTPAA is not sufficient to cover the provision of funds for travel by individuals to a State other than their States of residence or nationality for the purposes of terrorism.

Criterion 5.3 (Met) - Section 1 of the PACTOPAA provides that TF offences extend to any funds or other assets whether from a legitimate or illegitimate source. The language used in the definition of “funds” under Section 1 of PACOPTAA covers any funds “however acquired” at (c) and (d) as well as assets of every kind at (b) which indicates that the funds and other assets funds may be from any source, whether legal or not.

Criterion 5.4 (Partly Met)

Criterion 5.4 (a)-(Met) The definition of a terrorist activity under Section 1 PACOTPAA include *any attempt* to commit terrorist act. While Section 2(2) PACOTPAA criminalises TF offence. Read with Section 1(c) PACOTPAA, it is clear that the use of funds or other for attempted terrorist acts is also criminalised in Namibia.

Criterion 5.4 (b)- (Not met) Section 2(2) PACOTPAA criminalises acts as a TF offence where there is provision of funds intended to be used to carry out terrorist act(s) regardless whether such funds or part thereof were actually used to commit a terrorist activity. However, in circumstances whether the funds are not intended to be used to carry out a terrorist activity, then such provision of funds is not criminalised. The provision thus suffers the deficiency where without linkage to a terrorist offence, there is no legal avenue to penalise provision of funds to terrorist individuals and groups.

Criterion 5.5 (Mostly Met) - Namibia’s law allows for inference of TF offence from knowledge and objective factual circumstances of the case. This is provided by the wordings of Section 2 PACOTPAA which uses the words *...intending, knowing or having reasonable grounds to believe* that funds is to be used. However, it should be noted that there is no legal requirement that such intention be unlawful thereby creating a technical deficiency in the domestic law.

Criterion 5.6 (Met) - Namibia applies proportionate and dissuasive criminal sanctions to natural persons convicted of TF. The punishment for TF offences can be up to a maximum of life imprisonment. Under Item 28 on Schedule 1 to the POCA, TF is designated as an offence that is punishable by imprisonment for a period of 12 months or more. This prescribes the minimum limit for imprisonment of natural persons involved in TF offences. In terms of proportionality, the punishment for TF offence under Section 2(2) PACOTPAA is a fine not exceeding NAD100 million. When compared to other offences under the Prevention of Organised Crimes Act (POCA) such as the offence of money laundering which attracts a similar penalty of a fine not exceeding NAD100 million, the penalties for TF is considered proportionate and dissuasive.

Criterion 5.7 (Met) - In Namibia, criminal and civil liability and sanctions apply to both legal persons and natural persons. Section 332(2) & (5) CPA allows for apportionment of criminal liability on legal persons without prejudice to the criminal liability of natural persons. Under Section 2(2) PACOTPAA, a person who commits a TF offence is liable to a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment. Similar language is given for other offences provided in PACOTPAA. The offences are proportionate and dissuasive. Administrative sanctions applies to all persons (natural and legal) for non-compliance with the provisions of FIA. Section 56(1) FIA enables FIC or a supervisory body to impose administrative sanctions on institutions obliged under FIA which includes caution, reprimand, suspension or business or license or a financial penalty. Additionally, Section 332(5) FIA provides for the liability of natural person acting on behalf of the legal person, either jointly with the corporate body or personally. Section 56(11) FIA however limits the application of administrative sanctions against such institutions if the respondent has been charged with a criminal offence in respect of the same set of facts.

Criterion 5.8 (Mostly met) - Section 59 PACOTPAA criminalises aiding, abetting and participation in other ancillary offences to TF. Under this provision, *a person who attempts to commit, threatens to commit, prepares to commit, conspires, whether in or outside Namibia, to commit, aids, abets, facilitates, supports or counsels the commission of; or incites the commission of any offence under the Act commits an offence and is liable to the same sentence prescribed for such offence by or under the Act.* From this reading of the law, there is a deficiency in the legal provision which would criminalise contribution by a group of persons acting with a common purpose to commit TF offences.

Criterion 5.9 (Met) - Namibia has adopted an all-crimes approach to criminalisation of TF in terms of s 1 of the POCA under the definitions of “Proceeds of unlawful activities” and “Unlawful activity” and therefore TF offences are designated as ML offences in Namibia. The Financial Intelligence Act money laundering means a transaction that involves proceeds of any unlawful activity. Under POCA, “unlawful activity” has been defined as any conduct which constitutes an offence or which contravenes any law in Namibia. Proceeds of unlawful activities are considered as money laundering offences under Section 1 of POCA.

Criterion 5.10 (Met) - TF offences apply to all person regardless of whether the person alleged to have committed the offence(s) is in Namibia or a different country. This is clear from the direct provision of Section 2 of PACOTPAA using the wording “*a person who, in or outside Namibia*” which usage is broad to cover TF offences outside Namibia.

Weighting and Conclusion

Namibia does not criminalise wilful provision of funds or other assets in the knowledge or the unlawful intention that they are to be used in full or in part to carry out a terrorist act required by criterion 5.2. TF offences in Namibia does not include the financing of terrorist individuals, terrorist organisations and financing the travel of individuals who travel to a State other than their States of residence or nationality for terrorist purposes. The law does not provide for criminalisation in instances where funds or other assets are used in attempted terrorist act(s). There is no legal provision relating to the contribution to commit TF offences by a group of persons acting with a common purpose.

Namibia is rated Partially Compliant with R.5.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly SR III). The main technical deficiency was that there was no legal and administrative framework to implement the requirements on 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 were no mechanism to communicate effectively with the financial sector.

Criterion 6.1 (a) (Met) - The National Security Commission, who has the statutory responsibility in terms of the PACOTPAA to propose persons or entities to the 1267/1989 Committee for designation; and for proposing persons or entities to the 1988 Committee for designation. Section 46 (8) to (11) of the PACOTPAA specifically complies with this criterion at (2)(8). The wording used under this section is that *the Security Commission may also, if it thinks appropriate, propose proscribed persons or organisations to the Security Council 1267 (1999) Committee, the 1989 (2011) Committee, the 1988*

(2011) Committee, the 1718 (2006) Committee or the 1737 (2006) Committee for designation, in the prescribed form and manner.

Criterion 6.1 (b) (Met) - Namibia has mechanisms for identifying targets for designation which is based on criteria set out in Section 44(1) read with Sections 1, 46 and Regulation 11 of the PACOTPAA.

Criterion 6.1 (c) (Partly Met) - Namibia does not apply an evidentiary standard of proof of “reasonable grounds” when deciding whether or not to make a proposal for designation. The wording of Section 46 (8) does not make provisions for the Security Commission to use act on reasonable grounds when proposing proscribed persons or organisations to the Security Council 1267 (1999) Committee. However, such consideration for designation is not conditional upon the existence of a criminal proceeding.

Criterion 6.1 (d) (Met) - The procedure for listing is provided for under section 44 and 46 of PACOTPAA. PACOTPAA Regulation 11(4) (a), (b), and (c) also provide for relevant forms to be used for proposal to proscribe a person or organisation to the Security Council 1267(1999) Committee, the 1989(2011) Committee, the 1988(2011) Committee, for designation.

Criterion 6.1 (e) (Mostly met) - Section 46(9) PACOTPAA gives enough provision for providing as much relevant information as possible on the proposed name for designation including a statement of case which contains as much detail as possible on the basis for the listing. However, the law is silent on the procedure regarding whether or not the government should make known their designating status to other UN member states.

Criterion 6.2 (a) (Met) - The Security Commission is responsible to for designating persons or entities that meet the specific criteria for designation, as set forth in UNSCR 1373. The responsibility for designation is done pursuant to the country’s own motion as outlined in Section 44 and Section 46(1) or pursuant to a request by another country as per Section 33 read with Section 44(1)(I)(i) of PACOTPAA.

Criterion 6.2 (b) (Met) - The mechanism(s) for identifying targets for designation are outlined under Section 44 PACOTPAA, which conforms to the designation criteria set out in UNSCR 1373. The test is based on the existence of reasonable grounds. If such exists, the Minister proscribe and person or organisation he must request the Security Commission to proscribe the person.

Criterion 6.2 (c) (Met) - When receiving a request from another country under the UNSCR 1373, the Security Commission is empowered by Section 33(3) and Regulation 7(2) & (3) of PACOTPAA to make a prompt determination of whether they are satisfied that the request is supported by *reasonable grounds* to suspect or believe that the proposed designee meets the criteria for designation.

Criterion 6.2 (d) (Met) - Proscription in Namibia are applied only when the Minister is satisfied that *that reasonable grounds exists* to proscribe a person or organisation exists pursuant to Section 44 (1) PACOTPAA. This is not conditional upon the existence of criminal proceedings.

Criterion 6.2 (e) (Met) - When requesting to another State to take actions pursuant to the Security Council Resolutions 1373, PACOTPAA requires that such request must contain statement detailing the facts on which it is reasonably believed that the person or organisation to be so designated is engaged in any terrorist activity as per Section 46(7) read with Regulation 11(2) and (3) of PACOTPAA.

Criterion 6.3 (a) (Met) – The legal authority to collect or solicit information to identify persons and entities that, based on reasonable grounds, meet the criteria for designation is provided for under Section 44(14) under subsections (1) and (2) which allows the Minister and the Commission to have immediate access to all relevant information required to enable the taking of a decision on proscription, regardless of how, where and by whom such information is held. Section 1 read with 31 and 61 of the FIA, and

section 39 of the PACOTPAA provides legal mechanisms in an effort to identify persons and entities who on reasonable grounds meet criteria for designation.

Criterion 6.3 (b) (Met) - The proscription process in terms of UNSCR 1373 is ex parte and the proscribed individual is only informed after the proscription of the fact that s/he has been proscribed and the reason for proscription. For designations pursuant to a request from another State, the proscription also operates ex-parte to the extent provided in Section 33(5) (5).

Criterion 6.4 (Not Met)- In terms of Regulation 1 of the PACOTPAA without delay has been defined as within 48 hours after designation by the UNSC or the relevant Sanctions Committee (e.g., the 1267 Committee or the 1988 Committee) However, the procedure established under Section 23 and 24 is unduly too long leading to delayed implementation of freezing obligations which is not in line with FATF requirements. Under these Sections of the law, Namibia implements TFS within more than six days. This goes beyond the requirements ‘within a matter of hours’ for the purposes of implementing UNSCRs 1267 and its successive resolutions. For the purposes of UNSCR 1373, the Ministry of Justice have powers to designate based on a third-party request in terms of Section 33 of the Act to be read together Regulation 7 through MLA. However, the without delay element seems beyond the definition for the purposes of UNSC 1373 under the FATF Glossary since the law requires all the responsible parties to implement their obligations within seven days. Moreover, there is also no clear provision on freezing actions to be taken by persons other than the institutions obligated under the law for purposes of both the UNSCR 1267 and its successive resolutions and under UNSCR 1373.

Criterion 6.5 (Partly Met) - The Financial Intelligence Centre is the competent authority in Namibia responsible for implementing and enforcing targeted financial sanctions. Section 24(2) PACOTPAA gives the mandate of circulating of designations of persons or organisations by Security Council and any sanctions list to the Director of the Centre. The Security Commission has the legal authority to implement and enforce targeted Financial Sanctions in Namibia.

Criterion 6.5 (a) (Not met) - Namibia require that all natural and legal persons within the country freezes the funds or other assets of designated persons and entities. Section 25 prohibits any person from knowingly making funds available to or on behalf of designated persons, organisations or countries. This prohibition acts as automatic freeze against the provision of funds to designated persons. However, there is no provision requiring *all persons* to act *without delay and without prior notice* in implementing TFS. See also the analysis made under C6.4 for the definition of without delay which goes beyond the requirement of the FATF Standard.

Criterion 6.5 (b) (Met) - The obligation to freeze should extend to all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat. The freezing order issued pursuant to Section 23 and 45 PACOTPAA extends to all types of funds wholly or jointly owned, funds, assets or economic resources derived or generated from funds or other assets owned or controlled and funds, other assets or economic resources of persons or organisations acting on behalf of, or at the direction of, designated persons or organisations.

Criterion 6.5 (c) (Met) - Namibia prohibits its nationals, or any persons and entities within Namibia from making available for the benefit of designated persons and entities in accordance with the relevant UNSCRs. Section 45(8) punishes a person, organisation or institution that fails to comply with a freezing order by a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years. Similarly, Section 25 provides punishment for a person to whom a designation or list has been communicated in terms of section 24(2) or who knows or ought reasonably to know or suspect that he or she either directly or indirectly makes any funds on behalf of or for the benefit of a designated person,

organisation or country with a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years.

Criterion 6.5 (d) (Partly met) - Section 24(2) and Section 46(3) PACOTPAA provides mechanisms for communicating designations to the financial sector and the DNFBBs immediately upon making a freezing order.

However, Namibia does not provide clear guidance to financial institutions and other persons or entities, including DNFBBs, that may be holding targeted funds or other assets, *on their obligations in taking action* under freezing mechanisms. Instead, the Directives issued by FIA via Circulars for circulating the UNSCR sanction lists only provides for the obligations to report to the FIC STRs when there is a positive match against the listed persons.

Criterion 6.5 (e) (Met) - Regulations 2, 7(4) and 10(1) of PACOTPAA Regulations also require financial institutions and DNFBBs to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs. Any Attempted Transactions by or in connection with a designated individual or organisation would amount to suspicious transactions/or suspicious activities which are reportable under Section 33(1) of FIA.

Criterion 6.5 (f) (Met) - Section 23(3) & (4) and Section 45(3) & (4), read with Regulation 7(5) of PACOTPAA allows for persons who claims to have a bona fide right to funds or assets frozen to apply to the Minister for the exclusion of his or her interest from the freezing order.

Criterion 6.6 (Met) - Namibia has publicly known procedures to de-list and unfreeze the funds or other assets of persons and entities which do not, or no longer, meet the criteria for designation which are contained in Section 29(1), 30 and Section 46(10) and (11) of PACOTPAA.

Criterion 6.6 (Met) - The procedure to submit de-listing requests to the relevant UN sanctions Committee in the case of persons and entities designated are provided for under Regulation 4 and Section 46(10) and (11) of PACOTPAA.

Criterion 6.6 (a) (Met) - PACOTPAA Regulations outlines that the Security Commission must within a reasonable period inform the designated person and organisation of the availability of the United Nations Office of the Ombudsman and any other relevant Security Council Committees. Additionally, once a person or organisation has been designated by the 1988 (2011) Committee, the Security Commission must inform the designated person or organisation of his or her or its right to have the designation reviewed by the 1988 (2011) Committee in accordance with any applicable guidelines or procedures adopted by that Committee, including those of the focal point mechanism established under Security Council Resolution 1730 (2006).

Criterion 6.6 (b) (Met) - Section 44(6) & (13) provides for the Security Commission, if satisfied that reasonable grounds exist, to de-list and unfreeze the funds or other assets of persons and entities designated pursuant to UNSCR 1373 that no longer meet the criteria for designation.

Criterion 6.6 (c) (Met) - Under Section 44(10) PACOTPAA, an applicant dissatisfied by the decision of the Security Council to refuse his application for revocation of a designation, may within 60 days of receiving information of such refusal apply to a judge for review of that decision. Before applying to the judge, the aggrieved applicant is expected to make a written application in the prescribed manner to the Security Commission for the revocation of the order of proscription within 30 days of publication in the Gazette of a notice or publication regarding his/her proscription. Therefore, it is only after the consideration for revocation is denied by the Security Commission that the aggrieved may approach the court.

Criterion 6.6 (d) (Met) - The legal framework under Section 44(11) specifically provides that once a person or organisation has been designated by the 1988 (2011) Committee on the recommendation of the Security Commission, the Security Commission must inform the designated person or organisation of his or her or its right to have the designation reviewed by the 1988 (2011) Committee in accordance with any applicable guidelines or procedures adopted by that Committee, including those of the focal point mechanism established under Security Council Resolution 1730 (2006).

Criterion 6.6 (e) (Met) - With respect to designations on the *Al-Qaida Sanctions List*, the Security Commission must inform the designated persons and entities of the availability of the *United Nations Office of the Ombudsperson*, pursuant to UNSCRs 1904, 1989, and 2083 within a reasonable period for purposes of submission of delisting petitions as outlined under Section 44(10) PACOTPAA.

Criterion 6.6 (f) (Met) - Namibia has publicly known procedures for unfreezing of funds of persons who were wrongly designated by the UN Security Council. Section 29 PACOTPAA provides mechanisms for delisting of persons who is not the person or organisation on the designation list, or has been incorrectly designated by the UN Security Council. The scope of Section 29 is sufficient to apply to persons or entities with the same or similar name as designated persons/entities who are inadvertently affected by the freezing mechanisms. This is consistent with the requirement of this Criterion. For domestic proscriptions, the procedures under Namibian law does cover instances of persons or entities with the same or similar name as designated persons/entities who are inadvertently affected by the freezing mechanisms. According to Section 44(7) PACOTPAA, the use of the term “a proscribed person or organisation” is broad enough to cover a person wrongly proscribed i.e., false positive. This is consistent with the requirement of the Criterion.

Criterion 6.6 (g) (Mostly met) - The mechanisms for communicating de-listings and unfreezings to the financial sector and the DNFbps for persons listed under relevant Security Council regimes is provided for under Section 30 PACOTPAA. Section 44(13) provides for automatic lapse of any freezing action upon de-proscription. However, but once elapsed, the law provides no obligation to respect the delisting. The mechanisms for communicating to the financial sector and the DNFbps the unfreezing or delisting of proscribed individuals who are no longer subject of proscription is through the Director of the Centre or his or her authorized representative who must immediately circulate the names of delisted persons, organisations or countries using electronic mail, facsimile or any other expeditious means of communication to all accountable institutions listed in Schedule I of the Financial Intelligence Act;

Criterion 6.7 (Met) - Namibia authorises access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, in accordance with the procedures set out in relevant Security Council Resolutions. These measures are outlined Section 32, read with Section 33(11) PACOTPAA for the Security Council Resolution 1452 and Section 45(6) & (7) and Regulation 6 of PACOTPAA for Security Council Resolution 1373.

Weighing and Conclusion

Namibian law does not allow for its status as a designating state to be known in the case of proposing names to the 1267/1989 Committee. Overall Namibia has not put in place adequate mechanisms to implement TFS without delay. There is no clear guidance to financial institutions and other persons or entities, including DNFbps, that may be holding targeted funds or other assets, on their obligations in acting under freezing mechanisms or to respect de-listing. The law requires financial institutions and DNFbps to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs but there are no similar requirements in cases of attempted transactions. Namibia does not have mechanisms for providing guidance to financial

institutions and other persons or entities, including DNFBBs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Namibia is rated Partially Compliant with Recommendation 6.

Recommendation 7 – Targeted financial sanctions related to proliferation

These obligations were added during the revision of the FATF Recommendations in 2012 and were thus not considered in the framework of the evaluation of Namibia in 2007 under the 1st Round of MEs.

Criterion 7.1 (Not Met) Pursuant to an amendment introduced by Section 63 PACOTPAA, all preventative measures applicable to ML/TF also applies to proliferation activities. In terms of Regulation 1 of the PACOTPAA without delay has been defined as within 48 hours. Therefore, the deficiency relating to the implementation of the element of without delay highlighted under Criterion 6.4 also affects this Criterion.

Criterion 7.2 (Met) The Security Commission by dint of Section 44(1) has the powers and legal authority to identify and proscribe for purposes of PF.

Criterion 7.2 (a) (Not Met) Section 25 creates an obligation that every person (natural and legal) must comply with freezing order. Further, Section 23(6) of PACOTPAA which provides that any person, organisation or institution that fails to comply with a freezing order commits an offence meets the requirement of FATF Standards in so far as it ensures that all persons within the country freezes funds or other assets of designated persons. However, there is no provision in relation to freezing measures as per the two elements of the FATF Standards i.e., without delay and without prior notice.

Criterion 7.2 (b) (Met) A freezing order under Section 23 and 45 PACOTPAA applies to all funds or other assets that are owned or controlled by the designated person or entity whether wholly or jointly owned or controlled, and not just those that can be tied to a particular act, plot or threat of proliferation. It also covers all funds or other assets derived, funds or other assets of persons and entities acting on behalf of terrorists.

