Government of Malawi

NATIONAL MONEY LAUNDERING

AND

TERRORIST FINANCING

RISK ASSESSMENT REPORT FOR MALAWI

June 2013

CONTENTS

ACRONYMS

ACB	Anti-Corruption Bureau
AML/CFT	Anti-Money Laundering / Combating the Financing of Terrorism
AREA	Association of Real Estate Agents
ATM	Auto-Teller Machine
AUSTRAC	Australian Transaction Reports and Analysis Centre
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CONGOMA	Council for Non-Governmental Organizations in Malawi
CPA	Corrupt Practices Act
DNFBPs	Designated Non-Financial Businesses and Professions
DPP	Director of Public Prosecutions
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ECDD	Enhanced Customer Due Diligence
FATF	Financial Action Task Force
FFU	Fiscal and Fraud Unit
FIs	Financial Institutions
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
IAM	Insurance Association of Malawi
ID	Identification Document
IIA	Institute of Internal Auditors
IPO	Initial Public Offer
KYB	Know Your Customers’ Business
KYC	Know Your Customer

LCTR	Large Currency Transaction Report
LEA	Law Enforcement Agency
MAMN	Malawi Microfinance Network
MCA	Micro-Credit Agency
MCCCI	Malawi Confederation of Chambers of Commerce and Industry
MEJN	Malawi Economic Justice Network
MGB	Malawi Gaming Board
ML	Money Laundering
MLS	Malawi Law Society
ML & TF Act	Money Laundering, Proceeds of Crime and Terrorist Financing Act
MoF	Ministry of Finance
MoJ	Ministry of Justice
MOU	Memorandum of Understanding
MPC	Malawi Posts Corporation
MPS	Malawi Police Service
MRA	Malawi Revenue Authority
MUSCCO	Malawi Union of Savings and Credit Cooperatives
NRA	National Risk Assessment
NRAWG	National Risk Assessment Working Group
NGO	Non-Governmental Organization
NIB	National Intelligence Bureau
NPO	Non-Profit Organization
PEPs	Politically Exposed Persons
PIN	Personal Identification Number
NRAT	National Money Laundering and Terrorist Financing Risk Assessment Tool
RBM	Reserve Bank of Malawi

SACCO	Savings and Credit Cooperative
SADC	Southern African Development Community
SMS	Short Messaging Service
SOCAM	Society of Accountants in Malawi
SRO	Self-Regulatory Organization
STR	Suspicious Transaction Report
WB	World Bank
XBR	Cross Border Transaction Report

SECTION ONE: RISK ASSESSMENT OVERVIEW

1.0 INTRODUCTION

This report details findings from the Malawi's national ML/TF risk assessment, and has been conducted as a self assessment by Malawi authorities, using the National Money Laundering and Terrorist Financing Risk Assessment (NRA) Tool developed and provided by the World Bank.

The authorities involved in coming up with this report include Reserve Bank of Malawi (RBM), Financial Intelligence Unit (FIU), Malawi Gaming Board (MGB), Malawi Revenue Authority (MRA), Non-Governmental Organization (NGO) Board, Ministry of Lands, Ministry of Finance, Ministry of Justice, Ministry of Foreign Affairs and Internal Cooperation, Malawi Law Society (MLS), Association of Real Estate Agents, Institute of Internal Auditors Malawi Chapter (IIA), Anti-Corruption Bureau (ACB), Insurance Association of Malawi (IAM), Malawi Microfinance Network (MAMN), Malawi Confederation of Chambers of Commerce and Industry (MCCCI), Malawi Economic Justice Network (MEJN), National Intelligence Bureau (NIB) and the Malawi Police Service (MPS).

The role of the team from The World Bank was limited to delivery of the tool, providing guidance on technical aspects of it, review and provision of feedback to assist with the correct use of the tool. The data was populated onto templates of the National Money Laundering and Terrorist Financing Risk Assessment Tool (NRAT) by Malawian AML/CFT authorities.

All findings, interpretations, and judgments under the scope of the National Money Laundering Risk Assessment process completely belong to the Malawian authorities and do not reflect the views of The World Bank, its Board of Executive Directors or the governments they represent. Nothing herein shall constitute or be considered to be a limitation upon or waiver of the privileges and immunities of The World Bank, all of which are specifically reserved.

1.1 OBJECTIVES

The objectives of the NRA were:

a) Understand the level of proceeds of crime generated in Malawi or coming into Malawi and the threat posed by terrorist financing (TF);

b) Determine the vulnerability of the economic and financial sectors are to ML and TF;

c) Determine and understand the weakness in the legal framework, by considering the criminal and administrative justice system, and existing preventative systems; and

d) Appreciating the best manner to allocate resources for the prevention, investigation and prosecution of ML and TF.

1.2 METHODOLOGY

The stakeholders named above formed a National Risk Assessment Working Group (NRAWG) which was further divided into six sub-groups with each group focusing on a specific module of the risk assessment tool. The overall risk assessment was formed by the ratings of the first two groups, namely; ML Threat Analysis and National Vulnerability. An additional three groups assessed the money laundering vulnerability of various sectors and the results from these groups fed into the National Vulnerability Group. The sixth group looked at the aspect of financial inclusion products and their ML vulnerability. Results from this group did not feed into National Vulnerability and its findings are presented in a separate chapter of this report. Therefore the first and second chapters of the report focus on the first five groups.

It was agreed that the Working Group would include self-regulatory bodies of the private sector as full members, as they would add value to the process considering their hands-on experience with the institutions that would form the subject matter of the assessment.

The NRA process involved three stages, the first stage being a two and half-day workshop, which provided a brief summary on the NRA concepts, and introduced the NRA tools, followed by an explanation of the assessment methodologies and use of the NRA tool. The groups used the information collected before-hand to populate the NRA tool, and to identify information gaps.

The second stage required the working group members to collect the missing data, re-evaluate the inputs made during the initial workshop and populate the missing data into the NRAT. After this, the working group members were required to draft an initial group report.

The final stage of the NRA process involved a three-day final workshop. This workshop provided an opportunity for a final review of the NRA report and presentation of the findings to policymakers for their recommendations and strategizing on the way forward.

The five sub-groups that contributed to the overall risk assessment are briefly explained below:

i) Sub-Group One – ML/TF Threat Analysis

This group analyzed the ML/TF threat in Malawi, by indentifying and compiling data on the criminal offences that generate proceeds of crime which can be laundered. The group also considered the level of ML/TF external threat from neighboring countries and beyond.

ii) Sub-Group Two – National Vulnerability

Analyzed the national vulnerability to ML and TF, by considering how well LEAs are equipped to tackle this problem. This included assessing the levels of training, integrity and resources in these institutions including l how these institutions cooperate with one another and other institutions outside Malawi.

iii) Sub-Group Three – Banking Sector Vulnerability

This group assessed the vulnerability arising from provision of various bank products. The assessment involved analyzing the volume of bank products and their inherent vulnerability and these were assessed against the AML controls (general and product specific controls).

iv) Sub-Group Four – Other Financial Institutions' Vulnerability

The group assessed the vulnerability that arises from other financial institutions that are not part of the banking sector, namely securities, foreign exchange bureaus, money transmitters, insurance players, leasing and finance, and microfinance. This also included an analysis of the control measures that are in place in each of these sectors.

v) Sub-Group Five – DNFBPs Vulnerability

This group analyzed the vulnerability of DNFBPs which included Casinos; Real Estate Agents; Dealers in precious metals and precious stones, Legal practitioners, Notaries Public; Lawyers, Accountants and NPOs.

Data was collected through the following methods:

- The data collected came from databases of the FIU, RBM, MPS, ACB, MRA, National Registration Bureau, Department of Mines, Malawi Micro-finance Network and some targeted financial institutions.
- Questionnaires were administered to the concerned financial institutions such as banks and non-bank financial institutions, and DNFBPs.

- Review of publications by relevant regulators, such as the Financial and Economic Review produced by the RBM and the Insurance Sector Annual Reports.

- Telephone and face-to-face interviews were used to obtain quick information or clarification on responses provided earlier.

- Public information sources were used and these included Malawi's AML/CFT Mutual Evaluation Report (2008), National Anti-Corruption Strategy, Anti-Corruption Bureau (ACB) Consultancy Report (2012), the Malawi Money Laundering Typologies Report (2011), 2010 World Bank Report on Shadow Economies and other media publications.

- Legislation was also referred to, and this includes Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act; Corrupt Practices Act; and the Reserve Bank of Malawi Act to name a few.

1.3 LIMITATIONS

The assessment faced a number of limitations as outlined below:

- In some instances, data was not available from the targeted sources. This was the case with the informal financial sector and DNFBPs. The data provided was in some instances inadequate to come up with a proper ML risk rating for certain areas. This resulted in the use of common knowledge of the particular sectors.

- In other instances, the data was available but some institutions were not forthcoming with the information. This was applicable to most private sector institutions. The informal sector also held back information for fear of repercussions for divulging information related to businesses. At the time of preparing this draft report some institutions or stakeholders had not yet submitted the requested data, despite the repeated request having been made.

- ML and TF issues are relatively new in Malawi. Many people, including law enforcement officers, do not clearly understand the law on money laundering. Consequently, ML charges are easily ignored by investigators and prosecutors.

- Proceeds generated from criminal activities are usually not captured in cases, as the templates of the reports by Law Enforcement Agencies (LEAs) do not demand data on proceeds generated. It was therefore difficult to obtain reports of proceeds of crimes as the major focus is the number of investigations, prosecution and convictions.

- It was observed that data on cases handled by LEAs was not handled properly in Malawi. There is no linkage among LEAs in terms of data collection. There is no centralized database from which information could easily be accessed by LEAs. Moreover, most LEAs are still handling data manually and this made data collection difficult.
- Some information is not included in the report because the time allocated was insufficient to generate all the data required and come up with a proper analysis. Further the assessment was undertaken by individuals from various institutions who had other pressing institutional assignments during the same period. This created problems with data collection and finalization of the draft report.

Nonetheless, the data limitations do not in any way invalidate the results of this assessment.

1.3 EXECUTIVE SUMMARY

The AML/CFT regime in Malawi gained momentum with the enactment of the ML&TF Act in 2006, and the establishment of the FIU in 2007. These milestones, where followed by the conducting of a mutual evaluation exercise on Malawi's AML/CFT regime, aimed at identifying the strengths and weaknesses of the country's legal, judicial and financial systems.

To build on the knowledge gained from the mutual evaluation exercise, the Malawi Government requested The World Bank to provide technical assistance to Malawi in conducting a NRA. This exercise will enable government and AML/CFT stakeholders to better prioritize in the AML/CFT efforts and facilitate the implementation of the risk based approach.

The NRA exercise has been conducted in three phases, the first being a workshop in September 2012 attended by 19 key AML/CFT stakeholder institutions. Phase two was data collection, and phase three was a workshop aimed at discussing the draft report and finalizing the NRA report. The exercise involved assessing the national ML/TF threats and vulnerabilities. The assessment of ML vulnerability covered areas of national combating ability, banking sector, other financial institutions and DNFBPs.

The assessment revealed that the country faces a number of ML/TF risks due to loopholes in the implementation of Know Your Customer (KYC) programs by financial institutions, lack of proper identification documents among the majority of Malawians, lack of adequate capacity among LEAs on investigations and prosecution process and lack of adequate knowledge by major stakeholders and the general public on the importance of promoting AML/CFT.

The overall ML risk for Malawi is medium high. This is affected by the national ML threat which is rated medium and the national vulnerability which has a rating of medium high. In terms of TF risk, the threat level is low as there are no reported cases of TF in Malawi. However, there has been an influx of foreigners from countries in conflict or other form of civil unrest such as Pakistan, Nigeria, Somalia, Democratic Republic of Congo (DRC), Sudan, Burundi, Rwanda and Ethiopia. This has the possibility of increasing the threat level of terrorist activities. In addition, there have been terrorist activities in neighboring countries such as Tanzania and Kenya where the United States (US) Embassies were targeted.

Specific issues from the six assessment components were as follows:

a) National ML threat analysis

This component lacked concrete figures on values of proceeds linked with offences, as LEAs do not keep records of these; however, the figures regarding the frequency of committed offences were obtained. These figures indicate that the major ML threats come from tax evasion, corruption, fraud and smuggling. The assessment did not reveal any TF figures, as there were no reports of terrorist financing. Due to the data collection problems and limitations, the results of the threat assessment therefore need to be read with caution.

b) National vulnerability to money laundering

The assessment revealed that the national vulnerability to ML is medium high with a score of 0.64. This is a combination of medium high overall sectoral vulnerability and medium national combating ability. The sectors that are most vulnerable are DNFBPs followed by other financial institutions, namely securities, foreign exchange bureaus, money transmitters, insurance players, leasing and finance, and microfinance. The national combating ability is medium owing to low combating ability in respect of criminal investigation, criminal prosecution, criminal conviction, and asset forfeiture. These four factors in turn are affected by 22 variables namely: capacity of prosecutors; capacity of Financial Crime (FC) investigators; capacity of presiding officers; integrity of FC investigators; integrity of prosecutors; informal economy; capacity of Asset Forfeiture Investigators(AFI); financial integrity; asset forfeiture laws; integrity of AFIs; criminal penalties; integrity of presiding officers; Suspicious Transaction Report (STR) data analysis; identification infrastructure; international cooperation in asset forfeiture; asset forfeiture orders; corporate and trust transparency; audit and accounting practices; international cooperation in criminal asset forfeiture; tax disclosure; independent information sources; and domestic cooperation.

c) Banking Sector Vulnerability

The overall money laundering vulnerability for this sector is medium high. The most vulnerable products/services are trade finance, retail and corporate deposits, international funds transfers, private banking and SME credit products which have medium high vulnerability. The least vulnerable products are electronic banking (POS & Mobile banking) and micro deposits both of which have a medium vulnerability. All products fall within the medium to medium high category.

Private banking attracts high net worth customers most of whom are public officials or Politically Exposed Persons (PEPs) who require proper KYC and Enhanced Customer Due Diligence (ECDD). On the contrary, supervision exercises have found KYC on these customers to be inadequate as the banks feel that they know the individuals due to their status. Another area of concern is with regard to bogus traders who use fake invoices for international funds transfers with the aim of externalizing foreign currency and evading taxes.

d) Vulnerability of other financial institutions

This component of the assessment comprised both formal and informal sectors. Formal sectors are regulated while informal sectors are those that are unregulated. The informal sector, which includes *hawala*, money lenders and black market foreign exchange, was considered to pose a very high ML/TF vulnerability because it is not regulated and is conducted underground. As such, there is no evidence of KYC and record keeping. The formal Sector, had varying ML/TF vulnerability – Securities sector (medium high), Insurance sector (medium for life insurance and medium low for non-life insurance), Leasing and Financing (medium low), Foreign Exchange Bureaus (medium high), Remittance Service Providers (medium high), E-Money (low medium) and Microfinance (medium high).

e) DNFBPs Vulnerability

Under this component, the assessment established that the real estate sector, second-hand car dealers and legal practitioners/lawyers have a very high ML vulnerability followed by casinos and gambling houses. These sectors are highly targeted by PEPs and resident foreigners. The players in the sectors do not apply rigorous KYC measures, do not maintain proper customer records, and do not allocate resources towards AML/CFT programs.

The DNFBPs with lower vulnerability include dealers in precious stones and precious metals. This however could have been influenced by the fact that there was very minimal data to be collected on this sector.

1.4 CONCLUSION

In conclusion, the NRA has been an important exercise for the country. It has helped all stakeholders to understand where they are placed, and what role they play in the AML/CFT fight. Results from this assessment are a wakeup call for stakeholders to start paying attention to sectors that have the highest vulnerability and provide adequate resources to increase the combating ability. Further, it recommended that financial institutions should, out of this process, conduct a vulnerability assessment on their products, services, customers, channels of delivery and geographical locations where they offer their services. All these efforts will ultimately lead to a reduced threat and vulnerability of ML/TF in the country.

SECTION TWO: RISK ASSESSMENT FINDINGS AND RECOMMENDATIONS

2.1 OVERALL ASSESSMENT OF ML RISK

The overall ML risk for Malawi is medium high. This is informed by the overall threat which is rated medium and the overall vulnerability which is rated medium high. For the findings and details that underlie this assessment, please refer to the following sub-chapters.

2.2 TF AND ML THREAT ANALYSIS

2.2.1 TF THREAT ANALYSIS

There have not been any reported cases investigated and prosecuted on terrorism in the country. Similarly, the Malawi FIU has not received any STRs on terrorist financing and therefore no reports have been referred to LEAs. However, potential sources of terrorist financing in Malawi would be alternative remittance system as well as prevalence of other nationalities whose countries of origin have been susceptible to terrorism and TF. As for the alternative remittance sector, there are no official figures or records on its size, though indications are that this it is a growing sector because of the increasing presence of nationalities from conflict and terrorist-prone jurisdictions within the continent and beyond such as Pakistan, Nigeria, Somalia, Democratic Republic of Congo (DRC), Sudan, Burundi, Rwanda and Ethiopia. It is believed that these nationalities prefer the alternative remittance system to transfer money to or from Malawi thus increasing the threat level of terrorist financing and terrorist activities.

In view of this, the overall terrorist financing threat was rated low because there have not been any reports on terrorism and terrorist financing activities (See Appendix 3-TF Risk Assessment Template).

2.2.2 ML THREAT ANALYSIS

A clear determination and understanding of the ML threat is important in the process of assessing the ML and TF risk. The ML/TF threat analysis considered the level and trend of predicate offences reported. The most prevalent predicate offences are breakings, corruption, robbery with violence, illegal entry and to a lesser extent fraud, human trafficking, theft of motor vehicles, tax evasion, smuggling, illegal possession of fire arms and drug trafficking. The assessment also showed that there is no significant increase in these predicate offences since 2010. The overall ML threat was therefore considered to be medium. The typologies are covered in the discussion of the respective predicate crimes below and also in the ML Typology Analysis Template (See Appendix 2-ML Cases Typology Analysis).

Below is a detailed analysis of the ML threat stemming from important predicate crimes. The detailed analysis is also presented in the chart below:

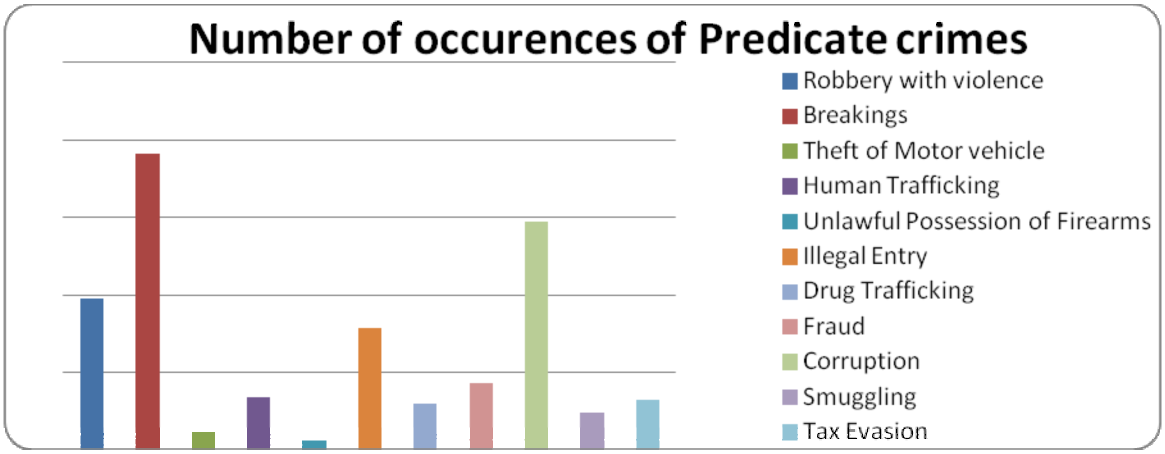

Figure 1 – number of predicate offences from 2010 to 2012

There was limited information on values of proceeds linked with offences because LEAs do not keep records of these. Therefore the assessment under this section needs to be read with this fact in mind.

2.2.1 ROBBERY WITH VIOLENCE

Robbery with violence is also referred to as armed robbery. It is defined as robbery by persons who are armed with dangerous or offensive weapons or instruments[1]. The total number of robberies with violence cases investigated from July 2009 to June 2012 was 980. The trend in occurrence of these cases is reducing, as is evident from the figures. From 2009 to 2012, the numbers reported cases were 352; 271; 243 and 114 in that order. The total number of proceeds identified from 2009 to 2012 was MWK51.4million (US$166,010).

Based on the figures alone, the ML threat with regard to this crime was assessed as medium due to the reduced number of occurrences**.**

[1] The Malawi Penal Code; Section 300

2.2.2 BREAKINGS

Breaking, according to the Malawi Penal Code, is where someone breaks into premises with the intention of stealing property without necessarily using violence[2]. This crime usually involves breaking into houses and stealing household items such as kitchen utensils and electronic appliances. The total number of cases investigated involving breakings from 2009 to June 2012, was 1,945. The occurrences of breakings are reducing. There were 651 cases reported in 2009; 672 in 2010; 456 in 2011 and 166 in 2012.

There are no records on the amount of proceeds identified and confiscated with respect to this offence. The ML threat has been assessed as medium since the trend is reducing and the items usually stolen are of minimal value.

2.2.3 THEFT OF MOTOR VEHICLES

The total number of cases investigated with regard to motor vehicle theft from 2009 to June 2012, were 115. There are no records on the amount of proceeds identified and confiscated and the ML threat is medium low.

2.2.4 HUMAN TRAFFICKING

Human trafficking is the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation[3]. However, there is no law on human trafficking and currently human trafficking cases are prosecuted using the Immigration Act and Penal Code. The total number of cases investigated from 2009 to June 2012, was 340.

The ML threat is medium low based on the number of occurrences and given that there is no particular trend on occurrence of human trafficking cases. There are no records captured on proceeds identified and confiscated from human trafficking.

2.2.5 UNLAWFUL POSSESSION OF FIREARMS

[2] The Malawi Penal Code CAP 7:01 of the Laws of Malawi, Sections 308-312

[3] UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 3 , paragraph (a)

There are few recorded cases on unlawful possession of firearms. From 2009 to June 2012, a total of 61 cases were handled and the trend does not show an increase. The firearms were in most cases used for robberies; however, there are no records on ML proceeds identified and confiscated. There is no particular trend in occurrence of these cases. Even though there is an economic motive to such cases, the threat level is medium low.

