



REPUBLIC OF KENYA



**NATIONAL RISK ASSESSMENT ON MONEY
LAUNDERING AND TERRORISM
FINANCING OF LEGAL PERSONS AND
LEGAL ARRANGEMENTS - KENYA**

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ACRONYMS & ABBREVIATIONS

ACA	Anti- Counterfeit Authority
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism
ARA	Assets Recovery Agency
ARINEA	Asset Recovery Interagency Network of Eastern Africa
ARINSA	Asset Recovery Interagency Network of Southern Africa
ATPU	Anti - Terrorism Police Unit
BO	Beneficial Ownership
BRS	Business Registration Service
BVI	British Virgin Islands
CAACC	Commonwealth Africa Anti-corruption Centre
CBK	Central Bank of Kenya
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CLGs	Companies Limited by Guarantee
DCI	Directorate of Criminal Investigations
DNFBPs	Designated Non-Financial Businesses and Professions
DT	Deposit Taking
EAC	East African Community
EACC	Ethics and Anti-Corruption Commission
EDD	Enhanced Due Diligence
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force
FC	Foreign Company
FinTech	Financial Technology
FIU	Financial Investigations Unit

FRC	Financial Reporting Centre
FSRBs	Financial Action Task Force-Style Regional Bodies
ICPAK	Institute of Certified Public Accountants of Kenya
ICS	Institute of Certified Secretaries
IPRS	Integrated Population Registration System
IRA	Insurance Regulatory Authority
KBA	Kenya Bankers Association
KEPSA	Kenya Private Sector Alliance
KES	Kenya Shilling
KRA	Kenya Revenue Authority
KSHS	Kenya Shilling
KYC	Know Your Customer
LEAs	Law Enforcement Agencies
LLPs	Limited Liability Partnerships
LSK	Law Society of Kenya
MAAC	Convention on Mutual Administrative Assistance in Tax Matters
ME	Mutual Evaluation
ML	Money Laundering
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MVTS	Money Value Transfer Services
NCTC	National Counter-Terrorism Centre
NGOCB	Non-Governmental Organisations Coordination Board
NGO	Non-Governmental Organisation
NIS	National Intelligence Service
NLVI	National Land Value Index
NPS	National Police Service
NRA	National Risk Assessment
OAG & DOJ	Office of the Attorney General and the Department of Justice/State Law

Office

ODPP	Office of the Director of Public Prosecutions
PEPs	Politically Exposed Persons
PF	Proliferation Financing
PIN	Personal Identification Number
PLC	Public Limited Companies
PLC	Public Limited Companies
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act
POTA	Prevention of Terrorism Act
RBA	Retirement Benefits Authority
SAR	Suspicious Activity Report
STR	Suspicious Transaction Report
TCSPS	Trust and Company Services Providers
TF	Terrorism Financing
TFS	Targeted Financial Sanctions
UAE	United Arab Emirates
UK	United Kingdom
USA	United States of America
VAT	Value Added Tax
WB	World Bank

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Lastly, we thank the Government of Kenya for the resources availed to facilitate the exercise.

EXECUTIVE SUMMARY

Kenya's economy plays a unique role in Africa owing to the fact that it is among one of the most diverse and advanced economies in Africa. The country's economy is projected to grow by 5.5 percent in 2023 and above 6.0 percent over the medium term. This growth will be reinforced by the Government's Bottom-Up Economic Transformation Agenda geared towards economic turnaround and inclusive growth.¹ From the foregoing, it therefore positions itself as an attractive investment destination for investors. More often than not, legal persons and arrangements are used as the vehicles for investment in Kenya by these investors. It is therefore expected that Kenya needs to understand the risks that legal persons and arrangements are exposed to and in particular misuse for money laundering (ML), terrorist financing (TF) and proliferation financing (PF) vulnerability.

Kenya used the World Bank Group Legal Persons and Arrangements ML Risk Assessment Tool to undertake the risk assessment. This tool was modified to include TF Threat Assessment and to assess the entity risks for ML and TF separately. The results of this assessment will facilitate the use of a risk based approach by the country in taking steps to prevent and deter the misuse of legal persons and arrangements for ML and TF.

Chapter One provides the background, scope, highlight of the methodology used as well as the limitations encountered while undertaking the risk assessment. Chapter Two identified the legal persons and arrangements in Kenya and also highlighted those that were considered in the assessment. Chapter Three analyses the level of domestic and cross-border threat of abuse of legal structures for the purposes of ML and TF. Chapter Four identifies risk factors that are specific to Private Limited Companies (PVT), Public Limited Companies (PLC), Companies Limited by Guarantee (CLG), Unlimited Companies, Foreign Companies, Limited Liability Partnerships (LLPs) and Trusts, that may make one type of structure at risk of abuse for ML/ TF than another. Chapter Five assesses the National Vulnerability with a key focus on the Attractiveness for Non-Resident Incorporation as well as the strength of Kenya's mitigation measures.

The results of this assessment will inform the country's approach to mitigating the identified risks. Recommendation 1 of the Financial Action Task Force (FATF) requires countries to identify their ML and TF risks and take appropriate measures to mitigate the risks. Kenya has made strides in understanding its risks, having undertaken a National Risk Assessment on Money Laundering and Terrorism Financing in 2021 and sectoral risk assessments, which assessments have informed the National AML/CFT National Strategy. Similarly, the results of this assessment shall build on Kenya's understanding of its risks and inform efforts to deter the use of legal structures as a channel for crime.

¹ <https://www.treasury.go.ke/wp-content/uploads/2023/01/How-Kenya-is-preparing-for-global-economic-shocks.pdf>

CHAPTER ONE: INTRODUCTION

1.1 Background

1.1.1 Overview of the Money Laundering & Terrorist Financing Risk Assessment

Legal persons and arrangements play a critical role as drivers of economies all over the world. However, these legal structures may be abused for corruption, tax evasion, sanctions evasion, shielding assets from confiscation, environmental crime, money laundering (ML), terrorist financing (TF), proliferation financing (PF), among other crimes. Cognisant of the risks of abuse, countries are required to put measures in place to counter the risks, including ensuring that both basic and beneficial ownership information of legal persons and arrangements is adequate, accurate, up-to-date and accessible to competent authorities.

Kenya has come a long way in its fight against misuse of corporate vehicles. In 2016, the Attorney General made a commitment during the Anti-corruption Summit in London to, among other things, measures in line with the regulatory framework to establish a central register of company beneficial ownership information, and to ensure that the information is accessible to international and domestic law enforcement agencies.

Following this commitment, Kenya introduced the concept of disclosure of beneficial ownership information in 2017 by amending the Companies Act, 2015. Kenya also developed the Companies (Beneficial Ownership Information) Regulations, 2020 and operationalized the electronic beneficial ownership register in October, 2020. The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023 also introduced disclosure requirements for beneficial ownership information of Limited Liability Partnerships (LLPs). It further introduced the requirement to disclose nominee status of nominee shareholders, directors in companies or partners in LLPs.

Kenya also sought to deepen its understanding of the risk of abuse of legal structures by conducting a comprehensive ML and TF risk assessment. The results of this risk assessment has enabled Kenya to put in place appropriate mitigation measures proportionate to the identified risks.

1.1.2 Justification of the Risk Assessment

The Financial Action Task Force (FATF) is the global money laundering and terrorist financing watchdog that seeks to globally institutionalise AML/CFT/CPF measures. FATF works through a network of nine FATF Style Regional Bodies (FSRBs). Kenya is a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), which is one of the nine FSRBs. On the basis of its membership to ESAAMLG, Kenya is required to adopt and implement the FATF Standards and is periodically assessed on the level of compliance with the Standards through a peer-review process known as Mutual Evaluation.

Recommendation 1 of the FATF Standards requires countries to identify and assess its ML/TF/PF risks and, based on the understanding of the risks, apply a risk-based approach to prevent or mitigate risks. Kenya conducted a comprehensive National Risk Assessment (NRA) between 2020 and 2021 in efforts to understand its risks and from the findings, the overall ML threat for Kenya was rated **Medium**, while the TF Vulnerability was rated as **Medium Low**. The report recommends that Kenya should conduct and continuously update sectoral and institutional

risk assessments to establish the level of risk in various sectors for risk-based interventions to ML and TF threats in those sectors. This recommendation forms the primary basis of the risk assessment for legal persons and legal arrangements.

In 2021, Kenya underwent a Mutual Evaluation (ME) process which is a peer-review process aimed at assessing the level of compliance with the FATF Standards. The ME report was adopted and published in September 2022. The ME identified gaps in the country’s understanding of the ML and TF risks, including on the understanding of the risk of the abuse of legal structures, and gaps in the implementation of appropriate mitigation measures.

In efforts to deepen the country’s understanding of its risks, Kenya commenced the process of conducting ML/TF risk assessment for legal persons and arrangements in November 2022. The aim of this risk assessment was to –

- i. assess the money laundering and terrorism financing risks associated with different types of legal structures created in Kenya, and take appropriate steps to manage and mitigate the risks identified; and
- ii. assess the money laundering and terrorist financing risks to which Kenya may be exposed, associated with different types of foreign-created legal structures and take appropriate steps to manage and mitigate the risks identified.

1.2 Scope, Methodology, Limitations of the Assessment



1.2.1 Scope

This is Kenya’s first sector specific risk assessment on legal persons and arrangements. The assessment covers legal persons and arrangements in Kenya which includes; Private Limited Companies (PVT), Public Limited Companies (PLC), Companies Limited by Guarantee (CLG), Unlimited Companies, Foreign Companies, Limited Liability Partnerships (LLPs) and Trusts.

1.2.2 Methodology

Kenya used the World Bank Group Legal Persons and Legal Arrangements Risk Assessment Tool (WB Tool), with modifications to assess threat of abuse for TF. The methodology was guided by FATF Standards, the FATF Guidance on Transparency and Beneficial Ownership and the FATF Guidance on Beneficial Ownership of Legal Persons (Recommendation 24).

To undertake this assessment, a Working Group was established comprising of officers from; Financial Reporting Centre (FRC), Business Registration Service (BRS), Ministry of Lands, Public works, Housing and Urban Development (MoL), Central Bank of Kenya (CBK), Kenya Revenue Authority (KRA), Capital Markets Authority (CMA), National Intelligence Service (NIS), National Police Service (NPS), Directorate of Criminal Investigations (DCI), Ethics and Anti-Corruption Commission (EACC), Retirement Benefits Authority (RBA), Betting Control and Licensing Board (BCLB), Asset Recovery Agency (ARA), Office of the Director of Public Prosecutions (ODPP), Insurance Regulatory Authority (IRA), Office of the Attorney & Department of Justice (OAG & DOJ) and Ministry of Foreign Affairs and Diaspora Affairs (MF & DA).

Kenya had engagements with the World Bank to discuss the application of the tool in conducting the assessment. Further, Kenya has engaged other jurisdictions which have conducted risk assessment on legal persons and legal arrangements on ML and TF such as Uganda and Mauritius to exchange experiences on the assessment process.

The assessment considered qualitative and quantitative data drawn from primary and secondary sources. The data was collected through semi-structured questionnaires and secondary data collection data sheets and was obtained from both open and classified information sources, including registries, Law Enforcement Agencies, Supervisory Bodies, Financial Institutions (FIs), Designated Non-Financial Businesses and Professions (DNFBPs) including Trust and Company Services Providers (TCSPs), and civil society organisations. The information obtained was analysed using the WB Tool to establish the ML/TF threat, risks and national vulnerability on scales ranging from 0 to 1.

To the extent possible, the Working Group considered the level of involvement of complex legal structures in the analysis. However, it is noted that complexity in corporate ownership structures does not indicate the abuse of the complex structure for ML, TF or other predicate crimes. However, complex corporate structures may be used to obscure transparency which may be leveraged by persons to perpetrate crimes.

Kenya adopted the four step process provided in the WB Tool as follows:



Step 1: Mapping

This step involved the identification of the different types of legal structures that can be created in Kenya. The working group reviewed registration data, requirements for entity formation or registration, availability of basic information and beneficial ownership information, nominee and bearer shares requirements, common business operations, collection of information on the legal and regulatory framework governing legal structures on each type of domestic and foreign legal structure.

Step 2. Threat and vulnerability analysis

A. Quantitative Analysis

Data analysed in this step was collected from Law Enforcement Agencies and other government agencies, and information from private sector sources such as Financial Institutions, DNFBPs, civil society, open sources, consultations with experts and persons in academia.

The data from the law enforcement used to assess the money laundering threat was obtained from Directorate of Criminal Investigations (DCI), Asset Recovery Agency (ARA), Ethics and Anti-Corruption Commission (EACC), National Police Service (NPS), Kenya Revenue Authority (KRA), Anti-Counterfeit Authority (ACA), Financial Reporting Centre (FRC) and Office of the Director of Public Prosecutions (ODPP), among others.

The data from the law enforcement used to assess the terrorist financing threat was obtained from Directorate of Criminal Investigations (DCI), Anti-Terrorism Police Unit (ATPU), Office of the Director of Public Prosecutions (ODPP), National Police Service, Office of the Attorney General and the Department of Justice (OAG & DOJ), National Counter Terrorism Centre (NCTC), National Intelligence Service (NIS) and Financial Reporting Centre (FRC).

This step was modified to consider TF threats.

B. Qualitative Analysis

Qualitative data used to assess the ML and TF threat was collected through open-ended questionnaires and through physical engagement meetings held with public sector agencies and private sector institutions (Financial Institutions, DNFBPs, civil society). Information was also obtained from open sources, consultations with experts and persons in academia. This data was used to determine the Nature of Abuse, the common ML and TF Typologies as well as the most prominent/ sophisticated cases relating to legal persons and arrangements.

Step 3. Entity Risk Assessment

This step considered the risk factors specific to each type of legal structure available in the jurisdiction. This exercise relied on the information collected during the mapping exercise and threat assessment.

This module was modified to consider the TF threat separately from the ML threat for each entity.

Step 4. National Vulnerability Assessment

The working group assessed and analysed Kenya's attractiveness as an international formation or incorporation centre for legal persons and arrangements by non-residents. Further, the group reviewed the strength of existing mitigation measures against abuse of legal persons and arrangements.

The aim of this exercise was to assess the overall vulnerability to ML/TF abuse of legal structures; review existing national-level mitigation measures against abuse of legal structures; identify gaps and weaknesses in the jurisdiction's overall beneficial ownership framework; and identify where additional safeguards are needed - without placing undue burden on the conduct of legitimate business in the jurisdiction.

