REPUBLIC OF KENYA

MONEY LAUNDERING AND TERRORISM FINANCING NATIONAL RISK ASSESSMENT REPORT

OCTOBER 2021





Money Laundering and Terrorism Financing National Risk Assessment Report

DISCLAIMER

The National Money Laundering and Terrorist Financing (ML/TF) risk assessment of the Republic of Kenya has been conducted as a self-assessment by the Kenyan authorities, using the National Risk Assessment Tool developed and provided by the World Bank Group. The World Bank Group project team's role was limited to delivery of the tool, providing guidance on the technical aspects of the tool, and review/feedback to assist with the accurate use of it. Data, statistics, and information used for completing the ML/TF risks assessment and the ensuing analysis, results, interpretation, judgment and the outcomes completely belong to the Kenyan authorities and do not reflect the views of the World Bank Group.

FOREWORD

I am pleased to present a report of the first Money Laundering (ML) and Terrorism Financing (TF) National Risk Assessment (NRA) conducted by Kenya.

I appointed the Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing Co-ordinated by the Financial Reporting Centre to conduct the NRA exercise. The NRA is intended to identify and assess the vulnerabilities, level and trends of Money Laundering and Terrorism Financing (ML/TF) in the country as well as proposes measures for mitigating the identified risks.

In conducting the NRA, we adopted a whole of Government approach whereby Ministries, Departments and Agencies (MDAs) involved in the fight against ML and TF participated in the assessment. The private sector represented by different areas vulnerable to ML and TF also participated in the exercise thus enabling the country to obtain and benefit from the widest possible range of information and views on the areas assessed.

Kenya is a major regional business and travel hub and a gateway to the neighbouring East African economies with well-developed trade links to the rest of the world. This geo-positioning facilitates legitimate commerce and has enabled the country to grow economically. It however also exposes the country to ML/TF risks. The NRA Report is thus intended to inform the Government on the country's ML/TF risks and vulnerabilities; to identify the sectors that carry a potentially higher or lower risk as well as guide the Government's response to the identified risks.

The results of the risk assessment will guide Government's response in combating money laundering, terrorism financing and proliferation financing (ML/TF/PF) and in particular, will assist MDAs in assigning responsibilities for dealing with these vices on the basis of the identified threats and vulnerabilities. The NRA findings also provide a basis for allocation of resources in combating ML/TF in a more efficient manner and in implementing a risk-based anti-money laundering action and countering the financing of terrorism approach.

I take this opportunity to thank all the stakeholders who participated in this important national exercise. The Government of Kenya is committed to implementing the recommendations of the NRA as set out in the resultant NRA Action Plan.

We need to remind ourselves that it is only through our collaborative efforts that we will ensure that Kenya remains a hostile location for illicit financial activities thus upholding the integrity of our financial system and protecting our citizens.



HON.(AMB.) UKUR YATANI, E.G.H.
Cabinet Secretary, National Treasury and Planning

MESSAGE FROM THE NATIONAL CO-ORDINATOR

Money laundering remains a significant concern for Kenya because it facilitates and conceals crime and can distort markets and the broader financial system. Kenya is particularly vulnerable to all forms of illicit financial flows because of the ingenuity of its citizens; the country serves as a trade hub for the region; the country has a relatively sophisticated financial system and a favourable environment for technological innovation advancement leading to innovative fintechs.

The National Risk Assessment on Money Laundering and Terrorism Financing exercise (NRA) was conducted in 2020-2021 using the World Bank's NRA tool and methodology. The global outbreak of the COVID-19 presented unique challenges in conducting the NRA exercise but participants were able to overcome the same.

The NRA Report will assist the country in identifying the gaps and deficiencies in Kenya's Anti-Money Laundering / Combating the Financing of Terrorism and Combating Proliferation Financing (AML/CFT/CPF) legal, regulatory and institutional framework. The NRA has also enabled the country to prepare for the ongoing 2nd Round of Mutual Evaluation that majorly focuses on the understanding of ML/TF risks as well as the application of risk-based measures. The output of the NRA exercise is this NRA Report which details the ML/TF risk profile as well as a corresponding National AML/CFT/CPF Strategy and Action Plan to address and implement the outcome of the NRA exercise.

I would like to express my gratitude to the Cabinet Secretary, the National Treasury and Planning for appointing the Financial Reporting Centre as the Coordinator of this important national exercise. I would also like to thank the World Bank for availing the NRA tool and methodology that enabled us undertake the NRA and also for their training and guidance on the use of the NRA tool. Finally, I thank the NRA Taskforce and participating institutions and personnel from both the public and private sectors for their, time, commitment, dedication and effort which has enabled us to successfully complete this exercise and realise Kenya's first National Money Laundering and Terrorism Financing Risk Assessment.



CAPT. (RTD.) SAITOTI K. MAIKA, M.B.S.
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ACRONYMS

ACA	Anti-Counterfeit Authority
ACECA	Anti-Corruption and Economic Crimes Act, 2003
AF	Asset Forfeiture
AMISOM	African Union Mission in Somalia
AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
ARA	Assets Recovery Agency
ATPU	Anti - Terrorism Police Unit
BCLB	Betting Control and Licensing Board
BFIU	Banking Fraud Investigations Unit
BO	Beneficial Ownership
BRS	Business Registration Service
CAK	Communications Authority of Kenya
CBK	Central Bank of Kenya
CDD/EDD	Customer Due Diligence/ Enhanced Due Diligence
CMA	Capital Markets Authority
CRB	Credit Reference Bureau
CS/CPS	Certified Secretaries / Certified Public Secretaries
DNFBPs	Designated Non-Financial Businesses and Professions
DCI	Directorate of Criminal Investigations
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
EACC	Ethics and Anti-Corruption Commission
FRC	Financial Reporting Centre
FATF	Financial Action Task Force
FXB	Foreign Exchange Bureau
GDP	Gross Domestic Product
GPW	Gross Premiums Written
ICPAK	Institute of Certified Public Accountants of Kenya
ICPSK	Institute of Certified Public Secretaries of Kenya
IRA	Insurance Regulatory Authority
IT	Information Technology
KBA	Kenya Bankers Association
KFS	Kenya Forest Service
KRA	Kenya Revenue Authority

KWS	Kenya Wildlife Service
KYC	Know Your Customer
LEAs	Law Enforcement Agencies
LSK	Law Society of Kenya
MLA	Mutual Legal Assistance
MLRO	Money Laundering Reporting Officer
ML/TF	Money Laundering and Terrorist Financing
MRP	Money Remittance Provider
MSME	Micro, Small and Medium Enterprise
MVTS	Money Value Transfer Service
NEMA	National Environmental Management Authority
NIS	National Intelligence Service
NPS	National Police Service
NGO/NPO	Non-Governmental Organization/Non-Profit Organization
NRA	National Risk Assessment
NYS	National Youth Service
ODPP	Office of the Director of Public Prosecutions
PEP	Politically Exposed Person
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act, 2009
POTA	Prevention of Terrorism Act, 2012
PSP/MNO	Payment Service Provider / Mobile Network Operator
RBA	Retirement Benefits Authority
SACCO	Savings and Credit Co-Operative Society
SASRA	Sacco Societies Regulatory Authority
STR	Suspicious Transaction Report
UNSCR	United Nations Security Council Resolution

EXECUTIVE SUMMARY

Money Laundering (ML) and Terrorism Financing (TF) National Risk Assessment (NRA) is a self-assessment process through which a country deepens its understanding of its unique money laundering and terrorism financing landscape. The output of the NRA process is a report detailing a country's specific risk profile as well as a corresponding strategy and an action plan to mitigate identified risk areas.

Kenya utilised the World Bank tool to undertake the NRA. As per the tool, risk is defined as a combination of threats and vulnerabilities. Threat refers to the scale, volume and characteristics of the proceeds of crime and/or terrorist financing. Threats assessment included proceeds of crime generated within the jurisdiction (internal threat), proceeds from other jurisdictions (external threat), and terrorist funds and assets raised, used, or transiting through the jurisdiction. On the other hand, vulnerability refers to weaknesses or gaps in a jurisdiction's defences, both at the national and sectoral level. These include gaps in legislation and regulation, low awareness and capacity, insufficient resources or infrastructure to combat ML/TF. Vulnerability also reflects the economic, geographical, or other social environment factors that may increase the ML/TF exposure. Generally, threat and vulnerability are combined to determine the overall risk.

The overall ML threat for Kenya was assessed as *Medium* with a potential for increase in the future. On the other hand, the national money laundering vulnerability was assessed as *Medium High*. Banking industry was assessed as the sector with the highest impact on the national ML vulnerability, largely due to the important role played by banks in the economy. Additionally, banks account for relatively higher share of financial sector activities undertaken as well as products and services offered, have elaborate networks which extend across the region and are faced with a number of compliance challenges. Real estate, money remittance providers (MRPs), money network operators (MNOs), Saccos, legal profession and motor vehicle dealers' sectors were also assessed as posing significant impact to the country's national AML/CFT vulnerability. This is attributed not only to the contribution of these sectors to the economy in general, but also to the fact that these sectors have relatively weaker frameworks on ML/TF oversight.

The FATF recommends that conducting due diligence (CDD) and know-you-client (KYC) requirements be performed by lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their clients concerning a number of activities. The assessment found a high money laundering vulnerability for the legal sector due to the fact that lawyers are involved in clients' transactions and most of these clients are high value clients and include foreigners and PEPs. The assessment noted that lawyers are not obligated to conduct AML/CFT due diligence to disclose the identity of new clients and can make decisions as directed by the same clients.

The FATF standards do not require AML/CFT obligations to be on-boarded on motor vehicle dealers. However, this assessment found that the motor vehicle dealers' industry, especially the second-hand dealers, are highly vulnerable to ML/TF abuse in Kenya. In this regard, the report recommends the designation of lawyers and motor vehicle dealers as DNFBPs for the purposes of AML/CFT reporting requirements.

The money laundering predicate offences were categorized as either posing High risk, Medium risk or Low risk to the country as enumerated below:

a. *High-risk predicate offences* - fraud and forgery related offences, include obtaining by false pretence, currency forgery, false accounting, stealing (including stealing by directors, agents, employees/servants, stealing of motor vehicles and motorcycles); drug

related offences including cultivation, trafficking, possession and handling of dangerous drugs; corruption and economic crimes that majorly relate to bribery (soliciting and accepting), demanding by false pretence, unexplained wealth, embezzlement of public funds and other corruption offences.

b. *Medium-risk predicate offences* - environmental and wildlife crimes which relate to illegal wildlife trade, killing of wildlife, illegal possession of wildlife and illegal trade in wastes/polluting products; cybercrime offences, tax related offences, money laundering and offences relating to counterfeiting and piracy of products. The medium rating for these predicate types is attributed to the fact that the formal sector of the economy has structural mechanisms for detecting and preventing the abuse of the financial system for money laundering purposes.

c. *Low-risk predicate offences* - human trafficking and smuggling of persons.

The assessment found that terrorism is not a major proceed generating crime in Kenya and is rated low risk in terms of the level of threat to money laundering. Even though terrorism is a serious predicate offence in Kenya, the ultimate motive of perpetrators of terrorism is to kill, maim and avenge Kenyan targets mainly for ideological mileage. As such, there are insignificant proceeds or financial rewards that accrue as benefits for the attacks. The proximity of Kenya to Somalia which hosts Al-Shabaab headquarters and operational bases exposes the country to the greatest threat on the terrorism front. Al-Shabaab continues to exploit Kenya's porous borders to launch ambushes against the law enforcement agencies and civilian population.

The domestic perception of terrorism financing risk in Kenya is generally high given the numerous incidences of terrorist attacks. However, a number of aggressive counter-measures have been employed by the Kenyan Government to combat terrorism and counter violent extremism in the country. Kenya has been consistently lobbying for the inclusion of Al-Shabaab, an Al-Qaeda affiliate, as a designated terrorist entity under the United Nations Security Council Resolution 1267. This demonstrates the appreciation by Kenya of the security threats posed by terrorists and terrorists organizations, including Al-Shabaab. The overall terrorism financing (TF) threat in Kenya was assessed as medium, and the overall vulnerability for TF was assessed as medium low.

Sectoral cases of terrorism financing threats have been reported in the banking and mobile money sectors in Kenya, and were dealt with as provided for under the law. Other than the banking and mobile money sectors, the assessment did not reveal any significant terrorism financing threats in the other financial services sectors.

The assessment revealed that the number of money laundering investigations in the country are still low considering that relatively large number of allegations have been reported. Additionally, most investigations and prosecutions are conducted without considering parallel financial investigations alongside the predicate offences. LEAs should therefore, be empowered to be able to conduct identification, tracing and confiscation of proceeds and instrumentalities as well. These include the ability to pursue confiscation of property of corresponding value as appropriate.

The assessment also found that data management systems (including storage and retrieval) employed by various Ministries, Departments and Agencies (MDAs) generally do not facilitate ease of access and use of the collated information. In some cases, the information is not stored at all. Further, it was noted that some organizations use different formats to categorize and/or classify similar pieces of information. For instance, individuals who are accused by LEAs of the offence of poaching offence are sometimes prosecuted for the crime of killing the animals,

instead of poaching, and vice versa. These non-unified case classifications impede collation, interoperability and analysis of the available data (information) leading to inconsistent reporting mechanisms.

The assessment found that mobile money has an influence on sports betting in Kenya. The potential for money laundering risks in sports betting was assessed as low for betting individuals. However, for the owners of the betting firms, the risks for money laundering was assessed to be high. This is because the ownership of sport betting firms is predominantly foreign based with locals playing a minority role, and the betting is mainly undertaken against international sporting activities. The ML risk comes in through the ownership of the betting companies where sports betting proceeds could potentially be comingled with funds from other predicate crimes and passed out as genuine winnings with a possible collusion on who takes the winnings which are later either reverted into the syndicate or transferred outside the country (a form of capital flight).

The report indicates that non-profit organizations (NPOs) in Kenya are registered under different laws e.g., NGO's Coordination Act; Companies Act; Societies Act; and Trustees (Perpetual Succession) Act. Other NPOs are created as informal associations (registered under the Department of Gender and Social Services) for the pursuit of other legally benevolent purposes. The apparent non-unified and unCo-ordinated registration regime infringes on the ability of the NGOs Coordination Board to effectively monitor, supervise and perform other regulatory obligations with reporting requirements under POCAMLA, thereby enhancing the TF risk factor for the activities conducted by the NPOs in the country.

1.0 INTRODUCTION

1.1 Background Information

The Republic of Kenya, located in East Africa, is bordered by South Sudan to the Northwest, Ethiopia to the North, Somalia to the East, Uganda to the West, Tanzania to the South, and the Indian Ocean to the Southeast. It has an area of 582,646 sq. km and a population of approximately 47.6 million people by 2019, making Kenya the world's 29th most populous country. It serves as a trade hub for East and Central Africa. Kenya's borders are wide and the citizens of East Africa enjoy free movement as members of East African Community. However, Kenya has a border control regime in place with its neighbouring countries, aimed at the prevention of potential cross-border transportation of criminal proceeds.

Kenya ushered in a new political and economic governance system with the passage of a new constitution in 2010, which introduced a bicameral legislature, devolved county government and an independent Judiciary. Kenya has one national government and 47 county governments, is a presidential democracy, in which elected officials represent the people and the President is the head of State and Government.

Geographically, Kenya sits almost centrally between East and West as well as North and South, which makes for a natural trade and financial hub in the region. The country also has direct links to the outside world through the airports, sea ports and several border posts. The legislative and regulatory environment is favourable to trade according to the recent improvements in the 'ease of doing business' index. Moreover, the quality, ingenuity and innovativeness of Kenyans, makes the country one of the most attractive investment destinations in the region.

Kenya's 2020 Gross Domestic Product (GDP) was about US$ 95.5 billion. Prior to Covid-19 pandemic, Kenya continued to experience steady economic growth, with real GDP expanding on average by about 5.6 percent between 2014 and 2019. This growth potential, skilled workforce, a sophisticated and robust financial system and relative high internet penetration continued to attract high foreign investments. In 2020 Kenya's economy was hit hard by Covid-19, severely affecting incomes and jobs. The economy has been exposed through the dampening effects on domestic activity of the containment measures and behavioural responses, and through trade and travel disruption (affecting key foreign currency earners such as tourism and cut flowers).

Kenya's economic agenda is anchored on the national development policy as outlined in the third Medium Term Plan (MTP III) of the Vision 2030 and prioritized through the "Big Four" Plan, which encompasses food security, affordable housing, manufacturing, and affordable healthcare for all. The Kenyan economy has remained resilient despite the global challenges, and growth in 2019 was mostly supported by strong performance in the service sector industries such as information and communication, transportation, construction, accommodation and food services, financial and insurance activities.

Kenya is fast tracking the operationalization of the Nairobi International Financial Centre (NIFC) to cement its position as a regional financial hub. With the establishment of the NIFC, a gap analysis is being conducted on the Kenya's financial services sector and development of regulations on NIFC activities and incentives are at an advanced stage. All these are geared towards facilitating and supporting the development of an efficient and competitive financial sector as envisaged in Vision 2030.

Kenya continues to strengthen the implementation of a risk-based supervision in the financial sector to promote competition, safety and soundness of the financial sector. This has also enabled financial sector regulators to cope with emerging risks, further extend the credit

reporting framework to include credit providers from outside the financial sector, strengthen the Financial Reporting Centre (FRC) which plays a critical role in the fight against money laundering and terrorism financing.

Kenya launched a Credit Guarantee Scheme in 2019 to enable the state to guarantee commercial loans issued to MSMEs. Kenya is facilitating the use of movable assets as collateral for credit facilities and is also speeding up the creation of a collateral registry system for movable assets for the Business Registration Services. These reforms are meant to catalyse the provision of credit to support the medium term economic plan.

Kenya has a favourable environment for technological innovation advancement leading to innovative fintechs. Over the past few years, it has attracted more players, especially the MSMEs. With the rapid mobile penetration in Kenya and user receptiveness, robust growth has been experienced in the fintech landscape. The mobile phone money transfer platform continues to contribute to financial inclusion besides spurring creation of other fintechs. Kenya has seen significant growth in mobile money transfer both locally and internationally, mobile lending, mobile banking, digital payment, online banking and online trading, among others.

With the increased adoption of technology, Kenya has seen an increase in cybercrime, and has therefore enacted the Computer Misuse and Cybercrimes Act, 2018 to enable timely and effective detection, prohibition, prevention, response, investigation and prosecution of computer and cybercrimes in addition to facilitating international co-operation in dealing with computer and cybercrime matters.

Corruption has been identified as detrimental to economic, social and all other spheres of life thus hindering government's efforts in bettering the lives of Kenyans. Kenya is thus strengthening governance and has enhanced the fight against corruption. The Government has taken steps to improve governance, transparency and accountability. First, the development and launch of the Public Procurement Information Portal and the subsequent requirement by all Ministries, Departments and Agencies (MDAs) to continuously publish details of procurement information and the awarded contracts. Kenya is implementing various legal, policy and institutional reforms to prevent the loss of public funds. To further sustain the drive against corruption, the Government has continued to enhance allocations to all institutions mandated to fight corruption, including the Ethics and Anti-Corruption Commission, the Office of the Director of Public Prosecutions, the Assets Recovery Agency, the Financial Reporting Centre, the Directorate of Criminal Investigations and the Office of the Auditor General. The Government is also supporting the oversight and legislative role of Parliament and access to justice through enhanced allocations.

The fight against corruption has also been extended to all public officers. This can be attested by the continuous lifestyle audits and the recent arrests and prosecutions of persons including senior government officials and business persons involved in graft practices, thereby sending a strong message that engaging in corruption attracts dire consequences in Kenya. The current anti-corruption efforts are premised on political goodwill, effective institutions and an engaged citizenry through public participation, thus making it easier to translate the anti-corruption commitments to actions.

Kenya has a strong legal and institutional framework to fight money laundering (ML) and terrorism financing (TF). In addition, the institutions tasked with implementing the anti-money laundering and combating the financing of terrorism (AML/CFT) legal regime are creatures of the constitution and various legislative Acts.

Kenya is a founding member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), an affiliate member of the Financial Action Task Force (FATF). FATF is an

inter-governmental body established in 1989 by the Ministers of its member countries, as the global standard setter on anti-money laundering (AML), countering the financing of terrorism (CFT) and the financing of proliferation of weapons of mass destruction. These standards are globally recognised and are referred to as "the FATF Recommendations".

FATF Recommendation 1 of the revised FATF 40 Standards requires countries to identify, assess, and understand the ML/TF risk they face to enable them apply a risk-based approach (RBA) in mitigating ML/FT risks. One way of identifying, assessing, and understanding the ML/FT risks is by conducting a National Risk Assessment (NRA) on money laundering (ML) and terrorist financing (TF).

The FATF obligations are binding on Kenya as the Constitution recognizes international treaties and obligations which Kenya has ratified as part of the Kenya law. Kenya's AML/CFT regime is largely contained in the Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA) supplemented with the Proceeds of Crime and Anti-Money Laundering Regulations, 2013.

POCAMLA and the Regulations thereunder provide for a comprehensive legislative and administrative framework for combating the offence of money laundering, terrorism financing and associated proceeds of crime. POCAMLA also facilitates the identification, tracing, freezing, seizure and confiscation of the proceeds of crime and establishes the Anti-Money Laundering Advisory Board, the Financial Reporting Centre (FRC) and the Asset Recovery Agency. Kenya's regime to combat terrorism financing is largely contained in the Prevention of Terrorism Act (POTA), 2012, and is supported by the Prevention of Terrorism (Implementing the UN Resolution on Suppression of Terrorism) Regulations, 2013. POTA provide for measures for the detection and prevention of terrorist activities.

1.2 Objectives of the ML/TF Risks Assessment

The key objective of undertaking an NRA is to enable the government understand the ML/TF vulnerabilities of a country, identify which sectors carry a potentially higher or lower risk and guide the government's response to these risks. At the national level, the risk assessment results provide a basis for efficient allocation of resources in combating ML/TF.

The specific objectives for Kenya to conduct the NRA are:

i. to provide information to policy makers, hence facilitate further improvement and development of Kenya's national AML/CFT policies. This includes fostering both the public and private sector stakeholders in understanding of their unique ML/TF risks;

ii. to assist the Kenyan competent authorities to assign responsibilities for combating ML/TF to the relevant entities on the basis of the identified risks and vulnerabilities;

iii. to assist in prioritising and allocating AML/CFT resources efficiently in view of the limited resources, thus ensuring that resources (including technical assistance, human resource, training/capacity building) are allocated to areas that present higher ML/TF risks;

iv. to identify the gaps and deficiencies in Kenya's AML/CFT legal, regulatory and institutional framework;

v. to feed into the institutional AML/CFT risk assessments that reporting institutions are required to undertake and assist reporting institutions to assess the adequacy of their internal AML/CFT controls including the application of customer due diligence measures on a risk sensitive basis and the extent to which the institutions should apply enhanced or simplified AML/CFT measures;

vi. to demonstrate the country's continued commitment to fully implement the FATF's Standards, thus improving the country's financial integrity and international trade with other countries;

vii. to prepare Kenya for the second round of mutual evaluation during which the focus will be on risk-based measures and the effectiveness of the AML/CFT regime in Kenya;

viii. to assist the country in applying a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified;

ix. to formulate a national AML/CFT strategy and coordination policy; and

x. to provide the general public with a greater awareness of the ML/TF risks in the country and the measures being implemented to mitigate them.

1.3 Assessment Methodology

The national ML/TF risk assessment (NRA) involves making judgments about ML and TF threats, vulnerabilities and consequences. Threats may include, an individual, groups of people, objects or an activity by criminals or terrorist, which can cause harm to the state, society, economy, etc. Understanding ML/TF threats is key in understanding the environment in which predicate offences (underlying criminal activities) are committed and proceeds of crime are generated, moved, utilised or integrated back into the financial system. Vulnerabilities are those things that can be exploited by the threat or that may support or facilitate its activities.

1.3.1 The World Bank ML/TF risks assessment tool

Kenya opted to utilize the World Bank model/tool. The tool defines the ML risk as a combination of national threat and national vulnerability, and is made up of 12 modules, which include the assessment on: 1) national money laundering threat; 2) national money laundering vulnerability; 3) banking sector vulnerability; 4) securities sector vulnerability; 5) insurance sector vulnerabilities; 6) other financial institutions vulnerability; 7) designated non-financial businesses and persons (DNFBPs) sectoral vulnerability; 8) national terrorist financing threat; 9) financial inclusion products; 10) environmental crimes vulnerability; 11) non-profit-organizations (NPOs) sector vulnerability; and 12) tax crime vulnerability. Each module included a set of variables. The assessment teams were required to analyse quantitative and qualitative data to select a rating between 0 (low) and 1 (high) for each variable as shown in Table 1.3.1. These ratings were inputted into the tool, which combined with product-level ratings, produced an assessment of the overall risk. Data collected informed the discussions to determine the ratings, but in most cases was not inputted into the tool itself.

Table 1.3.1: World Bank tool rating scale

1.0	0.9	0.8	0.7	0.6	0.5	0.4	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

The NRA team intended to assess all the 12 modules making up the World Bank Tool. However, the World Bank Guidance Manual for the tax crime vulnerability module (i.e., module 12) was under development at the time of the assessment, and was therefore not assessed. In this regard, the assessment team commits to assess the tax evasion vulnerability at the time of updating the NRA.

1.3.2 The NRA process

The NRA process was approved by the Government (i.e., the Cabinet) and the Cabinet Secretary for the National Treasury and Planning established a Taskforce on the National Risk Assessment on Money Laundering and Terrorism Financing (NRA Taskforce) through a gazette notice in March 2019. Under the Gazette Notice, the National Treasury and Planning was appointed to Chair the NRA Taskforce and the Financial Reporting Centre (FRC) the Coordinator. The Gazette Notice also established a Joint Secretariat comprised of the FRC and the Central Bank of Kenya (CBK).

The NRA Taskforce was composed of 30 public sector organizations that are in involved in national efforts to combat money laundering and terrorism financing. These included the relevant line ministries, financial sector supervisors, law enforcement, prosecutorial and investigative agencies. To facilitate the NRA process, the Taskforce incorporated additional select organizations drawn from both the public and private sectors who appointed liaison officers for purposes of the requisite relevant data/statistics. In total, about 140 public and private sector nominees participated in the NRA exercise, out of which over 70 participants represented the private sector.

To effectively conduct the NRA exercise, the Taskforce members and the liaison officers were purposefully grouped into 11 working groups corresponding to the 11 modules assessed i.e., key institutions and persons identified for specific working groups. All working groups were composed of at least 10 members drawn from both the public and private sectors. For instance, the securities module (module 4) had 15 representatives from the private sector. Module 5 (i.e., Insurance and Retirement Benefits industry vulnerability working group) had sixteen members of which ten represented the private sector, specifically the select insurers, association of insurers and the association of retirement benefits schemes.

Regarding module 3 (i.e., Banking Sector vulnerability) 23 banks (i.e., about 50% of all the banks), the Kenya Bankers Association and the Association for Microfinance Institutions (AMFI) were represented. Module 1 (national money laundering threat assessment), module 2 (the national vulnerability assessment and module 8 (terrorism financing risks and vulnerability assessment) comprised all the key players in the criminal justice system, including LEAs, prosecutions, assets recovery, the Judiciary, FRC, EACC, State Law Office, among others. On the other hand, modules 6 and 7 comprised industry practitioners representing all the categories of the Other Financial Institutions and DNFBPs, respectively. Each working group had an appointed chairperson and a co-chairperson to lead and guide deliberations/discussions. A specific member of the NRA Taskforce Secretariat was designated to coordinate the activities of each working group.

The process started by holding a sensitization workshop in Nairobi for Taskforce members and the liaison officers. The participants were sensitized on the existing AML/CFT laws, money laundering (ML) and terrorist financing (TF) risks, FATF requirements on risk assessment, objectives of conducting a NRA and how the outcomes of a NRA can be used to improve the AML/CFT regime in the country. Participants were then inducted to the work programme including formation of the 11 working groups for each of the modules to be assessed and informed about their roles and responsibilities regarding the NRA as well as the level of commitment required for the successful completion of the exercise.

1.3.3 Virtual conference with the World Bank project team

The World Bank has produced materials to support jurisdictions in utilizing the tool. The document “Introduction to the NRA Tool” provides an overview of the tool’s functions as well

as how to assess variables and review outputs. Guidance manuals for each module include a description of each variable, assessment criteria, and sources of information.

The Kenyan authorities and the World Bank experts held virtual conferences in June 2020 to provide information and training on how to utilize the tool. The virtual meeting was occasioned by the Social Distancing Guidelines following the Covid-19 Pandemic. The virtual conferences were organized along the 12 modules. The World Bank project team assigned at least two (2) sector experts to facilitate each of the modules. However, the virtual conferencing involving the tax evasion vulnerability working group (module 12) was delayed as the tool was still under construction at the time of the conferencing.

1.3.4 NRA data collection and analysis

Each working group took lead in preparing data collection tools, including the questionnaires. The NRA Secretariat, who were the coordinators for the 11 working groups, held a one-week workshop to fine-tune and moderate the tools. As the NRA national coordinator, the FRC disseminated the questionnaires to the respondents, received feedback/responses from the respondents and relayed the same to respective working groups. Before disseminating the questionnaires, all the target recipient sectors and individuals were already identified and the liaison officers trained.

The working groups held a two-week retreat in November 2020 to analyse the qualitative information. The key tasks largely involved analysing the already collated secondary information, interviewing stakeholders on their knowledge, information and opinions on topical issues relating to module variables. This exercise culminated into initial ratings for the variables and interim reports for all the working groups.

The working groups held a second two-week retreat in December 2020 to analyse the quantitative information that was received from the stakeholders. After considering the quantitative data (statistics), the working groups reviewed the initial variable ratings and drafted the final working group reports. The Secretariat thereafter held another one-week retreat to review the reports from all the working groups and draft an initial NRA report for Kenya. The Secretariat also developed an action matrix to guide implementation of the gaps and deficiencies identified during the NRA exercise.

1.3.5 Challenges

The challenges faced during the NRA process are described below:

i. Covid-19 pandemic adversely affected the NRA exercise and delayed the process. The initiated restrictions imposed by the Government made it difficult to proceed as earlier planned. There was therefore some form of lull as the entire nation waited to see how Covid-19 pandemic unfolded. Overtime, and with the widespread adoption of virtual meetings as the new normal, some of the NRA meetings were held virtually. However, the delay caused by the pandemic made the exercise to be conducted under great pressure to meet the set deadline;

ii. working groups did not get all the required data, especially from the financial sector regulators and the law enforcement agencies. It was discovered that some data is not kept on a consolidated basis by regulators and the law enforcement authorities;

iii. inconsistency in the data received from different sources. A few cases were noted whereby data received from reporting institutions was inconsistent with data received from regulators on the same issues. This may have been attributed to the rushed nature of the exercise hence there was inadequate time to train and explain to the respondents the extent and nature of

the data required. Some questionnaires were also incomplete thus hampered the quality of data received;

iv. constraints in financial resources caused a delay in conducting the process. The NRA exercise was gazetted in March 2018, but due to the delayed funding, the activities that required funding such as working groups' face-to-face workshops were delayed until mid-2019.

2.0 THE ASSESSMENT PROCEDURE

The NRA assessment proceeded along the eleven (11) modules which are discussed below:

2.1 National Money Laundering Threat Assessment

2.1.1 Nature and scale of the money laundering threat in Kenya

Kenya is a major regional business and travel hub and gateway to the neighbouring East African economies with well-developed trade links to the rest of the world. This geo-positioning has facilitated legitimate commerce and enabled the country's economic growth. However, the nature and volumes of trade conducted in Kenya and the inter-connectedness with its regional and global trading partners may also expose the country to money laundering risks. The country is also well connected with strong internet penetration which has promoted innovation, adoption of new technologies and growth of fintech. These pre-disposing factors are likely to increase the country's vulnerability in terms of abuse of the financial system for money laundering activities by both local and transnational criminal networks.

Money laundering threats manifest itself in both public and private sectors. Some of the cases in the public sector involve procurement corruption whereby key state departments have lost billions of shillings. In several instances, the Ethics and Anti-Corruption Commissions (EACC) recommended the prosecution of top government officials and some business people over the alleged misuse of public funds.

The cases highlights typologies and the common predicate offences for money laundering which includes corruption, abuse of office, forgery and fraud. These cases have greatly diminished the country's tax revenue, hampered the accurate assessment of taxes and caused serious social costs as well as reputational risk against the country as a safe investment destination.

The government has also been keen on countering corruption through enhanced domestic and international cooperation, as demonstrated by the case involving the extradition of a former Minister for Energy and a Managing Director of a major parastatal in the country. The two were suspected to have accepted bribes from foreign businesses for contracts. The payments were made by the contractors into the foreign bank accounts leading to successful extradition pursuant to the provisions of section 7(1) of the Extradition (Commonwealth Countries) Act (Chapter 77).

The stolen funds have since been recovered and are awaiting repatriation through the Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK), which was agreed and signed by the Governments of Kenya, Jersey, Switzerland and the United Kingdom (UK) in 2018, to ensure the proceeds of crime are returned to Kenya in a manner that is transparent and beneficial to the people of Kenya.

2.1.2 Methods of laundering funds in Kenya

Money laundering in Kenya is both complex in scale, settings and diversity of its actors. There is no single classical mechanism of money laundering offence that consist of all the elements or all of the three phases, that is placement, layering and integration. The techniques used in money laundering include fraud, bribery and embezzlement. Typical typologies entail opening accounts and making periodic cash deposits which do not correspond to the suspect's known sources of income. In such incidences, there may be no withdrawal from the accounts despite receiving huge sums of money which obviates a presumption of innocence1. The second methodology

[1] Assets Recovery Agency v Pamela Aboo; Ethics & Anti-Corruption Commission (Interested Party) [2018] eKLR

used by money launderers in Kenya involve procurement corruption where officials are influenced and/or enticed into flouting the rules and inflating the prices. Money launderers also use cash intensive businesses like supermarkets, filling stations, among others, to cleanse their ill-gotten wealth.

2.1.3 Key proceeds-generating predicate offences

Kenya follows a whole crime approach to combating money laundering. Therefore, all proceeds generating crimes are predicates for money laundering. The National Police Service is mandated to investigate criminal activities in the country. According to data records held by the National Police Service, the major offence categories of crime in Kenya are homicide, offences against morality, offences against persons (such as assault, affray and creating disturbances), robbery, breakings, theft of stock, stealing, theft by servant, vehicle and other theft, dangerous drugs, economic crimes, corruption and other penal offences.

The National Crime Research Centre which is responsible for collating all crime related data to inform policy decision making estimates that between the year 2016 and 2018, the most threatening crimes in Kenya were burglary and breakings, stealing, theft of stock (including cattle rustling), possession of drugs, possession of narcotic drugs, assault causing actual bodily harm, murder, robbery, rape, robbery with violence, gender based violence, defilement, theft of farm produce, child abuse (including child neglect), theft of motorcycle, land fraud (including grabbing) and corruption.

The National Police Service Annual Report (2018) showed an increase of defilement, assault, general stealing, creating disturbance, possession of drugs for personal use (Cannabis Sativa) and malicious damage which were associated mainly with consumption of alcohol. However, there was a notable decrease in stealing by servant, theft of stock, stealing from person and theft of motor cycle. Additionally, terrorism, cattle rustling, influx of illegal aliens and undocumented immigrants and proliferation of illegal firearms and light weapons were classified as the major causes of insecurity in Kenya.

2.1.4 Analysis and findings of money laundering threat

The money laundering (ML) threat analysis considered the level and trends of predicate offences, their origin, sectors which are abused and cross border threats in the country. In considering the predicate offences, the assessment considered the most common proceeds generating crimes in the country. It considered interviews from law enforcement authorities and annual statistics of crime patterns from the following law enforcement agencies: 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), Anti- Counterfeit Authority (ACA), Financial Reporting Centre (FRC) and Office of the Director of Public Prosecutions (ODPP), among others.

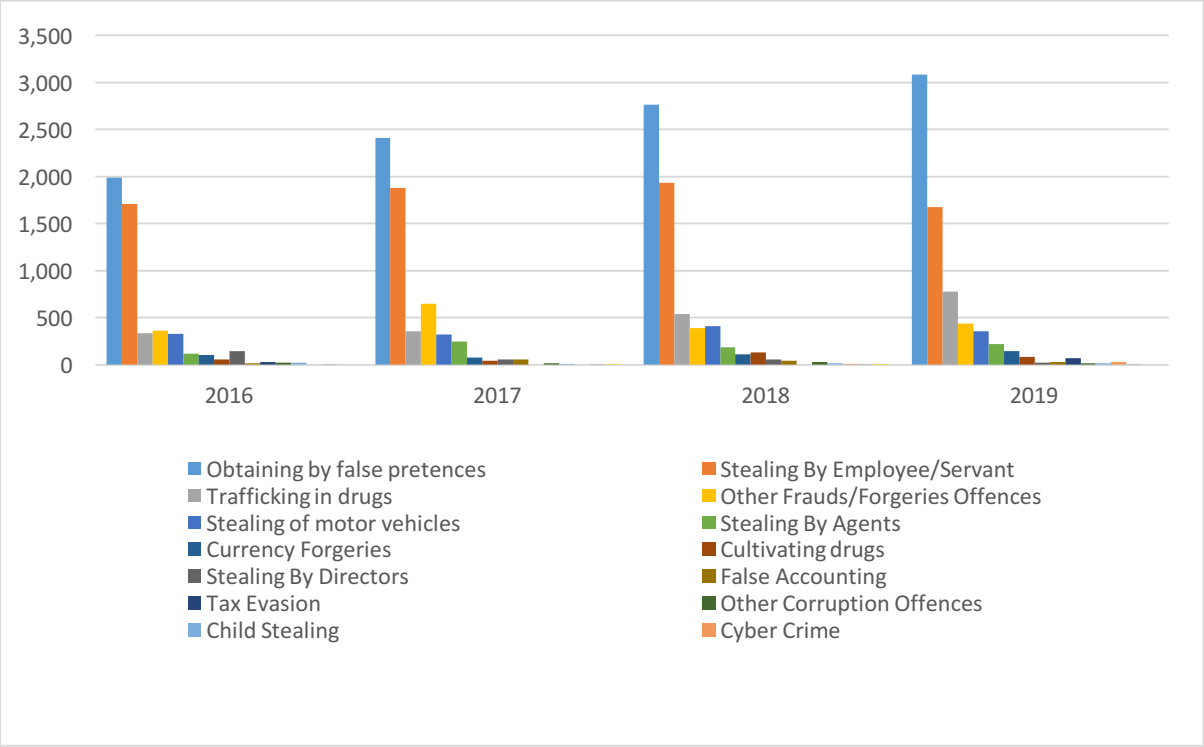
While all the common predicates present in Kenya were considered, only those proceeds generating crime types were included in this assessment. These predicates were further categorised into thematic areas to ease the analysis given that law enforcement statistics relating to investigations of offences as provided for under the Penal Code, while data relating to prosecution are classified in clusters. These are fraud and forgery, drug related offences, corruption and economic crimes, environmental and wildlife crimes, cybercrime offences, human trafficking and smuggling of person's offences, tax offences, counterfeiting and piracy of products, terrorism and related offences and money laundering.

2.1.5 High risk predicate offences in Kenya

This assessment established that fraud and forgery related offences presented high risk to the country. These offences include obtaining by false pretense, currency forgery, false accounting, stealing (*including stealing by directors, agents, employees/servants and stealing of motor vehicles*) and other fraud/forgery offences. Similarly drug related offences including cultivation, trafficking, possession and handling of dangerous drugs also presents high risk to the country. This is so because drug trafficking in Kenya is a growing health and social concern. The major types of dangerous drugs found in Kenya include Cocaine, Heroin, Ryphenol, Cozepam, and Cannabis2. The transnational element in drug trafficking is demonstrated by actions by a Presidential Order for a luxury yacht suspected to contain KSh 22 million drug haul to be destroyed at sea in the Indian Ocean3.

Another category of high risk predicate offences facing the country is on corruption and economic crimes. These offences are mainly relating to bribery (*soliciting and accepting*), demanding by false pretense, unexplained wealth, embezzlement of public funds and other corruption offences.

Figure 2.1.1: Predicate offences prevalent in Kenya



Source: DCI data, 2020

2.1.6 Medium risk predicate offences

Environmental and wildlife crimes present medium to high level of risk. These crimes relate to illegal wildlife trade, killing of wildlife, illegal possession of wildlife and the illegal trade in waste polluting products. Although the risk assessment presents medium-high risk on wildlife crimes, a *Special Typologies Project on Poaching, Illegal Trade in Wildlife and Wildlife*

[2] National Police Service Statistics on Drugs and Psychotropic Substances arrests

[3] Owner of luxury yacht blown up by President Kenyatta denies trafficking heroin (standardmedia.co.ke)

Products and Associated Money Laundering in the Region by ESAAMLG revealed that porous borders provide easy access to countries national parks. Relatively high demand for rhino horns and elephant tusks are some of the factors that contributes to the high risk' rating for Kenya4. However, cybercrime offences, tax related offences, money laundering and offences relating to counterfeiting and piracy products are rated as medium risk in Kenya. The medium rating for these predicate types is attributed to the fact that the formal sector of the economy has structural mechanisms for detecting and preventing the abuse of the financial system for money laundering purposes.

2.1.7 Predicate offences presenting low risk to Kenya

Human trafficking and smuggling of persons is rated medium-low risk. This is because of the geographical circumstances that Kenya occupies in a politically volatile neighbourhood where many economic immigrants and others fleeing political instability in their countries. As a result, there have been increasing influx of illegal aliens and undocumented immigrants mainly from Tanzania, Ethiopia, Somalia and South Sudan but also from other countries including Nigeria, Rwanda, Burundi, Congo and China5.

However, terrorism is not a major proceeds generating offence in Kenya and is rated low risk in terms of the level of threat to money laundering. The proximity of Kenya to Somalia which hosts Al-Shabaab's headquarters and their operational bases exposes the country to the greatest threat on terrorism front. Al-Shabaab has continued to launch ambushes against Kenya's law enforcement and civilian population. Even though terrorism is a predicate offence in Kenya, the ultimate motive of perpetrators of terrorism is to kill, maim and avenge Kenyan targets mainly for ideological mileage. As such, there is very little (or no) proceeds or financial reward that accrues as a benefit for the attacks.

The main types of predicates (particulars of risks) are described below:

I. Fraud and forgery

Fraud and forgery offences are provided for under Section 345 (Chapter XXXII) of the Penal Code, where forgery is described as *the making of a false document with intent to defraud or to deceive*. The analysed data showed that the number of cases reported for fraud and forgery were 15,804, representing about 25% of all the cases analysed, while approximately 19% of all investigations relating to fraud/forgery results into prosecutions with about 17% conviction rate. Between 2016-2020, approximately KSh1,722 billion were frozen and seized from fraud and forgery related offences. Additionally, the country confiscated about KSh 246 million relating to these offence types over the same period.

There have been limited prosecutions of ML cases arising from the predicate offences, despite the fact that there have been consistent investigations into all predicate offence common in Kenya. For example, for all the predicates investigated and prosecuted in Kenya over the last 5 years, only 39 case were prosecuted for associated ML offences, resulting in 7 convictions. Out of the seven (7) convictions, 6 cases involving banks opted for plea bargaining arrangement, hence there has been no natural person convicted for ML offence arising from all the investigated predicate offences. The plea bargaining (for the banks which opted for the plea bargaining agreement) was for failure to report ML related STRs, rather than the actual ML offence. It is therefore, recommended that the country should pursue the proceeds of crime by instituting ML offences for all the predicates that generates the identified proceeds.

[4] Typologies Report on the Wildlife Crimes and Related ML.pdf (esaamlg.org)

[5] National Police Service Annual Crime Report 2018

For the analysis, all the cases which were considered relates to the consolidated data involving fraud related crime types, including the offences of obtaining by false pretence, currency forgery, false accounting and fraud/forgery offences. The consolidation was to enable detailed analysis of these offences given that they have common elements hence the segregated manner in which data is kept by the National Police Service and the Office of the Directorate of Public Prosecutions could not allow a further break down into various types of fraud, for example, coining, counterfeiting, document falsification and other related offences.

Given the above information, the ML threat emanating from fraud and forgery offences was assessed as *High*. The assessment also predicted that the ML threat from the offence is likely to decrease in the future due to government interventions that has made it easier to detect and investigate fraud cases.

II. Drug related offences

The primary legislation that criminalises drug related crimes is the Narcotics and Psychotropic Substances Control Act (No. 4 of 1994) with the Anti-Narcotics Unit of the Criminal Investigations Department being charged with the responsibility of enforcing the provisions of the Act. The relevant data relating to the investigation of drug related offences was obtained from the DCI. The assessment also considered data from the NPS Annual report- 2016-2019 which also had the statistics from the Kenya Police Service. During the assessment period, there were a total of 26,164 cases of drug related offences that were investigated by the law enforcement agencies. Of these investigations, 3,966 proceeded to prosecution which resulted in 868 convictions.