2.2.6 ILLEGAL ENTRY

From 2009 to June 2012, there were 784 cases handled, and the number of occurrences reported indicates an increase in the cases, possibly due to internal conflicts in other countries in the region. There were 267; 105, and 412reported cases in 2009, 2010 and 2011 respectively. Malawi is mostly used as a transit country for illegal immigrants from Somalia, Ethiopia, Burundi, Rwanda and Democratic Republic of Congo, en-route to South Africa and beyond. Malawian public officials and ordinary citizens who facilitate the entry and transit are motivated by economic gains. However, few records are captured on the ML proceeds identified and confiscated. For example, the case of ***The Republic v Wesley Mzumara, Criminal Case no. 27 of 2010,*** where the accused was arrested for assisting foreigners to illegally enter Malawi in return for money (amount demanded not known).

The ML threat is low because the final destination of most illegal entrants is usually not Malawi.

2.2.7 DRUG TRAFFICKING

The main offences under this are growing, possession and trafficking of drugs, mainly *Cannabis Sativa* locally known as *chamba*. Only records for 2011 were found which indicated that 301 cases were reported. Law enforcers uprooted 5,162 *Cannabis Sativa* plants weighing 218.84kgs whereas a total of 4,100.58kgs were seized across the country. According to street information, 1kg of the drug could fetch K10,000 (US$32.30), hence the total of 4,319.42kgs could earn K43,194,200 (US$139,507.14) A total of 180 cases were concluded in which 162 persons were convicted of drug trafficking and possession. The records do not indicate the ML proceeds identified and confiscated because prosecutions focus on the predicate offence and are based on the weight of the drug and not financial value. Although there are no records on ML proceeds identified and confiscated, the ML threat is medium-high because of the unofficial street value as well as the continued production of the drug**.**

2.2.8 FRAUD

Fraud is covered under sections 332 to 336 of the Malawi Penal Code. The most common type of fraud in Malawi is public funds swindling, defrauding of private organizations and bank fraud[4]. The total number of cases handled in 2011 is 184 and the amount of proceeds identified is MWK625.3million (US$2.02million). In 2012 the total number of cases handled was 149 and the amount of proceeds identified is MWK294.8million (US$952,135).

From experience and expert judgment, the ML threat is assessed as high due the increasing number of cases handled.

2.2.9 CORRUPTION

Corruption in Malawi is criminalised under the Corrupt Practices Act. The Act defines a **c**orrupt practice as, "*the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person*"[5]. The national anti-corruption strategy defines corruption as "*the abuse of power for private gain*"[6]. However, the meaning of corrupt practices in Malawi is not different from those given in the literature by Rose-Ackerman (2004), Transparency International (2000) and the World Bank (1997). The emphasis is on the misuse of public office for private or political gain.

The Anti-Corruption Bureau (ACB) is the agency mandated under the Act to investigate and prosecute corruption cases in Malawi. The total number of cases investigated for the financial years (June to July) from 2009 to 2011 financial years was 1472[7] while the number of cases prosecuted in the same period is 79. The total amount of proceeds identified in 2010 was MWK1.4billion (US$4.52million) while in 2011 it was MWK1.1billion (US$3.55million). There was no information on the proceeds for 2009.

The ML threat is high considering that some cases involve significant amounts of public funds**.** However, the amounts of ML proceeds identified and confiscated are derived from very few isolated cases.

[4] Fiscal Police and Money Laundering Typologies in Malawi, September 2011

[5] The Corrupt Practice Act, 1995, pp 4

[6] Malawi Government: *National Anti-Corruption Strategy (2008) pp 12*.

[7] ACB Consultancy Report

2.2.10 SMUGGLING

Smuggling means the importation or exportation, or the loading onto or unloading from conveyance, or the diversion for consumption, of any goods subject to customs control with intent either to defraud the Government of any duty payable thereon or to evade any of the provision of the Customs and Excise (Amendment) Act[8]. The most common type of goods smuggled into Malawi are cosmetics, cooking oil, beer and cigarettes because these have a higher rate of custom duty[9]. On the other hand, the most common type of goods smuggled out of Malawi are maize and timber. Maize is smuggled out because it is a controlled produce and timber because of export tax[10].

The ML threat is medium high given the increasing trend in occurrence and the amount of proceeds generated. The trend in the number of occurrence of smuggling cases is increasing, as evidenced by the number of reported cases. In 2010[11], 22 cases were reported while 66 and 152 were reported in 2011 and 2012 respectively. The amount of proceeds confiscated is MWK389million (US$1.26million).

2.2.11 TAX EVASION

There is no specific definition for Tax Evasion provided in the Tax laws such as the Customs and Exercise Act, VAT Act and the Income Tax Act. However, it has been defined as the act of illegally paying less taxes (or not paying at all) than the amount legally required by the tax law[12].

The number of cases investigated from 2009 to 2012 is 323. There does not appear to be a clear trend in the number of occurrences of tax evasion cases, as in the 2009/2010 fiscal year the number reported is 54, in 2010/2011 fiscal year 165 and in 2011/2012 104. The amount of proceeds confiscated was MWK1.6billion (US$5.17million). The ML threat is high.

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[8] Customs and Excise (Amendment) Act, 2011 section 2

[9] Malawi Revenue Authority

[10] Malawi Revenue Authority

[11] The fiscal year runs from 1st July in one year to 30th June the next year.

[12] Chiumya Chiza, Counteracting tax evasion in Malawi: An analysis of the methods and a quest for improvement, 2006 (unpublished).

There are also combined figures on tax evasion and tax avoidance arising from tax audit cases. The tax audits are done to check both tax avoidance and tax evasion. Tax avoidance refers to reducing taxes by legal means, while tax evasion is the non-payment of tax liabilities[13] and this is a crime. In the 2009/2010, 1158 cases were audited and the quantified amount is MWK7.8 billion (US$25.19 million), 2010/2011 the number of cases audited was 558 and the amount quantified was MWK4.9billion (US$15.83million) and in 2011/2012, 494 cases with the quantified amount of MWK2.5 billion (US$8.07million). In total there are 2210 cases with a quantified amount of MWK38.2 billion (US$123.38million).

There are no ML cases connected to tax evasion that have been reported. In terms of typologies, an analysis of investigated cases on tax evasion indicate that the most prevalent cases involved under-invoicing, concealment/suppression of sales, claiming non allowable expenses, claiming non allowable Value Added Tax (VAT), non remittance of withholding tax, undervaluation of imports, undervaluation of imports and misclassification of goods. Through analysis, the FIU has also established that some individuals and companies use personal or private bank accounts to evade tax[14].

Examples of cases investigated by Malawi Revenue Authority on tax evasion explaining the above typologies include the following;

- A Malawian national of Burundi origin imported 6500 cartons of lotions into Malawi. The consignment was undervalued and under-declared as evidenced by corresponding declarations made in the country of export (Tanzania). After MRA investigations, a MWK32 Million (US$103.35 million) tax assessment was raised.

- Goods worth MWK31million (US$100.12 million) were imported by a certain cotton company duty free under the guise of diplomatic privilege.

- MWK15.2million (US$49,092) was recovered in a case involving false declaration of various groceries by a certain supermarket. The supermarket presented two separate declarations to the MRA officials at the port of entry. The first declaration was valued at ZAR700,000 (US$75,455) and the other declaration was valued at ZAR100,000 (US$11,351).

- Evasion of VAT and Income Tax with assessment amounting to MWK2.2billion (US$7.11million) income tax and MWK1.1billion (US$3.55 million) VAT

[13] http://en.wikipedia.org/wiki/Tax_noncompliance

[14] Money Laundering Typologies in Malawi, September 2011.

assessments based on estimated sales. The company involved had two set of invoices operating concurrently, one of which was declared to MRA.

In terms of ML through tax evasion, the FIU has analyzed cases in which business people evade tax through the financial system. An example is where a sole trader used a personal bank account in order to avoid remitting tax from his turn over. After FIU analysis, MRA investigations led to the subject pleading guilty to tax evasion and paid MWK35 million (US$113,042) in tax[15].

RECOMMENDATIONS

a) The focus of investigations and prosecutions should also include identification, recovery and confiscation of proceeds of crime.

b) Law enforcement agencies should improve their data capturing systems by including proceeds identified, recovered and confiscated.

c) Malawi should enact a law on human trafficking.

d) Authorities need to consider developing mechanisms to regulate alternative remittance system to prevent any possible terrorist financing threat that could be used through this system.

e) Authorities should consider establishing a unit responsible for asset forfeiture as this is currently not well coordinated in the country.

2.3 NATIONAL VULNERABILITY TO MONEY LAUNDERING

There are many factors that contribute to the vulnerability of a country to ML. Some factors have a more direct impact while others an indirect impact. The importance and impact of a single factor often depends on the existence or absence of other factors. Vulnerability to ML is affected by the overall sector vulnerability and the country's ability to combat ML.

Data used to determine the ML vulnerability was gathered from the institutions represented in the NRAWG, and the information collected covered the period from July 2011 to June 2012.

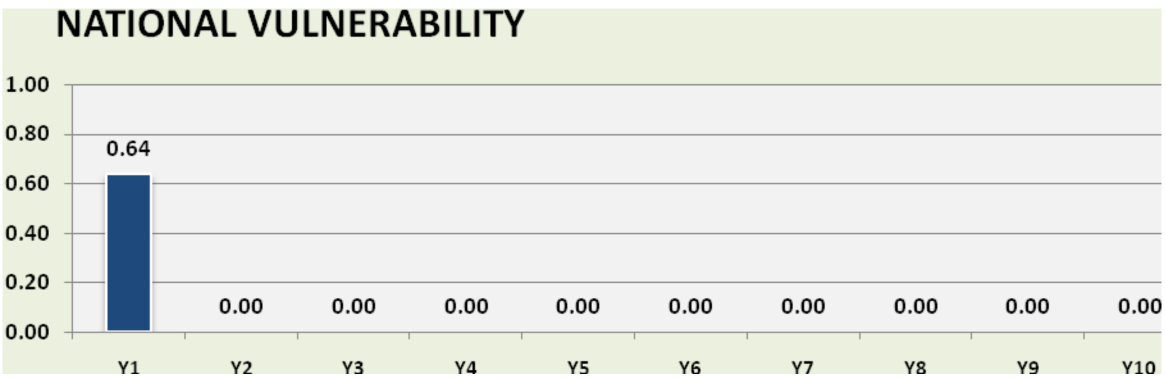
In summary, the overall national vulnerability is rated medium high with a score of 0.64 on the NRAT. This is driven by two factors: the national combating ability which is rated

[15] Money Laundering Typologies in Malawi, September 2011; p 10

medium as a result of poor ratings for asset forfeiture, criminal prosecution and criminal conviction, and to some extent criminal investigation; and overall sector vulnerability which is rated medium high mainly due to the high vulnerability of the DNFBP sector and other financial institutions which comprise leasing and finance, exchange bureaus, remittance service providers, e-money service providers, microfinance and other unregulated financial institutions such as lawn sharks, , providers of hawala, and black market foreign exchange dealers.

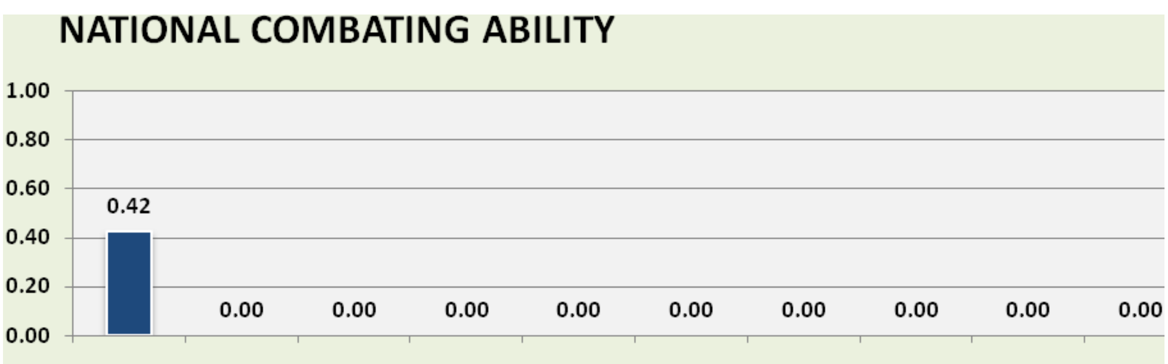
The charts below summarize the national vulnerability to ML (Chart 1) which is affected by the national combating ability (Chart 2) and the overall sector vulnerability (Chart 3). The vulnerability map in chart 4 shows the interrelationships between the factors affecting national vulnerability.

Chart 1



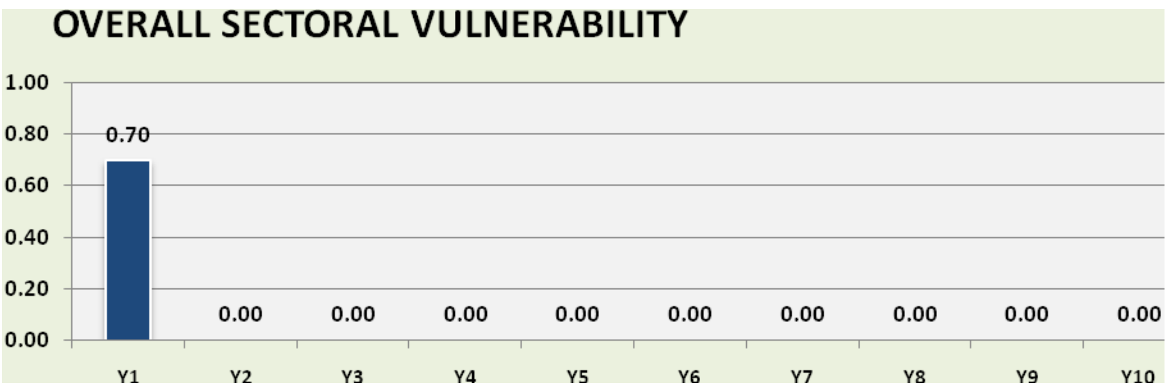
Note: the lower the better

Chart 2



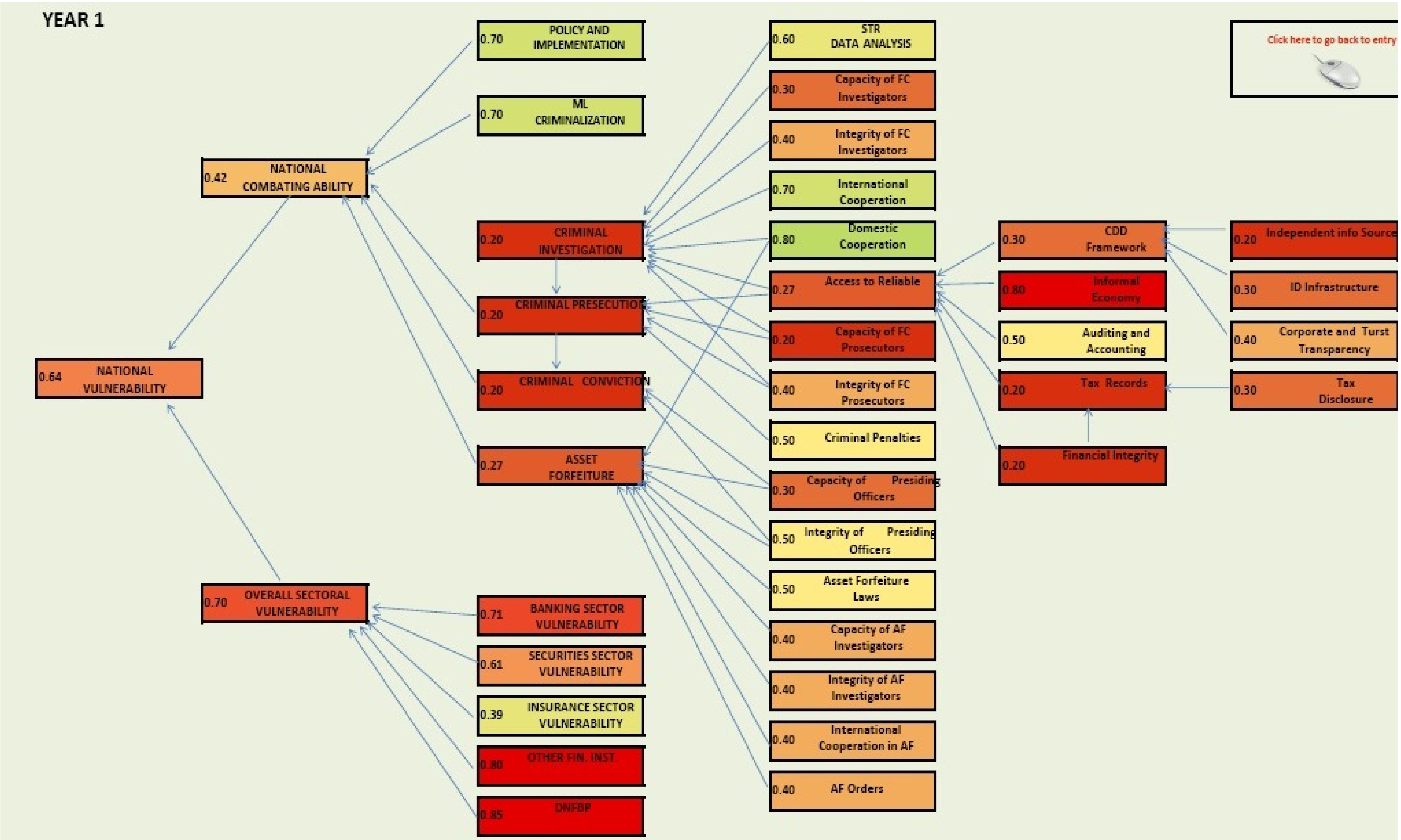
Note: the higher the better

Chart 3



Note: the lower the better.

Chart 4


YEAR 1
0.70 POLICY AND IMPLEMENTATION
0.70 ML CRIMINALIZATION
0.42 NATIONAL COMBATING ABILITY
0.64 NATIONAL VULNERABILITY
0.20 CRIMINAL INVESTIGATION
0.20 CRIMINAL PRESECUTION
0.20 CRIMINAL CONVICTION
0.27 ASSET FORFEITURE
0.70 OVERALL SECTORAL VULNERABILITY
0.71 BANKING SECTOR VULNERABILITY
0.61 SECURITIES SECTOR VULNERABILITY
0.39 INSURANCE SECTOR VULNERABILITY
0.80 OTHER FIN. INST
0.85 DNFBP
0.60 STR DATA ANALYSIS
0.30 Capacity of FC Investigators
0.40 Integrity of FC Investigators
0.70 International Cooperation
0.80 Domestic Cooperation
0.27 Access to Reliable
0.20 Capacity of FC Prosecutors
0.40 Integrity of FC Prosecutors
0.50 Criminal Penalties
0.30 Capacity of Presiding Officers
0.50 Integrity of Presiding Officers
0.50 Asset Forfeiture Laws
0.40 Capacity of AF Investigators
0.40 Integrity of AF Investigators
0.40 International Cooperation in AF
0.40 AF Orders
0.30 CDD Framework
0.80 Informal Economy
0.50 Auditing and Accounting
0.20 Tax Records
0.20 Financial Integrity
0.20 Independent info Source
0.30 ID Infrastructure
0.40 Corporate and Turst Transparency
0.30 Tax Disclosure
Click here to go back to entry

2.3.1 NATIONAL COMBATING ABILITY

The NRA tool used a total of 24 input variables to assess Malawi's ability to combat money laundering. Each variable is rated on a scale of 0 to 1 and the higher the rating for the variable, the better the performance.

The national combating ability has been assessed as medium with a score of 0.42, meaning that Malawi is not doing well as far as the ability to combat ML is concerned. The table below summarizes the most vulnerable areas under this component of the national vulnerability assessment:

VARIABLES	COMBATING ABILITY RATING
Capacity of Financial Crime Prosecutors	0.2
Availability of Independent Information Sources	0.2
Financial Integrity	0.2
Formalization of Economy	0.2
Capacity of Financial Crime Investigators	0.3
Capacity of Presiding Officers	0.3
Tax Disclosure	0.3
Identification Infrastructure	0.3
Integrity of Financial Crime Investigators	0.4
Integrity of Financial Crime Prosecutors	0.4
Capacity of Asset Forfeiture Investigators	0.4
Integrity of Asset Forfeiture Investigators	0.4
Asset Forfeiture Orders	0.4
International Cooperation in Asset Forfeiture	0.4
Corporate and Trust Transparency	0.4
Criminal Penalties	0.5
Integrity of Presiding Officers	0.5
Asset Forfeiture Laws	0.5
Auditing and Accounting Standards and Practices	0.5
STR Data Analysis	0.6
Criminalization of Money Laundering	0.7
Policy and Implementation	0.7
International Cooperation in Criminal Matters	0.7
Domestic Cooperation	0.8

Note: the higher the score, the better

The above 24 variables are explained in detail below:

2.3.1.1 POLICY AND IMPLEMENTATION

The assessment established that Malawi has well formulated policies and structures in place. For instance, there is a National AML/CFT Committee comprising of various agencies namely: Ministry of Finance, Financial Intelligence Unit, Reserve Bank of Malawi, Malawi Gaming Board, Anti-corruption Bureau, Malawi Revenue Authority, Immigration Department, Malawi Police Service, Ministry of Foreign Affairs, and Ministry of Justice and Constitutional Affairs. This Committee meets regularly to discuss issues affecting proper implementation of AML/CFT requirements. In addition, there is political will to ensure that anti-money laundering requirements are implemented at all levels. This is evidenced by the passing of the ML Act in 2006 and the regulations in 2011. Further to this, Malawi has taken the recommendations in the mutual evaluation report seriously as noted in the progress reports to peer review group in Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). However, there are challenges in implementation bordering on capacity of prosecutors and investigators, and financial constraints in law enforcement agencies. The other challenge lies with the independence of investigative and prosecutorial as heads of those institutions are political appointees, and their professionalism can sometimes be compromised. In addition, the set up of the AML/CFT committee is not sanctioned by any law and as such cannot make decisions that are binding and its operations are not adequately supported financially.

These factors make the rating for this variable to be medium to high with a score of 0.70.

2.3.1.2 CRIMINALIZATION OF MONEY LAUNDERING

Money laundering is criminalized under section 35 of the ML& TF Act which states that *"A person commits the offence of money laundering if the person knowing or having reasonable grounds to believe that any property in whole or in the part directly represents any person's proceeds of crime, converts or transfers property knowing or having reason to believe that property is the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property, or of aiding any person involved in the commission of the offence to evade the legal consequences thereof, or conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property knowing or having reason to believe that the property is the proceeds of crime, or acquires, possesses or uses that property, knowing or having reason to believe that it is derived, directly or indirectly, from proceeds of crime, or participates in, associates with or conspires to commit, attempts to commit and aids, abets and facilities the commission of any offences referred to earlier"*

While this is a positive step, prosecution of this offence has not yet happened, even though there have been cases involving predicate offences. This has mainly been due to capacity of prosecutors and investigators of financial crimes which is low as indicated in other parts of this report. There is need for suspects of predicate offences to be charged with money laundering as well which is not the case presently. This variable is therefore rated medium to high with a score of 0.70 because ML has been criminalised.