1.2.3 Limitations of the Assessment

The challenges faced during the assessment process are follows;

1. Data inconsistencies arising from lack of standard classification of data by different LEAs
2. Difficulties in retrieval of the information due to use of manual systems
3. This being the first sector specific risk assessment on the abuse of legal structures, there were some challenges experienced when onboarding the private sector players at the initial stages, particularly on the information requests.
4. This being a multi-agency initiative, allocation of financial resources was a challenge hence the working group could not meet as often as anticipated because the group had to depend on the good will of the various agencies to fund the participants.

CHAPTER TWO: MAPPING LEGAL PERSONS AND LEGAL ARRANGEMENTS IN KENYA

2.1 Types of Legal Persons and Legal Arrangements in Kenya

Kenya identified the types of legal persons and arrangements that exist in the country by reviewing the legislative frameworks governing the registration of the identified legal structures.

The following laws provide for registration of legal structures that exist in Kenya and the corresponding structures governed under the regimes.²

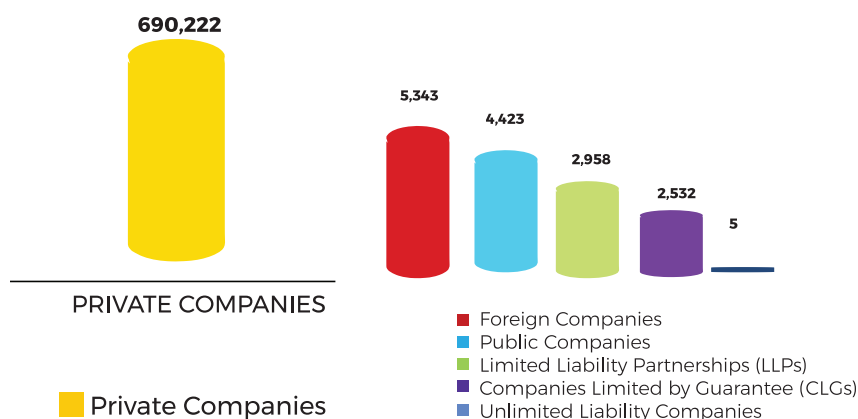
Relevant Legislation	Legal Structure
The Companies Act, 2015	<ul style="list-style-type: none"> ▶ Private Limited Companies ▶ Companies Limited by Guarantee ▶ Public Limited Companies ▶ Foreign Companies ▶ Unlimited Companies
The Limited Liability Partnerships Act, 2011	<ul style="list-style-type: none"> ▶ Limited Liability Partnerships
The Partnerships Act, 2012	<ul style="list-style-type: none"> ▶ Limited Partnerships ▶ General Partnerships
Trustees (Perpetual Succession) Act, Cap 164	<ul style="list-style-type: none"> ▶ Trusts
Registration of Documents Act, Cap 285	<ul style="list-style-type: none"> ▶ Trusts
Co-operative Societies Act, 1997	<ul style="list-style-type: none"> ▶ Cooperative societies

2.2 Legal Persons in Kenya

The FATF Standards define legal persons as any entity other than a natural person that can establish a permanent customer relationship with a financial institution or otherwise own property. This includes companies, body corporates, foundations, anstalt, partnerships, or associations and other relevantly similar entities. Legal persons have a separate legal personality and can sue and be sued, and have the ability to enter into contracts.

² The above laws are available on: <http://kenyalaw.org:8181/exist/kenyalex/index.xql>

The chart below shows the distribution of legal persons and comparison against other types of legal persons assessed in this report:



2.2.1 Private Limited Company

The primary characteristic of Private Limited Companies (PVTs) is that its articles restrict member’s right to transfer shares, limit the number of members to fifty and prohibit invitations to the public to subscribe for shares or debentures of the company. The Companies Act also indicates that a private company is not a company limited by guarantee and its certificate of incorporation states that it is a private company³.

There is no requirement to procure professional services when registering a private limited company. However, where a private limited company has paid up a nominal capital of Kshs.5,000,000/= or above, the company is required to have a company secretary⁴. Further, private companies are required to have at least one natural director⁵.

Where a private limited company is wholly owned by foreigners and the company does not have a resident director or a company secretary, it is mandated to appoint a contact person who shall be a natural person with a permanent residence in Kenya. The contact person is required to keep a copy of the record relating to directorship, shareholding, beneficial ownership, and any other information required to be kept by the company under the Act and make the copies available to competent authorities and the Registrar.

The cumulative number of private limited companies as at December 2022 was 690,222.

For the period under consideration (2018 to 2022), table 1 provides the breakdown per year.

Table 1: Number of Private Limited Companies Registered in Kenya During the Period of Assessment (2018 to 2022)

Type of legal persons	2018	2019	2020	2021	2022
Private Limited Companies	44,381	42,085	49,037	47,750	51,842

³ Companies Act, 2015, Section 9.

⁴ Companies Act, 2015, Section 243.

⁵ Companies Act, 2015, Section 129.

2.2.2 Public Limited Company

A company is considered to be a public company if its articles allow its members the right to transfer their shares in the company. Additionally, the articles of the company do not prohibit invitations to the public to subscribe for shares or debentures of the company, and its certificate of incorporation states that it is a public company⁶. Every public company is required to have at least one company secretary⁷. The cumulative number of public limited companies as at December 2022 was 4,423.

The following table shows the number of public limited companies registered in Kenya during the period of assessment (2018 to 2022).

Table 2: Number of Public Limited Companies Registered in Kenya During the Period of Assessment (2018 to 2022).

Type of legal person	2018	2019	2020	2021	2022
Public Limited Companies	66	77	103	159	89

2.2.3 Companies Limited by Guarantee

Companies limited by guarantee do not have a share capital. In addition, the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its liquidation; and its certificate of incorporation states that it is a company limited by guarantee⁸.

For registration of a company limited by guarantee, all directors and members have to undergo vetting before the company is registered. Furthermore, where a company is limited by guarantee and is wholly owned by foreigners and does not have a company secretary, the company is obligated to appoint a contact person who is a natural person with a permanent residence in Kenya. The contact person is required to keep a copy of the record relating to directorship, shareholding, beneficial ownership, and any other information required to be kept by the company under the Act and make the copies available to competent authorities and the Registrar⁹. The cumulative number of CLGs as at December 2022 was 2,532.

There were a few companies limited by guarantee registered in Kenya during the period of assessment, the following are the number of entities registered as CLGs in Kenya in this period.

Table 3: Number of CLGs Registered Between 2018 and 2022

Type of legal person	2018	2019	2020	2021	2022
Companies Limited by Guarantee	235	369	622	626	477

2.2.4 Unlimited Companies

A company is an unlimited company if there is no limit on the liability of its members, and has been issued with a certificate indicating that the liability of its members is unlimited¹⁰.

⁶ Companies Act, 2015, Section 10.

⁷ Companies Act, 2015, Section 244.

⁸ Companies Act, 2015, Section 7.

⁹ Companies Act, 2015, Section 243A.

¹⁰ Companies Act, 2015, Section 8.

There is no requirement to procure professional services when registering an unlimited company. However, where an unlimited company has paid up a nominal capital of Kshs.5,000,000/= or above, the company is required to have a company secretary.

Where an unlimited company is fully owned by foreigners and the company does not have a company secretary, a contact person who is a natural person with a permanent residence in Kenya must be appointed. The contact person is required to keep a copy of the record relating to directorship, shareholding, beneficial ownership, and any other information required to be kept by the company under the Act and make the copies available to competent authorities and the Registrar.

The cumulative number of unlimited companies as at December 2022 was 5. There was no registration of unlimited companies for the period of assessment.

2.2.5 Foreign Companies

Foreign Companies are companies that have been registered in a foreign country, have applied to be registered under the Companies Act, 2015, and have been issued with a certificate of compliance for the purpose of carrying on business in Kenya¹¹.

This includes companies which intend to have permanent establishments/branches/agencies or those that intend to establish significant business activity in Kenya or intends to own real estate/other local investment among other parameters which extend to circumstances where a company offers debentures or guarantees security for debentures offered in Kenya.

A foreign company must have a local representative who is always required to be present at the registered office of the company in Kenya during office opening hours¹². The local representative is also responsible for filing various lodgements with the Registrar. The cumulative number of foreign companies as at December 2022 was 5,343.

The number of foreign companies registered between 2018 and 2022 were as follows.

Table 4: Number of Foreign Companies Registered Between 2018 and 2022

Type of Legal Person	2018	2019	2020	2021	2022
Foreign Companies	176	165	153	193	184



Partnerships

General Partnerships: General Partnerships require each partner to be responsible for the business of the partnership and the capacity of the partnership as a legal person is unlimited. The liability of the partners is therefore not limited and each partner can be held liable directly for any offence committed through the entity. For this reason, this type of partnership may not pose a significant ML/TF risk and were excluded from the assessment.

¹¹ Companies Act, 2015, Section 974.

¹² Companies Act, 2015, Section 983(2)(b).

Limited Partnerships: These are partnerships that have at least one general partner and at least one limited partner. The partnership does not have a separate legal personality. Additionally, no limited partnership has been registered by the time of the assessment. Consequently, they were not included in the assessment.

Limited Liability Partnerships: This is a partnership that has been registered as a legal entity¹³ and has been issued with a certificate indicating that it is a limited liability partnership. The limited liability partnership is registered with a minimum of two partners and at least one manager. The limited liability partnership must have at least one manager who is a natural person¹⁴. This partnership is registered under the Limited Liability Partnerships Act, 2011. The cumulative number of LLPs as at December 2022 was 2,958.

Table 5: Number of LLPs Registered Between 2018 and 2022

Type of Legal Person	2018	2019	2020	2021	2022
Limited Liability Partnerships	380	414	472	477	458

2.2.7 Cooperative Societies

Cooperative Societies are established for the promotion of the welfare and economic interests of its members. Pursuant to Section 12 of The Cooperatives Societies Act (Cap 490), Cooperative Societies are corporate bodies with power to hold movable and immovable property of every description, to enter into contracts, to sue and be sued and to do all things necessary for the purpose of, or in accordance with, its by-laws.

These entities are member based, and each member has one vote only in the affairs of the society, irrespective of the number of shares he or she holds. Additionally, no member, other than a co-operative society, shall hold more than one-fifth of the issued and paid-up share capital of any co-operative society. The nature of these entities limit the extent of ownership and control of each member, making it difficult to drive an independent agenda without the consensus of the majority of the members.

Based on the foregoing, the Working Group concluded that it is unlikely that Cooperative Societies may be set up to facilitate money laundering/ terrorist financing (ML/TF) or perpetrate predicate crimes due to the limitations placed on ownership and control of the entities.

On this basis, Kenya excluded Cooperative Societies from the analysis of this report.

The number of Cooperative Sacco Societies registered between 2018 and 2022 is distributed as shown in table 6.

Table 6: Number of Cooperative Sacco Societies Registered Between 2018 and 2022

Type of Legal Person	2018	2019	2020	2021	2022
Cooperative Sacco Societies	1,266	1,110	906	964	1,108

¹³ Limited Liability Partnership Act, 2011, Section 6.

¹⁴ Limited Liability Partnership Act, 2011, Section 27.

2.3 Legal Arrangements in Kenya

The FATF Standards define Legal Arrangements as express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.

2.3.1 Trusts

Trust is a fiduciary relationship whereby a person (the settlor) gives or bestows upon another person (the trustee) the right to hold title to the property for the benefit of a Third party (the beneficiary).

Kenya recognizes Trust as the only legal arrangements that can be registered in Kenya. The Land Registration Department under the state Department of lands and Physical planning is mandated by Registration of Documents Act Cap 285 (RDA)¹⁵ and Trustees (perpetual Succession Act) Cap 164¹⁶ to register Trust Deeds and Incorporate Trusts respectively in Kenya.

The initial process of registration of Trust is under Registration of Documents Act (RDA) whereby the name of the proposed Trust and Settlor/Trustee details are endorsed in RDA volumes. The registration should be within two (2) months from the date of execution of the Trust Deed.

Registration of Trust under the Registration of Documents Act does not make a Trust a body corporate, however, the trust can commence its implementation of the objects as a simple trust through its trustees.

The application of incorporation of Trust under the Trustees (Perpetual Succession) Act is by way of a petition to the Principal Registrar for the verification and processing¹⁷ The Principal Registrar is required within sixty (60) days of receipt of an application for incorporation of a trust, to grant or reject the application.

Where an application is rejected, the Principal Registrar gives a written notice to the applicant, the notice states the reasons for rejection. Where an application for incorporation of Trust is approved by the Principal Registrar, a certificate of incorporation with an identifiable number is issued accordingly. The Trust thereupon becomes a body corporate by the name described in the certificate of Incorporation, with perpetual succession and a common seal.

The Basic requirements for incorporation of Trust of in Kenya are: The Name of the Trust; the Main Objects of the Trust; The names of the Settlor (s) i.e Full name, copy of ID card/passport; If the trustee is a company, a copy of the certificate of incorporation and a current official search form from BRS; Proposed physical address of the Trust and the trustees; Domicile and residence of the Trust and trustees; A registered Trust Deed instrument; Description of beneficiaries and their necessary allotments (if any) ; Description of the Trust fund and current financial status ; The description and details of the Trustees or employees and Administration details of the Trust.

Within one month after the expiry of one year from the date of issuance of a Certificate of Incorporation of Trust, the trustees are expected to submit annual returns on the names of the trustees and their addresses. The returns are done annually.

There are four types of Trusts in Kenya which include Irrevocable Trusts, Charitable Trusts,

¹⁵ Section 4.

¹⁶ Section 3

¹⁷ Trustees (perpetual Succession Act) Cap 164, Section 4.

Non-charitable Trusts and Family Trusts.

The cumulative number of Trusts registered in Kenya as at December 2022 was 2,343.

The following are the number of trusts registered in Kenya during the period under assessment;

Table 7: Number of Trusts Registered Between 2018 and 2022

Type of Legal Person	2018	2019	2020	2021	2022
Trusts	68	128	97	122	160

2.4 Sectoral and Regional Distribution of Legal Structures

Kenya has diverse sectors where legal structures being registered would operate. Among the most common sectors of operations include construction. Construction in particular has gained traction in the recent years to be among the most popular businesses especially by companies.

