

Anti-money laundering and counter-terrorist financing measures

Zambia

1st Enhanced Follow-up Report &
Technical Compliance Re-Rating

April 2022





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ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

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ZAMBIA: 1st ENHANCED FOLLOW-UP REPORT

INTRODUCTION

1. The ESAAMLG evaluated the Anti-Money Laundering and Combating the Financing of Terrorism and proliferation financing (AML/CFT) regime of the Republic of Zambia under its Second Round of Mutual Evaluations from 25th June -06 July 2018. The Mutual Evaluation Report (MER) was adopted by the ESAAMLG Council of Ministers in May 2019. According to the MER, Zambia was Compliant (C) with 11 Recommendations, Largely Compliant (LC) with 17 Recommendations, Partially Compliant (PC) with 11 Recommendations and Non-Compliant (NC) with 1 Recommendation. Out of the 11 Immediate Outcomes (IOs), Zambia was rated Moderate Level of Effectiveness on 9 IOs and Low Level of Effectiveness on 2. Details of the MER ratings are provided in the Table 2.1 below. This follow-up report analyses progress made by Zambia to address the technical compliance deficiencies identified in its MER. TC re-ratings are given where sufficient progress has been demonstrated. This report also analyses progress made in implementing the new requirements of Recommendations 2, 8, 15 and 21(5 has been included in the actual application for re-rating) which has changed since the MER was adopted. The report does not analyse any progress Zambia has made in improving its effectiveness. Progress in this area will be assessed as part of a subsequent follow-up assessment, and if found to be sufficient, may result in re-ratings of Immediate Outcome ratings at that time.

2. The assessment of Zambia's request for TC re-ratings and the preparation of this report were undertaken by the following experts (supported by the ESAAMLG Secretariat: Chris Likomwa, John Muvavarirwa and Valdane Joao):

- Bheki Khumalo (Eswatini)
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3. Section III of this report highlights progress made by Zambia and analysis undertaken by the Reviewers. Section IV sets out the conclusion and a table showing which Recommendations have been recommended for re-rating.

I. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

4. The MER¹ rated Zambia' technical compliance as set out in Table 2.1 below. In the light of these results, Zambia was placed in the enhanced follow-up process²

Table 2.1. Technical compliance ratings³ June 2019

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

II. OVERVIEW OF PROGRESS IN TECHNICAL COMPLIANCE

3.1. Progress to address technical compliance deficiencies identified in the MER

5. Since the adoption of its MER in June 2019, Zambia has taken measures aimed at addressing the technical compliance deficiencies identified in its MER. This section of the report summarises progress made by Zambia to improve its technical compliance by addressing the TC deficiencies identified in its MER and implementing the new requirements where the FATF standards have changed since the adoption of the MER (2, 5, 8, 15 and 21[w^{as} included in the application for re-rating]).

6. ESAAMLG welcomes the steps that Zambia has taken to improve its technical compliance deficiencies. Following this progress, Zambia has been re-rated to Largely Compliant with Recommendation 22. Recommendation 7 has been upgraded to PC. Recommendations 8 and 16 have not been re-rated. Recommendation 5 has been downgraded to PC. Due to the new requirements of Recommendations 2 and 15 which have

¹ Mutual Evaluation of Zambia, June 2019 available at https://www.esaamlg.org/index.php/Mutual_Evaluations/readmore_me/426.

² Enhanced follow-up is based on the traditional ESAAMLG policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT systems and involves a more intense follow-up process.

³ There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

not been fully addressed, R.2 has been downgraded from LC to PC while R.15 remains PC. Zambia remains Complaint with Recommendation 21.

3.1.1 Recommendation 5 – Terrorist Financing Offence (Originally rated LC – Downgraded to PC)

7. Under its Second Round MER, Zambia was assessed on the requirements of Rec 5 based on Anti-Terrorism Act, 2007 and it was rated LC. In-terms of the Procedures for ESAAMLG 2nd AML/CFT Mutual Evaluation, the Recommendation was not open to re-rating. However, the ATI, 2007 has since been repealed by a new Anti-Terrorism and Non-Proliferation Act (ATNPA), 2018. In view of this, all the criteria of Rec 5 are now being reviewed. In the MER, Zambia met the requirements of Rec 5.1, 5.2, 5.4, 5.5, 5.6, 5.8, 5.9 and 5.10 while 5.3, and 5.7 were rated MM and 5.2bis was rated NC. The provisions of the new law were assessed against all criteria of Rec 5.

8. S. 20 (1) & (2) of the ATNPA criminalizes TF on the basis of Article 2 of the International Convention for the Suppression of the Financing of Terrorism. Further under S.20 (1)(a) a person commits an offence if he collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out an act which constitutes an offence within the scope of and as defined in one of the treaties specified in the Schedule or the annex to the International Convention for the Suppression of the financing of terrorism. Paragraph (a) therefore covers the 9 Protocols in Annex 1. **On this basis, criterion c.5.1 has been met.** The offence of terrorist financing extends to financing of terrorist acts (S.20 of ATNPA). However, it does not cover financing of terrorist organisations and individual terrorists. Terrorism financing has been defined as an act by any person who, irrespective of whether a terrorist act occurs, by any means, directly or indirectly, willfully provides or collects funds or attempts to do so with the intention that the funds should be used or knowing that the funds are to be used in full or in part; (i) to carry out a terrorist act; by a terrorist; by a terrorist organisation; or (iv) for the travel of a person to a State other than the person’s State of residence or nationality for the purpose of perpetration, planning or preparation of, or participation in, terrorist act or the providing or receiving of terrorist training. However, other than the definition, S.20 itself which criminalizes the offence only covers terrorist acts. All the other elements that are in the definition have not been included/imported into S.20 hence the conclusion that the criminalizing section only covers terrorist acts and left out critical elements of terrorist organizations and individual terrorists. **On this basis, criterion c.5.2 has been partly met.** There is no provision in Zambia that prohibits financing the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training. Therefore, **criterion c.5.2bis is not met.**

9. TF offences extend to any funds or other assets whether from a legitimate or illegitimate source. S.2 of ATNPA define “funds” to means legitimately or illegitimately

sourced, acquired, provided or available— (a) cash; (b) assets of every kind, including any financial interest that accrues to such assets; (c) real or personal property of any description, whether tangible or intangible, however acquired; and (d) any interest in any real or personal property, however acquired, including legal documents or instruments in any form, electronic or digital, evidencing title to, or interest in such assets. **Criterion c.5.3 is met.** The definition of financing of terrorism under S. 2 of the ATNPA does not require that the funds were actually used to carry out or attempt a terrorist act. However, there is no substantive provision that criminalises that TF offences should not require that the funds or other assets: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s). **Criterion c.5.4 is not met.** The authorities provided cases of *David Zulu V The People* (1977) Z.R. 151 (S.C. and *Khupe Kafunda Vs The People* (2005) Z.R. 31 (S.C.), which prove that intent, a key ingredient of the offence of terrorism financing, can be proved by circumstantial evidence, as recommended under the criterion. Section 20 (2) (b) of the ATNPA, 2018 provides for custodial sentence of life imprisonment for a natural person found guilty of the offence of terrorist financing. The sanction of life imprisonment is proportionate and dissuasive. **Therefore c.5.5 and c.5.6 are met.** Courts have held legal persons criminally liable (See R5.7 of 2nd MER). S. 39 of the ATNPA provides that a criminal prosecution shall not preclude parallel civil or administrative proceedings in respect of a legal person. Criminal sanctions are proportionate and dissuasive as provided under SS.20 to 38 of the ATNPA. However, the law has not provided for civil or administrative sanctions and the sections indicated above do not provide an option of a fine to a legal person. **Therefore c5.7 is partly met.**