2.3.1.3 STR DATA RECEIPT, ANALYSIS AND DISSEMINATION

The FIU receives STRs mainly from the banking sector and from time to time foreign exchange bureaus, micro-finance institutions, and money transmission service providers have also been reporting. However, most of the DNFBPs have not yet started reporting, save for one STR received in 2010 from one of the accounting firms.

Once the STRs are received, they are analyzed and where necessary financial disclosures are made to appropriate LEAs. For instance, if there is suspicion of tax evasion, the STR would be disseminated to MRA.

The FIU has received a total of 137 STRs from financial institutions between 2008 and 2012. Out of these STRs, two from money transmission service providers, two from foreign exchange bureaus, one from a microfinance institution, one based on a disclosure by a foreign FIU and the remaining 131 were from the banking sector. In addition, from the Large Currency Transaction Reports (LCTRs) that the FIU receives, 49 suspicious reports were extracted bringing the total STRs to 186. Upon being analyzed 157 STRs were disseminated to LEAs. These are summarized in the table below:

Year	STRs Received from Financial Institutions	STRs extracted from Large Currency Reports	Total	STRs Disseminated
2009	7	4	11	13[16]

[16] Five of the STRs disseminated were based on the 6 disclosures the FIU received from LEAs

2010	22[17]	6	28	28
2011	18	17	35	30
2012	90	22	112	86
TOTAL	**137**	**49**	**186**	**157**

One of the challenges that affect receipt of STRs is that most financial institutions find it easier to send LCTRs as compared to STRs since LCTRs only require a threshold to have been reached without a need for them to determine suspicion.

Other challenges relate to the inability of financial institutions to make timely submissions of LCTRs and STRs to the FIU coupled with their inability to identify suspicious transactions. This usually happens because of frequent staff turnover in the compliance department and ICT systems failure. This ultimately has the effect of compromising the quality of suspicious transaction reports (STRs) submitted to the FIU.

At the point of report analysis, financial institutions sometimes take long to submit additional information requested to enrich the cases. In addition, once the analyzed reports are disseminated to LEAs, the concerned institutions sometimes do not coordinate well with the FIU or among themselves which leads to a delay in the investigation of the cases.

The vulnerability for this variable is therefore medium with a score of 0.60.

2.3.1.4 CAPACITY OF FINANCIAL CRIME INVESTIGATORS

Capacity of financial crime investigators in this report refers to skills, experience, resources as well as legal powers required to effectively investigate the offences. One common challenge among the LEAs is that they have inadequate investigators who in turn have inadequate training. This leaves them with a huge workload of cases and leads to prolonged investigations which in turn results in loss of some of the evidence, delayed prosecution, and the discharge of accused persons.

[17] One STR was a disclosure from a foreign jurisdiction.

ML investigations are mostly handled by the Fiscal Fraud Unit (FFU) of the Malawi Police Service (MPS). This unit however does not handle ML investigations only but also other financial crimes, hence a huge workload. The unit currently has 39 officers across the country. Out of these, 4 are long serving and have attended a number of trainings in money laundering and have the necessary experience, 14 were trained in basics of money laundering and the role of the FIU but have not yet been assigned to the FFU. The remaining 21 have not been trained and are only using on-the-job training to investigate ML cases. Other officers of the FFU have also been trained in ML as follows: Financial Analysis Training conducted by the World Bank and local experts in 2009 attended by four officers from FFU, Financial Intelligence Analysis conducted by the AUSTRAC in 2010 attended by two FFU officers and Money Laundering Investigations course for investigators and prosecutors conducted by AUSTRAC in conjunction with the Australian Federal Police in 2012 where 10 police officers attended. However, officers trained in AML have since been reassigned to other departments within MPS and this has left FFU incapacitated.

The FFU, like other LEAs, lack adequate financial and material resources to enable them carry out investigations effectively, for example, the annual 2011-2012 funding for the FFU was K7.62 million (US$24,611). In addition, some police stations in the country have only one working car which has to service the operations of all departments. Some do not even have a car and have to use public transport. Further, records are kept manually making it difficult to retrieve and follow up records on investigations and prosecutions.

Other stakeholders also involved in investigation predicate crimes such as ACB, MRA and Immigration Department have also benefitted from the training conducted by AUSTRAC in November 2010 and May 2012 which were attended by 2 officers from each of these institutions.

In the case of the ACB, there are 25 Investigations Officers, 17 of them have more than 2 years experience in investigations. These investigators have received training in investigations but only 14 investigation officers received AML training. The other challenges that investigators face include lack of adequate funding for their investigations. The annual budget for the investigations section of the ACB is about MK58.86 million (about US$190,103) per annum whilst the amount required for the section to carry out effective investigations is more than double the funding.

ACB also faces staff retention problems especially investigators and prosecutors who usually join the private sector which offers better perks. A major concern is that the investigators and prosecutors that leave the ACB are those that have been trained and have adequate experience.

The rating for this variable is therefore low-medium with a score of 0.30 for the fact that most investigators have not been trained, they have inadequate resources to carry out effective investigations and they are few in number.

2.3.1.5 INTEGRITY OF FINANCIAL CRIME INVESTIGATORS

According to the law, the heads of institutions involved in ML investigations are appointed by the state president. Although these heads have to report to parliament as a check and balance, they are sometimes pressured by political figures to pursue or not pursue investigations on high profile figures. For fear of losing their jobs, these heads of the institutions may yield to that pressure and prejudice investigations. The media has in some instances reported of cases where a head of an institution is dismissed for pursuing investigations.[18] Coupled with this challenge is the fact that the heads of the institutions hold the mandate to approve the investigation of cases. .Apart from that, there have been reported cases in the media of investigators being offered kickbacks for them to drop the cases.

The rating for this variable is medium low and a score of 0.40 because integrity is important for successful investigation and prosecution, and where this is lacking, the whole system falls apart.

2.3.1.6 INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

So far there has been cooperation between the RBM, FIU, and Police with their fellow counterparts, internationally. The FIU is a member of the Egmont Group which enables it to share information on the Egmont Secure Web. Further to this, the FIU has signed information sharing MOUs with the FIUs of, among others, the United States of America, Namibia, France, United Arab Emirates, South Africa, Mauritius, Tanzania and Philippines. The MOUs enable the FIU to request information or share information either on request or spontaneously.

RBM also has MOUs with central banks of several countries, including Zimbabwe, Botswana, Mauritius and South Africa. The purposes of the MOUs are for information sharing, consolidated supervision and monitoring where shareholders of financial information are from foreign countries.

[18] www.malawivoice.com/2012/04/21/bingus-zero-corruption-tolerance-policy-a-failed-drive-17710/

From 2008 to date, there have been 10 cases in which Malawi required international cooperation. Three of the cases are on corruption and abuse of office, while 4 are on general theft cases, and 3 on murder cases. The cases are still ongoing. The corruption and abuse of office cases concern high profile officials in the categories of former presidents and ministers. International assistance has been quite slow, for instance in the corruption case involving a former head of state, prosecutors requested information from a foreign jurisdiction, but to date the information has not been forthcoming.

The rating for this variable is medium high with a score of 0.70 because MOUs have been signed and information sharing is taking place.

2.3.1.7 INTEGRITY OF FINANCIAL CRIME PROSECUTORS

The integrity of financial crime prosecutors has been called into question especially from media reports. This is particularly a problem with MPS prosecutors[19]. For instance, a police prosecutor [20]was convicted following an investigation and prosecution by the ACB in July 2011 after they received allegations that the prosecutor demanded a bribe in order to offer no or weak evidence in court. In addition to this, since 2010, the ACB registered over 500 complaints on allegations of corruption by police officers, including police prosecutors. For MPS prosecutors, the assessment showed that receiving bribes may be attributed to low salaries.

The rating for this variable is 0.40 because of the large number of cases registered by ACB.

2.3.1.8 CAPACITY OF FINANCIAL CRIME PROSECUTORS

Prosecutors from institutions such as the MPS and the ACB usually have a lot of cases to handle. However, the trend has been that most prosecutors leave for greener pastures in the private sector and this leaves gaps in the public sector. Further, the lack of proper handovers of cases on leaving leads to discontinuation of the cases.

As regards the skills of the prosecutors and investigators, 166 officers from the Director of Public Prosecution (DPP), MRA, ACB, NIB and Immigration Department were trained from 2008 to 2013 in combating financial crimes and courses included Financial Analysis, Financial Intelligence Analysis and Money Laundering Investigations. A number of officers from MPS and the ACB have attended training in AML and other

[19] www.malawivoice.com/2012/05/08/acb-arrests-lawyer-police-officer

[20] http://www.nyasatimes.com/malawi/2012/10/09/malawi-police-prosecutor-arrested-for-corruption/

financial crimes at International Law Enforcement Agency in Botswana and the United States.

Capacity building for prosecutors is affected mostly by inadequate funding for prosecutorial activities. For instance the total funding of the prosecutions section in ACB is MK51.11 million (US$165,073) per annum which is not enough considering the many prosecutions that they have to carry out. The section requires more than double this amount to carry out their work effectively.

This variable has therefore been assigned a medium low rating of 0.20 because there are few trained prosecutors and inadequate resources allocated to prosecution units in LEAs.

2.3.1.9 DOMESTIC COOPERATION

The FIU has signed MOUs with the RBM, ACB, MRA and the Immigration Department. The MOU with the MPS is also being finalized. The MOUs have the purpose of enhancing information sharing among the parties. The ACB also has an MOU with MRA to share information. There are also cordial working relationships with all law enforcers even those with whom no MOUs are in place, and this allows for informal exchanges of information by institutions. In addition, from time to time, task forces are formed comprising a number of LEAs to deal with specific cases. For instance, a task force was formed comprising of ACB and the MPS to work on a fraud case involving staff members from the Accountant General's office.

For these reasons, this variable has been rated high with a score of 0.80 because MOUs have been signed and institutions are able to share information.

2.3.1.10 INTEGRITY OF PRESIDING OFFICERS

Malawi is rated as being fairly good in terms of judicial independence by the Transparency International[21]. However, there have been media reports on unprofessionalism by some magistrates and judges who receive or seek bribes to rule in favor of accused persons or to discharge cases[22] entirely. There is an ongoing case by the ACB against a judge who is alleged to have received a bribe and thereby ended up passing judgment in a case that was presided by another judge. There have also been

[21] http://www.transparency.org/country#MWI

[22] www.nyasatimes.com/2012/04/05/acb-arrest-judge-manyungwa-on-corruption-charges/

allegations of judge shopping[23] and cases where judgements are unnecessarily delayed [24]because the presiding officer's integrity is impaired.

This variable was assessed as medium high with a score of 0.50 for the fact that though Malawi is rated fairly well by Transparency International, there are questions over the integrity of the judiciary.

2.3.1.11 CAPACITY OF PRESIDING OFFICERS

The FIU organized a four-day training for judges in June 2010 and was attended by 30 judges and magistrates. There has however been no follow-up training to reinforce the 2010 training. In the absence of follow up training, the assessment established that most presiding officers do not have sufficient capacity to handle money laundering cases.

There have been instances where ML cases have been thrown out because judges do not understand the ML charges. For example, there was a case where one magistrate removed ML charges from a charge sheet, because he did not understand ML issues. There was also another case involving freezing of assets in which the judge clearly showed lack of understanding of ML issues and in particular how the ML Act is to be implemented and therefore threw out the case. Further to this, there have been no convictions on ML which might be due to inadequate capacity of the magistrates and judges to handle such cases.

The rating for this variable is medium low with a score of 0.30 for the fact that cases brought before judges so far have not been properly concluded.

2.3.1.12 CRIMINAL PENALTIES

The current ML Act has penalties for money laundering and terrorist financing as follows: the penalty for the offence of money laundering is K2,000,000 (about US$6,460) and imprisonment for ten years for a natural person, and K10,000,000 (US$32,298) and loss of business license; the penalty for the offence of terrorist financing is K3,000,000 (about US$9,689) and imprisonment for fifteen years for a natural person, and K15,000,000 (about US$48,446) and loss of business license.

[23] http://caprodeo.blogspot.com/2011/09/chief-justice-implicated-in-unima-judge.html

[24] http://mwnation.com/judiciary-should -improve-on-efficiency/

These penalties are severe in Malawian context but they have not been tested as no one has ever been convicted under ML Act.

This variable is therefore rated medium with a score of 0.50 because the Act has sufficient penalties.

2.3.1.13 ASSET FORFEITURE LAWS

The assessment was aimed at establishing whether the country has appropriate laws to seize, freeze and forfeit proceeds and instrumentalities of crime.

There are laws in place giving law enforcers powers to freeze, confiscate and forfeit assets to the state. Section 78 of the ML Act gives supervisory authorities powers to direct a financial institution to freeze assets that may be suspected of belonging to a terrorist or terrorist organization. However, there is no framework governing implementation of this provision, and Malawi has been seeking technical assistance to come up with an appropriate framework, and has in this regard held meetings with officials from the UN1267 Sanctions Committee during the August 2010 ESAAMLG meetings. Apart from this, the ML Act also provides for restraining orders on realizable property[25], confiscation orders[26] and pecuniary penalty orders in respect of benefits derived from the commission of an offence[27]. Sections 33-40 of the ML Act also provides for the seizure and later confiscation of suspicious imports or exports of currency and bearer negotiable instruments.

Under Section (23) (a) of the Corrupt Practices Act, the ACB also has powers to apply for a court order to seize or freeze any document, or other records or evidence or any asset, account, money or other pecuniary resource or wealth, property, or business or other interest. This has in the past been used for instance in the case of ***Greselder Jeffrey and Brian Kachingwe v The Anti-Corruption Bureau, MSCA civil Appeal No.12 of 2002***.

It can therefore be concluded that there are laws governing asset forfeiture but these have only been used under the CPA and not on the ML Act, and thus this variable was rated medium with a score of 0.50.

[25] Sections 79-88

[26] Sections 48-52, 53 -60

[27] Sections 48-52, 61-68

2.3.1.14 CAPACITY OF ASSET FORFEITURE INVESTIGATORS

This assesses the capacity of asset forfeiture investigators in terms of skills, experience, resources and powers required to effectively trace, detect, seize assets and apply for the forfeiture of proceeds and instrumentalities of crime.

There are no specific investigators for asset forfeiture in the country. The same investigators who handle investigation of ML and other financial crimes would also be expected to handle the forfeiture. For ACB investigators, they undergo a mandatory competences training on joining the institution. However, only 13 of the 25 investigators have attended this course. For the FFU, only 4 have had training in asset forfeiture.

This variable has therefore been rated low medium (0.40) because asset forfeiture investigators do not have adequate training.

2.3.1.15 INTEGRITY OF ASSET FORFEITURE INVESTIGATORS

This measures whether asset forfeiture investigators are able to conduct investigations without fear or favor and use their powers correctly, fairly and appropriately manage the seized or forfeited assets.

There have been reports of laxity among the LEAs on safe custody of seized assets. On a number of cases, seized assets have been vandalized or stolen. Asset forfeiture investigators take advantage of the laxity in systems for custody of assets and misuse assets.

This is therefore rated low-medium with a score of 0.40 because investigators have questionable integrity and the systems for custody of assets are weak.

2.3.1.16 ASSET FORFEITURE ORDERS

The asset forfeiture orders under the ML Act have not been passed.

However, under Section (23) (a) of the CPA, the ACB has powers to apply for a court order to seize or freeze any document, or other records or evidence or any asset, account, money or other pecuniary resource or wealth, property, or business or other interest. This has in the past been used for instance in the case of ***Greselder Jeffrey and Brian Kachingwe v The Anti-Corruption Bureau, MSCA civil appeal No.12 of 2002*** where the accused were paid for construction of school blocks when they had not done the work. The state went on to confiscate their assets including freezing of funds in their bank accounts. In another case, ***The Republic v Wesley Mzumara, Criminal Case no. 27 of 2010,*** where the accused was arrested for assisting foreigners through whatever means to illegally enter Malawi in return for money. After successful prosecution, assets worth K8.34m (US$26,936) were confiscated.

The assessment for this component is low medium with a score of 0.40 because under the ML Act, no asset forfeiture orders have been passed.

2.3.1.17 INTERNATIONAL COOPERATION ON ASSET FORFEITURE

In terms of asset forfeiture requiring international cooperation, there has only been one case that was successfully concluded. This happened in the case of the ***Republic v Kambalame (Criminal Case no. 108 of 2002)*** where the accused corruptly awarded contracts to companies outside Malawi and in return received hundreds of thousands of dollars. ACB investigators sought international cooperation to gather evidence and later on managed to confiscate the proceeds of corruption.

However, there are still challenges with cases involving transactions in foreign countries and these include lack of adequate funds for investigators to properly gather evidence and lack of capacity among investigators.

The rating is low with a score of 0.40 for the fact that the country has had only one case where assets were seized through international cooperation and this was not under the ML Act.

2.3.1.18 AUDITING AND ACCOUNTING STANDARDS AND PRACTICES

The Malawi Accountants Board is the primary regulator of Accountants in Malawi. The MAB works hand in hand with the Society of Accountants in Malawi (SOCAM) in regulating accountants. SOCAM handles all cases of misconduct relating to its members. The main challenge faces is that it is possible for one to practice without being a member of SOCAM. As such, if the misconduct is committed by a non-member there would no repercussions. In the last five years, most of the cases handled by SOCAM had to do with misconduct of auditors; only one case involved an accountant.

SOCAM has a working and investigations committee which investigates allegations of misconducts and the disciplinarily committee which hears and decides cases.

Investigations are normally triggered by a complaint, although SOCAM can also follow leads from any credible source on its own volition. The Ethics Committee investigates, and makes sure that the accused person has a chance to defend himself. If it is deemed that there is a case to answer, then the Disciplinary Committee summons the member to a hearing where the Ethics Committee presents the case and a decision is taken. The decision is normally kept secret except where there is a possibility of risk to the public, in which case the decision is published in the media. Disciplinary measures range from fines to permanent exclusion from membership.

All accountants in Malawi follow the International Accountings Standards issued by the International Accounting Standards Board. Similarly, auditors follow International Auditing Standards.

In addition, there is an Institute of Internal Auditors Malawi Chapter to which internal auditors subscribe and share experiences and contemporary best practices. This is not a regulatory board and registration is voluntary.

With regard to the integrity of accountants and auditors in Malawi, although there is no tangible evidence, some accountants preparing accounts for small to medium enterprises have been known not report to MRA on the malpractices of these enterprises such as the keeping of two sets of records on sales with the aim of evading value added tax (VAT).

This variable is therefore rated medium with a score of 0.50 because though accountants are supervised, there are others that are not supervised since they are not members of professional bodies.

2.3.1.19 IDENTIFICATION INFRASTRUCTURE

Currently, there is no national identification document in Malawi. As such, a passport and the driver's license are the recognized identification documents. Only a few Malawians possess these documents. The total number of Malawians who currently hold Malawi passports is 768,000 (5 percent of the population of 15.38 million) while the number of those that have driver's licenses is 230,000 (1.5 percent of the population).

Due to this problem, Know Your Customer (KYC) procedures are inadequate in most banks because few people possess the acceptable identification documents. This results in banks opening accounts without sufficient identification documents. The voter registration cards and letters from the chiefs or employer are sometimes used as identification documents by banks but these are prone to abuse as reported by banks. Some criminals have used this flaw to defraud banks.

Bank customers are required to indicate telephone contacts. However, in Malawi people can buy SIM cards from mobile telecommunication companies without being required to provide identification details. For this reason, it is not possible for banks to verify if the telephone number belongs to the bank customer in question or not. . Further, a lost SIM card can be replaced by buying another with little verification by the telecommunication companies.

In response to this shortfall, the Government established a National Registration Bureau in 2007, which is responsible for producing national identities for all citizens, and making sure that birth certificates are issued at birth, something which was previously not the case. This exercise is still in progress with no clear timelines indicating its completion date.

This variable therefore has a rating of 0.30 because identification documents are is still a problem and it is not known when a national identification document will be in use.

2.3.1.20 AVAILABILITY OF INDEPENDENT INFORMATION SOURCE

Financial institutions keep records for a specified period as required under various legislations. But for DNFBPs, such as real estate agents, it is not easy to access information after a considerable lapse of time because most of the information is kept manually and to create room, older information is destroyed. This is also due to lack of or little regulation for most industries, for example the real estate industry currently has not regulator.

The problem with manual record keeping is more pronounced in government departments where nearly all records are kept manually. The Registrar of Companies was for a long time a prime example of this. It was very difficult to retrieve information on registered companies especially those that were registered a long time ago. In addition, there is no coordinated identification information readily available in the country. There is lack of interrelationship among Departments such as Immigration, Road Traffic, Ministry of Lands and Malawi Police Service as well as the private sector with regard to identification of people.

To help with information on credit worthiness and general CDD of individuals and companies, government passed the Credit Reference Bureau Act. This act will be administered by the RBM which has registered two credit reference bureaus. However, these are not yet fully operational, due to some existing misunderstandings on the operation of the law between the RBM and commercial banks.

The assessment rating for this component is low with a score of 0.20 because the institutions that provide independent identification are not well coordinated.

2.3.1.21 CORPORATE AND TRUST TRANSPARENCY

There are various legislations that govern registration of companies and trusts. In order to register a company, one has to deposit with the Registrar of Companies, the memorandum of association and the articles of association. This document will contain information on the name of the company, details of the share holders and directors, registered office, the nature of business, share capital and production of annual returns. It will also contain information on powers of directors, conduct of general meetings, and declaration of dividends and capitalization of profits, distribution of assets on winding up, and mortgages and debentures. All this information is kept with the registrar of companies, which for a long time kept information manually. Although the system has now been automated, it is not fully functional; as such not all records are accessible.

There are fewer trusts as compared to companies and the majority of the trusts are private. Private trusts are required by law to be transparent but they are not required to report anywhere other than to the beneficiaries and hence it is not easy to follow up on them. Public trusts are legally required to publish reports on their activities annually for public knowledge, through local media, however this is not strictly enforced.

The rating is medium-low with a score of 0.40 because there is lack of enforcement on transparency and information is kept manually.

2.3.1.22 TAX DISCLOSURE

Tax laws require individuals and companies to make a declaration on taxable income. However this requirement is not enforced and many people do not make declarations as required. In addition, tax information is treated as confidential, but it is still accessible during investigations by LEAs who have MOUs with MRA.