Criterion 7.2 (c) (Met) Namibia prohibits its nationals and persons within its territory from availing terrorist funds. The definition of “freeze” outlines that it entails prohibition of making available funds and Section 25 and 46(4) covers this criterion.

Criterion 7.2 (d) (Mostly met) Namibia has mechanisms for communicating designations to financial institutions and DNFBBs immediately upon making freezing order pursuant to Sections 24(2) and Section 46(2)&(3) PACOTPAA. However, guidance is not provided to financial institutions and other persons or entities, including DNFBBs that may be holding targeted funds or other assets, *on their obligations in taking action* under freezing mechanisms. In terms of Section 23(2) there is obligation imposed on AIs and RIs to report actions taken pursuant to freezing mechanism. But does this create an obligation to take action:- (2) *All persons and institutions referred to in section 24(2) must inform the Financial Intelligence Centre, within a prescribed period, of any assets frozen or actions taken in terms of a freezing order.* The wording of this section relates to reporting and not necessarily to take action which is then reported to the FIC.

Criterion 7.2 (e) (Met) All financial institutions and DNFBBs in Namibia are required to report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements of the relevant UNSCRs. Section 33 FIA extends this requirement to instances of attempted transactions.

Criterion 7.2 (f) (Met) There are adequate measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under freezing mechanism under Sections 23(3) and Section 45(3) &(4).

Criterion 7.3 (Met) FIC and NAMFISA are the sector supervisors for monitoring and ensuring compliance by financial institutions and DNFBPs with the relevant laws or enforceable means governing the obligations under Recommendation 7. The Supervisory body is responsible for supervising, monitoring and enforcing compliance with this Act or any regulation, order, circular, notice, determination or directive issued in terms of this Act, in respect of all accountable or reporting institutions supervised by it as outlined under Section 35 FIC. Any accountable or reporting institution that is not supervised by a supervisory body is deemed to be supervised by FIC. FIC or a supervisory body has powers to impose an administrative sanction and civil penalties against failure to comply with the Recommendation 7. Criminal sanctions for non-compliance with Rec. 7 attract a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

Criterion 7.4 (Met) Namibia has publicly known procedures to submit de-listing requests to Security Council that no longer meets the criteria for designation. Regulation 4(3) PACOTPAA Regulations provides that a person or organisation applying to be delisted as provided for in section 29 of the Act after being listed pursuant to any other UNSC Resolution must follow the delisting procedure as provided for in UNSC Resolution 1730 (2006) and address such request to the address provided in Regulation 4(2).

Criterion 7.4 (a) (Met) Section 29(2) PACOTPAA and Regulation 4(2) and (3) enables listed persons and entities to petition a request for de-listing at the Focal Point for de-listing established pursuant to UNSCR 1730.

Criterion 7.4 (b) (Met) Section 30. (1) provides that a freezing order, arms embargo or travel ban issued in respect of any designated person, organisation or country lapses automatically once such person, organisation or country is delisted. Section 44(7) additionally gives provisions for the procedure to delist persons thus: Within 30 days of publication in the Gazette of a notice or publication under subsection (3), a proscribed person or organisation may make a written application in the prescribed manner to the Security Commission for the revocation of the order of proscription made under subsection (1). A proscribed person has the connotation that he/she may have been inadvertently proscribed, which is a broad interpretation to cover the criterion.

Criterion 7.4 (c) (Met) Section 32(1)(e), Section 45(6) & (7) of PACOTPAA and Regulation 6 provides procedures for authorising access to funds or other assets, where countries have determined that the exemption conditions set out in UNSCRs 1718 and 2231 are met as set out in those resolutions.

Criterion 7.4 (d) (Partly met) The Director FIC is mandated to immediately circulate the names of delisted persons, organisations or countries to all accountable institutions, supervisory bodies, reporting institutions, all regulatory bodies and any other person, business, public body, office, Ministry, government institution or competent authority as the Director considers appropriate. However, there is no guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 7.5 (a) (Met) Section 23(1)(b)(v) provides for the addition to the accounts frozen pursuant to UNSCRs 1718 or 2231 of any funds or assets held in a bank account, as well as any additions that may come into such account after the initial or successive freezing.

Criterion 7.5 (b) (Met) Section 32(1)(ii) (aa) (ab) and (ac) ensures a person can make application for payments due under contracts entered into prior to listing made pursuant to UNSCR 1737 and continued by UNSCR 2231 on condition that it has been determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in the relevant Security Council resolution. Such payments must also not be directly or indirectly received by a person or entity designated pursuant to UNSCR 1737. 10 working days prior notification must be given to the 1737 Sanctions Committee indicating the intention to make or receive such payments.

Weighting and Conclusion

Overall Namibia has not put in place adequate mechanisms to implement TFS without delay on PF. Namibia does not require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. The procedure for de-listing where property was frozen wrongfully as a result of any error in identity of person or organisation affected and how such a person/organisation can apply to the Security Commission for the release of property is provided. There are no mechanisms for providing guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Namibia is rated Partially Compliant with R.7.

Recommendation 8 – Non-profit organisations

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly SR VIII). The main technical deficiencies were that: here was 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. The FATF has revised the Recommendation to require countries to take an RBA in determining the exposure of the NPO sector to TF risk.

Taking a risk-based approach

Criterion 8.1 (Not Met)

Criterion 8.1 (a) (Not Met) Although Namibia conducted its NPO sectoral risk assessment in 2015 and updated the same in 2020, it is not clear whether the outcome of the risk assessment identified which subset of organizations fall within the FATF definition of NPO within Namibian jurisdiction. Namibia has not identified the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.

Criterion 8.1 (b) (Not met) Namibia conducted an NPO sectoral TF risk assessment in 2015, revised in 2018 and later updated in the 2020 NRA. The NPO and the NRA reports identified only the risks relating to money laundering. However, following the comments on Criterion 8.1 (a) above on the identification of subset of NPOs at risk of abuse, the country has not determined *the nature of specific threats and how terrorist actors abuse the NPOs*.

Criterion 8.1 (c) (Not Met) Namibia has outlined the legal and regulatory frameworks relating to NPOs. The NPOs are Accountable Institutions under the AML/CFT framework provided pursuant to Schedule 1 FIA. The measures provided for under FIA are however not adequate to be able to take proportionate and effective actions to address the risks in the sector since it covers all the NPOs without a targeted approach.

Criterion 8.1 (d) (Not Met) Namibia has not periodically reassessed the NPO sector by reviewing its NPO Sectoral risk assessment which was conducted in 2015 and updated with new information on the sector's potential vulnerabilities to terrorist activities in 2018 and 2020.

Criterion 8.2 (a) (Partly Met) The policies in place to promote accountability, integrity, and public confidence in the administration and management of NPOs are provided for under the Company Act and the National Welfare Act which are the two main legal frameworks for creation of NPOs in Namibia. However, they are not adequate to make sure that the necessary measures are to be taken for CFT purposes particularly on compliance with annual reporting and record keeping requirements.

Criterion 8.2 (b) (Partly met) The authorities have commenced outreach and educational programmes to raise and deepen awareness amongst NPOs as well as the donor community about TF vulnerability in compliance with FATF Rec 8. However, the authorities have not conducted any outreach to donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks.

Criterion 8.2 (c) (Partly Met) The authorities have partly commenced measures in their strategic supervisory plan in accordance with best practices to mitigate TF risks and vulnerabilities.

Criterion 8.2 (d) (Not met) The authorities have not initiated programs to encourage the NPOs to conduct transactions through regulated financial institutions.

Criterion 8.3 (Partly met) Namibia has taken measures to promote effective supervision or monitoring of the NPOs by bringing them under the purview of FIA. Hence, the NPO Sector in Namibia are accountable institutions under Schedule 1 of the FIA. As such, all the obligations under the FIA, including the obligation to conduct periodic risk assessments on clients, products, services and geographic risk applies to the NPO sector. However, there is no distinction made between NPOs with exposure to a high TF risk compared to those with a low TF risk or no risk at all. A RBA therefore is limited in its application.

Criterion 8.4 (a) (Partly met) The FIC is mandated to monitor and supervise the NPOs for compliance with AML/CFT/CPF laws. However, due to the infancy of the AML/CFT supervisory regime, the authorities have only partly commenced monitoring the compliance of NPOs with the requirements of this Recommendation. The Master of High Court and BIPA have not developed a framework for a risk-based monitoring of the NPOs that they supervise.

Criterion 8.4 (b) (Partly Met) The FIC, by dint of Section 35 FIA has legal authority to apply effective, proportionate and dissuasive sanctions for AML/CFT violations by NPOs or persons acting on behalf of these NPOs. BIPA and Master of High Court have powers to investigate complaints concerning alleged contraventions and non-compliance with the establishing law. However, BIPA and Master of High Court lack sufficient powers to administer civil, criminal or administrative penalties for breaches other than powers to decline registration or suspend the registration of an NPO which is found to be engaged in wrongdoing or failed to submit annual returns. Therefore, the sanction measures are not considered effective, proportionate and dissuasive.

Criterion 8.5 (a) (Not Met) Namibia does not have in place measures to ensure effective cooperation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

Criterion 8.5 (b) (Not Met) There is no investigative capability and expertise to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations. The law also does not provide powers for the Registrars of NPOs to inspect and audit the books of

registered NPOs and their bank and cash balances. Moreover, where there is reasonable ground to believe that an NPO is making or likely to make resources directly or indirectly available to a terrorist or terrorist organisation or for purposes of terrorism, there is no law to enable the registrar to call for all accounts and documents relating to the association and institute an inquiry into the affairs and conduct of the NPO.

Criterion 8.5 (c) (Met) Section 26-29 of the FIA provides for record-keeping obligations which equally apply to NPOs. The records are required to be made available to the FIC, where they can be obtained during an investigation.

Criterion 8.5 (d) (Met) The NPOs attract the full scope of the ML/TF/PF reporting obligation as an accountable Institutions under Schedule I of FIA. As such, where there is suspicion, the NPO is obliged to report to the FIC pursuant to Section 33 FIA. FIC is therefore able to share this information promptly with competent authorities, in order to take preventive or investigative action.

Criterion 8.6 (Met) The Namibian Central Authority for Mutual Legal Assistance requests from foreign states is the **Executive Director** of the Ministry of Justice as set out in Section 1A (2) of the International Cooperation in Criminal Matters Amendment Act, 2018. Sections 9 and 48 of FIA also allows FIC to share information with other FIUs regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.

Weighting and Conclusion

Namibia does not have a comprehensive regulation framework for NPOs. There has been no identification of a subset of organisations that fall within the FATF definition of NPOs which pose higher TF risks nor has there been a risk-based monitoring for ensuring compliance with regulatory requirement and issue enforcement sanctions for failure to comply.

Namibia is rated Non-Compliant with R. 8.

Recommendation 9 – Financial institution secrecy laws

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R 4). The main technical deficiencies were that; the POCA although was enacted, however, it was not yet in force; there was no measure to ensure that no financial secrecy law can inhibit the implementation of the existing AML/CFT requirements.

Criterion 9.1 – (Met) Financial institution secrecy laws do not to inhibit the implementation of AML/CFT measures under section 84(1) and 84(4) of the POCA Act, and there are extensive provisions in law to ensure that adequate information can be shared in terms of section 44 of the FIA.

Weighting and Conclusion

There are no shortcomings identified in respect of Criterion 9.1.

Namibia is rated Compliant with R. 9.

Recommendation 10 – Customer due diligence

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 5). The main technical deficiencies were that: the existing requirements in the banking sector are neither law/regulation nor other enforceable means; there were no CDD requirements in law or regulation for NBFIs, including insurance companies and the securities sector; there were 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; there were 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; there were 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; there were 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 were not required to perform enhanced due diligence for higher risk customers; there were serious doubts with regard to the implementation of CDD requirements within the banking sector; there were no measures in relation to occasional customers are in place.

When CDD is required

Criterion 10.1 – (Met) - Section 21 (4) of FIA as read with regulation 4(1) Financial Intelligence Regulations prohibits FIs from opening or maintaining anonymous accounts or accounts in fictitious names.

Criterion 10.2- (Met)

Criterion 10.2 (a) (Met)- Section 21(2) of the FIA requires FIs not to establish a business relationship or conclude a single transaction unless the financial institution has taken reasonable steps in the prescribed form and manner to establish the identity of the prospective client by obtaining and verifying identification. Regulation 5 of the FIA regulations, requires FIs to ascertainment and verification of the identity of the client before establishing a relationship.

Criterion 10.2 (b)(Met)- FIs are required to undertake CDD measures when carrying out occasional transactions above Five Thousand Namibian Dollars (NAD5,000) (Ref S.21(1) of FIA as read with Regulation 4, 5 and Determination No. FICD 3). The above threshold only applies to:

- a) those clients with whom the FIs have no business relationship; and
- b) with whom FIs conduct a single transaction with. Where a financial institution has a business relationship with a client, CDD must be conducted and the threshold is not applicable (Ref Ss. 21 & 22 FIA as read with Regulations 4 & 5 of FIA).

Criterion 10.2 (c)(Met)- Section 34 of the FIA and Regulation 32 of the FIA Regulations require FIs to conduct customer due diligence when conducting any wire transfer (domestic or cross-border). Regulation 32(4) provides for the reporting of transactions irrespective of whether it is a single or multiple transaction above NAD99 999.99 (USD 6,900).

Criterion 10.2 (d)(Met)- Section 21 (2)(d) of the FIA requires FIs to conduct customer due diligence if there is a suspicion of money laundering or financing of terrorism or proliferation.

Criterion 10.2 (e)(Met)- Section 24(2)(f)(i) of the FIA requires FIs to undertake enhanced monitoring and due diligence when any doubts arise about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures for all customers

Criterion 10.3 (Met)- Section 21(2) and 22(1) as read with Regulations 13 and 14 requires FIs to identify the customer (whether permanent or occasional, and whether natural, legal persons and legal arrangements) and verify that customer's identity through independence reliable sources of information including registries.

Criterion 10.4 (Met)- Section 21 (2)(c) (ii) of the FIA and as read with Regulation 11 (a) of the FIA Regulations require FIs to verify that any person who purports to act on behalf of the customer or act as an agent is so authorised, and identify and verify the identity of that person.

Criterion 10.5 (Met)- Section 21(3) as read with Regulation 7, 13 & 14 of the FIA Regulations require FIs to identify and take reasonable measures to verify the identity of beneficial owners and control structure of the companies' such that the AI/RI is satisfied on the identity of the beneficial owner.

Criterion 10.6 (Met)- Regulation 12 of the FIA Regulations require FIs with respect to each customer to verify, understand and obtain information on the purpose and intended nature of the business relationship.

Criterion 10.7- (Met)

Criterion 10.7 (a) (Met)- Section 24(1) of the FIA as read with Regulation 15(1) requires FIs to conduct on-going due diligence on the business relationship, including on monitoring the transactions carried out by the client in order to ensure that such transactions are consistent with the accountable or reporting institution's knowledge of the client, the client's commercial or personal activities and risk profile, including where necessary the source of funds.

Criterion 10.7 (b) (Met)- Section 24(1)(a) and Regulation 15 of FIA of the Regulation requires FIs to exercise on-going due diligence on any business relationship and ensuring that documents, data or information collected under the CDD process is kept up-to-date, relevant and including risk profile of customers.

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8 (Met)- Section 21 (2) of the FIA and Regulations 7-10 of the FIA Regulations obliges FIs and DNFBPs to understand the ownership and control of the legal person or arrangement including information on the nature of each customer's business.

Criterion 10.9 (Met)

Criterion 10.9 (a)(Met)- For customers that are legal persons or legal arrangements, FIs are required in terms of Section 21(3)(a) of the FIA and Regulations 7(2) and 10 (1) of the FIA to identify the customer and verify its identity through the name, legal form and proof of existence.

Criterion 10.9 (b)(Met)- For customers that are legal persons or legal arrangements, Section 21(3) and Regulations 7 to 14 of the FIA provides for the powers that regulate and bind the legal person and trusts and partnerships as well as the names of the relevant persons holding a senior management position.

Criterion 10.9 (c) (Met) Regulation 7(2)(e) & (f) identifies the address of the registered office of a legal person or legal arrangement, and, if different, a principal place of business. Regulation 9(b) identifies the address of the registered office of a partnership and Regulation 12(4) of the FIA regulation provides for the identification of a trust and, if different, a principal place of business.

Criterion 10.10 (Met)

Criterion 10.10 (a)(Met)- Accountable and reporting institutions are required in terms of section 21 (3)(b) and Regulations 7 to 14 of the FIA to identify and take reasonable measures to verify the name of the legal person, its legal form, address, directors, partners or senior management; the principal owners and beneficial owners.

Criterion 10.10 (b)(Met) - AIs and RIs are required in terms of section 21 (3)(b) and Regulations 7 to 14 of the FIA (read with definition of beneficial owners) to identify and take reasonable measures to verify the name of the legal person, its legal form, address, directors, partners or senior management; the principal owners and beneficial owners. Section 1 of the FIA covers the definition of “beneficial owner”.

Criterion 10.10 (c)(Met)- Section 21(3) of the FIA obliges AI/RI to identify the beneficial owner and take reasonable measures to verify the identification of the beneficial owner, using the relevant information or data obtained from reliable sources. Regulation 9 of the FIA regulations goes further to provide for the identification of the natural person duly authorized of an association, NGO and other forms of entities prior to establishing any business relationship on behalf of the entity.

Criterion 10.11 (Met)

Criterion 10.11(a) (Met) - Accountable and reporting institutions are required in terms of section 21 (3)(b) and Regulations 7 to 14 of the FIA to identify and take reasonable measures to verify identity of a beneficial owner of legal arrangements through the following information: Regulation 7-14 of the FIA requires accountable or reporting institution to ascertain in respect of a trust - its full name or where applicable its registered name; the registration number, if any; the country where it was set up if the trust was set up in a country other than Namibia; the management company of the trust, if any; National identity number; passport number; or date of birth; of - each trustee of the trust; each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created; the founder of the trust; each beneficial owner of the trust; and any class of beneficiaries. There is no requirement in respect of identifying and verifying the address of the registered office and, if different, a principal place of business of a customer who is a legal person.

Criterion 10.11(b) (Met)- Section 21 (3)(b) as read with Regulations 8 to 10 of the FIA requires AIs/RIs to obtain the identify and take reasonable measures to verify the beneficial owners including all the other parties involved in a legal arrangement including any other natural person who purports to be authorised to establish a business relationship.

CDD for beneficiaries of Life Insurance Policies**Criterion 10.12 (Not Met)**

Criterion 10.12 (a) (Not Met)- There is no specific requirement for accountable or reporting institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Criterion 10.12 (b) (Not Met)- There is no specific requirement for accountable or reporting institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Criterion 10.12 (c) (Not Met)- There are no legal provisions or requirements for accountable or reporting institutions to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies in a manner set out in the criteria.

Criterion 10.13 (Not Met)- There is no legal provision requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD

measures. In addition, there is no legal obligation for reporting entities to take enhanced measures if it determines that the beneficiary who is a legal person or legal arrangement presents a higher risk.

Timing of verification

Criterion 10.14 (Met)

Section 5 of the FIA requires an accountable or reporting institution to complete the verification process of a customer before or during the course of establishing a business relationship or conducting transactions for occasional customers, provided that:

Criterion 10.14 (a)(Met) Section 22(1)(a) and Regulation 5(2)(a) of the FIA covers the requirement for AIs/RIs to establish identity as far as is reasonably possible and to take such steps to ascertain or verify such identity.

Criterion 10.14 (b) (Met)- Regulation 5(3)(b) of the FIA requires that verification is done and that AIs/RIs ensure that the normal conduct of business is not interrupted.

Criterion 10.14 (c)(Met) - Regulation 5 (3)(c) of the FIA requires that verification is done provided that the money laundering, financing of terrorism or funding of proliferation risks are effectively managed.

Criterion 10.15 (Met)- Section 23 (1) and Regulation 5(4) of the FIA obliges FIs to adopt proper risk management procedures concerning the conditions under which businesses may utilise the business relationships prior to verification.

Existing customers

Criterion 10.16 (Partly Met)- Section 24 (1) & (2) and Regulation 15 of the FIA Regulations require FIs to apply CDD requirements to existing customers on the basis of materiality and conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained. However, there is no specific provision for remediation for existing customers on the basis of risk, including on-going due diligence on exiting or onboarding.