Evidence showed that most drug offenders in the country are charged with possession of drugs even when such possession is with a view to selling the same for the purposes of generating proceeds thereby making it difficult to establish how much proceeds are related to drug possession in Kenya. For the offence of drug cultivation, the recovered products of cultivated drugs are often destroyed as a National Policy to prevent the same reverting into the local market thus making it difficult to estimate the proceeds generated from the cultivated crop. Without following the money or instrumentalities of the crime, the offenders are not denied the opportunity to enjoy the proceeds even where they have been convicted. This makes the drug problem in Kenya persistent. While establishing the worth of all proceeds generated from drug related offences in the country is difficult, the assessment revealed that LEAs were able to freeze and seize KSh 200 million in relation to drugs.

Most of the offences relating to drug abuse and possession are not by themselves proceeds generating. Additionally, the manner in which the drug offence charges are drafted do not reflect the ML aspects as often the charges are mainly for possession of drugs and cultivation. Even for the offence of cultivating drugs, the law enforcement agencies prefer to destroy the crop immediately without official valuation to quantify the amount of proceeds thereby making it difficult to analyse the ML aspect.

The assessment showed that the drug problem in Kenya emanates from smuggling of Cannabis from Ethiopia and Tanzania using personal and high end cars. On the other hand, the volumes of high end drugs such as Heroin and Cocaine that have been seized is still relatively small and Kenya is only a transit point rather than the destination, the trend may change in the future given that these drugs are highly addictive and local consumption market is likely to grow.

The ML threat from drug related offences was therefore rated *High,* with a likely upward trend due to the expected ripple down effect from global dynamics where the World Health Organisation has declassified the use of Marijuana as a drug. Therefore, local consumption, smuggling between Kenya and Ethiopia land borders is expected to increase.

III. Corruption and economic crimes

Kenya has enacted various legislations to deal with corruption and economic crimes in the country. The Anti-Corruption and Economic Crimes Act, (2003) (ACECA), the Public Officer Ethics Act, 2003, the Bribery Act, the Public Procurement and Disposal Act, 2005, the Proceeds of Crime and Anti-Money Laundering Act, 2009, Ethics and Anti-Corruption Commission Act (EACCA) and the Leadership and Integrity Act, 2012 are the main laws relating to the fight against corruption and economic crimes. The National Police Service, the Directorate of Public Prosecutions, the Assets Recovery Agency, Ethics and Anti-Corruption Commission, Financial Reporting Centre, among others are the mandated institutions to tackle corruption in Kenya.

The assessment of corruption and economic crimes from all the institutions mentioned above revealed that there were over 17,000 cases of corruption and economic crimes detected/investigated between 2016 and 2020, representing about 27% of all the predicate offences. From these investigations, about 14,000 cases proceeded to prosecution resulting in 2,328 convictions.

Offences ranging from corruption, embezzlement and bribery, unexplained wealth and stealing by directors was consolidated from the EACC database to provide a consistent analysis of all cases from investigation to conviction of each of the offences relating to corruption and economic crimes prevalent in the country. In this analysis, ML offence was considered separately given that the offence is prosecuted as a distinct predicate under the Anti-Corruption and Economic Crimes Act, 2003 (ACECA) and the Penal Code.

The proceeds generated from corruption and economic crimes were considered to present *High* ML threat to the country, with a likelihood of declining in future given the political goodwill to fight corruption and the increased capacity of the law enforcement agencies.

IV. Environmental and wildlife crimes

During the review period, 5,834 of the reported and investigated cases were relating to Environmental and Wildlife offences. From these investigations, 3,375 were prosecuted out of which 1,583 resulted in convictions. In terms of freezing and confiscation, a total of KSh 173 million was seized from the offenders and an additional KSh 150 million confiscated to the state. The statistics analysed included data from the Kenya Wildlife Service, the National Environmental Management Authority(NEMA), the DCI and the Kenya Forest Service. The analysis also considered statistics from the ODPP.

The statistics from the predicate offences did not indicate a high threat level. However, the discussions held by the assessment team revealed that the threat from environmental and wildlife crime is *Medium High* due to the geographical position of Kenya, where many times the offences are committed in the neighbouring jurisdictions but the proceeds are smuggled in the country for onward shipment to other jurisdictions particularly in Asia. This threat picture is not likely to change in the near future.

V. Cyber-crime related offences

For cyber related offences, there were 198 cases that were detected and investigated by the DCI during the assessment period. However, ODPP recorded 1,047 cases of prosecution of offences relating to cyber-crime. The discrepancy in the low numbers of investigations relating to cyber-crime and higher number of cases being prosecuted resulted from the nature of offences where investigations may not reveal the cyber-crime component but at the time of preferring the charges, the ODPP may compound and graduate other offence-types into cyber-related charges. Based on this, there were 272 convictions from all the prosecuted cyber-crimes. The authorities also seized and confiscated assets worth KSh 17 million.

The ML threat relating to cyber-crime offences was therefore rated *Medium*. The prediction is that there is likelihood for the threat to increase due to the evolving patterns of crime, the use of technology and innovation and the digitisation of Kenya's economy.

VI. Human trafficking and smuggling of person's offences

The number of human trafficking and smuggling of person cases which were investigated by the DCI during the assessment period were 1346. However, it was established that while there are many reported cases, the challenge is often on pursuing the perpetrators. As such the cases brought to court were mainly from those who have been arrested and charged for being in the country illegally i.e., victims rather than the perpetrators. This also explains the high number of prosecuted cases where data given by the ODPP indicated that there were 751 prosecutions relating to human trafficking offences in the country from 2016-2020, and 342 convictions.

From the considered cases, the amount of frozen proceeds relating to human trafficking is estimated at KSh 50 million with 100% confiscation of the proceeds. This amount is considerably low even for the number of investigations and prosecutions conducted. From this analysis, the threat of ML relating to human trafficking and smuggling of persons was rated as *Medium Low* but the trend is likely to increase due to the use by smugglers of North-Eastern counties for transiting economic migrants mainly from Ethiopia and Somalia.

VII. Tax offences

The number of investigated cases relating to tax offences were 533 representing 0.84% of all predicate crimes considered. Out of this, 389 proceeded to prosecution resulting in 78 convictions. The number of individuals convicted in these cases were 113 persons. From the prosecuted cases, the amount of proceeds seized and confiscated by the authorities were about KSh 18 million for the year 2016-2020.

The low number of tax offences investigated and prosecuted were attributed to the fact that tax offences are largely handled by the Tax tribunal and an agreement for payment of taxes often arrived at between the parties. Therefore, in very few circumstances are tax matters taken to court. Further, until recently, the KRA was in charge of investigation and prosecution of tax related offences but the mandate for prosecution was reverted to the ODPP. Therefore, data and statistics relating to tax crimes were only limited to those cases in which KRA had investigated.

The ML threat relating to tax offence was considered *Medium* but expected to decrease in the future due to the digitization of tax filing system and the requirement for all legal entities to have personal identification numbers for tax purposes (KRA PIN) as a primary identifier for all transactions.

VIII. Counterfeiting and piracy of products

The results from the assessment established that there are 1,156 investigations relating to this predicated offence. Out of these, 360 cases proceeded to prosecutions leading to 4 convictions. The Anti-Counterfeit Agency pursues destruction of intercepted counterfeit products as a policy without first assessing the value of the intercepted products. As such, the value of the property which were seized during the assessment period is about KSh 3 billion, out of which only KSh 686 million was confiscated. These figures on seizure and confiscations represents amounts not relating to ML charges as the Anti-Counterfeit Agency was yet to pursue ML cases relating to its mandate.

[6] *Source: National Police Service Annual Crime Report, 2018*

From the analysis, the ML threat from counterfeiting and piracy of products was rated as *Medium* but this was expected to increase given that counterfeiting is basically an infringement of intellectual property. Kenya being a sophisticated economy that encourages innovation especially by the technologically savvy young population, it is predicted that criminals are likely to exploit the digital economy and innovation to counterfeit products at a much faster pace.

IX. Terrorism and related offences.

The number of investigations relating to terrorism between 2016-2020 were 2,530 in total. From these investigations, 717 were taken to court while 176 were convicted. This data relates to all terror cases within the country which were investigated under POTA even for cases where the offenders were not charged with ML offences. However, there has not been any amount of proceeds seized or confiscated relating to terrorism given that in most investigations, the authorities have only been pursuing the predicate offence. For money laundering relating to terrorism, the Financial Reporting Centre provided 48 financial intelligence reports during the assessment period which led to 19 investigations. These investigations resulted into the prosecution of 16 cases. However, there were no proceeds recovered from these cases.

During the discussions and analysis of the cases, it was established that while there have been many recorded incidences of terrorism in the country, the motive of these attacks are not to generate proceeds. As such, ML component related to terrorism is *Very Low* in the country as terrorist attacks in Kenya are largely ideological in nature and not an enterprise that aims to benefit the attackers financially. Therefore, the ML threat from terrorism related offences in Kenya was rated *Low*. This assessment is not likely to change in the future.

X. Money laundering offences

Money Laundering is a substantive predicate offence provided for under Section 3 of the Proceeds of Crime and Anti-Money Laundering Act (2009) (POCAMLA). While all the offences discussed above have components of ML which the assessment considered, the analysis of this part is only limited to the offences provided for as ML under the POCAMLA. From the analysis, the number of ML cases detected or investigated in Kenya between 2016-2020 are 32. These cases yielded 18 prosecutions without any convictions by the time of this assessment. The lack of conviction for ML is attributed to the fact that the country had only just started pursuing ML investigations in 2017 and that the judicial processes usually take long. However, there were active court cases on ML.

For the predicate offence of ML, the ML cases submitted by the FRC to the LEAs for investigations were 17. However, there were 32 investigations which resulted into six banks being charged for failure to report STRs as provided for under POCAMLA. However, all the banks involved opted for plea bargaining, hence were not convicted for the offences of ML. Generally, the ML offences led to about KSh 1.2 billion being seized and confiscated between 2016-2020. These figures relate to the sum total of all the confiscation and seizure for ML brought under POCAMLA.

XI. Conclusion

The total number of investigations for all the predicate offences considered in this assessment are 69,496 during the year 2016-2020. From these investigations 29,797cases were prosecuted resulting into a total of 6,773 convictions. The total number of persons convicted was indicated as 122. The figure is considered conservative owing to the manner in which data is kept by the authorities that presented challenges in retrieving the information required.

2.1.8 Origin and breakdown of proceeds generating offences

a) Home and foreign predicates

The LEAs are required to maintain data on number of cases investigated for offences. However, there are no practice to classify offences in terms of those committed within the country and those arising from foreign jurisdictions. Also, the issue of extra-territorial jurisdiction to investigate foreign predicates in which money is laundered in Kenya unless there is a request from foreign counterpart to investigate the offenders if domiciled in Kenya is lacking. This analysis is for both offences committed in Kenya and foreign jurisdiction where money has been laundered in the country or sent to other jurisdictions.

The data considered between 2016 and 2020 showed that there were 4 prosecutions awaiting judicial determination from the total of 241 investigated cases as per the data from FRC to EACC, DCI, ARA and KRA. The amount of proceeds confiscated by the authorities from the cases amounted to KSh 1.6 billion over the same period.

In terms of offences committed in foreign jurisdictions, there were 86 investigated cases in which money was laundered here in Kenya. From the investigations, there was a total of KSh 17 million which were confiscated from the offences that were investigated. This amount is only indicative given that there are other forms of confiscation involving civil forfeiture by the Assets Recovery Agency amounting to KSh 1.56 billion and a further KSh 17 million forfeited from foreign jurisdictions.

From the analysis, the threat of ML from offences committed in foreign jurisdiction but with the proceeds laundered in Kenya is considered *Medium Low* with no prediction for a significant change in the future.

b) Sector breakdown

Kenya has a complex financial system involving banking, securities, insurance, remittance, forex and Other Designated Non-Financial Business and Professions (DNFBPs). There are various financial sector regulators with the Central Bank of Kenya being the regulator for the banking industry in Kenya. The Capital Markets Authority regulates the securities sector while the insurance industry is regulated by the Insurance Regulatory Authority.

Given the size, complexity, importance and the relative volumes of transactions, the banking sector is considered the largest and most prominent financial sector in the Kenyan economy compared to the DNFBPs sector. It is therefore expected that there are high number of activities involving the sector and equally high volumes of transactions in the sector from the domestic and international transactions. Additionally, the DNFBPs sector in the country is also very wide-spread representing a substantial segment of Kenya's economy. The sector presents prominent industries such as the real estate, professional bodies (lawyers, accountants and company secretaries) through which significantly high volumes of transactions occur.

The objective of this assessment is to understand money laundering threat as it materialises in different sectors of the economy by examining how the proceeds are being invested and laundered in each of the identified sectors. Identifying these data helps determine those sectors, which are possibly being used to launder funds. The aim therefore is to determine the level of ML risk within the financial sectors.

The cases analysed in this assessment showed that money laundering investigations mainly involved the following sectors; banking, real estate, lawyers, car dealership, insurance, money remittances, money value transfer services (MVTs) and Casinos (including betting and gaming).

I. Banking sector

The ML threat in the banking sector was assessed *High* with a likelihood of increasing. Banks are the most likely institutions to be abused for money laundering. From the 20 cases that were analysed, the banking sector was established to have been abused in all these cases. This can be attributed to financial inclusivity which has led to majority of Kenyans transacting through the banking system and the fact that nearly all mega transactions are facilitated by the banks.

The number of ML investigations considered from 20 cases that were sampled revealed that 16 cases resulted into prosecution involving the sector while there were 3 convictions from these prosecutions that relates to the banking sector. The High rating for ML threat in the banking sector is attributed to the fact that the banking sector features prominently in money laundering investigations. During the analysis, the assessment team considered that nearly all mega corruption cases in the country have been facilitated through the banking sector. At present, there are 6 banks which have been fined through plea bargaining arrangement by the ODDP for their failing to report various suspicious transactions under the POCAMLA.

Data from FRC further indicated that the majority of all the STRs filed in the country over the last five years were filed by banks. While this is indicative of the level of ML activities in the sector, the high number of filed STRs suggests that this sector has adequate framework for detection of ML threats through a system of compliance, surveillance and monitoring.

Exposure to Kenya's banking system to the international business also increases the risk of ML within the banking sector. By the sheer size and the broad customer base engaged in cross border financial activities between Kenyan banks and their regional subsidiaries and correspondents, there underlies an inherent risk for ML. Kenyan banks have also evolved by adopting technologies that facilitates electronic transactions and transmission through different financial channels such as the mobile money networks, remote accounts and transfer of access rights to deposit accounts to third parties making the sector attractive to ML through the use of technology.

In terms of mitigation, although the threat for ML within the sector is considered *High*, considerations on the current aggressive pursuit of corruption cases and the steep sanctions/fines imposed on banks who are found non-compliant with AML/CFT measures project opportunities to deter exploitation of the banking industry for ML purposes. Additionally, enhanced efforts and surveillance by the regulator (CBK) aimed at addressing emerging risks associated with adoption of technology and innovations have created a strong regulatory and supervisory environment where potential ML threats can be identified and mitigated.

II. Insurance sector

The role played by the insurance industry in the economy is critical in providing financial security, mobilising savings and promoting direct and indirect investments7 particularly with the increasing demand for life insurance products. According IRA, the gross premium income in 2018 was about KSh 216 billion, representing a nominal growth rate of 3.5% from KSh 209 billion reported in 20178.

Kenya's insurance penetration stands at roughly 2.43%9 of the country's GDP in 201810 compared to regional rivals such as South Africa at 13.8%, Namibia at 7.6% and Morocco at

[7] The insurance industry contributes to the economy by providing financial security, mobilising savings and promoting direct and indirect investments

[8] https://www.ira.go.ke/images/docs/annual/2019/Insurance-Industry-Annual-Report-2018.pdf

[9] https://cytonn.com/uploads/downloads/h12019-insurance-sector-report-vf.pdf

[10] https://www.ira.go.ke/images/docs/annual/2019/Insurance-Industry-Annual-Report-2018.pdf

3.5%. The industry is regulated by the Insurance Regulatory Authority with the mandate of licensing, regulating and promoting the development of the sector. The industry has both local and foreign insurance organisations (Africa Reinsurance Company (Africa-Re), ZEP-RE (PTA Reinsurance Company) and Africa Trade Insurance agency (ATI)11 operating under various regional insurance charters and are thus not regulated by IRA.

The ML threat involving the insurance sector was assessed sector as *Medium*. Forecasting in the next 2-3 years, the assessment team predicted that the threat to ML is likely to increase given that the main financial sector which is the banking sector is currently heavily regulated thereby diminishing opportunities for exploitation by criminal networks and thus shifting their ML schemes to other sectors including the insurance sector. The twenty (20) cases reviewed established that only two were investigated in relation to money laundering. The cases proceeded to prosecution but there has been no conviction yet for ML in the insurance sector. Nonetheless, it is presented that there have also been no known cases of the insurance sector being abused or misused for ML purposes in Kenya.

III. Securities sector:

Kenya's securities sector is well developed and regulated with sophisticated range of products. The Capital Markets Authority regulating body charged with the prime responsibility of supervising, licensing and monitoring the activities of market intermediaries, including the stock exchange and the central depository and settlement system and all the other persons licensed under the Capital Markets Act.

The ML threat in the securities sector is rated *Low* but there is a likelihood of the level of threat to increase in the following years. The ratings for the sector is supported by the fact that there was no recorded case out of the 20 sampled cases that were reviewed involving abuse of the securities sector. Additionally, the following factors were considered by the assessment team to arrive at the ratings.

There exists a gap in enforcement of AML/CFT provisions as currently the market regulator CMA has not pursued penalties for violations of POCAMLA Regulations. However, the regulator has been able to take action on the basis of the AML Guidelines which were developed as provided for in POCAMLA. For instance, in 2019 the CMA recovered KSh 477 million through a contest signing involving traders with a particular oil company in Kenya, which is indicative of the ability of the Authority to take action against violations.

IV. Remittances sector

Remittances contributes greatly to the Kenyan economy and the country's development in general as a source of foreign investment. Kenya's economic blue print the Vision 2030 considers diaspora remittances as one of the flagship projects under the financial sector12. In 2020 alone, the remittance sector generated about US$ 259,393. Moreover, remittances also contribute to financial inclusion both at the micro and macro levels. According to a survey conducted by the Kenya Bankers Association, remittances to Kenya have been consistently increasing, recording higher levels than foreign direct investment and portfolio equity flows13.

The ML threat in the remittance sector is rated *Low* with the future presenting a decrease in the level of threat. From the reviewed cases, it was established that out of the total 20 cases, only one case involved the abuse of remittance sector for ML giving rise to the low ratings. Unlike

[11] https://www.ira.go.ke/images/docs/annual/2019/Insurance-Industry-Annual-Report-2018.pdf

[12] https://kenya.iom.int/sites/default/files/send%20money%20booklet%20webversion%2020%20June.pdf

[13] https://www.kba.co.ke/downloads/WPS-08-2018-4.pdf

the banking and other well regulated sectors, the remittance sector does not have a threshold on the number and amount of cash. While the sector represents a small percentage of the overall financial sector and general involvement in Kenya's economy, the fact that customers using the sector are often one-offs create possibilities for moving huge amount of cash through multiple institutions with little detection giving rise to ML risk. Remittance service providers are more vulnerable to fraudulent activities (corruption and bribery) which have consequential effect on ML activities.

V. Casinos

All casinos operating in Kenya are subject to the existing AML/CFT legislations. Casinos are regulated under the Betting, Lotteries and Gaming Act, and are reporting institutions under POCAMLA. The ML threat involving the casinos (including betting and gaming) was considered *Medium*. However, from the reviewed cases, there was a single reported case where the betting and gaming industry had been abused for ML purposes. Further, there was a significant increase in the number of sports and betting companies across the country, which presented ML risks given the cash-based nature of transactions in the country. The Government was however applying counter measures to prevent ML/TF abuse in the sector, for instance, by closing down several casinos and gaming sector operators for violations of operating licenses.

VI. Dealers in precious metals

Kenya does not have large deposits of precious metals, but there have been incidences of transit of gold or theft of gold from other jurisdiction passing through the country. However, these cases are largely classified as fraudulent schemes and not particularly relating to the abuse of the sector with classical schemes involving foreigners who fall prey to gold scams in Kenya.

VII. Car dealers

The ML threat in second-hand car dealership is rated as *Medium High* due to the weak regulatory controls. There is a likely increase in the level of threat in the future due the lack of clear regulations for monitoring the sector.

VIII. Lawyers

The Law Society of Kenya (LSK) is an association of lawyers. In an effort to provide mechanisms for the identification and flagging off suspicious potential ML schemes involving the sector, the LSK has drafted AML/CFT Guidelines for the sector, but are yet to take effect.

The ML threat in the legal profession was assessed as *Medium High* with a potential for the increase in the level of threat. This rating was mainly due to the current legal regime where lawyers have not been brought within the purview of POCAMLA, hence there is no legal requirement for them to report any suspicious transactions to the FRC. Further, the issue regarding confidentiality of client accounts and the attorney-client privilege have been identified as creating a challenge in accessing transaction records where there is suspicion involvement of lawyers in ML schemes.

During the analysis of the sector, it was established that out of the 20 cases sampled, there were 7 cases involving abuse of the legal profession for money laundering which were investigated between 2016-2020. From these investigations, 5 cases proceeded to prosecution while only one case resulted in conviction. The intelligence on potential ML within the sector as well as the ESAAMLG reports helped in establishing the high level of ML threat in the legal profession.

IX. Accountants

The ML threat within the accounting sector was rated *Medium Low* with no likelihood for increase in the level of threat primarily due to the fact that accountants are mandated to report

all suspicious transactions to the FRC. The accounting profession is well regulated by the ICPAK with developed guidelines to enforce AML/CFT measures in the accounting sector. It is therefore projected that in the coming years, enforcement of these AML/CFT regulations will improve the ability of the sector players to flag down suspicious transactions and report to the FRC.

X. Real estate sector

The ML threat in the real estate sector was assessed as *High* with a potential for increase in the level of threat in the future. This rating was based upon consideration of the cases involving abuse of the sector where it emerged that 13 out of the 20 sampled cases involved abuse of the sector for ML purposes, representing a 27% of all reviewed cases. From the 13 cases, 10 cases proceeded to prosecution but only 2 cases resulted in conviction. Going forward, this assessment forecasts ML threat in the sector is likely to go high due to the attractiveness on returns in the real estate investments, appreciation in land prices and the increasing demand for housing.

XI. Money Value Transfer Services (MVTSs)

The assessment team rated the level of ML threat in the MVTs sector as *Low*. The level of threat is likely to reduce further in the future. During the analysis of cases presented, the assessment established that there had only been one recorded incident of ML abuse of the MVTs sector. However, these factors are likely to decrease in terms of level of ML threat in the sector given that the MVTs businesses are required to keep robust AML/CFT policies and internal rules and also to appoint Money Laundering Reporting Officers (MLROs) to implement AML/CFT compliance programmes and report to the FRC any suspicious transactions. Additionally, the introduction of technology such as biometric registration and identification systems at the agency level will enable authentication of the sender and beneficiaries of funds, minimising chances for using falsified documents.

XII. Cross border threats

Kenya share borders with 5 countries and is also a major sea trading route given its international waters within the Indian Ocean. Additionally, Africa is the largest market for passenger flows to and from Kenya at 70.4%, followed by Europe at 13.1% and Asia-Pacific at 6.4%14.

2.1.9 Overall national money laundering threat

The domestic ML threat for Kenya is rated as ***Medium High*** but the trend in level of threat is likely to increase in the future. The money laundering threat from outside the country is rated as *Medium* and is also expected to increase in the future. In terms of threats emanating from unidentified origin, the rating is *Low* with no expected change in the future. Overall, Kenya's ML threat is assessed as *Medium,* but there is a potential for increase on the level of ML threat in the future.

[14] IATA Direct Data Solutions

2.2 National Money Laundering Vulnerability

2.2.1 Assessment of national money laundering vulnerability for Kenya

The national ML vulnerability for Kenya was assessed as *Medium High (0.64),* resulting from a *Medium High (0.69*) score for the composite sectoral ML vulnerability assessment and moderated by a national rating of *Low (0.4)* money laundering combating ability (that is, the mechanisms available to a country for combating money laundering).

Regarding the overall sectoral ML vulnerability assessment, the medium high vulnerability rating is composed of the vulnerability ratings of 13 sectors. The vulnerability assessment of securities, insurance and retirement benefits industry was *medium*, while that of Saccos, money remittance providers, accountants, banks, forex exchange bureaus and money network operators was *medium high*. On the other hand, motor vehicle dealers, casinos and legal sectors were found to be highly vulnerable to money laundering largely due to the lack of/weak regulatory framework in the sectors. The top priority sector is banking as a result of its contribution to the economy. Examining the national AML combating ability on the other hand, involved assessment of the following 22 variables:

I. Quality of AML Policy and Strategy

Kenya is committed to combating money laundering and terrorist financing through the establishment and implementation of a robust and effective anti-money laundering regime in accordance with international AML/CFT standards and practice. Through the National Taskforce on Anti-Money Laundering and Combating the Financing of Terrorism (NTF), the government is able to have a Co-ordinated approach to tackling money laundering and terrorism finance. Kenya's first Anti-Money Laundering National Strategic Plan (2008-2011) is outdated. However, the country has largely achieved the key strategic initiatives in that plan which included passage of AML legislation and creation of a financial intelligence unit (the FRC). With the conduct of this NRA, the country is in the process of developing a risk based Action Plan and a revised National AML/CFT Strategy.

The law enforcement agencies publish annual crime statistics that gives an indication of prevalent predicate crimes and source of proceeds of illegal funds. This information forms part of the data used in developing action plans to prioritize crime prevention and detection. For instance, Kenya identified corruption as a national threat and in this regard, the country has developed and is implementing the National Anti-Corruption Plan. The financial sector players are required to undertake ML risk assessment as required by POCAML Regulations, 2013 and sector specific AML/CFT Guidelines issued by respective guidelines.

The Quality of AML Policy and Strategy was rated *Medium Low (0.4)*.

II. Effectiveness of Money Laundering (ML) Crime Definition

The offence of money laundering is criminalized under Sections 3, 4 and 7 of POCAMLA, in line with the Vienna and Palermo Conventions and extends to any type of property that is or forms part of the proceeds of crime, regardless of the value and whether the offence was committed in Kenya or elsewhere. Kenya has adopted an all crimes approach in defining an offence. The ML offences under POCAMLA do not distinguish between the person committing the predicate offence and the person who later launders the proceeds from the offence thus provide for self-laundering. While ancillary offences to the offence are not fully covered under POCAMLA, these are provided for in the penal code.

While judicial precedence on money laundering is still in its nascent, Effectiveness of Money Laundering (ML) Crime Definition was rated as *Very High (0.8)*.

III. Comprehensiveness of Asset Forfeiture Laws

Kenya has a comprehensive asset forfeiture legal framework that seeks to deprive criminals of property used in or acquired through illegal activities, recovery of such assets, ensure asset forfeiture is administered professionally and promote and enhance inter-agency cooperation. The asset forfeiture legal framework consists of POCAMLA, Ethics and Anti-Corruption Act, 2011, Anti-Corruption and Economic Crimes Act, 2003, Penal Code, Criminal Procedure Code, Mutual Legal Assistance Act. and the leadership and Integrity Act. Others are Counter-Trafficking in Persons Act, Forests Act, 2005 CAP. 385, Fisheries Act Cap. 64, Tobacco Control Cap. 245a, Scrap Metal Cap. 503) Value Added Tax, 2013 Narcotic Drugs and Psychotropic Substances (Control) Cap. 245, Anti-Counterfeit Act and the Environmental Management and Conservation Act. Section 131 of POCAMLA stipulates that there is a conflict between the provisions of this Act and the provisions of any written law with regard to any matter, the provisions of POCAMLA shall prevail.

Criminal forfeiture and non-conviction–based (NCB) forfeiture are the mechanisms used in the recovery of assets. Part VII of POCAMLA provides for the confiscation of all proceeds derived from the commission of a crime after conviction of the person. In addition, according to Section 92 (4) of the POCAMLA, a predicate offence need not be proved for assets to be recovered.

Section 29 of the Penal Code provides for forfeiture of property of corresponding value while Section 36 of the Narcotic Drugs and Psychotropic Substances (Control) Act provides for forfeiture of all the property owned by the accused person on the date of committing a specified offence or any property subsequently acquired by the person after the date of committing a specified offence. Narcotic Drugs and Psychotropic Substances (Control) Act also provides for forfeiture of instrumentalities used in the commission of any crime in terms of the Act. Such instrumentalities cover machinery, equipment, implements, pipe, utensil or any other article which have been used for the commission of an offence. The Anti-Corruption and Economic Crimes Act also covers property of corresponding value. Realisable property as provided for under Section 2 of POCAMLA, includes property of corresponding value, which is defined by section 2 of POCAMLA to include realisable value.

Section 69 POCAMLA makes provisional measures to prevent dealing in property subject to confiscation. Further, Under Section 56 of the Anti-Corruption and Economic Crimes Act, EACC may make an application to the High Court seeking an order prohibiting the transfer or disposal of or any other dealing with property, where there is evidence that the property was acquired as a result of a corrupt conduct. The order can be made against the person who was involved in the corrupt conduct or a person who later acquired the property.

Rights of bona fide third parties are protected under Section 93 of the POCAMLA. Further, Section 102 (1) and (2) of the POCAMLA, prevent disposal of jointly owned property where a co-joint owner dies whilst the property is subject to a preservation order.

Several constitutionally independent institutions are involved in asset tracing, freezing and forfeiture process. Section 18 of the Office of Director of Public Prosecutions (ODPP) Act, 2013, grants the ODPP powers to trace, forfeit and recover assets through criminal proceedings. Section 57 (4) stipulates that the ODPP Act shall have the force of law throughout Kenya and shall in so far as the same is not inconsistent with the Constitution of Kenya, supersede any other law with regard to investigation, prosecution and any other matter relating to the enforcement of criminal law in Kenya. This implies that ODPP has a role to play in Criminal Asset forfeiture.

Based on the above, Comprehensiveness of Asset Forfeiture Laws was rated as *High (0.7)*.

IV. Quality of FIU Intelligence Gathering and Processing

The FRC (Kenya's Financial Intelligence Unit) is established by Section 21 of POCAMLA. It is an independent body whose principal objective is to assist in the identification of the proceeds of crime and combating money laundering. The other objectives of the FRC are to make information collected by it available to investigating authorities and supervisory bodies to facilitate the administration and enforcement of the laws of Kenya; ensure compliance with international standards and best practice in anti-money laundering measures; and exchange information on money laundering activities and related offences with similar bodies in other countries.

The FRC is a headed by a Director General who is appointed through a competitive process that requires Parliamentary approval. For administrative purposes, the Centre reports directly to the Cabinet Secretary for National Treasury and Planning and has an independent budget to finance its operations.

The Anti-Money Laundering Advisory Board advises the FRC generally on the performance of its functions and the exercise of its powers under the Act. The Board therefore has limited oversight role over FRC and does not therefore interfere with the operational independence of FRC. The Director General of FRC has full discretion regarding the employment of staff and the terms of such employment, with the stipulation that the people employed should be suitable and qualified.

The FRC staff are well trained through attendance of both local, international courses and have been assigned international duties that have augmented their skills and knowledge. Training through practice plays a critical role in building capacity of staff members. 31 staff members have over 10 years' relevant experience and eleven staff members are trained financial analysts. Section 32 of the POCAMLA requires all staff members to take an oath of confidentiality before assuming employment.

At the time of the risk assessment, FRC was in the process of installing the goAML application which is a fully integrated software solution developed specifically for use by Financial Intelligence Units. It is designed to meet the data collection, management, analytical, document management, workflow and statistical needs of the finance intelligence unit.

FRC has access to various data sources to enable it add value to information received. It has access to Integrated Population Registration System (IPRS) through which the it can verify any identity card online. FRC has signed MOUs for sharing and receiving information with several agencies including: Kenya Revenue Authority, Registrar of Companies, Immigration database, Lands Registry, and Criminal records. The FRC also has a working arrangement with the National Transport and Safety Authority. Pursuant to Section 24(e) POCAMLA, the FRC may instruct any reporting institution to provide such other or additional information or documents to enable FRC to properly undertake its functions under POCAMLA.

While FRC is not a member of Egmont15 Group of Financial Intelligence Units, it is able to cooperate with its international counterparts. Between 2016 and 2020, FRC made 24 international requests for information assistance and received 23 responses. During the same period, FRC received 55 cases of requests for assistance and effectively responded to all the cases.

[15] Egmont is a group of Financial Intelligence Units is an international organization that facilitates cooperation and intelligence sharing between national financial intelligence units to investigate and prevent money laundering and terrorist financing.

Based on the forgoing, the Quality of FIU Intelligence Gathering and Processing was rated *Medium High (0.6)*.

V. Capacity and Resources for Financial Crime Investigations (including Asset Forfeiture)

Investigations of crime in Kenya is undertaken by number of agencies under their respective mandates. The National Police Service (NPS) is established by the Constitution, the National Police Service Act 2011 and the National Police Service Commission Act 2011. In accordance with these provisions, the National Police Service consists of the Kenya Police Service, the Administrative Police Service and the Directorate Criminal Investigation (DCI).

DCI is Kenya's principal criminal investigative agency. Its main function is to undertake investigations on serious crimes including homicide, narcotics crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crimes, and cybercrime among others. Headed by a Director reporting to the Inspector General of NPS, DCI has four main command branches under the Director, and the command spreads out from the Headquarters to Regions, counties, sub counties. Currently there are 8 Regional and 47 County Directorate Offices and over 297 Sub-counties countrywide. BFIU, the Economic and Commercial Crime Unit (ECCU) and Anti-Terrorism Police Unit (ATPU) are the units within DCI that are responsible for the investigation of economic crimes and terrorism financing. The BFIU and the ECU are responsible for investigating ML.

Ethic and Anti- Corruption Commission derives its mandate from the provisions of Articles 79 and 252 of the Constitution, the Ethics and Anti-Corruption Commission Act, 2011, and the Leadership and Integrity Act, 2012. The main predicate offences investigated is corruption and bribery. It undertakes preliminary investigation on reported cases, forensic investigations and Lifestyle audits. In addition to investigating the predicate offences, EACC through the Asset tracing Unit and Asset Recovery Units undertakes ML and asset forfeiture investigations.

Section 53 of POCAMLA establishes the Assets Recovery Agency (ARA) with the mandate of investigating the offence of money laundering, identification, tracing, freezing, seizure, confiscation and recovery of proceeds of crime.

KRA and Anti-Counterfeit Authority (ACA) are two other agencies with a mandate to investigate aspects of money laundering relating to their core mandate. Kenya Wildlife Service, Kenya Forest Service and Kenya Bureau of Standards investigate predicate offences under their respective Acts but do not undertake money laundering investigations.

Investigations are normally based on various sources including: intelligence reports, whistle blower reports, STRs from FRC amongst others sources. Investigative agencies have a broad range of investigative powers, including special investigative techniques. Specialized covert operations are through legal process as provided under Evidence Act, Criminal Procedure Code and POCAMLA provision. In addition, they have sufficient powers to compel persons to produce records, perform searches or take witness statements. During the period under review, the investigative agencies undertook a total of 89 ML investigations of which 57 were undertaken by EACC and 32 by DCI. The number of investigations were relatively lower compared to the number of predicate offences reported to the Police.

Deficiencies and key areas of improvement include the low number of ML investigations undertaken during the review period, lack of clarity on mandate to undertake ML investigations and failure by some investigative agencies to hand over cases to other competent authorities for ML investigations to be undertaken where they have limited capacity on ML matters. In

addition, LEAs generally require additional funds to enable them perform their operations effectively. ARA on the other hand requires additional staff members.

The variable, Capacity and Resources for Financial Crime Investigations (including Asset Forfeiture) was therefore assessed as *Medium High (0.6)*.

VI. Integrity and Independence of Financial Crime Investigators (including Asset Forfeiture)

Kenya has identified corruption as a major challenge and has developed a corresponding action plan. The Independent Policing Oversight Authority (IPOA) was formed in 2011 to provide for civilian oversight over the work of the police in Kenya. In 2018, IPOA processed 2,339 complaints against police misconduct, which was a slight increase on the 2,267 cases reported in 2017. Majority of the complaints reported relate to police in-action (i.e., failure by police to take action) 32%, police misconduct, 15.1%, police assault, 12.1% and police harassment, 9%. The general public perception is that activities of investigative agencies have been interfered with or influenced by politics, corruption as well as social pressure. A few cases of perceived abuse of power by the police have been reported as well.

Accordingly, the Integrity and Independence of Financial Crime Investigators (including Asset Forfeiture) was assessed as *High (0.7)*.

VII. Capacity and Resources for Financial Crime Prosecutions (including Asset Forfeiture)

In Kenya, criminal prosecutions are undertaken by the ODPP while asset forfeiture is conducted by several agencies including ARA, EACC and KRA. ODPP is mandated to institute and undertake prosecution of criminal matters and all other aspects incidental thereto by Article 157 of the Constitution of Kenya.

For the assessment period, the ODPP received 23 ML cases for prosecution. All were approved for prosecution, but no conviction was realised yet. The number of ML cases prosecuted are few. This is attributed to capacity constraints, few number of ML investigations. Most prosecutors do not charge ML offences along with the predicate offence as they are not well versed with ML. ODDP do not have data asset freezing orders and/or confiscation order filled by prosecutors.

ODPP has access to all necessary documents, information and witnesses and/or other relevant individuals for use in prosecutions. The DPP can request the police to investigate any matter, therefore where there are gaps the prosecutor can request for these to be filled. Where ODDP faces setbacks in acquiring documents or witnesses for prosecutions it may rely on the multi-agency approach and use of the multi-agency task team for all disputes on information sharing, resort to informal requests for MLA, regional asset recovery groups or use the ODPP powers to enforce cooperation as catered for under Section 26 and 27 of the ODPP Act.

ODPP pursuant to Article 157 and 159 of the Constitution of Kenya, the National Prosecution Policy, 2015 and the Diversion Policy, 2019, introduced 'Differed Prosecution' as an alternative to Prosecution in Kenya. To this end, corporations can enter into a Deferred Prosecution Agreement (the "DPA") with the ODPP to defer the prosecution of the corporation for a set period on the condition that the corporation meets and continues to meet specific conditions under the DPA. This tool was used on March 5 2020, when ODPP entered into Deferred Prosecution Agreements with five banks who agreed to pay penalties for failing to report suspicious transactions.

Asset forfeiture proceedings that are civil in nature are undertaken by EACC and the Assets Recovery Agency (ARA). ARA has nine state counsel who undertake assets forfeiture proceedings in court. The staff are not adequate and ARA is seeking to increase the number of state counsels in the future. The staff are not reassigned to ensure that the specialised skills are retained.

ARA staff have the necessary skills required to make assets forfeiture applications in court. They are adequately trained and continue to undergo regular training locally and internationally to hone their skills. The staff have adequate knowledge of financial products, processes, and financial crimes and money laundering typologies. ARA has access to the information and witnesses required in the asset forfeiture application and has successful obtained Asset forfeiture orders for 99% of cases filed in court.

Regarding civil cases relating to corruptly acquired assets, EACC has powers to file cases in court for recovery of such assets. In this regard, EACC has two units with responsibility of handling AF matters. During the period under review, about 86% of the AF investigation proceeded to court for analysis. The ML cases had not been concluded to determine convictions rate. Most of these cases have been prosecuted between 2018-2019. The Anti-Corruption and Economic Crimes Act (Sections 27 and 28 and 29) provide EACC with legal framework to access all necessary documents through application ex-parte applications, notices to produce record and premises search.

Section 44 of the Tax Procedures Act allows the Commissioner (KRA) to seize and forfeit goods in respect of which taxes have not been paid. This is in nature an administrative forfeiture action because the Commissioner can seize and forfeit without the intervention of the court. The Commissioner is equally empowered under Section 201-216 and Section 130 of EACC Act to search, seize and forfeit goods, vessels, vehicles to ensure delinquents do not benefit from crime and tax evasion.

The Capacity and Resources for Financial Crime Prosecutions (including Asset Forfeiture) was therefore, assessed as *Medium High (0.6)*.

VIII. Integrity and Independence of Financial Crime Prosecutors (including Asset Forfeiture)

ODPP's vison is a just, fair, independent and quality public prosecution service. In order to undertake professionalization of prosecution services, ODPP developed policy documents namely: National Prosecution Policy, Code of Conduct and Ethics for Public Prosecutors, General Prosecution Guidelines and Corruption and Economic Crimes Prosecution Guidelines. ODPP recently launched Guidelines on Decision to Charge that details steps to be taken by a prosecutor to ensure fairness, consistency, transparency and accountability in the prosecution decision-making process to bolster public confidence in the administration of justice.

ODPP has also launched the Uadilifu Case Management system. This system has capabilities to track and monitor the status and progress of files and further, facilitate electronic filing of pleadings and disclosure of evidentiary material. This Case Management System will enhance efficient and expeditious disposal of criminal cases. ODPP has also established the Integrity and Quality Assurance Department which ensures that decisions are made in compliance with the code of ethics. In additional, the ODPP has an Internal Affairs Unit in the ODPP acts on all complaints related to misconduct and has a process in place where prosecutors are constantly reviewing files to ensure all areas are covered in each case being prosecuted. The pace or outcome of ML prosecutions/ assets forfeiture is affected by factors such as the complexity of cases which provides a challenge in presentation of the evidence in court, mutual legal assistance technicalities and lack adequate financial investigators and forensic experts among others.

In undertaking AF proceedings, ARA has internal standard operating procedures on how to conduct money laundering investigations and asset recovery procedures. AF proceedings into high-profile cases are conducted in teams comprising lawyers, investigators and financial analysts to ensure professionalism and objectivity. Further, ARA is guided by core values of: integrity, transparency and excellence. The process of managing frozen and seized assets is supervised by the Courts and this guarantees integrity in the process. The Integrity and Independence of Financial Crime Prosecutors (including Asset Forfeiture) is assessed as *High (0.7)*.

IX. Capacity and Resources for Judicial Processes (including Asset Forfeiture)

The Judiciary of Kenya interprets and applies the law in Kenya. The Judiciary consists of the Supreme Court, Court of Appeals, High Court, Employment and Labour Relations Court, Environment and Land Court, the Magistrate Court, Kadhi Court.

Judges and magistrates have to meet certain qualifications, skills and experience. Over time they build on their experience as they adjudicate cases. They also have legal knowledge to enable them preside over ML/AF cases. There is no requirement imposed on judicial officers handling ML and AF to have any other training or qualifications. The Judiciary Training Institute (JTI) was established in 2008 to provide continuous judicial education for judges and magistrates. JTI performs this mandate in part through various training programs and seminars, public lectures, research, and other forms of discourses targeting all cadres of Judiciary staff, and where, appropriate, members of the academy and the public at large. Judges and magistrate hold an annual colloquium to discuss a range of issues.

The Court has few ongoing money laundering cases. However, it has presided over and granted numerous AF orders. The first money laundering case in Kenya was prosecuted in 2016. No money laundering case has been adjudicated fully owing to the backlog of cases in Kenya. The total number of cases classified as backlog by State of the Judiciary and the Administration of Justice Annual Report 2018/19 stood at 359,347 cases. Another challenge is that the Judiciary Fund which is established under Article 173 of the Constitution is yet to be operationalised.

The Capacity and Resources for Judicial Processes (including assets forfeiture) was assessed as *Medium High (0.6)*.

X. Integrity and Independence of Judges (including Asset Forfeiture)

Kenya is a signatory to the United Nations Basic Principles on the Independence of the Judiciary that sets basic principles, formulated to assist countries in their task of securing and promoting the independence of the judiciary. The independence of judiciary is provided for in Article 160 of the Constitution. The Judicial Service Commission (JSC) is an independent Commission established under Article 171 of the Constitution. Its mandate as stipulated in Article 172 of the Constitution is to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice. The Judges enjoy a security of tenure with a retirement age of seventy (70) years, but a judge may elect to retire at any time after attaining the age of sixty-five years.

Further, the process of removing a judge is provided for under article 168 of the Constitution, which provides for grounds of removal which include inability to perform the functions a, breach of a code of conduct prescribed, bankruptcy, incompetence; or gross misconduct or misbehaviour. JSC is responsible for initiating the process of removing and consider a petition of removal of a Judge before making a recommendation to the President of Kenya. Despite the fact that the Judiciary is normally faced with pressure from all quarters, especially commentaries about cases appearing in the media (both electronic and social media), the institution is able to

adjudicate cases independently. The Integrity and Independence of Judges (including Asset Forfeiture) was thus assessed as *High (0.7)*.

XI. Quality of Border Controls

Along the Kenya's long border stretch, there exist illegal crossing points and smuggling routes. The Ocean border region and especially, Mombasa coastline, is known for drug trafficking. Policing of the Indian Ocean waters face challenges such as inadequate surveillance equipment by private beaches and villas (whose activities are hard to monitor) and the use of the waters by other countries as transit routes. The top Border Control and Operations Coordination Committee (BCOCC) was established under the Immigration Act though Section 75 Security Laws (Amendment) Act, 2014 to formulate policies and programs for the management and control of Point of Entry (POE), coordinate the exchange of information, ensure compliance with standards and exercise oversight authority over the operations of agencies at POEs. This interagency body reports to that national security advisory council.