10. S 31(1) of the ATNPA provides that a person who conspires or attempts to commit an act of terrorism, financing of terrorism, proliferation and proliferation financing commits an offence and is liable, on conviction, to imprisonment for life. S.32 (1) (a) provides that a person commits an offence if that person participates in terrorism financing or proliferation financing, irrespective of an occurrence of a terrorist act or proliferation whether the funds have actually been used to commit that act. The participation would include an accomplice. Also S.32(1)(b) provides that a person commits an offence if he invites another person to provide or make available funds or other property for purposes of terrorism or proliferation. Furthermore, Zambia recognizes and applies the doctrine of common intention (S.21 and 22 of the Penal Code Act) and therefore, accomplices in a terrorism financing offence can be charged with the offence. **Therefore criterion c.5.8 is met.**

11. Zambia has adopted all-crimes approach; therefore, the criminalization of terrorist financing under Section 20 of the ATNPA, 2018, renders TF a predicate offence to money laundering. Under S. 3 (2) (c) of the ATNPA, the High Court of Zambia has the jurisdiction to try any person that is present in Zambia after committing an offence of terrorism or terrorism financing, whether such offence was committed inside or outside Zambia. There is therefore no limit on which persons can be prosecuted in Zambia, as long as the persons concerned are within Zambia, regardless of where they committed the offence. This provision is complimented by S. 3 (3) that provides for prosecution of suspects in

Zambia even if the offence was committed wholly or partly outside Zambia. **Criteria c.5.9 and c.5.10 are met.**

Weighting and Conclusion

12. Zambia has addressed some of the requirements of R.5. However, it has not addressed the new requirements of c.5.2bis and c.5.4 and has partly addressed requirements of c.5.2 and c.5.7 as the offence of TF does not extend to cover individual terrorist and terrorist organisation. In addition, civil or administrative sanctions are not available for legal persons under SS.20 to 39 of the ATNPA. These deficiencies are considered moderate hence, the rating of R.5 be downgraded from LC to PC.

3.1.2 Recommendation 7 - Targeted Financial Sanctions related to Proliferation (Originally rated NC- Upgraded to PC)

13. Under its Second Round MER, Zambia was rated Non-Compliant with the requirements of this Recommendation. The major deficiency was that there were no legal provisions for PF.

14. The Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017, though they were made under a repealed law (ATI 2007), they were saved by operation of S.15 of the General Provisions and Interpretation Act. As such, the legal regime to comply with United Nations Security Council Resolutions, adopted under Chapter VII of the Charter of the United Nations, relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing is made up on ATNPA, 2018 being the primary law and 2017 Regulations. S.2 of ATNPA has defined applicable UNSCRs and they include 1718 (Para (e)) and 1737 (Para (f)) and any other United Nations Security Council Resolution that may be issued concerning the designation, asset freezing, arms embargo and travel ban in respect of a designated person, entity or country in relation to the application of measures for the combatting of terrorism (para (l)). However, the law has not defined what is “without delay” neither has the law provided a time frame within the law to provide a basis of what without delay entails. Also S.40 (1) (a) and (c) as read with Regulation 6 of the Anti-Terrorism Regulations 2017 provides that for the purposes of this Act, an organisation is a declared terrorist organisation or proliferation related entity if (a) the Minister has, by notice, under this section, declared the organisation or entity to be engaged in terrorism or proliferation activity, and (b), the organisation or entity has been declared by the Security Council of the United Nations, or the African Union or nationally listed as a terrorist or proliferation organisation. Reg 6 (1) requires Zambia’s Permanent Mission, upon receipt of the Designated List, without delay, to submitted to ministry responsible for foreign affairs who in turn has to submit to FIU who in turn circulates to supervisors and the supervisors circulates to reporting entities. As indicated, without delay has not been defined and it is not clear from the law whether the TFS PF will apply automatically or

subject to a Gazette process. Although S.40 of ATNPA does not cover individuals (natural persons) Regulation 2 has defined designation to include a person and entity. **As a result, c.7.1 is partly met.**

15. S.5 of the ATNPA establishes National Anti-Terrorism Centre which is the competent authority responsible for implementing and enforcing targeted financial sanctions against proliferation financing. Regulation 7 (1) (a) of the Anti-Terrorism Regulations 2017 states that once the FIU receives the list in accordance with a UN Resolution or the Act it shall instruct supervisory Authorities to direct all reporting entities to immediately or without delay freeze all property, funds, and other financial assets or economic resources suspected or belonging to a designated person or entity including funds derived from property owned or controlled directly or indirectly, by that designated person or entity or by a person acting on that designated person's or entity's behalf or at the designated person's or entity's direction, and ensure that these funds and other financial assets or any other funds, financial assets or economic resources are not made available, directly or indirectly for the designated person's or entity's benefit, by their nationals or by persons within their territory. However, failure to define or provide a description of what is without delay in c7.1 will impact this requirement. Regulation 7 (1) (a) requires that all funds or other assets that are owned or controlled by the designated person or entity, (ii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, and (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities to immediately or without delay, freeze. However, there is no requirement to include funds or assets that are jointly owned or controlled, directly or indirectly, by designated persons. Sections 45 (Making funds or financial services available to designated or nationally listed person or entity prohibited), 46 (Prohibition on making funds or financial services available for benefit of designated or nationally listed person, terrorist organisation or proliferation related entity) and 47 (Prohibition on making economic resources available to designated or nationally listed person, terrorist organisation or proliferation related entity) of the ATNPA and Regulations 7, 16 and 17 meet the requirements of this sub-criterion. Funds or financial services are prevented from been made available to another person or entity for the benefit of a designated or national listed person, terrorist organization or proliferation related to entity if that person or entity knows, or reasonably suspects that the other person or entity is making the funds available to a designated or nationally listed person, terrorist organization or proliferation related entity for the purposes of terrorism, finance of terrorism, proliferation or proliferation finance. Regulation 7(1) (a) (Supervisory Authorities) enable the Centre to communicate designations and direct reporting institutions to freeze funds or assets of listed or designated persons or entities immediately and without delay. S.52 (4) require a reporting entity to report to the Centre assets if it credits a frozen account. However, there is no requirement to inform the Centre of any other action tak-

en in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions. Regulation 8(1) of the 2017 Regulations provides for the protection of the rights of bona fide third parties. The regulation allows a person who claims to have a bona fide right to funds or assets frozen in accordance with regulation 4(11) or regulation 7(1) (a) to apply to the Minister for the exclusion of that person's interest from the freezing order. S.33 of the FIC Act contains measures that protect the rights of bona fide third parties acting in good faith when implementing the obligations under Recommendation 7. **Therefore, c7.2 is partly met.**

