National Anti-Money Laundering and Combating the Financing

of Terrorism Risk Assessment Report of Namibia

October 2012

Version1.3

Abbreviations

AI	Accountable Institution
AML	Anti-money laundering
BoN	Bank of Namibia
CDD	Customer due diligence
CFT	Combating the financing of terrorism
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FI	Financial institution
FIC	Financial Intelligence Center
FIU	Financial intelligence unit
FSRB	FATF-style regional body
IMF	International Monetary Fund
LEA	Law enforcement agency
ML	Money laundering
RBA	Risk-based approach
STR	Suspicious transaction report
TF	Terrorist financing
WB	World Bank

Definitions and concepts

Money laundering (ML) is a serious crime that affects the economy as a whole; as such countries require enhanced transparency and financial integrity in their national financial systems now more than ever before. Money laundering is criminalized in terms of the Prevention of Organized Crime Act (POCA) refers to:

The process by which income and assets derived from illegal activity, as criminalized under Namibian laws, are converted into or disguised as apparently legitimate income. Illicit proceeds may be laundered to avoid detection of criminal activity, to preserve the fruits of the crime, or to further criminal enterprise.

Internationally the following three phases of money laundering have been accepted:

Phase 1 – Placement (entry) of funds into the formal financial system
Phase 2 – Layering (moving around) of the funds through a number of transactions
Phase 3 – Integration of the funds back into the economy with the appearance of legitimacy

Predicate Offences refers to all unlawful activities that generate illicit proceeds.

Anti Money Laundering (AML) refers to all measures implemented to prevent, deter and combat ML in any financial system.

Terrorist Financing (TF) refers to when a person (legal or natural) by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act of terrorism.

Combating the Financing of Terrorism (CFT) refers to all measures implemented to assist in the prevention and detection of the financing of any person or organization in their efforts to perform or support the commission of acts of terrorism, whether these acts are being committed in Namibia or abroad.

A National Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT) risk assessment, for the purpose of this report, is defined as an organized and systematic effort to Identify, assess and understand the ML and TF risks in Namibia. This is done by:
  (i)   Identifying and assessing the ML and TF Threats in Namibia; and
  (ii)   Identifying and evaluating the weaknesses in the AML/CFT system that renders the country vulnerable to ML or TF activities.

The terms threat and risk are sometimes used interchangeably in AML/CTF forums, there are however generally a difference between the two terms. It was therefore also very important to define the following terms used throughout the report.

ML Threat – Refers to the sources and dimensions of proceeds of crime(s) in Namibia that could exploit the vulnerabilities in the Namibian economic, legal and institutional system. Thereby intentionally or inadvertently, and successfully launder funds through the financial system, which may cause serious damage to the reputation of Namibia and compromise the overall integrity of our financial system. In determining the ML threat in Namibia, the following had to be identified and determined:

i.   The common predicate crimes that generate illicit proceeds;
ii. The scale of the illicit proceeds in the country;
iii. The scale of money laundering in the country; and
iv. The money laundering methods and trends in the country.

TF Threat - The potential for funds flowing to and from Namibia, for the purpose of financing (directly or indirectly) any act of terrorism or for the support of terrorist organizations or individuals. The suspected presence of individuals or organizations linked to terrorism in Namibia is one of the factors considered in understanding the TF threat in Namibia.

ML/TF Vulnerability – are the intrinsic properties in a National AML/CFT system or structure which makes it open to abuse or exploitation by criminal elements for ML, TF or both. These properties generally relate to the weaknesses or gaps in the economic, legal and institutional environment that renders a country susceptible and therefore attractive to money laundering or terrorist financing schemes. Specifically focusing on:

i)   Weaknesses/gaps in National AML/CFT legal framework
ii) Weaknesses/gaps in the institutional framework
iii) Weaknesses in the relevant infrastructure

Risk – Is defined as the effect of uncertainty on objectives in terms of the International Standard on Risk Management. It is stated as a function of the ML/TF threat and vulnerability to ML/TF in the context of this assessment. **ML/TF Risk** – Is therefore defined as the effect of ML or TF activity on the overall objectives of the Namibian AML/CTF system. The risk is further defined as the likelihood of ML or TF threats occurring or materializing in the event that the vulnerabilities are exploited and the significance of the consequences of that event.

Section A- Executive Summary

A 1.1 Introduction

During 2009 Cabinet approved the Namibia's strategy on Anti Money Laundering and Combating the Financing of Terrorism (AML/CFT). The strategy is designed to achieve the following objectives which represent the objectives of the Namibian AML/CFT system. The objectives are to establish:

i)   Effective compliance with the International Treaties and Obligations;

ii)   An effective AML/CFT legal system;

iii) Effective domestic and international cooperation;

iv)   Effective AML/CFT enforcement structures;

v)   Effective coordination;

vi)   Effective AML/CFT training; and

vii) Effective allocation of sufficient resources.

The National AML/CFT risk assessment (NRA) was performed to identify and assess the risks our National AML/CFT system faces in combating ML/TF whilst evaluating the effect of these risks on the objectives as stated above. The NRA offered numerous benefits which affect both the public and private sector, namely:

a) It will provide a better understanding of the ML/TF risks in Namibia;

b) Assist both the authorities and AI's to develop a risk based approached to AML/CFT. This will ensure proportionate regulations as well as efficient and effective resource allocation; and

c) Enhance the effectiveness of Namibia's national AML/CFT system particularly through improving compliance with the International AML/CFT standards.

Namibia's ability to effectively combat ML/TF was assessed against the Financial Action Task Force recommendations[1], which are considered the international AML/CTF

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[1] *The FATF recommendations are generally regarded as the International Standards on Anti Money Laundering and Combating the Financing of Terrorism*

standards, in 2007. The results were very negative as Namibia was rated non-compliant and partially compliant with most of the standards. The NRA considered the findings made in the Mutual Evaluation Report[2] as well as all of the progress made in addressing these weaknesses in order to ensure that a holistic view of the Namibian AML/CFT system is portrayed.

A National AML/CFT risk assessment should therefore be regarded as providing the "fundamental background information" needed to assist AML/CFT supervisors, law enforcement authorities, the financial intelligence unit (FIU), and financial institutions in contributing towards the effectiveness of the National AML/CFT system. This requires that competent authorities[3] periodically renew their awareness of current money laundering and terrorist financing methods and reassess the effectiveness of established safeguards.

The NRA process should therefore inform a consideration of whether current laws are sufficient to address new threats, and whether current methods of supervision and enforcement are adequate. Where the AML/CFT system is inadequate and ineffective in a particular jurisdiction the inherent vulnerability to ML and TF is increased significantly. Where the law is adequate, but AML/CFT supervision is not effective, timely and relevant information will not be available to supplement law enforcement efforts in combating ML and TF. Where law enforcement is seen to be ineffective in combating ML or TF, the law has little deterrent effect as the AML/CFT system will be considered ineffective.

Risk assessment results should therefore be useful to policymakers in identifying AML and CFT priorities. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention. Assessments should be tied to strategic planning and linked to specific actions.

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[2] The detailed Mutual Evaluation report of Namibia is available on the ESAAMLG website.

[3] Competent authorities include all designated law enforcement agencies, AML/CFT supervisory agencies, FIC and Office of the Prosecutor General

NRA Scope

The NRA scope consisted primarily of the need to:

(i)   Identify and evaluate the sources of proceeds of unlawful activities or proceeds of crime in Namibia for the period of the assessment[4];

(ii)   Identify and evaluate the (potential) sources and methods of money laundering[5] (ML) used and available in Namibia, (a) and (b) being considered in determining the **ML threat**;

(iii) Identify and assess the potential for funds flowing to and from Namibia destined for persons or organizations designated as involved in terrorist activities or as supporting or being affiliated to terrorists organizations (**TF threat)** ; and

(iv)   Assess the adequacy of the Namibian AML/CFT system in achieving its objectives which are largely aimed at reducing the impact of the likely consequences the country faces in the event that we do not achieve these objectives, this being the **Vulnerability**[6] assessment.

Challenges

It is however important to highlight that in pursuing this assessment a lot of challenges were encountered by the assessment team, particularly with regard to the keeping and availability of the relevant statistics in Namibia. It follows that the relevant statistics and information remains very scarce and scattered. There was also a lack of cooperation by certain stakeholders in gathering and assessing information. As this assessment is the first ever of its kind, the assessment team also realized that it would be impossible to get everything right the first time around and that it would be very prudent and realistic to build on this assessment in order to eventually ensure that the risk of ML/TF in Namibia is adequately identified and mitigated. The assessment scope was also limited in that certain sectors could not be assessed due to the current make up of these sectors. These included the NPO sector as well as the dealers in precious metals and stones. The assessment also did not obtain any information providing evidence of trade based money laundering in Namibia.

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[4] *The NRA focused on a three year period 2009 - 2011*

[5] *The process by which income and assets derived from illegal activity, as criminalized under Namibian laws and by (a) above, are converted into or disguised as apparently legitimate income. Illicit proceeds may be laundered to avoid detection of criminal activity, to preserve the fruits of the crime, or to further criminal enterprise.*

[6] *ML/TF Vulnerability – are the intrinsic properties in a National AML/CFT system or structure which makes it open to abuse or exploitation by criminal elements for ML, TF or both.*

This report details the findings of this risk assessment, the methodology used and the risk mitigating strategies formulated to ensure that all significant risks identified are addressed.

A 1.2 Information and Methodology used for the National AML/CFT risk assessment

It is important to note that no universal methodology or framework exist for countries to use in conducting an assessment of this nature. As such the assessment was done using a customized methodology developed based on a mixture of the following:

    i)   International standard on Risk Management (ISO 31000);
    ii)   The FATF 40 recommendations, the Methodology used for assessing compliance with the FATF 40 recommendations;
    iii)   Money Laundering and Terrorist Financing Risk Assessment Strategies paper by the FATF and the Guidance note on ML/TF risk assessments;
    iv)   The second generation risk and vulnerability assessment tool developed by the World Bank. See Annexure A for more detail.

The methodology developed and used is largely based on the structure of the tool developed by the World Bank and consists of the following:

1. Assessment (identification and evaluation) of ML and TF Threat in Namibia.
   This process focused on:
   a) Identifying and evaluating the sources of illicit proceeds in Namibia;
   b) Analyses of ML and TF methods and trends identified in Namibia.