The number of active taxpayers for the year 2012 is as follows

Description	***Year 2012***
Income tax- corporate entities	*2,124*

Income tax-self-employed and other	*5,477*
PAYE withholders(employers)	*3,646*
VAT mandatory registrations	*4,312*
VAT-voluntary registrations	*1,026*
Excise-domestic manufacturers/producers	*38*

This variable is rated low-medium with a score of 0.30.

2.3.1.23 FINANCIAL INTEGRITY

The Companies Act requires companies to submit annual accounts to the Register of Companies. Further tax laws require transparency; however this is not strictly enforced. For example, there are a lot of businesses that do not charge VAT on goods sold. They do this in order to attract customers by selling at cheaper prices than would be the case if VAT was charged. In addition, there is a tendency for businesses to under-declare import invoices with the aim of paying lower import duty. Some business under-declare exports so that the final profit declared is low and eventually the tax liability is reduced. This is exacerbated by the inability of the tax authorities to detect these malpractices.

From the Malawi Money Laundering Typologies Report of 2011, MRA indicated that the most prevalent cases under their investigations were under-invoicing, smuggling, suppression of sales, claiming non-allowable expenses, claiming non-allowable VAT, non-remittance of withholding tax, and undervaluation of imports.

Through analysis, the FIU has also established that t a developing trend whereby some companies and sole proprietors open personal bank accounts for their business operations rather than opening business accounts with the aim of evading tax. For example, one case revealed that a father (Mr. X) and daughter (Miss Y) were involved in diverting proceeds of a legitimate business to a personal account between January and July 2009. The father was a managing director of a successful abattoir in Malawi. He was depositing proceeds of his business in his daughter’s personal account. The deposits that were made included over 45 cheques totaling MWK180 million (US$581,358). The daughter was not a registered tax payer and the business books showed little activity, hence MRA collected very little in taxes.

After the FIU analysis, investigations ensued and the subject pleaded guilty to tax evasion and subsequently paid MWK35 million (US$113,042) to MRA.

The rating for this variable is low with a score of 0.20 because there is low transparency by companies and SMEs as regards tax compliance.

2.3.1.24 INFORMAL ECONOMY

There is a lot of informal economic activity going on in the country such as sale of customary land, second hand cars and clothes. Currently no concrete figures exist on how much these sectors contribute to the GDP, according to the National Statistics Office. However, a 2007 World Bank Report on Shadow Economies[28] estimated that the informal sector is about 41.6% of Malawi's GDP.

This variable is rated low with a score of 0.20 because the sector forms a huge part of Malawi's GDP but there is no regulation and there are no records on its actual size.

2.3.2 OVERALL SECTOR VULNERABILITY

The other component feeding into the assessment of national vulnerability is overall sector vulnerability. This component collects together the findings from the other modules on various sectors and the sectors considered include the banking sector, securities sector, insurance sector, other non-bank financial institutions, and DNFBPs. Assessment of these components are explained in detail in the subsequent sections of this report. .

The overall vulnerability of the sector is medium with a score of 0.70 on the assessment tool. The results from these sectors are summarized in the table below:

[28] http://www.documents.worldbank.org/curated/en/2010/06/12864844/shadow-economies-all-over-world-new-estimates-162-countries-1999-2007

OVERALL SECTORAL VULNERABILITY	VULNERABILITY	WEIGHTS	WEIGHTED SCORE
DNFBP VULNERABILITY	0.85	5	0.28
OTHER FINANCIAL INSTITUTIONS VULNERABILITY	0.80	2	0.11
BANKING SECTOR VULNERABILITY	0.71	4	0.19
SECURITIES SECTOR VULNERABILITY	0.61	1	0.04
INSURANCE SECTOR VULNERABILITY	0.39	3	0.08
		15	0.70

For purposes of this report, the insurance sector was divided into life and investment linked life insurance and non-life insurance. Life and investment linked life insurance was the most vulnerable of the two with a rating of medium (score=0.44); non-life insurance had low medium vulnerability (score=0.33).

Furthermore, other financial institutions included Leasing and Finance, Foreign Currency Exchange Bureaus, Remittance Service Providers (Western Union, MoneyGram), E-Money (Airtel Money, TNM Money), Microfinance and other unregulated financial institutions such as Loan Sharks (*Katapila*), Hawala and Black market foreign exchange dealers. The most vulnerable financial institutions out of these are the unregulated ones i.e. *hawala*, black market foreign currency exchange dealers and loan shark all of which have high rating. Of the regulated financial institutions, the most vulnerable are foreign exchange bureaus and remittance service providers which also had a high rating.

With regard to DNFBPs the most vulnerable sectors were real estate agents and secondhand car dealers, followed by legal practitioners and accountants.

2.3.3 PRIORITY AREAS

The main priority areas (in order of highest ranked in terms of vulnerability) for the authorities and the stakeholders to improve are as listed below:

a) According to sectors:

- DNFBPs
- Banking Sector

- Other financial institutions
- Insurance
- Securities

b) **<u>According to national combating abilities:</u>**

- Capacity of Financial Crime Prosecutors
- Availability of Independent Information Sources
- Financial Integrity
- Formalization of Economy
- Capacity of Financial Crime Investigators
- Capacity of Presiding Officers
- Tax Disclosure
- Identification Infrastructure
- Integrity of Financial Crime Investigators
- Integrity of Financial Crime Prosecutors
- Capacity of Asset Forfeiture Investigators
- Integrity of Asset Forfeiture Investigators
- Asset Forfeiture Orders
- International Cooperation in Asset Forfeiture
- Corporate and Trust Transparency
- Criminal Penalties
- Integrity of Presiding Officers
- Asset Forfeiture Laws
- Auditing and Accounting Standards and Practices

- STR Data Analysis
- Criminalization of Money Laundering
- Policy and Implementation
- International Cooperation in Criminal Matters
- Domestic Cooperation

2.3.4 RECOMMENDATIONS

It is important to know that there has to be coordinated efforts between the public and private sector in reducing the risk of ML/TF. The assessment therefore recommends the following:

- The authorities need to consider training of officers in MPS, ACB, MRA, DPP and the Judiciary, as this has been identified as a problem area.
- MPS should put in place deliberate measures to ensure that officers that have been trained in AML/CFT should be retained within FFU as AML is a specialized field and requires continuity.
- MPS should consider an automated data recording and collection system as this was seen to be a big challenge since currently all record keeping is manual. This may not need sophisticated software and equipment, a simple system of maintaining records would suffice, as long as it is systematic.
- Government should provide adequate funding towards AML/CFT activities at FFU and ACB as these institutions fail to function properly due to inadequate finances for the officers to conduct investigations and prosecutions.
- ACB should come up with ways of retaining and attracting experienced investigators and prosecutors to ensure that the quality of investigations and prosecutions is maintained.
- There should be checks and balances in place to improve and monitor the integrity of law enforcement and judicial officers.
- MRA should toughen up on tax declarations and make them mandatory rather than leaving them to individuals to decide. MRA should also work with stakeholders to make it mandatory for businesses to produce a tax registration certificate before

opening a bank account. This will ensure that all businesses are registered for tax purposes and therefore it will be easy for MRA to follow up.

- There is a need to expedite the implementation of the national identification process, to ensure that it is easier to identify citizens.

2.4 BANKING SECTOR VULNERABILITY

There are currently 12 banks in Malawi and these have a combined asset value of K531billion (US$1.72 billion).

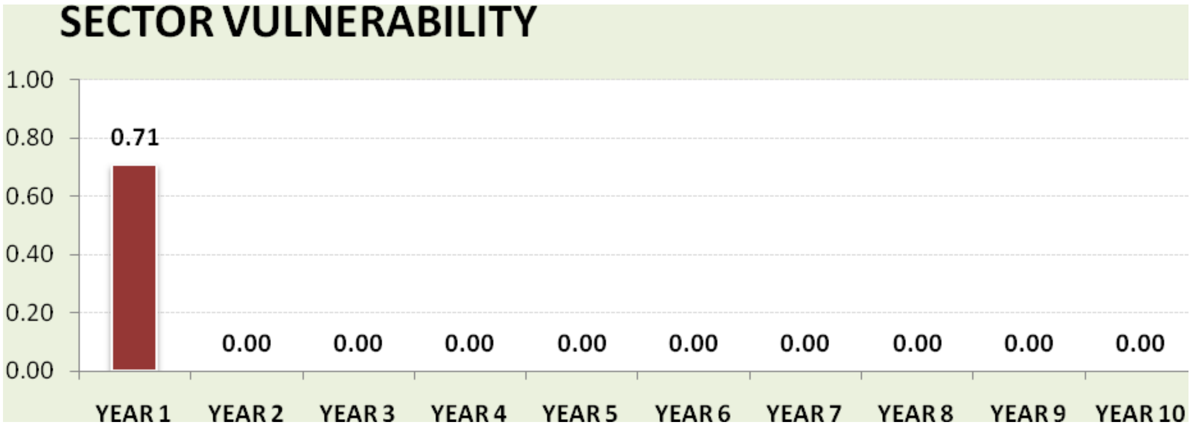
The assessment considered the vulnerability arising from products by taking into account volume of transactions, inherent vulnerability (client base, other vulnerable features and average transaction size), and AML controls which were divided into product specific and general. Product specific AML controls varied from one product to another. General AML controls included factors like AML laws, enforcement of the same, quality of AML supervision, market pressure to meet AML standards, penalties involved, and commitment to good governance, among others.

2.4.1 OVERALL FINDINGS

The overall banking sector vulnerability to ML is rated medium high with a score of 0.71. This is due to poor quality of AML controls which is rated low medium with a score of 0.40 and this is attributed to the quality of operations which is rated low medium with a score of 0.39, and that of policies and procedures which is rated medium with a score of 0.53. The most vulnerable products/services are trade finance, retail and corporate deposits, international funds transfers, private banking and SME credit products which have medium-high vulnerability. The least vulnerable products are electronic banking (POS & Mobile banking) and micro deposits both of which have a medium vulnerability. All the products have the vulnerability rating ranging from medium to medium high.

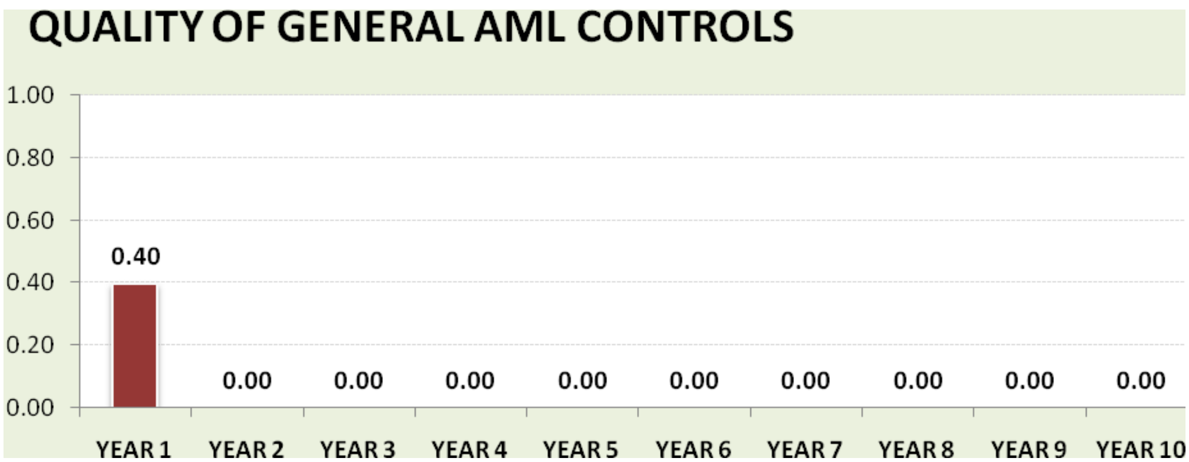
Charts 1 – 3 below summarize the overall sector vulnerability which is affected by the quality of general controls and the vulnerability due to products/ services.

CHART 1 - SECTOR VULNERABILITY



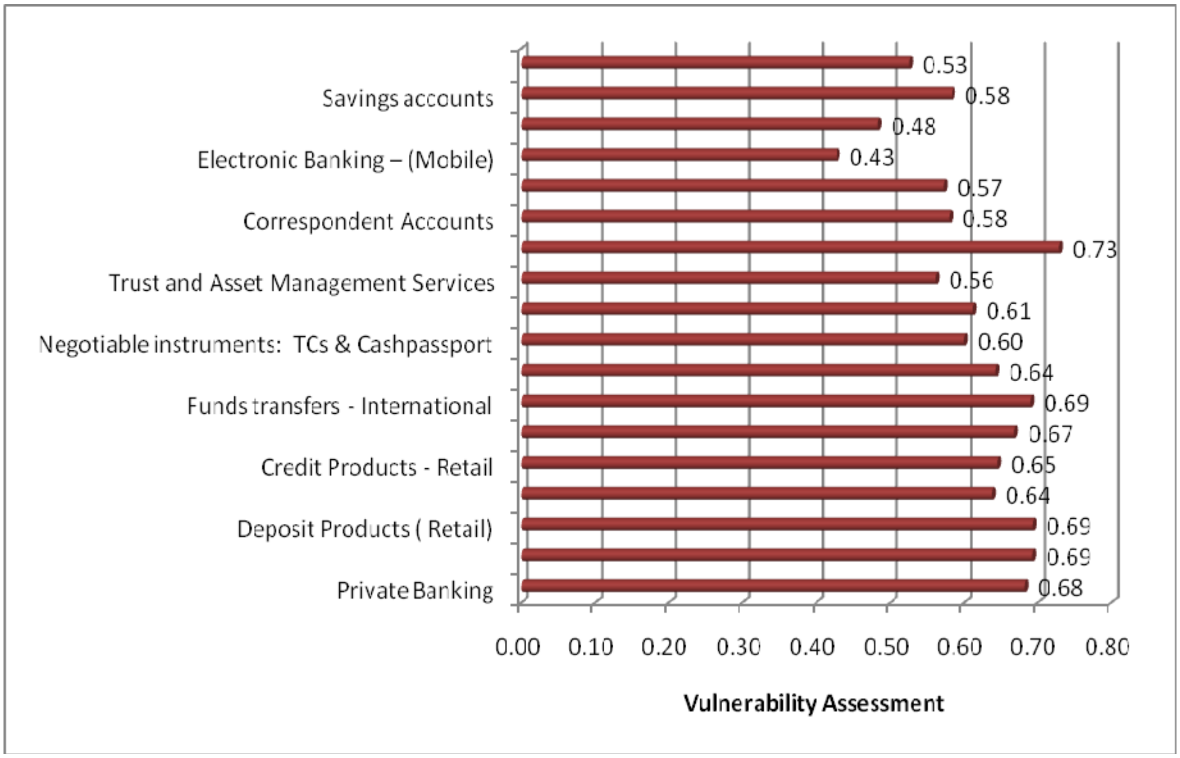
Note: the lower the better

CHART 2 - QUALITY OF GENERAL AML CONTROLS



Note: the higher the better

Chart 3 – vulnerability emanating from products/services



Note: The higher the value the more vulnerable to ML the product

2.4.2 QUALITY OF AML GENERAL CONTROLS

The assessment considered 13 general input variables and these have been summarised in the table below:

GENERAL INPUT VARIABLES	RATING
Enforcement of AML Obligations	0.20
Availability of Independent Information Sources	0.20
Banks' AML Record Keeping and Monitoring Systems	0.30
Identification Infrastructure	0.30
Bank Staff Knowledge	0.40
Compliance Function	0.40
Corporate and Trust Transparency	0.40
Quality of AML Supervision	0.45
Commitment to Good Corporate Governance	0.50
Penalties	0.50
Bank Staff Integrity	0.60
AML Laws and Regulations (preventive measures and supervision)	0.70
Market Pressure to Meet AML Standards	0.70

Table 1 – quality of AML general controls

The justifications for the above ratings are as follows:

1. AML Laws and Regulations (preventive measures and supervision)

According to the 2008 AML/CFT Mutual Evaluation Report on the FAFT Recommendations that deal with preventative measures, Malawi is largely compliant (LC) on Recommendation 10 (R10), R19 and R20; partially compliant (PC) on R11, R13, R15, R17, R18, R21, R26, R27 and R29. The country is non-compliant (NC) on R12 and R16. Although Malawi was rated NC on R12 and R16, there has been a lot of progress in that most financial institutions that have been reached out by the FIU have shown willingness to comply with AML/CFT requirements. With regard to the Basel Core Principles, the 2012 self assessment indicates that Malawi is compliant[29].

This variable was rated medium high with a score of 0.70 and this shows the laws and regulations currently in place in Malawi are strong.

[29] Reserve Bank of Malawi

2. Quality of AML Supervision

Supervisory authorities (RBM and FIU) conduct regular onsite and offsite examinations, and have adequate resources to fulfill their mandate. In 2010, a total of 8 onsite examinations were carried out (2 examinations carried out by RBM and 6 by the FIU); 7 in 2011 (2 by RBM and 5 by the FIU) and 5 in 2012 (2 by RBM and 2 by the FIU, and 1 was jointly carried out by RBM and FIU).

The main deficiencies found during these examinations were lack of proper identification, inadequate ML/TF risk assessment, inadequate AML/CFT policies, non-compliance with the AML/CFT policies and procedures, inadequate training, inadequate record keeping, inadequate staff within the compliance function, limited scope of independent testing of AML programmes, inadequate monitoring of customer transactions, and non-compliance with reporting requirements. All the banks are given deadlines within which to comply with the examiners recommendations, in response most banks develop action plans to meet the requirements.

To further enhance ML compliance, regulators are in the process of reviewing the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act and the Money Laundering Regulations. The Regulations will include administrative penalties which will make it easier for regulators to apply sanctions to institutions that are non-compliant.

For the above reasons, the quality of AML supervision was rated medium with a score of 0.45.

3. Market Pressure to Meet AML Standards

Most Malawian banks have entered into correspondent relationships with foreign banks as a result CDD is carried out on their operations. This creates automatic pressure on banks to meet international best practices. In addition, banks are always wary of reputational damage and they therefore work to meet international standards.

This was rated medium high with a score of 0.70 because of the above reasons.

4. Commitment to Good Corporate Governance

The Registrar of Financial Institutions (RBM Governor) issued a guideline in 2010 on corporate governance. Banks are supposed to develop their structures based on these guidelines. Most banks are complying with the guideline though some bank structures reveal inadequacies and failure to comply with best practice. Furthermore, the internal audit function in some banks consists of individuals that are not certified internal auditors and this compromises the quality of their work.

This variable has been rated medium, with a score of 0.50 because as much as most banks are applying best practices on corporate governance, a good number are not.

5. Penalties

This variable was aimed at assessing whether the country has appropriate criminal penalties in case of non-compliance with AML/CFT laws and regulations. The ML Act has severe criminal penalties. The penalty for money laundering in the case of a natural person is imprisonment for ten years and a fine of MWK2, 000,000 (US$6,460) and in the case of a corporation, a fine of MWK10, 000,000 (US$32,298) and loss of business authority.[30] The penalty for terrorist financing in the case of a natural person is imprisonment for fifteen years and a fine of MWK3, 000,000 (US$9,689) and in the case of a corporation, a fine of MWK15, 000,000 (US$48,446) and loss of business authority[31]. However, these penalties have never been applied because there has been no prosecution on money laundering or terrorist financing. The Corrupt Practices Act also has penalties which have been enforced in the past. However, the penalties do not target money laundering but only corruption. Consequently, the rating given is medium with a score of 0.50.

6. Enforcement of AML Obligations

This variable assessed whether the country takes the criminal enforcement steps against a bank or individual members of management or staff in case of non-compliance with AML obligations. It has been noticed through on-site examinations that banks prefer taking administrative action against employees for misconduct rather than criminal action for fear of having to pay damages in the event that the employee is not convicted. For example, in 2009, the ACB investigated a matter in which a bank employee was involved in criminal activities regarding foreign exchange transactions. The concerned bank dealt with the matter administratively and the employee was dismissed, no criminal charges were laid against the employee.

This was rated low with a score of 0.20 because no one in the banking sector has been prosecuted for violating AML obligations although the ML Act does provide for such penalties.

7. Bank Staff Integrity

There is evidence of fraud by bank staff but most of it is not reported to the regulators particularly the RBM for fear of reputational damage and penalties. Further banks have

[30] Section 35 (3) ML Act

[31] Section 36 (3), ML Act

indicated that they are afraid of civil action being taken against them by the dismissed employee should they be found not guilty in a criminal trial. Therefore, this has been rated medium with a score of 0.60.

8. Bank Staff Knowledge

Banks have been conducting training on general AML issues. However, on-site examinations have shown that most bank employees do not possess adequate AML knowledge. It has been noted that sometimes the banks do not provide comprehensive AML/CFT training to staff members, for instance they will arrange for a training session a week before the on-site examination. The rating is therefore low medium with a score of 0.40.

9. Compliance Function

Some banks have designated compliance officers at senior positions while others are at middle management level. In most banks the compliance function is positioned within other departments or functions such as risk or legal hence this function is not very effective. The compliance functions are well resourced in some banks but lack resources in others. All banks perform internal audits but their focus has mostly been on KYC only. Other areas of the AML compliance program are not covered during such audits and having the compliance function perform their work without interference is sometimes a challenge. Further, the fear of losing customers to their competitors also leads to compromises in the compliance function. Consequently, the rating is low medium, with a score of 0.40.

10. Banks' AML Record Keeping and Monitoring Systems

Some banks have installed systems that are capable of monitoring transactions but they are not properly configured to do so. However, no bank has installed an automated transaction monitoring system[32] and as such effective monitoring is still a challenge. Most banks have improved on record keeping as such it is easy to follow through a customer's transaction. Nonetheless, some t banks have of late been reluctant to maintain copies of transacted documents, claiming that it is a move aimed at reducing operational costs. So once they transact, all documentation, especially the forex dealings, is sent to RBM without retaining hard copies. For this reason, this is rated low medium with a score of 0.30.

11. Identification Infrastructure

Currently, there is no national ID; the only reliable and verifiable IDs are driver's license and passport. In the absence of these two documents, letters from chiefs, employer ID and voter

[32] There are plans by some banks to install automated systems for monitoring by end of 2013

ID are accepted by banks. The absence of reliable IDs leads to banks opening accounts without sufficient identification documents. This is exacerbated by the fact that most Malawians do not have verifiable physical address. Therefore, the rating for identification infrastructure is low, with a score of 0.30.