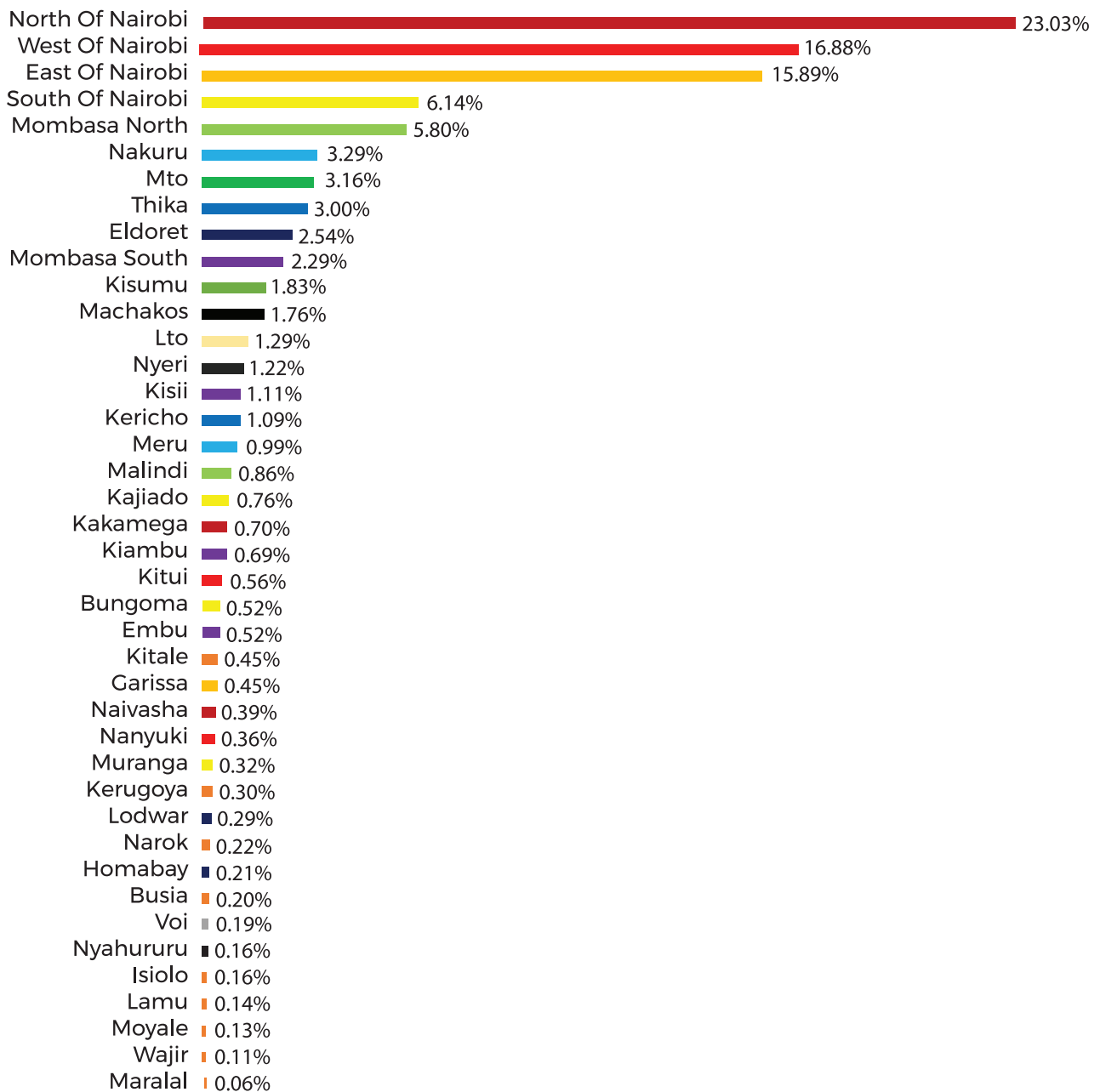
Below is a sectoral representation of registered structures in Kenya.

Distribution of Legal Structure by Sectors



Legal structures registered in the country are concentrated in Nairobi, with more than 60% of all registered structures operating within the capital city.

Distribution of Legal Structure by Region



CHAPTER THREE: THREAT ASSESSMENT

3.1 Introduction

The aim of this step is to identify the level of domestic and cross-border threat of abuse of legal structures for the purposes of ML and TF. The step factored in qualitative and quantitative data and considered case studies on the use of legal structures for ML and TF in Kenya to determine the threat levels.

The ML and TF Threat were assessed separately. The Threat Assessment module in the tool provided for the assessment of the ML Threat only and was modified to accommodate the TF Threat assessment by considering qualitative and quantitative data on terrorism financing. This was done by considering law enforcement data on TF and the perception of public and private sector experts and the civil society on TF.

The public sector experts engaged in this assessment are the FRC, CBK and CMA, who are key Supervisory Bodies designated under the First Schedule of the Proceeds of Crime and Anti-Money Laundering Act, 2009. The basis of the engagement is their interaction with Reporting Institutions who implement preventative measures such as customer due diligence measures which may mitigate the risks of the use of legal structures for ML purposes.

Private sector experts considered in this assessment are ICS, ICPAK, KBA and LSK. These bodies represent professionals who may be used to facilitate money laundering through legal persons.

3.2 ML Threat Assessment

3.2.1 Overall ML Threat Score

The overall ML threat involving legal structures in Kenya was assessed as **Medium**.

The Threat Score was arrived at based on the analysis of the following factors:

1. Level of ML abuse based on enforcement data - quantitative data from law enforcement agencies; and
2. Level of ML abuse based on threat perceptions and open sources - qualitative data from private and public sector experts and open-source information.

3.2.2 Level of ML Abuse Based on Enforcement Data

The level of ML abuse based on enforcement data was rated **Medium**. The factors considered are discussed below:

a. Level of Suspicious Transaction Reports and Suspicious Activity Reports

Information from the Financial Reporting Centre on the number of Suspicious Transaction Reports (STRs) and Suspicious Activity Reports (SARs) filed concerning the suspected use of legal structures for ML purposes from 2018 to 2022 was used to analyse the level of STRs and SARs.

Based on the information, there have been cases of ML abuse of legal structures for ML purposes, but only a small number of cases involved complex and more sophisticated legal structures.

Out of the total number of STRs/SARs during the period of assessment, it was observed that on average, 66.04% of the filed STRs/SARs related to legal structures out of which only 0.23% involved complex legal structures. Furthermore, only 8.4% of the STRs/SARs that related to Legal structures formed the basis for dissemination to law enforcement agencies for further investigations.

However, it was noted that the existence of STRs and SAR is indicative of suspicion and not the occurrence of ML.

b. Level of MLA Sent

Law enforcement agencies have existing formal and informal mechanisms to provide Mutual Legal Assistance to foreign counterparts and non-counterparts. The statistics provided by Competent Authorities¹⁸ on MLA requests sent and received concerning legal structures used or suspected to have been used for money laundering purposes were used to assess this variable.

Out of the total number of requests made by Kenya to other jurisdictions for MLA, an average of 60% involved legal structures, out of which approximately 6.35% involved complex structures. Thus, to a large extent, the MLA requests sent in the period of assessment involved simple structures rather than complex legal structures.

c. Level of MLA Received

The law enforcement agencies have received MLA requests through the available formal and informal channels from several jurisdictions concerning suspected abuse of legal structures for ML purposes as indicated in the considered data.

Out of the total number of requests received from other jurisdictions for MLA, 67.48% involved legal structures while the MLA requests received involving complex structures was approximately 7.0%.

d. Level of Criminal Investigations

Law enforcement agencies provided information on the number of investigations conducted relating to the involvement of legal structures in ML. Information on high proceeds generating offences investigated in the period was also used to supplement the available information on ML. Out of the investigations considered in this assessment, 25% involved legal structures and 7.27% of them involved complex structures.

e. Level of Civil Enforcement Actions

To determine the level of civil enforcement actions instituted based on suspected money laundering, information from ARA, KRA and EACC. The three agencies are among institutions with powers to enforce sanctions including enforcing administrative penalties for tax offences, freezing of assets and forfeiture.

The number of cases where civil enforcement actions had been taken involving legal structures were few and none of the cases involved complex legal structures.

¹⁸ Mutual Legal Assistance Act, S. 2

f. Level of Proceeds Laundered Through Legal Structures

Law enforcement agencies and the ODPP provided information which was necessary to assess the level of proceeds laundered through legal structures in the assessment period. The data considered included cases of money laundering and high proceeds generating offences.

Based on the global amount of proceeds suspected to have been laundered in the assessment period, 5% was suspected to have been laundered through legal structures, out of which only 0.38% involved complex structures.

g. Level of Criminal Prosecutions

In the reporting period, there were 41 active cases of alleged money laundering involving legal structures. Out of the 41 cases, only a few involved complex legal structures.

h. Level of Criminal Convictions

The ODPP had not recorded any convictions on money laundering in the reporting period. However, it was reported that the 41 cases were ongoing before courts.

3.2.3 Level of ML Abuse Based on Threat Perceptions & Open Sources

In addition to the enforcement data provided by law enforcement agencies and the ODPP, the threat perception by public and private sector experts, as well as threat perception from credible open sources was used to assess the ML threat.

The overall level of ML abuse based on threat perceptions and open sources was rated **Medium**.

Below is a summary of the information considered:

a. Level of Threat Based on Credible Open Sources and Perceived Threat by Civil Society/Academic Experts

Kenya engaged the members of the civil society in an in-person forum and through written questionnaires to record and assess their perception on the level of abuse of legal structures for money laundering. The general perception from the civil society was that the risk associated with abuse of legal structures for money laundering is high.

Open-source reports sampled also indicate that the general money laundering threat through legal structures in Kenya is high. Some scholars have noted that, despite existing vulnerability of abuse, Kenya has taken significant steps, to improve measures to combat money laundering¹⁹. However, scholars advise that Kenya should take a risk-based approach to employing mitigation measures rather than adopting a general approach²⁰.

In relation to money laundering predicate offences such as corruption, Kenya was rated 32 out of 100 on the Transparency International Corruption Perception Index²¹. The existence of a high level of perceived predicate corruption goes hand in hand with a perceived perception that the proceeds of corruption are laundered through corporate vehicles.

¹⁹ Denis Wangwi Moroga, 'Towards A Harmonised Anti-Money Laundering Approach In The East African Community' 2020/2021 East African Community Law Journal 1, 202

²⁰ Ibid, 206

²¹ Transparency International, 'Corruption Index,' 2022, <https://www.transparency.org/en/cpi/2022>

(1)1

Kenya was rated 67 out of 100 the Tax Justice Network financial secrecy index²². The ranking is based on the assessment of several factors, including the transparency of legal structures. This rating indicates that Kenya is perceived to be a jurisdiction that is attractive to persons who intend to hide illicit funds through legal structures due to the perceived opaqueness.

Academic publications also indicate that there is a threat associated with the gaps in the supervision of legal professionals who may enable money laundering.²³ This assertion is supported by the perceived abuse of professional privilege to facilitate the creation and administration of legal structures for money laundering purposes.

b. Level of Perceived Threat by Public Sector Experts

Responses to structured questionnaires circulated to Supervisory Bodies charged with regulating and supervising Reporting Institutions on the implementation of measures to combat money laundering, terrorism financing and proliferation financing pursuant to the provisions of POCAMLA and POTA, was assessed in this step. The questionnaire sought to assess the perception of ML threat based on engagements with reporting institutions, including observations from inspections conducted.

From the responses received, the general perception was that there was moderate use of legal structures for money laundering in Kenya. This finding was attributed to implementation of preventative measures by some Designated Non-Financial Businesses and Professions (DNFBPs), who may be vulnerable to abuse for ML purposes. However, the responses indicated that the ongoing efforts to enhance compliance in the DNFBP sectors acts as a deterrence, which will lead to a decline in the use of legal structures for ML in the DNFBP sector in future.

c. Level of Perceived Threat by Private Sector Experts

Responses to structured questionnaires circulated to members of ICS, ICPAK, KBA, LSK, KEPSA were used to assess this parameter. The overall opinion is that the abuse of legal structures for money laundering purposes was low, and the cases largely involved simple structures and rarely involved complex legal structures.

Further, the responses indicated that private limited companies (98.09%) were the highest legal structures associated with money laundering. Further, out of the 98.09% cases involving private limited companies, 43.51% of the cases involved abuse by directors of the company, employees were also involved to a great extent. 48.15% of the cases involving foreign companies on the other hand involved directors of the company. Further, Limited liability partnership had the majority of the cases involving partners of the LLP. There was no reported case for the public limited company and the Companies limited by guarantee.

3.2.4 Nature of Abuse of Legal Structures for ML

Based on the quantitative data available from law enforcement agencies and the threat perceptions and information from open sources analysed above, the following observations were made by the working group:

It was noted that statistics from LEAs on abuse of legal structures for suspected ML was available. However, the statistics were not maintained in a standardised format, creating significant challenges in retrieval of the data required. For instance, the data was maintained as per case/inquiry number in some cases, excluding the entity name and type in the search parameters.

²² Tax Justice Network, 'Financial Secrecy Index 2022' <https://fsi.taxjustice.net/>

²³ Gikonyo, Constance. "Detection mechanisms under Kenya's anti-money laundering regime: omissions and loopholes." 2018(21)1 Laundering Control 59-70.

The perceived level of threat from open sources was higher than what was observed from incidents from the enforcement data analysed. This variation was attributed to the number of media reports on corruption related cases and the perception of resulting money laundering to conceal the illicit source of the funds.

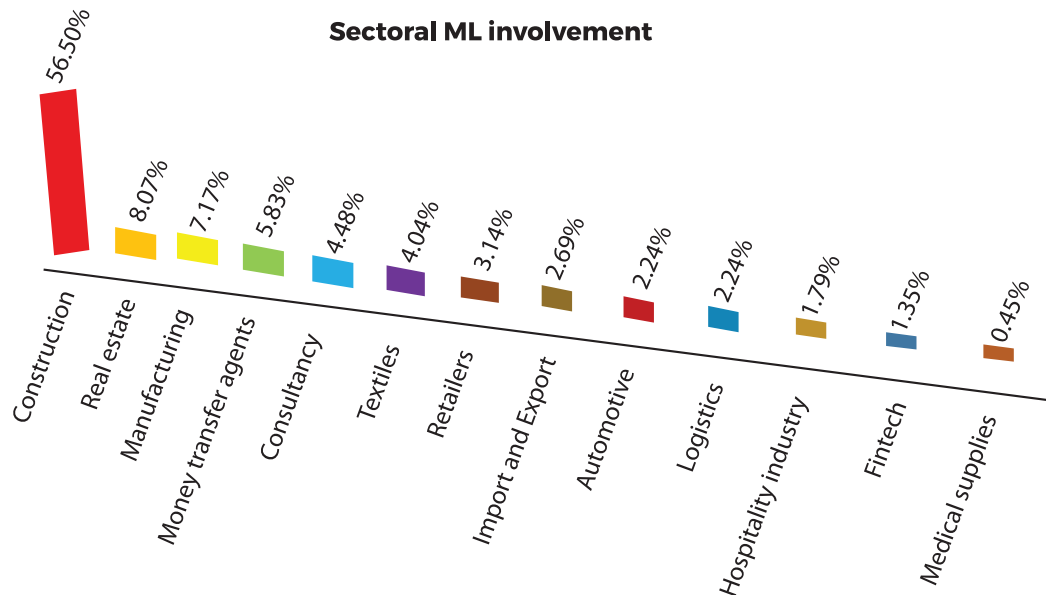
The main challenges facing authorities investigating cross border ML crimes which could prevent authorities from pursuing complex investigations involving certain legal structures included; conflict of laws, lack of cooperation and collaboration between LEAs in various jurisdictions and the complex nature of MLA processes.

