Consolidated report
Anti-Money Laundering and Combating the Financing of Terrorism in Certain SADC Countries

Compliance & Risk Resources

Prepared for FinMark Trust

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1. Introduction and overview

FinMark Trust commissioned and funded the development of the focus notes contained in this report in order to highlight key considerations relating to anti-money laundering (AML) and combating the financing of terrorism (CFT) in 13 Southern African Development Community (SADC) countries. This was undertaken in the light of findings from a detailed review of the regulatory frameworks in these jurisdictions.

In various studies undertaken by FinMark Trust, the implications of AML and CFT regulatory requirements are often cited as a constraint to the development, growth and access to financial services and products. It has been reasoned that an inappropriate or inconsistently applied regulatory environment for domestic and cross border AML/CFT controls has a detrimental impact on the strategic objective of increasing financial integration and access to financial services within the region.

FinMark Trust would like to investigate whether the harmonisation and more appropriate calibration of the AML/CFT regulations across and within the SADC countries could enhance legal certainty and regulatory predictability. It has been motivated that, in the light of the expansion of African and international financial service providers in the SADC region, this legal harmonisation would have a positive impact on the development and release of financial services and products in the region.

The following focus notes, covering AML/CFT regulatory requirements in the SADC countries, have been developed to draw attention to key matters:

- Focus Note 1 - Financial inclusion and AML/CFT;
- Focus Note 2 - Risk-based approaches to AML/CFT;
- Focus Note 3 - AML / CFT due diligence and related matters;
- Focus Note 4 - Mobile services / technology; and
- Focus Note 5 - Harmonisation of regulatory frameworks in the SADC region.

A brief description of each of the focus notes is set out below.

Figure 1: Proportionate AML/CFT responses

Focus Note	Brief Description
1. Financial inclusion and AML/CFT	Considerations that are relevant in determining whether and how AML/CFT regulatory requirements in the participating countries are a financial inclusion constraint or not are discussed. Various studies that have been carried out indicate that AML/CFT legislation, implemented in response to the FATF Recommendations, has resulted in a conservative approach to compliance with this legislation by the regulated institutions. This is viewed in relation to levels of financial inclusion and economic conditions in SADC.
2. Risk-based approaches to AML/CFT	The adoption of a risk-based approach to the regulation of ML/TF is no longer optional. This is now required in terms of international standards[1]. Key aspects thereof are considered with a view to identifying regulatory harmonisation opportunities as set out in Focus Note 5 - Harmonisation of regulatory frameworks in the SADC region. Where financial inclusion friendly AML/CFT requirements are

[1] In terms of FATF Recommendation 1.

Focus Note	Brief Description
	put in place, which allow for proportionate compliance responses according to the ML/CFT risk, this can play a positive role in promoting access to formal financial systems of countries. This can also potentially reduce the use of informal mechanisms that are outside of the authorities' scrutiny.
3. AML / CFT due diligence and related matters	Customer due diligence and related matters are described in light of relevant FATF Recommendations[2], specifically in view of financial inclusion dynamics, i.e. for the purpose of identifying themes that are relevant in the SADC region. Reference is made to the FinMark Trust country reviews[3] in this regard. While it is understood that customer due diligence that is undertaken by institutions is an important foundation on which AML/CFT compliance responses must rest, overly conservative compliance responses of institutions can result in access barriers.
4. Mobile services / technology	Key aspects of opportunities that can be derived from the introduction of mobile services and new technologies in the SADC region are highlighted. This is done in light of identified opportunities to support financial inclusion objectives. Various FATF Recommendations[4] are considered in order to provide the context for the analysis carried out. New technology opportunities and mobile services offer solutions that will, to a far greater extent than in the past, provide opportunities to deliver financial services to the underserved or excluded market.
5. Harmonisation of regulatory frameworks in the SADC region	AML/CFT harmonisation prospects relating to regulatory frameworks of countries in the SADC region are addressed. The underlying motivation in this regard is to put forward an analysis of various SADC regulatory requirements with a view to promoting opportunities to enhance legal certainty and regulatory predictability as well as support the strategic objective of increasing financial integration and access to financial services in the respective countries.

2. Acknowledgements

This report has been prepared by Compliance & Risk Resources. It has been drafted taking into account the findings contained in the SADC country review reports that have been prepared for FinMark Trust[5].

The level of cooperation and support provided by the SADC country stakeholders, who were consulted during the research phase of this project and the finalisation of the country reports, is acknowledged. The willingness of those who made themselves available to assist, often at very short notice, in all participating countries, is highly valued.