12. Availability of Independent Information Sources

Malawi has limited independent information sources. Frequently used sources are Immigration, Police, Registrar of Companies and Road Traffic. However, lack of coordination among these departments coupled with manual record keeping and poor archiving systems make access to information difficult. In some instances, information on some of the records has been lost. Although two credit reference bureaus have been licensed by the central bank they are not yet operational, and thus their ability to be an independent source of information cannot be assessed.

The problem is that most records are kept manually and this is more pronounced in government departments where nearly all records are kept manually. In addition, there is lack of interrelationship among Departments such as Immigration, Road Traffic, Ministry of Lands and Malawi Police Service as well as the private sector with regard to identification of people. For these reasons, this is rated low with a score of 0.20.

13. Corporate and Trust Transparency

There are fewer trusts as compared to companies and partnerships in Malawi. The information about control and ownership of corporate structures is available at the office of the Registrar of Companies. The majority of the trusts are private, and are required by law to be transparent. . This is however limited to the beneficiaries, it is difficult to follow up on the level of transparency with the beneficiaries considering their private nature. . Public trusts however are required to report on their activities, but this is not done systematically. On the basis of the above factors, this variable is rated low medium with a score of 0.40.

2.4.3 PRODUCT SPECIFIC INPUTS

The following paragraphs discuss the justification for the ratings given to the banking products assessed. Table 3 in the appendix illustrates the findings below;

(i) Private Banking

Private banking is a significant component of the banks' products and the average transaction size is quite huge as compared to other products. Customers accessing this product are mostly high net worth individuals including PEPs. KYC on these customers is mostly inadequate because banks feel that they are customers that can be trusted due to the high profile positions they hold, and their being high net worth individuals. Being a cash-based economy, monitoring of cash transactions, especially huge amounts, is not easy.

In addition the high minimum balance is considered normal, which creates room for these customers to launder money without any suspicion of being raised. Furthermore, the desire by banks to earn more profits may lead to compromised monitoring for fear of losing "profitable" customers. The regulatory framework requires banks to conduct enhanced customer due diligence procedures. The huge amounts involved under this category make the category risky; consequently, the product has been rated medium high with a score of 0.68

(ii) Corporate Deposits

Corporate deposits have highest volume percentage compared to the rest of the products, and the average transaction size is quiet significant. Customers are normally established business entities whose monthly turnover exceeds K4million (US$12,920). The accounts involved are current accounts, which use cheques; however, sometimes cheques can be disguised as payments for legitimate goods when they are not and thus being attractive to criminals. Corporate accounts also enjoy overdraft facilities, which can in turn be used to launder criminal proceeds. However there are some controls aimed at mitigating risks, such as the requirement for bank tellers to seek clearance from their supervisors before they can pay out huge amounts, most of the controls relate to money paid out and not deposits. This makes it one of the more the vulnerable of all bank products and hence has a rating of medium high, with a score of 0.69.

(iii) Retail Deposits

This has a significant volume and average transaction size. It is composed of mixed clientele, some more risky than others, more so since they originate from various jurisdictions. The inability to verify source of funds makes this product very risky. Some account holders in this category run small registered and unregistered businesses (briefcase businesses such those selling second hand clothes-'*Kaunjika*) whilst others are smallholder farmers. These bring their deposits mostly in cash to the banks, which makes it difficult to verify whether indeed it is coming from their small scale businesses or not. The potential for clients under this category to engage themselves in money laundering is quite significant. This has therefore been rated medium high with a score of 0.69.

(iv) Corporate Credits

The product has a significant volume and the average transaction size is quite high because it is accessed by big corporations who normally transact in huge amounts. Sometimes the product calls for some non face to face interactions such as emails and telephone calls and may also be accessed by high risk customers. Therefore, the vulnerability has been rated medium high with a score of 0.64.

(v) Retail Credit Products

Under this product, both the volume and average transaction size are significant. There are mixed client profiles; resident foreign nationals, ordinary Malawians, high net worth individuals and PEPs, to name a few. Other vulnerable features include inadequate verification of source of funds, credit worthiness of customers and possibility of bankruptcy. Most of these products have controls because banks are mindful of losing funds. This product is therefore rated medium high with a score of 0.65.

(vi) Credit Products for Small and Medium Enterprises (SMEs)

The credit products for SMEs are both long-term and short term loans. The volume of long-term loans is low but the average transaction size is quite high as most customers accessing these products need them for big investments. The clientele for credit products is mixed as it covers both risky and non-risky customers. Other vulnerable features include easy business registration processes, which lack proper KYC/CDD, which makes it easy for money launderers to hide behind such businesses. Short term loans are attractive to launderers because they can easily clean their ill-gotten money within a short time as there are less stringent conditions to access them, leading to low specific controls. As a result, the vulnerability of these products has been rated medium high, with 0.67 score.

(vii) International Wire Transfers & Telegraphic Transfers

The volume and the average transaction size are high. International funds transfer have mixed client profile, credible good and scrupulous individuals and corporate entities either involved in importation of goods and services or indeed flow of funds through money transfer, both in and out of Malawi. There is a high prevalence of bogus invoices being raised and honored, as well as the possibility of document forgery, particularly importation documents. The product involves some non-face-to-face interactions for instance where a customer simply sends an email or makes a telephone call. Consequently, the product has been given a medium high rating with a score of 0.69.

(viii) Domestic Wire Transfers

Just like international funds transfers, the volume and transaction size for domestic funds transfers is slightly high. Client profile under the product is mixed with the majority being corporate customers. The product involves some non face to face transactions whereby customers can simply write the bank asking it to transfer certain amounts to a different account or bank. There are no limits on how much can be transferred except where certain accounts, because of their type (e.g. basic savings), cannot transact beyond certain limits. This makes this product more vulnerable. This has therefore been rated medium high with a score of 0.64.

(ix) Negotiable instruments: Travelers' Cheques & Cash passport

The volume and average transaction size are both significant with a mixed client profile. Some of its vulnerable features include transferability and the ability of bank staff to override controls on limits and the required supporting documentation which should be submitted at the time of applying for the facilities. Though there are a number of mitigating factors such as passwords and limits on amounts that can be withdrawn, the product is still quite vulnerable. Consequently, the vulnerability has been rated medium, with a score of 0.60.

(x) Negotiable Instruments: Bank Draft

The volumes and the average transaction size for this product are both quite high because it is the most used mode of externalization for remittances facilitated by banks. Most transfers are for payment in respect of educational tuition to schools outside the country. The client profile is mixed, with both corporate and individual customers participating. There is some level of anonymity and there are low requirements to access them. As such, the vulnerability rating on this product is medium high with a score of 0.61.

(xi) Trust and Asset Management Services

The volume is quite low but the average transaction size is very high. Client profile is mixed. Some of the vulnerable features include the fact that beneficiaries are sometimes not known and sometimes foreign shareholders are involved despite not registering their foreign investment with Exchange Control authorities (RBM). The services also involve non face to face transactions. Involvement of brokers coupled with insufficient controls to ensure that beneficiaries are known and identified, make the product more vulnerable hence given a medium rating with score of 0.56.

(xii) Trade Finance

Trade finance volume is generally low to medium though the average transaction size is very high. The client profile is mixed. The most vulnerable feature associated with this product is that clients may use this product for transfer pricing, capital flight and movement of laundered funds. Controls do exist but are not adequate. The vulnerability emanating from this product is therefore medium high, with a score of 0.73.

(xiii) Correspondent Accounts

Malawian banks are mostly on the other end of the relationship in correspondent account relationship since it is Malawian banks that open accounts with banks outside Malawi. The extent to which they can carry out CDD on other banks is therefore limited. Most of the foreign banks that Malawian banks have correspondent accounts with are reputable banks with strong AML / CFT systems. This has a rating of medium with a score of 0.58.

(xiv) Electronic banking – Internet banking

The volume and average transaction size are quite low and this is mostly accessed by individual customers and a few corporate customers. The most prominent vulnerable feature is the anonymity part although the customer registers in person for the product. This product is rated medium with a of 0.57

(xv) Electronic Banking – Mobile Banking

Only individual customers access this product. The volume and average transaction size are very low. Just like internet banking, this also has anonymity issues. However, there are adequate controls as regards the amounts that can be transferred. The only way to go around these controls is to own multiple accounts. Therefore, the vulnerability for this product is rated medium and the score is 0.43

(xvi) Electronic Banking – Point of sale

The product is accessed by both individual and corporate customers. The volume is low while the average transaction size is significant. Under the product, customers have the option of exchanging the e-money-value with hard cash (MALSWITCH cards), apart from using cards to pay for goods or services. The former makes it more vulnerable, and as such the rating assigned to this product is medium, with a 0.48 score.

(xvii) Savings accounts

The volume and average transaction size are both low, with a mixed client profile involving individuals, corporations, associations, clubs and other low income earners. There is a possibility for fairly high income earners to hide behind this product. There are mostly no specific controls apart from the normal KYC requirements. Consequently, the rating under this is medium with a score of 0.58.

(xviii) Micro Deposit

Similar to savings accounts, the volume and transaction size are low under micro deposits and the product is mainly accessed by low income earners. The source of income is usually difficult to determine and there is also a possibility of high income earners hiding behind this product, making it possible for ill gotten funds to find their way into these accounts especially with the deficient monitoring systems in most banks. Therefore, the rating for this product is medium with a score of 0.53.

2.4.4 RECOMMENDATIONS

In order to reduce the vulnerability emanating from the banking sector, the following recommendations are made in order of their priority;

a. Improve knowledge of bank employees as regards understanding of ML issues and their obligations (duties and responsibilities) on their part, in curbing ML. This should take into account, the quality of the training materials, frequency of training and level and type of staff trained;

b. Improve the quality of AML supervision. This should include but not be limited to having sound AML regulation framework, method of supervision, frequency thereof, and qualified AML supervisors. There should be punitive measures for non-compliance to ensure non-repetition of malpractices or crimes. After each supervision visit, feedback should be given to responsible officers for further action. A review of the regulations should be done to address any existing gaps. This will improve on the efficiency and quality of supervision. Good working relationships with stakeholders especially law enforcement agencies should be encouraged to ensure improved enforcement of AML obligations.

c. Financial institutions need to consider improving the compliance function. The compliance function should be adequately staffed and financed. The officers in the compliance function should be adequately trained in order for them to carry out their duties diligently.

d. Make it a requirement for banks to install automated account monitoring systems in order to improve identification of unusual transactions. AML Record keeping and monitoring systems should also be sound.

RANKING OF PRIORITY AREAS

From the assessment, priority areas have been identified as follows:

YEAR 1	IMPACT RANKING**
AML Laws and Regulations (Preventive measures and supervision)	
Quality of AML Supervision	2
Market Pressure to Meet AML Standards	
Commitment to Good Corporate Governance	6
Penalties	10
Enforcement of AML Obligations	5
Staff Integrity	7
Staff Knowledge	1
Compliance Function	3
AML Record Keeping and Monitoring Systems	4
Corporate and Trust Transparency	8
Identification Infrastructure	8
Availability of Independent Information Sources	11

**The darker the color the more priority the item has. The smaller the number the higher the priority.

2.5 OTHER FINACIAL INSTITUTIONS VULNERABILITY

Assessment for other financial institutions covered both ML and TF. Other financial institutions refer to those sectors that are not operating as commercial banks. These can be categorized as regulated and unregulated. The key players in the regulated category include securities (capital markets), insurance companies, leasing and finance companies, foreign exchange bureaus, money transmitters and microfinance companies.

On the other hand, the unregulated category consists of individuals and entities which operate illegally and their operations include *hawala*, black market foreign exchange and loan sharking (*katapila*).

The regulated category is supervised and licenced by RBM under various Acts, some of which are under review. The informal category is not licenced, supervised and regulated and transactions are usually clandestine.

2.5.1 SECURITIES SECTOR (STOCK, SHARES AND COLLECTIVE INVESTMENT SCHEMES)

The sector is made up of the stock exchange (1 operator), portfolio managers (7), investment advisors (4), stock brokers (4), collective investment schemes (2) and transfer secretaries (3). The sector had an asset size of MK130.1 billion (US$420.19 million)[33] in 2011 and registered a volume turnover of MK760 million (US$2.45 million)[34] in the year. Transactions are mostly done through cheques and bank transfers and are in Malawi Kwacha.

[33] 1US$ = MK160.00

[34] Ibid

Trusts, PEPs and non-resident customers pose the greatest ML/TF risk in the sector. Trusts ordinarily conceal the identity of the beneficiary hence pose an ML risk in the absence of upfront identifications. The verification of PEP's sources of funds is a challenge because most of them run businesses which help disguise their ill-gotten income. For non-resident customers, the ML risk would arise mostly during IPOs when the source of funds used to acquire is not adequately vetted. The ML/TF vulnerability is enhanced due to the limited CDD during the IPO since there are no limits on the number of shares one can acquire. It is estimated that 20% of the transactions are cash-based and most of the criminal activities relate to insider dealing. Investigations are currently being conducted into suspected insider trading involving MK500 million (US$1.61million) on an IPO that was conducted in 2011.

There are currently no specific ML/TF regulations in place; however, securities brokers do conduct KYC procedures. The RBM and FIU conducted an AML/CFT pilot onsite inspection at FDH stockbrokers in December 2009. Since then, no inspection has been conducted at any of the other securities sector players, due to limited resources and lack of appropriate AML/CFT regulatory and advisory tools to conduct the examination.

The RBM vets sources of seed capital and checks criminal records of promoters of new market entities. Some of the institutions (such as Malawi Stock Exchange) have submitted STRs to the FIU; however, this has been irregular. Based on these facts, the industry's ML vulnerability is rated as medium high with an overall score of 0.61.

2.5.2 INSURANCE SECTOR

The insurance sector is categorized into two; life and general (non-life) insurance. There are currently 4 life and 7 general insurance companies that are registered in Malawi.

Total assets in the industry as at 31st December 2011 were MK81 billion (US$261.61 million), of which 85% belonged to the life insurance category. The reported assets constituted 21.3% of assets accumulated by both the banking and insurance industries. Gross total premium was MK13.1 billion (US$818,750,000), of which 76% belonged to the non-life sector. All insurance transactions are domestic, except for marine insurance which is insurance that covers loss or damage to cargo in transit from country of origin to country of final destination. This however, constitutes a negligible proportion.

Cash intensiveness is low since most insurance clients are corporate and pay their premiums through cheques and bank transfers. Individual clients, though numerous, pay by cash but they constitute a small percentage of the total premium receipts for the industry. All claim payments and premium refunds are strictly by cheque.

Insurance products and transactions do provide an opportunity for ML/TF abuse but the vulnerability is medium low. Most of the insurance products are unattractive to ML/TF abuse because they do not provide for withdrawals and unlimited top-up premiums. In life insurance, investment linked products such as endowment (savings) policies and unit linked (savings) policies are more prone to ML/TF risks. In general insurance, products that are prone to ML/TF are on motor, marine and general property.

PEPs, small and medium enterprises, property owners and individuals are the likely customers to the above mentioned ML/TF prone insurance products hence posing a higher ML vulnerability in the industry. PEPs, property owners and business entities, especially SMEs, may conceal the identity of the true owner of assets or property, and may acquire property through questionable means. They are exposed to multiple sources of income making it easy for them to launder the money without detection, and may use a number of people on various insurance transactions for layering purposes.

Though there are no reported cases of ML/TF, there could be a possibility of laundering funds considering that there have been instances of fake claims (inflated and fictitious claims and / or arson) or policy cancellations, and in life insurance, a policy may be used as collateral to purchase other financial instruments. STRs, if any, would be reported to the FIU by the insurance institutions.

As of October 2012, insurance companies have been recognized as financial institutions in the ML Act. In this regard, insurance companies are now expected to comply with all provisions of the ML Act including reporting to the FIU. Vetting sources of seed capital and checking of criminal records of promoters of new market entities are conducted by the RBM.

The ML/TF vulnerability in the insurance industry in Malawi is medium (0.44) for life insurance and medium low (0.30) for non-life insurance with an overall rating of medium low.

2.5.3 LEASING AND FINANCE

Of the twelve (12) licensed commercial banks in Malawi, two (2) - Indebank and Opportunity Bank - are not conducting leasing and financing business. As at 30thJune 2012, total assets of five (5) of these institutions amounted to MK27.721 billion (about US$89.53 million).

The leasing and financing business does not involve international transfers because the assets financed are registered in Malawi for ease of tracing and attaching ownership. Payments are made directly to the suppliers by the leasing and financing company. In view of challenges in verifying the sources of funds used in accessing banks leasing and financing services, private banking customers, which include, professionals, business people and PEPs would pose the highest ML/TF risks unlike salaried employees. Though there are no reported cases of ML/TF in the sector, indicators could be in the form of quick sale of procured assets and repayment of loans before maturity.

The regulators have previously focused on-site examinations on normal banking activities and not the leasing and finance business. However, the ML/TF regulations issued in 2011, will now be used for ML/TF on-site examinations for this sector. Further, vetting sources of seed capital and checking criminal records of promoters of bank businesses in Malawi are vigorously conducted by RBM. The sector has submitted LCTRs to the FIU but no STRs were reported.

Considering the above factors, the vulnerability for this industry was placed at medium low with an overall rating of 0.30.

2.5.4 FOREIGN EXCHANGE BUREAUS

In 2011, all exchange bureaus not attached to commercial banks were not operating as the regulator was issuing operating licenses only to exchange bureaus that were attached to commercial banks. Following a change in policy in 2012, the regulator reverted to the previous licensing regime that permitted stand alone foreign exchange bureaus to operate in the market. Nine foreign exchange bureaus applied for license renewal in 2013.Two of these, namely Rennies Forex Bureau (with 1 branch) and Victoria Forex Bureaus (with 4 branches) have applied to operate as stand-alone foreign exchange bureaus. The remaining seven have also applied to operate several branches.

The sector's total foreign exchange sales figure for 2011 was MK4.9 billion (about US$15.83million) while total purchases was MK5.6 billion (about US$18.09million). In the absence of submitted audited financial statements to the regulator, this report does not have the asset size for exchange bureaus.

Foreign currency purchase through commercial banks is account-based whereas for bureaus transactions are done by walk-in customers usually on cash basis. Much as customers provide reasons for purchase of foreign currency, banks and bureaus do not verify (e.g. by checking travel details) whether customers used the currency for the intended purpose and this poses an ML risk. Related to this, the operators' failure to adequately verify credibility of sources of foreign currency bought could create an environment conducive for ML abuse. The same applies to sale of foreign currency in that the bureau operators are unable to verify sources of local currency used due to absence of a standing relationship with customers. There have also been cases of bureau employees selling foreign currency to customers at a higher rate than the official rate. In such instances there is no KYC or CDD conducted and the absence of KYC poses ML risk.

Some PEPs and business persons pose the highest ML/TF risks due to anonymity of sources of their funds. This therefore might give room for proceeds of criminal activities to be laundered through foreign exchange bureaus. There are known cases of foreign currency abuse, however there are no reported cases of ML/TF in the sector. Indicators could be in the form of assets acquired not being commensurate with known sources of income.

The regulators conduct AML/CFT on-site examinations on the sector though not regularly. However, ML/TF regulations are not in place for foreign exchange bureaus. Meanwhile, RBM vets sources of seed capital and checks the criminal records of promoters and directors of banks and foreign exchange bureaus in Malawi.

The overall vulnerability rating for this industry is medium high, with a score of 0.70 because of inability of foreign exchange bureaus to determine the source of funds.

2.5.5 REMITTANCE SERVICE PROVIDERS

Statistics for the asset size and annual turnover of the remittance service providers could not be obtained. There are two remittance service providers in Malawi, namely, MoneyGram and Western Union. MoneyGram operates through commercial banks while Western Union is operated by both banks and independent operators who do so as agents. Banks are allowed to operate only one of the two remittance services.

Banks have to seek permission from the RBM before entering into an agreement with the remittance service provider. The RBM then ensures that the agreement is in line with the current exchange control requirements. The sector is regulated as one of the Authorized Foreign Exchange Dealers (AFED) under the Foreign Exchange Act and as such, the RBM conducts quarterly onsite inspections of the sector.

For MoneyGram, a customer can send a maximum of US$1,000 per annum which can only be sent through a personal account. Western Union does not require one to have an account with a bank, but an individual is limited to send US$100 per day, which is the pegged gift allowance as per the Exchange Control Regulations. However, for both MoneyGram and Western Union, there is no limit on foreign currency which an account holder or a walk-in client can receive.

In terms of potential ML/TF risks, there is likelihood that several people can send money to one beneficiary outside Malawi and a beneficiary in Malawi can receive money from several people and this information is only available to the parent company. The agent will not detect this. Some of these people could be sending or receiving the money as a way of laundering it. In addition, for in-coming remittances, the agents have no mechanisms of verifying the sources of funds.

The industry has a medium high vulnerability to ML/TF with a score of 0.63 because though agents cannot verify sources of income for incoming funds, outgoing transfers are well regulated under the Exchange Control Act.

2.5.6 E-MONEY

In Malawi, electronic money (e-money) is a relatively new service, and is currently being provided by the two existing telecommunication service companies, namely: Airtel Limited and Telekom Networks Malawi Limited (TNM). E-money is a mobile based financial service that allows subscribers (both banked and unbanked) to send and receive money, pay bills, and buy goods and services. It also allows for bulk payments, such as, payment of salaries and loans.

a) **Airtel Money** is provided by Airtel Mobile Commerce Services Limited. Airtel Money operation comprises agents, where customers can access e-value and cash; merchants where customers can pay for goods and services; and banks which hold trust accounts and offer customers an opportunity to access their bank accounts when linked with subscribers' Airtel Money mobile account.

b) **TNM Mpamba** is provided by Telekom Networks Malawi Limited and the service is similar to the Airtel Money system.

The legal framework for e-money is currently the RBM Act which empowers the RBM to promote, supervise and regulate payment and settlement systems in Malawi. Under this Act, the RBM issued guidelines for Mobile Payment Systems in March 2011 to govern operations of non-bank-based e-money service providers in Malawi.

There are measures and controls to mitigate the ML/TF risks. For example, TNM customers access facilities to transfer or receive up to MK200, 000(US$646) and above after TNM has have received and processed registration (KYC) documents. TNM has also set up support teams for agents, customers and billers, and merchants. Further, e-money by both providers does not involve international transactions.

One of the challenges facing e-money is lack of reliable identification documents by majority of Malawians. This forces service providers to use less stringent and unreliable identification documents such as the Malawi Electoral Commission registration card, letters from the chief/village headman and unverifiable employer IDs.

The industry has a medium low vulnerability to ML/TF with a score of 0.22 because there are many mitigating controls.

