



Anti-money laundering and counter-terrorist financing measures

Malawi

Mutual Evaluation Report

September 2019





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MUTUAL EVALUATION REPORT OF MALAWI

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Abbreviations and Acronyms

ACB	Anti-Corruption Bureau
AFU	Asset Forfeiture Unit
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BAM	Bankers Association of Malawi
CDD	Customer Due Diligence
CONGOMA	Council for Non-Governmental Organisations in Malawi
DICS	Department of Immigration and Citizenship Services
DDU	Dangerous Drugs Unit
DNPW	Department of National Parks and Wildlife
DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Directorate of Public Prosecution
EDD	Enhance Due Diligence
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FCA	Financial Crimes Act
FFU	Fiscal Fraud Unit
FIA	Financial Intelligence Authority
FIU	Financial Intelligence Unit
KYC	Know Your Customer
LCTRs	Large Cash Transaction Reports
LEAs	Law Enforcement Agencies
MGB	Malawi Gaming Board
MoJCA	Ministry of Justice and Constitutional Affairs
MRA	Malawi Revenue Authority
MoFEPD	Ministry of Finance, Economic Planning and Development
NAMLC	National AML/CFT Committee
NAO	National Audit Office
NCTP	National Counter-Terrorism Panel
NIS	National Intelligence Service
ML	Money Laundering
MPS	Malawi Police Service
NGOs	Non-Governmental Organisation
NPOs	Non-Profit Organisation
NRA	National Risk Assessment
PEP	Politically Exposed Persons
PF	Proliferation Financing
RBA	Risk Based Approach
RBM	Reserve Bank of Malawi
SARPCCO	Southern African Regional Police Chiefs Co-operation Organisation
STR	Suspicious Transaction Report
TC	Technical Compliance
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
UN	United Nations
UNSCR	United Nations Security Council Resolution
WCIU	Wildlife Crimes Investigation and Intelligence Unit

EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in the Republic of Malawi as at the date of the on-site visit (19-30 November 2018). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Malawi's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- a) Malawi's efforts to combat money laundering and terrorist financing started in 2006. Although some technical compliance requirements remain, the legal and institutional frameworks and mechanisms underpinning Malawi's AML/CFT system are generally solid.
- b) Malawi has relatively a good understanding of the ML risks and its major ML risks are mostly identified and assessed. There is an AML cooperation and coordination among the competent authorities. Though Malawi has also mostly identified and assessed its TF risks, the authorities - except the FIA, RBM and NIS - have not demonstrated a good understanding of the risk. Malawi does not have a national AML/CFT Policy and Strategy in place.
- c) The financial intelligence generated by the Financial Intelligence Authority (FIA) is to some extent used by the Law Enforcement Agencies (LEAs) both in ML and predicate offences investigations. The quality of FIA's financial intelligence and analysis reports is considered good and useful to effectively support the operational needs of LEAs. However, given the absence of TF related cases, verification of the use of financial intelligence on TF was not possible.
- d) Malawi has to some extent investigated and prosecuted ML cases consistent with the country's threats and risk profile. This is most evident in corruption related ML cases (under *Cashgate*). However, the number of ML investigations and prosecutions relating to corruption and the other predicate offences, namely, fraud, tax crimes, drug trafficking and smuggling of goods reported and processed is low. The LEAs have a low resources capacity which hinders them from effectively performing their mandate in general and in line with the country's risk profile.
- e) Malawi demonstrated limited ability to recover assets in a range of ML/TF and predicate cases consistent with its risk profile and pursuing confiscation as a policy objective is at formative stage. Though confiscation in relation to most offences that generate a significant amount of proceeds from 2013 to 2018 is low, Malawi has started to strengthen the legal and structural confiscation framework especially upon risks identified in *Cashgate* cases by consistently implementing a number of measures, including establishing a unit responsible for asset forfeiture, confiscation of assets and instrumentalities of crime. In this regard, Malawi has established the Asset Forfeiture Unit and the Confiscation Fund Account which is a fundamental step to mitigate challenges related to asset recovery.

- f) The FIs have a good understanding of the ML/TF risks facing the products and services they provide as well as their AML/CFT obligations, though at varying levels depending on size and level of sophistication of business operations. The Designated Non-Financial Businesses and Professions (DNFBPs) have little understanding of the risks they face and their AML/CFT obligations.
- g) The supervisory authorities have to some extent adopted a risk-based approach to supervise for AML/CFT and the remedial actions taken by the RBM were, to some extent, proportionate in the context of the stage of AML/CFT development in Malawi. However, Malawi is yet to apply sanctions for violation of AML/CFT requirements by DNFBPs.
- h) Though Malawi has a legal framework to implement targeted financial sanctions (TFS) against terrorist financing and to some extent against proliferation financing (PF), implementation of the laws is at formative stage. Moreover, unlike the largest commercial banks, small to medium FIs and DNFBPs are yet to effectively implement their TFS obligations. Significant steps have not been initiated to categorise the NPOs in terms of their vulnerability to TF risk and the inspection monitoring tool in use for reporting institutions does not include components of risk exposure to TF.
- i) Reporting entities in Malawi are required to establish the true identity of ultimate beneficial owners when establishing a business relationship or carrying out an occasional transaction. In practice, however, effective implementation of the ultimate beneficial ownership (UBO) measures is more observed in the commercial banking industry than other sectors. There is also no adequate legal and regulatory framework to obtain and maintain beneficial ownership information on legal persons and arrangements from the companies and trusts neither has there been a comprehensive ML/TF risk assessment on all forms of legal persons and arrangements due to information scarcity.
- j) Malawi has in place a good legal and institutional framework to cooperate and exchange information with foreign counterparts in respect of mutual legal assistance (MLA) and other forms of international cooperation. However, the effectiveness of cooperation is hindered by lack of an effective case management system that enables effective monitoring of cases.

Risks and General Situation

2. Malawi is one of the least developed countries in the world. The economy of Malawi is small and therefore less integrated into global economy. Malawi is a landlocked country situated in Southern Africa, sharing borders with Zambia, Tanzania and Mozambique. The neighbouring countries have relative stability. This has largely contributed positively to mitigation of cross-border ML/TF threats in Malawi.

3. Malawi updated its 2013 National Risk Assessments (NRA) in 2018 and shared the results with stakeholders. The NRA provides sufficient context on the features of the inherent ML and TF risk situation in the country. The ML threat emanates mainly from the five highest proceeds generating predicate offences in Malawi which are: (i) corruption; (ii) tax crime; (iii) illegal externalization of foreign currency; (iv) fraud; and (v) smuggling of goods followed by wild life

crimes, drug trafficking and human trafficking. More specifically, public sector corruption is generating the highest amount of criminal proceeds. The laundering of domestic proceeds in foreign countries is predominant in Malawi than foreign proceeds being laundered in the country. The ML threat is considered at medium-high based on increases in proceeds-generating predicate offences in 2018 relative to 2013 NRA results.

4. The financial sector is considered to have higher inherent ML/TF risks than the DNFBP sector. Within the financial sector, banks accounts for two-thirds of the total assets of the financial sector. Furthermore, banks offer a variety of products and transactions, and have deeper connection with the international financial system than other FIs and the DNFBPs. Within the latter, the real estate industry in Malawi is most vulnerable to misuse for ML purposes. The other industries such as dealers in stones and precious metals, lawyers, and accountants face lesser ML/TF risks.

5. Malawi faces lesser TF risk than ML risk. The threat of TF or terrorism appears to be related to foreign nationals from high risk TF jurisdictions than Malawian nationals. Malawi has not experienced incidents of terrorism nor cases of funds generated in Malawi nor outside Malawi for terrorist operations in Malawi nor elsewhere. Malawi remains vigilant as the authorities are aware of the features in the country such as cash economy, informal alternative remittance systems (e.g., *hawala*), a transit country for humans smuggling and trafficking, and proximity to unstable jurisdictions exploited by militant groups such as *Al-Shabab* in the East and the Horn of Africa region.

Overall Level of Effectiveness and Technical Compliance

6. Since its last mutual evaluation in 2008, Malawi enacted new laws and strengthened its institutional framework to have a more robust and relatively effective AML/CFT system. Key institutional changes include re-establishment of the Fiscal and Fraud Unit (FFU) within the Malawi Police Service (MPS) and strengthening of powers of the Financial Intelligence Authority (previously known as Malawi FIU), establishment of a National Counter-Terrorism Panel (NCTP) and the Asset Forfeiture Unit (AFU) to effectively implement AML/CFT/CPF legal frameworks. Furthermore, Malawi completed and revised a National Risk Assessment in 2018 as the basis to adopt, develop and implement a risk-based approach to AML/CFT.

7. Notwithstanding the significant changes to the AML/CFT regime, Malawi still requires significant improvement in respect of oversight of NPOs, cross-border wire transfers to combat externalisation of currency, and transparency of legal persons and arrangements including understanding risk to misuse thereof.

8. Malawi has implemented an AML/CFT system that is effective in some areas. Particularly, good results are being achieved to some extent in the areas of ML/TF risk assessment and ML risk understanding, investigation and prosecution of predicate offences and associated ML, use of financial intelligence, and co-operating domestically and internationally. Although Malawi has strengthened its AML/CFT legal framework, the majority of the Financial Institutions (FIs), DNFBPs and the Competent Authorities are still in the early stages of developing and implementing their policies, procedures and processes to take into account the new framework

and results of the 2018 NRA. The newly created or re-established institutions to combat ML and TF have started to make relative progress in investigating, prosecuting and confiscating proceeds of crime but are not performing to their maximum capabilities due to lack of adequate resources. The provisions relating to obtaining of information on legal persons and arrangements have not been fully realised. The authorities are yet to fully implement effective risk-based supervision on non-bank FIs and DNFBPs and compliance with preventive measures. Though the authorities have a relatively good national and international coordination and cooperation systems, there is still a need to improve on handling of MLA and extradition matters by having a proper case management system and keeping UBO information.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

9. Malawi demonstrated a reasonably good understanding of its ML risks, albeit at varying levels, developed over a period especially following the release of the results of the NRA, as revised in 2018. The private sector demonstrated a varied understanding of ML/TF risks. Overall, the FIs understand their ML/TF risk more than the DNFBPs. In general, authorities in Malawi demonstrated a fair understanding of TF risks particularly FIA, RBM and NIS. However, there is need for a more comprehensive approach to ML/TF risk assessments in some areas including legal persons and legal arrangements and NPOs.

10. The Ministry of Finance, Economic Planning and Development provides policy direction and exercises oversight on AML/CFT Policy and Strategy. The National AML/CFT Committee serves as advisory body on AML/CFT matters for the Government. The Committee serves as a platform for multi-agency approach to coordination of strategies and implementation of AML/CFT policy in Malawi. AML/CFT coordination at the operational level appears effective and inclusive of relevant competent authorities. The completion of the 2013 and 2018 NRAs is one of the major achievements of the different coordination structures in Malawi. Malawi to some extent is using the results of the 2013 and 2018 NRAs to coordinate an effective risk-based allocation of resources to mitigate the identified ML/TF risks through programmes at a national level. However, the competent authorities have inadequate resources to prioritise and mitigate identified higher risks.

11. Malawi has applied the NRA results in developing and implementing action plans, policies, and programmes supported by risk-based allocation of resources approach. Further, Malawi is in the process of finalising National AML/CFT Policy to promote coordination and cooperation on AML/CFT matters in the country.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

Use of financial intelligence (IO 6)

12. The Financial Intelligence Authority (FIA) is the national financial intelligence unit (FIU) of Malawi which is responsible for receipt, request, analysis and evaluation of reports and dissemination of financial intelligence and other relevant information to the law enforcement agencies. The FIA has autonomy and operational independence to perform its core functions and

has access to a wide range of databases to augment its analysis of the different transactions reports it receives from reporting institutions. The FIA has reasonable capacity to discharge its core functions to assist LEAs to identify potential criminal proceeds and TF cases. The FIA is well structured and has a secured environment to safeguard its operations. There is need for the authorities to provide more resources to the FIA to enable it to strengthen its capacity to support the emerging focus on complex financial crimes investigations by LEAs. The LEAs obtain and, to some extent, use financial intelligence and other information to identify and trace criminal property, and support investigations on allegations of predicate offences, ML especially from 2015 in pursuit of the large sums of misappropriated public funds within several government departments/agencies (the so-called '*Cashgate Scandal*'). The majority of transaction reports analysed by the FIA are from commercial banks and there is limited or no filing of transactions reports by the DNFBPs including DNFBPs with high ML risks and some non-bank FIs. Thus, the diversity of the STRs filed is relatively not sufficiently broad. The FIA has received cross-border currency and BNIs reports over the US\$5000 from the MRA since July 2018. The FIA, to some extent, uses the cross-border currency and BNI information for strategic analysis as well as trends and typologies.

ML Investigation and Prosecution (IO7)

13. Malawi has a solid framework which allows the competent authorities to collect and use intelligence to investigate predicate and ML crimes. The country successfully identified, investigated and prosecuted some ML cases on the basis of the financial intelligence and other sources of information. The competent authorities have good coordination and cooperation in the investigation of complex crimes by sharing information and establishing joint teams as demonstrated by some successful ML cases resulting from the *Cashgate* and wildlife crime cases. However, with the exception of some few cases, the majority of the competent authorities have not demonstrated that they pursue parallel financial investigations and that they prioritize ML investigations as they do not have adequate resources to effectively carry out their functions. Consequently, the number of ML investigations and prosecutions relative to the predicate offences reported, investigated and prosecuted is low and not consistent with the identified ML risks. There is no ML conviction on foreign predicate offences which is consistent with the risk profile of the country and standalone ML, third party laundering being the bigger number compared to self-laundering. Malawi had no cases where the authorities had prosecuted a legal person for ML, which was contrary to some of the cases presented which showed the involvement of legal persons in ML. In these situations, only the natural persons were prosecuted. Consequently, it is not possible to determine the effectiveness of the regime in prosecuting legal persons for ML or the effectiveness of any sanctions. Though there is enabling legal framework to take alternate measures, Malawi has never experienced a situation requiring alternative criminal justice measures in cases where ML investigation has been pursued but where it is not possible to secure an ML conviction.

Confiscation (Immediate Outcome 8)

14. Malawi has a solid framework which allows the competent authorities to identify, trace and confiscate assets linked to ML/TF and associate predicate offenses. At the time of onsite visit, the authorities had forfeited some property, including real estate, vehicles and funds. The authorities have some cases of confiscating proceeds involving equivalent value and only two cases of confiscating instrumentalities. However, confiscation in relation to most offences that generate a significant amount of proceeds between 2013 and 2017 is low and it was recently that the country has set out confiscation of criminal proceeds and instrumentalities as a high-level priority and as a policy objective. Malawi established an Asset Forfeiture Unit (AFU) within the DPP in February 2018 in order to target proceeds and instrumentalities of crime. The AFU is still in its infancy and is not adequately resourced. Confiscation of falsely and non-declared cross-border currencies and bearer negotiable instruments is rarely done or in its infancy and hence sanctions are not adequately applied. Malawi has no cases involving confiscation of proceeds from foreign predicate offences, foreign instrumentalities of crime or where proceeds were located abroad. Consequently, Malawi has not shared any assets with other jurisdictions. In the case of domestic asset sharing, the Malawi Authorities have shared confiscated assets in a few instances. In view of all these, Malawi has to some extent a capacity to recover assets in a range of ML/TF and predicate cases consistent with its risk profile.

Terrorist Financing and Financing of Proliferation (Chapter 4 - IOs 9-11; R.5-8)

TF Investigation and Prosecution (Immediate Outcome 9)

15. Though Malawi has a framework and mechanisms to combat TF, there is a deficiency regarding criminalization of terrorism or acts of terrorism and definition of funds under the Malawian law. The FIA and the NIS demonstrated a relatively good understanding of TF that Malawi is facing. The CID within the MPS is responsible for investigating TF in line with the general powers of the police to investigate any crime in the country. However, the department has no dedicated and adequate capacity and resource to coordinate, identify and carry out potential TF investigations. As a result, TF cases may not be easily identified and their investigations prioritized. Moreover, Malawi lacks a comprehensive counter-terrorism strategy which would include an outline of the role of the various security and law enforcement agencies involved in combating TF. Malawi has not demonstrated successful cases of TF disruption measures. There has been no TF case identified, investigated and prosecuted in Malawi. The effectiveness, proportionality and dissuasiveness of the sanctions and any other measures which could be implemented by the authorities to deter TF activities could therefore not be determined.

Preventing terrorists from raising, moving and using funds (IO 10)

16. Malawi has the legal and institutional framework to implement UNSCRs for combatting TF (See the analysis for Rec.6). The implementation of the TFS regime is enforced by the National Counter-terrorism Panel. However, the Panel was at its early stages of being structured for its operations and has not issued its own working procedures and guidelines to the supervisory bodies, reporting entities and other stakeholders, guiding them on how to implement the sanctions lists. Therefore, effectiveness of the current structure in implementation of UN Security Council

Resolutions could not be determined. The reporting entities, except the large commercial banks, do not implement systematically UNSCRs without delay. Instead, the FIA has established a practice to download the consolidated sanctions list from UN website and then send to supervisory authorities and reporting institutions though not in a systematic manner. The competent authorities have not provided awareness workshops to the NPO sector and had just commenced gathering information to implement a risk-based approach to the NPO and societies sectors based on the results of the NRA, although this had not yet gained much ground and no NPOs had yet been identified as being vulnerable to possible TF abuse. The absence of TF cases makes it impossible to ascertain the extent to which terrorists, terrorist organizations and terrorist financiers would be deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities.

Proliferation financing (IO 11)

17. Malawi has the legal and institutional framework to implement UNSCRs for combatting PFPF (See the analysis for Rec.7). However, the scope of legal framework for implementation of TFS relating to PF does not cover UNSCRs 2231 in relation to Iran. The implementation of the TFS regime is enforced by the NCTP. However, the Panel was at its early stages of being structured as described above. Therefore, effectiveness of the current structure in implementation of UN Security Council Resolutions could not be determined. The reporting entities, except the large commercial banks, do not implement systematically UNSCRs without delay. Instead, the FIA has established a practice to download the consolidated sanctions list from UN website and then send to supervisory authorities and reporting institutions though at various levels. UNSCRs on combating PF are not being implemented adequately by all national bodies, financial institutions, and DNFBPS, and this is due to the absence of comprehensive necessary procedures, instructions or mechanisms and weak awareness of the TFS system in relation 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.

Preventive Measures (Chapter 5 - IO4; R.9-23)

18. The Financial Crimes Act and the 2011 AML Regulations set out AML/CFT obligations for FIs and DNFBPs in Malawi. The FIs and DNFBPs subject to AML/CFT obligations in Malawi are consistent with the scope of covered entities under the FATF Standards. The legal and regulatory frameworks require FIs and DNFBPs to implement mitigating controls on a risk-sensitive basis. Overall, the AML/CFT obligations are largely compliant to enable the FIs and the DNFBPs to mitigate and manage ML/TF risks.

19. Generally, FIs have a good understanding of their ML/TF risks and application of AML/CFT obligations than DNFBPs. In particular, the large FIs have demonstrated a better understanding of the ML/TF risks and application of AML/CFT obligations compared to the small to medium FIs. On the contrary, the DNFBP sectors have demonstrated little to no understanding of ML/TF risks. Though the DNFBP sector is aware of its AML/CFT obligations, its level of implementation is varied among different sectors. The lawyers, accountants and real estate agents demonstrated a good application of AML/CFT obligations. By contrast, the casino and dealers in

precious stones and metals demonstrated little to no understanding of ML/TF risks and, to some extent, good application of AML/CFT obligations. This is attributed mainly to lack of adequate AML/CFT supervision. With the exception of banks, filing of STRs by the other FIs and DNFBP sector is low.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

20. The RBM (for all FIs) and the MGB (casinos) apply sound market entry requirements for ensuring the integrity of the sectors which prevent criminals and their associates from holding or being a beneficial owner of significant interest or holding a management function in the sectors. The supervisors of real estate operators, trust and company providers and dealers in precious stones and metals generally have inadequate market entry requirements. As a result, there are unregistered natural persons participating in the precious stones and metals and real estate sectors.

21. The FCA introduced risk-based approach to AML/CFT. The FIA, the RBM and the Malawi Gaming Board have applied RBA to AML/CFT when determining compliance with AML/CFT obligations by their respective entities. Of noteworthy is that the RBM has advanced compliance monitoring programmes than the FIA and the MGB. There has been less focus on real estate agents and dealers in precious stones and metals by the FIA even though the sectors have been identified as posing higher ML risks. This could be attributed to inadequate resources at the FIA to supervise and monitor compliance as well as the recent nature of the enforcement powers granted to the FIA under the FCA, 2017. However, during the inspections that were conducted by the FIA, RBM and Gaming Board, areas of non-compliance by reporting institutions were identified and some warranted administrative sanctions. As such, in the financial sector, supervisory measures taken in Malawi have an effect on compliance with some improvements demonstrated –albeit to varying degrees. Whilst the RBM has issued monetary penalties and remedial actions to inspected FIs found non-compliant with AML/CFT obligations, the FIA and the MGB have issued remedial actions in respect of violations of AML/CFT obligations by the DNFBPs. Therefore, it is difficult to determine if, in practice, the sanctions are dissuasive, proportionate and effective in respect of the DNFBPs.

22. The FIA, RBM and MGB have provided a number of training and outreach programmes to reporting entities in order to improve the level of compliance. In addition, the FIA has issued ML/TF trends and typologies which have been useful in enhancing understanding of ML/TF risks by the reporting entities. The impact of the initiatives is varied, with the majority of FIs demonstrating a good understanding of the ML/TF risks and AML/CFT obligations and understanding by the DNFBPs is largely emerging.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

23. Basic information on the creation and types of legal persons and legal arrangements is publicly available. The current Companies Act does not provide for obtaining of beneficial ownership information of a legal person at registration stage and maintaining of a BO register. There are also no similar requirements under the laws regulating trusts.

24. During the onsite, it was observed that the ML/TF risks posed by legal persons are not comprehensively assessed due to lack of sufficient information. The FIs and DNFBPs do not generally take similar rigour as they only depend on the information available from the Registrar General's database, which has limitations regarding BO information particularly where complex structures are involved. Malawi needs to ensure that the steps which it is currently taking to maintain a database and a BO register are speeded up to completion.

25. Malawi has not sufficiently implemented specific mitigating or preventive measures to enhance the transparency of legal entities and legal arrangements created in the country as the Registrar General's Office is under-resourced and cannot therefore monitor non-compliance issues in respect of companies and take appropriate actions accordingly. Besides, the authorities have not imposed sanctions consistently on legal persons where the provisions of the Companies Act are contravened. It was therefore difficult to determine whether there were effective, proportionate and dissuasive sanctions. The Act governing trusts has no sanctions for any breaches against the Act.

International Cooperation (Chapter 8 - IO2; R. 36-40)

26. Malawi has legal and institutional framework in place to facilitate mutual legal assistance, extradition matters and other forms of cooperation. Malawi has ratified all international instruments relevant to AML/CFT, which it has domesticated to support provision of international cooperation. There are also a number of bilateral and multilateral agreements which have been useful in facilitating exchange of information with foreign counterparts. The Attorney General (AG) through the DPP is the Central Authority mandated to execute outgoing and incoming MLA and extradition requests. Malawi is adequately using other forms of international cooperation through the various domestic agencies, namely; ACB, MPS, FIA, MRA and RBM who are able to exchange information with their foreign counterparts.

27. Malawi has not received any MLA or extradition request on ML/TF. Malawi to some extent provided constructive information to foreign requests, including on beneficial ownership using other forms of international cooperation. However, the effectiveness of international cooperation is constrained by a general lack of adequate case management system in place to enable monitoring and accounting for MLA and extradition requests received and sought. In the absence of a case management system, it was difficult to properly determine the time within which the requests are handled, number of requests handled, feedback and the quality of information received.

Priority Actions

Malawi should implement the following priority actions to improve implementation of its AML/CFT system and raise the level of effectiveness:

- a) Use the findings of the 2018 NRA (and any updates thereof) and then demonstrate the effective implementation of the AML/CTF Strategy and Policy, while strengthening inter-agency coordination to mitigate the ML/TF risks identified and to take the measures against ML, TF and PF.
- b) Intensify application of risk-based approach to AML/CFT to promote and increase access to financial services to mitigate the ML/TF risks identified.
- c) Intensify outreach activities to improve the implementation of the relatively new AML/CFT framework particularly in respect of the FCA, 2017 and the relevant UNSCRs, 2018 NRA, and ensure that all the stakeholders (e.g. government policy-makers, FIA, LEAs, Supervisors, FIs and the DNFBPs) understand and effectively carry out their responsibilities.
- d) Prioritise provision of adequate resources to competent authorities including the ACB, DDU and FFU across the board (budget, expertise and technical) for effective implementation of the AML/CFT measures to achieve the desired outcomes in terms of initiating ML/TF and the highest proceeds generating predicate offences investigations or request information to support on-going ML/TF and associated predicate offenses investigations initiated by the LEAs, and to increase focus on ML/TF prosecutions and, ultimately, confiscation of criminal property in line with the country's overall risk profile.
- e) Conduct a comprehensive review of the NPO sector to better understand and target NPOs that are exposed to TF abuse and continue outreach to NPOs and their donors to raise awareness of specific TF risk.
- f) Ensure confiscations of criminal proceeds, instrumentalities and property of corresponding value are done as a matter of policy. Strengthen the asset recovery regime by, *inter alia*, ensuring that the AFU maintains comprehensive statistics pertaining to property frozen, seized or confiscated.
- g) Develop and implement outreach programme to enhance the understanding of ML/TF risks by the DNFBP sector as well as their AML/CFT obligations.
- h) Ensure that both financial and DNFBP supervisors fully adopt and implement a risk-based approach to supervision. Commence or enhance supervision of the DNFBP sectors by, among other things, provision of necessary guidance including issuing AML/CFT regulations or developing of enforceable guidance on, and conducting risk-based inspections.
- i) Undertake a comprehensive review of the legal and regulatory framework on legal persons and arrangements to promote transparency by providing for adequate obligations to obtain and maintain ultimate beneficial ownership information to FIs, DNFBPs and competent authorities in a timely manner and to ensure that it is kept accurate and up-to-date by regularly updating the information. More importantly, the authorities should undertake a comprehensive ML/TF risk assessment of legal persons and arrangements to ensure that the Registrar General understands which types of legal persons and arrangements are most vulnerable and should prioritise

resources particularly as resources are currently a major concern in Malawi and conduct effective supervision, the use of preventive measures and the use of remedial penalties and sanctions

j) Establish an efficient case management system in the AGO for collection and dissemination of MLA and extradition in timely manner necessary to enable monitoring and accounting for MLA requests received, acceded to, declined, dispatched and quality of information received as well as to review the effectiveness of the AML/CFT system.

k) Develop and operationalise sufficient mechanisms and coordination to implement UNSCRs relating to TF and PF.

Effectiveness & Technical Compliance Ratings

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	ME	ME	LE	ME	ME	ME	LE	LE	LE

Technical Compliance Ratings

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

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place in the Republic of Malawi as at the date of the on-site visit (19-30 November 2018). It analyses the country's 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.

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.

The evaluation was conducted by an assessment team consisting of:

ESAAMLG Secretariat:

- Mr. Muluken Yirga Dubale, Senior Legal Expert (Team Leader)
- Mr. Joseph Jagada, Principal Expert
- Mr. Phineas R. Moloto, Technical Advisor

Assessment Team:

- Ms. Hilka Alberto, Financial Sector, Supervision, Namibia Financial Institutions Supervisory Authorities (NAMFISA), Namibia;
- Ms. Nontsikelelo Dlamini, Financial Sector, Preventive Measures, FIU Eswatini, the Kingdom of Eswatini;
- Mr. Languito Sibinde, Financial Intelligence Unit, FIU Mozambique, Mozambique ;
- Mr. Kassim N. Robert, Legal, FIU Tanzania, Tanzania; and
- Ms. Mokgadi B. Bokaba, Law Enforcement, South African Police Service- Directorate of Priority Crime Investigations (DPCI), South Africa.

The report was reviewed by the FATF Secretariat; Mr. Sydney Asubo, FIA Uganda; and Mr. Joseph Munyoro, Bank of Zambia.

Malawi previously underwent a FATF Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The 2008 evaluation *and the 2017 and 2018 Progress Reports* have been published and are available at <https://www.esaamlg.org>.

That Mutual Evaluation concluded that the country was compliant with 4 Recommendations (i.e., R4, R19, R28 and R37); largely compliant with 13 Recommendations (i.e., Rs 1-3, R7, R10, R14, R20, R31, R35, R36, R38, SR IV and SR VII); partially compliant with 21 Recommendations (i.e. Rs 5-6, R 9, R 11, R 13, R 15, R 17, R 18, R 21, R 23, R 26, R 27, R 29, R 33, R 34, R 39, R 40, SR I, SR II, SR V and SR IX); and non-compliant with 10 Recommendations (i.e., R 8, R 12, R 16, R 24, R 25, R 30, R 32 and SRs III, VI and VIII). The rating on Recommendation 22 was Non-Applicable in the case of Malawi. Malawi was therefore rated compliant or largely compliant with 7 of the 16 Core and Key Recommendations.

Malawi entered the follow-up process in 2009 and exited the process in September 2018 still with outstanding deficiencies on SR11, SR13, R34, and R39. The reason for exiting the follow-up process was that Malawi was going to be assessed for the second time in November 2018.

CHAPTER 1. ML/TF RISKS AND CONTEXT

28. The Republic of Malawi is a landlocked country in southeast Africa. Malawi shares borders with Zambia to the north-west, Tanzania to the north and Mozambique, which surrounds it on the east, south and west. Malawi is divided into four regions (the Northern, Central, Eastern and Southern regions), which are further divided into twenty-eight districts. The capital city of the country is Lilongwe, while Blantyre is the commercial city. Official estimates in 2018 indicated population of 17.6 million (the 1998 census registered figure was 9.9 million).

29. The economy of Malawi is small and less diversified. In 2018, Malawi's economy posted a 3.4% real Gross Domestic Product (GDP) growth. Agriculture drives economic performance in Malawi. The sector contributes around 30 percent to GDP (about US\$6.89-billion) in 2018.

30. Malawi is a Republic and obtained independence from Great Britain on July 6, 1964. Malawi is a unitary state headed by a republican President who is elected by universal suffrage for a term of five years. Malawi's political system is a multi-party democracy. The three arms of Government operate independently from each other and comprise the Executive, the Legislature and the Judiciary. The Executive is made up of the President, Vice-President and cabinet members. Appointments to cabinet are at the sole discretion of the President. Ministers can be appointed from members of the National Assembly or non-members.

31. The Legislature is made up of the National Assembly, which comprise of 193 members of parliament elected by universal suffrage, each of whom serves for a five-year term.

32. The Malawi Legal System is based on the English Law which has been modified since 1969. The Judiciary interprets and applies the laws of Malawi and provides for a mechanism for conflict resolution. The judiciary is composed of Magistrate Courts, High Court, and Supreme Court of Appeal. The Supreme Court of Appeal, made up of the Chief Justice and nine other justices, is the highest court of justice in the country. The High Court handles any civil or criminal case and has a general division which hears appeals from the subordinate courts, and magistrate courts handle both civil and criminal cases except for most serious offences of treason, murder or manslaughter. Most High Court cases are heard before a single judge, with no jury. Cases that concern the question of constitutionality are heard by a minimum of three judges.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

33. Malawi completed an NRA to identify and assess domestic ML/TF risks facing the country. The results of the NRA have significantly improved the level of understanding of ML/TF risks by both the private and public sector. Malawi has a relatively good understanding of ML/TF risks, albeit varied amongst different public and private institutions. The authorities used a variety of information and data sources from different private and public sector in the completion of the risk assessment. It focused on major sources of threats, vulnerabilities and the resultant consequences of ML/TF risks facing the financial and the non-financial sectors, taking into account both the domestic and foreign dimensions. Malawi faces significant inherent ML/TF risks arising from cash-intensive and informal nature of the economy.

34. The most proceeds-generating predicate offences (about USD 145.3 million between 2013 – 2017) are corruption, fraud, tax crimes, smuggling of goods, wildlife offences, drug trafficking, human trafficking and illegal externalisation of foreign currency. Over the past five years, there have been several typologies used to launder property in Malawi, with the most prevalent being use of cash-intensive businesses to disguise criminal proceeds and use of import and export system to disguise and transfer proceeds through the movement of goods and funds.¹

35. Malawi faces significant domestic rather than foreign threats to ML. This means that the proceeds are generated in Malawi but the proportion of the funds laundered abroad is higher than domestic laundering. There are instances where foreign nationals mainly from Asia under-declare taxes due by their businesses to the authorities and expatriate the funds without following the legal processes. Analysis of foreign threat in relation to ML shows that there were cases reported whereby foreign suspects and offenders were taking advantage of relaxed vetting and requirements to do business in Malawi. This was most prevalent in the offences of illegal externalization of foreign currency, tax evasion and wild life crimes.² With respect to illegal externalization of foreign currency, the source of funds externalized is not clearly defined as the pattern was that huge cash deposits were made at the financial institutions followed by repatriation. However, the volume of funds was not proportional to the type of business operated by the customers. During the onsite visit, the authorities indicated that in some instances, the offenders set up legitimate businesses in Malawi but do not declare the income generated as required. Instead, they declare a loss but externalise (illegally move the funds out of the country) the income generated to foreign jurisdictions. This is done through misrepresentation of customs documentation to hide the true value of the goods imported. However, there were no cases reviewed which showed that the predicate offence was committed in a foreign jurisdiction but the proceeds were laundered in Malawi. The authorities have determined the overall ML threat as medium high.

36. The NRA has identified TF threat as low. The TF threat appears mainly from external than internal sources. There have been no known cases of funds raised in and/or moved out of Malawi for use in financing of terrorism within or outside of the country. Further, there are no known cases of Malawians participating as foreign terrorist fighters. There are no known cases of domestic-based terrorists targeting home or foreign jurisdictions, and no known cases of terrorists on a global scale targeting Malawi.

37. The assessment team concurs with the conclusion by the authorities that; in the context of Malawi, the risk of TF is less pronounced than ML.

¹ The 2018 NRA Report

² Ibid.

38. In May 2018, Malawi completed an update to the 2013 NRA to identify and assess national ML/TF risks. The NRAs analysed the ML threats to which Malawi 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.

39. The assessment team received and reviewed a number of 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 of significant importance to assessing the effectiveness of the AML/CFT system in Malawi. The assessors focused on the following priority issues:

- ***ML investigations and prosecutions:*** including how effectively all the competent authorities (e.g. ACB, DDU, FIA, FFU, DNPW) and the National AML/CFT Committee (NAMLC) co-ordinate their actions when investigating ML resulting from the major predicate offences (corruption, illegal externalization of foreign currency, fraud, tax evasion, wild life crimes and smuggling) from a strategic and tactical point of view. The assessors also needed to have more information in form of statistics or data which was used by the authorities to determine the risk rating of the offences as well as the level of resources allocated to law enforcement given the low levels of ML cases brought before the courts relative to the high level of investigation and prosecution of predicate offences.
- ***Confiscation:*** the findings of the NRA were that forfeiture/confiscation was generally low due to limited capacity and resources. The assessors determined the effect of Malawi being predominantly a cash-based economy on tracing of proceeds of crime and implementation of confiscation measures and how the Malawian authorities prevent incoming and outgoing illicit flows in the form of cross-border cash movements or through cash couriers. The assessors also determined the ML/TF risks associated with the informal sector including some illegal financial activities (such as 'black market' foreign exchange, informal money value transfer systems and illegal money lenders) to ascertain to what extent the absence of information have implications on the effectiveness of the AML/CFT system of Malawi.
- ***Supervision of the Most of Vulnerable Sectors:*** AML/CFT supervision of FIs and DNFBPs in Malawi identified banks, remittances, bureau de change, real estate and dealers in precious stones and metals as posing higher ML risks. Assessors focused on the extent to which supervisors promoted understanding of ML/TF risks and AML/CFT obligations commensurate to risks identified.
- ***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.

- **Terrorist Financing:** while TF is rated low by the NRA, it was important to assess the extent to which the measures currently in place would detect and combat potential terrorism and TF activities. In this regard, the assessors also paid special attention to the level of understanding of TF risk by various stakeholders (e.g., FIA, NIS, CID, NAMLC, and NPO regulators, among others) and the extent to which targeted financial sanctions and NPO measures were being implemented.

Materiality

40. The banking industry in Malawi is small and predominates the economy. It accounts for two-thirds of the total assets of the financial sector, with the remainder in insurance companies and securities firms. The Malawian financial system consists of nine banks among which 5 are foreign majority owned and 4 locally majority owned. The banking sector is the most significant sector with a total asset value of USD2.06 Billion as of December 2017. Due to the large volumes and high values of transactions conducted via the banking system, there are inherent ML/TF risks facing the sector.

41. The DNFBP sector is less significant relative to the financial sector. Malawi has significant informal sector and dominance of cash-intensive industries. The vulnerability of the sector was further highlighted by the Baker Tilly Report³ which showed large sums of proceeds of mismanagement of public funds and externalisation of illicit proceeds from evasion of customs duties during the cash-gate scandal being moved through the banking sector.

42. All DNFBPs, except trust and company service providers (TCSPs) as defined by the FATF, conduct business in Malawi. The FCA requires the DNFBPs to comply with AML/CFT obligations. The real estate industry is regulated by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers (hereinafter referred to as the Lands Board) which was established through the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, 1990. This Board regulates individuals wishing to practice as Land Economy Surveyors, Valuers, Estate Agents and Auctioneers. The Lands Board does not license real estate firms. There are only 37 individuals registered with the Lands Board, while the FIA has compiled a list of 59 firms operating as real estate agents, valuers and / or auctioneers. It is however difficult to determine the size of the industry as there are many unregistered players. Accountants, auditors and lawyers are the largest groups among independent legal and accounting professionals. There are about 407 licensed lawyers (excluding those employed in government) and 33 licensed firms. There are 56 practicing members of Institute of Chartered Accountants in Malawi (ICAM) and 22 licensed audit firms. Therefore, the DNFBP Sector is a fairly small player and therefore it has a minimal integration into the global financial system.

Structural Elements

43. In general, Malawi has key structural elements for implementation of an effective AML/CFT system. The country has political and institutional stability, accountability, the rule of

³ Cash-Gate Report, 2013 stated that a total of 104 'cash-gate' cheques were paid into at least ten different commercial banks throughout Malawi with 22 cheques, linked to 10 different businesses, being banked at one bank.

law and an independent judiciary. The government of Malawi made reforms on its AML/CFT legislation in 2017. However, international organizations and counterparts in Malawi and the findings of the 2018 NRA show that corruption is an issue in the jurisdiction which may also affect the criminal justice system. Malawi is ranked at 28.37 by the World Bank Worldwide Governance indicator, for control of corruption in 2017 (where 0 corresponds to the lowest rank and 100 correspond to the highest rank). In 2013, Malawi faced a major corruption scandal popularly known as “Cashgate” relating to the mismanagement of government funds by public officials through fraudulent transactions in the government’s computerised payments system.

44. The assessment team noted with concern the negative effect that inadequate resources on investigative officials have had on the efficient functioning of the AML/CFT system particularly in relation to combatting drug smuggling, human trafficking and corruption. Notwithstanding this, Malawi has made a high-level commitment from the highest office in the country to implement AML/CFT measures consistent with the FATF Standards. Going forward, Malawi intends to use the 2018 NRAs results as the basis to strengthen its risk-based AML/CFT system.

Background and other Contextual Factors

Overview of AML/CFT strategy

45. Malawi has a largely cash-intensive and informal economy. The country’s AML/CFT regime was started in the early 2000s and has been strengthening on the back of recommendations arising from the previous MER (2008). Malawi was subject to an enhanced follow-up by the ESAAMLG (which it exited recently in September 2018) for failing to address a number of deficiencies identified in its 2008 MER. The follow-up process increased the momentum for a high-level political commitment by the Government to address the deficiencies. This resulted in the comprehensive legislative review of the AML/CFT framework through the passage of the Financial Crimes Act, 2017. Overall, there have been some noticeable positives in the AML/CFT regime in Malawi.

46. Malawi faces a challenge of resources across the spectrum, and this has affected the capacity of most competent authorities. In spite of the resource challenges, some competent authorities were able to implement, to some extent, effective AML/CFT strategies and activities.

47. In June 2018, Malawi updated the 2013 NRA which was the basis for the evolution of the shared understanding of ML/TF risks in the country. Most competent authorities in Malawi are in the process of aligning their strategies and objectives to the NRA results and action plan while others have done so (e.g. RBM, FIA and the MRA). Through the NRA process, Malawi continues to strengthen implementation of the Action Plan annexed to the NRA. In the main, the Action Plan promotes a risk-based approach, domestic cooperation, coordination, and prioritisation of resources.

48. The misuse of public resources largely through corruption schemes is of serious concern to effective implementation of AML/CFT measures as it undermines the operational capability of competent authorities. The fact that the Action Plan annexed to the NRA focuses on institutional capacity of competent authorities such as the investigative bodies (e.g., the Anti-Corruption

Bureau) reflect the high-level commitment of Malawi to build effective AML/CFT institutions but should be provided with adequate resources and operational independence.

Overview of the legal & institutional framework

49. Malawi criminalised the offences of ML and TF in the Financial Crimes Act, 2017⁴ and the associated predicate offences in various statutes. In general, the same laws along with the Financial Services Act, 2012, MLA Act and Extradition Act and the 2011 AML Regulations provide for the salient features of a sound AML/CFT regime based on application of AML/CFT obligations, freezing and confiscation of proceeds, broad institutional framework, and coordination and cooperation (national and international).

50. Malawi has established various agencies/institutions and mechanisms to administer and oversee implementation of the AML/CFT regime. Some of them are as follows:

National Anti-Money Laundering and Combatting the Financing of Terrorism Committee: is a multi-coordination agency chaired by the Ministry of Finance, and comprises: the Financial Intelligence Authority, the Reserve Bank of Malawi, the Malawi Police Service (represented by the Fiscal and Fraud Unit), the Anti-Corruption Bureau, the Director of Public Prosecutions, the Malawi Revenue Authority, the Ministry of Foreign Affairs, the National Intelligence Service, Malawi Gaming Board, Ministry of Defense, Ministry of Homeland Security, Department of Immigration and Citizenship Services, and the Ministry of Justice and Constitutional Affairs.

Anti-Corruption Bureau (ACB): is responsible for investigation and prosecution of corruption, ML and other offences uncovered in the course of investigating corruption.

Attorney General's Office (AGO): is responsible for drafting of AML/CFT laws, mutual legal assistance and extradition as the central authority, and prosecution of civil matters on behalf of the Government.

Department of Immigration and Citizenship Services –facilitates the movement of travelers in and out of Malawi.

Department of National Parks and Wild Life: conducts investigation and prosecution of wild life crimes and ML offences.

Department of the Registrar General: is responsible for registration and incorporation of legal persons and arrangements and maintaining their register.

Directorate of Public Prosecutions (DPP)- is a Directorate under the Ministry of Justice and Constitutional Affairs responsible for instituting all criminal prosecutions and handles MLA and extradition requests through delegation by the AGO.

Financial Intelligence Authority (FIA): is the central authority responsible for receipt and analysis of transactions reports and dissemination of the results of the analysis to relevant law enforcement agencies. FIA is also responsible for supervision of DNFBPs (other than casinos).

⁴ These offences were to some extent first criminalised in an earlier Act of 2006 which was repealed in 2017.

Malawi Gaming Board (MGB): is the regulator and AML/CFT supervisor of casinos and has explicit powers under the FCA to take enforcement actions against its regulated entities for non-compliance with market entry and AML/CFT obligations.

Malawi Police Service: is responsible for investigation and prosecution of all crimes including ML/TF offences.

Malawi Revenue Authority (MRA): is responsible for conducting investigation and prosecution of tax crimes and ML offences. It also manages cross-border currency and bearer-negotiable instruments declarations at ports of entry and exit.

Ministry of Foreign Affairs and International Cooperation - is responsible for managing the country's diplomatic relations with other countries and international organizations and sharing information with relevant stakeholders including the FIA on the UNSCRs relating to targeted financial sanctions.

National Counter Terrorism Panel- facilitate implementation of UN Security Resolutions relating to the suppression of terrorist financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction and such other related resolutions.

National Intelligence Service (NIS)- is responsible for gathering, analysing terrorism and TF intelligence and disseminating the information to the investigating authorities and the FIA.

Reserve Bank of Malawi (RBM): is the regulator and AML/CFT supervisor of all financial institutions in Malawi.

Overview of the financial sector and DNFBPs

51. The FIA is the main competent authority in Malawi responsible for supervising and monitoring AML/CFT compliance by the FIs and DNFBPs. The Reserve Bank of Malawi (RBM) and Malawi Gaming Board (MGB) regulate and supervise FIs and casinos respectively on AML/CFT issues through delegation by the FIA. The FCA and FSA (RBM in respect of FIs) provide AML/CFT enforcement powers to the supervisory authorities for non-compliance with AML/CFT obligations.

52. Malawi has participation in all financial activities listed in the FATF Glossary and its financial sector is divided broadly into the following segments:

- **Banking:** The banking sector in Malawi comprises 9 commercial banks. Of the nine banks, five are domestic banks accounting for 57.4 percent of total assets compared to 59.7 percent in 2016. On the other hand, four were foreign-owned banks with their assets increasing to 43.0 percent in 2017 from 40.3 percent in 2016, following the merger of one of the foreign-owned banks with a domestic-owned bank.
- **Insurance:** The insurance sector in Malawi is regulated and supervised by the Reserve Bank of Malawi. Insurance entities (insurance companies, insurance brokers, insurance agents and loss assessors /adjusters) are licensed under the Financial Services Act (FSA), No. 26 of 2010, CAP 44:05 of the Laws of Malawi. The insurance sector is categorized into two sub-sectors, namely: life insurance and general insurance. There is a total of thirteen (13)

insurance companies, with eight (8) dealing in general insurance business and five (5) dealing in life insurance business. There are 17 insurance brokers and 40 insurance agents in the industry, one of which is a re-insurance broker. There are 5 agents for brokers. These are banks providing bancassurance services. The total assets in the industry was at US\$408,600,000 of which 90 percent (US\$358,700,000) belonged to the Life insurance sector. Gross total premium for both sub-sectors stood at US\$75,556,250.00, of which 64 percent belonged to the general insurance sector.

- **Securities Sector:** The sector has 24 players: stock exchange (1), Asset/fund managers (5), investment advisors (8), stock brokers (3), collective investment schemes (2) and transfer secretaries (5). The stock market had a capitalization of US\$1.4 billion with 698.9 million shares traded in 2017 at a turnover of US\$18,544,275.00. Total funds under management by portfolio managers amounted to US\$1.4 billion⁵ while stock brokers had US\$1,242,081 and collective investment schemes were at US\$15,210,775 at the time of the onsite.
- **Other Financial Institutions:** other FIs include foreign exchange bureaus (FEBs), money transfer operators (MTOs), microfinance institutions (MFIs) and mobile payment service providers or mobile money Operators (MMOs). In Malawi, there are: 3 MMOs with a value US\$821.5 Million and volume US\$195,000; 79 MFIs (including microcredit agencies, MFIs and SACCOs) with a total asset of US\$64.4 million and total loans amounting US\$39.5 million; 15 FEBs with a total sale of US\$1.2 million and total purchases amounting to US\$78.9 million; and 11 MTOs with inward remittances equivalent to US\$37.8 million and outward remittances totalling US\$903,000.

⁵ Life insurance funds account for 55% of the funds while pension funds account for 23% of the funds

Table 1: STRUCTURE AND SIZE OF THE FINANCIAL SECTOR AS AT DECEMBER 2017

Type of Financial Institutions	Domestic		
	No. of Licensed/ Regulated/ Registered	Total Assets USD	Foreign Majority/ Locally Majority Owned (Number)
Banks	9	2,061,141,741	5 foreign majority owned 4 locally majority owned
Credit finance		54,355,000	
Factoring		21,542,000	
Leasing	0		
Microfinance	46	37,250,000	7 Foreign Majority Owned 39 Locally Majority Owned
MVTS	4	10,966,792.10	All Foreign Majority Owned
Money changer	16	8,180,743.95	2 Foreign Majority, 14 Locally Majority Owned
Life Insurance	5	368,700,000	3 Foreign Majority 2 Locally Majority Owned
General Insurance	8	39,900,000	4 Foreign Majority 4 Locally Majority Owned
Insurance brokers	17		2 Foreign Majority 15 Locally Majority Owned
Insurance agents	40		All Locally majority owned
Pension Funds⁶	30	861,677,551	
Stock Exchange	1	551,306	All Locally Majority Owned
Asset/Fund Managers	5	1,397,129,414	All Locally Majority Owned
Stock Brokers	3	1,242,081	All Locally Majority Owned
Collective Investment Schemes	2	15,210,775	All Locally Majority Owned
Investment Advisors	8	N/A ⁷	

Source: Information and data provided by the Authorities

Overview of the DNFBP Sector

⁶ Pension funds are set up by employers or pension services companies as trusts and are therefore owned by the members.

⁷ None of the investment Advisors are stand alone, they are all functions within various fund managers and commercial bank

53. The Designated Non-Financial Businesses and Professions which operate in Malawi are Casinos, Dealers in Precious Stones and Metals, Real Estate agents, Lawyers and Accountants and are subject to AML/CFT requirements and monitoring as prescribed under the FCA.

Casinos: The casinos and gaming activities in Malawi are regulated by the Malawi Gaming Board (MGB) in terms of the Gaming Act, 1996. As at 31st December 2017, the sector comprised 3 casinos, 2 Wide Area Progressive (WAP) gaming licensees with a total of 29 linked gaming machine sites and 3 standalone gaming machine sites. Gross Gaming Revenue (GGR) for the 2016/17 financial year for gaming and sports betting was MK4.77billion (⁸US\$ 6.57 million) representing 15% growth from 2013 (turnover = US\$5.72 million). Casinos contributed MK 1.63 billion (US\$ 2.25 million), WAP MK 2.95 billion (US\$ 4.07 million), standalone gaming sites MK 92.6 million (US\$127, 661) and sports betting MK 93.3 million (US\$128, 641).

Dealers in Precious Metals and Precious Stones: Dealers in Precious Metals and Precious Stones in Malawi are regulated under the Mines and Minerals Act 1981 and the Mines and Minerals Policy 2013. The sector is regulated by the Department of Mines. The sector comprises both registered and unregistered operators and there are 268 mineral license holders registered with the Department of Mines. Artisanal and small-scale miners (ASM) are also engaged in prospecting, gemstone mining, rock aggregate crushing, lime production, ceramics and pottery and salt processing

Real Estate Sector: The real estate industry is regulated by the Board of Registration of Land Economy Surveyors, Valuers, Estate Agents and Auctioneers (hereinafter referred to as the Lands Board) which was established through the Land Economy Surveyors, Valuers, Estate Agents and Auctioneers Act, 1990. This Board regulates individuals wishing to practice as Land Economy Surveyors, Valuers, Estate Agents and Auctioneers. The Lands Board does not license real estate firms. There are only 37 individuals registered with the Lands Board, while the FIA has compiled a list of 59 firms operating as real estate agents, valuers and / or auctioneers. It is however difficult to determine the size of the industry as there are many unregistered players.

Lawyers: The legal profession is regulated by the Malawi Law Society (MLS). As of 2017, the MLS had membership of 407 licensed lawyers (excluding those employed in government and have not been licensed) and 33 licensed firms. Out of 407 legal practitioners, 123 are employed in companies whereas 284 are working in law firms (as managing partners or employees). On average, about 40 people have been admitted to the bar every year for the past 3 years.