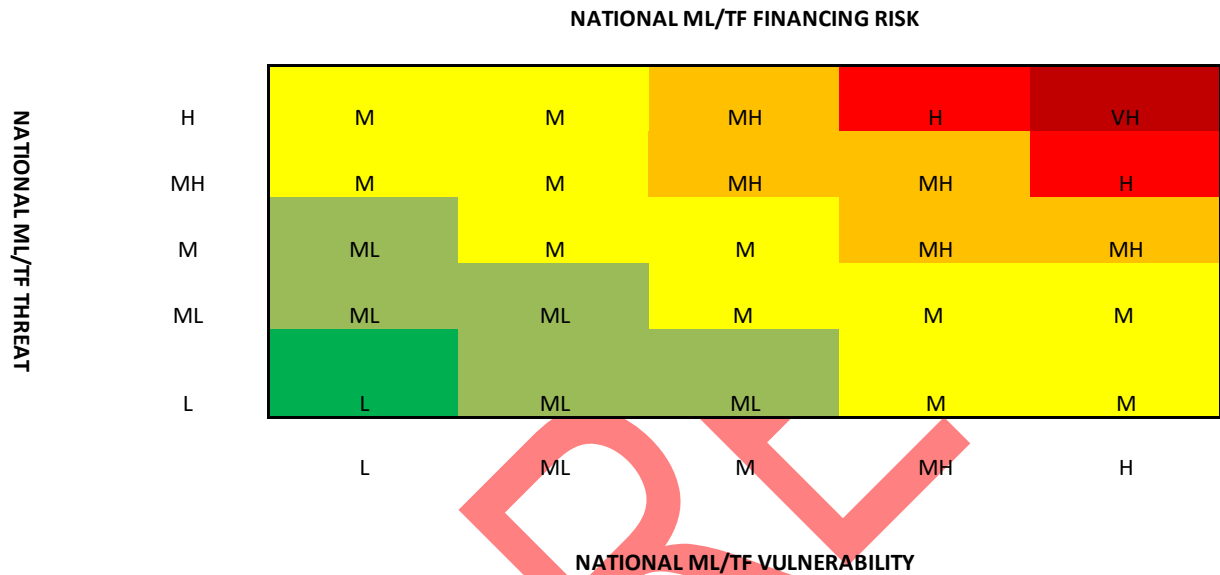2. Determining the National level of Vulnerability to ML and TF.

   National Vulnerability = National Combating Ability + Sectoral Vulnerability

   This processed involved:
   a) Assessing the National Combating ability in respect of ML and TF;
   b) As well as assessing the ML and TF vulnerability within all of the relevant sectors in Namibia; and
   c) Identifying and assessing the risks faced by the National AML/CFT system resulting from the findings made by the assessment in respect of the National Vulnerability to ML and TF.

3. Determining the overall National ML and TF risk as per the model heat map below, see figure A1. The overall ML and TF risk is stated as a function of the National ML and TF threat and the National Vulnerability to ML and TF. The National ML and TF risk is determined by mapping the assessed ML and TF threat and vulnerability (as calculated by the tool) onto the risk map as depicted below in figure A1.

Figure A1

National ML/TF risk = National ML/TF Threat + National Vulnerability to ML/TF

NATIONAL ML/TF FINANCING RISK

NATIONAL ML/TF THREAT	L	ML	M	MH	H
H	M	M	MH	H	VH
MH	M	M	MH	MH	H
M	ML	M	M	MH	MH
ML	ML	ML	M	M	M
L	L	ML	ML	M	M

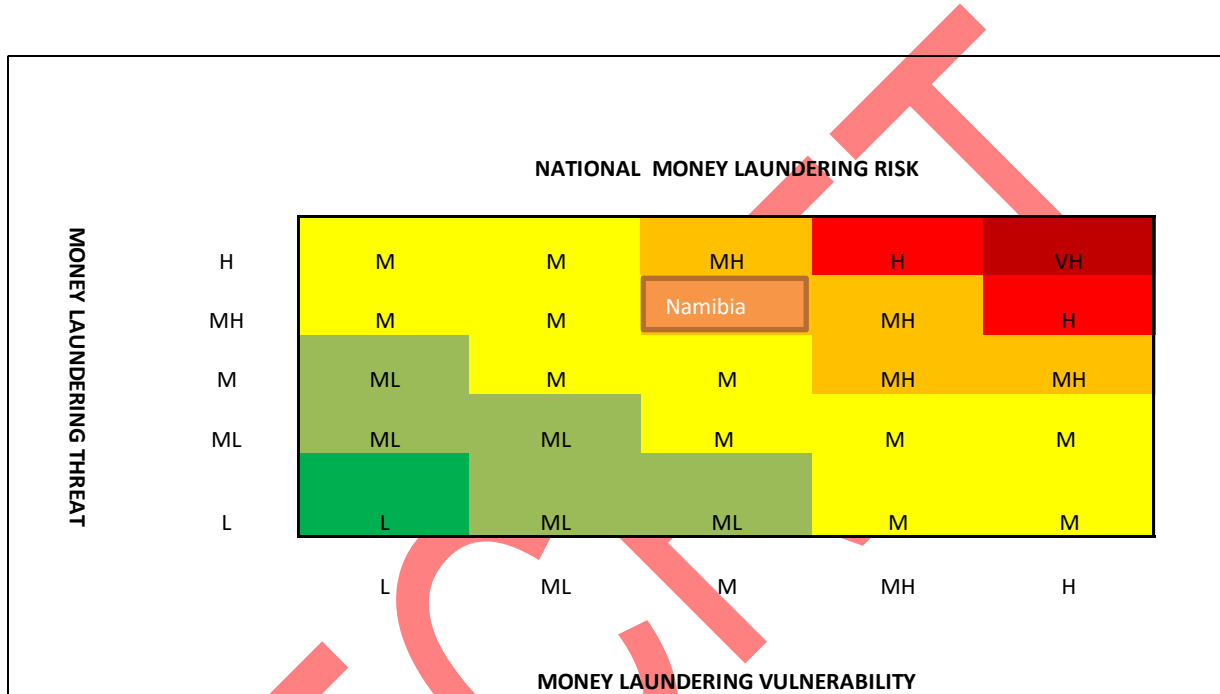**NATIONAL ML/TF VULNERABILITY**

Important Note

The overall National ML and TF risks are stated and are to be used to contextualize the risks our National AML/CFT system faces. It is important to note, that even in a situation where the ML and TF threat is considered low, Namibia still faces significant consequences if the National AML/CFT system is not designed and operating effectively to achieve its objectives as some of these objectives aims to execute international obligations in terms of international legally binding instruments.
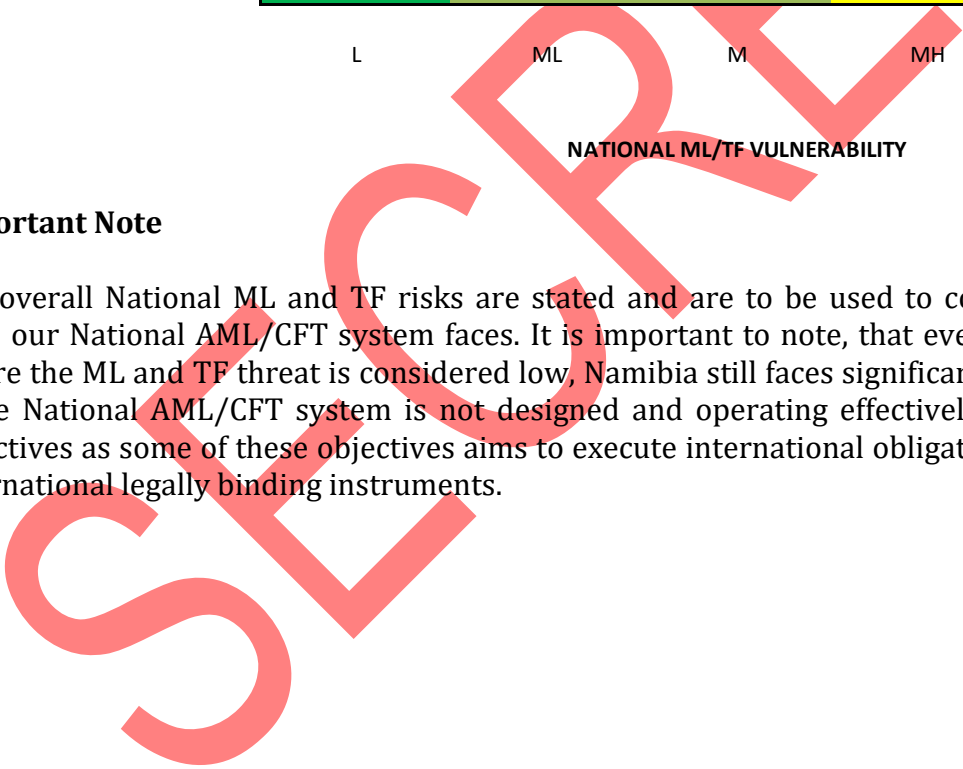
A1.3 Summary findings of AML/CFT risk assessment

The National AML/CFT risk assessment findings as listed below should be read and interpreted in terms of the above methodology.

National Money Laundering (ML) risk

NATIONAL MONEY LAUNDERING RISK

		L	ML	M	MH	H
MONEY LAUNDERING THREAT	H	M	M	MH	H	VH
	MH	M	M	Namibia	MH	H
	M	ML	M	M	MH	MH
	ML	ML	ML	M	M	M
	L	L	ML	ML	M	M

MONEY LAUNDERING VULNERABILITY

The main sources of the ***ML threat*** in Namibia relate to the following factors:

a) The main sources of illicit proceeds or proceeds from crime that could be identified by the various law enforcement agencies upon investigation (using the available crime statistics provided) are:
   i) Tax evasion – N$241 889 615.20
   ii) Corruption/Bribery – N$82 245 321.56
   iii) Stock Theft – N$51 769 345.00
   iv) Motor Vehicle Theft – N$ 9 835 697.34
   v) Fraud – N$ 4 066 285.40

Accurate statistics regarding the total amount of illicit proceeds involved in all cases reported and investigated are not currently being kept as it was not a requirement previously. The absence of these statistics caused that a significant portion of the approximately 121,000 cases investigated by law enforcement agencies during the three year period covered by the assessment did not have any monetary values assigned to them, thus a more accurate total of illicit proceeds in Namibia could not be established. This also

causes that no accurate picture being available on the crimes which should be regarded as a priority by law enforcement in combating ML.