2.5.7 MICROFINANCE

Microfinance is the provision of a broad range of financial services to those excluded from the formal financial system. A variety of institutional models have emerged globally to serve microfinance markets including specialized microfinance banks, Non-Governmental Organizations (NGOs), Credit Unions, Savings and Credit Cooperatives (SACCOs), non bank financial institutions (i.e. MFIs) and some Commercial Banks that develop new lines of business or specialized subsidiaries that focus on microfinance market segments.

According to the Finscope Malawi Small, Medium and Micro-Enterprises (SMME) survey of 2012[35] it was reported that about 80% of the Malawi population does not have access to financial services. Therefore the microfinance sector attempts to provide services such as loans, savings, micro-insurance, funds transfers and payment services to those who are un-banked.

There are 20 microfinance institutions registered with Malawi Microfinance Network (MAMN) and membership for this grouping is voluntary. RBM is the primary regulator for this sector. The legal framework setting principles in terms of governance, management, resource mobilization and product offerings for microfinance institutions are the Financial Services Act 2010, Microfinance Act 2010 and the Financial Cooperatives Act 2011.

The microfinance sector in Malawi is highly cash intensive as both loan disbursements and loan repayments are usually done on cash basis. The asset size for the sector as at December 2011 was MWK 28.3 billion (US$91.41 million) and the volume turnover was MWK10.26 billion (US$31.14 million). Most of the customers are low income earners and mostly illiterate. There have been instances where as a result of illiteracy or low income, some PEPs and other influential people have used youths or villagers to get loans on their behalf. In one instance, students were used for such malpractice[36]. Furthermore, there is no requirement on disclosure of source of income by most customers of this sector.

[35] http://www.finscope.co.za

[36] www.nyasatimes.com/2012/05/16/acb-arrests-fierce-dpp-youth-governor-over-yedef-loans/

No specific AML/CFT onsite examinations have been conducted on the sector. However, in 2011, some of the institutions such as Blue Financial Services and Izwe Loans were sensitized by the FIU and undertook to start reporting after putting necessary control measures into place. A follow up on these institutions has shown that these institutions have not made any progress because most of the people sensitized have since left the institutions and there have been changes in their management structures.

The vulnerability to ML/TF is medium high with a score of 0.60 due to the high cash intensity as well as lack of proper identification documents.

2.5.8 OTHER FINANCIAL INSTITUTIONS (UNREGULATED)

These institutions refer to financial activities that take place underground or those that are not regulated. In Malawi, they include the *hawala* system, parallel/black market foreign exchange dealings and loan sharking (*katapila)*.

a) *Hawala*

Hawala is an alternative or parallel remittance system that exists and operates outside of, or parallel to "traditional" banking or financial channels[37]. *Hawala* works by transferring money without actually moving it. Its dealings are done underground with no official records and the practice relies on trust and extensive use of connections such as family relationships or regional affiliations. In Malawi, its market is unregulated.

The asset size of this market is not known. However, there has been movement of huge sums of money outside the formal financial system through this system and it is a potential breeding ground for ML/TF as source of the funds cannot be established. The system is swift, attracts low commissions and has no restrictions on how much can be remitted. In Malawi, *hawala* comes in different forms:

- Malawians living in the diaspora deposit foreign currency in a designated account outside Malawi to the credit of a colleague residing in Malawi. This Malawi resident will in turn either deposit the equivalent amount in Malawi Kwacha locally to the credit of the Malawian living abroad or pay directly to the supplier on behalf of the Malawian. In such cases transfers attract an "interest rate" agreed upon by the two parties, or;

[37] FINCEN

- A Malawian resident in a foreign country visiting Malawi buys goods or services in Malawi but pays for them in the country of residence, denying Malawi of foreign currency.

The existence of this parallel market in Malawi has served the interests of a small group of people; mainly PEPs, business people, the Asian community and Malawians living abroad. There is a huge likelihood that ML activities are facilitated through this practice. In fact, it is believed that some of the finances used in constructing houses by Malawians living abroad are remitted using *hawala*. The assessment could not establish whether the *hawala* system is used for TF.

The ML/TF vulnerability of this sector has been assessed as very high with a score of 0.94 because the sector is unregulated, customers cannot be identified, the operators are not known, the size of the industry is not known, and the source and destination of funds are not known.

b) Foreign Exchange Parallel Market (Black-market)

This is an informal and unregulated illegal market whose dealings are done underground, with no official records. The rates applicable are usually higher than the official bank rates. People often utilize this service because it is faster, there are no limits as to how much one can buy or sell, no questions are asked on the purpose for the purchase of the foreign currency and identification documents are not required, and through this, the rigorous process under Exchange Control Regulations is avoided.

The main players in this business are;

- Vendors/dealers who are usually stationed near shopping malls or at border posts. Some business persons, both local and international also engage themselves in this practice. Those who do cross-border trade may buy or sell foreign currency among themselves. Their exchange rates are usually based on the dominating bank rates.

- Some prominent business people of the Asian community in Malawi buy and sell foreign currency informally amongst themselves outside the formal financial systems. These Asians usually do not sell to any person but rather secretly to those they know or are connected to fellow Asian business associates.

This practice poses a ML/TF risk because there are huge amounts of money involved and there is no audit trail since there are no records. The money being exchanged could be from illegal economic activities and hence promote ML/TF. Therefore this sector has a very high vulnerability to ML/TF and has a score of 1.00.

c) Money lenders / Loan sharks ("*Katapila*")

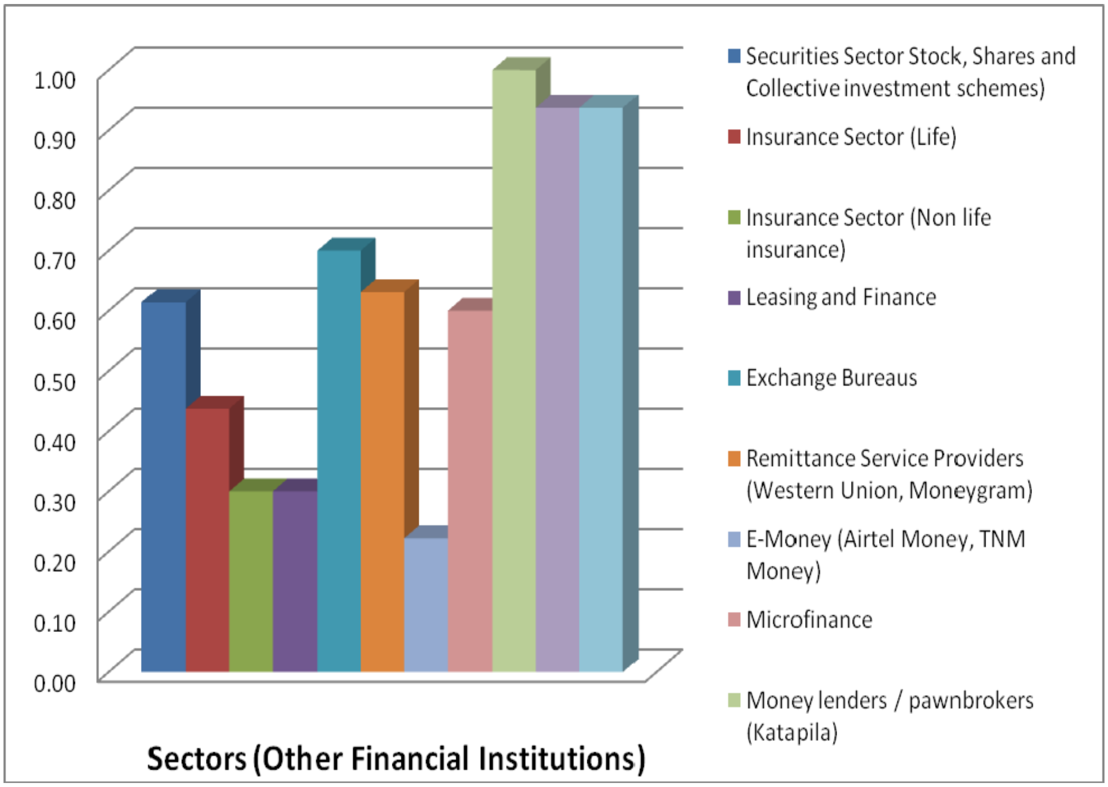
This is a practice in which some people provide unsecure loans to those in need and charge high interest rates. In Malawi they charge between 50% to 100% interest rates or even more depending on level of desperation shown by the borrower. Some may demand collateral (tangible assets) such as household furniture and motor vehicles. This practice is susceptible to ML in that money launderers may pretend they make their money through this business when in actual fact they make it through illegal means.

As an example, a prominent businessman in Blantyre is serving a ten-year jail sentence for armed robbery. This businessman owned a well established school and was also a loan shark. He claimed he makes his money through the school and "*katapila*" businesses, and yet he was linked to proven criminal activities.

It is difficult to indicate the size of this sector or the volume turnover due to the manner in which the activities are carried out. Moreover, because of its prevalence, and the fact that it is an illegal business, it is rated as having very high ML vulnerability, with a score of 1.00.

2.5.9 SUMMARY OF FINDINGS

Below is a summary of the assessment findings in a graphical representation showing sectors which portray the highest vulnerability to ML/TF.



2.5.10 RECOMMENDATIONS

- The RBM and FIU should provide adequate capacity building to enable enforcement of AML compliance by all the non-bank financial institutions.
- The RBM and FIU should enhance supervision of securities, exchange bureaus, remittance service providers and microfinance institutions.
- Regulators should develop AML / CFT regulations and guidelines for the insurance, securities, e-money, foreign exchange bureaus and microfinance institutions.
- The FIU should enforce STR reporting by securities market players, insurance companies, foreign exchange bureaus and microfinance entities.
- The FIU and RBM should carry out studies on *hawala*, foreign exchange black market and *katapila* to determine extent of the practices and their impact.

2.6 DNFBPs VULNERABILITY

For this assessment, the definition of the DNFBPs includes casinos (which also includes internet casinos), real estate agents, dealer in precious metals and precious stones[38], legal practitioners, lawyers, notaries public and accountants. Trust and company service providers were deliberately omitted for this assessment on the understanding that those services are largely provided by lawyers and accountants that are already part of the working definition of DNFBPs.

Accordingly, the assessment also looked at other professional groups that do not ordinarily fall under the working definition of DNFBPs or of a financial institution but equally pose ML/TF risks and these are:

a) Non-governmental organizations (NGOs) / non-profiting making organizations (NPOs). This assessment adopted the FATF definition of an NPO which is “a legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.

b) Franchised car dealers;

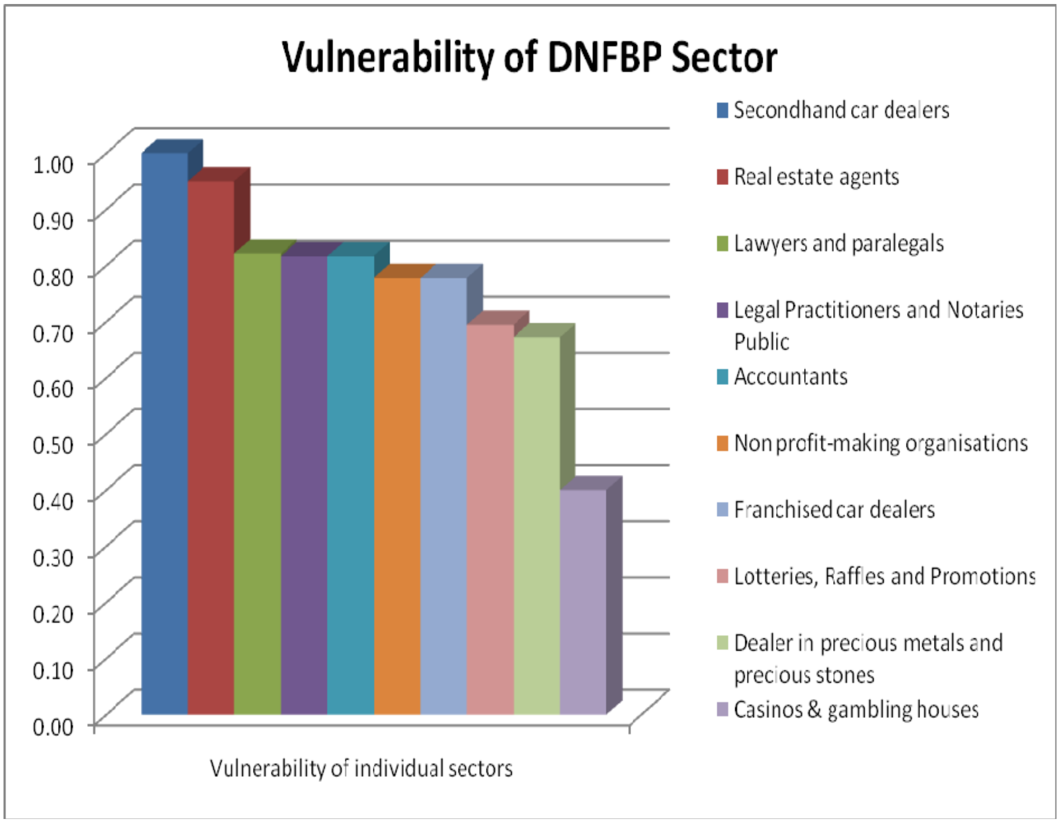
c) Second-hand car dealers; and

d) Lotteries, raffles and promotions

Overall ML vulnerability for DNFBPs is at 0.85 which represents high vulnerability and has been influenced by the following sectors: Casinos, Real estate agents, Dealer in precious metals and precious stones, Legal Practitioners and Notaries Public, Lawyers and paralegals, Accountants, Non profit-making organizations, franchised car dealers, secondhand car dealers, Lotteries, Raffles and Promotions.

The table below summarises the vulnerability of the various sectors under DNFBP:

[38] It was suggested by the group that this should be combined with dealers of other precious items like crocodile skins.



2.6.1 CASINOS, GAMING HOUSES AND LOTTERIES

In Malawi there are 19 Wireless Access Protocol (WAP) sites, 4 gaming sites and 1 casino. The casino industry involves players gambling on tables and slot machines. It uses a combination of both cash and cashless gaming. Lotteries involve buying lottery tickets, scratch and win cards, SMS gaming, raffles and promotional competitions. At the time of the assessment, there was one national lottery operator, two SMS lotteries and other promotional competitions.

The annual turnover for casinos is MK760million (US$2.45million), WAP operators MK1 billion (US$3.23million), gaming sites K13 million (US$41,987) and lotteries MK700 million (US$2.26million). These figures are submitted through monthly returns to the Malawi Gaming and Lotteries Board. Casinos, gaming houses, slot machines are about 80 percent cash intensive and they are followed by tables and lotteries which are 20 percent cash intensive.

There are few large cash transactions for the lotteries sector and this has mainly been driven by SMS lottery and promotional competitions. There are no international transactions in Malawi in as far as casinos, gaming houses and lotteries are concerned and there are almost no resident foreigners and PEPs participating in lotteries. However, for casinos and gaming houses 70 percent of customers are resident foreigners and PEPs.

The assessment found that there are few indicators for potential ML activities in the casinos, gaming houses and lotteries sector. For example, casinos and gaming houses in Malawi get large cash transactions which account for about 10 percent of the total transactions. Further to that, some winners do not take their winnings immediately and prefer to re-gamble using the same winnings while others refuse to accept cheque payment for their winnings preferring cash instead.

By assessing the structural indicators captured above, the ML vulnerability for casinos, gaming houses and lotteries was placed at medium.

Control Measures for the casinos, gaming houses and lotteries sector

The gaming and lotteries industry is regulated by the Malawi Gaming and Lotteries Board. There are general gaming regulations and draft ML guidelines for the gaming industry. As for lotteries, there are general regulations but no ML guidelines.

The Gaming and Lotteries Board commits some resources towards AML/CFT in respect of casinos and gaming houses, but there is no such commitment for lotteries. There are no professional ethics and standards for casinos and gaming houses but guidelines and procedure manuals are available. As for lotteries, there are no professional ethics and standards but there are guidelines for competitions.

The Gaming and Lotteries Board does not carry out AML/CFT inspections in casinos and gaming houses and currently there is no recorded suspicious transaction reported.

Final Vulnerability to ML for the casinos, gaming houses and lotteries sector

After taking the controls into account, the final ML vulnerability was placed at medium. The vulnerability level of the casinos, gaming houses and lotteries sector was impacted adversely by the high cash intensity, the large number of resident foreigners and PEPs patronizing casinos, lack of resources committed to AML/CFT by the Gaming and Lotteries Board, and the absence of professional ethics.

2.6.2 REALESTATEAGENTS

In Malawi, real estate agents play a middleman role in land transactions, in most cases representing both the buyer and the seller. There are other real estate agents who have diversified into auctioneering of other properties (both movable and immovable) and also property management.

There is also a Self-Regulatory Organization (SRO) called the Association of Real Estate Agents (AREA) whose membership is voluntary and as such not all real estate agents are members. There is an estimated 165 Estate Agents registered under the Business Names Registration Act but only 88 are members of AREA[39].

It is estimated that real estate agents in Malawi are able to sell properties valued at MK6.96 billion (US$22.48million) per year[40]. Land transfers that are registered with Ministry of Lands are estimated at a monetary value of about MK10 billion (US$32.3million) per annum and this includes both value of land sales, house sales and other real estate. The MK10 billion (US$32.3million) is a combined sum for charges in relation to mortgaged property valued at MK4 billion (US$12.92million) and transfers in relation to sale of land and buildings valued at K6 billion (US$19.38million).[41]. Most transactions are cash-based as this allows the estate agents to get their commission immediately. However, where the transaction is done through a financier such as a bank, the use of cash is restricted as they always issue a cheque to the seller.

In Malawi section 24 (c) of Lands Act puts some restrictions on sale of private land to persons who are not citizens of Malawi and it states, "*no person is allowed to sell, whether by private transaction or by tender, auction or other means, any private land to a person who is not a citizen of Malawi, unless the intention to sell the private land has been published in a newspaper in daily circulation in Malawi not less than twenty-one days before the date of sale, specifying the price, location and size of the private land, any developments thereon and any other particulars sufficient to identify the land*". The tracking of the section 24 (c) notices shows that the frequency of international land transactions is very low. In a year, very few real estate agencies handle transactions for international clients. An international client is understood to mean a citizen of another country, residing outside Malawi and sending instructions to a Real Estate Agent in Malawi to buy or sale property for them. Foreigners, who have resided in Malawi for a long time, are able to carry out land transactions without the scrutiny required of foreigners under section 24 (c), even though they are not Malawian. Such foreigners pass as Malawians because they claim to come from certain parts of Malawi or that their parents were born in Malawi and are able to speak the local language.

Some information on real estate transactions is not publicly available as in some instances transactions are done without adequate documentation and settlement is done by cash. From the available information, it is noted that high value real estate transactions are mostly

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[39]Sourced from the Association of Real Estates Agents

[40]Sourced from the Association of Real Estates Agents

[41]Figures provided by Ministry of Lands

conducted by foreigners who makes the sector vulnerable to money laundering. These are foreigners who may have mostly stayed in Malawi for a year or beyond and over time pass off as Malawians. In one specific case, a foreign resident bought land, developed town houses whose total value was estimated at K1.8 billion (US$5.81million) and immediately instructed an estate agent to sell off the units, all this in a space of one year.

The ML vulnerability for estate agents was assessed as very high due to the absence of proper regulation of the industry. Currently, AREA is not recognized by the Estate Agents Registration Board; further, it does not have the means to monitor transactions in the sector. There are no professional ethics and standards in the industry and there is a lack of committed resources to AML/CFT programs, and there is no STR filing compliance.

2.6.3 DEALERS IN PRECIOUS METALS AND PRECIOUS STONES[42]

The Mines and Mineral Act defines "precious metals" as,"…*gold, silver, platinum and platinoid metals, in an unmanufactured state, and includes all such slimes, concentrates, slags, tailings, residues and amalgams as are valuable for their content of the aforementioned precious metals…*".while "Precious stones" are defined by the Mines and Mineral Act as,"…*rough and uncut diamonds, emeralds, rubies and sapphires, not forming part of any tool or instrument or abrasive powder used in an industrial process, and includes any other stones which may be prescribed…*".[43]

The Word Bank's Malawi Mineral Sector Review in July 2009 reported that there is only limited history of mining for gold and other precious metals in Malawi. It further stated that though there is no diamond mining in the country, several areas of Malawi are underlain by kimberlitic rocks and that gemstone mining in Malawi is done in rubies and sapphires. There are also other semi-precious stones like aquamarine, amethyst, gem tourmaline, smoky and rose quartz, sunstone, heliodor, rhodolite and almandine garnets that are mined on a fairly regular basis. In a recent newspaper article, the Minister of Mines, indicated that in 2011, the mining sector realized about K19.3 billion (US$62.33million) in exports.[44] This however covered mining in general and not specifically on precious metals and precious stones.

Under the Mines and Mineral Act, the Minister responsible for mines grants export mineral permits, and every permit holder is supposed to, within fourteen days after the end of the month in which he exported the minerals, submit to the Commissioner for Mines a copy of the records showing details of buyers and these are the records that can show the frequency or

[42] There was insufficient data under this component.

[43] Section 98

[44] *The Daily Times* newspaper, Tuesday, March 12, 2013 page 9

percentage of international transactions. The Department for Mines keeps such records for a minimum period of 7 years. Regulation 4 (2) (b) (i) of the Mines and Minerals (Reserved Minerals License) Regulations dealers are obligated to keep and file records of the name and address of the purchaser. These are records that can also help to know whether the buyers or sellers are high risk customers.

Dealing in precious metals and precious stones in Malawi is not highly cash intensive. However, the industry is prone to ML/TF in that people who have been to the Democratic Republic of Congo sometimes bring diamonds and have at times approached the Department for Mines to get export permits. The department has refused such requests on grounds that Malawi does not have diamonds and thus an export permit cannot be granted. In addition, there is no law prohibiting miners from selling minerals to foreigners. As such, sometimes foreigners buy the minerals locally and export them. In such incidents, the Department for Mines issues an export permit in the name of the miner and such details of the foreigner will not be captured.

There are currently two jewelry operators in Malawi – Gems and Jewels, and Lake Valley Minerals. The latter, however, is not involved in the actual manufacturing of the jewels as the company only buys the stones, cuts and polishes, then sells them locally. The jewel operators are not regulated.

Control Measures

There are no AML/CFT regulations, guidelines and enforcement mechanisms. Although there are 11 different regulations made under the Mines and Minerals Act that are aimed at regulating specific issues to do with the mining industry, none of these Regulations deal with ML or TF issues. There are groups like the Gemstone Association of Malawi and the Malawi Women Miners Association but these do not have the status of a regulatory authority.