The Quality of Border Controls was assed as *Medium High (0.6)*.

XII. Comprehensiveness of Customs Regime on Cash and Similar Instruments

The key provision relating to monetary declaration include section 12 (3) of POCAMLA which creates an offence for failure to or submission of a false monetary instruments; section 16(3) of POCAMLA which creates fine not exceeding ten per cent of the amount of the monetary instruments involved for offences relating to monetary declarations; and section 12(4) POCAMLA which grants authorized officer to temporarily seize monetary instruments suspected to be tainted property. Comprehensiveness of Customs Regime on Cash and Similar Instruments was thus assessed as *Very High (0.8)*.

XIII. Effectiveness of Customs Controls on Cash and Similar Instruments

Kenya requires the travellers to declare monetary instruments of a value exceeding US$10,000 when crossing the borders. Custom officers from KRA inform passengers of declaration/disclosure duties, and the legal consequences of any violations through verbal announcements at the point of arrival or departure. Passengers are also issued with declaration forms by airline crews on board the air for travellers coming into the country. Some of the techniques used for detecting undisclosed monetary instruments include: baggage scanners, multi-agency verification of cargo, border surveillance by patrol team and passenger profiling and interviews.

Effectiveness of Customs Controls on Cash and Similar Instruments was rated *Medium High (0.6)*.

XIV. Effectiveness of Domestic Cooperation

The effectiveness of domestic cooperation amongst the law enforcement agencies (LEAs) was rated *High (0.7)*. This was attributed to the existence of several mechanisms to promote interagency cooperation. POCAMLA provides for inter-agency cooperation. The mechanisms for ensuring domestic cooperation, among others, include:

a) NTF

The National Taskforce on Anti-Money Laundering and Combating the Financing of Terrorism (NTF) is a multidisciplinary Taskforce whose membership comprises the organizations that are deemed to be crucial in the implementation of the national AML/CFT regime.

b) Anti-Money Laundering Advisory Board (AMLAB)

Section 49(1) of the POCAMLA establishes the Anti-Money Laundering Advisory Board whose main function is to act as a forum in which FRC, associations representing categories of reporting institutions, state organs and supervisory bodies can consult one another on anti-money laundering developments, concerns and initiatives.

c) Multi-Agency Team (MAT)

Established through an Executive Order of November 2015, to:

i. enhance cooperation, coordination and collaboration among the agencies;
ii. engage other relevant agencies in order to enhance the effectiveness of the graft war;
iii. identify resource needs for each agency and lobby for the same; and
iv. develop effective communication strategies for awareness creation on the gains.

The essence of MAT is to ensure that the noose on corrupt individuals is tightened to ensure that prosecution and disruption of finances is achieved. All agencies are required to undertake joint operations on corrupt individuals. For example, the DCI and EACC will conduct investigations, the police will arrest, the KRA will go after taxes and revenue, the ARA/EACC will trace, identify, freeze and preserve or recover assets.

d) The Office of the Director of Public Prosecution (ODPP) and Investigative Agencies.

The ODPP is mandated to prosecute all criminal cases while several agencies have investigative or enforcement powers. To achieve successful prosecution of cases, the ODPP and Investigative are required to have a close working relationship. This has been achieved through joint trainings of investigators and prosecutors, joint forms and prosecution-guided investigations.

e) DCI

DCI facilitates domestic corporation through common trainings and workshops on AML, sharing intelligence with other agencies, multi-agency engagements and case conferences for specific cases. DCI has also seconded liaisons persons to various agencies.

f) Memorandum of Understanding (MOU)

Several agencies involved in AML/CFT have entered into MOUs with each other as a framework of sharing information.

g) Court User Committees

Court User Committees to address problems within the usage of court processes including sharing of documents for purposes of expediting court procedures;

h) The National Council on the Administration of Justice (NCAJ)

The National Council on the Administration of Justice (NCAJ) was formally launched in 2011 and is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high-level policymaking, implementation and oversight coordinating mechanism as reflected in its membership that is composed of state and non-state actors from the justice sector. The mandate as stipulated in the Act is to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.

i) Law Enforcement Coordinating Group

Is established under Regulation 7 and 8 of POTA Regulations to implement the POTA Regulations and support the functions of the Counter Financing of Terrorism Inter-Ministerial Committee.

Challenges to domestic cooperation include, poor coordination at lower levels of administration/ criminal justice system, lack of a comprehensive policy framework to guide on modalities of cooperation and poor management to joint-approaches to investigations. It was also noted that turf wars and apprehensiveness of sharing information posed a threat to the effectiveness of cooperation among agencies. Additionally, MAT only concentrates on high impact corruption cases. Therefore, MAT composition and mandate should be expanded to cover all serious crimes and relevant investigative agencies.

XV. Effectiveness of International Cooperation

The effectiveness of international cooperation about law enforcement agencies was rated *Medium High (0.6)* as Kenya has a comprehensive legal framework for undertaking international cooperation. The Kenya Constitution stipulates that the general rules of international law shall form part of the laws of Kenya. The Mutual Legal Assistance Act, 2011 provides flexibility in application of MLAs by use of treaties, conventions, reciprocity and does not strictly apply the dual criminality principle. It also recognizes special investigative techniques and it gives effect to foreign orders with regard to confiscation and asset forfeiture. Others laws that provide for International Cooperation include POCAMLA, the Extradition (Commonwealth Countries) Act, Cap. 77 and the Extradition (Contiguous and Foreign Countries) Act, Cap. 76.

The country provides the widest possible range of Mutual Legal Assistance (MLA), pre-MLA assistance, and informal information or intelligence such as obtaining evidence or information relevant to any criminal matter including the production, search and seizure of such evidence or information; locating or identifying suspects; tracing property; serving document; and identifying, freezing, seizing or confiscating: assets laundered or intended to be laundered, and proceeds of ML.

The National Police Service is a member of several international and regional bodies that enhance is access to information and intelligence. These include bodies like Interpol. Law enforcement agencies are able to coordinate ML investigations or forfeiture actions and share information and intelligence with counterparts in other countries as well as share information or intelligences with counterparts.

FRC has powers to conduct queries on behalf of foreign FIUs and exchange with them all information it would be able to obtain if such queries were carried out domestically. In 2020, FRC made 5 requests for international cooperation generally relating to money laundering and tax evasion. For the period under review, it received 55 requests for information from countries such as Uganda, UK, Seychelles, Germany amongst others. It takes one to three months to respond to MLA requests. between 2016 and 2020, EACC made over 30 MLA requests to Switzerland, Canada South Africa, India, UAE USA, UK, China, Singapore. It also received 5 MLA requests from Israel, Poland, UK, USA and Pakistan. EACC has also participated in three joint international investigations.

Other mechanism used for international cooperation include Africa Union Convention on Preventing and Combating Corruption, Asset Recovery Inter-Agency Network for Southern African (ARINSA), Assets Recovery Inter-Agency Network for Eastern Africa (ARIN-EA) and the Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK),

agreed and signed by the Governments of Kenya, Jersey, Switzerland and the UK in 2018. In addition, several institutions such as ODPP, FRC and CBK have several MOUs with international partners for exchanging information and cooperating in various aspects.

The Office of Attorney General is mandated to process MLA requests and establish mechanism to track all MLAs. The challenges noted with international cooperation include language barrier, competing jurisdictions' interests and difference in legal systems and lack of urgency in processing applications. It was also noted that there are a few reported number of joint international investigations and inadequate record keeping of international information requests processed by LEAs. Further, MLAs are based mainly on mutual trust, good faith and political good will, failure to which the other country or party may fail to accede to a request.

XVI. Availability of Independent Audit

The Institute of Certified Public Accountants of Kenya (ICPAK) was established in 1978 by the Accountants Act, CAP 531 of the laws of Kenya to regulate the activities of all certified public accountants in the country. The Institute does the regulation by ensuring that credibility, professionalism and accountability are upheld in the accounting profession in Kenya. In addition to regulating the accountancy profession in accordance with the Accountants Act, ICPAK is also responsible for supervision and enforcement of compliance by all the accountants. This also extends to oversighting of all the accounting firms.

Through a delegated mandate under section 24A (3) of POCAMLA, ICPAK has developed and commissioned the "Ant-Money Laundering Guidelines for Accountants in Kenya, 2020" outlining the requirements for regulated entities to develop programs to effectively combat money laundering and financing of terrorism activities. Auditors are required to renew their certificates annually. ICPAK is a member of the International Federation of Accountants (IFAC). ICPAK upholds the international standards issued by the standards setting bodies under IFAC, including International Financial Reporting Standards, International Public Sector Accounting Standards, International Audit and Assurance Standards, International Ethics Standards for Accountants, International Accounting Education Standards, International Standards of Supreme Audit Institutions and Internal auditing standards also apply. The variable was rated *High (0.7)*.

XVII. Level of Financial Integrity

The level of financial integrity focuses on the quality of business and professional ethics transparency of a country's tax system. Kenya's tax regime is based on self-assessment whereby the taxpayer makes a declaration and pays without any intervention from the taxman. Sections 28 and 52 of Tax Procedures Act, provide for returns by persons chargeable to tax. Self-assessments are filed through the online iTax platform. This has boosted levels of tax compliance and introduced transparency in tax reporting by individuals and entities. On the other hand, tax crimes are considered serious financial crimes under the Tax Procedures Act.

Level of financial integrity is also impacted by ethics and professional standards. A report on the State of Corporate Governance of Issuers of Securities to the public in Kenya issued in 201816 showed that sectors performed fairly in commitment to good governance save for construction and allied workers which scored a 'needs improvement' grade. A number of sectors have business code of conduct. However, level of business ethics and commitment to good corporate governance and tax compliance by businesses and profession is still low. Several financial crimes such as corruption, tax evasion continue to pose challenges to LEAs.

Based on the foregoing, the Level of Financial Integrity was assessed as *High (0.7)*.

[16] Report-on-the-State-of-Corporate-Governance-for-Issuers-of-Securities-to-the-Public-in-Kenya-2018.pdf

XVIII. Effectiveness of Tax Enforcement

The KRA is established by an Act of Parliament, Chapter 469 of the laws of Kenya, charged with the responsibility of assessing, collecting and accounting for all revenue on behalf of the Government of Kenya. The Commissioner is empowered to access taxpayers' premises, books, records, and other tax information under Sections 58, 59 and 60 of the Tax Procedures Act, 2015. Taxpayers are required by law to maintain books and records under the following sections 54A and 55 of Income Tax Act, Section 43(1) VAT Act 2013, revised in 2019, Section 23 of the Tax Procedures Act 2015 and Section 34 of the Excise Duty Act 2015. The conduct of audit is currently managed using a case management workflow through the audit module in *i*Tax. KRA is still in the process for increasing/expanding the tax bracket (i.e., number of persons required to pay taxes), for instance, taxing the digital economy.

Based on the foregoing, the Effectiveness of Tax Enforcement was assessed as *High (0.7)*.

XIX. Formalization Level of the Economy

The informal sector refers to a section of the economy that encompasses all jobs which are not recognized as normal income sources, and on which taxes are not paid. The informal sector represents an important part of the economy and plays a major role in employment creation, production and income generation. The Kenyan informal sector covers mainly small-scale activities that are normally semi organized, unregulated or use low and simple technologies. The number of registered taxpayers is about 6 million against an estimated working age population of over 31 million Kenyans. This implies that there is a heavy tax burden placed on a very small fraction of the population, mostly in the formal sector, to run the country. Further, cash payment remains king despite digital money growth within the country. The spiral effect of these factors is that Kenya fails to realize its tax revenue targets, leading to increased taxation rates and also create challenges for investigators seeking to rely on records. The variable was rated *Medium (0.5)*.

XX. Availability of Reliable Identification Infrastructure

The Ministry of Interior and Coordination of National Government through the Directorate of Immigration Services is charged with the responsibility of registration of Kenyan citizenship, issuance of passports, issuance of driving licence and other travel documents, immigration controls, and foreign nationals management. Centralization of issuance of identification ensures a secure ecosystem to issue secure and reliable identification of documents.

Refugee Aliens cards are issued by the Directorate of Refugee Affairs and are regulated by Refugees Act, 2006 and the 1951 Refugee Convention, to which Kenya is party. The official identification documents recognized in Kenya are national identity card (ID); birth certificate; national passport; foreign national certificate; refugee ID and driver's license. However, to undertake financial transactions, financial institutions only accept national identity card, passport, driving licence and birth certificate, thus limiting the porting of the populace involved.

The National Registration Bureau (NRB) was established in 1978 to implement and enforce the Registration of Persons Act (CAP. 107). The Act provides for compulsory identification, registration and issuance of identity cards to all persons who are citizens of Kenya and who have attained the age of eighteen years and above. NRB also maintains an electronic database of registered refugees and foreign nationals, processes the refugees and foreign nationals' identity cards as well as the civil servants' identity cards and government staff identification badges.

The Government has implemented the Integrated Populations Registration System (IPRS). IPRS is a system which creates a comprehensive national population register that is linked to the new third generation identification card, the Visa Issuing System, the Births and Deaths Certificate System, the Biometric Passport System and Border Management System. According to Vision 2030, It will also be linked to other national population registration systems, including the

Kenya Revenue Authority, National Social Security Fund, National Health Insurance Fund Systems, as well as the national security database mentioned above.

IPRS is one of the mechanisms used to authenticate documents by citizens or identify Kenyans by matching their biometric and photographic details with documents in their possession. Institutions may also consult the Immigration Department for guidance an evaluating the authenticity of identification documents. People whose legal status are unclear or undocumented usually face risk of exclusion, which mostly affects border communities and communities in northern frontier. The main challenge is that these communities have social and cultural and relationship with neighbouring communities across the border. As a result of this, such applicants normally undergo extreme vetting process. The Reliability of Kenya's Identity Infrastructure was therefore, rated as *High (0.7)*.

XXI. Availability of Independent Information Sources

Reporting institutions are required to verify customer and beneficial owner identification through reliable and independent source documents, data or information as part of CDD measures. In Kenya, there are independent and reliable sources of information to determine transaction patterns of clients. These sources include tax information, credit reference bureaus (CRBs), historical customer banking information, utility bills, especially water and electricity bills. However, several inconsistences have been noted with such bills and as such financial institutions are reluctant to rely on them as a source of independent source of information.

Availability of Independent Information Sources was rated as *Medium High (0.6)*

XXII. Availability and Access to Beneficial Ownership Information

Kenya has defined Beneficial Ownership (BO) under the Companies (Beneficial Ownership Information) Regulations, 2019 and POCAMLA. Regulation 2 of the BO Information Regulations defines "beneficial owner" to mean the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement.

Business Registration Service (BRS) is mandated to oversee the operations of the Companies Registry, Movable Property Security Rights Registry (Collateral Registry), Insolvency (Official Receivers) Registry and the Hire Purchase Registry. The Business Registration Service Act, 2015 establishes Business Registration Service (BRS) as a semi-autonomous body under the Office of the Attorney General and Department of Justice.

All new registrations of companies, business names and limited liability partnerships are done online. BRS has introduced a process known as "link a business" as part of a records clean-up exercise and an audit trail. This will help eliminate the issue of missing files and reflection of wrong information to the Registry. So far, over 40% of the companies' records have been verified and are update to date. The process further ensures that records are easily accessed online and ensure that there is traction of activities conducted at the registry thereby minimizing fraudulent activities.

Beneficial Ownership Information Regulations, 2020 is the legal framework that provides for creation of a Beneficial Ownership Register, defines a competent authority, places an obligation on companies to maintain a register among other provisions. The Registrar of Companies operationalized the Beneficial Ownership (BO) E-Register with effect from October 2020. As at June 9, 2021, BRS reported receipt of 148,908 applications for change of officials (which include the Beneficial Ownership E-Register), 32,711 applications for link a business and 34,400 applications to file annual returns. Availability and Access to Beneficial Ownership Information was assessed as *Medium Low (0.4)*.

2.3 Banking Sector Vulnerability

2.3.1 Overview of the banking sector

The banking sector is regulated by the Central Bank of Kenya (CBK) which is charged with the twin responsibilities of licensing and regulating/supervising commercial banks and microfinance banks. As at November 2020, the sector comprised of 39 banks and fourteen microfinance banks. Two banks were under receivership while one bank was under statutory management. These three banks are not included amongst the 39 banks. Commercial banks are grouped into three peer groups. The large and medium peer groups have 9 banks each, and the remaining 21 banks fall under small peer group. The banking sector is relatively larger than other financial sectors in Kenya in terms of capital base, deposits, assets, number of customers and contribution to the GDP, with a total net asset of KSh 4.8 trillion by December 2019.

2.3.2 Assessment of the General AML Control Variables

The following is the detailed assessment of the General AML Control Variables:

I. Comprehensiveness of AML Legal Framework

This variable was rated *High (0.7)*. POCAMLA is the main AML statute for all the sectors including banking and establishes a strong AML legal framework and provides for key AML requirements such as money laundering offences and other related offences. POCAML Regulations provide granular provisions for the implementation of POCAMLA requirements and the FATF AML standards. The Regulations amplify requirements on obligations of reporting institutions which include requiring reporting institutions to undertake a money laundering risk assessment to enable them identify, assess, monitor, manage and mitigate the risks associated with money laundering. The Regulations further provide for customer due diligence requirements, reporting requirements, and powers of the FRC.

CBK has specific AML guidelines for banks (industry specific AML regulatory framework). These are called prudential guidelines on Anti-Money Laundering and Combating the Financing of Terrorism. These prudential guidelines largely mirror FATF requirements but are tailor-made for the banking sector (commercial banks). Microfinance Regulations, 2008 on the other hand, focus more on Know Your Customer (KYC) requirements.

The banking sector is subject to the 29 Basel Core Principles on Effective Banking Supervision. The CBK has largely domesticated these principles in the banking laws, particularly through the Banking Act and Prudential Guidelines developed pursuant to the Banking Act. In this regard, Kenya is largely compliant with the Revised Basel Core Principles (BCP) 1, 2, 3, 4, 5, 9, 11, 13, 25, 26, and 29 as they are all covered in the Banking Act and prudential guidelines. Peer review by EAC Central Banks on Kenya's compliance with the 29 BCPs found that Kenya is largely compliant with the 29 BCPs.

II. Effectiveness of Supervision Procedures and Practices

The CBK Act gives CBK the mandate of licensing and supervising banks. The Banking Act and the Microfinance Act provide detailed provisions for the licensing and regulation of the two sets of banks. CBK has a Bank Supervision Department wholly dedicated to the supervision of banks and other licensees. CBK has developed comprehensive supervisory policies, procedures and manuals to facilitate seamless supervision of banks. CBK has adopted a risk based approach to AML supervision and has a documented risk-based supervision manual in this regard. It conducts both AML onsite inspections and off-site surveillance.

CBK's AML supervisory framework comprises of a number of activities including licensing to effect market entry controls, offsite and onsite supervision to assess the quality of controls of

banks, regulation and information to guide and inform regulation and regulated banks, monitoring and reporting to ensure ongoing effectiveness of supervisory actions on compliance, assessment of money laundering risks to mitigate ML risks and guide in supervisory resource allocation and enforcement to proportionately address breaches of requirements.

CBK is well resourced in terms of financial resources, technical staff and supervisory tools. In 2016, CBK had 71 technical staff. 81 members of staff in 2017, 82 in 2018, 80 in 2019 and 80 in 2020. Over 50% of the technical staff have masters/postgraduate degree in key/relevant professional areas including finance, accounting, law, IT, economics. All technical staff have undergraduate degrees. Supervisory staff have diverse skills sets including financial analysis, legal expertise, expertise in IT, economics, audit, onsite inspection, policy formulation, developing of laws, legislative drafting, amongst others.

The normal supervision teams also undertake AML supervision as part of their day to day work. In 2016, the staff number for on-site inspections was 17, 24 in 2017, 24 in 2018, 22 in 2019 and 21 in 2020. This is reasonable given that CBK has adopted risk-based supervision. Bank Supervision Department also has 4 specialized AML staff dedicated to AML work only. The specialized team supports the main Supervision Teams. CBK continuously trains its staff on a number of topical issues including AML risk-based supervision, money laundering risks and other AML related issues. Trainings are both domestic and international. Over seventy technical staff have been trained on supervisory issues. The CBK therefore has a good staff knowledge base and with the available supervisory tools (laptops, teammate and ACL), CBK has the capability to undertake effective AML supervision.

The CBK is moving from the traditional onsite inspections to Regtech/Suptech with near real time supervision. This is consistent with the current global trend on banking supervision. This new approach is expected to fundamentally improve the efficiency and effectiveness of AML supervision by the CBK. So far, the CBK has established an Enterprise Data Warehouse (EDW) through which the new approach to supervision will be implemented. Banks will be required to submit data online and almost on near real time basis. The EDW will enable integration of data and access to multiple data sources; improved data quality, consistency and standardization; increased accuracy and confidence; and enhanced reporting and querying. The CBK will be able to access banks' data almost in near real time basis thereby improving its capacity to timeously intervene where necessary.

III. Availability and Enforcement of Administrative Sanctions

This variable was rated *Medium*. The existing AML laws and regulations provide a robust administrative sanctions regime. POCAMLA, POCAML Regulations, Banking Act, Prudential Guidelines, Microfinance Act and Microfinance Regulations provide comprehensive framework for administrative sanctions. Kenya has a range of effective, proportionate, and dissuasive administrative sanctions applicable to natural or legal persons in cases of non-compliance with AML/CFT laws and regulations. The legal and regulatory framework expressly provide for monetary penalties, administrative actions, removal of critical staff, and suspension/withdrawal of bank licenses. Administrative sanctions can be imposed by both CBK and FRC directly, without going through the criminal process. These administrative sanctions are viewed as an efficient means of deterring non-compliance with the AML/CFT laws and regulations. The comprehensiveness of the administrative sanctions intuitively dissuades or deters non-compliance with AML laws and regulations.

Whenever an inspection is conducted and violations noted, CBK has always imposed administrative penalties. Some of these penalties have been quite stiff and dissuasive, for instance, the KSh 392 million monetary penalty which was imposed against five banks (in the

NYS case). The frequency of administrative sanctions is however, largely dependent on the limited number of target and scheduled on-site inspections conducted.

There is record of administrative sanctions having been imposed against banks by the CBK during the period under review. These administrative sanctions ranged from imposition of monetary penalties, re-vetting of bank staff found to have been in breach and denial of corporate approval. In addition to the administrative sanctions, the concerned banks were required to take time-bound corrective measures to address the violations or AML deficiencies noted. The CBK should continue with and enhance this approach to enforcement of administrative sanctions in order to realize more AML compliance rates by banks.

IV. Availability and Enforcement of Criminal Sanctions

Kenya has a robust legal framework for AML criminal sanctions under POCAMLA. Part II (sections 3 – 16) of POCAMLA is wholly dedicated to money laundering and related offences. It covers a range of ML offences key amongst which include money laundering; acquisition, possession or use of proceeds of crime; failure to report suspicion regarding proceeds of crime; tipping off; malicious reporting; failure to comply with the provisions of POCAMLA; misuse of information; and hindering a person in performance of functions under POCAMLA.

Section 16 of POCAMLA provides a graduated framework for penalties arising from commission of the offences. The penalties range from, in the case of a natural person, to imprisonment for a term not exceeding fourteen years, or a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher. In the case of a body corporate, the penalty is a fine not exceeding twenty-five million shillings, or the amount of the value of the property involved in the offence, whichever is the higher. On the other hand, Regulation 42 of POCAML Regulations makes it an offence for any person, reporting institution or supervisory body to contravene the provisions of the said Regulations. The penalty for such contravention is a fine not exceeding five million shillings or imprisonment for a term not exceeding three years or both fine and imprisonment. These range of criminal sanctions can safely be described as effective, proportionate, and dissuasive. The sanctions are applicable not only to banks but also to their staff including directors and senior management. This variable was rated *Low (0.3)*.

V. Availability and Effectiveness of Entry Controls

The licensing framework for banks is provided for in the Banking Act, Prudential Guidelines for commercial banks, Microfinance Act and Microfinance Regulations for microfinance banks. The entry controls range from assessing capital adequacy, sources of capital, confirmation through a sworn statement that the capital is not from proceeds of crime. Significant shareholders and persons proposed to be appointed as directors and senior officers of banks must be vetted for suitability.

The suitability assessment criteria look at a number of records including past criminal records, any disciplinary proceedings against the person, shareholding in other corporate entities, financial history, amongst others. Any vetting approval is subject to withdrawal if new information comes to the knowledge of CBK which would have otherwise disqualified the person from being appointed to manage or control a bank.

The entry controls for banks are very effective. The license applications are processed by very well experienced and trained staff. The unlimited powers of the CBK to request and obtain information enable the licensing staff to ask for all the information they need about an applicant or its shareholders, associates or proposed directors or senior officers. No bank licensed by CBK has ever had its license suspended or revoked on account of money laundering issues. No new

bank applied for license in 2016- Sept 2020 due to the licensing moratorium imposed by the CBK. Two licenses were however granted to commercial banks which had applied for the licenses before the moratorium. For microfinance banks, one microfinance bank was licensed in 2019.

This variable was rated *High (0.7)*.

VI. Integrity of Banks' Staff

All financial institutions have an obligation to recruit, vet and employ people of high integrity. There are staff policies and procedures on integrity of staff and dissuasive staff disciplinary processes. CBK Prudential Guideline on Corporate Governance has provisions on Code of Conduct and has strict requirements on staff integrity. Directors and senior officers are also vetted by CBK before on-boarding. Dissuasive administrative sanctions which can be imposed directly by CBK against staff are clearly specified in law.

The data analyzed revealed that a number of integrity breaches by bank staff have been recorded over the last five years and is generally low compared to the total number of staff in the banking sector. This shows that the level of staff integrity is high. Majority of the reported integrity breaches were related to internal fraud, forgery, cybercrime, theft of cash, concealment of cash shortages, disclosure of confidential information, breaches of internal policies and procedures, staff colluding with external parties, soliciting funds from customers, amongst other.

The analysis indicated that banks recorded a decline in number of disciplinary actions in the subsequent years in the period under review. The decline of the number of disciplinary actions against staff could point to the fact that the standards of staff integrity has been improving over the years.

During the period under review, only one bank was charged in court in 2016 on money laundering offences. This shows that the level of money laundering offences investigations and prosecutions is very low. In another case, *Republic Vs. five banks* touching on violation of various provisions related to the Proceeds of Crime and Anti-Money Laundering Act. A Deferred Prosecution Agreement (DPA) was reached in which the banks paid a total of KSh 385 Million in penalties in 2020. This was in addition to the penalties paid to the CBK (approximately KSh 392 Million in monetary penalties). This variable was rated *Medium High (0.6)*.

VII. AML Knowledge of Banks' Staff

Banks are required by law to train and develop training programs for their staff on AML including POCAMLA, POCAML Regulations, CBK Prudential Guidelines, policies and procedures. The banks' staff trainers are sourced internally or externally. Staff undergo physical and online AML trainings. The typologies of the trainings are sourced from FATF, ESAAMLG and European Union and sometimes in liaison with KBA. A good number of banks have embedded AML key performance indicators (KPIs) as part of staff responsibilities. There are records on staff training.

The analysis indicated that most banks train their staff annually but a number of banks have adopted different frequencies ranging from monthly, quarterly, bi-annually and yearly. Majority of banks train all cadres/categories of staff. However, some banks train specific categories of staff. Slightly less than 50% of the staff compliment of about 30,000 in the entire banking sector have been trained in the last five years. Although the banks' staff are well trained, targeted AML training by public authorities (CBK, FRC, KBA, Kenya Institute of Bankers (KIB), EACC, ARA, ODPP, KRA and Institute of Directors), especially on emerging trends should be enhanced.

This variable was rated *Medium (0.5)*.

VIII. Effectiveness of Compliance Function (Organization)

Regulation 9 of POCAML Regulations requires banks to establish compliance functions and Regulation 10 requires them to appoint money laundering reporting officers (MLROs) at senior management position. The MLROs are also required to be independent and to have adequate resources.

The assessment confirmed that banks have board approved compliance policies covering roles and responsibilities, reporting, training, consequences of breaches, among others. In Kenya all banks have compliance functions which are largely independent and have MLROs who operate independently in analyzing and reporting suspicious transactions to the FRC. Between 2016 and 2020, some business relationships were declined and/or terminated based on recommendations from the compliance staff. Recommendations by compliance function for the termination of business relationships were based on diverse reasons including adverse media mention, insufficient KYC documentation, de- risking, suspicious transactions/activities, high risk geographies and high risk business activities.

The banks have in place disciplinary processes relating to AML compliance breaches. The main disciplinary actions taken against bank staff for breaching compliance policies over the last five years included warning letters, summary dismissals, show cause letters, and suspensions. From the assessment, it came out clear that the number of banks staff who have faced disciplinary actions in the last five years is equally very low which is a clear indicator of high rate of compliance with compliance policies. This variable was rated *High (0.7)*.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

Banks have systems for record keeping, monitoring and reporting suspicious transactions to support their AML policies and procedures. They are able, and do file suspicious transaction reports (STRs) with the Financial Reporting Centre. The number of STRs filed with the FRC have increased tremendously in recent times. Banks have systems that assist in the identification and recording of complex and unusual large transactions. They also have systems that support in performing PEP sanctions and transactions screenings. Banks staff have a good understanding of the scope of their reporting obligations on STRs. This variable was rated *Medium (0.5)*.

X. Level of Market Pressure to Meet AML Standards (Optional)

Market pressure to meet AML standards is high. This is due to the regulatory requirement set out by the correspondent banks on due diligence with regards to correspondent banking relationships. The correspondent banks require banks to apply their group wide AML/CFT policies to all its subsidiaries and branches within and outside the country. Consequently, banks conduct due diligence when engaging in cross border transactions as required by the law. Additionally, before the establishment of any relationship with any Kenyan bank, correspondent banks conduct compliance checks on the domestic banks in order to ascertain their level of compliance with AML requirements through a questionnaire served on the domestic banks. On-site visits are also conducted as further checks where discussions revolve around AML/CFT measures and compliance.

Over 50% of banks surveyed have correspondent relationships with foreign banks. Kenyan banks effectively comply with AML requirements in establishing correspondent banking relationship. Moreover, the bank managements are sensitive to international and national AML-related reputational risks and consider reputational damage as very significant to their business continuity, so they ensure compliance with all AML requirements most especially on cross border correspondent relationships. Moreover, ESAAMLG De-Risking Survey Report 2018-

2021 show that there is 41% decrease in termination/restriction of correspondent accounts compared to the 2011-2016 Report, implying reduction of de-risking by correspondent banks.

The variable was rated *High (0.7)*.

XI. Availability and Access to Beneficial Ownership Information

The assessment reviewed and adopted the assessment conducted by the National Vulnerability Working Group. The variable was rated *Medium Low (0.4*).

XII. Availability of a Reliable Identification Infrastructures

The assessment reviewed and adopted the assessment conducted by the National Vulnerability Working Group. The variable was rated *High (0.7)*.

XIII. Availability of Independent Information Sources

The assessment reviewed and adopted the assessment conducted by the National Vulnerability Working Group. The variable was rated *Medium High (0.6)*.

2.3.3 Banking products vulnerability

The following are the outcomes of the products vulnerability assessments.

I. Private banking

There is no private banking in the country hence low ML vulnerability. The value and size of the transaction is zero from the data of the 15 sampled Banks. The average size of the transaction is low. The overall ML risk for this product was rated *Low*.

II. Customer/retail deposits

Retail customers have a high total value and size of transactions. From the 15 banks sampled, the total value of retail deposits is relatively high at around KSh 1 trillion which accounts for 44% of total deposits for the sampled banks. The average transaction size is KSh 148,000 which is considered medium low. This rating is also because of some wealthy individuals who have relatively high deposits from the sampled banks. A high velocity in the number of transactions which account for almost 75% of all the customer accounts in the sampled banks was noted. The client profile is majorly on salaried employees and small traders.

Digital retail accounts are becoming increasingly popular in the banking industry with some banks currently allowing digital account opening. This has introduced new money laundering risks due to the non-face to face nature of the transactions. In most financial institutions the product has an investment feature, which introduces inherent money laundering risks. However, data provided did not support this assertion and the decision was based on discussions and experiences within the assessment team. The product vulnerability was rated *Medium*.

III. Legal persons

This category includes both business banking and corporate banking customers. The total value of transactions in this category is relatively high. From data of the 15 sampled banks, the deposits of legal persons' account for 55% of all the total deposits. The average transaction size is relatively high at KSh 5.5 million. The level of cash activity for this product is relatively high evidenced by more than double the cash activity for retail customers as per data from the sampled banks. The client risk profile for this product is high since it is available to high risk customers like politically exposed persons, high net worth individuals, foreigners hence vulnerable to money laundering risks. There is also high level of international transfers associated with this product especially for traders involved in import export business.

The overall risk for this product was rated *High*.

IV. Retail credit products

Total value of transactions account for 11.4% of total loan book for the sampled banks. Though the total value is low, the size is relatively high with the total number of customer accounts being 45% of the total credit customers for the sampled banks. The client profile cut across salaried individuals and small traders. The level of cash activity is low, however there is money laundering risk of customer repaying their loans in cash where the source of funds is not determined. It was however noted from most financial institutions that the loan origination/disbursement is to a bank account or mobile wallet. There is phenomenal growth in the mobile lending for retail customers which is non face to face mode of transactions. The product is also susceptible to fraud especially mobile lending and personal loans where there is a lot of impersonation.

The overall money laundering risk of the product was rated *Medium Low*.

V. Retail credit products/SME

There is no universal classification of SME across the banks with tier one bank having a different classification with tier 2 and tier 3 banks. From the sample used, most of the banks indicated that there are no international transactions associated with this product apart from syndicated loans which are minimal. There exist some fraudulent activities especially on loan perfection where there are fraudulent charges and title deeds charged to different lenders. Currently, most banks are piloting digital lending for SME products so majority of the credit facilities are still face to face. The overall risk for this product was rated *Medium*.

VI. Credit for large customers

They have the highest total value of the loan portfolio at 80% of the total value from the sampled banks. The total number of customers are relatively low compared to retail and SME customers. The total average transaction size is quite high in comparison to the other customer categories. Some of these large customers have complex structures mainly incorporated in high risk jurisdictions making it difficult to determine the beneficial ownership. The investments in this category of accounts for 41% of total investments/deposits from the sampled banks. The level of cash activity associated with the product is low since there is no cash activity in loan origination/disbursement and loan repayment. The overall risk for this product was rated *Medium High*.

VII. Current account

The total value of deposits in current accounts is relatively high at around KSh 1 trillion for the 15 sampled banks. The average transaction value is also high. Additionally, there are investment features which account for 42% of all deposits in the sampled banks. The investment features are high mainly due to large legal firms that keep client funds in current accounts and government parastatals depositing project funds. The product has high level of cash transactions, even though data did not support this. However, based on our understanding of the product, there is high level of cash activity. The cash transaction reports (CTRs) submitted to FRC by most banks are transactions relating to current accounts. Kenya is majorly a cash based economy where most transactions are cash based. There is high use of international transfers considering the cross-border business dealings, and is susceptible to be used for tax fraud and most STRs are based on transactions done in the current accounts. Most banks confirmed that the product is linked to non-face-to-face channels due to the utilization internet and mobile banking platforms. The overall risk for this product was rated *High*.

VIII. Wire transfers

The value and volume of transactions are high with more than 66% of all channel transactions attributed to this channel. Client profile includes both retail and corporate customers. The average transaction size is high with little cash transactions associated with this product. The transparency requirement for the sender and receiver are well known. There is a high level of transfers both locally and internationally which are majorly non-face-to-face. The overall risk for this channel was rated *High*.

IX. Negotiable instrument

The total value is relatively medium at 12.6% of all channel transactions with low cash activity associated with this product. Beneficial ownership is known and established. The product is majorly face to face with a few banks allowing remote deposit capture and deposits through ATMs. There is low use of this channel for international transfers. The overall risk for this product was rated *Medium Low*.

X. Mobile phone banking

The value of mobile phone transactions in the country is high even though data provided was not supportive. The average transaction size is low with high velocity. Most banks have interlinked their customers to the mobile service providers which has increased the use of this product. The level of cash activity is low for this channel as customers from the bank side do not use cash. However, there is high cash activity from the mobile service provider's side (M-Pesa). The channel is non-face-to-face and difficult to trace information on the customer. There exists a huge risk of the channel used for fraud also considering some banks on-board agents to handle mobile transactions. The overall risk for this product was rated *Medium*.

XI. Internet banking

The total size and value of transactions is high but the data provided was not supportive. The average transaction size is high and the client profile cuts across different customers i.e. retail, SME and corporate. High net worth customers and PEPs can use this channel for ML activities. The level of cash activity is low, beneficial owners are well known, majorly non face-to-face, senders' and receivers' details are known and there exists a fraud risk which is prominent.

The overall risk for this product was *High*.

XII. Cards

The total size, volume and average size of the transactions is low. The cards are normally mapped to current accounts with high level of cash activity for ATM debit cards and low for credit cards which are mainly utilized for international transactions. The abuse for fraud is high. The overall risk for this product was *Medium Low*.

XIII. Trust and asset management

Majority of the banks do not offer trust business in Kenya. However, it was noted that the value and size of the transaction is medium while the average transaction size is high. The client profile risk is high because banks rely on third parties to conduct the due diligence. A small number of banks sampled offer global custody services hence minimal international transactions. The beneficial ownership is difficult to determine especially for nominee and trust accounts.

The overall risk for this product was *Medium*.

XIV. Trade finance

The value of transaction is medium with high average transaction activity and minimal cash activity on the product. The product however has high frequency of international transfers and can easily be used for fraud and tax. Trade finance is majorly a non-face-to-face with available documentation. The overall risk for this product was rated *Medium*.

XV. Correspondent banking

Correspondent banking has high value, volume, average size of transactions with no cash activity. The frequency of international transactions is also high. Annual KYC and due diligence done on each correspondent bank. This product can easily be used for fraud especially fraudulent swift transactions. In 2016, FATF issued a comprehensive guidance on correspondent banking. Regulation 24 of POCAMLA guides on establishing correspondent banking. Controls exist and are comprehensive. The overall risk for this product was rated *Medium High*.

XVI. Safe deposit

Safe deposit is a product with low size and volume of the transaction. It also has low average transaction size with minimal cash activity associated. This product has been interpreted to relate to an existing account. The overall risk for this product was rated *Medium High*.

2.3.4 Overall banking sector vulnerability assessment

Based on the ratings of the general AML control variables, ratings of the intermediate variables and the product risk ratings, the overall banking sector vulnerability was assessed as *Medium High* (*0.62*).

2.3.5 Priority ranking for the banking sector

The priority ranking as generated by the tool is presented in Table 2.3.4.

Table 2.3.1: Ranking of priority areas in the banking sector

Priority Ranking - Last Case/Scenario	Ranking**
Comprehensiveness of AML Legal Framework	
Availability and Enforcement of Criminal Sanctions	5
Level of Market Pressure to Meet AML Standards	
Availability and Effectiveness of Entry Controls	
Effectiveness of Supervision Procedures and Practices	2
Availability and Enforcement of Administrative Sanctions	3
Integrity of Banks' Staff	7
AML Knowledge of Banks' Staff	1
Effectiveness of Compliance Systems	3
Effectiveness of Suspicious Activity Monitoring and Reporting	5
Availability and Access to Beneficial Ownership Information	8
Availability of Reliable Identification Infrastructure	
Availability of Independent Information Sources	9

2.4 Securities Sector Vulnerability Assessment

2.4.1 Regulatory framework for securities sector

The securities sector in Kenya is regulated by the Capital Markets Authority (CMA). CMA has deepened and broadened the capital market by developing a regulatory framework that facilitates the development of new financial products and institutions through research and ensuring fairness and orderliness in the capital markets sector. The regulatory framework of the capital markets sector is comprised of the following Acts, Regulations, Guidelines and Rules:

The Acts of Parliament (applicable to the capital markets) include POCAMLA, the Capital Markets Act (CAP. 485A), the Central Depositories Act, 2000 and the Companies Act, 2015. The Regulations and Rules include the Proceeds of Crime and Anti-Money Laundering Regulations, 2013, the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002, the Capital Markets (Licensing Requirements) (General) Regulations, 2002, the Capital Markets (Takeovers and Mergers) Regulations, 2002, the Capital Markets (Foreign Investors) Regulations, 2002, the Capital Markets Tribunal Rules, 2002, the Capital Markets Asset-Backed Securities Regulations 2007, the Capital Markets (Registered Venture Capital Companies) Regulations 2007, the Capital Markets (Conduct of Business) (Market Intermediaries) Regulations 2011.

Others include the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011, the Capital Markets (Demutualization of the Nairobi Securities Exchange Limited) Regulations 2012, the Capital Markets Real Estate Investment Trusts Collective Investment Schemes Regulations 2013, the Capital Markets (Derivatives Markets) Regulations, 2015, Central Depository Operational Procedures, 2012 (updated 2018), Companies (Beneficial Ownership Information) Regulations, 2020, Nairobi Stock Exchange Market Participants Rules, 2014, Nairobi Stock Exchange Listing Rules, Nairobi Stock Exchange Derivatives Rules, Capital Markets (Online Foreign Exchange Trading) Regulations, 2017 and the Capital Markets (Collective Investment Schemes) Regulations, 2001.

Among the issued guidelines are the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets (Capital Markets), Code of Corporate Governance Requirements for Issuers of Securities to the Public, 2015 (Capital Markets), Guidelines on the Approval and Registration of Credit Rating Agencies (Capital Markets), Guidelines on Financial Resource Requirements for Market Intermediaries (Capital Markets), NSE Trading Participants Business Conduct and Enforcement Rules 2014.

2.4.2 ML vulnerability of the securities sector

The money laundering vulnerability of the sector was assessed as ***Medium (0.59)***. The detailed analysis of the general AML control variables assessment and products specific vulnerability assessment in the sector is presented in the following sections.

2.4.3 General AML control variables assessment

I. Comprehensiveness of AML Legal Framework

There is a comprehensive legal framework in place at the national level providing for AML requirements including, the POCAMLA, which designates supervisory bodies to ensure compliance of the reporting institutions in the respective sectors. In 2015, CMA developed robust AML Guidelines (CM AML Guidelines) for the sector which are aligned to the national AML laws and the FATF Recommendations. The participants in the assessment exercise affirmed that there is a comprehensive AML legal framework for the capital markets sector.

Based on the forgoing, the variable was assessed as *Very High (0.8)*.

II. Effectiveness of Supervision Procedures and Practices

The FRC through POCAMLA has delegated its authority and mandate to conduct AML supervision to the CMA. CMA uses a risk-based supervision model, but has not fully implemented the AML risk-based regime as it lacks a sufficient number of specially trained staff on AML. The cycle and frequency of AML risk assessments and inspection over the past years has been low and lacks a standalone team responsible for AML/CFT supervision.

There are a total of 13 supervision staff responsible for oversight of over 80 market intermediaries for both conduct and AML/CFT obligations. However, the few existing supervision officers have the technical capacity and knowhow to conduct AML supervision and have been utilizing the limited resources available to them. The CMA has developed an AML program consisting of policies, procedures, risk-based tools, and an annual work plan designed to carry out supervisory activities. The policies and procedures are both internal and external to guide CMA and market participants. The developed AML/CFT supervisory manual guides the CMA's supervision officers when conducting inspections on AML/CFT risks in the Securities sector.

The variable was therefore assessed as *Medium (0.5)*.

III. Availability and Enforcement of Administrative Sanctions

The CM Act provides for administrative sanctions under Section 25A, 26, and 26A for breaches in the capital market that are predicate offences to money laundering such as insider trading, market manipulation, front running and securities fraud. These administrative sanctions are enforceable not only on the securities firms but also against individual members of management of the securities firms, issuer, securities exchange or other approved persons for non-compliance with the AML obligations (especially the CM AML/CFT Guidelines).

All 15 respondents to the data collection questionnaire confirmed that the CMA has not taken action for violations of AML/CFT obligations. However, CMA has in the past taken administrative action on predicate offences to money laundering such as insider trading, market manipulation and securities fraud. Most of the surveyed institutions (about 90%) concurred that there are appropriate administrative sanctions under POCAMLA for non-compliance with AML/CFT obligations. Further, the surveyed market intermediaries confirmed that the administrative sanctions as contained under POCAMLA apply to both natural and legal persons.

The variable was therefore assessed as *Medium (0.5)*.

IV. Availability and Enforcement of Criminal Sanctions

There are effective and proportionate criminal sanctions under POCAMLA applicable in cases of non-compliance to POCAMLA obligations. Sections 4(a) (b) and (c), 7, 8, 10 and 11 of POCAMLA provides for criminal penalties. Regulation 42 of POCAML Regulations provides that any person, reporting institution or supervisory body who contravenes the Regulations commits an offence and is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding 3 years or both.