Risk-Based Approach

Criterion 10.17 (Met)- Section 23 (2) & Section 24 (1)(c) of the FIA and Regulation 15(3) of the FIA requires that accountable or reporting institutions perform enhanced due diligence when dealing with high risk customers.

Criterion 10.18 (Not Met)- There is no specific provision which permits AIs/RIs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs. Nor is there a provision requiring that the simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios apply.

Failure to satisfactorily complete CDD

Criterion 10.19- (Met)

Criterion 10.19 (a)(Met)- Where a FI is unable to comply with relevant CDD measures, it is required in terms of Section 22(2) and Regulation 5 (2) (c) of the FIA, not to open the account, nor commence the business relationship or perform the transaction or terminate the business relationship.

Criterion 10.19 (b)(Met)- Where FIs are unable to comply with relevant CDD measures, it is required in terms of section 22 (2) of the FIA as read with regulations 5(2)(c) of the FIA regulations to immediately file a SAR or STR.

CDD and tipping off

Criterion 10.20 (Met)- Regulation 5(5) of the FIA requires that an accountable or reporting institution does not proceed with the identification process if there is reason to believe that the process may tip-off the client and must continue to file a suspicious transaction or suspicious activity report.

Weighting and Conclusion

While Namibia has legal provisions on CDD which also includes identification and verification of information on legal person and arrangements, minor deficiencies remain. FIs are required to verify the identity of the customer and take reasonable measures for the purposes of verification of the information provided when a business relationship is established including of a BO. Minor deficiencies remain including the information on beneficiaries of life insurance policies in the CDD requirements; and there is no specific provision which permits FIs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs.

Namibia is rated Largely Compliant with Recommendation 10.

Recommendation 11 – Record-keeping

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 10). The main technical deficiencies were that: the existing provision in the Banking sector were insufficient to meet the FATF Standards; there were no record keeping requirements for NBFIs; there were serious doubts with regard to the implementation of CDD requirements within the banking sector.

Criterion 11.1 (Met) - Section 26 and 27 of the FI Act as read with Regulation 18 of the FI Act Regulations requires AIs/RIs to maintain all records of business relationships and transactions, both for national and international, for at least five years from the date on which that transaction is concluded, or longer if specifically so requested by competent authorities before the expiration of the five year period.

Criterion 11.2 (Mostly Met)- Section 27 read with section 26 of the FI Act and Regulation 18 of the FI Act Regulations requires AIs/RIs to keep the records for at least five years from the date on which the business relationship is terminated; or longer if specifically, so requested by competent authorities before the expiration of the 5-year period. There is no express obligation for record-keeping to cover analysis undertaken during CDD.

Criterion 11.3 (Met)- Section 27(2) of the FI Act requires AI/RIs to keep transaction records to enable the reconstruction of any transaction for both clients and non-clients whether concluded as a single transaction or in the course of a business relationship, for a period of not less than five years from the date the transaction has been completed or the business relationship has been terminated, or longer. Further, Regulation 18(5)(c) of the FI Act regulations requires the AI/RIs to keep records in a manner that permit reconstruction of only individual transactions so as to provide evidence of prosecution of criminal activity or civil or criminal assets forfeiture procedures.

Criterion 11.4 (Met)- Section 27 (3) of FI Act requires AIs/RIs to maintain all books and records with respect to their clients and transactions as set forth in section 26 and must ensure that such records, any supporting documentation and underlying information are available on a timely basis at the request of any competent authority.

Weighting and Conclusion

There are minor deficiencies relating records of analysis undertaken during CDD.

Namibia is rated Largely Compliant with Recommendation 11.

Recommendation 12 – Politically exposed persons

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R 6). The main technical deficiencies were that there are no requirements for financial institutions to identify politically exposed persons (PEPs) or take other such measures as indicated under Recommendation 6. In 2012, the FATF introduced new requirements for domestic PEPs and persons having prominent functions in international organisations.

Criteria 12.1 – 12.4 (Not Met) Namibia does not have a law setting out obligations for financial institutions to comply with PEPs measures as required by R.12 of the FATF Recommendations. In 2020, the FIC issued a Directive on PEPs for financial institutions to implement PEPs obligations. The Directive does not have force of law as it is issued outside of the scope of the FI Act and the powers of the FIC. In addition, the substance of the said measures does not meet R.12 requirements. Nevertheless, the extent to which the financial institutions in Namibia have applied the measures in the PEPs Directive are considered for effectiveness purposes in IO.4 of the Report.

Weighting and Conclusion

Namibia does not require financial institutions to implement PEPs requirements as set out in R.12.

Namibia is rated Non-Compliant with Recommendation 12.

Recommendation 13 – Correspondent banking

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R 7). The main technical deficiencies were that there are no requirements for financial institutions to take such measures as set out in Recommendation 7. The new FATF Recommendation has added a requirement to prohibit relationships with shell banks.

Criterion 13.1 – (Mostly Met)-In relation to cross border correspondent banking and other similar relationships, AI/RIs are required under:

- (a) Section 25 (1)(b)(c)(e) of the FIA, requires AI/FIs to: gather information on the nature of the respondent institution's activities and use publicly available information to evaluate the reputation of the institution and the quality of supervision to which it is subject and evaluate the controls implemented by the respondent institution with respect to anti-money laundering and combating the financing of terrorism or proliferation. The provision does not extend to cover ML/TF investigation or regulatory action;
- (b) Section 25(1)(e) of the FIA provides for AI/RIs to assess the respondent institution's AML/CFT/PF controls;
- (c) Section 25(1)(d) of the FIA provides for AI/RIs to obtain approval from senior management before establishing new correspondent relationships;
- (d) Section 25(1)(f) of the FIA provides for AI/RIs to document the respective AML/CFT/PF responsibilities of each party under the relationship.

Criterion 13.2 (Met)

Criterion 13.2 (a)(Met) – Section 25(1)(g) of the FIA requires AI/RIs, in respect of payable-through accounts, to ensure that the respondent institution has performed CDD obligations on its clients.

Criterion 13.2 (b)(Met) Section 25 (1) (g) of the FIA requires AI/RIs, in respect of payable-through accounts, is capable of providing relevant CDD information upon request.

Criterion 13.3 (Not Met)- There is no provision prohibiting AI/RIs from entering into or continuing correspondent banking relationships with shell banks nor a requirement to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

Weighting and Conclusion

There are moderate shortcomings relating to lack of prohibition of FIs from entering into or continuing banking relationships and gathering of information on whether the respondent bank has been subject to ML/TF investigation or regulatory action.

Namibia is rated Partially Compliant with Recommendation 13.

Recommendation 14 – Money or value transfer services

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly SR VI). The main technical deficiencies were that: there were 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; there were no requirements for MVT service operators to maintain a current list of its agents. The FATF introduced new requirements concerning the identification of providers of money or value transfer services who are not authorised or registered, and the application of sanctions for failure to comply with these obligations and additional obligations for MVTS providers which use agents.

Criterion 14.1 – (Met) Section 9 of Currencies and Exchange Act, 1933 as read with Regulations 1 and 2 of Currencies and Exchange Regulations, 1966 gives the Bank of Namibia legal basis for licensing and registration of businesses engaged in foreign currencies including cross-border platforms being banks as authorized dealers (AD) and money remitters and foreign currency businesses as Authorised Dealers With Limited Authority (ADLAs) for remittance in the country. As at the time of the onsite only 4 banks and one non-bank for provision of money or value transfer services.

Criterion 14.2– (Met) The Currencies and Exchanges Regulations contains penalties for persons (natural or legal) that fail to comply with any provisions of the Regulations (Regulation 22). Namibia has demonstrated collaboration efforts through cases in which the Bank of Namibia, NAMPOL, Prosecutor-General’s Office and FIC took action against unlicensed MVTS including arrests, forfeiture and prosecution.

Criterion 14.3– (Met) MVTS (Authorized Dealers and Authorized Dealers with Limited Authority) are designated as accountable institutions (Ref Items 8 & 13 of Schedule 1 to the FIA) and subject to AML/CFT compliance requirement under the supervision of the FIC in terms of Section 39(2) of the FI Act. The FIC monitors and supervises MVTS for AML/CFT compliance (Ref S. 39(2) of FIA).

Criterion 14.4– (Met) - Namibia legislation allows for MVTS to enter into an agency arrangement subject to approval and registration by the Exchange Control and Legal Services of the Bank of Namibia. Namibia has a mechanism in place for access of the agent’s information by competent authorities. Banks use this option to enter into agency relationships. However, as at the time of the onsite mission, there were no such arrangements approved.

Criterion 14.5– (Not Met) There is no legal framework requiring MVTS providers to include their agents in their AML/CFT programmes and to monitor them for compliance with the programmes.

Weighting and Conclusion

Namibia has minor shortcoming in that there is no requirement for Agents of MVTS providers to be included in MVTS providers' AML/CFT programmes nor are they required to be monitored for compliance with the programmes. As at time of onsite mission, there were no agents licensed or registered in Namibia.

Namibia is rated Largely Compliant with Recommendation 14.

Recommendation 15 – New technologies

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R 8). The main technical deficiencies were that no obligations requiring institutions to have policies in place to prevent the misuse of technological developments and non-face to face business. The new R. 15 focuses on assessing risks related to new products, new business practices and new delivery channels and the use of new technologies for both new and existing products.

Criterion 15.1 – (Partly Met) Namibia covered, to a limited extent, new technologies in its 2020 NRA by assessing ML/TF risks associated with e-mobile money and virtual assets. In general, the NRA has identified potential ML/TF vulnerabilities of new technologies owing to inadequate application of preventative measures. However, the NRA paid little attention to inherent threats facing new technologies except for mentioning possible threats arising from major proceeds-generating offences identified in the NRA. Namibia is in the process of identifying and assessing ML/TF risks as part of the objectives of the country's Financial Technology (FinTech) Innovations and Regulatory Framework, 2021 which seeks to strengthen regulation of new technologies by balancing AML/CFT and financial inclusion. Namibia has therefore not yet fully assessed ML/TF risks arising from new technologies.

Criterion 15.2 (Met)

Criterion 15.2 (a) (Met) - Section 39(1) and Regulation 24(1) of the FI Act provides for AI/RIs to undertake the risk assessments prior to the launch or use of such products, practices and technologies

Criterion 15.2 (b) (Met) Section 39 (3) requires AI/RIs to take appropriate measures to manage and mitigate the risks.

Criterion 15.3-15. 11 (Not Met)

There are no legal framework setting out prudential regulation and AML/CFT obligations for VAs and VASPs.

Weighting and Conclusion

Namibia has major deficiencies under R.15 in that the country does not have prudential and AML/CFT framework for regulation of VAs and VASPs. Only c.15.2 is met.

Namibia is rated Non-Compliant with Recommendation 15.

Recommendation 16 – Wire transfers

In its MER under the 1st Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly SR VII). The main technical deficiencies were that there were 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 were not required to ensure that non-routine transactions are not batched; there were no requirements for beneficiary FIs to adopt effective risk-based procedures for identifying wire transfers not accompanied by complete originator information; there were serious doubts with regard to the implementation of the wire transfer record requirements; the effective implementation of wire record keeping requirements was further undermined by a total lack of supervisory oversight over AML/CFT efforts in banking institutions and the lack of enforceability of BoN requirements. The FATF requirements in this area have since been expanded to include requirements relating to beneficiary information, identification of parties to transfers and the obligations incumbent on the financial institutions involved, including intermediary financial institutions.

Ordering financial institutions

Criterion 16.1 (a)(i) – (Met) Section 34 (2) of FIA and as read with Regulation 32(1)(A) require AI/RIs to include accurate the name of the originator in the electronic message or payment form accompanying the transfer. Moreover, Regulation 32(1)(a) requires all transfers (in or out of Namibia), irrespective of the amount involved to include the name of the originator.

Criterion 16.1 (a)(ii) – (Met) Regulation 32(1)(b) require FIs to include the originator account number where such an account is used to process the transaction or in the absence of an account, a unique transaction reference number which permits traceability of the transaction;

Criterion 16.1 (a)(iii) – (Met) Regulation 32(1)(c) require FIs to include the address of the originator, or national identity number, customer identification number or date and place of birth;

Criterion 16.1 (b)(i) – (Met) Regulation 32(1)(d) require AI/RIs to include the name of the beneficiary;

Criterion 16.1 (a)(ii) – (Met) Regulation 32(1)(e) require FIs to include the account number of the beneficiary where such an account is used to process the transaction or in the absence of an account, a unique transaction reference number which permits traceability of the transaction.

Criterion 16.2-(Met) Regulation 32(2) of the FIA prescribes that where several individual cross-border electronic money transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file should contain required and accurate originator information and full beneficiary information that is traceable in Namibia or the recipient country.

Criterion 16.3 (a) – (b) and 16.4 (N/A) Namibia does not apply a *de minimis* threshold for the requirements of criterion 16.1.

Criterion 16.5 (Met) - Regulations 32(4) & (5) of the FIA prescribes that AI/RIs are required to include accurate originator and beneficiary information when conducting domestic funds transfers.

Criterion 16.6 (Met)- Regulation 32(6) and (7) of the FIA requires FIs on the domestic electronic transfer to include the account number or a unique transaction reference number, provided that this number or identifier permits the transaction to be traced back to the originator or the beneficiary and make the information available within three working days of receiving the request either from the recipient accountable or reporting institution or from competent authorities.

Criterion 16.7 (Met)- Section 34(6) as read with regulation 32(8) of the FIA provides for the AIs/RIs whenever it is a recipient, or originator, or intermediary to comply with the record keeping requirements in accordance with Recommendation 11.

Criterion 16.8 (Met)- Section 34(4) of the FIA requires that AI/RI receives an electronic transfer that does not contain all the prescribed originator information, it must take the necessary measures to ascertain and verify the missing information from the ordering institution or the beneficiary, before it honors any of the instructions contained in the transfer.

Intermediary financial institutions

Criterion 16.9 (Met)- Section 34 (3) of the FIA and Regulation 26 and 27 of the FIA Regulations requires FIs who act as intermediary in a chain of payments, to transmit all the information received with the wire transfer to the recipient institution and to maintain the originator and beneficiary information.

Criterion 16.10 (Met)- An intermediary FI must maintain all transaction related information for at least five years (Ref s. 34(6), read with Regulation 32(8) of the FIA).

Criterion 16.11 (Met)- Section 34(4) of the FIA requires AI/RIs to take measures to obtain and verify the missing information from the ordering institution or the beneficiary where it receives wire transfers that do not contain the complete originator information.

Criterion 16.12 (a) – (b) (Partly Met)- Section 39(1) and (3) requires AI/RI to carryout risk assessment taking into account the scope and nature of its clients, products and services, as well as the geographical area, and develop and implement customer acceptance policy, internal rules to effectively manage and mitigate risks of ML/TF. However, there is no requirement in the law on (a) when AIs/RIs should execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and (b) the appropriate follow-up action.

Beneficiary financial institutions

Criterion 16.13 (Met)- Section 34(4) & (5) of the FIA requires AI/RIs to take measures to obtain and verify the missing information from the ordering institution or the beneficiary where it receives wire transfers that do not contain the complete originator information.

Criterion 16.14 (Met)- Regulation 32(3) of the FIA mandates recipient financial institution to verify the identity of the beneficiary for all electronic funds transfers maintain this information for record keeping purposes as required in terms of Rec 11.

Criterion 16.15 (a) (Met) Section 39(1) requires AI/RI to carryout risk assessment taking into account the scope and nature of its clients, products and services, as well as the geographical area, and develop and implement customer acceptance policy, internal rules to effectively manage and mitigate risks of ML/TF or PF

Criterion 16.15 (b) (Met)- Section 34(5) requires that, when an accountable or reporting institution is not able to obtain the prescribed originator information must take appropriate action, it must file a suspicious transaction report.

Money or value transfer service operators

Criterion 16.16 (Mostly Met)- Section 34 read with Regulation 32 of FIA captures the requirements of Rec 16 and applies to all banks and clearing system participants, including MVTs acting operating as agents of MVTs.

Criterion 16.17(a) Partly Met - MVTS providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether an STR has to be filed. However, the timing for filing STRs does not conform to FATF standards.

Criterion 16.17 (b) (Not Met) - Whilst there is a general requirement for reporting entities to file suspicious transactions, there is no specific obligation for MVTS providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether to file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU. The general STR obligations apply.

Implementation of Targeted Financial Sanctions

Criterion 16.18 (Partly Met)

Namibia has mechanisms that require communication by financial institutions and DNFBPs to report to competent authorities any assets frozen or making freezing order or actions taken in compliance with the prohibition requirements of the relevant UNSCRs. Section 33(1) FIA extends this requirement to instances of attempted transactions. However, Namibia does not provide clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms. Instead, the Directives issued by FIA via Circulars for circulating the UNSCR sanction lists only provides for the obligations to report to the FIC STRs when there is a positive match against the listed persons.

Weighting and Conclusion

Overall, Namibia has the necessary legal rules to comply with R.16 requirement and the legal-provisions meets most of the requirements under-R.16, except that there are some minor deficiencies in relation to: when FIs should execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and the appropriate follow-up action, lack of no specific obligation for MVTS providers to take into account all the information from both the ordering and beneficiary FIs in order to determine whether to file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIU. There is also a gap in relation to requiring FIs processing EFTs to take freezing action and comply with prohibition from conducting transactions with designated individuals and entities as per the applicable UNSCRs.

Namibia is rated Largely Compliant with Recommendation 16.

Recommendation 17 – Reliance on third parties

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R 9). The main technical deficiency was that while FIs were not specifically prohibited from using third parties they do not utilize them at this time and there were no regulations or policies to address this issue and to follow the other requirements under Recommendation 9. The FATF's new requirements emphasise on the country risk of the third party required to perform due diligence on the customer.

Criterion 17.1(a) – (c) (Met) Regulation 5 (8) and 5(10) of the FIA permits AIs/RIs to rely on third parties or intermediaries to apply CDD measures on their behalf in manner that ensures that the AI/RI:

(a) obtains the identification information of the client;

- (b) satisfies itself that copies of the identification data and other relevant documentation relating to the client identification requirements will be made available by the third party accountable or reporting institution without delay, upon request; and
- (c) satisfies itself that the third party accountable or reporting institution is regulated and supervised or monitored or has measures in place for compliance with client identification and record keeping requirements.

Criterion 17.2 (Not Met)- While Regulation 5(9)(c) of the FIA requires FIs to be satisfied that the third party should have policies that mitigate any high-country risk (relevant to cr.17.3(c)) there is no specific provisions particularly referring to the determination in which countries the third party that meets the conditions to rely on for CDD measures, can be based. The current requirement addresses mitigation of risk and not the issue of having regard to information available on the level of country risk at point of determining in which countries the third party that meets the conditions can be based.

Criterion 17.3 (a)- (Met) Regulation 5(9) of the FIA requires FIs relying on a third party or an introduced business which is part of the same financial group to have regard to the following: (a) – the group applies same or stricter measures under R.10, R.11 and R.18;

Criterion 17.3 (b)- (Met) Regulation 5(9)(b) of the FIA requires FIs relying on a third party or introduce business which is part of the same financial group to apply CDD and record keeping requirements, AML/CFT/PF programmes and supervised at group level by the group head office

Criterion 17.3(c) (Met.)- Regulation 5(9)(c) of the FIA requires that any higher risks at a national level are sufficiently mitigated by the financial group’s AML/CFT policies.

Weighting and Conclusion

Namibia has a minor deficiency relating to absence of the requirement to rely on information on the level of country risk at point of determining in which countries the third party that meets the conditions can be based.

Namibia is rated Largely Compliant with Recommendation 17.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R.15). The main technical deficiencies were that there were: 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; serious doubts with regard to the implementation of the existing requirement within the banking sector. The new Recommendation introduces new requirements on implementing AML/CFT programmes for financial groups.

Criterion 18.1(a) – (Met) Section 39(6) requires AI/RI to designate compliance officers at managerial level who will be in charge of the application of the internal programmes and procedures.

Criterion 18.1(b) – (Met) Section 39(5)(a) of the FIA requires FAI/RIs to have in place procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of those employees.

Criterion 18.1(c) – (Met) Section 39(5)(b) of the FIA requires FIs to have in place on-going employee training programmes, such as “Know Your Customer” programmes and instructing employees with regard to responsibilities under this Act internal procedures, policies and controls, including ongoing training of employees.