A total of N$398 093 714.50 of illicit proceeds have been identified that poses a potential ML threat considering that proceeds from white collar crimes such as fraud, corruption and tax evasion do not always generate physical cash as proceeds and as such may already be placed within the financial system and be readily available for further layering and integration transactions which further enhances the vulnerability of the relevant sectors.

b) A total of three hundred and twenty one (321) STR's were received and and analyzed by the FIC, BoN during the period covered by the assessment (2009-2011). The FIC, BoN disseminated two hundred and sixty four (264) intelligence reports to law enforcement. An analysis of these intelligence reports revealed that a total of N$804 310 883.34 have been identified as potential illicit proceeds which required further investigation.

c) Namibia currently does not have any cases whereby ML has been successfully prosecuted. These illustrate some of the vulnerabilities identified by the assessment, as well as offer no ability to assess how ML activities have been executed. The assessment however did analyze the emerging trends identified by the analysis of the reports received to date by the FIC, BoN. The findings are summarized below:

   i) A large number of cash deposits made into both personal and business banking accounts and investment type accounts (placement) which includes unit trust accounts. These transactions were largely inconsistent with the customer profiles established by the relevant financial institution and thus triggered suspicion.

   ii) Upon detailed analyses it was noticed that funds would be immediately transferred to other financial institutions or to purchase moveable (vehicles) or immovable assets (property) in order to divert suspicion (layering) from the initial placement account.

   iii) It was also noticed that funds from these accounts being accessed from high risk jurisdictions by both the account holder and non-account holders, with certain domestic transactional limits/controls not being applicable to international transactions. These reports illustrated the potential TF threat Namibia is facing.

   iv) The use of shell (non-trading) close corporations or companies was noticeable with these business accounts not conforming to normal trading business accounts activity. It was also detected that other foreign currencies were normally included in these cash deposits, specifically South African Rand.

v) There are also indications illustrating the vulnerability of the gambling industry in Namibia, whereby large amounts of cash have been noted in reports received by the FIC, BoN. These reports indicated the ability to "place" money at the cashiers within a gambling institution by loading the corresponding value onto one of the gaming instruments (such loyalty cards or MVG cards). The trend identified indicated that funds would be redeemed after limited gambling activity either in cash (but for different notes) or to be transferred to a bank account or even to another gambling institution (locally or abroad) affiliated to the gambling institution.

vi) Namibia's property market is currently experiencing a boom and thus attracts investors from all over the world to invest in and own property. The extent to which these transactions may involve proceeds of crime could not be assessed, but with the existence of transnational crime syndicates operating in the region and the vulnerabilities identified within the sector, a significant threat exists within this sector.

In assessing the ***National ML vulnerability*** the assessment focused on two main areas namely:

a) National Combating Ability; and

b) The Overall Sectoral Vulnerability within each of the relevant sectors.

The details on the National Vulnerability are described in Section B of this report. The main findings from the National Combating Ability and Sectoral Vulnerability assessment are listed below.

Constraints affecting the effectiveness of the National Combating Ability are:

a) Inadequate capacity within:

i) Financial crime investigators
ii) Financial crime prosecutors
iii) Asset forfeiture investigators
iv) Presiding officers dealing with financial crime cases

b) Inadequate domestic cooperation amongst the relevant competent authorities in investigating ML and the relevant predicate offences; and

Constraints affecting the effectiveness of the AML/CFT system in respect of the diiferent sectors are:

a) Weaknesses in the AML legal framework (Financial Intelligence Act), such as:

i) No formal requirements on Financial Institutions and Designated non financial businesses and professions to apply a risk based approach;

ii) Competent authorities and financial institutions does not have timely access to beneficial ownership information as this is not required to be kept by the Registrar of Companies; and

iii) AML supervisory bodies do not have adequate powers to supervise and enforce compliance by Accountable Institutions with the AML obligations prescribed by the FIA.

b) Weaknesses in the institutional framework and a lack of capacity within institutions responsible for AML/CFT supervision resulting in a lack of quality AML/CFT supervision over very vulnerable financial institutions and designated non financial businesses and professions within the various sectors assessed.

Based on the above, the **National ML Threat** in Namibia was assessed as *"Medium High"* with the **National ML Vulnerability** assessed as *"Medium"*. This resulted in the overall **National ML risk** being rated as *"Medium High"* using the above risk model. Using the overall National ML risk rating, the following risks have been identified and assessed as effecting the objectives and the effectiveness of National AML/CFT system and directly relates to the implementation of the National Strategy on AML/CFT as adopted by Cabinet in 2009.

1. Inability to effectively combat ML in cases which are detected or reported.

The combating of ML largely consists of the ability to effectively investigate, prosecute and convict persons engaging in ML activities as identified per cases reported or detected. It also involves identifying the total illicit proceeds involved in the ML scheme, freezing and eventually confiscating these assets for the benefit of the country. The assessment identified significant constraints that are considered the underlying reasons for the fact that we have to date no convictions for ML offences, very low number of ML cases being investigated and presented for prosecution. In addition to this, it is evident that ML charges are not considered or included in the investigation of the relevant predicate offences with the property generated by the unlawful activity not being identified and subjected to civil or criminal confiscation/forfeiture procedures.

The assessment identified significant constraints that are considered the underlying reasons for the fact that we have to date:

i) No convictions for ML offences;
ii) A very low number of ML cases being investigated and presented for prosecution; and

iii) In addition to this, it is evident that ML charges are not always considered or included in the investigation of the relevant predicate offences with the property generated by the unlawful activity not being identified and subjected to civil or criminal confiscation/forfeiture procedures; and

iv) As a result a very low amount of illicit funds and assets have been forfeited into the Criminal Assets Recovery Fund as established by the Prevention of Organized Crime Act (POCA).

The following variables were assessed and indicated an overall inability to effectively combat ML:

i) Inadequate capacity (skills, resources, numbers) of financial crime investigators, asset forfeiture investigators, financial crime prosecutors and to a certain extent the relevant presiding officers;

ii) Inadequate domestic cooperation in investigation and prosecution of ML/TF cases; and

iii) An inadequate legal framework – Weaknesses within FIA and non existence of a Anti Terrorism or TF legislation;

2. *Inadequate AML/CFT control measures to effectively prevent deter or detect placement and/or layering of illicit proceeds through the financial and DNFBP sector*

Upon careful analysis of the process of ML, the vulnerabilities identified due to the nature and size of the respective sectors assessed, the financial sector is considered the most likely entry point (placement) of illicit proceeds into the formal economy. Considering the nature of the top predicate offences identified as part of the ML threat analysis, not all predicate offences are generating physical cash as illicit proceeds.

The movement therefore of illicit proceeds is more likely to pass through the Banking sector (including Nampost Savings Bank) and Capital Markets sector (Securities and Asset/Unit Trust management companies) at some point during the layering phase considering the profiles of clients using the products and services assessed as vulnerable. The most important AML control identified within the Capital Markets sector is that the as the industry largely relies on inter bank account transfers for the settlement of all transactions and the due diligence performed by the commercial banks. Considering the weaknesses illustrated by the assessment on the Banking sector, both these sectors are considered equally vulnerable for ML activities taking place especially at the placement and layering phase of any ML activity.

Namibia's property sector has been experiencing a boom with investors from all over the world acquiring property (both residential and commercial and farmland).The ability to buy property in cash or with a substantial portion of the purchase price being paid in cash,

makes the sector highly attractive for ML schemes. In addition to this, no preventive measures exist to ensure that no person(s) identified as terrorist(s) or with extensive links to terrorists or terrorist organizations owns property in Namibia.

Analysis of previously reported suspicious transactions revealed that large sums of cash have been involved in transactions within the motor vehicle industry and the casino/gambling industry illustrating the vulnerability to ML. The Namibian motor vehicle industry is a very lucrative and well established industry with luxurious assets always attracting criminals to acquire and enjoy these assets. Namibia also has a very large illegal gambling house industry which was created inadvertently by a moratorium placed on the licensing of gambling houses.
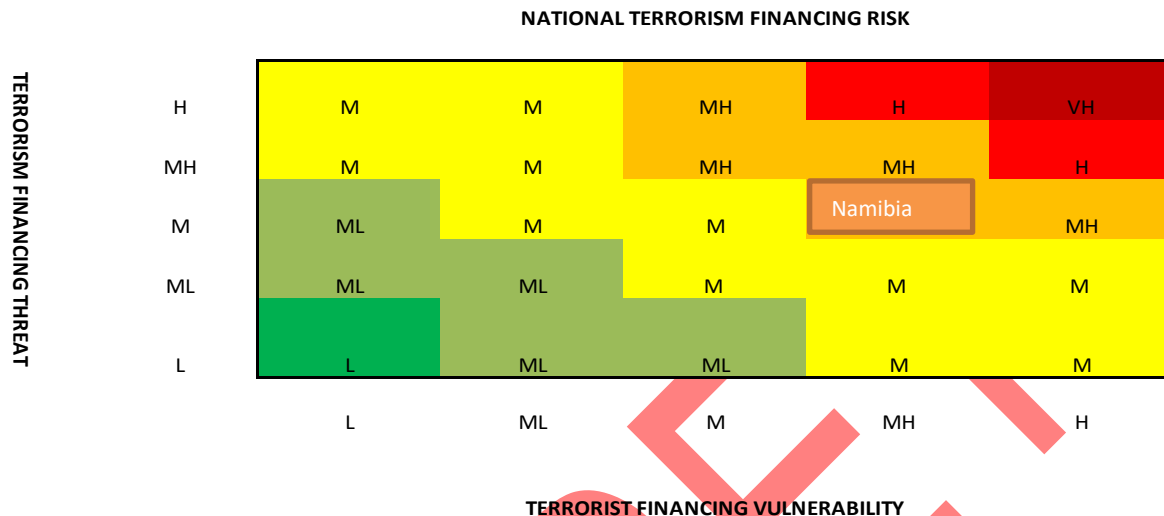
Proceeds from this industry may pose a significant ML risk in the event that these funds are disguised as other income. Also most of these businesses are considered to be part of the informal economy and thus a majority of these businesses are not registered for tax purposes.