It is recommended that the information on cases investigated and/or prosecuted should be made available to the CMA. The investigation, prosecution, and enforcement agencies need to closely work together to expedite successful investigation and prosecution of AML/CFT criminal offences. There is also need to harmonize and improve data management systems. Further, FRC should prepare and publish statistics and typologies on actions taken on securities sector to enhance and raise awareness among all the stakeholders in the fight against ML/TF in the country.

The variable was therefore assessed as *Low (0.3)*.

V. Availability and Effectiveness of Entry Controls

There are effective controls on licensing and approval of new entities including a robust regime for fit and proper assessments of directors and key personnel of market intermediaries. CMA licensing staff are trained on the processes of licensing applications, screening, vetting and approval of applications and supporting documentation at the CMA. There are various checks in place including but not limited to confirming the source of funds. Directors are required to undergo training in corporate governance with six months of appointment. It was noted that the CMA has granted 108 new licenses in the last 5 years with no rejections in the period. However, 3 new licenses have been held in abeyance due to issues related to the probity of parent companies and directors. No granted license / licensee has been revoked of suspended for failure to meet AML/CFT obligations. The variable was therefore assessed as *Very High (0.8)*.

VI. Integrity of Staff in Securities Firms

Generally, securities firms screen potential employees prior to onboarding and put controls in place to prevent money laundering within their firms. Background checks are undertaken on staff in securities firms before employment to ensure that they do not on-board individuals who are not deemed fit. Fit and proper assessments are conducted by the CMA for key personnel and directors of the securities firms. This ensures that reputable individuals are recruited into the sector thus eliminating the risk of recruiting corrupt individuals. However, the CMA has found instances of breaches where staff collude with criminals to commit fraud and predicate offences to money laundering.

An analysis of the data provided by the FRC for the period 2016 to September 2020 showed that there were no AML sanctions or penalties meted to the securities firms or its staff. CMA data however, indicate that there was an increase in cases in 2018 where employees had been involved in insider trading, market manipulation and market abuse cases which then declined in 2019 and slightly increased in 2020. Reported number of employees involved in corporate fraud cases were high in 2016, declined in 2017 and 2018, slightly increased in 2019 and slightly declined in 2020. The variable was therefore assessed as *Medium (0.5)*.

VII. AML Knowledge of Staff in Securities Firms

Appropriate staff in the sector are trained on AML and disseminate the information to the members of the Securities Firm. This enables the first line of defense to actively control money laundering attempts before the second line of defense (MLROs) take charge. It was noted that the securities firms were independently sourcing for AML training from a variety of training providers. Securities firms organize a minimum of one annual training to equip its members with requisite skills to combat money laundering and the financing of terrorism. In the surveyed period, CMA organized 1 training in 2016 and another in 2018, the NSE organized 1 training in 2019. From the surveyed market intermediaries, 955 staff from 7 firms were trained between 2016 and 2020 in a total of 75 training sessions. This represents an average of 191 staff per year. The variable was therefore assessed as *Medium High (0.6)*.

VIII. Effectiveness of Compliance Function (Organization)

The CMA places a strict obligation on securities institutions to establish an independent compliance function. The securities institutions assessed have effective compliance functions that employ a risk-based approach in conducting anti-money laundering oversight. It was noted that the assessed securities firms have internal compliance programs that take into account factors such as institution type, volume, and nature of products provided, client-based profile and transaction patterns. It was recommended that the compliance function need to be sufficiently resourced to be able to effectively meet legal and regulatory obligations as it was

noted that most of the MLROs double up as legal, compliance and risk officers. Taking into consideration the nature and size of the firms, it is recommended that the compliance function be sufficiently resourced in terms of human capital to be able to effectively meet legal and regulatory needs. The variable was therefore assessed as *Medium High (0.6)*.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

Majority of the assessed securities institutions do not have effective suspicious activity monitoring and reporting frameworks. The securities firms indicated that the systems used for monitoring are manual and inadequate for monitoring suspicious activities. Some firms have developed in-house systems tailored to their operations. The systems can record all transactions but cannot identify complex and unusual large transactions. From the survey carried out, it was noted that the number of STRs received by FRC from the securities sector for the period 2016 to 2020 were relatively low, which posed a question on the awareness of suspicious transaction monitoring and reporting. Though the number of STRs received were found to be low, the sample data received by the FRC indicated quality reporting.

It is recommended that there should be more interaction between FRC and the securities sector to promote AML/CFT awareness, including suspicious transaction identification and reporting. In addition, the securities firms should automate their monitoring systems to facilitate effective and efficient monitoring of transactions. Finally, the market intermediaries should be encouraged to screen for PEPs with the already available infrastructure to enhance risk-based monitoring. The variable was assessed as *Medium Low (0.4)*.

X. Level of Market Pressure to Meet AML Standards

There is a considerable high level of market pressure on the securities firms to comply with both national and international regulations on money laundering. Notably, some securities firms are members of group companies that operate outside Kenya and are therefore required to comply with global compliance standards. Additionally, securities firms are members of local industry associations that require their members to comply with the set compliance standards over and above the existing laws.

The securities firms have foreign investors, mostly through global broker-dealers and custodians, who require the firms to comply with international best practice as a condition precedent to investing through the firms in Kenya. Foreign banks involved in processing transactions for local entities require that securities firms meet global AML standards including submission of their licensing details and internal AML policies and procedures. Further, some firms are required to adhere to global standards of AML to ensure they receive business from both local and foreign clients. Non-compliance with global AML standards can lead to loss of business and affects the revenue of the market participants. The variable was assessed as *High (0.7)*.

XI. Availability and Access to Beneficial Ownership Information

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *Medium Low (0.4)*.

XII. Availability of a Reliable Identification Infrastructures

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *High (0.7)*.

XIII. Availability of Independent Information Sources

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *Medium High (0.6)*.

2.4.4 The priority ranking for securities

Table 2.4.1: Priority ranking for securities sector

PRIORITY RANKING	PRIORITY RANKING**
Comprehensiveness of AML Legal Framework	
Effectiveness of Supervision Procedures and Practices	1
Availability and Enforcement of Administrative Sanctions	3
Availability and Enforcement of Criminal Sanctions	5
Availability and Effectiveness of Entry Controls	
Integrity of Staff in Securities Firms	6
AML Knowledge of Staff in Securities Firms	1
Effectiveness of Compliance Function (Organization)	7
Effectiveness of Suspicious Activity Monitoring and Reporting	3
Level of Market Pressure to Meet AML Standards	
Availability and Access to Beneficial Ownership Information	8
Availability of Reliable Identification Infrastructure	
Availability of Independent Information Sources	9

As shown in Table 2.4.1, the input variable Effectiveness of Supervision Procedures and Practices has a priority ranking of one, implying that mitigating the deficiency related to this variable is the first item at the top of the priority list. Therefore, the immediate key action points are enhancing the effectiveness of supervision in the securities sector, improving the AML knowledge of staff, promoting the effectiveness of suspicious activity monitoring and reporting, creating more awareness on suspicious activity reporting as well as enforcing administrative actions in the sector.

2.4.5 Inherent vulnerability assessment for securities sector

Capital markets are a part of the financial markets that facilitate raising of long-term capital by use of various instruments. An issuer is a legal entity that develops, registers and sells securities to finance its operations. Issuers may be corporations, investment trusts, or domestic or foreign governments. The capital markets in Kenya include debt and equity markets; debt securities (or "bonds") issued by governments, counties and companies - similar to loans but have standard features; equity securities (or shares) - represent ownership in a company; and securities – this can be issued in public markets (such as stock exchanges) or in private professional markets. The capital markets sector in Kenya has several products and services. A structure of the capital markets products is highlighted in Figure 2.4.1.

Figure 2.4.1: Structural presentation of capital market products in Kenya



These products and services have various inherent vulnerabilities that pose AML/CFT risks at different levels. Products and services which have been selected for this assessment include: Fixed Income Securities, Equities, Exchange Traded Funds (ETFs), Online Foreign Exchange Trading & CFDs, Derivatives, Private Wealth, Hedge Funds, Private Equity Funds, Venture Capital Funds, Investment Advisory Services and a Regulatory Sandbox.

I. Fixed Income Securities

This is a type of debt instrument that provides returns in the form of regular or fixed, interest payments and repayments of the principal when the security matures. The instruments are issued by governments, corporations, and other entities to finance their operations. examples of fixed income securities include bonds (both corporate and government), treasury bills, money market instruments, and asset-backed securities. Fixed income markets trade in significant volumes compared to other products in the market especially government bonds as they have guaranteed returns with almost zero risk. For instance, the bond turnover YTD (as at 30th September, 2020) was about KSh 529 billion (treasury bond KSh 528 billion and corporate bond KSh 0.81 billion). The product is well structured in terms of interest payments, maturity period and terms of payment and is available to all types of clients, both resident and non-resident. This product's vulnerability was therefore assessed as *Medium*.

II. Equities

The equities product has been the oldest financial instrument in the Kenyan capital market. This refers to a stock or any other security that represents an ownership interest in a limited liability company. Equity ownership can be obtained through an initial public offer (IPO), a rights issue or through a purchase in the NSE secondary market. The equities product is the most dominant product and offers a vast array of opportunities for transforming money into a diverse range of assets as evidenced by the relatively high number of listed companies.

There is significant activity in the equities market with a vast array of opportunities for transforming money into a diverse range of assets as evidenced by the relatively high number of listed companies in the country. Total equity turnover in 2019 stood at KSh 307 billion. There is high turnover in the equity market mainly due to the foreign investors, the institutional players and the local high net worth individuals. The clients are broadly categorized into retail and institutional investors and could exist in the market without detection. The equities market is

liquid and shares are easily transferable between companies and individuals. Additionally, the frequency of international transactions in the equity market is high and approximately 95% of trades are through custodians, who normally carry out KYC checks on the foreign institutional client investing in local equities. This product's vulnerability was assessed as *Medium*.

III. Registered and Unregistered Collective Investments Schemes (CIS)

A Collective Investment Scheme (CIS) comprises of pooled funds from public investors with a goal to earn returns through diversification. The funds are held by a Custodian under the direction of a Trustee and investment services by a Fund Manager. The assets from individuals and organizations investors are pooled to develop a single larger, diversified portfolio (Fund) available for investment and exploit economies of scale and increase returns to the investors.

The total assets under management by the CIS are relatively low (about KSh 88 billion by June 2020). The product is sold to the general public and is not restricted to any geographical location as such the clientele include both individuals and companies. The businesses are less likely to know their customers personally, it could offer a greater degree of anonymity compared to other businesses. Traditional CISs are relatively simple and safe, however, the specialized CISs are complex depending on the product structure. CIS products also allow for flexibility to pay for investments via cash, EFT or M-pesa. Some of the arrangements are open ended allowing for flexible conditions of terminating these contracts. The variable was assessed as *Medium*.

IV. Alternative Asset Classes (Online Foreign Exchange Trading and CFDs)

Online foreign exchange trading refers to the internet-based trading of foreign exchange (currencies) and includes trading in contracts for difference based on a foreign underlying asset. Trading is done via an online trading platform which is an internet-based trading system, mainly MT4 and MT5 (Metatrader 4 and Metatrader 5 - trading platforms designed to provide traders with access to stocks and futures).

Although the total value of the online foreign exchange sector is relatively low compared to the entire industry, it is worth noting that the sector is new with only three operational licensees. There is likelihood that the size of the product may significantly increase into the future when more players come into the space. The products are relatively complex as they are available in the form of contracts-for-difference and offered in a fast-moving market where price movements happen within very short timelines. The products within the online forex trading sector are available to all types of clients both resident and non-resident while the deposit feature in the sector is available to both small and large clients and is thus prominent as both small and large amounts of money are transacted in this space. There are also no specific AML controls designed or prescribed within the available regulatory frameworks for the online forex trading sector. However, there are internal controls measures which have been designed at the institutional level to mitigate the risks of money laundering and financing of terrorism. This product's vulnerability was therefore assessed as *Medium High*.

V. Private Wealth

Private Wealth Management is a financial service with varying degrees of customization and complexity (tailor-made investment solution) geared towards meeting the specific needs and goals of high-net worth individuals, trusts, foundations and institutions. It is usually a consultative process whereby the advisor(s) gleans information about the client's wants and tailors a bespoke strategy utilizing appropriate financial products and services. These high net worth investors have diverse and varied holdings to spread risk and as such they also target offshore investments as well. This product is exclusively offered to a small category of elite clients in the market that meet some strict financial scores, for instance, customers with US$

one million, that are designed by the financial institution offering the product. As such, the product is usually for the selected few who meet the prescribed criterion.

The investment/deposit feature is also available and prominent. ML vulnerability is increased by the fact that some of the arrangements are open ended, hence flexible conditions for termination of the contracts. The high net worth investors have diverse and varied holdings to spread risk and as such they target offshore investments as well. A significant proportion of their transactions are cross-border and this increases the risk of money laundering. In addition, some of the high net worth clients investing in this product include non-Kenyan residents and hence increases this product's vulnerability. The vulnerability for this product was therefore, assessed as *Medium High*.

VI. Regulatory Sandbox

The regulatory sandbox is intended to allow for testing of innovative products, solutions and services that have the potential to deepen or broaden the Kenyan capital markets. The product was expected to also accelerate CMA's understanding of emerging technologies, support adoption of an evidence-based approach to regulation and facilitate deepening and broadening of Kenya's capital markets.

Fintech firms are considered for admission based on their documented plans to offer innovative products, solutions or services with the potential to deepen Kenya's capital markets following successful exit from the sandbox. No market size or product portfolios as the products are in testing stages. Sandbox option is available to all types of clients, and the same measures of care during the customer due diligence (CDD) are expected for high-risk clients. This means that non-residents, high net worth clients, PEPs can open derivatives trading accounts and trade. The market intermediaries processing these accounts are the ones who will determine whether the said persons will access the market or not, hence very subjective. The variable was assessed as *Medium Low*.

VII. Hedge Funds, Private Equity Funds, Venture Capital Funds and Commodity Pools

A hedge fund is an investment company, typically formed as a private limited partnership that engages in speculation using credit or borrowed capital from its clients' to either beat the market or provide safeguard against unforeseen market changes. Third-party investors like pension funds, banks, and wealthy individuals invest in the partnership as limited partners while the hedge fund management group serves as the general partner.

The hedge fund's management invests the limited partner's money in a number of different ways in an attempt to generate a risk-adjusted return above the market. Hedge funds trades in relatively liquid assets and are able to make extensive use of more complex trading, portfolio-construction and risk management techniques to improve performance, such as short-selling, leverage and derivatives. Due to its use of complex techniques, hedge funds are mainly restricted to institutional investors, high-net-worth individuals and other investors considered sufficiently sophisticated.

Private equity funds are capital investments made into companies that are not publicly traded or listed. Private equity comes from high-net-worth individuals and firms that purchase stakes in private companies or acquire control of public companies with plans to privatize them. The private equity industry is comprised of institutional investors such as pension funds and large private equity firms funded by accredited investors. Private equity entails direct investment, often to gain influence or control over a company's operations and thus a significant capital outlay is required.

Venture capital funds is a form of private equity financing that is provided by venture capital firms or funds to start-ups and emerging companies that have been deemed to have high growth potential or which have demonstrated high growth (in terms of number of employees, annual revenue, scale of operations, etc.). Venture capital firms or funds invest in these early-stage companies in exchange for equity or an ownership stake. Venture capitalists take on the risk of financing start-ups in the hope that the firms they support will become successful. Venture capital generally comes from well-off investors, investment banks and other financial institutions.

Table 2.4.2: Hedge funds, private equity funds, venture capital funds and commodity pools

Features	**Hedge funds**	**Private equity funds**	**Venture capital funds**
Nature of investments	Invest in liquid assets	Invest in illiquid assets	Invest in illiquid assets
Fund structure	Open ended- Allow investors to invest and withdraw capital periodically, mostly one year	Allow investors to withdraw after a number of years, mostly 8 to 10 years.	Allow investors to withdraw after a number of years, mostly 8 to 10 years.
Investment time horizon	Short investment lock-in period	Long investment lock-in period	Long investment lock-in period
Fee structure	Asset management fee is typically charged on a monthly or quarterly basis	Annual management fees	Annual management fees

Hedge funds are formed as private limited partnerships. Private equity and venture capital funds can either be individuals or firms investing in existing companies. As investors, their stake in the investee companies may be concealed since they might not appear on the company's ownership documents but will still benefit from the profits of the investee companies. On the other hand, Hedge funds and private equity firms operate in a regulatory grey area, which makes them vulnerable to criminality. Private equity and venture capital firms entail injecting capital into other companies and thus do not require the investors to appear face to face to make the investment. The investments can be simply done through online platforms. Based on the foregoing, the vulnerability for this product was assessed as *Medium High*.

2.5 Insurance and Retirement Benefits Sector Vulnerability Assessment

2.5.1 Regulatory framework for insurance industry

The insurance industry in Kenya is regulated by the Insurance Regulatory Authority (IRA) which was established under the Insurance (Amendment) Act [No.11 of 2006]. The mandate of IRA is to regulate, supervise and develop the insurance industry in Kenya. Through a delegated mandate under section 24A (3) of POCAMLA, IRA has revised and issued the "Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020" outlining the requirements for regulated entities to develop programmes to effectively combat money laundering and financing of terrorism activities. These guidelines were gazetted as Legal Notice No. 23 of 2020 and approved by the National Assembly in October 2020.

The insurance industry in Kenya is heavily intermediated. Agents act on behalf of the insurance companies while the brokers act as agents of the clients and not the insurance companies. Indeed, insurance intermediaries are deemed to be the primary point of contact with the clients and therefore, have access to substantial and crucial client information. At the time of this assessment, there were 31 insurance companies offering general insurance, 25 insurers offering long-term (life) insurance and six (6) composite companies (i.e., offering both general and life insurance). Additionally, there were five (5) reinsurers, 195 insurance brokers, 10,443 agents and 31 banc-assurance agents. There are also other service providers such as medical doctors, lawyers, hospitals and garages who are a critical part of the insurance value chain but are not regulated under the Insurance Act.

2.5.2 Players and performance of the retirement benefits industry

As at September 2020, there were 31 Administrators, 11 Custodians and 24 Fund Managers registered by the RBA to provide their respective services to schemes. The retirement benefits schemes are classified either by scheme design, scheme type, fund type or the nature of investment of scheme funds. Currently, there are 1,258 registered schemes in Kenya which include 1,101 occupational schemes, 40 individual pension schemes, and 31 umbrella schemes. The number of trustees trained in the between 2015 and 2020 were 3,651. In 2019, the assets under management included KSh. 192 billion of National Social Security Fund (NSSF) funds, which were managed by four (4) external managers. NSSF internally administered about KSh. 57 billion of investments17, while the trustees of the various schemes directly managed about KSh. 67 billion of property investments18. The assets managed internally by NSSF dropped drastically by about KSh.31 billion from KSh.88 billion in June 2019.

2.5.3 ML vulnerability of the insurance and retirement benefits industry

The money laundering vulnerability of the insurance and retirement benefits sector was assessed as ***Medium (0.56).*** The detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections.

[17] These includes property amounting to KSh. 43.73 billion, quoted equities KSh. 9.15 billion; fixed deposits, KSh. 768 million, Cash and demand deposits, KSh. 3.18 billion, and unlisted shares, KSh. 331 million.

[18] Internally managed property is investments in property not reported by fund managers. The data of the internally managed property was extracted from the schemes financial accounts for 2019. The decrease in the internally managed property can be attributed to the directive issued by the Authority requiring schemes to relinquish the investment of scheme funds to fund managers.

2.5.4 General AML control variables assessment

I. Comprehensiveness of AML Legal Framework

The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) [No. 9 of 2009] designates FRC as the primary regulator for AML/CFT purposes. Notwithstanding that, IRA and RBA are further designated as the supervisory bodies for the insurance and retirement benefits sectors respectively, and places on them an obligation to supervise and enforce compliance on the reporting institutions they regulate.

POCAMLA (Section 24A (3)) permits the delegation of powers to a supervisory body to issue AML related instructions, directions, guidelines or rules to reporting institutions. In this regard, IRA has issued the Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020 under Section 3A (g) of the Insurance Act. Additionally, Part IV of POCAMLA details the AML obligations of a reporting institutions, while Section 134 obligates the development of Regulations specifying, among others, the nature of the information required from a reporting institution as contemplated in Section 44 of the Act, and the manner in which the reports are to be made. In this regard, the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 have been issued. Based on the forgoing, the variable was assessed as *Very High (0.8)*

II. Effectiveness of Supervision Procedures and Practices

The first schedule of the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) designates IRA and RBA as the supervisory bodies for the insurance and retirement benefits industries respectively and places on them obligations to supervise and enforce AML compliance. Section 36A of POCAMLA empowers IRA and RBA to conduct inspections with unrestricted access to information. IRA has developed the Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020. At the time of this assessment, RBA was in the process of developing guidelines for trustees and service providers to ensure compliance with the requirements under POCAMLA.

IRA and RBA have appropriate authority and mandate to conduct AML compliance supervision. IRA carries out its supervisory activities within a comprehensive supervisory framework that includes clear supervision policies, procedures, and manuals, but is still at the initial stages of implementing the AML supervision. Specifically, the focus has been on trainings and development of data collection and risk assessment tools. RBA has not developed policies, procedures and manuals for AML supervision of the retirement benefits schemes. Additionally, the Authority has not conducted a risks assessment of the players in the retirement benefits industry.

From 2019, IRA has conducted a risk assessment of life insurance companies and a pilot onsite inspection with respect to AML. Currently, IRA incorporates aspects of AML in the prudential onsite inspections and the findings are included in the prudential inspection reports. Accordingly, IRA conducts a risk-based approach on an annual basis. All the insurance companies are also mandated to submit to IRA a risk assessment and an independent audit report on the effectiveness of their AML programmes on an annual basis. IRA however, is yet to conduct an ML risk assessment of the insurance intermediaries.

IRA has held several trainings and workshops with the insurance companies, the directors of the companies, agents, brokers on prudential issues, including AML. IRA has also held several meetings with the regulated entities to discuss prudential issues and is able to use moral suasion to positively influence behaviour patterns. IRA's procedures for offsite inspection are effective, however the process of conducting AML/CFT risk-based onsite inspections is still at the infancy

stage. RBA does not carry out AML specific onsite and offsite reviews. Over 90% of the surveyed entities reported that IRA exercises moral suasion that positively influences behaviour patterns. The variable was therefore assessed as *Medium (0.5)*

III. Availability and Enforcement of Administrative Sanctions

Section 24A (3) of POCAMLA delegate powers to a supervisory body to issue instructions, directions, guidelines or rules regarding the application of the Act to reporting institutions regulated or supervised by the supervisory body. Section 24C of POCAMLA provides for a wide range of administrative sanctions. The variable was therefore assessed as *Medium (0.5)*

IV. Availability and Enforcement of Criminal Sanctions

POCAMLA provides a comprehensive legal framework for AML criminal sanctions. For instance, Part II criminalises money laundering and related offences including, acquisition, possession or use of proceeds of crime; failure to report suspicion regarding proceeds of crime; financial promotion of an offence; tipping off; misrepresentation; malicious reporting; failure to comply with the provisions of POCAMLA; conveyance of monetary instruments to or from Kenya; misuse of information; failure to comply with order of court; and hindering a person in performance of functions under POCAMLA. Moreover, Section 16 details a framework for penalties arising from commission of the offences.

The penalties range from, in the case of a natural person, to imprisonment for a term not exceeding fourteen years, or a fine not exceeding five million shillings or the amount of the value of the property involved in the offence, whichever is the higher. In the case of a body corporate, the penalty is a fine not exceeding twenty-five million shillings, or the amount of the value of the property involved in the offence, whichever is the higher. The criminal sanctions under POCAMLA are dissuasive and proportionate. However, the criminal justice system is slow and the prosecutions have to go through a costly judicial process for the fines to be imposed. There was no information on the number of criminal sanctions directly relating to ML in the insurance and retirement benefits industry from the survey. However, further assessments including key-informant discussions revealed that there are criminal enforcement actions taken against staff and players in the insurance industry with respect to ML and predicate offences. The variable was therefore assessed as *Medium (0.5)*.

V. Availability and Effectiveness of Entry Controls

There is a comprehensive legal framework for licensing insurance and retirement benefits schemes in Kenya and the licensing bodies are clearly identified in the law. The licensing bodies have clear and comprehensive framework for the licensing and registration of players in the industry, including a fit and proper test designed to prevent criminals (or their associates) from being granted an insurance or retirement benefits license, or having a significant controlling interest in insurance companies and retirement benefits schemes, or holding a management position. Over 90% of the surveyed insurance companies reported that the licensing framework implemented by IRA requires all licensees to have adequate AML compliance controls confirming the availability of adequate entry controls.

For instance, IRA approves appointment of directors and senior management of insurers and insurance brokers. Section 27 of the Insurance Act provides requirements for appointment of directors of the regulated entities, who in addition have to undergo a mandatory training on corporate governance (circular No. ICRE 06/2008). IRA also issued Guidelines on Corporate Governance for insurers and re-insurance companies in June 2011. Section 31(h) of the Insurance Act requires senior management to possess relevant educational and professional qualification, while Section 68 provides for the appointment of principal officers (Chief

Executive Officers for regulated entities). IRA also has a good understanding of ML risks posed by insurance companies which has been done through data collection and risk profiling in the insurance industry.

RBA has comprehensive legal and regulatory framework for registration of trustees and service providers under the Retirement Benefits Act. For instance, Section 22A (b) of the Retirement Benefits Act requires RBA to consider the educational qualifications and experience of natural and legal persons acting as trustees and licensed service providers. Section 25B requires the board of directors and top management of administrators to possess the relevant academic and professional education in matters relating to administration of schemes e.g., Insurance, law, actuarial science, accountants, economic, banking, finance or investment of scheme funds. IRA has developed and issued the Insurance (Anti-Money Laundering and Combating Financing of Terrorism) Guidelines, 2020 which require regulated entities to develop programs to effectively combat money laundering, including appointment of a Money Laundering Reporting Officer (MLRO). RBA is in the process of developing specific guidelines on AML/CFT. Based on the foregoing, the variable was assessed as *Medium High (0.6)*.

VI. Integrity of Staff in Insurance Companies

Most insurance companies have recruitment and on-boarding policies and procedures (e.g., HR manuals, business operation standards) to assess the integrity and competence of staff including vetting and staff background checks. The policies include, whistle blowing, anti- bribery policies, code of ethics, anti- fraud policies. There is also segregation of roles to ensure no one staff has responsibility for executing a transaction end-to-end (i.e., from initiation to completion) to minimize fraud other malpractices. The administrative actions applied by the insurance include dismissal of staff and agents in case of integrity breaches.

The aspects assessed during recruitment and on-boarding of employees include financial and educational background, compliance with Chapter Six of the Constitution (on Ethics and Integrity) as well as screening of prospective staff against sanctions lists i.e., UN sanction list, the Office of Foreign Assets Control of the United States Treasury (OFAC) sanction list, media mentions etc. in addition, IRA approves appointment of senior management and heads of control functions and require the regulated entities to continuously assess their suitability and report to IRA should any fails to meet the suitability requirement. Over 80% of insurance companies have adequate training and development programmes which are aimed at enhancing appropriate internal controls and AML procedures. Life insurance companies also have training programmes for the insurance agents who exclusively distribute products for life insurer. Some of the areas of training are ethics and integrity, features of the product and AML related aspects.

Generally, insurance companies are reluctant to report or disclose instances of integrity breaches by their members of staff, and would prefer internal disciplinary actions like dismissal of the concerned employees to avoid any reputational risks. The survey revealed very few cases on integrity breaches with only 25% of the received responses from the surveyed insurance companies reporting incidences bordering integrity breaches. The reported cases mostly involved the insurance agents rather than the staff of the companies and the majority of the incidences included mis-selling (i.e., selling to a customer on the basis of a misleading advice), premium embezzlement (agents collecting premiums from the clients but never remit the same to the underwriter), unauthorized premiums deductions, forgery, bribery, corruption and cybercrime. The variable was therefore assessed as *Medium (0.5)*

VII. AML Knowledge of Staff in Insurance and Pension Companies

Approximately 45% of the life insurance companies (accounting for over 80% of the market share in terms of Gross Premiums Written as well as assets) have developed training

programmes for their staff and board members which are conducted on an annual basis. The insurance companies that have an association with major banks leverage on the training programmes developed by the banks. For instance, in one of the insurance companies associated with a major bank, staff are required to undertake a certain number of online trainings failure of which leads to being locked out of the system.

Most insurance companies (over 80%) have a Risk Management and Compliance Programmes (RMCPs) which set out a high-level framework for the disciplined, continuous and consistent management of AML/CTF regulatory and compliance. RMCPs highlight the nature of ML/TF risks, which are categorized in terms of the nature, scale and complexity of the business; diversity of operations, including geographical diversity; volume and size of transactions; features of the intended target market of clients who are likely to use the products and services on offer; geographic locations of the companies' operations and of their clients; delivery channels and features of a particular product or service.

Staff members have a good knowledge of and are regularly updated on domestic and transnational money laundering schemes and typologies, including those involving the misuse of the insurance companies and specialized knowledge and skills of its staff and its products. Based on the responses received, the staff in insurance companies indicated that 60% of the insurance companies conduct assessment of their staff however, 40% indicated that they do not evaluate staff for AML/CFT knowledge. 73% of respondents regularly update their staff on domestic and transnational money laundering schemes and typologies, especially during training sessions. Based on the foregoing, the variable was assessed as *Medium High (0.6)*.

VIII. Effectiveness of Compliance Function (Organization)

IRA requires all insurance companies to have a compliance function that is well resourced with sufficient powers depending on the nature, scale and complexity of the insurers operations. Most of the companies have leveraged on the existing compliance function to deal with ML matters and have appointed an MLRO at management level in the organization structure. In some insurance companies, the MLRO reports both administratively to the principal officer and functionally to a board committee, while in some few companies, the MLRO reports both administratively and functionally to the principal officer.

Staffing of the compliance function varies depending on the nature, scale and complexity of the insurance company, but generally the data showed that all compliance functions are adequately staffed. However, most compliance functions lacked transaction monitoring systems (TMSs) or software for STR monitoring and reporting. The compliance function in most insurance companies are independent of the internal audit and risk management functions. The variable was therefore assessed as *Medium (0.5)*.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

Half of the surveyed insurance companies reported that they have information systems that facilitate the monitoring of transactions of clients against their profile. Specifically, these systems are able to flag out complex transactions (i.e., split transactions, smurfing, unusually large transactions etc.), adverse media mentions, beneficial ownership gaps and sanctioned clients. Records from IRA however indicate that only a handful of insurance companies have systems that facilitate monitoring of suspicious transactions. Several insurance companies do not have a data base of PEPs and high risk customers. During the risk assessment conducted by IRA in 2019 and 2020, approximately 20% of the insurance companies reported to have PEPs in their books, indicating absence of an information system for assessing and monitoring high risk customers.

Less than half of the insurance companies that responded confirmed that their transactions monitoring systems are capable of identifying suspicious transactions. For instance, the suspicious transactions flagged include, payment of multiple investments in a short period of time without regard to payment costs on multiple policy, multiple cash deposits below the regulatory threshold, transfer of the benefits of products to unrelated third parties, deposit of funds with a request for immediate transfers, cancellations of investments soon after purchase, transactions made by customers who make frequent requests for change of addresses, among others. The variable was assessed as *Medium Low (0.4)*.

X. Level of Market Pressure to Meet AML Standards (Optional)

About 30% of the insurance companies have cross-border relationships that they deem important and that require them to comply with international AML standards. IRA has also issued Group-Wide Supervision Regulations, 2020 (LN No. 25) for the supervision of insurance groups. Additionally, about 45% of the insurance companies are associated with banks and are therefore, compelled to put in place AML programmes in line with those established by the banks. For example, nature and frequency of trainings, procedure manuals and management information system, among others. Additionally, the fear of adverse effects (e.g., damage of reputation) of media mention also increases the market pressure to meet AML standards.

The variable was therefore assessed as *Medium High (0.6)*

XI. Availability and Access to Beneficial Ownership Information

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *Medium Low (0.4)*.

XII. Availability of a Reliable Identification Infrastructures

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *High (0.7)*.

XIII. Availability of Independent Information Sources

The working group reviewed and adopted the assessment conducted by the National Vulnerability working group. This variable was given a rating of *Medium Low (0.6)*.

2.5.5 The priority ranking

A priority ranking was generated to help guide and highlight immediate actions as the starting point for developing action plans to strengthen AML controls within the insurance and retirement benefits industry.

Table 2.5.1: Priority ranking

General AML Control variables	Priority Ranking
Effectiveness of Supervision Procedures and Practices	1
AML Knowledge of Staff in Insurance Companies	2
Effectiveness of Compliance Function (Organization)	3
Effectiveness of Suspicious Activity Monitoring and Reporting	3
Availability and Enforcement of Administrative Sanctions	3

Integrity of Staff in Insurance Companies	6
Level of Market Pressure to Meet AML Standards	7
Availability and Enforcement of Criminal Sanctions	8
Availability and Effectiveness of Entry Controls	8
Availability and Access to Beneficial Ownership Information	10
Availability of Independent Information Sources	11
Availability of Reliable Identification Infrastructure	
Comprehensiveness of AML Legal Framework	

As shown in Table 2.5.1, the input variable Effectiveness of Supervision Procedures and Practices has a priority ranking of one, implying that mitigating the deficiency related to this variable is the first item at the top of the priority list. The results reveal that the immediate key action points are enhancing AML/CFT supervision in the insurance and retirement benefits industry, improving the AML knowledge of staff, promoting the effectiveness of suspicious activity monitoring and reporting, improving the compliance functions among the regulated entities (i.e., internal control measures), and enforcing administrative actions in the industry.

2.5.6 Products specific (inherent) money laundering vulnerability assessment

The assessment considered all the six (6) products under long-term insurance business (life assurance) as provided for under the Insurance Act (CAP. 487). These include, Life Assurance, Annuities, Deposit Administration, Group Life, Group Credit, Unit Link and Linked Investments. The products comprise all individual life policies categorized by the term 'assurance' policies as discussed below.

I. Life Assurance

Life Assurance offers financial protection to the beneficiaries of the insured in the event of death of the insured. Life Assurance products allow for flexibility to pay premium in instalments or to make lump sum payments making it vulnerable to use by high-net worth individuals. Due to the structure of these products, they could be vulnerable to money laundering for example, the funds used to purchase the product may be proceeds of crime. The bulk of life assurance products are distributed through agents, some of whom represent several insurance companies, causing confusion regarding the responsible entity.

There are diverse range of clients from high net worth individuals who have high value policies to middle and low income individuals for lower value policies. The market has endowment products with investment components and the level of cash activity is high even though, most insurance companies have discouraged cash transactions and require premiums to be deposited in company bank accounts or through other channels, including electronic platforms and mobile platforms. Currently, life assurance policies are not sold across jurisdictions other than to Kenyans who may be based across border, or to non-Kenyans who are residents in Kenya. Based on the foregoing, the product's vulnerability was assessed as *Medium High (0.64)*.

II. Annuities

An annuity is a contract between an individual and an insurance company where the individual makes a lump sum or periodic payment to an insurance company which converts it to a series of regular payments for the contracted period. One may purchase an annuity for themselves or

for their beneficiaries. An annuity contract may grant a guaranteed period of payment, perhaps five, ten or fifteen years where a specific payment amount is assured, whether the annuitant survives this period or not. If the annuitant dies during the guaranteed period, the balance of the guaranteed payments is paid immediately to the appointed beneficiary.

The total value/size of the product is low but the potential for criminals camouflaging "dirty" transactions was considered significant. In most cases, retiring individuals from retirement benefit schemes source annuities through scheme administrators or directly to the insurance companies, hence low on intermediaries. While annuities have investment components which are insurer specific and are customized to clients' needs, the use of cash to purchase annuities is very rare and non-resident participants are few in the market. The product's vulnerability was therefore assessed as *Medium Low (0.33)*.

III. Deposit Administration

Deposit Administration (DA) is a retirement funds investment scheme managed by a life insurance company. The insurance company pulls together contributions from different retirement benefit schemes to form the deposit administration fund. The Insurance company guarantees a minimum interest. Details of the contract between the insurance company and the scheme trustees are covered under the deposit administration policy.

DA accounts for 38% of the life insurance Gross Written Premium (i.e., very high), However, the possibility for disguising dirty transactions was considered low. There are no intermediaries involved, and the clients range from schemes of parastatals, corporates, NGOs and private schools operating within the country. The insurance company can invest DA in various asset classes to achieve the minimum guarantee return, but the level of cash activity is very low and cross border use is not allowed. The product's vulnerability was assessed as *Low (0.22)*.

IV. Individual Retirement Benefit Schemes

Individual retirement benefit schemes (also known as Individual Pension Plans (IPPs)) are offered by insurance companies and designed for individuals who contribute to build up a sum of money that can be used in retirement. The individuals make voluntary periodic payments and may access the benefits as provided in the applicable scheme rules.

The scheme type determines the nature of payment at retirement. In most cases, the individuals seek the services of the IPPs without any agents. There are however, cases where employers on behalf of the employees determine which IPPs they will contribute towards. The client base for individual pension plans are varied and includes members of other existing schemes who are changing jobs and would like to transfer their retirement funds from the employer sponsored scheme, employed people who are not in an employer sponsored scheme or who want to enhance their retirement savings, self-employed people, those in seasonal or contractual employment arrangements, small and medium sized employers who cannot afford to set up an occupational retirement benefits scheme as well as those working in the diaspora.

The scheme has various investment options and contributions are received in cash, direct debit or mobile money options including the M-pesa option. The product is available to clients in the diaspora. The working group considered evidences in situations where the policy holders reside in foreign jurisdictions and the beneficiaries reside in Kenya. Moreover, there exist anonymous use of IPPs as the beneficiary of the policy is not always identified. The policy may be executed for the insurance company's customer on behalf of others. ML typologies on the abuse of the product also exist as IPPs are prone to money laundering abuse. Finally, non-face-to-face initiation of business relationships (with respect to IPPs) which can raise money laundering vulnerability. Based on the foregoing, the product's vulnerability was assessed as *Medium High (0.58)*.

V. Group Life

Group Life insurance cover is a life insurance cover offered to a group of people. It is usually provided by an employer to its employees or taken by groups of people with common interests (affinity groups). In the case where an employer takes up the cover on behalf of the employees, the policy document is in the name of the employer who usually pays the premium.

Insurance brokers play key roles in the market in terms of soliciting for clients, collection of premiums and repository of client data. But, Group Life products are not investment policies and while contributions are invested by the insurer, the purpose of a Group Life policy is protection, so payout is only in the event of death, disability or critical illness. The level of cash activity is very low, although the product allows for cross border use through multinational clients. The product depends purely on face-to-face interactions i.e. even when business is on-boarded through intermediaries. There are no insurers in Kenya who have a complete end to end on-boarding process that does not involve direct interaction with the client e.g. online on-boarding. The product's vulnerability was therefore assessed as *Low (0.23)*.

VI. Group Credit

Group Credit insurance is a cover offered to financial institutions that offer loans to their clients. The policy is designed to pay, the financial institution the remaining principal balance in the event of death, disability or even loss of employment of the borrower of a lending institution during the term of their loan. The cover therefore, protects the lending institution from the risk of default arising from death, disability or retrenchment.

Group Credit products are dominated by intermediaries, mostly by agents, because most of these financial institutions are affiliated with agencies. The clients' base includes financial institutions such as banks, micro finance institutions, Saccos, among others. The client institutions are also the beneficiaries of the products sold and are governed by other financial sector regulatory bodies. There are no investment policies as well as cash transactions. The product allows for cross border use through multinational clients, but an anonymous use of the product is not possible. The product's vulnerability was assessed as *Low (0.20)*.

VII. Unit-Linked or Investment Insurance Products

Unit-linked insurance products are policies that offer a life cover and a savings component that is invested in collective investment schemes and priced in units to the policyholder. These products are preferred as they offer investment growth and return to the policyholders while providing for the traditional life cover. These products have grown in popularity as they offer policyholders access to investment options that would ordinarily be harder to participate, and the accumulated growth of premiums paid over time.

A portion of the premium paid is utilized to provide life coverage to the policyholder and the remaining portion is invested in equity and debt instruments that are unitized. The products allow for premiums to be paid as single injection or regular payments over the period of the cover. Cover periods for the product are shorter than endowment or pure risk insurance products driven by policyholder preferences and administrative costs for managing the product are included in the premium with shorter period covers attracting higher administrative costs. Some unit-linked products allow the policyholder to select the investments they prefer to participate in aligned to their risk profile and some allow flexibility in switching to other investment types during the period of cover.

The total premiums for the Unit Linked products account for about 1% of the GWP under life assurance (i.e., low) but the possibility of camouflaging dirty transactions was considered significant because of the nature of investments and the inherent risk appetite. All the life

assurance companies that sell unit-linked products have respective agents to distribute these products and the client profile for unit-linked products are varied as it is driven by the premium pricing, product features and distribution. Investments options are available and cross-border use is allowed while the level of cash activity is significant. The anonymous use of the product is not possible, but the underwriters have put in place a number of control measures to curb the misuse of this product for money laundering. Based on the foregoing, the product's vulnerability was assessed as *Medium High (0.66)*.

VIII. Occupational Retirement Benefits Schemes

Occupational Retirement Benefit Schemes are voluntarily set up by employers for the benefit of their employees to provide a pension at the end of their working years and/or at retirement. The funds are contributed by both the employer and employee at agreed rates, with employer contribution rates at least equal to the employee rate. Occupational retirement benefit schemes are either defined contribution or defined benefit in design, they are either a pension scheme or provident fund.

Contributions into the scheme are deducted directly from the payroll. Therefore, agents or brokers are not used to sell and market this product. Investment options are available, but contributions are remitted through the payroll check-off system and remitted directly to the custodian. Cross-border use of the product does not exist. Additionally, scheme trustees do not accept additional voluntary contributions (i.e., funds from external sources) unless they are checked off from the payroll. The product's vulnerability was therefore assessed as *Low (0.24)*.

IX. Income Drawdown Schemes

Income drawdown is a means through which retirees invest their accumulated retirement benefits through a fund. This product is an alternative to the purchase of an annuity. The plan allows a retiree to receive a fixed amount of money on a regular basis and to benefit from income generated from investing their lump sum. RBA caps the amount that one can draw down from a fund annually at 15% of the fund balance. The minimum drawdown period is 10 years, after which the member may either continue with the drawdown arrangement, take up an annuity or take the remaining fund balance as a lump sum. The product does not use intermediaries while the persons who purchase income drawdown products are exclusively retired individuals. Investments on this product are very limited and there are no cash transactions involved. The product's vulnerability was assessed as *Low (0.12)*.

X. Umbrella Retirement Benefits Schemes

An umbrella scheme consists of multiple unrelated employers who participate in a single scheme together with their employees. The schemes can be established either by employers within a similar industry, trade, profession or association or among employers who do not have any commercial or professional relationship with each other. Intermediaries are used to market this product to potential employers willing to participate, but they do not take part in the on boarding of members. The client base are employees of participating employers. The mode of investment is either through guaranteed funds or segregated funds and contributions are remitted directly through the payroll check-off system and remitted directly to the custodian. The product's vulnerability was therefore assessed as *Low (0.12)*.

2.6 Other Financial Institutions' Vulnerability Assessment

2.6.1 Introduction

The assessment of the Other Financial Institutions (FIs) involved examination of the inherent vulnerability factors related to the other FI category and a range of AML control factors applied to the assessed Other FIs category. The AML control factors assessed includes the AML legal framework, supervisory practises and preventive measures instituted by other FIs.

For the purposes of the NRA, the module examined both regulated and unregulated financial institutions in Kenya that fall outside the banking, insurance and securities sectors. The regulated other FIs include, foreign exchange bureaus; money remittance providers (MRPs); mobile network operators (MNOs) licensed as payment service providers; and deposit taking savings and credit cooperative societies (Saccos). Unregulated other FIs include non-deposit taking microfinance institutions; digital lenders; unlicensed foreign exchange dealers/online traders; and informal money transfer companies popularly known as 'Hawalas'.

2.6.2 Foreign exchange bureaus

I. Overview of foreign exchange bureaus

Foreign exchange bureaus in Kenya were initially licensed in 1995 as part of the government's efforts to liberalize the economy following the repeal of the exchange controls in 1993, paving the way for the adoption of market-determined exchange rates. In terms of asset size, the volume and value of transactions through foreign exchange bureaus in Kenya is considered low when compared to other financial sectors.

Foreign exchange bureaus in Kenya mainly comprise of small, family-oriented businesses employing anywhere between three to ten employees and offering financial products and services such as spot sales and purchases of foreign exchange; money remittance services as sub-agents of banks that are affiliated to international money remittance companies such as MoneyGram, Western Union and Express, among other; M-pesa agents; mainly cash in cash out services to customers.

CBK is the designated supervisory authority responsible of foreign exchange bureaus (FXB) and they are licensed and regulated under the Central Bank of Kenya Act, POCAMLA, the Foreign Exchange Bureau Guidelines, the Guidelines on Forex Exchange and Forex Bureau Penalty Regulations. By September, 2020, 67 licensed FXBs operated in Kenya with majority conducting business in Nairobi. These FXBs had a total of 108 outlets. According to the Bank Supervision Department Annual Report, 2019, 88 FXB outlets were located in Nairobi, two in Kisumu and one each, in Mombasa, Watamu, Nakuru, Eldoret, Busia, Namanga and Garissa.