Accountants: The activities of accountants are regulated by the Malawi Accountants Board (MAB) and supervised by the Institute of Chartered Accountants in Malawi (ICAM) as mandated by the Public Accountants and Auditors Act 2013 (PAAA) (Sec.26 (1) and Sec.40). As at November 2017, there were an estimated 1,855 registered accountants and 275 pending applications. The number of unregistered accountants cannot be estimated reliably. The accountants in Malawi do not provide the financial services as per the FATF Standards.

⁸ RBM mid-rate as of 8 Dec 2017; 1 US\$ = MK 725.4144

TABLE 2: DOMESTIC MARKET: STRUCTURE AND SIZE OF THE DNFBP SECTOR

Sector	In Malawi Activity performed by	Law under which entity if licensed/registered	Licensing/ Registering authority	Size of Sector (number)	AML/CF T supervisor	Comments
Casinos	Gambling through machines, tables games, and related facilities	Gaming Act 1996	Malawi Gaming Board	3	Malawi Gaming Board	5 casino licences with 3 currently operational and 2 still in pre-operational phase
Real Estate Agents	Buying and selling of property, real estate and valuation	Land Economy, Surveyors, Valuers, Estate Agents and Auctioneers Act 1989 (Section 3)	Lands Board	37	FIA	There are over 60 agents
Dealers in precious metals	Import and sales of precious metals	Mines and Minerals Act (1981), Chapter 61:01 of the Laws of Malawi	Department of Mines	unknown	FIA	
Dealers in precious stones	Extraction and sales of precious metals	Mines and Minerals Act (1981), Chapter 61:01 of the Laws of Malawi	Department of Mines	unknown	FIA	

Legal professionals	Facilitating real estate transactions, creation of legal persons/arrangements	Legal Education and Legal Practitioners Act	Malawi Law Society	407	FIA	
Accountants		Public Accountants and Auditors Act (2013), CAP 53:06 of the Laws of Malawi	Malawi Accountants Board	56	FIA	
Trust and company Service Providers	Unknown ⁹			unknown		

Source: Information and data provided by the Authorities

Overview of preventive measures

54. The primary legal and regulatory framework prescribing AML/CFT obligations for FIs and DNFBPs are set out in the Financial Crimes Act, AML Regulations 2011, and its directives and other subsidiary legal instruments. The AML/CFT laws cover all FIs and DNFBPs as required by the FATF. The AML/CFT obligations for FIs generally also apply to DNFBPs. The FCA requires FIs and DNFBPs to apply preventative measures on a risk-sensitive basis. While the AML/CFT measures have been improved through a series of amendments since 2017 (mainly to the AML/CFT Act), some of the key AML/CFT requirements require further improvements. These include: UNSCRs on targeted financial sanctions and CDD measures particularly on legal arrangements (See IO4 and IO10-IO11 for details).

⁹ Though the authorities indicated that the Legal Practitioners in Malawi provide trust and company related services, the number of legal practitioners providing such services was unknown during the onsite visit. However, trust and company service providers are reporting entities as per Section 2 of the FIC Act, 2017.

Overview of legal persons and arrangements and Non-Profit Organizations

55. The Companies Act, 2013 and the Business Registration Act, 2012 (BRA) regulate the incorporation and registration of legal entities in Malawi. The Companies Act establishes different types of companies such as private limited liability companies (s.23), public limited liability company (s.24), company limited by guarantee (s.25) and state-owned companies (s.26). Partnerships and sole proprietorship are registered under the BRA. As at the time of the onsite visit, there were 1663 limited companies that include limited by guarantee, public limited liability company, limited by shares and state-owned. However, the authorities did not provide detailed information by breaking down the aggregated data on these types of legal persons. There were also 2938 partnerships and 37,555 sole proprietorships registered in terms of the Business Registration Act, 2012.

56. All limited companies, partnerships and sole proprietorships in Malawi are registered by the Department of the Registrar General, which falls under the Ministry of Justice and Constitutional Affairs. The main role of this office is to incorporate limited companies; keep a record of company information submitted under the Companies Act; and make the information available to the public and law enforcement agencies. In order to register, companies must provide information on their directors and shareholdings. However, this information is not updated and records cannot be considered adequate, accurate and current. Additionally, no adequate information on beneficial ownership is required or collected. It should however, be noted that the Registrar General's office is undergoing a computerization program to computerize its database.

57. There are two types of trusts that can be created in Malawi. Public trusts utilized by charities and other related non-profit organizations are created under the Trustee Incorporation Act. Private trusts are created under Common Law, by either a trust deed or a will. Public trusts are required to be registered, similar to a company under the Companies Act, but there is no registration requirement for private trusts. No information is collected on beneficial owners of such private trusts.

58. There is no mandated legal structure for non-profit organizations relating to the subset of NPOs that might be subject to TF exposure and abuse. Most of these organizations are set up as associations, charities, churches, clubs, cooperatives, societies and unions. They are required to be registered with the Ministry of Gender, Children, Disability and Social Welfare; NGO Board; or Ministry of Justice and Constitutional Affairs depending on whether they are an international or national organization and members of Council for Non-Governmental Organisations in Malawi (CONGOMA). However, in practice, not all NPOs are registered nor members of CONGOMA. This registration entails collection of information on office bearers of the NPO, although this does not amount to a fit and proper test. There is no sufficient monitoring on the transparency of financial resources or funding activities of NPOs. Malawi has not undertaken a comprehensive review of its NPO sector to assess its vulnerability to abuse for the financing of terrorism as the source of funding of NPOs could not be traceable due to inadequate information. At the time of the on-site visit, NPOs illustrated in Table 3, below, were in existence and members of CONGOMA:

TABLE 3: NON –PROFIT ORGANISATIONS

Sector	Number of Entities Within the sector¹⁰
Health	546
HIV/AIDS	311
Education	606
Adult Literacy	7
Religious	59
Agriculture, Nutrition & Food Security	374
Water & Sanitation	78
Legal & Human Rights	162
Gender	311
Youth	157
Microfinance	2
Early Childhood Development	11
Orphan Care	175
Capacity Building/ Skills Development	86
Environment, Forestry, Wildlife, Natural Resources & Renewable Energy	168
Total	3,053

Overview of supervisory arrangements

59. The AML/CFT supervisors of FIs and DNFBPs are the FIA, RBM and MGB. The FIA is the AML/CFT supervisor under the FCA. The FIA does not have sufficient resources and supervision tools to properly supervise and monitor all FIs and DNFBPs, on a risk-sensitive basis, for compliance with AML/CFT requirements. In line with the FCA, the FIA has delegated its AML/CFT supervisory power to the RBM in relation to the FIs and MGB for the casinos. Thus, the RBM is responsible for supervision of commercial banks, insurance, microfinance institutions, capital market players, bureaux de change and money remitters. The MGB is responsible for licensing and AML/CFT supervision of the gaming sector. Further, the RBM and MGB have adequate prudential supervision capacity. The FIA currently supervises DNFBPs (except casinos), which includes dealers in real estate agents, precious metals and stones, as well as lawyers and accountants. The FIA and the RBM used their respective understanding of the risks faced by their regulated sectors in relation to customer categories, products, delivery channels as well as geographical location as the basis for taking supervisory action (e.g., inspections). In addition to the FIA, RBM and MGB have powers to issue sanctions under the FCA. The FIA, RBM and MGB have signed MoUs which establish a coordination structure for exchange of information, cooperation and coordination of AML/CFT regulatory supervisory actions. To some extent, the MoU members have undertaken supervisory actions which have contributed positively to

¹⁰ One NPO may fall under more than one sector, so the figures given should be considered as estimates

AML/CFT compliance. However, a number of FIs and, to a large extent, DNFBPs have not been adequately supervised for compliance with AML/CFT obligations during the period under review.

Overview of international cooperation

60. Malawi has ratified the international instruments relevant to AML/CFT, which it has domesticated to support its international cooperation requirements. The legal framework for extradition and MLA is set out in the FCA in conjunction with Mutual Assistance in Criminal Matters Act (MACRM Act), 1994 and the Extradition Act, 1972 that is not unduly restrictive. In addition, Malawi has entered into bilateral and multilateral agreements (e.g. the Harare / Commonwealth MLA Scheme and South African Police Chiefs Cooperation Organisation (SAPRCCO) as well as with other countries) to facilitate international cooperation. ML and TF are extraditable offences in Malawi.

61. The LEAs and the AGO through DPP (which handles MLA and extradition requests) have made and received requests on cases with their foreign counterparts but are not related to ML/TF. The FIA has signed MoUs with other FIUs including FIUs in the ESAAMLG region to facilitate exchange of information. As at the date of the onsite visit, the FIA Malawi had exchanged information with counterparts such as in India, United Kingdom, and South Africa. The FIA as the AML/CFT supervisor, the RBM and the MGB can cooperate and exchange information with foreign counterparts.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- a) Malawi has a relatively good understanding of its ML/TF risks, albeit at varying levels and shared across Malawi government departments, LEAs, and supervisory and regulatory agencies.
- b) For the most part, the financial institutions demonstrated an understanding of risk as framed in the NRA and reported using it to inform their own risk assessments. However, the level of understanding of ML/TF risks by the DNFBPs including the casinos, real estate sector and dealers in precious stones and metals and their respective prudential regulators was considered to be at a nascent stage.
- c) Malawi to some extent is using the results of the 2013 and 2018 NRAs to coordinate an effective risk-based allocation of resources to mitigate the identified ML/TF risks through programmes at a national level. However, the competent authorities have inadequate resources to prioritise and mitigate identified higher risks.
- d) National co-ordination and co-operation on AML/CFT issues at the operational level has improved significantly since the last evaluation and the 2013 NRA, particularly operational level co-ordination among law enforcement agencies (LEAs). There is no National AML/CFT policy or strategy in place to address the risks identified in the NRAs.
- e) The Malawi's ML/TF risk assessments and understanding of risk is informed by both qualitative and quantitative data although there is need for a more comprehensive approach to risk assessment in some areas including legal persons and legal arrangements and NPOs.

Recommended Actions

Malawi should:

- a) Use the new law enforcement tools in the Financial Crimes Act 2017 and the newly established National Counter Terrorism Panel to ensure their effectiveness, and update the 2013 and 2018 AML Action Plans to include new actions as deemed necessary.
- b) Improve the collection of more consistent, comprehensive, national statistics to further enhance ML/TF risk understanding and thereafter, comprehensively identify, assess and understand the vulnerabilities posed by legal persons to ML/TF risks and the NPO sector to TF risk and thereafter to review their respective risks.
- c) Finalise and implement the National AML/CFT Policy and Strategy and provide competent authorities with adequate resources to prioritise and mitigate identified higher risks.
- d) Enhance outreach including issuance of guidance to sustain understanding of ML/TF risks and implementation of AML/CFT obligations by the DNFBP sector.
- e) Increase the level of understanding of emerging TF risks and intelligence gaps, and take appropriate action.
- f) Given the very high percentage of the population that is without access to financial services, and the estimated very high volumes of transactions taking place in cash, unrecorded and untraceable, it will be important to ensure that the efforts of the government to promote financial inclusion should be further strengthened and coordinated closely with AML/CFT authorities to ensure that ML/FT risks are considered and managed in this context.

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

62. In general, Malawi has a good understanding of its ML/TF risks, albeit in varying degrees. The assessors based this conclusion on a review of the available national and sectoral risk assessments and discussions with the public and private sectors.

63. The FIA, the LEAs and the DPP in Malawi demonstrated a good understanding of the ML risks facing the country. Though Malawi has identified and assessed its TF risk and the FIA and NIS have good understanding about the TF risk, the other relevant authorities met during onsite were mixing their understanding of TF with that of terrorism and the risk is not well understood (See IO7 and IO9).

64. The FIA, the RBM and the MGB are the AML/CFT supervisors of reporting entities for AML/CFT compliance in Malawi. The supervisors demonstrated a good understanding of the ML/TF risk for their supervised sectors and entities. Together with many other relevant stakeholders, they were closely involved in the development of the NRA and this has further enhanced their understanding of the risks associated with their supervised entities.

65. The authorities and the financial institutions met during the onsite shared the understanding of the higher ML risks posed by: cash-based economy and ML from proceeds of corruption, fraud, tax crimes, smuggling, wildlife offences, and illegal externalisation of foreign currency. Further, wild life crimes, drug trafficking and human trafficking were also understood as posing ML risks. Malawi has significant informal sector and dominance of cash-intensive industries. During onsite, the authorities had indicated that in order to address the limited access to financial services, the Malawi Government and all stakeholders (public and private sector, development partners, civil society, etc) have continually worked towards and supported activities aimed at increasing access to financial services by the low-income and underserved segments of the society under the National Strategy on Financial Inclusion (2010-2014 and 2016-2020). Among other things, the stakeholders have supported access to digital financial services, support to village savings and loans associations (VSLAs), increased access to affordable credit, access to offsite (agency) banking services and expansion of financial services delivery platforms among other things. Despite such efforts, Malawi is a cash-based economy which may also affect the availability of information or data which enables the authorities to comprehensively identify and understand ML/TF risks.

66. The results of the 2013 and 2018 NRAs played a significant role in promoting a good understanding of the ML/TF risks. Malawi has shared the results of the 2018 NRA to stakeholders through workshops facilitated by FIA and via the dissemination of relevant portions of the NRA report to each sector. Further, the NRA results were shared with policymakers and National AML/CFT Committee members. For the 2013 NRA, findings were mainly disseminated to policymakers and private sector associations (BAM and MAMN) facilitated by the FIA in June 2013. In addition, RBM held workshops with some FIs (banks, insurance, securities, and forex bureaus).

67. In addition to the NRAs, the FIA and RBM also conducted risk assessments of some specific reporting institutions. In addition, the financial institutions (mainly banking, foreign exchange bureaus, insurance, capital markets and deposit taking MFIs) have conducted ML/TF risk assessments based on the 2013 NRA to enable them identify, assess and understand ML/TF risks, which is now a requirement under S.21 of FCA. The FIA has also developed a number of studies on specific proceeds-generating predicate offences. These have been published on the FIA website and such products has contributed to the understanding of ML and TF risks in Malawi.

68. Although there were challenges in obtaining data and information from some participants (including the proceeds generated from criminal activities) and therefore, the major focus was the number of investigations, prosecution and convictions, this has not affected the reasonableness of the NRA findings. A significant portion of the NRA and sectoral risk assessment was focused more on ML than TF risk assessment, which was consistent with the general risk profile of Malawi.

69. There is need for a more comprehensive approach to risk assessment in some areas specifically legal persons and legal arrangements and NPOs. While the understanding of ML/TF risk is based on a range of qualitative and quantitative information, its measurement of risk mitigation measures could be further enhanced by more consistent, comprehensive, national statistics on law enforcement activity, confiscation, and international cooperation. To achieve this, the authorities should continuously review and update the NRA.

National policies to address identified ML/TF risks

70. Following the release of the second NRA results in May 2018, Malawi developed a three-year Action Plan with targets, timelines and responsibilities to address the identified ML/TF threats and vulnerabilities. Malawi continues to implement the Action Plan and there is an ongoing process to adequately translate the Action Plan into institutional plans. For instance, agencies such as ACB, MPS and DPP are improving their respective prioritization mechanisms to effectively investigate and prosecute high priority crimes. A National AML/CFT Policy and Strategy has been completed and awaits Cabinet approval.

Exemptions, enhanced and simplified measures

71. Most FIs have conducted their own ML/TF risk assessments to identify, assess and understand ML/TF risks, and use it as the basis for mitigation measures on a risk-sensitive basis. This has helped reporting entities to identify customers for which to apply lower or higher CDD measures.

72. The FIA is promoting risk-based approach by reporting entities through issuance of guidance on application of commensurate CDD measures on low risk or high-risk customers. Further, the country has issued Gazette Notices on CDD to enable reporting institutions consider enhanced or simplified CDD. The Action Plan has recommendations for reporting institutions to implement based on high risk or lower risk scenarios. During the onsite, the supervisory authorities indicated that they had started monitoring implementation of the recommendation especially by the FIs accordingly.

Objectives and activities of competent authorities

73. The authorities indicated that their objectives and priorities are largely based on the NRA results. LEAs' priorities are more focused on tackling the predicate offences consistent with the findings of the ML threat identified in the NRA such that investigations and prosecutions on corruption, embezzlement, tax crimes and foreign exchange are consistent with NRA findings.

74. From 2013, the DPP had prioritized on the basis of an internal strategy on handling of fraud and theft related cases known as *Cashgate*. After drawing lessons from the *Cashgate*, the MPS, FIA and ACB have started to include ML more systematically into their investigations of the proceeds generating crimes.

75. MRA has put in place mechanisms to start investigating ML as currently priority is given to identification and recovery of assets subject to taxes. The introduction of systematic ML investigations relating to proceeds of tax crimes is as a result of findings for the 2018 NRA.

76. As a result of the finding of the 2013 NRA, the Department of National Parks and Wildlife (DNPW) has made some progress in wildlife crimes investigations and prosecutions which include pursuance of ML such as in the case of the *Republic vs Patrick Kaunda and Chancy Kaunda, Criminal Case No. 1 of 2015*. The suspects were convicted of wildlife crimes and ML, but were only fined K5-million and the state has since appealed for review of the penalty since the case involved ML conviction. In the case of the *Rep vs John Phiri and Julius Daka criminal case No. 419 of 2018*, the individuals are being investigated on ML emanating from wildlife crimes. The case is being pursued by the DNPW. In addition, there is a wildlife crime investigation unit within DNPW which comprises officers from MPS and DNPW. The FIA and the MPS provide support in terms of information or intelligence where necessary.

77. The RBM, the FIA and the MPS have handled cases on illegal foreign exchange externalisation (for instance *Rep v Junaid Mohammed and 3 others - criminal case no. CRM 734 of 2017*) which were informed by the results of the NRA. Further, the FIA and the RBM have conducted compliance inspections on financial institutions for externalisation of foreign currency. In 2016, a fraud syndicate was uncovered by the competent authorities in which individuals who applied for foreign travel allowances using fake travel tickets and different beneficiaries had used same air ticket numbers, and customers received foreign travel allowances from different branches within the same period. Following this, the FIA issued press statements and guidance to financial institutions on the specific risks arising from foreign currency externalisation.

78. In 2017, the FIA set up an investigations department to focus on proceeds of crime, and conducting civil confiscation relating to ML cases. The FIA has been working in collaboration with the LEAs to investigate cases involving theft of public funds, corruption, illegal externalisation of foreign currency and money laundering. For instance, in April 2018, the MPS used the financial intelligence from the FIA on the arrest of an officer in the Department of Accountant General for theft of pension funds money.

79. Since 2013, the FIA, the RBM and the MGB conducted training and other outreach initiatives for FIs and DNFBPs. The efforts have resulted in increase in number of reporting institutions, establishing Compliance Units, and filing reports to the FIA.

80. The country's supervision of financial institutions by RBM and FIA is risk-based. Financial institutions that are deemed to pose a higher risk from information obtained from offsite supervision and on account of the findings of the NRA are targeted and this has helped in

allocation of resources towards areas where the risks are higher. On the other hand, supervision of DNFBPs is generally not risk-based even though some have been identified in the NRA as posing higher ML risks. The authorities are in the process of using the ML/TF risk understanding of the DNFBPs to develop and implement a risk-based supervision programme. It has been noted that the FIA intensified its outreach to DNFBPs from 2018.

National coordination and cooperation

81. There is good cooperation and coordination among competent authorities in terms of addressing the identified ML/TF risks. The authorities have, to a large extent, co-operated and coordinated the development and implementation of policies and activities to combat ML/TF. The assessors noted the effective national AML/CFT coordination through the National AML/CFT Committee.

82. The MoFEPD is responsible for AML/CFT Policy direction and coordination. There is a draft AML/CFT policy in place based on the NRA findings and requirements on combating proliferation of weapons of mass destruction.

83. The National AML/CFT Committee was formally established in August 2017 and is responsible for coordinating AML/CFT activities. The committee was established through formal approval of the Ministry of Finance, Economic Planning and Development. It is chaired by the Secretary to the Treasury and the members are the head of institutions of the following organisations (MoFEPD, FIA, RBM, MGB, MoJCA, MoFAIC, Ministry of Defence, NIS, MoHS, DPP, MRA, MPS, ACB and Department of Immigration and Citizenship Services). Realising that the heads of the institutions could be busy and that this could pose challenges in the way the committee functions, a provision was made for the heads to nominate one permanent member to the committee. The committee has terms of reference and an MoU has been signed by the heads of all institutions to be a part of the Committee. The TORs of the Committee have a clause that any institution including the Registrar General and the NGO Board can be co-opted. Prior to this, a Committee was operating informally and used to meet on an *ad hoc* basis.

84. Malawi has a National Counter-Terrorism Panel responsible for combating the financing of terrorism and proliferation of weapons of mass destruction and its financing. At the time of the onsite visit, the Panel was not fully operational.

85. The FIA, Ministry of Homeland Security, Department of Immigration and Citizenship Services, and Malawi Investment and Trade Centre (MITC) cooperate on issuance of immigration permits where the FIA vets the financial status of the applicants.

86. There is a domestic coordination and cooperation among the competent authorities. Stakeholders coordinated well in producing the NRA as well as developing the Financial Crimes Bill and consultations surrounding that work, and developing the draft AML/CFT Policy, among others. The LEAs cooperate in investigations, prosecution and domestic task forces activities such as Inter-Agency Committee on Combating Wildlife Crime. Investigation into wildlife crimes involved forming of a joint investigation comprising MRA, Department of Parks & Wildlife, DPP and MPS (see IO7). RBM/MPS have worked together on a number of cases especially those involving illegal foreign exchange dealing (refer to the cases on illegal foreign exchange externalization cases under IO 8). The *State vs Muhammad Jawad* was a joint investigation between MPS and RBM, in which the accused person was found with illegal possession of foreign currency.

FIA and RBM work together in conducting onsite examinations, training of financial institutions, development of Regulations and Guidelines. FIA has also worked together with MGB to train gaming operators. This is done pursuant to an MoU the two agencies have signed before the change of the law and another signed after the change of the law.

87. To promote coordination and cooperation, FIA has signed MoUs with the RBM, MRA, MPS, ACB, NIS, National Audit Office, NGO Board, Department of National Parks and Wildlife, National Intelligence Service, Malawi Gaming Board, Department of Immigration and Citizenship Services, and Office of the Director of Public Officers' Declarations (ODPOD). However, there is still a need to improve awareness and communication in the non-bank FIs and DNFBP sectors.

Private sector's awareness of risks

88. The 2013 and 2018 NRA findings were communicated to policymakers and private sector associations (BAM and MAMN) during a workshop facilitated by the FIA. In addition, the 2018 NRA findings have been communicated to the FIs and DNFBPs through dissemination of relevant portions of the NRA report to each sector. Further, the RBM held workshops with some FIs (banks, insurance, securities, and forex bureaus) where the findings of the 2013 NRA were disseminated and discussed with the sector involved. The RBM (in conjunction with the FIA) and the FIA (in conjunction with the MGB) have further undertaken numerous outreach and awareness-raising initiatives to promote the understanding of AML/CFT risks by reporting entities.

89. The impact of the initiatives by the RBM and FIA among the FIs varies, with the majority of FIs demonstrating a good understanding of the ML/TF risks. The impact of the initiatives taken by the FIA and MGB on DNFBPs is also varied as the awareness by the DNFBPs is largely emerging. Consequently, the DNFBPs, including the gaming operators, real estate sector and dealers in precious stones and metals and their respective prudential regulators (Ministry of Lands, Housing and Urban Development, Department of Mines) did not demonstrate a good level of awareness on the ML/TF risks consistent with the findings of the NRAs. This is concerning given that the majority of the real estate sector and dealers in precious stones and metals are vulnerable to ML/TF risks (See IO3 and IO4).

Overall Conclusions on Immediate Outcome 1

Malawi has achieved a Moderate Level of effectiveness for Immediate Outcome 1.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Financial Intelligence ML/TF (IO6)

- a) The FIA has capacity to exercise its core functions to receive and analyse transaction reports, as well as to disseminate financial intelligence and other information to LEAs.
- b) The LEAs obtain and, to some extent, use financial intelligence and other information to identify and trace criminal property, and support investigations on allegations of predicate offences, ML especially from 2015 in pursuit of the large sums of misappropriated public funds within several government departments/agencies (the so-called *Cashgate Scandal*)
- c) The majority of transaction reports analysed by the FIA are from commercial banks and there is limited or no filing of transactions reports by the DNFBPs including DNFBPs with high ML risks and some non-bank FIs. Thus, the diversity of the STRs filed is relatively not sufficiently broad.
- d) The FIA has received cross-border currency and BNIs reports over the US\$5000 from the MRA since July 2018. The FIA, to some extent, uses the cross-border currency and BNI information for strategic analysis as well as trends and typologies.
- e) Though the FIA disseminated financial intelligence related to TF to the NIS, the information was not shared with the MPS to identify potential or carry out TF investigations.
- f) The FIA has produced strategic analysis reports which have been useful to the LEAs dealing with crimes such as ML, corruption and tax-related offences to identify emerging risks and assist the LEAs to pursue potential ML investigations.
- g) The FIA provides useful feedback to reporting entities on the quality and usefulness of the STRs filed to and analysed by it. The majority of the reporting entities interviewed confirmed how the FIA uses structures such as the compliance officers' forums and other stakeholder engagements to provide structured feedback to the reporting entities. The only drawback on feedback is the fact that the FIA does not receive feedback from the LEAs on the usefulness of the financial intelligence and other information on utilisation of the reports.

ML Investigation and Prosecution (IO 7)

- h) Malawi has a comprehensive framework and adequate powers of LEAs responsible for investigating ML and predicate offenses. However, the competent authorities have carried out more investigations on predicate offences than ML cases due to inadequate material and human resources.
- i) The ACB and FFU have good coordination and cooperation in the investigation of complex crimes by sharing information and establishing joint teams as demonstrated by some successful ML cases resulting from joint investigations of the *Cashgate* cases.
- j) Malawi has to some extent investigated and prosecuted ML cases consistent with their country's threats and risk profile. This is most evident in corruption related ML cases (under *Cashgate*).
- k) The authorities had no cases where they had investigated and prosecuted legal persons for ML, though some of the cases had shown involvement of legal persons when they were committed.

- l) There is no ML conviction on foreign predicate offences and standalone ML, third party laundering being the bigger number compared to self-laundering.
- m) ML related to drug trafficking cases has not been investigated and there has not been prosecution and conviction of any drug related ML cases. There is no ML conviction linked to drug related offences.
- n) The ACB carries out parallel financial investigation as a policy position while the FFU conducts the parallel financial investigation on some selected cases.
- o) Alternative criminal justice measures in cases where a ML investigation has been pursued but not possible to secure a ML conviction have not been pursued and there are no cases of other criminal justice measures having been taken provided.
- p) Malawi does not have a national strategy for ML investigation and prosecution consistent with the ML risks identified.

Confiscation (IO8)

- q) Malawi has pursued confiscation as a policy objective to a limited extent as manifested through low level of confiscations of proceeds of crime, mostly *Cashgate* cases; lack of clearly-defined strategy, procedures and supporting information to demonstrate actions; only two cases of confiscation of instrumentalities of crime; few confiscations of property of equivalent value as well as lack of overarching strategic planning on asset confiscation.
- r) Malawi has no cases involving confiscation of proceeds located abroad in relation to the cross-border aspects to the crimes, for example in drug trafficking and illegal wildlife trafficking consistent with the risk profile of the country.
- s) Malawi has not had cases involving proceeds laundered or brought into the jurisdiction from other countries; therefore, it has not shared any assets with other jurisdictions. In the case of domestic asset sharing, the authorities have had cases where laundered proceeds and instrumentalities used to commit offences were shared.
- t) Authorities in Malawi are allowed under the FCA to seize and detain any currency or BNI derived from an offence or intended for use in commission of an offence. However, at the time of the onsite visit the authorities had not applied these measures. Prior to July 2018, there were few cases of cross-border currency confiscations done by the MPS under the Exchange Control Act.
- u) Malawi demonstrated limited ability to recover assets in a range of ML/TF and predicate cases consistent with its risk profile. Confiscation in relation to most offences that generate a significant amount of proceeds from 2013 to 2018 is low.
- v) Authorities in Malawi have started to strengthen the legal and structural confiscation framework especially upon risks identified in *Cashgate* cases by consistently implementing a number of measures, including establishing a unit responsible for asset forfeiture, confiscation of assets and instrumentalities of crime.
- w) Malawi has established the Asset Forfeiture Unit and the Confiscation Fund Account which is a fundamental step to mitigate challenges related to asset recovery.
- x) Asset forfeiture measures in relation to cross-border confiscation of currency or bearer negotiable instruments were of recent nature at the time of the onsite visit and the cases were very few; therefore, it was difficult to determine the level of effectiveness.

Recommended Actions

IO6

- a) Malawi should improve domestic cooperation and exchange of information between the FIA and LEAs as well as the NIS and MPS on use of financial intelligence to pursue ML/TF investigations and prosecutions, as well as confiscation of criminal property.
- b) The authorities should strengthen mechanisms to get feedback from the LEAs on the usefulness of the financial intelligence and information disseminated to them.
- c) The authorities should increase the diversity of reports from reporting institutions consistent with the risk profile of the country.
- d) FIA and the LEAs should improve the use of information in relation to cross-border and BNIs reports from the MRA.

IO7

- e) Particularly for agencies that investigate crimes consistent with the ML risks of Malawi (such as FFU and DDU), Malawi should ensure that adequate material and human resources are allocated to the dedicated ML investigation teams to enhance the investigation of complex ML schemes, financial investigation techniques and develop its technical and human resource capabilities in this area.
- f) Malawi should consider looking at investigation and prosecution of legal persons for ML and associated predicate offences.
- g) MPS and other LEAs should look to enhance their investigation of crimes consistent with the ML risks of Malawi. This should particularly enhance parallel financial investigations, when investigating predicate offences suspected of generating proceeds of crime and not only focus on investigating the predicate offences. They should also identify potential ML cases and not only focus on predicate offences.
- h) Malawi should ensure that LEA's are continuously trained on financial investigations techniques.
- i) The authorities including the specialised investigating unit in the MPS (DDU and FFU) should develop a national strategy for investigating and prosecuting of ML consistent with the identified ML risks when dealing with proceeds generating offences and ensure that the LEAs adequately understand these risks based on the prevailing trends and methods of the crimes.

IO8

Malawi should:

- j) Consistently employ appropriate investigative measures, such as account monitoring orders, to enable restraint and ensure assets are recovered and not dissipated.
- k) Ensure as a matter of priority that the competent authorities including the AFU is able to adequately identify, trace and recover proceeds of crime generated by high risk ML and associated predicate offences and foreign predicate offences.
- l) Put in place a clear policy or mechanism to prioritize 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 assets and ensure that the LEAs are adequately sensitized to help them understand and mitigate these risks.

m) The authorities should implement the measures on cross-border declaration of currency and BNIs, particularly given that externalisation of foreign currency was rated high risk in the NRA as well as Malawi being largely a cash-based economy.

The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Background and Context

90. Malawi has a developed Financial Intelligence Unit (FIU), known as Financial Intelligence Authority (FIA). The FIA is the central agency for the receipt and analysis of suspicious transactions and other reports from reporting entities, and dissemination of financial intelligence and other relevant information to LEAs to identify potential cases of ML, TF and associated predicate offences. Following the repeal of the AML Act, 2006 which established the FIU as an administrative unit, the FCA gave the FIU investigative and asset recovery mandates in addition to the central agency core functions. The FIA has been member of the Egmont Group since 2009, which provides it with a platform to exchange information with foreign counterparts.

91. The FIA has reasonable resources to adequately conduct its core functions. The personnel who perform the analysis are well trained. In addition, at the time of on-site, there were 2 staff members dealing with investigations. The FIA is also involved in assets forfeiture, seizure, and detention and freezing of assets roles. At the time of the on-site visit, the FIA had 22 Technical Staff, inclusive of 6 Analysts, as per the table below.

Table 4: FIA Staff

Departments	Posts Available	Posts filled
Director General and Deputy Director	2	2
Information and Communication Technology (ICT)	5	3
Monitoring and Analysis (MNA)	17	8
Compliance and Prevention	12	5
Legal and Corporate Services	14	6
Total	50	24

92. The FIA is in a stand-alone building with adequate physical security.

93. It was noted that, since 2014, the FIA has been hiring core staff for different key areas mainly due to the fact that, the Government has, on an incremental basis, provided more funding to the FIA. The FIA has trained staff to carry out the core functions of an FIU.

Use of financial intelligence and other information

94. The FIA and the competent authorities in Malawi have access to a wide range of financial intelligence and other information to fulfil their respective mandates to identify and investigate

potential cases of ML and TF. There are direct and indirect channels through which the information is accessed by the FIA and the LEAs. The FIA has applied the broad range of powers it has to access relevant information held both in the public and private sectors.

95. The FIA receives STRs and other information from reporting institutions on suspected criminal and TF transactions. It conducts analyses and disseminates financial intelligence and other information generated thereof to LEAs to identify and investigate potential ML and TF cases. The assessment team, however, noted that the diversity of the STRs filed is relatively not sufficiently broad. The non-bank FIs and DNFBPs have filed a few, or not, transactions reports, despite some being identified as high risk, to fulfil their reporting obligations under the FCA (See IO.4 for more details).

96. The FIA has received 106 cross-border currency and BNIs reports over the US\$5000 from the MRA since July 2018. The FIA has demonstrated the use of the information/data to augment its financial analysis responsibilities relevant to the operations of the LEAs. The reports serve as an important source of intelligence and information for the functions of the FIA and subsequent outcomes of the analysis process are disseminated to the LEAs, subject to initiating or supporting a potential ML and TF investigations. The FIA, to some extent, uses the cross-border currency and BNI information for strategic analysis as well as trends and typologies. There has been an increase in STRs related to foreign exchange transactions and they are matched and cross-referenced against cross-border currency declarations. Additionally, for cases handled by the LEAs and shared with the FIA, the FIA cross-checks with the foreign currency declarations from the MRA.

97. The FIA has demonstrated the use of its powers to request additional information from the reporting institutions. The majority of the requests were to commercial banks, which hold the majority of financial information in the country. The FIA demonstrated that the requests for additional information related to or covered persons and their associates irrespective of whether or not such persons were reported in the initial transaction reports. The requests include bank statements, CDD information, methods of movement of funds including cross-border wire transfers. The results thereof augmented the analysis and the quality of financial intelligence and other information produced by the FIA in pursuit of potential ML/TF cases.

98. The FIA and the competent authorities have exercised their powers to gain access to records and other information held by various public authorities and privately-owned databases. In the public domain, the FIA accesses publications and other information from administrative agencies of the government such as audit reports from the National Audit Office, Lands Registry, Directorate of Road Traffic and Safety Services, Department of Immigration and Citizenship Services, Registrar of Companies, Malawi Revenue Authority, RBM, Ministry of Lands, Office of the Director of Public Officers Declarations, NIS, and DNPW. Additionally, the FIA accesses private sector information/data through payment of subscription arrangements. The wide range of databases available to the FIA and the competent authorities are reasonable to enable them to generate relevant financial intelligence and other information for criminal proceeds and TF.

99. Further, the FIA receives, upon request or spontaneously, information from other FIUs through bilateral arrangements (MoUs) and the Egmont Group Secure Website, which it uses in its transactions analysis. The FIA also gets spontaneous disclosures from other FIUs. Further, the FIA receives transactions reports as normal Large Currency Transaction Reports (LCTR) or as Suspicious Transaction Reports (STRs), which it has used for production of financial intelligence for use by LEAs.

Box 1: FIA dissemination on wildlife crime.

The case involves two Malawian brothers who were in May 2013 found in possession of 781 pieces of ivory hidden under bags of cement. The ivory weighed 2,640 kilograms and was valued at K4.4-billion (approx. US\$5.9-million) in Rumphi district in the northern region of Malawi. Their arrest and seizure of the ivory was done at a road block mounted by the Malawi Police Service and the Malawi Revenue Authority. The case was initially prosecuted jointly by the Office of the Director of Public Prosecutions and the Malawi Police Service in the Magistrate Court, but when it was moved the High Court it was handled by the DPP's office alone.

The brothers were alleging that they were just mere transporters and had nothing to do with the ivory. Their story was that they were hired to transport some cement and they took their truck for loading and left it there to be loaded. As such they could not have been aware of what else was loaded on the truck in their absence.

The FIA became aware of the case through an Inter-Agency Committee on Combating Wildlife Crimes in which it is a member¹¹, and by then the case was in court and was being prosecuted by the DDP. One of the tasks that was assigned to FIA was to analyze financial information on the subjects. The FIA was able to trace some transactions conducted by the subjects that went through Western Union in which they received funds from unrelated parties in Hong Kong, and China. Further analysis of the transactions revealed that the funds movements did not make business or economic sense. Financial intelligence derived from the financial information showed that the funds were purportedly sent by other suspects who were part of the syndicate and the funds were part of the illegal operation value chain. The intelligence was used to make it clear to the suspects that they were not innocent or ignorant of the criminal activities.

In the High Court, the suspects were convicted for ML and possession of ivory on 28th July 2015. The court fined them K5-million (i.e. K2.5-million each) or in default to serve 5 years' imprisonment and they paid the fine. The state appealed on this sentence arguing that the sentence for ML should have been custodial. The appeal was upheld by the Malawi Supreme Court of Appeal and the court substituted the fines for custodial sentences of 8 years IHL as it was satisfied that the fines were insufficient punishment for the offences that they were convicted of.

The case demonstrated coordination and cooperation by multiple agencies from the onset where MRA Fast team had intercepted the contraband, to the Police and DNPW for the arrest and investigation of the case and identification of the specimen of the ivory, FIA for the provision of financial intelligence and DPP's successful prosecution of the case including the subsequent

¹¹ The other Members being the Department of National Parks and Wildlife, the Directorate of Public Prosecutions, the Judiciary, the Malawi Police Service, the Malawi Defence Force, The Society of Environmental Journalists.

appeal that led to the custodial sentence. The Court was able to give sentences using different pieces of legislation as opposed to the Wildlife Act as it has always been traditionally in such cases.

100. Apart from getting intelligence from the FIA, the aforementioned LEAs also receive information from the following sources; members of the public (informants and complainants) either through reporting in person or through phone calls; civil society; regional and international investigative organisations such as the Interpol; government ministries, departments and agencies; and the judiciary. The ACB also gets information from the civil society and media and through tip-off anonymous system managed by a private service provider.

101. The LEAs obtain and, to some extent, use financial intelligence and other information to identify and trace criminal property, and support investigations on allegations of predicate offences, ML and TF especially from 2015 in pursuit of the large sums of misappropriated public funds within several government departments/agencies (the so-called *Cashgate scandal*).

STRs received and requested by competent authorities

102. The FIA receives STRs and other transactions reports from reporting entities as required under the FCA. In addition, the FIA receives large currency transactions reports (LCTRs) at a threshold of MK1,000,000 from reporting entities, as well as electronic funds transfer reports (EFTRs) from authorised FIs. The FIA applies a prioritization system of STRs using a prioritization tool to determine allocation to analysts and time-frame for analysis. In terms of the prioritisation process, about 20 percent of the STRs are High Priority, with the remainder shared equally between Medium and Low Priority categories. In general, this means that the FIA prioritises a significant number (about 60 percent, i.e., high priority plus medium) of the STRs received, which bodes well for improved utilisation rates between the STRs received and analysed.

103. The FIA received most of the STRs from the banking industry, which might appear consistent as the majority of the financial sector assets and therefore transactions are conducted via the sector. The non-bank FIs and the DNFBPs have either not filed or have filed negligible numbers. This is a concern as some of the reporting entities in this category are considered as posing higher ML risks (e.g., real estate sector). It is the view of the assessors that this denies the FIA potential transactional and other information useful for conducting analysis and producing relevant financial intelligence for possible use by the LEAs (See IO.4 for more details). Notwithstanding, the FIA requests and receives information from these reporting entities in the course of conducting its analysis function independent from filing a transactions report. Due to increased interaction between reporting entities and the FIA (e.g., compliance officers meetings) in the recent past, the FIA has noted that a reasonable number of the STRs filed and responses to requests for additional information have been satisfactory. The table below summarises the STR reporting over the years:

Table 5: STRs Received between 2013-2018

	Years
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Source of report	2013	2014	2015	2016	2017	2018 ¹²	TOTAL
FIs	70	86	94	131	136	82	599
DNFBPs	0	1	0	0	1	1	3
Supervisory bodies/LEAs	2	1	3	0	2	0	8
Other FIUs	0	0	2	0		0	2
Unraveled ¹³ from LCTR by the FIU	25	5	4	2	2	3	41
TOTAL	97	93	103	133	141	86	653

104. In the view of the assessors, it appears that on the basis of the size of the economy and the risks identified in specific sectors (e.g., real estate), the STRs received could be higher than in the table above. The main reason for the low number of STRs in general and non-bank FIs and the DNFBPs in particular, could be attributed to inadequate supervision and monitoring of the sectors.

105. The FIA provide feedback to reporting entities on the quality and usefulness of the STRs filed to it. The FIA has taken significant steps including industry and bilateral engagements with the reporting entities, which has improved the quality and relevance of the reports filed. For instance, every six months, the FIA prepares and shares with the reporting entities a feedback report covering issues of quality and ways of filing reports. The reporting entities interviewed have confirmed the usefulness of the feedback sessions on their ability to detect and file quality transactions reports to the FIA.

106. There was no STR received with funds suspected of directly involving TF in Malawi during the period under review. This appears consistent with the position that Malawi has a low level of TF profile (IO.1 for details). In respect of TF transactions and business relationship, the FIA's analysis process involves checking, using commercial software such as World-Check, the names of person involved in a transaction against the UNSCR List. There has been no positive match at the time of the on-site mission. However, in 2016 the FIA received an STR from one of the agents of Money Gram regarding a certain foreign national from West Africa who had received K3.6-million (approx. USD5, 000) from an individual based in the Middle East. Analysis of the travel pattern of the recipient showed that he frequently travelled between Kenya and Tanzania and was based in another East African country. In view of the terror threat in the named countries, the FIA made a spontaneous disclosure to Kenya in 2016. The FIA has capability to conduct TF transactional analysis.

107. The FIA makes requests to competent authorities (e.g., the MRA and the RBM) for information to conduct strategic analysis. For instance, during the *Cashgate* investigations, the FIA made numerous requests to the RBM on payments made from government Ministries, Departments and Agencies that were involved in the criminality, to assist in conducting the

¹² The financial year for the FIA starts in July and ends in June of the next year.

¹³ STRs triggered from LCTRs.

analysis that led to disseminations of financial intelligence and other information, on the request of the LEAs. Some successfully prosecuted cases were as a result of this initiative, including case examples of *The Republic v Kalonga*, and *The Republic v Lutepo*. The ACB is the agency requesting the most information from the FIA (see table below).

Table 6: The requests made by LEAs to the FIA since 2013

LEA	2013	2014	2015	2016	2017	2018 ¹⁴	TOTAL	AVERAGE RESPONSE TIME
ACB	9	11	9	12	19	3	63	1.5 weeks
MPS	1	1	2	3	6	3	16	1 week
MRA	4	2	2	0	0	1	9	1.5 weeks
DPP	1	0	0	5	4	0	10	1 week
DNPW	0	1	2	0	1	0	4	1 week
NIS	0	2	0	0	0	0	2	1 week
NAO & OTHER AGENCIES	1	0	0	0	1	1	3	1 week

Operational needs supported by FIU analysis and dissemination

108. The FIA produces quality financial intelligence and information, which has been used, to some extent, by the LEAs to identify and investigate potential ML cases. The FIA uses i2 analytical software tool to process STRs and other information (e.g., LCTRs and EFTRs), and capture and perform analysis. Whilst the amount of information used for analysis is dependent on the nature and extent of the subject matter, the FIA generally uses all transactions and other information (e.g., from internet search engines) when conducting its operational analysis. Further, the FIA relies on a combination of information generated through access to privately-owned/commercial and public databases to enrich the quality of the financial intelligence and other information for use by LEAs, either to support or initiate an investigation.

109. To some extent, the LEAs use financial intelligence and other information from the FIA to initiate or support investigations in respect of predicate offences and ML. For instance, the FIA’s intelligence disseminations resulted in the convictions such as in the case of *Steven Kamphangale Banda* in January 2018 and that of *Vincent Nyondo and others* in December 2017. Further, the FIA has provided information requested by the LEAs to help them in their successful investigations and prosecutions of the *Cashgate cases* such as the *Rep vs Leonard Kalonga* and *Rep vs Oswald Lutepo*.

Table 7: Disseminations made by the FIU to LEAs from 2013 to 2018

AGENCY	2013	2014	2015	2016	2017	2018 ¹⁵	TOTAL
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¹⁴ The financial year for the FIA starts in July and ends in June of the next year.

¹⁵ The financial year for the FIA starts in July and ends in June of the next year.

MRA	4	11	13	3	3	0	34
MPS	12	2	2	2	2	2	22
Immigration	0	0	1	0	0	0	1
DPP	0	1	1	3	1	0	6
ACB	22	7	10	4	2	0	45
NIS	0	0	1	0	0	0	1
RBM	1	0	20	14	4	1	40
YEARLY TOTAL	39	21	48	26	12	3	149

110. The periods 2013 and 2015 registered higher number of disseminations from the FIA to the LEAs, with the ACB and the MRA receiving the most reports. These disseminations were mostly for the *Cashgate* investigations, and were consistent with the LEAs' focus on major proceed-generating crime including abuse of public office and tax crimes. From 2013 to 2018, there were 73 freezing directives issued by the FIA to enable LEAs to use their respective powers to sufficient evidence in relation to the criminal allegations. For instance, the FIA froze MK150 million and MK12, 345, 290.31 in *The Republic v Mr. X* and *The Republic v Mr. Y* respectively. The accounts remained frozen as the cases were pending before court.

111. There have been some successful investigations in respect of identifying, freezing and confiscation of assets as a result of the disseminations from the FIA (IO.8 for details). The case examples below illustrate the use of disseminations to support operational needs.

Box 2 -Examples on use of FIA's dissemination by Law Enforcement

CASE 1:

In 2013, A former Assistant Director at the Ministry of Tourism, was investigated by MPS and ACB on conspiracy to defraud government and ML offence. The official forged documents to facilitate K3.7-billion payment to suppliers who rendered no service to the government. He laundered K520-million by facilitating, abetting and aiding acquisition of six Scania Marcopolo buses on instruction from another senior government official in the Ministry of Finance involved in defrauding the government). The MPS and ACB investigated the case (Rep. Vs Leonard Kalonga Criminal Case No. 52 of 2013) and they requested FIA to obtain information/financial intelligence on their behalf from a foreign jurisdiction. The FIA, through an MoU with an FIU of that jurisdiction, was provided the information which helped the law enforcement with further information for investigation and evidence for successful prosecution.

The ACB prosecuted the case with the Director of Public Prosecutions. The official from the Ministry of Tourism was convicted in August 2015 in his own plea of guilty and in March 2018 sentenced to 1 year for defrauding government of K1-billion, 2 years for facilitating ML and 7.5 years for ML and the sentences are running concurrently. The convict restituted some of his property including movable and immovable things.

CASE 2:

In 2013, the MPS received financial intelligence report from the FIA regarding suspected duplicate and fraudulent government cheques, which were being used to dubiously cash government funds. One of such cheques, amounting to K5,400,000.00, was made payable to Mr. X who cashed it at X Bank, Blantyre Branch, in March 2013. MPS opened a case file of Obtaining Money by False Pretence following receipt of the FIA report, and the police arrested the suspect who later appeared before the Blantyre Senior Resident Magistrate court. He was convicted and sentenced to 3 years imprisonment with hard labour (IHL) for theft of public funds.

CASE 3:

The FIA made a dissemination to ACB on 9 January 2013 regarding an official at District Health Office in Blantyre, who was suspected of being involved in fraudulent transactions where he was inflating figures for payments. He was charged with abuse of office, obtaining money by false pretence and ML.

The case was investigated by the ACB who later arrested the person on 26 January 2015 on account of abuse of office by fraudulently obtaining K2,396,330 from Malawi Government between November 2011 and February 2012 and deposited it into his personal MUDI Savings and Credit Cooperative Account with the aim of concealing the illicit origin.

He was convicted of ML on 9 January 2018. He was however, acquitted on the counts of abuse of office and obtaining money by false pretence. On 12th January 2018, he was sentenced to 10 years imprisonment for the offence of ML.

Assets frozen by FIA:

Case 4:

The Republic Vs Mr. Z and Others

From around February to June, 2017 the FIA received about 5 suspicious transactions reports from 3 reporting entities. The reports were in respect of 6 businesses in Mzuzu which were involved in making requests for import payments in respect of payments for machines. The reports showed that the individuals concerned in all the Reporting Institutions are the same and are all based in Mzuzu and a link was established connecting all of them.

The concerned individuals were all of Pakistan origin. The 4 individuals are suspected to have externalized US\$4,077,097.00 and £18,000 through their business accounts at X Bank (US\$3,364,842.50 & £18,000), Y Bank (US\$107,169) and Z Bank (US\$605,085.00) from around January to July, 2017. The funds were disguised as import payments for machines from Dubai, India, Hong Kong and China. Investigations established that no such machines were ever imported into Malawi since the concerned parties have failed to provide information and documents to prove otherwise.

The FIA froze all the Bank Accounts involved. The Suspects challenged the freezing orders in Court but the FIA successfully defended the orders (Judicial Review Case No. 54 of 2017).

The amount frozen in the accounts was MK17, 527,427.11.

Case 5

THE REPUBLIC Vs Mr. M

The Financial Intelligence Authority analysed financial transactions for three bank accounts relating to Mr M who is a public official. From around May 2016 the accounts have been receiving significant monthly deposits described as pension from the Accountant General, a Malawi Government Department. In total, he received over MK100 Million through monthly pension benefits in 22 months.

The transactions were suspicious because Mr. M did not qualify for pension since he was not retired from the Civil service. He was still working in Malawi Government as an IT Officer at the Accountant Generals department. Mr. M created two bank accounts through which the Pension money was being received. The FIA also unearthed one other account in the name of another person believed to be a ghost pensioner. The ghost pensioner account transferred between 70 to 80 percent of the total monthly pension received to one of the accounts of Mr. M. There was also a single payment of pension into Mr. M's spouse account in October 2016.

The FIA working jointly with one Law Enforcement Agency had the suspect arrested.

The FIA traced assets through utility service providers, the Road Traffic Directorate and the Land Registry. The assets traced included real estate and motor vehicles. The case is under prosecution by the Director of Public Prosecution.

112. The majority of the cases investigated and successfully prosecuted between 2013 and 2015 involve the *Cashgate scam*. The trend appears to dip between 2016 and 2018 as most of the *Cashgate* cases were being completed. The majority of crimes generating the most proceeds identified in the FIA disseminations included: tax crimes, fraud, public sector corruption, and externalisation of foreign currency. Overall, the predicate crimes identified in the FIA disseminations and the resultant investigations and prosecutions appear consistent with the ML/TF risk profile of Malawi.

113. The authorities attribute this success to the fact that there is a very good level of cooperation among the LEAs, and, when need be, the LEAs carry out joint investigations to expedite and smoothen the processes. Further, the authorities had set up small committees amongst the LEAs including the FIA, which met regularly to discuss operational issues.

114. Since 2016, the FIA conducted strategic analysis to identify trends and patterns, and inform stakeholders on emerging risks, as presented in the table below¹⁶.