16. S. 12 of the ATNPA gives power to Terrorism Committee to appoint Terrorism and Authorized officers to ensure compliance of the Act. The officers may demand the production of and inspect or make copies of any documents or accounts kept by a person, pursuant to the provisions of the Act. Further S. 5 (3) (g) of the FIC (Amendment) Act, 2020 provides that in consultation with a supervisory authority, where applicable, cause an inspection to be made by an officer authorized by the Director-General in writing and S.11B of the FIC (Amendment) Act, 2016 provides for powers of inspectors. S. 12 (9) of the ATNPA provides for a fine not exceeding seven hundred thousand penalty units or to imprisonment for a term not exceeding seven years, or to both to any person who obstructs terrorism or authorized officers. **Therefore c7.3 is met.**

17. Pursuant to regulation 9(2) Zambia has adopted procedures in the relevant UN Sanctions Committee for de-listing requests. It provides that a designated or nationally listed person, entity or country may request the appropriate Sanctions Committee to delist that person or entity in accordance with the appropriate resolution or the de-listing procedure provided for in the applicable Resolution. Unfreezing funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism has not been provided in the Act or regulations. S.52 (6) (e) of the ATNPA provides for access to funds or other assets where Zambia has determined that the exemption conditions set out in UNSCR 1718 and 1737 are met. The exemptions include expenses necessary to honour any judicial, administrative or arbitral lien or judgement and payments due under contracts entered into prior to the listing of such person or entity. Regulation 9(7) of the Anti-Terrorism (United Nations Resolutions Implementation) Regulations, 2017 empowers the Centre to only notify supervisory authorities, defence and security organs, the LEAs and FIC. There is no requirement or mechanisms to communicate de-listings and unfreezings by Sanctions Committee to financial institutions or DNFBPs. It is not clear whether after being notified the supervisory authorities or FIC have the mandate to communicate the de-listings. Regulation 10 (3) (4) and (5) deal with national delisting. **Therefore c.7.4 is partly met.**

18. S.52 (1) (a) and (b) provides that a reporting entity may credit a frozen account with (i) interest or other earnings due on the account; or (b) payments due under contracts, agreements or obligations that were concluded or arose before the account was frozen. S.52 (6) (e) (II) (A) and (B) of the ATNPA authorises payments due under con-

tracts entered into prior to the listing of such person or entity where it has determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in the relevant Security Council resolution; and also where it has been determined that the payment is not directly or indirectly received by a person or entity designated pursuant to UNSCR 1737. In respect of UNSCR 2231 (Successor resolution to 1737), ten working days prior to the notification of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, has been given to the 1737 Sanctions Committee. **Therefore c7.5 is met.**

Weighing and Conclusion

19. Zambia has addressed the requirements of c7.3, and c.7.5. It has partly addressed requirements of c.7.1, c.7.2 and c.7.4. Zambia does not require all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. There is no definition of without delay and it is not clear from the wording of S.40 of the ATNPA, 2018 that the designations apply automatically or subject to a Gazette Notice. There is no requirement to inform the Centre of any other action taken in compliance with prohibition requirements of the relevant UNSCRs, including attempted transactions. Unfreezing funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism has not been provided in both the Act and the regulations. There is no requirement or mechanisms to communicate de-listings and un-freezing's by Sanctions Committee to financial institutions or DNFBPs. It is not clear whether after being notified the supervisory authorities or FIC have the mandate to communicate the de-listings. These deficiencies are considered moderate hence, the rating of R.7 be upgraded from NC to PC.

Recommendation 8 - Non-Profit Organisations (NPOS) (Originally rated PC- No Re-rating)

20. Under its 2nd round MER, Zambia was rated partially compliant with the requirements of this recommendation. The deficiencies noted include: the legal framework regulating the NPO sector is not yet risk based to require identification and determination of NPOs which, based on their activities or their characteristics could be at risk of terrorist financing abuse. The supervision and monitoring of the NPO sector is also not yet required to be done on TF risk sensitive basis, the same requirements apply to all NPOs. The legal framework currently existing does not take into account TF risks in the NPO sector but is based on general regulation of the NPOs and their activities.

21. The Registrar of NGOs, FIC, NACT and other stakeholders have identified a subset of NPOs whose features and types determined by virtue of their activities or

characteristics are likely to be at risk of terrorist financing abuse. These NPOs are involved in raising and/or disbursing of funds. Further according to information submitted by the authorities to support their position, a matrix was submitted titled Risk Classification of NPOs. The matrix contains columns showing name, status, country of origin, source of funding, thematic areas, and inherent TF risk of the country's NPOs. Zambia also conducted a TF Risk Assessment in December 2020 and established that as at the date of the risk assessment, there were 1 394 NPOs registered by the Department of Registrar for NPOs under the Ministry of Community Development and Social Services out of which 814 (58%) were categorized as NPOs that fall under the FATF definition of NPOs. According to the risk assessment and the TF Risk Classification, the 814 are all NGOs considered at risk of TF abuse. Among the features considered when categorizing NGOs that fall under the FATF definition were the sources of funds, thematic areas of operations, parent headquarters and geographical operations. The methodology that was used in undertaking the TF risk assessment for the NPO sector includes having roundtable stakeholder consultation, intelligence information, expert judgments, NGO sector input and typology studies and data from the Department of Registrar for NGOs. However, other than conducting the risk assessment itself, Zambia has not identified the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. Zambia simply included all 814 NPOs falling within FATF definition into NPOs likely at risk of terrorist financing. It is also not clear in the Report if other sources of information were considered like that from FIC, tax authorities and other LEAs. Zambia has identified the nature of threats posed by terrorist entities to the NPOs which are at risk. The threats are contained in the "Terrorist Financing Risk Assessment of NPOs. The threats includes; the existence of immigrants and settlers from jurisdictions deemed to pose a risk and TF activities such as the Horn of Africa, Middle East and Southern Africa; the existence of suspected terrorist cell groups; mushrooming of religious extremist groups; Mushrooming of foreign companies from TF prone countries; Cyber-crime-ATM fraud, Human trafficking, Drug trafficking; Mushrooming of criminal gangs; Existence of unemployed youths who are susceptible to radicalization and recruitment; Possible existence of sympathizers to TF or organizations; and Existence of NPOs involved in criminal activities (Cash Smuggling). However, it is not clear in the TF risk Assessment of NPOs whether Zambia has identified how the terrorist actors abuse or can abuse those NPOs. Zambia has reviewed the laws and regulations of its NPO sector. The NGO Act 2009 was already considered by the assessors. However, it was amended in 2020 and S. 7 of the NGO (Amendment) Act 2020 provides that the NGO Reg Board in consultation with the FIC, may implement measures for monitoring the risk of the use of NGOs in terrorism financing, proliferation financing or financing of any other related serious offence as prescribed. However, S.58 (2) of FIC 2010 only grants the Minister powers to make Regulations and the powers specified in the section does not support what the authorities submitted. Further, Zambia carried out its 1st NRA, which included a component on TF risk for NPOs. In De-

cember 2020, it carried out a sectoral risk assessment which assessed the NPO TF risk as medium. The NGO (Amendment) Act, 2020 was also amended to include monitoring TF risks of NPOs. Zambia has taken four years to reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. **Therefore c8.1 is Partly met.**