A 2017 report of the survey to assess the existence, causes and impact of de-risking within the ESAAMLG region indicated that a number of FXBs faced some challenges in obtaining banking services. Additionally, the 2021 follow up survey identified foreign exchange bureaus as one of the categories of customers most impacted by de-risking in Kenya. It further indicated that commercial banks are opting to either terminate business relationships with foreign exchange bureaus or restrict the range of financial services and product to be offered. This is of particular relevance to foreign exchange bureaus when offering money remittances as an agent of a commercial bank, where they are required to open a bank account, prior to offering money remittance services.

During the period under review, players in the sector indicated that fintech companies which are collaborating with commercial banks to offer financial services that traditionally had been the preserve of FXBs and MRPs disrupted FXB's traditional business model. Customers that

would traditionally rely on foreign exchange bureaus were now utilizing alternative channels such as multicurrency pre-paid cards and mobile money value transfers to undertake foreign currency transactions.

II. Assessment of ML vulnerability of foreign exchange bureaus

The overall money laundering vulnerability of foreign exchange bureaus was assessed as *Medium High (0.61)*. This is attributed to a Medium *Low assessment (0.4*) of the AML controls and an inherent product vulnerability of 0.61. A detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections.

III. General AML Control Variables Assessment

i. Comprehensiveness of AML Legal Framework

An analysis of Kenya's primary and secondary AML legislations, POCAMLA and POCAML Regulations revealed that Kenya's AML legal framework is comprehensive and largely aligned to the revised FATF Standards on AML/CFT and proliferation issued in 2012. The requisite AML measures including customer due diligence, risk-based approach, including verification of beneficial ownership information for customers that are natural persons/legal entities/legal arrangements); enhanced due diligence for PEPs and high-risk countries; amongst others are covered. The assessment team noted that the sector specific regulations, that is, the Forex Bureau Guidelines 2011 have not incorporated the requirements of the revised FATF 2012 standards on the risk-based approach (RBA) to AML measures, suspicious transaction reporting requirements and enhanced due diligence measures for high-risk countries and Politically Exposed Persons (PEPs). Based on the foregoing factors, this variable was assessed as *High (0.7)*.

ii. Effectiveness of Supervision/Oversight Activities

CBK's authority and mandate to undertake AML supervision of foreign exchange bureaus is set out under Section 4 of the CBK Act as read alongside and 36 A of the POCAMLA. AML supervision of foreign exchange bureaus is conducted by a unit comprising of two portfolio managers and two teams of seven supervisors each. Supervision of foreign exchange bureaus is conducted using a prudential framework that includes an operation manuals and off-site returns. The supervisors possess a sufficient level of skills /qualifications necessary to undertake supervision including post and professional qualifications such as CPA (K) ACCA.

The Unit is adequately equipped with a budget and the necessary tools required to undertake on-site AML examinations including hardware (laptops), software and office space. Upon completion of each on-site examination, the unit shares the AML component of on-site inspection report with the FRC in line with the Section 24A of the POCAMLA which requires supervisory bodies to report to the FRC financial institutions' compliance with the Act.

Between 2016 and September 2020, a total of 124 on-site examinations of foreign exchange bureaus were conducted by CBK that included an AML component. A majority were prudential on-site examinations, with nine targeted AML inspections conducted during the demonetization exercise that was undertaken by CBK in 2019. The number of yearly inspection conducted as a percentage of the total number licensed FXBs in 2016, 2017, 2018 and 2019 was 26%, 51%`, 30% and 56% respectively. Further analysis of on-site AML examination report findings revealed that the most frequently cited deficiencies noted in foreign exchange bureaus related to failure to undertake an institutional AML/CFT risk assessment, weaknesses in the compliance function, and a lack of employee training and awareness.

Inspection of FXBs are undertaken based on an annual inspection plan approved at the beginning of every new financial year. The plan though risk based, did not incorporate ML risk as one of the key determinants. Records shows that 25% of foreign exchange bureaus were inspected every 12 to 18 months, while 30% were subject to inspection at twice over the four-year period. However slightly over a third of foreign exchange bureaus (36%) were only inspected once over the four-year period.

Over the period under review, the examiners in the unit have progressively developed their capacity and understanding of AML issues through joint inspections conducted with a specialized AML unit. However, there is need to further enhance the supervisors' technical capacity to undertake on risk-based AML supervision. The assessment revealed that on several instances, the inspection unit did not manage to undertake inspections as per the approved inspection program due disruption occasioned by target or unplanned inspections and staff constrains. Based on the above factors this variable was assessed as *Medium High (0.6)*.

iii. Availability and Enforcement of Administrative Sanctions

Sections 24 of the POCAMLA and the Foreign Exchange Bureau Penalties Regulations provide for a wide range of administrative sanctions for non-compliance with AML obligations including monetary penalties, warnings, orders barring individuals from employment by a reporting institution, suspension or revocation of a license, permit or authorization of a reporting institution.

During the period under review, CBK administered monetary penalties on account of violations of the Forex Bureau Guidelines to a number of FXBs. In addition, it took other administrative actions that included revocation of licenses for instances of non-compliance.

Based on the above factors, this variable was assessed as *High (0.7)*.

iv. Availability and Enforcement of Criminal Sanctions

The POCAMLA, POCAML 2013 Regulations provide for a wide range of criminal sanctions for non-compliance with the legislation and AML-related offences. These include ancillary offences of money laundering offences particularly relating to participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences, as outlined under the Penal Code (Cap.63) of Kenya. A majority of the FXBs interviewed were of the view that the above criminal sanctions were effective, proportionate and dissuasive, citing actions taken by CBK against 5 commercial banks in 2018. However, for the period under review, no FXB or their staff had been subjected to any criminal justice process for violating POCAMLA or POCAML Regulations. Investigative agencies indicated that no case of ML related offences had been reported to LEAs during the period under review. Based on the above factors, this variable was rated *Medium Low (0.4)*.

vi. Availability and Effectiveness of Entry Controls

The Central Bank of Kenya is established under Article 231 of the Constitution of Kenya. CBK is mandated under Section 4A of the CBK Act, to license and supervise foreign exchange bureaus. The licensing function is conducted by a unit within CBK that is responsible for the prudential supervision of foreign exchange bureaus. Market entry requirements for foreign exchange bureaus are set out under the Forex Bureau Guidelines, 2011. As part of the licensing process for foreign exchange bureaus, CBK applies a number of checks and controls to prevent criminals and their associates from owning or controlling foreign exchange bureaus. Senior managers, directors, shareholders are subject to a fitness and propriety test which involves consideration of their credit history, education, any previous criminal convictions and any negative history of managing financial institutions. The entry controls are effective and CBK

has revoked several licenses of FXBs for being non-compliant. Based on the foregoing factors, this variable was assessed as *High (0.7)*.

vi. Integrity of Business/Institution Staff

Most foreign exchange bureaus surveyed regarded their staff members/employees as being safe or at low risk of being influenced or corrupted by criminals. All FXBs surveyed indicated that prospective employees are subjected to a vetting process. The employees are required to provide supporting documentation such national identification card (ID); certificate of good conduct obtained from DCI; reference checks; credit report; KRA tax compliance certificate; and in some instances, a letter from religious authority/priest/imam.

Cases involving breaches by FXB staff were reported to law enforcement agencies were negligible. Only one case was reported to the Banking Fraud Unit (BFID in 2018. However, during this assessment, FXBs indicated that there are a number of cases integrity breaches by staff. The discrepancy between responses from FXBs and BFID is due to a general reluctance on the part of foreign exchange bureaus to refer staff integrity/fraud cases to law enforcement agencies for further investigation and prosecution. This is largely attributed to the fact that most foreign exchange bureaus employees have close family connections with the shareholders and directors. From the FXB sampled, most cases involved culpable integrity breaches such as fraud, theft were resolved internally with summary dismissals and repayment of the amount lost. Based on the foregoing factors, this variable was assessed as *Medium (0.5)*.

vii. AML Knowledge of Business/Institution Staff

Most foreign exchange bureaus, with the exception of a few highly established ones, displayed a generally low level of understanding of their AML obligations under the POCAMLA and POCAML Regulations 2013. This was one of the most commonly cited weaknesses in the AML on-site examination reports along with a weak compliance function. The lack of an institutional AML risk assessment and failure to monitor and report suspicious transactions.

The industry association and CBK has attempted to provide AML training on an annual basis. A review of the course content provided by the industry association are brief and not comprehensive. In most instances, due to human resource and time constraints the programs are mainly attended by directors and shareholders, rather than the operational staff. It was not possible to ascertain the extent to which the training materials were disseminated to operational staff. High levels of attrition that continue to plague the sector have further contributed to the low levels of awareness. Due to frequent staff changes, the institutional AML knowledge that has been gained over time through work experience is not retained. Based on the foregoing factors, this variable was assessed as *Medium Low (0.4)*.

viii. Effectiveness of Compliance Function (Organization)

Most foreign exchange bureaus are small family run enterprises that do not have the level of resources to engage external AML auditors or have a full-fledged compliance function. Typically, the MLRO within an FXB also undertakes other functions within the institution. While internal controls programs exist within FXBs, they are mostly not commensurate to the level of risk and do not consider the ML due to the lack of awareness on the risk–based approach to managing ML/TF risk. While internal and/or external AML audits are performed, the outcomes of the audits and implementation of recommendations are in certain instances unduly influenced by the senior management/shareholders.

From the interviews conducted with industry players, it was noted that the competency/qualifications of compliance officers in foreign exchange bureaus are generally low and serve as an impediment to the effective implementation of AML compliance function in the sector. Most of the compliance officers had limited working experience in the financial sector i.e. less than 2 to 3 years' experience. Further, a high attrition rate for compliance officers/MLROs in foreign exchange bureaus was reported. This is due to factors such as low level of remuneration. FXBs are therefore often spending resources training new compliance officers. This variable was therefore assessed as *Medium Low (0.4)*.

ix. Effectiveness of Suspicious Activity Monitoring and Reporting

Section 44 of the POCAMLA and Regulation 32 of the POCAML Regulations 2013 places an obligation on reporting institutions to monitor and report suspicious activity/transactions. Record-keeping requirements are stipulated under Section 46 of the POCAMLA and Regulation 36 of the POCAML 2013 Regulations. All foreign exchange bureaus adhere to the requirement to retain records for a minimum of seven years. Foreign exchange bureaus had very low levels of STR reporting as indicated in Table 2.6.6. This low level of reporting was attributed to a lack of awareness of AML obligations under the POCAMLA and POCAML Regulations coupled with inadequate IT systems for the monitoring and reporting of suspicious transactions.

It was also noted that the STRs filed were of poor quality as they did not contain the necessary information to support their further processing. While all licensed FXBs make use of IT systems to upload customer details, and transactions, these systems do not include a functionality for monitoring and reporting suspicious transaction reports. As far as PEPs screening is concerned, the data collected during the NRA survey showed that the majority of FXBs were not conducting PEP screening.

x. Availability and Access to Beneficial Ownership Information

This variable was assessed by the National Vulnerability Working Group and rated *Medium Low (0.4)*.

xi. Availability of a Reliable Identification Infrastructure

This variable was assessed by the National Vulnerability Working Group and rated *High (0.7)*.

xii. Availability of Independent Information Sources

This variable was assessed by the National Vulnerability Working Group and rated *Medium High (0.6)*.

2.6.3 Money remittance providers (MRPs)

I. Overview of money remittance providers (MRPs)

Kenya Vision 2030, the Government's National Policy Blue Print, recognizes the role diaspora remittances play in national development and therefore highlights diaspora inflows as one of the flagship projects under the financial sector. CBK is thus required to among others, collect data on remittance flows through formal channels, analyze the cost of remitting funds, disseminate information on remittances to stakeholders for policy formulation and develop legal and regulatory frameworks for regulating money remittances services in the country. In addition, developments in the national, regional and global arena called for the adoption of best practices to enable the achievement of internationally accepted pillars of sound, safe, transparent and competitive remittance services. Consequently, in 2013, CBK created a legal framework for licensing stand-alone money remittance providers (MRPs).

Diaspora remittances currently amounts to 2.9% of the total Gross Domestic Product (GDP) and is the main source of foreign exchange for Kenya surpassing tourism, agriculture and horticulture. MRPs continue to play a significant role in facilitating the transfer of roughly between 25 to 30% of the total of Kenya's diaspora inflows. Despite the outbreak of the Covid-19 pandemic, Kenya is one of the countries where the total amount of inflows continued to increase, demonstrating the relative importance of the diaspora remittances.

The licensing of MRPs is governed by Section 4 of CBK Act, while their operations are governed by the Money Remittance Regulations, 2013. The Regulations also provide for the establishment of outlets and appointment of agents of MRPs across the country. MRPs are permitted to offer financial services and products such as inbound and outbound remittances through partnering with authorized international money remittance providers across the globe; spot sales/purchases of foreign currencies; and money value transfer services acting as agents of Mobile Network Operators (MNOs). By September 2020, there were a total of eighteen (18) licensed MRPs. The MRPs licensed facilitate the passage of approximately 25% of the total remittance into the country. The remaining 75% of money remittances are mainly channeled through commercial banks. During the period under review, North America accounted for approximately 45 percent of the in inward remittances into Kenya. Europe on the other hand accounted for approximately 23 percent of inward remittances.

II. Assessment of Money Laundering Vulnerability of MRPs

The overall money laundering vulnerability of Money remittance providers was assessed as *Medium High (0.68)*. A detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections.

III. General AML Control Variables Assessment

i. Comprehensiveness of AML Legal Framework

MRPs are reporting institutions and as such subjected to the requirements of POCAMLA and POCAML Regulations. POCAMLA and POCAMLA regulations are aligned to international standards and covers among others, preventive measures on CDD, Record-keeping, EDD, STRs, Registration or licensing, Tipping-off and confidentiality, internal controls regulations and supervision/oversight of financial institutions. The MRP Regulations in addition to specifically providing that a money remittance operator be required to comply with the POCAMLA and the Regulations thereunder (Regulation 36 of MRP Regulations), details the customer and transaction details to be collected by the MRPs. This variable was assessed a rating of *Very High (0.8)*.

ii. Effectiveness of Supervision/Oversight Activities

Section 4 of the Central Bank of Kenya Act designates CBK as the supervisor of MRPs. While Sections 36 (A) of the POCAMLA also designates CBK as the AML supervisory authority responsible for enforcing AML compliance of its licensees including MRPs. CBK has continued to train officers on AML/CFT and undertake capacity building through on-the-job training by attaching officers from the AML unit to MRP inspection teams. However, there is need to further enhance the MRP supervisors' technical capacity on risk-based AML supervision.

Between 2016 and September 2020, a total of 42 on-site examinations of MRPs were conducted by CBK that included an AML component. Analysis of on-site AML examination report findings revealed that the most frequently cited deficiencies in MRPs relate to weaknesses of AML/CFT policies and procedures, inadequate ML/TF risk assessments and weak CDD procedures. In accordance with the requirements of POCAMLA and the MOU signed between

CBK and FRC, CBK shares with FRC AML/CFT inspections findings and enforcement action taken for non-compliance against MRPs. Based on the above factors this variable was assessed as *Medium High (0.6)*.

iii. Availability and Enforcement of Administrative Sanctions

Enforcement of administrative sanctions for MRPs are provided for under POCAMLA, POCAML Regulations and the MRP Regulations. The administrative sanctions available to CBK and FRC against reporting institutions for non-compliance include, levying of monetary penalties, issuing of directives/ actions, suspension or revocation of licenses, disqualification of officer from serving in a regulated financial institution.

During the period under review, CBK administered several administrative sanctions against MRPs for non- compliance of the MRP regulations. The administrative sanctions taken against inspection findings related to failure to meet AML obligations were copied to FRC. FRC upon receipt of communication from CBK on findings of an inspection and enforcement action taken, would ordinarily review and concur with the report and the recommendations, and only take addition action if there is need to. During the period under review, FRC concurred with CBK's actions hence did not take additional enforcement action. Based on the above factors, this variable was assessed as *High (0.7)*.

iv. Availability and Enforcement of Criminal Sanctions

The POCAMLA and POCAMLA, 2013 Regulations provide for a criminal sanction for offences under the Act. Ancillary offences of money laundering offences particularly relating to participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences, as outlined under the Penal Code (Cap.63) of Kenya.

Main offences under POCAMLA include money laundering, acquisition, possession or use of proceeds of crime, money laundering, failure to report suspicion regarding proceeds of crime, tipping off, misuse of information, failure to comply with any provisions of POCAMLA, contravention of any provisions of the POCAML Regulations, 2013, among others. POCAMLA also provides for a wide range of fines if a person/entity is found guilty. The minimum fine for a corporate is KSh.5 million and KSh.500, 000 for a natural person. However, the fines may be as high as the amount of the value of the property involved in the offence. In terms of custodial sentences, the range is zero to seven years. Industry players were of the opinion that criminal sanctions provided were sufficient and persuasive. Based on the above factors, this variable was rated *Medium low (0.4.)*

v. Availability and Effectiveness of Entry Controls

Market entry requirements for MRPs are set out under Part I and Part II of the Money Remittance Regulations, 2013. As part of the licensing procedures for MRPs, CBK applies a number of checks and controls to prevent criminals and their associates from owning or controlling MRPs. Senior managers, directors, shareholders of MRPs are subject to a 'fit and proper test'. During the period under review, four new MRPs were licensed and while two had its licensed revoked for non-compliance. One MRP applied for voluntary closure. The supervisory staff in charge of licensing and monitoring MRPs are well versed with requirements of POCAMLA and its Regulations.

Based on the foregoing factors, this variable was assessed as *High (0.7)*.

vi. Integrity of Business/Institution Staff

The staff recruitment process in MRPs is generally guided by the firm's HR manual and generally to ensures that on boarding of employees meet the required standards in terms of education and professional qualifications and integrity. Ethics and integrity clauses are embedded in employee contracts. MRPs that formed the survey sample group, indicated that prospective employees are subjected to vetting process. The employees are required to providing a national identification card and documents to be used to assess the moral suitability of a candidates. These would include police certificate of good conduct, Credit Reference Bureau reports and references from community leaders.

Results from the NRA quantitative survey cited a few cases of staff integrity involving breaches such as fraud and theft. The MRP management resolved all cases internally through summary dismissal and re-payment of lost/stolen funds. Most MRPs are small outfit with majority of employees having some form of personal connection to shareholders or management of the MRP. This is a contributory factor to the low number of reported cases on staff integrity breaches. There were no statistics provided from law enforcement concerning staff breaches by MRPs. Majority of MRPs staff surveyed were aware of immunity clause provided in POCAMLA but remain apprehensive as to whether it sufficiently protected them from reprisals by customers reported or their accomplices. The variable was assessed as *Medium (0.5)*.

vii. AML Knowledge of Business/Institution Staff

Most MRPs displayed a moderate level of understanding of their AML obligations under the POCAMLA and POCAML Regulations 2013. This is because of most MRPs are formerly foreign exchange bureaus that converted into MRPs. They have the benefit of staff who have a significant amount of working experience and are therefore knowledgeable about AML laws and regulation including the reporting obligations. However, there still remains a lack of understanding regarding the reporting of suspicious transaction reports, one of the most commonly cited weaknesses in the AML on-site examination reports for MRPs for the period under review.

The industry association, the Kenya Forex and Remittance Association (KFRA) has provided a few training sessions targeting the sector. However, the course content is not comprehensive and did not have material unique to business of MRPs. The MRPs also benefit to some extent from training courses provided by commercial banks that act as sub-agents of international money remittance companies such as Western Union and Money Gram. In many cases these courses are in-depth and speak specifically to the operations of money remittance providers. Based on the foregoing factors, this variable was assessed as *Medium (0.5)*.

viii. Effectiveness of Compliance Function (Organization)

Compliance arrangements in the sector are basic and dependent on the size of the MRP, i.e., the more established MRPs tend to have compliance officers who are dedicated to ensuring that operations of the entity are in compliant with the law. Less established MRPs tend to face staffing challenges hence the persons responsible for compliance are also assigned other duties within the entity that might compromise their compliance duties. A number of MRPs had not fully implemented a risk based approach to AML compliance e.g., two MRPs while aware of high risk jurisdictions still processed transactions from such jurisdiction without undertaking enhanced due diligence measures.

Further, majority of the risk assessments undertaken by MRPs were inadequate and generic in nature. Other weaknesses noted with MRPs included failure to identify all inherent risks and inadequate documentation measures taken to mitigate the risks. MRPs were subjected to

external audits and the outcomes shared with employees highlighting areas where the AML compliance function could further be enhanced. The kind of inspection findings reported also indicated ineffective compliance functions of MRPs. These findings included poor record keeping, instances of failure to obtain and verify supporting documentation, lack of customer complaint mechanisms among others. This variable was assessed as *Medium (0.5)*.

ix. Effectiveness of Suspicious Activity Monitoring and Reporting

MRPs as reporting institutions are required to monitor and report any suspicious activity to the FRC. Statistics obtained from the FRC for the period under review indicated that the total number of STRs reported to the FRC had gradually increased, though the overall quality of the STR reports remained low. The larger MRPs have relatively sophisticated IT systems due to obligations set up by their international partners. Further, their systems are required to be advanced enough to allow integration with systems of international partners. To encourage quality STR reporting, it is recommended that FRC undertakes specific trainings on STR reporting for MRPs. On the basis of the foregoing factors, this variable was assessed *as medium (0.5)*.

x. Availability and Access to Beneficial Ownership Information

This variable was assessed by the National Vulnerability working group *as Medium Low (0.4)*.

xi. Availability of a Reliable Identification Infrastructure

This variable was assessed by the National Vulnerability working group *as High (0.7)*.

xii. Availability of Independent Information Sources

This variable was assessed by the National Vulnerability working group *as Medium High (0.6)*.

2.6.4 Payment service providers (PSPs)

I. Overview of PSPs

In Kenya, mobile telecommunication companies (Telco's) are licensed by the Communication Authority of Kenya (CAK), which is mandated to license, manage the country frequency spectrum, facilitate and manage a national cybercrime framework, facilitate development of ecommerce, promote fairness, monitor market conduct and compliance to the law. Licensed telco companies intending to provide payments and other financial services are then required to apply for licensing from CBK where they are issued with a PSP license.

Innovations on mobile money have seen Kenya emerge as a world leader in mobile money technologies. Since 2007 when the first innovation was done, the sector has seen tremendous growth and diversification both in products and services. More capabilities have been enhanced on the mobile platforms to offer one stop solutions thus making the sector a major player in the economy. These include inter alia; sending and receiving of money, settlement of business transactions, international money transfers, remote access of banking services, investments, payment for government services, among others. A subscriber is considered to be a properly registered mobile money customer if the card has been formally registered both for Global System for Mobile Communications (GSM) by CAK and mobile money services by CBK.

Issuance of SIM cards is done from the telco offices, contracted intermediaries and their agents. Subscribers are required to provide their identification particulars to the recruiting agent, where their data/information is electronically captured and transmitted to the telco systems for registration. An identity search is then conducted through the Integrated Population Registration Services (IPRS) (the Government Registration System) for verification and validation. Upon verification, the subscriber details are registered and a SIM card issued. The CBK monthly

report on mobile payments showed that there were 282,929 approved and active agents licensed to conduct mobile transactions throughout the country by December, 2020.

II. Assessment of Variables

The ML vulnerability for PSPs was assessed as *Medium (0.55)* The detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections

i. Comprehensiveness of AML Legal Framework

This variable was rated *High (0.7)*. Kenya's legislative framework is largely aligned to the FATF standards on combating money laundering, terrorism financing and proliferation. The coverage on the requisite AML preventive measures including customer due diligence, enhanced due diligence on high risk countries and PEPs record keeping and internal controls is largely adequate. The National Payment System Regulations, 2014 provides guidance on CDD, record keeping, among others. There is however, need to develop sector specific AML guidelines for mobile payment service providers/e-money issuers to address emerging ML risks from the new payment systems and the application of the risk based approach to AML measures. Integrators/aggregators play a key role in the enhancement of financial transactions, integration of multiple systems as well as real time settlements of payments.

ii. Effectiveness of Supervision/Oversight Activities

The variable was assessed as *Medium High (0.60)*. CBK has the appropriate mandate to regulate and supervise payment service providers under the National Payments Act and is designated as the AML supervisory body to enforce payment service providers' compliance with POCAMLA. AML on-site examinations of PSPs are conducted as a component of prudential examinations by a unit based in the Digital Payment Services Division at CBK. The Unit has been equipped with the necessary resources, including an ample budget and necessary tools, and inspections are conducted using a supervisory framework operation manual, inspection manuals which were only recently developed. The oversight team has conducted one joint on-site examinations with the specialized team from the Bank Supervision Department and one inspection on its own. The AML related findings of the on-site inspections are shared with the FRC in line with the requirements of Section 24 A of POCAMLA, which requires supervisory bodies to report to the FRC financial institutions' compliance with the Act.

The survey conducted showed that the PSPs have a good understanding of ML risks in their sector. Currently, the frequency and intensity of on-site AML inspections of PSPs are mainly guided by the materiality of the PSPs and the extent to which the deficiencies highlighted during the previous inspection have been addressed. CBK is yet to implement a risk-based AML supervision of the sector. In terms of staffing, there is need to enhance the size of the Unit dealing with payment service providers and the technical capacity/expertise to deal with AML supervision of PSPs, especially the new ones which are emerging in the Kenyan market.

In Kenya, PSPs are regulated by two regulators. The Communications Authority of Kenya (CAK) is responsible for regulation of Global System for Mobile communications (GSM) component while Central Bank of Kenya regulates the provision of financial services by the PSPs. To ensure effective and efficient supervision of the two functionalities, CBK and CAK have entered into an MOU to facilitate the exchange of information on areas of mutual interest.

It is recommended that CBK should ensure that the Unit responsible for the oversight of PSPs is provided with training on AML risk-based supervision. The training should be benchmarked with jurisdictions with established PSPs and have developed effective risk-based onsite AML supervision mechanisms; implements a system for in-house training from specialized BSD

team/industry players where staff are regularly updated on emerging AML typologies surrounding payment service providers, and also implement risk-based AML supervision of payment service providers including the development of supervisory tool/mechanism for undertaking risk-based AML supervision. It is also recommended that the MOU between CBK and CAK should be fully operationalized to facilitate implementations of policy decisions that are taken to reduce the impact on ML risk posed by PSPs.

iii. Availability and Enforcement of Administrative Sanctions

This variable was rated *Medium (0.5)*. POCAMLA and the attendant Regulations provide for a wide range of administrative actions including monetary penalties, warnings and orders regarding removal of staff/directors and revocation of licenses/authorizations. However, the FRC has not applied any administrative actions against any PSP, while CBK has applied administrative sanctions under the context of prudential supervision for violations of the National Payment Regulations 2014.

iv. Availability and Enforcement of Criminal Sanctions

This variable was rated as *Medium (0.5)*. Kenya has a legal framework that provides for comprehensive criminal penalties in case of non-compliance with AML obligations with adequate criminal sanctions including imprisonment and fines where applicable. The criminal sanctions are considered effective dissuasive and proportionate by the payment service providers. By the time of this NRA, no criminal sanctions had been imposed on any payment service provider. At the time of this assessment, FRC was championing for the establishment of a joint ML intelligence Taskforce for the purposes of facilitating informal collaboration between competent authorities including financial sector regulators and law enforcement.

v. Availability and Effectiveness of Entry Controls

The variable was assessed as *High (0.7)*. CBK is mandated under Section 17(1) of the National Payments Act, to license and regulate payment service providers. Market entry requirements for payment service providers are set out under Part II, Regulation 4 of the National Payment Regulations, 2014. As part of the authorisation process for payment providers e-money issuer license, CBK applies a number of checks and controls to prevent criminals and their associates from owning or controlling a PSP. The senior management, directors and shareholders of payment service providers are subject to a fitness and propriety test.

Several factors are considered when assessing the applicant including any previous criminal convictions, their creditworthiness, tax compliance records, any negative history with managing financial institutions. The applicant is also required to demonstrate that it has adequate control measures to facilitate the implementation of AML laws and regulations The licensing function is conducted by a unit within the Digital Payment Services at the CBK. The staff of this Unit are sufficiently knowledgeable about the licensing processes and procedures. Prospective directors/shareholders of payment service providers are subject to fit and proper requirements such as previous history of managing financial institutions, level of credit worthiness, certificate of good conduct, among others. The applicant is also required to demonstrate the AML controls that will be put in place so as to adhere to the requirements and reporting obligations under the POCAMLA.

vi. Integrity of PSPs Business/Institution Staff

The variable was rated *Medium (0.5)*. Fraud generally persists despite action by PSPs, including summary dismissals of staff and referral of cases to law enforcement for prosecution and investigation. While PSPs have implemented numerous measures in response to the high level of frauds that occur in the sector, there is still a perception that there is still a relative high level

of fraud perpetrated by /staff. Staff are subject to annual ethics awareness sessions and sign code of ethics and conflict of interest agreements preventing them from engaging in unethical practices.

PSPs were more open to admitting to the possibility of the occurrence of ethics breach and had documented polices on addressing integrity breaches and ethics breaches outlined issues surrounding ethics breaches by staff. They also reported publicly through annual reports the incidences of fraud within their organizations, including those referred to law enforcement agencies for further action. The survey showed that most PSPs require certificate of good conduct issued by the Directorate of Criminal Investigations (DCI), references from previous employers, information on criminal convictions, civil judgements, pending criminal cases and pending civil cases against the job applicant as well as credit report from licensed Credit Reference Bureaus for purposes of vetting prospective staff.

vii. AML Knowledge of Business/Institution Staff

This variable was rated *Medium High (0.6*). PSPs appear to display a generally good level of understanding of their AML obligations under the POCAMLA. Training on AML is provided to staff as well as agents on a regular and continuous basis through a variety of methods including face to face training as well as online training sessions. Various methods are utilized to verify the effectiveness of the training including testing of staff through mystery shopping; observations regarding the implementation of AML controls by staff; and peer reviews provide some assurance regarding the level of understanding of the subject matter. It was however noted that high rates if fraud by staff of PSPs still persist. PSPs should therefore consider implementing measures above and beyond what is currently in place, for instance, lifestyle audits at regular intervals.

viii. Effectiveness of Compliance Function (Organization)

The variable was rated *Medium High (0.6)*. Most compliance units within the PSPs are well resourced with the relevant structures and resources. MLROs are at senior management level. While the internal controls programs put in place are commensurate to the level of money laundering risk faced by payment service providers, most of the surveyed PSPs had put in place comprehensive internal controls and policies, where staff members have been assigned specific AML responsibilities including the Board of Directors and senior management. The policies set the minimum standards and apply to all staff (permanent, seconded and contracted staff), agents and partners providing financial services which are covered by POCAMLA, National Payment System Act (2011), Prevention of Terrorism Act (2012) and any other relevant law. The outcomes of the AML audits are used to initiate corrective actions to the compliance function where issues/deficiencies have been highlighted.

ix. Effectiveness of Suspicious Activity Monitoring and Reporting

The variable was assessed as *Medium High (0.6)*. Kenyan's AML laws and Regulations requirements on recordkeeping and suspicious transaction monitoring and reporting are largely aligned to international standards on money laundering. Most PSPs have integrated sophisticated systems for monitoring and reporting STRs that make use of data analytics and artificial intelligence to track trends, anomalies and behaviour patterns. For the period under review, PSPs appeared to have progressively developed an understanding and appreciation of their AML reporting obligations under the POCAMLA as evidenced by the increase in numbers of STRs that had been referred to law enforcement agencies for further investigations. There appears to be challenges with monitoring for local PEPs. There is need to develop a local PEP list to assist PSPs in the monitoring of PEPs. The implementation of the goAML system by the FRC will work towards enhancement of the mechanism for reporting STRs to the FRC.

Based on the foregoing, this variable was assessed as *Medium Low (0.4)*.

x. Availability and Access to Beneficial Ownership Information

This variable was assessed by the National Vulnerability working group as *Medium Low (0.4*).

xi. Availability of a Reliable Identification Infrastructure

This variable was assessed by the National Vulnerability working group as *High (0.7*).

xii. Availability of Independent Information Sources

This variable was assessed by the National Vulnerability working group as *Medium High (0.6*).

2.6.5 Saving and credit cooperatives (Saccos) vulnerability assessment

I. Overview of Saccos sector in Kenya

Savings and Credit Cooperatives (referred to as Saccos) have a long history in Kenya that dates back to precolonial times when the phenomenon was introduced in the country. The general philosophy of Saccos is individuals with a common goal pooling resources together to achieve a common goal. Sacco movement in Kenya is well developed and operates both in rural and urban areas.

All Saccos are guided by bylaws which are formulated by members during formation and annual general meetings, but they have different functions and objectives depending on the social economic status of the members. As per the Sacco Supervision Annual Report, 2019, SASRA grouped Saccos into two broad categories depending on the initial objectives, that is financial and non-financial categories. Financial Saccos are formed to provide financial intermediation on behalf of their members in one way or the other. They include deposit taking (DT) Saccos, non-deposit taking, land and housing and investment Saccos. Non-financial Saccos are formed to promote the socio-economic interest of their members, without the co-operative intermediating financial services between the counterparties as a financial institution. They include marketing, consumer, transport and multipurpose related Saccos.

Deposit taking Saccos are licensed under Cooperative Societies Act, and are supervised by SASRA. They are authorized to take deposits, and thus offer withdrawable savings accounts services similar to those offered by banks. They also offer front office services where members can walk into the Sacco banking halls and withdraw or deposit money into their accounts. Non-deposit taking Saccos are licensed by the Cooperative Societies Act, and are supervised by SASRA (if the non-withdrawable deposits are above KSh.100 million) or Commissioner of Cooperatives (if the non-withdrawable deposits are below KSh.100 million). They are not authorized to take withdrawable deposits or present themselves to the public as deposit-taking entities. They mobilize savings from their members; these savings are strictly utilized as collateral for credit facilities advanced to such members. These deposits are not withdraw-able by the member, but can only be refunded when the member leaves the Sacco. The non-deposit taking Saccos do not offer front office services as members do not hold accounts where they deposit or withdraw money.

There are other types of Saccos in the market that are formed with diverse objectives as defined in their bylaws. They are licensed under the Cooperative Societies Act, and supervised by the Commissioner of Cooperatives in the Ministry of Agriculture, Livestock, Fisheries and Co-operatives. They include housing, investment, transport, marketing related cooperatives, among others. As at September 2020, there was a total of one hundred and seventy-five (175) licensed deposit taking Saccos, with a total asset base of KSh.625 billion and deposits of more than KSh.380 billion. Cumulatively, all deposit taking Saccos have a membership of 4.97 million, comprising natural and legal persons. This translated to about 10% of the total population.

Government and teachers-based deposit taking Saccos control the largest chunk of market shares with the 36 government based deposit taking Saccos controlling about 38% of the total assets and about 38% of the total deposits; while the 43 teachers-based deposit taking Saccos controlling about 37% of the segments' total assets and 36% of the segments total deposits.

Based on the foregoing, about 74% of the total assets and deposits within the Saccos segment is concentrated among just 79 DT-Saccos, whose membership are directly drawn from the Government. These do not include financial co-operatives which mobilize deposits for the purposes of investment in various entities or projects such as housing, land, among others, and registered under the Cooperative Societies Act. There is no business specific regulatory framework that is applied to these types of co-operatives. On the flipside, about 49% of the total Sacco membership belonged to 49 farmers-based Saccos. This showed that, majority of Sacco members are either farmers or government employees.

II. Assessment of ML Vulnerability of Deposit Taking Saccos

The ML vulnerability of deposit taking Saccos which are licensed and regulated by the Saccos Societies Regulatory Authority (SASRA) was assessed as *Medium High (0.60)*. The detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections.

i. Comprehensiveness of AML Legal Framework

POCAMLA and the Regulations thereof, Kenya's primary and secondary AML legislation are comprehensive and largely aligned to the FATF AML/CFT and proliferation standards. The coverage on the requisite AML preventive measures including customer due diligence, enhanced due diligence on high risk countries and PEPs record keeping and internal controls.

The country has adequate regulatory structures for deposit taking Saccos. They are registered under Co-Operative Societies Act, 2008. Further, they are regulated under the following regulatory framework;

- the Sacco Societies Act (2008)- this is the act that forms SASRA the supervisory body for deposit taking Saccos;
- the Sacco Societies (Deposit Taking Sacco Business) Regulations 2010- these Regulations guide Saccos on how they should be reporting to SASRA as the supervisory body;
- POCAMLA- the law that classifies Saccos as reporting institutions since they qualify the definition of Financial institutions.

Based on the foregoing, this variable was assessed as *High (0.7)*.

ii. Effectiveness of Supervision/Oversight Activities

SASRA has the appropriate authority to regulate deposit taking Saccos but lacks the mandate to undertake AML supervision of deposit taking Saccos as it is not designated as a supervisory authority under Section 2 (First Schedule) of POCAMLA. As a result, though deposit taking Saccos are reporting institutions under POCAMLA, SASRA is not able to legally enforce their compliance with POCAMLA and the POCAMLA 2013 Regulations. On-site surveillance and monitoring of Saccos are conducted by a unit based at SASRA. AML is covered as general concern but not to specifically check for compliance with POCAMLA and POCAMLA Regulations. The Unit has been equipped with the necessary resources, including an ample budget and necessary tools. It has a staff complement of 74 supervisors who are charged with the supervision of 175 deposit taking Saccos. SASRA uses the Capital adequacy, Asset quality, Earnings and Liquidity (CAEL*)* rating model to monitor and report on the stability, soundness,

safety and general performance of DT-Saccos on a day to day basis and in line with its Risk Based Supervisory (RBS) policy framework. This includes the receipt of off-site returns as highlighted below. Based on the foregoing, this variable was assessed as *Medium (0.5)*.

iii. Availability and Enforcement of Administrative Sanctions

POCAMLA provides for a wide range of administrative sanctions for non-compliance with AML obligations including monetary penalties, orders barring individuals from employment within an institution order requesting for the suspension or revocation of a license, registration or authorization. For the period under review the FRC did not apply any administrative sanctions against Saccos for failure to comply with POCAMLA and the POCAMLA Regulations. SASRA is currently not designated as a supervisory body under the POCAMLA. Based on the foregoing, this variable was assessed as *Medium (0.5)*.

iv. Availability and Enforcement of Criminal Sanctions

Kenya has a legal framework that provides for comprehensive criminal penalties in case of non-compliance with AML Laws and Regulations with adequate criminal sanctions including imprisonment and fines where applicable. Criminal sanctions for non-compliance with AML obligations are set out under Sections 16 and 35 of the POCAMLA and Regulation 42 of the POCAMLA Regulations 2013. The sanctions are considered effective dissuasive by the surveyed Saccos. The data provided showed no record on the number of criminal sanctions that have been imposed on Saccos. Based on the foregoing, this variable was assessed as *Medium (0.5)*.

v. Entry Controls

Section 3 of the SASRA Act mandates SASRA to license and supervise deposit taking Saccos. There is a portion of non-deposit taking Saccos that is to yet to be legally brought under the supervisory ambit of SASRA. Market entry requirements for deposit taking Saccos are set out under Part II of the Saccos (Deposit Taking) Saccos Societies Regulations 2010. At the time of the NRA, the Saccos Societies (Amendment) Act, 2018 had been enacted to provide for the fit and proper requirements. This variable was assessed as *Medium (0.5)*.

vi. Integrity of Business/Institution Staff

SASRA has established a mechanism for members of deposit taking Saccos to be able to register complaints with the Office of the Ombudsman. Complaints registered with the complaints board were few, roughly 9% of total complaints/issues forwarded to the Ombudsman were related to fraud by Saccos members/officials, contrary to public perception where deposit taking Saccos generally regarded their staff members/employees as being safe or at low risk of being influenced or corrupted by criminals. Deposit taking Saccos are often mischaracterized and bundled together with non-deposit taking financial cooperatives which have been associated with corruption and mismanagement. Statistics provided by the Banking Fraud Investigations Unit (BFID) showed that a few instances where staff of deposit taking Saccos regulated by SASRA are facing integrity breaches were mainly related to financial co-operatives. This variable was rated *Medium (0.5)*.

vii. AML Knowledge of Business/Institution Staff

Whereas Sacco staff have knowledge on prudential matters, they have little or no knowledge on AML matters. Therefore, there is generally a low level of understanding regarding AML measures. Based on the foregoing, this variable was assessed as *Medium Low (0.4)*.

viii. Effectiveness of Compliance Function (Organization)

Most deposit taking Saccos have compliance programmes in place for prudential purposes, but these programmes do not include implementation of AML control measures including the appointment of MLROs. This is due to the low level of awareness of Saccos regarding their AML obligations under the POCAMLA. The mistaken notion that Saccos are not reporting entities under POCAMLA because SASRA is not designated as an AML supervisory body could be the main reason for the low awareness. Saccos reported that they conduct audits of their organizations, but do not include AML component. This variable was assessed as *Medium (0.5)*.

ix. Effectiveness of Suspicious Activity Monitoring and Reporting

Data showed that only a few Saccos have implemented systems for monitoring suspicious transaction reports. In terms of PEPs screening, most Saccos highlighted that they faced challenges in developing a local PEPs list, a fact which is supported by the findings of the inspections conducted. Further, only one STR was submitted to the FRC and was of poor quality given that the Sacco did not complete all the fields of the STR reporting template and did not provide sufficient supporting documentation. This low level of reporting is primarily attributed to a general low level of awareness on suspicious transaction reporting in Saccos. Based on the foregoing, this variable was assessed as *Close to Nothing (0.1)*.

x. Availability and Access to Beneficial Ownership Information

This variable was assessed by the National Vulnerability working group as *Medium Low (0.4*).

xi. Availability of a Reliable Identification Infrastructure

This variable was assessed by the National Vulnerability working group as *High (0.7*).

xii. Availability of Independent Information Sources

This variable was assessed by the National Vulnerability working group as *Medium High (0.6*).

III. Non-Deposit Taking Saccos

For non-deposit taking Saccos, they can be categorized in different subcategories depending on the activities undertaken and the target membership. Some non-deposit taking Saccos restrict their membership depending on their bylaws. These include employees of an organization, professionals of a certain expertise, business people dealing in a certain product, farmers of a certain crop etc. Others are open to the general public. The main focus of these Saccos is economic empowerment of their members by offering to them affordable credit as well as investment opportunities through structured contributions.

Currently, there are no statistics for non-deposit taking Saccos as they are not formally reported. The 2017 *Report on the Monetary and Financial Statistics Mission (December 3–14, 2018)* by IMF indicated that approximately 2,286 non-deposit taking Saccos are operating in Kenya, holding in excess of KSh.153 billion in assets. However, this contradicted a report from the Commissioner of Cooperative Development, which showed that a total of 3,034 non-deposit taking Saccos were audited in 2017. This is a sizeable amount that needs to be subjected to prudential regulation and under the AML legislation by virtue of the products and services offered by non-deposit taking Saccos.

IV. Other Sacco types

There are other types of Saccos, though they are formed as non-deposit taking, their operations are special and restricted to some specified type of activities or projects. These include housing, investment, transport, motor cycles (bodaboda), marketing related cooperatives societies, among others. This assessment did not consider this category of non-deposit taking Saccos in detail. However, the following observations were made.

Areas of improvement:

- *Regulatory framework*- there is no specific regulatory framework that is applied to these types of co-operatives and are considered to be normal non-deposit taking Saccos. However, some like investment Saccos have an unclear structure as they are Saccos within a Sacco.
- *Unsanctioned investments*- investment Saccos deal with high value investments, land, housing, motor vehicles, among others, yet there are no guidelines to oversight these investments and requirements for disclosure on sources of money. This makes it easy for these Saccos to be misused for comingling of illicit funds.
- *Lack of an official transitional strategy* – due to inadequate supervision, some Saccos, like transport related Saccos, operate in an amorphous and unstructured way. There is no oversight incase a Sacco decides to transit from this category to the non-deposit taking Sacco category. This raises a challenge, that there might be Saccos operating there, offering financial services and products with no proper oversight.

2.6.6 Unregulated financial institutions

Unregulated financial institutions in Kenya include the informal value transfer services (Hawala), non-deposit taking microfinance institutions, digital money lenders and unlicensed foreign exchange dealers.

I. Non-deposit taking microfinance institutions

A non-deposit taking microfinance institution (MFI), also known as a credit only entity, is an institution that does not take any form of deposit or cash collaterals from members of the public. The core business of the MFI is to lend products to its customers. MFI's growth is driven by demand for credit by persons unable to access lending from the regulated financial institutions due to reasons such as lack of collateral, credit risk rating of the client, lengthy credit appraisal processes, amongst others.