Table 8: Strategic Analysis Reports (2016-2018)

Year of Analysis	Objective of the study	Key findings/recommendations of the Study
Jun-16	The typologies, with their accompanying case studies, are for the purposes of illustration and keeping stakeholders aware of the emerging techniques and are not in themselves exhaustive or may not occur again or elsewhere in an exact fashion.	This report has highlighted money laundering methods employed by criminals during the period from 2012 to 2015 and these are: (i) public sector fraud (known as <i>Cashgate</i>), (ii) use of fake cheques, (iii) use of personal accounts to evade tax, over-/under-invoicing of

¹⁶ The first Typologies Report was done in 2011. During the period under review, the assessors have used the three reports.

		goods and services, (iv) and use of alternative remittance systems (hawala).
Jun-17	This report mainly targets the reporting entities to enable them to prepare for all kinds of eventualities and to be ready to detect and report suspicious transactions related to money laundering and financial crimes in general. In order to achieve this; reporting entities need to be well equipped by having adequate transaction monitoring systems and strictly adhering to KYC requirements and customer due diligence measures.	This report highlights financial crimes that occurred in the period 2015 – 2017. The methods include: (i) theft of pension funds by public officials, (ii) trade based money laundering and abuse of travel allowances.
2017/2018	This report primarily addresses the reporting institutions and LEAs on the emerging and continuing escalation of some typologies in money laundering happening in Malawi. The public is also appraised on how criminals are using the financial system and the mechanisms they employ to launder proceeds of crime.	This report highlights financial crimes that occurred in the period: (i) Understanding risk; (ii) Use of FIA's intelligence Capabilities; (iii) Increased and efficient access to beneficial ownership information by authorities and stakeholders

Cooperation and exchange of information/financial intelligence

115. The FIA 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. The cooperation is largely managed through the basis of 'upon request' and 'spontaneity' on the part of both the FIA and the LEAs.

116. The FIA and the LEAs hold regular meetings to give each other feedback and share progress of the cases disseminated. The FIA also takes part in joint investigations and prosecutions with LEAs (MPS, ACB, MPS, DNPW, and NAO) and RBM. (See IO.1 for more details).

117. The FIA demonstrated that it has adequate measures for safeguarding and protecting information being exchanged or used, either with domestic LEAs (e.g., MoUs) or foreign counterparts (e.g., Egmont Group Secure Web). The physical security, CCTV and ICT infrastructure including high parameter walls with 24-hour armed guards, electronic office card access system and anti-malware software are robust to restrict access and ensure safeguarding of the information.

Overall Conclusions on Immediate Outcome 6

Malawi has achieved a Moderate Level of effectiveness for Immediate Outcome 6.

Immediate Outcome 7 (ML investigation and prosecution)

Background

118. The repealing of the AML/CFT Act of 2006 and replacing it with the new Financial Crimes Act of 2017 has increased the scope of Competent Authorities which can investigate ML offences. However, although ML has been criminalized since 2006, notable and systematic investigations and prosecutions only commenced from 2011 and convictions on ML have been achieved to a reasonable extent since then. The 2013 *Cashgate* scandal marked a turning point in the investigation and prosecution of ML cases in Malawi.

119. The LEAs responsible for investigation of the specific predicate offences and associated ML cases are the Fiscal and Fraud Unit (FFU) within the Malawi Police Service (MPS), Anti-Corruption Bureau (ACB) which focus on corruption and ML offences emanating from such from corruption, Department of Immigration and Citizenship Services (DICS), Malawi Revenue Authority (MRA) which investigates tax crimes and ML under the various statutes it administers and the Department of National Parks and Wildlife (DNPW) which focuses on wildlife crimes and ML offences. However, the FFU is the designated authority to investigate ML offences in Malawi. MRA, on the other hand, had just started investigation of ML cases, at the time of the on-site visit.

120. In terms of the laws of Malawi, the DPP is responsible for all prosecutions but can also delegate this function to other competent authorities. Pursuant to this mandate, the DPP has delegated powers to prosecute cases in line with the statutes they administer to the FIA, ACB, DICS, DNPW, MRA, RBM and the MPS.

121. Overall, the biggest challenge for the LEAs is lack of capacity (human, technical and material) to effectively execute their duties in fighting ML/TF and related predicate offences. The shortcomings in capacity are well illustrated in the 2018 NRA.

ML identification and investigation

122. Money laundering investigations for LEAs are initiated mostly from disseminations from the FIA, referred cases from other law enforcement agencies, complaints from government institutions, complaints received directly from members of the public, complaints from reporting entities and members of the media. The LEAs use different investigation techniques such as interviews, call records for analysis, analysis of documents from FIs, analysis using software, forensic audits, surveillance, controlled delivery, asset valuation, and net-worth analysis, among others. However, interception of communication is not allowed under the laws of Malawi.

123. As already highlighted in the background information above, there are several LEAs that are mandated to identify and investigate proceeds generating crimes. These are as follows:

a) Malawi Police Service (MPS)

124. The MPS is mandated to prevent and detect all crimes and enforce all laws and subsidiary legislation in Malawi. The MPS also has dedicated 130 prosecutors empowered through delegation

by the DPP to prosecute any offence under the law. The Prosecutors have presence in all the 4 Regions of Malawi with one lead prosecutor trained on AML matters and prosecution of complex cases in each of the Regions. Majority of predicate offences are prosecuted by the DPP, while drug cases are still prosecuted by MPS under the guidance of the DPP.

125. The MPS has a Criminal Investigations Department (CID) which is mainly the central investigative authority within the MPS composed of different Units, including the FFU, Dangerous Drugs Unit, Fingerprint Bureau, General Duties and Murder Squad, Wildlife Crimes Unit and INTERPOL which investigate various types of predicate offences. Of these Units, the FFU carries out most of the complex investigations, including those of ML. However, the FFU and the DDU Unit are both affected by inadequate human, financial resources, including vehicles to attend scenes of crime, equipment such as surveillance and testing kits, to use when carrying out their work.

a1) The Dangerous Drugs Unit

126. The DDU investigates drug-related offences. The DDU acknowledges the high risk of drugs in Malawi. It confirmed that most Malawians are not drug dealers but are used by foreign nationals to transport drugs. The authorities cited a case where a Malawian girl was arrested in Ghana and had confessed that her trip had been funded by one Nigerian national in Malawi. The Ghanaian authorities informed the Malawian authorities about the arrest and tried to locate the Nigerian but could not find him as he had disappeared by then.

127. At the time of the on-site visit, the DDU had not yet investigated any drug-related ML case. Given the frequency of serious drug cases as reported by the Authorities, including the DDU, the assessors found the lack of investigation of any drug-related ML case inconsistent with the risk posed by drug trafficking offenses which are rated as medium-high under the 2018 NRA. The interview with the DDU did not only reveal that Malawi was used as a transit point for drugs at times but it also had a home-grown marijuana which was being smuggled to neighbouring countries to be sold. Under the 2018 NRA, it is also indicated that from 2013 to 2016, 775 cases of drug trafficking were reported, of which 737 were prosecuted, resulting in 520 convicted cases involving 570 persons. Both Malawians and foreigners have been arrested and convicted for drug trafficking which suggest that a transnational network may be involved and annually about 70,000 kilograms is seized. Considering the proceeds which might be coming out of dealing in drugs, the authorities could do more in pursuing ML investigations arising from such cases and to understand the extent of the risk posed by both transited hard drugs and home-grown marijuana.

128. The lack of adequate resources could also be contributing to the poor detection of drug related cases, making Malawi vulnerable to such activities. At the time of the on-site visit, the DDU had last had a vehicle to use in its operations at Head Office in 2016, had no computers to use in capturing data and of utmost importance was the lack of drug testing kits which are critical to the work carried out by the Unit.

a2) The Fiscal and Fraud Unit (FFU)

129. The FFU, which is a special branch of the CID, is responsible for the investigation of ML, financial crime related predicate offences including all fraud matters, violations relating to exchange control, theft by public officials, counterfeit of products, and smuggling of contraband. The unit has a staff compliment of 54 members who are stationed at Head Office and all regional offices¹⁷. Some of FFU officers are deployed at border posts to assist in enforcing the exchange control requirements.

130. The FFU initiates its investigations from complaints lodged by members of the community or other divisions of the MPS or any other LEA, intelligence reports, tips and informers, media and anonymous reports. The cases are then screened and those that indicate a financial benefit are then prioritised. However, the prioritisation of the cases is not aligned or based on high risk areas identified during the NRA. Cases investigated by the FFU are prosecuted by MPS and some by the DPP's Office depending on how complex and serious the case is.

131. From 2013 to 2018, the FFU carried out a number of investigations and secured three ML convictions on non *Cashgate* cases and four were ML convictions linked to *Cashgate* cases while seven convictions were joint investigations with ACB from *Cashgate* investigations. Although, the FFU did not have a good number of ML cases investigated and prosecuted, it had managed to carry out successful investigations on predicate offences which resulted in a number of convictions and asset forfeitures. The cases covered a wide range of predicate offences, including those of fraud, theft, theft by servant and illegal externalisation of foreign currency. Table 9 below shows a total number of predicate offences investigated by the FFU as well as number of convictions obtained during the period of assessment. While Table 10 shows convictions secured on Table 9 and the average sanctions imposed.

Table 9: Investigated and Convicted Predicate Cases by Fiscal and Fraud Section between 2013 – 2018

Year	Reported cases	Detected cases	Prosecution	Convictions
2013	94	94	85	20
2014	60	60	49	4
2015	67	67	27	6
2016	334	323	209	12
2017	232	195	88	9
2018	45	45	20	3
Total	832	784	68	54

17 At the time of the on-site visit, the FFU was planning to recruit an additional 35 officers, with fifteen earmarked to be stationed at Head Office, ten in Lilongwe and another ten at border posts.

Table 10: Average sanctions on convicted predicate offences by FFU without ML

	Type of offence	No of Cases	Approximate total value involved	Average sanctions
1.	Theft by Servant	5	K134 742 753	2 years IHL
2.	Forgery & Uttering	7	K42 987 603	3 years IHL
3.	Theft by False Pretences	6	K50 024 050	8 years IHL
4.	Fraud	2	K47 530 100	4 years IHL
5.	Attempted Extortion	1	K10 000 000	39 months IHL

132. The FFU has also investigated and secured conviction against a number of individuals for committing illegal externalisation of forex. A table below reflects the outcome and status of the thirty-two cases of illegal externalisation of forex investigated by the FFU. At the time of the on-site, one case of ML relating to illegal externalisation of currency had been investigated and successfully prosecuted by the authorities. Although illegal externalisation of currency was identified as high risk during the National Risk Assessment in 2018, there have not been efforts by the authorities to link the trends of amounts that are externalised with what is coming back into the country as imports. Despite the explanation by the authorities that some of the illegal externalisation was done through banks, it was the assessors view that the full scale of the risk in this area has not been explored in terms of determining whether none of the illegally externalised funds are being brought back to Malawi disguised in other forms of products or imports.

Table 11: Investigations and outcomes of illegal externalisation of forex cases done by the FFU

No. of cases received for investigation	No. of cases with Forfeiture	No. of cases with fines and forfeiture	No. of cases with fines	No. of cases under investigation	No. of cases pending in court	No. of convictions without ML	No. of convictions with ML
32	15	4	2	2	5	3	1

133. There are clear arrangements on sharing of information between the FFU and the FIA which have culminated into the two signing an MoU to strengthen the relationship. The FIA disseminations are submitted to a focal point in the FFU, who is a designated desk officer

appointed to receive all disseminations from FIA and conduct a first level analysis to determine the quality of the intelligence information and identify if there is any other additional information needed from the FIA to enable an investigation to be carried out. When all information has been received, the desk officer will then record the disseminated reports and other information from FIA in a register and distribute it to investigators for further investigations.

134. The FFU regards the information it receives from the FIA as of good quality as the majority of it resulted in initiation of an investigation, including parallel financial investigations. Furthermore, FFU indicated that it takes a maximum of three (3) days to receive information requested from the FIA and that about 50% of the information received assists in a ML investigation.

135. At the time of the on-site visit, the FFU had received twenty-two disseminations covering the period from 2013 to 2018. The disseminations had assisted it in initiating new investigations, or enhancing existing investigations on predicate offences. From the twelve (12) disseminations received in 2013, forty-seven separate files of both predicate offences of Theft and Money Laundering were opened. Of the four (4) disseminations received by FFU during the period of 2017 to 2018, investigations of two cases of alleged forgery, fraud, theft by public servant, theft and externalisation of over US\$15million were at an advanced stage during the onsite visit. From the fifty (50) cases investigated, forty (40) were submitted for prosecution and ten (10) convictions were secured but these did not include cases of ML.

Table 12: Number of disseminations that FFU received from FIA from 2013 – 2018

2013	2014	2015	2016	2017	2018	Total
12	2	2	2	2	2	22

136. Members of FFU have received training on financial investigations but for most of the officers, this training was received prior to 2014 and considering that methodologies and modus of committing ML and associated predicate offences are always evolving and sometimes complicated, it is important that the officers receive continuous and up-to-date training and capacity building on financial investigations. More so, continuous training of the officers becomes important since the FFU also conducts ML awareness campaigns for different units and departments within the MPS.

b) Anti-Corruption Bureau (ACB)

137. In the majority of the ML cases pursued by the FFU, it worked jointly with the ACB which is the mandated designated authority to investigate corruption and corruption-related ML or any other offence arising from a corruption investigation. The ACB has fully functional operational corruption prevention, public education, investigations and prosecutions sections which also duplicate its mandate. The Bureau is headed by a Director General who is deputised by a Deputy Director General (vacant at the time of the onsite visit). The fixed establishment of the Bureau is 246 officials and currently, the bureau has 39 filled investigators and 13 prosecutors' positions, with 14 vacant posts for investigators and 23 for prosecutors.

138. The ACB receives its cases from walk-in complainants, anonymous letters from people, complains from the media, FIA, MPS and whistle blowers. All matters reported are evaluated by the complaints review committee which includes representatives from the operations and prosecution sections of the ACB. The cases are evaluated using a case prioritisation matrix which includes the risk, monetary value, position of the suspect as well as probability of success. Cases which do not meet the criteria but are corruption related are also investigated and those without the corruption element will be referred to MPS.

139. Parallel financial investigations are conducted in most corruption and ML investigations. Prosecutors and investigators meet regularly to do their case planning and continuous guidance is given by the prosecutors during investigation stages of the cases. However, of the cases provided by the ACB, they show more success in investigating and prosecuting predicate offences compared to ML cases.

140. The ACB has had some success in investigating and prosecuting ML cases. From 2013 to 2018, the ACB carried out seventy-three ML investigations, initiated fifty-one prosecutions and achieved thirteen convictions, and the other cases were still pending in court Table 13 below illustrates ML investigations and prosecutions carried out during 2013 -2018.

Table 13: ML investigations and prosecutions by the ACB

Year	2013	2014	2015	2016	2017	2018	Total
No. of investigations conducted with ML component	69	1	0	1	1	1	73
No. of ML prosecution initiated	13	29	5	2	2	0	51
No. of ML convictions	0	1	3	4	3	2	13

Table 14: ML sanctions secured by the ACB

	2013	2014	2015	2016	2017	2018
Sanctions	None	3yrs IHL	1. 4yrs 2. 3 mnths 3. 4yrs IHL	1. 2yrs suspended for 2yrs (K1,165,000 mil restituted)	1. Fined K2 mil 2. 5yrs IHL 3. 10yrs	1. 10yrs IHL (K2,396,370 confiscated) 2. 5yrs IHL

				2. 5yrs IHL		
				3 .11yrs (K400 mil restituted)		
				4. 7.5yrs IHL		

141. Most of the ML convictions achieved by ACB are from the *Cashgate* cases. At the time of the on-site, there were 13 ML convictions, comprising of 11 from the *Cashgate* and 2 from standalone ML investigations. However, of concern, as shown in Table 10 above, is the decrease of the ML cases investigated by the ACB from 69 cases investigated in 2013 to 1 case each year until 2018.

142. The ACB has effectively used intelligence disseminated by the FIA and this is well illustrated in the cases described in Box 3 and 4, below. Furthermore, the ACB and FIA have signed an MoU which aligns the sharing of information, facilitates a multi-agency platform and dealing with complex investigations.

Box 3 – Abuse of office and ML-Conviction

FIA made dissemination to ACB on two police officers and a businessman on charges relating to K45-million public funds embezzled in 2010 in the MPS. Deputy Commissioner of Police and his 3 colleagues were accused of preparing a payment to Classic Motors for services not rendered. The case was investigated by ACB. The judgement was passed in March 2018 by the Lilongwe Magistrate Court and the third accused person was acquitted on abuse of office but fined K2-million for his negligence that led to loss of the public money; the fourth accused person was convicted of theft by public servant, abuse of office and ML and was sentenced to serve 20 years imprisonment (i.e. 10 years for theft, 5 years for abuse of office and 5 years for ML and the sentences are running concurrently); and the first accused person was sentenced to 5 years for ML. FIA made the initial dissemination in 2011 but kept on providing further details to ACB from 2012 and onwards since the same persons were also involved in a similar case involving K400-million which was still pending in court.

Box 4– Fraud and ML case- Conviction (Cashgate)

In 2013, a former Assistant Director at the Ministry of Tourism, was investigated by MPS and ACB on conspiracy to defraud government and ML. The person forged documents to facilitate K3.7-billion payment to suppliers who had not rendered any service to the government. He laundered K520-million in which he facilitated, aided and abated acquisition of six Scania Marcopolo buses on instruction from another government fraud (Cashgate) suspect who was the then Director of Budget in the Ministry of Finance.

During the investigation, MPS and ACB requested FIA to get information on their behalf from another jurisdiction. The FIA, through a MoU with the FIU of that jurisdiction, was provided the information which helped the law enforcement with further evidence for investigation and prosecution.

The ACB prosecuted the case jointly with the Director of Public Prosecutions. The suspect was convicted in August 2015, on his own plea of guilty and in March 2018 was sentenced to 1 year for defrauding the government of K1-billion, 2 years IHL for facilitating ML and 7.5 years IHL for ML and the custodial sentences are running concurrently. The convict resituated the State with some of his property including 2 houses in Lilongwe valued at K19-million, a Range Rover, a Mercedes Benz and 2 Toyota Corollas.

143. The ACB has trained investigators in financial investigative techniques, combating economic crimes, anti-money laundering and financial investigations, money laundering and proceeds of crime, anti-corruption and asset recovery. In addition, ACB has prosecutors who are trained lawyers and have been exposed to asset recovery and financial investigations. Whenever necessary the DG of the ACB can outsource lawyers from private practice to prosecute cases after going through a due diligence check and receiving authority to prosecute from the DPP which has assisted in mitigating the shortage of prosecutors. The ACB appeared to be better resourced than the other LEAs with the officers provided with the basic tools of trade such as laptops and mobile phones. In addition, it also has a digital forensics laboratory which was set up with the assistance of DFID, Royal Norwegian Embassy, and Irish Aid. The lab is also available for use by the DPP's Office, FIA and the MPS. The lab had been used to carry out analysis of financial information in two cases which are still under investigation and another one which was is on trial where analysis from the lab was being presented as evidence.

c) Wildlife Crimes Investigation and Intelligence Unit (WCIU)

144. The 2018 NRA has rated wildlife crime as medium high. In 2016, MPS established a unit to address wildlife crimes and this was done jointly with the Department of National Parks and Wildlife (DNPW). The wildlife crimes investigation team consists of prosecutors with delegated powers from the DPP to prosecute, seconded officers from MPS as well as National Parks rangers. The capacity of the wildlife team is spread in three (3) regions, the North, Central and South regions and three (3) Environmental centres. The capacity for the investigation of wildlife crimes is spread in police stations close to the national parks. Some of the wildlife cases are investigated by the MPS. The wildlife crimes investigation team received various training relating to wildlife crimes but no AML training had been provided to it at the time of the on-site visit. The WCIU and the DNPW receive most of their resources from partners and donors. However, some of the vehicles had been received from the DPP as part of proceeds of crime forfeited to the State in one criminal case.

145. Though the prosecutors within the unit have delegated powers to prosecute from the DPP, they handle matters in the lower courts while complex cases that are heard in the High Court are prosecuted by the DPP's Office. The unit has a total of eight (8) dedicated prosecutors who are prosecuting predicate offences in all the regions.

146. The WCIU and the Department of National Parks have jointly signed a MoU with the FIA for cooperation. As an inter-agency unit, members hold meetings to discuss cases and to evaluate evidence for prosecution.

147. The DNPW has since 2016 been successful in investigating and prosecuting wildlife related cases with 24 individuals out of 30 convicted in the Northern region, 69 individuals out of 72 convicted in the Lower Shire Division and 2 individuals charged in one case convicted in the Upper Shire Division. For each of the cases, the suspects were given custodial sentences with hard labour and a fine or either of the two. The sentences ranged from 6 months to 42 months, with the latter being the highest custodial sentence given to some of the offenders. Included in the many cases that had been investigated by the DNPW was the case of the *Rep vs Patrick Kaunda and Chancy Kaunda* which involved ivory smuggling and ML. A conviction was secured on both possession of specimen of a protected species and ML, upon conviction the Court imposed a hefty fine and a jail term as illustrated in the case in Box 5, below.

Box 5: Ivory Smuggling and ML with conviction

Around 2013, two Malawian nationals were found in possession of 781 pieces of ivory weighing 2,640 kilograms which was valued at K4, 393,125.00. The state charged them for possession of specimen of protected species and ML and was convicted on both charges. The accused were given a fine of K2, 500,000.00 each or in default serve 5 years in prison.

d) Malawi Revenue Authority (MRA)

148. MRA has powers to investigate and prosecute cases under various revenue laws, including ML arising from smuggling and tax evasion. The MRA is comprised of two Revenue Divisions of Domestic Taxes and Customs and Excise as well as 12 Support Divisions which include Tax Investigations Division. The Taxes Investigations Division is responsible for investigating tax and smuggling related cases, whilst the Customs and Excise Division is responsible for detection of cross-border transportation of currency and BNIs. There is also the Legal Division Department responsible for prosecution of cases relating to tax and customs offenses and the resultant ML. The MRA officers have been trained in forensic investigations, financial investigations, fraud investigations, Illicit Financial Flows, FATF Standards Course, investigative techniques, asset tracing, and other courses. MRA is fairly resourced.

149. The MRA's primary sources of case referrals for investigations are: informants, anonymous letters, phone calls, social media, spontaneous disclosures from other agencies, general public, its own initiatives and the dissemination reports from the FIA. The MRA had previously been focusing on revenue collection and civil recoveries but since the enactment of the FCA in 2017 which empowered the MRA to also investigate ML related to its functions, it had started to carry out financial investigations. During onsite, the authorities indicated that the MRA was to establish a new Unit to investigate ML cases and carry out other related financial investigations.

150. Although officials of the MRA had undergone training on ML investigations, most of the training had been before 2015 and the authorities were in the process of working on an ML investigation charter to assist with ML investigations.

151. At the time of the on-site visit the MRA had referred 11 tax-related cases to the ACB, FIA and MPS but none of them involved ML. However, the number of tax evasion cases eventually prosecuted compared to what was investigated, as shown in Table 15 below, was relatively low. The authorities attributed the low number of cases prosecuted to some of the cases being resolved administratively since the MRA's key focus was mainly revenue collection. At the time of the on-site visit, the MRA only had one (1) ML case in court which it had jointly investigated with the RBM. Though Malawi is a cash-based economy, the MRA had not investigated any case relating to cross-border movement of cash or BNIs for the period July to November 2018 when the MRA had been delegated powers to investigate such cases. However, this was inconsistent with cases provided by the FFU of persons who had tried to smuggle out cash through official exit/entry points during the same period (from July to November 2018) the MRA indicates it had not investigated any cases relating to cross-border transportation of cash or BNIs. Although, the 12 cases (see paragraph 183) provided by the FFU show that the Police work at the exit points is bearing positive results more coordination of the work with the other LEAs manning these points, like the MRA needs to be put in place to limit possibilities of more people carrying undetected cash or BNIs across Malawi's borders.

Table 15: Tax evasion cases handled by MRA.

Year	Number of Tax Evasion Reports Received	Number Investigated	Number Prosecuted	Number of cases resolved through administrative fines
2013	28	28	3	25
2014	32	32	3	29
2015	48	48	10	38
2016	30	30	3	27
2017	49	49	4	45
Total	187	187	23	164

Disseminations

Table 16: Number of Investigations/Prosecutions and Convictions arising from disseminations from the FIA

Year	Number of Disseminations Received	Number Investigated	Number Prosecuted	Number Convicted	Number of Acquittals
2013	4	3	0	0	0
2014	11	10	1	0	0

2015	13	10	1	0	0
2016	3	2	1	0	0
2017	3	2	0	0	0
2018	2	2	0	0	0
Total	36	29	3	0	0

152. MRA also received a number of disseminations from FIA and for the period 2013 to 2018, MRA received 36 financial intelligence reports, out of which 29 were investigated and three prosecuted with no convictions. It was indicated that of the 29 investigations done, some of the cases were resolved administratively by imposing of fines to the perpetrators.

153. MRA has signed MoUs with other domestic agencies such as MPS, ACB, FIA and Regulatory Authorities which has led to formation of domestic inter-agency committees an arrangement which has assisted with sharing of information amongst the agencies.

154. With regard to joint investigations, the case summarised in Box 4d x above, also illustrates how the different LEAs in Malawi managed to work together to coordinate a successful investigation, during the *Cashgate* cases. The collaboration is also well illustrated in Table 17, below.

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

155. At the time of the on-site visit, Malawi had undertaken its second NRA which was completed in May 2018, and the most proceeds-generating predicate offences are identified as corruption, fraud, tax crimes, smuggling, wildlife offences, and illegal externalization of foreign currency which were rated high risk and these were followed by illegal logging, drug trafficking rated as medium high and human trafficking rated as medium low. Based on the findings of the NRA, the country has formulated an action plan to implement recommendations of the NRA. The Action Plan has a general approach to combating ML and its main aim was to develop and strengthen the AML/CFT regime in Malawi in order to protect the integrity of the financial system and the economy at large. The Action Plan focuses more on capacity building and training. This approach is too high level to provide a strategic direction for Malawi LEAs based on specific high ML/TF risks, not to mention that most of them are struggling to get sufficient resources to conduct ML investigations and prosecution. The LEAs in Malawi are not informed by AML policies to pursue ML investigations and prosecution consistent with the threats and risks facing the country. However, considering that this was the country's second NRA, the FFU and ACB have shown some successes in the investigation of ML and associated predicate offences mainly in relation to the *Cashgate* cases. The general observation is that not many of the cases resulted in ML convictions and there was a significant decline in the number of the ML cases after the *Cashgate* cases. The perpetrators in the predicate offences received jail terms and where there were foreign nationalities, they were to be deported at completion of serving their jail term. The lack of set policy direction relating to addressing high risk predicate offences could be contributing to the decrease in investigations and prosecutions of ML cases after the *Cashgate* cases.

156. In addition to this, despite the success in the *Cashgate* cases, the authorities seem to have slowed down in investigating ML cases arising from corruption, which is of concern as it is regarded as one of the high-risk predicate offences generating proceeds which are being laundered. As a result, the number of ML investigations, prosecutions and convictions remains low if compared to the overall ML threat (see Table 16).

Types of ML cases pursued

157. As stated before, the DPP is the constitutional office mandated to carry out criminal prosecution including on ML in Malawi. There are, however, other institutions that conduct criminal prosecutions with the consent of the DPP. The NRA found that although there had been a number of ML prosecutions in *Cashgate* cases, the levels of conviction of ML were still on the lower side since most of the LEAs concentrated on the predicate offences and were not well capacitated to pursue parallel financial investigations.

158. The FFU had pursued a number of illegal externalisation of foreign currency cases though only one resulted in any type of ML conviction but they managed to secure some ML convictions linked to the *Cashgate* investigation as well as few fraud matters.

159. Of the ML cases pursued by the FFU from 2013 to 2018, it secured four (4) convictions on third party laundering on its own and six jointly with ACB, two (2) cases on self-laundering on its own and one (1) jointly with ACB. During the same period, the ACB carried out seventy-three ML investigations from which fifty-one prosecutions were initiated and resulted in seventeen convictions (including those jointly investigated with FFU) whereby thirteen are linked to the *Cashgate* and four are linked to other corruption cases investigated. The ACB successfully secured three (3) convictions on third party laundering, two (2) self-laundering and no stand-alone ML convictions on its own. As will be shown in the tables below, describing the types of ML cases that have been prosecuted, none of the LEAs including ACB and FFU, had yet pursued cases of stand-alone laundering at the time of the on-site visit. . In general, as shown in Table 16 below, other than the *Cashgate* cases, ML cases pursued by the authorities are very few as they are only 8 from 2013 -2018. Tables 17 – 18 below illustrates the types of ML cases investigated, the investigating agency and prosecution which often was done by collaborating agencies:

Table 17: Types of ML cases pursued, prosecuted and convicted

	2013-2018	<i>Cashgate</i> cases	Non- <i>Cashgate</i> cases	3 rd Party Laundering Conviction	Self-Laundering Conviction	Stand-Alone Conviction	Entity Conviction
ACB	13	11	2	10	3	0	0
MPS	7	4	3	4	3	0	0
DNPW	1		1	1		0	0
MPS & ACB	7	7		6	1	0	0

DNPW & MRA	2		2		2	0	0
Total No. of ML convictions	30	22	8	21	9	0	0

Table 18: Sample of ML cases investigated and prosecuted between 2013 and November 2018

NO.	NAME OF CASE	LEAs INVETIGATING THE CASE	PROSECUTING AUTHORITY
Third Party Laundering Cases			
1.	Rep vs Caroline Savala	FFU	DPP
2.	Rep vs Luke Kasamba	ACB/FFU	DPP
3.	Rep vs Wyson Z. Soko	FFU	DPP
4.	Rep vs Esnart Ndovie	ACB	ACB
5.	Rep vs Godfrey Dzanjalimodzi - Joint investigations	FFU/ ACB	DPP/ACB
6.	Rep vs Phyoka Kaunda	ACB	ACB
7.	Rep vs Tressa Senzani	ACB	ACB
8.	Rep vs Paul Mphwiyo & 18 others	ACB/FFU	DPP
9.	Rep vs James B. Chirwa	ACB/FFU	ACB, DPP
10.	Rep vs Muzipasi Moyo& 2 others	FFU	DPP
11.	Rep vs Yohane Kaweche& 2 others	ACB/FFU	ACB, DPP
12.	Rep vs Masankho Chingoli	FFU	DPP
13.	Rep vs Oswald Lutepo	ACB/ FFU	ACB/DPP
Self –Laundering Cases			
1.	Rep vs Victor Sithole	FFU	DPP
2.	Rep vs Leonard Kalonga	ACB/FFU	ACB/DPP
3.	Rep vs Steven K. Banda	ACB	ACB
4.	Rep vs Roosevelt Ndovi	FFU/RBM	MPS/RBM

160. Table 19 below shows convictions achieved by ACB related to corruption offences. The table shows a high number of corruption cases investigated and prosecuted by the ACB but very low levels of convictions. There is also a huge gap of cases which are not explained between those prosecuted and of convictions secured. Overall, considering the figures provided in Table 18 below, the ACB has to improve on the quality of the cases taken to court for prosecution.

Table 19: Convictions achieved by ACB related to the predicate offence of corruption-2013-2018

YEAR	No. of corruption cases reported	No. of cases Investigated	No. of cases recommended for prosecution by investigation	No. of cases prosecuted	No. of convictions	Acquittals
2013/14	587	435	79	63	3	1
2014/15	264	242	29	58	6	2
2015/16	182	147	36	55	4	5
2016/17	262	140	47	42	5	2
2017/18	257	104	21	6	4	2
Totals	1552	1068	212	224	22	12

161. The decision by the authorities to establish a Wildlife Crimes Investigation Unit in 2016 to address one of the proceeds generating offence is commended as it has yielded a great result with the team managing to secure a ML conviction which resulted with a number of assets being forfeited.

162. The Unit has managed to successfully secure convictions in most of the predicate cases. This has managed to mitigate to some extent the risk relating to wildlife crimes but there are still very few ML cases arising from such offences.

163. When carrying out investigations the authorities do not identify and categorise investigated cases according to elements of foreign predicate offences. At the time of the on-site visit, no foreign predicate offences had been identified and investigated by the authorities.

Effectiveness, proportionality and dissuasiveness of sanctions

164. The sanctions imposed on the 13 *Cashgate* cases were proportionate and dissuasive. All the convicts have been sent to prison with hard labour and others even paid back some of the stolen money. The authorities have not applied any other criminal justice measures in respect of possible ML cases.

165. The effectiveness, proportionality and dissuasiveness of sentences meted on some of the few *Cashgate* cases on ML are provided in Table 15 below.

Table 20: *Cashgate* sentences on ML

NO.	Details of individuals convicted	Sanctions
1.	Tressa N. Senzani, former Principal Secretary of the Ministry of Tourism, was the first <i>Cashgate</i> convict. She pleaded guilty to charges of theft and money laundering of K63.54 million from the government, which she later restituted by surrendering a house.	<ul style="list-style-type: none"> • 3 years – ML • 9 months – theft of government funds The sentences were set to run concurrently.
2.	Victor Sithole, a former account assistant in the Ministry of Energy, Mining and Natural Resources, was	<ul style="list-style-type: none"> • 7 years – ML • 1 year – being found in possession of stolen property

	found with cash in various currencies amounting to an equivalent of K112 million (US \$31,850 and R122, 200) at his house in Lilongwe	<ul style="list-style-type: none"> • 1 year – illegal possession of foreign currency • The sentences are running consecutively.
3.	Wyson Z. Soko, Malawi Congress Party's Deputy Director of the Youth, was found guilty of money laundering of K40.9million.	<ul style="list-style-type: none"> • 4 years – ML
4.	Maxwell Namata and Luke Kasamba were found guilty of stealing K24million from the government. Namata restituted the misappropriated K14million in cash while Kasamba restituted K4 million cash and a truck valued by the state at K9million.	<p><i>Maxwell Namata</i></p> <ul style="list-style-type: none"> • 5 years – ML • 3 years – theft <p>Sentences were running consecutively. On appeal, the convictions were set aside by the Supreme Court on Namata only</p> <p><i>Luke Kasamba</i></p> <ul style="list-style-type: none"> • 4.5 years – ML
5.	Mr. Leonard Kalonga, pleaded guilty - conspiracy to defraud government and laundering of K3.7 billion	<ul style="list-style-type: none"> • 7.5 years - ML • 1 year - conspiracy to defraud government • 1.5 years - facilitating ML
6.	Mr. Oswald Lutepo - conspiracy to defraud government and laundering of K2.1 billion	<ul style="list-style-type: none"> • 8 years - ML • 3 year - conspiracy to defraud government
7.	Allan Harrison Magombo was convicted in connection with theft and money laundering of K32.5 million government funds by getting the money from Ministry of Local Government without rendering any services	<ul style="list-style-type: none"> • 4 years – ML
8.	Angella Katengeza defrauded K105.9 million government funds for services not provided	<ul style="list-style-type: none"> • 5 years – ML
9.	Caroline Savala arranged with Mr. Leonard Kalonga to use her company, Kamu Civil Engineering, to get K84.9 million from the Ministry of Tourism for no service rendered.	<ul style="list-style-type: none"> • 3 years – ML • 7 years for theft and ML • The sentences are running concurrently

10.	Steven Kaphangale Banda laundered K2,396,370	<ul style="list-style-type: none"> • 10 years – ML (in January 2018) • Forfeiture of K827,570 and funds to be deposited in the Confiscation Fund Account • ACB to seize property held by the convict
11.	Republic vs Patrick Kaunda and Chancy Kaunda, Criminal Case No. 1 of 2015). The convicts were found with ivory worth K4-billion	<ul style="list-style-type: none"> • The convicts were fined K5-million on ML and possession of ivory, and the state has since appealed for review of the penalty since the case involved ML.
12.	Godfrey Dzanjalimodzi was charged with lending a certificate and ML of K356,909,607.87 on services not delivered	<ul style="list-style-type: none"> • 5 years – ML • 3 years – lending a certificate • Sentences running consecutively

166. Considering that it was the first time Malawi found itself undertaking investigations that involved prominent public officers who abused the vulnerabilities of government systems, the sentences imposed on the accused people were proportionate and dissuasive as shown in the table above. However, the only concern is that other than the sanctions imposed on the *Cashgate* cases on ML, other cases where sanctions were applied on ML were very few which reflects a low number of investigations and prosecution on the other types of ML outside the *Cashgate* cases and sentences not as harsh as those for the *Cashgate* cases.

Use of alternative measures

167. In terms of the FCA, Malawi 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. However, the authorities indicated that they have never experienced a situation requiring alternative criminal justice measures in cases where a ML investigation had been pursued but where it is not possible to secure a ML conviction and therefore it was difficult to determine the level of effectiveness in this regard.

168. Furthermore, there are cases investigated by the ACB where convictions were secured on predicate offence but could not be secured on ML. The average sanctions of those cases are tabled below.

Table 21: Average sanctions of corruption related cases

SR	CASE	AMOUNT INVOLVED (MK)	SANCTION/SENTENCE
1.	REP V MSHAMBOZGA	3,487,350	2 YEARS IHL
2.	REP V HELIX DZUWA & ANOTHER	77,000.00	SENTENCED TO PAY FINE

3.	ZIONE & MUZA V REP (ISSUING MALAWIAN PASSPORT TO A KENYAN)		2 YEARS IHL
4.	REP V HUSSEIN PENSULO & ANOTHER	226,980.00	36 MONTHS IHL
5.	REP V GRACE KAMOTO	4,500.00	SENTENCED TO PERFORM COMMUNITY SERVICE.
6.	REP V S.K. BANDA	2,300,000.00	10 YEARS IHL
7.	REP V MLOIWA	8,000.00	2 YEARS IHL
8.	REP V LIPENGA	64,000.00	2 YEARS IHL
9.	REP V KALEMA	18,000.00	2 YEARS
10.	REP V MANDA		26 MONTHS IHL

Overall Conclusions on Immediate Outcome 7

Malawi has achieved a Moderate level of effectiveness on Immediate Outcome 7.

Immediate Outcome 8 (Confiscation)

Background and Context

169. In general, authorities in Malawi have a legal basis for provisional and confiscation measures related to ML, TF and associated predicate crimes. The FCA is the main law that provides competent authorities with powers to forfeit proceeds of ML and the associated predicate offences. It defines competent authority widely to cover all the LEAs in the country. The FCA provides for both conviction-based (criminal) 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. In civil forfeiture proceedings, the standard of proof is proof on a balance of probabilities.

170. Apart from the FCA, other laws which provide for asset forfeiture includes the Corrupt Practices Act (CPA) and the Police 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 and the seizure of proceeds of crime. However, more has to be done to improve the expertise and other resources of LEAs' capacities to implement measures on freezing and confiscation of proceeds of crime.

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

171. In addition to its legal framework for provisional and confiscation measures, Malawi at the time of the on-site visit was in the process of setting up an administrative Asset Forfeiture Unit (AFU) within the DPP's in the MoJCA which had commenced in February 2018. The Unit is still being capacitated and its focus is on civil and conviction-based asset recovery. The staff within the AFU is trained on issues of money laundering and confiscation. The Unit is responsible for making civil and criminal asset forfeiture applications on cases they are handling as well as cases handled by other LEAs. Further, Malawi has established a Confiscation Fund Account which is maintained by the FIA on behalf of the Minister of Finance, Economic Planning and Development. These are positive changes in the confiscation regime of Malawi; however, these developments are too recent to have had an impact on this evaluation.

172. Malawi has pursued confiscation as a policy objective to a limited extent as manifested through low levels of confiscation of proceeds of crime, mostly relating to the *Cashgate* cases; only two cases of confiscation of instrumentalities of crime; three confiscations of property of equivalent value were carried out. The lack of an overarching strategy on asset confiscation is also contributing to the low levels. Authorities indicated that there were two cases where confiscation of instrumentalities happened: 1) *Lengwe Appeal Case* – where vehicles and plants used to destroy vegetation were confiscated; 2) *Victor Sithole case* – where a vehicle used to stash cash was confiscated as an instrumentality of crime. They also stated that the DPP office has an internal unwritten policy emphasizing the necessity of asset forfeiture/confiscation in financial crime cases. Although assessors could not ascertain how this policy works in the absence of any document provided, they were in agreement that the recoveries under the *Cashgate* cases were effective and there was motivation by the authorities to recover laundered assets as public funds were involved. However, the effectiveness relating to the *Cashgate* cases could have been better augmented by an overall national strategy on confiscation. There are no provisional and confiscation measures resulting from TF cases.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad Confiscation of falsely or undeclared cross-border transaction of currency/BNI

173. Malawi's asset recovery framework has primarily been conviction-based, and restitution heavily relied upon identification and quantification of the value of ill-gotten assets. The enactment of the Financial Crimes Act, 2007 introduced value-confiscation ("realizable property") but the system has not yet been tested. The authorities indicated during the onsite visit that there are no cases on confiscations involving proceeds from foreign predicate offences, foreign instrumentalities of crime or where proceeds were located abroad as Malawi has not had such kind of cases occurring in its jurisdiction. Malawi has formal arrangements for asset sharing in terms of s. 127(10) of the FCA; however, authorities have not shared any assets with other jurisdictions as no such cases have occurred. In terms of domestic asset sharing, authorities cited the case of *Rep. Vs Leonard Kalonga Criminal Case No. 52 of 2013* (summarised as CASE 1 under IO 7.3) where buses confiscated from the *Cashgate* case were shared among the LEAs. Another sharing was on *Lengwe Appeal Case* (summarised in IO 7) in which vehicles and plants used to disrupt

vegetation in Lengwe were confiscated and the assets were shared among various government Ministries, Departments and Agencies. Authorities stated that the 2013 and 2018 NRA report indicates that proceeds of crime are generated primarily from within Malawi. Cases presented by the authorities were for confiscations of proceeds of crime from domestic predicate offences and money laundering.

174. Below are examples of cases where LEA and Prosecution successfully applied for confiscation/ forfeiture in respect of ML cases:

- (i) *Rep. v Savala*, restituted 5% (i.e. K4,248,167.06) of the whole sum of the criminal benefit;
- (ii) *Rep. v Senzani*, K63,542,083.30 was restituted and this was the value of the funds stolen;
- (iii) *Rep. v Ndovi*, a vehicle worth K12.9-million was restituted;
- (iv) *Rep. v Lutepo*, a house in Lilongwe and Woget ginnery buildings were restituted and the confiscation process has not been completed;
- (v) *Rep. v Namata*, restituted K24,179,120.79 stolen money was restituted;
- (vi) *Rep. v Sithole* in which funds (K112,000,000; 40,000 SA Rands; USD20,000) were seized.
- (vii) *Rep. v Kaunda* in which K789,543.12 was restituted as 10% of the whole sum stolen

175. The cited cases are summarized in the Box 6 below:

Box 6- examples of cases where LEA and Prosecution successfully applied for confiscation/ forfeiture

These are all forfeitures associated with the 2013 *Cashgate* scandal. The Malawi Government's approach to plea bargaining in white collar crime cases accords importance to the need to recover the proceeds of crime. As such where plea bargaining occurs there are often stipulations that the accused person forfeit their benefit to the State, this is commonly referred to as restitution. The courts have made asset forfeiture orders allowing the State to recover MK212, 621,204.09, ZAR 40, 000.00 and USD 20,000.00 on cash-gate cases.

In the case of *Republic v Tressa Senzani* the accused was a civil servant whose company had been used to defraud the Malawi government of K63, 542, 083.30. The accused person entered into a plea agreement with the Government and pleaded guilty to the offences of theft and money laundering and restituted the total sum defrauded.

The cases of *Republic v Esnat Ndovi*, *Republic v Phyoka Kaunda* and *Republic v Kasamba and Namata* are very analogous on the facts. The accused persons were all proprietors of corporate entities that received fraudulent payments from the Malawi Government. These corporate entities were used to disguise the ultimate beneficiary of the fraudulent sums and to aid in this endeavour the proprietors would encash the fraudulent sums and pass them onto their co-conspirators in the fraud. Both **Ndovi** and **Kaunda** entered into plea agreements with the State which required full disclosure and the forfeiture of any benefit obtained from the transactions; in fulfilment of these agreements they restituted K12.9 million and K789, 543.12, respectively. In the case of **Kasamba and Namata** they were found guilty and convicted and restituted the entire sum to the court as a consideration for sentencing.

In the case of **Republic v Lutepo** confiscation is ongoing. The accused person in this case being a very successful entrepreneur in Malawi had allowed 3 of his limited companies to be utilised as a recipient of fraudulent payments from several Ministries in the Government of Malawi and in this manner the accused fraudulently converted K4,206,337,562.00. A portion of the value of these payments was then encashed and passed on to his co-conspirators. The State has applied for

confiscation of assets valued at K1,400,000,000.00 and are currently awaiting an interlocutory ruling, although to-date commercial property valued at K370,000,000 and a residential stand with an estimated value of K200, 000, 000 have been confiscated.

The case of **Victor Sithole** was one of the first cases of *Cashgate*. In the course of a search of his residential property on another offence investigators found K112,000,000, ZAR40,000 and USD20,000 in cash, stashed in two vehicles and in one of the rooms at his residence. As the accused was a very junior officer in the Malawi government with no known business that could have realised the said sum, he was charged with possession of property suspected of having been unlawfully obtained, money laundering and illegal possession of forex. During the trial there were various attempts to substantiate the source of the money, including a claim by the above mentioned **Lutepo** that the money belonged to him; however, the Court found that none of these explanations were reasonable and the accused was convicted. The State applied for confiscation of the money and one of the vehicles where the money had been found (as an instrumentality). The application did not extend to the house as it was a rented, nor the other car as that was found to be a stolen vehicle and returned to the rightful owner.

176. Before the enactment of the FCA in 2017, the MRA was only focusing on revenue collection and civil recoveries as indicated in the amount of funds recovered after seizures in Table 16 below but after the enactment, MRA can now investigate proceeds laundered.

Table 22: Value of Amounts recovered after seizures conducted by the MRA

Year	Number of Seizure Reports Received	Amount Recovered After Seizures (MK)/(~USD)
2013	29	318,887,006.25 (USD 437, 767.00)
2014	27	323,708,161.34 (USD 444, 388.51)
2015	28	354,594,391.98 (USD 486, 829.41)
2016	25	668,066,738.40 (USD 917, 201.59)
2017	64	613,025,971.72 (USD 866, 418.98)
2018	67	953,447,438.60 (USD 1, 309, 060.16)
Total	240	3,231,729,708.29 (USD 4,437,086.36)

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

177. Malawi established a declaration system for cross-border transportation of currency or bearer negotiable instruments (BNI) under the Financial Crimes Act, 2017. The Act requires travellers entering or leaving Malawi with an amount of money or BNI above US\$5,000 to declare to Malawi Revenue Authority. The Act criminalizes false declarations and non-declarations. Sanctions for false declaration and non-declaration are applied upon conviction, and they are K5-million and 10% of the non-declared amount. Since July 2018 the MRA has been reporting declarations made by travellers to FIA.

178. Authorities in Malawi are allowed under the FCA to seize and detain any currency or BNI derived from an offence or intended for use in commission of an offence. Although, at the time of the on-site visit other authorities, like the MRA indicated that they had not implemented the new declaration requirements as there had been no violations of the requirements but as already described in paragraph 155 of this report, the FFU (MPS) indicated that it had dealt with a number

of violations of the requirements during the same period. Therefore, the only recoveries during the period July to November 2018 when the MRA had been delegated powers to investigate such cases were done by the FFU as illustrated in Table 23 below. Of the amounts recovered by FFU in the 12 cases, in five of them the amounts (not very significant) were forfeited to the State and in the other seven, the amounts were returned to the accused persons by the courts after being fined.

Table 23: Attempted externalization cases

Case Ref No	Amount and Type of Currency involved	Amount forfeited
1. F/285/2018	South Africa Rands (ZAR) 16,750	ZAR16,750 (about USD1,340)
2. CC313/2018	Accused attempted to send USD700 abroad using a parcel through DHL concealed in shoes	USD 700
3. CC773/18	Meticais 10,470	Meticais 10,470 (about USD168)
4. CC973/18	Meticais 20,000	Meticais 20,000 (about USD 322)

179. Prior to July 2018, the MPS had been responsible for confiscating cross-border currency under the Exchange Control Act. Authorities cited a few examples in support of this.

For example:

- (a) **Mohammad Jawad**, Malawian of Pakistan origin wanted to board an X Airline flight to Dubai from Chileka International Airport. Upon search in his travelling bag, he was found with US\$270,000 for which he failed to produce supporting documents.
- (b) On the 15th March 2018, at the departure lounge of Kamuzu International Airport in the city of Lilongwe, **FEROZ Ahmed** was found in possession of foreign currency amounting to US\$334,900 without permission and that he attempted to transfer the foreign currency out of Malawi. The accused was arrested, cautioned and charged. He appeared before the Senior Resident Magistrate sitting at Lilongwe where he was found guilty and convicted and sentenced on the first count to pay a fine of K800,000 and in default serve 24 months' imprisonment while the on second count he was sentenced to pay a fine of K300,000 or in default serve 8 months' imprisonment. The sentence was to run consecutively meaning the suspect was to pay a total fine of K1,100,000 or serve a jail term. The money was forfeited to Malawi government. (Court Case number 198 of 2018).
- (c) **Moinuddian Mohamed Iqbar Sodagar**, on 30 December 2016 at Kamuzu International Airport, was found in possession of proceeds of crime namely sum of US\$622,000; €15,860 and £2,015 which he was attempting to take out of Malawi. He was arrested, cautioned and charged for the above offences and appeared before the Lilongwe Magistrate Court, where

he was convicted and was awaiting sentence at the time of the on-site visit (Court case number 3 of 2017).

180. Authorities noted that prior to July 2018, declarations of currency and BNIs were being enforced by the MPS through random checks of travellers at all points of entry and exit. Cases summarised in paragraph 184 above, show reasonable success by MPS in detecting such cases. Given that unlawful externalisation of currency was cited in the NRA as one of the ML risks, it is concerning that the MRA from July 2018 to the time of the on-site in mid-November 2018 had neither detained currency for further investigations or investigated any cases of false or non-declaration of currency or BNIs at any of Malawi's borders, or was there adequate coordination between MRA, MPS and other LEAs at these points to adequately detect undeclared currency or BNI cases (see paragraphs 155, 183) .

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

181. The ML threat assessment identified predicate offences that generate a significant amount of proceeds in Malawi and these are corruption, illegal externalization of foreign currency, tax evasion, smuggling, wildlife crime, fraud, drug trafficking and fraud. Confiscation in relation to most of these offences from 2013 to 2018 such as smuggling, fraud, drug trafficking, wildlife crimes and human trafficking remains very low.

182. However, assessors noted considerable serious corruption cases reported in the period between the last National Risk Assessment in 2012/2013 and the review in 2017, particularly the plunder of public funds through the bogus contracts involving private businesses and civil servants popularly referred to as *Cashgate* scandal. Most of the statistics on asset recovery referred by the authorities involved the *Cashgate* cases: the types of confiscation done relating to the *Cashgate* scandal to address the issue of corruption and to ensure that State funds were recovered and the criminals did not benefit from the crimes; the actions taken by the authorities during the *Cashgate* cases are consistent with the risk of corruption in Malawi and the involvement of both ACB and FFU in recovering and ensuring that tainted assets relating to the corruption were identified, traced, seized/frozen and confiscated as part of addressing the risk of corruption; and the effect it had on corruption in Malawi in terms of deterrence. However, the recoveries relating to wildlife crimes seem not to be adequately addressing the risk of wildlife crimes. Moreover, the lack of capacity at the Drugs Unit is negatively affecting efforts on recoveries related to drug trafficking. The lack of proper implementation of asset management of confiscated assets and the recourse to restitution before the February 2018 asset recovery regime hamper the effectiveness of the confiscation systems (and, in general, hinder the effectiveness of the AML system, which provides for strong confiscation measures). Moreover, there are impediments to other types of confiscation, like on proceeds generated from foreign predicate offences and moved to other countries, despite the authorities having not yet dealt with such cases. To mitigate these risks, the authorities also determined that the focus of investigations and prosecutions should also include identification, recovery and confiscation of proceeds of crime. Assessors have noted consistency of measures and confiscation results since Malawi has taken some steps to mitigate the identified risks by establishing an administrative Asset Forfeiture Unit responsible for asset forfeiture, confiscation of assets and instrumentalities of crime, asset sharing, confiscation of assets of equivalent value as well as confiscations of funds for violation of cross-border declaration

requirements in the DPP. It is expected that the establishment of the AFU will assist in confiscations relating to the high-risk profile crimes.