The following variables were assessed as the main variables contributing towards this risk:

i) Lack of quality AML supervision within both the Banking and Non-Banking sectors;

ii) Weaknesses within AML laws and regulations;

iii) STR Data analysis; and

iv) Inadequate AML record keeping and monitoring;

National Terrorist Financing (TF) risk

TERRORISM FINANCING THREAT

	L	ML	M	MH	H
H	M	M	MH	H	VH
MH	M	M	MH	MH	H
M	ML	M	M	Namibia	MH
ML	ML	ML	M	M	M
L	L	ML	ML	M	M

TERRORIST FINANCING VULNERABILITY

The main factors underlying the *TF Threat* assessment in Namibia are:

a) No confirmed cases of TF in Namibia as well as no confirmed cases of terrorist organizations or individual terrorists or organizations or individuals linked to terrorists have been identified in Namibia;

b) Namibia and the whole of southern Africa relatively peaceful and stable in comparison to other parts in the world;

The assessment however recognized the global threat of terrorism which is real and therefore the potential for persons or institutions in Namibia collects or sends funds which are to be used in the preparation, facilitation or execution of an act of terrorism.

In assessing the *National TF vulnerability* in Namibia, the following factors have been identified as the key sources of the National vulnerability in respect of TF:

a) None existence of an adequate and effective legal framework dealing with combating of the financing of terrorists;
b) Inadequate capacity in terms of investigating and prosecuting cases pertaining suspected TF;

c) Inadequate CFT preventative measures in respect of international funds transfers. This is due to the significant volume and value of international trade, international funds transfers to and from "high risk" jurisdictions which are not monitored for potential suspicious transactions pertaining the financing of terrorists; and

d) Inadequate legal and institutional framework over Non-Profit Organizations (NPO's) operating in Namibia. The International AML/CFT standards (FAFT rec 34 and SRVIII) require countries to have adequate laws that relate to entities such as NPO's and trusts that can be abused for ML/TF. In addition to the legal framework countries are required to have:

i) Effective supervision or monitoring of those NPO's which account for a significant portion of resources under control of the sector and with a substantial share of the sector's international activities;

ii) All NPO's should be licensed or registered with information pertaining their purpose and objectives, identity of persons who own, control or direct their activities being publicly available;

iii) Appropriate measures in place to sanction violations of oversight measures; and

iv) Measures in place to provide access to beneficial ownership and control of trusts information available. This may be either publicly available like through a national registry or only available to competent authorities.

In terms of TF it is worth noting the risk of funds that have been sent from Namibia to jurisdictions regionally or internationally (including but not limited to the high risk jurisdictions identified) being used in the preparation, execution of an act of terror would expose the country's inability to act against the persons responsible for the financing thereof. This will further reveal the weaknesses in our ability to perform extradition, mutual legal assistance, freezing seizing of funds or property related to these persons, prosecution or conviction of these persons.

Based on the above, the **National TF Threat** in Namibia was assessed as *"Medium"* with the **National TF Vulnerability** assessed as *"Medium High"*. This resulted in the overall **National TF risk** being rated as *"Medium High"* using the above risk model. Using the overall National TF risk rating, the following main risks have been identified and assessed as effecting the objectives and the effectiveness of National AML/CFT system and directly relates to the implementation of the National Strategy on AML/CFT as adopted by Cabinet in 2009.

1. **Potential TF by Money or Value Transfer Service (MVT's) providers**

Description of risk and contributing variables

In the formal sector, money or value can be transferred in various ways. This risk only covers MVT's with the ability to engage in cross border transactions. The assessment

identified that MVT's, both those operating from within banks and those private entities, send and receives money to and from high risk jurisdictions all over the world. The potential for funds involved in these transactions to be used in the funding of actual individual terrorists, terrorist organizations or individuals or organizations linked to or supporting terrorists or terrorist organizations is considered high. Thus the potential for an act of terror to occur, whether within Namibia or elsewhere in the world, with funds that have originated from Namibia, poses a significant risk.

The following variables were assessed and contribute towards this risk:

   i)   Lack of quality AML/CFT supervision in both MVT's under banks and private MVT's (ADLA's);

   ii)   Inadequate AML record keeping and monitoring systems; and

   iii)   STR data analysis.

2. **Inadequate institutional and legal framework governing Non Profit Organisations (NPO's) and legal arrangements such as trusts.**

Internationally NPO's are considered preferred vehicles terrorist's use to hide or move assets in. Similarly trusts are considered the preferred option for criminals to hide their criminally derived assets in. It is therefore that the International AML/CFT standards (FAFT rec 34 and SRVIII) require countries to have adequate laws that relate to entities such as NPO's and trusts that can be abused for ML/TF. In addition to the legal framework countries are required to have:

   v)   Effective supervision or monitoring of those NPO's which account for a significant portion of resources under control of the sector and with a substantial share of the sector's international activities;

   vi)   All NPO's should be licensed or registered with information pertaining their purpose and objectives, identity of persons who own, control or direct their activities being publicly available;

   vii)   Appropriate measures in place to sanction violations of oversight measures; and

   viii) Measures in place to provide access to beneficial ownership and control of trusts information available. This may be either publicly available like through a national registry or only available to competent authorities.

Factors contributing to this risk:

i)   Although all trusts are required to be registered with the Office of the Master of the High Court, up to date information on the beneficial owners or persons controlling the trusts are not readily available to competent authorities;

ii) NPO's registered as section 21 companies as well as other charitable organizations (such as some churches, charities, and sports clubs) are not subjected to any form of monitoring or supervision activities.

iii) Considering the factors listed under risk no 3 above, no data on the values of international transactions relating to this sector is currently available to accurately assess the ML/TF threat posed by the activities of NPO's and trusts in Namibia.

Main actions Namibia as a country is required to reduce the overall National ML and TF risk can be summarized as follows:

i)   Enactment of the proposed FIA amendment Bill, which aims to address the weaknesses identified in the AML legal framework as well as addressing the AML supervision weakness in part. The other part requires the remaining AML regulators, being NAMFISA and the FIC, BoN to be well structured and resourced to execute this function effectively;

ii) Enactment of the proposed Prevention and Combating of Terrorist Activities Bill, which aims to address the weaknesses identified in the CFT legal framework;

iii) Deployment and deployment of an effective risk based AML/CFT supervision plan by the relevant AML/CFT regulators covering all the designated Accountable Institutions and Reporting Institutions; and

iv) Allocation of sufficient resources to the respective agencies in order to address the constraints hampering the execution and implementation of the respective mandates; and

v)   Development and deployment of an effective risk based AML/CFT supervision plan by the relevant AML/CFT regulators considering the assessment results of each respective sector.

vi) Commission a study to assess the size, nature and vulnerability to ML and TF of the NPO sector in Namibia aimed at informing policy considerations

The main consequences faced by Namibia in failure to execute the actions listed above and in the process adequately mitigate/treat these risks can be summarized as follows:

a) Namibia may be listed by the Financial Action Task Force (FATF) as a jurisdiction with strategic AML/CFT deficiencies that have not made sufficient progress in addressing the deficiencies. Namibia is currently listed as a country with strategic AML/CFT deficiencies, but that have committed to an action plan developed with the FATF to address the deficiencies;

b) Namibia may face significant damage to its reputation and credibility as an international trade partner due to the fact that no combating ability exist in terms of ML and TF cases detected or reported;

c) The overall ability to fight crime and especially complex financial crime in Namibia will be compromised as the AML/CFT system will not be able to generate the timely and accurate financial intelligence needed to remove the profit from crime and prevent acts of terror occurring both domestically and internationally; and

d) Namibia (Inland Revenue and the asset forfeiture fund) may suffer significant loss of revenue due to the inability to combat ML/TF effectively in the detected/reported cases. This occurs under the following circumstances:

  i)   In the event that offences such as tax evasion and corruption are not properly and in a timely manner being investigated; and

  ii) Proceeds of crime are not identified and subjected to civil or criminal confiscation/forfeiture applications.

Section B – National Vulnerability Module 2

B 1.1 Overview of the Namibian AML/CTF System and its compliance with the relevant FATF 40[7] recommendations

Introduction

The evaluation of Namibia's compliance with FATF recommendations by a team from the World Bank during April 2006, found Namibia mostly non-compliant. The report was adopted by the ESAAMLG during August 2007. See figure 1 below for a summary of the ratings Namibia received on the key and core FATF recommendations which are considered the fundamental building blocks of an effective AML/CFT system. Since the evaluation, Namibia has made a lot of progress in addressing these deficiencies and in the process improving compliance with the FATF standards. This sections aims to briefly highlight these achievements as well as what still needs to be done.

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[7] The revised FATF recommendations as adopted by the FATF plenary in February 2012.

Figure 1

Ratings for core and key Recommendations:															
1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
PC	PC	PC	NC	NC	NC	NC	NC	NC	LC	LC	NC	NC	NC	NC	PC

FATF Targeted review on Namibia

Namibia was subjected to a targeted review by the Financial Action Task Force's International Cooperation Review Group during 2010. The reason for the review was necessitated by:

a) the size of Namibia's Financial Sector; and

b) the fact that Namibia received 14 partial compliance and non-compliance ratings on the Financial Action Task Force 16 Key and Core Recommendations on Money Laundering and Terrorism Financing during its evaluation of compliance with the FATF recommendations, as illustrated by figure 1 above.

The International Cooperation Review Group, a sub group of the FATF tracking country's progress, reviewers noted the progress Namibia made since 2007, but also noted the following overall key Anti-Money Laundering and Combatting the Financing of Terrorism deficiencies for Namibia:

a) Weaknesses in the structure and function of the FIU, including inadequate provisions to safeguard the operational independence of the FIU (Recommendation 26 – rated Non-compliant);

b) Weaknesses in the supervisory and sanctions regime (Recommendations 17, 23 and 29 – Rated Partially-Compliant, Non-Compliant and Largely-compliant respectively);

c) Not all the relevant UN Conventions and Protocols under the TF Convention have been ratified and implemented (Special Recommendation I – Rated Non-compliant);

d) Lack of criminalisation of terrorist financing (Special Recommendation II – Rated Non-compliant); and

e) Lack of a mechanism for freezing and confiscating terrorist assets (Special Recommendation III – Rated Non-Compliant).