Criterion 18.1(d) – (Met) Section 39(5)(c) of the FIA requires FIs to have in place internal procedures, policies and controls, including an independent audit function to check compliance with those programmes

Criterion 18.2 (Not Met)- There is no legal requirement for financial groups to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group, including: (a) policies and procedures for sharing information required for the purposed of CDD and ML/TF risk management; (b) provision in the law for financial groups to provide, at group level compliance, audit and/or AML/CFT functions of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes, and (c) safeguards on confidentiality and use of information.

Criterion 18.3 (Not Met) - There is no legal provision for AIs to ensure that their foreign branches and majority owned subsidiaries apply AML/CFT measures which are consistent with Namibia’s requirements, where the requirements of the host country are less strict. Moreover, there are no obligation for financial groups to apply appropriate additional measures to manage ML/TF risks and report to the supervisors in Namibia, should the host country not permit proper implementation of AML/CFT measures.

Weighting and Conclusion

Namibia meets the requirements of criterion 18.1 but does not meet criteria 18.2 and 18.3. There is no provision for financial groups to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group. AIs are not required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures which are consistent with the home country requirements, where the host country requirements are less strict.

Namibia is rated Partially Compliant with Recommendation 18.

Recommendation 19 – Higher-risk countries

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R21). The main technical deficiencies were that there is no requirement for financial institutions to give special attention to business relationships with persons, including legal persons and other financial institutions, from or in countries which do not or insufficiently apply the FATF Recommendations or to take other such measures as required under Recommendation 21. R.19 strengthens the requirements to be met by countries and FIs in respect of higher-risk countries.

Criterion 19.1 – (Not Met) – There is no obligation for FIs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons, including FIs, from countries for which this is called for by the FATF.

Criterion 19.2 – (Met) – Through Section 9(2)(e) of the FIA, the FIC may issue Circulars to FIs which will enable Namibia to apply countermeasures proportionate to the risks to the risks when called upon to do so by the FATF and independently of any call by FATF to do so.

Criterion 19.3 (Met)- The FIC publishes on its website regular advisories following issuance of the ICRG Grey List by the FATF.

Weighting and Conclusion

Namibia does not require FIs to apply enhanced due diligence, proportionate to the risks, to business relationships and transactions with natural and legal persons, including FIs, from countries for which this is called for by the FATF. This represents.

Namibia is rated Partially Compliant with Recommendation 19.

Recommendation 20 – Reporting of suspicious transaction

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R13 and SRIV). The main technical deficiencies were that there were: no suspicious transaction reporting requirements in law or regulation for FIs that includes terrorist acts or that address attempted ML/TF transactions; no suspicious transaction reporting requirements for NBFIs; the 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 and effectiveness of the AML system could not be assessed which is not part of technical compliance under the 2013 FATF Methodology.

Criterion 20.1 – (Partly Met) Section 33(1) of the FIA requires FIs to make a suspicious transaction report within 15 working days to the FIC where it has knowledge or reasonable grounds to suspect that any service, or transaction may be related to the commission of criminal conduct including an offence of money laundering or of financing of terrorism or proliferation. The prescribed 15 working days is considered long for requiring FIs to file promptly an STR with the FIC. This represents a significant deficiency as it fails to oblige FIs to submit STRs as soon as possible for the FIC and other competent authorities in Namibia to take prompt action against the suspicious transaction and those related to it. .

Criterion 20.2 (Met) - Section 33(2) of the FIA requires AI/RIs to report all suspicious transactions, including attempted transactions, regardless of the amount of the transaction.

Weighting and Conclusion

STR obligation in Namibia has moderate shortcoming arising from the fact that the FIA provides for 15 working days period for FIs to file an STR to the FIC from the time of formation of a suspicion.

Recommendation 20 is rated Partially Compliant

Recommendation 21 – Tipping-off and confidentiality

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R14). The main technical deficiency was that the POCA though enacted was not yet in force and there were no requirements to prohibit tipping off by FIs and their employees. The new R. 21 has not modified FATF requirements.

Criterion 21.1 – (Met) Section 45 of the FIA provides for protection of directors or employees of FIs from any criminal, civil, disciplinary or administrative proceedings in relation to any reports or information made in good faith.

Criterion 21.2 (Met)- Section 33(3) and (4) of the FIA prohibits FIs who knows or suspects that a report has been made from disclosing the fact that an STR or related information has been or will be made to the FIC.

Weighting and Conclusion

Namibia has met all the requirements of this Recommendation.

Namibia is rated Compliant with Recommendation 21.

Recommendation 22 – DNFBPs: Customer due diligence

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R12). The main technical deficiencies were that there were: no CDD requirements in law or regulation for DNFBPs including public accountants and auditors and trust and company service providers; 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 were not required to have policies to prevent misuse of technological developments in ML/TF schemes or deal with non-face to face business relationships; 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.

Criterion 22.1 – (Mostly Met) – DNFBPs are required to comply with the CDD requirements set out in Recommendation 10 in the following situations:

- (a) FIC Determination General Notice No.70 of the FIA set out a threshold amount of twenty-five thousand Namibia Dollars from which casinos must establish the identity of clients;
- (b) Since Real Estate Agents are classified as accountable institutions in terms of Schedule 1 of the FIA. Section 21-24 of the FIA requires real estate agents to comply with the CDD requirements set out in R.10;
- (c) Since Dealers in precious metal and stones are classified as accountable institutions in terms of Schedule 1 of the FIA. Namibia does not have a monetary threshold on application of CDD obligations in respect of transactions conducted by dealers in precious metals and stones (FATF Standards sets a threshold of USD / EUR 15,000), the general CDD measures under the FIA apply;
- (d) Since Lawyers, notaries and other independent legal professionals and accountants are classified as accountable institutions in terms of Schedule 1 of the FIA. Section 21-24 of the FIA requires them to comply with the CDD requirements set out in R.10,
- (e) Trust and company service providers are classified as accountable institutions in terms of Schedule 1 of the FIA. The general CDD requirements set out in R10 apply.

However, there is no specific provision for remediation for existing customers on the basis of risk, including on-going due diligence on exiting or onboarding. There is no also specific provision which permits the DNFBPs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs. Nor is there a provision requiring that the simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios apply (See Rec. 10).

Criterion 22.2 (Met)- Section 26-29 of the FIA provides for record-keeping obligations which equally apply to DNFBPs.

Criterion 22.3 (Not Met) – Namibia does not have a law setting out obligations for DNFBPs to comply with PEPs measures as required by R.12 of the FATF Recommendations. In 2020, the FIC issued a Directive on PEPs for DNFBPs to implement PEPs obligations. The Directive does not have force of law as it is issued outside of the scope of the FI Act and the powers of the FIC. In addition, the substance of the said measures does not meet R.12 requirements. Nevertheless, the extent to which the DNFBPs in Namibia have applied the measures in the PEPs Directive are considered for effectiveness purposes in IO.4 of the Report.

Criterion 22.4 (Partly Met)- Section 39(1) and Regulation 24(1) of the FI Act provides for DNFBPs to undertake the risk assessments prior to the launch or use of such products, practices and technologies. Section 39 (3) of the same act requires the DNFBPs to take appropriate measures to manage and mitigate the risks (See Rec. 15).

Criterion 22.5- (Mostly Met) Regulations 5(8) and 5(10) of the FIA provides for obligations relating to third party or introduced business which equally apply to DNFBPs. While Regulation 5(9)(c) of the FIA requires DNFBPs to be satisfied that the third party should have policies that mitigate any high country risk (relevant to cr.17.3(c)) there is no specific provisions particularly referring to the determination in which countries the third party that meets the conditions to rely on for CDD measures, can be based.

Weighting and Conclusion

There are moderate shortcomings relating to R.10, R.12, 15 and 17 that have an impact on the ability for Namibia to comply with this recommendation. Namibia has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs. There is no specific provision for remediation for existing customers on the basis of risk, including on-going due diligence on exiting or onboarding. There is no also specific provision which permits the DNFBPs to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or FIs. Further, there are no specific provisions in the FIA related to PEPs.

Namibia is rated Partially Compliant with Recommendation 22.

Recommendation 23 – DNFBPs: Other measures

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R16). The main technical deficiencies were that: no obligations for DNFBPs to monitor transactions and business relationships; no laws or regulations enacted requiring the reporting of suspicious transactions in DNFBPs; no reporting requirements imposed on DNFBPs; 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.

Criterion 23.1 (Partly Met)

Criterion 23.1 (a) (Partly Met)- Section 33 of the FIA provides for the filing of STR obligations which equally apply to all DNFBPs. The deficiency highlighted in R20 above on prompt reporting applies here. Legal professional privilege is covered as the FIA under section 44(2) provides that the obligation to report does not apply if the obligation of secrecy or other restriction is based on the common law right to professional privilege between a legal practitioner and his or her client.

Criterion 23.1 (b) (Partly Met)- The requirements to file suspicious transactions reports set out in R.20 (Section 33 of the FIA) are also applicable to all Dealers in precious metals and stones. The deficiency highlighted in R. 20 above on prompt reporting applies here.

Criterion 23.1 (c) (Partly Met)- Section 33 of the FIA provides for filing of STR obligations which equally apply to Trust and Company service providers. The deficiency highlighted in R. 20 above on prompt reporting applies here.

Criterion 23.2 (Partly Met)- There is no provision for financial groups to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group. DNFBPs are not required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures which are consistent with the home country requirements, where the host country requirements are less strict.

Criterion 23.3 (Partly Met) - DNFBPs are required to comply with the same higher-risk countries requirements as AI/RIIs under the FIA – see analysis of R.19. The deficiency noted under criterion R.19 also apply to this criterion.

Criterion 23.4 (Met)- Sections 33(3) & (4) and 46 of the FIA (See R.21 for further analysis) provides for tipping-off prohibition and confidentiality obligations which equally apply to DNFBPs. This should be Met since 21 is compliant.

Weighting and Conclusion

The requirements for the criteria are satisfied to a minimal extent due to the deficiency highlighted in the criterion to Recommendation 23 above.

Namibia is rated Partially Compliant with Recommendation 23.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 33). The main technical deficiency was that access to all documents kept by the Registrar should be made available irrespective of the type of companies and there should be a mechanism to check beneficial interests in companies. The new FATF Recommendation and the accompanying Interpretive Note, contains more detailed requirements particularly with respect to the information to be collected about beneficial owners.

Basic Information

Criterion 24.1 – (Met) Namibia has mechanisms that identify and describe the different types, forms and basic features of legal persons formed and created in the country. The Close Corporations Act 1988 and the Business and Intellectual Property Authority Act 2016 regulate the incorporation and registration of legal entities in Namibia. The office responsible for the registration of all legal persons (companies, close corporations and other business entities in Namibia) is the Business and Intellectual Property Authority (BIPA). The Companies Act establishes different types of companies (CO's) such as private limited liability companies, public limited liability company and companies not for profit, while the Close Corporations Act establishes close corporations (CC's). As part of the registration process, prospective companies are required to submit the Memorandum and Articles of Association with the Registrar of business and industrial property/CEO of BIPA. 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 is also required to be submitted. Information relating to the creation of legal persons is available at the BIPA office and its website.

Criterion 24.2 – (Not Met) Namibia has not undertaken an ML/TF risk of all types of legal persons in the country.

Criterion 24.3 – (Met) S.4 of the BIPA requires the Board of the BIPA to establish a registration office where business and industrial property are registered in accordance with the BIPA Act and applicable legislation. Information retained at BIPA include company's name, certificate of incorporation, type of company, the registered address of the company, list of directors or company secretaries, details of shareholders/members memorandum of articles, list of members and their details for CCs, founding statements for CCs. This information is accessible to the members of the public and competent authorities.

Criterion 24.4. – (Met) In terms of S. 117 of Companies Act, 2016 companies are required to keep, at their registered office a register of members. The authorities indicated that the company is required to keep records which are but not limited to the following: memorandum of association, register of shareholders/members/directors and members indicating separately for each class of equity and preference shares held by each member residing in or outside Namibia, a share register that includes name, number of shares held including the type and the last known address for each person who has been a shareholder etc. Additionally, Section 223 of the Companies Act 2004, every company registered in Namibia is required to keep a register of directors and officers including the company secretaries which are body corporate.

Criterion 24.5 – (Met) Section 4(1) of the FIA provides that the registrar of companies and close corporation must annually collect and keep accurate and up-to-date prescribed information in respect of members, directors, shareholders and beneficial owners of companies and close corporations.

Beneficial Ownership Information

Criterion 24.6 – (Met)

Criterion 24.6(a) – (Met) Section 4(1)(a) FIA requires the Registrar of Companies and Closed Corporations to annually collect and keep accurate and up to date prescribed information in respect of members / directors, shareholders and beneficial owners of companies and closed corporations.

Criterion 24.6(b) – (Met) Section 4 (2) of the FIA requires all companies and close corporations upon registration, and annually thereafter, to submit to the Registrar of Companies and Close Corporations up-to-date information referred to in subsection (1)(a) in respect of each member, director, shareholder and beneficial owner of such companies and close corporations.

Criterion 24.6(c) – (Met) Accountable and reporting institutions are required in terms of section 21 (3)(b) and Regulations 7 to 14 of the FIA to identify and take reasonable measures to verify the name of the legal person, its legal form, address, directors, partners or senior management; the principal owners and beneficial owners. Section 1 of the FIA covers the definition of "beneficial owner".

Criterion 24.7 – (Met) Section (4) (1)(a) of the FIA requires the Registrar of Companies to keep accurate and up to date beneficial ownership info. Moreover, Section 4(2) of the FIA and Regulation 2(1) of FIA regulations requires, all companies and close corporations at the time of registration, and when the registration of renewed annually thereafter, to submit to the Registrar of Companies or Close Corporations/ Registrar of Business and Industrial Property up-to-date information in respect of each member, director, shareholder and beneficial owner of such companies or close corporations.

Criterion 24.8 – (Not Met) There are no requirements/mechanisms for companies to co-operate with competent authorities to the fullest extent possible in determining the beneficial owner

Criterion 24.8(a) – (Not Met) Section 4(1)(c) of the FIA obliges the Registrar of companies (and not companies) to avail all information referred to in paragraphs (a) and (b) of companies and close corporations to competent authorities upon request.

Criterion 24.8(b) – (Not Met) Section 4(1)(c) of the FIA obliges the Registrar of companies (DNFBPs) to avail all information referred to in paragraphs (a) and (b) of companies and close corporations to competent authorities upon request.

Criterion 24.8(c) – (Not Met) No comparable mechanism exists to obligate to avail beneficial owner information to competent authorities on request.

Criterion 24.9 – (Met) In terms of Section 27 of the FIA records kept in terms of the FIA is required to be kept for 5 years, or longer if so requested by competent authorities. Moreover, the National Archives Act provides that information on legal persons should be kept indefinitely.

Other Requirements

Criterion 24.10 – (Mostly Met) Competent authorities, including law enforcement agencies have powers to obtain access to basic and beneficial ownership information to the extent that such information exists. Basic information on legal persons is publicly available, beneficial ownership information where such information exists, can be accessed by competent authorities.

Criterion 24.11 – (Not Met)

Criterion 24.11(a) (N/A) Bearer shares are not prohibited in Namibia in terms of sections 107 and 110 (4) of the companies act 2004 as amended 2007.

Criterion 24.11(b) – (Not Met) No legal provisions exist for conversion of bearer shares and share warrants into registered shares or share warrants.

Criterion 24.11 (c) – (Not Met) – No legal provisions exist for immobilizing bearer shares and share warrants by requiring them to be held with a regulated financial institution or professional intermediary.

Criterion 24.11(d) - (Not Met) – No provisions are in place requiring shareholders with a controlling interest to notify the company and the company to record their identity upon such notification

Criterion 24.11(e) – (Not Met) – No other alternate mechanisms have been indicated by the authorities.

Criterion 24.12– (Not Met) In Namibia legal persons are allowed to have nominee s/h and directors in terms of the companies act. However, there is no mechanism to prevent the misuse of legal persons by requiring the nominee s/h and directors to disclose their identities, to be licensed for their nominee status to be included in company registries or any other mechanism identified by Namibia.

No provisions exist to provide for mechanisms to ensure that legal persons that have nominee shares and nominal directors are not misused.

Criterion 24.13 – (Not Met) – In Namibia, no liability, nor proportionate and dissuasive sanctions apply to legal or natural persons who fail to comply with the requirements.

Criterion 24.14 – (Mostly Met) Under section 48(9) of the FIA the FIC can share any information and facilitate the access by foreign competent authorities to any information that the FIC has direct or indirect access and also under mutual legal assistance as per the International Cooperation in Criminal Matters Act 2000.

Other than the FIC other competent authorities rely on the central MLA authority (Ministry of Justice) to facilitate sharing and exchange of information.

Criterion 24.15 – (Not Met) There are no existing frameworks for Namibian authorities to monitor the quality of assistance they receive from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

Although the FIC monitors the exchange of information in compliance with EGMONT procedures and best practices, as well as its own internal procedures, such monitoring of exchange does not extend to the quality of assistance received. The deficiencies with regards to BO remains.

Weighting and Conclusion

Namibia has not done an ML/TF risk assessment that covers all types of legal persons created in the country. There are no requirements to keep BO information accurate and updating of the information is not necessarily directed towards BO. Although, the jurisdiction does have some general measures to ensure that companies fully cooperate with competent authorities possible in determining the basic information and BO information the deficiencies with regards to the BO information remains. Bearer shares are still allowed in Namibia and Namibia does not have mechanisms to prevent the misuse of nominee shares and nominee directors. There are no mechanisms in place to monitor the quality of assistance received from other countries regarding BO information.

Namibia is rated Partially Compliant with Recommendation 24.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 34). The main technical deficiencies were that competent authorities have no access to information related to the ultimate beneficial owners under a trust and there were no measures taken to prevent the unlawful use of trusts in relation to ML and FT.

Criterion 25.1 (Partly Met)

Criterion 25.1 (a) (Met) – section 5(2) of the FIA read together with section 5(1)(b) places a legal obligation is placed on trustees to provide the information required under this criterion by requiring-trustees to obtain and hold adequate information on the settlor, protector and class of beneficiaries or person exercising control. Section 5(1)(b) FIA requires that the Master of the HC collect and keep up to date prescribed information in respect of each – trustee, income beneficiary, beneficial owner of all registered testamentary and inter vivos trusts. Section 5(2) FIA provides that the Master of the HC may not register any trust without the information in subsection 1(b) being provided.

Criterion 25.1 (b) (Not Met) Namibia does not have any provision in law which requires trustees of any trust governed under the law to hold basic information on other regulated agents of, and service providers to, trusts, including investment advisors or managers, accountants and tax advisors.

Criterion 25.1 (c) (Met) - Section 5 of the Trust Monies Protection Act provides for records to be kept. The National Archives of Namibia regulates and supervises all records management activities of all institutions in the Namibian public service that are created by an Act of Parliament.

Criterion 25.2 (Met)- Section 5(1)(b) of the FIA requires the Master of the High Court is required to collect and keep up-to-date prescribed information in respect of the founder, each trustee, each income beneficiary and each beneficial owner of all registered testamentary and inter vivos trusts.

Criterion 25.3 (Met)- Namibia requires accountable and reporting institutions indirectly to find out the status of any trusts when entering into a business relationship. Sections 21 and 22 of the FIA, as well as Regulation 6-14 of the FIA regulations contains specific criteria which and Accountable or Reporting Institution must ascertain and verify, when onboarding a Trust as a client.

Criterion 25.4 (Met)- Section 5(1)(c) of the FIA requires the Master of the High Court is required to avail information on the founder, trustee, trust beneficiary and trust beneficial ownership information of all registered testamentary and *inter vivos* trusts to competent authorities upon request.

Criterion 25.5 (Met) - Section 9 of the FIA empowers the FIC to get access to records kept in terms of the FIA, relating to suspicious money laundering or financing of terrorism or proliferation activities, by or on behalf of any other person or institution that hold relevant records or information, including information on a commercially held database, and the authorized representative of the FIC must be given all reasonable assistance without delay, or face criminal charges. The access extends to entities including trusts, on this basis records and information can be obtained by the FIC from trusts.

The LEAs have the power to compel entities to provide information necessary in the course of investigations and prosecutions.