Review of the enforcement data shows that Private Limited Companies were the most frequently abused legal structure for money laundering purposes in Kenya in comparison to other legal structures.

Trusts did not feature prominently in enforcement data analysed. However, there is a likelihood of abuse for ML purposes due to the absence of a robust legal regime governing trusts and inadequate supervision and regulation.

The ownership/control arrangement of legal structures that have been most frequently abused for money laundering purposes are simple (non-complex) domestic structures with direct ownership (that is shareholders who were also exercising direct control through directorship in the case of companies). In a few other cases, companies had used proxies to launder money or registered multiple companies to hide behind and facilitate the laundering (see case examples 1 and 2).

The legal structures that had been abused for money laundering purposes were mostly involved in construction, real estate, manufacturing and financial services.



The perceived level of involvement of PEPs in the identified cases was high while the frequency of complex legal structures used to conceal ownership/control by PEPs was low. The data further indicates that abuse by domestic PEPs was more prevalent than abuse by foreign PEPs.

In relation to legal structures that had been abused for ML purposes in the assessed cases, lawyers were involved in the creation of legal structures and movement of the illicit funds while bankers were involved in the processing of the funds. There was no significant involvement of accountants, TCSPs and other professionals.

3.2.5 Case Studies

The following are selected cases illustrating how different types of legal structures were used to aid in money laundering activities in Kenya.



Case Study 1

LKK Limited, the local subsidiary of LKE (Singapore) LTD, in conjunction with financial institutions, law firms, foreign and locally registered companies, individuals, politically exposed persons & government officials were suspected of involvement in money laundering.

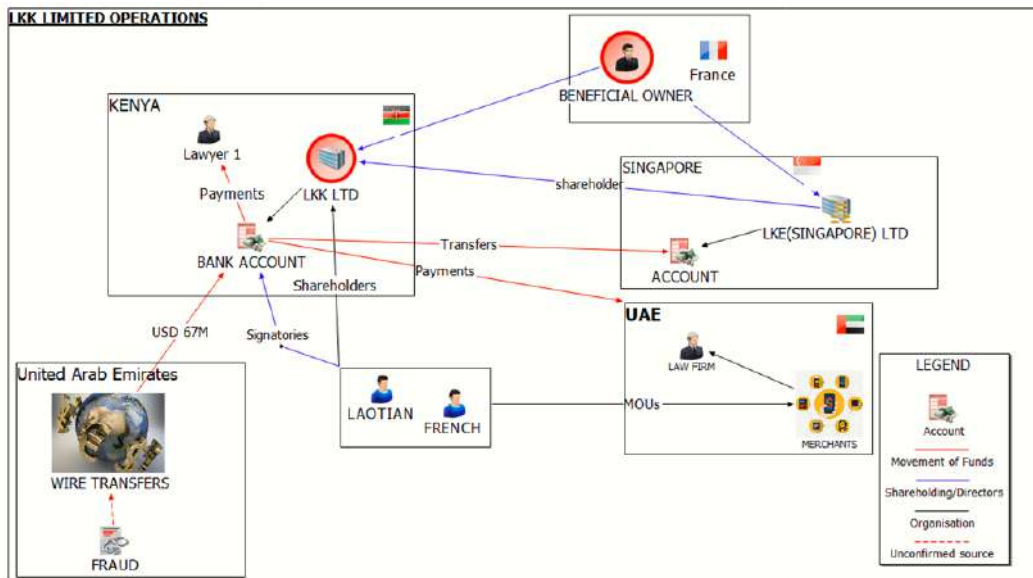
At onboarding with the bank, LKK Limited was described as a payment service provider receiving funds for online merchants for onward settlement. At the point of incorporation, the company was owned by LKE (Singapore) Ltd and other local individuals who were shareholders. The accounts of LKK Limited cumulatively received USD 67,000,000 through wire transfer mostly from abroad.

The Singaporean company thereafter bought out the other shareholders and became the sole shareholder. It also incorporated non-shareholding directors who were granted full mandate to operate bank accounts for the company. The non-shareholding directors who were of Laotian and French origin, entered into partnership with foreign merchants in UAE to provide Payment Services. Analysis of the transaction revealed that the entities wiring the funds had been profiled for involvement in card fraud, illegal online gambling and hacking of online merchants.

Upon receipt of the funds, the company immediately wired out the money to other accounts in Singapore and UAE operated by the new non shareholding directors and their legal representatives. Some of the funds were transferred to the local law firms which had been earlier contracted by the foreigners during registration and change of shareholding of LKK Limited. Some of the funds were also wired to a foreign law firm that had notarized documents for the parent company.

An inquiry by the FIU to its counterpart in Singapore revealed that the parent company was not a licensed payment service Provider. Part of the funds were preserved through a court order and the case was still pending in court at the time of assessment.

Offense: Money laundering and tax evasion



3.3 TF Threat Assessment

Terrorist actors use both legitimate and illegitimate means to finance their activities which may involve the creation and administration of legal structures. Financiers of terrorism may attempt to obscure their identities through legal structures, which makes it critical for Kenya to understand the risks associated with legal structures with regards to TF.

The WB tool does not provide for a separate threat assessment for TF. However, Kenya modified the tool by including parameters which would be used to assess TF threat including SARs and STRs on TF, investigations on TF and perceptions from private and public sector on abuse for TF by legal persons. In relation to the nature of abuse and typologies, the case studies provided by law enforcement were useful in improving the understanding of TF abuse by legal structures.

The public sector experts engaged in this stage of the assessment are the FRC, CBK and CMA, who are key Supervisory Bodies designated under the First Schedule of the Proceeds of Crime and Anti-Money Laundering Act, 2009. The basis of the engagement is their interaction with Reporting Institutions who implement preventative measures such as customer due diligence measures which may mitigate the risks of the use of legal structures for TF purposes.

Private sector experts considered in this assessment are ICS, ICPAK, KBA and LSK. These bodies represent professionals who may be used to facilitate TF through legal persons.

3.3.1 Overall Threat Score

Information from law enforcement agencies and threat perception of public and private sector experts, as well as threat perception from open sources was useful in assessing the overall TF Threat.

The Threat Score was arrived at based on the analysis of the following factors:

1. Level of TF abuse based on enforcement data - quantitative data from law enforcement agencies; and
2. Level of TF abuse based on threat perceptions and open sources - qualitative data from private and public sector experts and open-source information.

The overall threat score indicating the level of abuse of legal structures in Kenya for terrorism financing purposes was rated **Medium Low**.

The factors considered are discussed below:

3.3.2 Level of TF Abuse Based on Enforcement Data

The level of TF abuse based on enforcement data was **Low**.

a. Level of SARs/STRs

Information from the Financial Reporting Centre on the number of Suspicious Transaction Reports (STRs) and Suspicious Activity Reports (SARs) filed from 2018 to 2022 was considered in this step.

Approximately 51.7% of the total STRs and SARs reported in the assessment period involved legal structures. However, it was noted that none of the reported STRs and SARs involved complex legal structures and the identities of the natural persons behind the implicated structures was relatively easy to establish. Additionally, only a few of the reports formed a basis for dissemination to law enforcement agencies.

b. Level of MLA sent

Through the available formal and informal channels used for MLA purposes, law enforcement agencies reported that the requests sent on suspected terrorism financing cases did not involve complex legal structures. Moreover, the data indicated that the MLA requests on legal structures was minimal in comparison to requests made with regards to natural persons.

c. Level of MLA received

Data from law enforcement agencies indicate that the MLA requests received in the assessment period were very few and did not involve complex structures.

d. Level of Criminal Investigations

The number of investigations conducted relating to the involvement of complex legal structures in TF was obtained from law enforcement agencies including the ATPU. From the investigations conducted, only a few involved legal structures. Additionally, it was noted that the majority of the business activities which featured in TF investigations involved small-scale informal businesses which do not have separate corporate legal personalities. The cases investigated did not form a basis for prosecution as explained by ATPU.

e. Level of Civil Enforcement Actions

In the assessment period, no civil enforcement actions were taken with regards to Terrorism Financing involving legal structures in the period of assessment.

f. Level of Terrorism Financing Prosecutions

The Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023 (AML/CFT Act) which commenced on 15th September 2023 introduced criminal sanctions for legal persons. Prior to this, there were no sanctions applicable to legal persons, as such, no TF prosecutions relating to legal structures were reported in the assessment period.

3.3.3 Level of TF Abuse Based on Threat Perceptions and Open Sources

In addition to the enforcement data provided by law enforcement agencies and the ODPP, the TF threat perception by public and private sector experts, as well as threat perception from credible open sources were considered.

The overall level of TF abuse based on threat perceptions and open sources was rated **Medium Low**.

Below is a summary of the information considered:

a. Level of Threat Based on Credible Open Sources and Perceived Threat by Civil Society/Academic Experts

The literature on terrorism financing through legal structures in Kenya is limited. However, there are several reports available depicting Kenya as a high-risk jurisdiction for terrorism. For instance, the 2020 and 2023 Global Terrorism Index (GTI) Report placed Kenya in the 20th position with a score of 6.163. These ratings were within the high category according to the GTI scale.²⁴

Other sources depict Kenya as being

high risk for terrorism due to Al-Shabab operations²⁵. Additionally, there are indications that the Al-Shabab rely on both illicit sources and legitimate sources, including businesses. However, there is no evidence that the businesses used to raise funds used to finance terrorism are in the form of legal structures.

The country also engaged the Civil Society on their perception of TF. The responses indicate that Kenya is perceived as being a high-risk jurisdiction for terrorism. This position reflects the observations made from scholarly reports. There was however no indication that Civil Society had encountered instances of terrorism financing through legal structures or perceived that TF is perpetrated by legal structures.

b. Level of Perceived Threat By Public Sector Experts

Kenya considered responses from Supervisory Bodies who are charged with regulating and supervising reporting institutions on the implementation of measures to combat money laundering, terrorism financing and proliferation financing pursuant to the provisions of POCAMLA and POTA.

The Supervisory Bodies indicated that legal structures are rarely involved in terrorism financing. Further, the responses indicated that there had been increased engagement between reporting institutions on terrorism financing typologies to enhance detection and reporting of suspected cases of terrorism financing to the FRC.

c. Level of Perceived Threat by Private Sector Experts

The views of ICPAK, ICS, KBA, LSK and KEPISA on the perceived level of threat of abuse of legal structures for TF were collected through the in-person engagements and the responses to questionnaires. The persons engaged were generally of the opinion that legal structures are rarely abused for terrorism financing purposes. They indicated that financiers of terrorisms are not inclined to obscure their identities through the formation and administration of legal structures and that these structures are mostly used for money laundering.

²⁴ The global terrorism index (GTI) is a comprehensive study that analyse the impact of terrorism for 163 countries covering 99.7% of the world's population.

²⁵ United Nations Security Council, Report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 2244 (2015): Somalia

3.3.4 Nature of Abuse of Legal Structures for TF

Based on the quantitative data available from law enforcement agencies and the threat perception and information from open sources analysed above, the following observations were made by the working group with regards to the nature of abuse of legal structures for TF:

The quality of statistics provided on terrorism financing was satisfactory, considering the absence of prosecution cases occasioned by the lack of a legal framework governing criminal sanctions for legal persons and the recent implementation of standard operating procedures to prioritise parallel investigation on terrorism financing when investigating terrorism.

The overall level of evidence of abuse of legal structures for TF was lower from the enforcement data in comparison to the perceived threat from open sources. The perceived threat was high due to the number of media reports on terrorism incidents generally which is perceived to indicate corresponding incidences of terrorism financing to facilitate the attacks.

The main challenges faced by authorities in investigating cross border TF crimes include; conflict of laws, lack of cooperation and collaboration between LEAs in various jurisdictions and the complex nature of MLA processes. Further, the pending status of Kenya's admission to the EGMONT Group in the assessment period limited the cooperation by member countries to some extent.

From the enforcement data available, private limited companies were suspected to be the most likely abused structure for Terrorism Financing purposes in comparison to other legal structures. Although Companies Limited by Guarantee do not feature prominently in enforcement data, it was perceived that they could have been abused, to a limited extent, for Terrorism Financing purposes. In addition, the available cases indicate that abuse is mostly by directors of the company.

From the cross-border TF cases involving legal structures investigated, Kenya is considered to be mostly a transit jurisdiction for funds meant for terrorism financing purposes. The funding is through legitimate business and from proceeds of other crimes.

The most popular business purposes/functions or sectors of operation of legal structures that have been abused for Terrorism Financing purposes are logistics(transport) real estate, trade, and Oil Marketing Companies.

3.3.5 Case Studies

Some of the case studies related to terrorism financing in Kenya reported were as follows:



Case Example 1:

Company Y is a PVT in the hospitality and transport industry. The company has various outlets within the Country offering different services. The funds from the company are channelled to individuals involved in terrorism activities. The persons involved were the directors and the employees of the company. They used banks, cash and Money Value Transfer Services (MVTs) to transfer funds from Kenya to Somalia. The case is under investigation



Case Example 2:

A transport (logistics) company was used to clandestinely import restricted goods disguised as commercial goods which are received in Kenya and illegally delivered to other destinations. The company coordinates the procurement of assorted goods from overseas, declares false destinations and organises onward delivery to various destinations in support of terrorism activities. The persons involved were the directors and the employees of the company. They used banks and cash to transfer funds from China to Somalia. The jurisdiction of the bank accounts is Kenya and the business activities were in Kenya, China and Somalia. The case is under investigation.

CHAPTER FOUR: ENTITY RISK ASSESSMENT

4.1 Introduction

This section analysed the risks associated with all legal structures in Kenya, including Foreign Companies. From the analysis, trusts were observed to be susceptible to the highest level of risk while unlimited companies were susceptible to the least level of risk.