In order to address the above identified deficiencies the Government of the Republic of Namibia (during the month of May 2011) developed an Action Plan that received Namibia's highest political commitment during the June 2011 Financial Action Task Force Plenary meeting. This political commitment was communicated in the form of a letter from the Minister of Finance; on instruction of His Excellency, the President. The actionable items on this action plan will be integrated in the overall action plan developed to address the risks identified by this assessment.

Consequences for failure to execute Action Plan

A failure by Namibia to adequately address the above concerns in line with the agreed upon action plan will result in Namibia being listed as a jurisdiction whose financial system pose a significant risk to the international financial system. Listing may result in Namibia being subjected to a variety of sanctions, which may directly affect the stability of the Namibian economy, correspondent banking relationships, foreign direct investments and availability of funds to Namibian Foreign Missions abroad.

B 1.1.1 Legal System and related institutional measures – Combating Ability

AML/CFT Policy and Strategy
Namibia designed and implemented a National Strategy on AML/CFT[8] that focuses on addressing the key deficiencies highlighted by the 2007 evaluation by the World Bank and is based on the following seven pillars:

i)   Effective compliance with the international treaties and obligations
ii)   Effective AML/CFT framework
iii)   Effective domestic and international cooperation
iv)   Effective AML/CFT enforcement structures
v)   Effective coordination of national AML/CFT programs
vi)   Effective training on AML/CFT
vii)   Effective allocation of resources

In addition to the above, Namibia also:
a) Developed a post evaluation implementation plan which serves as the road map on how to address the deficiencies highlighted by the MER; and

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[8] The National Strategy on Anti Money laundering and combating the Financing of Terrorism as approved by Cabinet.

b) Established the Anti Money Laundering Advisory Council (AMLAC) in terms of the Financial Intelligence Act, No 3 of 2007 (FIA), as the main policy advisory body to the Minister of Finance.

The AMLAC approved the conducting of the first ever National AML/CFT risk assessment in line with the adopted National strategy on AML/CFT. It also recently approved the alignment of the AML legal framework to international standards, primarily to provide more effectively for the risk based approach towards AML/CFT.

AML/CFT Laws – Criminalization of ML

Money Laundering (ML) in Namibia is criminalized in terms of the chapter 3 of the Prevention of Organized Crime Act, 2004 (POCA) which came into effect on 5 May 2009. The offence of ML is defined as doing any act which constitutes an offence in terms of sections 4, 5 and 6 of the POCA and is generally consistent with the Vienna and Palermo conventions, although Namibia has not ratified the Vienna convention. Namibia adopted an all crimes approach whereby any offence generating illicit proceeds would be considered a predicate offence to ML. The factors underlying Namibia's partially compliant rating on R1 & 2 of the FATF were primarily related to the fact that the POCA was not in force at the time of the evaluation.

The legal provisions for the identification, tracing and evaluating property subject to confiscation, seizing, freezing and forfeiture of property are provided for in the POCA and are comprehensive. Under the POCA, confiscation refers to criminal based process, whilst forfeiture refers to a civil based process regardless of whether an accused person is prosecuted.

Terrorism and the FT are not yet criminalized in Namibia. Namibia has however recently ratified the UN International Convention on the Suppression of the Financing of Terrorism and revised and renamed the Anti Terrorism Activities Bill which is due to be submitted to the Cabinet committee on Defense and Security before onward submission to the Cabinet committee on legislation. As it is impossible to accurately predict the timelines as to when this Bill, now called The Prevention and Combating of Terrorist Activities Bill will be entering parliament during 2012. As at the time of this assessment the Namibian CFT framework is thus considered non-existent, leaving Namibia with an inability with respect to the freezing, seizing and confiscation of terrorism related funds. At the present moment in the absence of legislation, Namibia is not able to fully implement the United Nations Security Council Resolutions, 1267 and 1373. These resolutions prescribe certain requirements Namibia should take in terms the Al-Qaida and Taliban sanctions lists as well as the procedures to take in designating certain individuals and organizations identified as domestic terrorists. Since the last evaluation by the World Bank, Namibia has however ratified both the OAU and UN conventions relating to the financing of terrorism.

AML/CFT Preventive measures are provided for by the Financial Intelligence Act, 2007 (FIA) which also came into effect on the 5 May 2009. Although the FIA as Namibia's main AML law is largely consistent with the requirements of the FATF 40, the authorities recently prepared a series of amendments to the FIA aligning it to the revised FATF 40. Most noticeably providing for preventive measures pertaining FT, obligating all AI's[9] to deploy risk management systems in adopting a risk base approach to AML/CFT. The measures currently prescribed by the FIA can be summarized as follows:

i) Section 13 and 14 provides for the establishment of the identity of both new and existing clients. Establishing the identity consist of obtaining customer identity information and the verification thereof;

ii) Section 15 and 16 provides for the keeping of all relevant records for a period of at least 5 years;

iii) Section 21 provides for the reporting of unusual or suspicious transactions to the FIC, BoN;

iv) Section 25 requires all AI's to:
   a) Implement internal rules pertaining KYC, ongoing CDD, record keeping, etc;
   b) Training of staff;
   c) Appointment of a AML Compliance Officer;
   d) Design and Implement Policies and procedures regarding reporting of suspicious transactions; and
   e) Implement an independent review function to ensure compliance with the FIA obligations

v) Section 32 provides for a prohibition against tipping off clients of potential investigations;

Establishment of a Financial Intelligence Unit (FIU)

The FIA provided the BoN with the power to perform the functions of an FIU. The BoN established the Financial Intelligence Center (FIC, BoN), a separate department within its structure, which is headed operationally by a director which reports the Governor of the BoN functionally.

The FIC, BoN currently consist of three divisions reporting to the director of the FIC, namely:

a) The Financial Investigations and Analyses division with its main function being the receiving and analyzing of suspicious transaction reports, before disseminating financial intelligence to the various authorized law enforcement agencies. The division currently has 6 full time staff which includes a deputy director. The division

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[9] Schedule I to the FIA list a variety of institutions, businesses and professions as being Accountable Institutions.

also uses an automated software tool to perform their core functions in line with approved standard operating procedures;

b) The Legal and Compliance division with its main function being the supervision of all AI's in ensuring that the preventive AML measures as per the FIA are implemented. The division currently employs 6 fulltime staff which includes a deputy director; and

c) The Exchange Control Division responsible for administering the Currency and Exchanges Act of Namibia.

B 1.1.2 Overview of the vulnerability assessed within the Namibian Financial Sector and designated Non-financial Businesses and Professions

Namibia has one of the most highly developed financial systems in Africa. The system consists of four commercial banks, a micro finance bank, and government owned savings bank, approximately 30 insurance companies, a very large number of pension funds, a stock exchange, four stock brokers, numerous asset and unit trust management companies and a large variety of micro-lending institutions.

Financial Institutions – Banking (Module 3)

As at 31 December 2011, the four commercial banks shared almost 1 million clients and approximately N$60 billion in assets. The assessment did not consider either of the soon to be established SME bank, nor the only micro finance bank at this stage but will be included in follow up assessments. The assessment did however consider the direct and indirect impact Nampost Savings Bank (NSB), its operations and assets have on the banking sector as a whole. Although the ML vulnerability NSB has been assessed in terms of module 6 which covers other financial institutions, it is worth noting the risk posed to the banking sector as NSB is expected to be issued with a commercial bank type license within the near future. NSB has approximately N$2.2 billion worth of assets and with more than 300,000 clients making use of their banking type products and services, it was considered significant enough and thus assessed for its ML/TF vulnerability as well.

The most significant vulnerabilities within the banking sector relate to:

a) Inadequate AML record keeping and Monitoring systems;
  ➤ Banks do not have adequate transaction/account monitoring systems that could detect transactions that are outside the individual client profile. This is especially true in terms of transactions involving funds already in the system.
b) Lack of quality AML supervision;

c) Weaknesses within the current AML legal framework such as:
   i) No formal requirements to identify and assess ML risks;
   ii) No formal requirements to apply enhanced CDD measures on high risk clients and transactions emanating from high risk jurisdictions; and
   iii) No formal requirement to implement and apply preventive measures in respect of TF.

d) Offering of highly vulnerable products and services such as:
   i) Deposit products;
   ii) Brokered deposits/pooled deposits (Attorney's Trust Accounts);
   iii) Electronic Banking; and
   iv) Private Banking

Vulnerabilities within products were assessed considering the following factors:

   i) Value and Volume of transactions;
   ii) Specific client profiles of clients using these products or services;
   iii) Specific vulnerable features within product; and
   iv) Existence of specific AML controls

Considering the level and the context of the National ML threat assessed, the non existence of adequate AML monitoring systems really reduces the ability of the banking sector to detect and report suspicious transactions in timely manner, thus significantly compromising the effectiveness of the AML/CFT system.

Financial Institutions – Non Banking (Module 4, 5 & 6)

Overview – As at end of December 2010, Namibian Financial Institutions Supervisory Authority (Namfisa) as the non-bank financial institution prudential regulator had oversight over 38 approved investment managers, 10 management companies and three trustees of unit trust schemes, one stock exchange and four stockbrokers. Of the investment managers, only 16 had assets under management, while the top 6 managers managed over 80% of the total assets.

Investment Management – Approved investment managers (asset managers) and registered management companies (unit trust managers) administered investments for and on behalf of financial institutions, corporate entities, and households. Investment managers managed N$86billion, while the management companies had N$26billion under management at the end of December 2010.

Approximately N$24.6 billion of assets managed by the investment managers came from sources other than the Pension funds, short and long term insurance companies and

medical aid funds. The institutions' funds are considered low risk for ML/TF in the sense that it largely consist of contributions from employees and employers with a very small potential for actual ML/TF occurring as a result of these contributions.

Funds accepted from private companies, individuals or even other unit trust schemes makes the investment managers as well as the portion that relates to the registered management companies highly susceptible to ML risks in the event that inadequate or ineffective AML controls exist within the sector. In addition to the above analysis of the sector, it is important to note the bulk of these funds end up in the banking sector both locally and internationally in the form of money market investments, notice, call and other deposits and negotiable certificates of deposit. Some of the funds are even invested in listed or unlisted equity or debt instruments.