There are no resources committed to AML/CFT nor are there any known professional ethics and standards for precious metals and precious stones. There has been no reporting of STRs so far and transactions in this industry are not monitored.

Considering the absence of controls and taking into account the size of the sector (which is small), the overall ML vulnerability of this sector was placed at medium.

2.6.4 LEGALPRACTITIONERS

A legal practitioner is any person who has studied law and has fulfilled the requirements to be admitted to the legal practice bar. Any legal practitioner is allowed, as part of their practice, to be involved in (a) processing the buying and or selling of real estate for or on behalf of their clients, (b) management of their client's money, securities or other assets, (c) creation, operation or management of legal persons on behalf of their clients and (d) buying and selling of business entities on behalf of their clients.

In December 2011, Malawi had 96 law firms, and 317 legal practitioners of which only 311 have valid practice licenses and this is considered low looking at the country's population which in 2012 was estimated by the World Bank to be at 15.91 million[45]. The sector, which is not high cash intensive, has an estimated annual turnover for legal practitioners of MK50 million (US$161,488).

The legal practitioners industry has a very minimal interaction with international clients in (a) processing the buying and / or selling of real estate for / or on behalf of their clients, (b) management of their client's money, securities or other assets, (c) creation, operation or management of legal persons on behalf of their clients and (d) buying and selling of business entities on behalf of their clients. Further although legal practitioners deal with PEPs (lawyer-solicitor relationships in general), there was no evidence of legal practitioners dealing with PEPs in the activities named above.

Control Measures

The MLS is the regulatory body for legal practitioners in Malawi, it has professional ethics and standards but they do not cover AML/CFT issues. Further to this, there are no AML/CFT regulations or guidelines or other enforcement mechanism in place nor does the MLS have resources committed to AML/CFT. The MLS, as a regulatory body, it does not conduct AML/CFT supervision nor does it monitor the adequacy of reporting where legal practitioners are involved in the transaction named above.

Even though there is no evidence of the presence of indicators of potential ML activities, the absence of controls places the ML vulnerability of legal practitioners at high.

2.6.5 LAWYERS

Lawyers are those that have been through law school within or outside Malawi, but do not have a license to practice as legal practitioners. They are typically under no obligation to be registered with the MLS.

[45] http://data.workbank.org/country/malawi/

There is no law prohibiting lawyers from managing client's money, securities or other assets, and managing bank savings or securities accounts. However, under section 24 of the Legal Education and Legal Practitioners Act, lawyers are not supposed to be involved in (a) buying and selling of real estate; (b) creation, operation or management of legal persons or arrangements; and (c) buying and selling of business entities. Because of these restrictions, lawyers only get involved in these transactions clandestine. Considering that they are not subjected to any regulatory authority, it is difficult to gauge the size of their industry and the volume of their turn over.

It was difficult during the assessment to measure the interaction of lawyers with international clients and high risk customers in (a) processing the buying and or selling of real estate for or on behalf of their clients, (b) management of their client's money, securities or other assets, (c) creation, operation or management of legal persons on behalf of their clients and (d) buying and selling of business entities on behalf of their clients. This was the case because of restrictions placed on them and also considering that they are not subjected to any regulatory authority.

The business of lawyers is typically cash intensive. Lawyers would prefer not to deal in cheques because of the secretive nature of their operations. Because of inadequate regulation and clandestine operations, the assessment formed a view that there are indicators of potential ML activities/conduct.

Control Measures

In Malawi, lawyers do not have a regulatory authority and as such if they do not voluntarily become members of the MLS, s such there will not have any ethical standards to guide them. There are no AML/CFT regulations/guidelines or other enforcement mechanism in place nor are there any resources committed to AML/CFT. As such, lawyers are not monitored in the adequacy of reporting and other obligations under the ML &TF Act when they are involved in (a) buying and selling of real estate; (b) managing of client money, securities or other assets; (c) management of bank, savings or securities accounts; (d) organization of contributions for the creation, operation or management of companies; (d) creation, operation or management of legal persons or arrangements; and (e) buying and selling of business entities.

The ML vulnerability of lawyers was placed at very high because there are no ML controls and they are not obligated to belong to any professional body.

2.6.6 ACCOUNTANTS

The Malawi Accountants Board is the statutory regulatory body for accountants in Malawi and it carries out it its mandate through SOCAM, an association for accountants whose membership is voluntary. Both institutions are the custodians of data relating to the size of the industry.

The Accounting profession in Malawi can be divided into three groups. The first are accountants that are registered by SOCAM, followed by those that are not registered with SOCAM but are members of ACCA and hence are regulated to some extent. The last group is accountants that are not registered with any professional body but can do basic accounting work, including preparation of accounts for clients mainly SMEs.

With reference to transactions that are prone to ML/TF, accountants in Malawi are mostly involved in managing their client's money, securities or other assets, and operating or managing legal persons on behalf of their clients. The industry has an average turnover of MK355 million (US$1.15million)[46], and is not cash intensive. Accountants do not handle transaction of international clients frequently and the percentage of high risk customers that accountants deal with is also minimal[47].

The assessment found that there are many indicators for potential ML activities/conduct in this industry particularly for the group of accountants that is not registered.

Because of the set up of this sector, the ML vulnerability for accountants was placed at high.

Control Measures for accountants

The accounting industry is regulated by the Malawi Accountants Board and SOCAM, but their regulations do not cover ML/TF issues. Both institutions do not have resources committed to AML/CFT, and as such do not conduct AML/CFT examinations.

There are no AML/CFT guidelines, or other enforcement mechanisms for accountants in Malawi. However, SOCAM has powers under the Public Accountants and Auditors Act to set accounting and auditing standards appropriate to conditions prevailing in Malawi, and to the continued international acceptance of audited financial statements. The standards which they set do not specifically relate to AML/CTF issues except that ML is mentioned in the

[46]Figures were sourced from responses that individual accounting firms gave to the questionnaires that were used in the assessment.

[47]Sourced from responses that individual accounting firms gave to the questionnaires that were used in the assessment

International Federation of Accountants (IFAC)/ International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants.

Accountants in Malawi are bound by IFAC/ IESBA Code of Ethics for Professional Accountants. Under paragraph 210 of the Code, before accepting instructions from clients accountants must ensure that the instructions do not have the possibility of threatening compliance with the fundamental principles which include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices. Under paragraph 270.3 of the same Code, as part of client engagement and acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice is required to make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant is advised to consider seeking legal advice.

In the absence of explicit local AML/CFT guidelines, and the presence of potential ML activities, the overall ML vulnerability for the accounting profession was placed at high.

2.6.7 NON—PROFIT-MAKINGORGANIZATIONS

There are at least 2,000 NPOs registered as legal persons by the Registrar General of which only 230 are duly registered with the NGO Board. The average turnover for NPOs in Malawi is about MK40 billion (US$129,191), this being an estimate taken from the 2011/2012 government budget estimates. The industry is not high cash intensive. Money moves in the industry mainly through bank transfers and cheques.

Section 22(a) (i) to (iv) of the NGO Act requires NPOs to provide annual audit reports, communicate annually source of funding and in turn the NGO Board is required to verify and certify that the NPO in question has accounted for all the funding provided and that the same has been used for the purpose for which it was intended as per the founding documents. However most NPOs do not report as required, and the NGO Board does not have the capacity to enforce compliance with the provisions of the law. There are also no regulations or rules that require NPOs in Malawi to maintain and make available to competent supervisory or investigative authorities upon request, for a specified minimum period, all necessary records on transactions, both domestic and international. The frequency or percentage of international transactions is high because most of the NPOs rely on foreign based donors for their budgetary support. It has to be stated though that the assessment did not form any view on NPOs interactions with people from high risk jurisdictions.

The percentage of high risk customers that NPOs in Malawi deal with is low[48], as most NPOs provide assistance to people who are low income earners, who are usually based in the rural areas. However there are indicators for potential ML activities/conduct in the NPO industry, considering that most NPOs do not register with the NPO Board, and thus do not have their finances scrutinized. In addition, there have been significant cases involving fraud by NPOs, where money meant for the benefit of the NPO ends up being misappropriated by either the founders or the employees of the NPO. For instance, the FIU analysed a case in which a director of an NGO liberally used funds meant for the institution's operations to fund activities for a lavish lifestyle. The subject was regularly withdrawing funds for external travel, and upon questioning could not satisfactorily explain the purposes of the trips[49].

Control Measures for the NPO sector

Under Section 18 of the NGO Act, the NGO Board has the mandate to regulate operations of NPOs in Malawi; however, there are no AML/CFT regulations, guidelines, or other enforcement mechanisms for NPOs in Malawi. Similarly the Council for Non-Governmental Organizations in Malawi (CONGOMA) which is a self regulatory organization for NPOs does not have such regulatory mechanisms.

Both the NGO Board and CONGOMA do not have resources committed to AML/CFT, and there are no professional ethics and standards for NPOs in Malawi. Both institutions do not conduct AML/CFT examination of NPOs in Malawi. For those NPOs that are registered with the NGO Board and that solicit and accept funds and contributions and engage in public fundraising for the furtherance of a public benefit, only 10 percent comply with reporting requirements prescribed under section 22 of the NGO Act and this reporting has nothing to do with suspicious transaction reporting.

The final ML vulnerability after taking into account the controls is placed at High.

2.6.8 FRANCHISED CAR DEALERS

There are 15 franchised car dealers in Malawi, whose average annual turnover is about MK2 billion (US$6.46 million)[50].The industry is not high cash intensive. Money moves in the industry mainly through cheques, as purchases from franchised dealers is done by big organizations and usually financed through banks.

[48]This was the opinion of the assessment based on some factors on the ground like operations of NPOs in Malawi

[49] Malawi ML Typologies report 2011

[50]Figures were sourced from the Malawi Revenue Authority

There is no evidence of frequency of international transactions. While there is no tangible evidence to-date, it is believed that political parties and other public officials usually buy cars from this sector and mostly in bulk. The bulk purchase of motor vehicles by public officials could be an indicator for potential ML activities/conduct.

Control Measures for the franchised car dealers sector

This sector has no controls in that it does not have AML/CFT regulations and guidelines, it does not have a regulatory authority and there are no resources committed to AML/CFT regulation. In addition, there are no professional ethics and standards, and there is no monitoring of transactions of franchised car dealers.

The ML vulnerability is placed at medium as the sector is not cash intensive and is rarely used by individuals thus unlikely to be used as a means to launder money.

2.6.9 SECOND-HAND CAR DEALERS

The assessment did not establish the exact number of second-hand car dealers in Malawi because although there is an SRO, Secondhand Motor Vehicle Dealers Association, not all secondhand car dealers are members of this association. Many of them operate on an individual basis and the industry is highly cash intensive. The assessment could not establish the average annual turnover for secondhand car dealers in Malawi because the SRO had no information.

The percentage of high risk customers is high as any person can buy a vehicle using cash with no questions asked on source of the cash. The frequency of international transactions for secondhand car dealers is high as the price is always much lower than that of franchised car dealers. This is attractive even to buyers in neighboring jurisdictions.

The assessment found that there are indicators for potential ML activities in this sector. This is because most transactions are done in cash. Further, they are conducted very quickly and without any complexity, and once money changes hands there is usually no record of the transaction having taken place.

Control Measures for the secondhand car dealers sector

There are no AML/CFT Regulations, guidelines or other enforcement mechanisms for secondhand car dealers. Further, there is no regulatory authority for the sector, save for the SRO. The sector does not have professional ethics and standards, and there are no resources committed to AML/CFT regulation, nor is there monitoring of transactions of secondhand car dealers.

After taking the controls into account the final vulnerability to ML was rated as very high, because the sector is highly cash intensive, it is easy to buy second hand cars, and anyone can be a second hand dealers as it does not require specific registration or regulation.

2.6.10 RECOMMENDATIONS

i. Gaming Board and the National Lotteries Board should be financially and legally empowered to monitor transactions in casinos and gaming houses.

ii. Malawi should come up with mechanisms to regulate the real estate sector.

iii. Malawi should conduct a study of the dealers in precious metals and stones, franchised car dealers and second hand car dealers, and consider how best to introduce AML/CFT regulation in the sector as currently no regulation exists

iv. The Malawi Law Society should be empowered to coordinate AML/CFT regulation for all players in the legal profession.

v. The Registrar of Companies and the Ministry of Lands should enforce the law[51] which says only legal practitioners can process the buying and or selling of real estate for or on behalf of their clients.

vi. The Malawi Accountants Board and SOCAM should be engaged and empowered to carry out supervisory functions on AML/CFT.

vii. Malawi should have systems and mechanisms to identify NPOs that receive donations from jurisdictions that have poor AML/CFT regimes.

viii. The NGO Board and CONGOMA should use its powers under section 18 of the Non-Governmental Organizations Act to come up with regulations, guidelines, and enforcement mechanisms for NPOs in Malawi which should include AML/CFT.

[51] section 24(1)(b) of the Legal Education and Legal Practitioners Act

SECTION THREE: FINANCIAL INCLUSION PRODUCTS VULNERABILITY ASSESSMENT

3.0 INTRODUCTION

As part of the ML/TF risk assessment, a complementary assessment was done on financial inclusion products. Financial inclusion products aim at giving access to financial services to low income earners and residents of remote areas, previously excluded from formal financial services. One of the reasons why some customers are excluded from financial services is that they lack proper identification documents required by financial institutions. Policy makers are mindful that while promoting financial inclusion, there is need to safeguard the sector from money laundering threats. The assessment was therefore done to assess the level of ML/FT threats in products designed to promote financial inclusion. The findings of this assessment will provide the basis for determining anti-money laundering regulations for financial inclusion products.

Financial inclusion products are given different names by the various financial institutions but in general, they include basic bank savings accounts, basic bank credit accounts, ordinary farmer bank account, mobile payments, mobile banking, local money remittance, member based savings and credit, and micro-credit. Data for the assessment was collected using questionnaires. Respondents included: commercial banks, mobile payment service providers, local cash remitters, micro-finance institutions, Savings and Credit Cooperatives (SACCOs), Reserve Bank of Malawi (RBM), and Financial Intelligence Unit (FIU). Apart from these institutions, the assessment also targeted the National Registration Bureau, which is a public entity with the mandate to implement the national identification program.

3.1 FINDINGS

3.1.1 BASIC SAVINGS BANK ACCOUNT

There are 12 commercial banks in the country. Eleven banks responded to the questionnaire and 9 of them offer a basic savings account. The banks have various branded names for the basic savings account. The banks also apply slightly different measures to this product in terms of identification documents allowed, transaction limits and eligible customers. The product is being accessed by 632,890 customers.

Identification documents that are being allowed by the banks include: letter from a traditional leader, letter from an employer, national elections voter registration card, identity card from employer, Tobacco Control Commission Identity Cards for smallholder farmers, college or school identity card, letter from college or school, letter from the District Commissioner and letter from magistrate court with official stamps and passport-sized photos of the bearer. One of the banks said it also accepted World Bank Business Certificates based on the arrangement the bank has with the World Bank.

Specific findings for the product are as follows:

- Eight banks use the threshold of K50,000 (US$312.50)[52]for total monthly deposits or withdrawals per customer under this product. This is in line with Regulation 3(5) of the ML &TF Act which states that a financial institution may apply simplified customer identification requirements for customers whose average monthly income does not exceed K50,000 or customers whose average monthly withdrawals do not exceed K50,000. It should, however, be noted that the K50,000 threshold is not the limit for the book balance. Only one bank has not placed any threshold on transaction value allowable for the product. The bank says the product is mainly offered to students and added that it is in the process of developing thresholds for the product.

- There is no limitation on the number of transactions carried out per day or per month. The customers are allowed to transact as many times as they wish as long as the threshold value of K50,000 (US$312.50) per month is not surpassed.

- The product does not provide for anonymity of the customers. All customers go through the normal KYC process namely filling account opening forms, presenting identification documents and ultimately being accepted by the banks after satisfactory fulfillment of the requirements. Simplified CDD is applied.

[52] The rate used is 1US $ = K160 based on the rate at the time of passing the AML Regulations in September 2011

- Banks allow customers of this product to carry out transactions through both face-to-face and non-face-to-face. Transactions can be conducted in banking halls, or through non-face-to-face means such as transacting at ATMs or using mobile banking to check balances, pay bills or transfer funds to other customers of the same bank.

- One of the banks has indicated that it allows cross-border transactions with this product, though it did not specify the jurisdictions involved. There is a limit on the amount of money that may be transferred.

- The banks have never processed nor received any cross-border transaction from high-risk money laundering jurisdictions[53].

- The banks only accept Malawian nationals residing in the country as customers with the exception of two banks that also accept Malawian nationals not based in the country as customers for this product. Non-citizens and legal persons are not permitted to access this product.

- The players have to get approval from the RBM at the point of getting a license to offer banking services, which include basic and ordinary savings accounts. The banks are required to oblige with directives and Regulations issued by the RBM from time to time.

- Market entrants are guided by the following legislative frameworks; Financial Services Act; Banking Act; Exchange Control Regulations; KYC Directive from RBM; ML & TF Act; and the ML & TF Regulations.

- The Money Laundering, Proceeds of Serious Crime and Terrorist Financing Act under Sections 28 and 34, and Regulation 22 of the Money Laundering Proceeds of Serious Crime and Terrorist Financing Regulations 2011 oblige all financial

[53] FATF Public Statement - 19 October 2012 (accessed on 15th November 2012).

institutions to monitor transactions and report to the FIU all suspicious transactions.

- Only one bank out of the nine that that provide this product has an automated system of monitoring suspicious transactions. The other 8 were doing the monitoring manually. Based on the onsite examinations conducted by the FIU, manual monitoring of transactions is not an effective system as samples examined show that there are a lot of transactions that could have been reported to the FIU as suspicious but were not.

- The RBM is the main supervisor of the product. In collaboration with the FIU, the RBM provides guidelines required for various operations of the banks in relation to preventing ML and TF. However, there were no specific guidelines for this product apart from the general guidelines issued for all products offered by the banks.

- Training for the product providers is generally below average as most staff members have not been adequately trained in AML/CFT issues and where such trainings have been conducted, they are not frequent. Only 2 banks providing this product have shown commitment to promote AML/CFT awareness to its staff members to enable them identify suspicious transactions These 2 banks have provided training to over 75% of their staff members as well as their board of directors.

- The FIU and the RBM are in the process of working on AML/CFT Guidelines for banks. This task commenced in mid 2012.

- The banks generally rate the ML/FT vulnerability for this product as low. They argue that the product is offered to customers who are mostly low income earners and hence pose low ML risk.

  However, one bank rates the vulnerability as medium because simplified IDs like voter registration ID or letter from traditional leaders are easily forged and the bank is not able to verify the authenticity of the identification documents. The bank gave an example in which a customer fraudulently entered into business agreements with individuals who were asked to deposit money into such accounts. After deposits were made, the customer withdrew the funds from the account and disappeared knowing that it would be difficult for the bank to trace the customer using the identification documentation provided.

ML RISK RATING: The ML vulnerability rating for this product is low because in most cases the product low transactions limits, is offered to Malawians only, and there is no anonymity of customers. However, lack of proper identification documents which may lead to forging of identification documents is a concern. The absence of a proper monitoring system is also a challenge, as most banks manually monitor transactions.

In conclusion, the basic savings account qualifies for simplified customer CDD, however, regulators need to work with the banks on setting volume and value thresholds, disallowing cross border transactions and foreigners accessing this product, automated transaction monitoring and allowable simplified customer identification requirements.

3.1.2 BASIC BANK CREDIT ACCOUNT

The basic bank credit account is a micro-loan product being offered by two banks to individuals and groups who are mostly low income earners and based in remote areas of the country. The customers are required to open a savings account with the bank and some are trained in basic business management skills. A total of 370,937 customers are accessing this product from one bank which targets both men and women while the other has about 45,000 customers and targets women only.

For identification, the banks accepts letter from an employer, letter from a traditional leader, voter registration IDs, and Tobacco Control Commission IDs as well as driver's licence and passport.

Specific findings for the product are as follows:

- There are 5 different forms of the credit product offered by the banks targeting individuals or groups who run small-scale businesses. The customers usually operate in groups. The loan limits range from K30, 000 (US$97) to K40, 000

(US$130) per individual in a group or K300, 000 (US$970) to K400, 000 (US$1,300) for a group. The majority of the customers are women.

- Anonymous transactions are not possible as the customers have to be in groups or the individual should be well-known or properly identified in terms of residential physical address and the base of operating their business.

- Non-face-to-face operations are not possible as individuals have to repay their loans on a weekly or fortnightly basis.

- The banks only accept Malawian nationals residing in the country for this product.

- Every provider of this product is guided by the following legislative frameworks: Financial Services Act; Banking Act; KYC Directive from RBM; ML & TF Act; and the ML & TF Regulations.

- The ML& TF Act under Sections 28 and 34, and Regulation 22 of the ML&TF Regulations oblige financial institutions to monitor transactions and report to the FIU all suspicious transactions.

- The product providers do not have automated system for monitoring suspicious transactions but indicated willingness to procure an automated system.

- There are no specific guidelines for this product. Guidelines that are issued by the RBM and the FIU do cover a broad range of products as stipulated in the ML & TF Regulations and KYC Directive.

- The level of training for the product providers is average as some key staff members are trained in AML/CFT.

- One of the providers of this product showed some commitment to promoting AML/CFT awareness among its employees. In March 2011, the bank trained 126 staff members in AML/CFT at three branches. The staff that were trained included credit officers and supervisors, account opening officers and supervisors, tellers and their supervisors, risk officers and some support staff.

ML RISK RATING: The ML vulnerability for this product is low because the amounts involved are of low and banks identify the customers through various means such as the identification documents as well as through their fellow customers of the bank who are in the same group with them or know them as people coming from the same community.

The basic bank credit product qualifies for simplified CDD, however, there is need for providers to improve monitoring of transactions and the Regulators need to develop specific regulations for this product.

3.1.3 ORDINARY FARMER BANK ACCOUNT

Ordinary Farmer Bank account is an account which is offered by one of the banks in the country targeting small-scale farmers. Such farmers are usually based in remote parts of the country and most of them are semi-literate or illiterate. Most customers of this account open the account as part of a group (i.e. farmers clubs). The farmers normally get the bulk of their earnings at once from sales of produce and then this is followed by frequent small or big withdrawals to help them in their farming endeavors such as purchase of farm machinery or other farm inputs.

Transactions in this account are usually for K300,000 (US$970) and above. This applies to both individual or group accounts.