Criterion 25.6 (Partly Met) - Namibia can obtain beneficial ownership information on behalf of foreign counterparts and facilitate access by foreign competent authorities or exchange domestically available trust-related information through MLA requests. The FIC uses Egmont platform to share information with counterparts who are members of EGMONT. It is not indicated how information can be obtained from non-members.

Criterion 25.7 (Partly Met)- Section 5(5) of the FIA is limited to the obligation for trustees to be legally liable for any failure to duties relevant to meeting their obligations for failure to register or provide information and given the use of nominee shareholders and directors it makes it difficult to identify the actual trustee of a legal arrangement. The sanction is a fine or imprisonment not exceeding 10 years.

Criterion 25.8 (Partly Met) – There is no specific legal provision to grant timely access to competent authorities to information regarding a trust registered by the Masters of Courts in Namibia. Section 5 (7) of the FIA empowers the Master of the High Court to request for information from an accountable person including trustees. By virtue of section 5(8) of the FIA any reporting entity that fails to do so commits an offence and is liable to a fine not exceeding NAD10 million, or where the commission of the offence is attributable to a representative of the accountable or reporting institution, to such fine or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment which is deemed to be proportionate and dissuasive.

Weighting and Conclusion

Namibia meets criteria 25.2 to 25.5 and partly meets criteria 25.1 25.6 to 25.8. Although in Namibia trustees are required to obtain and hold adequate information on the settlor, protector and class of beneficiaries or person exercising control, there is no provision regarding the holding of information on the other service providers to the trust. Namibia can share BO information with foreign counterparts but the FIC is not able to share BO information to non-Egmont members. The use of nominee shareholders and directors makes it difficult for sanctioning the trustee for any failure to carry out their obligations.

Namibia is rated Partially Compliant with Recommendation 25.

Recommendation 26 – Regulation and supervision of financial institutions

In its MER under the 1st round of MEs, Namibia was rated Non-Compliant with requirements of the Recommendation (formerly R.23). The main technical deficiencies noted were that: The BoN and NAMFISA do not ensure FIs were effectively implementing the FATF Recommendations; NBFIs had 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 were not undergoing necessary legal or regulatory

measures to prevent criminals from ownership or management functions; BoN was not supervising the money exchange service (Bureau De Change operators) for compliance with AML/CFT requirements. The new FATF Recommendation strengthens the principle of supervision and controls using a risk-based approach.

Criterion 26.1 – (Met) Section 9(1)(h) of the FIA and regulation 35(3) of the FI regulations designate the FIC as the AML/CFT/CPF supervisory bodies for FIs, MVTS and DNFBPs and Schedule 2 of the FIA designate the NAMFISA as a supervisory body for the non-banking and insurance sector.

Market Entry

Criterion 26.2 – (Met) - BoN and NAMFISA are responsible for the licensing, authorisation and registration of market entrants under their purview. BoN is also responsible for the authorisation of the Authorised Dealers in Foreign Exchange with Limited Authority – MVTS.

All Core Principles FIs are required to be licensed (section 5-19B of the Banking Institutions Act 1998; Section 15 of the Long-Term Insurance Act 1998; Section 15 of the Short-term Insurance Act, 1998; Section 4(1) of the Pension Funds Act, 1956; Stock Exchanges Control Act, 1985) MVTS providers and foreign exchange bureaus are subject to authorization as per Section 9 of the Currencies and Exchanges Act 1933. The market entry requirements for BoN are adequate to identify and prohibit establishment and operation of shell banks in Namibia. As at the time of the onsite, there were no shell banks present in Namibia. NamPost is a creation of statute and operate as deposit-taking entities through PSD 6 license from the Bank of Namibia and participate in Namibian clearing and settlement (payment system).

Criterion 26.3 – (Partly Met) - The relevant supervisory body (FIC and NAMFISA) is mandated to take the necessary legal and regulatory measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable or reporting institution under section 35(15) of the FIA. The Bank of Namibia conducts fit and proper assessment on shareholders under section 20(4) of the Banking Institutions Act 1998. For the ADLAs, the Standard Licensing Procedures issued under the Exchange Controls Regulations 1961 provides for the carrying out of background checks of fitness of directors and shareholders.

In order to determine the ultimate beneficial owner, Bank of Namibia and NAMFISA base their determination on the shareholding of the entity (natural or legal person) and that shareholding varies on the type of license. BON developed guidelines that provide the criteria for determining the fitness and probity of persons proposed to be shareholders, board members and senior management in banks or financial business. The guidelines provide guidance to ensure that shareholding structure of the applicant is reviewed so that the final beneficial owners are identified for ensuring that there's compliance with AML/CFT and compliance with control and shareholding limitations. Also, under these guidelines published in 2019, substantial shareholder means any shareholder who holds 5% or more shareholding in the proposed banking institution.

For MVTS under the Payments and settlement system participants are subject to fitness and probity of the BO under sections 12.1.4 and 12.1.6 of Payment Systems Determination 6. The BoN follows similar licensing procedures and processes including on fit and proper tests and determination of significant shareholders and beneficial owners in a manner that prevents criminals from controlling or being beneficial owners of an entity in the MVTS sector.

Risk-Based Approach to Supervision and Monitoring

Criterion 26.4 (Mostly Met)

Criterion 26.4(a) – (Partly Met) - Core principles institutions (i.e., banks, securities and insurance) are subject to RBA AML/CFT supervision and monitoring by the NAMFISA and FIC under the FIA. However, the supervisors have no legal basis or framework in place for consolidated group or conglomerate supervision for AML/CFT purposes applied by the supervisors.

Criterion 26.4 (b)(Met) - The FIC and NAMFISA apply supervision and monitoring actions on FIs such as MVTS (not core principles FIs) with monitoring systems for compliance with Namibia's AML/CFT requirements having regard to circumstances in c.26.5 and 26.6.

Criteria 26.5 (a) (Mostly Met) – Regulation 30(4) of the FIA provides for supervisors to base the frequency and intensity of on-site and off-site AML/CFT supervision of financial institution or group should be determined on the basis: (a) the money laundering, financing of terrorism and funding of proliferation risks and the policies, internal controls and procedures associated with the accountable or reporting institution, as identified by the assessment of the institutions risk profile by the supervisory body.

Criteria 26.5 (b)– (Met) Regulation 30(4) of the FIA provides for supervisors to base the frequency and intensity of on-site and off-site AML/CFT supervision of financial institution or group should be determined on the basis: (b) the money laundering, financing of terrorism and funding of proliferation risks present in the country)

Criteria 26.5 (c)– (Met) Regulation 30(4) of the FIA provides for supervisors to base the frequency and intensity of on-site and off-site AML/CFT supervision of financial institution or group should be determined on the basis (c) the characteristics of the accountable or reporting institutions, in particular the diversity and number of the institutions and the degree of discretion allowed to such institutions under the risk-based approach.

Criteria 26.6 –(Met) The FIC and NAMFISA (supervisors) have entity risk assessment tools which they apply on licensees to assess and review the ML/TF risk profile of a financial institution or group, including the risk of non-compliance, periodically, and as and when there are major events or developments in the management and operations of the financial institution or group.

Weighting and Conclusion

Namibia has designated agencies (FIC and NAMFISA) to supervise FIs for compliance with FIA, regulations and guidelines. However, there are minor deficiencies with respect to a risk-based supervision for AML/CFT purposes whereby the laws, other instruments or mechanisms do not indicate that supervisory authorities use a consolidated supervision approach for assessment of AML/CFT group risks.

Namibia is rated Largely Compliant with Recommendation 26.

Recommendation 27 – Powers of supervisors

In its MER under the First Round of MEs, Namibia was rated Non - Compliant with requirements of this Recommendation (formerly R.29). The main technical deficiency was that the 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.

Criterion 27.1 – (Met) Section 35(2) of FIA confers powers upon FIC and NAMFISA to supervise, monitor and enforce compliance with this Act or any regulation, order, circular, notice, determination or directive issued in terms of this Act, in respect of all accountable or reporting institutions supervised by it. Section 9(1)(h) of the FIA, designates the FIC as a supervisory body through declaring that it has powers to supervise, monitor and enforce compliance with this Act, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by accountable and reporting institutions and give guidance to accountable and reporting institutions to combat money laundering or financing of terrorism activities

Criteria 27.2 – (Met) Section 53 of FIA empowers supervisory bodies (FIC/NAMFISA) to conduct inspections on accountable and reporting institutions for determining compliance with AML/CFT/CPF measures. Subsection (1) requires regulation, notice, order, circular, determination or directive issued in terms of this Act, an inspector may at any time and on notice, enter and inspect any premises at which the Centre, the supervisory body or regulatory body reasonably believes the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted that for the purposes of determining compliance with this Act.

Criteria 27.3 – (Met) In terms of Section 53(2)(b) & (c) of FIA an inspector conducting inspections on behalf of a Supervisory Authority may compel the production of any information/documentation or open any strong room containing documents necessary for an assessment of compliance with AML/CFT/CPF obligations. Section 9(2) in order to attain its objects and perform its functions the Centre may: call for and obtain further information from persons or bodies that are required to supply or provide information in terms of the Act or any law, furthermore it may direct any accountable or reporting institution, or supervisory body to take such steps as may be appropriate in relation to any information or report received by the Centre, to enforce compliance with the Act

Criteria 27.4 – (Met) Section 35(16) as read with Section 65 of the FIA provides supervisors with adequate authority to impose sanctions for failure to comply with AML/CFT requirements including powers to impose a range disciplinary and financial sanctions such as withdrawal, restriction/suspension and termination of a license (See R.35 for details).

Weighting and Conclusion

Namibia fully meets all the criteria of this Recommendation.

Namibia is rated Compliant with Recommendation 27.

Recommendation 28 – Regulation and supervision of DNFBPs

In its MER under the First Round of MEs, Namibia was rated Non – Compliant with the requirements of this Recommendation (formerly R.24). The main technical deficiency was that DNFBPs are not subject to effective regulatory and supervisory regimes in the AML/CFT area. The new FATF Recommendation strengthens the principle of supervision and controls using a risk-based approach.

Casinos

Criterion 28.1(a) – (Met) Section 34 of the Gaming and Entertainment Act requires any person wishing to carry out a business of casino to obtain a license from the Casino Board.

Criterion 28.1(b) – (Met) Casino Board has licensing procedures and processes for identifying and verifying shareholders as set out Section 34 of the Gaming and Entertainment Act and it takes reasonable steps to verify the self-declarations provided by applicants. As part of its licensing procedures, fit and proper vetting is done which includes information criminal status and professional integrity of the persons who will own or control the entity as well as those managing it. In addition, the FIA requires casinos as accountable institutions under the FIA to comply with section 35(15) of the FIA which requires regulators such as the Casino Board to adopt the necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable or reporting institution.

Criterion 28.1(c)– (Met) Schedule 1 of the FIA read with Section 35 of the FIA gives authority to the FIC to supervise, monitor and enforce compliance with AML/CFT obligations by casino.

Criteria 28.2 –(Met) Sections 9 and 35 as read with Schedules 1 and 3 of the FIA designate the FIC as the supervisor for monitoring and ensuring AML/CFT compliance by DNFBPs.

Criteria 28.3 –(Met) Section BPs are subject to accountable institutions under Schedules 1 and 3 of the FIA as read with Section 35 of the FIA as such they are monitored by the FIC for compliance with AML/CFT requirements.

Criteria 28.4(a) – (Met) The FIC has powers in terms of Section 9 read with 35 to supervise, monitor and enforce compliance with the FIA, or any regulations, directives, determinations, notices or circulars issued in terms of the Act, by accountable and reporting institutions and give guidance to Accountable and reporting institutions to combat money laundering or financing of terrorism or proliferation activities.

Criteria 28.4(b) – (Mostly Met) Real Estates: The Namibia Estate Agent Board regulates real estate agents who are required to be licensed and hold a fidelity certificate under section 16 of the Estate Agents Act 1976. The fidelity certificate requires the applicant to disclose whether they have been subject to criminal proceedings and other information on the shareholders of the legal entity. The fidelity certificate is renewed on an annual basis and each applicant has to undergo the process for them to be registered with the Real Estate Board.

- Accountants: Accountants are registered by the Public Accountants and Auditors Board under section 23 of the Public Accountant and Auditors Act 1951 and the sector. The Board has fit and proper tests which consider professional integrity and criminal checks.
- Legal practitioners: Lawyers are registered by the Law Society of Namibia (LSN) and comprises 179 law firms or entities. Persons qualified are permitted under section 4 of the Legal Practitioners Act 1995 (LPA 1995) and submit an application for admission. The person must be fit and proper in order to be admitted and authorised and possess the relevant qualifications as provided under section 5 of the LPA 1995. The LSN approves applications by entities that wish to practice as law firms with trust accounts and must have fidelity certificates.
- Dealers in Precious Stones and Metals: Dealers in Precious Metals and Stone are licensed by the Ministry of Mines and Energy with application for diamond dealer/cutting is issued under section 15 of the Diamond Act of 1999, any applicant must undergo a fit and proper assessment at the application stage which includes vetting of beneficial owners and criminal checks.
- Jewellery, Arts and Antiques are not regulated and therefore market entry rules are unknown.

Furthermore, Section 35(15) of the FIA which requires DNFBPs to adopt necessary measures to prevent or avoid having any person who is not fit and proper from controlling, or participating, directly or indirectly, in the directorship, management or operation of an accountable or reporting institution.

Criteria 28.4(c) – (Met) Section 35(16) as read with Section 65 of the FIA provides supervisors with adequate authority to impose sanctions for failure to comply with AML/CFT requirements including powers to impose a range disciplinary and financial sanctions such as withdrawal, restriction/suspension and termination of a license (See R.35 for details).

Criteria 28.5 – (Met) Regulation 30(4) of the FIA gives authority to the FIC to base the frequency and intensity of on-site and off-site AML/CFT supervision of financial institution or group should be determined on the basis: (a) understanding of ML/TF risks, having regards to the characteristics of the DNFBPs, in particular their diversity and number and (b) ML/TF risk profile of those DNFBPs and the degree of discretion allowed to them under risk-based approach, when assessing the adequacy of the AML/CFT internal controls, policies and procedures of DNFBPs. The FIC has in place a framework that risk profiles DNFBPs and apply the results of the assessment to carry out inspection based on risk categorisation of the entities.

Weighting and Conclusion

Overall, Namibia has adequate rules that satisfy the criteria except for a minor deficiency relating to absence of regulation of Jewellery, Arts and Antiques.

Namibia is rated Largely Compliant with Recommendation 28.

Recommendation 29 - Financial intelligence units

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R26). The main technical deficiency was that the FIU was not established at that time.

Criterion 29.1 – (Met)

Namibia's FIU, the FIC was established, pursuant to the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (the FIA) as the national centre for combatting money laundering and the financing of terrorism or proliferation activities in collaboration with the other law enforcement agencies.

The FIC has the powers and functions to collect, request, receive, process, analyse and assess all reports, requests for information and information received from a wide range of sources including AIs/RIs and competent authorities (s.9(1) FIA). The FIC is able to initiate an analysis of its own motion based on information in its possession or information received from another source following which it is enabled to disseminate information to which it has access to competent authorities and foreign agencies with powers and duties similar to that of the FIC.

Criterion 29.2 (a) (Met)— The FIA establishes the FIC as the national centre responsible for administering the FIA under section 7(1). Suspicious transaction reports are required to be filed by an accountable or reporting institution pursuant to section 33(1) of the FIA as read with Regulations 20 & 21 of the FIA.

Criterion 29.2 (b) (Met)—

The FIC is a central agency for the receipt of disclosures filed by reporting entities, including:

- Suspicious Transaction & Suspicious Activity Reports (Ss. 9(1)(e)(i) & 33(1) of the FIA, & Regulations 21 & 22 of the FIA & Government Notice 3 of 2015)

- Declaration of cross border movement of cash and bearer negotiable instruments (S 36, 38(1) & 37 and Regulation 31 of the FIA) Section 32, read with Regulation 23 of the FIA.
- Electronic transfers of money (Section 34. (1) as read with regulation 23 of the FIA).

Criterion 29.3(a) (Met) — The 9(1) & (2) and 40(2) of the FIA enable the FIC to obtain and use additional information in addition to the information that entities report to the FIC.

Criterion 29.3(b) (Met) — Section 31(1) enables the FIC to have access to the widest possible range of financial, administrative and law enforcement information that it requires to properly undertake its functions. The FIC has authority to access information held by commercially available databases. See information on IO.6.

Criterion 29.4(a) (Met)- There is sufficient legal basis to enable the FIC conduct operational analysis as per S.9(1) & regulation 35 of the FIA. FIC performs operational analysis for identification of specific targets to disseminate, proactively or upon request, to the LEAs. See statistics in IO.6.

Criterion 29.4(b) (Met)- The FIC has conducted various sectoral and thematic strategic analysis shared via FIC website with LEAs and other stakeholders as required by Section 9(2)(f) of the FIA. The FIC has conducted strategic analysis reports covering corruption, fraud, gift remittances, wildlife, and tax. crimes.

Criterion 29.5 (Met) — The FIC is able to disseminate spontaneously and upon request, information and the results of its analysis to domestic relevant competent authorities. (Ref. Sections 9(1)(c) &(d),48(1), (6) & (7) and section 48(4) & (8) of FIA. In practice the FIC has MOUs in place to govern the sharing of information with competent authorities. All information is approved before dissemination and secure mechanisms are used to disseminate the information to competent authorities. The FIC utilizes the ESW to disseminate information to other jurisdictions (FIUs) who are members of Egmont. For non-Egmont members and domestic competent authorities, the FIC uses the goAML encrypted email application,

Criterion 29.6 (a)(Met)— The FIC is housed within the Bank of Namibia, but remains a statutorily independent organization. In this regard, clear demarcation in terms of core functions and access to the FIU space and information exists between FIC and the Bank of Namibia. The FIC has an IT Policy and SOP in place that govern the handling, security and confidentiality of information between it and the Bank of Namibia.

Criterion 29.6 (b)(Met)— FIC conducts security vetting of its staff by the Namibia Central Intelligence Service before and during employment as required under Section 13(4) of the FIA.

Criterion 29.6 (c) (Partly Met)— The FIC is administratively housed within the Bank of Namibia, with its dedicated office space. Access to the FIC is secure and managed through different layers of entry controls based on the SOP in place that governs the handling of security. The ICT system of the FIC is however administered and managed by dedicated personnel of BoN.

Criterion 29.7 (Partly Met) - There are moderate shortcomings in relation to the operational independence and autonomy of the FIC in exercising its core functions.

Criterion 29.7 (a) (Not Met) - The legal provisions in sections 12(1)(a) &(f), and 48(1), (7), (8), (9) of the FIA accord the FIC to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information. However, the FIC lacks operational independence in respect of appointment/removal of the Director, appointment and secondment of staff, and security vetting of staff as there must be concurrence between the FIC Director and the Governor of

the Bank of Namibia. Further, the FIA is silent on what happens when there is no concurrence between the FIC Director and the Governor of the Bank of Namibia. The Governor has power to reassign the FIC Director¹¹ any role he/she deems fit within the Bank of Namibia including redeployment within the Bank of Namibia. Essentially, the FIA provides for two conflicting processes for removal of the FIC Director while also granting the Governor of the Bank of Namibia full control over staffing matters of the FIC which has significant impact on operational independence of the FIC.

Criterion 29.7 (b) (Met) - The FIC has the power to share information held by it with competent authorities and foreign counterparts (FIA, s.48(1) & s.9). Sharing of information is done through EGMONT secure Web as well as written agreements, including MOUs

Criterion 29.7 (c) (Met) - The FIC is housed within the Bank of Namibia premises. The FIA under section 9 provides for the core functions of the FIC. The available legislative framework indicates that the functions of the FIC are distinct from those of the Bank of Namibia as provided in section 3 of the Bank of Namibia Act, 15 of 1997.

Criterion 29.7 (d) (Not Met) - The FIC is able to obtain and deploy the resources needed to carry out its functions. However, there are legal provisions in the FIA which are impediments to FIC's operational independence and autonomy as highlighted below:

- (1) The FIA provides that there must be concurrence between the FIC and the BoN Governor to do all that is necessary or expedient to perform its functions effectively (FIA, s.10) including:
 - determining its own staff establishment
 - employment of its staff within the Council approved structure in accordance with staff policies and procedure of the BoN as far as reasonably possible;
 - appointing employees and seconded personnel to posts on its staff establishment,
 - obtain the services of any person by agreement, including any state department, functionary, or institution, to perform any specific act or function.
- (2) The FIA further requires concurrence between the FIC and the Governor on security screening of staff (including on-going screening), s.13(4) & (5).