Overall Conclusions on Immediate Outcome 8

Malawi has achieved a moderate level of effectiveness for IO.8.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Terrorist financing investigation and prosecution – TF offense (IO9)

- a) Malawi has identified TF as low risk based on internal and external considerations directly impacting on the TF threats in the country. These included that Malawi has a sound CFT legal framework and there has not been incidents of terrorism and its financing in Malawi and generally in the region.
- b) Though Malawi has a framework for criminalising TF, there is a deficiency regarding criminalization of terrorism or acts of terrorism and definition of funds under the Malawian law. Furthermore, though Malawi undertook TF risk assessment, it has not demonstrated that it has a clear understanding of its TF risks. The FIA appear relatively to be well aware of the TF situation in the country. However, the FIA has limited human resource capacity to effectively analyse or monitor transactions for TF, particularly monitoring transactions occurring outside the formal financial markets.
- c) While the NIS has relatively an understanding of the country's terrorism threats and has measures in place to respond to such threats, it did not demonstrate a similar understanding of TF threats including on the vulnerabilities of NPOs for TF.
- d) The Organised Crime Unit of CID and other LEAs have limited understanding and information on terrorism and TF which is limiting their understanding of the modus operandi, offences and the risks associated with them.
- e) Malawi agencies dealing with TF do not have a similar understanding on the TF risk lined to NPO sector. They do not have a targeted, inter-agency coordinated approach to understand the vulnerabilities of the NPO sector for TF and prevent their misuse.
- f) The CID within the MPS is responsible for investigating TF and Terrorism in line with the general powers of the Police to investigate any crime in the country. However, the department has no dedicated and adequate capacity and resource to coordinate, identify and carry out potential TF investigations. As a result, TF cases are not being properly identified and investigated.
- g) Due to non-prioritisation of TF within the CID within the MPS there has been no any threat analysis related to TF so as to activate investigation and disruptions
- h) Malawi lacks a comprehensive TF strategy which would include an outline of the role of the various security and law enforcement agencies involved in combating TF.
- i) There has been no TF case identified, investigated and prosecuted in Malawi. The effectiveness, proportionality and dissuasiveness of the sanctions and any other measures which could be implemented by the authorities to deter TF activities could therefore not be determined.

Implementation of TF related TFS without delay and non-profit organizations (NPOs) (IO 10)

- j) Malawi has a legal and institutional framework to combat TF and terrorism including the UNSCRs 1267/1373 and successive resolutions related to targeted financial sanctions. Malawi have no yet used UNSC 1373.

- k) The implementation of the TFS regime is enforced by the National Counter-terrorism Panel (NCTP). However, the Panel was at its early stages of being structured for its operations and has not issued its own working procedures and guidelines to the supervisory bodies, reporting entities and other stakeholders, guiding them on how to implement the sanctions lists. Therefore, effectiveness of the current structure in implementation of UN Security Council Resolutions could not be determined. Therefore, the reporting entities except the large commercial banks do not implement systematically UNSCRs without delay. Instead, the FIA has established a practice to download the consolidated sanctions list from UN website and then send to supervisory authorities and reporting institutions though at various levels.
- l) Malawi has not yet conducted a comprehensive TF risk assessment related to the NPOs sector in terms of the nature of organizations, objectives, activities and possibility of being misused for TF purposes. It also did not identify the subset of the NPOs that fall under the definition of FATF. This has affected Malawi's understanding of NPOs TF risks.
- m) Supervision of the NPO sector for TF is still lacking as the monitoring tool in use does not deal in general with TF issues nor does it incorporate a component for risk of exposure to TF. Besides, the authorities have not outreached to NPOs and their donors to sensitize them on TF risks.
- n) Lack of TF cases making it impossible to ascertain 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.
- o) Malawi does not have a targeted, inter-agency coordinated approach to understand the vulnerabilities of the NPO sector for TF and prevent their misuse.

Proliferation Financing (IO 11)

- p) Malawi has legal and institutional framework to implement UNSCR 1718 and its successor resolutions on proliferation of weapons mass destruction (WMD). However, there are no similar legal and institutional arrangements to implement targeted financial sanctions relating to UNSCR 2231 relating to Iran.
- q) The National Counter-Terrorism Panel monitors the implementation of UNSCRs relating to combating proliferation financing (PF). However, the Panel was at its early stages of being structured for its operations and has not issued its own working procedures and guidelines to the supervisory bodies, reporting entities and other stakeholders, guiding them on how to implement the sanctions lists. Therefore, effectiveness of the current structure in implementation of the UNSCRs on combatting PF could not be determined. Instead, the FIA has established a practice to download the consolidated sanctions list from UN website and then send to supervisory authorities and reporting institutions though at various levels.
- r) Supervisory authorities have not issued instructions and guidelines and have not established mechanisms to implement the relevant TFS, nor do they monitor the entities under their supervision in this regard.
- s) UNSCRs on combating PF are not being implemented adequately by all national bodies, financial institutions, and DNFBPS, and this is due to the absence of comprehensive necessary procedures, instructions or mechanisms and weak awareness of the TFS system in relation to PF.

- t) 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.

Recommended Actions

IO9

- a) There should be a common understanding of TF by all LEAs.
- b) Malawi should build operational capacity to identify, investigate and prosecute TF cases. This capacity should be built with the provision of specialised TF trainings. In this regard, the roles and responsibilities of the agencies involved in the identification and investigation of TF should be clearly outlined as this will enable targeted capacity building among the relevant agencies.
- c) Malawi should ensure that the NPO sector's TF risk analysis be conducted in line with the emerging threats.
- d) Malawi should develop and implement a counter-terrorism strategy that will also outline how TF risks will be identified and investigated.
- e) The MPS should consider establishing a separate unit to collect TF targeted intelligence, investigate TF or enhance one of its existing Units with trained investigators in TF to consider such cases.
- f) Malawi should establish a coordinated structure comprising of all relevant entities to address issues of TF.

IO10

- g) Take necessary measures to operationalize the National Counter-terrorism Panel to effectively discharge its mandate including by training and putting in place procedures and processes needed to implement its work.
- h) Malawi should ensure that there are clearly defined procedures and processes in place to enable the competent authorities (MOFAIC, National Counter Terrorism Panel and the FIA) to effectively coordinate and implement the UNSCRs without delay.
- i) Ensure that the NPO regulator has adequate capacity to supervise and monitor the activities of NPO for any possible abuse for TF purpose.
- j) The authorities should undertake a detailed study of the NPO Sector to ascertain 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.
- k) Malawi should enhance understanding and awareness to implement UNSCRs obligations, related to terrorism and TF, to all the stakeholders

IO 11

- l) Take necessary measures to operationalize the National Counter-terrorism Panel to effectively discharge its mandate including by training and putting in place procedures and processes needed to implement its work.
- m) The authorities should issue the necessary guidelines that specify the obligations of the entities subject to it regarding the implementation of UNSCRs related to combating PF without delay.
- n) Malawi should raise awareness among the relevant authorities as well as the FIs and DNFBPs in relation to their obligations to implement the UNSCRs related to combating PF through different outreach mechanisms.

- o) The authorities should review the mechanism used to disseminate UNSCRs related to combating PF to all FIs and DNFBPs to ensure that they are received by those responsible for the implementation do so without delay.
- p) The NCTP should issue the necessary instructions and mechanisms to enforce the supervision of FIs and DNFBPS to ensure the implementation of the obligations stipulated in the UNSCRs related to PF, and require corrective measures and/ or impose sanctions against violating institutions.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Background

183. Terrorism Financing is criminalized in terms of s. 43 of the Financial Crimes Act, 2017. However, there is a deficiency regarding criminalization of terrorism or acts of terrorism under the Malawian law. The Malawian authorities indicated that they had done an NTA which they update annually though during the time of the on-site the vulnerability within the NGO sector was not given serious attention. The level of understanding of TF risks with the exception of FIA could not be determined.

184. The NIS and the Organised Crime Unit of the CID are responsible for gathering, analysing terrorism and TF intelligence and disseminating the information to the investigating authorities and the FIA. The CID within the MPS is a delegated authority to investigate TF and Terrorism in line with the general powers of the Police to investigate any crime in the country. The DPP is responsible for prosecution of terrorism and TF cases in the country. The Intelligence Community including the National Intelligence Service (NIS) through their various mandates have powers to access information. The Police require a court order to access financial information whilst FIA has power to access the information directly from the financial institutions.

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

185. Though Malawi has identified and assessed its TF risk, the risk is not well understood among the relevant public stakeholders except the FIA and NIS. The interaction with the different LEAs showed that there was a low understanding of the TF risk even within the Organised Crime Unit of CID who are mandated to gather intelligence related to TF. In addition, the Police and the other competent authorities did not place much emphasis on the TF risks compared to that of the terrorism offence.

186. The competent authorities, other than the FIA as will be described below, do not understand the TF risks posed by TF activities connected to individuals and terrorist organisations. The NIS has relatively a good understanding about the terrorism and TF situation in the country. The situation is further complicated by the authorities' belief that TF is of low risk in Malawi and that this is related to the absence of any known terrorist activity having occurred before. There is a potential threat of using the financial sector and NPOs to collect funds from different sources abroad and using them to serve terrorist activities outside Malawi. There had not been investigation and prosecutions of any type of TF activity in Malawi at the time of the on-

site visit. 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 prosecuted.

187. NPOs are at a great risk of being used for TF because some NGOs operate without their information being kept by the authorities as such it is difficult to monitor them. Similarly, there are some NGOs whose source of funds is anonymous hence it is difficult to monitor their operations. These factors increase their vulnerability to TF. However, there are no confirmed cases of abuse of the sector for TF purposes.

TF identification and investigation

188. The NIS and the Organised Crime Unit of the CID is responsible for gathering, analysing terrorism and TF intelligence and disseminating the information to the investigating authorities while the FIA is responsible for gathering and analysing TF intelligence based on suspicious transactions. The NIS was created pursuant to a Warrant of Establishment under the Office of the President and Cabinet while the Organised Crime Unit of the CID was created under the Police Act. The NIS has a Counter-Terrorism Unit responsible for any matters that relate to terrorism or TF, while the Organised Crime Unit of the CID is tasked to collect all intelligence including TF.

189. The NIS uses secure communication mechanisms with counterpart intelligence agencies. It has a wide range of sources for obtaining information including from other intelligence networks it shares information with. It has a database of people coming in and going out of Malawi, database of the criminal activities in Malawi and those involved and it also receives the UN Sanctions List, which it uses to check through its database to see whether or not the indicated individuals have ever visited Malawi. The Organised Crime Unit of the CID has no clear database of any persons of interest linked to TF to help them with investigations as and when intelligence would be shared with them.

190. The authorities indicated that they had done a national threat assessment (NTA) on terrorism which they update annually. For purposes of preventing or disrupting TF, the NIS does also risk profiling of visitors based on their places of origin and destinations and targeted surveillance, where necessary. Where the NIS sees the possibility of violent extremism, it monitors the identified people for any escalating levels of radicalisation, which it said it was still able to control and that it is able to track their movements. The information on identified possible threats of violent extremism or radicalisation is not shared by NIS with other LEAs.

191. The NIS to some extent is aware of the vulnerabilities associated with the NPO sector relating to TF. In one instance, the NIS and the FIA have identified one NGO which was being monitored after it was found that the NGO was receiving funds through a number of suspicious transactions. Malawians are lured into different practices of religion with a promise of a better life after schooling and thus, they have moved from normal schooling to attend schools which are linked to the NGO's which some are supported by organisation in countries where the risk of TF is high. This risk linked to NGO's was not shared with LEA's for any investigations. The authorities have further identified TF risk brought by some illegal immigrants from the Horn of Africa and Asia who establish small businesses but do not use the normal financial system and it is unknown on how they move their money in and out of Malawi. The authorities indicated that they do this to avoid paper trail.

192. The NIS has disseminated 2 cases of terrorism to the MPS and Malawi Defence Force and is awaiting feedback. Between 2014 and 2017 the FIA has disseminated two intelligence reports to NIS which are still being followed through and no other intelligence report has been disseminated to other LEA's relating to TF. Information contained in the two intelligence reports disseminations has not been shared with any LEA's so that they can also utilise other mechanism to strengthen the intelligence which might have led to a possible case for investigation and prosecution.

193. The CID is a designated unit within the MPS to investigate TF and Terrorism in line with the general powers of the police to investigate any crime in the country. However, there is/are no a dedicated officer or officers within the CID specifically designated to investigate complex crimes including terrorism and TF cases. There is no special unit for investigating terrorism or TF. At the time of the on-site visit, there had not been any TF threat analysis by CID and there was no case identified or referred for in investigations relating to TF in Malawi, and this could be a consequence of inadequate skill and knowledge to gather, analyse and investigate TF cases. The Police require a court order to access financial information whilst FIA has power to access the information directly from the financial institutions. However, the authorities have not used these powers for TF investigations as no case has been identified. In general, the country has inadequate capacity to investigate potential TF cases, in the event of such cases arising.

TF investigation integrated with -and supportive of- national strategies

194. Malawi has established the National Counter Terrorism Panel. At the time of the on-site, the Panel was operational for only three months and they were yet to develop and implement a national strategy to counter financing of terrorism.

195. The Panel comprises of the Director-General of National Intelligence Service who serves as a chair and the following serves in the committee a senior public officer designated by the Chief Secretary, the Secretary responsible for Home Affairs and Internal Security, the Secretary to the Treasury, the Secretary responsible for Foreign Affairs and International Cooperation, the Attorney-General; the Army Commander; the Inspector-General; the Registrar of financial institutions; and the Director General of the FIA, who shall be secretary to the Panel.

196. During the time of the on-site, the Panel was in a process of establishing a task team which will be assisting the panel in exercising its powers and functions. The task team will compose of members from various departments which will reflect a similar representation of the Panel.

Effectiveness, proportionality and dissuasiveness of sanctions

197. Malawi has not prosecuted and convicted any person of terrorism or TF charges. At the time of the on-site visit, Malawi had not designated any domestic individuals or groups to any of the UN bodies. The effectiveness, proportionality and dissuasiveness of the sanctions and any other measures which needed to be implemented by the authorities to deter TF activities could therefore not be determined.

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

198. The NIS has to some extent measures in place to conduct disruptive operations when the need arises. During the on-site, they shared about a disruptive operation regarding a possible

terrorist threat relating to foreign nationals, who were arrested and the business licence was withdrawn. However, there is no domestic cooperation and coordination to identify, investigate and conduct TF disruptions as the responsible authorities dealing with TF matters do not have a common platform to share information.

Overall Conclusions on Immediate Outcome 9

Malawi has achieved a Low level of effectiveness on Immediate Outcome 9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

199. Malawi has issued the Financial Crimes (Suppression of TF and Proliferation) Regulations 2017 as the basis for legal and institutional framework to combat TF and terrorism including the UNSCRs 1267/1373 related to targeted financial sanctions. The Regulations set out the procedures for proposing designations, freezing assets, utilization of frozen property, delisting, restrictions in travel and dealing in arms. Further to this, the Regulations establish the National Counter-terrorism Panel and mandate it to facilitate implementation of UNSCRs 1267/1373 and all successor resolutions relating to the suppression of terrorist financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction and such other related resolutions.

200. With regard to UNSCR 1267 and its successor resolutions, the FIA is mandated by Regulation 9 of the Financial Crimes (Suppression of TF and Proliferation) Regulations 2017 to receive (from Ministry of Foreign Affairs and International Cooperation) all designations made by the UN Security Council and any sanctions list or other similar list issued and without delay, submit all designations to the Panel and to members of the National Counter-Terrorism Panel, law enforcement agencies, national security organs (which are not members of the Panel) and to supervisory authorities (which are not members of the Panel) and any institution which is authorized to detect, freeze or seize the funds or the property of a designated entity or take any reasonable action as may be necessary to give effect to the relevant UNSCR. Upon receipt of the designations or sanctions list, the supervisory authorities are required to circulate the designations or sanctions list to reporting institutions under their purview for information and immediate action. In addition, the law (Reg. 9) allows FIA to source the list and distribute in the same way outlined above and in practice this is what happens.

201. The Regulations require the National Counter-terrorism Panel to receive proposals for the declaration of a person as a designated person in accordance with the criteria set out in Resolution 1373 without stipulating the due process. It is not clear which institution makes the domestic proposals to be received by the Panel, the grounds to be considered for making such proposals and steps to be taken by the Panel in the designation process. Malawi has not implemented Resolution 1373 and during the onsite visit authorities seemed to be uncertain on the due process.

202. Where the Panel designates a person under UNSCR 1373, the Secretary of the Panel (i.e. the FIA) prepares and disseminates the list of designated persons to all reporting institutions.

Similarly, the FIA disseminates the designated names to the United Nations Sanctions Committee and all diplomatic representatives in Malawi with the reasons for the designation. A person who is aggrieved by the decision of the Panel may, upon giving notice to the FIA, appeal to the court.

203. Malawi requires a third-party state which requests designation of a person pursuant to Resolution 1373 to give details of the designation through an accredited diplomatic representative of Malawi in that country or in the absence of a diplomatic representative, the Ministry responsible for foreign affairs in that country. Malawi has never received a request for designation from another country or requested any other country to make a designation.

204. At the time of onsite visit, the National Counter-terrorism Panel was in its early stages of being structured for its operations, it was therefore difficult to assess its effectiveness in implementation of UN Security Council Resolutions.

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

205. Although Malawi's 2018 NRA looked at the NPO sector, the findings summarised in the report are not detailed enough to determine whether a proper TF risk in the NPO sector was undertaken and the risks identified would enable the authorities to target certain NPOs in terms of their level of risk. The main concern raised in the report relating to NPOs is the threat posed by the dominance of high-cash transactions in the sector and difficulties in tracing the source of NPOs' funds, the authorities indicated that comprehensive assessment and review of the TF risk in the NPO sector is yet to be carried out but it was now under consideration due to the increased awareness on the TF risk. The NGO Board; CONGOMA; Ministry of Gender, Children, Disability and Social Welfare; and Ministry of Justice and Constitutional Affairs are vetting applications of NPOs before they are registered. However, none of these authorities seem to have a fair understanding of the sector and are not well informed of the possible TF risks associated with NPOs. Notwithstanding, they confirmed that an assessment of the sector needs to be carried out by the NGO Board using a documented and systematic methodology to identify the characteristics of the NPOs in Malawi and determine which NPOs are likely to be vulnerable to TF. The Registrar of the NGO Board indicated that the Board monitors NPOs through the information they submit as part of their annual obligations such as the audited and financial statements which are submitted to it annually by the NPOs to determine the source of funding and compare it to the narrative which the NPO will have given to the Office to see whether there is consistency. No additional measures are imposed on NPOs who are vulnerable to being used for TF. The authorities have not yet commenced engaging and doing outreach to NPOs and their donors to sensitise them on TF risks.

206. The NGO Board and the Registrar General do not adopt a risk sensitive approach, supervise and monitor NPOs that are at risk from terrorist and TF abuse. In 2013, the FIA conducted AML/CFT training workshop for staff of one NGO, Christian Aid and as no other sensitisation has been conducted to the NPO sector on their possible vulnerability to TF abuse, it was difficult for the assessment team to determine to what extent the NPOs understand their vulnerabilities to TF and the kind of measures they could be taking to protect themselves from the possible exposure to terrorist abuse.

Deprivation of TF assets and instrumentalities

207. There has not been TF cases that warranted the institutions/entities to freeze assets related to terrorist activities which could be attributed to low TF risk. It was not possible therefore to

ascertain the extent to which terrorists, terrorist organisations and terrorist financiers are deprived (whether through criminal, civil or administrative processes) of assets and instrumentalities related to TF activities.

Consistency of measures with overall TF risk profile

208. The overall TF risk profile for Malawi is low as rated in the 2013 and 2018 NRAs. The actions taken by Malawi appear consistent with the TF risk profile of the country. In this regard, the legal and institutional counter-measures in place are consistent with the risk profile. However, the NRAs do not comprehensively identify the TF risks of the NPOs in Malawi and as a result, the measures applied to the NPO sector cannot be assessed as being consistent to the TF risk profile.

Overall Conclusions on Immediate Outcome 10

Malawi has achieved a low level of effectiveness for Immediate Outcome 10.

Immediate Outcome 11 (PF financial sanctions)

Background

209. Malawi has legal and institutional framework to implement UNSCR 1718 and its successive resolutions on proliferation of weapons mass destruction (WMD). The Suppression of Terror Financing and Proliferation regulations gives power to the National Counter Terrorism Panel “The Panel” which is mandated to facilitate the implementation of the UNSCRs 1718 and 1737 (though terminated currently) as well as all successor resolutions. The Panel have to furthermore formulate and supervise the implementation of the National Strategy and Action Plan on Counter Terrorism.

210. During the time of the on-site, the Panel had only met once as it was only established in August 2018. Members of The Panel have to still undergo training to fully understand what is required of them and still have to draw a plan of action regarding the implementation of the UNSCR.

211. The Panel also indicated that in order to effect its mandate efficiently they have decided to set up a Task Team which will assist them in exercising its powers and functions. The Task Team will be composed of members from the various sectors which will reflect a similar representation of the Panel.

212. Malawi does not have mechanisms in place to adequately implement without delay any financial sanctions relating to financing of proliferation. The FIA has indicated that they have dedicated capacity to monitor the UNSCR list but could not show the effectiveness of circulation of the list without delay as some of the critical stakeholders had confirmed during on-site that they had not received any of the UN list. Furthermore, no guidance has been provided to those who have to act on the list on what should happen upon receipt of such a list.

Implementation of targeted financial sanctions related to proliferation financing without delay

213. None of the reporting entities in Malawi are guided by any framework to build on internal measures allowing implementation of targeted financial sanctions related to proliferation financing without delay though some the financial institutions met during the onsite indicated that they sometimes receive the UNSCR list from the Reserve Bank of Malawi and they understand that if there is a positive match they should act without delay. However, the level of awareness on combatting PF among the various sectors is low.

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

214. 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, and prevent them from operating or executing financial transactions related to proliferation.

215. Malawi considers the requirement to identify assets and funds held by designated persons/entities and prohibitions thereof as a new area to them. The authorities plan to build the necessary awareness and measures in the public and private sectors.

FIs and DNFBPs' understanding of and compliance with obligations

216. The big commercial banks have shown a fair understanding of compliance with the UNSCR obligations regarding the freezing without delay of accounts of individuals identified in the UNSCR list, although none of the institution which had received the list had any reason to act on it. The DNFBPs have low understanding of and implementation of the obligations relating to Proliferation Financing.

Competent authorities ensuring and monitoring compliance

217. The FIA, RBM and MGB are the designated supervisors for ensuring compliance with measures against proliferation financing in Malawi. However, the RBM and MGB did not demonstrate appreciation of proliferation financing. Since there has not been any instance to monitor compliance, the level of effectiveness could not be determined.

Overall Conclusions on Immediate Outcome 11

Malawi has achieved a Low level of effectiveness on Immediate Outcome 11.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- a) FIs demonstrated a good understanding of ML/TF risks and AML/CFT obligations associated with business relationships and transactions that apply to them. In particular, large and foreign-owned or controlled FIs showed robust understanding of ML/TF risks and application of AML/CFT obligations in most instances. On the other hand, the DNFBPs demonstrated a varied level of understanding ML/TF risks and AML/CFT obligations, with the majority of them at an emerging stage. The application of the mitigating controls reflects the same pattern. The variance between the FIs and the DNFBPs is attributed to the size, ownership/control, sophistication, and degree of compliance monitoring by supervisors.
- b) FIs demonstrated good application of CDD and record keeping measures in relation to business relationships and transactions involved. DNFBPs on the other hand demonstrated a fair application, basic CDD and manual record keeping. Until 2017, Malawi had no national identification card with the FIs and DNFBPs using different forms of identification issued by competent authorities. The FIs and DNFBPs have remediated more than two-thirds of the existing clients while new clients are required to provide the new identification card.
- c) In respect of UBO and EDD, commercial banks and life insurance companies showed robust application of procedures and use of commercial databases and CDD databases within group structures for foreign-owned or controlled FIs. While the rest of the FIs and some DNFBPs demonstrated an emerging understanding and application of UBO requirements, they appear not to have UBO challenges where customers/transactions are for local clients, stock exchange listed companies and the majority of foreign-owned companies. Further, FIs and some DNFBPs apply robust CDD measures on PEPs, although there are often challenges to identify associates and close relatives of PEPs.
- d) Commercial banks, MVTS and foreign currency changers bureaux de change have put in place sufficient automated transactions detection and monitoring systems for transactions reporting to the FIA. Commercial banks have reported more than 90 percent of STRs filed to the FIA. The NBFIs and DNFBPs have made a negligible contribution to the STRs filed to the FIA. The STRs are of good quality and have enabled the FIA to conduct proper transactional analysis. Further, there is generally a good understanding of tipping-off prohibition obligations across the FIs and DNFBPs, with the majority of the FIs have systems and training on it.
- e) Commercial banks, life insurers, and cross-border money services have deployed ICT applications for monitoring of UNSCRs on targeted financial sanctions. They have either subscribed directly to the UNSCRs Sanctions website or acquired commercial databases with instant notification of changes to the Sanctions list.

Recommended Actions:

Malawi should ensure that:

- a) DNFBPs and FIs (other than commercial banks and life insurers) should adequately apply a risk-based approach to AML/CFT controls particularly in relation to, (a) EDD, (b) on-going due diligence, and (c) UBO, obligations when establishing business relationships or carrying on a transaction.

- b) FIs (other than commercial banks and life insurers) should increase the understanding and application of UBO obligations.
- c) FIs should continue providing necessary employee training on compliance programmes.
- d) FIs (other than commercial banks and life insurers) and DNFBPs should take reasonable steps to establish the true identity of PEPs, associates and family members of PEPs.
- e) FIs (other than commercial banks and life insurers) and DNFBPs should understand and effectively apply targeted financial sanctions on TF.
- f) FIs (other than commercial banks) and all DNFBPs should adequately detect and file transactions reports particularly STRs to the FIA consistent with the customers and transactions risk profile.

The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CFT obligations

218. The AML/CFT legal and regulatory framework in Malawi requires FIs and DNFBPs (reporting entities) to apply a risk-based approach when implementing AML/CFT obligations to manage and mitigate risks posed by financial services and products offered to clients. There is variance in the understanding of ML/TF risks and AML/CFT obligations between FIs and DNFBPs. The FIs showed a more developed understanding of ML/TF risks and AML/CFT obligations than the DNFBPs. The main contributing factors to the overall variance include the size (e.g., small or big), ownership/control (e.g., local or foreign), and sophistication (e.g., types of products offered) and degree of compliance monitoring by supervisors. For instance, the large foreign-owned and sophisticated FIs and DNFBPs showed a robust understanding and application of ML/TF risks and AML/CFT obligations than the rest of the reporting entities. Similarly, the large locally-owned/controlled and sophisticated FIs and DNFBPs displayed better understanding of ML/TF risks and AML/CFT obligations than the small/medium and less sophisticated entities. The latter showed emerging understanding of ML/TF risks and AML/CFT obligations. As a result, the FIs and the DNFBPs with developed understanding of ML/TF risks and implementation of AML/CFT obligations demonstrated good procedures and processes to manage and mitigate the ML/TF risks.

Financial Institutions

219. There is a robust understanding of ML/TF risks by all banks and large FIs. The remaining FIs displayed a fair understanding of the ML/TF risks facing them. The majority of FIs have own ML/TF risk assessments and have risk-rated their customers, transactions, and delivery channels. This is the basis for application of commensurate AML/CFT controls against the risks identified.

220. Banks regard transactions involving foreign currency exchanges and cross-border wire transfers, correspondent banking, PEPs and high-net worth clients as posing higher ML risks. Banks identified proceeds from public sector corruption and tax crimes as major threats for the sectors, other FIs and most of the DNFBPs. Further, banks identified use of private (individual) bank accounts to engage in unlawful transactions. Case examples related to the *Cashgate* scandal were shared with the assessors to support the threats posed by proceeds of corruption, fraud, tax

crimes and the types of customers. The FIA substantiated this view based on the sizeable STRs filed by banks to it.

221. The insurers (life insurance companies in particular), securities sectors, money remitters and foreign currency changers in Malawi demonstrated a good understanding of the ML/TF risks facing their operations and the applicable AML/CFT obligations. This is largely attributed to supervisory actions by supervisors and being an affiliate to foreign financial groups.

DNFBPs

222. DNFBPs have shown various levels of understanding of the ML/TF risks and AML/CFT obligations that apply to them. Large Accounting firms on the other hand demonstrated a good understanding of the ML/TF risks and AML/CFT obligations that apply to them. This could be as a result of a combination of supervisory actions and influence at group level. Some DNFBPs indicated that following awareness-raising and inspections by the FIA, they appointed compliance officers and documented ML/TF risks, as well as applying a risk-sensitive approach to mitigate and manage the risks.

223. The law firms interviewed showed a low understanding of the ML/TF risks and AML/CFT obligations particularly in relation to beneficial ownership information of companies and legal arrangements.

224. Overall, FIs and DNFBPs regard TF risk level as low. The FIs and the DNFBPs demonstrated a reasonable appreciation of the TF risks facing Malawi, particularly in respect of the regional security situation and the absence of known terrorism cases in the country, as well as how it applied to the financial services, products and delivery channels.

Application of risk mitigating measures

225. The FIs and DNFBPs use the understanding of ML/TF risks described above as the basis for managing and mitigating the risks. However, the application of the risk mitigation measures significantly varies between FIs and DNFBPs, as well as within FIs and DNFBPs.

226. Most FIs and a few DNFBPs apply risk mitigating measures on the basis of documented ML/TF risks assessments, with the results that such FIs and the DNFBPs have stronger application of AML/CFT obligations. The large and well-resourced FIs and DNFBPs implemented rigorous controls to mitigate and manage the risks using different approval layers of business relationships and transactions and on-going/enhanced monitoring on customers or transactions considered high risk. These controls are mainly included on PEPs, non-resident customers, cash-intensive industries and cross-border wire transfers.

227. With respect to TF risks the controls applied by DNFBPs are generally inadequate although the understanding of the TF risks varies in the DNFBP sector.

Financial Institutions

228. The majority of the FIs in Malawi apply controls to manage and mitigate risks as a result of understanding derived from institutional ML/TF risks. For instance, whenever there is change in the risk indicators such as business operations, business relationship, method of payment, delivery channel, jurisdictions and services/products offered, the FIs would adjust the underlying factors, the risk rating and the controls in place. In addition, the mitigating measures also take into

account the risks emanating from high risk jurisdictions identified by the FIs themselves, the FATF and other organisations and jurisdictions, to review and apply appropriate measures in a in timely manner

229. The insurance sector in general and life insurers in particular showed good implementation of appropriate mitigating measures to manage the risks identified when on-boarding a customer or processing a transaction. The life insurance companies take reasonable measures to establish the true identity of the ultimate beneficiaries of the policy especially at the time of pay-out, and have put in place risk-rating systems of their customers.

230. The securities sector has put in place mitigating measures that include checks and balances against brokers to ensure they apply the appropriate AML/CFT measures and pass on the collected information to the principal for decision, depending on the risk profile of the customer.

231. Overall, MVTS operators have good mitigating measures in place, especially those engaged in provision of cross-border transactions that are largely provided by entities with affiliation to globally licensed and recognised providers who apply, to the extent possible, the policies and procedures of the parent companies on the Malawi operations. For instance, the MVTS interviewed demonstrated a good blend of domestic and group ML/TF risk assessments and policies to strengthen compliance with local AML/CFT obligations. This is more prevalent on customer classification and transactional monitoring processes to develop and implement mitigating controls on the basis of risk profiles.

DNFBPs

232. While generally the DNFBP sector is aware of the AML/CFT obligations that apply to them, the level of implementation is varied. The real estate agents, accounting firms and legal professionals (high ML risk sectors) demonstrated a generally good application of the AML/CFT obligations on their customers and transactions. By contrast, the casino industry and dealers in precious stones and metals demonstrated little understanding and application of AML/CFT obligation. Save for the large accounting firms, the DNFBP sector in Malawi does not have Group level relationships, all of them are local entities. This means that they have to independently develop their ML/TF methodologies, CDD, EDD and sanction screening measures (mitigating measures) in compliance with the FCA. Dealers in precious stones and metals interviewed demonstrated little implementation of mitigating controls.

Application of enhanced or specific CDD and record keeping requirements

233. The AML/CFT legal and regulatory framework in Malawi recognises a risk-based approach to CDD measures commensurate to customer and transactions risk levels. For this to take effect, majority of FIs and a few DNFBPs have assessed their risks and based on the understanding of the risks thereof, applied commensurate CDD and record keeping measures to manage and mitigate the risks identified.

Customer Due Diligence

234. FIs and DNFBPs understand CDD requirements in respect of customers and transactions. Further, FIs and DNFBPs apply CDD procedures having regard to whether it is a new or an existing customer. If the former applies, the FIs and some DNFBPs generally require normal CDD information for natural persons, such as; full names, date of birth, country of birth and residence, residential address, proof of national identity, and proof of source of income. For foreign nationals, FIs and DNFBPs obtain copy of passport, work permit and bank confirmation letter. For legal persons or arrangement, the FIs and some DNFBPs seek and obtain CDD information such as articles of association, memorandum of association, certificate of incorporation, identity of beneficial owners, principal shareholders and physical addresses, up-to-date audited financial statements, and any other person authorised to act on behalf of the legal person or arrangement. If the latter applies, FIs and some DNFBPs review the customer's CDD information and, on the basis of risk and materiality, remediate and update the information.

235. In case of doubt on the veracity of the CDD information provided or suspicion of criminality, the FIs and some DNFBPs take reasonable steps including use of other independent sources of information such as publicly- and/or commercially-available databases to verify the information provided. For entities with foreign affiliation, they use parent company CDD databases for verification of customers. The information sought include bank reference letters, notarized documents, search engines, government databases such as registrar of companies and commercial databases such as World-check and Lexus Nexus.

236. Until 2017, Malawi did not have a national identification document. As a result, entities relied on alternative means of identifying customers such as a driver's licence. With the introduction of the national identification card, FIs have been remediating legacy accounts and insisting on the new identification card when on-boarding new customers using a risk-based approach. The banks and large FIs indicated that they had remediated more than two-thirds of their clients, with specific focus on high-risk customers whilst the other sectors were in the process of customer remediation exercise.

237. The understanding and appreciation of the obligation to identify and verify ultimate beneficial owner (UBO) information by FIs and DNFBPs differ markedly. In general, FIs demonstrated a higher understanding and application of UBO verification measures. Within the financial sector, commercial banks and life insurance companies demonstrated more rigour on verification of beneficial owners. The remaining FIs demonstrated emerging application of UBO procedures. Although the AML Regulations 2011 sets a UBO threshold at 15 percent and above, FIs have lower thresholds, ranging from 5 to 15 percent. The FIs and some DNFBPs indicated that generally they are able to obtain and verify the UBO information particularly in relation to local customers, stock exchange listed companies, and the majority of foreign companies. They did, however, indicate that there are some difficulties in obtaining UBO information on customers who are, or transactions, involving foreign nationals from Asian Communities. In this case, the FIs apply a risk matrix to determine whether the customer should be on boarded or transaction should be conducted. Where the risk is considered high, the FIs do not open the business relationship or process the transaction. By contrast, where the risk is tolerable, the FIs accept the business relation but apply enhanced controls to mitigate and manage the risk. Further, some FIs with foreign affiliation rely on group CDD databases to verify the identity of UBOs when it is not possible to

do so through the local sources of information. For local companies, they do experience challenges in obtaining the necessary information from government databases such as the Registrar of companies, to identify the beneficial owner. Notwithstanding, the assessors observed that FIs and some DNFBPs in Malawi do take reasonable steps to establish the true identity of the UBO information in respect of their customers and transactions they process especially as most legal persons in Malawi are small to medium sized with most of them having the shareholders as ultimate beneficial owners.

238. Brokers conduct independent CDD on customers at on-boarding stage and only submit the completed agreement form to the principal company with an undertaking of availability of accurate information upon request by the principal. Where full CDD has not been carried out by a broker, the prospective customer will not be on-boarded. In Malawi, agents are regarded as introducers only, since the principals remain fully responsible for the CDD process before the relationship is established. Overall, reporting entities involved in agency relationship understand that the principal ultimately shoulders the responsibility for CDD information.

Application of EDD measures

239. Based on risk classification, FIs generally apply enhanced due diligence (EDD) and ongoing transactions monitoring measures on high-risk business relationships and transactions. The measures include a combination of specialised business units and technological capability with specially trained personnel to scrutinise information/data on customer and transactional behaviour. For instance, commercial banks and life insurers interviewed also use the EDD and transactions monitoring capability of parent company on high net-worth clients in corporate and investment banking business units. In the units, there are specially trained and dedicated personnel who, in addition to using information generated through the broader CDD processes, build personal relationships with the clients, which includes conducting visits to their places of residence and/or business as part of deepening the understanding of the customer.

240. The process of application of EDD is generally similar across the FIs, but subject to the nature and complexity of the financial services provided by the FIs, and therefore the business relationship and transaction processed. In most FIs, there is usually a risk committee comprising senior management of relevant business units such as legal and risk, operations, business development and AML/CFT compliance. Such committees, or similar arrangements, considers information on prospective and existing (i.e., information from regular reviews of customers and transactions) clients identified as high risk, to which decisions on application of EDD measures is made in accordance with the compliance programmes of the entity. The application of EDD measures extends to customers (e.g., PEPs), transactions (e.g., cross-border wire transfers), and jurisdictions (e.g., North Korea) meeting the threshold for high risk, in accordance with the FCA, as designated by a relevant authority such as a country (e.g., Malawi or a foreign government) organisation (e.g., FATF ICRG Listing), and entity itself (i.e., subsidiary or parent company). In general, the DNFBP sector, with the exception of law firms, showed little evidence of application of EDD measures in respect of high-risk clients and transactions. This could be attributed to a low understanding of risk-based approach to application of CDD measures mainly as a result of limited supervision and monitoring of the sector.

On-going due diligence

241. FIs generally apply on-going due diligence on high-risk customers determined through institutional ML/TF risk assessments. However, the level of intensity differs from one entity to another, depending on the size and control/ownership of the entity and complexity of the financial services provided. In general, once a decision has been made to on-board a high risk customer, the FIs apply on-going due diligence on the business relationship by closely monitoring the behavior of the customer. The FIs use a number of sources of information, including credible media and recognised organisations reports (e.g., FATF ICRG List, European Union and United Nations targeted sanctions lists). In addition, FIs use information generated on the nature and complexity of the financial services, the delivery channel (e.g., introduced business relationship), methods of payments, and the industry in which the customer participates in (e.g., casino as opposed to money transfers). FIs interviewed described the usefulness of the information generated through, *inter alia*, the regular reviews and the risk variables in further informing the intensity and timing of the EDD measures. The information is largely generated and analysed using sophisticated analysis software. As already indicated in the EDD analysis, the approval structures in the entities do, on the basis of new information affecting the risk profile of the entity, downgrades or upgrades customers, transactions, and delivery channels in accordance with business risk determination and tolerance matrices.

242. Despite demonstrating a reasonably good understanding of ML/TF risks that apply to them, the DNFBP sector, except for law firms, in Malawi demonstrated absence, or little, appreciation and application of enhanced due diligence in general and on-going due diligence in particular.

Record keeping requirements

243. The appreciation and application of recordkeeping obligations by FIs and DNFBPs is reasonably good, as the entities have systems in place to obtain and maintain records of the information/data generated from customers. The information is kept in a manner that it can be retrieved and used by the entity itself and competent authorities such as supervisors, law enforcement and the FIU should a need arises. For instance, the FIA and the law enforcement agencies have confirmed that in the majority of the cases, the information requested from the reporting entities were of good quality to enable reconstruction of the information to fulfil the intended purpose. Additionally, reporting entities keep the information beyond the legal requirements of seven years as set out in the FCA.

Politically Exposed Persons

244. The FCA places specific focus on PEPs by identifying them as high-risk customers upon whom extra due diligence measures must be applied more and above the normal CDD measures. The FIs and DNFBPs demonstrated a clear understanding of the specific ML risks posed by PEPs and their associates and family members, and therefore apply additional risk management procedures, albeit at varying degrees. FIs in Malawi have described in length the interaction they had with PEPs and how the PEPs measures were applied even before the recent amendments. The intensity of the PEPs measures were enhanced following the *cash-gate scandal* since 2013 which involved PEPs. Further, the FIs and DNFBPs recognise the broader scope of PEPs under the law to include not only domestic but also foreign PEPs. To this end, the rigour of the CDD measures

applied on types of PEPs appear similar. FIs have PEP declaration forms used to obtain information on whether a prospective customer is a PEP or not. For existing customers, the FIs use different sources of information including government information, media reports, and commercial databases to identify and monitor clients who are PEPs.

245. Approval of a relationship with a PEP is granted by a high-level senior management structure within the FIs, which includes senior management of the entity. In addition, FIs have PEPs Relationship Managers to ensure closer scrutiny of the relationship. FIs have, however, indicated that at times there are difficulties in identifying and verifying a UBO who is a PEP especially where there are complex company structures. Overall, the FIs take reasonable steps to identify and verify a PEP in every respect (UBO, family, and associates) until they are satisfied that a PEP has been identified or that the risk exposure can be mitigated. In the event that the opposite is true, the FIs do not accept the proposed relationship or terminate an existing relationship. Generally, the FIs retain PEPs' high-risk status even when a customer is no longer a PEP because of the likelihood of the PEPs maintaining influence post political life.

246. Although the DNFBPs appreciate the high ML risks posed by the PEPs and therefore the rigour with which specific CDD measures must be applied, the risk management systems are less developed to adequately mitigate and manage the ML risks posed by the PEPs.

High Risk Jurisdictions

247. For the FIs with ML/TF risks assessment, high risk jurisdictions comprise the risk factors as business relationships and transactions emanating from these jurisdictions are generally treated as high risk until the opposite is proven. Most FIs take reasonable steps to establish the risks posed by business relationships and transactions from high risk jurisdictions. The geographical risks are generally sourced from the FATF ICRG List, commercial databases, sanctions by the United Nations as well as some governments and regional/continental bodies, and open source information which are used to determine the nature and extent of the ML/TF risks posed by customers and transactions emanating from high risk jurisdictions and apply enhanced due diligence and on-going monitoring measures.

248. The DNFBPs demonstrated inadequate understanding and implementation of appropriate mitigating controls (e.g., EDD and increased transactions monitoring) based on the risks posed by customers and transactions from the high-risk jurisdictions.

Correspondent Banking relationships

249. Malawi has adequate measures for managing risks related to correspondent banking relationships and transactions. Commercial banks in correspondent relationship arrangements have structures and processes in place to manage risk exposure. These include having a risk-based approach to application of CDD measures, applying further CDD measures including gathering sufficient information so as to fully understand the nature and purpose of the business of the bank, satisfying itself on the adequacy of the AML/CFT measures in place by requesting and obtaining AML/CFT programmes, determining the soundness and effectiveness of AML/CFT controls applied by the respondent bank, and obtaining senior management approval before establishing a correspondent banking relationship. In order to monitor the relationships, commercial banks involved in CBRs have dedicated units in place which handle customers and transactions under

the CBR arrangement. The CBRs are monitored and reviewed on an on-going basis or as and when there are changes that may impact on the robustness of the measures applied on the relationship.

Cross- Border Wire transfers

250. Commercial banks and MVTS provide cross-border money or value transfer business. Although Malawi has major deficiencies in relation to cross-border wire transfer obligations, all banks comply with the SWIFT messaging standards. The sectors obtain the mandatory information including originator and beneficiary information such as names, address, amount unique reference and date, among others, otherwise the transaction will not be processed. Similar information requirements apply for domestic wire transactions. The assessors are of the view that the information obtained or collected and accompanying cross-border wire transfer transactions appear reasonable to establish the correctness and traceability of transactions conducted.

Simplified CDD

251. Reporting entities understand the basis for simplified CDD measures. There are 8 products under financial inclusion, namely; (a) Basic Savings, (b) Basic Banking Credit, (c) Ordinary Farmer Account, (d) Mobile Banking, (e) Mobile Money, (f) Local Money Remittances, (g) Member based Savings, and (e) Micro-credit. These products pose low vulnerability except for Member-based Savings which has Medium Low vulnerability because of it has no thresholds. The service providers for these products are conversant with simplified CDD and do apply them as required.

New technologies

252. The AML/CFT regulatory framework of Malawi does not adequately oblige FIs and DNFBPs to continuously assess existing and new technologies with a view to identifying ML/TF risks. Regardless of the identified deficiency, FIs in practice take reasonable measures to detect and mitigate the risks posed by the nature of the business relationship transaction and payment method. MVTS, for instance, have put in place control measures such as threshold limits on transactions to manage ML/TF risks associated with the technological advancement. All FIs that provide cross-border wire transfers identify and assess ML/TF risks on new products including mobile payment services prior to the launch of the products. Although DNFBPs do not generally provide their services via technological platform posing ML/TF risks, they are aware of the ML/TF requirements on new technologies.

Targeted Financial Sanctions relating to TF

253. The FIA, working together with AML/CFT supervisors, disseminate via email the UNSCRs lists to reporting entities for their implementation. The large foreign owned/control FIs and sophisticated entities subscribe to commercially-owned online websites for information on persons and entities on the UNSC Sanctions List, as well as high risk jurisdictions. DNFBPs are reliant on UNSCRs Sanctions List disseminated by the FIA. It was evident during the interviews with DNFBPs that there is minimal understanding, and therefore implementation, of TF obligations. Malawi authorities are in the process of strengthening the UNSCRs Sanctions mechanism for effective implementation by reporting entities (see IO.10).

Reporting obligations and tipping off

254. Commercial banks predominate the filing of STRs at more than 90 percent to the FIA. This is consistent with the materiality and risk profile of the financial sector in Malawi based on the volumes and values of transactions processed. Non-bank FIs, on the other hand, have very low reporting levels while other sectors have not filed any STR during the period under review. Overall, very few industries in the DNFBP sector have filed STRs to the FIA. The main contributing factors to the low level of STR filed by the reporting entities over the years can be attributed to limited supervisory actions (especially of the non-bank FIs and DNFBPs) such as awareness and training on implementation of the AML/CFT control measures.

Table 24: No of STRs sent to the FIA by sector-2013-2018

Source of report (sector)	No of STRs received				
	2014	2015	2016	2017	2018
Banks	80	89	129	120	77
Insurance	4	5	1	14	5
Securities	1	0	0	1	0
MVTS	1	0	1	0	0
Microfinance	0	0	0	1	0
Real Estate	1	0	0	0	0
Lawyers	0	0	0	1	0
Accountants	0	0	0	0	1
Total	87	94	131	137	83

255. The assessors noted during the interviews that both FIs and DNFBPs are aware of their obligations against tipping off. The entities were able to demonstrate the application of tipping off requirements throughout the suspicious transaction report process. Further, AML/CFT training programmes cover issues on confidentiality of the information on persons and entities associated with a suspicious transaction.

Internal controls and legal/regulatory requirements impending implementation

256. Most FIs have compliance functions, which sets out policies and procedures, as well resources to effectively implement AML/CFT obligations. Generally, the compliance function is headed by a Compliance Reporting Officer at a senior level and reports to a Board.

257. The AML/CFT compliance function of FIs appears commensurate to their size, nature and complexity of the business operations and ML/TF risks. In the majority of cases, it is the size, ownership or control structure and sophistication of the reporting entity, which determine levels of AML/CFT compliance risk management, and assurance thereto. For instance, the large and well-

resourced domestic FIs and affiliates of foreign groups have demonstrated robust internal controls and procedures such as board approvals, on-boarding and monitoring of relationships, reporting of STRs, keeping and accessing of records, and audits (internal and external testing). Further, they have put in place technological solutions such as sanctions screening and transactions detection and reporting.

258. The majority of DNFBPs have inadequate AML/CFT function. Some DNFBPs have appointed compliance officers and are building compliance programmes as required under the FCA.

259. Based on the interviews conducted with FIs and DNFBPs and inspections reports, banks and life insurers conduct on-going training of staff. The rest of the non-bank FIs and DNFBPs have conducted little to no training. It appears they rely on the FIA and the supervisors to train their employees.

260. FIs and DNFBPs have systems in place to know their employees before and during the course of employment. For instance, all new employees are screened for integrity, though the intensity depends on the position performed. The existing employees are continuously subjected to integrity checks. Generally, the entities seek past employment references, police clearance, the media, and public databases as part of reasonable measures to employ persons with integrity.

Overall Conclusions on Immediate Outcome 4

Malawi has achieved a Moderate Level of effectiveness with IO.4.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

Financial Sector Supervisor

- a) The RBM (for all FIs) applies robust market entry requirements for ensuring the integrity of the sectors by preventing criminals and their associates from holding or being beneficial owners of significant interest or holding a management function in the sectors. The RBM conducts fit and proper assessments on shareholders, directors, and senior management and has systems to identify and verify the true identity of ultimate beneficial owners.
- b) The RBM, as an AML/CFT supervisor, demonstrated a robust understanding of ML/TF risks facing the reporting entities as well as procedures and processes for implementing an RBA to AML/CFT. The supervisor applies good compliance programmes based on an RBA to AML/CFT supervision, framework which increased compliance levels by regulated entities.
- c) RBM has applied remedial actions and sanctions on FIs for failure to comply with AML/CFT obligations under the FSA and the FCA since 2017. In the main, the RBM directed FI to take remedial actions and, to some extent, issued financial penalties and administrative sanctions against FI institutions for non-compliance.
- d) The FIs demonstrated that they are dissuaded from non-compliance by the mere fact that there is on-going monitoring which can attract sanctions in cases of non-compliance. As such, in the financial sector, supervisory measures taken in Malawi have an effect on compliance with some improvements demonstrated albeit to varying degrees.
- e) The RBM (in conjunction with the FIA) has undertaken numerous outreach and awareness-raising initiatives to promote the understanding and implementation of AML/CFT obligations by reporting entities. The impact of the initiatives varies, with the majority of FIs demonstrating a good understanding of the ML/TF risks and AML/CFT obligations.

DNFBP Supervisors

- f) The MGB (casinos) applies sound market entry requirements for ensuring the integrity of the sector by preventing criminals and their associates from holding or being a beneficial owner of significant interest or holding a management function in the gaming sector. However, the MGB does not conduct TFS screening on the applicants.
- g) The supervisors of real estate agents, and dealers in precious metals and stones, do not have the necessary or reasonable measures to prevent criminals from being professionally accredited and to prevent them from holding or being beneficial owners of significant interest or holding a significant or controlling interest in management function in institutions in the DNFBPs sectors.
- h) The FIA and the MGB as AML/CFT supervisors demonstrated a good understanding of ML/TF risks facing the reporting entities as well as procedures and processes for implementing an RBA to AML/CFT by their respective entities. These supervisors, however, demonstrated less developed compliance monitoring activities.
- i) The FIA has had less focus on real estate agents and dealers in precious stones and metals even though the sectors have been identified as posing higher ML risks. Furthermore, no

administrative sanctions have been taken against these entities for non-compliance issues identified.