Capital Markets (Securities) – The overall market capitalization increased to N$1,178 billion, while the local market capitalization increased to 7.8 billion in 2010. The assessment found that although all listed trading activities by the registered stock brokers are subjected to oversight by the NSX, a significant portion of the funds received by brokers to be invested in money market investments are received from private companies, individuals and even non-governmental or not for profit organizations. Considering that the total value of this type of activity is estimated to be valued at over N$3 billion and the overall financial sector weaknesses described below, stockbrokers are considered highly susceptible to ML when dealing specifically with higher risk profile clients.

Micro lending sector – consists of 347 micro lenders as at end of 2010. The volume of loans increased during 2010 with the total number of loans having risen to over 600,000 at a value of approximately N$1.1 billion. The overall ML risk posed by the lending activity is considered very low due to the following factors:
    i)   nature of the types of loans issued (short term or pay date loans);
    ii)   the fact that the risk for ML is reduced due to the enhanced CDD performed to mitigate the credit risk attached to the loans granted; and
    iii)   the fact that more than 99% of the lenders are reluctant to grant loans to non-salaried individuals

The assessment however considers the weakness in the entry requirements enforced by Namfisa to be very significant as it provides no assurance as to the source of funds used to start up or fund a micro lending business. This allows for the micro lending business being used as the perfect vehicle for ML.

Money or value transfer services businesses (Authorized Dealers (AD's) and Authorized dealers with limited authority (ADLA's))

There is currently 6 ADLA's operating in Namibia with only 3 performing money or value transfer services in addition to the normal currency exchanging functions. In addition to these all four commercial banks as AD's are licensed to also perform this function. An

analysis on the movement of funds to and from Namibia for one month revealed that transactions included parties located in countries regarded as being potential targets for terrorist acts/attacks. There are currently no monitoring or other preventive measures applied in this sector to reduce the overall vulnerability that this sector is exposed to.

Designated Non Financial Businesses and Professions (DNFBP's) – Module 7

The DNFBP sector includes registered accountants and auditors, approximately 109 law firms (not in public practice), approximately 700 real estate agents, numerous gambling institutions including four casinos, dealers in precious metals and stones, auctioneers, trust and company service providers and approximately 80 new and used motor vehicle dealers.

Namibia's property sector has been experiencing a boom with investors from all over the world acquiring property (both residential and commercial and farmland).The ability to buy property in cash or with a substantial portion of the purchase price being paid in cash, makes the sector highly attractive for ML schemes. In addition to this, no preventive measures exist to ensure that no person(s) identified as terrorist(s) or with extensive links to terrorists or terrorist organizations owns property in Namibia.

Analysis of previously reported suspicious transactions revealed that large sums of cash have been involved in transactions within the motor vehicle industry and the casino/gambling industry illustrating the vulnerability to ML. The Namibian motor vehicle industry is a very lucrative and well established industry with luxurious assets always attracting criminals to acquire and enjoy these assets. Namibia also has a very large illegal gambling house industry which was created inadvertently by a moratorium placed on the licensing of gambling houses. Proceeds from this industry may pose a significant ML risk in the event that these funds are disguised as other income. Also most of these businesses are considered to be part of the informal economy and thus a majority of these businesses are not registered for tax purposes.

Summary of variables contributing the most towards the assessed overall National vulnerability affecting all sectors

The assessment revealed the following priority areas that need to be addressed as a matter of urgency, in order to treat or mitigate the identified AML/CFT risks:

i)   **Quality AML supervision**

This variable assessed the quality and comprehensiveness of the AML supervisory regime within each of the sectors. Overall findings were that the designated AML supervisors do not have adequate resources to ensure a high level of compliance, with a very low number of supervisory activities illustrated by the supervisory statistics.

ii) **AML laws and regulation**

This variable assessed the effectiveness (and adequacy) of the AML laws and regulations regarding AML preventive measures and AML Supervision. The findings indicated that although the FIA largely complies with the international standards in relation to AML preventive measures, weaknesses identified and being addressed in the FIA amendment Bill are considered significant in the effort to enhance the overall effectiveness of the Namibian AML/CFT system. The overall level of AML supervision is rated as very low, as the initial designated supervisory bodies failed to exercise effective AML supervision over the respective sectors.

iii) **AML record keeping and monitoring**

This variable assessed the adequacy of the Accountable Institutions adequacy and effectiveness of their AML record keeping and monitoring systems. What was considered in preparing the final rating was the effect of the inadequate and ineffective AML supervision, weaknesses in the law and the findings of the STR data analysis variable. Although normal record keeping systems are considered more than adequate, records kept for AML purposes should be relevant and up to date in order for monitoring systems to be working effectively. Considering the challenges faced by the AI's in identifying customers accepted before the inception of the FIA, the non-existence of monitoring systems (automated or manual) which are aimed monitoring high risk customers using especially high risk products resulted in the rating to be rated very low.

iv) **Enforcement of AML obligations**

To date no sanctions has been applied to any AI for failure to comply with AML obligations. This is primarily due to the variables listed above. The facts that only criminal sanctions are currently available for any non-compliance detected and that due to the size of the Namibian economy, reluctance existed to enforce criminal sanctions for non-compliance with AML obligations.

Below is a list of all the variables assessed in terms of the National Vulnerability.

YEAR 1*	PRIORITY RANKING**
Among Sectors	
Banking Sector	1
Securities Sector	4
Insurance Sector	5
Other Financial Institutions	2
DNFBPs	3
Among National Combating Ability Factors	
Criminalization of ML	
Policy and Implementation	8
Capacity of Presiding Officers	7
Integrity of Presiding Officers	
Capacity of Prosecutors	2
Integrity of Prosecutors	
Criminal Penalties	
Informal Economy	5
Audit and Accounting Practices	16
Tax Disclosure	14
Financial Integrity	10
Identification Infrastructure	20
Corporate and Trust Transparency	9
Independent Information Sources	17
Capacity of FC Investigators	1
Integrity of FC Investigators	11
International Cooperation in Criminal Inv. Pros.	12
STR Data Analysis	4
Domestic Cooperation	3
Asset Forfeiture Laws	13
Capacity of Asset Forfeiture Investigators	6
Integrity of Asset Forfeiture Investigators	18
International Cooperation in Asset Forfeiture	18
Asset Forfeiture Orders	15

Section C ML/TF Threat Analysis

Introduction

A comprehensive AML/CFT risk assessment should attempt to determine the amount of proceeds of crime that criminals may wish to launder through the country's financial and non-financial sectors. Crime, however, is by nature secretive and does not lend itself readily to the vigorous, evidence-based analysis that should underpin that determination. Internationally the understanding of the criminal economy is therefore still limited. Most countries also lack sufficient data to enable a precise measurement of the proceeds of crime and Namibia as this assessment confirmed is no different.

Despite this challenge, it is important to engage in an exercise to estimate as best as possible, whether in monetary or qualitative terms:

- The value that criminals derive from and through crime in that country;

- The value of proceeds of crime exported to that country from abroad; and

- The portion of the value of proceeds of crime likely to laundered through the Namibian financial system.

C1.1 Identification and evaluation of the sources of illicit proceeds

To determine the total National illicit proceeds and the underlying predicate offences generating the proceeds needed to be identified with the values corresponding to each crime recorded. This was done using module 1 of the World Bank Tool to record all findings. Based on the preliminary results of module 1 of the World Bank tool that assesses the extent and scale of illicit proceeds, the various law enforcement agencies (LEA's) in Namibia through analysis, investigations and prosecutorial interventions estimated that approximately N$395 million of illicit proceeds was generated during the 3 year period covered by this assessment. This value is however considered significantly understated as the assessment revealed that the amount only relates to 60286 cases from the total of 125 147 cases investigated by the respective law enforcement agencies. In order for this assessment to properly illustrate the ML/TF threat in Namibia, a further estimate was considered in establishing the magnitude of the potential illicit proceeds.

Having regard to the 2006 IMF guidelines which suggested a range of 1-1.5% of GDP be used in calculating proceeds likely to be laundered through the financial system, the assessment considered a potential proceeds of crime to the tune of N$1, 2 billion to be a more accurate value in the case of Namibia. The total value of the illicit proceeds generated in Namibia or flowing to and from Namibia form the basis in attempts aimed at establishing

the level of which ML can occur in Namibia. The non availability of more accurate crime statistics on the magnitude of the total illicit proceeds generated and flowing into Namibia and the clear under valuation of potential illicit proceeds in Namibia seriously affected the quality of the overall ML Threat assessment. The main sources of the identified illicit proceeds could be linked to the following predicate offences listed below in table C1.2

TableC1.2

Predicate Offenses	Number of cases investigated	Amount of proceeds identified in investigation by LEA (N$)
Tax evasion	573	N$241,889,615.20
Corruption/bribery	1 961	N$ 82,245,321.56[10]
Stock theft	8 767	N$ 51,769,345.00
Theft of Motor Vehicles	1 022	N$ 9,835,697.34
Fraud-Incl. ATM Fraud	6 259	N$ 4,066,285.40
Robbery	11 059	N$ 3,100,000.00
Drug trafficking	3 305	N$ 2,687,450.00
Housebreaking: business premises/Residential	27 340	N$ 2,500,000.00
Immigration Control Act violations	1 859	Nil
Kidnapping, illegal restraint, hostage-taking	328	Nil
Theft of Explosive	2	Nil
Theft of Firearms	455	Nil
Other theft	61 421	Nil
Extortion	65	Nil
Forgery	631	Nil
Piracy	Nil	Nil
Diamond Smuggling	Nil	Nil
Protected resources – other	Nil	Nil
Human trafficking/Smuggling of migrants	Nil	Nil
Terrorism/ Terrorism Financing	Nil	Nil
Totals	125,147	N$398,093,714.50

C1.2 ML/TF methods

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[10] The value stated only refers to 740 cases.

Financial Intelligence Centre - Confidential

In the absence of a trends and typologies report from the FIC, BoN an analysis was performed on previously reported suspicious transaction reports (STR's) in order to determine the likely methods to be used for ML/TF in Namibia. Considering the traditional ML process as described below, the analysis attempted to illustrate how illicit proceeds have flowed, the relevant institutions used and the likely final destination of the funds.