The Microfinance Act, 2006, defines MFIs and grants the Cabinet Secretary responsible for the National Treasury the powers to specify non-deposit taking microfinance business to which the Microfinance Act applies, and to prescribe measures for the conduct of the specified business. From 2007, the country started to experience a surge in the number of pyramid schemes, where some presented themselves as MFIs. In 2012, the National Treasury, the Registrar of Companies and the CBK had a tripartite agreement on licensing of MFIs. Since then, MFIs are required to be registered at Business Registration Service (BRS) as limited companies. Upon receipt of an application to register an MFI, the Registrar of Company requests for a letter of no objection from CBK. Additional items submitted for review include the proposed name of the entity, background of shareholders, documented source of funds among others. At this this stage, CBK seek to verify that the name of the proposed entity and the objects as stated in the Memorandum and Articles of Association are not in breach of the CBK Act, Banking Act and Microfinance Act.

II. Digital lenders

Digital lending involves the use of digital channels to lend credit to customers. It leverages on mobile money technology to obtain data about a prospective customer, disburse the funds and collect the repayments. The 2019 Digital Credit Audit Report by FSD showed that digital credit had been instrumental in granting formal credit to previously excluded segments of the economy. Demand side survey data reveals that over six million Kenyans have borrowed at least one digital loan for meeting day-to-day household needs and working capital for small enterprises19. At the same time, usage of non-regulated digital credit has grown from approximately 1% in 2016 to 8% in 201920.

There has been a rise in the number of mobile applications offering credit from 14 in 2017 to 49 in 2018. As at September 2018, the two main *App. stores* had approximately 110 mobile apps provided by 74 unique developers listed as offering digital credit. However, as at April 2019, 65 of these apps had been pulled down from the app stores, while 47 new ones developed by 43 unique developers had emerged21.

However, digital lending has several risks including:

- *Ease of entry*: establishing a digital lending entity is relatively uncomplicated. Once an entity has an app and is registered as an entity, it can start offering loans.
- *Regulatory risk*: the sector is unregulated.
- *Predatory lending*: most digital lenders use excessive marketing practices, for example, unsolicited messaging and misleading communication to lure prospective customers.
- *Misuse of information*: digital lenders collect information from customers and misuse it during debt collection process or to market products.
- *Consumer protection*: there have been numerous complaints by customers about the service offered. Most of the digital lenders do not have mechanism to handle customers' complaints.
- *Lack of transparency*: majority of the digital lenders do not fully disclose cost of credit to clients and sometimes the repayments for defaulted loans are exorbitant.

At the time of this assessment, there were no reported money laundering case on digital lenders. The assessment team further took cognizance of the fact that the there was a Bill in Parliament to guide digital lending business.

III. Unlicensed foreign exchange dealers and/ online traders

Unregulated entities in the foreign currency market take two forms, namely unlicensed foreign exchange dealers and unlicensed online forex dealers. The CBK Act only recognizes CBK and foreign exchange bureaus as the only entities permitted to engage in the business of buying and selling foreign currencies. Unlicensed foreign exchange dealers therefore, refer to persons or entities that undertake spot foreign currency transactions without a CBK license.

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[19] Kaffenberger, Michelle, and Edoardo Totolo. 2018. "A Digital Credit Revolution: Insights from Borrowers in Kenya and Tanzania." Working Paper. Washington, D.C.: CGAP

[20] FSD Kenya. 2018. Digital credit in Kenya: evidence from demand-side surveys. https://s3-eu-central-1.amazonaws.com/fsd-circle/wp-content/ uploads/2018/10/18162055/Digital-Credit-in-Kenya.pdf.; 2019 FinAccess.

[21] https://www.fsdkenya.org/blog/digital-credit-not-every-winner-must-create-a-loser/

Sometimes, CBK grant certain businesses a permit to accept foreign exchange receipts but not to deal in (buying and selling) foreign exchange. Such businesses include duty free shops, hotels or other businesses requiring to regularly transact in foreign currency. There is no information on the number and volumes of transactions by unlicensed foreign dealers. The dealers are normally found in certain locations, especially around border crossing. Such unregulated businesses pose some money laundering vulnerability, although low, since the amount of currency they are able to exchange is relatively small. Further, general security concerns and bulkiness of some currency would make it difficult to launder significant amount of proceeds through such individuals.

CMA may license an entity to engage in the business of online foreign exchange trading as principal and market maker. According to the Capital Markets (Online Foreign Exchange Trading) Regulations, 2017, online foreign exchange trading refers to internet-based trading of foreign exchange and includes trading in contracts for a 'difference' based on a foreign underlying asset. Forex trading (FX) involves the speculation of one currency price against another currency. It is an example of a Contract for Difference (CFD) which is defined as an agreement to exchange the difference in the value of an asset from the time the contract is opened and when the contract is closed. This is different from forex bureau business where parties actually hold the foreign currencies being exchanged based on spot exchange rates22.

In 2018, CMA issued to the public a warning against engaging in online foreign exchange trading through platforms of unlicensed entities as they risk losing their investments and may not be protected under the law. Such entities, are vulnerable to money laundering abuse because the unregulated dealer would not be interested in sources of funds a client uses to trade. In 2019, CBK cautioned the public against emergence of unlicensed and unregulated online foreign exchange (forex) dealers and platforms. In 2020, CBK and CMA jointly warned the public against fraudulent unregulated entities styling themselves as online foreign exchange (forex) brokers and traders. These entities promise customers huge returns and are not licensed as required, either as online forex brokers or traders by the CMA or as forex dealers by CBK. CMA licenses and regulates online forex brokerage and trading, and other capital market products while CBK licenses and regulates all forex dealers and the Kenya Shilling component of any online forex trading and brokerage.

No typology has been published on the use of unlicensed online trader. The vulnerability of such entities being used for money laundering exists but current indication is that most are created mainly to defraud the public.

IV. The Hawala

The Hawala is a form of informal value transfer service (IVTS). An IVTS can be described as a system or network of people facilitating, on a full-time or part-time basis, the transfer of value domestically or internationally outside the formal (regulated) financial institutional systems. Hawala involves the transfer of money from one person to another, without physical transfer of the funds taking place. IVTS operate as underground systems in Kenya so it is difficult to obtain information and statistics that may lead to understanding the extent and size of the business. Open source information show that the Hawala system is based on trust, thus, a client does not need to produce any identification document to facilitate the transfer of funds. The attractiveness of using Hawala to transfer money is premised on a number of salient features including, non-regulation in nature, affordability, the absence of formal sector alternatives, cultural context and

[22] https://cma.or.ke/index.php?option=com_content&view=article&id=554:press-release-cma-licenses-second-non-dealing-online-forex-trading-broker&catid=12&Itemid=207

sensitivity, familiarity, accessibility, efficiency and speed, anonymity and having a predominantly cash based society.

Despite Hawala being used for legitimate purposes, it may also be used to facilitate illegitimate activities, thus the distinction between black and white Hawala. Indeed, some of the inherent characteristics which make Hawala a desirable money transfer method are the same ones that also make it a favourable method for moving proceeds of crime. These include the anonymity involved, adaptability, lack of evidence and non-regulation. In relation to money laundering, Hawala can enable international transfer of funds without leaving an identifiable trail. For instance, value is transferred between a client and Hawala broker and often no records of these transactions are kept. Where records are kept, they are probably in coded languages which may make it difficult for investigators to decipher. Such businesses also rarely ask for source or purpose of funds and are mostly associated with cross border transactions.

The introduction of MRP Regulations was aimed at encouraging the informal value transfer service (IVTS) entities like Hawala businesses to be licensed and regulated. Other considerations for introducing the MRP Regulations are: the need to reduce barriers and lower the cost of sending and receiving money and increasing transparency; to foster competition, enhance innovations and increase access to money remittance products and services to the low income group; creating an enabling environment to increase the flows of remittances through formal financial delivery channels; and the need to subject MRPs to enhanced AML/CFT standards not only in Kenya, but also in the originating jurisdictions.

The provisions under POCAMLA cover both formal and informal institutions, including IVTS. However, Hawala business is banned in Kenya and for the period under review, Kenya did not have any typology on the use of Hawala to launder proceeds of crime. Intelligence sources indicated that two cases of terrorism financing had involved Hawala business in Kenya, but the NRA assessment did not obtain any formal information and statistics on the same. Indeed, the assessment revealed insignificance presence of Hawala business in Kenya. The assessment further revealed that the use of mobile money services and other formal channels which are readily available and accessible in most parts of the country have increased the penetration of formal financial services and channels/outlets, thus reducing the appetite of informal channels like Hawala business.

2.7 Designated Non-Financial Businesses and Persons (DNFBPs) Sectoral Vulnerability

2.7.1 Background and objectives

In 2017, FRC with the assistance of the IMF conducted an assessment of the DNFBPs sector. This sectoral assessment involved participants under the DNFBPs umbrella including, lawyers, accountants, real estate and betting/gaming. Generally, the report showed that the DNFBPs sector players pose a *Medium High* money laundering risks. For instance, the accountancy, casinos and legal sectors were assessed as posing *Very High* ML vulnerability; the real estate vulnerability was rated *High*; while precious stones and metal dealers were assessed as posing *Medium* ML impact. However, notable improvements have been made in the various sectors and some of the identified inherent ML risks have been addressed. The findings of this sectoral assessment conducted in 2017 is consistent with the current NRA findings.

Supervisory authority is defined under Section 2 of POCAMLA and listed under the *First Schedule*. The list include the Institute of Certified Public Accountants of Kenya (ICPAK) which is established under the Certified Public Accountants Act, 1978 (CAP. 531) to licence accounting professionals; Betting Control and Licencing Board established under the Betting Lotteries and Gamming Act, 1966 (CAP. 131) for imposition and recovery of tax on gaming and betting and for licensing and regulating public lotteries; the Estate Agents Registration Board (EARB) established under the Estate Agents Act, 1984 (CAP. 533); and the FRC as a supervisor of last resort.

The DNFBP sector is vulnerable in relation to trade based money laundering, particularly with respect to the accountancy and legal professions. Reports submitted to FRC show that the services provided by this sector can be used in tax evasion as a result of abusive transfer pricing, trade mis-pricing, mis-invoicing of services and intangibles and shifting of profits. The assessment details for each of the identified DNFBPs are discussed below:

2.7.2 Accountancy profession

The Institute of Certified Public Accountants of Kenya (ICPAK) was established in 1978 by the Accountants Act (CAP. 531) to regulate the activities of all certified public accountants in the country. ICPAK regulates the accountancy profession by ensuring that credibility, professionalism and accountability are upheld in the profession in Kenya. By September 2020, ICPAK membership stood at 23,000 individuals with 800 fully paid up audit firms. Multiple licensing had also been approved to commence in the year 2021 and permit licensing of firms offering non-audit services. The regulatory activities include inspections on compliance status of firms in accordance with ICPAK's statutory mandate. Section 8 of the Accountants Act mandates ICPAK to among others: promote standards of professional competence and practice amongst members of the Institute; and carry out any other functions prescribed for it under any of the other provisions of the Act or any other written law.

To ensure that registered firms comply with the provisions of the Act, Section 13(2) establishes the Registration and Quality Assurance Committee. Section 18(1) as read together with Sec 4(2) of the Accountants Act seeks to buttress the profession from vagaries of unregulated practice by stating that '*no person shall practice as an accountant unless he/she holds a practicing certificate and a license to practice*'. Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two million shillings and in the case of continuous offence, a further fine not exceeding two thousand shillings for each day on which the offence continues.

2.7.3 Assessment of ML vulnerability of the accountancy profession

The ML vulnerability of the sector was assessed as *0.69 (Medium High)*. The detailed analysis of the general AML control variables assessment and products specific vulnerability (inherent vulnerability variables) assessment in the sector is presented in the following sections.

I. Comprehensiveness of AML Legal Framework

This variable was rated *High (0.7)*. Kenya has comprehensive AML laws and regulations in force within the accountancy profession which are largely aligned to the international standards. The coverage on the requisite AML preventive measures in POCAMLA and the attendant Regulations 2013, including CDD, EDD on high risk countries and PEPs, record keeping and internal controls are aligned to the FATF standards.

II. Effectiveness of Supervision Procedures and Practices

This variable was assessed as *Medium High (0.6)*. There is relatively a comprehensive legal and regulatory framework on AML and which clearly define ICPAK and FRC as AML supervisors. ICPAK has powers to undertake AML supervision of accounting firms and ICPAK members under POCAMLA and other laws and has developed supervisory policies, procedures and manuals. ICPAK is also relatively well resourced in terms of financial resources, technical staff, supervisory tools; understands the need to conduct risk-based reviews and supervision of licensed firms under its oversight; while the staff are conversant with ML risks given the risk-based approach and the periodic risk assessment reports the Institute periodically receives from the audit firms under its supervision. Additionally, reports and records examination results are structured in a systematic way which details history of the audit firm, violations noted, applicable law, recommendations, penalties proposed and remedial measures to be taken.

III. Availability and Enforcement of Administrative Sanctions

This variable was assigned a rating of *Medium High (0.6)*. Kenya has a range of effective, proportionate, and dissuasive administrative sanctions applicable to natural or legal persons in cases of non-compliance with AML/CFT laws and regulations. The regulatory framework expressly provides for monetary penalties, administrative actions, removal of critical staff, and suspension/withdrawal of bank licenses.

Administrative actions can be imposed by a regulator directly, without going through the criminal process. These actions are viewed as an efficient means of deterring non-compliance with the AML/CFT laws and regulations. However, the administrative actions have not often been imposed because of the limited or non-existent number of onsite reviews and inspections of firms by the AQR staff. Some firms have not been reviewed for AML. This has enormously affected the effectiveness of the administrative sanctions which can be imposed by the Institute. There is also no record of administrative actions imposed by FRC.

IV. Availability and Enforcement of Criminal Sanctions

The variable was rated *Low (0.3)*. Kenya has a range of effective, proportionate, and dissuasive criminal sanctions, which are applicable in cases of non-compliance with AML laws and regulations. The criminal sanctions also extend to ancillary offences to ML offences and are applicable to both the institution and staff. However, the enforcement of criminal sanctions within the accountancy profession is very poor.

V. Availability and Effectiveness of Entry Controls

This variable was assessed as *Very High (0.8)*. There are comprehensive and effective regulatory framework on registration and licensing of accountants and firms. There are two Statutory

Committees of ICPAK to ensure compliance and uphold disciplinary requirements for members. One of the committees approves license applications. The staff working in these two committees have sufficiently long working experience in processing licensing applications. However, not enough training resources have been allocated to the licensing staff to handle vetting of applications with AML predisposition. On the other hand, records on training courses specifically on entry controls or registration and licensing of members are limited or scanty. There are complaints that sometimes ICPAK takes long to process registration and license applications.

VI. Integrity of ICPAK Staff

This variable was assigned a rating of *Medium High (0.6)*. ICPAK has developed policies and procedures on integrity of staff and dissuasive staff disciplinary processes. Additionally, the Prudential Guideline on Corporate Governance has provisions on Code of Conduct which has strict requirements on staff integrity. Staff, council members, management and senior officers are vetted by ICPAK before on-boarding and there are records on conviction of ICPAK staff and / or members on fraud and related offences. It is also worth noting that Kenya is a high-risk jurisdiction based on ratings, for instance, by Transparency International which rates the country corruption index as being high. While the various industries/sectors in which the members or accounting firms undertake their work are in environments which are highly competitive making them susceptible to corruption.

VII. AML Knowledge of ICPAK Staff

The variable was rated *Medium (0.5)*. The professional associations and regulators are required by law to train their staff on AML. A good number of organisations where members work, as well as audit firms have embedded AML key performance indicators (KPIs) as part of staff responsibilities. While the records on staff AML trainings exist, the accounting firms despite having international relationships do not sufficiently understand the international legal frameworks of countries they have provided services, indicating that the training programmes are either not comprehensive enough on AML or do not embed the AML regimes of foreign jurisdictions.

VIII. Effectiveness of Compliance Function (Organization)

This variable was rated *Medium (0.5)*. Regulation 9 of the POCAML Regulations, 2013 requires entities to establish compliance functions, while regulation 10 requires entities to appoint MLROs at senior management position, be independent and to have adequate resources. Majority of ICPAK licensees and member firms (audit firms) have board approved compliance policies covering roles and responsibilities, reporting, training, consequences of breaches, among others. Moreover, the Compliance Society of Kenya (a professional body) has been registered to work closely with ICPAK to enhance compliance under POCAMLA.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

This variable was assessed as *Medium (0.5)*. ICPAK and some of the member firms have largely developed systems in place for record keeping, monitoring and STR reporting to support their AML policies and procedures and are progressively filing STRs with FRC. The transaction records are available in a format that facilitates AML screening, and some of the accounting firms have systems that assist in the identification and recording of all complex, unusual large transactions to some extent as well as conducting PEPs screenings.

X. Level of Market Pressure to Meet AML Standards

This variable was assigned a rating of *Medium High (0.6)*. ICPAK and some of the accounting firms have correspondent relationships through Memorandum of Recognition *(for ICPAK and other Professional Accountancy Organizations across the world)* arrangements that require compliance with AML laws. Market forces also exert pressure on ICPAK and the management teams of accounting firms to have an effective AML compliance function. For instance, the risk of de-risking by Professional Accountancy Organizations with Memorandum of Recognition arrangements with ICPAK and international accounting firms necessarily impels the Institute and these firms to have effective AML compliance function.

The assessment showed that there are Guidelines on AML/CFT for accountants which requires the accounting firms to comply with specified obligations when establishing international operations and relationships. However, some of the information required is considered difficult to obtain.

XI. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was rated *Medium Low (0.4)*.

XII. Availability of a Reliable Identification Infrastructures

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was rated *High (0.7)*.

XIII. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was assessed as *Medium High (0.6)*.

2.7.4 Certified Secretaries profession

Members of the Institute of Certified Public Secretaries of Kenya (ICPSK) are referred to as Certified Secretaries and they use designator letters 'CS' before their names. The designation 'CS' is protected at the Kenya Industrial Property Institute. The ICPSK is a membership organization, established under the Certified Public Secretaries of Kenya Act (Cap 534). CS profession plays a pivotal role in promoting the practice of good governance. The purpose of ICPSK is to promote the practice of good governance in both the public and private sectors. Membership qualifications are prescribed under Section 20 of the Certified Public Secretaries Act.

The key players are the registered Certified Secretaries, registered by ICPSK Registration Board and who are members of ICPSK. POCAMLA does not have clear definition of Trust and other company service providers where CS are classified. However, FATF recommendation updated in October 2020 (for DNFBPs) has provided a clear guide for trusts and company service providers.

The services offered by CSs include business registration/formation; registration maintenance i.e., filing the various returns with the regulatory bodies to maintain registration and compliance with the various laws; governance audit for both quoted and unquoted entities to assess compliance with the various corporate governance policies; board evaluation to assess effectiveness of the Board; compliance assessment/secretarial audits, training for board and members of senior management on corporate governance; maintenance of statutory registers such as register of directors and members, register of charges, register of beneficial owners; capitalisation/ reorganisation/merger and acquisitions; and company deregistration.

2.7.5 Assessment of ML vulnerability for the certified secretaries

The ML vulnerability of the sector was assessed as ***Medium High (0.74).*** The detailed analysis of the general AML control variables and products specific vulnerability assessment in the sector is presented in the following sections.

I. Comprehensiveness of AML Legal Framework

This variable was assessed as *Medium Low (0.4)*. Kenya has comprehensive laws and regulations regarding AML preventive measures and AML supervision of trust and company service providers. Kenya has largely adopted FATF AML Standards in its laws and regulations for trust and company service providers. However, ISC has not developed AML Guidelines for CS. While all the international standards cited in the Assessment Criteria One (1) are covered within Kenya's AML legal framework, Certified Public Secretaries Act does not have specific AML regulations or guidelines for CSs. Further, POCAMLA has not identified the Institute of Certified Secretaries (ICS) as a supervisory body.

II. Effectiveness of Supervision Procedures and Practices

This variable was assigned a rating of *Medium Low (0.4)*. AML supervisory procedures are clearly identified in the laws and regulations and ICS has appropriate authority and mandate to conduct AML compliance supervision. There are legal frameworks that clearly identify FRC as supervisory body and give them powers to supervise Certified Secretaries.

ICS does not have dedicated AML supervisory unit with resourced qualified and competent AML staff to supervise Certified Secretaries on AML matters. ICS therefore relies on FRC's existing AML framework. In addition, ICS does not have staff handling AML matter and relies on the FRC as a supervisory body in dealing with AML matters. ICS in partnership with FRC undertakes frequent AML training to staff and Certified Public Secretaries on AML compliance examinations. Certified Secretaries are relatively knowledgeable on AML risks.

ICS also have inadequate resources to ensure AML compliance (such as technical capacity, budget, and tools), no documented risk-based supervisory program and does not conduct on-site and off-site inspections on the Certified Secretaries and relies on FRC for AML supervision. Because of the lack of a framework to supervise CS on AML, ISC does not maintain data/record relating to AML. However, ICS in partnership with FRC conducts workshops, seminars and training on AML laws and guidelines and their application by CS.

III. Availability and Enforcement of Administrative Sanctions

This variable was rated *Medium low (0.4)*. Kenya has a range of effective, proportionate, and dissuasive administrative sanctions applicable to Certified Secretaries in cases of non-compliance with AML laws and regulations. Section 28 of the Certified Public Secretaries (CPS) Act provides for independent disciplinary process and disciplinary sanctions in case of professional misconduct. However, the CPS does not have specific sanctions such as penalties and fines as a consequence due to professional misconduct. Additionally, CPS Act does not include breach of AML laws and guidelines as a professional misconduct. This can only be interpreted to have been covered by Section 24 (l) of CPS Act i.e., *fails to do any other act which may be prescribed/* Additionally, ICS has also not developed AML guidelines for Certified Secretaries.

IV. Availability and Enforcement of Criminal Sanctions

The variable was assigned a rating of *Medium low (0.4)*. Kenya has a range of effective, proportionate, and dissuasive criminal sanctions, which are applicable in cases of non-compliance with AML laws and regulations. CS also regard the criminal sanctions regime as

sufficiently dissuasive to positively influence individual behavior patterns. However, the number of ML convictions is very low as no CS had been convicted of money laundering offences.

V. Availability and Effectiveness of Entry Controls

This variable was assessed as *Medium High (0.6)*. There is a comprehensive legal and regulatory framework on entry controls (registration of members), rendering the entry controls for CS effective. The Certified Public Secretary Registration Board has sufficient legal powers to exercise when processing applications registration and the staff working in Certified Public Secretary Registration Board have sufficient work experience in processing registration applications.

VI. Integrity of Certified Secretaries

This variable was assessed as *Medium High (0.6)*. There are policies and procedures on integrity for CS and independent disciplinary process due to professional misconduct. Part IV of the CPS Act on disciplinary provisions establishes an independent disciplinary committee and sets out the disciplinary process. ICS has also developed GG 001-Guideline on professional ethics and conduct for Certified Secretaries. Further, ICS has developed a code of Corporate Governance for State Corporations (Mwongozo) and a Code of Corporate Governance for Private Owned Companies.

VII. AML Knowledge for Certified Secretaries

The variable was rated *Medium Low (0.4)*. The ICS CPD programme includes training on AML. While these trainings are not mandatory, all Certified Secretaries are required to undergo ongoing training to ensure that their knowledge of AML laws, policies, and procedures is appropriate and up-to-date. Majority of CS are not trained on international AML laws and regulations across Jurisdictions. The training is not mandatory which means there are ICS members who have no training on AML. ICS CPD programme has ensured continuous training for Certified Secretaries on AML issues on on-going basis. Certified Secretaries do not have adequate knowledge of and are not regularly updated on domestic and transnational money laundering schemes and typologies, including those involving the misuse of the business/profession and specialized knowledge and skills of its professionals and its products and services.

VIII. Effectiveness of Compliance Function (Organization)

The variable was rated *Low (0.3)*. ICS does not undertake annual and continuous AML risk assessment on CS, and does not have risk-based compliance programs for CS. Majority of CS firms do not have independent MLROs at senior management level. ICS is also not designated as a supervisory body under POCAMLA and does not have supervisory power to monitor AML compliance. However, ICS has guidelines on disciplinary measures and sanctions for non-compliance with AML policies and procedures. Available sanctions as per the labour laws includes warning letters, suspensions, terminations/dismissals and demotions. There are no records of disciplinary actions taken against staff for AML violations. Further, ICPS Act does not specifically categorise AML as one of the offences under professional misconduct.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

The variable was rated *Low (0.3)*. CS do not have systems for record keeping and monitoring STRs to support their AML policies and procedures, and the number of STRs filed with the FRC are very few. There is lack of an AML framework for CS prescribing the format of recording transactions that weakens the AML supervision for Certified Secretaries. Further,

firms do not have modern information systems that can enable them facilitate the monitoring of transactions of clients against their profiles.

CS firms need to design a system of monitoring STR and reporting to enhance AML oversight. Further, CS firms lack systems that can support PEPs screening and do not maintain PEPs list. In Kenya, there is no central database for PEPs. Commercial databases for screening such as World Check database do not have unique identifiers such as identity card numbers. PEPs and their associates are not easily identifiable as there is no local database for such.

On the other hand, CSs do not have a good understanding of the scope of their reporting obligations on suspicious transactions and activities, including what activities are covered or not covered under laws.

X. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium Low (0.4)*.

XI. Availability of Reliable Identification Infrastructure

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *High (0.7)*.

XII. Availability of Independent Information Sources

This variable was assessed by the National Vulnerability Working Group as *Medium High (0.6)*.

2.7.6 Gaming industry

Gaming industry in Kenya started in 1952 with the start of sports betting being placed on horse racing. This led to the development of the Jockey's club of Kenya. The Betting, Lotteries and Gaming Act came into effect in 1966 and in 1969 the first Casino was set up. For several years there was only one casino in Kenya, growing to 8 in 2008 and 40 in 2013. Currently, there are 43 Casinos implying that there has not been any significant increase in numbers from 2013. In 2010, online betting started gaining traction globally and by 2013, there were several online betting establishments.

To mitigate the ML/TF risks posed by significant cash activities in the casinos POCAMLA has prescribed preventive detective measures for cash activities. Casino operators are required to file a cash transaction report to FRC for any cash transaction that involves an amount of US$ 10,000 or more. Majority of the customers are locals, but there is no prohibition for foreigners participating in betting at casinos in Kenya. The casino companies do not maintain a PEPs list or conduct screening of customers against UN list of persons involved in terrorism or TF.

In 2010 there were four (4) bookmakers/sports betting firms and these were all brick and mortar establishments. In fact, up to 2010 all gaming establishments were brick and mortar. All online companies were sports betting/bookmakers and several of them also had online casinos without having an actual brick and mortar establishment and they did not have any regulations. In 2013 there was a major change and anyone who was registered was allowed to operate online and use mobile money services. Published reports indicate that sports betting is facilitated by a 'conducive' infrastructure which leverages on the strong mobile connectivity in the country, mobile money availability across the country, ability to make mobile payments, and good

internet connectivity. Majority of the individuals engaging in sports betting are employed youthful males.23

As far as the regulatory framework is concerned, the Gaming industry in Kenya is regulated by the Betting, Lotteries and Gaming Act,1966, Cap 131 of the Laws of Kenya. The Betting Control and Licensing Board (BCLB) is established under Section 3 of the Act. The functions of the Board are to regulate, supervise and inquire into complaint against licensees. There are several categories of licenses issued under the Act are which include Public Gaming (Casinos), Bookmakers, Public Lotteries, Totalisators, Short term Lotteries and Prize Competitions.

2.7.7 Assessment of ML vulnerability of the gaming industry

The ML vulnerability of the Gaming industry was assessed as *High (0.85)* as discussed in the following sections.

I. Comprehensiveness of AML Legal Framework

This variable was assessed as *Medium Low (0.4)*. Kenya has comprehensive laws and regulations regarding AML preventive measures and AML supervision of the gaming sector. Kenya has largely adopted FATF AML Standards in its laws and regulations for the gaming industry. Additionally, the Association of Gaming Operators (AGOK) has developed an AML policy for the association members. This policy heavily borrows from POCAMLA and actualizes the provisions of Sections 44-48 of the Act which defines the obligations of a reporting institution where gaming operators fall under.

II. Effectiveness of Supervision Procedures and Practices

This variable was rated as *Very Low (0.2)*. There is relatively a comprehensive legal and regulatory framework on AML which clearly defines BCLB as AML supervisors. Further, BCLB has powers to undertake AML supervision of the gaming industry under POCAMLA, but it lacks the requisite technical capacity. BCLB has therefore, not imposed any administrative sanctions on violations of POCAMLA and POCAML Regulations. Indeed, BCLB does not have AML guidelines which are specific to the gaming industry, while AGOK have AML guidelines but are only applicable to its members.

III. Availability and Enforcement of Administrative Sanctions

This variable was assessed as *Low (0.3)*. Kenya has a range of effective, proportionate, and dissuasive administrative sanctions applicable to natural or legal persons in cases of non-compliance with any laws and regulations. Members of staff are subject to the Public Officers code of conduct. However, BCLB has never issued any administrative action against any entity in the Gaming industry.

IV. Availability and Enforcement of Criminal Sanctions

This variable was assessed as *Medium Low (0.4)*. Kenya has a range of effective, proportionate, and dissuasive criminal sanctions, which are applicable in cases of non-compliance with AML laws and regulations. The available criminal sanctions include ancillary offences to money laundering offences. Sanctions are applicable not only to gaming operators but also to their staff including shareholders. The enforcement levels of criminal sanctions are however very low.

[23] http://erepo.usiu.ac.ke/handle/11732/3257;jsessionid=87464557FB01573D11A303D46EA3DA63

V. Availability and Effectiveness of Entry Controls

This variable was assessed as *Medium (0.5)*. There is a comprehensive legal and regulatory framework on entry controls (licensing of gaming operators) and BCLB have sufficient powers to exercise when processing license applications. Additionally, BCLB takes applicants through a clearly defined process for license applications and the staff who process the licenses have sufficient work experience in processing licensing applications. However, the licensing staff do not undergo frequent AML training and records on training courses specifically on entry controls or licensing of gaming operators are limited.

VI. Integrity of Gaming Operator's Staff

The variable was rated *Low (0.3)*. There are staff policies and procedures on integrity of staff and dissuasive staff disciplinary processes. There is also a code of conduct at the gaming establishments which have strict requirement on staff integrity. The staff normally undergo vetting at the on-boarding stage, staff from other establishment are subjected to vetting and reference checks otherwise majority of the new employees have no previous experience. However, BCLB do not vet directors and senior staff members of the gaming operators before on-boarding and there exist records of court cases by/against gaming operators submitted to BCLB, which involve integrity breaches.

VII. AML Knowledge of Gaming Operator's Staff

This variable was assessed as *Very Low (0.2)*. Gaming operators are required by law to train their staff on AML, but there are no records on staff' AML training indicating that most gaming operators have not developed training programs for their staff or simply do not train their staff on AML obligation. Additionally, the gaming operators despite having international relationships and exposure still do not have sufficient understanding of the international legal frameworks and their respective AML regulations.

VIII. Effectiveness of Compliance Function (Organization)

This variable was rated *Very Low (0.2)*. Gaming operators have industry approved AML compliance policies and procedures, but do not undertake ML risk assessment and have not adopted a risk-based approach. Gaming operating do not conduct continuous ML risk assessment on new and existing products and services. The MLROs are largely not knowledgeable on AML and are also not regularly trained on AML. Independence of MLROs in most cases is not assured due to occasional management interference in some cases. There are no disciplinary measures and sanctions for non-compliance with AML policies and procedures, including sanctions for breaches of AML policies. No records of disciplinary actions taken against any member of staff in the past exist. The gaming operators also do not have audit committees to oversee the audit functions and rarely carry out independent internal or external AML audits.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

This variable was rated *Low (0.3)*. Gaming operators have systems for record keeping, monitoring and STR reporting to support their AML policies and procedures. The operators have invested partially in modern IT systems to facilitate effective transaction monitoring and reporting. In some instances, manual client risk profiling is used with limited use of automated systems. However, the automated systems are not perfect/not fool proof and largely depend on how they have been programmed to operate in monitoring transactions.

The transactional records are largely unavailable in a format that facilitates AML screening and monitoring. In majority of cases the records have not been integrated to enable linking of customer transactions. Lapses on AML screening and monitoring have been noted due to some formats of how transactions are kept. On the other hand, the operators do not have systems that support PEPs screening and do not maintain PEPs list. Gaming operators do not have screening systems for customers during on-boarding and on an ongoing basis. PEPs and their associates are not easily identifiable as there is no local database for such.

X. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium Low (0.4)*.

XI. Availability of Reliable Identification Infrastructure

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *High (0.7)*.

XII. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium High (0.6)*.

2.7.8 Legal profession

The legal sector in Kenya is regulated by the Law Society of Kenya (LSK) Act (CAP. 18) and the Advocates Act (CAP. 16). The Law Society of Kenya is established under the LSK Act, 2014, with a key mandate of regulating and supervising the legal sector in Kenya. The Kenya Law Reform Commission is a state agency established by the Kenya Law Reform Commission Act, 2013 and is mandated to keep under review all the law and recommend its reform to ensure, among others, that the law systematically develops in compliance with the values and principles enshrined in the Constitution and that the law is consistent, harmonized, just, simple, accessible, modern and cost-effective in application.

Kenya currently has 12,000 practising advocates. The main players and their key responsibilities in the legal sector in Kenya are presented in Table 2.7.1.

Table 2.7.1: Players in the legal sector

	Category	Number
1.	Associate advocates	6,081
2.	Partners in law firms	2,277
3.	Sole proprietors	2,172
4.	Corporate lawyers/in-house counsel	1,244
5.	Others – state counsels	6,504
6.	Non-law based	20

The Law Society of Kenya Regulations, 2020 have now been passed. These Regulations create an opening for addressing the emerging concerns in the legal space such as the threat of AML and

2.7.9 Assessment of ML vulnerability of the legal sector

The ML vulnerability of the sector was assessed as *High (0.85)*. The detailed assessment is described below:

I. Comprehensiveness of AML Legal Framework

This variable was assessed as *High (0.7)*. Kenya has comprehensive laws and regulations regarding AML preventive measures and AML supervision of the various sectors including the legal sector. Kenya has also largely adopted FATF AML standards in its laws and regulations for various sectors. POCAMLA is the main AML statute. POCAMLA Regulations are the main AML Regulations covering all reporting institutions excluding the legal sector institutions. International standards are generally covered within Kenya's AML Laws and Regulations.

However, POCAMLA has not designated lawyers or provided legal mechanisms for the LSK as a supervisory body in terms of AML obligations. Further, practical mechanisms for the advocates to report suspicious transactions without breaching the advocate client privilege are not adequate.

II. Effectiveness of Supervision Procedures and Practices

The variable was rated *Low (0.3)*. While LSK has appropriate mandate to conduct supervision of its members, it lacks appropriate legal powers under POCAMLA to conduct AML compliance supervision. This is because LSK has not been designated as a supervisory body for AML purposes. LSK has developed AML Guidelines to act as the supervisory guidance document, but these Guidelines are yet to be operationalised. Lawyers have a good understanding and appreciation of the ML risks within their sector. Further, FRC has undertaken regular training of the lawyers on ML risks and has also trained the LSK staff on risk-based supervision.

LSK staff are fairly knowledgeable on AML risks and current typologies. New LSK staff are attached to old and experienced staff for apprentice, but the mentoring/coaching is not directly linked to AML. FRC has organised workshops and trainings for the Lawyers either singly or jointly and sometimes involves other partners and stakeholders during which they participate and get additional AML/CFT skills and knowledge. Additionally, FRC has continuously provided support to individual law firms when approached, but has however not prepared the related AML reports for the benefit of the industry.

III. Availability and Enforcement of Administrative Sanctions

The variable was rated *Low (0.3)*. The law provides for a wide range of administrative sanctions. Administrative sanctions that can be imposed by the regulator exist but not related to AML. The administrative sanctions are therefore not an efficient means of deterring non-compliance with AML laws.

IV. Availability and Enforcement of Criminal Sanctions

The variable was rated *Medium Low (0.4)*. Kenya has a range of effective, proportionate, and dissuasive criminal sanctions, which are applicable in cases of non-compliance with AML laws and regulations. Available criminal sanctions include ancillary offences to money laundering offences for e.g. bribery, corruption, terrorism financing etc. Sanctions are applicable not only to the legal sector but also to their staff including directors and senior management. There is a record of convictions, and criminal enforcement actions, that have been taken over the past years by law enforcement authorities regarding noncompliance with AML requirements in the sector. But the enforcement levels of criminal sanctions are very low compared to the high number of cases that have been reported.

V. Availability and Effectiveness of Entry Controls

The variable was rated *Medium High (0.6)*. There is a comprehensive legal and regulatory framework on entry controls (licensing of lawyers). LSK has sufficient legal powers to exercise when processing license applications. LSK staff have sufficient work experience in processing licensing applications. The licensing staff undergo frequent training including online training.

The Advocates Act, defines who could take up briefs to represent clients. It further provides strict measures to be meted upon unqualified persons practicing laws and or LSK Members taking up matters whilst not having licenses for the very year in question. The law and qualifications for one to admitted as an advocate and allowed to practice as such is strict and its observance greatly observed. Part IV Advocates Act details the qualifications required to practice as an advocate in Kenya

However, there is no requirement for all licensees to have adequate AML compliance controls in place, including compliance manuals and the appointment of well-qualified internal controls/compliance staff at the moment. But there are adequate resources to ensure quality implementation of entry controls for lawyers, including a sufficient number of well-trained and highly skilled personnel to screen, vet, and approve all applications and supporting documentation.

The Council for Legal Education vets' persons who wish to get admitted to the roll of advocates as provided for under Section 8 of the Advocates Act. Most of the licensing staff, at the Council of Legal Education have long work experience having undertaken licensing application processing for many years. Nonetheless, there is still insufficient training resources allocated to licensing team, particularly on courses touching on AML.

VI. Integrity of Lawyers

The variable was rated *Medium (0.5)*. LSK has policies, procedures and guidelines on integrity of lawyers. The Attorney General through the Advocates Complaints Commission and the Law Society through their Compliance Unit can handle complaints raised against advocates within the mechanisms akin to each and under the law. Moreover, continuous professional development is a requirement for each advocate before taking out their License for the subsequent year. During such seminars, advocates take sessions on integrity and advocate conduct.

VII. AML Knowledge of LSK Members

The variable was rated *Medium (0.5)*. Over the years, FRC has undertaken trainings on AML regularly through LSK which develops training programs for their members. FRC has taken a deep stake in the public participation during the drafting of the draft LSK AML Guidelines, 2020 whose plenaries and discussions accorded a facilitated chance to deepen the knowledge of AML by members. Advocates in the course of their training might have come across the POCAMLA rules and regulations thereon but the prominence has not been given on training on AML.

However, only a few lawyers have been trained in AML. There is limited training and knowledge on AML laws and regulations for other jurisdictions that lawyers conduct business in or with such as law firms which have international affiliations. Notably, a handful of lawyers conduct business with clients and professional intermediary firms in other jurisdictions such as United Kingdom, United States of America, China, Uganda, Tanzania, South Africa. There are a handful of members informed about the legal consequences/sanctions for compliance breaches contained in POCAMLA though they are not obligated to comply by reporting.

VIII. Effectiveness of Compliance Function (Organization)

The variable was rated *Low (0.3)*. POCAMLA and the Regulations thereon do not include the sector as reporting institutions unless during an active investigation where a lawyer who undertook a transaction is summoned to the High Court under Section 18(3) of the Act. Further there is no requirement for law firms to establish compliance function. The advocate's Act provides for the complaints commission and tribunal for complaints raised against advocates. It is however not tied to AML compliance breaches. There are also no compliance mechanisms to disseminate AML information to the sector.

IX. Level of Market Pressure to meet AML Standards

This variable was rated *High (0.7)*. There are exceptions to the client advocate confidentiality principle under the legal professional ethics which sometimes requires compliance with AML laws. Market forces have exerted pressure on advocates and lawyers to have an effective AML compliance function. Moreover, they are sensitive to international and national AML related reputational risks and the risk of de-risking by Kenyan correspondent banks compels lawyers to have effective AML compliance function.

X. Effectiveness of Suspicious Activity Monitoring and Reporting

The variable was rated *Low (0.3)*. Lawyers are not required by law to report any suspicious transaction as it is not a supervisory body under POCAMLA. Therefore, the lawyers have no obligation to file STRs and also lacks capacity to file STRs with the FRC as they have no dedicated AML unit. Further, Law firms are not reporting institutions under POCAMLA. The assessment however, indicated that the highest number of the filed STRs amongst DNFBPs sector was relating to the legal profession.

XI. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium Low (0.4)*.

XII. Availability of a Reliable Identification Infrastructures

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *High (0.7)*.

XIII. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium High (0.6)*.

2.7.10 Motor vehicle dealers

The motor vehicle dealership industry in Kenya is diverse and has several players. Major players within the sector includes new vehicle assemblers, new spare parts manufacturers, newly manufactured motor vehicle importers, used vehicles and spare parts importers and local traders dealing with used cars and spare parts. The number of registered motor vehicles was reported at 3,280,934 units in 2018, showing an increase from the 2,989,788 units for 2017. The annual increase in the number of registered motor vehicles averaged 1,616,745 units from December 2004 to December 2018, thus making motor dealership a significant sector within the economy.

There are a number of motor vehicle dealers operating in Kenya, with the most established being Toyota (East Africa), Cooper Motor Corporation, General Motors, Simba Colt and DT Dobie. There are also three vehicle assembly plants in the country, which concentrate on the assembly of pick-ups and heavy commercial vehicles. The established dealers face intense competition from imported second-hand vehicles, mainly from Japan and United Arab Emirates. By 2015,

it was estimated that 85% of the vehicles in the country were second-hand vehicles with new ones taking the remainder. On average, according to statistics from Kenya Bureau of Statistics, a total of 85,000 used vehicles are imported into the country annually.

Due to the diversity of the operations within the sector, different segments fall under different regulatory frameworks such as the Traffic Act, National Traffic and Safety Authority Act, Standards Act (CAP. 496), Motor Vehicles Components and Accessories Act, Kenya Revenue Authority Act and POCAMLA. These laws guide different roles in the sector, ranging from, importation, inspection, clearance to the country and registration.

The industry has different players offering different products and services. Major players include; New vehicle assemblers, new spare parts manufacturers, newly manufactured motor vehicle importers, used vehicles and spare parts importers and local traders dealing with used cars and spare parts. Products and services differ based on the specialization of the players as shown below:

a) New vehicles by motor assembling entities and new vehicle importers;

b) Used motor vehicle by car bazaar operators;

c) Motor vehicle importation by local importers and representative offices;

d) Lending/ Hire purchase services by car yard dealers;

e) Insurance brokerage by car yard dealers; and

f) Used spare parts and accessories by auto spares dealers.

2.7.11 Assessment of ML vulnerability of motor vehicle dealers

The ML vulnerability of the sector was assessed as *Very High (0.95)*. The detailed analysis is described below:

I. Comprehensiveness of AML Legal Framework

The variable was rated *Medium Low (0.4)*. Kenya has comprehensive laws and regulations regarding AML preventive measures and AML supervision of the various sectors including the legal sector. Kenya has also largely adopted FATF AML Standards in its laws and regulations for various sectors. POCAMLA is the main AML statute. POCAMLA Regulations are the main AML Regulations covering all reporting institutions excluding the motor vehicle dealers. International standards are generally covered within Kenya's AML Laws and Regulations.

However, motor vehicle industry does not have a supervisory body thus making it hard to issue sector targeted guidelines. Further, there is no licencing regime for motor vehicle thus no standardised licencing requirements and vetting guidelines for the institutions. On the other hand, motor vehicle dealers are not listed as reporting institutions under DNFBPs as defined in POCAMLA. The recommendation is that FRC, as the AML supervisor should actively guide the industry through registration of motor vehicle dealers, conduct of inspections and creation of trainings and awareness to the industry.

II. Effectiveness of Supervision Procedures and Practices

The variable was rated *Close to Nothing (0.1)*. The FRC as the regulator has not been effective in oversighting the motor vehicle dealers sector because it is not adequately resourced to conduct its oversight role. Therefore, there has been no formal engagement and off-site inspections conducted on the industry for the last five years.

III. Availability and Enforcement of Administrative Sanctions

The variable was rated *Does Not Exist (0.0)*. *Although* Kenya has a range of effective, proportionate, and dissuasive administrative sanctions applicable to natural or legal persons in cases of non-compliance with AML/CFT laws, these sanctions have not been enforced since the supervisor has not conducted any inspections.

IV. Availability and Enforcement of Criminal Sanctions

The variable was rated *Low (0.3)*. Criminal sanctions have not been enforced in the motor vehicle dealership.

V. Availability and Effectiveness of Entry Controls

The variable was rated *Does Not Exist (0.0)*. There is no law guiding the entry of new market entrants. The sector is a free market and any new player is free to join without any prescribed new requirements and there are no special licenses required for market entrants due to lack of a supervisory body. In this regard, there are no specific AML controls are in place to ensure mitigation measures are in place.