[2] Customer Due Diligence (CDD) (Recommendation 10); Record keeping requirements (Recommendation 11); Correspondent banking (Recommendation 13); Reliance on third parties (Recommendation 17); Internal controls (Recommendation 18); and Reporting requirements for suspicious transactions (Recommendation 20).

[3] Published 13 May 2015.

[4] Money or value transfer services (Recommendation 14), new technologies (Recommendation 15) and wire transfers (Recommendation 16).

[5] AML/CFT and Financial Inclusion in SADC - Consideration of Anti-Money Laundering and Combating the Financing of Terrorism Legislation in Various Southern African Development Community (SADC) countries. March 2015.

The report has been prepared by John Symington with assistance from the Compliance & Risk Resources team. Input has been obtained from a panel of experts, who provided insights and feedback relating to the design of the study. A sincere word of thanks is extended to Raadhika Sihin, Kim Dancey and Neal Estey for providing input. Dhashni Naidoo and Mojgan Derakhshani, FinMark Trust, provided feedback during the drafting process.

3. Methodology and scope

The production of focus notes for FinMark Trust has been prepared on the back of the detailed SADC country review reports prepared by the parties indicated in the acknowledgements in section 2 above.

The reports addressed the following topics:

- Legislation and Regulation in Force;
- Customer Due Diligence;
- Record Keeping;
- Correspondent Banking;
- Money Transfer Services;
- New Technologies;
- Wire Transfers;
- Reliance on Third Parties;
- Internal Controls;
- Suspicion Transaction Reporting; and
- Guidance and Feedback.

Thirteen countries participated in the study: Angola, Botswana, Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia and Zimbabwe. The review findings contained in the respective sections of the reports have been analysed and used as a platform to identify the regulatory requirements that are in place in each of the participating countries. This serves as a basis to develop recommendations relating thereto.

The Compliance & Risk Resources consulting team has made use of its knowledge and experience in respect of regulatory requirements in force in Sub-Sahara Africa and has referenced existing studies that address AML/CFT requirements and financial inclusion. It is noted that Compliance & Risk Resources was, at the time this report was prepared, in association with Cenfri[6], undertaking a project[7] designed to engage AML/CFT stakeholders in Sub-Sahara countries in order to provide a platform from which to develop a sound understanding of national as well as sectoral AML/CFT risk assessments[8]. Accordingly, it

[6] Centre for Financial Inclusion - A non-profit think tank based in Cape Town which operates in collaboration with universities in the region to support financial sector development and financial inclusion through facilitating better regulation and market provision of financial services.

[7] Financial Sector Deepening Africa (FSDA). Current research being undertaken entitled "Risk-Based Approaches to Regulation of AML/CFT".

[8] This is designed to address key aspects of international guidance and examples of how jurisdictions have approached the adoption of a RBA by outlining the elements thereof as relevant to countries in the Sub-Sahara Africa region and assisting participating countries with a product scan to define parameters of risk at a sectoral level to get to grips, in a practical way, with what low and high money laundering (ML) and terrorist financing (TF) risk could entail. The project directly addresses financial inclusion related considerations, noting that the application of the RBA will not be limited to financial inclusion impacts.

is acknowledged that there has been an opportunity to use the knowledge gained during this engagement to inform the approach taken in developing these focus notes.

4. International standards and guidance

In view of the increasing focus on and understanding of the benefits that are derived from access to finance and financial services by communities in developing countries, both regionally and internationally, the impact of AML/CFT regulatory requirements on financial inclusion has been drawn into the spotlight. Notably, during the course of 2011, the Financial Action Task Force (FATF), following interest kindled under the G20 presidency by Mexico, agreed to have the issue of financial inclusion on its agenda and committed to examining potential challenges posed by AML/CFT requirements relating to the goal of achieving financial inclusion.

The FATF recommendations, which were revised in 2012[9], now make the adoption of a risk-based approach mandatory. They provide space for financial inclusion to be recognised as a country policy objective and, accordingly, there is an opportunity for countries to shift the focus towards achieving AML/CFT objectives within an environment that does not compromise financial inclusion. It is encouraging that there has, in recent years, been steady progress towards recognising the importance of financial inclusion imperatives. This is particularly notable through the development of a FATF guidance paper in June 2011[10], which was intended to provide support to countries in designing AML/CFT measures that meet a national financial inclusion goal without adversely impacting financial integrity objectives. This was revised in 2013, the main aims thereof being the development of a common understanding of the "FATF standards that are relevant when promoting financial inclusion and explicit the flexibility that the standards offer, in particular the risk-based approach (RBA), enabling jurisdictions to craft effective and appropriate controls."[11]

Other FATF guidance, relating to AML/CFT and the risk-based approach, has also touched on AML/CFT and financial inclusion. For example, the following question is raised: "Does the manner in which AML/CFT measures are applied prevent the legitimate use of the formal financial system, and what measures are taken to promote financial inclusion?"[12]. This refers to the issue of whether financial institutions and designated non-financial businesses and professions (DNFBP) adequately apply AML/CFT preventive measures commensurate with their risks and report suspicious transactions. Further, there have been a number of publications by international organisations that have shed light on this topic, for example published by AFI[13] and CGAP[14], which illustrates the growing momentum that has been gained and the international understanding of the impact of AML/CFT requirements on financial inclusion.