Phase 1 – Placement (entry) of funds into the formal financial system;
Phase 2 – Layering (moving around) of the funds through a number of transactions; and
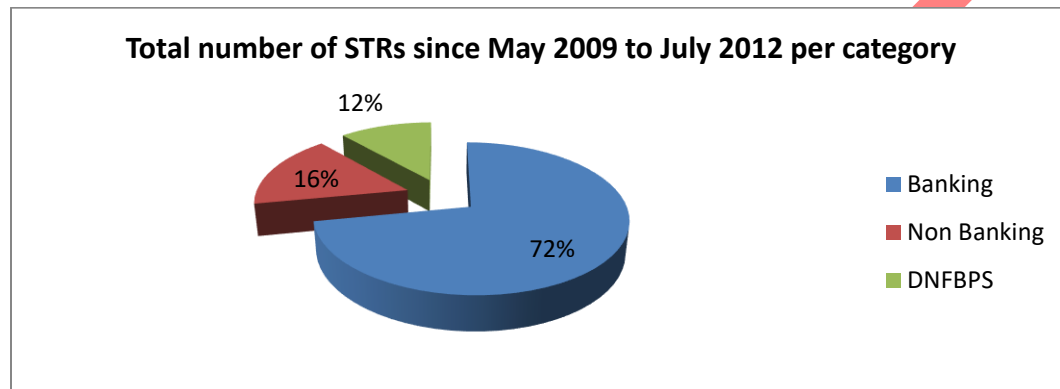Phase 3 – Integration of the funds back into the economy with the appearance of legitimacy

The bulk of the STR's analyzed revealed the following as key ML/TF risk indicators:

i)   A large number of cash deposits made into both personal and business banking accounts and investment type accounts (placement) which includes unit trust accounts. These transactions were largely inconsistent with the customer profiles established by the relevant financial institution and thus triggered suspicion.

ii)   Upon detailed analyses it was noticed that funds would be immediately transferred to other financial institutions or to purchase moveable (vehicles) or immovable assets (property) in order to divert suspicion (layering) from the initial placement account.

iii)   It was also noticed that funds from these accounts being accessed from high risk jurisdictions by both the account holder and non-account holders, with certain domestic transactional limits/controls not being applicable to international transactions. These reports illustrated the potential TF threat Namibia is facing.

iv)   The use of shell (non-trading) close corporations or companies was noticeable with these business accounts not conforming to normal trading business accounts activity. It was also detected that other foreign currencies were normally included in these cash deposits, specifically South African Rand.

v)   There are also indications illustrating the vulnerability of the gambling industry in Namibia, whereby large amounts of cash have been noted in reports received by the FIC, BoN. These reports indicated the ability to "place" money at the cashiers within a gambling institution by loading the corresponding value onto one of the gaming instruments (such loyalty cards or MVG cards). The trend identified indicated that funds would be redeemed after limited gambling activity either in cash (but for different notes) or to be transferred to a bank account or even to another gambling institution (locally or abroad) affiliated to the gambling institution.

In the three years in which the reporting mechanism the FIA created, a total of 321 STR's were received and analyzed by the FIC, BoN. Fig C 1.2 below illustrates the sources of these reports, with the Banking sector accounting for the 72% of the reports received to date.

Figure C1.2

Total number of STRs since May 2009 to July 2012 per category

- 12%
- 16%
- 72%
- Banking
- Non Banking
- DNFBPS

After analyzing these reports by the FIC, BoN, financial intelligence reports were disseminated to the various law enforcement agencies for further investigation. The number of reports disseminated and the corresponding value of the suspected predicate offence are detailed below in table C1.3. These reports indicate a potential of N$800 million worth of illicit proceeds being involved suspected ML/TF cases. This value is considerably close to the estimate of N$1.2 billion on potential illicit proceeds within the Namibian economy as described above and should the fact of the overall low number of STR's received be considered it would be prudent to consider the estimate as indicative of the level of ML threat Namibia faces.

Table C1.3

Predicate Offenses	Number of Intelligence Reports disseminated	Amount of proceeds identified in investigation by FIU (N$)
Tax evasion	74	N$441,640,408.51
Suspicious large cash deposits	54	N$ 50,138,041.99
Illegal deposit taking		N$ 5,906,939.00
Corruption/bribery	17	N$ 86,298,593.70
Stock theft		
Fraud-Incl. ATM Fraud	15	N$152,840,310.68
Drug trafficking	4	N$ 6,869,258.61

Housebreaking: business premises/Residential	Nil	Nil
Immigration Control Act violations	Nil	Nil
Kidnapping, illegal restraint, hostage-taking	Nil	Nil
Robbery	Nil	Nil
Theft of Explosive	Nil	Nil
Theft of Firearms	Nil	Nil
Other theft	Nil	Nil
Extortion	Nil	Nil
Forgery	Nil	Nil
Piracy	Nil	Nil
Diamond Smuggling	27	N$ 20,372,286.87
Protected resources – other		
Human trafficking/Smuggling of migrants	1	N$ 124,316.69
Terrorism/ Terrorism Financing	6	N$ 40,120,727.29
Totals	199	N$804,310,883.34

Although this assessment could not obtain information to positively confirm the presence of individuals or organizations linked to terrorist organizations in Namibia, the reports received involving suspected TF (N$40 million), it did highlight a potential for funds to be send from Namibia to individuals or organizations linked to terrorist organizations. In addition to the above, a country should consider determining the potential threat of illicit proceeds flowing into Namibia from abroad, as well as the potential risk for TF. Thus as part of this assessment an analysis[11] on the flow of funds in and out of Namibia as reported by all authorized dealers on the Cross Border Foreign Transaction Reporting System (CBFTRS) was performed, with the following findings made:

i) An amount of N$5bn per month was received from various countries for different purposes categorized according to the approved inward categories. Amongst these countries that send money to Namibia, some were included on the FATF lists for high risk and non-co-operative jurisdictions as well as jurisdictions cooperating with FATF to address the significant weaknesses in their respective AML/CFT systems.

ii) An amount of N$2.8bn was send abroad to various countries for various purposes. Included amongst these countries are some of the world's most high

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[11] An analysis was done using the month of May 2012 as this was the latest possible information available at the time to the assessment.

risk jurisdictions which are prone to terrorist attacks as rated by the latest terrorism risk index[12].

Based on the above, the threat of ML/TF in Namibia has been assessed as High.

Informal economy (Shadow economy)

One of the key variables assessed as part of this assessment related to the size and impact of the informal economy in Namibia. As a result of various conditions in a country, including low regulatory and law enforcement capacity, limited economic regulation, high levels of social exclusion and/or tax considerations, some economic activity may remain or become unregistered and informal. Such activities may or may not be illegal by themselves. Generally records are not kept of informal economic activity making it difficult for law enforcement authorities to access transaction and client information. Informal economic activity poses a challenge for law enforcement agencies when they investigate and attempt to prosecute money laundering offences and trace proceeds of crime.

In a policy research paper issued by the World Bank, the following definition of the shadow economy was used.

The shadow economy includes all market-based legal production of goods and services that are deliberately concealed from public authorities for any of the following reasons:

(1) To avoid payment of income, value added or other taxes;

(2) To avoid payment of social security contributions;

(3) To avoid having to meet certain legal labor market standards, such as minimum wages, maximum working hours, safety standards, etc.; and

(4) To avoid complying with certain administrative procedures, such as completing statistical questionnaires or other administrative forms.

In this paper, the size of the Namibian shadow economy is stated at 30.5% of GDP for the period researched (1996-2007). This is quite significant as it poses a significant threat to the effectiveness of the Namibian AML/CFT system as a large portion of the funds generated within this sector would be generated from unlawful/illegal activities. The use of

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[12] Terrorism risk index has been developed by Maplecroft to enable businesses to identify and monitor the risks posed by terrorism to employees and assets in 197 countries.

these funds, whether to buy luxury assets or to deposit the funds into the financial system at one of the "deposit taking" institutions, would technically form part of a ML scheme.

If the funds remain outside the formal financial system, authorities are faced with a significant challenge in combating these illegal activities, especially in cases where these funds are to be used for the financing of terrorism. Linked to this portion of the funds is the effect of the national efforts to reduce the financial exclusion rate in Namibia.Levels of financial exclusion as per the recent FINSCOPE study have decreased from 51% in 2007 to 31% in 2011. The majority (65%) of the eligible Namibian population are formally served (n=727,736), and 62% are banked. Another 46% use other formal products and 13% are informally served.

Financial Inclusion Module 8[13]

Considering the risks posed by the high level of financial exclusion, it is thus essential for countries to ensure that proportionate regulation are applied in enforcing AML obligations on Accountable institutions. The current legal framework do not allow for this approach, however the proposed FIA amendments prepared to include ample flexibility towards Accountable institutions to design proportionate AML control measures which are sensitive and aligned to the assessed ML risk. As part of the assessment, two of Namibia's primary financial inclusion products were assessed for the potential ML/TF risk associated with the product. These two products were:

a) Basic Bank Account offered (to be offered) by all commercial banks
b) Smart Card Account offered by Nampost Savings Bank

The findings of this product assessment indicated:

i)   The potential for ML/TF to occur through these products exist as these products are not subjected to adequate AML/CFT controls;

ii) The need for a financial inclusion product framework to be developed to allow financial institutions to develop products and their features in such a way that a low risk for ML/TF exists at all times; and

iii) The current AML legal framework does not fully provide for a flexible approach towards AML compliance taking into account the ML risk posed by a specific client or product.

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[13] A detailed paper on this module is prepared to fully describe the findings of the assessment in respect of the financial inclusion module.

Overall it was noted that the launching of financial inclusion products does not necessarily require regulators or financial institutions to compromise on other priority areas such as financial stability, consumer protection or financial integrity. With proper consultation and guidance, financial inclusion products could and should satisfy all of these requirements.