VI. Integrity of Motor Dealer's Staff

The variable was rated *Does Not Exist (0.0)*. There are no policy guidelines on how staff members in motor dealers should conduct their business. The are no guidelines of vetting staff being brought on board to ensure the integrity of the industry is upheld and no guidelines to vet senior management and directors of entities involved have been put in place. and no internal controls in place to guide on staff behaviours. Indeed, the industry is highly competitive and commission based thus making staff members to be vulnerable to corruption and manipulation.

VII. AML Knowledge of Motor Dealers' Staff

The variable was rated *Does Not Exist (0.0)*. Motor vehicle dealers are supposed to develop mechanisms for staff to be adequately resourced on ML issues and mitigations and train staff on AML as required under POCAMLA. However, there are no training materials developed for staff within the sector and there has never been any AML training offered to the players by FRC.

VIII. Effectiveness of Compliance Function (Organization)

The variable was rated *Does Not Exist (0.0)*. POCAML Regulations (regulation 9) requires reporting entities to establish a functional and comprehensive compliance function. The compliance function should include; formulation of internal control policy, monitoring of transactions and suspicious activities, trainings, vetting of staff, compliance manuals. Additionally, regulation 10 requires reporting entities to appoint MLROs at senior management position, be independent and to have adequate resources. However, there are no compliance functions for motor vehicle dealers and currently there are no guidelines on how to enforce the same. The motor vehicle dealers also do not have any specific management structure and no requirements on appointment of MLROs. There is also no sectoral code of conduct thus no disciplinary actions are taken.

IX. Effectiveness of Suspicious Activity Monitoring and Reporting

The variable was rated *Does Not Exist (0.0)*. Motor vehicle dealers have defined system of record keeping related to AML requirements. Records are only kept for their own purposes as proof of transactions. There is no monitoring of suspicious activities hence no reporting to FRC on any suspicious activities. Moreover, information systems are in place but not for monitoring of AML transactions and there are no specific requirements for records and no screening and monitoring is done.

X. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium Low (0.4)*.

XI. Availability of Reliable Identification Infrastructure

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *High (0.7)*.

XII. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium High (0.6)*.

XIII. Recommendations

While motor vehicle dealers are not required to report suspicious transactions, the assessment revealed that:

i. There are large volumes of cash involved in this industry, especially the second hand dealers, some of which could be proceeds from other predicate offences like drug trafficking. On the other hand, tax related crimes have been reported in relation to second hand car dealership. There are also cases of high end vehicles stolen from foreign jurisdictions that find their way into the country while other impounded vehicles have been found to be on transit to neighbouring countries. Further studies are recommended to establish the potential ML/TF risks and tax evasion methods used by motor vehicle dealers.

ii. Several motor vehicle dealers offer unregulated credit facilities for car purchase enabling car buyers to purchase cars through instalments (hire-purchase), while other dealers provide insurance brokerage services, a significant portion of dealers provide investment options for customers and some dealers were noted to provide Sacco business/products to customers. These auxiliary services should be assessed in detail as they may present additional ML/TF vulnerabilities.

2.7.12 Real estate

The real estate industry in Kenya is regulated by the Architects and Quantity Surveyors Act (CAP. 525), Engineers Act (CAP. 530), Physical Planners Act (CAP. 536), National Construction Authority Act (CAP. 449), Estate Agents Registration Act (CAP. 533), Valuers Act (CAP. 532), Surveyors Act, Building Surveyors Act, Land Act, Land Registration Act, Community Lands Act, National Land Commission Act (No. 5 of 2012) and the Stamp Duty Act. The Key mandate of these legislations is to regulate, supervise and develop the industry.

Real estate agents are regulated by the Estate Agents Registration Board (EARB) which is established under the Estate Agents Registration Act (CAP. 533). EARB is also designated as an AML supervisory body under POCAMLA. The main functions of real estate agents in leasing and purchasing transactions entail to liaise with clients, solicitors and other property professionals to negotiate sales and lettings on residential or commercial properties. The agents are involved in frequent liaison with banks, Saccos, mortgage brokers, surveyors, solicitors and other estate agencies during transactions. They may also handle sales taking place via auction.

The current requirements and legal steps for real estate purchases are quite stringent and if well followed to the letter, the ML vulnerability in the sector would drastically decline. The requirements include searches and inspection of the title, preparation of offers and price negotiation, sale agreement and deposit payment, payment of land rates, transfer documents and

consent to the transfer, valuation, payment of stamp duty and registration of transfer. The main professional players in the real estate industry are presented in Table 2.7.2.

Table 2.7.2: Players in the real estate industry

	Category	Number
1.	Architects	883
2.	Quantity surveyors	534
3.	Engineers	1900
4.	Physical planners	266
5.	Estate agents	411
6.	Land surveyors	109
7.	National Land Commission	Regulator
8.	Board of Registration of Architects and Quantity Surveyors	Regulator
9.	Estate Agents Registration Board (EARB)	Regulator
10.	National Construction Authority	Regulator

Source: Institute of Quantity Surveyors of Kenya, 2020

2.7.13 Assessment of ML vulnerability of the real estate industry

The ML vulnerability of the sector was assessed as *High (0.82)*. The assessment details are presented as follows:

I. Comprehensiveness of AML Legal Framework

The variable was assigned a rating of *Low (0.3)*. There are no AML specific laws in this sector. Kenya has several laws and regulations regulating the real estate sector professionals and practitioners, including Architects and Quantity Surveyors Act, Engineers Act, Physical Planners Act, NCA Act, Estate Agents Registration Act, Valuers Act, Surveyors Act, Building Surveyors Act, land Act, land Registration Act, Community lands Act, National Land Commission Act, Stamp Duty Act. However, the industry does not have industry specific regulations on AML/CFT.

II. Effectiveness of Supervision Procedures and Practices

The variable was assigned a rating of *Low (0.3)*. For estate agents, there is a big presence of many unregistered practitioners, making it difficult to regulate. The regulatory bodies and associations do not have mandate and capacity to undertake elaborate AML functions. The construction industry has many diverse players who are not regulated.

III. Availability and Enforcement of Administrative Sanctions

The variable was assigned a rating of *Medium Low (0.4)*. Kenya Property Developers Association, the Architectural Association of Kenya, Institution of Surveyors of Kenya and other similar organizations are considered members' clubs and therefore do not have any enforcement mechanisms in cases of non-compliance with AML/CFT laws and regulations. The professional registration boards provide for monetary penalties, administrative actions, removal of critical staff, and suspension/withdrawal of licenses for misconduct which could include

AML/CFT laws and regulations. Members are subjected to AML/CFT sanctions by other mandated bodies such as CBK (through commercial banks) and KRA. Real estate relies on the national guidelines provided by statutes like POCAMLA laws and Section 6 of the Constitution of Kenya.

IV. Availability and Enforcement of Criminal Sanctions

The variable was rated *Medium Low (0.4)*. Specific boards and associations are governed under laws and regulations that enforce criminal sanctions, fines and imprisonment. For instance, any unregistered persons practicing is guilty of an offence and liable to a fine of KSh.20,000 or imprisonment for a term of two years or both, among other sanctions. Enforcement levels of criminal sanctions is however very low.

V. Availability of Effectiveness of Entry Controls

The variable was assessed as *High (0.7)*. there is no comprehensive legal and regulatory framework or entry controls for the real estate sector. However, there are entry requirements for the respective professions. The entry controls for associations and regulators are very effective. Regulators have sufficient legal powers to exercise when processing license applications.ie BORAQS, EARB, NCA. Annual renewal of membership by most organizations

VI. Integrity of Real Estate Professionals

The variable was assessed as *Medium High (0.6)*. Whereas there are policies and procedures on integrity and dissuasive disciplinary processes, these are for the respective associations and only applicable to members of those associations. However, there are practitioners in this sectors who are not members of these associations and therefore those policies and procedures would not be applicable to them. Some regulators and associations have guidelines on corporate governance, members of staff normally undergo vetting at the on-boarding stage.

Records on conviction and revoked licenses and appointments for board members exist. Internal controls exist but are sometimes compromised. Cases of some staff and professionals colluding with criminals have also been reported. It is easy for proceeds of crime to be invested in the real estate sector in Kenya. The real estate industry is highly competitive making it susceptible to corruption- issues of undercutting by professionals and unethical behaviour.

VII. AML Knowledge of Staff

The variable was assessed as *Medium High (0.6)*. Most real estate associations and regulatory bodies have continuous professional programs (CPDs). There are Board charters and corporate governance procedures as well as a constitution and by-laws for most organisations. There are general and specialised training programs for specific disciplines, committee and board members and data on trained staff and professionals are available. Trainings are mandatory for some associations and regulators. Members awarded CPD points and pre-requisite for annual membership renewal. However, AML specific training programs are lacking across the sector. Most staff and professionals are aware of AML challenges, but there is no concerted effort in the industry for regular training and updates on the area. Staff members and professionals are generally not aware of AML compliance, reporting procedures and obligations.

VIII. Effectiveness of Suspicious Activity Monitoring and Reporting

The variable was assigned a rating of *Low (0.3)*. The real estate regulatory boards and associations do not have the mandate and capacity to monitor and report on staff and members STRs.

IX. Availability and Access to Beneficial Ownership Information

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *Medium Low (0.4)*.

X. Availability of a Reliable Identification Infrastructures

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability Working Group. This variable was given a rating of *High (0.7)*.

XI. Availability of Independent Information Sources

The Working Group reviewed and adopted the assessment conducted by the National Vulnerability

2.7.14 Precious stones and metal dealers

I. Legal and regulatory environment

Dealings in Minerals Regulations, 2016 gives effect to Section 223(1) of the Mining Act in so far as it relates to dealings in minerals. Essentially, it provides for the scope (application of these regulations), procedures to be followed by a person who requires a licence or permit to deal in a mineral, the qualifications, the various forms that are required to accompany an application, the terms and conditions, renewal, revocation and the reporting requirements by the holder of the license or permit as the case may be.

The scope or application of these regulations is largely informed by the definitions of a mineral dealer and mineral dealings in the interpretation section of the Mining Act and also sections 158(1), 164, 171(1) and 172 of the Act. The regulations do not apply to the import and export of rough diamonds. This is because any dealing in diamonds which includes the shipment (import and export of rough diamonds into or from Kenya) has to be governed by the Kimberley Process Certification Scheme. In any case, section 171(4) covers this somewhat, albeit in relation to exports.

The Mining Act, 2016 and the Gazetted Mining (National Mining Corporation) Regulations of 2017 (NMC Regulations) established the National Mining Corporation (the NMC). The NMC is mandated, either on its own or in association with any other person or company, to undertake the exploration and mining of all strategic minerals or deposits in Kenya. The Act entitles the National Government to a 10% free carried interest in large scale mining operations. The free carried shares are to be held by the NMC. However, under the State Participation Regulations, the Cabinet Secretary may appoint any person or statutory body to act as its agent for the exercise of any of the rights of the State as a shareholder.

II. ML Risks/Vulnerability

The precious stones and metal dealers sector in Kenya is not common to all, only an estimated less than 1% of Kenyans have knowledge on precious stones and metal dealings. However, the value of the products involved in this sector (mostly gold, diamonds and other colloidal precious metals) is normally very high, with a likelihood of a prevailing black market. Kenya is exposed to the money laundering risks in this sector given that the country is a trade route for precious stones and metals from the neighbouring countries, including Uganda, Rwanda and Democratic Republic of Congo for export through Kenya's ports. As such, the ML risk in this sector was assessed as *High*.

Therefore, the sector is vulnerable due to the high value product that is traded. Identification of customers is poorly performed and source of income is not effectively established. There is lack of effective and comprehensive regulation also increases the sectors' vulnerability. There is also

extensive use of cash transactions. Trade with persons who are not licensed by Ministry of Mining is very high. According to past events the sector is highly compromised due to interference by politically exposed persons. The foregoing factors increase the sector vulnerability.

Supervision of the sector is centralized to the Ministry of Petroleum and Mining, State Department of Mining. The formation of the National Mining Corporation should aim to enhance regulatory or supervisory powers over the players in the sector. A holder of an artisanal mining permit shall sell any mineral produced to the National Mining Corporation, a holder of a mineral dealer's licence or permit or to such designated persons or bodies that the Cabinet Secretary may specify. Alternatively, the holder of an artisanal mining permit may export the mineral produced with the approval of the Cabinet Secretary and on such terms and conditions that the Cabinet Secretary (Ministry of Petroleum and Mining) may publish in the Kenya Gazette.

All mineral exports are authorised by the Ministry through export permits detailing the exporter (licensed dealer or miner), value, weight, source (where mined or bought) composition of the minerals, country and address of destination. In the case of precious metals (such as gold) and precious stones (such as gemstones), these are of high value but low volume; export permits are only issued by the ministry after a mineral consignment has been seen by a panel of officers, tested, valued and the permit fees & royalty to the Government of Kenya paid. The consignment is then jointly sealed by officers from both the State Department for Mining and the Kenya Revenue Authority.

2.8 National Terrorist Financing Threat

2.8.1 Geographical and socio-political environment that exposes Kenya to terrorism

Kenya has been the target of terrorist attacks over the recent past. Since 1998 when Kenya was the target of an Al-Qaeda attack targeting the American Embassy in Nairobi, there have been numerous other attacks targeting civilians and critical installations. Notable attacks that have occurred in Kenya includes the 2013 Westgate terror attack, the Garissa University terror attack, the 14 Riverside Drive attack and the Mandera bus attack. All these attacks have been conducted by the Al-Shabaab terrorist group save for the 1998 bombing which was conducted by Al-Qaeda. ISIS on the other hand is not known to maintain operations in Kenya nor has there been any recorded incidence of an ISIS attack in the country.

Kenya is a strategic economic hub in the region giving the country dominance in terms of international visibility and status as compared to its regional neighbours. The country shares borders with Somalia which hosts Al-Shabaab terrorist organisation, has a failed government structures and ungoverned spaces which has allowed Al-Shabaab to thrive and launch attacks across the border. Given that the border between Kenya and Somalia is long, un-manned and porous, there have been sporadic incidences of terror attacks from across Somalia targeting Kenyan law enforcement and civilians living along the border.

2.8.2 Perception of the risk of terrorism in Kenya (domestically and internationally)

Internationally, Al-Shabaab is perceived to be the most prominent terrorist group posing a threat to Kenya's stability and a regional threat to peace and stability of Kenya's neighbours. This perception has led the Western world to issue numerous travel advisories for their citizens restricting their nationals to travel into the country on occasions where they perceive the threats to be high. These advisories have been occasioned by the fact that Al-Shabaab has targeted some of its attacks in Kenya and the neighbouring countries against Western targets.

2.8.3 Counter-terrorism measures in Kenya

While there have been several terrorist incidences recorded in Kenya, a number of aggressive counter-measures have been employed by the Kenyan government to combat terrorism and counter violent extremism in the country. The Government has consistently lobbied for the inclusion of Al-Shabaab as a designated terrorist entity under the United Nations Security Council Resolution (UNSCR) 1267, as an Al-Qaeda affiliate. The Government has also enhanced the skills of the Anti-Terrorism Police Unit (ATPU), which is the specialised police unit charged with detection and investigation of terrorists and terrorism financing related cases in the country.

To help stabilise the war-torn Somalia and to disrupt the numerous cross border terror attacks, particularly ambushes against Kenya's security forces, the Kenya Defence Forces (KDF) joined the African Union Mission in Somalia (AMISOM), which is an active regional peacekeeping mission operated by the African Union with the approval of the United Nations Security Council. This initiative has helped in securing Kenyan borders as well as in disrupting the planning, recruitment and launching of terrorist attacks targeting Kenya. Additionally, there are significant investments in modern anti-ballistic weapons, specialised equipment and kits for disruption of terrorist activities. Moreover, the government embarked on building of a physical barrier along Kenya-Somali border to contain incursions of Al-Shabaab militants and crossing of illegal immigrants into the country.

2.8.4 Legislative framework

The leading legislation for counter-terrorism in Kenya is the Prevention of Terrorism Act, 2012 (POTA). Additionally, POCAMLA facilitates combating money laundering and terrorism financing. Both POTA and POCAMLA are complementary in the administration and implementation of the legal measures in combating terrorism.

Under POTA, a terrorist act is defined as an act or threat of action which involves the use of violence against a person; endangers the life of a person, other than the person committing the action; creates a serious risk to the health or safety of the public or a section of the public; results in serious damage to property; involves the use of firearms or explosives; involves the release of any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agent or toxin into the environment; interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services; interferes or disrupts the provision of essential or emergency services; prejudices national security or public safety.

The above mentioned activities must be carried out with the aim of intimidating or causing fear amongst members of the public or a section of the public; or intimidating or compelling the Government or an international organization to do, or refrain from any act or destabilizing the religious, political, constitutional, economic or social institutions of a country, or an international organization.

These legal provisions are supported by policy and administrative initiatives to help counter radicalisation and recruitment of Kenyan youths into terrorism. Specifically, the National Strategy to Counter Violent Extremism (NSCVE) and the County Action Plans (CAPs). A number of institutions have also been established and resourced to fight terrorism, including the Joint Counter-Terrorism Analysis Taskforce (JCTAT), Joint Intelligence Centre (JIC), Anti-Terrorism Police Unit (ATPU), National Counter-Terrorism Centre (NCTC) and the Multi-Agency Taskforce (MAT). The country has also issued policy and administrative guidelines on countering violent extremism including the National Strategy to Counter Violent Extremisms and the additional County Action Plans.

2.8.5 Domestic terrorism threats targeting Kenya

Terrorism manifestation in Kenya emanates from Al Shabaab (AS), an AL QAEDA (AQ) affiliate group operating in Somalia, and Islamic State (IS) affiliate groups in the region i.e. Islamic State in Somalia operating in Puntland. In this risk assessment, the major terrorist organisations that were considered are the Al-Shabaab, ISIS, self-radicalised individuals commonly referred to as Lone Wolf actors and the Al-Qaeda.

I. Al-Shabaab

Al-Shabaab continue to pose significant threat to Kenya from its operational headquarters in Jilib, Somalia. The group is affiliated to Al-Qaeda which had been hitherto active in the region. The group has conducted major attacks both on Kenyan critical infrastructure installations and also against the civilian population. The expansive border (about 700 kilometres from Mandera to Lamu) between Kenya and Somalia and the porous nature of this border has enabled infiltration of the Somalia based terrorist groups into Kenya. Al-Shabaab is known to attack western interests in the country as well as civilian populations. The most recent deadly attack conducted by the group was in 2019 in Wajir County24.

[24] S/2020/949 - E - S/2020/949 -Desktop (undocs.org) at paragraph 56

II. ISIS

The ISIS threat in Kenya emanates from Islamic State in Somalia operating in Puntland. In Somalia, the Islamic State in Iraq and the Levant (ISIL) faction in Somalia pledged allegiance to the new ISIL leader, Abu Ibrahim al-Hashimi al-Qurashi25 making the group maintain its presence not only within Somalia but also having regional networks and global appeal as well.

III. Self-Radicalised

Self-radicalised individuals also known as 'lone wolf' attackers are not common in Kenya due to the dominance of other terrorist groups particularly the Al-Shabaab and Al-Qaeda which have recorded a number of attacks against Kenyan targets. The estimate of the level of threat from lone self-radicalised individuals is analysed along with other terrorist organisations posing threat to Kenya.

IV. Al-QAEDA

The first attack conducted by Al-Qaeda operatives was in 1998 in which a suicide bomber, Abu Anas Al-Libi engineered an attack on the US Embassy in Nairobi. A similar attack was carried simultaneously targeting US Embassy in Tanzania. Approximately 224 people died from the attack. While there had been prior activities of Al-Qaeda in Kenya, the level of threat from the group has diminished over the years which can be attributed to the dominance of its affiliate Al-Shabaab in the region. Therefore, there was no recorded activities conducted by the terrorist organisation during the assessment period.

2.8.6 Regional and global threats facing Kenya

Kenya shares extensive and porous borders with Somalia which has active terrorist cells and operational bases for Al-Shabaab, Al-Qaeda and ISIS, posing a security threat to Kenya and the region. Therefore, the threat of terrorism from the region and global terrorist organisation mentioned above is considered on the basis of shared but very porous borders between Kenya and Somalia which has allowed the terrorist groups to target Kenya from across the border.

2.8.7 Threat to Kenya as transit point

Kenya is a strategic location being a regional transport hub with elaborate network and seaport connectivity. Kenya also borders a designated terrorist jurisdiction in Somalia as well as having proximity to neighbouring states which faces political instability. The assessment considered the general political environment in the region as well as the ability of the known terrorist actors in Somalia to cross Kenya's boundaries in order to carry out attacks in neighbouring jurisdictions such as Uganda and Tanzania. The assessment also considered intelligence of other nationals being intercepted in Kenya while attempting to cross its borders to either join ISIS or Al-Shabaab. The assessment considered the risk evaluation by neighbouring jurisdictions about terrorist operatives active in the region. Uganda, Al-Shabaab executed a twin bomb blast in Kampala in July 2010 that left 76 people dead.

Given these considerations, the threat posed by Al-Shabaab and ISIS in using Kenya as a transit point and was rated as *Medium* for both the two groups. The *Medium* level of assessment was also given for the two groups on the rating of the impact of terrorism financing threat. Threat posed to Kenya as a transit point for Al-Qaeda was rated as *Low* and the same rating of *Low* was assigned in terms of its impact on terrorism financing threat. Following the above

[25] Pledges to New IS 'Caliph' Continue to Come from Group Fighters, This Time from Pakistan, Somalia, and Yemen | Jihadist News (siteintelgroup.com)

considerations on the levels of terrorist threats, the overall terrorism threat to Kenya was assessed as *Medium*.

2.8.8 Terrorism financing threat

The data considered in this analysis was derived from the following law enforcement agencies; Directorate of Criminal Investigations (DCI), Office of the Director of Public Prosecutions (ODPP), National Police Service, Anti Counterfeit Agency, Office of the Attorney General (AG), National Intelligence Service (NIS) and Financial Reporting Centre (FRC). The analysis established that Kenyan investigative agencies do not establish proper records on financing of terrorism or for money laundering activities from the predicate offences relating to terrorist cases. As such, the data presented for analysis focused on criminal investigations and prosecution of terrorist offences rather that terrorism financing. The assessment also considered the direction, sources and channels of funds.

2.8.9 Terrorism financing vulnerability

I. Quality of legislation

Kenya has designated TF offence as a predicate offence for money laundering. POTA also provides for a wide range of dissuasive penalties for terrorist financing offences and criminal penalties for terrorist financing offences regarded as proportionate when compared to penalties for other serious offences. When such penalties cannot be applied to legal persons, there are civil or administrative sanctions that can be applied to them, for instance, freezing mechanisms. Besides, the penalties for TF is proportionate and dissuasive to justify a high priority for these offences compared to other serious offences in the country.

The assessment also considered the judicial handling of terrorism cases and concluded that the judges have access to a wide range of sentencing tools (e.g., fines; imprisonment, which increases with the severity of the offence, number of offences, etc.). it was established that judges who handle terrorist cases are guided by appropriate sentencing guidelines and similar instruments, as well as their firm understanding of the impact of terrorist financing, when considering the seriousness of terrorist financing offences in their sentencing.

II. Availability and effectiveness of laws and regulations regarding targeted financial sanctions regimes to comply with UN Security Council resolutions relating to Terrorism Financing (TF):

Kenya has a legal framework to identify a competent authority as having responsibility for proposing (UNSCR 1267) and designating (UNSCR 1373) persons and entities that meet the designation criteria. Further, the legal framework under the Kenyan laws requires all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. This has been demonstrated in practice when the Cabinet Secretary, Ministry of Interior and Coordination of National Government designated various individuals as specified entities26. The POTA Regulations under which the Cabinet Secretary drew his authority prohibits Kenyan nationals, or any person and entities within Kenya, from making funds or other assets, economic resources, or other related services available for the benefit of designated persons and entities. POTA Regulations also establishes mechanisms for communicating designations to the financial sector and the Designated Non-Financial Businesses and Professions (DNFBPs) and also requires that financial institutions and

[26] Cabinet Secretary Dr. Fred Matiangi orders accounts of 9 Kenyans frozen over terror links (the-star.co.ke)

DNFBPs report to competent authorities any assets frozen or actions taken in compliance with the prohibition requirements, including attempted transactions

Kenya has also adopted legal measures which protect the rights of bona fide third parties when applying sanctions against terrorist entities and has established publicly known procedures to de-list and unfreeze the funds or other assets of persons and entities which do not meet the criteria for designation. As such, the current provisions of POTA allow access to frozen funds and other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses

III. Quality of intelligence

There is adequate legal framework and powers vested on competent intelligence services to deal with terrorism financing. The intelligence agencies are adequately structured, funded, and staffed by persons who have appropriate training and skills including specialized training with regard to terrorist financing, financial products/services, and financial processes. Further, the intelligence agencies are provided with sufficient financial, technical, and human resources to perform their functions. They also have sufficient operational independence and autonomy to carry out their functions freely, including the autonomous decision to collect, analyse and disseminate information and intelligence related to TF to investigative and other competent authorities.

In terms of safeguards, the assessment established that there are safeguards in place to preserve the integrity of the intelligence agencies' staff both in law and in practice, which have enabled the staff to maintain high professional standards including on issues related to confidentiality and integrity. For access to information, it was established that the intelligence agencies have real time unrestricted access to all relevant databases of other domestic agencies and commercial sources, and can obtain additional information from relevant sources for their analysis, including from their own sources and informants. They are also able to share intelligence and information related to TF with competent intelligence services of foreign countries through various mechanisms.

IV. Effectiveness of domestic cooperation on combating TF

The Financial Reporting Centre (FRC), intelligence services, investigators of financial crime, asset forfeiture investigators, counter-financing of terrorism (CFT) regulators and supervisors, customs and tax authorities meet regularly to share information and discuss joint initiatives. These coordinating mechanisms are also enshrined in the legal frameworks that allows for joint investigations by relevant investigative units. Further, there is effective cooperation between the FRC and reporting entities as well as fully functional interagency cooperation committees such as the NTF on AML/CFT, NCTC, JCTAC and JTTF.

V. Effectiveness of TF-related suspicious transaction reporting, monitoring and analysis

The suspicious transaction reporting (STR) system works well, including reporting, analysis, and dissemination and the type of data from other competent authorities that the FRC has access to in order to support its analysis is wide and unrestricted. The FRC is also able to obtain additional financial information from reporting entities on an STR and can obtain information from an entity that has not filed an STR and even make a follow-up when it is deemed necessary, based on an STR filed by another entity. Additionally, the FRC is able to obtain financial information from regulated entities where no STR has been filed and utilize publicly available information such as remittance data and data on beneficial owners of legal persons and legal arrangements to enable it conduct its analysis.

VI. Adequacy of human resources for CTF (*including specialized investigators, FIU and intelligence officers, prosecutors, and judges*)

The counter-terrorism financing (CTF) agencies are adequately structured; moderately funded; and well-staffed by persons with appropriate educational background, training and skills, including specialized training in regard to financial crimes, financial products/services, and financial processes.

VII. Effectiveness of international cooperation

The country has a legal basis for international cooperation related to TF through the enacted legislation and the treaties that have been ratified by Kenya. Kenya also has mechanisms for informal international cooperation on TF cases (e.g., intelligence to intelligence, police to police and FIU to FIU).

VIII. Awareness and commitment to fight TF

There is high level political commitment to fight TF in Kenya (i.e., TF is given high priority in the country) and there is good will of Kenya's political leadership in the fight against terrorism and terrorism financing. There is also awareness and commitment among the policy makers, law enforcement, FRC and intelligence community to fight TF.

IX. Geographical and demographic factors

The assessment established that the country is able to conduct joint patrols with neighbouring jurisdictions including Somalia and is actually able to offer governance interventions and support to Somali Government. Further, the military interventions have reduced the Al-Shabaab capabilities and allowed the establishment of the Somali National Government thereby increasing the ability for Somali national authorities to fill in the ungoverned spaces which has helped to reduce the pool of radical elements.

There are inter-country cooperation/communication, including the common cultural forums/clan elders who are relied upon for dispute resolutions between Kenya and Somali clans have enabled the country counter the drivers for radical extremism. This added to the Intel-led CSRs/civilian military cooperation (at community level) to counter narratives for TF mobilisation have greatly reduced terrorist threats to Kenya.

2.9 Financial Inclusion Products

2.9.1 Overview of financial inclusion products in Kenya

Financial inclusion is generally defined as access and use of financial services, where individuals and businesses have access to useful and affordable financial products and services that meet their needs that are delivered in a sustainable way. The key objective is to ensure that all households and businesses, regardless of income level, have access and can effectively use financial services to improve their lives.

Financial inclusion products target segments of the population who may be excluded from accessing financial services. According to government development plans such as the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007, the financial sector was highlighted as one of the principal sectors to grow the economy. By 2002, the financial sector had a 10.6% contribution to the GDP and it also accounted for 3.8% of total employment. However, this potential to grow was hindered by exclusion of a sizable population from access to financial services where, 38.6% of the population was excluded from financial services as highlighted in Financial Access Report by CBK in 2006.

Exclusion from financial services may be attributed to aspects relating to social, economic and geographical location. Some of the major factors leading to financial exclusion include irregular sources of incomes, lack of prerequisite identification documents, high fees charged to access financial services and remote areas where services are not easily accessible which required moving long distances to access the services. These hindrances prompted the government to come up with strategies of promoting access to financial services aimed at ensuring that the whole population has access to services by the year 2030. Due to these interventions, the situation has gradually improved with a national access to financial products inclusion standing at 83% by December 2020.

In the realm of regulatory framework, financial inclusion is a multisector service which targets all financial sectors to ensure there is inclusion within the economy. As at the time of the assessment, Kenya had no policy on financial inclusion. Such a policy could have assisted in strategic planning, monitoring and gradual evaluation of the progress of inclusion of the target market. In the absence of a national policy, different sectors operating under different regulatory frameworks guide products development within their respective sectors. Licensed operators are encouraged to develop products which meet legal requirement, addressing needs as well as facilitating ease of access to the products. In addition, to ensure that the products are not abused for ML/TF, POCAMLA is applicable to provide guidance and control for all financial institutions.

The different institutions thereafter design tailor-made products which target to address the needs of their customers who could not be covered under the normal metrics of their products. Notable developments occurred in the financial sector from 2016-2020, as several financial institutions were able to innovate products which increased market penetration and accessibility of products. Some institutions managed to fully segregate and analyse the products, while others incorporated them within their general performance metrics.

2.9.2 Assessment of ML vulnerability of the financial inclusion products

The overall ML vulnerability assessment for financial inclusion product was assessed as *Medium Low*. This rating resulted from the mean average inherent risk assessment of the different products offered in different sectors vis-a-viz the regulatory and operational mitigation controls in place. The assessment was conducted on associated risks which are broadly

categorized dependent on sector specifications. Different sectors have different risk categorization. For all sectors, the following checks are done for different categories:

- Customer risk- associated with the target customers.
- Product risk- associated with accessing the product.
- Channel risk- associated with the platform used to access the product.
- Geographical risk - associated with jurisdictions which have deficiencies in combating ML/TF.
- Partner risk - associated with contracted third parties who either facilitate insurance business or act as intermediaries in the transactions. These includes; brokers, intermediaries, money remittance businesses and mobile network operators.

2.9.3 Sector 1: Payments service providers (PSPs)

Products and services under this category are channeled through mobile phones. At the time of this assessment, the total number of mobile subscriptions stood at 57 million, with 30.5 million registered for mobile money. This offered a good platform for enhancing financial inclusion to a wider segment of the population. There are four players in the sector but two institutions which controls over 98% of the financial transactions were picked for the assessment. Customers are able to easily acquire and register SIM cards which have inbuilt e-wallet for financial transactions. These wallets are enabled to carry out several services.

The overall rating for this sector is *Medium*, focusing on the four major financial inclusion services offered, including:

- ***Cash In-Cash-Out***: customers are first required to be enrolled to hold registered SIM cards which are then enrolled for mobile money services. The functionality uses a simplified due diligence approach where only a verifiable means of identification is required both for enrolment and transactions. Transactions are carried out at agent locations and easily accessible delivery channels like the automated teller machines (ATMs) and the amounts transacted are flexible with a daily limit of KSh.300,000, and a transactional limit of KSh150,000. These limits were enhanced in March 2020 from KSh.140,000 and KSh.70,000, respectively as a way of expanding financial inclusion and enhancement of payments during the Covid-19 lockdown period.
- ***Pay Bills*:** enables customers to be able to make business transactions easily, efficiently and conveniently. Transactions involved purchases of goods, payment of services from government institutions, settlement of business transactions. Pay bills enables traders to collect, manage and reconcile their business finance. Limits are dependent on the size and categorization of the business and they range from KSh.150,000, which is set on individual wallets, but the limits for bigger businesses are higher.
- ***Money Remittance Services (MRPs)***: allows customers to receive and send money through registered and licensed MRPs. Funds from different jurisdictions and within the country are efficiently, timely and securely received and accessed through mobile wallets.
- ***Interoperability:*** offered to all SIM card holders who are enabled to move money from one PSP to another. Access required the transacting between the two systems to be registered for mobile banking by their respective PSP provider.

The features described above make the products easy to access thus favorable for financial inclusion. The risks in this sector are classified in five broad categories as described below;

a) **Customer risk:**

This was assessed on vulnerabilities associated with customers. For the different categories of products, the following are the highlights of the product descriptions:

Cash in Cash out- at the point of on boarding, customers are required to properly identify themselves by producing identity cards. These details are validated through IPRS system.

Pay bills- proper identification is obtained while enrolling for this product, both for individual and for the business. The ones registered under individual names, national identification and KRA PIN are obtained and validated through IPRS. Registration is exclusively done at PSP retail shops.

Money Remittance Services –this allows customers to receive and send money through registered and licensed MRPs. To transact, clients are required to produce identification documents and particulars for the transactions.

Interoperability- this product enables customers to move money between different PSP platforms in real time. To access the product, customers must be registered for mobile money with their respective PSP providers. Transactions are PIN based.

b) **Product risk:**

The rating for this product was captured at *medium*.

Cash in Cash out- there is a transactional limit of KSh. 150,000 for a single transaction and a daily limit capped at KSh.300,000. These limits were fixed through scientific analysis on customer financial behaviors and patterns.

Pay bills- there are separate thresholds for different tiers dependent on nature of business. These are usually decided at the point of onboarding and is based on the transaction history of clients. Further, nature of business is considered and rated depending on the associated inherent risk. Customer limits also varies depending on mode of operation. For those in informal sector and with no business registration, the transaction limits are embedded on the phone e wallet of KSh. 150,000.

MRPs- transactions are accessed through e-wallets and the respective thresholds limits of KSh. 150,000 for single transaction and a daily limit capped at KSh.300,000 are maintained.

Interoperability- access of these wallets is through USSD[27] commands. There is a transactional limit of KSh. 150,000 for single transaction and a daily limit capped at KSh. 300,000.

c) **Channel risk:**

As guided by provisions of the National Payment Systems Act, channels of delivery are supposed to be safe, with the providers required to ensure that customers data and transactions are secure. There is also enhanced monitoring for transactions targeting use of shared mobile phones by SIM cards registered under different identities. This assists in pointing out misuse of channels. Payment service providers ensure that all transactions are PIN based thus mitigating the risk of anonymity and misuse of delivery channels. Due to mobility of mobile phones which are used as delivery channels, cash out transactions are ring fenced and can only be done when the person transacting is within the vicinity. The assessment therefore achieved a low rating for the channel risk.

[27] Unstructured Supplementary Service Data (USSD) is a Global System for Mobile Communications (GSM) protocol that is used to send text messages.

d) **Partner risk:**

This is the third party associated with partners who are contracted to carry transactions on behalf of the PSP. These include agents, merchants and other payments providers, both locally and internationally. Effective vetting is conducted during the on boarding of agents, where directors' passports, registration certificates and licenses from respective authorities are collected. A risk analysis is conducted on the partner and regulatory approval is sought. Further, to assess AML/CFT controls in place, site visits are done and real time transaction trials done. Only partners with sound controls, those operating from non-high risk jurisdictions are contracted.

e) **Geographical risk:**

This variable was rating as posing *Medium* risk.

Cash in Cash Out- monitoring of transactions from foreign jurisdictions is enhanced to ensure transfer of third party risks is mitigated. Transactions to and from high risk jurisdictions are totally blocked out. These are jurisdictions like Somalia, Yemen, Iraq, Syria, Colombia, among others.

Pay bills- this only takes transactions from local operations. However, even places which may be considered as high risk spots like border points, monitoring of transactions from those areas is enhanced.

MRPs- all partners are properly vetted and limitations established on funds from high risk jurisdictions. MRPs registered and operating in high risk jurisdictions are not viable for partnership. Funds from high risk jurisdictions are singled out and blocked.

Interoperability – geographical risk for this category transactions are rated low since both subscribers must be registered locally and the USDD commands are not applicable across the boundaries.

2.9.4 Sector 2: Banks and microfinance banks

Financial inclusion in this sector were tailored around accessing banking services with simplified CDD measures. To ensure these products were easily accessible to the target population, the products are offered through multiple channels. Customers can either access the products through main banking halls, contracted agents and through mobile phones through partnerships with licensed PSPs.

2.9.5 Sector 3: Investment companies

Products in this sector are mainly for long term investments and penetration was still very low.

a. **Money markets-** allows a customer to easily purchase products like Unit Trusts. Clients need to register with the national identity card and ownership of a registered mobile line. The amounts to be transacted are low, hence affordable for many persons and also allows easy cash out within four days.

b. **Pension plans**- targets individuals who are under no Pension Scheme, both in employment and in business. They also include groups of individuals whose employers do not have a Retirement Benefits Scheme, employers of SMEs who do not have an occupational scheme and any other person planning to save for their retirement.

a) **Customer risk:**

The risk remains low since the products target customers with long term investment plans.

b) **Product risk:**

Investment products are tailored with proper identification, amounts involved are usually low. To ensure that the risk of vulnerability of cash transactions is mitigated, all transactions are made through bank accounts. For group investments, accounts must be in the name of the group and be operated by trustees. Further, transactions limits are embedded on the PSP approved limits.

c) **Geographical risk:**

Funds used in these schemes are mostly contributory and the bulk is from locals. For the persons from foreign jurisdictions, the funds are wired to bank accounts where an entry point validation is done. Further, most of the targeted customers are in low risk jurisdictions where they are subjected to other secondary measures like FATCA validations. This ensures that only funds from bonafide sources are allowed to fund the products.

2.9.6 Sector 4: Insurance

Insurance products varies from one institution to another and are diverse in nature, use and design. Currently, different institutions have designed tailor made products for their customers, with the sector only contributing about 7% of all financial inclusion products in 2020.

a. **Education saving products-** are long term saving products targeting to build an education cover for students. The entry requirements are low requiring only an Identity Card. Products target long term periods and have reasonable threshold limits. Currently, contributions are capped at a maximum of KSh. 20,000.

b. **Saving and investments products-** targets people with subsistence incomes planning to build a saving, either for future use or for investment. These products have low entry requirements with a national identification and KRA tax PIN as the only prerequisite registration documents.

c. **Personal protection products-** covers both individual entities against potential threats. Main features include, low sum assured capped at KSh.one million. Easy requiring national identity cards and group registration. Mobile lines registered under the same KYC.

a) Customer risk:

Access to these products are easy with only national identity card and KRA pin are required which are then validated through IPRS and *i*-tax. Registered groups are required to submit complete registration documents for verification and this is done through BRS systems.

b) Product risk:

The products are designed with low limits on sum assured. Maximum thresholds of premiums of KSh. 20,000 per month and sum assured capped at KSh.1 million, making the products less attractive. Despite the products allowing non-face to face to transactions, the limitation that only registered and matching KYC profile for the mobile number have mitigated the misuse of the product.

c) Partner risk:

To expand the outreach of financial inclusion products, insurance underwriters have contracted agencies to conduct sales customer due diligence. Some of these agents have inadequacies in terms of AML knowledge which is in essence transferred to the underwriter. Insurance underwriters further partner with PSPs to offer insurance products through mobile phones. This is through the use of USSD commands for enrolment and transacting.

d) Geographical risk:

Funds from cross border payments are only received through bank transfers, PSP and MRP platforms. The first level of controls for ATM falls under the ambits of the respective institutions as payments for insurance is a secondary transaction. These products receive funds from foreign jurisdictions, but the amounts are not significant.

2.9.7 Sector 5: Saccos

Products within this sector are mainly saving and credit accounts targeting people in rural and informal settlements. The target population are people who are organized in self-help groups with an aim of economic empowerment on shared visions. The CBK (*FinAccess)* Report, 2020 showed that deposit taking Saccos accounts for 3% of financial inclusion, including farmers, employed people and non-salaried business people in the informal sector.

The ML vulnerabilities under Saccos are classified into the following four categories:

a) Customer risk

Different financial inclusion products have different requirements but for all, customers' identity must be verified. For all the products, customers are required to provide a copy of identification document (identification card) and provide the bio data. Thereafter, different products have specific requirements which must be fulfilled. These are as follows:

i. ***Savings accounts-*** customers must present their account applications. National identity copies/ Passports are verified. However, there is no mechanism of validation. For customers in the diaspora, a copy of the passport notarized by an authorized notary, and must be individuals who are not listed by the international bodies such as OFAC, UNSC among others.

ii. ***Loan accounts-*** customers must be already registered members and operating saving accounts. They must present copies of identification as well as formal applications.

iii. ***Agency banking-*** customers must be registered member and account holders and are required to provide business KYC for review and appointment as an agent.

iv. ***Mobile bank loans-*** this product is offered to account holders who also have registered mobile numbers. The KYC for the mobile numbers is third party as the Sacco is dependent on the PSP registration. However, the registration must march the phone registration details.

b) Product risks

Section 34 (1) of Sacco Society (Deposit Taking Sacco Business) Regulations, 2010, requires Saccos to submit new product designs to SASRA for review and approval before they are rolled out to the public. Products are only accessed after customers are properly enrolled. Different products have different requirements.

c) Geographical risk

This is the risk associated with introducing a product to be accessed by people operating in high risk jurisdictions. The rating for this variable is *Low*. This is because only saving products and remittance are accessible to non- residents and transactions must be properly supported with documentation.

d) Partners risk

This is the risk associated with partners who are contracted to carry transactions on behalf of the Sacco, including agents, merchants and other payments providers, both local and

international. For partnership between Saccos and PSPs, Section 16 (1) of the PSP Regulations requires CBK to be notified of any newly contracted agent or merchant prior to commencement of operations. While section 17 (1) of Sacco Society (Deposit Taking Sacco Business) regulation 2010, directs Saccos to seek SASRA's approval before they enter into agency agreement. This then ensures that all agent partnerships are well regulated.

2.10 Environmental Crimes

2.10.1 Background information

The environmental sector is a dynamic field which has been evolving over time largely due to human activities, emerging technologies and changes in land use patterns. This has immensely contributed to environmental degradation and environmental crime. In line with Article 42 of the Constitution, the sector is required to provide for a clean and healthy environment for every person while Article 69 (a) requires the State to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.

The sector is a fundamental pillar of the Kenyan economy as it plays a pivotal role in securing the environment stewarding the nation towards sustainable utilization of natural resources. It also contributes significantly to the Gross Domestic Product (GDP) and has a great potential in contributing to the attainment of targeted 10% economic growth as envisioned in Kenya's economic blueprint Vision 2030. According to the KNBS Economic Survey of 2020 the environment and natural resources sector contributes 3.2% to the GDP through forestry and logging, fishing and aquaculture, mining and quarrying and water supply.

The Constitution lays out the obligations of the state in regard to sustainable exploitation of natural resources and management of the environment by highlighting the need to encourage public participation and establishing systems to ensure protection of biological diversity. It further gives the courts a mandate to compel public officers to protect the environment by responding appropriately to stop harmful practices as well as providing a platform for victims seeking compensation.

2.10.2 Overview of the environmental sector in Kenya

Environmental crime and illegal trade in wildlife has escalated rapidly and globally, and now encompasses a wide range of flora and fauna across all continents, including terrestrial and aquatic animals, forests/plants and their products. According to the World Economic Forum's Global Risks Report 2018, the most pressing threats that are perceived as having the biggest impact in the next 10 years are extreme weather events and natural disasters, failure of climate change mitigation and adaptation, water crises, biodiversity loss, and air and soil pollution.

Environmental crimes fuel corruption, insecurity, threatens biodiversity, and can have a significantly negative impact on public health and the economy. In particular, it has contributed to the spread of zoonotic diseases in recent years which are derived from viruses, bacteria, and other pathogens transmitted between animals and humans. According to the World Health Organization, some 60% of emerging infectious diseases that are reported globally are zoonotic (including COVID-19, Ebola, MERs, and SARs). This underlines the importance of ensuring that natural resources are traded in a legal, safe and sustainable manner, and that countries remove the profitability of illegal markets.

To reflect the serious nature of this crime, the UN General Assembly has adopted several resolutions to combat IWT, and in September 2019, reiterated its call for all members "*...to amend national legislation, as necessary and appropriate, so that offences connected to IWT are treated as predicate offences for money laundering*".