The risk score of each entity was arrived at based on the consideration of the following categories of factors:

1. Scale;
2. Ease, speed and cost of formation;
3. Attractiveness for Non-Resident Use;
4. Quality and accessibility of Basic Information;
5. Cross-Border Risk Exposure;
6. Incidence in analysed ML and TF cases; and
7. Existence of ML and TF typologies.

Each entity was assigned an ML and TF Risk score based on the analysis of the above factors.

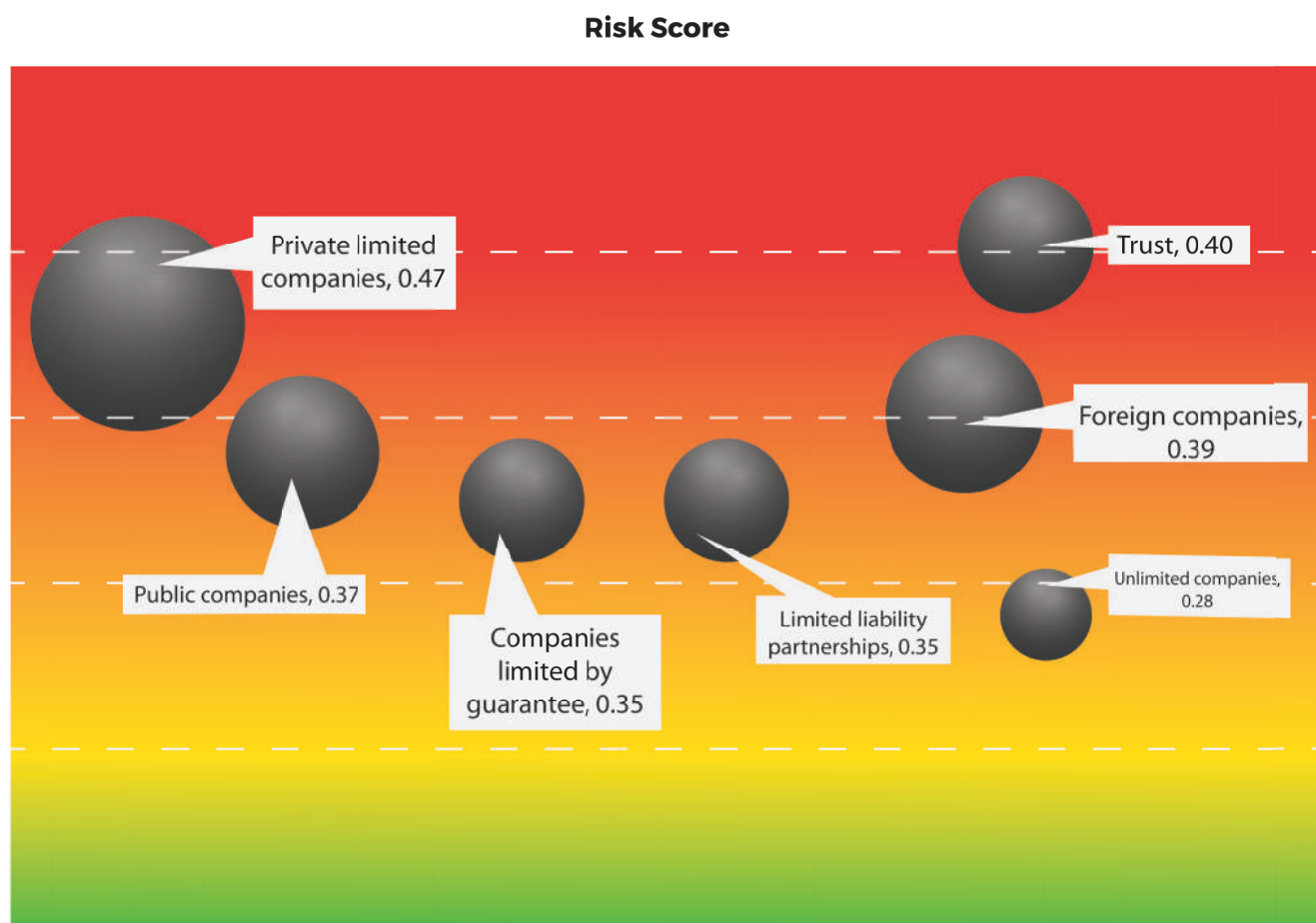
The WB Tool does not provide for separate modules to assess the entity risks with regard to TF. However, based on the observed variance in the level of ML and TF incidences recorded in the period and the variance in the typologies observed, Kenya considered the ML and TF entity risk separately.

The scale of the legal structures within the period of assessment is represented by the table below;

Legal Persons	2018	2019	2020	2021	2022	Five-year total	% composition in the five years
Company Limited by Guarantee	235	369	622	626	477	2329	0.94%
Cooperative	1266	1110	906	964	1108	5354	2.17%
Foreign companies	176	165	153	193	184	871	0.35%
Limited Liability Partnership (LLP)	380	414	472	477	458	2201	0.89%
Private companies	44381	42085	49037	47750	51842	235095	95.21%
Public Limited Company (PLC)	66	77	103	159	89	494	0.20%
Trust	68	128	97	122	160	575	0.23%
Grand Total	46572	44348	51390	50291	54318	246919	100.00%
Yearly % composition	18.86%	17.96%	20.81%	20.37%	22.00%	100.00%	

The image below shows a summary distribution of ML risk scores for each entity.

Figure 1: Heat map of risk scores for legal structures in Kenya in relation to ML



The figure below shows a distribution of risks associated with each legal structure.

ML/TF Risk Scores distribution

Legal Structures	ML Risk Score	TF Risk Score
Trusts	Medium (0.5)	Medium Low (0.36)
Private Limited Company	Medium (0.47)	Medium Low (0.37)
Foreign Companies	Medium Low (0.39)	Low (0.32)
Public Limited Companies	Medium Low (0.37)	Low (0.27)
Limited Liability Partnerships	Medium Low (0.35)	Low (0.28)
Companies Limited by Guarantee	Medium Low (0.35)	Low (0.25)
Unlimited Companies	Low (0.28)	Low (0.25)

The ratings below correspond to the assigned risk scores.

1.0	0.9	0.8	0.7	0.6	0.5	0.3	0.3	0.2	0.1	0.0
Excellent	Close to Excellent	Very High	High	Medium High	Medium	Medium Low	Low	Very Low	Close to Nothing	Does not Exist

In this step, the WB Tool did not provide a scale. However, the WG adopted the above scale in order to guide Competent Authorities, Supervisory Bodies, professional service providers and all other relevant persons on the categorization of the levels of risk, and facilitate decision making on the steps taken to mitigate the risks. The scores were rounded up to the nearest score where the score ended with a 0.05 to 0.09 decimal.

4.1.1 Private Limited Companies

Private limited companies (PVT) are the most popular legal persons in Kenya due to the ease and speed of formation which take between three to five days and the relatively low cost associated with formation and administrations.

PVTs in Kenya mainly operate domestically, with very low ownership and control links to secrecy jurisdiction, hence posing low cross border exposure risk. Their formation requires at least one natural person. Basic information is collected at registration and is accessible to the public upon request while beneficial ownership information is maintained in a centralised register accessible to competent authorities, supervisors of financial institutions, Public Procurement Authority and financial institutions. After registration, the company is issued with a unique identifier which is contained in the Certificate of Incorporation. The Company is also issued with a KRA PIN Certificate. The most common type of business activity associated with these types of companies is construction. As at December 2022, a total of 690,222 private limited companies had been registered in Kenya.

The financial flows or assets held by private companies is high. The National Risk Assessment identified legal as being the main users of the banking services²⁶. A further look at the most common type of legal person revealed that private limited companies are the highest users which suggests higher financial flows compared to other types of structures.

The Suspicious Transaction Activities (SARs) and Suspicious Transaction Reports (STRs) filed to the Financial Reporting Centre during the period of assessment indicate incidences of a higher number of PVTs involved in money laundering and terrorism financing cases in comparison to reports filed in relation to other legal structures. During this period, a total of 395 private limited companies were reported in relation to terrorism financing incidents and a total of 10,733 reported incidents of money laundering. Despite the high number of STRs and SARs, only 15 cases in relation to TF formed the basis for dissemination to LEAs while only 525 in relation to ML formed the basis for dissemination over the 5-year period.

The common typologies involved in this type of entity is abuse by directors, use of proxies and the use of company directors to some extent. A number of cases also included use of proxies or use of legal persons as company directors and the abuse of legal professional privilege

The overall ML risk score for PVT is **Medium** while the TF risk score is **Medium Low**. Both the

²⁶ Money Laundering and Terrorism Financing National Risk Assessment Report, P. 39.

ML and TF risk scores are higher in comparison to other legal structures.

4.1.2 Companies Limited by Guarantee (CLGs)

Companies Limited by Guarantee (CLG) in Kenya mainly operate domestically with very low membership and control links to secrecy jurisdictions, hence posing low cross border exposure risks. The formation of CLGs requires at least one natural person. Basic information is collected at registration and is accessible to the public upon request while beneficial ownership information is maintained in a centralised register accessible to competent authorities. Further, proposed directors and members of CLGs undergo vetting by the National Intelligence Service (NIS), making the process of registration difficult and slow despite the cost of registration and administration being relatively low.

After registration, CLGs are issued with a unique identifier which is contained in the Certificate of Incorporation. The Company is also issued with a KRA PIN Certificate. The most common type of activity associated with these types of companies is charitable activities. As at December 2022, a total of 2,532 CLGs had been registered in Kenya.

During the assessment period, there were no STRs and SARs in which CLGs were reported in suspected money laundering cases. There were limited incidents of terrorism financing through CLGs, with only two being reported through STRs and SARs in the assessment period. None of the reports formed a basis for dissemination.

The overall ML risk score for CLG is **Medium Low** and the TF risk score is **Low**.

4.1.3 Public Limited Companies (PLC)

Public Limited Companies in Kenya mainly operate domestically with very low ownership and control links to secrecy jurisdiction hence posing low cross border exposure risks. Their formation requires at least one natural person and a company secretary. Basic information is collected at registration and is accessible to the public upon request while beneficial ownership information is maintained in a centralised register accessible to competent authorities. Public listed companies require a minimum capital of Kshs.6,750,000. The registration process of public limited companies is easy and fast, taking approximately three to five days. The cost of registration is Kshs.10,750. The cost of administration may however be higher compared to private limited companies due to additional compliance requirements. By December 2022, Kenya had registered a total of 4,423 Public Companies.

After registration, the company is issued with a unique identifier which is contained in the Certificate of Incorporation. The Company is also issued with a KRA PIN Certificate. The most common type of business activity associated with these types of companies is land buying/ investments.

Most of the biggest companies in the country are registered as PLCs. However, the big companies may only be represented by the listed companies which enjoy some monopoly in their respective sectors. As at the end 2022, only 62 companies were listed²⁷, which is 1.4% of all registered public companies. The remaining percentage comprises mostly land buying companies, a majority of which were registered post independent to aid in acquisition of land by members of the public. Such companies no longer have assets or significant transactions as most have distributed the land. The financial flows and assets held by these types of companies is therefore not high, with the exception of a few companies which dominate the market in the sectors within which they operate such as telcos.

²⁷ <https://www.cdskenya.com/investor-education/listed-companies>

The number of SARs/STRs reported on terrorist financing and money laundering relating to public companies were low with only 8 cases reported in relation to terrorism financing during the assessment period and 41 cases in relation to money laundering in the same period. The main typology associated with this type of legal structure is the abuse by directors and abuse of legal professional privilege.

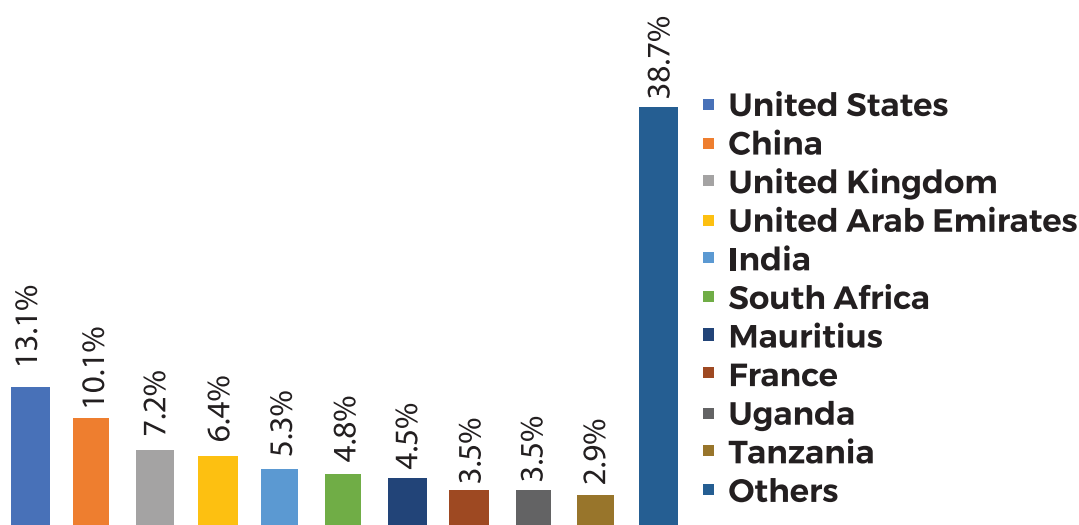
The overall ML risk score for PLC is **Medium Low** and TF risk score is **Low**.

4.1.4 Foreign Companies

Foreign companies carrying on business in Kenya are required to be registered under the Companies Act. At the point of registration, basic and beneficial ownership information. The requirement to file beneficial ownership information came into force in September 2023 and, as at the time of assessment, this requirement was in the early stages of implementation. Foreign companies are required to have a local representative who is a natural person and should be present at the registered premises during the declared working hours of the company. The company is issued with a certificate of compliance upon registration bearing a unique identifier and is required to obtain a KRA PIN Certificate. The common type of business activities that these companies undertake is investment related activities. As at December 2022, a total of 5,343 foreign companies had been registered in Kenya.

Foreign companies have less favourable tax rates than resident companies which makes Kenya have less tax attractiveness, the corporation tax for foreign companies is 37.5% while that of resident companies is 30%. Conversely there are tax incentives aimed at attracting foreign companies such as capital allowances.

Distribution of Foreign Companies by Jurisdiction of Incorporation



The top 10 jurisdictions where the foreign companies in Kenya are incorporated are as shown above. Top 5 jurisdictions represent countries which are commercial hubs. All the other jurisdictions combined account for 38.7% of the foreign companies, which shows a wide distribution of jurisdictions of origin for foreign companies registered in Kenya. Kenya employs both formal and informal means for MLA and is able to effectively cooperate with a majority of the foreign jurisdictions where foreign companies in Kenya have links or originates from.