Criterion 29.8 (Met) —The FIC is a member of the EGMONT Group of FIUs since June 2014.

Weighting and Conclusion

Namibia has put in place a framework to enable the FIC to conduct its core functions. However, there is doubt on the operational independence and autonomy of the FIC as regards the removal of the FIC Director by the Minister and the Governor of the BoN, powers of the FIC Directors which require concurrence from the Governor of BoN on the overall administrative matters of the FIC such as appointment and security vetting of staff and secondment of offices from other institutions. The FIC shares ICT systems and infrastructure with BoN, the latter having administrative rights which entails that access to FIC information technology systems is not limited to the FIC. The requirement for the Director to report administratively to the Governor and functionally to the Council impacts negatively on the operational independence of the FIC especially that the Council includes representation from the private sector.

Namibia is rated Partially Compliant with Recommendation 29.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R27). The main technical deficiencies were: that although Namibia had 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 and moreover, though Specialized Police Units are in place but offences of money-laundering and financing of terrorism do not exist yet.

Criterion 30.1 (Met) - The Namibian Police Force (NAMPOL) has general powers to conduct investigations into any offence, including ML/TF offences and its predicates pursuant to Section 13(c) of the Police Act 1990. The NAMPOL has a dedicated Division within the CID for conducting-money laundering investigations. The responsibility for investigation into ML is consistent with Namibia’s AML/CFT policies. The other LEA with the responsibility to conduct investigations into ML derived from their mandate is the Anti-Corruption Commission (ACC) which is empowered to investigate corruption cases and any other criminal activity resulting from the corruption case, which includes ML arising from the predicate offence of corruption.

Criterion 30.2 (Met) -The Inspector General may recommend a member of police to conduct parallel financial investigation pursuant to Section 83 (1) POCA. Sections 3(b) and 18(3) of the Anti-Corruption Commission (ACC) Act allows the Anti-Corruption Commission (ACC) to refer cases to any other appropriate authority for investigation or further action, which can include cases for parallel financial investigations.

Criterion 30.3 (Met) - The OPG is mandated to coordinate the preservation and eventual realisation of forfeited property. The Assets Recovery Unit under the OPG is responsible for identifying, tracing, and investigating assets that are subject to freezing or that may become subject of confiscation or property suspected to be proceeds of crime.

Criterion 30.4 (Met) - Although the FIC is not a law enforcement authority per se, it has powers to initiate freezing and seizing of property with full powers to search and seize given under Section 61 FIA. Section 42 of the FIA further empowers the FIC to “freeze” suspected proceeds of crime for 12 days in order to initiate the freezing and seizing of property/proceeds of crime under the POCA. The FIC may also trace assets as part of its analysis, or on behalf of a foreign FIU.

Criterion 30.5 (Met) - The ACC has sufficient powers to identify, trace, and initiate freezing and seizing of assets. Section 22(b) of the ACC Act empowers the ACC to seize anything which in the opinion of the authorised officer has a bearing on the investigation. Further, the Director of the Commission is empowered by Section 26(1) of the ACC Act to obtain information concerning assets if, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that such information could assist or expedite the investigations.

Weighting and Conclusion

Namibia has a framework to investigate ML/TF and designated offences including the conduct of parallel financial investigations. There are designated LEAs with the mandate to investigate ML/TF and are authorised to carry out parallel financial investigations, and identify, trace assets/proceeds of crime and freeze or seize them for purposes of confiscation.

Namibia is rated Compliant with Recommendation 30.

Recommendation 31 - Powers of law enforcement and investigative authorities

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R 28). The main technical deficiencies were that though the legal tools existed but were rarely used and that the POCA and the CPA though enacted were not yet in force. This Recommendation has been expanded and now requires countries to have, among other provisions, mechanisms for determining in a timely manner whether natural or legal persons hold or manage accounts. The offences relating to TF have now been criminalised (see R. 6).

Criterion 31.1 (Met) - Competent authorities in Namibia are able to obtain access to all necessary documents and information for use in those investigations, and in prosecutions and related actions.:

- a. The NAMPOL, pursuant to Section 205 of the Criminal Procedure Act, 1975, (Act.no 51 of 1975) as read with Section 179 of the CPA has powers to search and seize records held by financial institutions, DNFBBs and other natural or legal persons pursuant to Section 20 and 21 of the CPA. FIC using the powers it has under ss. 61(5), 71(1)(b) of FIA) can on behalf of LEAs obtain records held by financial institutions, DNFBBs and natural persons. Authorised officers as defined under s. 1 of FIA (. an officer of the NAMPOL, ACC, FIC, the Intelligence Service, the Prosecutor General, Supervisory body and investigative authority) acting under s. 61(5) FIA can require any person to deliver to the officer any record, report or document suspected to have been used in the commission of an offence. FIC has the mandate to access records relating to suspicious money laundering or financing of terrorism or proliferation activities FIC is further empowered to make extracts or copies of those records (s. 31(a)(v)).
- b. Sections 21(2), 23 of the CPA empowers the Police with or without a search warrant to search any person or enter any premises and carry out a search. Similarly, s. 61(1)(a), (b) of FIA allows an authorised officer to enter and search any premises.
- c. Section 26 CPA empowers the NAMPOL to enter any premises without a warrant for the purposes of obtaining statements from witnesses.
- d. S. 25(1)(b)(ii), (iii) of the CPA and s. 61(1)(d) of FIA empowers investigative agencies and the FIC to enter premises for the purposes of seizing and obtaining evidence.

Criterion 31.2 (Partly Met) – A wide range of investigative techniques are only provided for to a limited extent in Namibia with the Authorities relying on applicable common law practice at times:

- (a) Under-cover operations are recognised by the courts in Namibia under common law. See Box 3.5: Case law examples of undercover operations: 1) S v Theron (CC 27 – 2012) (2019) NAHCMD 237 (11 July 2019) and Box 3.6: 2) S v Siyong Xu and Haifen Yang (HC-MD-CRIMINALI-APP-CAL-2018/64) (2018) NAMCMD 409 (14 December 2018).
- (b) Section 40(1) of PACOTPAA empowers the Inspector General of NAMPOL to apply ex parte to a judge in chambers for the issuance of a warrant for the interception of communications only in TF cases, and there are no similar provisions for ML investigations.
- (c) Authorised officers of the different competent authorities including from the NAMPOL and ACC have powers to access computer systems as per. S. 24(1)(g) of the Anti-Corruption Act and Section 61 of the FIA.

- (d) There are no specific provisions empowering LEAs to engage in controlled delivery when conducting investigations, but NAMPOL mainly relies on common law and evidence of such cases has been admitted in the Namibian courts.

Criterion 31.3 (Partly met)

- (a) Namibia has mechanisms for identifying whether natural or legal persons hold or control accounts. FIC under Section 48 of FIA can use a wide range of information to form the basis for its analysis and assessment and to provide information to an investigating authority inside Namibia, relevant Supervisory Bodies, and relevant regulators and to the Namibia Central Intelligence Service. Further mechanisms for identifying ownership and control of accounts are provided for under CPA where the NAMPOL can obtain information pursuant to Section 205 of the Criminal Procedure Act, 1975 which provides that a judicial officer may issue a subpoena requiring any person who is likely to give material or relevant information as to any alleged offence to appear at a date and place in the subpoena and be examined by a public prosecutor. In case of information held by any person employed in or associated with an agency, office or ministry as defined in the Public Service Act, 1995 (Act no. 13 of 1995) or statutory body, such person can be compelled to provide the information pursuant to Section 87 and 88 of POCA.
- (b) There is no mechanism to ensure that competent authorities have a process to identify assets without prior notification to the owner. Section 205 CPA only allows for calling of the person who is likely to give information to appear for examination. This entails that the person (not assets) must first be identified and notified through a subpoena. This does not satisfy requirement of this criterion. Section 31(2) FIA which empowers FIC to be given access to information does not detail the manner such information is to be accessed, i.e., whether the application to access such information can be made ex parte.

Criterion 31.4 (Met) - Competent authorities have access to the FIC information spontaneously or upon request. This relates to all information relevant to ML, associated predicate offences, or TF. Pursuant to Section 48(1), (6), (7) of the FIA, FIC must disclose all relevant information relating to the national security or economic stability of Namibia to an investigating authority and to the Namibia Central Intelligence Service. Although the wording of Sub-Sections (6) and (7) to Section 48 outlines that the Centre may specify such information to be released to competent authorities, this does not preclude the competent authorities from asking for all relevant information.

Weighting and Conclusion

LEAs in Namibia apply special investigative techniques, particularly undercover operations, control delivery, and accessing computer systems but there are deficiencies relating to lack of powers to intercept communication for purposes of investigating ML and other high-risk/serious predicate offences other than TF. There are no clear provisions or processes enabling competent authorities to identify assets without prior notification to the owner.

Namibia is rated Partially Compliant with Recommendation 31.

Recommendation 32 – Cash Couriers

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly SR IX). The main technical deficiencies were that there was a lack of effective implementation of SR IX that the Customs and Excise Act, 1998 (Customs Act) was not implemented and no monitoring mechanism of transportation of currency.

Criterion 32.1 (Met) - Namibia implements mandatory declaration of cross border movement of cash and bearer negotiable instruments (BNI) pursuant to the provisions of Section 36(1) of FIA which provides that every person entering into or departing from Namibia who is carrying or transporting cash, bearer negotiable instruments, or both, equal to or exceeding an amount determined by the Centre must declare such cash or instrument, to an officer of the Customs and Excise at the port of entry into or departure from Namibia. The wording of the provisions of Section 36(1) is that “every person entering” which means that the provision covers all physical cross-border transportation by travellers. Further, Section 36(2) and (3) covers other means of transportation including mail and cargo. These provisions operate whether the person uses different systems or modes of transportation.

Criterion 32.2 (Met) - The pre-set maximum threshold referred to in c.32.1 above is NAD 100 000.00 and above, or the equivalent thereof in another currency as per FIC Determination 3 of 2016. The obligation to submit a truthful declaration to the designated competent authorities is prescribed in law by providing a consequence for false declaration. Section 36(6) FIA outlines that any person that is required to make a declaration of cash or bearer negotiable instruments and makes a false declaration commits an offence and is liable to a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

- (a) The system of declaration in Namibia is for written declaration system for all travellers carrying amounts above a threshold.
- (b) See c.32.2(a) above
- (c) Not applicable

Criterion 32.3 (Met) - Namibia operates a declaration rather than a disclosure system. The declarant is not required to provide an upfront written declaration to a Customs and Excise or Post Office Officer, but by virtue of section 37 of the FIA such officers can ask additional questions of declarant on the basis that failure to provide a truthful declaration is criminalized. Travelers are therefore required to give truthful answers and provide authorities with appropriate information upon request’.

Criterion 32.4 (Met) - In the event of a false declaration, Section 37(1)(c) FIA enables the Customs and Excise or Post Office to require the person making the declaration to provide information concerning the origin of the cash or bearer negotiable instrument and its intended purpose.

Criterion 32.5 (Met) - Proportionate and dissuasive sanctions are applied against persons who make a false declaration. Section 36(6) of FIA provides for the offence of making false declaration thus: “Any person that is required to make a declaration in terms of subsections (1), (2) or (3) of cash or bearer negotiable instruments, or both, and who fails to make such declaration, or makes a false declaration, commits an offence and is liable to a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.”.

Criterion 32.6 (Met) - Section 38 FIA requires that all declarations must be submitted to the FIC.

- (a) Not applicable
- (b) Section 38(1) read with Regulation 31(3) FIA requires that the Commissioner of Customs and Excise

and the Postmaster must submit all declarations to the Centre on a weekly basis.

Criterion 32.7 (Partly Met) - Section 37(6) of FIA requires that the Customs and Excise or Post Office must cooperate with other law enforcement agencies on any matter concerning investigations of money laundering activities, financing of terrorist or proliferation activities. However, competent authorities do not cooperate to implement other provisions of Recommendation 32 that are not specific case under investigations. Thus, domestic coordination is only pursued to the extent that such measures relate to the pursuit of investigations.

Criterion 32.8 (Met) - Section 37(2)(a)(ii) and (iii) allow competent authorities to seize and detain cash or bearer negotiable instruments to ascertain whether or when such cash or bearer negotiable instruments are used for ML/TF purposes.

- (a) The use of the word “*reasonably suspects*” in Section 37(2)(a) connotes that the provision can be applied where there is a suspicion of ML/TF or predicate offences.
- (b) where there is a false declaration, this is covered by Section 37(2)(b)(ii).

Criterion 32.9 (Met) - Competent authorities have general powers for sharing information between the FIC and its foreign counterparts pursuant to Section 9(1)(c) of FIA and through other informal mechanisms. To ensure that information obtained by competent authorities is *retained* for the purposes of engaging in international cooperation and assistance, each competent authority is able to enter into MoU with their foreign counterparts for the purposes of information sharing. FIC also requires that records to be kept of business relationships and transactions that Accountable Institutions are engaged in for at least five years. This information may be shared through EGMONT secure website and with other jurisdictions that FIC has MoUs with.

Criterion 32.10 (Met) - There are sufficient mechanisms in place to provide *strict safeguards* to ensure proper use of information collected through the declaration system pursuant to Section 52 of the ACC Act as well as Sections 45, 49 and 50 of FIA. The use of information obtained by Customs are not restrictive against trade payments between Namibia and other countries and neither does it curtail the freedom of capital movements.

Criterion 32.11 (Met) - Section 36(6) of FIA provides for the offence of making false declaration thus: “Any person that is required to make a declaration in terms of subsections (1), (2) or (3) of cash or bearer negotiable instruments, or both, and who fails to make such declaration, or makes a false declaration, commits an offence and is liable to a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment. See c.3.9 and c.5.7 for sanctions measures against legal and natural persons in terms of Section 2(2) of PACOTPA and Section 332(5) of CPA. There are also measures that enable the confiscation of currency or BNIs that are related to ML/TF or predicate offences.

Weighting and Conclusion

Namibia has a minor deficiency relating to inadequate coordination between competent authorities in respect of cash declarations and BNIs.

Namibia is rated Largely Compliant with R. 32.

Recommendation 33 – Statistics

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R 32). The main technical deficiency was that no comprehensive statistics available.

Criterion 33.1 – (Partly Met)

Criterion 33.1(a) – (Partly Met) Namibia to some extent maintains and has provided statistics on STRs received and reports disseminated to LEAs for the period under review. FIC maintains statistics under section 9(1)(e)(i) of the FIA on the STRs received and disseminated though it was difficult to determine the level of effectiveness due to the submission of inconsistent information.

Criterion 33.1(b) – (Partly Met) – NAMPOL and the OPG to some extent maintain statistics on ML investigations, prosecutions, and convictions. NAMPOL – CID maintains statistics on TF investigations, prosecutions, and convictions. But the statistics is not comprehensive enough to assist in assessing the effectiveness of the agency in combating ML/TF crimes as evidenced in the 2020 NRA.

Criterion 33.1(c) – (Partly Met)- The OPG maintains statistics on property frozen, seized and confiscated and recovered through forfeiture. But the statistics is not comprehensive enough to assist in assessing the effectiveness of the agency in combating ML/TF crimes as evidenced in the 2020 NRA.

Criterion 33.1(d) – (Partly Met)- MoJ maintains statistics on number of MLA requests made and received. The FIC, NAMPOL and NAMFISA also maintain statistics on incoming and outgoing requests for international cooperation. But the statistics is not comprehensive enough to assist in assessing the effectiveness of the agency in combating ML/TF crimes as evidenced in the 2020 NRA. Furthermore, there is no evidence that other competent authorities do so.

Weighting and Conclusion

Namibia maintains statistics in most required areas has moderate deficiency in that in most cases the information may not be as comprehensive to determine the level of effectiveness.

Namibia is rated Partially Compliant with Recommendation 33.

Recommendation 34 – Guidance and feedback

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 25). The main technical deficiencies were that no guidelines were issued to assist NBFIs to implement and comply with AML/CFT requirements and that the BON does not provide feedback to banking institutions reporting STRs.

Criterion 34.1 – (Mostly Met) - In terms of section 35(15)(d) of the FIA, the relevant supervisory body of an accountable or reporting institution must issue guidelines. Moreover, Section 9(1)(h) provides that the FIC should, in part, provide guidance to accountable and reporting institutions to combat money laundering or financing of terrorism or proliferation activities.

Guidance: The FIC has issued guidance on a number of reporting obligation, reporting of STRs, SARs, cash transaction reports and electronic funds transfer, customer identification, CDD relating to intermediaries, all available on the FIC website.

Feedback

Both NAMFISA and the FIC provides feedback to the supervised entities following onsite inspections.

The FIC also provides industry level feedback on reporting.

Weighting and Conclusion

Namibia has minor deficiencies in relation to provision of specific guidance on some obligations such as BO but has provided reasonable guidance on STRs.

Namibia is rated Largely Compliant with Recommendation 34.

Recommendation 35 – Sanctions

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R17). The main technical deficiencies were that both the BON and NAMFISA lack effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with enforcement of FATF recommendations; the Terrorist Financing Convention had not been ratified nor its provisions implemented and the Terrorism Bill was still pending and the UN Resolutions were not fully implemented.

Criterion 35.1 – (Mostly Met) Section 35(16) of the FIA provides for a range of proportionate and dissuasive criminal, civil and administrative sanctions for breaches of AML/CFT requirements by Accountable Institutions and Reporting Institutions. The sanctions include a maximum fine of N\$ 100 millions and 30 year imprisonment, or both. For natural person, the sanctions include prohibition from participating in the market, 10 years imprisonment and N\$10 million, or both. Furthermore, the sanctions range from enforceable directions to take remedial actions, business restrictions business suspensions, financial penalties and custodial sentences. While NPO are subject to the same sanction regime as a DNFBP under the FIA, there are major deficiencies in the regulation of NPOs in Namibia (See R.8 for details). Violation of TFS relating to TF is sanctioned by a fine not exceeding NAD100 million or to imprisonment for a period not exceeding 30 years which could be applied to either legal or natural persons. Since VASPs are not licensed nor registered, there are no sanctions in place. Section 63 of PACTOPAA as read with Regulation 13 of the PACOTPAA Regulation provides for criminal sanctions only which attracts a liability of a fine not exceeding NAD 50 million or imprisonment not exceeding 15 years, or both. There are no civil and administrative sanctions.

Criteria 35.2 (Met) – Section 65 as read with Section 35 of the FIA sanctions apply to directors and management of FIs and DNFbps for violation of AML/CFT obligations.

Weighting and Conclusion

Namibia has a broad range of sanctions that are proportionate and dissuasive to deal with natural and legal persons that fail to comply with the AML/CFT requirements but have minor deficiencies in relation to NPOs, TFS and VASP.

Namibia is rated Largely Compliant with Recommendation 35.

Recommendation 36 – International instruments

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R35) and Non-Compliant with SR I. The main technical deficiencies were that: although the Palermo convention had been ratified by Namibia, most of its provisions have not yet been fully implemented, in addition, other UN Conventions and Resolutions have not been ratified and implemented. The deficiency concerning implementation of targeted financial sanctions is no longer assessed under this Recommendation but is now covered in R. 6.

Criterion 36.1 – (Met)- Namibia acceded to the Vienna Convention of 1988 on 6 March 2009. Namibia had ratified the Palermo Convention in August 2002 and has since passed POCA & ACA. Namibia ratified the United Nations Convention against Corruption in August 2004, and ratified the International Convention for the Suppression of the Financing of Terrorism in October 2021.

Criterion 36.2 (Met) – The Vienna, Palermo, Merida and Terrorist Financing Conventions have been implemented vide the Anti-Corruption Act, PACOTPA, POCA, FIA, and Article 144 of the Namibia Constitution.

Weighting and Conclusion

Namibia meets all criteria.

Namibia is rated Compliant with Recommendation 36.

Recommendation 37 - Mutual legal assistance

In its MER under the First Round of MEs, Namibia was rated Largely Compliant with requirements of this Recommendation (formerly R36 and SRV). The main technical deficiencies were that: in the absence of the AML law confidentiality requirements may be an impediment to providing appropriate MLA to a requesting country; since MLA was 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; moreover, Terrorist Financing was not an extraditable offence; there is extensive cooperation within the region through the SADC and SARPCCO framework but there is not much activity outside the SADC region.