- j) Joint inspections on casinos between the FIA and the MGB have identified areas of non-compliance which, whilst they warranted some administrative sanctions, remedial actions were applied. This could be attributed to the recent powers that were attributed to them.
- k) There have been no sanctions issued against any DNFBPs in Malawi during the period under review, while limited remedial actions have been issued to DNFBPs that have been inspected. Therefore, it is difficult to determine if in practice, the sanctions are dissuasive, proportionate and effective in respect of the DNFBPs.
- l) The FIA in conjunction with the MGB have undertaken numerous outreach and awareness-raising initiatives to promote the awareness of ML/TF risks and effective implementation of AML/CFT obligations by reporting entities. The impact of the initiatives is varied as the awareness by the DNFBPs is largely emerging.

Recommended Actions

Financial Sector Supervisor

- a) Further, the supervisor should apply the existing RBA to Foreign Exchange Bureaus and MVTS to improve implementation of mitigating controls.
- b) The RBM should ensure that it continues to carry out outreach programmes to reporting entities having regard to their sectoral and entity risk profiles in order to promote adequate understanding of the ML/TF risks facing them and ensure proper implementation of mitigating controls on a risk-sensitive basis.

DNFBP Supervisors

MGB

(c) The MGB should put in place adequate measure aimed at ensuring the integrity of the sector by preventing criminals and their associates from holding or being beneficial owners of significant interest or holding a management function in the gaming sector specifically by ensuring that it screens applicants against TFS lists.

(d) The MGB should take significant steps to promote compliance with AML/CFT obligations including awareness creation programmes to assist their regulated entities to adequately understand and apply the AML/CFT obligations on a risk-sensitive basis.

(e) The MGB should enhance its supervisory capacity to ensure that it adequately supervises and monitors compliance with AML/CFT obligations on a risk-based approach, taking into account the findings of the NRA.

(f) Ensure application of a wide range of enforcement actions, which are dissuasive, proportionate and effective against AML/CFT violations. Further, the MGB should put in place adequate mechanism for monitoring changes in compliance levels to demonstrate the effectiveness of supervisory actions.

FIA

- (g) FIA should ensure that real estate agents, precious stones and metals dealers develop and implement robust licensing/registration market entry requirements which includes

adopting and consistently applying manuals, procedures and processes to enable them to adequately deter criminals from participating in the ownership, control or management of DNFBPs, including in relation to fitness and probity of the ultimate beneficial owners.

- (h) The FIA should enhance necessary supervisory capacity and ensure that it adequately supervises and monitors compliance with AML/CFT obligations by the DNFBPs and ensure that supervision and monitoring is on a risk-based approach, taking into account the findings of the NRA.
- (i) Ensure application of a wide range of enforcement actions, which are dissuasive, proportionate and effective against AML/CFT violations. Further, the FIA should put in place adequate mechanism for monitoring changes in compliance levels to demonstrate the effectiveness of supervisory actions.
- (j) Ensure that the supervisors continue to carry out outreach programmes to reporting entities having regard to their sectoral risk profiles in order to promote adequate understanding of the ML/TF risks facing them and proper implementation of mitigating controls on a risk-sensitive basis in particular for the DNFBPs.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35

Background

261. In terms of the NRA and the SRA, commercial banks were identified as posing the most ML/TF risks in the financial sector and classified as posing second highest ML/TF risk at national level. This is mainly due to their materiality as they account for two-thirds of the total assets of the financial sector, the range and types of products they offer, the volumes of transactions they handle, and the connection of the banking sector with the international financial system. The real estate sector in Malawi is also vulnerable to misuse for ML risks mainly due to its involvement in activities exposed to high ML risk. Other entities vulnerable to laundering of cash include dealers in precious stones and metals, lawyers, and accountants.

Immediate Outcome 3 (Supervision)

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

262. Malawi has a number of regulatory bodies charged with market entry responsibilities. The FIs are licenced by the RBM, while the DNFBPs are licenced/registered by various licensing/registration bodies. These are the Malawi Law Society (lawyers), the Mining Department (dealers in precious stones and metals), the Land Board (real estate agents), Malawi Gaming Board (casinos) and the Malawi Accountants Board (auditors and accountants). In general, the regulatory bodies have reasonable licensing/registration frameworks in respect of the entities under their purview. In particular, the RBM and Malawi Gaming Board demonstrated robust application of licensing requirements for FIs and the Gaming sector. However, the supervisors of DNFBPs such as the real estate sector, dealers in precious metals and stones did not demonstrate a fair application of measure aimed at ensuring that criminals and their associates are prevented from

being professionally accredited and prevented from holding or being a beneficial owner of significant interest or holding management functions in the DNFBPs sectors.

RBM

263. The RBM performs fit and proper assessments in respect of persons wishing to participate in the market and intending to manage FIs. The measures apply to legal persons, directors and administrators of FIs at the point of market entry and on an on-going basis, and as and when changes occur. The assessments include integrity of shareholders, directors and administrators with particular regard to character of the persons including criminal proceedings or convictions. The information is applied to determine suitability of the persons to participate in the regulated sectors. The licensing requirements are detailed and require the applicants to submit various documentation such as memorandum and articles of association and certificates of incorporation used to determine and verify the type of legal entity and eventually UBO. The applicants are also required to submit tax clearance certificates, audited financial statements, bank reference letters, police clearances, academic and professional certificates and identification documents for natural persons. These are used to determine and verify compliance with legislations, verify financial standing of entities, to determine the fitness and probity of individual and ensure they have no criminal records. Those with criminal records are not allowed to participate in the financial sector. Where an applicant is a regulated entity in another jurisdiction and depending on the nature of the prospective entity or key person, the RBM requests and obtains information on such entity from its home regulator/supervisor, registrar of companies and enforcement agencies. As such, the supervisory authorities cooperate with foreign counterparts, where necessary, at market entry stage as part of the vetting process.

264. The RBM verifies the information submitted against independent sources, depending on the nature and complexity of the licensing issue at hand. For example, UBO verification focuses on a shareholder with substantial shareholding or controlling interest of 10% and above. The RBM collaborates with the FIA to screen ultimate beneficial owners against TFS screening. Further the RBM conducts a physical due diligence, by visiting the registered locations or countries where the ultimate beneficial owners are, as part of the licensing process to ascertain the submitted information. When information is outstanding, licenses are not issued regardless of the mandatory timeframes relating to the processing of all license applications. The RBM declined two license applications during the period under review due to AML/CFT concerns that arose from the process of evaluating the fitness and probity of some shareholders, directors and administrators. Furthermore, the RBM has demonstrated that it has measures to enable detection of misleading information. License approvals go through various review levels enabling detection of breaches. Further documents submitted in support of an application are assessed against the legal requirements and any other requirements to determine whether they meet the relevant requirements.

MGB

265. The MGB has to a large extent implemented adequate licensing procedures and processes for casinos following similar vetting procedures and processes as the RBM. However, they had not yet started using the TFS screening as they just started receiving them from the FIA. Like the RBM,

they identify and verify UBO but the verification process focuses on a shareholder with substantial shareholding or controlling interest of 5% and above.

DNFBPs

266. The licensing and registration bodies responsible for DNFBPs implement procedures and processes relating to fit and probity to observe market entry requirements in respect of their regulated entities. However, the application of the fit and proper procedures varies from one regulator to another. The Ministry of Lands and the Department of Mining have some challenges relating to adequately determining fitness and probity of persons owning, controlling or managing entities including verification of UBO information under their purview. It was, however, noted that the Land Board requires criminal records and apply UNSCRs on TF on real estate agents who are foreigners. The lawyers engaged in TCSP and real estate business are first licensed by their professional body and proceed to register with the Lands Ministry as real estate agents. There are unregistered real estate agents and dealers in precious stones and metals in Malawi for which the authorities are in the process of bring them into the AML/CFT regime.

267. The absence of legal or regulatory measures for effective vetting process of UBO information and lack of understanding of verification of UBO information of market participants are the main contributing factors facing the regulators of the real estate agents and dealers in precious stones and metals. Further, with the exception of the RBM, the regulatory bodies in Malawi rarely subject market participants including those owning, controlling or managing the entity to TFS screening.

Supervisors' understanding and identification of ML/TF risks

268. The FIA, the RBM and the MGB are the AML/CFT supervisors of reporting entities for AML/CFT compliance in Malawi. The supervisors demonstrated a good understanding of the ML/TF risk for their supervised sectors and entities. Together with many other relevant stakeholders, they were closely involved in the development of the NRA and this has further enhanced their understanding of the risks associated with their supervised entities.

269. The FIA and the RBM have leveraged off the information and data as well as the findings of the NRA to promote and consolidate the understanding of ML/TF risks associated with their respective supervised entities. Since the scope of the NRA included identification and assessment of ML/TF threats and vulnerabilities in Malawi, it served as a useful source of information/data to the designated supervisors as they used the findings to improve their understanding of ML/TF risks in the country in general and their supervised entities in particular.

270. The RBM has conducted a sectoral risk assessment (SRA) and institutional risk assessments which enabled it to understand the nature of risks and categorise the ML/TF risk levels of the entities it supervises into three categories, namely; low, medium and high. The ML/TF risk factors applied in the assessment process include the customer type, product and services, delivery channels and geographic locations. The RBM then considered the quality of the ML/TF risk management controls to determine vulnerabilities and then aggregated the score to get the residual score. The assessors' view is that the process and results of the SRA were reasonable to enable the RBM to understand the risks facing the entities it supervises. Further, the assessors noted that the

SRA findings in terms of the risk levels of the entities supervised by the RBM are in line with those of the NRA.

271. To enhance its understanding of inherent ML/TF risks facing reporting entities, the FIA relies on various sources of information such as the findings of the NRA, AML/CFT inspections reports, suspicious transactions reports, cash threshold reports, government agencies databases, and media reports. The RBM and the MGB have followed a similar approach in relation to understanding of ML/TF risks. For instance, on the basis of the findings of the NRA, the supervisors were able to identify and further assess various AML/CFT vulnerabilities (e.g., capacity issues) in some key sectors, cash-intensive sectors, materiality of the sectors (e.g., % share on total assets), illegal externalisation of foreign currency and illegal money lending (financial activities), illicit mining, and unlicensed estate agents. The information was used to assist the supervisors to identify the supervised entities that are likely to be misused to launder or channel the proceeds of the identified major proceeds-generating crimes. For instance, the FIA used the information to develop a good understanding of the threats posed by unlicensed real estate agents.

272. The supervisors appreciated the types of customers who participate in their respective areas of supervision. For instance, they understand that the client base contains PEPs, high net-worth individuals and foreign clients considered as posing high ML risk. There is evidence that unlicensed real estate agents were used by PEPs implicated (and some found guilty in a court of law) in the laundering of proceeds from abuse of public funds through bogus contracts involving private businesses and civil servants between 2013 to 2015. The proceeds were used to fund acquisition of and construction of high-value properties in Malawi. The FIA understands that the real estate sector in Malawi is highly cash intensive, and that the risk is higher when unregistered real estate agents are considered. Further, the FIA demonstrated an understanding of anonymity provided by unregistered estate agents for purposes of ML especially as the ultimate beneficiary may not be adequately identified and verified in accordance with the law.

Risk-based supervision of compliance with AML/CFT requirements

273. The AML/CFT risk-based framework at the FIA, the RBM and the MGB are well developed for adequate and effective supervision and monitoring of reporting entities. The FIA, the RBM and the MGB have in place risk-based supervision manuals, policies and procedures on how to supervise or monitor compliance with AML/CFT obligations by their regulated entities on a risk sensitive basis.

274. The RBM has an ML and TF Off-site Risk Assessment Instructions Manual applied to ensure that supervisory activities are focused on the areas posing greatest risk to the institution. The Manuals also dictate that the supervisor should perform periodic risk assessments, which form part of the supervised entities institutional risk profile. It was observed that the RBM applies the Manuals to conduct risk assessment exercise to identify and assess the type, level, management and direction of all significant risks affecting an institution. The results of the institutional risk assessment have been used to develop a Risk Matrix and a Risk Assessment Summary that are used to inform the focus of the inspection on types of FIs it supervises.

275. An entity's inherent risk is determined by having regard to products types, geographical location, distribution channels and customer type. At this stage, the RBM also relies on the results of the NRA, entity ML/TF risk assessments, inspection reports and other information sources to adequately apply its RBA to AML/CFT framework. For instance, inspections are conducted based

on the risk presented by the various entities as per the results of the risk assessment and focus is on entities classified as high risk and medium risk.

276. The FIA has AML Examination Manuals used to identify the reporting institution's ML/TF risks, develop examination scope, and document the plan. This process includes determining examining staffing needs and technical expertise, and selecting examination procedures.

277. The RBM has a dedicated AML/CFT inspections unit and has put in place a prioritisation framework based on the risk categories of its entities and sectors. The unit has a staff compliment of five out of an establishment of nine and uses other staff within the prudential units, where relevant, when undertaking AML/CFT supervision. The staff from the prudential units are selected based on the sector being inspected. This has enabled the RBM to further appreciate the overall and specific risks associated with the entity being inspected. Given the size and risk profile of the regulated entities, it is the view of the assessors that the staffing compliment is reasonable to enable the RBM to sustain the current supervisory actions.

278. The RBM has conducted a number of inspections on banks and non-bank FIs using a risk-based approach, even long before the FCA made it mandatory for supervisors to apply an RBA monitoring process. The FIA increased, albeit from a low base, its inspection focus following the amendments to the FCA (i.e., post 2017). There is evidence to suggest that the FIA and RBM use their understanding of ML/TF risks in the financial sector to coordinate supervisory actions including conducting of joint inspections. In addition, the RBM conducted an SRA that was used to develop and implement supervisory tools and informs the annual supervisory plan on a risk-sensitive basis.

279. The RBM conducts full scope and thematic inspections and event-based on-site supervision visits using the risk assessment and supervision manuals. The RBM uses a combination of the off-site tools mentioned-above to determine high risk areas requiring more attention to inform its on-site supervision activities. The scope of a thematic inspection is specific to a particular ML/TF-related matter as determined by the ML/TF risks identified. The RBM also conducts full scope inspections which generally cover broader compliance programs related to risk assessments, compliance functions, internal controls, CDD, internal or external audits, correspondent banking, TFS lists, wire transfer, and overall compliance function such as as record keeping, ongoing monitoring, and training and awareness.

280. In both instances described above, the scope is also guided by, inter alia, reports from the FIA, outcomes of off-site assessments, previous on-sites assessments and the media. The RBM has detailed operating procedures covering file sampling, and which is further tailored to meet the needs of the type and scope of the on-site visit (e.g. thematic, routine or event-driven) and any specific risks identified during the course of the inspection. The corresponding reports seen by the assessors appear to be thorough as per the supervision manuals.

Table 25: On-site inspections conducted by RBM and FIA on FIs (2014-2017 as at June 2018)

Type of Financial Institution	Number of AML/CFT on-site examinations				
	2014	2015	2016	2017	2018
Banks	9	10	7	10	1
Microfinance	0	0	0	1	0
Money changer	0	0	4	0	0
Life Insurance	1	3	0	2	1
MVTS (remittance)	1	0	0	0	2
Securities	3	1	0	4	1

281. Over the five-year period (2014–2018), RBM undertook 60 on-site AML/CFT inspections, of which 61 percent involved commercial banks. The RBM prioritises the supervision of all nine banks, largely because of the materiality and inherent risks emanating from total asset value and the swift nature of concluding transactions through the sector. Overall, Malawi regards commercial banks as posing a medium ML/TF risk.

282. The money-changers and MVTS have been classified as medium risk. Despite having the same rating as the banks, and while being cognisant of the materiality of the banks, the AML/CFT supervisory focus on the money-changers and MVTS has been insufficient. For example, only three inspections were conducted on MVTS between 2014 and 2018 while foreign-currency changers were last inspected in 2016. This approach of not testing the rigour of the AML/CFT programmes of the MVTS may render the industry vulnerable to abuse by criminals. As regards the insurance sector Malawi has 5 life insurers. Malawi has assessed the ML/TF risks of the insurance industry and determined that the endowment policy is Medium High risk. This is largely because of the non-face-to-face nature of the transactions, the high-net worth and high-risk customer profile including PEPs mostly access the product. Further, because life insurers represent approximately 89% of the total assets in the insurance sector, three inspections were conducted in 2017 and 2018 which are considered sufficient.

283. To facilitate the application of the examiner’s understanding of the reporting institution’s risk profile and to adequately establish the scope and intensity of the examination, the examiners amongst others, consider risk profile of the institution, review prior examination or inspection reports, related work-papers, and management’s responses to any previously identified AML issues, identify reports and processes the reporting institution uses to detect unusual activity, identify previously noted higher-risk operations, and review recommendations for the next examination.

284. The DNFBPs have remained largely unsupervised and not monitored prior to the FIA assuming supervision and monitoring powers over them in 2017. Some improvements, albeit inadequate, have been noted subsequent to the FIA assuming supervisory and monitoring powers.

285. While the Real Estate sector is considered high risk, it has only been subjected to limited supervision. The Legal Professionals and Dealers in Precious Metals and Stones have remained largely unsupervised despite posing medium risk. Therefore, the supervision of the Real Estate,

Legal Professionals and Dealers in Precious Metals and Stones sectors, for compliance with AML/CFT obligations is at infancy stage and not commensurate to the identified risks.

Table 26: On-site inspections conducted by FIA on DNFBPs (2014-2018)

Type of Financial Institution	Number of AML/CFT on-site examinations				
	2014	2015	2016	2017	2018
Casinos (including internet casinos)	0	0	1 ¹⁸	11 ¹⁹	8
Real Estate Agents	4	0	0	0	1
Legal professionals	0	0	0	4	0

286. Although prior to August 2018 the MGB undertook joint inspections with the FIA, the MGB is still in the process of enhancing its AML/CFT supervisory capacity after it was designated as a supervisor in August 2018.

287. The MGB applies an RBA AML/CFT Inspection Manual to guide its inspections which it came into place following the coming into effect of the FCA during 2017. Since then, the MGB has undertaken a number of AML/CFT inspections and they appear to address the high-risk ML/TF issues identified. Some inspections were conducted jointly with the FIA. Since assuming supervision mandate, the MGB has conducted inspections in all the casinos.

288. The assessors noted with concern that, there has not been on-site inspections conducted on dealers of precious metals and stones. Thus, the supervisory approach, or inadequate supervision, is not commensurate to the medium ML/TF risks associated with the sector.

Remedial actions and effective, proportionate, and dissuasive sanctions

289. Under the FCA, supervisory bodies have sufficient powers to issue a wide range of sanctions including administrative penalties such as warnings, remedial notices, monetary penalties, and publication of sanctions in the widest distributed newspaper. The supervisory bodies have issued various administrative penalties in terms of the FCA.

290. Prior to 2017, the RBM was using supervisory powers emanating from the Financial Services Act (FSA) to enforce non-compliance with AML/CFT obligations on its regulated entities. Under the FSA, the RBM had administrative powers for non-compliance with financial sector laws and AML/CFT. As such, the RBM had issued directives to Banking, Securities, Life Insurance and Micro Finance sectors to remediate AML/CFT non-compliance issues identified during inspections.

291. After the inspections, the RBM continues with on-going monitoring of the inspected entity on a risk-sensitive basis by, inter alia, requiring the inspected entity to report on regularly (i.e., quarterly or any other period depending on the nature of the findings) basis on progress made in addressing the adverse findings. The RBM on-going monitoring process has specific time-lines set for purposes of remediation.

¹⁸ Done by FIA alone

¹⁹ Joint inspection for FIA and MGB

292. Analysis of the inspections reports and discussions on AML/CFT compliance issues held with the FIA and RBM found the following as main areas of non-compliance: Inadequate AML/CFT Policies, Incomprehensive AML/CFT risk assessments, Inadequate AML/CFT Training program, Inadequate Customer Identification Program, Inadequate enhanced due diligence measures on High Risk Customers, Inadequate review by Internal and External Audit Function, Inconsistent Large Currency Transaction reporting.

293. Actions taken by the RBM so far are mostly issuing directives to FIs to take remedial actions. The process for issuing of remedial actions is that the RBM engages the inspected FIs through different mechanisms such as letters, reports and follow-up inspections. The RBM instructs FIs in formal written communications to provide remedial actions and the measures to be taken are specified with timelines to adopt corrective measures. Institutions then adopt corrective measure, which are followed-up within the specified timelines. The inspected FI is required to submit progress on how it has addressed, or is addressing the action items agreed to with the RBM. This enables the RBM to monitor progress and, if necessary, take commensurate measures to enforce compliance.

294. No sanctions were issued during 2014 and 2015. During 2016, the RBM issued a warning to a bank under the FSA. Since the coming into force of administrative sanctions under the FCA in 2017, the RBM has issued monetary and administrative sanctions for non-compliance, in addition to remedial actions. In one case, the RBM issued a MK25million fines on a bank for not implementing AML/CFT remedial actions and for failing to submit an action plan post an inspection. Furthermore, a written warning was issued to a bank for repeat non-compliance findings while another bank found non-compliant on filing of STRs was directed to immediately file an STR with the FIA. In addition to these, a securities firm was fined MK30million by the RBM for failing to implement previous AML/CFT recommendations. Overall, the RBM has observed non-compliance issues, but has generally directed institutions to take remedial actions as it considered the violation not so grave as to require a sanction. It is the view of the assessors that the remedial actions taken by the RBM were, to some extent, proportionate in the context of the stage of AML/CFT development in Malawi.

Table 27: Sanctions Issued to FIs (2016 – 2017)

Year	Nature of violation	Type of Sanction	Law
2016	Non-compliance to on-site examination and AML/CFT requirements especially on record keeping practices	Warning letter	FSA
2017	Failure to implement most of the previous AML/CFT on-site examination recommendations	Monetary penalty of K30 million	FSA
2017	Failure to submit an action plan for the implementation of AML/CFT on-site examination recommendations within the stipulated deadlines	Monetary penalty of K25 million	FSA

2017	Failure to implement some of the previous AML/CFT on-site examination recommendations	First and final warning	FSA
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295. Malawi is yet to apply sanctions for violation of AML/CFT requirements by DNFBPs. This could be attributed to the low level of supervision in the sector and the recent nature of the administrative sanctions under the FCA, 2017.

Impact of supervisory actions on compliance

296. The FIA and the RBM have taken various supervisory actions including on-site inspections and on-going monitoring, albeit mainly on FIs which have improved, to some extent, the level of compliance with AML/CFT obligations. FIs expressed that, the mere fact that they know supervisory bodies will conduct on going monitoring and have powers to enforce sanctions discourages them from being non-compliant. In general, supervised entities interviewed regard the inspections as a platform that enables them to identify and rectify weaknesses, and therefore have a positive attitude to being supervised and monitored by the supervisory bodies. As such, the supervisory actions are, to some extent, dissuasive.

297. However, the focus of the supervisory actions in the country has been mainly on commercial banks and, to some extent, on insurers, law firms, securities and casinos. Thus, the positive impact of the supervisory actions so far identified has not filtered throughout the broad spectrum of the supervised entities based on risk. For instance, the real estate industry sector is regarded as posing higher ML risks in Malawi, but it was largely left unsupervised with 4 inspections conducted in 2014 and only 1 inspection conducted in 2018.

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

298. The FIA in conjunction with the RBM and the MGB have undertaken numerous initiatives to create awareness among reporting entities about ML/TF risk and the obligations arising from AML/CFT legal and regulatory frameworks. The mechanisms used included workshops, issuance of guidelines, and provision of training conducted on an on-going basis to enhance compliance by FIs and DNFBPs.

299. The FIA, the RBM and the MGB have also provided feedback to inspected reporting entities aimed at enhancing the reporting entities' understanding of ML/TF risk and application of mitigation measures. Further, reporting entities receive copies of the inspection reports containing the outcomes of on-site inspection with outcomes on the ML/TF risks and vulnerabilities identified and remedial measures. The majority of the reporting entities confirmed that the FIA and the RBM undertook awareness raising activities, which they found beneficial to them. The assessors noted differential impact of these initiatives on reporting entities. For instance, banks and insurers demonstrated a good understanding of their obligations and generally had robust AML/CFT internal control programmes, which they attribute, among other things, to the engagements they had with the RBM and the FIA. On the other hand, understanding of AML/CFT obligations as well as ML/TF risks among DNFBPs has only started improving recently following the increased intensity and frequency of the awareness programmes by the FIA. However, more work is

required in respect of raising compliance levels in the casino and the precious metals and stones dealers particularly in relation to the recent legislative changes under the FCA and TFS obligations. 300. In Malawi considering the materiality and sector significance, aspects of supervision were weighed most heavily for the banking sector compared to the other sectors even if some of the sectors posed a similar risk rating. This is largely due to the recent nature of the risk-based supervisory framework and enforcement powers under the FCA for all supervisors except for the RBM which has been enforcing AML/CFT violations under the FSA.

Overall Conclusions on Immediate Outcome 3

Malawi has achieved a Moderate Level of effectiveness for IO.3.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- a) Basic information on legal persons incorporated in Malawi is readily accessible at the Registrar of Companies, mostly within 72 hours. Competent authorities access the information free of charge but reporting entities and members of the public access it at a fee. The information available is being kept manually and includes information on the form and type of the legal entity, the shareholder, director and company secretary information, shareholder information which has to be updated whenever there are changes (kept at the legal person's registered office), and the registered office of the legal entity. This information in practice is however not updated on a timely basis and therefore may not be at all times accurate.
- b) Though Malawi considered the transparency of legal persons as part of the 2018 NRA exercise and identified the inherent risks on some of the legal persons, the NRA does not comprehensively cover how the different types of legal persons created in the country are being misused for ML/TF purposes. Due to this, the competent authorities, the Department of the Registrar General and other relevant institutions including the companies and reporting entities do not have sound understanding of the risks that arise from the types of legal entities and related practices in Malawi.
- c) Reporting entities obtain information on BO as part of the CDD requirements and this information is accessible to competent authorities. However, the reporting entities could not vouch for the BO information they obtain being accurate as they had nowhere to verify it. Also, due to most of the transactions being carried out in cash in Malawi, it was not in all cases that legal persons had to open bank accounts or transact with reporting entities which limited obtaining of BO information on some of the companies.
- d) Trustees of legal arrangements in Malawi are not required in terms of common law or case law to obtain and maintain information on settlors, beneficiaries, or other persons exercising ultimate control over the trust
- e) Malawi has not sufficiently implemented specific mitigating or preventive measures to enhance the transparency of legal entities and legal arrangements created in the country as

the Registrar General Office is under-resourced and cannot therefore monitor non-compliance issues in respect of companies and take appropriate actions accordingly. The assessment done of the ML/TF risks of the different types of legal persons created in Malawi was not comprehensive.

- f) Sanctions are not being applied consistently or at all where instances of non-compliance are identified.

Recommended Actions:

Malawi should:

- a) Introduce a legal framework which will enable Malawi to obtain and maintain accurate information on BO for legal persons which do not open bank accounts or transact with reporting entities.
- b) Improve the quality of information available on the companies register by ensuring that information collected by Registrar General is accurate and up-to-date.
- c) Provide adequate resources to Department of the Registrar General to be able to follow up on non-complying legal persons and arrangements and build awareness on the risks that arise from the types of legal entities and related practices in Malawi.
- d) Take steps to mitigate the vulnerabilities on obtaining BO information of legal persons and arrangements identified in the 2018 NRA and conduct a comprehensive risk assessment with a view to identify ML/TF risks associated with transparency of the different types of legal persons that can be created in Malawi and legal arrangements, including entities with foreign ownership and the issue of nominee shareholders.
- e) Conduct outreach to FIs which are not foreign-owned or which have no foreign control and DNFBPs on obligations to collect beneficial ownership information to foster a greater understanding of the concept of beneficial owner.
- f) Ensure effective, proportionate and dissuasive measures are taken against non-compliance.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

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

301. The information on the creation and types of legal persons, and public trust is available through the different legislation which makes provision for incorporation or registration. This legislation can be easily accessed physically at the Registrar General's (Registrar General) head office and online on its website²⁰. Information on the creation and types of legal arrangements (trusts) in Malawi is not publicly available as it is established mostly under common law. The other information kept by the Registrar General is accessible to LEAs free of charge and at a fee to

²⁰ <https://www.registrargeneral.gov.mw/>

members of the public including the reporting institutions. The searches are manual and it takes a maximum of 72 hours to get the information.

Identification, assessment and understanding of risks and transparency of legal persons and arrangements

302. Malawi considered the transparency of legal persons and arrangements as part of the 2018 national risk assessment and assigned a rating of medium high to the input variable because beneficial ownership information is not collected and stored by the Registrar General. However, the Registrar General should not be the only institution which was referred to in identifying, assessing and understanding of risks and transparency of legal persons and arrangements, thus, the scope applied was not wide enough as the Companies Registry is only but one of the sources of information on basic and BO information of both legal persons and arrangements that can be used. There should also be other sources of information including the reporting entities, companies themselves, and MRA, among others.

303. The information maintained by the Registrar General is not updated. The commercial registry of Malawi does not ordinarily liaise with the company/commercial registry where the foreign shareholder is registered to validate the information supplied, companies registered under the old law (1984 Companies Act) whose information have not been updated according to the requirements of the new law pose a high risk as the registration requirements under the old law were not comprehensive. Moreover, there is no due diligence in terms of ML/TF risk done by the Registrar General when legal persons are created in Malawi.

304. The NRA noted further that Malawi has no legislation regulating Settlement Trust/Private Trust and there is no register for Private Trusts which makes it difficult to identify and verify the beneficiaries of a particular Trust. The 2018 NRA drew lessons from the *Cashgate* (See on IO7) and other cases and noted that various forms of legal persons were involved in ML crimes in the country. The report concluded that the types of the legal entities used were not used because of the loopholes in the legal framework but simply because the registered businesses or companies were the ones through which funds from government could easily be syphoned without easy detection. However, the assessors noted that what the NRA report describes are the inherent vulnerabilities created by weak legislation but did not go further to determine or assess whether any of the these weaknesses did actually manifest into ML/TF risks affecting any type of the legal persons created in Malawi (pg 180 of the NRA report), particularly linked to the *Cashgate* cases or the types of companies which might be exposed to such risks.

305. The authorities cited some cases of how contractors/suppliers with limited liability companies and partnerships were used in the *Cashgate* case. At page 181 of the NRA report, the authorities describe some of the businesses/companies being registered a few months or days before receiving a fraudulent payment later associated with the *Cashgate* cases. This demonstrates the ML risks associated with the natural persons creating these types of legal persons/businesses and the potential use of these types of legal persons for committing the subsequent crimes not being assessed or identified at the time of their creation or at any other time after their creation before committing the offences. However, what is more critical is that NRA report does not proceed to indicate any subsequent action being taken against these legal persons in terms of prosecution, blacklisting, being struck off or de-registered. Some of the cases cited in the report where legal

persons/businesses were involved include: *Republic v Oswald Lutepo*; *Republic v Maxwell Namata and Luke Kasamba*; and *Republic v Esnart Nenani Ndovi*.

306. Apart from the above underlying factors, the NRA did not comprehensively identify and assess the threats, vulnerabilities and risks of the full range of legal persons and arrangements created in Malawi. The assessment did not cover transparency of Malawian companies with foreign ownership and the issue of “nominee” shareholders. An assessment of the risk of misuse of legal persons need to be carried out in the context of the predicate offences considered by the NRA to be more prevalent and the sectors considered to be at most risk to be used for ML.

307. Competent authorities, particularly the Registrar General’s Office and the reporting entities do not have sound understanding of the risks that arise from the types of legal entities and arrangements they deal with and related practices in Malawi.

Mitigating measures to prevent the misuse of legal persons and arrangements

308. Malawi has not sufficiently implemented specific mitigating measures to increase the transparency of legal entities created in Malawi. Though the FCA requires reporting institutions to collect and keep beneficial ownership information of their customers and clients, some LEAs and the reporting entities met during the onsite have admitted that they do not have all the information required under the law on the legal persons and arrangements. This has been confirmed through the findings of inspections carried out. Other conclusions were to the effect that data storage at both the Registrar General and that of Deeds was still being done manually with both Registries having only started to file some of the information electronically, which made it difficult to easily and quickly access information kept by both Registries. Assessors were informed during the onsite visit that the MoJCA is working on draft regulations to be issued under the Companies Act to mandate the Registrar General to obtain and require companies to provide information on beneficial ownership.

309. During the onsite visit, assessors noted that access to the beneficial ownership information of foreign legal persons or legal arrangements in Malawi is difficult since the Registrar General does not collect information through international cooperation and the law does not require him to obtain such information. The authorities indicated that where legal persons have a business relationship or conduct a transaction with a FI/DNFBP, the BO information would be obtained by the FI/DNFBP. However, since legal persons and legal arrangements have no obligation to open a bank account and are likely to operate in or as part of the informal economy in Malawi, obtaining BO information of legal persons from the FI/DNFBP might not be all the time possible.

310. Bearer shares and nominee shareholders are not allowed in Malawi under the Companies Act, 2013.

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

311. Competent Authorities in Malawi access basic information on legal persons and legal arrangements from the company registry. However, the Registrar General does not always implement the mechanisms that ensure that the information kept in the company’s registry is accurate and updated on a timely basis as companies do not always submit their annual returns on time and sanctions are not always imposed to encourage compliance with the obligation.

Companies are also expected to keep the register of shareholders or members which Competent Authorities can use to access basic information. However, the Registrar General due to shortage of resources does not conduct inspection of companies' shareholder registries to ascertain accuracy of information kept by companies although the law allows the Registrar General to conduct inspection and impose sanctions in the event of non-compliance with the Act. Therefore, such basic information is not always accurate, up-to-date and reliable.

312. Further, though the Companies Act creates an obligation on companies to submit information on changes to the ownership, control structure and the audited financial statements to the Registrar General, the extent of compliance with this obligation is low because of lack of capacity and limited resources at the Registrar General's office. The Registrar General does not follow-up on all of the non-complying companies but handles such violations only when such companies show up in his office for other matters and the non-compliance is noted. Due to this, therefore, the Company register may not contain adequate, accurate and current information about a company at any given point in time.

313. Authorities indicated that information kept by the Registrar General is accessible to LEAs free of charge and at fee to the public including the reporting institutions. However, the searches are manual and it takes up to 72 hours to get the information needed which makes it difficult to access information kept in the company registry in a timely manner.

314. The NRA findings and discussions that occurred with the authorities revealed that company's registry does not contain beneficial ownership information with regards to both domestic or foreign owners, as a result access to and the reliability of beneficial ownership information depend mainly on the information collected by reporting entities. In this regard, the data on beneficial owners held by FIs obtained in the course of their CDD and record keeping process can be accessed by competent authorities to obtain beneficial ownership information. The reporting entities met during the on-site indicated that although they implement the requirements to obtain information on BO during their CDD processes as provided by the law, it was difficult to verify the information as no public institution kept such records. However, they further contented that due to the nature of the legal persons created in Malawi which do not normally involve complicated structures, it was easy for most financial institutions to determine who the UBOs or natural persons who have ultimate control are. The banks interviewed also indicated that trusts formed a very small percentage of their businesses so much that the business involving trusts was insignificant. About three banks met during the on-site, indicated that they had been approached by different LEAs requesting for BO of companies which hold accounts with them, particularly the ACB and FFU. The same averments were made by ACB and FFU. ACB provided 12 cases where it had gone to different FIs to seek information on UBO during an investigation. The ACB confirmed that in all the 12 occasions it had asked for the information, it was provided to it and it was helpful to the investigations which were being undertaken.

315. The other limitation to the scope of UBO information as described by the authorities was that legal persons and arrangements are not required by law to open a bank account but they are required by banks to have registration certificates for purposes of opening bank accounts. Assessors noted that the disadvantage of not having this as a requirement was that since legal persons and arrangements are not obliged to open a bank account or have any other business relationship where they might end up being subjected to CDD requirements, the scope of UBO

information might be limited as legal persons dealing mostly with the informal sector like in Malawi might not see the need to use a FI due to the cash based nature of most of the transactions.

Effectiveness, proportionality and dissuasiveness of sanctions

316. The legal regime adopted in 2017 introduced many sanctions for non-compliance especially in the context of CDD for the reporting entity, but they have not been applied in a dissuasive and proportionate manner. The sample of inspection reports provided contains findings of non-compliance with CDD requirements.

317. Sanctions for legal persons are also available in terms of the Companies Act (ss. 343-345 and 381). But these do not appear to be dissuasive and proportionate as they are only of small fines and are not evenly applied as the Registrar General does not have sufficient resources to check which companies are complying with the Companies Act. In addition, the Companies Act does not provide for sanctions (e.g. struck off) for not submitting the required annual returns though the authorities provided some information regarding sanctions in actual practice. The authorities indicated that the 48 companies which were deregistered in Malawi were either on a voluntary basis or the companies ceased to do business in Malawi. Further, in most cases, the Registrar General does not file a criminal complaint but prefers to impose administrative sanctions. According to the authorities, the office has been writing to companies to pay penalties for non-compliance but only few companies would comply and the rest did not pay as the Registrar General does not have sufficient enforcement mechanism due to lack of resources.

318. Trustees' incorporation are supposed to file annual returns with the Registrar General. However, the authorities indicated that this is not being enforced by the Registrar General due to lack of resources.

Overall Conclusions on Immediate Outcome 5

Malawi has achieved a low level of effectiveness for Immediate Outcome 5.

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings:

- a) Generally, Malawi has a sound legal framework providing for a broad range of timely and constructive international cooperation such as MLA and extradition. International cooperation is also facilitated by international conventions and regional networks such as ARINSA and SARPCCO. However, limited statistics on international cooperation constrains effectiveness of the international cooperation framework.
- b) International Cooperation Unit at the Directorate of Public Prosecutions is not adequately resourced to properly handle MLA and extradition requests. The Unit has only three staff members and does not maintain case management system to manage and prioritize processing of MLA requests and therefore it was difficult to the assessors to make a determination on how timely the authorities have been able to provide MLA.
- c) Malawi has not received any request for MLA relating to ML or TF since 2013 and have made only two MLA requests on ML in the last four years. Most MLA or other forms of cooperation received relate to predicate offences.
- d) The FIA is an Egmont Group member and exchanges information with foreign counterparts. It actively responds to requests for information from its foreign counterparts but have not had an incident that requires Malawi to seek any information from abroad. The FIA has also to some extent responded to international requests on basic and beneficial ownership information relating to legal persons.
- e) International responses on international cooperation provided by some countries indicates there was lack of or minimal MLA and extradition requests on ML or TF received or sought by Malawi in the last four years.
- f) Beneficial ownership information is not always readily available which is an impediment to effective information exchange and Malawi uses these channels very rarely in relation to ML/TF investigations.

Recommended Actions:

Malawi should:

- a) Provide adequate trainings to LEAs and reviewing effectiveness of measures related to provision or seeking of international cooperation.
- b) Provide adequate resources to the International Cooperation Unit within the Directorate of Public Prosecutions and maintain case management system to manage and prioritize international cooperation requests.
- c) Ensure effective response, in a timely manner, to international cooperation requests especially requests for MLA and extradition.
- d) Establish mechanisms to identify and exchange information on the beneficial owners of legal persons and arrangements.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Background

319. Competent authorities in Malawi have legal basis for providing and seeking MLA and extradition as well as other forms of international cooperation. The Mutual Assistance in Criminal Matters Act (MACMA), Extradition Act and the Financial Crimes Act have enabling provisions for Malawi to provide and seek MLA and extradition requests with commonwealth countries. MLA and extradition to other countries outside of the commonwealth are determined by bilateral and international agreements. Besides, each competent authority has specific legal mandates to facilitate other forms of international cooperation. In practise, the Directorate of Public Prosecutions (DPP) by delegating the AG is the Central Authority for MLA and extradition requests, but most of the requests are referred to the Ministry of Foreign Affairs and International Cooperation (MoFAIC) to relevant jurisdictions. MoFAIC also facilitates processing of requests and responses for mutual legal assistance and extradition. Usually a Central Authority for MLA and extradition requests is the authority that request and receive MLA and extradition requests directly. That is the same process which is followed when foreign requests are received. However, the DPP in some cases receives requests on MLA from requesting jurisdictions, directly.

Providing constructive and timely MLA and extradition

Mutual Legal Assistance

320. The mechanism for the transmission and execution of incoming MLA requests is as follows: Requests for MLA are received through the MoFAIC which analyses the request to find out if it is based on an existing treaty or agreement then it transmits such requests to the Attorney General's office with a copy to the Solicitor General's office. MoFAIC facilitates processing of requests and responses for mutual legal assistance and extradition. The analysis process at the MoFAIC takes a maximum of three days. Although the MoFAIC does the initial analysis of the request, in practice MoFAIC does not reject any MLA requests on the basis of any formal deficiencies, but rather leaves handling of the request to the Attorney General's office.

321. Once a request for MLA is in the Attorney General's Office it is sent to the International Cooperation Unit within the Directorate of Public Prosecutions for detailed analysis. The Unit currently has 3 officers assigned to it, namely: one Senior Deputy Chief State Advocate (SDCSA) and two Senior State Advocates (SSA). Upon receipt of the request, the Unit performs detailed analysis to verify whether the request satisfies the legal requirements. The Attorney General liaises with the appropriate LEAs for execution of the MLA requests that meet the legal requirements and sets the timeframe for the response. Authorities in Malawi may refuse requests for MLA on grounds set out in R.37 of the MACMA. Assessors did not find the grounds for refusal to be unreasonable. In practice, Malawi has never refused any request for MLA.

322. Between 2013 and 2018, Malawi did not receive any request for MLA relating to ML. Malawi follows all crimes approach in defining predicate offences. Between 2013 and 2018 Malawi received 5 requests for MLA in relation to genocide. Malawi also received request for MLA in relation to 2 wildlife cases and 2 requests on drug trafficking within the period. For example, Malawi has provided mutual legal assistance in a case involving ivory smuggling (*The Republic vs Patrick Kaunda and Chancy Kaunda*). Tanzanian authorities requested Malawi to provide

information on the case, which was provided and investigations conducted on behalf or jointly with Tanzania on 781 pieces of ivory valued at K4-billion. The ivory was confiscated and later burnt in 2016. There has never been a case requiring sharing of assets. An intention to proceed with extradition was also expressed on the same case. The Tanzanian authorities are yet to come back to Malawi. Since there was no other evidence provided to the assessors, it was not possible to make an assessment of whether Malawi is effectively implementing its laws with regard to ML/TF and provisional and confiscation measures nor is it possible to make an assessment of effectiveness based on what has been done so far or what could be done in the future.

323. On a different case on drug trafficking, *Rep v Benitez Rosellyn Luz Marina*, upon her conviction in Malawi on 10th March 2018, the Venezuelan embassy in Mozambique sent to Malawi a letter of request for mutual legal assistance. They requested for the court record of proceedings and info on any investigation that Malawian authorities had done in the case. The request was based on the principle of reciprocity. Malawi complied and provided the information requested on 16th March 2018.

324. Malawi has not also received any MLA request on TF and the Authorities attributed the request with the low risk of TF as informed by the 2013 and 2018 NRAs.

325. Authorities indicated that, in general, they respond to foreign MLA requests in an average of two months depending on the type of request received and which is the same approach taken with any other case being dealt with by the International Cooperation Department. However, the statistics provided by the authorities do not seem to corroborate this timeframe.

326. International responses on risk situation and international cooperation in relation to the Malawi ME provided by FATF/FSRBs countries indicates lack of or minimal MLA and extradition requests on ML or TF received by Malawi in the last four years. The response given could not therefore speak on the quality and timelines of responses.

327. Domestically, Malawi's legal framework allows authorities to provide a wide range of assistance to MLA requests. However, Authorities have not developed guidelines on the prioritisation and the timely execution of incoming requests. Although authorities stated that all international requests are given high priority, they do not maintain case management system to manage and prioritise the processing of incoming MLA requests.

Box 7: Case Example of a successful response to MLA request

Name

Mutual Legal Assistance Pertaining to Mr. X

Type of Offence

Mr. X, a Chinese national was alleged to have stolen MK45, 000,000 equivalent to US\$60,000 from Mr. Y, also a Chinese National. He would be charged with Theft by Servant in Malawi. The offence was alleged to have been committed between April and May 2018 in Lilongwe, Malawi.

Type of Request

The Chinese relevant Authority requested for evidence with regard to the alleged offence committed by Mr. X for the appropriate authority in China to prosecute.

Status

The Malawi government through the DPP facilitated the preparation of the investigative file which was transmitted to the relevant Authority in China in August 2018.

328. Malawi provided MLA requests on crimes other than ML/TF to countries in the region namely South Africa, Tanzania, Rwanda and Zimbabweas follows:

Table 28- Mutual Legal Assistance Requests

	2013 - 2017	2018
Number of MLA requests received	- 5 from Rwanda on genocide in 2016 - 2 wildlife requests in 2016 from Tanzania - 2 on drug trafficking	-1 from Zimbabwe on drug trafficking on 2 July 2018
Number of requests granted	3 (2 wildlife & 1 drug trafficking)	0
Number of requests refused	0	0
Number of requests under consideration	6 (5 requests on genocide still under consideration. Locating the subjects has been unsuccessful. 1 on drug trafficking still outstanding)	1 (recent request)
Average Time required to respond	2 months	-

Extradition

329. All incoming extradition requests to Malawi are sent via diplomatic channels to the MoFAIC. Like MLA requests, extradition requests are then forwarded to the AG’s Office and handled by the International Cooperation Unit within the Directorate of Public Prosecutions. The Unit analyses the request and applies for an authority to proceed to the Minister on behalf of the designated country in which the fugitive offender to be surrendered is accused or was convicted.

330. A warrant for the arrest of a fugitive offender may be issued by court on the receipt of the authority to proceed issued by the Minister or upon such evidence as would in the opinion of the court authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or alleged to be unlawfully at large after conviction of an offence within the jurisdiction of the court.

331. Where an authority to proceed has been issued in respect of the person arrested and the court is satisfied, based on the evidence tendered, the court should commit that person to custody to await his surrender.

332. Between 2013 and 2018, Malawi received one ML-related extradition request. There was no TF related extradition request within the period. Malawi also received 1 extradition requests related to other criminal offences, namely genocide (13), theft (2), murder (1), house breaking and theft (1). Only three of the requests made have been granted and the rest are still pending in court. As shown on the Table below, it takes between four months and two years to facilitate extradition requests depending on the case.

Table 29: Statistics on extradition requests received by Malawi between 2013 and 2018

	Money Laundering		Terrorist Financing	Other criminal offence	
	2013-2017	2018	-	2013-2017	2018
Number of extradition requests received relating to domestic nationals	0	1 from South Africa on ML & fraud	0	3 from South Africa in 2017 on theft (2) and murder & theft (1)	0
Number of extradition requests received relating to foreign nationals	0		0	12 from Rwanda in 2016 on genocide	1 from Tanzania on house-breaking & theft 1 from Rwanda on genocide
Number of extradition requests granted relating to domestic nationals	-	(under consideration)	0	2 (1 on murder & theft is pending)	
Number of extradition requests granted relating to foreign nationals	0	0	0	1 granted but matter in court 11 are pending following request of further information from Rwanda	(all are under consideration)
Number of extradition requests refused relating to domestic nationals	0	0	0	0	0
Number of extradition requests refused relating to foreign nationals	0	0	0	0	0
Average Time required to finalise the request	-	-	-	4 months to 2 years (Time to provide depends on circumstances, availability of the suspect, etc)	4 months to 2 years (Time to provide depends on circumstances, availability of the suspect, etc)

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

333. Malawi has made two MLA requests on ML in the last four years. During the onsite visit Authorities indicated that most MLA requests made were on predicate offences, mostly relating to stealing by public servant, fraud and corruption. Most of the MLA requests by Malawi were made to countries in the region, namely Kenya, Uganda, Botswana and South Africa. Authorities

indicated further that there were also a number of requests made to jurisdictions outside the region such as UAE, China and Hong Kong, China. Most of these requests were acknowledged but not responded to.

Box 8: Example of a request for legal assistance for international cooperation

In a case of **Brian Makoti and Oscar Kapito**, Malawi sought assistance from Botswana in March, 2018 on a case relating to fraud and ML. Botswana authorities provided assistance within a month. Oscar Kapito was convicted of ML and fraud and sentenced to 12 years while Brian Makoti was acquitted due to lack of evidence.

In the case of Republic Vs X (Criminal case No. 35/2014) which was in progress during the onsite visit Malawi sought assistance from South Africa on X, one of the persons who jumped bail and was alleged to be living in South Africa. Malawi made request in 2017 which at the time of the onsite was yet to be responded.

334. Between 2013 and 2017, Malawi had not sought extradition requests. It had not also made request for any assistance on TF or terrorism and there had been no any TF or terrorism prosecutions in the country. Authorities attributed lack of MLA requests on TF to the low risk of terrorist financing activities in Malawi.

Seeking and providing other forms of international cooperation for AML/CFT purposes

335. Competent Authorities in Malawi have defined procedures and processes which provide for other forms of international cooperation and information exchange with their foreign counterparts on AML/CFT matters.

336. Authorities indicated that FIA is involved in the exchange of information with its foreign counterparts. FIA is a member of the Egmont Group of FIUs where it shares information with counterparts through the Egmont Secure Web (ESW). Further to that FIA shares information with other FIUs based on bilateral MoUs. The FIA has signed 21 MoUs with its counterparts within and outside the ESAAMLG region.

337. The ACB and DPP used intelligence provided by FIA to successfully investigate and prosecute one of the *Cashgate* suspects, Leonard Kalonga. This was achieved through sharing of information through the ESW after signing an MoU with the concerned jurisdiction.

338. FIA has exchanged information with foreign counterparts (including UK, South Africa, UAE, India, USA, Japan, British Virgin Island, Malaysia, and Isle of Man) mainly through the Egmont Secure Web (ESW). Between 2013 and 2018 FIA received a total of 25 requests from foreign counterparts, granted a total of 24 requests and made a total of 27 requests to other FIUs as shown in the tables below.

Table 30: Statistics of exchange of information between FIA and its foreign counterparts

	No. of Requests of Information received from other FIUs						
Year	2013	2014	2015	2016	2017	2018	TOTAL
Number of requests received from other FIU	2	5	4	6	5	3	25
Number of requests granted	2	5	4	6	5	2	24
Number of requests refused	0	0	0	0	0	0	0
Average time required to respond to a request	4 – 8 weeks	4 – 8 weeks	4 – 8 weeks	4 – 8 weeks	4 – 8 weeks	4 – 8 weeks	4 – 8 weeks
	Spontaneous Referrals of Information by the FIA						
Year	2013	2014	2015	2016	2017	2018	TOTAL
Number of spontaneous referrals of information made by FIA to foreign authorities	0	0	0	2	0	4	6

Table 31: Requests for information received from other FIUs (ESW)

YEAR	NO. OF REQUESTS
2013	2
2014	4
2015	4
2016	6
2017	3
2018	3
TOTAL	22

Table 32: Requests for information made to other FIUs (ESW)

YEAR	NO. OF REQUESTS
2013	1
2014	5
2015	2
2016	7
2017	11
2018	1
TOTAL	27

Table 33: Spontaneous Disclosures from other FIUs to FIA

YEAR	NO. OF DISCLOSURES
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2014	6
2015	5
2016	7
2017	6
2018	0
TOTAL	24

Table 34: Spontaneous Disclosures made by FIA

YEAR	NO. OF DISCLOSURES
2014	0
2015	0
2016	1
2017	0
2018	4

339. **Malawi Police Service (MPS)** is a member of the Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO). This cooperation governs the exchange of information for purposes of investigations and joint operations exercises between countries on specific crime types. However, there is no information provided to show how Malawi exchanged information or conducted joint investigations or operations under the Southern Africa Regional Police Chiefs Cooperation Organisation.