Although only a few reported suspicious activities and transactions in the assessment period involved foreign companies, a total of nineteen ML cases involving foreign companies were disseminated to law enforcement agencies for further investigations and out of these cases, ten

involved complex structures. There were however no TF STRs in relation to foreign companies. Investigations in relation to instances where foreign companies had been abused for either ML or TF were also very low indicating very low incidences of abuse for ML and TF in relation to foreign companies.

The common method of misuse for money laundering and terrorism financing in this category was the abuse by directors of the company, and some instances of abuse of legal professional privilege.

The overall ML risk score for FCs was **Medium Low** and TF Risk score is **Low**.

4.1.5 Limited Liability Partnerships (LLPs)

LLPs are required to provide both basic and beneficial ownership information at registration. Upon registration, LLPs are issued with a certificate of registration which contains a unique identifier and is required to obtain a KRA PIN Certificate. As at December 2022, a total of 2,958 LLPs had been registered in Kenya.

During the period under assessment, LLPs were not required to keep beneficial ownership information, however, the Anti-Money Laundering and Counter Terrorism Financing Act of 2023, introduced the requirement for LLPs to maintain beneficial ownership information and file the same with the registrar of companies.

LLPs operate mainly domestically and the common type of business activity conducted through LLPs is in the legal profession (law firms) and real estate and with very low level of ownership and control from other jurisdictions hence posing negligible cross border risk exposure.

Incidences of ML and TF cases in STRs and SARs involving LLPs were few with only 5 cases on Terrorist Financing reported during the period under assessment and 43 cases of ML. None of the SARs/STRs formed a basis for dissemination in relation to TF while only 4 cases were disseminated to LEAs in relation to ML.

Few instances of legal persons as managers were noted from the Registry, which may indicate efforts to conceal the identity of the beneficial owner on whose behalf they are acting. However, this typology of abuse was not observed from law enforcement data.

There were limited incidences of ML and TF abuse by LLPs from the data provided. However, the absence of Beneficial Ownership disclosure requirements for LLPs in the reporting period indicates a likelihood of abuse for ML and TF purposes, which impacted the final entity risk scores.

The overall ML risk score for LLPs is **Medium Low** and TF Risk score is **Low**.

4.1.6 Unlimited Companies

The formation of an unlimited company requires a minimum of one natural person, registration with the tax authority to obtain a taxpayer identification number. There is a requirement to file beneficial ownership information.

Unlimited companies are the least popular type of legal person in Kenya with only five companies registered over the years and none registered during the period under assessment. Among all the legal structures assessed, unlimited companies pose the least level of risk.

There have been no reported cases of ML and TF from law enforcement data.

The overall ML Risk score is **Low** and the TF risk score is **Low**.

4.1.7 Trusts

Trusts are the only legal arrangement registrable under Kenyan law. They are registered as incorporated trusts under the Trustees (Perpetual Succession) Act under the Ministry of Lands. The registration regime for trusts requires the trust to have at least one natural person and a certificate of incorporation of Trust is issued with a unique identifier. Thereafter, trusts register with Kenya Revenue Authority to obtain a taxpayer personal identification number for purposes of filing tax returns.

The process of incorporating a trust is relatively expensive since some of the documents required for its creation are drawn by Advocates. Before a trust is fully incorporated and issued a certificate of incorporation, it must first be registered under the Registration of Documents Act. The incorporation process is lengthy and might take up to six months.

The process of registration of trusts is largely manual and records are kept in physical files. The use of manual processes makes verification of data difficult. It also increases the information retrieval time.

The amendment of Trustee (Perpetual Succession) Act in 2021 introduced the requirement of having ascertainable or identifiable beneficiaries to the trust to curb the abuse of this entity and improve transparency.

However, there is no requirement for the Ministry of Lands to keep beneficial ownership information. The lack of a BO register increases the risk for abuse of Trusts since there can be obscurity in the structure, making it hard to identify the person who ultimately stands to benefit from the structure.

Trusts operate mainly domestically with the most common type of activity undertaken by trusts being charitable activities and formation of family related trusts. They therefore pose very low cross border risk exposure since a majority do not have ownership and control links with other jurisdictions.

The most common typology related to trusts however is the abuse of professional privilege to form and administer trusts. In the assessment period, there was no requirement for trusts to keep and file beneficial ownership information. Further, lawyers were not ML obliged entities under the POCAMLA. These factors contribute to the likelihood for abuse as facilitated by professional privilege.

There were very few incidences of money laundering and terrorism financing cases reported in the assessment period involving trusts. From the ML cases reported, only 5 involved trusts while only 2 were reported to have been suspected of being abused for TF.

The overall ML risk score for Trusts is **Medium and** TF risk score is **Medium Low**.

CHAPTER FIVE: NATIONAL VULNERABILITY ASSESSMENT

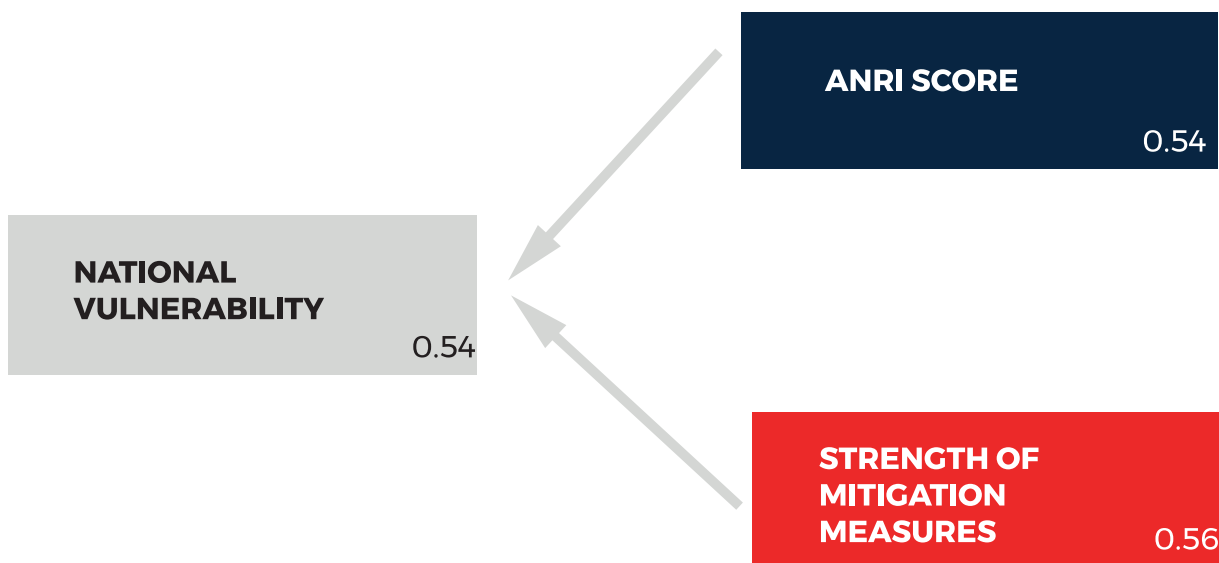
5.1 Introduction

The National Vulnerability Assessment was conducted with the following objectives:

- Assessing Kenya's overall vulnerability to ML and TF abuse of legal structures
- Reviewing existing mitigation measures put in place by Kenya against abuse of legal structures
- Identifying gaps and weaknesses in Kenya's overall beneficial ownership framework
- Identifying where extra safeguards are most urgently needed – without introducing burdensome procedures on legitimate business in Kenya.

The National Vulnerability Assessment took into consideration the Attractiveness for Non-Resident Incorporation (ANRI) as well as the strength of Kenya's mitigation measures.

The overall Vulnerability score was **Medium**.



5.2 Vulnerability - ANRI Score

The Attractiveness for Non-Resident Incorporation (ANRI) Score measures the attractiveness of a jurisdiction to foreign investors seeking to incorporate legal structures in the jurisdiction.

The ANRI score for Kenya was **Medium**.

The factors considered were as follows:

5.2.1 Size and Influence of Offshore Company Formation Business Sector

Kenya is not considered to be an offshore financial centre and thus, it is viewed to have low political influence on the company formation business sector. However, there is a small percentage of TCSPs providing services for offshore company formation. These services are mainly offered by a few TCSPs, some of whom are highly skilled and have a large foreign client base.

The TCSPs and other service providers who provide offshore incorporation services advertise Kenya as an international company formation centre for non-residents. The most common channel for advertising is online through websites. However, this is done by a few TCSPs. The laws of Kenya, however, limit the extent of advertising by advocates which has an impact on the overall number of those advertising services online²⁸.

5.2.2 Political and Economic Stability

Kenya enjoys political and economic stability. There is government stability, stability in public institutions, peace, fairly stable economy and a moderately stable currency. The WB reports that Kenya has taken steps to sustain economic growth and political stability in the recent past.²⁹ This stability makes Kenya an attractive jurisdiction for foreign and domestic investment.³⁰

5.2.3 Strength of the Rule of Law

The Constitution of Kenya, 2010, provides the independent Judiciary capable of enforcing contractual ownership rights. The strength of the rule of law in Kenya is considered robust. The overall Judiciary performance score in the Performance Management and Measurement Understandings Evaluation Report was 89.83% in the year 2021/2022 and 89.81% in the year 2019/2020.³¹ This indicates that the Judiciary is highly effective in the execution of its mandate.

5.2.4 Legal Framework for Asset Protection

The Constitution of Kenya, 2010, provides for the right to own property. However, this is not an absolute right and the protection does not extend to the protection of unlawfully acquired property which may be recovered through civil enforcement measures³². The Land Registration Act also provides protection for proprietors of land.³³ Further, intellectual property is also protected within the scope of protections under the Constitution as well as the Copyright Act, 2001 and the Industrial Property Act, 2001. The legal framework for asset protection in Kenya is therefore considered as being robust.

5.2.5 Perceived Corruption Levels

The perception of corruption in Kenya is high. For instance, in the Transparency International's Corruption Perceptions Index of the year 2022, Kenya scored 32 out of 100, indicating a perception of rampant corruption. This perception may act as a detriment, making the country less attractive to foreign investors.

5.2.6 Beneficial Ownership Transparency

Companies³⁴ and Limited Liability Partnerships³⁵ are required to maintain a register of their beneficial owners and submit a copy of the same to the Registrar of Companies. BO information is available to LEAs and other Competent authorities. Additionally, the BO information is available to Reporting Institutions upon request. The foregoing indicates that there is enhanced transparency of legal persons.

28 The Advocates (Marketing and Advertising) Rules, 2014, Rule 7.

29 <https://www.worldbank.org/en/country/kenya/overview>

30 <https://www.invest.go.ke/why-invest-in-kenya-2/political-stability-favorable-investment-policy/>

31 <https://www.judiciary.go.ke/wp-content/uploads/2023/07/pmmu-report-2022.pdf>

32 The Constitution of Kenya, 2010, Article 40

33 Land Registration Act, 2012, Section 25

34 Companies Act, 2015, Section 93A

35 Limited Liability Partnerships Act, 2011, Section 31B

5.2.7 Tax Attractiveness

Kenya is considered an investment hub within the region.³⁶ The corporation tax for foreign companies is 37.5% and that of resident companies is 30%³⁷. Foreign companies therefore are considered to have less favourable tax rates than resident companies, which may make Kenya less tax attractive for foreign companies.

However, there are tax incentives aimed at attracting foreign entities, such as capital allowances and tax holidays for companies manufacturing for export. In addition, all taxpayers have a statutory obligation to file annual tax returns and pay applicable taxes. Tax payers registered for VAT are required to file monthly VAT returns and remit VAT. Penalties and fines accrue if a taxpayer fails to file returns or pay the taxes due.

5.3 Strength of Mitigation Measures

In Kenya the measures in place to mitigate the ML and TF risk presented by Legal structures are considered to be effective but with various areas requiring immediate safeguards to mitigate the ML and TF risk. The strength of the mitigation measures score was **Medium High**.

The parameters considered were as follows:

5.3.1 Quality of Regulation & Supervision of TCSPs

TCSPs are required to monitor, on a continuous basis, and report any suspicious transactions or activities. Under POCAMLA TCSPs are categorised as DNFBPs and designated as reporting institutions who are obligated to conduct CDD³⁸. The TCSPs must therefore, take reasonable measures to satisfy themselves as to the true identity of any person seeking to enter into a business relationship with them or to carry out a transaction with them, by requiring the applicant to produce an official record to establish the true identity of the applicant.

Further, TCSPs are required to apply enhanced customer due diligence on business relationships and transactions with any natural and legal persons, legal arrangements or financial institutions originating from countries identified as posing a higher risk of money laundering, terrorism financing or proliferation. However, supervision of TCSPs is yet to commence.

5.3.2 Effectiveness of Enforcement of Sanctions/Fines

Under the Companies Act and the Limited Liability Partnership Act; failure to disclose BO information is an offence and upon conviction attracts a fine not exceeding Kshs 500,000 and a further Kshs 50,000 for each day of default. Further, reporting inaccurate information to the Registrar is an offence³⁹.

The Registrar also applies administrative measures to ensure that the basic and BO information is up-to-date. BRS uses denial of service to any company that fails to update their information. This ensures that non-complaint companies and LLPs are not able to carry on business because they are not able to get relevant documents such as up-to-date Official Search (CR12) required to facilitate their businesses in Kenya including bidding for tenders, operating bank accounts, acquiring, disposing or placing charge on properties belonging to the company.

³⁶ Kenya Country Commercial Guide <https://www.trade.gov/country-commercial-guides/kenya-investment-climate-statement>

³⁷ Income Tax Act, Third Schedule

³⁸ Proceeds of Crime and Anti-Money Laundering Act, 2009, Section 44.

³⁹ Companies Act, 2015, Section 872.

The AML/CFT Act 2023 empowered the Registrar to strike off companies for failure to disclose BO information. Further it introduced administrative sanctions for failure to update BO information within the prescribed timelines which attracts a penalty of Kshs.2,000 and a further Kshs.100 for each day of default.

These sanctions are dissuasive since there is a combination of criminal and administrative sanctions. The ultimate penalty of strike is also expected to serve as a deterrent factor to legal structures.

5.3.3 Quality of Corporate Registry

5.3.3.1 Comprehensiveness of Coverage

All legal entities created under the Companies Act, Limited Liability Partnership Act, Cooperatives Societies Act, Trustees (Perpetual Succession) Act are registered under the relevant registries. All companies and LLPs are registered by the Registrar of Companies under the Business Registration Service. Trusts are registered by the Principal Registrar under the Ministry of Lands while the Cooperative Societies are registered under the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development.