Overall Findings of the National AML/CFT risk assessment

The primary objective of the Namibian AML/CFT system is to effectively prevent, deter, detect and combat ML/TF in Namibia. The following detailed risks have been assessed as the most important considering this objective and thus need to be managed and mitigated appropriately in order to achieve this objective. A detailed Action plan addressing these areas has been prepared and is attached and marked as Annexure B

1.   Inability to effectively combat ML/TF on cases detected or reported

Description of risk and contributing variables

The combating of ML/TF largely consists of the ability to effectively investigate, prosecute and convict persons engaging in ML/TF activities as identified per cases reported or detected. It also involves identifying the total illicit proceeds involved in the ML/TF scheme, freezing and eventually confiscating these assets for the benefit of the country. The assessment identified significant constraints that are considered the underlying reasons for the fact that we have to date no convictions for ML offences, very low number of ML/TF cases being investigated and presented for prosecution. In addition to this, it is evident that ML charges are not considered or included in the investigation of the relevant predicate offences with the property generated by the unlawful activity not being identified and subjected to civil or criminal confiscation/forfeiture procedures.

In terms of TF it is worth noting the risk of funds that have been sent from Namibia to jurisdictions regionally or internationally (including but not limited to the high risk jurisdictions identified) being used in the preparation, execution of an act of terror would expose the country's inability to act against the persons responsible for the financing thereof. This will further reveal the weaknesses in our ability to perform extradition, mutual legal assistance, freezing seizing of funds or property related to these persons, prosecution or conviction of these persons.

The following variables were assessed and indicated an overall inability to effectively combat ML/TF:

   iv)   Lack of capacity (skills, resources, numbers) of financial crime investigators, asset forfeiture investigators, financial crime prosecutors and to a certain extent the relevant presiding officers;

    v)   Lack of domestic cooperation in investigation and prosecution of ML/TF cases; and

    vi)   An inadequate legal framework – Weaknesses within FIA and non existence of a Anti Terrorism or TF legislation;

The consequences in failure to adequately mitigate/treat this risk can be summarized as follows:

a) The country may face significant damage to its reputation and credibility as an international trade partner due to the fact that no combating ability exist in terms of TF cases detected or reported;

b) Loss of revenue towards the state and the asset forfeiture fund. This occurs under the following circumstances:

    i)   In the event that offences such as tax evasion and corruption are not properly and in a timely manner being investigated; and

    ii)   Proceeds of crime are not identified and subjected to civil or criminal confiscation/forfeiture applications.

c) In addition to point ii) above, whenever assessing the overall effectiveness of any AML/CFT system, the lack of statistics pertaining the number of suspicious transaction reports received, analyzed and disseminated by the local FIU, the number of cases investigated by the respective law enforcement agencies, the number of prosecutions and convictions of ML/TF cases would be considered an indication of weaknesses in the ability to effectively implement the AML/CFT system; and

d) The potential loss of confidence by the Accountable/Reporting institutions in purpose and credibility of the National AML/CFT system.

3.   Potential facilitation of TF by Money or Value Transfer Service (MVT's) providers

Description of risk and contributing variables

In the formal sector, money or value can be transferred in various ways. This risk only covers MVT's with the ability to engage in cross border transactions. The assessment identified that MVT's, both those operating from within banks and those private entities, send and receives money to and from high risk jurisdictions all over the world. The potential for funds involved in these transactions to be used in the funding of actual individual terrorists, terrorist organizations or individuals or organizations linked to or

supporting terrorists or terrorist organizations is considered high. Thus the potential for an act of terror to occur, whether within Namibia or elsewhere in the world, with funds that have originated from Namibia, poses a significant risk. Considering the risk described under point 1 above which affects the country's ability to effectively combat detected or reported cases of TF, this risk is compounded significantly.

The following variables were assessed and contribute towards this risk:

iv)   Lack of quality AML/CFT supervision in both MVT's under banks and private MVT's (ADLA's);

v)   Inadequate AML record keeping and monitoring systems; and

vi)   STR data analysis.

4.   Inadequate institutional and legal framework governing NPO's and legal arrangements such as trusts.

The International AML/CFT standards (FAFT rec 34 and SRVIII) require countries to have adequate laws that relate to entities such as NPO's and trusts that can be abused for ML/TF. In addition to the legal framework countries are required to have:

ix)   Effective supervision or monitoring of those NPO's which account for a significant portion of resources under control of the sector and with a substantial share of the sector's international activities;

x)   All NPO's should be licensed or registered with information pertaining their purpose and objectives, identity of persons who own, control or direct their activities being publicly available;

xi)   Appropriate measures in place to sanction violations of oversight measures; and

xii) Measures in place to provide access to beneficial ownership and control of trusts information available. This may be either publicly available like through a national registry or only available to competent authorities.

Factors contributing to this risk:

iv)   Although all trusts are required to be registered with the Office of the Master of the High Court, up to date information on the beneficial owners or persons controlling the trusts are not readily available to competent authorities;

v) NPO's registered as section 21 companies as well as other charitable organizations (such as some churches, charities, and sports clubs) are not subjected to any form of monitoring or supervision activities.

vi) Considering the factors listed under risk no 3 above, no data on the values of international transactions relating to this sector is currently available to accurately assess the ML/TF threat posed by the activities of NPO's and trusts in Namibia.

5. Inadequate AML/CFT control measures to effectively prevent deter or detect placement and/or layering of illicit proceeds through the financial sector.

Upon careful analysis of the process of ML, the vulnerabilities identified within the financial sector and the nature and size of the respective sectors assessed, the financial sector is considered the most likely entry point (placement) of illicit proceeds into the formal economy. Considering the nature of the top predicate offences identified as part of the ML/TF threat analysis, not all predicate offences are generating physical cash as illicit proceeds. The movement therefore of illicit proceeds is more likely to pass through the Banking sector (including Nampost Savings Bank) and Capital Markets sector (Securities and Asset/Unit Trust management companies) at some point during the layering phase. The most important AML control identified within the Capital Markets sector is that the as the industry largely relies on inter bank account transfers for the settlement of all transactions. Considering the weaknesses illustrated by the assessment on the Banking sector, both these sectors are considered equally vulnerable

The following variables were assessed as the main variables contributing towards this risk:

v) Lack of quality AML supervision within both the Banking and Non-Banking sectors;

vi) Weaknesses within AML laws and regulations;

vii) STR Data analysis; and

viii) Inadequate AML record keeping and monitoring;

The likely consequences should this risk not be adequately treated or mitigated could be summarized as follows:

a) The financial institutions are exposed to significant legal and reputational risks and might even suffer severe financial losses in the event non-compliance with the AML obligations in term of the FIA. Which in turn may cause financial instability in the event these risks materializes;

b) The inability of the FI's to detect and report all suspicious transactions relating to potential ML in a timely fashion to the FIC, BoN will result in a very low number of reports being disseminated to the respective law enforcement agencies; and

c) The follow up mutual evaluations might assess the country's compliance with the relevant standards as non compliant or partially compliant which in turn will negatively impact the overall effectiveness of the AML/CFT system in Namibia.

6. **Inadequate AML control measures to effectively prevent, deter or detect placement and/or layering of illicit proceeds through the Designated Non Financial Businesses and Professions (DNFBP's)**

The assessment indicated potential ML trends within the DNFBP sector with the real estate sector and motor vehicle industry being identified as the most likely channels used. The buying of luxury vehicles (both new and second hand) and properties (including farms) through cash or partial cash transactions have been highlighted.

The following variables were assessed as the main variables contributing towards this risk:

i) Lack of quality AML supervision;
ii) Weaknesses within AML laws and regulations;
iii) STR Data analysis; and
iv) Inadequate AML record keeping and monitoring;

The likely consequences should this risk not be adequately treated or mitigated could be summarized as follows:

a) The DNFBP's are exposed to significant legal and reputational risks and might even suffer severe financial losses in the event non-compliance with the AML obligations in term of the FIA;

b) The inability of the DNFBP's to detect and report all suspicious transactions relating to potential ML in a timely fashion to the FIC, BoN will result in a very low number of reports being disseminated to the respective law enforcement agencies undermining and compromising the effectiveness and objectives of the AML/CFT system; and

c) The follow up mutual evaluations might assess the country's compliance with the relevant standards as non compliant or partially compliant which in turn will negatively impact the overall effectiveness of the AML/CFT system in Namibia.

Conclusion

The **National ML Threat** in Namibia was assessed as *"Medium High"* with the **National ML Vulnerability** assessed as *"Medium"*. This resulted in the overall **National ML risk** being rated as *"Medium High".* The **National TF Threat** in Namibia was assessed as *"Medium"* with the **National TF Vulnerability** assessed as *"Medium High"*. This resulted in the overall **National TF risk** being rated as *"Medium High*.

The strategy therefore is aimed at addressing the variables affecting the National Vulnerability as a matter of priority as this would reduce the overall ML/TF risk and improving Namibia's ability to combat ML and TF activities when and where they are detected by the National AML/CFT system.

Annexure-A World Bank Tool used as primary basis for the National AML/CFT risk assessment

YEAR 1

0.35 Independent info Sources	
0.65 ID Infrastructure	
0.15 Corporate and Trust Transparency	
0.25 Tax Disclosure	

CDD Framework 0.39
Informal Economy 0.25
Auditing and Accounting 0.55
Tax Records 0.25
Financial Integrity 0.40

STR DATA ANALYSIS 0.25
Capacity of FC Investigators 0.30
Integrity of FC Investigators 0.61
International Cooperation 0.45
Domestic Cooperation 0.40
Access to Reliable Info&Evidence 0.50
Capacity of FC Prosecutors 0.40
Integrity of FC Prosecutors 0.70
Criminal Penalties 0.85
Capacity of Presiding Officers 0.50
Integrity of Presiding Officers 0.75
Asset Forfeiture Laws 0.55
Capacity of AF Investigators 0.20
Integrity of AF Investigators 0.65
International cooperation in AF 0.55
AF Orders 0.30

POLICY AND IMPLEMENTATION 0.65
ML CRIMINALIZATION 0.70
CRIMINAL INVESTIGATION 0.30
CRIMINAL PROSECUTION 0.30
CRIMINAL CONVICTION 0.30
ASSET FORFEITURE 0.20

BANKING SECTOR VULNERABILITY 0.59
SECURITIES SECTOR VULNERABILITY 0.52
INSURANCE SECTOR VULNERABILITY 0.36
OTHER FIN. INST. VULNERABILITY 0.73
DNFBP VULNERABILITY 0.65

NATIONAL COMBATING ABILITY 0.41

OVERALL SECTORAL VULNERABILITY 0.57

NATIONAL VULNERABILITY 0.58