Specific findings for the product are as follows:

- Most customers are usually from rural and hard-to-reach areas, and usually come from Farmers Clubs. The accounts are used to collect proceeds from annual produce sales or accessing micro-credit for their farming operations. The transactions for this class of customers are usually seasonal and at times the accounts become dormant.
- Banks do not apply the AML Regulation 3(5) with regard to a monthly threshold of K50,000 for customers using this product.
- Customers are assigned their own banking suites or bank tellers where they can interact with the bank officers with ease.

- Identification documents presented by the customers include: voter registration ID, Auction Holdings cards (tobacco selling company cards), and a letter from traditional leaders.
- The customers are not involved in cross-border transactions and the product is accessed by Malawians only.
- Providers are guided by the following legislative frameworks; Financial Services Act; Banking Act; Exchange Control Regulations; KYC Directive from RBM; ML and TF Act; and the ML & TF Regulations.
- The ML & TF Act under Sections 28 and 34, and Regulation 22 of the ML &TF Regulations oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.
- There are no specific guidelines for this product, apart from the general guidelines provided to banks on AML/CFT.

ML RISK RATING: The ML vulnerability for this product is low because customers mostly operate in groups and are well known to each other and sources of funds are easily identified. However, banks do not have proper transaction monitoring mechanism at the moment and farmers expect high values after sales of their produce but there are possibilities that some farmers may be involved in high value transactions outside the farming season.

The product qualifies for simplified CDD. Regulators need to set specific guidelines and thresholds for farmer accounts and ensure that transactions are properly monitored.

3.1.4 MOBILE BANKING

The mobile banking product allows bank account holders to transact using mobile phones. This product is different from internet or online banking as it only requires one to have a mobile phone. The transactions possible with this product include balance inquiry, mini-statement, funds transfer, bill payment and airtime top up. Mobile banking allows customers flexibility of transactions and reduces transaction costs for customers in remote areas.

Out of the 11 banks that responded to the assessment questionnaires, three banks are offering this product. Two banks only offer funds transfer to other customers of the same bank while one of the banks allows its customers to transfer funds to non-customers of the bank. This is done through card-less ATM withdrawals using transaction specific personal identification number (PIN)[54].

The product's impact on financial inclusion might not be significant as the product requires customers to have existing bank accounts. However, there could be some impact in the case of one bank that allows non-customers to receive funds from customers through card-less ATM withdrawals. Through this arrangement customers of banks can remit funds to the unbanked.

Specific findings for the product are as follows:

- The daily transaction limits differ from one bank to another. Basically the limits used are the same as those for ATM transactions and they range from K80,000 (US$258) to K100,000 (US$322)[55]. However, apart from the limits on values, there are no limits on the number of transactions allowed.

- Anonymity cannot be possible because the product is offered to already existing customers of banks.

- The product is offered on non-face-to-face basis. The customer is not required to use a banking hall to carry out transactions using this product.

- The banks offering this product do not allow transactions across the borders.

- The product is open to all customers of the banks regardless of whether they are Malawian or not.

- Providers of the product are required to get approval from the RBM, and the market entry controls for this product are; Financial Services Act; Banking Act; ML and TF Act and the ML and TF Regulations.

[54] www.agrifinfacility.org/.../15%20-%203.29%20-%20Plenary%203% (FMB Presentation on Financing Agricultural Forum 2012, March 28th – 30th 2012, Kampala, Uganda - accessed on 8th November 2012)

[55] Exchange rate based on the commercial banks rate of US$1 = K309.62 as at September 2012

- ML&TF Regulations provides that a financial institution should take reasonable steps towards prevention of use of new technologies for money laundering and terrorist financing schemes[56].

  Furthermore, the ML&TF Act under Sections 28 and 34, and Regulation 22 of the ML & TF Regulations oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.

- The transaction monitoring mechanism is automated. Once the threshold is reached per day, no further funds transfer transactions can be allowed until the following day.

- There are no specific guidelines and regulations for this product.

- This product is supervised by the RBM, which has access to all transactions of this product and undertakes onsite assessments and gets reports from the product providers periodically.

- There is no adequate AML/CFT training offered to the providers specifically for this product.

- One of the providers of this service is fully committed to training its staff on AML/CFT issues while the other two providers have little commitment towards promoting awareness of their staff members.

- The RBM issued Guidelines for Mobile Payment Systems in March 2011 which are used by the providers of this product.

ML RISK RATING: The ML vulnerability posed by this product is low because it is offered to existing customers and the thresholds involved are low. Regarding card-less ATM transmission of funds, only customers of the bank can effect a transaction and the customers are well-known by the bank but the beneficiary is not known and can only be traced through the mobile telephone number.

[56] Regulation 23

The product does not fully qualify for simplified CDD. The determination for level of CDD will depend on type of customers and transaction limits on the account. It is recommended that banks come up with initiatives of ensuring that people who are unbanked have access to financial services using mobile banking.

3.1.5 MOBILE PAYMENTS

The RBM issued Guidelines for Mobile Payment Systems in March 2011 with the aim of facilitating the delivery of payment services to the banked and non-banked population in Malawi through mobile phones network providers. There are two mobile telecommunication companies that are operating mobile payments. Airtel Mobile Commerce Limited has been offering Airtel Money since June 2009. TNM Limited started offering TNM Mpamba from the first quarter of 2013. Airtel and TNM have in place systems for monitoring transactions and thresholds for specific types of customers.

Use of the products requires registration in person and compliance with KYC requirements. Identification documents that are being used included letter from an employer, letter from a traditional leader, voter registration ID, membership cards from recognized groups. If a customer would like to transact in large amounts, he or she has to present additional identification documents such as a passport or driver's license. Non-Malawians using this product are only allowed to present passports.

At the time of assessment, data was not available for TNM Mpamba. Airtel Money had 30,835 customers of which 30,375 are Malawians and 460 are non-Malawians resident in the country. About 30% of the customers present simplified KYC documents. The providers have agents that are recruited to facilitate registration of customers, as well as cash in (receipts) and cash out (payments).

Specific findings for the product are as follows:

- Customers using simplified identification documents may only transact up to K20,000 (US$65) per day and K50,000 (US$161) per month. Customers can graduate to a higher level upon provision of formal identification documents such as a passport and a driver's licenses.

- Anonymity is not possible because only duly registered customers use this product.
- Registering is on face-to-face basis while transactions like sending funds, buying airtime or paying bills are non-face-to-face.
- Cross-border transactions are not allowed.
- The product is offered to individuals who are either Malawian or non-citizen but resident in the country.
- Providers of the product have to be licensed by RBM. The RBM came up with Guidelines for Mobile Payment Systems in March 2011 which the providers have to adhere to. The ML &TF Act under Sections 28 and 34, and Regulation 22 of the ML &TF Regulations oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.
- The providers have monitoring systems in place. They can identify suspicious transactions through their automated systems.
- There is sufficient capacity on the part of supervisors to carry out supervision of the product considering that there are few providers and that the reporting systems and monitoring mechanisms have been agreed upon.
- Training in AML/CFT was offered in 2011 to 74 Airtel staff and agents while 16 staff of TNM were trained in February 2013. However, the number of agents for the provider has risen since then.
- There is some commitment from the providers of the product to have their staff members trained in AML/CFT.

ML RISK RATING: The ML vulnerability posed by this product is low because the values of the transactions for customers that present simplified identification documents are low and are guided by the AML Regulation threshold of K50,000 (US$161) per month.

3.1.6 LOCAL MONEY REMITTANCE

Local Money Remittance is offered by Malawi Post Corporation (MPC) to enable people from various areas to send and receive money through post offices. The product brands offered are:

- ***Fast Cash***: This is an electronic funds transfer product, which allows a receiver to access funds in real time.

- ***Postal Order****:* Postal orders are transferred physically and usually take 2 to 7 days depending on the distance from the sender.

In 2011, a total of 452,330 people used Fast Cash and Postal Orders at MPC branches. Identification documents are required for recipients only. Documents allowed by MPC included voter registration ID, driver's license, passport, letter from an employer and letter from a traditional leader.

Specific findings for the product are as follows:

- There were no limits set for these products either on the value and number of transactions.

- Anonymity could be possible on the part of the sender if he or she wants to use a false name while that could not be possible for the receiver as he has to present identification document at the point of collecting the money.

- The two products require face-to-face transactions at the point of both sending and receiving the money.

- The products are operated locally and not applicable for cross-border transactions.

- The products are designed to help Malawians remit funds to destinations within the country. Nevertheless, the products are also used by non-Malawian customers as long as the destination is within the country.

- The Financial Services Act, Communications Act and Payments Systems Regulations are the statues that guide the providers. Apart from these, the RBM has in place draft Regulations for Money Transfer Agents.

- The ML& TF Act under Sections 28 and 34, and Regulation 22 of the AML Regulations 2011 oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.

- The provider has an automated system in place which is used for transfers of funds and monitoring of transactions, however, the system does not monitor frequency of transactions carried out by specific customers and suspicious transactions that may take place.

- There were no specific guidelines for this product, and the RBM requires additional human resource to adequately undertake supervision of the product provider.

- Training of staff members of the product provider has not been adequate. Only 35 staff members of MPC were trained in AML/CFT in July 2011. The provider has a total staff compliment of about 900, a third of which are front officers who transact fast cash and money orders.

ML RISK RATING: The ML/TF vulnerability posed by this product is low because the values of the transactions are usually low, however, there are no thresholds attached to this product and there are no controls on the number of transactions a person can conduct in a month.

It is recommended that specific guidelines for this product be developed and limits on number and value of transaction set. In addition, the regulator should work with the provider to raise awareness among staff members.

3.1.7 MEMBER BASED SAVINGS AND CREDIT

Member based savings and credit products are offered by Savings and Credit Cooperatives (SACCOs). There are 43 SACCOs operating in Malawi that are affiliated to the Malawi Union of Savings and Credit Cooperatives (MUSCCO). There are also some SACCOs that are not affiliated to MUSCCO.

SACCOs are formed based on a common bond among members and these include working for a common employer or belonging to the same community. Members join

SACCOs on the understanding that they will be making monthly savings and get credit according to the value of the savings accumulated by a member. Members can also buy shares of the SACCO as a way of investing his or money. At the end of the year, members share the profits made based on the number of shares held.

The identification documents that are used by the SACCOs include letter from employer, letter from traditional authority or chief, witness ID (this is where one member of the SACCO group bears testimony of knowledge of a new member). They also accept driver's license and passport. All SACCOs, apart from United Nations SACCOs, do not allow non-Malawian citizen membership.

Specific findings for the product are as follows:

- SACCOs have no limits on number and value of transactions.
- Anonymity is not applicable as members are known to each other being employed in the same institution or belonging to the same community.
- Non-face-to-face transactions are not allowed.
- Cross-border transactions were also not allowed.
- The following legal instruments are used to regulate SACCOs: Financial Services Act; Financial Cooperatives Act; Cooperative Societies Act; ML and TF Act; ML & TF Regulations. The RBM is in the process of coming up with Financial Cooperatives Directives.
- The ML&TF Act under Sections 28 and 34, and Regulation 22 of the ML&TF Regulations 2011 oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.
- SACCOs have no AML/CFT monitoring mechanism.
- There are no automated processes available in any SACCO to monitor suspicious transactions. The monitoring is done manually. Only one SACCO has reported a suspicious transaction since the FIU started its operations in 2007.

- Staff and members awareness of AML/CFT issues is very low. However, 19 staff members of SACCOs affiliated to MUSCCO were trained on AML/CFT in October 2011.

- There are no specific guidelines at the moment for these products.

ML RISK RATING: The ML/TF vulnerability posed by this product is medium because high value transactions are involved and there are no limits on the number and value of transactions and these features would be attractive to money launderers. In addition, SACCOs have no transaction monitoring mechanism to detect suspicious transactions.

For the product to qualify for simplified CDD, specific guidelines and transaction thresholds need to be developed. In addition, the regulators need to work with SACCOs to raise AML/CFT awareness.

3.1.8 MICRO-CREDIT

There are about 40 formal micro-finance institutions (MFIs) offering micro-credit and most of them are yet to be registered by the RBM.

The micro-credit providers are categorized into:

i. Microcredit Agencies (MCA) - provides credit only;

ii. Non Deposit Taking MFIs (NDMFI)- provides credit plus other microfinance services but cannot mobilize deposits; and

iii. Deposit Taking MFIs (DMFIs)-can mobilize credit and provide other MF services.

Microfinance institutions offer group and individual loans in the form of business, agricultural, emergency/salary advance, educational, mortgage, and non-mortgage housing loans. In order to access these products, customers need to provide identification documents. Customers are allowed to use driver’s license, passport, letter from an employer, letter from a traditional leader, letter from a landlord, witness ID, employment ID and village bank passports.

Only 4 out of 10 MFIs responded to the questionnaires that were sent to them. The four have a total of 64, 523 customers and are offering the product to Malawians only.

Specific findings for the product are as follows:

- There were no regulatory limits on the number and value of transactions. The providers develop their own thresholds which are applicable to individual and group customers.
- Anonymity of customers was not applicable as customers needed to be identified as individuals or groups.
- Acceptance of non-face-to-face relationship creation is not applicable for this product.
- Cross-border transactions are not permitted as the product is designed to be used by customers within the country only.
- The product is specifically offered to Malawians.
- Micro-credit providers have to be registered and licensed by the Registrar of Financial Institutions. Providers of this product are guided by the following legislative instruments: Financial Services Act; Microfinance Act; ML &TF Act; ML &TF Regulations; Microfinance (Non-Deposit Taking) Directive; and Microfinance (Microcredit Agency) Directive.
- The ML 7 TF Act under Sections 28 and 34, and Regulation 22 of the Money Laundering Proceeds of Serious Crime and Terrorist Financing Regulations 2011 oblige all financial institutions to monitor transactions and report to the FIU all suspicious transactions.
- The providers have no suspicious transaction monitoring mechanisms in place. The FIU has just started reaching out to the sector. One of the providers has a policy on monitoring of transactions but its staff members have not attended any AML/CFT training.
- There are no specific guidelines to address ML/TF risk.

ML RISK RATING: The ML vulnerability posed by this product is low the transaction values are generally low and mostly accessed by groups whose members are known to each other.

The product qualifies for simplified CDD, however, providers need to develop mechanisms for monitoring transactions. The regulators need to work with providers to raise AML/CFT awareness and develop guidelines and thresholds for micro-credit products.

3.1.9 RECOMMENDATIONS

Financial inclusion is a very important ingredient of any financial system in a country and requires deliberate efforts to promote it. The following are therefore recommendations to promote financial inclusion in Malawi:

a) A standard basic savings account targeting low income Malawians should be introduced by all providers with attributes that qualifies it for simplified CDD.

b) Products that qualify for simplified CDD should be monitored regularly to ensure that customers that exceed the set thresholds undergo enhanced CDD.

c) The requirement in regulations for transaction threshold of K50, 000 per month for customers under simplified identification requirements is on the lower side in view of current economic environment. In view of this, it is recommended that the threshold should be raised to K150, 000 per month.

d) Regulators should develop specific guidelines for all financial inclusion products to ensure that the products are in line with AML/CFT requirements.

e) There is a need for the regulators to allocate sufficient financial and human resources for supervision of the financial institutions.

f) The RBM and the FIU should reach out to providers of financial inclusion products with AML/CFT awareness programs.

SECTION FOUR: CONCLUSION

The NRA is a very important exercise for Malawi. This document will guide the country on its AML/CFT endeavours. The assessment has many recommendations which need to be taken into account by all stakeholders in the country. The stakeholders need to refresh themselves and take bold steps of contributing towards enhancement of the national AML/CFT regime. If all stakeholders play their part rightfully, Malawi stands to record success stories in the fight against money laundering and combating of terrorist financing.

APPENDICES

APPENDIX 1 - LIST OF CAPITAL MARKETS (SECURITIES SECTOR)

A. Stock Exchanges

1. Malawi Stock Exchange

B. Stock Brokers

1. Stockbrokers Malawi Limited
2. FDH Stock Brokers Limited
3. African Alliance Securities Limited
4. CDH Stockbrokers Limited

C. Investment Advisors

1. Old Mutual Investment Group Limited
2. NICO Asset Managers
3. CDH Asset Managers
4. First Discount House

D. Portfolio Managers

1. Old Mutual Investment Group Limited
2. NICO Asset Managers Limited
3. CDH Asset Management Limited
4. INDE Trust Limited
5. Alliance Capital Limited
6. NBM Capital Markets Limited
7. First Merchant Bank Limited

E. Transfer Secretaries

1. National Bank
2. Standard Bank
3. First Merchant Bank

F. **Collective Investment**

1. Old Mutual Unit Trust Company (Malawi) Limited
2. National Investment Trust Limited (Limited)

APPENDIX 2 - LIST OF MICROFINANCE INSTITUTIONS; INCLUDING ASSET SIZE AND VOLUME TURNOVER AS AT 31St DECEMBER 2011.

INSTITUTION	ASSET BASE (MWK)	TURNOVER PER YEAR (MWK)
CUMO	495,067,000.00	214,336,000.00
FITSE	709,431,289.13	575,657,000.00
FINCA	1,079,131,000.00	508,029,311.00
ASAP	12,000,000.00	2,577,247,000.00
OIBM	15,125,826,000.00	4,635,363,000.00
PRIDE	593,812,732.00	134,517,401.00
HUNGER PROJECT	28,955,760.00	11,248,245.00
MICROLOAN	348,606,000.00	322,719,000.00
MRFC	5,507,691,000.00	555,906,000.00
NABW	20,504,699.00	2,320,066.00
MARDEF	3,000,000,000.00	118,000,000.00
MUSCCO	667,518,284.00	104,787,282.00
CISP	13,394,058.00	111,581,920.00
CCODE	266,472,481.00	272,716,938.00
INDEFUND	454,867,000.00	117,293,000.00
TOTAL	**28,323,277,303.13**	**10,261,722,163.00**

APPENDIX 3 - QUESTIONNAIRE FOR BANKS, MONEY REMITTERS AND MOBILE PAYMENT PROVIDERS

NATIONAL MONEY LAUNDERING AND TERRORIST FINANCING (ML/TF) RISK ASSESSMENT

Name of financial institution ……………………………………………………………….

Date of Incorporation ………………………………………………………………………….

Number of branches of the financial institution ………………………..…………………

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Name of the institution's official filling the questionnaire ……………………………..…

Signature of the official filling the questionnaire ………………..………….…………...

Date of filling the questionnaire.....………………………………………………………

PART A: BANK PRODUCTS/SERVICES THAT PROMOTE FINANCIAL INCLUSION

1. Does your bank have special account(s) and other products/services that promote financial inclusion?

   Yes ☐ No ☐

2. If your answer to question 1 is yes, please outline name(s) of the account(s) and/or products/services below:

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PART B: TRANSACTIONS

3. Is there a set limit (threshold) in place allowed for transactions in such account(s) or products/ services?

Yes ☐ No ☐

4. If your answer to question 3 is yes, please provide details of the threshold(s)/ limit(s) below:
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…………………………………………………………………………………………

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5. Are customers of such accounts (products/services) allowed to conduct trans-border transactions (such as wire transfers)?

Yes ☐ No ☐

6. If your answer to question 5 is yes, are there limits (thresholds) for such trans-border transactions and what are the thresholds?

Yes ☐ ……………………………………………………………………….

No ☐ ……………………………………………………………….……….

PART C: CUSTOMERS

7. Are the special accounts (products) offered to Malawians based in the country?

Yes ☐ No ☐

8. Can Malawians residing outside the country be allowed to become customers of these special accounts (products)?

Yes ☐ No ☐

9. Can non-residents who are also non-citizens of Malawi be allowed to become customers of these special accounts (products)?

Yes ☐ No ☐

10. Please provide an explanation to your answers to questions 7, 8 and 9.

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……………………………………………………………………………………………

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11. How many customers are currently holding the special accounts (that promote financial inclusion) with your bank?

Malawians based in the country: ……………………………………

Malawians not based in the country: ……………………………………

Non-Malawians based in the country: ……………………………………

Other (specify) ……………………………………

Total number of customers ……………………………………

PART D: IDENTIFICATION DOCUMENTS

12. What identification documents do you request from customers that open the special accounts that promote financial inclusion?

Letter from employer Yes ☐ No ☐

Letter from traditional leaders Yes ☐ No ☐

Voter ID Yes No ☐ ☐

Other (specify) ……………………………………………………

……………………………………………………

……………………………………………………

13. If your bank allows customers who are non-resident and non-citizen to open the accounts that promote financial inclusion, what identification documents are requested for this category of customers?

……………………………………………………………………………………………..

……………………………………………………………………………………………..

14. Does your bank have tiered (or (categorized) identification requirements for accounts that promote financial inclusion?

Yes ☐ No ☐

15. If your answer to question 14 is yes, please provide the tiered requirements below against the name of the account.

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…………………………………………………………………………………………..

…………………………………………………………………………………………..

…………………………………………………………………………………………..

PART E: MONEY LAUNDERING RISK

16. How do you rate the money laundering risk posed by customers of the special accounts that promote financial inclusion?

Low ☐ Medium ☐

High ☐ Extreme ☐

17. Has there been any suspected financial crime being perpetrated using such account (product) type?

Yes ☐ No ☐

18. If your answer to question 17 is yes, please provide an explanation.

……………………………………………………………………………………………..

……………………………………………………………………………………………..

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PART F: RECOMMENDATIONS FOR FINANCIAL INCLUSION PROMOTION IN THE COUNTRY

1. What would you recommend the country so that financial institutions accelerate implementation of financial inclusion?

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APPENDIX 4 - AGENCIES AND INDIVIDUALS INVOLVED IN THE ASSESSMENT

GROUP	NAME	INSTITUTION
One -	John Minofu	FIU
Two -	Cecilia Chiphwanya Fatima Phiri Khetase Yiwombe Kondwani Kaunda Mada Kausi Mabvuto Katemula Julius Chabwera John Mapira Nicholas Nachawe	FIU ACB Interpol MEJN Min of Justice Min of Foreign Affairs Immigration Min of Industry and Trade Malawi Revenue Authority
Three – Banking Sector	Joseph Kaluwa	FIU
Four – Other Financial Institutions vulnerability	Anita Mankhambo Chitani Chigumula Dorothy Chapeyama Stewart Kondowe	FIU RBM IAM MAMN
Five - DNFBPs	Atuweni-tupochile Phiri Sheen Msusa Paul Chiumia Loveness Mang'anya Ken Msonda	FIU FIU Malawi Gaming Board MRA AREA

	Peter Chanza Hope Chavula Likhwa Mussa Winston Harawa	Ministry of Lands MCCCI MLS NGO Board
Six – Financial Inclusion	Masautso Ebere Mtchaisi Chintengo McEwen Champiti Faith Nhlema Maxwell Salika	FIU RBM RBM RBM Ministry of Finance

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