5.3.3.2 Level of accurate & up-to-date information

Based on the records from the registry, basic company registration is available and changes to the information are updated within 14 days. To ensure accuracy of the information, the Registrar validates against government databases such as IPRS and KRA. The integration with other government agencies reduces the level of manual input of information, improving on the accuracy of the information submitted. The verification process employs a look-up function which populates data based on ID input.

5.3.3.3 Adequacy of Resources

The staff at the registries are experienced, qualified and competent. The registries have ICT infrastructure including online portals which are embedded in the government digital services platform (e-Citizen). However, the registries would operate optimally with more financial and human resources.

5.3.3.4 Automatic alerts

Currently, the registries do not issue automatic alerts. Notifications are done manually. BRS analyses non-compliant companies from their records. In the recent past, 89,000 notices were sent out to companies which were not compliant with BO information. Efforts are being made to improve reporting tools to allow for a quick identification of non-compliant legal structures and enable for dissemination of automatic alerts.

5.3.3.5 Online access Data Formats

Basic information on legal structures is accessible by the public upon payment on a nominal fee. The cost of access to basic information is Ksh. 650/=. The process of obtaining the information requires users to login to ecitizen and search the name of the entity they want to conduct a search on. Upon payment, the report is made available instantly to the applicant online. The information provided includes the name of the structure, date of registration and registration number, address of the structure, contact information of the structure and directors, shareholders or partners of the structure.

5.3.3.6 Quality of Data Format and search options

Quality of data format and search options was rated high since Information at the registries can be searched using the legal entity name or the unique identifiers. The information is held in the database in a standardised format. Identity numbers can also be used to search associated legal structures or indicate beneficial ownership in legal structures.

5.3.3.7 CDD by Financial Institutions

Financial institutions are obligated to identify and verify the identity of their customers and their beneficial owners pursuant to Section 45 of the Proceed of Crime and Anti-Money Laundering Act, 2009 (POCAMLA). CBK, CMA and IRA have issued guidelines on measures to be applied by financial institutions. Additionally, inspections by regulators and report filing requirements ensure that financial institutions are aware of their requirement to conduct CDD and implement sufficient verification measures.

5.3.3.8 CDD by Other “Gatekeeper” Professions

Lawyers and accountants are designated as reporting institutions under POCAMLA and are subject to CDD requirements. Further, from discussions with members of various professions, there was an indication from the professionals such as advocates and certified secretaries that they have been conducting CDD on clients that they onboard.

5.3.3.9 AML/CFT Risk Awareness of TCSPs

TCSPs have a moderate understanding of AML/CFT requirements. However, Supervisory Bodies have enhanced sensitization in the sector on their obligations to boost level of understanding. Specific components on ML such as BO requirements have been addressed through numerous training sessions with advocates and certified secretaries. The Law Society has also included ML as part of their CPD programme where advocates are trained on the same. ICS included BO in some of their CPD events.

5.3.3.10 Availability of Quality of risk-based enhanced CDD measures

POCAMLA provides enhanced CDD for instances that present higher risks, including sectors identified as high risk in the NRA. Financial institutions and DNFBPs are required to conduct enhanced CDD measures especially where legal structures involved are from high-risk sectors.

5.3.3.11 Level of Access to BO information by competent authorities

LEAs and competent authorities can easily access BO information through API or upon written request to the Registrar. So far a number of LEAs and supervisors including KRA, ARA, EACC, IRA and CBK have made requests for BO information which have been honoured.

5.3.3.12 Level of Access of BO information by the Public

BO information is not available to the public. However, BO information on companies awarded tenders by the Government is publicly available on the Public Procurement Information Portal as published by the Public Procurement Regulatory Authority. Further, the Regulations provide that the State can publish BO information where it is a matter that affects the nation⁴⁰.

⁴⁰ Companies (Beneficial Ownership Information) Regulations, 2020, Regulation 13(6).

5.3.3.12 Level of Access by Reporting Entities

BO information from the Registries was not available to Reporting Institutions in the assessment period. However, the Companies (Beneficial Ownership Information) Regulations, 2020, were amended in 2023 to allow access of BO on companies to reporting institutions. Similarly, the Limited Liability Partnerships (Beneficial Ownership Information) Regulations, 2023 introduced access of BO information on LLPs to Reporting Institutions.

5.3.3.13 Quality of Routine Verification & Cross checks with Other Data sources

Registries collect and verify information on constitutive documents on registration and upon change of information. The registration process also has different levels of reviewers to ensure that information supplied is scrutinised before approval. The basic and BO information provided to the registry is verified through other government agencies and databases such as the Integrated Population Registration Database System (IPRS), KRA and other credible sources.

5.3.3.14 Red-Flagging for Enhanced Checks

Red-flagging of potential risk factors that trigger enhanced checks of the supplied information have been factored in the new enhanced system which is in its pilot phase. However, red-flagging is yet to be implemented.

5.3.3.15 Discrepancy Reporting Mechanism

Section 862 of the Companies Act provides that any person can report inconsistencies to the Registrar and the Registrar has the power to rectify and resolve inconsistencies in the registry. In addition, the Limited Liability Partnerships (beneficial ownership information) Regulations 2023 have provisions on discrepancy reporting. The amendments to the Companies (Beneficial Ownership Information) Regulations, 2020 as amended in 2023 also introduced requirements to BO and companies to report any material discrepancy in relation to BO information with the Registrar.

5.3.3.16 Existence of BO Transparency Measures for Foreign Structures

Foreign companies carrying on business in Kenya are required to register in order to operate locally or own assets.

All companies and LLPs registered in Kenya, including those incorporated in foreign jurisdictions, are required to provide BO information within 30 days and provide the amendments to BO information within 14 days of the amendments.

Kenya has also executed ten MOUs with the authorities of Israel, UAE, Jordan, Mozambique, Seychelles, South Sudan, among others. Kenya also has 15 double taxation agreements with foreign jurisdictions, facilitating expedited exchange of BO information. These MOUs provide Kenya with a solid platform to seek information and provide BO information, especially in relation to legal persons and arrangements under tax investigation or audit.

5.3.3.17 Quality of Bearer Shares Controls

Bearer shares are prohibited in Kenya. Section 504 of the Companies Act abolished bearer shares and share warrants. Any share not converted within the prescribed timelines was rendered void. Consequently, only registered shares are available and offered by companies in Kenya.

5.3.3.18 Level of Transparency on PEPs and BO

The BO disclosure is standard for all persons including PEPs. However, there is no requirement

to indicate that one is a PEP in the corporate register or the BO register. The Asset declaration (wealth declaration) requires persons in the public service to declare all their assets and shares in companies. There is however no express requirement to indicate BO status in the declaration.

5.3.3.19 Quality of Controls Against Deceptive Entity Names

Quality controls against deceptive names exist and are highly effective since there is a statutory restriction against using similar or deceptive names in the index of names maintained by the Registrar. Mechanisms also exist to compel any company registered with a name similar to another to change its name⁴¹. Further, the name search function is facilitated by systems which makes the process more accurate compared to manual searches.

5.3.3.20 Quality Nominee Regulations

The Companies Act and the LLP Act provides for disclosure of nominees, however, the provisions are yet to be operationalized through a lodgement platform. Nominators who have met the criteria for identification as BOs pursuant to Regulation 3 of the Companies (Beneficial Ownership Information) Regulations 2023 would be reported as BOs.

5.3.3.21 Level of BO Transparency for Structures Owned or Controlled by Trusts

All companies are required to disclose BO information including where trusts have ownership or control of a legal person. When registering a company that has a trust as a shareholder, the shareholder's beneficial owners must be provided before proceeding with the registration process. The process of identification of the BOs for shareholders who are trusts in companies is explained in the beneficial ownership guide⁴².

5.3.3.22 Level of BO Transparency for Structures with Corporate Directors

All companies are required to disclose BO information. The obligation extends to instances where legal persons are directors or shareholders of a company. Additionally, corporate shareholders or directors cannot be added as shareholders or directors of another company if they have not first filed their BO information. In relation to foreign companies, the information is added at the point of being introduced in the register as directors or shareholders of another company. The Guide on Beneficial ownership disclosure also explains this scenario and explains how the BOs can be identified.

5.3.3.23 International Exchange of AML Information and Tax Information

Kenya enjoys excellent international exchange of AML information by virtue of its membership in various regional and international organisations which require members to exchange information. These organisations include: the EAC, Global Forum on Transparency and Exchange of Information for Tax Purposes; ARINSA, ARINEA, CAACC, among others. It has also ratified international instruments such as the MAAC which obligates countries to share information which includes BO information. For most of these organisations the obligation extends to international exchange of tax information.

5.3.3.24 Effectiveness of Domestic Interagency Information Exchange

Exchange of information is achieved through various Multi-Agency frameworks which enable government agencies to exchange information on legal structures. For Law enforcement agencies they can access information on legal persons through API, read-only and/or upon written request. API and read only access give law enforcement instantaneous access to information which

⁴¹ Companies Act, 2015, Section 58.

⁴² Guide on Disclosure of Beneficial Ownership Information, P. 15 available on <https://brs.go.ke/wp-content/uploads/2023/03/sure-of-Beneficial-Ownership-Information.pdf>

allows for a quick assessment as to whether there is a need for further pursuit. Law enforcement agencies would subsequently write in instances where investigations become actionable and information is to be presented before a court of law.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusions

The risk assessment on legal persons and arrangements enhances the country's understanding of its ML and TF Risks. In particular, it would enable the country to employ appropriate mitigation measures in relation to each legal structure to counter the identified risks. The findings of this assessment impacts on the activities of law enforcement agencies, supervisory bodies, registries as well as private sector players interacting with legal structures.

The money laundering threat for abuse of legal structures was rated medium. On the other hand, the TF threat was rated medium low. Further, findings of the entity risk assessment revealed that of all legal structures, trusts are the most likely to be abused for both ML (medium) and TF (medium low), followed by private limited companies. Unlimited companies on the other hand recorded the lowest risk score among all legal structures which was low. In terms of sectors, legal persons operating in the construction sector and real estate appeared to pose the biggest threat to ML abuse as compared to any other sector in relation. In relation to TF, legal structures operating in the transport sectors appeared to be more prone to abuse than other sectors.

The national vulnerability score was medium. The score took into account the Attractiveness for non-resident incorporation (ANRI) score and the strength of mitigating measures available in the country. It was observed that Kenya has put in measures which reduced the vulnerability of abuse, including the requirement to have a natural person in registration of legal structures, collection of BO information among other measures. The enactment of the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023 addressed a number of the deficiencies existing in the assessment period, thus strengthening the available mitigating measures.

Overall, Kenya is committed to enhancing the transparency of legal structures and arrangements and will continue to enhance measures to mitigate the risks as evidenced by the strengthening of our legislative framework governing legal structures over the years.

6.2 Recommendations

Based on the findings of this report it is recommended that the country takes the following measures to mitigate the risks identified in this report:

1. Review the laws governing the trust regime in Kenya and put in place measures to mitigate or deter their use for ML and TF purposes.
2. Automation of the registration processes in all registries and the digitisation of records in relation to legal structures.
3. Registries should employ a risk-based approach and consider enhanced verification measures commensurate to the identified risks where applicable.
4. The Business Registration Service should implement the provisions of the Companies Act and the Limited Liability Partnerships Act introduced through the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023, to enhance the transparency of these structures.

5. Kenya should provide for mechanisms for discrepancy reporting on beneficial ownership information available in the registries through legislative means, to enhance the verification of the information.
6. Kenya should develop a case management system to track the number of cases investigated and the number of requests for assistance made by other countries through mutual legal assistance. The case management should also include the nature of the offences investigated and timelines used to process requests from other entities and timeliness of the responses received.
7. The Financial Reporting Centre, Supervisory Bodies, the Business Registration Service and the Ministry of Lands should work towards sensitising financial institutions, DNFBPs, TCSPs and the public on compliance requirements and risks associated with legal structures in relation to money laundering and terrorism financing.
8. The Government should consider increasing the funding for agencies and Ministries that register legal persons and legal arrangements to ensure that there are no resource gaps hindering the execution of their mandates. The enhanced funding should cater for the implementation of enhanced verification of data and information, implementation of necessary systems, staffing and stakeholder sensitization needs.

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ANNEXURES

8.1 Annex 1: Legal Framework

Legislative Framework

1. The Advocates (Marketing and Advertising) Rules, 2014
2. Anti-Corruption and Economic Crimes Act (No. 3 of 2003)
3. Banking Act (Cap 488)
4. Capital Markets Act (Cap 485 A)
5. Central Bank of Kenya Act (Cap 491)
6. Constitution of Kenya
7. Companies Act, 2015
8. Cooperatives Societies Act (Cap 490)
9. Companies (Beneficial Ownership Information) Regulations, 2020
10. Ethics and Anti-Corruption Commission Act (No. 22 of 2011)
11. Income Tax Act, Cap 470
12. Insurance Act (Cap 487)
13. Land Registration Act, 2012
14. Law Society of Kenya Act, 2014 (No. 21 of 2014)
15. Limited Liability Partnerships Act, 2011
16. Microfinance Act, 2006 (No. 19 of 2006)
17. Mutual Legal Assistance Act (No. 36 of 2011)
18. National Payment Systems Act, 2011 (No. 39 of 2011)
19. Partnerships Act, 2012
20. Prevention of Terrorism Act, 2012 (No. 30 of 2012)
21. Proceeds of Crime and Anti-money Laundering Act, 2009 (No. 9 of 2009)
22. Registration of Documents Act Cap 285
23. Sacco Societies Act, 1997 (No. 14 of 2008)
24. Trustees (perpetual Succession Act) Cap 164

The above laws are available on: <http://kenyalaw.org:8181/exist/kenyalex/index.xql>

8.2 Annex 2: Members of the Working Group

Kenya constituted a Working group comprising of –

8.2.1 The Financial Reporting Centre

The Financial Reporting Centre (FRC) is established pursuant to Section 21 of the Proceeds of Crime and Anti-Money Laundering Act (2009) (POCAMLA). The functions of the FRC include Exchange of information between jurisdictions, collection of data, development of guidelines and advisory of the CS, receipt and analysis of suspicious transaction reports and suspicious activity reports, and dissemination of analysed reports to competent authorities.

In addition, the FRC has the power to regulate and supervise reporting institutions regarding the application of measures to combat money laundering, terrorism financing and the proliferation of weapons of mass destruction. These measures include the obligation to conduct customer due diligence on their customers, including customers who are legal persons and legal arrangements.