22. The assessors determined that Zambia had clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs. These include prohibition to operate an unregistered NPO, both domestic and international (s. 10), an NPO can only operate in Zambia subject to having a certificate of registration issued by the Registrar of NPOs (s. 13); there is set criteria for rejecting an application for registration by the Board (s. 15); set procedures for renewal of the registration certificate after every five years (s. 16); the Registrar has to maintain a Register where all particulars and all other information relating to the NPOs shall be registered and the Register is open for inspection by any person upon payment of a prescribed fee (s. 20), etc. These policies still subsist as they are in law. The deficiency that was found was that the law did not include its application to TF and S.7 of the NGO (Amendment) Act 2020 addresses the deficiency. The information provided by the authorities shows that Zambia is taking steps to increase awareness among NGOs and Donor Community. However, as it stands it appears the authorities have held one awareness session (June 2021) with the representatives of the donor community hence it can reasonably be concluded that this deficiency is still outstanding as the awareness activities have to be on continuous basis. Further, no information has been submitted to show that the country is continuously holding outreach and awareness sessions. It is also not clear whether the donors invited represented each and every donor who actually works with the NPOs at risk of TF abuse in Zambia. There is no awareness program that Zambia is following let alone on a consistent basis in order for reviewers to conclude that the donor community has been made aware of the requirements of Recommendation 8. No documentation has been provided (NPO Sector Guidelines) to support the assertion that best practices have been developed. It is clear therefore that the country has not developed any best practices for the NPO sector. There are no guidelines and other measures that have been issued to encourage the NPOs to conduct their transactions through regulated channels. **Therefore c.8.2 is partly met.**

23. As earlier indicated, S. 7 of the NGO (Amendment) Act, 2020 empowers the NGO Board, in consultation with the FIC to implement measures for monitoring the risk of the use of NPOs in terrorism financing, proliferation financing or financing of any other related serious offence. However, other than the law empowering the Registrar to apply risk-based approach to monitoring and the authorities having carried out risk assessment of NPOs, there are no mechanisms to risk rate and profile the individual NPOs in order to allow the authorities to apply a risk-based supervision and monitoring of the NPOs that fall under the FATF definition. There is no indication that either offsite or on-

site inspections are being done and if they do, whether they are risk based. There is no categorization of the NPOs at risk of abuse into high, medium and low risk. **Therefore c.8.3 is not met.**

24. In both the NRA (2016) and the TF risk Assessment (2020) it was found that TF risk for NPOs was medium. However, the other deficiencies that were noted in the MER remain outstanding. No programme has been submitted to show that appropriate authorities as defined in the Recommendations are monitoring NGOs compliance with the requirements of this Recommendation, including the risk-based measures being applied to them under c8.3. There is no monitoring mechanism in place to ensure that NPOs implement the targeted measures in place to protect them from the TF abuse. The monitoring tool that has been submitted is a Monitoring Form that the Registrar uses to collect basic information about the NPO. Additionally, the MER found existence of unregistered NPOs in Zambia and this was not disputed by the authorities during discussions of the MER. Therefore, the authorities cannot turnaround now and deny the findings of the MER without indicating the measures taken to address such findings. The onus remains on the country to show how the deficiency has been addressed. Offences and penalties for transgressing representatives of NPOs and NPOs are provided in terms of s. 36 of the NGO Act (Already considered in the MER). The following offences are set out in that section: (1) a person who (a) makes, signs, or utters false statement or declaration in support of an application for registration or exemption; (b) On being required to do so (under S.26) fails or refuses to produce to the Registrar a certificate, constitution, activity reports or relevant information for the purposes of the NGO Act (c) knowingly or recklessly gives false information for the purpose of obtaining a certificate or other requirements commits an offence. Penalties for the above violations are provided in s. 36(2) and (3) of the Act and they provide as follows: (2) any person convicted of an offence under s. 36 shall be disqualified from holding office in any NGO for a period of three years; (3) On conviction of an Officer of an NGO under section 26, the NGO Registration Board may de-register that organization. Further, in terms of s. 17 of the NGO Act, the NGO Board may suspend or cancel the NGO certificate for various offences committed by the NGO. The sanctions, however, are not specifically linked to offences relating to TF. **Therefore c.8.4 remain partly met.**

25. Although the assessors did not specifically identify any deficiency as regards sub criterion c.8.5, it is clear that the Department of Registrar for NGOs has not shown collaboration with all categories of appropriate authorities as defined in the Glossary. Appropriate authorities have been defined as “competent authorities, including regulators, tax authorities, FIUs, law enforcement, intelligence authorities, accrediting institutions, and potentially self-regulatory organisations in some jurisdictions”. Other than the MOU with FIC, the other MOU that exists is with NATC. All other categories of appropriate authorities are left out. Similar deficiencies that apply to Rec 31 will also be applicable to this sub-criterion c.8.5b as they have not been addressed since MER adop-

tion. These deficiencies include; the law does not empower the DEC, ZPS, and ZSIS, all being competent authorities that investigate offences of ML/FT to obtain evidence or information for prosecution or investigation of ML/TF by, if necessary, compelling production of records by FIs, DNFBPs, legal or natural persons; conduct searches of persons and premises; taking witness statements; or seizing and obtaining evidence. Also that there are no provisions or other mechanisms available to enable LEAs to carry out controlled delivery and that no all the listed LEAs have the legal mandate to conduct undercover operations, or conduct controlled delivery operations, as recommended under this criterion. The deficiency under this sub-criterion was that the powers that existed and available to the Department of Registrar for NGOs was not applicable to TF. S.12 of the ATNPA, provides powers to a Terrorism Officer to access wide range of information when conducting investigations including access to premises, books of accounts, records kept by the person. S. 12 (6) provides that all books, records and documents required to be kept by a person under any law shall be open to inspection at all reasonable times by an anti-terrorism officer or an authorised officer while S.12 (5) authorises terrorism officer to apply to Court for a Search Warrant. The Terrorism Officer may also seize all articles of evidence. Although the Department of the Registrar for NGOs has signed MOU with NATC, it has not been made clear how the MOU has addressed the deficiency. The MOU has not been provided. Further, the assessors recommended amending the NGO Act to address the deficiency noted in c8.5(d). Such amendments have not been made and the authorities have not shown if there is any other law that has addressed the deficiency. **Therefore c.8.5 remains mostly met.**

Weighing and Conclusion

26. In the MER Zambia met requirements of c.8.6 and mostly met c.8.4 and c.8.5. However, Zambia has not and addressed c.8.3 and has not fully addressed the requirements of c.8.1, and c.8.2, as they remain partly met. The deficiencies include; that the risk assessment does not show how the identified threats are linked to the NPOs at risk of TF abuse. Also, Zambia has not identified how the terrorist actors abuse those NPOs at risk. There is no risk based approach to inspection and supervision. No categorization of the NPOs at risk into high, medium and low risk. There is no monitoring mechanism to ensure that NPOs implement targeted measures in place to protect them from the TF abuse. The monitoring tool that was submitted is a Monitoring Form that the Registrar uses to collect basic information about the NPOs. It does not show how such information is applied to help in monitoring. Further, it is unclear if other sources of information were considered like FIU, tax authorities and other law enforcement agencies when coming up with the sub-set that can be abused for TF purposes. Deficiencies on c.8.4 and c.8.5, noted by assessors during MER, though minor, are still outstanding. Overall, the deficiencies are considered moderate hence, R.8 should not be re-rated.