Kenya has various agencies established to protect and manage the sustainable utilization of the environment including: Kenya Wildlife Service (KWS), Kenya Forestry Service (KFS), National Environmental and Management Authority (NEMA), State Department for Fisheries, State Department for Mining and the Kenya Coast Guard. In order to assist the above organizations in their role of managing the environment, various agencies act as auxiliary forces ensuring that those who negatively impact the environment are held accountable. Such agencies include those in the justice, border controls law enforcements sector such as the Judiciary, ODPP, NPS, DCI, State Department for Immigration, Kenya Ports Authority, Kenya Airports Authority, among others.

2.10.3 Players in the sector

The players in this sector are both state and non-state actors. The state actors constitute autonomous and semi- autonomous government agencies which include the following:

a) Kenya Wildlife Service (KWS)

KWS is established under Section 6(1) of the Wildlife Conservation and Management Act, 2013. Under Section 7 of the Act, KWS is mandated with conservation and management of national parks, wildlife conservation areas, and sanctuaries under its jurisdiction and to provide security for wildlife and visitors in national parks, wildlife conservation areas and sanctuaries.

b) Kenya Forest Service (KFS)

KFS is established under Section 7 of the Forest Conservation and Management Act, 2016 and is mandated under Section 8 of the Act to among others; to conserve, protect and manage all public forests.

c) National Environment Management Authority (NEMA)

NEMA is established under the Environmental Management and Coordination Act, 1999 (EMCA) and is mandated to exercise general supervision and coordination over all matters relating to the environment and is the principal instrument of Government in the implementation of policies, regulations and standards relating to the environment.

d) National Mining Corporation (NMC)

National Mining Corporation (NMC) is established under Section 22(1) of the Mining Act, 2016 as the investment arm of the national government in respect of minerals. The functions of the National Mining Corporation are to engage in mineral prospecting and mining, and any other related activities.

e) Fisheries Department

The State Department for Fisheries, Aquaculture and the Blue Economy is under the Ministry of Agriculture, Livestock and Fisheries and has the following mandates: protection of the aquatic ecosystem and coordination of development of policy, legal, regulatory and institutional framework for the fisheries industry, aquaculture and the blue economy.

f) Collaborating agencies

In achieving their mandate, the lead agencies in the environmental sector work very closely with other law enforcement agencies which include the National Police Service (NPS), Kenya Revenue Authority (KRA), Kenya Airports Authority (KAA), Kenya Ports Authority (KPA), Kenya Coast Guard (KCG), the Office of the Director of Public Prosecutions (ODPP) and other government institutions both at the National and County level. At the international level, these

agencies include Interpol, the Convention on International Trade in Endangered Species of Wild Fauna and Flora CITIES28, Lusaka Agreement Task force (LATF), among others.

g) *Development Partners and International Organizations*

Development Partners and International Organizations provide financial, technical support and capacity development to the environmental agencies. The sectoral agencies collaborate with development partners in the implementation of its programs such as wildlife conservation, climate change, water infrastructure development, water supply and sanitation and natural resource conservation.

h) Non-state actors

The non-state actors are independent institutions and individuals who provide vital support roles mainly in resource mobilization, capacity building, community empowerment, technical support, creation of awareness on environmental protection and conservation of natural resources. They are also involved in conservation activities such as tree planting, prevention of soil erosion and conservation of water catchment areas and wild lands among others. They are categorized into, Non-Governmental Organizations (NGOs), Civil Society Organizations (CSOs), Community Based Organizations (CBOs), Faith Based Organizations (FBOs,) and other special interest groups that participate and support programs in the sector.

i) Media

The media is important in advocacy and communicating the sector's policies, projects and programs to the public. Responsible reporting by the media is therefore crucial for transparency and accountability in the use of resources and highlighting success cases to be replicated in other areas. It also plays a major role in exposing environmental breaches, creating awareness and publicity.

2.10.4 Performance developments in the environmental sector since 2016

The environment sector has made significant changes in the past five (5) years especially on regulations, environmental crime, operations, MOUs and bilateral agreements. Some of the key developments in the sector during the last five years include the following:

(i) the Paris Agreement signed on 22nd April, 2016 and ratified on 28th December, 2016which is an international treaty on climate change with a goal to limit global warming;

(ii) a training collaboration between the Prosecution Training Institute (PTI) Kenya and the Higher School of the Public Prosecution Service (ESMPU) of Brazil aimed at implementing joint trainings, research and academic activities relating to prosecutions. In addition, collaboration with Brazil's Global Institute for Environment, to enhance prosecution and investigation of Environmental cases;

(iii) MOU between ODPP and Brazil's Global Institute for Environment, to enhance prosecution and investigation of Environmental cases;

(iv) some of the legislative changes in Kenya include: Climate Change Act, 2016, Mining Act, 2016, Water Act, 2016, Forest Conservation and Management Act, 2016, Fisheries Management and Development, 2016;

(v) increase in technical competency levels, expertise and professional development of staff in all key agencies;

[28] https://cites.org/eng/parties/country-profiles/ke

(vi) staffing and deployment of staff to cover key geographical locations in line with threat to environment and adoption of devolution of system of government;

(vii) development in research infrastructure where KWS has a state-of-the –art forensic and genetics laboratory, making Kenya the second country in Africa after South Africa to apply Wildlife DNA forensic analysis in wildlife law enforcement and Cargo scanners by KRA to help in Protection of environment through enforcement of prohibitions and restrictions in trade in endangered animal species;

(viii) increased conviction rates of wildlife crimes and successful assets recovery/ forfeiture arising from a wildlife related cases;

(ix) increased adoption of technology in the fight against environmental crimes and establishment of relevant databases by key agencies;

(x) heightened awareness creation and involvement of local communities in wildlife conservation/protection;

(xi) community owned conservancies that provide livelihood to local communities and give incentives to communities to protect wildlife and biodiversity; and

(xii) banning the use, manufacture and importation of all plastic bags for commercial and household packaging through a Gazette Notice in February, 2017.

2.10.5 Objectives of assessing the environmental sector

The environmental crimes risk assessment aimed at:

i. identifying the main environmental crimes threats by establishing a typology of the criminality in the country, and their extent and consequences, especially financial;

ii. assessing vulnerabilities to environmental crimes, based on the available environmental crime and related ML/TF controls as the legal and regulatory framework; and

iii. formalizing an action plan to strengthen environmental crimes and related ML and TF controls.

2.10.6 Assessment of ML vulnerability of the environmental crimes sector

The ML vulnerability posed by environmental crimes in general was assessed as *Medium*. The assessment revealed that the country has a significant case load on environmental crimes, however few cases were subjected to parallel financial investigations.

Only two environmental crime cases being handled by ARA and other LEAs progressed to successful prosecution in relation to money laundering, and related asset recovery under illegal possession of wildlife trophies. The assessment further revealed that no cases relating to forestry, fisheries and waste pollution were subjected to parallel financial investigations, mainly due to low AML/CFT awareness and a focus by agencies on their primary predicate offence mandate without following the associated predicate offences and proceeds of crime.

The report on "*Special Typologies Project Report on Poaching, Illegal Trade in Wildlife and Wildlife Products and Associated Money Laundering in the ESAAMLG region*" by ESAAMLG, confirmed that despite arresting traffickers and seizing illegal wildlife products, law enforcement failed to arrest or convict, let alone confiscate/forfeit illegally acquired assets by the criminal masterminds wreaking havoc in this area across Africa. The study equally found that law enforcement investigations, particularly in the ESAAMLG region, were primarily focused on the poaching activity as a predicate offence and hardly considered investigating the financial flows related to these crimes.

I. Data collection, risk analysis and assessment

The data is collected consistently and informs organizational strategies in mitigating risks and resource mobilization resulting in robust risk mitigation strategies in the fight against crime and efficient resource mobilization processes. However, the systems use different pre-set data formats/classifications posing a challenge in harmonization of data across different entities and tracking of cases and corresponding offences across organizations. However, the collated data was based on several agencies' individual systems and may not reflect the actual position on the ground due to the different data sets utilized by different systems and time it takes to conclude cases in the judicial system.

II. Capacity of designated authorities

The capacity of designated authorities was assessed as *High*. Kenya has designated bodies charged with the coordination and development of a national strategy to combat environmental crimes. The designated authorities for environmental management have the capacity to carry out their functions freely, including autonomous decisions to analyze cases and/or forward or to coordinate their actions with other authorities to combat environmental crimes. Each category of environmental crime to which Kenya is exposed has a designated body in charge of coordinating the development of a national strategy to combat them. These include KWS, KFS, NEMA, ODPP, DCI, among others guided by the respective laws.

III. Definition of environmental breaches

Kenya has well defined environmental offences in legal and regulatory instruments for combating environmental crimes in its territory. These include domestication of various international legal instruments which call for criminalization of environmental breaches. In addition, Kenya has laws/regulations which identify and define illegal wildlife offences, forest offences, illicit fishing, mining violations, hazardous waste trafficking or any other criminal environmental conduct.

The offences are defined in multiple legislative instruments. Kenya has also sufficiently defined illicit conduct related to core offences, such as participation in association with or conspiracy to commit, attempt, aiding and abetting, facilitating and counselling the commission. These are defined in the Penal Code (which has general provisions applicable to all criminal offences), Interpretation and general provisions Act, Organized Crime Act and POCAMLA.

However, some emerging offences like bio-piracy where natural occurring biochemical or genetic materials are commercially exploited without the knowledge or fair compensation of the community they originate from have not been adequately addressed. In addition, wildlife cybercrime offences which relate to online trading of illicit wildlife in online markets (dark net) have not been adequately addressed.

IV. Administrative/Civil Sanctions

The level of administrative actions against environmental breaches was assessed as *Low*. The environmental sector is lagging behind in administrative actions against environmental crimes. Section 108 of EMCA provides for issuance of environmental special orders. There are no ancillary penalties that can be applied to persons in breaches of environmental law and hence no imposition of administrative or civil sanctions.

V. Criminal Sanctions

The level of criminal actions against environmental breaches was assessed as *High*. Criminal sanctions are clearly provided for in the respective environmental legislations as well as key criminal legislations. All offences are identified as predicate offences and thus subject to money laundering proceedings under the law.

VI. Environmental Crimes Asset Recovery and Management

Environmental Crime Asset Recovery and Management was assessed as *High*. There exist sufficient legal and institutional frameworks for seizure, freezing and confiscation of proceeds and instruments of environmental crimes in Kenya. The asset forfeiture under POCAMLA and other sectoral laws such as WCMA, FCMA, FDMA, EMCA and ACECA (on unexplained assets from a corruption perspective) apply fully to all predicate environmental crimes. The country also has structures for the management of these assets.

As is required under FATF Recommendation 3 for each country to have a dedicated agency on asset recovery and management, Kenya's lead agency on this is the ARA. Additionally, sectoral agencies such as EACC, KWS, KFS, NEMA and the State Department for Fisheries have legislative powers to seize, freeze and confiscate proceeds and instrumentalities of crime.

However, while there is the Multi-Agency Task-Force framework for collaboration on high impact cases, this is not sufficient and there is inadequate inter-agency coordination and synergy in asset recovery efforts with the majority of law enforcement agencies in the environmental sector having very minimal interface with the ARA and FRC. Data showed that only 2 cases out of 514 investigated under Illegal possession of wildlife trophies were pursued from a money laundering perspective thus there is a huge opportunity to improve taking into consideration the total case load was 5831 investigations.

VII. Control of Corruption (and Bribery)

The variable on control of corruption (and bribery) was assessed as *Medium High*. EACC is the constitutionally mandated organization/body that deals with corruption cases with a national anti-corruption action plan being implemented by various state agencies. The implementation of the plan has led to the creation of a multi-agency caucus (MAT) that identifies high impact casework related to corruption and provides a platform where state agencies collaborate in investigations and prosecution. Annual surveys on corruption are carried out by the EACC, civil society and other relevant state actors. There has been increased momentum amongst state agencies to investigate and prosecute corruption related to environmental crimes. Systems audits and corruption surveys are carried out by various organizations to deter/prevent corruption.

Over the last two years, EACC has been able to trace and recover assets both locally and internationally. EACC has also been able to complete investigations with high impact, charged suspects and received convictions that have gone a long way in deterring high level corruption. There should be institutional reforms to improve on case conclusion rate and turn around.

VIII. Domestic Cooperation

The level of domestic cooperation was assessed as *Medium* due to the existence of effective formal and informal networks in the environmental sector. Prosecutors of financial crimes, asset forfeiture investigators, FRC and anti-corruption agencies are involved in these initiatives through MAT and other forums. There are joint forums and initiatives on environmental crimes between the participating agencies. These agencies nominate members to the committees to represent their organization's interest and mandate. For instance, one of such initiatives is the East African Network on Environmental Compliance Enforcement (EANECE) which was established to exchange intelligence and information across the region. However, these joint forums lack any legal and structural framework to push for implementation of their recommendations, share resources, which need to be properly structured and enhanced to ensure proper planning of resources instead of relying on the 'goodwill' from the persons in the respective agencies.

IX. Non-Profit Organizations (NPOs)

The rating assigned was *High*. Most NPOs in the environmental space get their funding from international donors interested in environmental conservation and are free to deploy their resources in their respective fields of interest or expertise, thus are free from government influence or interference in their strategic operations and resource mobilizations. Most environmental activities are guided by the national priorities as provided by country environmental strategic plans. NPOs operationalize part of these strategic plans in collaborations with the various lead government agencies responsible for the specific sub-sector. NPOs conduct their activities in close collaboration with the lead government environmental agencies to supplement their resources based on needs.

There is an established good collaboration between the NPOs, the environmental lead agencies as well as with the prosecution arm of the government (ODPP) aimed at combating wildlife crimes. The NPOs have been involved in funding of specialized training in Kenya to enhance capacity of environmental agency personnel and other multi agency teams at the border points, international airports and seaports. These trainings are aimed at enhancing the capacities of the officers in identifying wildlife contrabands, illicit and smuggled wildlife trophies, wildlife crime scenes, wildlife investigations as well as prosecution aspects. The NPOs have also been involved in the funding and acquisition of tools, gadgets, computers, vehicles etc., all aimed at equipping the officers in tackling wildlife crimes within the country and at border posts.

NPOs essentially support government initiatives and capacity building of institutions and are not specialized in information/ intelligence gathering. They provide a lot of information/data to the investigating agencies on potential environmental crimes. The information gathered are shared with the lead agencies for further investigations and prosecutions. Intelligence information is shared with state agencies upon requests and on their own cannot directly be used in a criminal trial by the prosecutor without verification.

The environmental lead agencies in Kenya have the capacity and powers under the law to conduct both covert and overt operations and intelligence gathering on environmental crimes based on information received from NPOs on any place or premises in Kenya. This strength is utilized fully to ensure that all criminals are apprehended and prosecuted according to the law. All information received are generally subjected to the intelligence cycle to develop an actionable intelligence which is then disseminated to the relevant departments for action and implementation.

X. International Cooperation

The level of International Cooperation was assessed as *High*. Kenya has had landmark cases aided by international cooperation and is a signatory to various global treaties for environmental protection such as the Kyoto Protocol for Climate Change which is a platform for international cooperation and trading in carbon credits. Kenya also hosts many international organizations focusing on environmental conservation e.g., UNEP HQ, Interpol regional Office and Lusaka Agreement Task Force among others. As a result, the country enjoys commendable donor assistance for example the setting up of a state-of-the-art forensic laboratory at the KWS HQ.

Comparatively, Kenya is doing better in terms of international cooperation which can be attributed to the key role it plays as a transport hub regionally. Kenya has also obtained positive feedback from Interpol on the level of cooperation which has resulted in criminal convictions. Kenya is a party to various international and regional legal cooperation mechanisms and domestic legislations and institutions charged with the responsibility of implementing mutual legal assistance and extradition requests. In addition to having domestic laws, Kenya is party to

many bilateral agreements and treaties in combating environmental crimes. There is noted mutual legal assistance with high risk destination countries of wildlife trophies including China.

Kenya is a party to the UN convention on transnational crime which has inbuilt international legal cooperation framework. It is also a party to the Harare Commonwealth Scheme for MLA and extradition as well as a number of similar regional frameworks such as IGAD, ICJLR and EAC. Kenya has defined channels and processes to enable cooperation on environmental crimes through Interpol, Eastern Africa Police Chiefs Cooperation Organization (EAPCCO) and competent central authorities in various countries which process requests with well trained and dedicated officers, and joint investigative teams established with various jurisdictions on a number of operations.

XI. Geographical Factors

Environmental vulnerability resulting from Geographical Factors was rated *High*. Generally, Kenya has a vast area of land with porous borders and lacks sufficient coverage by most environmental protection agencies. However, the country has strategically zoned its jurisdiction geographically and deployed resources to facilitate aerial, marine and ground surveillance with a risk based approach.

XII. Public Awareness

The level of public awareness regarding environmental crimes was rated *Medium High*. Members of the public are aware of the environmental crimes but majority do not appreciate the impact these crimes pose to the environment. This is notable, for example, how environmental crimes are classified as minor crimes instead of felonies. Some members of the public also do not appreciate that unsustainable utilization of natural resources like hunting antelopes and felling indigenous trees as well as littering of waste is a serious environmental offence. This is notable in the types and number of incidences reported to the environmental agencies.

The legal framework in the country has enabled and made it mandatory for public awareness on all matters that affect the public. This provides a good opportunity for public campaigns on environmental crimes and management of the environment. The media also provides a platform for environmental awareness through investigative journalism that has been adopted by most media houses. The host communities around the conservation areas are engaged in educational activities to increase their awareness on coexistence with the wildlife and the need to conserve wildlife in their respective areas. They also benefit from the bursaries and other community projects funded by NPOs, partners and government.

The Government further creates awareness through commemoration and celebration of world environment days like World Wetlands Day, World Wildlife Day, International Day of Forests, World Environment Day, World Oceans Day, World Day to Combat Desertification and Drought, among others. EMCA requires NEMA to undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education and public awareness about the need for sound environmental management.

XIII. Capacity of the Borders and Customs Forces

This variable was rated *Medium High (0.6)*. Kenya is taking the lead in combating environmental crimes in the region especially along the exit and entry points. Customs have been proactive in wildlife crime and ozone depleting substances detection. Customs has also enhanced joint collaborations with agencies dealing with environmental crimes by building expertise and the acquired equipment for the purpose of detecting wildlife crimes. In addition, Customs have a declaration system for profiling and selectivity of high risk consignment; advance passenger information systems for profiling high risk passengers; cargo scanners at the

points of entry and exit; non-intrusive inspection of containerized cargo; baggage scanners at the land borders and airports; non-intrusive inspection of passenger baggage; AirCop, Air cargo control unit and Joint Port Control Unit; Joint patrols, verification and interdiction; Exchange of information and intelligence; and a real time communication system for information exchange.

The multi-agency approach has effectively worked for customs at the borders with capacity being built in combating illegal wildlife trade. There are proposals to focus on other crimes, for example, forest crimes and waste. There is however, need to build capacity of the lead agencies in the country on other environmental crimes like the hazardous waste materials. In addition, resource allocation for equipment should be enhanced to enable detection of environmental crimes and other contrabands. Although, there is an interagency collaboration for border controls, the borders are porous and expansive to cover which pose unique threats and challenges.

XIV. Incentives and Protection for Reporting

The variable Incentives and Protection for Reporting was assessed as *High*. Kenya has a functional witness protection framework in place and has also enacted a data protection law that is acting as a safeguarding framework for all the data in the state reservoir. The country has a comprehensive legal framework on witness protection under the Witness Protection Act, 2006. This legislation cuts across all crimes in the country including environmental crimes. The Act allows for witnesses to testify even from remote locations and via online platforms like video-conferencing including casing identity of the witnesses.

The Victims Protection Act, 2014 provides for the protection of victims of any crime including potential witnesses. It has clear provisions for protection of witnesses and the right to privacy and confidentiality. There is a draft bill for the protection of whistleblowers. Kenya also enacted the Witness Protection Act, 2008 to protect vulnerable witnesses or whistle blowers.

XV. Effective Use of Intelligence

The primary agencies in environmental protection have established effective systems to collect intelligence used to curb commission of environmental crimes. The Wildlife Conservation Management Act (WCMA), Fisheries Management and Development Act, 2016 (FMDA), Environmental Management and Coordination Act, 1999 (EMCA), Computer Misuse and Cyber Crime Act (CMCC), National Intelligence Service Act (NIS) give powers to investigate and collect intelligence on environmental related crimes in Kenya.

There are national and international frameworks for sharing information including the MAT framework which handles high value casework, joint operation centers at ports of entry and Border management committees. Some of the international frameworks include Interpol and Afripol framework, Africa-Twix (Trade in wildlife information exchange) which is an online tool to facilitate information exchange between law enforcement officers and Eastern Africa Police Chiefs cooperation organization, which handles exchange of information in east Africa.

The information is stored in secure databases with agencies having in place units in charge of gathering intelligence on environmental crime and to ensure information is shared and accessed on a need to know basis. A lot of useful intelligence is being gathered across state agencies, however there is insufficient capacity to turn intelligence into evidence. This is exacerbated by insufficient intra and interagency collaboration. Law enforcement agencies use covert techniques to gather intelligence / information related to environmental crimes. The operational units employ many tactics including sting operation, deep covert and normal covert operations in order to penetrate the criminal gang and criminal syndicates.

XVI. Capacity of Preventive Authorities

The variable Capacity of Preventive Authorities was rated *High*. The environmental conservation agencies have been empowered by WCMA, EMCA, FMCA, FMDA Acts. These agencies have preventative roles towards disrupting the criminal network. The National Police Service (NPS) is also involved in both the preventative and reactive roles in environmental crimes. The agencies have also built expertise, infrastructure and equipment to aid their capacity in preventative roles. These agencies engage local communities through awareness creation and provision of alternative livelihoods among other campaigns strategies in preventing wildlife crimes. The agencies are fairly resourced, but there is a need to improve on capacity to cover vastness of the territory.

The agencies have designed programmes to build expertise on intelligence, forensics and genetics. KWS has specialized units like intelligence, investigations and public response units. It has a fully-fledged forensic and molecular lab located at KWS HQs' including a veterinary department with experts working in the DNA analysis of bush meat and rhino horn isotopes.

XVII. Suspicious Transaction Reporting (STRs)

The STRs variable was rated *Medium High (0.6)*. From 2016 to 2020, FRC received a total of 358 environmental related STRs from financial institutions but none from the environmental agencies. Notably, the STRs on suspected environmental crimes had linkages with other predicate offences and were disseminated to law enforcement agencies for necessary action. The STRs were predominantly on wildlife and forestry crimes relating to logging without licenses, poaching, illegal possession of forest produce, pollution and illegal emission and mining related STRs.

In line with POCAMLA regulations and best practice, FRC issued guidelines to reporting entities to assist improve the detection of money laundering predicate crimes including environmental crimes. FRC is building its capacity to enforce its mandate by amongst other efforts increasing the number of reporting institutions and creating public awareness on their role and benefits of financial investigation in combating money laundering and terror financing. There has been enhanced efforts by FRC towards periodical training of stakeholders as mandated under the POCAMLA. The training for reporting institutions is both specific to targeted reporting entities and general sector. The forums are used to upscale reporting institutions to improve on the quality of their reports and enhance their detection capability of STRs regarding money laundering and terrorism financing.

XVIII. Capacity of the FIU

FRC has been progressively increasing its staff compliment in order to address the resources needs to tackle environmental crimes among others. FRC periodically nominates officers for training in environmental crimes both locally and internationally in addition to playing an active role in such forums. FRC provides high quality information to various law enforcement and tax authorities to assist in investigations and prosecutions of environmental crimes and related offences. Though the information is detailed, it is hampered by the fact that few environmental crimes are statistically reported to the FRC as compared to other predicate offences like corruption.

XIX. Capacity of Criminal Law Enforcement

The Capacity of Criminal Law Enforcement was assessed as *High*. The country has sufficient skills deployed in investigation of environmental crimes and money laundering offences by the relevant law enforcement agencies. Once the approach of following the money is adopted, the efforts to curb environmental crimes will be boosted as illicit money will be prevented from

being infiltrated into legal financial system, provide clear criminal networks which would provide insights on criminals and their associates. There is coordination between competent agencies involved in enforcing the law on environmental crimes under the MAT framework. There is continuous capacity building of officers at the wildlife crime investigative agencies however most of the agencies confined their investigations on predicate offences i.e. focus is on wildlife and forest crimes with rare undertaking of financial trail investigations on proceeds arising from such crimes.

However, there is a need to create awareness on parallel investigations in environmental cases i.e. investigation on predicate offences and financial investigations and enhancement of coordination between environmental agencies. Also to operationalize the coordination framework of wildlife agencies as provided as provided for under EMCA.

XX. Legal Protection for Prosecutors, Judges

There are sufficient mechanisms and safeguards for the protection of judges and prosecutors as well as availability of channels for handling complaints including anonymous reporting and internal complaints committee for transparency. The Constitution, ODPP Act, Magistrate Act, the Judicial Services Act and the Code of conduct and ethics for judicial officers protect prosecutors and judges from undue influence, ensures their independence and requires them to act with integrity. Kenya has whistleblower and anti-bribery policies, a code of conduct for prosecutors, and compliance and enforcement committees within the respective institutions. In addition, Kenya is a party to the UN resolution on standards of professional responsibility and statement of essential duties and rights of prosecutors besides domestication of the International Association of Prosecutors (IAP) by the national prosecution policy.

XXI. Use of Experts

The variable of Use of Experts was rated *Medium High*. The Environmental Management Conservation Act allows for the use of registered experts in various fields such as DNA analysis, wildlife conservation and toxicology. The Evidence Act permits the use of experts' findings in prosecution of environmental crimes. The various agencies combating environmental crimes are building in-house capacity for specialized expertise however, there is a deficiency in the number of experts which can cause delays in prosecution of cases. The Kenya Wildlife Service has received considerable support from donors to build capacity in wildlife tracking, surveillance, toxicology, DNA matching and detection of concealed wildlife trophies.

The agencies tasked with combating environmental and wildlife crimes have established processes and procedures for use of experts in investigation and prosecution of environmental crimes. Sections 77 and 78 of the Evidence Act allows for use of experts and presentation of expert evidence in prosecution. Examples of licensed experts used in strengthening investigations are molecular biologists, forensic scientists, etiologists, DNA experts, wildlife tracking experts and toxicology experts.

XXII. Legal Protection for the Law Enforcement and Customs

Law enforcement, customs and environmental crimes units are incentivized to act with integrity and undue influence through various anti-corruption legislation and monitoring mechanisms such as whistle blowing policies. Sections 114 and 115 of the Wildlife Conservation and Management Act and the Environmental Management and Conservation Act stipulate penalties for law enforcement officials who breach integrity in the course of investigating and prosecuting wildlife crimes. Law enforcement staff conducting environmental crime investigations are legally protected when performing their duties by KWS Act (section 5), EMCA (section 110

&115), NPS Act (section 66), KRA Act (section 14) which clearly stipulate protection from personal liability.

The Forest Conservation and Management Act (Sections 62 and 63) on enforcement and compliance provides powers for the enforcement and compliance of the KFS mandate. There has been deliberate awareness creation and training with the National Environment Tribunal setup to oversight environmental matters (EMCA Section 185). Staff at the environmental enforcement agencies are also subject to a code of conduct and disciplinary measures for breach of the same.

NEMA, KFS and KWS have established internal integrity and anti-corruption committees that look at the conduct of law enforcement officers and all staff in collaboration with the EACC. Interagency training is conducted to emphasize zero tolerance to corruption in addition to training on anti-corruption targeting law enforcement officers. Anti-corruption action plans have been made available in organizations involved in protection of the environment as part of reinforcement of a culture of integrity.

XXIII. Capacity of the Prosecutors and the Judiciary

The variable Capacity of the Prosecutors and the Judiciary was assessed as *Medium High*. There effectively. The country has a dedicated resource in prosecution and adjudication. The ODPP has the mandate to prosecute all cases including those in the environmental sector. It is not in the environmental agencies' mandate to prosecute but they provide support to the ODPP to effectively prosecute environmental crimes cases. There are trained prosecutors and judges on environmental matters. The Judiciary has land and environmental courts and tribunals for environmental cases. In addition, there are environmental protection strategies and policies in forest, wildlife and fisheries matters.

There is a prosecution-guided investigations model in place. Prosecutors and Judges are able to obtain and access all necessary information for use in environmental crimes prosecution. However, there needs to be continuous capacity building on prosecutors and judicial officers mostly on the 'follow the money' aspect. In addition, capacity building needs to be expanded to other environmental crimes. Resources should also be enhanced to facilitate capacity building of environmental crimes. The ODPP has a specialized unit for wildlife crimes with about 300 prosecutors trained on wildlife aspects but there is room for improvement in training.

2.11 Non-Profit-Organizations (NPOs) Vulnerability Assessment

2.11.1 Background

Non-Profit Organizations (NPOs) or Non-Governmental Organizations (NGOs as they are often referred to in Kenya) play a vital role in society and in a country's economy. NPOs comprises Faith Based Organisations, Civil Society Organisations and Community Based Organisations. There are also governmental and intergovernmental NPOs established to complement mainstream government activities in the provision of social welfare and social protection services. To this extent, NPOs fill critical gaps in Kenya's social economic setup. The total amount that NGOs contributes to the economy is quite significant. For the year ending 2018/19, NGOs received funding from various sources totalling to KSh.166 billion, an 8 percent increase from the previous year. It is noteworthy, that 88 percent of these funds were raised from sources outside Kenya. For the year ending 2018/19 the total amount spent in Kenya by NGOs that are registered with the NGO Board amounted to KSh.134 billion, which was equivalent to about 4.5 percent of Kenya's national budget in that year.

To prevent exploitation of communities in the NPOs domain, the sector is regulated by the Non-Governmental Organizations Act, 1990 (CAP. 19). The Act gives mandate to NGOs Coordination Board to register and regulate the activities of the NPOs in Kenya. Under the Act, "Non-Governmental Organization" means a private voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, development charity or research in the areas inclusive of, but not restricted to, health, relief, agriculture, education, industry and the supply of amenities and service.

Therefore, the NGOs Act contemplates a situation where all NPOs operating in Kenya are first constituted legally prior to registration with the Board. Section 10 of the NGOs Act outlines the requirements for registration which include, the certificate of incorporation and a copy of the NPO's constitution. It is a criminal offence for any person to operate an NGO in Kenya without registration and certificate issued by the Board, which also has a mandate to enforce deregistration of dormant NPOs within 30 days. By June 2019, there were a total of 11,262 registered NGOs29.

All registered NPOs in Kenya are incorporated under various laws depending on the nature of activities that they are engaged in. There are also informal associations created for the pursuit of other legally benevolent purposes. The NGOs Act also allows the Cabinet Secretary responsible for matters relating to NGOs to exempt certain NPOs from the application of the Act.

2.11.2 NPOs in the context of FATF

FATF Standards requires that countries assess and identify their risk to terrorism financing and to apply appropriate counter measures commensurate with the risks so identified. In the context of the NPOs, the mechanisms for applying countermeasures are provided for under Recommendation 8 of the FATF Standards/Recommendations. The FATF recognises the vital importance of the NPO community in providing charitable services around the world and further recognises that not all NPOs are vulnerable to TF abuse. Therefore, FATF recommends that countries identify the subsector of the NPOs that are vulnerable to TF abuse and apply appropriate safeguards to prevent exploitation of those subsectors for TF purposes. The critical

[29] NGO Board Annual Report 2018-2019

element of an FATF defined NPO is that the organization must be set-up for the purposes of raising or disbursement of funds. Other organizations formed for purposes other than raising or disbursement of funds such as sports associations would not fall under the FATF definition.

2.11.3 Nature and threats posed by terrorist entities to the NPO Sector in Kenya

There is little evidence to show the risk of abuse of the NPO sector for TF purposes in Kenya. During the assessment period, there was only a single case of TF abuse of NPOs that was reported and investigated by the authorities. Similarly, intelligence reports and the reports submitted to FRC have indicated minimal existence of abuse of the sector for TF purposes. However, majority of the NPOs operating in Kenya are financed by donations from international sources. This exposure to international funds may exacerbate the vulnerability of the NPOs to abuse by terrorist organizations seeking opportunity to plan and finance terrorist activities in the country.

As a mitigation measure for foreign donor base, all NPOs are required to be established in the country and to register with the NGOs Coordination Board for monitoring and supervision. Further, funds are mainly sourced and disbursed through the formal financial channels which are reporting institutions under POCAMLA. Therefore, the eventual disbursement of these funds to Kenya is assessed as being *Low Risk* in terms of terrorism abuse of the beneficiary local NPO.

Apart from international NPOs operating in Kenya, majority of the NPOs in the country are not cross-jurisdictional, that is, they have strong domestic element hence there is minimal risk of TF abuse for cross-border transactions. The international NPOs on the other hand have adequate institutional framework to provide for accountability on the use of funds. Such accountability includes the requirement to report to the NGO Coordination Board on the usage of funds, annual declaration and audit reports. There are also mechanisms for due diligence prior to and after receiving funds which can be monitored during compliance oversight.

Terrorism thrives in areas dominated by conflict and ungoverned spaces. Somalia has been embroiled in conflict since the fall of President Siad Barre in 1991, creating a governance vacuum and an influx of refugees into the Kenyan territory. The influx of refugees has also created a humanitarian crisis which has prompted many non-governmental actors to step in to provide basic social amenities and for the protection of the Somali refugees. As such, the NPOs operating in Dadaab refugee camp in Kenya as well as Kakuma which are all located at close proximity of the Kenyan-Somali borders remain highly vulnerable to the abuse for TF purposes either wittingly or unwittingly. Considering that NPOs which operate near the conflict zones along the Kenya-Somali border are primarily exposed to abuse by terrorists aiming to use proxies in waging war against Kenya, it can be concluded that TF risk is present in these NPOs.

2.11.4 Measures against the abuse of the NPOs for TF purposes

I. Adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector

The NGOs Coordination Board regulates and supervises the NPO sector in Kenya. NPOs are expected to submit annual reports on issues of accountability and governance relating to their operations. Further, prior to licensing, every NPO is expected to submit to the NGO Coordination Board, specific information supporting its application for registration and licensing pursuant to section 3 of the NGO Act. Every registered NGO must notify the Board of any change to its physical and postal addresses, its constitution and the names of its officers or their titles. There are also adequate provisions to enable enforcement where there is failure to comply with any of the mandatory provisions of the NGO Act.

II. Measure to prevent against diversion of funds

The inadequacy of oversight and supervision by the NGO Coordination Board affects the country's ability to account for utilisation of funds by the NPOs operating in the country. It is also difficult to monitor the diversion of funds, if any, to finance terrorist activities or to establish the source of funds.

III. Outreach and Education

There is no effective outreach to the sector by the NGO Coordination Board on terrorism financing related issues. All NGOs surveyed identified a complete lack of outreach on terrorism and terrorism financing measures.

IV. Incorporation of NPOs.

Incorporation requirements are not restrictive with diverse legal regimes for creation of NPOs in the country. As such, there are some groups that are operating as NPOs though not yet legally formed thereby remaining under the control of individuals who are promoting/sponsoring them. This non-incorporation of NGOs may be as a result of lack of a strong enforcement mechanism that will ensure compliance with registration requirements prior to conducting the business of NPOs.

V. Conclusion

The level of risk of TF abuse in the NPOs sector in Kenya is considered low. However, the lack of effective monitoring and supervision by the regulator, and reporting obligation by NPOs as required under POCAMLA enhances the risk factor for the activities conducted by the NPOs in Kenya. The overall vulnerability of NPO sector for TF abuse was therefore rated *Medium*.

3.0 RECOMMENDATIONS

It is recommended that this NRA report should be implemented to improve the capture and scope of the existing AML/CFT measures to create ripple effects that spurns the entire country. A robust and effective AML/CFT framework in Kenya will provide for the protection to the country from criminal networks and will readily be attractive to players who seek to invest in jurisdictions with sound financial systems. The following are among the key recommendations:

a. Policy and legal

i. Adopt a national policy to fight money laundering offence in a similar manner to those adopted against other ML predicates like corruption, drug abuse, among others.

ii. conduct parallel financial investigations, prosecution & confiscation to all cases involving ML predicate offences.

iii. the assessment established that LEAs do not identify ML cases arising from terrorist predicates. As such ML investigations relating to terrorism offences are not effectively identified and investigated. It is recommended that LEAs adopt a policy to investigate ML component (*follow the money principle*) for all terrorist offence predicates.

iv. LEAs should adopt, as a policy objective, the confiscation of property of corresponding value from offenders. Authorities should quantify the value worth of all proceeds for effective freezing and confiscation including for non-economic crimes.

v. there are inconsistencies in ML investigations and prosecution with threats and risk profile of the country, that is for the most prevalent predicate offences presenting high risk. Therefore, investigations and prosecution of these predicate offences should involve parallel financial investigations as a matter of policy.

vi. the authorities should as a practice maintain records of the value arising from all the predicates investigated and prosecuted so as to allow for confiscations of proceeds and instrumentalities of crime. Further, all LEAs should document all realizable property extending to where proceeds are located outside the country.

vii. the authorities should aggressively pursue as a matter of policy, the confiscation of falsely declared or undeclared cross-border cash transactions. The assessment propose that legal reforms should enable the FRC to temporarily freeze/detain any suspicious transaction brought to its attention by the customs/border authorities and reporting institutions to allow for analysis and establishment of the source of funds. Measures should be put in place to properly implement the cross border currency declarations on real time basis. In addition, KRA should utilize its powers to temporarily freeze movement of funds cross the border where it is deemed necessary arising from a suspicion, to allow authorities to establish the source of funds. It was however noted that establishing the legitimacy of funds on transit is very complex given the international protocols, agreements and best practices currently in place.

b. *Operational and domestic cooperation*

viii. there is need for a seamless case management system to ensure the data is coherent and accessible to all authorities. The segregated nature in which the current data is stored makes it difficult to effectively analyse and use the available information. To this end, the LEAs should be well capacitated to maintain database of all offences by predicate types and to ensure data coherence from various agencies.

ix. data digitization is recommended to facilitate update of withdrawal and addition of charges in the Judiciary and to shift from the current format for drafting charges where the focus in on the number of charges as opposed to the nature of charges.

x. authorities should strengthen investigation and prosecutorial capacity for cross border ML threat and predicate offences.

xi. Government should strengthen inter-agency coordination mechanisms such as MAT and joint investigation teams between KRA, ARA, ACA, JTAC and EACC to enable these institutions follow the ML offences through the use of a wide range of financial intelligence and other information.

xii. terrorism being a threat to the country, there should be parallel financial investigation of all terrorist related offences to effectively identify ML threats relating to terrorism so as to deny the facilitation of terrorist networks and to disrupt the planning and recruitment for attacks.

c. Resources and capacity building aspects

xiii. the Government should enhance the capacity of ARA, the ACA and FRC to be able to effectively pursue the proceeds and instrumentalities of crime. The assessment has revealed that while Kenya is largely capable of pursuing predicate offences, there has been limited instances in which the assets and proceeds from these predicates are identified, frozen and confiscated.

xiv. the current approach of prosecution of victims of human trafficking and smuggling of persons who are found in Kenya illegally without following the perpetrators demonstrate lack of awareness, skills and knowledge among the authorities. LEAs should pursue, as a matter of policy, the perpetrators of human trafficking and deny them the benefits of proceeds generated from such crimes.

xv. there should be adequate resources to improve the capacity of all LEAs to investigate financial crimes especially those arising from predicates presenting high risk to the country and provide adequate skills and necessary tools to be able pursue money laundering cases from these predicates.

xvi. there should be effective mechanisms to promote the AML/CFT capacity of RIs and LEAs as envisaged under POCAMLA.

d. Regulatory and supervisory aspects

xvii. all the financial sector and DNFBPs supervisors should implement a risk-based approach and effectively supervise their respective sectors for compliance. Further, regulators should adopt group-wide supervision to mitigate cross-sector ML/TF threats when appropriate.

xviii. there is need to conduct and continuously update sectoral and institutional risk assessment to establish the level of risk in various sectors for risk-based interventions to ML/TF threats in those sectors.

xix. lawyers and car dealers should be designated as reporting institutions for the purposes of reporting ML suspicions to the FRC. It is proposed that the Law Society of Kenya should be designated as supervisor in respect of the legal profession.

ANNEX: NRA Participating Institutions

	NRA Task Force Members & Participating Institutions	Role
1	National Treasury & Planning	Chairing
2	Financial Reporting Centre	Coordinator & Joint Secretariat
3	Ministry of Interior & Coordination of National Government	Member
4	Ministry of Lands	Member
5	Office of the Attorney General	Member
6	Ministry of Foreign Affairs	Member
7	Central Bank of Kenya	Joint Secretariat
8	Anti-Narcotics Unit	Member
9	Anti-Terrorism Police Unit	Member
10	Asset Recovery Agency	Member
11	Banking Fraud Investigations Department / Unit	Member
12	Betting & Licensing Control Board	Member
13	Business Registration Service	Member
14	Capital Markets Authority	Member
15	Directorate of Criminal Investigations	Member
16	Ethics and Anti-Corruption Commission	Member
17	Insurance Regulatory Authority	Member
18	Kenya Revenue Authority	Member
19	Kenya Wildlife Service	Member
20	National Counter Terrorism Centre	Member
21	National Crime Research Centre	Member
22	National Intelligence Service	Member
23	National Police Service	Member
24	Office of the Director of Public Prosecutions	Member
25	Retirement Benefits Authority	Member
26	Sacco Societies Regulatory Authority	Member
27	State Department of Immigration	Member
28	Kenya National Bureau of Statistics	Member
29	Kenya Bankers Association	Member
30	NGO Coordination Board	Member
31	Judiciary	Public
32	Ministry of Mining & Petroleum	Public
33	Institute of Certified Public Accountants of Kenya	Public
34	Communications Authority of Kenya	Public
35	Anti-Counterfeit Agency	Public

36	Kenya Forest Services	Public
37	Kenya Airports Authority	Public
38	Kenya Ports Authority	Public
39	Kenya Law Reform Commission	Public
40	National Authority for the Campaign against Alcohol and Drug Abuse	Public
41	Kenya Bureau of Standards	Public
42	Kenya Defence Forces	Public
43	Kenya National Audit Office	Public
44	Institute of Quantity Surveyors of Kenya	Public
45	Nairobi Securities Exchange	Private Sector
46	Law Society of Kenya	Private Sector
47	Association of Real Estate Agents	Private Sector
48	Credit Information Sharing Association of Kenya	Private Sector
49	Association of Kenya Insurers	Private Sector
50	Kenya Association of Stockbrokers & Investment Banks	Private Sector
51	Funds Managers Association	Private Sector
52	Association of Insurance Brokers Kenya	Private Sector
53	Association of Retirement Benefits Scheme	Private Sector
54	Kenya Auto Bazaar Association	Private Sector
55	Association of Forex Bureaus & Money Remittance Providers	Private Sector
56	Architectural Association of Kenya	Private Sector
57	Institute of Certified Secretaries (ICPS)	Private Sector
58	Association for Microfinance Institutions	Private Sector
59	Association of Gaming Operators Kenya	Private Sector
60	African Wildlife Foundation	Private Sector
61	Kenya Property Developers Association	Private Sector
62	Absa Bank	Private Sector
63	Bank of Baroda	Private Sector
64	Access Bank	Private Sector
65	Airtel Kenya	Private Sector
66	Safaricom Plc	Private Sector
67	Amal Express	Private Sector
68	Britam Insurance	Private Sector
69	Classic Forex Bureau	Private Sector
70	Consolidated Bank	Private Sector
71	Crisis Action	Private Sector
72	Cytonn Asset Managers	Private Sector

73	Dahabshill	Private Sector
74	Dry Associates	Private Sector
75	Diamond Trust Bank Kenya	Private Sector
76	EGM Securities	Private Sector
77	Equity Bank	Private Sector
78	Faulu Microfinance Bank	Private Sector
79	GenAfrica Asset Managers	Private Sector
80	Genghis Capital	Private Sector
81	GT Bank	Private Sector
82	Habib Bank	Private Sector
83	HFC Bank	Private Sector
84	ICEA Lion Insurance	Private Sector
85	KCB Capital Ltd.	Private Sector
86	Kestrel Capital	Private Sector
87	Kenya Women Microfinance Bank	Private Sector
88	Liberty Life Assurance	Private Sector
89	Maisha Micro-Finance Bank	Private Sector
90	National Bank of Kenya	Private Sector
91	NCBA Bank Kenya	Private Sector
92	Prime Bank	Private Sector
93	UAP Old Mutual Insurance	Private Sector
94	Rafiki Microfinance Bank	Private Sector
95	Renaissance Capital	Private Sector
96	Sanlam Investment	Private Sector
97	Save The Children Kenya	Private Sector
98	Sky Forex Bureau	Private Sector
99	SMEP Microfinance Bank	Private Sector
100	Space for Giants	Private Sector
101	Spire Bank	Private Sector
102	Standard Chartered Bank Kenya	Private Sector
103	Sterling Capital	Private Sector
104	Travel Point Forex Bureau	Private Sector
105	Unaitas Sacco Society Limited	Private Sector
106	Victoria Commercial Bank	Private Sector
107	World Vision	Private Sector
108	World Wildlife Fund	Private Sector



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