8.2.2 Registrars

8.2.2.1 Business Registration Service

The Business Registration Service is a State Corporation, under the Office of the Attorney General and the Department of Justice, established to administer policies, laws and other matters relating to the registration of Companies, partnerships and firms, and corporations carrying on business under a business name, bankruptcy, hire-purchase, and security rights. This role is critical in the ecosystem of doing business in Kenya and economic growth at large.

The Laws the Service administers include the Business Registration Service Act, the Registration of Business Names Act, the Limited Liability Partnerships Act, the Partnerships Act, the Companies Act, the Insolvency Act, the Hire Purchase Act and the Movable Property Security Rights Act.

The Business Registration Service (BRS), is the sole custodian of all business names, companies and limited liability partnerships. It keeps information of these entities registered in Kenya and maintains registers, data and records on registrations carried out by the Service in a central database.

The BRS is also in charge of Regulating Insolvency Practice in Kenya, Managing affairs of Bankrupts' estates (Bankruptcy Trustee), Liquidation and administration of insolvent and financially distressed companies.

BRS deals with the dissolution of the entities they register.

8.2.2.2 Ministry of Lands, Public Works, Housing and Urban Development

The State Department for Lands and Physical Planning is a central player in Kenya's socio-economic development plan. The functions bestowed to the Department include-

1. Administration and Support Services. It provides the overall policy direction and co-ordination of the State Department's functions
2. Physical Planning. It provides the general advisory on national Physical Planning services; general principles on land planning and coordination of planning by counties in terms of policies, standards and guidelines and technical assistance and capacity building for counties on Physical Planning.
3. Land Adjudication and Settlement: The Main key functions are the ascertainment of land rights and interests, land consolidation and adjudication; acquisition of agriculturally viable land for settlement of poor landless Kenyans; management of the Agricultural Settlement Fund; management of group ranches as well as arbitration of land disputes.

4. Surveys: Survey is the official Government agency for land surveying and mapping. Its Responsibilities include production, maintenance and distribution of accurate geographical data in the form of analogue and digital maps in all ranges of scales.
5. Land Administration: Its Key functions is the Administration and management of private land, control and regulation of land use and property in respect of all categories of land and the maintenance of land records.
6. Land Valuation: The Valuation of land and assets for stamp duty, Government leasing including foreign missions, asset valuation, rating and development of National Land Value Index.
7. Land Registration: its key Functions are registration of land transactions and other legal documents Including Trust Deeds, Incorporation of Legal persons and Arrangements, determination of land and boundary disputes in collaboration with Surveys Department.

8.2.2.3 Registrar of Societies

The Registrar of Societies is under the Registrar general department within the Office of the Attorney General and the Department of Justice and deals with the registration of all types of societies.

The type of societies include those Charitable in nature like Children homes, orphanage, education foundations, scientific research foundations; Religious in nature like churches, Ministries, mosques, temples; Professional body like Media Owners Association; Alumni Associations; Cultural Associations; Recreational Clubs among others.

8.2.2.4 Ministry of co-operative and Micro Small and Medium Enterprises Development

The Ministry is mandated to promote and stimulate development of co-operative societies. It registers and maintains data relating to co-operatives. It further deals with Supervision and oversight over Co-operative Societies; Co-operative Savings, Credit, and other Financial Services Policy.

Directorate of Criminal Investigations (DCI), Assets Recovery Agency (ARA), Ethics and Anti-Corruption Commission (EACC), Anti - Terrorism Police Unit (ATPU), National Police Service (NPS), Kenya Revenue Authority (KRA), Financial Reporting Centre (FRC) and Office of the Director of Public Prosecutions (ODPP), among others.

8.2.2.5 Non-Governmental Organizations Co-ordination Board

The Non-Governmental Organizations Co-ordination Board is a State Corporation established by the Non-Governmental Organizations Co-ordination Act (Cap 19) of 1990. The Board has the responsibility of regulating and enabling the NGO sector in Kenya. The NGOs Co-ordination Board started its operations in 1992 and is currently under the Ministry of Interior and Co-ordination of National Government.

Specifically, the NGOs Co-ordination Board is responsible for inter alia registering, facilitating and coordinating all national and international NGOs operating in Kenya; advising the government on their contribution to national development; providing policy guidelines for NGOs to align their activities with national priorities and receiving and analyzing NGOs annual reports.

8.2.3 Law Enforcement Agencies and Supervisory Bodies

8.2.3.1 Kenya Revenue Authority

The Kenya Revenue Authority was established by an Act of Parliament, Chapter 469 of the laws of Kenya, which became effective on 1st July 1995. KRA is charged with collecting revenue on behalf of the government of Kenya. The core functions of the Authority are to assess, collect and account for all revenues in accordance with the written laws and the specified provisions of the written laws; to advise on matters relating to the administration of, and collection of revenue under the written laws or the specified provisions of the written laws and to perform such other functions in relation to revenue as the Minister may direct.

8.2.3.2 Office of the Director of Public Prosecution

The ODPP draws its mandate from the Constitution of Kenya 2010 together with the ODPP Act 2013, which give the Director of Public Prosecutions (DPP) the powers to direct the Inspector-General of the National Police Service to investigate any information or allegation of criminal conduct.

8.2.3.3 Directorate of Criminal Investigation

The Directorate of Criminal investigations is established under the National Police Service Act to undertake investigations of serious crimes. In 2013, the DCI established the Financial Investigations Unit (F.I.U), whose main objective is to implement the Proceeds of Crime and Anti-Money Laundering Act (No.9 2009) in compliance with the Financial Action Task Force (FATF) standards.

The Anti - terrorism Police Unit (ATPU) is a unit within the Directorate of Criminal investigation mandated to mitigate and investigate terrorism related cases in the country. It was formed in the year 2003 as a unit based at the Police headquarters to investigate all Terrorism matters.

ATPU's role includes prevent, disrupt and interdict terrorist activities, including terrorism financing, within the country; investigate all terrorism related cases; lead other agencies at all scenes of terrorist related incidents; create profiles for suspected terrorists and keep an updated databank; share intelligence with other stakeholders; review and monitor security of vital installations and soft targets and sensitize the public on terrorism awareness on need basis.

8.2.3.4 Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission (EACC) is a body corporate established under Section 3 of the Ethics and Anti-Corruption Act, 2011. It is mandated to undertake investigation of any acts of corruption or violation of codes of ethics or other matters prescribed under the Anti-Corruption and Economic Crimes Act No. 3 of 2003 and all other relevant Acts. The economic crimes provided in the Act include;

- a. an offence under section 45;
- b. an offence involving the laundering of the proceeds of corruption; and
- c. an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;

The Commission may commence proceedings at the High Court under this section against a person if; after an investigation, the Commission is satisfied that the person has unexplained assets; the person has, in the course of the exercise by the Commission of its powers of investigation or otherwise, been afforded a reasonable opportunity to explain the disproportion

between the assets concerned and his known legitimate sources of income and the Commission is not satisfied that an adequate explanation of that disproportion has been given⁴³.

8.2.3.5 Central Bank of Kenya

The Central Bank of Kenya (CBK) is responsible for formulating monetary policy to achieve and maintain price stability. The Central Bank also promotes financial stability; an effective and efficient payment, clearing and settlement system; formulates and implements foreign exchange policies; holds and manages foreign exchange reserves; issuing of currency; and is the banker for, adviser to and fiscal agent of the Government.

The statutory mandate of the CBK under the CBK Act has its principal objectives being: To formulate and implement monetary policy. To foster liquidity, solvency and proper functioning of a stable market based financial system and to support the economic policy of the government including its objective of economic growth and development.

In addition to Kenya's AML/CFT Laws and Regulations, the current AML/CFT frameworks applicable to CBK are:

- ▶ The Central Bank of Kenya Act
- ▶ The Banking Act
- ▶ The Microfinance Act
- ▶ The National Payment System Act
- ▶ The Prudential Guideline on Anti-Money Laundering and Combating the Financing of Terrorism (CBK/PG/08)
- ▶ The Microfinance Regulations, 2008
- ▶ The Forex Bureau Guideline, 2011
- ▶ The Money Remittance Regulations, 2013
- ▶ The National Payment Systems Regulations, 2014
- ▶ The Digital Credit Provider Regulations, 2022

8.2.3.6 Insurance Regulatory Authority

The Insurance Regulatory Authority (IRA) which was established under the Insurance (Amendment) Act [No.11 of 2006] regulates the insurance industry in Kenya. The mandate of IRA is to regulate, supervise and develop the insurance industry in Kenya.

Guidelines issued by the Authority

The "Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020"- The guide outlines the requirements for regulated entities to develop programmes to effectively combat money laundering and financing of terrorism activities.

8.2.3.7 Retirements Benefit Authority

Retirement Benefits Authority (RBA) is a regulatory body under the National Treasury, established under Retirement Benefits Act. The Retirement Benefits Act was enacted as part of the on-going reform process in the financial sector in order to bring the retirement benefits industry under a harmonized legislation, to address the many problems that have hitherto faced the industry.

⁴³ Anti-Corruption and Economic Crimes Act, No. 3 of 2003, Section 55.

The Specific mandate of RBA includes Regulating and Supervising the establishment and management of retirement benefits schemes; Protecting the interests of members and sponsors of the retirement benefits sector and promoting the development of the retirement benefits sector.

8.2.3.8 Asset Recovery Authority

The Assets Recovery Agency was established under Section 53 of the Proceeds of Crime and Anti-Money Laundering Act No.9 of 2009 as a body corporate with the mandate of combating money laundering, terrorist financing, and proliferation financing through identification, tracing, freezing, seizure, and confiscation of proceeds of crime.

The Mandate of the Assets Recovery Agency under Section 54 of the Proceeds of Crime and Anti-Money Laundering Act No.9 of 2009 is to implement the provisions of Parts VII to XII. This includes; Criminal Forfeiture, Civil Forfeiture, administering the Criminal Assets Recovery Fund and international assistance in investigations and proceedings.

8.2.4 Office of the Attorney General and the Department of Justice (State Law Office)

The OAG and DOJ is established under Article 156 of the Constitution of Kenya 2010 and the Office of the Attorney General Act 2012 establishes the Office of the Attorney General. For purposes of this exercise is the Central Authority in charge of coordinating mutual legal assistance to be given and received by Kenya in investigations, prosecutions and judicial proceedings in relation to criminal matters. This applies to requests for legal assistance from any requesting state or international entity to which Kenya is obligated on the basis of a legal assistance agreement or not as well as requests for legal assistance from any requesting state or international entity to which Kenya is obligated on the basis of a legal assistance agreement or not.

The Executive Order No 1 of 2023 refers to the Office of Attorney General and Department of Justice as State Law Office.

8.2.5 Ministry of Foreign and Diaspora Affairs

The Ministry of Foreign and Diaspora Affairs of the Republic of Kenya is a ministry in the Government of Kenya which oversees the foreign relations of Kenya. The Ministry in collaboration with the OAG& DOJ is mandated to Management of Bilateral and Multilateral Relations; Official Communications on Global Foreign Relations and of importance is to coordinate mutual legal assistance to be given and received by Kenya in investigations, prosecutions and judicial proceedings.

8.2.6 DNFBP Sector Supervisory Bodies and Self-Regulatory Bodies


- a. Institute of Certified Public Accountants of Kenya-** is responsible for the registration of accountants and accounting firms, as well as regulating the activities carried out by the practice of certified accountants in Kenya. It is designated as a Supervisory Body under the First Schedule of the POCAMLA.
- b. Betting and Licensing Control Board-** is responsible for regulates and supervises the casinos and other gaming institutions and is designated as a Supervisory Body under POCAMLA.
- c. Estate Agents Registration Board:** is the regulatory body responsible for registering and regulating real estate agents and is designated as a Supervisory Body under POCAMLA.

- d. **Law Society of Kenya**- is responsible for regulating and supervising the activities undertaken by legal practitioners. It also provides advice and assists members of the legal profession, government and the public in all matters relating to the administration of justice in Kenya. It is designated as a Self-Regulatory Body under the POCAMLA.
- e. **Institute of Certified Public Secretaries (ICPS)**: – Responsible for registration and regulating the practice of certified public secretaries in Kenya.
- f. **Ministry of Petroleum and Mining, State Department of Mining**-is responsible for supervising activities undertaken by dealers of precious stones and metals.

8.2.7 Annex 3: Glossary

Bearer share	FATF Glossary definition: “Bearer shares refers to negotiable instruments that accord ownership in a legal person to the person who possesses the bearer share certificate.” A bearer share entity is an entity whose ownership is established by one or more certificates, securities, or other documents, none of which name a specific person as the owner of the entity or is registered in any jurisdiction but deems the owners of the entity to be anyone with physical possession of an ownership document. The issuing entity neither registers its owners nor tracks transfers of ownership; it disperses dividends to Bearer shares when a physical coupon is presented. Because no ownership document is registered with any authority, transferring ownership of the entity involves only delivering the physical ownership document to a new person.
Beneficial owner	FATF Glossary definition: “Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Only a natural person can be a beneficial owner, and more than one natural person can be the owner of a given legal person or arrangement.”
Customer due diligence	The process of gathering and analysing information on a customer and verifying the customer’s identity with a view of understanding the customer better.
Discrepancy reporting mechanism	A mechanism for reporting a difference between information held in a government registry and information held by a registry user or information held in the public domain. Jurisdictions may allow voluntary reporting of discrepancies by registry users or obligate certain registry users to report all or some discrepancies to authorities. The registry authority must ensure reported discrepancies are resolved to ensure accurate registry information.
Legal arrangement	FATF Glossary definition: “Legal arrangements refers to express trusts or other similar legal arrangements. Examples of other similar arrangements (for AML/CFT purposes) include fiducie, treuhand and fideicomiso.”
Legal entity	Refers to legal persons with separate legal personality.

Legal person	<p>Legal persons refers to any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property. This can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities.”</p> <p>Legal persons have a separate legal personality and can sue and be sued, and can enter into contracts.</p>
Anstalt	A flexible corporate form closely related to a trust but unlike a trust, it has legal personality like a company or foundation. Its capital may be divided into shares. It can be formed when the founder, a legal or natural person, transfers rights to assets to a board of directors by an act of assignment.
Cooperative	An autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned enterprise.
Fideicomiso	An arrangement, generally used in inheritance law, to leave an estate to one person, entrusting them to pass it on to another person.
Reporting Institution	Means a financial institution and designated non-financial business and profession;
Supervisory Body	Has the meaning assigned under the Proceeds of Crime and Anti-money Laundering



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