Recommendation 10 - Customer Due Diligence (CDD) (Originally rated PC- Upgraded to LC)

27. Under its 2nd round MER, Zambia was rated partially compliant with the requirements of this recommendation. The deficiencies includes: transactions limits for wire transfers above the threshold of \$1,000; there is no requirement to understand the intended purpose and nature of each business relationship; there is no provision in the law which requires FIs to scrutinise transactions undertaken throughout the course of that relationship; also no provision to identify and verify customers that are legal arrangements through the powers that regulate and bind the legal person; and the address of the registered office and, if different, a principal place of business; there is no specific requirement for FIs to identify and verify the customer or beneficial owner of life insurance and other related investment insurance policies; no legal provision requiring FIs to consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether or not to apply enhanced CDD measures. In addition, there is no legal obligation for reporting entities to take enhanced measures if it determines that the beneficiary who is a legal person or legal arrangement presents a higher risk; there is no specific provision for remediation for existing customers on the basis of materiality; there is no obligation for FIs to apply enhanced measures where the ML/TF risks are higher; there is no provision for application of simplified measures which are commensurate with the lower risk factors and its inapplicability in circumstances where there is suspicion of ML/TF or specific higher risk scenarios; and no specific legal provision permitting FIs not to pursue the CDD process, and instead to file an STR where they form a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer.

28. Zambia has not yet addressed the deficiency under c.10.2(c), that is, minimum threshold of \$/€1000. **Therefore c.10.2 remain mostly met.** S.16 (6) (a) of the FIC (Amendment) Act, 2020 provides that a reporting entity shall, as part of its obligations under 16 (1) and (4) of the Act, understand the purpose and intended nature of the business relationship. **Therefore c.10.6 is met.**

29. The deficiency that was noted by the assessors has not been fully addressed. under S.24 (a) of the FIC (amendment) Act, 2020 as read with S.19(4) provides that a reporting entity shall exercise ongoing due diligence using a risk based approach with respect to a business relationship with a customer which includes (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the financial service provider's knowledge of the customer, their business and risk profile, including where necessary, the source of funds. The risk-based approach prescribed in S.24(a) of the FIC Act as amended in 2020 when read

together with s.19(4) of the FIC Act as amended in 2020 applies both to determining whether to conduct ongoing due diligence of the business relationship and to determine the extent of the due diligence measures that should be taken. The application of the risk-based approach to determining whether to conduct ongoing due diligence of the business relationship unduly restricts the scope of the ongoing due diligence conducted by FI as required under criterion 10.7. **Therefore c.10.7 is partly met.** The deficiency under this criterion was that the customer identification did not extend to legal arrangements. S.16 (4) (a) of the FIC (Amendment) Act, 2020 provides that a reporting entity shall, with respect to each customer, obtain and verify, as part of its obligation under subsection (1), (c) for legal arrangements, the name, legal form and proof of existence, the address of the registered office or the principal place of business, the powers that regulate and bind the arrangement, the identity of the settlor, the trustee, the protector, where applicable, the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust, including through a chain of control or ownership, and any other parties with authority to manage, vary or otherwise control the arrangement. **Therefore c.10.9 is met.**

30. *The FIC Act was amended in 2020 to require FIs to identify and verify the identity of beneficiaries of life insurance and other related investment insurance policies both (a) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements, by taking the name of the person(S. 16 (7)(a) FIC (Amendment) Act); and (b) for a beneficiary that is designated by characteristics or by class or by other means (S. 16 (7) (b) FIC (Amendment) Act). The FIC Act provides that this verification must take place at the time of the payout for beneficiaries designated by characteristics, by class or by other means (S. 16 (7) (b) (i) FIC Act. However, for a beneficiary identified as specifically named natural or legal person or legal arrangement, there is no requirement in the legislation to conduct the verification at the moment of the pay-out. Therefore c.10.12 is Partly met.* S. 16(7) (b) (ii & iii) of the FIC (amendment) Act, 2020 partly meet the requirements of criterion c.10.13. It provides that an insurance company shall include the beneficiary of a life insurance policy as a relevant risk factor in determining whether on going due diligence is applicable and (iii) if the insurance company so determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it is required to take enhanced measures which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout. However, both provisions only apply when beneficiaries are designated by characteristics, by class or by other means under S. 16(7) (b) FIC Act and not beneficiaries who are specifically named natural or legal persons or legal arrangements under S. 16 (7) (a) FIC Act. This is because (ii) and (iii) are sub-paragraphs to subsection 16(7)(b). **Therefore c.10.13 is partly met.**

31. S. 16 (8) provides that a reporting entity is required to apply the identification and verification requirements stipulated under subsections (1) and (4) to customers and beneficial owners with which it has a business relationship on the basis of materiality and risk, at appropriate times, depending on the type and nature of the customer, business relationship, product or transactions, or as may otherwise be prescribed. **Therefore c.10.16 is met.** S.19 (4) of the FIC (Amendment) Act states that where a reporting entity identifies customers whose activities may

pose a high risk of ML/TF/PF or any other serious offence relating to ML/TF/PF, the reporting entity will have to exercise enhanced identification, verification and ongoing due diligence procedures with respect to such customers while S.19 (1) states that a reporting entity shall identify, assess, and understand the money laundering and financing of terrorism or proliferation or any other serious offence relating to money laundering, financing of terrorism or proliferation risks with regard to its products, services, delivery channels and its customers, geographical locations and country risk. **Therefore c.10.17 is met.**

32. S.19 (5) of the FIC (Amendment) Act requires that where the reporting entity identifies lower risks in relation to its products, services, delivery channels and its customers or geographical locations, the reporting entity may allow simplified measures for customer due diligence. However, there is no requirement that the lower risks should be commensurate with the country's risks. There is also no requirement that the simplified measures should be commensurate with the lower risk factors, furthermore there is no requirement that the simplified measures will not apply whenever there is suspicion of ML/TF, or specific higher risk scenarios. Both S.19 (1) & (2) of the FIC (Amendment) Act 2020 and Reg 8 and 9 of the FIC General Regulations does not address the deficiencies. **Therefore c.10.18 remain partly met.** S. 16 (10) of the FIC (Amendment) Act 2020 provides that where a reporting entity forms a suspicion of money laundering or financing of terrorism or proliferation or any other serious offence and it reasonably believes that conducting customer identification and verification requirements shall tip off the customer, it shall not conduct customer identification and verification, and instead shall file a suspicious transaction report under this Act.. **Therefore c.10.20 is met.**