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[9] FATF. International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations. 2012.

[10] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. June 2011.

[11] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. February 2013.

[12] FATF. Methodology for assessing technical compliance with the FATF recommendations and the effectiveness of AML/CFT systems. February 2013.

[13] Alliance for Financial Inclusion - A global network of financial policymakers from developing and emerging countries working together to increase access to appropriate financial services for the poor.

[14] Consultative Group to Assist the Poor - An organisation which has the objective of advancing financial inclusion to improve the lives of the poor.

5. Focus Note 1 - Financial inclusion and AML/CFT

5.1. Introduction

This focus note highlights considerations that are relevant in determining whether and how AML/CFT regulatory requirements in the participating countries are a financial inclusion constraint or not. Various studies that have been carried out indicate that AML/CFT legislation, implemented in response to the FATF Recommendations, has resulted in a conservative approach to compliance with this legislation by the regulated institutions (caused by fear of regulatory/supervisory intervention as well as other interrelated factors). This does not encourage or facilitate financial inclusion. SADC country interpretations of the FATF recommendations have, to a significant degree, represented a challenge for the region. This is particularly the case where national identity systems and residential address systems do not lend themselves to obtaining identity and address verification documentation that is readily available, i.e. to the extent that it is in developed countries.

As a point of departure, various aspects of a financial inclusion strategy of a country are considered below, i.e. in the light of economic development dynamics. This leads into a discussion of financial inclusion in relation to AML/CFT requirements that are imposed in the SADC countries.

5.2. Focus Note 1 executive summary

The FATF Recommendations are, in the main, principle-based and provide countries with the flexibility to implement regulatory frameworks that are appropriate to their circumstances. However, in practice, the reality can be seen quite differently, notably where countries adopt inflexible and inclusion unfriendly frameworks. When coupled with rigorous supervisory practices and other factors, this can lead to overly conservative compliance responses by institutions. On the other hand, where regulatory requirements provide for flexibility relating to due diligence, this is not always applied by financial institutions in a manner that supports financial inclusion.

There is a relatively low level of financial inclusion in some SADC countries. The extent to which AML/CFT requirements contribute towards such financial exclusion is relevant. Further, in view of the relatively high poverty levels in some SADC countries, increasing access to finance and financial services has been identified as an opportunity to contribute towards alleviating poverty and stimulating economic development.

The indications are that countries generally understand the need to develop and implement financial inclusion strategies. This is indicated in the regional focus thereon at various international forums from an AML/CFT perspective. There is also an increasing recognition that financial integrity and financial inclusion objectives are not necessarily in conflict. Those sectors of the population that are informally served or excluded will, for the most part, fall outside of the purview of the AML/CFT regulatory authorities and the ML/TF risks may not be brought to light. It can be argued that low levels of financial inclusion could result in the overall country ML/TF risk being misunderstood. This could also result in an increase in the overall country risk in that the excluded segment of the population will not be subject to formal risk mitigation processes at country or institutional levels.

Challenges faced by consumers that are financially excluded include low income levels and rural living circumstances that may not place them in a geographical position that enables or encourages the use of formal financial services. Such consumers may also, to a significant extent, be undocumented and not

have easy access to identification and address verification alternatives. Due diligence requirements may also add to the cost of doing business with consumers. They can also introduce significant operational and administrative challenges that can ultimately result in compliance risk for institutions. The extent to which AML/CFT requirements adversely impact on financial inclusion should be determined. However, this should be viewed holistically and understood in the light of other contributing factors.