Criterion 37.1 – (Met) - The International Co-operation in Criminal Matters Act (ICCMA) and CPA provide the legal basis for provision of a wide range of MLA in Namibia on ML, TF and associated predicate offenses. MLA arrangements are also facilitated through the African Union Convention on Prevention and Combatting Corruption (2003), the SADC Protocol on Mutual Legal Assistance in Criminal Matters, the Joint Permanent Commissions (used inter alia to discuss conclusion of bilateral treaties for extradition and mutual legal assistance) as well as the Scheme for Mutual Assistance Within the Commonwealth (Harare Scheme). The ICCMA authorizes MLA to be provided in relation to requests for assistance in obtaining evidence from witnesses and producing documents (s.8), requests for assistance in compelling attendance of witness in any state listed in Sch 1 (s.11), requests for execution of a foreign monetary sentence (s.15), and requests for the enforcement of foreign restraint and confiscation orders (ss. 19, 20 and 24). As a part of the MoJ Charter, the timeline indicated for processing MLAs is 30 working days. The assessment team considers the period of two weeks reasonable as the authorities acted without undue delay.

Criterion 37.2 – (Partly Met) - The Central Authority is the Permanent Secretary /Executive Director of the Ministry of Justice or such other official designated by the Minister of Justice by notice in the Government Gazette. – Section 1A of ICCM Act. The processes to follow are set out in the ICCMA, however without time frames, and the authorities have not established that they use a comprehensive case management system to monitor progress of requests. The 2020 Manual for MLA developed by the MoJ gives no indication that the requests are prioritized.

Criterion 37.3 – (Mostly Met) - The extent that grounds for refusal for mutual legal assistance under Section 7A (1) of the International Cooperation in Criminal Matters Amendment Act, 2018 (Act No. 20 of 2018), are not unreasonable nor unduly restrictive. The other grounds for refusal or limitation of MLA are found in specific articles of the treaties that Namibia signed with different countries and SADC Protocol on MLA in Criminal Matters. These treaties provide for the refusal of MLA if the request relates to a political offense, an offense solely under military law, the request would prejudice national security or is not in compliance with the provisions of the treaty. When there is a request by a foreign country for execution of a foreign sentence of fine under the ICCMA, s.15(1), which the Minister may refuse if

satisfied that the person upon whom the sentence was imposed would not have been ordered to be surrendered under Namibia extradition law had a request for the person's extradition been made. In this, the conditions and grounds for refusal are found in the extradition treaties and sections 3(1) and 5 of the 1996 Extradition Act (as amended). One such ground for refusal is that the conviction was obtained in the absence of the defendant, which has presented challenges in practice. Moreover, since Namibia follows dual criminality to render MLA requests in terms of Section 7A(1)(c), requests on MLA crimes such as illicit trafficking in stolen goods and piracy which are not criminalised in Namibia (See Criterion 3.2). These exception to the general rule is considered minor deficiencies based on the risk profile of the jurisdiction.

Criterion 37.4 – (Met) In terms of Section 7A (2) of the ICCMA, MLA request are not refused on the ground that it has fiscal matters including tax crimes. On the contrary, a tax crime is a predicate offence to ML, and, therefore, subject to MLA requests. The same provision also provides for the overriding of bank secrecy and confidentiality provisions. The POCA and FIA, on the other hand, override any secrecy and confidentiality provision relating to information held by FIs and DNFBPs.

Criterion 37.5 – (Met) Namibian law prohibits disclosure of MLA request unless authorized by law, or except if the disclosure is necessary to execute the request from a foreign State, if the person has come to know of the information by virtue of his office or in his official capacity. Section 2A of the International Cooperation in Criminal Matters Amendment Act, 2018 (Act No. 20 of 2018), makes provision for non-disclosure of requests for assistance.

Criterion 37.6 – (Met) In terms of S.7 A (1)(c) of the ICCMA to be read together with Section 15 of the same Act and Sections 3(1) and 5 of the 1996 Extradition Act (as amended), dual criminality is required for rendering MLA in Namibia. There are no exceptional conditions under the law that enable Namibia not to make dual criminality a condition for rendering assistance where the assistance requests do not involve coercive actions.

Criterion 37.7 – (Met) Namibia would provide MLA if the circumstances of the case relating to the request are such that if such conduct had happened in Namibia, it would be regarded as an offence regardless of whether the conduct would be in the same category of offences in both Namibia and the requesting jurisdiction.

Criterion 37.8(a) – (Met) By virtue of **Section 7 of the ICCM Act**, law enforcement agencies may use any of the investigative powers and investigative techniques contained in the various governing legislation.

Criterion 37.8 – (Mostly Met) -

Criterion 37.8(a) – (Mostly Met) By virtue of **Section 7 of the ICCM Act**, law enforcement agencies may use any of the investigative powers and investigative techniques contained in the various governing legislation.

Criterion 37.8 (b) – (Mostly Met) - By virtue of **Section 7 of the ICCM Act**, law enforcement agencies may use any of the investigative powers and investigative techniques contained in their governing legislation. Further reference made to analysis of R.31.

Weighting and Conclusion

The legal framework of Namibia meets the requirement of this Recommendation to a large extent. The offences of illicit trafficking in stolen goods and piracy are not criminalized which affects MLA in

respect of those offenses. All the limitations indicated under Rec.31 remain as deficiencies under this criterion. There are also moderate shortcomings relating to the issue of the absence of a case management system and prioritization mechanisms that would help keep case records and provide speedy updates on case progress.

Namibia is Largely Compliant with Recommendation 37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its MER under the First Round of MEs, Namibia was rated Partially Compliant with requirements of this Recommendation (formerly R. 38). The main technical deficiency was that it was 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.

Criterion 38.1– (Mostly Met)

Criterion 38.1 (a) and (b) (Met)- The ICCMA provides for registration of foreign restraint and confiscation orders (ch.4). The orders are not limited to specific offenses and cover confiscation of property laundered from or proceeds from ML, predicate offenses, and TF. For the identification of laundered property, the LEAs must apply the provisions of the CPA, s.20, which provides for search and seizure of articles which are concerned in the commission or suspected commission of an offense, whether within the country or elsewhere or which may afford evidence of the commission or suspected commission of an offense. See also Criterion 4.1.

Criterion 38.1(c) (Met)- Provision for the seizure of instrumentalities used in the offense is made in the CPA, s.20(a) and for the confiscation of any instrumentality used in the offense upon conviction in s.35.

Criterion 38.1 (d) (Mostly Met)- The seizure of instrumentalities intended for use in criminal activities is covered in the CPA, s.20(c). Section 35 of the same Act only provides for the confiscation of any instrumentality used in the offense upon conviction.

Criterion 38.1 (e) (Met)- A foreign confiscation order means any order issued by a court or tribunal in a foreign State aimed at recovering the proceeds of any crime or the value of such proceeds (s1 ICCMA). A foreign restraint order means an order aimed at restraining any person from dealing in any property (s1 ICCMA).

Criterion 38.2 – (Met) - In terms of POCA, Chapter 6, section 64, the Prosecutor General may bring civil forfeiture proceedings and obtain a forfeiture order by default. In terms of Section 20 of the ICCMA (as amended), assistance may be rendered to a foreign authority for a default civil forfeiture order where the perpetrator is not present.

Criterion 38.3 (a) – (Met) - Seizure and confiscation actions are coordinated by the OPG in partnership with the NAMPOL and other relevant authorities. Once confiscation measures are finalized domestically, the OPG is responsible for coordinating with other jurisdictions on any requests regarding freezing and forfeiture of assets.

Criterion 38.3 (b) – (Met) - The Prevention of Organized Crime Act No 29 of 2004 in terms of Sections 74 for establishment of the Criminal Asset Recovery Fund. Section 75 provides for the sources of the money to the CARF, section 76 on utilization of the money from CARF which extends to disposal of money received into the CARF.

Criterion 38.4 – (Met) - Namibia has a legal basis for sharing of confiscated property with other countries through agreements in terms of (ICCMA, s.21 (3)). Namibia is entitled to recover expenses incurred in connection with the execution of the foreign confiscation order.

Weighting and Conclusion

The legal framework for MLA relating to freezing and confiscation covers most required elements. Minor deficiencies exist, there is no specific provision for confiscation of instrumentalities intended for use.

Namibia is rated Largely Compliant with Recommendation 38.

Recommendation 39 – Extradition

In its MER under the First Round of MEs, Namibia was rated Non-Compliant with requirements of this Recommendation (formerly R. 39). The main technical deficiency was that money laundering and terrorist financing were 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.

Criterion 39.1 (Partly Met)

Criterion 39.1 (a) – (Partly Met) ML and TF are extraditable offences in Namibia in terms of Section 3 (1), read with Section 4(1) of the Extradition Act, 1996 (Act No.11 of 1996) as amended by Extradition Amendment Act, 2018 (Act No. 19 of 2018). However, Namibia has limited the scope of the offense of TF by exempting from criminality certain acts– See C.5.2 and 5.2bis).

Criterion 39.1 (b) – (Not Met) Namibia has not developed a comprehensive case management system in place and there are no yet clear processes for timely execution of extradition requests including prioritization of such requests.

Criterion 39.1 (c) – (Met) Section 5 of the Extradition Act, 1996 (Act No.11 of 1996), as amended places reasonable restrictions on the return of wanted persons, in line with international standards and practices.

Criterion 39.2 (a-b)– (Met) The law makes provision for prosecution of Namibian citizens accused of having committed offences upon request of extradition, and upon the written authorization of the Prosecutor General. It is clear that the principle that prosecute if you cannot extradite is part of the law of the land of Namibia (See Section 6 of the Extradition Act, 1996 (Act No.11 of 1996) as amended by Extradition Amendment Act, 2018 (Act No. 19 of 2018)).

Criterion 39.3 – (Met) The dual criminality principle is applicable in Namibia in terms of **Section 3(2) of the Extradition Act, 1996** (Act No.11 of 1996) as amended regardless of whether both countries place the offence within the same category of offence.

Criterion 39.4 – (Met) - Namibia has simplified extradition in place Section 8(1)(c) of the Extradition Act as amended by the Extradition Amendment Act, 2018 (Act No. 19 of 2018). Such a request must be accompanied by a mere certificate issued by the appropriate authority in charge of the prosecution in the foreign state concerned.

Weighting and Conclusion

Namibia meets Criteria Moderate deficiencies exist in relation to not being able to execute extradition requests without undue delay, case management is not in place and there is a limited scope of the criminalization of TF since Namibia follows dual criminality principle to handle extradition requests.

Namibia is rated Partially Compliant with Recommendation 39.

Recommendation 40 – Other forms of international cooperation

In its MER under the First Round of MEs, Namibia was rated Largely Compliant with requirements of this Recommendation (formerly R. 40) The main technical deficiency was that there was extensive cooperation through the SADC and SARPCCO framework within the region. However, there is not much activity outside the SADC region.

Criterion 40.1 – (Met) - Namibia's legal and institutional framework allows its authorities to participate in international and regional organizations and networks (such as the Egmont Group, Interpol, ARINSA, Global Focal Point Conference on Asset Recovery in Organised Crime, SARPCO), as well as bilateral cooperation through a number of MOUs. The exchange of information is both spontaneously and upon request. Legislation allows for a wide range of information to be exchanged with foreign authorities in relation to ML, associated predicate offences and TF. Section 1A (2)(d)(e)(f) and 1A (5) & (6) of the ICCMA Amendment Act, 2018 specifically empowers the Central Authority to employ means that will ensure rapid response, informal exchanges and Sections 7 and 30 of the ICCMA Act provides for the widest means of cooperation in a sense that nothing in the ICCMA contained should be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international co-operation in criminal matters otherwise than in the manner provided for by the Act. The NAMPOL, ACC, the FIC, BoN and the NAMFISA have powers to provide the widest range of international assistance and exchange of information to foreign counterparts and, where relevant, to other international organisations as described below. Although there are no specific procedures with prescribed time-frames, it appears a maximum of six weeks applies in most cases except where the matter is considered 'complex'.

Criterion 40.2 (Mostly Met)

Criterion 40.2 (a)– (Mostly Met) The NAMPOL, the FIC, the ACC, BoN, NAMFISA and the AG have legal basis to render international assistance and exchange information, as mentioned above. The ICCMA Amendment Act provides for the legal basis for the competent authorities to provide cooperation through the central authority. The NAMPOL is authorised to enter into agreements / MOUs with police forces of foreign states. Platforms such as the ICPO Interpol and ARINSA are used to get and provide cooperation. Within the scope of Interpol and ARINSA mechanisms and processes have been established for the efficient and timely provision of international cooperation. Namibia FIC is a member of EGMONT and can provide international cooperation within the group using secure gateways. There is no a specific legal basis for NAMRA to entertain requests from foreign counterparts and in terms of Section 2(3) of the NAMRA Act, 2017, the Agency is not empowered to lead negotiations of treaties and international agreements relating to tax and customs. The authorities advised that the Minister of Finance enters into bilateral or multilateral arrangements or agreement on the basis of reciprocity or mutuality and to set out procedures and processes relating to provision, protection and use of information requested and provided. On the basis of the reviews conducted on bilateral and multilateral arrangements (e.g., MoUs) it appears that in general competent authorities lay down the procedures and the processes of giving effect to the statutory powers to request and provide information in MoUs signed on mutual

agreement. Similar arrangements were noted between the Immigrations Department of Namibia and South Africa in respect of detecting, investigating and preventing cross-border crimes.

Criterion 40.2 (b)– (Met) Authorities in Namibia cooperate with foreign counterparts on the basis of MoUs, Interpol, and through the FIC (with which all authorities have MoUs for the exchange of information) to ensure that information is provided efficiently, timely and securely. Besides, competent authorities like the Police are authorised to enter into agreements, and can sign MOUs with countries outside SADC in terms of the agreements / MOUs which are drawn to achieve efficiency.

Criterion 40.2 (c)– (Met) Competent authorities use clear and secure gateways, or have mechanism or channels in place. In particular, the FIC uses Egmont secure web for exchange of information. Interpol Namibia portal is used by NAMPOL, which assists other LEAs like ACC and DPP.

Criterion 40.2 (d)– (Partly Met) Mechanisms to facilitate, transmit and execute requests contained in MOUs may provide for a requester to indicate how urgent the request is, but that does not necessarily mean that all requests are prioritized to ensure timely responses. Each request received by FIC is assessed, classified and its priority determined. GoAML is configured to treat some requests as higher priority with each step to be done within 24 hours; in contrast, “medium” priority cases allow 48 hours per step. The NAMPOL prioritizes requests based on the seriousness of the offense but this is not always the best way to prioritize as not every serious matter is urgent. No information was provided about how other authorities ensure timely execution of requests.

Criterion 40.2 (e)– (Partly Met) The process safeguards for information received at State level is embodied in the provisions of the ICCM Act. Safeguards for information are contained in clauses of the bilateral and multilateral agreements entered signed between competent authorities (particularly the police) and their counter parts. There is insufficient information relating to what the other authorities have in place.

Criterion 40.3 – (N/A) There is no requirement for competent authorities to have bilateral or multilateral agreements to be able to cooperate with their foreign counterparts. There appears to be a deliberate practice of competent authorities being members of specialised regional organisations or networks (e.g. SAPRSCO, ARINSA and CISNA) for purposes of cooperation on supervision, investigation and prosecution. Competent authorities provide such assistance and exchange such information as may be requested if the purpose of the request meets the set criteria.

Criterion 40.4 – (Partly Met) There is no specific legal provision or basis for provision of feedback, however in practice feedback is provided. Examples were cited of instances where the central authority in liaison with competent authorities provided feedback e.g., Angola, Iceland, and Norway.

Criterion 40.5 (Met)

Criterion 40.5 (a)-(Met) Namibia does not refuse a request for assistance on the grounds that the request is also considered to involve fiscal matters.

Criterion 40.5(b)-(Met) Section 84(1) and 84(4) of the POCA override secrecy obligations and allow sharing of information by financial institutions or DNFBPs.

Criterion 40.5 (c)-(Met) A request cannot be refused on the basis that there is an inquiry, investigation or proceeding underway in Namibia, unless the assistance required would impede that inquiry, investigation or proceeding.

Criterion 40.5 (d)-(Met) Namibia does not prohibit exchange of information or place restrictive conditions based on the nature or status of the requesting authority being different from that of its foreign counterpart (Section 7 (4) of the ICCMA).

Criterion 40.6 – (Met) MOUs signed between competent authorities and their foreign counterparts cover this requirement as a crucial part of the MOU. Namibia has the necessary confidentiality safeguards to ensure that information received is used only for the intended purpose, and by the authorities for whom the information was sought.

Criterion 40.7 – (Met) The oath of secrecy for staff members in competent authorities, Egmont secure web used by FIC, as well as MOUs signed by competent authorities contain this clause and competent authorities adhere to these requirements. Rules in place for safeguarding and confidentiality of information and documents held by competent authorities in Namibia apply also to documents and information exchanged with or received from foreign counterparts.

Criterion 40.8 – (Met) There are no legal provisions that prohibit competent authorities to conduct inquiries on behalf of foreign counterparts. Section 48(9) & (10) of the FIA makes provision for the Centre to conduct inquiries on behalf of foreign counterparts. Section 3(d), read with 3(c) of the ACC Act makes provision for the ACC to conduct enquiries on behalf of counterparts.

Exchange of information between FIUs

Criterion 40.9 – (Met) The legal provisions in sections 9(1)(c) 12(1)(f), and 48(1),(7),(8),(9), & (12) of the FIA provide an adequate legal basis for the FIC in providing co-operation on money laundering, associated predicate offences and terrorist financing

Criterion 40.10 – (Met) - The FIC provides feedback to foreign counterparts upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided.

Criterion 40.11 (a)– (Met) The legal provisions inspections 9(1)(c) 12(1)(f), and 48(1), (7),(8),(9), & (12) of the FIA provide an adequate legal basis to enable the FIC exchange all information required to be accessible or obtainable directly or indirectly by an FIU, in particular under Recommendation 29.

The FIC being a member of EGMONT Group of FIUs entails that it must have the ability to exchange information without undue restrictions. The legal provisions in sections 9(1)(c) 12(1)(f), and 48(1), (7), (8),(9), & (12) of the FIA provide an adequate legal basis to enable the FIC exchange any other information which it has the power to obtain or access, directly or indirectly, at the domestic level. The FIC being a member of EGMONT Group of FIUs entails that it must have the ability to exchange information without undue restrictions.

Criterion 40.11 (b)– (Met) The legal provisions in sections 9(1)(c) 12(1)(f), and 48(1),(7),(8),(9), & (12) of the FIA provide an adequate legal basis to enable the FIC exchange any other information which it has the power to obtain or access, directly or indirectly, at the domestic level.

The FIC being a member of EGMONT Group of FIUs entails that it must have the ability to exchange information without undue restrictions.

Exchange of Information between Financial Supervisors

Criteria 40.12 – (Not Met) The authorities place reliance on the section 4(c) of the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001) the provision relied upon is silent or does not give NAMFISA powers to have multi-lateral or bi-lateral cooperation with foreign authorities. All of the MOU's submitted do not cater for exchange of supervisory information related to or relevant for AML/CFT purposes.

Criteria 40.13 – (Partly Met) Reliance is placed on the Micro-lending Act specifically Section 42(e), it is imperative to note that the Act is applicable to Micro-lenders and not necessarily other financial role

players. The criterion is much broader because it refers to information held by financial institutions. The Authorities did not provide for circumstances where information may be held by other financial institutions except micro-lenders.

Criteria 40.14 – (Met) Both the FIA (Sections 5 and 48(4) and the NAMFISA Act (Section 30) provide for exchange of information by the FIC and NAMIFISA with their foreign counterparts including regulatory information, prudential information, fit and properness and AML/CFT information.

Criteria 40.15 – (Partly Met) There is no specific legal basis for NAMFISA to conduct inquiries on behalf of foreign counterparts, and to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country. NAMFISA has co-operation agreements and is a member to CISNA, ASEL and IAIS supervision which it uses to provide cooperation. The FIC can conduct inquiries on behalf of foreign supervisory authorities as per Section 48(9-11) of the FIA.