Weighing and Conclusion

33. Zambia has fully addressed the requirements of c10.6, , c10.9, c10.13, c10.16, c10.17 and c.10.20. It has partly addressed c10.7, c.10.12, and c.10.13. However, it has not addressed the requirements of c.10.2 (c), and c10.18 which remains MM and PM respectively. The outstanding deficiencies include that; there is no requirement that the lower risks should be commensurate with the country's risks. Further, there is also no requirement that the simplified measures should be commensurate with the lower risk factors, and that there is no requirement that the simplified measures will not apply whenever there is suspicion of ML/TF, or specific higher risk scenarios. S.19 (1) & (2) of the FIC (Amendment) Act 2020 and Reg 8 and 9 of the FIC General Regulations that the authorities submitted does not seem to address the deficiencies identified. *New provisions on CDD for beneficiaries of life insurance policies are not fully aligned with the FATF standards.* These deficiencies are considered minor therefore R.10 be upgraded from PC to LC.

Recommendation 16 - Wire Transfers (Originally rated PC- No Re-Rating)

34. Under its 2nd round MER, Zambia was rated partially compliant with the requirements of this recommendation. The deficiencies includes: thresholds set under Regulation 6 of the FIC (Prescribed Threshold) Regulations, 2016, are higher than USD/EUR 1,000. Further, the law does not provide for requirements for FIs to obtain required beneficiary information; there is no requirements for ordering FIs to include full beneficiary information in cross-border batch files;

also there is no specific legal provisions that permit compliance with criterions 16.3-4; no provision requiring the ordering FI to make the information available within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. There is no provision that explicitly enables LEAs to be able to compel immediate production of such information related to wire transfers; no requirement to maintain all beneficiary information collected in accordance with R.11; also no specific obligation for intermediary FIs to keep records of all the information received from the ordering FI or another intermediary FIs where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer; no specific legal requirement for FIs to apply a risk-based approach to wire transfer transactions under any circumstances; no explicit legal requirement to have measures in place to monitor transactions in order to identify such wire transfer transactions which lacks originator or beneficiary information; no explicit requirement for beneficiary FIs to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and the appropriate follow-up action; and there is no specific legal requirements for MTVS providers to review information from ordering and beneficiary side of the wire transfer and to decide whether to file an STR or to ensure that an STR is filed in any country affected and transaction information made available to the FIU.

35. S. 26 (1) (b) and (c) of the FIC (Amendment) Act 2020 provides that where a financial service provider undertaking a wire transfer equal to, or above a prescribed threshold he should identify and verify the identity of the originator. He should also obtain and maintain information on the identity of the beneficiary, obtain and maintain the account number of the originator and beneficiary, or in the absence of an account number, a unique reference number. Further, the FI should obtain and maintain the originator's address or, in the absence of address, the national identity number, or date and place of birth and should include the above stated information in the message or payment form accompanying the transfer. However, Regulation 6 of the FIC (Prescribed Threshold) Regulations, 2016 which prescribes the minimum threshold to be \$10000 for legal persons and \$5000 for natural persons has not been revised to meet the requirements of c16.1. It therefore means that one of the deficiencies that was identified in the MER is outstanding. **Therefore c.16.1 is partly met.** The requirements of c.16.2 are met under S.26 (4) of the FIC (Amendment) Act 2020. The law provides that where several individual cross border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file must contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country, and the financial service provider shall include the originator's account number or unique transaction reference number. **Therefore c.16.2 is met.**

36. In terms of the 2nd MER under c16.1(de minimis), the assessors found that Regulation 6 of the Prescribed Threshold of 2016, Zambia applies a threshold that is above the minimum \$/€1000. As a result, the deficiency that was noted in the MER has not been addressed, ie, there is no legal provision meeting requirements of 16.3. **Therefore c.16.3 is not met.** The same analysis on c.16.3 will apply on c.16.4. **Therefore c.16.4 is not met.**

37. Under S.26 (5) (a), (b), and (c) of the FIC (Amended) Act 2020, it is a requirement that where information accompanying domestic wire transfer can be made available to a beneficiary

financial service provider and appropriate authorities by other means, the ordering financial service provider must include the account number, or a unique transaction reference number, except that this number or unique transaction reference number will permit the transaction to be traced back to the originator or the beneficiary. Where required, the ordering financial service provider should make the information available within three business days of receiving a request either from a beneficiary financial service provider, FIC or any supervisory authority. It is also provided in the law that, when required, law enforcement agencies must be able to compel immediate production of such information. **Therefore c.16.6 is met.** Since the ordering financial institutions are now required to obtain beneficiary information (see section 26.1 FIC Act under c. 16.1), the record keeping obligation under Section 22 FIC Act extends to beneficiary information. **Therefore c.16.7 is met.**

38. Since the ordering financial institutions are now required to obtain beneficiary information (see section 26.1 FIC (Amended) Act, 2020 under c. 16.1), ordering FIs are obligated to decline processing the transfer on the basis that a client has failed to obtain any missing information pursuant to S.26 (14) of the FIC Act, 2020, which now extend to beneficiary information.. **Therefore c.16.8 is met.** S.26 (3) requires FIs who act as intermediary in a chain of payments, to re-transmit all the information received with the wire transfer that would help to identify the originator and the beneficiary of the transfer. This includes all originator and beneficiary information obtained under S.26 (1) (b) and (c). **Therefore c.16.9 is met.** Also, S. 26 (6) of the FIC Act was amended in 2020 to expressly provides that where the required originator or beneficiary information accompanying a cross border wire transfer does not remain with a related domestic wire transfer, the intermediary financial service provider must keep a record of all the information received from the ordering financial service provider or another intermediary financial service provider for at least ten years, The reason for failure to remain with the required information is wide enough to cover technical limitations. **Therefore c.16.10 is met.** S.26 (7) (a) and (b) FIC (Amendment) Act 2020 provides that, among other things, an intermediary FIs must develop and implement risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information and for making appropriate follow-up action. **Therefore c.16.12 is met.** Further, beneficiary FIs are required to take reasonable measures, including, where feasible, post event monitoring or real time monitoring to identify cross border wire transfers that lack required originator information or required beneficiary information S.26 (8) of the FIC (Amendment) Act, 2020. **Therefore c.16.13 is met.**