340. The MPS is also a member of the International Police (Interpol) where it enjoys the privilege of exchanging information with other Police through Interpol platform. From 2013 to 2018 MPS through its Fiscal and Fraud Unit (FFU) requested for information from South Africa, Botswana, Nigeria, Ghana, USA, UK, Germany, Dubai, Hong Kong, China, Virgins Islands, Italy, India through Interpol and FIA. Based on statistics indicated in the table below, the number of requests made by MPS and refused is bigger than the number of requests granted. MPS needs to put a mechanism in place to get feedback on the quality of its requests and provide guidance to its officials in application for other forms of international cooperation.

Table 35: number of requests that FFU made to Foreign Counterparts between 2013 – 2018

Year	Number of request by FFU	Number of Requests granted	Number of requests refused	Average response time
2013	1	1	1	1 week
2014	15	3	12	1 week
2015	0	0	0	-
2016	1	0	0	-
2017	6	5	1	1 week
2018	6	2	4	1 week
Total	29	11	18	

341. The authorities sent a request to Botswana on a case involving theft by servant, who was arrested and brought to Malawi for trial. The accused was also charged with ML.

Box 9: Fraud and ML case Conviction

The suspect defrauded Blantyre Water Board K128 Million after intercepting three cheque payments from State House and Malawi Police Services meant for settling water utility bills. The cheques were deposited into a fraudulent account opened in the name of Blantyre Water Board Welfare account. The money was withdrawn by the accused and shared with his accomplices. In course of the investigations, Botswana government was asked to arrest another suspect which they did. Accused was charged with the new Financial Crimes Act section 42 and was convicted to 12 years IHL on Money Laundering.

342. The MPS through its Fiscal and Fraud Unit (FFU) exchanged information and conducted joint financial investigation with other Police counterparts in Africa. The MPS provided information to South Africa, Namibia, Kenya and Uganda and conducted joint financial investigations with Kenyan Police counterparts for the offence of Theft and Forgery and Namibia police counterparts for the offence of Theft by Servant.

Box 10: Case of ivory smuggling which was jointly investigated by MPS and DNPW

The matter was jointly investigated by MPS and DNPW

Around March 2017, information was received through INTERPOL that customs officials have seized 422 pieces of raw ivory at Suvarnabhumi International Airport. The ivory was among cargo which had been declared as 1,925 kgs of rough stones in Malawi.

A Gambian national was arrested in Bangkok in connection with the seizure. Investigation led to the arrest of another Gambian national in Malawi as well as other suspects. The Gambian national arrested in Malawi was the owner of the mining company that had just been granted an export licence. The investigation also confirmed that he personally delivered the cargo at KIA and was present during the customs clearing process. The case is still pending in court in Thailand.

Table 36: number of requests that FFS provided to its foreign counterparts between 2013 – 2018

year	Number of requests received	Number of requests granted	Number of requests refused	Average time
2013	1	1		1 week
2014	0	0	0	-
2015	1	1	0	1 week
2016	1	1	0	1 week
2017	2	2	0	1 week
2018	2	2	0	1 week
Total	7	7		

343. The MPS has also made requests for information to authorities in Dubai, Hong Kong, and China where they have received an acknowledgement letter from Hong Kong and China but they have not received any response from Dubai authorities despite several follow-ups.

344. The ACB seeks other forms of international cooperation through information exchange with counterparts like Anti-Corruption Commission of Zambia, Botswana Directorate of Corruption and Economic Crimes, National Crime Agency of the UK, and the Interpol.

345. Authorities indicated that ACB requested for information from the UK National crime Agency on four cases involving corruption and ML to enable tracing of money and property and in some case requesting for freezing of such funds or property. In 2017, ACB requested information on corruption and ML from the International Anti-Corruption Coordination Center (IACCC) based at the National Prosecutions Authority of South Africa. The requested information was provided in 2018. ACB received one request for information from Zambia in 2017 and responded within three weeks.

Table 37: Requests for assistance received by Anti-Corruption Bureau (ACB) involving AML/CFT related issues

Year	Number of requests made by LEAs	Number of Requests granted	Number of requests refused	Average Response Time
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	1 (ACB request from Zambia) on fraud and ML	0	0	3 weeks
2018	0	0	0	0
TOTAL	1	0	0	0

346. Authorities indicated that the MRA exchanges information with its counterparts (like Zambia Revenue Authority, Kenya Revenue Authority, Zimbabwe Revenue Authority and SARS). However, there were no statistics on such exchanges specific to ML/TF at the time of onsite.

347. The Department of National Parks and Wildlife (DNPW) indicated that they do exchange information with counterparts through treaties such as treaties signed with Zambia and Mozambique. However, there were no exchanges made through such treaties specific to ML/TF at the time of the onsite visit.

348. Similarly, authorities indicated that LEAs in Malawi exchanges information with their foreign counterparts through Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). However, there were no such exchanges specific to ML/TF at the time of the onsite visit

349. Supervisors have the powers to exchange information with foreign counterparts. The RBM can seek other forms of international cooperation for AML/CFT purposes on the basis of MoU. RBM has signed MoUs with foreign counterparts such as Botswana, South Africa, Mozambique, Mauritius, Kenya and Zambia. Statistics in the tables below show that there was only one request made for AML/CFT purposes and it was granted in 2017.

Table 38: Requests for assistance Provided by RBM involving AML/CFT related issues

Name of Supervisory Authority				
Year	No. of requests for assistance made	Number of Requests granted	Number of requests refused	Average Response Time
2014	1(Uganda)	1	0	6 weeks
2015	0	0	0	0
2016	1(Uganda)	1	0	3 weeks
2017	0	0	0	
2018	0	0	0	

Table 39: Requests for assistance received by RBM involving AML/CFT related issues

Year	Number of requests for assistance received by the Supervisors	Number of Requests granted	Number of requests refused	Average Response Time
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	1	1	0	1 week
2018	0	0	0	0

Table 40: Requests for assistance received by RBM involving AML/CFT related issues

Year	Number of requests for assistance received by the Supervisors	Number of Requests granted	Number of requests refused	Average Response Time
2013	0	0	0	0
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	1	1	0	1 week
2018	0	0	0	0

350. The number of requests that MRA made is indicated below:

Table 41: Number of Requests that MRA Made to Its Foreign Counterparts between 2013 and 2018

Year	Number of requests made by MRA	Number of Requests granted	Number of requests refused	Average Response Time
2013	0	0	0	-
2014	0	0	0	-
2015	0	0	0	-
2016	0	0	0	-
2017	2	1	1	1 week
2018	0	0	0	-
TOTAL	2	1	1	-

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

351. The Registrar general does not obtain and keep beneficial ownership information and therefore cannot exchange beneficial ownership information with foreign counterparts. The Registrar General has not provided beneficial ownership information from foreign counterparts.

352. Authorities indicated that RBM responds to requests from other countries requiring information on basic and beneficial ownership information of legal person including any information on the compliance of a financial institution. Authorities indicated that RBM received 1 request involving AML/CFT in relation to basic and beneficial ownership information in 2017 and responded to it within one week as shown in Table 41 above.

353. In February 2015, FIA Malawi responded to a request for beneficial ownership information from their Counterpart in Mauritius. Similarly, in November, 2017, FIA made a request to its counterpart in British Virgin Islands for the basic information of a subject whom they believed to have been incorporated in British Virgin Islands after committing financial crimes in Malawi. British Virgin Island responded and provided information requested within two weeks.

Overall Conclusions on Immediate Outcome 2

Malawi has achieved a Moderate level of effectiveness for Immediate Outcome 2.

TECHNICAL COMPLIANCE ANNEX

1. This annex 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 2008. This report is available from www.esaamlg.org.

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 Malawi on this in 2008.

Risk assessment

Criterion 1.1- (Met). Malawi identifies and assesses its ML//TF risks through its National Risk Assessment (NRA) process using the World Bank Methodology. This includes the ML threat to which the country is exposed and the major predicate offences that generate larger amounts of criminal proceeds, and the level of TF threat the country faces. It also takes into account 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 risk of the NPO sector.

Criterion 1.2- (Met). The FIA as the Secretariat of the AML/CFT National Committee is the designated authority for coordination of ML/TF risk assessment in Malawi. In this regard, FIA has been coordinating actions to assess ML/TF risks both in 2013 and 2018. A wide range of stakeholders provided input to the assessment of risks, in particular the FIA, law enforcement agencies, supervisors and private sector representatives.

Criterion 1.3-(Met). Malawi published its first NRA in 2013 and a second NRA was published in June 2018 upon approval by the Minister of Finance which is considered to be updated.

Criterion 1.4-(Met). The results of the two NRAs were available to all relevant competent authorities and SRBs, FIs and DNFBPs using different mechanisms. With regard to the 2013 NRA, the FIA and RBM held meetings with relevant stakeholders including heads of institutions to disseminate the findings of the NRA. RBM sensitized financial institutions on the ML/TF risks identified. For the 2018 updated NRA, the FIA disseminated the findings to FIs, DNFBPs, SRBs and National AML/CFT Committee through a series of workshops followed by email of results for specific sectors. The NRA is not publicly available.

Risk mitigation

Criterion 1.5-(Met). Malawi has designed and applied a risk-based approach to ensure that resources are allocated to mitigate the areas posing high ML/TF risks and prioritize resources being

used to counter ML/TF. Malawi also developed an AML/CFT Action Plan (annexed to the 2018 NRA) which addresses some of the key ML/TF threats and vulnerabilities identified in the NRA.

Criterion 1.6– (Not Applicable). Malawi has not applied any exemption from its AML/CFT framework with respect to activities conducted by FIs or DNFBPs as defined under the FATF Standards.

Criterion 1.7-(Met). (a) S. 21 (5) of the Financial Crimes Act (FCA) requires FIs and DNFBPs to take enhanced measures to manage and mitigate higher risks. (b) In terms of S.21 (3) of the same Act, FIs and DNFBPs are also required to document their risks and incorporate information on higher risks into their risk assessments.

Criterion 1.8- (Met). Malawi allows FIs and DNFBPs to apply simplified due diligence measures when they have identified a low-risk relationship or transaction (S.21 (5)-(6) of the FCA).

Criterion 1.9-(Met). Supervisors and SRBs are required to ensure that FIs and DNFBPs are implementing their obligations under R.1 (S.36 (4) (h) and S.38 (a) of the FCA). See analysis of R. 26 and R. 28 for more information.

OBLIGATIONS AND DECISIONS FOR FINANCIAL INSTITUTIONS AND DNFBPS

Risk assessment

Criterion 1.10-(Met). FIs and DNFBPs in Malawi are required to take appropriate steps to identify, assess, and understand their ML/TF risks as provided under S.21(1) of the FCA. Under S.21(3) of the FCA, the FIs and DNFBPs are required to document the risk assessments, consider all relevant factors before determining what level of overall risk and appropriate level and type of mitigation to be applied, keep the assessments up-to-date. S.36(4)(h) and S.38 of the FCA require the FIs and DNFBPs to provide their assessments to the supervisory authorities and SRBs.

Risk mitigation

Criterion 1.11-(Met). FIs and DNFBPs are required to have policies, controls and procedures which are approved by senior management to enable them to manage and mitigate risks they have identified as provided under S.27 (1) (b) and 27(2) of the FCA. Section 27 1(b) & (d) of the FCA requires the compliance officer to oversee the compliance program and that the systems and procedures should be audited. Under Section 21(5) of the same Act, the reporting entities are required to take enhanced measures to manage and mitigate the risks where higher risks are identified.

Criterion 1.12- (Partly Met). Malawi allows simplified due diligence measures where low-risk has been identified (see analysis of c. 1.9) and criteria 1.9 to 1.11 are met. However, there is no clear provision under the law that prohibits the taking of simplified due diligence when the FI or DNFBP suspects ML or TF.²¹

²¹ The authorities submitted a draft Financial Crimes Regulations, 2018. Reg. 3(3) of the Regulations reads: *Where the reporting institution identifies lower risks, the reporting institution may decide to allow simplified measures for customer due diligence provided that enhanced due diligence shall be applied where there is suspicion of money laundering, terrorist financing or other financial crime.*

Weighting and Conclusion

Malawi meets Criteria 1.1-1.11 and partly meets Criterion 1.12. Malawi's law does not clearly prohibit the reporting entities to take simplified measures when they suspect ML or TF. This is considered a minor deficiency as FIs and DNFBPs must nevertheless weigh a number of factors before applying simplified CDD. **Malawi is rated Largely Compliant with Recommendation 1.**

Recommendation 2 - National Cooperation and Coordination

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with this Recommendation (formerly R 31). The reason for the rating was that it was too early to assess effectiveness which is not part of technical compliance under the 2013 FATF Methodology. 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- (Not met). Malawi does not have national AML/CFT policies which are informed by the identified risks and are reviewed regularly.

Criterion 2.2-(Met). Malawi established a permanent National Committee for AML/CFT since August 2017. Some of the functions of the Committee are to: (a) Assess the effectiveness of policies and measures to financial crimes; (b) Advise the Minister and make recommendations to institutions represented in the Committee for legislative, regulatory and policy reforms in respect of the prevention of financial crimes; (c) Coordinate development, promotion and implementation of national AML/CFT Strategy; and (d) Promote coordination among law enforcement agencies, supervisory authorities and other institutions with a view to improve the effectiveness of existing policies to combat financial crimes. Regulation 4 of the Suppression of TF and Proliferation Regulations 2017 also set the National Counter Terrorism Panel which is mainly responsible for combating financing of terrorism and proliferation.

Criterion 2.3- (Met). The National Committee provides a platform for policy makers, LEAs, supervisors and other relevant competent authorities to cooperate in the development and implementation of AML/CFT policies and activities. Furthermore, at the operational level, numerous arrangements for coordination and information sharing are in place between/amongst competent authorities to facilitate exchange of information, spontaneously or upon request.

Criterion 2.4- (Partly Met). The National Committee's mandate is also extended to issues in relation to CPF (See Criterion 2.1). Further, Regulation 4 of the Suppression of TF and Proliferation Regulations 2017 set the National Counter Terrorism Panel whose membership comprises the Director-General of the National Intelligence Service (chairperson of the Panel); (b) a senior public officer designated by the Chief Secretary; (c) the Secretary responsible for Home Affairs and Internal Security; (d) the Secretary to the Treasury; (e) the Secretary responsible for Foreign Affairs and International Cooperation; (f) the Attorney-General; (g) the Army Commander; (h) the Inspector-General; (i) the Registrar of financial institutions; and (j) the Director General of FIA

(secretary to the Panel). In terms of Regulation 5 of the same Regulations, the Panel is mandated to facilitate implementation of UNSCR 1718 and 1737 (though currently repealed) and all successor resolutions relating to the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction in relation to DPRK and such other related resolutions in accordance with these Regulations. However, there is a similar arrangement or framework for coordination and cooperation on UNSCR 2231 in relation to Iran.

Criterion 2.5-(Met). Malawi has cooperation and coordination mechanisms among and between various agencies aimed at ensuring compatibility of AML/CFT requirements with Data Protection and Security rules as guided by legal provisions and bilateral arrangements (e.g. Ss. 5(d), 5(f) and 10 (3) of the FCA, S.71(1) and 74(1) & (2) of the Electronic Transactions Act 2016). For example, At FIA email exchanges are encrypted, access to such data is done by authorized personnel and is stored in a secure location. In case of FIA, S.10 (3) of the FCA prohibits *an employee and agent of the FIA from disclosing any information that would directly or indirectly identify an individual who provided a report or information to the Authority or a person or an entity about whom a report or information was provided under the Act.* Further, Section 71(1) of the Electronic Transaction Act, 2016 states that *“A data controller shall ensure that personal data is (a) processed fairly and legally; (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; (c) adequate, relevant and not excessive in relation to the purposes for which they are collected and processed; and (d) accurate and, where necessary, kept up to date”.* The FIA, RBM, ACB, Malawi Gaming Board, MPS, MRA and other agencies are subject to data protection requirements which ensure the protection of privacy, and that coordination on AML/CFT is maintained through their representation in the National AML/CFT Committee in which they are signatories to the Committee’s MoU which requires secure use of information. These officers regularly co-operate and co-ordinate with the Malawi Communication Regulatory Authority which is empowered to protect data in Malawi.

Weighting and Conclusion

Malawi established a National Committee for AML/CFT which is responsible for AML/CFT policies. Absence of policies which are informed by identified risks and limited scope of mechanisms to facilitate coordination for purposes of combatting the financing of proliferation of weapons of mass destruction are considered to be fundamental deficiencies (the CFT Regulations, 2017 does not cover Resolution 2231). In view of these deficiencies, Malawi is ***rated partially compliant with R. 2.***

Recommendation 3 - Money laundering offence

In the MER under the First Round of MEs, Malawi was rated Largely Compliant (formerly R.1) and Largely Compliant (formerly R.2). The main technical deficiency was that there was no provision for self-laundering. Another deficiency on the two recommendations related to effectiveness which is not part of technical compliance under the 2013 FATF Methodology. In 2016, Malawi passed the Financial Crimes Act, 2016 which repealed and replaced the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act. The new Act criminalizes the offence of money laundering.

Criterion 3.1 (Partly met)- The offence of ML is criminalized under Section 42 (1) of the Financial Crimes Act, 2017 (FCA) and Section 331A of the Penal Code. The two sections have a different standard of proof for the offence of ML in relation to the physical element. Assessors are of the view that in order to fully meet Criterion 3.1, the two sections need to be streamlined such that there is the same material element for ML which covers adequately both the physical and material elements of the offence consistent with Articles 3 (1) (b) & (c) of the Vienna Convention and Article 6 (1) of the Palermo Convention.

Criterion 3.2 (Mostly Met)- Section 2(10) of the FCA provides a wider definition of predicate offence which regards all criminal offences under the laws of Malawi as predicate offences to ML. However, Assessors noted that the offence of terrorism which is mentioned under the FATF Glossary is not criminalized in Malawi (see Annex A at the end of the report). Therefore, terrorism is not considered as a predicate offence for ML in Malawi.

Criterion 3.3 (N/A) -Malawi applies all crimes approach which comprise all category of criminal offences in terms of Section 2(10) of the FCA.

Criterion 3.4 (Met)-The offence of ML extends to all types of property, which directly or indirectly represents proceeds of crime, regardless of the value (s 42 (1) of FCA). The term “property” is defined under s. 2 of FCA to cover every kind of asset.

Criterion 3.5 (Met)-In terms of Section 42 (2) of FCA, it is not necessary for the predicate offence to be committed in order to prove the offence of Money Laundering. See also Maxwell Namata vs The Republic, Criminal Appeal No.13 of 2015 in support of this position.

Criterion 3.6 (Mostly Met)-The text of ss. 2(10) and 42 of the FCA apply the relevant offenses to predicate offenses committed in Malawi and to any act or omission committed abroad that would have constituted an offense had it occurred in Malawi.. However, the Country will not be able to conduct ML offence for terrorism as it does not constitute predicate offences for ML in Malawi.

Criterion 3.7 (Met)- S. 42 (1) of the FCA applies the ML offence to the person who commits the predicate offence. Malawian case law supports the notion that the ML provisions can also be applied to the person who committed the predicate offense (See *Maxwell Namata vs Republic, High Court, Criminal Case No. 45 Of 2013*).

Criterion 3.8 (Met)- As a general rule, Malawi allows for the mental element of criminal offences to be inferred from objective factual circumstances. S.9(4) of the Penal Code allows the court to make reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances in determining whether a person has committed an offence. The basis for this principle is the common law and general criminal law practice. This assertion is also supported by sections 169 & 171(f) of the Criminal Procedure and Evidence Code and a case law (*Republic vs Wyson Zinyemba Soko HC Criminal Appeal Case No. 7 of 2015 (Unreported)*)

Criterion 3.9 (Met)- Section 43(2)(a) provide for dissuasive and proportionate sanctions against natural persons and are liable to imprisonment for life upon conviction.

Looking at the penalties provided and circumstances under which courts apply penalties, sanctions applied to natural persons convicted of ML are proportionate and dissuasive.

Criterion 3.10 (Met)- Malawi applies criminal sanctions against legal persons. The Penal Code Section 25 includes fines as a form of criminal penalty that may be imposed by a court. In the case of ML, Legal persons may be subject to criminal liability and be held criminally responsible under s.42 (3)(b) of the FCA. A legal person convicted of ML offence is liable to a fine of 671 USD (USD 670, 850.00). In addition to a fine, the Act provides also for the revocation of a business licence. The criminal liability of natural persons is not affected by the liability of legal person: both liabilities are actionable. The prescribed sanction provided for the offence of ML would be both proportionate and dissuasive.

Criterion 3.11 (Met)- S. 42(1)(d) of the FCA criminalises participation, association or conspiracy, attempt, aiding, abetting and facilitating thereby covering all ancillary offences.

Weighting and Conclusion

Malawi partly meets Criterion 3.1, mostly meets Criteria 3.2 and 3.6, meets all the remaining criteria. Criterion 3.3 is not applicable in the case of Malawi. There are two sections that are criminalising the offence of ML (Section 42 (1) of the Financial Crimes Act, 2017 (FCA) and Section 331A of the Penal Code) but both with a different material/physical elements of ML. This is a major deficiency due to the confusion it brings as to which section will be preferred and why, which brings adequacy for the criminalisation of the offence under the two sections into question. The offence of terrorism is not criminalised and as such is not a predicate offence for ML and the Country will not be able to conduct ML offence for terrorism as it does not constitute a predicate offence for ML in Malawi.

Malawi is rated *partially compliant* with R. 3.

Recommendation 4 - Confiscation and provisional measures

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R.3). The main technical deficiencies were that: no implementation of the ML & TF Act and no statistics were maintained which is not part of technical compliance under the 2013 FATF Methodology.

Criterion 4.1 (Met)

Criterion 4.1(a) – (c)-Ss 48(2), 49, 72, 74 and 77 of the FCA, read together with the definitions of “tainted property” and “proceeds of crime” under section 2 of the FCA allow forfeiture of laundered property, proceeds of or instrumentalities used or intended to be used for ML/TF or other predicate offences.

Criterion 4.1 (d)- Ss 48(2), 49, 72, 74 and 77 of the FCA, read together with the definitions of “realizable property”, “tainted property”, “proceeds of crime” and “gift” under section 2 of the FCA allow forfeiture of property of corresponding value.

Criterion 4.2 (Met)

Criterion 4.2(a) -In term of Section 2 of the FCA, the term competent authority includes but not limited to a police officer, an immigration officer, a revenue officer, ACB, the FIA and any person authorized by any of them in that behalf and any other person the minister of Finance may, by notice published in the *Gazette*, designate. Malawi law enforcement agencies have powers to identify, trace and evaluate property that may become subject to confiscation. Section 60 gives a competent authority the powers to apply to the court for Property tracking, tracing and monitoring orders for purposes of determining possession and control of property. Section 86 of the FCA provides for the procedures for assessing and determining benefit and value of proceeds of crime.

Criterion 4.2 (b)-The legal framework in Malawi contains a number of provisions related to provisional measures. S. 23(1) of CPA provides for powers to freeze and seize. This requirement is also met under section 55 of the FCA which empowers an authorized officer to use reasonable force where necessary to seize and detain suspicious imports and exports of currency. Section 56 of the FCA – empowers an authorized officer to seize currency or bearer negotiable instruments imported or about to be exported in violation of foreign exchange control regulations. Section 58 of the FCA – empowers a competent authority to seize cash suspected on reasonable grounds to belong to a terrorist or intended for use for terrorist acts. Section 62 of the FCA – requires a reporting institution to freeze immediately funds suspected to belong to a terrorist or intended for terrorist acts. Section 65 of the FCA – gives a competent authority the power to obtain a preservation order. Section 67 of the FCA – the preservation order has a duration of 90 days. Section 68 of the FCA – provides for seizure of property under preservation order. Section 69 of the FCA – provides for the dealing with immovable property subject to a preservation order.

Criterion 4.2(c)- The law in Malawi gives power to the court to prevent or void actions whether contractual or otherwise affecting tainted property subject to confiscation. Section 82(b) of the FCA allows the court to set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice

Criterion 4.2 (d)-The legal framework in Malawi provides for a broad range of investigative measures in support of the existing confiscation powers. Section 5(c) of FCA allows the Financial Intelligence Authority to investigate any matter in relation to implementation of the Act. Section 10 of the CPA gives the Anti-Corruption Bureau power to investigate any complaint, report or other information of any alleged or suspected corrupt practice or offence under the law. S. 4(1)(a)–(f) gives Malawi Police Service powers to investigate and confiscate any property while s. 34 provides general powers of the police officers which include powers to investigate.

Criterion 4.3(Met)- The rights of bona fide third parties are protected by law. Section 75 and 83 of the FCA allows a person who claims interest in the property which is subject to forfeiture application to apply to court for an order declaring the nature, extent and value (at the time the order was made) of the person’s interest. Section 76 allows the court to make an order excluding certain interests of *Bona fide* purchaser for sufficient consideration in property which is subject to the forfeiture order, from the operation of the order. Section 77(3) and (4) protects the rights of bona fide third parties even where a forfeiture order by default has been made under section 77(1) and (2).

Criterion 4.4 (Met) - The FCA sets out mechanisms for managing, disposing of property frozen, seized and confiscated assets. S. 99 gives power to the Minister to appoint Administrator who, in respect of property subject of preservation, assumes control over the property, care for the property, administer the property, carry on with a property which is a business or undertaking and comply with an order of the court. Section 81 of the FCA gives powers to the Administrator to deposit any moneys forfeited into the Fund or dispose of property forfeited by sale or any other means and deposit the proceeds of the sale or disposition into the Fund. S.80 gives powers to the Court to appoint administrator where court has made a forfeiture order and an administrator has not been appointed in respect of any of the property concerned. Section 96 places an obligation on a competent authority which seizes property to detain the property seized, taking reasonable care to ensure that the property is preserved. Sections 128-135 provides for a Confiscation Fund in terms of its establishment, composition, vesting, objectives, application, bookkeeping, audit and reports of the Fund; holding; and financial year.

Weighting and Conclusion

Malawi meets all criterions under this Recommendation. **Malawi is rated Compliant with R.4.**

Recommendation 5 - Terrorist financing offence

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly SR II). The main technical deficiencies were that: the penalty for entering into an arrangement to facilitate terrorist financing activities was not strengthened and the provisions related to the offence of terrorist financing have not been tested.

Criterion 5.1(Met)-Malawi criminalizes TF in line with the 1999 Terrorist Financing Convention in terms of Section 43 (1) (a) of the FCA.

Criterion 5.2(Met)-Section 43 (1) of FCA extends the offence of TF to any person who by any means, directly or indirectly provides or receives funds with the unlawful intention that they should be used in full or in part to carry out a terrorist act and to be used by a terrorist or terrorist organisation.

Criterion 5.2^{bis} (Mostly Met)-Malawi indicated that this sub-criterion is covered by section 43 of FCA which addresses sub-criterion 5.2 (a) & (b) above and Section 43(3)(d) which criminalizes provision of financial support for training or upkeep of a terrorist or for commission of a terrorist act. The Authorities indicated further that although this provision does not specify the financing of travel for the purpose of preparation of a terrorist act, the offence is captured by the general TF provision. Assessors are of the views that, in the absence of clear evidence indicating the inclusion of financing of travel in the TF offence it is difficult to ascertain this fact.

Criterion 5.3 (Not Met)-The provisions of s. 43 extend to any funds whether legitimate or illegitimate. However, the term funds are not defined consistent with the definition given under the TF Convention as well as under the FATF Glossary. In the absence of the definition of the term "funds" Assessors could not ascertain if the provision extends to any funds or other assets whether from a legitimate or illegitimate source.

Criterion 5.4(Met) -Section 43 (2) (a) and (b) of the FCA states explicitly that TF offence is committed even if the act of terrorism thereto referred does not occur; or even if the funds were not actually used to commit or attempt the act of terrorism thereto referred.

Criterion 5.5(Met)-As a general rule, Malawi allows for the mental element of criminal offences to be inferred from objective factual circumstances. S.9(4) of the Penal Code allows the court to make reference to all the evidence, drawing such inference from the evidence as appears proper in the circumstances in determining whether a person has committed an offence. The basis for this principle is the common law and general criminal law practice. This assertion is also supported by sections 169 & 171(f) of the Criminal Procedure and Evidence Code and a case law (*Republic vs Wyson Zinyemba Soko HC Criminal Appeal Case No. 7 of 2015 (Unreported)*)

Criterion 5.6(Met)-The statutory sanctions for a natural person is imprisonment for life pursuant to Section 43 (4) (a) of the FCA. The sanctions are considered to be both dissuasive and proportionate as it allows the court to apply sanctions based on the circumstances of the case. The law provides for proportionate and dissuasive sanctions for natural persons.

Criterion 5.7(Met)- Malawi applies criminal sanctions for terrorist financing against legal persons. In the case of TF offences, Legal persons may be subject to criminal liability and be held criminally responsible under s.43(4)(b) of the FCA. A legal person convicted of ML offence is liable to a fine of K500,000,000. In addition to a fine, the Act provides also for the revocation of a business licence. The criminal liability of natural persons is not affected by the liability of legal person.

Criterion 5.8 (Met)

Criterion 5.8 (a)- Section 43(1) criminalises attempt to commit TF offence.

Criterion 5.8 (b)-Participation as an accomplice in a TF offence or attempted TF offence is criminalized by Section 43 (3) (a) of the FCA

Criterion 5.8 (c)-Organizing or directing others to commit the TF offence or attempted TF offence is criminalized under Section 43 (3) (b) of the FCA.

Criterion 5.8(d)-Contribution to the commission of the TF offence or attempted TF offence is criminalized by Section 43 (3) (c) and (d) of the FCA.

Criterion 5.9(Met)- Malawi takes all crimes approach to defining predicate offences for ML (s. 2(10) of the FCA). TF is an offence in Malawi as per Section 43 of the FCA and therefore a predicate offense for ML.

Criterion 5.10 (Met)- TF offence applies in Malawi regardless of the state or territorial location in which the act of terrorism is intended or does occur (Section 43(2)(c) of the FCA).

Weighting and Conclusion

Malawi does not meet Criterion 5.3, mostly meets Criterion 5.2bis and meets all the remaining criteria under this Recommendation. There is no law that covers the financing of travel, though the TF offence can partly mitigate the gap as the financing of training and “upkeep” is covered. There is no definition of ‘fund’ under the Malawian Law and the law, therefore, is not clear

whether the fund should have legitimate or illegitimate source. **Malawi 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, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly SR III). The main technical deficiencies were that there was no framework to implement the requirements on the freezing of funds used for terrorist financing.

Identifying and designating

Criterion 6.1 (Partly met)-

Criterion 6.1 (a) -Malawi issued the Financial Crimes (Suppression of TF and Proliferation) Regulations, 2017 (CFT Regulations) to implement the UNSC Resolutions relating to targeted financial sanctions (TFS). Reg 4 (1) and (2) of the TF Regulations identify the National Counter Terrorism Panel (NCTP) as the competent authority for proposing person and entities for designation to the 1267/1989 and 1988 UN Committees as well as for identifying persons for the purpose of their designation. One of the functions of the Committee is to facilitate implementation of Resolution 1267 and 1988 and all successor resolutions (Reg 5 (1) (a) of the TF Regulations).

Criterion 6.1(b)-The National Counter Terrorism Panel is empowered by Regulations to consider designations. Regs. 4 and 5 (2) (a) of the TF and Proliferation Suppression Regulations allows the Panel in carrying out its functions to co-operate with any person for the purposes of identifying persons for designation.

Criterion 6.1 (c)-(e)- No evidentiary standard of proof of reasonable grounds is provided for in the law. The law does not provide for procedures and standard forms for listing as adopted by the relevant committee. There is no provision for providing as much relevant information as possible on the proposed name.

Criterion 6.2 (Largely Met)-

Criterion 6.2(a)- The NCTP is the authority responsible for designating persons and entity pursuant to UNSCR 1373 in terms of Reg 4 (1) and (2). The Panel have the powers under Reg. 6(2)(b) to set Criterion, on the basis of reasonable grounds, for designating persons in line with Resolution 1373.

Criterion 6.2(b)- Reg 4 (1) and (2) of the CFT Regulations allow the NCTP to designate persons and entities pursuant to UNSCR 1373. Reg 6(2)(b) gives the Panel powers to set criteria, on the basis of reasonable grounds, for designating persons in line with Resolution 1373. However, at the time of the onsite, the Panel has not yet set the criteria in accordance with the Regulation.

Criterion 6.2(c) -The responsible authorities in the case of a foreign request of designation are the Panel, the FIA and the Attorney General. According to Reg 5 (2) (b) of the TF Regulations, the Panel may, in carrying out its functions, co-operate with any person for the purposes of examining and giving effect, upon a request by a foreign country, to an action initiated under the freezing mechanism of that foreign country. Reg 10 requires that any country which, makes or requests designation of a person shall give details of the designation to an accredited diplomatic

representative of Malawi in that country or in the absence of a diplomatic representative, the Ministry responsible for foreign affairs in that country. The FIA shall, upon receipt of the request forthwith submit to the Attorney General for a determination as to whether there are sufficient grounds to designate the person in accordance with the Regulations. If the Attorney General has determined that there are reasonable grounds to designate the person, he shall inform the FIA's Director General who shall without delay, inform the Panel and request it to make a provisional determination designating the person and disseminate the name of the designated person to supervisory authorities and reporting institutions.

Criterion 6.2 (d)-The Panel takes the decision to designate based on "reasonable grounds to believe" that a person meets the designation Criterion, independently from any criminal proceedings. This is provided for under Reg 6 (2).

Criterion 6.2 (e)- Requests to other countries are supported by the following information, reasons for the designation, name and an alias or title, place and date of birth, establishment or incorporation, sex, original or acquired nationality, passport numbers, identity card numbers or registration number, physical and postal addresses, occupation, telephone number, an explanation of how the person meets the designation criterion, and any other information which the Panel may consider relevant (Reg.8). When making request to other countries under 1373, Malawi provides as much identifying information as possible to allow for a determination that the reasonable basis test is met.

Criterion 6.3(Met)

Criterion 6.3 (a) - The NCTP has powers to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the Criterion for designation. This is supported by Reg. 5(2) and (3) of the TF Regulations.

Criterion 6.3(b) - *The Attorney General* has a legal authority to act *ex parte* under Reg. 10 (5) of the TF Regulations. The provisions cited do not require that a potential designee be informed of an upcoming designation.

Freezing

Criterion 6.4 (Met) -As soon as a designation or consolidated list is circulated, there is an obligation to freeze "immediately". The freeze includes also an ongoing prohibition against the provision of funds or financial services to the designated individual or entity against which the order is made. Reg.11 (1) of the TF Regulations provides that a designation or a consolidated list circulated by or through the FIA shall be deemed to immediately authorize a reporting institution or any other institution which holds the property of a designated person to freeze, until further notice.

Criterion 6.5(Met)-

Criterion 6.5 (a)-Reg 11 (1) and (3) (a)of the TF Regulations requires any person or entity who identifies property in his possession belonging to a designated person or entity to immediately and without notice to take necessary measures to freeze such property.

Criterion 6.5 (b)-In terms of Reg 11 (1) of the CFT Regulations, 2017, the obligation to freeze extends to all relevant persons and assets (property of a designated person or any other person acting on behalf or under the direction of such person) as required under the FATF Standard.

Criterion 6.5 (c)-This criterion is met by Regulation 12 (5) – (9).

Criterion 6.5(d)- Regulations 9 (3) and 6 (2) (a) takes care of the communication and guidance to financial institutions and any person who may be holding the property.

Criterion 6.5(e)- This requirement is met by Reg 11(3) (b), 11(4) of the CFT Regulations and s. 23(1) of FCA.

Criterion 6.5 (f)- Section 62(5) of the FCA and Regulation 11 (7) of the CFT Regulations allow any person affected by the decision or directive to freeze funds to apply to the court for a revocation of the decision or directive in relation to him.

De-listing, unfreezing and providing access to frozen funds or other assets

Criterion 6.6 (Met)-

Criterion 6.6(a),(b),(d) and (e)-Delisting procedures are established by the CFT Regulations, 2017 which are published in the Malawi Gazette. The Regulations contains delisting procedures *in respect of the United Nations Consolidated List* as well as domestic delisting (Reg. 19 and 20).

Criterion 6.6(c)- Regulation 8(6) provides for procedure allowing a person who is aggrieved by the decision of the Panel to appeal to a competent court for review of the designation on appeal.

Criterion 6.6(f)- Reg. 16 of the TF Regulations contains publicly known procedures to unfreeze the funds or other assets of persons or entities with same or similar name as designated persons or entities who are inadvertently affected by freezing mechanism.

Criterion 6.6(g)-Reg. 20(3) and 21 of the TF Regulations provide for the mechanism to communicate delisting and the responsibility of Supervisory Authorities to provide guidance.

Criterion 6.7 (Met) -Reg. 13 and 14 of the TF Regulations provides for access to frozen funds in special circumstances such as where the property is necessary to cover the basic and necessary expenses or where the person or entity has applied and obtained authorization in accordance with the Regulations.

Weighting and Conclusion

Malawi partly meets Criterion 6.1, largely meets Criterion 6.2 and meets the other Criteria under this Recommendation. The law does not provide for procedures and standard forms for listing as adopted by the relevant UN sanctions committee. There is no provision for providing as much relevant information as possible on the proposed name. Though Reg 6(2)(b) gives the NCTP powers to set criteria, on the basis of reasonable grounds, for designating persons in line with Resolution 1373 the Panel has not yet set the criteria at the time of the onsite. **Malawi is rated Largely Compliant with R.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 Malawi in 2008 under the First Round of MEs.

Criterion 7.1 (Partly met) - Malawi has put in place the Financial Crimes (Suppression of Terrorist financing and proliferation) Regulations, 2017 (CFT Regulations, 2017) to implement the UNSCR relating to the suppression and disruption of proliferation of weapons of mass destruction and its financing. However, the Regulations are only applicable in relation to UNSCR 1718 and its successor resolutions.²² However, there are no measures in place to implement TFS in relation to Iran. Regulation 9 of the CFT Regulations, 2017 empowers the FIA to receive designations by the UN and without delay, submit all the designations to the NCTP and other competent authorities including supervisors and LEAs which are not members of the Panel. A supervisory authority which receives the designation list from the FIA is supposed to circulate the same without delay to the reporting entities under its purview for information and immediate action.

Criterion 7.2 (Partly met) -Malawi issued the Financial Crimes (Suppression of TF and Proliferation) Regulations, 2017 (CFT Regulations) to implement the UNSC Resolutions on TFS relating to the prevention, suppression and disruption of weapons of mass destructions. See Criterion 7.1 about the scope of the Regulations limited to Resolution 1718 and its successor resolutions. Reg 4 (1) and (2) of the TF Regulations identify the NCTP) as the competent authority to take the following measures:

Criterion 7.2 (a) (Partly met)-The Regulations provide for the application of targeted financial sanctions (freezing and prohibitions) by any person. Regulation 11 (3) requires a person to whom a designation or United Nations Consolidated Sanctions List is submitted, where applicable, to take the necessary measures to freeze the property owned, held or controlled by the designated person, without delay and without notice to the entity or take any other action as may be necessary to give effect to UNSCR 1718 and its successor resolutions.

Criterion 7.2 (b)- As per Reg. 11 (1) of the CFT Regulations, 2017, the prohibition on economic and financial activity applies to all funds or other assets that are owned or controlled by the designated person or entity or their representatives.

Criterion 7.2 (c)-This criterion is met by Regulation 12 (5) – (9).

Criterion 7.2 (d)-Regulations 9 (3) and 6 (2) (a) cover the communication and guidance to financial institutions and any person who may be holding the property.

Criterion 7.2 (e)-This requirement is met by Reg 11(3) (b), 11(4) of the CFT Regulations and s. 23(1) of FCA.

Criterion 7.2 (f)- Reg. 11(7) provides for the protection of rights of third parties acting in good faith.

²² Though the Regulations are also applicable in the case of UNSCR 1737, the implementation of this Resolution is terminated by UNSCR 2231 which is not covered under the current Regulations.

Criterion 7.3 (Partly met) -During the onsite, there was no evidence to demonstrate whether Malawi had adopted measures for monitoring and ensuring compliance by the FIs and DNFBPs on TFS in relation to PF. However, Regulation 12 of the TF and Suppression of Proliferation provides for a fine of K500, 000,000 or twenty years imprisonment in case of non-compliance and a fine of K500,000,000 person for participating in activities, the object or effect of which is directly or indirectly, to circumvent the prohibitions or to enable or facilitate the contravention of the provisions of the Regulation. See also Criterion 7.1 about the scope of the Regulations limited to Resolution 1718 and its successor resolutions.

Criterion 7.4 (Partly met)- See Criterion 7.1 about the scope of the Regulations limited to Resolution 1718 and its successor resolutions.

Criterion 7.4(a)- Reg. 19 (1) (b) of the CFT Regulations provides that designated person who wishes to have his name deleted from any list under these Regulations may, in respect of—the United Nations Consolidated List, submit an application through the Authority, to the United Nations Sanctions Committee, stating reasons for the application. Reg 19 (3) requires the Authority to inform the applicant of the decision made by the Panel or the United Nations Sanctions Committee promptly.

Criterion 7.4(b)- Reg 16 of the CFT Regulations, 2017 provides that where property was frozen wrongfully as a result of any error, the person affected may apply to the Panel for release of the property. Upon receipt of the application, the Panel shall, for applications related to the United Nations Consolidated List, submit the request to the United Nations Sanctions Committee for determination; or, for any other designations, assess the application and make a determination.

Criterion 7.4 (c)-Reg. 13 and 14 of the TF Regulations provides for access to frozen funds in special circumstances such as where the property is necessary to cover the basic and necessary expenses or where the person or entity has applied and obtained authorization in accordance with the Regulations.

Criterion 7.4(d)-Reg. 20(3) and 21 of the CFT Regulations, 2017 provide for the mechanism to communicate delisting and the responsibility of Supervisory Authorities to provide guidance to financial institutions.

Criterion 7.5 (Not met)- See Criterion 7.1 about the scope of the Regulations limited to Resolution 1718 and its successor resolutions.

(a)-Reg 15 of the TF and Proliferation Suppression Regulations permits access to the frozen accounts in relation to obligations that arose prior to the date on which accounts were frozen.

Criterion 7.5(b)-Malawi has no provisions allowing designated persons to make any payment due under a contract entered into prior to the listing.

Weighting and Conclusion

Malawi does not meet Criterion 7.5 and partly meets the remaining criteria under this recommendation. The scope of the Regulations is limited to Resolution 1718 and its successor resolutions. Malawi has no provisions allowing designated persons to make any payment due under a contract entered into prior to the listing. **Malawi is rated *partially compliant with R.7.***

Recommendation 8 – Non-profit organisations

Taking a risk-based approach

Criterion 8.1- (Not Met)

Sub-criteria (a) and (b) NPOs in Malawi can be established either in a form of non-governmental organization (NGO), companies limited by guarantee or charitable trust. Malawi registers and governs NGOs through the NGOs Act, 2001 which defines NGOs operationally for the purposes of the Act. While the definition does not lend itself to the various analytic and theoretical definitions, it delineates the types of organizations that fall under the regulatory mandate of the NGO Board. Section 2 of the Act defines NGO as a Non-Governmental organization constituted for a public benefit purpose; and it defines ‘public benefit purpose’ as “organizational purposes involving developmental and charitable purposes including but not limited to: educational, health, welfare, advocacy, cultural, civic, social, recreational, scientific, environmental, or other similar objects for the benefit of the general public, a section thereof or members of the organization but excluding the activities of a church or religion, trade union, employers organization or political party”. In addition, companies limited by guarantee established for sole purpose of operating as charity or non-profit motive are also registered under Section 25 of the Companies Act, 2013. Charitable trusts are incorporated and registered in terms of Sections 3 and 6 of the Trustees Incorporation Act, 1962 (as amended).

Malawi has not adequately reviewed its NPO sector, including a mapping of its size, features and activities with a view to identify features and types of NPOs which by virtue of their activities or characteristics, are likely to be at the risk of terrorist financing abuse. In addition, the authorities have not identified any threats of NPO abuse emanating from terrorist entities or the manner in which such abuse is done²³.

Sub-criterion (c) and (d) Malawi has not carried out any review to determine adequacy of measures, including laws and regulations targeting a subset of NPOs that may be abused for terrorist financing to guide application of appropriate risk-based measures. Furthermore, the country does not have any framework in place or capacity to obtain timely information on the activities of the NPOs, their size and other relevant features which would help in identifying characteristics which would potentially make them vulnerable to TF risks.

²³ The Malawian authorities advised assessors that they were reviewing their laws to address the AML/CFT deficiencies regarding the NPO sector and that a draft Bill is being finalised.

Sustained outreach concerning terrorist financing issues

Criterion 8.2- (Not met) Sections 22 of the NGOs Act and Part X of the Companies Act, 2013 prescribe duties and requirements as well as procedures in relation to use of funds, preparation and retention of financial records, audit and filing of annual returns by associations. To a large extent, these promote accountability and integrity in the management and administration of NPOs. However, apart from these legal provisions Malawi does not have specific policies to promote transparency, integrity, and public confidence in the administration and management of NPOs, let alone for terrorist financing purposes. In addition, no measures are in place to implement sustained outreach and educational programmes concerning TF issues and there has not been any engagement of the NPO sector with a view to (a) develop best practices to address TF risks and vulnerabilities or (b) encourage them to conduct transactions through regulated financial institutions. Further, there is no a similar requirement for charitable trusts under the Trustees Incorporation Act.

Targeted risk-based supervision of monitoring of NPOs

Criterion 8.3(Not met) Though Malawi has to some extent assessed risks and vulnerabilities facing the NPO sector, it has not developed any risk-based measures for supervision and monitoring the NPOs which may be at risk of being abused for terrorist financing purposes.

Criterion 8.4 (Not Met) Most of the requirements of this Recommendation are not contained in the existing laws for the NPO sector. In view of this, the NPOs are not under obligation to comply with them and the authorities cannot monitor their compliance. In terms of s.34 of the NGO Act, violation against all provisions attracts a fine not exceeding 50,000 MKW (USD 67) or the amount of the financial gain whichever is the greater. This is in addition to the administrative measures in terms of canceling or suspending the registration of NGOs. However, there is no clear provision on penalties for natural persons and the criminal sanctions do not appear to be proportionate and dissuasive. In relation to companies limited by guarantees, there is a range of sanctions under Section 345-349 and 381 of the Companies Act, 2013 both for natural and legal persons. However, there is no a similar provision in relation to charitable trusts.

Effective information gathering and investigations

Criterion 8.5- (Not Met)

Sub-criteria (a) (not met) Malawi does not have in place measures to ensure effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs;

Sub-criteria (b) (not met) With respect to companies limited by guarantee, the Registrar General in terms of s. 16 of the Companies Act has got powers to inspect or call for production of any book required to be kept by the company. However, there are no similar legal provisions for charitable trusts and NGOs. Apart from existence of the legal provisions, Malawian authorities did not appear to have specific investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations;

Sub-criteria (c) (met) S.22 of the NGO Act requires NGOs to file with the Registrar's office on an annual basis its audited annual financial statements, its annual report and return and its source of

funding. In the case of companies limited by guarantees, there is no restriction for the investigative authorities in Malawi to access to information from the Registrar General. However, a registered document kept by the Registrar or evidence of the entry of particulars or a registered document in any device or facility can be accessed through a court order. Additionally, s.90 of the FCA empowers courts to issue search warrants to LEAs to investigate and inspect the books of a named company to assess the value of benefit derived by a person. Information in relation to charitable trusts are required to be registered by the Registrar General under the Trustee Incorporation Act and Rules and there is no restriction on accessing of information by the investigative authorities.

Sub-criteria (d) Malawi does not have appropriate mechanisms to ensure that information is promptly shared with competent authorities, in order to take preventive or investigative action when there is suspicion or reasonable grounds to suspect that a particular NPO is involved in terrorist financing abuse and/or is a front for fundraising by a terrorist organisation; is being exploited as a conduit for terrorist financing, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations.

Criterion 8.6- (Not Met) Malawi does not have points of contact and procedures to facilitate prompt sharing of information with competent authorities in order to take preventive or investigative action regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support.

Weighting and Conclusion

Malawi does not meet all the criteria under this Recommendation. Although the relevant laws have licensing/ registration requirements and the Registrar of NGOs and the Registrar General have powers to ask for a wide range of information from the NPOs when necessary, all the measures regulating the activities of NPOs in Malawi under the laws are not for purposes of dealing with the possible exposure of the NPO sector to abuse for TF activities. Authorities have not undertaken a comprehensive review of the NPO sector to appropriately understand TF risks and have not taken steps to promote targeted risk-based supervision or monitoring of NPOs. The NPO sector has not been engaged to raise awareness about potential vulnerabilities to TF abuse and risks. In view of the foregoing deficiencies, Malawi has been **rated Non-Compliant with R 8.**

Recommendation 9 – Financial institution secrecy laws

In its MER under the First Round of MEs, Malawi was rated Compliant with requirements of this Recommendation (formerly R 4) and as before, there are no statutory or other financial secrecy or confidentiality laws in Malawi that inhibit the implementation of the FATF Recommendations. The new R. 9 has not modified the requirements under the former R.4 of the 2004 FATF Methodology and the detailed analysis set out in paragraphs 348-351 still apply.

Criterion 9.1(Met)-Financial institution secrecy laws do not appear to inhibit the implementation of AML/CFT measures, and there are extensive provisions in law to ensure that adequate information can be shared in terms of S.32 of the FCA.

Weighting and Conclusion

Malawi meets criteria 9.1. **Malawi is rated Compliant with R. 9.**

Recommendation 10 – Customer due diligence

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R. 5). The main technical deficiency was that only banks complied with most of this requirement which was related to effectiveness but not part of technical compliance under the 2013 FATF Methodology. The new FATF Recommendation imposes more detailed requirements, particularly concerning the identification of legal persons, legal arrangements and beneficiaries of insurance policies.

Criterion 10.1 – (Met) Section 20 of the FCA as read with Regulation 3(2) Money Laundering, Proceeds of Serious Crimes and Terrorist Financing prohibits reporting institutions from keeping anonymous accounts or accounts in fictitious, false or incorrect names.

When CDD is required

Criterion 10.2 – (Met) S.16 (1) of the FCA and Regulation (1) of the Money Laundering, Proceeds of Crimes and Terrorist Financing Regulations, 2011 (ML Regulations, 2011) provide for performance of customer due diligence by reporting entities under the following circumstances:

- (a) – when establishing a business relationship (s.16(1)(a));
- (b) – when conducting a transactions above MK500, 000 (US\$676.59) irrespective of whether it is a single or multiple transactions;
- (c) – when conducting an occasional wire transfer (cross-border or domestic) above MK500, 000 (US\$676.59);
- (d) – when there is suspicion of ML/TF regardless of any circumstances.
- (e) – when there is doubt about the veracity or adequacy of previously obtained customer due diligence information.

Required CDD measures for all customers

Criterion 10.3 – (Met) Section 16(1) of the FCA obliges the FIs to identify and verify the identity of a customer using reliable and independent source documents.

Criterion 10.4 – (Met) Section 16(9)(b) as read with Regulations 4(2) and 5(2) of the Money Laundering, Proceeds of Serious Crimes and Terrorist Finance Regulations 2011 require FIs to verify any person purporting to act on behalf of the customer to determine if such a person is so authorised, and identify and verify the identity of that person.

Criterion 10.5 – (Met) Section 16(4)(1) of the FCA obliges FIs to establish and verify the true identify a beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using relevant information or data obtained from a reliable source such that the reporting institution is satisfied that it is clear about the identity of the beneficial owner.

Criterion 10.6 – (Met) Section 16(2)(a) of the FCA obliges FIs to understand and, where necessary, obtain information on the purpose and intended nature of the business relationship.