Criteria 40.16 – (Met) - The NAMFISA and FIC have appropriate confidentiality provisions which guide the sharing and dissemination of information with other parties. Disclosure or dissemination of information exchanged, or its use for other purposes by the foreign counterparts, may only be done after authorisation, in writing, from the concerned party (See Section 30 of the NAMFISA Act and Section 48(9-11) of the FIA respectively).

Criterion 40.17 – (Met) - Law enforcement authorities can exchange domestically available information with foreign counterparts based on a bilateral or a multilateral framework for intelligence sharing or investigative purposes in respect of ML, TF and predicate crimes including identification and tracing of assets and instrumentalities of crimes under investigation. NAMPOL is a member of INTERPOL and SARPCCO which enables provision of information to its counterparts in a secured manner. All requests from foreign counterparts are received at Interpol National Central Bureau in the NAMPOL Headquarters in Windhoek and are channelled to a relevant unit within the Police to investigate using its domestic powers to collect information on behalf of its counterparts. Furthermore, the NAMPOL and the PPO are members of the ARINSA which has further links with other asset tracing regional and international networks such as Camden Asset Recovery Inter-Agency Network (CARIN) which they use to identify and trace illicit assets. In terms of section 3 (c) & (d) of the ACC Act, the ACC may share information with similar agencies of other countries.

Criterion 40.18 – (Met)- LEAs can use their respective powers, including investigative techniques available within national laws, to carry out inquiries and gather information on behalf of foreign counterparts. For instance, NAMPOL uses cooperation channels within Interpol, SAPRCCO and ARINSA to initiate investigation and obtain information on behalf of foreign counterparts. Section 3 of the ACC Act, which provides for the powers of ACC is also broad enough to carry out inquiries and gathering information on behalf of foreign counterparts.

Criterion 40.19 – (Met) LEAs in Namibia rely on legal powers and other mechanism such as bilateral and multilateral arrangements to enter into and participate in joint investigative teams with foreign counterparts in relation to ML, TF and predicate crimes. The Namibia Police are a member of the SARPCCO, and other forums which cooperate in the investigation of Piracy, ML, TF and other predicate offences.

Criterion 40.20 – (Not Met) Namibia has not demonstrated that competent authorities are permitted through legal authority or other mechanism to exchange here are no legal provisions or other mechanisms for Namibian competent authorities to exchange information indirectly with foreign non-counterparts.

Weighting and Conclusion

Namibia meets most of the criteria of this Recommendation. Moderate shortcomings in relation to the absence of legal provisions or other mechanisms for supervisors to cooperate with foreign counterparts on AML/CFT matters and the Namibian competent authorities to exchange information indirectly with foreign non-counterparts and requiring financial supervisors to obtain prior authorisation for any dissemination of information were noted.

Namibia is rated Partially Compliant with Recommendation 40.

Annex B. Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> There are some minor deficiencies with regards to full circumstances for simplified due diligence and risk-based resources decisions in Namibia
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> Limited mechanism for coordination of CPF as well as data protection and privacy
3. Money laundering offences	LC	<ul style="list-style-type: none"> Stand-alone Money Laundering and the predicate crimes such as illicit trafficking of stolen goods and piracy are not criminalized
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> No confiscation of instrumentalities intended for use in ML, predicate, and TF offenses.
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> No criminalisation of willful provision of funds or other assets. No legal provision for the financing of terrorist individuals, terrorist organisations and financing the travel of individuals who travel to a State other than their States of residence or nationality for terrorist purposes. No legal provision for criminalisation in instances where funds or other assets are used in attempted terrorist act(s). No legal provision relating to the contribution to commit TF offences by a group of persons acting with a common purpose.
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> No adequate mechanisms to implement TFS without delay. No clear guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations in taking action under freezing mechanisms or to respect de-listing No clear requirements for reporting cases of attempted transactions No mechanisms for providing guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> No adequate mechanisms to implement TFS without delay on PF No requirement for all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. No mechanisms for providing guidance to financial institutions and other persons or entities, including DNFBPs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.
8. Non-profit organisations	NC	<ul style="list-style-type: none"> Namibia has not identified the subset of non-profit

Recommendations	Rating	Factor(s) underlying the rating
		<p>organizations falling within the FATF definition</p> <ul style="list-style-type: none"> Namibia has not determined the nature of specific TF threats and how terrorist actors abuse the NPOs. Namibia has not initiated programs to encourage the NPOs to conduct transactions through regulated financial channels There is no investigative capability and expertise to examine NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> No requirement on beneficiaries of life insurance policies in the CDD requirements No specific provision which permits AIs/RIs to apply simplified CDD measures where lower risks have been identified No provision in the primary law in relation to PEP for them to be categorized as high-risk clients.
11. Record keeping	LC	<ul style="list-style-type: none"> No express obligation for record-keeping to cover analysis undertaken during CDD
12. Politically exposed persons	NC	<ul style="list-style-type: none"> Namibia does not require financial institutions to implement PEPs requirements
13. Correspondent banking	PC	<ul style="list-style-type: none"> Lack of prohibition of FIs from entering into or continuing banking relationships have been noted The information gathered on the respondent bank does not extend to ML/TF investigation or regulatory action.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> No requirement for Agents of MVTS providers to be included in MVTS providers' AML/CFT programmes nor are they monitored for compliance with the programmes.
15. New technologies	NC	<ul style="list-style-type: none"> There are no specific provisions in the FIA related to VAs and VAPs.
16. Wire transfers	LC	<ul style="list-style-type: none"> No legal provision that requires verification of information for a customer where there is a suspicion of ML/TF. No requirement in the law on (a) when AIs/RIs should execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and (b) the appropriate follow-up action. The timing of filing STRs does not conform to FATF standards
17. Reliance on third parties	LC	<ul style="list-style-type: none"> No requirement to rely on the information on the level of country risk at point of determining in which countries the third party that meets the conditions can be based.
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> No provision for financial groups to implement group-wide programs against ML/TF risks to all branches and subsidiaries of the financial group. AIs are not required to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures which are consistent with the home country requirements, where the host country requirements are less strict.
19. Higher-risk countries	PC	<ul style="list-style-type: none"> No specific provisions in the FIA for FIs to apply counter-measures, independently of any call by the FATF No measures for highlighting the weaknesses in the AML/CFT systems of other countries which are not listed by the FATF
20. Reporting of suspicious transaction	PC	<ul style="list-style-type: none"> The requirement for reporting STRs does not meet the element of 'prompt' FATF standards
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> The requirement is fully met
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> Namibia has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • There is no specific provision for remediation for existing customers on the basis of risk, including on-going due diligence on exiting or onboarding. • There is no specific provision which permits the DNFBPs to apply simplified CDD measures where lower risks have been identified through an adequate analysis of risks by the country or FIs. • Namibia does not require DBFBPs to implement PEPs requirements.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> • The deficiencies highlighted in Recs 19 & 20 affect Rec 23.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> • No ML/TF risk assessment that covers all types of legal persons • No requirements to keep BO information accurate and updated • Bearer shares are still allowed in Namibia and Namibia does not have mechanisms to prevent the misuse of nominee shares and nominee directors. • No mechanisms in place to monitor the quality of assistance received from other countries regarding BO information.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • No provision regarding the holding of information on the other service providers to the trust • FIC is not able to share BO information to non-Egmont members • The use of nominee makes it difficult for sanctioning the trustee for any failure to carry out their obligations
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> • No indication that supervisory authorities use a consolidated supervision approach for assessment of AML/CFT group risks.
27. Powers of supervisors	C	
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> • No market entry requirements for Jewelry, Arts and Antiques.
29. Financial intelligence units	PC	<ul style="list-style-type: none"> • No operational independence and autonomy of the FIC • No segregated ICT systems and infrastructure from BoN
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> • No legal provisions to provide powers to do interception on communication for purposes of investigating ML and other high-risk/serious predicate offences other than TF • limited ability of competent authorities to identify assets without prior notification to the owner.
32. Cash couriers	LC	<ul style="list-style-type: none"> • No adequate co-ordination among customs, immigration and other related authorities
33. Statistics	PC	<ul style="list-style-type: none"> • Not all AML/CFT agencies maintain statistics on international cooperation requests.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> • Not enough sector specific detail to assist all AIs and RIs to apply national AML/CFT measures.
35. Sanctions	LC	<ul style="list-style-type: none"> • Inadequate sanctions against NPOs. • TFS sanctions excludes civil and administrative sanctions.
36. International instruments	C	
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • Offences of illicit trafficking in stolen goods and piracy are not criminalized.

Recommendations	Rating	Factor(s) underlying the rating
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • No case management system and prioritization mechanisms. • No specific provision for confiscation of instrumentalities intended for use.
39. Extradition	PC	<ul style="list-style-type: none"> • Namibia is not able to execute extradition requests without undue delay. • There is limited scope of criminalization of TF. • Namibia does not have comprehensive case management system for timely execution of extradition requests.
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> • No legal provisions or other mechanisms for Namibian competent authorities to exchange information indirectly with foreign non-counterparts. • No legal basis for supervisors to cooperate with foreign counterparts on AML/CFT matters.

Annex C-Glossary of Acronyms

ACA	Anti-Corruption Act, 2003
ACC	Anti- Corruption Commission
ADLA	Authorized Dealer with Limited Authority
AFU	Asset Forfeiture Unit
AI	Accountable Institution in terms of the Financial Intelligence Centre Act, 2012
AML	Anti-money Laundering
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism and Proliferation
ARINSA	Asset Recovery Inter-Agency Network of South Africa
BIPA	Business and Intellectual Property Authority
BNI	Bearer Negotiable Instruments
BO	Beneficial Ownership
BoN	Bank of Namibia
CBDRs	Cross Border Declaration Reports
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CIS	Collective Investment Scheme
CMA	Common Monetary Area
CPA	Criminal Procedure Act, 1977
CTR	Cash Transaction Report
DNFBP	Designated non-financial businesses and professions
EA	Extradition Act, 1996
EDD	Enhanced Due Diligence
EFT	Electronic Funds Transfer
EGMONT	Egmont Group of Financial Intelligence Units
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FIs	Financial Institutions
FIA	Financial Intelligence Act, 2012
FIC	Financial Intelligence Centre
FIU	Financial Intelligence Unit
TF	Terrorist Financing
goAML	IT system developed by UNODC for use by FIUs
IAIS	International Association of Insurance Supervisors
ICCMA	International Cooperation in Criminal Matters Act, 2000
IFTs	International Fund Transfers
IOSCO	International Organization of Securities Commissions
IO	Immediate Outcome
INTERPOL	International Criminal Police Organisation
KYC	Know Your Client
LEAs	Law Enforcement Agencies
ME	Mutual Evaluation
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MoU	Memorandum of Understanding
MVD	Motor Vehicle Dealers
MVTS	Money and Value Transfer Services
NAD	Namibian Dollar
NAMFISA	Namibia Financial Institutions Supervisory Authority
NAMPOL	Namibia Police Force
NAMPOST	Namibia Post Office

NAMRA	Namibia Revenue Agency
NBFI	Non-banking financial institution
NCIS	Namibia Central Intelligence Service
NPO	Non-profit organisation
NRA	National Risk Assessment
OPG	Office of Prosecutor General
Palermo Convention	United Nations Convention against Transnational Organised Crime, 2000
PCTPAA	Prevention and Combating of Terrorist and Proliferation Activities Act, 2014
PEP	Politically Exposed Person
PFI	Parallel Financial Investigation
POCA	Prevention of Organised Crime Act, 2004
R.	FATF Recommendation
RBA	Risk-Based Approach
RI	Reporting Institution in terms of the Financial Intelligence Centre Act, 2012
SADC	Southern Africa Development Community
SARPCCO	Southern Africa Regional Police Chiefs Cooperation Organisation
SRA	Sectoral Risk assessment
SRB	Self-Regulatory body
STR	Suspicious Transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and Company Service Provider
TF Convention	International Convention for the Suppression of the Financing of Terrorism, 1999
UN	United Nations
UNODC	United Nations Office on Drugs and Crimes
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
VA	Virtual Asset
VASP	Virtual Asset Service Provider
Vienna Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998

Annex D- Criminalization of FATF Designated Categories of Offences

No.	DESIGNATED CATEGORIES OF OFFENCES	APPLICABLE STATUTORY PROVISIONS	Applicable penalty Fine US\$ Imprisonment
1	Participation in an organized criminal group and racketeering	<p>POCA-racketeering Section 2 of POCA</p> <p>Section 12 and 13 of POCA deal with criminal gang activity</p>	<p>A fine not exceeding N\$1 billion, or to imprisonment for a period not exceeding 100 years, or to both the fine and imprisonment.</p> <p>Penalties to criminal gang activity a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding six years</p>
2	Terrorism, including terrorist financing	<p>PACOTPAA Section 2</p>	<p>Penalties on terrorism and TF Terror activity= Life imprisonment TF= N\$100 million or 30 years imprisonment or both</p>
3	Trafficking in persons migrant smuggling	<p>Combating of Trafficking in Persons Act 1 of 2018 (“Trafficking in Persons Act) Section 3 Child Care and Protection Act 3 of 2015 Section 202 Prevention of Organised Crimes Act 29 of 2004 Sections 15 and 16</p>	<p>A fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.</p>
4	Sexual exploitation including sexual exploitation of children	<p>Trafficking in persons Act Sections 5-8 Combating of Immoral Practices Act 21 of 1980 (“Immoral Practices Act”) Section 10. Combating of Rape Act 8 of 2000 (“Combating of Rape Act”) Sections 2-3</p>	<p>For a period not exceeding 30 years or to both such fine and such imprisonment; and (b) in the case of a second or subsequent conviction, to a fine not exceeding N\$2 500 000 or to imprisonment for a period not exceeding 50 years or to both such fine and such imprisonment.</p> <p>Penalties to s 15 of POCA N\$1 000 000 or 50 years imprisonment</p> <p>Penalties to section10 of Immoral Practices Act fine not exceeding three thousand rand or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.</p> <p>Penalties to s16 of POCA N\$500 000 or 25 years imprisonment</p> <p>Penalties to section 5 of trafficking in persons Act period not exceeding 50 years or to both such fine and such imprisonment.</p>

			<p>Penalties to section 8 of trafficking Act</p> <p>(a) in the case of a first conviction, to a fine not exceeding N\$1 000 000 or to imprisonment</p> <ul style="list-style-type: none"> and (b) in the case of a second or subsequent conviction to a fine not exceeding N\$2 500 000 or to imprisonment for a
5	Illicit trafficking in narcotic drugs and psychotropic substances	Abuse of Dependence-Producing Substances and Rehabilitation Centers Act 41 of 1971 Section 2 and 2A	<ul style="list-style-type: none"> A fine not exceeding R30 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment
6	Illicit arms trafficking	Arms and Ammunition Act 7 of 1996 Sections 14, 25, 26, 32, 33, 38	<ul style="list-style-type: none"> A fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment
7	Illicit trafficking in stolen and other goods	<i>None</i>	<ul style="list-style-type: none">
8	Corruption and bribery	Anti-Corruption Act Sections 33-48	A fine not exceeding N\$500 000 or to imprisonment for a term not exceeding 25 years, or to both such fine and such imprisonment.
9	Fraud	Common law offence. No statute.	<p>Penalties on fraud</p> <p>Punishment depends circumstances of each case coupled with the jurisdiction of the trial Court. In the High Court= No limit</p> <p>In the Regional Court= N\$100 000 fine and 20 Years Imprisonment maximum sentence</p> <ul style="list-style-type: none"> In the Magistrates Court= N\$60 000 and 5 years maximum sentence.
10	Counterfeiting currency	Prevention of Counterfeiting of Currency Act 16 of 1965 Section 2.	<ul style="list-style-type: none"> to imprisonment for a period not exceeding fifteen years; (ii) in the case of an offence referred to in paragraph (d) or (h), to imprisonment for a period not exceeding five years; (iii) in the case of an offence referred to in paragraph (j), to imprisonment for a period not exceeding three years; and (iv) in the case of an offence referred to in paragraph (k) or (l), to imprisonment for a period not exceeding twelve months.
11	Counterfeiting and piracy of products	CUSTOMS AND EXCISE ACT 20 OF 1998 Section 90.	<ul style="list-style-type: none"> A fine not exceeding N\$20 000 or to an amount equal to three times the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

12	<p>Environmental crime</p>	<p>Contravening Section 26(1) read with sections 1, 26 (2), 26(3), 85, 87, 89 and 89A of the Nature Conservation Ordinance 4/1975 as amended and further read with Sections 90, 155 and 250 of the Criminal Procedure Act 51 of 1977 as amended – Hunting of Specially Protected Game (Rhino/Elephant)</p> <p>Contravening Section 4(1)(b) read with Sections 1, 4(2)(a), 8,9,12,13 and 14 of the Controlled Wildlife Products and Trade Act 9 of 2008 as amended - Dealing in Controlled Wildlife Products the dealing of which is unlawful in terms of Schedule 1 of the Controlled Wildlife Products and Trade Act 9 of 2008 as amended</p> <p>Contravening Section 4(1)(a) read with Sections 1, 4(2)(a), 8,9,12, 13 and 14 of the Controlled Wildlife Products and Trade Act 9 of 2008 as amended - Possession of any controlled wildlife products the possession of which is unlawful in terms of Schedule 1 of the Controlled Wildlife Products and Trade Act 9 of 2008 as amended (Rhino Horn/Elephant Tusk)</p> <p>Contravening Section</p>	<ul style="list-style-type: none"> • A fine or imprisonment or both
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	<p>4(1)(d) read with Sections 1, 4(2)(b),8,9,12, 13 and 14 – IMPORTS ANYTHING FROM A CONTROLLED WILDLIFE PRODUCT THE IMPORT OF WHICH IS UNLAWFUL IN TERMS OF SCHEDULE 1 – OF THECONTROLLED WILDLIFE PRODUCTS AND TRADE ACT, NO. 9 OF 2008 as amended</p> <p>Contravening section 33(1)(a) read with sections 1, 7, 26, 27, 32 to 38 of the Sea Fisheries Act, 1992 (Act 29 of 1992) and further read with sections 1, 4, 5, 7 and 8 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), as amended, and sections 90 and 250 of the Criminal Procedure Act, 1977 (Act 51 of 1977) - CATCHING OR KILLING FISH WITH EXPLOSIVES, POISON, ETC</p> <p>Contravening section 33(1)(b) read with sections 1, 7, 26, 27, 32 to 38 of the Sea Fisheries Act, 1992 (Act 29 of 1992) and further read with sections 1, 4, 5, 7 and 8 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990), as amended, and sections 90 and 250 of the Criminal</p>	
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		<p>Procedure Act, 1977 (Act 51 of 1977) - CATCHING FISH WITH A DRIFTNET</p> <p>Marine Resources Act 27 of 2000</p> <p>Section 52 of the Act provides for offences and penalties for violations of the Act. Unauthorised fishing or contravention of license conditions by Namibian or foreign flag vessels attract a fine of up to N\$2 million.</p>	
13	Murder, grievous bodily injury	Common law offence.	No statute. Punishment depends on circumstances of each case and jurisdiction of the Court.
14	Kidnapping, illegal restraint & hostage-taking	Common law offence.	No statute. Punishment depends on circumstances of each case and jurisdiction of the Court. Namibia has no laws on hostage taking but such an offence would fall under kidnapping or may constitute a terror activity under PACOTPAA
15	Robbery or theft	<p>Generally, common law offences and punishment depend on circumstances of each case and jurisdiction of the trial Court. However, we have some legislation dealing with theft of certain properties.</p> <p>Motor Vehicle theft Act 12 of 1999 <u>Section 13 deals with competent verdicts</u> Section 13.</p> <p>Stock Theft Amendment Act 19 of 2004 Section 14</p> <p>Diamonds Act 13 of 1999 Section 74.</p>	<p>A fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;</p> <p>Penalties to Diamonds Act A fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding twenty years or to both such fine and such imprisonment.</p>
17	Smuggling	Generally common law offence	Punishment is subject to jurisdiction of the trial Court, however, some offences have been legislated as indicated in this document.
18	Extortion	Common law offence.	No statute. Punishment depends on circumstances of each case and jurisdiction of trial court
19	Forgery	Common law offence.	No statute. No fixed punishment. Punishment depends on circumstances

			of each case and jurisdiction of trial court.
20	Piracy	None	
21	Tax Crimes	Income Tax Act 24/1981 S65	a fine not exceeding three hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.