39. Beneficiary financial institutions are not required to verify the identity of the beneficiary for cross-border wire transfers above the prescribed threshold. The deficiency on prescribed threshold identified in c.16.1 will also affect the rating of this criterion. **Therefore c.16.14 remains partly met.** S.26 (9) (a) and (b) of the FIC Act, as amended in 2020 require a beneficiary financial service provider to develop and implement risk based policies and procedures for determining when to execute, reject, or suspend a

wire transfer lacking required originator or required beneficiary information or take appropriate follow up action. **Therefore c.16.15 is met.** Also, MVTs are required to comply with requirements of R16. The outstanding deficiencies under c.16.1-16.15 will also apply to MVTs providers. **Therefore c.16.16 is partly met.** S.26 (10) (a) and (b) of the FIC (Amendment) Act 2020 requires MVTs that controls both the ordering and the beneficiary side of a wire transfer to take into account all the information from both the ordering and beneficiary sides in order to determine whether the wire transfer has to be reported. Further the MVTs should submit a suspicious transaction report in any country affected by the suspicious wire transfer and should make relevant transaction information available to the FIC. **Therefore c.16.17 is met.**

Weighing and Conclusion

40. **Although the FIC Act was amended to require FIs to include accurate originator information on electronic funds transfers, the *de minimis* thresholds set under Regulation 6 of the FIC (Prescribed Threshold) Regulations, 2016, remain unchanged and are above USD/EUR 1,000 (c 16.1).** Having a higher threshold impacts heavily on the rest of the requirements of R16 **and notably has a cascading effect on c. 16.3 and 16.4.** Further, the deficiencies in this recommendation will impact MVTs. Therefore, R.16 should not be re-rated.

Recommendation 22 - Designated Non-Financial Businesses and Professions (DNFBPs): Customer Due Diligence (Originally rated PC- Upgraded to LC)

41. Under its 2nd round MER, Zambia was rated partially compliant with the requirements of this recommendation. The main deficiency was that deficiencies identified in respect of CDD (R.10), PEPs (R.12) and third party (R.17) also apply.

42. Requirements of c.22.1 were largely affected by R.10 deficiencies. Since most of those deficiencies in R.10, have been addressed (See R.10 analysis above), it follows that **c.22.1 will be mostly met.** Also c.22.4 was affected by the deficiencies that were noted in c.15.2 in the 2nd MER. Such deficiencies have been addressed (See analysis of c.15.2 below), it therefore follows that **c.22.4 is met.** DNFBPs are required to comply with the same third-party reliance requirements as FIs under the FIC Act. Zambia has amended the FIC in 2020 to address the deficiency that was noted in R.17. Despite not applying for re-rating of R.17 (Due to ESAAMLG ME Procedures), the deficiency has been addressed. **Therefore c.22.5 is met.**

Weighing and Conclusion

43. Zambia has addressed c22.4 and c22.5. The ratings of c22.2 (MM) and 22.3(MM) remain the same as there are no changes since the adoption of the MER. However, minor deficiencies still exist on c22.1, c.22.2 and c.22.3 as was established by the assessors

in the MER. Therefore, R.22 be upgraded from Partially Compliant to Largely Compliant.

3.2. Progress on Recommendations which have changed since the adoption of MER

3.2.1 Recommendation 2 – National Co-operation and Co-ordination (Originally rated LC – Downgraded to PC)

44. Under its Second Round MER, Zambia was rated Largely Compliant with the requirements of this Recommendation. The only deficiency was that there were no national AML/CFT policies. Zambia is being re-rated on this Recommendation due to the changes that were made to the FATF Standards after Zambia's MER was adopted.

45. Zambia has no national AML/CFT policy and strategy. The authorities indicate that they have a draft policy which is yet to be approved by the Cabinet. However, the position is not different from what assessors established onsite. The authorities further indicate that they have been guided by Action Plan which was developed after completion of the NRA and based on the Action Plan they state that the Plan has enabled them to prioritise areas of focus. However, the requirement remains that the country should have AML/CFT national policies which are informed by the risks and are regularly reviewed. **Therefore c.2.1 remains not met.**

46. There is no cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. S.53 of the Data Protection Act, 2021 prohibits unauthorised disclosure of personal data. S. 53 (4) provides an exception that (4) a data controller or data processor shall disclose, without consent of the data subject, personal data where it is necessary to prevent—(a) a reasonable threat to national security, defence or public order; or, (b) investigate or prosecute a cognisable offence and any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years or to both. Although there is a law in place, S. 1 of the Data Protection Act provides that it shall come into operation on the date appointed by the Minister by statutory instrument. The Statutory Instrument has not been submitted which means the law is not yet in force. **Therefore 2.5 is not met.**

Weighing and Conclusion

47. Zambia has taken some actions to address the outstanding deficiencies identified in the MER. However, the deficiencies remain outstanding. The draft National AML/CFT

policy and strategy **developed by the authorities at the time of the MER is still in a draft form.** Also, there are no cooperation and coordination between relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules. Overall, the outstanding shortcomings are considered moderate hence the rating of R.2 be downgraded from Largely Compliant to Partially Compliant.

3.2.2 Recommendation 15 – New Technologies (Originally rated PC – No Re-Rating)

48. Under its Second Round MER, Zambia was rated Partially Compliant with the requirements of this Recommendation. The major deficiency was that there was no specific legal provision that requires FIs to undertake the risk assessments prior to launch or use of such products, practices, technologies and to take appropriate measures to manage and mitigate the risks. Zambia is being re-rated on this Recommendation due to the introduction of c.15.3-15.11 that were made to the FATF Standards after Zambia's MER was adopted.

49. S.19(3) (a) of the FIC (Amendment) Act 2020 requires that a reporting entity, prior to launching or using a new product, new business practices, including a new delivery mechanism, and the use of a new or developing technology for both new and pre-existing products, identify, assess, manage and mitigate the risks that may arise in relation to the development and use of the products, practices and technologies. **Therefore c.15.2 is met.**

50. VASPs have been designated as reporting entities under S.2 [definitions section] of the FIC (Amendment) Act, 2020. Also S.2 of the FIC Act as amended in 2020 has defined Virtual Asset Service Providers in line with the FATF definition. S.19 (1) requires a reporting entity to identify, assess, and understand the ML/TF/PF or any other serious offence relating to ML/TF/PF risks with regard to its products, services, delivery channels and its customers, geographical locations and country risk. However, Zambia has not identified and assessed the ML/TF risks emerging from VA and VASPs activities. As a result, there is no risk-based approach to ensure that measures to prevent or mitigate ML/TF are commensurate with the risks identified. **Therefore c.15.3 is not met.** There are no requirements for VASPs to be licensed or registered. Further, no action has been taken to identify natural or legal persons that carry out VASP activities without the requisite license or registration and apply appropriate sanctions to them. Therefore, requirements of **c.15.4 and c.15.5 are not met.**