Criterion 10.7 – (Met) Section 29 of the FCA and Regulation 22 of the Money Laundering, Proceeds of Serious Crimes and Terrorist Financing Regulations require FIs to:

- (a) - conduct on-going due diligence on the business relationship, including on monitoring the business relationships and the transactions undertaken throughout the course of the relationship consistent with the information about the customer held by the reporting institution and the risk profile of the business of the customer, including, where necessary, the source of funds (s.29(3) & Reg. 22(1); and
- (b) – ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records particularly for higher risk categories of customers (s.29(4)).

Specific CDD measures required for legal persons and legal arrangements

Criterion 10.8- (Partly Met) Section 16(2)(c)(i) of the FCA requires FIs to take the necessary steps to understand the nature of the customer’s business who is a legal person, and the ownership and control structure of the legal person. There is no similar requirement in the case of a customer who is a legal arrangement.

Criterion 10.9- (Partly Met)- Section 16(2)(c) as read with Regulation 7(1) of the ML Regulations, 2011 provide for FIs to identify and verify the identity of legal persons through, inter alia, corporate name; identities of directors, address of the head office; proof of incorporation and similar evidence of the legal status legal form; as well as provisions that bind the legal person and any information that is necessary to understand the ownership and control structure of the legal person. There is no similar requirement in the case of a customer who is a legal arrangement.

Criterion 10.10 – (Met) Section 16(1)&(4) of the FCA obliges FIs 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 source, such that the FI is satisfied that it knows who the beneficial owner is. A beneficial owner is defined under the FCA as a natural person ultimately owns or controls a customer or a person on whose behalf, a transaction is conducted and includes a natural person who exercises ultimate effective control over a legal person or arrangement.

Criterion 10.11 – (Met) Section 16(5)-(6) of FCA as read with Regulations 7 and 12 of the ML/TF Regulations 2011 require reporting institutions to obtain the identity of the settlor, a trustee, the protector, beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership of trusts, the duty to identify and take reasonable measures to verify the parties involved in a legal arrangement is covered under the law.

CDD for beneficiaries of Life Insurance Policies

Criterion 10.12 – (Met) Section 18 of the FCA requires the FIs to conduct the following CDD measures on the beneficiary of life insurance and other investment related insurance policies, as soon as the beneficiary is identified or designated:

- (a) – for a beneficiary is identified or designated as specifically named natural or legal persons or legal arrangements – taking the name of that person (s18(1)(a));

- (b) – for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the FIs that it will be able to establish the identity of the beneficiary at the time of the payout (s.18(1)(b)); and
- (c) – for the above cases – the verification of the identity of the beneficiary should occur at the time of the payout (s.18(2)).

Criterion 10.13 – (Met) Section 18(3) of the FCA obliges FIs to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable so as to determine the required enhanced measures on a risk-sensitive basis which should include reasonable measures to establish and verify the true identity of the beneficial owner of the beneficiary, at the time of pay-out.

Timing of verification

Criterion 10.14 – (Met) Section 16(7) of the FCA and Regulation 9(1) of the ML Regulations, 2011 requires FIs to complete verification process of a customer before or during the course of establishing a business relationship or conducting transactions for occasional customers on condition that:

- (a) – the verification of identity may be completed as soon as reasonably practicable after the commencement of the business (s.16(7)(a));
- (b) – a delay in verification is unavoidable in the interest of not interrupting the normal conduct of business (s.16(7)(c)); and
- (c) – the risk of money laundering or financing of terrorism is effectively managed (s.16(7)(b)).

Criterion 10.15 – (Met) Section 16(7) of the FCA as read with Regulation 9(2) of the ML Regulations obliges FIs to adopt risk management procedures concerning the conditions under which businesses may utilise the business relationships prior to verification, and provides limitations on the use of the business relationship including in relation to the number, type and amount of transactions that can be performed by the reporting institution and that in the absence of risk management systems a reporting institution should not enter into a business relationship before verifying the identity.

Existing customers

Criterion 10.16 – (Met) Section 16(12) & (13) of the FCA obliges FIs to apply a risk-based approach to remediation of CDD measures subject to materiality and risk of the concerned customers including on the level of CDD measures prior to the coming into force of the FCA.

Risk-Based Approach

Criterion 10.17 – (Met) Section 21(5) of the FCA obliges FIs to apply enhanced due diligence where ML/TF risks are higher.

Criterion 10.18 – (Met) Section 21(5) of the FCA permits application of commensurate simplified due diligence (SDD) measures where there are lower risks except on circumstances under c.10.17.

Regulation 3(6) of the ML Regulations requires FIs not to conduct SDD where there is suspicion of ML/TF.

Failure to satisfactorily complete CDD

Criterion 10.19 – (Mostly Met) Where it is not possible to comply with relevant CDD measures or where the customer fails to submit satisfactory identity documents, Section 19(1)(a) and (b) of the FCA requires FIs not to open the account, commence business relations or perform the transaction and to submit an STR to the FIA within three working days. However, there is no specific requirement under the law to terminate the business relationship in such circumstances.

CDD and tipping off

Criterion 10.20 – (Not Met) There are no specific obligation for FIs, where they reasonably believe that performing the CDD process will tip-off the customer, not to pursue the CDD process but instead file an STR.

Weighting and Conclusion

Malawi meets with c.10.1-7, 10.10-18; mostly meets c.10.19; partly meets c.10.8-9; and does not meet c.10.20. There is no specific requirement under the law to terminate the business relationship where it is not possible to comply with relevant CDD measures or where the customer fails to submit satisfactory identity documents. There is no requirement for FIs to take the necessary steps to understand the nature of the business of a customer who is a legal arrangement. The law does not provide for FIs to identify and verify the identity of legal arrangements through, inter alia, corporate name; identities of directors, address of the head office; proof of incorporation and similar evidence of the legal status legal form; as well as provisions that bind the legal arrangement and any information that is necessary to understand the ownership and control structure of the legal arrangement. There is no specific obligation for FIs, where they reasonably believe that performing the CDD process will tip-off the customer, not to pursue the CDD process but instead file STR. **Malawi is rated Largely Compliant with R.10.**

Recommendation 11 – Record-keeping

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R. 10). The main technical deficiency was that, while the record keeping requirements were complete in terms of satisfying the Criterion, they did not apply to insurance companies and there had been no implementation with respect to covered entities other than banks.

Criterion 11.1 – (Met) Section 23(2) of the FCA requires FIs to maintain all records for a minimum period of seven (7) years following termination of a business relationship or a transaction.

Criterion 11.2 – (Met) Section 23(2) & (3) of the FCA requires FIs to maintain records obtained through CDD and transactions reporting obligations including account files and business correspondences and the results of any analysis undertaken for at least seven (7) years following termination of a business relationship or a transaction.

Criterion 11.3 – (Met) Section 23(3)(a) of the FCA requires FIs to maintain records in their possession in a manner which will enable sufficient reconstruction of the transactions by

competent authorities (including law enforcement agencies) at any time, if necessary, for evidence in the prosecution of criminal activity.

Criterion 11.4 – (Met) Section 23(3)(b) requires FIs to maintain in a manner and form that will enable FIs to comply immediately with requests for information from a competent authority.

Weighting and Conclusion

Malawi complies with all the criteria of this Recommendation. **Malawi is rated Compliant with R.11.**

Recommendation 12 – Politically exposed persons

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R 6). The main technical deficiencies was that the determination of beneficial ownership and source of wealth were found to be significant deficiencies. Moreover, only banks complied with the requirements of this recommendation which is not part of technical compliance under the 2013 FATF Methodology. In 2012, the FATF introduced new requirements for domestic PEPs and persons having prominent functions in international organisations.

Criterion 12.1 – (Met) Section 16(2)(d) of the FCA requires FIs to apply measures on foreign PEPs by adopting risk management procedures, obtaining management approval, verifying the source of income/wealth and conducting on-going due diligence to mitigate and manage the risks.

Criterion 12.2 – (Met) Section 16(2)(d) of the FCA requires FIs to take reasonable measures to determine whether a customer or the beneficial owner is a PEP and, where there is a high risk, apply the measures under c.12.1.

Criterion 12.3 – (Met) Section 16(2)(d) of the FCA requires FIs to apply the measures under criteria 12.1 and 12.2 in respect of family members or close associates of all types of PEPs.

Criterion 12.4 – (Met) Section 16(2)(d)(vi) &(vii) of the FCA requires FIs to take reasonable measures to determine whether the beneficiaries and the beneficial owner of the beneficiary are PEPs. Further, the FIs are required to inform senior management for enhanced due diligence on the whole business relationship with the policy holder, and consider a making a suspicious transaction report to the FIA.

Weighting and Conclusion

Malawi meets the criteria of this Recommendation. **Malawi is rated Compliant with R.12.**

Recommendation 13 – Correspondent banking

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R 7). The main technical deficiencies were that: financial institutions are not required to determine if an institution has been subject to a ML or TF investigation or regulatory action or ascertain whether controls at a respondent institution are adequate and effective. The new FATF Recommendation has added a requirement to prohibit relationships with shell banks.

Criterion 13.1 – (Met) Section 30(1)(b-e) of the FCA requires FIs to comply with the following in respect of cross-border correspondent relationships and other similar relationships:

- (a) gather sufficient information about a cross border correspondent institution prior to undertaking business (s.30(1)(b));
- (b) understand the nature of the respondent's business (s.30(1)(b));
- (c) determine from publicly available information on the reputation of the institution, the quality of supervision, to assess the correspondent institution's controls against ML/TF (s.30(1)); and
- (d) obtain approval from senior management before establishing a new correspondent relationship and to clearly understand and document the responsibilities of the financial institution and the correspondent institution (s.30(1)(d)).

Criterion 13.2 – (Met) In relation to “payable-through account”, Section(4)(a-b) of the FCA requires FIs when entering into a correspondent relationship to perform CDD measures on their customers that have direct access to the account of the correspondent bank and provide the relevant CDD information upon request to the correspondent bank.

Criterion 13.3 – (Met) Section 30(2) of the FCA prohibits FIs from entering into or continuing correspondent banking relationships with shell banks. Further, the Section requires FIs to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

Weighting and Conclusion

Malawi meets all the criteria of this Recommendation. **Malawi is rated Compliant with R.13.**

Recommendation 14 – Money or value transfer services

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly SR VI). The main technical deficiency was that there had been no implementations effort with respect to money transmission service providers. 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)-Natural and legal persons are required under S.12 of the Payment Systems Act 2016 to be licensed or authorized by the Reserve Bank of Malawi prior to establishing or operating a payment, clearing and settlement system or service, remittance services including electronic money transfer services, mobile payment services or issue payment instruments.

Criterion 14.2(Met)-S. 12(4) of Payment Systems Act 2016 provides for proportionate and dissuasive sanctions for MVTS providers that carry out services without a licence. The penalty is a fine of K50, 000,000 and imprisonment for 7 year for any person.

Criterion 14.3 (Met)-In terms of Section 2 of the FSA, the MTS are one of the reporting institutions. The MVTS providers are supervised for AML/CFT by the FIA in terms of Section 35(1) of the FCA. Section 18(1) of the Payment Systems Act gives the Reserve Bank of Malawi power to monitor compliance by MVTS providers prudentially. RBM is also monitoring the AML/CFT compliance by MVTS through delegation by the FIA in accordance with Ss. 5 (e)(ii) and 35(2) of the FCA and through a delegation instrument signed in April 2018.

Criterion 14.4(Met)-MVTS service providers are required under S.16(2) of the Payment Systems Act to provide information to RBM required for regulatory, oversight and investigative purposes. Such information includes current list of agents of the MVTS providers and these are submitted to the RBM. The lists of agents are therefore accessible to RBM and other competent agencies.

Criterion 14.5(Met)-Reporting institutions are required by S.27(1)(c) of the FCA to establish and maintain compliance management programme which shall include conducting on-going training of its directors, officers, employees and agents to recognize suspicious transactions, trends in money laundering and financing of terrorism activities and money laundering and financing of terrorism risks within the financial institution's products, services and operations. The compliance management program includes monitoring of transactions and, by extension, the role played by the agents as they are part of the transactions process.

Weighting and Conclusion

Malawi meets all the criteria of this Recommendation. **Malawi is rated Compliant with R.14.**

Recommendation 15 – New technologies²⁴

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R 8). The main technical deficiencies was 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) Regulation 23 of Money Laundering, 2011 Regulations requires FIs to take reasonable measures to prevent the use of new technologies for ML/TF. The general requirement under Section 21(1) to FIs to assess their ML/TF risks arising from the delivery channels applies. However, Malawi has not carried out an ML/TF risk assessment associated with development of new products and new business practices, including new delivery mechanisms, and the use of new technologies for both new and existing products.

Criterion 15.2 – (Met) Section 21(1) & (2) of the FCA requires FIs to conduct ML/TF risk assessment in relation to the products offered and delivery channels and to take counter-measures commensurate the risks.

Weighting and Conclusion

Malawi partly meets c.15.1 and meets c.15.2. Malawi has not identified and carried out an ML/TF risk assessment associated with development of new products and new business practices, including new delivery mechanisms, and the use of new technologies for both new and existing products. **Malawi is rated Partially Compliant with R.15.**

²⁴ In June 2019, the FATF revised R.15 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This review does not assess compliance with revised R.15 because, as at the review period, the FATF had not yet revised its assessment Methodology accordingly. *Malawi* will be reviewed for technical compliance with revised R.15 in due course.

Recommendation 16 – Wire transfers

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly SR VII). The main technical deficiency was that no definition of what constitutes originator information and no provision for handling wire transfers that do not contain complete originator information. 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-(Met) Section 28(1) as read with Regulation 18(1)(a-b) of the ML/TF Regulations require FIs to include accurate originator and beneficiary information when conducting domestic and international funds transfers, regardless of the amount, where originator or beneficiary information refers to name of the originator or the beneficiary, address of the originator or the beneficiary, an account number of the originator or the beneficiary, and other related messages that are sent.

Criterion 16.2 -(Not Met) There are no specific obligations for ordering FIs to include full beneficiary information in cross-border batch files.

Criterion 16.3 – (N/A)– Malawi does not apply a *de minimis* threshold for the requirements of criterion 16.1.

Criterion 16.4 (Met)-Regulation 18(2) of the ML Regulations 2011 requires verification of all information (identity of the originator and the beneficiary) obtained regardless of whether there is suspicion of ML or not.

Criterion 16.5 – (Met) Section 18(1) of the FCA and Regulation 18(1) of the ML/TF Regulations FIs are required to include accurate originator and beneficiary information when conducting domestic funds transfers.

Criterion 16.6 – (Not Met) There is no specific obligation to FIs to implement the measures under this criterion.

Criterion 16.7-(Met) **See R.11.** Section 28(3) of FCA reads:(3) *All records and information collected under subsection (1) shall be maintained in accordance with section 22.*

Criterion 16.8(Not Met)-There is no specific requirement in Malawi to fulfil this criterion.

Intermediary financial institutions

Criterion 16.9 (Met)-In terms of Regulation 18 (3) of the Money Laundering Regulations, 2011 financial institutions are required to ensure that an intermediary institution in the payment chain provides all originator and beneficiary information accompanying an electronic fund transfer.

Criterion 16.10 (Met)-Section 28(4) of FCA provides that *where the required originator or beneficiary information accompanying a cross-border wire transfer does not remain with a related domestic wire transfer, the intermediary financial institution shall keep a record, for at least seven years, of all the information*

received from the ordering financial institution or another intermediary financial institution, satisfying the requirements of the criterion.

Criterion 16.11(Met)-Financial institutions are required to monitor and report to FIA funds transfers that lack required originator information or required beneficiary information as provided under Reg. 18(4) of the ML Regulations 2011

Beneficiary financial institutions

Criterion 16.12-16.13 (Not met)- The requirements are not provided in the law.

Criterion 16.14 (Met)-See R.11. Regulation 18(2) of the ML Regulations 2011 mandates financial institutions verify in full, the identity of the originator and beneficiary for all *electronic* funds transfers.

Criterion 16.15 (Not met)-There is no requirement in existing law that places an obligation on reporting institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information.

Money or value transfer service operators

Criterion 16.16 (Met)-MVTs fall under reporting institutions and are therefore covered under S.28(1) of the FCA and Regulation 18(1)(a) which make it mandatory to include accurate originator and beneficiary information when conducting domestic and international funds transfers.

Criterion 16.17 (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 an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIA.

Implementation of Targeted Financial Sanctions

Criterion 16.18(Met)-Section 28(5) of FCA Provides that where a name designated on a prescribed sanctions list is encountered and confirmed, the financial institution, person or money transmission service provider shall freeze the transaction. Reg. 9 (2) (e) (ii) of the CFT Regulations, 2017 also requires FIs to take freezing measures pursuant to UNSCR 1267/1999 and UNSCR 1373/2001 as described under R.6.

Weighting and Conclusion

Malawi meets Criteria 16.1, 16.4, 16.5, 16.7, 16.9, 16.10, 16.11, 16.14, 16.16, 16.17 and 16.18, partly meets Criterion 16.15; does not meet Criteria 16.2, 16.6, 16.8, 16.12 and 16.13. The rating for Criterion 16.3 is Non-Applicable in the case of Malawi as the country does not apply a *de minimis* threshold for the requirements of criterion 16.1. There are no specific obligations for ordering FIs to include full beneficiary information in cross-border batch files. There is no specific requirement for ordering FIs to be required to include the account number or a unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary. There is no specific obligation prohibiting the ordering financial

institution to execute wire transfer if it does not comply with the requirements specified above at criteria 16.1-16.7. There is no specific obligation to intermediary and beneficiary financial institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information. There is no specific requirement for FIs to take reasonable measures which include post-event monitoring or real-time monitoring to identify cross-border wire transfers that lack complete originator information or required beneficiary information. 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 an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIA. **Malawi is rated Partial Compliant with R.16.**

Recommendation 17 – Reliance on third parties

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R 9). The main technical deficiencies was that only banks comply with this requirement. 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 – (Met)Section17(1) of the FCA permits FIs to rely on a third party or introduce business and places the ultimately CDD obligation with the FIs provided that the third party:

- (a) - obtains immediately the necessary information concerning elements (a) – (c) of the CDD measures set out in R.10;
- (b) – will, immediately, on request by the FI to produce the copies of the CDD and other relevant records obtained under R.10 and transactions reporting obligations;
- (c) – satisfy itself that the third party upon whom reliance is placed, is regulated and supervised for compliance with CDD and record keeping obligations set out in Sections 16 and 23 of the FCA.

Criterion 17.2 –(Met)Section 17(1)(d) of the FCA requires FIs which rely on a third party or an introduced business to consider the country's ML/TF risk level to satisfy itself that the introducing party is from a jurisdiction which conforms to the FATF Standards on AML/CFT.

Criterion 17.3 – (Met) Section 17(2)(a-c) of the FCA 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;
- (b) – the measures under (a) are supervised by a supervisor (i.e., RBM); and
- (c) – any higher risks at a national level are sufficiently mitigated by the financial group's AML/CFT policies.

Weighting and Conclusion

Malawi meets the criteria of this Recommendation. **Malawi is rated Compliant with R.17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R 15). The main technical deficiency was that while the RBM did not charter shell banks and none operate in Malawi, there was no statutory or regulatory prohibition against the use of shell banks as correspondent banks or against correspondent banks using shell banks. It was rated with Not Applicable with the former R 22 as here were no Malawian local banks with foreign branches and subsidiaries. The new Recommendation introduces some new requirements on implementing AML/CFT programmes for financial groups.

Criterion 18.1 – (Met) Section 27 of the FCA requires FIs to establish and implement AML/CFT programmes with regard to ML/TF risks and size of the businesses and programmes, including:

- (a) - appointment of compliance officer at a senior management level;
- (b) - staff screening to ensure integrity;
- (c) - staff training for continuous competency; and
- (d) - independent audit function of the AML/CFT procedures and systems.

Criterion 18.2 – (Met) Section 31(2) of the FCA requires FIs to implement group-wide AML/CFT programmes which are applicable or appropriate to all branches or majority-owned of FI, including on:

- (a) - policies and procedures for sharing information for purposes of CDD and risk management;
- (b) - (b) the provision of customer, account, and transaction information from branches and subsidiaries when necessary for ML/TF purposes; and
- (c) - (c) adequate safeguards on the confidentiality and use of information exchanged.

Criterion 18.3 – (Met) Section 31(3) and (4) as read with Section 27 of the FCA requires FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country, and apply appropriate additional measures where the host country does not permit proper implementation of AML/CFT measures to manage ML, TF and handling of proceeds of crime risk.

Weighting and Conclusion

Malawi meets the criteria of this Recommendation. **Malawi is rated Compliant with R.18.**

Recommendation 19 – Higher-risk countries

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R21). The main technical deficiencies were that: only banks observe any part of this recommendation and no measures to inform financial institutions about specific country concerns and no countermeasure efforts in place to address such concerns. R.19 strengthens the requirements to be met by countries and FIs in respect of higher-risk countries.

Criterion 19.1 – (Met) The FIA uses its power Section 5 of the FCA to require the FIs to apply enhanced due diligence, commensurate to the risks, on business relationships and transactions

with natural or legal persons, including FIs, from jurisdictions which have been identified as high risk for purposes of ML/TF from countries for which this is called for by the FATF.

Criterion 19.2 – (Met) The FIA uses its power Section 5 of the FCA be able to apply countermeasures proportionate to the risks: (a) when called upon to do so by the FATF; and (b) independently of any call by the FATF to do so. .

Criterion 19.3 – (Met) The FIA (AML/CFT supervisor of all FIs) and the RBM have issued the FATF ICRG List to FIs to have regard to when engaging with customers pursuant to. Section 21(6)(a) of the FCA. The FIs interviewed during the on-site visit confirmed receipt of the List as soon as it is published by the FATF.

Weighting and Conclusion

Malawi meets the criteria of this Recommendation. **Malawi is rated Compliant with R.19.**

Recommendation 20 – Reporting of suspicious transaction

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R13) and Largely Compliant with the former SRIV. The main technical deficiencies were that: only banks were filing STRs and it was unclear whether attempted suspicious transactions are required to be reported.

Criterion 20.1 – (Mostly Met) Section 23(1) of the FCA requires FIs to file STRs when there is a suspicion that a transaction contains funds generated from criminal proceeds, or related to TF, to the FIA as soon as possible but no later than three (3) working days following the formation of such a suspicion. Proceeds generated from terrorism are not covered as predicate offences (see c.3.2 for details) in Malawi and therefore not legally reportable by FIs as required under the FATF Standards.

Criterion 20.2 – (Met) Section 23(2) of the FCA and Regulation 26(1)(c) respectively require FIs to file STRs including attempted transactions, irrespective of the value of the transaction involved.

Weighting and Conclusion

Malawi meets Criterion 20.2 and mostly meets Criterion 20.1 of this Recommendation. The uncovered predicate offence of terrorism is not a major crime generating proceeds for ML/TF purposes in Malawi, and therefore their impact is minimal. **Malawi is rated Largely Compliant with R.20.**

Recommendation 21 – Tipping-off and confidentiality

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R14). The main technical deficiency was that no protection for Directors from possible liability for STRs. The new R. 21 has not modified FATF requirements.

Criterion 21.1 – (Met) Section 26 of the FCA provides protection to FIs and their directors, officers, employees or agent from both criminal, civil, administrative and disciplinary liability for breach of any restriction on disclosure of information, on good faith, to the FIA, regardless of whether the criminal activity happened or not.

Criterion 21.2 – (Met) Section 25 of the FCA prohibits FIs and their directors, officers, employees or agent from disclosing the fact that an STR or related information has been or will be made to the FIA.

Weighting and Conclusion

Malawi meets all the criteria under this Recommendation. **Malawi is rated Compliant with R.21.**

Recommendation 22 – DNFBPs: Customer due diligence

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R12). The main technical deficiency were that AML/CFT preventive measures under the ML & TF Act are not being implemented by any of the DNFBPs as required under FATF Recommendations 5-11.

Criterion 22.1 – (Mostly Met) The CDD obligations set out in Section 16 of the FCA (see R.10 for further details) apply to all transactions conducted by DNFBPs regardless of value. In this regard, since Malawi does not have a monetary threshold on application of CDD obligations in respect of transactions conducted at a casino (FATF Standards sets a threshold of USD / EUR 3000), the general CDD measures under the FCA apply.

Criterion 22.2 – (Met) Section 22 of the FCA (See R.11 for further details) provides for record-keeping obligations which equally apply to DNFBPs.

Criterion 22.3 – (Met) Section 16 of the FCA (See R.12 for further details) provides for obligations relating to PEPs which equally apply to DNFBPs.

Criterion 22.4 – (Partly Met) Section 21 of the FCA (See R.15 for further details) as read with Regulation 23 of the AML Regulations provides for obligation relating to new technologies which equally apply to DNFBPs. Malawi has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs.

Criterion 22.5 – (Met) Section 17 of the FCA provides for obligations relating to third party or introduced business which equally apply to DNFBPs.

Weighting and Conclusion

Malawi meets criteria 22.2 to 22.3 and c.22.5, mostly meets c.22.4, and partly meets Criterion 22.4. Malawi does not have a monetary threshold on application of CDD obligations in respect of transactions conducted at a casino (FATF Standards sets a threshold of USD / EUR 3000), the general CDD measures under the FCA apply. Malawi has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs. **Malawi is rated Largely Compliant with R.22.**

Recommendation 23 – DNFBPs: Other measures

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R16). The main technical deficiencies were that: no implementation of there porting requirement; and no implementation of the internal controls obligation.

Criterion 23.1 – (Mostly Met) Section 23 of the FCA (See R.20 for further details on deficiencies) provides for filing of STR obligations which equally apply to DNFBPs.

Criterion 23.2 – (Met) Section 27 of the FCA (See R.18 for further details) provides for AML/CFT programmes relating to foreign subsidiaries and branches which equally apply to DNFBPs.

Criterion 23.3 – (Met) Section 21 of the FCA (See R.19 for further analysis) provides for obligations relating to identified high risk jurisdictions which equally apply to DNFBPs.

Criterion 23.4 – (Met) Sections 25 and 26 of the FCA (See R.21 for further analysis) provides for tipping-off prohibition and confidentiality obligations which equally apply to DNFBPs.

Weighting and Conclusion

Malawi meets criteria 23.2 to 23.4 and mostly meets criterion 23.1. The uncovered predicate offence of terrorism is not a major crime generating proceeds for ML/TF purposes in Malawi, and therefore their impact is minimal. **Malawi is rated Largely Compliant with R.23.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R. 33). The main technical deficiency was that information was not kept in an updated manner and no beneficial ownership information. 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.

Criterion 24.1 (Met)- The Companies Act, 2013 and the Business Registration Act, 2013 (BRA) regulate the incorporation and registration of legal entities in Malawi. The Companies Act establish different types of companies such as private limited liability companies (s.23), public limited liability company (s.24), company limited by guarantee (s.25) and state owned companies (s.26). Body corporates, partnerships and sole proprietorship are registered under the Business Names Act 2012. Section 27 *et. al* of the Companies Act provide for the process for formation of companies. An application for the creation or registration of a company has to be made to the Registrar of Companies on a prescribed form, signed by each applicant and meet all the other requirements set out in ss. 23- 26 and 28 of the Companies Act, including obtaining a declaration of compliance from the person engaged in the formation of the company confirming that the application complies with the requirements of the Companies Act, which apply to formation of all the types of companies which can be created in Malawi. Sections 11 and 12 of the Business Registration Act provide for information required during registration of sole proprietors and partnerships. S. 28(2) of the Companies Act adequately covers the requirements of obtaining basic information when creating a company in Malawi but not on beneficial ownership.

Criterion 24.2 (Met)-The May 2018 NRA includes specific assessment of the ML risks associated with legal persons that can be created in Malawi. However, looking at the content of the NRA report, it does not contain information on the assessment of risk posed by various forms of legal persons in Malawi nor does it assess each type separately for the risk they pose for money laundering and terrorist financing.

Basic Information

Criterion 24.3 (Met)-Section 6 of the Business Registration Act 2012 and Section 4(1)(b) of the Companies Act 2013 empowers the Registrar of Businesses/Companies to maintain a register of businesses/companies. In terms of Section 29 of the Companies Act, where the registrar is satisfied that the application for incorporation of a company complies with the requirement of the Act, it is mandated enter the particulars of the company on the register upon payment of the prescribed fee. Section 174 of Companies Act 2013 provides for a register of directors to be kept by a company and that it should be available for search by any person; for free in case of members and for a fee in case of any other person. When a legal person is registered, the Registrar of Companies issues a Certificate of Incorporation. A certificate of incorporation issued in terms of s. 29 of the Companies

Act serves as evidence that all the requirements of the Companies Act have been met and from the date of incorporation recorded on the certificate that the company is incorporated in terms of the Act. The register of companies at the office of the Registrar General is available for search by any person upon payment of a fee (149(1)(b)).

Criterion 24.4 (Met)-The Companies Act requires companies to keep and maintain information obtained in criterion 24.3 above and also shareholder information. Section 174 of the Companies Act 2013 provides for companies to keep a register of Directors. Section 55 requires companies to maintain at least one registered office and that information to be provided in the incorporation or registration documents of the company. Section 145 of the Companies Act 2013 requires companies to maintain 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 within the preceding 7 years. Section 148 of the Companies Act 2013 requires the share register to be kept in Malawi if it is in hard copy. The law states that if the share register is a hard copy it has to be kept in Malawi. Section 2 of the Companies Act 2013 defines a member as (a) a shareholder (b) in the case of company, limited by guarantee, a person whose name is entered in or who is entitled to have his name entered in the register of members.

Criterion 24.5 (Met)- Section 172(2) of the Companies Act 2013 require companies to inform the Registrar of any change in the particulars, change in directorship, company secretary or any other particulars contained in its register. Any change in directors is supposed to be communicated to the Registrar within 28 days. This includes changes in shareholders, registered address, directors, company secretary. Company secretary is under obligation to take reasonable steps to ensure that the share register is properly kept and that share transfers are entered in register (S150 & S139). In terms of Section 150, a person who contravenes that provision is liable to a fine as may be prescribed in a schedule of penalties. In terms of Section 55(3) of the Companies Act, companies are required to notify the Registrar in case there is a change in particulars of the registered office.

Beneficial Ownership Information

Criterion 24.6-24.9 (Not met)-Malawi has got no mechanisms complying with requirements under criteria 24.6, 24.7, 24.8 and 24.9 on obtaining of information on beneficial ownership of a company by that company, FIs, DNFBPs or by any other competent authority, and for it to be kept available at a specific location in the country, or for it to be determined in a timely manner by the competent authorities and for that information to be accurate and kept up-to-date as possible.

Other Requirements

Criterion 24.10 (Partly Met)-Although competent authorities can obtain timely access to information held by the Registrar of Companies which was also confirmed by the NRA, such information does not cover beneficial ownership. However, law enforcement officials such as the police can obtain information required from companies, FIs and DNFBPs through a court order, in addition to information which can be provided to them by the FIU. The same limitations described under C. 24.7 also apply to this criterion. The requirement to obtain information on

members, although it might also be the same information on the beneficial owner, the extent of such a coincidence could not be determined as the authorities did not provide any information on this.

Criterion 24.11 (Met)-All shares in Malawi must be nominal. The issuance of bearer shares or bearer share warrants is not allowed (S.71 of the Companies Act).

Criterion 24.12 (Not Met)-The authorities stated that Malawi has put in place measures to ensure that nominee arrangements are not misused (option c of this criterion). Nominee shareholders or directors are subject to the FCA and further that, in the case of nominee shareholders, if the contract that regulates the nominee arrangement is not stamped, it cannot be enforceable in court. However, the authorities have not demonstrated how these measures ensure that the nominee shareholders are not being misused nor have they provided evidence supporting availability of such measures.

Criterion 24.13 (Partly Met)- S.381 of the Companies Act 2013 which deals with offences for which no specific penalty is provided, S.382(4) of the Companies Act 2013 which allows regulations or rules created under the Act to impose a fine and imprisonment, S.22(6) of the FCA which provides for a penalty of imprisonment for 5 years and fine of K10-million, and K50-million and revocation of business licence to a legal person for failure to establish and maintain customers' records, S.49(a) of the CPA which provides for a fine of K50,000 and to imprisonment for 2 years to any person who contravenes or fails to comply with any order, direction notice, requirement or demand of the Bureau issued, given or made under the Act. There are no similar provisions for breaches of the requirements with respect to beneficial ownership information.

Criterion 24.14 (Partly Met)- The Mutual Assistance in Criminal Matters Act provides the Central Authority on MLA, the DPP with wide powers to provide mutual legal assistance which might include any MLA on information relating to basic and beneficial ownership information. There was one case where the Registrar General provided some assistance to the government of Canada through the Malawi Police Service. However, the Authorities have not provided any evidence in support of their response. There are no specific provisions facilitating access by foreign competent authorities to basic information held by the Registrar of Companies. Although the competent authorities can use ss. 22, 60(b) and 104(1) of the FCA to obtain information on crimes under investigation and to issue information notices to all reporting entities requesting for information relating to a financial crime, there are no legal provisions expressly providing LEAs with powers to obtain beneficial ownership information on behalf of their foreign counterparts.

Criterion 24.15 (Partly Met)-There are no existing frameworks for the Malawian 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. However, the requirements of the Companies Act (described in 23.3 & 23.4, above) adequately mitigate this deficiency in as far as basic information on legal ownership of companies is concerned as they are comprehensive enough but not on beneficial ownership. Though the FIA monitors the exchange of information as part of its approach to meeting 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 DPP which is the central authority for

MLA in practice, although this is not being done, can use its general legal framework provided under the Mutual Assistance in Criminal Matters Act to determine the quality of the assistance received on requests for basic information, although it might be constrained when it comes to monitoring the quality of assistance requested or received relating to beneficial ownership information. The authorities indicated that Malawi has been making many requests to foreign counterparts especially with regard to investigations of the *Cashgate* and generally the responses have been very beneficial.

Weighting and Conclusion

Malawi meets criteria 24.1 – 24.5, 24.11; partly meets 24.10, 24.13 and 24.14 and does not meet criteria 24.6 – 24.9 and 24.12. Malawi has got no mechanisms complying with requirements under criteria 24.6, 24.7, 24.8 and 24.9 on obtaining of information on beneficial ownership of a company by that company, FIs, DNFBPs or by any other competent authority, and for it to be kept available at a specific location in the country, or for it to be determined in a timely manner by the competent authorities and for that information to be accurate and kept up-to-date as possible. Although competent authorities can obtain timely access to information held by the Registrar of Companies which was also confirmed by the NRA, such information does not cover beneficial ownership. The authorities have not demonstrated how their measures ensure that the nominee shareholders are not being misused nor have they provided evidence supporting availability of such measures. There is no specific provision to liable a person for breaches of the requirements with respect to beneficial ownership information. There are no specific provisions facilitating access by foreign competent authorities to basic information held by the Registrar of Companies. There are no legal provisions expressly providing LEAs with powers to obtain beneficial ownership information on behalf of their foreign counterparts. There are no existing frameworks for the Malawian authorities to monitor the quality of assistance they receive from other countries in response to requests for beneficial ownership information or requests for assistance in locating beneficial owners residing abroad. **Malawi is rated Partially Compliant with R.24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R 34). The main technical deficiencies were that: information not kept in an updated manner on public trusts and no beneficial ownership information on private trusts.

Criterion 25.1 (Partly Met)

Criterion 25.1 (a)- Malawi does not require trustees of any express trust governed under their law to obtain and hold adequate, accurate, and current information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust. This requirement is placed on Financial Institutions under S.16(5) of the FCA.

Criterion 25.1(b)- Malawi does not have any provision in law which requires any trust governed under their law to hold basic information on other regulated agents of, and service providers to, trust, including investment advisors or managers, accountants and tax advisors.

Criterion 25.1(c)- Reporting institutions are subject to the 7 year- record keeping requirements (including on beneficial owner information) stipulated by S. 22 of the FCA. Professional trustees are part of the reporting persons as DNFBPs in Malawi.

Criterion 25.2 (Partly Met)- Reporting institutions are required under S.22(1) to establish and maintain information on their customers, including beneficial ownership information in accordance with S.16 of the same Act. However, section 22 does not have a requirement to the effect that information kept has to be updated.

Criterion 25.3 (Met)- Malawi requires reporting institutions to find out the status of any trusts when entering into a business relationship under Section 16 of the FCA. Section 16(5) of the FCA requires identification of *the settlor, a trustee, the protector, if any, a beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership.*

Criterion 25.4 (Met)-Law enforcement (MPS, ACB, MRA, FIA) have wide powers and they can access any information needed from a natural or legal person, including on trusts and from trustees.

Criterion 25.5 (Met)-Law enforcement agencies use powers in their respective laws to obtain any information whenever needed including on beneficial ownership; physical address of the trustee; assets held by the reporting institution on behalf of the trustees they have relationship with and beneficial ownership information that trustees should obtain and maintain pursuant to the FCA.

Criterion 25.6(Met)- Malawi 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 Interpol and MLA requests. The FIA uses Egmont platform (ESW) to share information with counterparts.

Criterion 25.7 (Met) –Trustees are liable for failure to perform their duties. Authorities have cited S.22(6) of the FCA which provides for a penalty of imprisonment for 5 years and fine of K10-million, and K50-million for Reporting persons who fails to establish and maintain customer records.

Criterion 25.8 (Met)- Malawi has criminal sanctions for failing to provide information to LEAs. Refer to Criterion 24.13

Weighting and Conclusion

Malawi meets criterions 25.3, 25.4, 25.5, 25.6, 25.7 and 25.8 and partly meets criteria 25.1 and 25.2. Criterion 25.1 creates major deficiencies as the Registrar General who has the responsibility to register trust Deeds has got no obligation to obtain information set out under this criterion and trustees also have got no specific obligation to obtain and retain adequate, accurate and current information on the identity of the settlor, the trustees, beneficiaries or natural persons exercising ultimate control over the trust. Although, FIs have an obligation to obtain and keep full information on beneficial ownership or natural persons who have ultimate control over a trust or any other legal arrangement, for competent authorities in particular law enforcement, such information will not be easy to access as it will not be kept at a central registry and not all the registered trusts might have a relationship with a FI or a DNFBP. **Malawi is rated Partially Compliant with R.25.**

Recommendation 26 – Regulation and supervision of financial institutions

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R23). The main technical deficiencies were that: banks were the only financial institutions implementing the statute's requirements and many foreign exchange bureaus were unlicensed. The new FATF Recommendation strengthens the principle of supervision and controls using a risk-based approach.

Criterion 26.1-(Met) Section 35(1) of the FCA designates the Financial Intelligence Authority (FIA) as the AML/CFT supervisor for all financial institutions in Malawi. Section 35(2) give power to the FIA to delegate supervisory responsibilities to other financial sector supervisors to ensure compliance with the AML/CFT obligations by their regulated entities. In this regard, the FIA has delegated the RBM to supervise all FIs except for mobile money services providers, which is supervised by the former.

Criterion 26.2 (Met) - All FIs are required to be licensed or registered in terms of section 21 the FSA. In addition, Malawi has specific industry legal and regulatory frameworks for market entry requirements. The definition of financial institutions as per section 2 of FSA includes all core financial institutions.

Financial institutions providing a money service and money or currency changing service (Forex Bureau) are required to be licensed or registered as per Section 12 of the Payment Systems Act and Section 9 (1) of the Exchange Control Act, 2014 respectively.

Section 5 (2) of the Financial Services Directive 2018 prohibits shell companies from owning or operating a bank. Financial institutions are prohibited from entering or continuing relationships with shell bank or allow their account to be used by shell banks (s 21 of the Money Laundering Regulations, 2011) It is the view of the assessors that the licensing requirements in place are rigorous enough not to allow licensing or operation of shell banks. At the time of the on-site visit, there were no shell banks that were licensed or operating in Malawi.

Criterion 26.3-(Met) The Registrar is responsible and has powers to issue directives for the carrying out of Fit and Proper assessments for shareholders, controlling parties, directors, executive officers, managers, auditors and actuaries of financial institutions (Section 34(2)(a) of the FSA). These assessments are part of the licensing requirements as provided for in various directives, regulations and guidelines applicable to financial institutions.

Where there are concerns, licensing or registration can be refused. Further, Financial Institutions are required to advise the registrar in relation to any change in key person. The Registrar subsequently has to conduct a Fit and Proper assessment again.

The following directives were issues in terms of section 34 of the FSA.

Criterion 26.4-(Met)(a)The RBM is responsible for AML/CFT supervision of *Core Principles* FIs, on a risk-sensitive basis to supervise and monitor compliance with AML/CFT obligations. The RBM implements Basel Core Principles (BCP) and is a member of the International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commission, which

further includes requirements for consolidated supervision. As such, the supervisor has general powers to undertake consolidated supervision.

(b) The RBM when supervising and regulating other financial institutions is obliged to consider the ML/TF risks within the sector. It is also obliged to review the adequacy and implementation of reporting institutions policies, internal controls and procedures, taking into account the money laundering and terrorist financing risk profile and size of the institution (Section 36(4)(i) of FCA).

Criterion 26.5-(Met) (a) The RBM is obliged to conduct risk assessments. In doing so, the RBM must review the ML and TF risk profiles and risk assessments prepared by reporting institutions and take the result of this review into consideration. The RBM must further review the adequacy and implementation of reporting institutions policies, internal controls and procedures, taking into account the money laundering and terrorist financing risk profile and size of the institution (Section 36(4)(h) and (i) and (5) of FCA).

In terms of implementation of these provisions, RBM conducts ML/TF risk assessments, offsite analysis of returns from financial institutions (quarterly, semi-annually and annually). From these returns, risk profiles are developed for each financial institution. The risk profiles developed feed into the annual onsite examination program. The risk assessment is also updated when there are major events affecting the financial sector.

(b) The Supervisors participated in the 2018 NRA. Their supervisory framework, takes into account the findings of the NRA. The frequency and intensity of supervision and monitoring of FIs for compliance with AML/CFT obligations is informed by ML/TF risks.

(c) The RBM has demonstrated that it is obliged to conduct ML and TF risk assessments. There is evidence that the AML/CFT part of the supervisory activity is guided by ML/TF risks as identified by the supervisory authorities and that it is commensurate with the level of ML/TF risks in the country.

Criterion 26.6 (Met) -Section 36(4)(a), (h) & (i) of FCA obliges supervisory authorities to take into account the outcome of the risk assessments and controls in place to mitigate the risks. In terms of their supervisory approach, they must assess the risk periodically or when there are major developments.

Weighting and Conclusion

Malawi meets all criteria under this Recommendation. **Malawi is rated Compliant with R.26.**

Recommendation 27 – Powers of supervisors

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R29). The main technical deficiencies were that: there was virtually no supervision in the foreign exchange area of those that were licensed, and absolutely no supervision of unlicensed ones.

Criterion 27.1-(Met) Supervisory authorities are responsible for regulating, supervising and enforcing compliance with the FCA (Section 36(1) of FCA), subordinate legislation as well as instructions and guidelines issued under the Act.

Criterion 27.2- (Met) In terms of Section 41 of the FSA, the RBM has powers to conduct inspections.

Criterion 27.3-(Met) Supervisors have the powers to compel production of any records, documents and information relevant to monitoring compliance (Section 36(4)(f) of FCA). Examiners may also make copies, obtain extracts, to inspect and make copies or take extracts from any relevant records documents or things in those premises and may require a person who controls the financial institution to provide to the Registrar with information or documents as may be necessary (Section 41(3) of the FSA).

Criterion 27.4-(Met) The FIA and supervisory bodies have wide powers to take administrative penalties against Persons or Reporting Institutions (Section 34 of the FCA). The administrative penalties range from issuing warning, directing a person to do specific things or to refrain from doing specific things and go as far as publicising the non-compliance of a reporting institution in the widest distributed newspaper (Section 34 of the FCA). In cases where a fine is issued and the offender fails to pay it within the prescribed period, it can be recovered as a civil debt.

Criminal and civil sanctions are provided regarding specific obligations in the FCA. The sanctions are applicable to natural persons of reporting institutions and to legal persons.

In terms of sec 31 of the FSA, the Registrar has powers to remove key person based on competence, business record or character where a key person is no longer suitable to discharge his duties. The Gaming Board has similar powers in terms of Regulation 40 of 1998.

The Registrar can also suspend or revoke a license if a financial institution is involved in financial crime (Section 27 (1)(e) of the FSA). The definition of financial crime includes contravention of the AML/CFT laws including the FCA. The RBM also has powers to withdraw a license or revoke authorisation of a system operator should it contravene the Act or pose risk (Section 15(1) of the Payment Systems Act).

Weighting and Conclusion

Malawi met all criteria under this recommendation. **Malawi is rated Compliant with R.27.**

Recommendation 28 – Regulation and supervision of DNFBPs

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R24). The main technical deficiencies were that no implementation of AML/CFT requirements across all DNFBPs. The new FATF Recommendation strengthens the principle of supervision and controls using a risk-based approach.

Casinos

Criterion 28.1- (Met) (a) In terms of Sec 4(1) of the Gaming Act, Casinos are required to be licensed.

(b) As part of the assessment of an application the board is obliged to consider whether the applicant is fit and proper (Sections 5(3) of the Gaming Act)

A key person can only be appointed after having been granted registration by the board. Key persons include senior management, directors and all persons who individually or as part of a group who formulate management policy (Gaming Regulation 32). Applicants are also required to provide information on shareholders with more than 5% control and source of information.

In terms of Regulation 15 (1) (a) of the Gaming Regulations 1998, the licensing process requires applying a fit and proper test on the key person in a prescribed form. The Regulation also requires that source of funds be identified and verified. The financial standing of a business is also considered and the criminal records are considered and verified.

(c) Casinos are subject to supervision for compliance with AML/CFT requirements as they are classified as reporting institutions (Section 35 (1) and (2) of the FCA).

DNFBPs other than casinos

Criterion 28.2-(Met) The FIA is designated as the supervisory authority for monitoring compliance with AML/CFT requirements for all reporting institutions, including all DNFBPs (Section 35 (1) and (2) of the FCA). The FIA can delegate its supervisory powers to self-regulatory body. In this case, the powers to supervise the Gaming sector is delegated to the Malawi Gaming Board. The delegated powers also include powers to imposing and enforcing administrative sanctions and penalties for breach of the FCA Act and powers to investigate any matter in relation to implementation of the said Act.

Criterion 28.3-(Met) The FIA is mandated by Sections 5 & 35 to monitor compliance by reporting institutions. This extends to all DNFBPs.

Criterion 28.4 (Met) (a) - The FIA has powers to supervise compliance with AML/CFT requirements for all reporting institutions (Section 35 (1) and (2) of the FCA). These powers include powers to imposing and enforcing administrative sanctions and penalties for breach of the FCA Act and powers to investigate any matter in relation to implementation of the said Act. The FIA can delegate its supervisory powers to self-regulatory body.

Every self-regulatory body is specifically obliged to ensure DNFBP are subject to effective systems for monitoring and ensuring compliance with requirements set out under the FCA based on risk sensitivity (Section 38 (a) of the FCA).

(b) Competent authorities and SRB are empowered and obliged to take the necessary measures to prevent criminals or their associates from being professionally accredited or holding or being the beneficial owner of a significant or controlling interest or holding a management function, and have effective, proportionate, and dissuasive sanctions for any member who does not comply with this act. (Section 38 of the FCA).

(c) The FIA and supervisory bodies have wide powers to take administrative penalties against Persons or Reporting Institutions (Section 34 of the FCA). The definition of Reporting Institutions includes DNFBP (Section 2 of the FCA). The administrative penalties range from issuing warning, directing a person to do specific things or to refrain from doing specific things and go as far as publicising the non-compliance of a reporting institution in the widest distributed newspaper (Section 34 of the FCA). In cases where a fine is issued and the offender fails to pay it within the prescribed period, it can be recovered as a civil debt.

Criminal and civil sanctions are provided regarding specific obligations in the FCA. The sanctions are applicable to natural persons of reporting institutions and to legal persons.

All DNFBPs

Criterion 28.5- (met) (a) In terms of sec 36(4)(h), (i) and (5) of the FCA supervisory authorities are obliged to review the money laundering and terrorist financing risk profiles and risk assessments prepared by reporting institutions and take the result of the review into consideration and develop and implement a risk-based approach to supervision.

Supervisory authorities have developed risk based supervisory frameworks and therefore the intensity and frequency of the supervision is informed by the understanding of ML/TF risk.

(b) Supervisors should review the adequacy and implementation of reporting institutions' policies, internal controls and procedures taking into account the ML and TF risk profile and size of the institution. However not much supervision has taken place to date.

Weighting and Conclusion

Malawi met all criteria under this recommendation. **Malawi is Compliant with R.28.**

Recommendation 29 - Financial intelligence units

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R26). The main technical deficiencies were that: short comings in the application of the legislation in relation to guidance notes and in the application of the reporting forms; no MOUs in place to share information with competent authorities domestically; the FIU had not publicly released any reports in relation to its activities; at the time of the mission, the FIU was still in the process of establishing control over its offices and IT systems in order to adequately protect its information; and the legislation had not been fully implemented due to short time that the FIU had been established and effectiveness in some areas could not be established.

Criterion 29.1 (Met)— Malawi has established hybrid Financial Intelligence Authority (FIA), which is autonomous) and has been operational since July 2007, as provided under Section 3 (1) of the FCA). The functions of the FIA have been strengthened with the enactment of the FCA Act. FIA is the national centre for receipt and analysis of STRs and other any reporting entity relevant to ML and TF Section 4 (a) & (b), and for the dissemination of the results of that analysis.

Criterion 29.2 (Met)— The FIA is the central agency for the receipt of suspicious transactions reported by all Reporting entities (as defined under Section 2 (C). All reporting institutions have the obligation to file STRs (Section 23 subsection (1) (b) and Subsection (2) (a), (b) & (c) of the FCA). Additionally, Section 55 of the FCA, requires that declarations related to incoming/outgoing cross-border transportations of currency and bearer-negotiable instruments be sent to FIA without delay.

Criterion 29.3 (Met)— The FIA is legally empowered to require additional data and information from a Reporting Institutions which has filled a report as provided for under Section 5 (g) and Section 23 Subsection (3) of the FCA Act. The FIA has also the legal power to:

- access the widest possible range of financial, administrative and law enforcement information from any supervisory authority, financial regulatory authority, fiscal or tax agency, competent authority or fraud investigations agency for the proper discharge of the functions of the authority under this act or for purposes of achieving the objectives of the act (Section 5 (f) of the FCA); and

- request and receive progress and outcome reports from law enforcement or prosecutorial agents on matters referred to under (Section 5 (h) of the FCA Act.).

Criterion 29.4 (Met) The FIA undertakes operational and strategic analysis based on the information received from reporting entities and the other information available to it, (Section 4 (a) to (j) of the FCA).

During the period under review, FIA has carried out both operational and strategic analysis.

Regarding strategic analysis FIA carried out three typology studies, namely:

- one in June 2016, related to experienced a major fraud scandal involving staff members in the public service and some business entities, commonly known as *Cashgate*.
- Another in June 2017, which identified three major methods by which criminals are laundering and moving money to disguise their origins and integrate the money into the formal economy. The methods are: theft of public funds, illegal externalization of foreign exchange and abuse of travel allowances.
- The last one was carried out in 2017/18 it covers a number of areas such as wildlife/environment crimes, theft of public funds and abuse of office, concealing assets/funds by circumventing customer identification requirements and use of nominees, obtaining funds by false pretense, money laundering through illegal externalization of foreign currency and insurance disinvestments.

Criterion 29.5 (Met)— The FIA transmits the reports, compiled within the meaning of this paragraph and including a technical report containing the information on the transactions that led to the suspicion of ML or TF, without delay, including on the basis of memoranda of understanding, to the relevant law enforcement authorities, or a supervisory authority, as provided for under (Section 4 (b) of the FCA).