51. S.5 (3) (j) of the FIC (Amendment) Act 2020 authorises the FIC to supervise and enforce compliance with the FIC Act by reporting entities that are (i) not regulated or supervised by a supervisory authority in terms of the FIC Act or any other written law; or (ii) regulated or supervised by a supervisory authority in terms of the FIC Act or any other written law, if that supervisory authority fails or neglects to enforce compliance. FIC has adequate powers to supervise or ensure compliance by VASPs with requirements to combat ML/TF including authority to conduct inspections, compel production of information and impose a range of disciplinary and financial sanctions. Sections 5 (2) (h) (j), 10, 11A, 11B, 37A, 37B, 37C, 49B (Sanctions), 49C (Sanctions) and 56 of the FIC Act 2010 as amended in 2016 and 2020. However, Zambia has not yet identified natural persons or legal persons that carry out VASPs. It is also not submitted if there are systems for ensuring VAPSS compliance with national AML/CFT requirements. Zambia has not demonstrated that beyond the reporting obligation and the residual power of the FIC to supervise reporting entities under S.5 (3) (j) VASPS are or can be subject to adequate regulation and risk-based supervision or monitoring by a competent authority, including systems for ensuring their compliance with AML/CFT requirements in accordance with Recommendations 26 and 27 and in any case the deficiencies that exist under R.26 will apply to this criterion. **Therefore c.15.6 is partly met.**

52. There are no guidelines that have been established and no feedback to assist VASPs in applying measures to combat ML/TF, and in detecting and reporting suspicious transactions. **Therefore c.15.7 is not met.** VASPs are subject to various sanctions be it civil, criminal, and administrative under the FIC Act as amended. Part IV of the Act provides for offences and penalties while S.49B provides for a compounding penalty and 49C provides for a range of administrative sanctions. S.52 of the FIC Act 2010 applies criminal sanctions to a body cooperate or unincorporated. It further states that directors or managers shall be liable, upon conviction, as if the director of manager had personally committed the offence unless he or she proves that the acts were done without knowledge, consent or connivance. However, there is no similar provision applicable in respect of civil and administrative sanctions to the directors or senior management. The sanctions appear proportionate and dissuasive. Further, the same deficiencies that were noted under recommendation 35 would apply to this criterion. **Therefore c.15.8 is partly met.** VASPs are reporting entities and therefore required to comply with the requirements of Recommendations 10 to 21. The deficiencies noted in those recommendations would also affect this criterion. It is also not clear if S.26 of the

FIC (Amendment) Act. 2020 on obligations of wire transfers would apply to VASPs as it is not provided if VASPs would be regarded as FI. Also, the threshold to conduct CDD under c10.2 has not been addressed, that is, \$10000 for legal persons and \$5000 for natural persons. **Therefore c.15.9 is partly met.**

53. The ATNPA has referred to FIC Act for definition of a Reporting Entity. As stated earlier, the FIC Act has defined reporting entity to include VASPs. Therefore, the communication mechanisms, reporting obligations and monitoring referred to in criteria 6.5 (d), (e), (g) and 7.2 (d), (e), 7.3 and 7.4 (d) will apply. However, the deficiencies under Recommendations 6 and 7 will apply. **Therefore c.15.10 is partly met.** Under the mutual legal assistance and extradition provisions, Zambia can rapidly provide the widest possible range of international cooperation in relation to money laundering and predicate offences on the basis set out in Recommendations 37 to 39. Zambia may provide the widest possible range of international cooperation in relation to money laundering, predicate offences, and terrorist financing relating to virtual assets, on the basis set out in Recommendation R.40. FIC is the default supervisor of VASPs therefore, exchange of information on VASPs between Zambian supervisors and their foreign counterparts can take place. However, the deficiencies in the MER on R37-40 will impact Zambia's ability to provide widest range of international cooperation. **Therefore c.15.11 is Mostly met.**

Weighing and Conclusion

54. Zambia has addressed some of the requirements of R.15. It has fully addressed deficiencies on c.15. 2. It has mostly addressed c.15.11. It has partly addressed c.15.6, c.15.8, c.15.9 and c.15.10). It has not addressed requirements of c15.3, c.15.4, c.15. 5 and c.15.7. The outstanding deficiencies are; Zambia has not identified and assessed the ML/TF risks emerging from VA and VASPs activities. As a result, there is no risk-based approach to ensure that measures to prevent or mitigate ML/TF are commensurate with the risks identified. There are no requirements for VASPs to be licensed or registered. Further, no action has been taken to identify natural or legal persons that carry out VASP activities without the requisite license or registration and apply appropriate sanctions to them. Zambia has not yet identified natural persons or legal persons that carry out VASPs. It is also not submitted if there are systems for ensuring VAPSs compliance with national AML/CFT requirements. Zambia has not demonstrated that beyond the reporting obligation and the residual power of the FIC to supervise reporting entities under S.5 (3) (j) VASPS are or can be subject to adequate regulation and risk-based supervision or monitoring by a competent authority, including systems for ensuring their compliance with AML/CFT requirements in accordance with Recommendations 26 and

27 and in any case the deficiencies that exist under R.26 will apply to this criterion. The outstanding deficiencies are considered moderate therefore R.15 should not be re-rated.

3.2.3 Recommendation 21 – Tipping-off and Confidentiality (Originally rated C – To remain C)

55. Under its Second Round MER, Zambia was rated Compliant with the requirements of this Recommendation. It is being re-rated on this Recommendation due to the changes on c.21.2 that were made to the FATF Standards after Zambia’s MER was adopted.

56. S.33 (1) of the FIC Act prohibits FIs or their directors, partners, officers, principals or employees from tipping off their customers or a third party that an STR or any other information concerning suspected ML/TF or any other serious offence shall be, is being or has been submitted to the FIC or that a ML or TF or any other serious offence investigation is being carried out. There is no provision in the law which intend to inhibit or prohibit information sharing within financial groups as required by Recommendation 18. Therefore 21.2 is met.

Weighing and Conclusion

57. Zambia has addressed the new requirements under c.21.2. Therefore, the rating of R.21 remains Compliant.

III. CONCLUSION

58. Zambia has made progress in addressing some of the technical compliance deficiencies identified in its MER. The Task Force considered information provided in support of the request for re-rating of Recommendations 10, and 22 (initially rated PC) and re-rated to LC.

59. Zambia has also made some minor progress in addressing technical compliance deficiencies of Recommendation 7 (Initially rated NC) and re-rated to PC.

60. Although some progress has been made on Recommendations 8, and 16 (initially rated PC), it is not sufficient to justify an upgrade and therefore should not be re-rated due to the moderate deficiencies that still exists.

61. On Recommendation 5 (initially rated LC) which was being re-rated due to changes to the law, Reviewers recommend that it should be downgraded to PC. There are moderate deficiencies that have been noted.

62. On Recommendations that are being re rated due to the changes made to the FATF Standards, it is recommended that R.2 (originally rated LC) should be downgraded to PC. The new criterion that was added has made the deficiencies to be moderate. R.15 (initially rated PC should not be re-rated due to the moderate deficiencies caused by the changes. R.21 (Initially rated C) to remain C.

63. Considering overall progress made by Zambia since the adoption of its MER, its technical compliance with the FATF Recommendations has been revised as shown in Table 4.1 below.

Table 4.1 Technical Compliance Re-rating, April 2022

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

64. Zambia will remain in enhanced follow-up given outstanding deficiencies in other Recommendations as well as in the Immediate Outcomes.

**ESAAMLG Secretariat
April 2022**