Criterion 29.6 (Met)— The FIA is required to design, develop and implement internal systems, policies and procedures for dissemination and protection of and access to information, (Section 4 (i) of the FCA).

Additionally, Section 9 Subsection (4), of the FCA requires that FIA should ensure that its staff members have the necessary security clearance, vetting procedures and understanding of their responsibilities in handling and disseminating sensitive and confidential information. Transmission of information to other FIUs using electronic channels secured by the network of international communication (Egmont and UIF.net).

Criterion 29.7 (Met)— The FCA establishes the FIA as a public body which shall be the principal national agency responsible for preventing and combating financial crimes. The body shall not in the performance of its functions, be subject to the direction of, control or influence from any other person, authority or entity which may compromise its operational independence, as provided for under section 3, (1)-(3) of the FCA.

FCA, under section 4 (e) states that the FIA is empowered to make arrangements with any local and international institutions, organizations or agencies in realizing the objects of this Act.

Additionally, the FCA Act under Sections 6,7 &9 sets the procedures for appointing both the Director, and the Deputy Director respectively and it reflects the FIU autonomy. In this respect,

see also the answer to Criterion N. 29. 1. As a consequence of this legislative framework, all the decisional process is developed within FIU, without any interference from any institution.

Criterion 29.8 (Met)— The FIA of Malawi is an Egmont member since May 2009.

Weighting and Conclusion

Malawi meets all the criterions under this Recommendation. **Malawi is rated Compliant with R.29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R27). The main technical deficiency were that lack of implementation of the legislation and no evidence found of measures taken by authorities to waive or postpone arrests of suspected persons or the seizure of money for the purpose of identifying persons involved in money laundering activities or for gathering evidence. The FATF standards in this area have been strengthened considerably by including, among other things, requirements for parallel financial investigations and role of anti-corruption enforcement authorities.

Criterion 30.1 (Met)- Malawi has several law enforcement authorities that are responsible for fighting ML/TF and associated predicate offences with FFFU of the MPS the designated authority to address ML investigations. The Malawi Police Services (MPS) has a general power to prevent, investigate and detect crimes including ML, associated predicate offences and TF in terms of Section 4(1)(a) of the Police Act, 2010. The Anti-Corruption Bureau (ACB) is statutorily mandated to investigate any offence (including ML) disclosed in the course of investigating any alleged or suspected corrupt practice or other offences under the Corrupt Practices Act, 2004. Section (c) of the FCA empowers the Financial Intelligence Authority (FIA) to investigate any matter in relation to implementation of the FCA including ML, associated predicate offences and TF. Investigation of cases in relation to immigration and wild life offences and potential ML cases can be carried out by the Department of Immigration and Citizenship Services and Department of National Parks and Wildlife in terms of S.18 of the Immigration Act and S.9 of the National Parks and Wildlife Act respectively. The Malawi Revenues Authority (MRA) has also a power to investigate crimes in relation to tax and customs and the resultant ML offences.

Criterion 30.2 (Met)- The institutional arrangement for LEAs in Malawi is that while the Police is the designated authority for investigation of ML, associated predicate offences and TF cases, each investigative agency responsible for a predicate offence is also responsible for investigating, in principle, to pursue the investigation of any ML/TF offence through a parallel financial investigation (for example, the ACB). Most predicate offences fall within the responsibility of the Criminal Investigations Department of the Malawi Police Services, which has a specialized Section (Fiscal & Fraud) responsible for pursuing parallel financial investigations on proceeds-generating crimes. Some agencies (for example the MRA in investigating tax crimes) may defer the ML investigation to the MPS. In addition, the FIA is also given the responsibility, under the FCA, to investigate ML or TF. See C 30.1.

Criterion 30.3 (Met)- In term of Section 2 of the FCA, the term competent authority includes but not limited to a police officer, an immigration officer, a revenue officer, ACB, the FIA and any person authorized by any of them in that behalf and any other person the minister of Finance may, by notice published in the *Gazette*, designate. Ss. 60, 68 and 93 of the FCA empower the competent authorities to 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.

Criterion 30.4 (Met)- Malawi has a broad definition of a '*competent authority*' which includes the office of the attorney general (AGO), Director of Public Prosecutions (DPP), office of the registrar general, office of the administrator general, a police officer, an immigration officer, a revenue officer, the anti-Corruption Bureau, the authority, the Reserve Bank of Malawi, the registrar of Financial Institutions as defined in the Financial Services act, and includes any person authorized by any of them in that behalf and any other person the minister may, by notice published in the *Gazette*, designate (s.2 of the FCA). In addition, S. 42 of the Financial Services Act (FSA) empowers the Registrar of Financial Institutions to appoint an investigator *where the Registrar has reasonable grounds to believe that a financial institution is or has been involved in financial crime*. This provides Malawi with a wider range of competent authorities to identify, trace property and initiate freezing and seizure proceedings against it.

Criterion 30.5 (Met)-The ACB has powers to identify and trace property for freezing and seizure proceedings (Ss. 2, 60, 68 and 93 of the FCA). Further, the ACB can trace when the assets have been bought or from whom the asset have been bought. The bank documents also enable the ACB to perform money trails which is important in the process of identifying and tracing the assets (s.12 of the CBA). The ACB can also seek assistance from the Ministry of Lands to value the property that is under investigations in terms of Section 41 of CPA. Under section 23A of the CPA, during an investigation or when a person has been charged, the ACB after securing a court warrant for search, can seize or freeze any document, or other records or evidence or any asset, account money or other pecuniary resource, wealth, property, or business or other interest. As a matter of practice, the ACB can conduct search to identify properties at the Registrar General, at the Registrar of Companies, at Road Traffic Directorate and the Ministry of Lands (Land Registry) to identify the assets in terms of Section 11(1)(c) of the CPA.

Weighting and Conclusion

Malawi meets all the criteria under this Recommendation. **Malawi is rated Compliant with R.30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

In its MER under the First Round of MEs, Malawi was rated Compliant with requirements of this Recommendation (formerly R 28). This Recommendation was 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.

Criterion 31.1 (Met)-There is legal basis for competent authorities to obtain access to all necessary documents and information to assist them with conducting their investigations including by way

of compulsory measures. In terms of ss. 22, 60(b) and 104(1) of the FCA, FIs and DNFBPs must maintain books and records of their customers and business transactions and upon request to make such books and transaction records available to the FIA and other competent authorities. Section 12(1) & 12A(1)(c) of the CPA empower the ACB to obtain any information from banks or any other person with whom the Director of the ACB believes that the suspected person had any financial transactions or other business.

The Competent Authorities in Malawi have adequate powers of search of persons and premises in terms of Ss. 55, 59, 93, 94, 95, 115 and 116 of the FCA. The Criminal Procedure and Evidence Code also provides for the search of persons and premises. S. 24(1)(b) of the Code provides any police officer or any person arresting a person with powers to search the person. Ss. 21, 113 and 113A of the same Code empowers the police to search premises. Ss. 16 and 17 of the Dangerous Drug Act also provide for the searches of persons and premises by an inspector, customs officer or police officer. Section 13(2) of the Customs and Excise Act provides for searches of persons by an officer. Search of premises is provided for in Section 15(1)(a) of the Act. S.18 of the Immigration Act empowers immigration officers to conduct searches/investigations. S.9 of the National Parks and Wildlife Act empowers officers of DNPW to conduct searches/investigations. Furthermore, the Bureau Standing Orders C/14 provides for the searches of persons and premises.

Section 46 of the Police Act empowers all police officers to take witness statements. Anti-Corruption Bureau records witness statements from witnesses during the course of their interviews as per the Bureau Standing Orders C/6 which were made in line with Section 18(1)(a) of the CPA.

The MPS is given powers under Section 35 to search without warrant and seize whatever is found if it accords as evidence for an offence. The ACB under Section 23A of the CPA have powers to seize and freeze any document, records, assets, money, property, businesses, pecuniary resources, wealth etc. The Bureau is also empowered to obtain evidence under Sections 11(1)(b) & (c) of the CPA. Ss. 94(2), 95(2), 115(c) and 116(2)(b) of the FCA empower the competent authorities to seize and obtain evidence during the course of investigation. Section 17(3) of Dangerous Drug Act also provides for the seizure of drugs, books, accounts or documents related thereto. Section 146(1) of the Customs and Excise Act provides for the seizure of goods. Section 15(1)(d) of the same Act provides for seizure of books, documents, computer records, electronic data or other things. See also R.30.

Criterion 31.2 (Mostly met) -The ACB conducts electronic surveillance operations under the Bureau Standing Orders C/29 and C/30 which are created under S.18 (1) of the CPA. There are no similar provisions for other competent authorities in relation to surveillance and the law does not provide for powers to apply or use a wide range of investigative techniques for investigation of ML/TF and associated predicate offences, the authorities can apply the techniques in practice. The laws of Malawi does not allow interception of information. For example, the MPS employs controlled delivery mechanism when conducting investigations, especially in drug-related cases. However, the Malawi law does not allow interception.

Criterion 31.3 (Met)- Under S. 5(g) of the FCA, the FIA requests reporting institutions to submit account details held by natural and legal persons. S. 9(1) of Banker's Book Evidence Act states: "Where a judge or magistrate is satisfied by evidence on oath, that in fact, or according to reasonable

suspicion, the inspection of any banker's book is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge or magistrate concerned may, by warrant, authorize a police officer or other person named therein to investigate the account of any specified person in any banker's book, and such warrant shall be sufficient authority for the production of any such banker's book as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such banker's book." In terms of Ss. 60 and 63 of the FCA, the competent authorities can make an application on behalf the police for either a warrant to search and seize documents relevant to locating property which become property tracking documents and seize such property as evidence upon being found. Though the law is not clear on whether an *ex parte* application can be made in such circumstances, the authorities indicated that this is done without prior notice to the owner and any competent authority can use this power. Section 64 of the FCA prohibits disclosure of existence monitoring orders to any person.

Criterion 31.4 (Met) -There is a legal mandate that any competent authority to request information from the FIU under Section 4(b) of the FCA. Section 5(j) also gives FIA power to enter into any agreements or arrangements with any local institution or agency regarding the exchange of information. For this purpose, FIA has entered into MOUs with LEAs which stipulate procedures for exchanging information and the required security and confidentiality standards expected. As a procedure, LEAs fill a form to get information from FIA.

Weighting and Conclusion

Malawi mostly meets Criterion 31.2 and meets the other criterions under this recommendation. The Malawi law does not allow interception. **Malawi is Largely Compliant with R.31.**

Recommendation 32 – Cash Couriers

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly SR IX). The main technical deficiencies were that: although the legislative basis existed, there was limited implementation of either a declaration or disclosure system and, as that moment was applied, only in relation to foreign exchange violations in Malawi when travellers were leaving the country; the provisions of the ML&TF Act had not been implemented; only one report had been made to the FIU; the penalties were not dissuasive or effective; and no information or data was recorded by authorities.

Criterion 32.1 (Met) – Malawi has a declaration system for incoming/outgoing cross-border transportation of currency and bearer negotiable instruments. The system is administered by MRA, MPS and Immigration. Natural persons entering and leaving Malawi are obligated to declare to Malawian customs whether they are carrying cash/bearer negotiable instruments as provided for under S.55 (1) of the FCA and Section 27(2) of the Exchange Control Regulations.

Criterion 32.2 (Met)— . Section 55(1) of FCA states that the report shall be made in a “**prescribed manner**”, as such it can either be written or oral or in any other way the authority deems fit and appropriate. The threshold is prescribed under the declaration forms attached in the amount of US\$5000.

Criteria 32.3 (N/A) – This criterion is not applicable since Malawi adopted the declaration system.

Criteria 32.4 (Mostly Met)— Upon discovery of false declaration, an authorised officer has the authority to seek further information from the carrier with regard to the origin of the currency or

BNIs and their intended use (S.55 (5) of the FCA). Though ‘authorized officer’ is defined under the act, the Minister has not issued a notice published in Gazette to designate such a person or persons during the onsite. However, officers from the MRA and MPS were serving the position in the actual practice.

Criteria 32.5 (Met)—In terms of Section 55 (6) the FCA, a person who fails to declare or makes a false declaration commits an offence and shall be liable, on conviction, to a fine of K5,000,000 and ten percent of non-declared amount.

Criteria 32.6 (Met)— S. 55(1) & (4) of FCA requires the officer to notify the FIA, when in the course of investigations prescribed by this same provision, facts and situations emerge related to ML and TF. The Authorized Officer (officers from MPS and MRA in practice) is required under the law to send a copy of the report without delay if it is in excess of the amount prescribed in regulations to the FIA.

Criteria 32.7 (Met)—There is co-ordination among law enforcement agencies especially Customs, Immigration and the Police in making sure that travelers do declare truthfully about their currencies or BNI’s. Arrests have been done during joint operations at the airports when travelers try to smuggle currency out of the country. The cases have even gone to court.

Criteria 32.8(Met)—Section 55(4) & (5) of the FCA provides for power to seize and detain currency or BNI in order to ascertain whether evidence of ML/TF may be found and, inter alia, in the case in which there is a suspicion of ML or TF. According to Section 56 (a), (b) and (c) of FCA, an Authorized Officer may seize and detain any currency or bearer negotiable instruments. As per s.57(1) of the same Act, currency and bearer negotiable instruments seized under section 55 or section 56 cannot be detained for more than fourteen days after seizure, unless a court grants an order of continued detention for a period not exceeding three months from the date of seizure.

Criteria 32.9 (Not met) —The declaration system in Malawi does not provide for international cooperation and assistance in accordance with Recommendations 36 to 40.

Criteria 32.10 (Met)—The declaration system does not restrict trade payments between countries for goods and services or the freedom of capital movements. There are no restrictions on the amount of money that can be imported into or exported from Malawi; however, once the amount has reached or exceeded the threshold, it must be reported.

Criteria 32.11 (Met)— Travellers engaged in physical cross-border transportations of currency/BNI related to ML/TF or predicate offences are subject to the sanctions applicable the ML/TF offences, as described in R.3 and R.5. Confiscation of smuggled goods including currency is provided for in the FCA (Ss. 2, 48(2), 49 together with 72, 74 and 77).

Weighting and Conclusion

Malawi does not meet Criterion 32.9, mostly meets Criterion 32.4, does not have a disclosure system so Criterion 32.3 is non-applicable and meets the remaining criterions under this recommendation. The declaration system in Malawi does not provide for international cooperation and assistance in accordance with Recommendations 36 to 40. Though ‘authorized officer’ is defined under the act, the Minister has not issued a notice published in Gazette to designate such a person or persons during the onsite. ***Malawi is rated with Largely Compliant with R. 32.***

Recommendation 33 – Statistics

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R 32). The main technical deficiency was that no systematic collection of detailed statistics with respect to: investigation, prosecution and conviction of ML cases, freezing, seizure and confiscation of proceeds of crime, mutual legal assistance requests, extradition requests, other forms of international cooperation, no detailed review had been conducted on the effectiveness of the AML/CFT regime in Malawi, discrepancies in FIU statistics, RBM inspections performed, and sanctions for non-compliance, training of supervisors, and MOUs in place and requests/exchange of information.

Criterion 33.1 – (Partly Met) In general, competent authorities keep statistics on their operations. The FCA requires the FIA to maintain statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system (S. 4 (c) of FCA). The FIA keeps comprehensive statistics over a period of four years in relation to STR received, analyzed, disseminated; requests made and received both domestic and international. The same applies to its supervisory activities.

The FIA keeps comprehensive statistics over a period of four years in relation to STR received, analyzed, disseminated; requests made and received both domestic and international. The FCA requires the FIA to maintain statistics on matters relevant to the effectiveness and efficiency of the AML/CFT system (**S. 4 (c) of FCA**). The same applies to its supervisory activities. The assessment team however observed that the statistics often lacked context and were over a short of period of time to enable any meaningful determination of the effectiveness of the AML/CFT system (see IOs for more information). There was also lack of sufficient data or information on type of predicate offence involved in dissemination of analysed reports to law enforcement.

Information provided by law enforcement agencies was not comprehensive particularly in respect of giving context on specific crimes investigated. The challenges relating to collection and availability of statistics by competent authorities was highlighted by the NRA. It was highlighted under the NRA that for LEAs, there is no centralized database from which information can be easily accessed by LEAs. With some LEAs still handling data manually, this made data collection difficult. Across the board, relevant competent authorities (e.g. MRA, ACB and DPP) in Malawi could not provide well organized statistics relating to freezing and confiscation of property. The assessors observed that the competent authorities have started implementing the relevant recommendations of the NRA to address the problem and they provided statistics relating to ML investigations and prosecutions, AML/CFT supervision, seizure and confiscation of property and to some extent, other forms of international cooperation. Nevertheless, statistics on MLA were not sufficiently captured.

Weighting and Conclusion

Malawi does not maintain comprehensive statistics on MLA. The authorities should continue implementing recommendations of the 2018 NRA by establishing mechanisms such as the

creation of a centralized database from which information can be easily accessed by LEAs. The lack of comprehensive statistics by law enforcement agencies represents significant deficiencies in the availability of data or information to assess effectiveness of the AML/CFT system in Malawi. **Malawi is rated Partially Compliant with R. 33.**

Recommendation 34 – Guidance and feedback

In its MER under the First Round of MEs, Malawi was rated Non-Compliant with requirements of this Recommendation (formerly R. 25). The main technical deficiencies were that only limited guidelines were issued and there had been no meaningful feedback to the banks that have filed STRs.

Criterion 34.1 (Partly met)—The FCA requires competent authorities, supervisors and SRBs to have guidelines and feedback sessions. Section 5 (a) & (e)(i) of the FCA empower the FIA or where appropriate, the FIA in consultation with a supervisory authority or self-regulatory body to issue, in writing, instructions, directions, directives, guidelines or rules to reporting institutions as it may consider necessary for the better carrying out of its functions under the Act. The RBM has issued Guidelines to the Mobile Operating Systems in 2011. It has also issued Directives in relation to CDD as well as fit and proper requirements by banks in 2016 and 2018 respectively. Furthermore, FIA issued guidelines on STRs. It also issued AML/CFT Guidelines for Casinos and Gaming Houses in May 2018. However, from the onsite interviews with DNFBPs other than casinos, it was evident that they need guidance in other areas such as customer identification and verification, detection of suspicious transactions, etc. In terms of feedback, FIA provides general feedback through acknowledgment of STRs and meetings with reporting institutions.

Weighting and Conclusion

Malawi partly meets Criterion 34.1. Guidance is required to assist the DNFBPs other than casinos to understand their AML/CFT obligations. **Malawi is rated partially-compliant with R. 34.**

Recommendation 35 – Sanctions

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R17). The main technical deficiency was that the sanctions regime in existence at the time of the onsite was not considered to be effective, if imposed, because there was no discretion and loss of business authority was mandated in almost every case for corporations.

Criterion 35.1 (Mostly Met)-The FIA and supervisory bodies have wide powers to take administrative penalties against Persons or Reporting Institutions (Section 34 of the FCA). The definition of Reporting Institutions includes DNFBP (Section 2 of the FCA). The administrative penalties range from issuing warning, directing a person to do specific things or to refrain from doing specific things and go as far as publicising the non-compliance of a reporting institution in the widest distributed newspaper (Section 34 of the FCA). In cases where a fine is issued and the offender fails to pay it within the prescribed period, it can be recovered as a civil debt.

Criminal and civil sanctions are provided regarding specific obligations in the FCA. The sanctions are applicable to natural persons of reporting institutions and to legal persons. Sanction for natural persons can be in the form of imprisonment up to 5 years or fines up to K10,000,000 and in the case of legal person in addition to a fine of K50,000,000 (USD 67,805.00), a license can also be revoked.

These sanctions apply in cases of failure to comply with CDD requirements. In relation to the CCD requirement, there are extra requirements applicable when dealing with a PEPs which amongst others include the establishment of risk management systems, obtaining senior management approval before entering into a relationship, establishing source of funds, identifying family members etc.

Sanctions are also provided for MVTs providers that carry out services without a license (Section 12(1) of the Payment Systems Act 2016). The penalty for contravening the said requirement is a fine of K50, 000,000 (USD 67,805.00) and imprisonment for 7 years (Section 12(4) of the Payment Systems Act 2016).

The MVTs providers also have certain obligations imposed by Section 28 of the FCA. In a case of non-compliance, the following sanctions are applicable: in the case of a natural person imprisonment for five years and to a fine of K10,000,000 (USD 13,417.00) and in the case of a legal person, a fine of K50,000,000 (USD 67,805.00) and revocation of a business license.

Financial institutions secrecy laws do not on the basis of any legislation, common law or other agreements inhibit the implementation of any FATF requirements unless if it relates to legal professional privilege (section 32 of the FCA). It is however not clear whether any sanctions are applicable if this provision is not complied with.

It is not clear whether there are sanctions for failing to comply with requirements relating to new technologies, reliance on 3rd parties/intermediaries and high-risk countries.

Natural persons and reporting institutions are also sanctioned for failing to obtain satisfactory evidence of the identity of a customer, for failing to: maintaining accounts in true names, maintaining customer records, reporting suspicious transactions and failing to comply with the obligation not to disclose the reporting of suspicious transaction report or other information regarding the suspicious transaction report, disclosing the identity of the person who reported a suspicious transaction report, for failing to include accurate originator and beneficiary information and other related messages when conducting domestic and international electronic funds transfers, failing to monitor transactions and to conduct ongoing due diligence, failing to comply with obligations and requirements relating to entering into correspondent banking relationships, for failing to implement group wide programmes against money laundering, for deliberately or with intention to deceive, fail to make a report.

For any of the above contraventions, a natural persons can be imprisonment up to 5 years or fines up to K10,000,000 (USD 13,417.00) in the case of a legal person, in addition to a fine of K50,000,000 (USD 67,805.00) that can be imposed for failures as abovementioned, a license can also be revoked (Section 16 (14) , 19(2), 20(3), 22(6), 23(6), 24(2), 25(3), 28(6), 29(7), 30(5), 31(7), 37(2) of the FCA).

For failing to appoint compliance office and having compliance programs, sanction can be in the form of imprisonment up to 5 years or fines up to K5,000,000 (USD 6700.85.) and with regard to

legal person, in addition to a fine of K50,000,000 (USD 67,805.00) that can be imposed a license can also be revoked (Section 27 (6) of the FCA).

Recommendations can also be given to a SRB to take action under the respective law that governs a particular person as a professional or employment or business authority misconduct. The FCA also recommends the commencement of criminal proceedings to the Director of Public Prosecution should the need arise (section 34(3)).

SRB are also obliged to report suspicious transactions, failing which they can be held liable to imprisonment for five years and to a fine of K10,000,000 (USD 13,417.00) (Section 39 (2) and (3) of the FCA)

Regulation 12 of the TF Regulations provides that any person who knowingly participates in activities, the object or effect of which is directly or indirectly commits an offence and is liable, upon conviction, to a fine of K500,000,000 (USD 670,850.00). In terms of s.34 of the NGO Act, violation against all provisions attracts a fine not exceeding 50,000 MKW (USD 67) or the amount of the financial gain whichever is the greater.

Although Malawi has penalties for breach by both natural and legal persons, there are some concerns in the sanctions regime. It is not clear whether there are sanctions for failing to comply with requirements relating to new technologies, reliance on 3rd parties/intermediaries and high-risk countries. The sanctions for legal persons are also not dissuasive for large entities/sectors and sanctions provided for are not proportionate. To a large extent, the sanctions are similar for all the various accountable institutions irrespective of their significance and size and the vulnerabilities associated with some sectors. Thus, the dissuasiveness and/or proportionality of some of the sanctions is unclear.

Criterion 35.2 (Met)- The sanctions as demonstrated above are applicable to reporting institutions (financial institutions and DNFBP) and to natural persons.

Weighting and Conclusion

Malawi partly meets Criterion 35.1 and meets Criterion 35.2. It is not clear whether there are sanctions for failing to comply with requirements relating to new technologies, reliance on 3rd parties/intermediaries and high-risk countries. **Malawi is rated Largely Compliant with R.35.**

Recommendation 36 – International instruments

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R35) and Partially Compliant with SR I. The main technical deficiencies were that: no provision for special investigation techniques; no asset sharing arrangements; and no implementation of UN Security Council Resolutions. 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)– Malawi has ratified the Vienna Convention (12th October, 1995), the Palermo Convention (14th December, 2000) and the Merida Convention (UNCAC) (4th December, 2007). The International Convention against Financing of Terrorism was acceded to in August 11, 2003.

Criterion 36.2 (Met) –Malawi has fully implemented the Conventions in 36.1 above. Malawi has domesticated the mandatory conventions, criminalization Money Laundering and Terrorist Financing according to the Vienna Convention, Terrorist Financing Convention and Palermo Convention; and Corruption is criminalized according to the Merida Convention. Malawi’s legislative framework has been improved since the last mutual evaluation in 2008.

Weighting and Conclusion

Malawi meet all criteria under this Recommendation. **Malawi is rated Compliant with R.36.**

Recommendation 37 - Mutual legal assistance

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R36) and Partially Compliant with SRV. The main technical deficiencies were that: no clear and efficient processes for executing requests; insufficient implementation of MLA requests related to ML cases; insufficient implementation of the provisions relating to TF cases; and no consideration for asset sharing.

Criterion 37.1 (Met) –Malawi provides MLA through the Mutual Assistance in Criminal Matters Act (MACMA) as well as Part VIII of the FCA (ss.117 *et. al*). The MACMA is normally used for MLA between Commonwealth countries while part VIII of the FCA covers MLA in respect of all countries. In fact, the MACMA and FCA are mutually inclusive in terms of Ss. 118 and 120 of MACMA. Principles of comity, reciprocity and mutual interest in international law guide Malawi for all situations outside the Commonwealth countries. Thus, the provisions of MACMA may also be applicable in the case of non-commonwealth countries for the purpose of rendering MLA with respect to ML, TF and other related offences under the FCA. Malawi is also a member to regional networks such as ARINSA, Global Focal Point Conference on Asset Recovery in Organised Crime, SARPCO and others. In addition, the country make use of bilateral treaties with other countries. (Number and list of bilateral treaties, time entered and sample copy of treaties)

Criterion 37.2 (Met)–Though the authorities indicated that the authority responsible for MLA is the Ministry of Justice through the Attorney General’s office according to section 118 of the FCA, it appears while the Office of the Attorney General is mainly responsible for MLA requests on issues of search, seizure and confiscation of tainted properties as per Ss. 118, 126 and 127; the Ministry is responsible for handling MLA requests with respect to investigation and prosecution of offences under the FCA in terms of s.120 of the FCA. However, seeking MLA in all circumstances is the mandate of the Attorney General as per s.122 of the FCA.

Criterion 37.3 (Met)—The conditions for refusal of MLA request described in Section 18 of the MACMA and the conditions for rendering MLA under Part VIII of the FCA do not appear unreasonable and unduly restrictive.

Criterion 37.4 (Mostly Met) -MACMA does not provide for a refusal of a request on the basis that a particular offence relates to fiscal matters and section 2 of the MACMA states that assistance can

be given in serious offences, which include all offences related to fiscal matters. In addition, financial secrecy or confidentiality does not impede Malawi's provision of MLA pursuant to MACMA and FCA. However, Malawi has not criminalized all 21 designated categories of offences. The offence of terrorism is not criminalized.

Criterion 37.5 (Met) –S.17(3) of MACMA states that the requesting country that wishes that the request of assistance or any part of it be kept confidential shall so state, giving reasons, in the request or in a document accompanying, but not forming part of, the request.

Criterion 37.6 (Met) –In terms of S.18(2)(d) of the MACMA, dual criminality is required for rendering MLA in Malawi. There are no exceptional conditions under the law that enable Malawi not to make dual criminality a condition for rendering assistance where the assistance requests do not involve coercive actions.

Criterion 37.7 (Mostly met)-S.18(2) (d) of the MACMA provides for dual criminality to be satisfied if the conduct upon which the request is being made is also criminalised in Malawi and placing the offence within the same category offence or denominating the offence by the same terminology is not a determinant for such assistance. However, Malawi has not criminalised terrorism which affects MLA in respect of this offence.

Criterion 37.8 (Mostly met)- Ss.19-27 of the MACMA and ss. 117, 118, 120, 125, 126 and 127 of the FCA provide for the powers that are required under Recommendation 31 or are otherwise available to domestic competent authorities, including some of the specific powers required under Recommendation 31 relating to the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons, and the taking of witness statements are available under MLA though the use of an evidence-gathering order. However, all the limitations indicated under Rec.31 including the absence of provisions in applying investigation techniques for interception remain as deficiencies under this criterion.

Weighting and Conclusion

Malawi meets criterion 37.1 - 37.3 as well as 37.5 – 37.6 and largely meets criterion 37.4, 37.7 and 37.8. The offence of terrorism is not criminalized which affects MLA in respect of terrorism. All the limitations indicated under Rec.31 including the absence of provisions in applying investigation techniques for interception remain as deficiencies under this criterion. **Malawi is Largely Compliant with Recommendation 37**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In its MER under the First Round of MEs, Malawi was rated Largely Compliant with requirements of this Recommendation (formerly R. 38). The main technical deficiencies were that insufficient implementation of the provisions relating to ML cases; and no consideration for asset sharing.

Criterion 38.1 (Met) –Competent authorities in Malawi have the authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize or confiscate laundered property under sections 117 and 118 of the FCA. While sections 117 and 118 provide for powers to locate and seize property suspected to be tainted property, s.127 of the FCA allows request for

assistance for enforcement of preservation orders or confiscation orders from other countries against property believed to be located in Malawi. See also C4.1.

Criterion 38.2 (Met)- S.127 of the FCA provides for the enforcement of foreign confiscation or preservation orders, and it specifically states that such orders can be enforced “whether based upon criminal or in rem or other non-conviction-based proceedings.”

Criterion 38.3 (Met)-The Attorney General in terms of the MACMA has the authority to make arrangements for coordinating seizure and confiscation actions with other countries. (See also section 127 of the FCA). In terms of Section 127 (10) of the FCA, where the AG considers it appropriate either because an international arrangement so requires or because it is permitted or in the public interest, he may order that the whole or any part of any property forfeited pursuant to this section or the value thereof be returned or remitted to the requesting State.

Criterion 38.4 (Met)-Section 127 (10) of the FCA states that the Attorney General may, subject to any international arrangements or agreements, public interests or because it is permitted, order that either the whole or part of forfeited property be remitted to a requesting country.

Weighting and Conclusion

Malawi meets all the criterions under this recommendation. **Malawi is rated Compliant with R.38.**

Recommendation 39 – Extradition

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R. 39). The main technical deficiencies were that no explicit provision prohibiting the extradition of Malawi nationals; no prosecution of Malawi nationals in lieu of extradition; and no clear processes for dealing with extradition cases.

Criterion 39.1 (Mostly Met)

Criterion 39.1 (a)-ML and TF are both extraditable offences in terms of Ss. 119 and 124 of the FCA. The authorities indicated that it takes from four (4) months to two (2) years to handle extradition requests. (underlying factors to determine duration of handling extradition to be provided).

Criterion 39(1)(b)-There is no a proper case management system to ensure timely disposal of cases was launched recently at the Ministry of Justice (DPP).

Criterion 39(1)(c)-The law applicable for execution of extradition requests related to ML/TF is FCA and the Extradition Act. These laws do not place unreasonable or unduly restrictive conditions on the execution of requests.

Criterion 39.2(Met) -Authorities cited the case of *Republic v Murekezi, Extradition case number 1 of 2016* to indicate that Malawi does not prohibit the extradition of its nationals. Assessors noted that in the cited case, Malawi pursued extradition of a naturalized Malawian of Rwandan origin to answer genocide charges in Rwanda.

Criterion 39.3(Met)- Dual criminality is a requirement for extradition in Malawi (section 5(1)(b) of the Extradition Act). Criminalization of the underlying conduct suffices and no need that the offences be designated in with the same terminologies in Malawi and other countries.

Criterion 39.4(Not met)-There is no enabling law or mechanism in place in Malawi for executing a simplified extradition.

Weighting and Conclusion

Malawi meets Criteria 39.1-39.3 and does not meet Criterion 39.4 under this recommendation. There is no enabling law or mechanism in place in Malawi for executing a simplified extradition. There is no a proper case management system to ensure timely disposal of cases was launched recently at the Ministry of Justice (DPP). ***Malawi is rated Largely Compliant with R.39.***

Recommendation 40 – Other forms of international cooperation

In its MER under the First Round of MEs, Malawi was rated Partially Compliant with requirements of this Recommendation (formerly R. 40). The main technical deficiencies were that: the cooperation in the case of the police, DPP and Supervisor was informal; no FIU to FIU cooperation as yet; no records, procedures or processes available in order to test effectiveness; hard copy records might impede prompt provision of information.

General Principles

Criterion 40.1 (Mostly Met)- Malawi'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 5(1) of the MACRMA provides that nothing in the Act prevents the development of other forms of co-operation in respect of criminal matters between the competent authorities of Malawi and other countries. The MPS, DPP, the FIA, RBM and the Attorney-General have powers to provide the widest range of international assistance and exchange of information to foreign counterparts and, where relevant, to other international organisations. The AG and DPP may use the services of the International Criminal Police Organisation (Interpol) to process requests to obtain information in a timely and expeditious manner. There are no similar powers in respect of which other competent authorities such as MGB, Immigration, ACB and MRA can provide the widest range of international cooperation. Instead, the authorities advised of reliance on bilateral and multilateral arrangements. 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'. In general, the initial response is to send an acknowledgement of receipt which is followed by a preliminary review of the request to determine any information gaps or availability of information, after which the requesting authority is advised on the possible time for providing the requested information.

Criterion 40.2 (Mostly Met)-

Criterion 40.2(a)-Competent authorities in Malawi have lawful basis for providing co-operation with counterpart foreign authorities (**Section 4 of the FCA** for FIA, **Section 122 of Taxation Act** for MRA, **Section 106 of the Customs & Excise Act** for MRA).The MRA also liaise with the World Customs Organization and through Double Taxation Agreements (DTAs) in relation to tax matters, which may be predicate offences to ML and TF. The DPP engages in bilateral cooperation with their counterparts in Mozambique, South Africa, Tanzania and Zambia. The DPP does provide assistance to the MPS whenever they are involved in joint cross-border operations with neighboring police force counterparts. The bilateral relations are informal and not predicated on any formal agreement with the aforementioned countries. The RBM uses informal channels of communication to provide international cooperation. It also has statutory authority to participate internationally in representing Malawi (**Section 19 (3) of FSA** for RBM).

Criterion 40.2(b)- Authorities in Malawi cooperate with foreign counterparts on the basis of MoUs, Interpol, and through the FIA (with which all authorities have MoUs for the exchange of information) to ensure that information is provided efficiently, timely and securely.

Criterion 40.2(c)-Competent authorities use clear and secure gateways, or have mechanism or channels in place. In particular, the FIA uses Egmont secure web for exchange of information. Interpol Malawi portal is used by MPS, which assists other LEAs like ACB and DPP.

Criterion 40.2(d)-The Malawian Authorities have processes for prioritising and executing requests. For FIA, the monitoring and analysis team prioritises all the cases including requests from various sources. For MPS, there is an Interpol Liaison Officer who categorises the information according to the urgency of the matter and disseminates to the relevant department/competent authority. This allows for the timely execution of the requests. However, Authorities did not indicate if they have internal guidelines, procedures or instructions in relation the handling and prioritisation of requests

Criterion 40.2 (e)-Competent authorities have clear processes for safeguarding the information received. All staff of competent authorities in Malawi are bound by confidentiality. In particular, officers of FIA sign an oath of secrecy upon joining the institution and there are stiff penalties (Section 10 of FCA) applicable to any person who discloses confidential information; further, only officers in the monitoring and analysis department access information related to intelligence. The Police Oath and the Police Procedure strictly prohibit disclosure of information. Information is classified according sensitivity of information and all classified information cannot be disclosed by any police officer. Oath of secrecy also applies to MRA, RBM and ACB CPA Section 49B – unauthorized disclosure of information is a criminal offence FSA Section 38(2) RBM Act Section 59.

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. SAPRCO, 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)-The FIA has a mechanism in place to provide feedback upon request to counterparts on the usefulness of the response. While no specific mechanisms were available to the LEAs, the FIA, RBM, MGB (as the mandated AML/CFT supervisors for dealing with foreign requests) advised that feedback requests on AML/CFT supervision information provided would follow a similar process.

Criterion 40.5 (Met)

Criterion 40.5 (a)(c)(d)-There are no unduly or restrictive conditions on the provision of information or assistance and no restrictions concerning the exchange of information and provision of assistance on fiscal matters.

Criterion 40.5 (b)-Section 32 of FCA overrides secrecy obligation.

Criterion 40.6 (Met)- MOUs signed between competent authorities and their foreign counterparts cover this requirement as a crucial part of the MOU. Malawi has the necessary confidentiality safeguards set out in standard operating procedures 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 FIA, 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 Malawi 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. Malawi authorities can exchange information with their foreign counterparts all information that is obtainable domestically.

Exchange of information between FIUs

Criterion 40.9 (Met)- Section 4 (e) read in conjunction with Section 5(g) of the FCA provides for the functions of the FIA as cooperate with international institutions, organizations or agencies and also empowers the FIA to request and receive information or additional information, as the case may be, from any person, institution or agency, internationally.

Criterion 40.10 (Met)- The FCA Act is silent regarding the provision of feedback to the reporting authorities. However, the Authorities stated that Section 4(e) of the FCA is open in its wording to provide the FIA the flexibility of being able to provide feedback as required by this criterion. Therefore, judging by the number of responses the FIA provided to their foreign counterparts we concluded that Malawi FIA is able to provide feedback to their 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 (Met)- Section 4 (e) as read with Section 5 (g) of the FCA Act of the FCA, FIA can provide to foreign counterparts all the information that it can access or obtain domestically. states that the FIA can request and receive information or additional information, as the case may be,

from any person institution, institution or agency, whether local or international, for the purpose of this Act.

Exchange of Information between Financial Supervisors

Criterion 40.12 (Met)-The RBM has an appropriate legal basis for co-operation with its foreign counterparts. The Registrar is empowered to enter into arrangements with organization outside Malawi that have responsibilities under law for the regulation and supervision of financial institutions. The parties can then enter into consultation, exchange information and they can have arrangement relating to enforcement of financial services laws and assistance with enforcement of other laws. The co-operation can also relate to issue of examination and investigation on a joint basis.

Section 19(3) of FSA gives appropriate legal powers to the Registrar to enter into arrangements with organization outside Malawi that have responsibilities under law for the regulation and supervision of financial institutions similar institutions.

Criterion 40.13(Met)-- The RBM is empowered to enter into information sharing arrangements or agreements with any organisation in a foreign state that has responsibility for verifying AML/CFT. These principles apply without distinction to all areas of supervision, including AML/CFT (section 19(3) of the FSA).

In terms of Sections 19(3) and 38(1) of FSA, the RBM has powers to obtain information domestically, including information held by financial institutions, and exchanges it with foreign supervisors in a manner proportionate to their respective needs. The FIA has also the same power in terms of s.5(g) of the FCA.

Criterion 40.14(Met)- When relevant for AML/CFT purposes, the Registrar is authorized to exchange information with other supervisors provided the information is necessary for facilitating the performance of their functions (Section 19(1) and 38(1) of FSA).Information that can be shared is wide and includes (i) regulatory information; (ii) prudential information; and (iii) AML/CFT information

In terms of Section 38(1) and 19(1) of FSA, the RBM is empowered to exchange: (i) regulatory information; (ii) prudential information; and (iii) AML/CFT information.

Criterion 40.15 (Met)-There are no restriction for the RBM to conduct inquiries on behalf of its foreign counterparts. The authorities also advised that procedures and processes for making enquiries may be laid out in bilateral or multi-lateral arrangements such as MoUs on international assistance and information exchange. For instance, Paragraph 6.4(c) of the *CISNA Multi-lateral MoU on the Exchange of Information and Surveillance of Securities, Insurance and Retirement Activities*, in general, provides the RBM with a mechanism to assist foreign counterparts to obtain information held and accessible by them.

Criterion 40.16(Met)-Information obtained by the RBM from foreign counterparts is subject to confidentiality and any dissemination would require the authorization of the foreign requested authority.

Exchange of Information between Law Enforcement Authorities

Criterion 40.17 (Met)–MPS shares information with foreign counterparts through SARPCO and Interpol. The ACB uses MPS to share information with foreign counterparts. For MRA, Section 122 of Taxation Act and Section 106 of the Customs & Excise Act empowers them to enter into agreements for the sharing of information with foreign counterparts. Section 4(e) of the FCA of the empowers the FIA to cooperate with local and international institutions, organizations or agencies in realizing the objects of the FCA.

Criterion 40.18 (Met)–Through legal powers and arrangements explained earlier, law enforcement agencies in Malawi 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, the MPS use cooperation channels within Interpol, SAPRCCO and ARINSA to initiate investigation and obtain information on behalf of foreign counterparts.

Criterion 40.19 (Met)-LEAs in Malawi 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. Within SARPCCO's investigation cooperation arrangements, there is Simultaneous Joint Operations in which members can send their police officers in foreign countries, or carry out simultaneous investigation at home on the same matter and provide the information collected to a foreign counterpart. The Police indicated that one such case involved an investigation to counter illicit trafficking of firearms in the region.

Exchange of information between non-counterparts

Criterion 40.20(Not met) -There is no legal or regulatory basis which gives authority to the FIA, supervisors and the LEAs to exchange information indirectly with foreign counterparts.

Weighting and Conclusion

Malawi does not meet Criterion 40.20, partly meets Criterion 40.4, mostly meets Criterion 40.1 and 40.2, non-applicable for 40.3 and meets all the remaining criteria under this recommendation. While Malawi meets the majority of the criteria under R.40, there are deficiencies which weigh less on the overall compliance with the requirements. These include lack of feedback on usefulness of information by competent authorities, generalised timelines to respond to a request, and absence of authority to competent authorities to exchange information indirectly with foreign non-counterpart. **Malawi is rated with Largely Compliant on R.40.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> No clear prohibition of taking simplified measures when the reporting entities suspect ML or TF.
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> Absence of policies which are informed by identified risks. Limited scope of mechanisms to facilitate coordination for purposes of combatting the financing of proliferation of weapons of mass destruction (the CFT Regulations, 2017 does not cover Resolution 2231).
3. Money laundering offence	PC	<ul style="list-style-type: none"> There are two sections that are criminalising the offence of ML (Section 42 (1) of the Financial Crimes Act, 2017 (FCA) and Section 331A of the Penal Code) but both with different material elements. the Country will not be able to conduct ML offence for terrorism as it does not constitute a predicate offence for ML in Malawi.
4. Confiscation and provisional measures	C	<ul style="list-style-type: none"> The recommendation is fully met.
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> No provision for covering the financing of travel, though the TF offence can partly mitigate the gap as the financing of training and “upkeep” is covered. No clear provision whether the fund should have legitimate or illegitimate source.
6. Targeted financial sanctions related to terrorism & TF	LC	<ul style="list-style-type: none"> No procedures and standard forms for listing as adopted by the relevant UN sanctions committee. No provision for providing as much relevant information as possible on the proposed name. Though Reg 6(2)(b) gives the NCTP powers to set criteria, on the basis of reasonable grounds, for designating persons in line with Resolution 1373, the Panel has not yet set the criteria at the time of the onsite
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> No mechanisms to implement UNSC Resolution 2231 and its successor resolutions.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> No provisions to allow designated persons to make any payment due under a contract entered into prior to the listing.
8. Non-profit organisations	NC	<ul style="list-style-type: none"> No outreach activities and review of legal and regulatory framework. No risk assessment conducted to identify high risk NPO for monitoring purposes. Absence of measures to ensure effective cooperation, coordination and information sharing among authorities.
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> The recommendation is fully met.
10. Customer due diligence	LC	<ul style="list-style-type: none"> No specific requirement under the law to terminate the business relationship where it is not possible to comply with relevant CDD measures or where the customer fails to submit satisfactory identity documents. No requirement for FIs to take the necessary steps to understand the nature of the business of a customer who is a legal arrangement. The law does not provide for FIs to identify and verify the identity of legal arrangements through, inter alia, corporate name; identities of directors, address of the head office; proof of incorporation and similar evidence of the legal status legal form; as well as provisions that bind the legal arrangement and any information that is necessary to understand the ownership and control structure of the legal arrangement. No specific obligation for FIs, where they reasonably believe that performing the CDD process will tip-off the customer, not to pursue the CDD process but instead file STR.
11. Record keeping	C	<ul style="list-style-type: none"> The recommendation is fully met.
12. Politically exposed persons	C	<ul style="list-style-type: none"> The recommendation is fully met.
13. Correspondent banking	C	<ul style="list-style-type: none"> The recommendation is fully met.
14. Money or value transfer services	C	<ul style="list-style-type: none"> The recommendation is fully met.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
15. New technologies	PC	<ul style="list-style-type: none"> Malawi has not identified and carried out an ML/TF risk assessment associated with development of new products and new business practices, including new delivery mechanisms.
16. Wire transfers	PC	<ul style="list-style-type: none"> No specific obligations for ordering FIs to include full beneficiary information in cross-border batch files. No specific requirement for ordering FIs to be required to include the account number or a unique transaction reference number, provided that this number or identifier will permit the transaction to be traced back to the originator or the beneficiary. No specific obligation prohibiting the ordering financial institution to execute wire transfer if it does not comply with the requirements specified above at criteria 16.1-16.7. No specific obligation to intermediary and beneficiary financial institutions to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking required originator or beneficiary information. No specific requirement for FIs to take reasonable measures which include post-event monitoring or real-time monitoring to identify cross-border wire transfers that lack complete originator information or required beneficiary information. 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 an STR has to be filed and file an STR in any country affected by the suspicious wire transfer, and make relevant transaction information available to the FIA.
17. Reliance on third parties	C	<ul style="list-style-type: none"> The recommendation is fully met.
18. Internal controls and foreign branches and subsidiaries	C	<ul style="list-style-type: none"> The recommendation is fully met.
19. Higher-risk countries	C	<ul style="list-style-type: none"> The recommendation is fully met.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> The uncovered predicate offence of terrorism is not a major crime generating proceeds for ML/TF purposes.
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> The recommendation is fully met.
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> No monetary threshold on application of CDD obligations in respect of transactions conducted at a casino (FATF Standards sets a threshold of USD / EUR 3000). Malawi has not identified and assessed ML/TF risk on new technologies and products being used by DNFBPs.
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> The uncovered predicate offence of terrorism is not a major crime generating proceeds for ML/TF purposes in Malawi.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> No mechanisms complying with requirements under criteria 24.6, 24.7, 24.8 and 24.9. Although competent authorities can obtain timely access to information held by the Registrar of Companies which was also confirmed by the NRA, such information does not cover beneficial ownership. No specific provision to liable a person for breaches of the requirements with respect to beneficial ownership information. No specific provisions facilitating access by foreign competent authorities to basic information held by the Registrar of Companies. No legal provisions expressly providing LEAs with powers to obtain beneficial ownership information on behalf of their foreign counterparts. No existing frameworks for the Malawian authorities to monitor the quality of assistance they receive from other countries in response to requests for beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> No obligation to obtain information set out under Criterion 25.1. No specific obligation for trustees to obtain and retain adequate, accurate and current information on the identity of the settlor, the trustees, beneficiaries

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>or natural persons exercising ultimate control over the trust.</p> <ul style="list-style-type: none"> Although FIs have an obligation to obtain and keep full information on beneficial ownership or natural persons who have ultimate control over a trust or any other legal arrangement, for competent authorities in particular law enforcement, such information will not be easy to access as it will not be kept at a central registry and not all the registered trusts might have a relationship with a FI or a DNFBP.
26. Regulation and supervision of financial institutions	C	<ul style="list-style-type: none"> The recommendation is fully met.
27. Powers of supervisors	C	<ul style="list-style-type: none"> The recommendation is fully met.
28. Regulation and supervision of DNFBPs	C	<ul style="list-style-type: none"> The recommendation is fully met.
29. Financial intelligence units	C	<ul style="list-style-type: none"> The recommendation is fully met.
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none"> The recommendation is fully met.
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> The Malawian law does not allow interception.
32. Cash couriers	LC	<ul style="list-style-type: none"> The declaration system in Malawi does not provide for international cooperation and assistance in accordance with Recommendations 36 to 40. Though 'authorized officer' is defined under the act, the Minister has not issued a notice published in Gazette to designate such a person or persons during the onsite.
33. Statistics	PC	<ul style="list-style-type: none"> No adequate statistics kept necessary to review and assess the effectiveness of the AML/CFT system.
34. Guidance and feedback	PC	<ul style="list-style-type: none"> No guidance and feedback to assist the DNFBPs other than casinos to understand their AML/CFT obligations.
35. Sanctions	LC	<ul style="list-style-type: none"> No clear sanctions for failing to comply with requirements relating to new technologies, reliance on 3rd parties/intermediaries and high-risk countries.

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
36. International instruments	C	<ul style="list-style-type: none"> The recommendation is fully met.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> The offence of terrorism is not criminalized which affects MLA in respect of these offences. All the limitations indicated under Rec.31 including the absence of provisions in applying investigation techniques for interception remain as deficiencies under this recommendation.
38. Mutual legal assistance: freezing and confiscation	C	<ul style="list-style-type: none"> The recommendation is fully met.
39. Extradition	LC	<ul style="list-style-type: none"> No proper case management system to ensure timely disposal of cases was launched recently at the Ministry of Justice (DPP). No enabling law or mechanism in place in Malawi for executing a simplified extradition.
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> Lack of feedback on usefulness of information by competent authorities. Generalized timelines to respond to a request. Absence of authority to competent authorities to exchange information indirectly with foreign non-counterpart.

Annex A-List of Offenses for determining Criminal Conducts as predicate offenses in Malawi

Designated Category of Offences	Relevant Law and Specific sections
1. Participation in an organized criminal group	Ss. 89, 404-406 of the Penal Code (PC)
2. Terrorism, including terrorism financing	S. 43 of Financial Crimes Act. However, terrorism is not criminalised.
3. Trafficking in human beings and migrant smuggling	Part III of the 2015 Trafficking in Persons (TIP) Act and Section 36 of the Immigration Act respectively.
4. Sexual exploitation (including of children)	Article 20 of the 2015 TIP Act.
5. Illicit trafficking in narcotic drugs	S. 4-5 of Dangerous Drugs Act
6. Illicit Arms Trafficking	S. 4-5 of Firearms Act
7. Corruption and bribery	Part IV, S. 90 of PC; S. 24-25 of Corrupt Practices Act
8. Illicit trafficking in stolen and other goods	S. 331 of PC
9. Fraud	S. 120, 332-336 of PC
10. Counterfeiting currency	S. 371-377 of PC and Section 17 of the Reserve Bank Act
11. Counterfeiting and piracy of products	S. 387 – 388 of PC. See also Part XI of the Trade Marks Act, 1958 and s.113 of the Copy Rights Act
12. Environmental crime	S. 197-198 of PC; S. of Environmental Management Act. See also Section 98 and Part XIII of the national parks and wild life act.
13. Murder, grievous bodily injury	S.209, 238-239 of PC
14. Kidnapping, illegal restraint and hostage taking	S. 257-269 of PC
15. Robbery or theft	S. 270-290, 300-302 of PC
16. Smuggling	S. 89 of PC; S. 134 of the Customs & Excise Act as read with S. 142
17. Tax Crimes	S. 112 (4) of the Taxation Act; S. 48 of the Value Added Tax Act
18. Extortion	S. 91, 304-307 of PC
19. Forgery	S. 351-354, 355-359 of PC
20. Piracy	S. 63 of PC
21. Insider trading and market manipulation	S. 45 - 49 of Securities Act