It is perhaps fair to say that the initial driver for the development of AML/CFT regulatory frameworks was the need for countries to comply with the FATF Recommendations. The frameworks were, to some extent, not put in place with a specific focus on the impact thereon in respect of non-AML/CFT related considerations. Structured (often inflexible) approaches taken by regulators have, in some instances, been conservative and have had an adverse impact on financial inclusion. On the other hand, flexible risk-based approaches can lead to high levels of regulatory uncertainty that can also result in conservative compliance responses, particularly where there is not adequate regulatory guidance. An assessment of the ML/TF risks in the SADC region should ideally be undertaken prior to determining the approach that should be undertaken in respect of the design, development and implementation of a regulatory framework in a country. This should be designed to provide a sound understanding of local circumstances. It should also position how best to address the intersect between financial integrity (avoidance of abuse of the financial system for ML and TF purposes) and financial inclusion (access to finance and financial services).

The question of whether AML/CFT objectives are being achieved should be addressed, i.e. through the compliance responses of institutions to the regulatory framework that is put in place in each country.

5.3. Financial inclusion strategy

A financial inclusion strategy is a comprehensive public document developed through a broad consultative process involving private and public sector stakeholders involved in financial sector development to systematically accelerate the level of financial inclusion[15]. In general terms, financial inclusion involves providing access to an adequate range of safe, convenient, appropriate and affordable financial products and services to consumers, including low income, rural and undocumented persons, who have been underserved or excluded from the formal financial sector. Financial inclusion can also be seen in terms of the provision of financial products in a fair and transparent manner.

The indications are that countries generally understand the need to develop and implement financial inclusion policies, and international bodies recognise the importance thereof. This is evident in a number of recent Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) interventions where financial inclusion was an agenda item. However, the question of whether the aforementioned translates into an appropriate focus thereon by stakeholders that are directly responsible for drafting AML/CFT regulatory requirements, and navigating these through the law making process, should be considered. It would also be beneficial to reflect on whether important financial inclusion perspectives are effectively addressed by the respective country AML/CFT supervisors, notably in respect of AML/CFT risk that is introduced through abuse of the informal sector. It is recommended that, in this regard, there should be co-ordination and communication between the highest levels of government, i.e. between stakeholders that are responsible for financial inclusion and financial integrity policies respectively.

[15] AFI Financial Inclusion Strategy Peer Learning Group (FISPLG).

The achievement of financial inclusion objectives will play a role in promoting economic development. This is intuitively a sound value statement. It is reasoned that benefits would be derived from a detailed understanding of the aforementioned, notably in respect of the nature and extent of the correlation between financial inclusion and economic development and the relationship thereof with AML/CFT requirements. CGAP specifically focuses on this issue and indicates that there is a tangible correlation between financial inclusion and economic development. The following is stated in this regard "recent evidence using rigorous research methodologies appears to generally confirm the policy makers' convictions that inclusive and efficient financial markets have the potential to improve the lives of citizens, reduce transaction costs, spur economic activity, and improve delivery of other social benefits and innovative private-sector solutions."[16]

Further, governance in the public and private sectors of a jurisdiction has a major impact on economic development opportunities. It is reasoned that good governance, as a direct and indirect consequence thereof, will result in the avoidance or management of conflicts of interests in and between organisations as well as between individuals and groups in a society, which in turn has an impact on broad-based economic development opportunities. It can be argued that AML/CFT requirements themselves represent a governance opportunity in that they deal with crime and the proceeds of crime in a manner that coordinates the efforts of a wide range of stakeholders, which can significantly improve the outlook of vulnerable people in society.

The broad perspectives outlined above, particularly in respect of the role that financial inclusion plays in respect of economic development and good governance, are beyond the scope of this report. However, further study thereof in relation to AML/CFT would yield valuable insights.

5.4. AML/CFT and financial inclusion

From an AML/CFT perspective, financial products and services should be provided through financial institutions subject to adequate regulation in line with the FATF Recommendations. It is recognised that it is important to protect a country's financial system from misuse. However, countries are able to "build AML/CFT regimes that specifically address their identified higher ML/TF risks while taking into account the importance of financial inclusion, both from an AML/CFT perspective and from a social policy point of view".[17] There is increasing recognition that financial integrity and financial inclusion objectives are not necessarily in conflict. "Financial inclusion and an effective AML/CFT regime can and should be complementary national policy objectives with mutually supportive policy goals. Accordingly, the FATF Recommendations have flexibility, enabling jurisdictions to craft effective and appropriate controls taking into account the relevance of expanding access to financial services as well as the diverse levels and types of risks posed by different products and supply channels. The challenge is finding the right level of protection for a particular financial environment".[18]

Consideration of the controls and level of protection needed for an effective AML/CFT regime, as well as practical financial inclusion variables relating thereto, is beyond the scope of this report. It is suggested

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[16] CGAP Focus Note. Robert Cull, Tilman Ehrbeck, and Nina Holle. Financial Inclusion and Development: Recent Impact Evidence. April 2014.

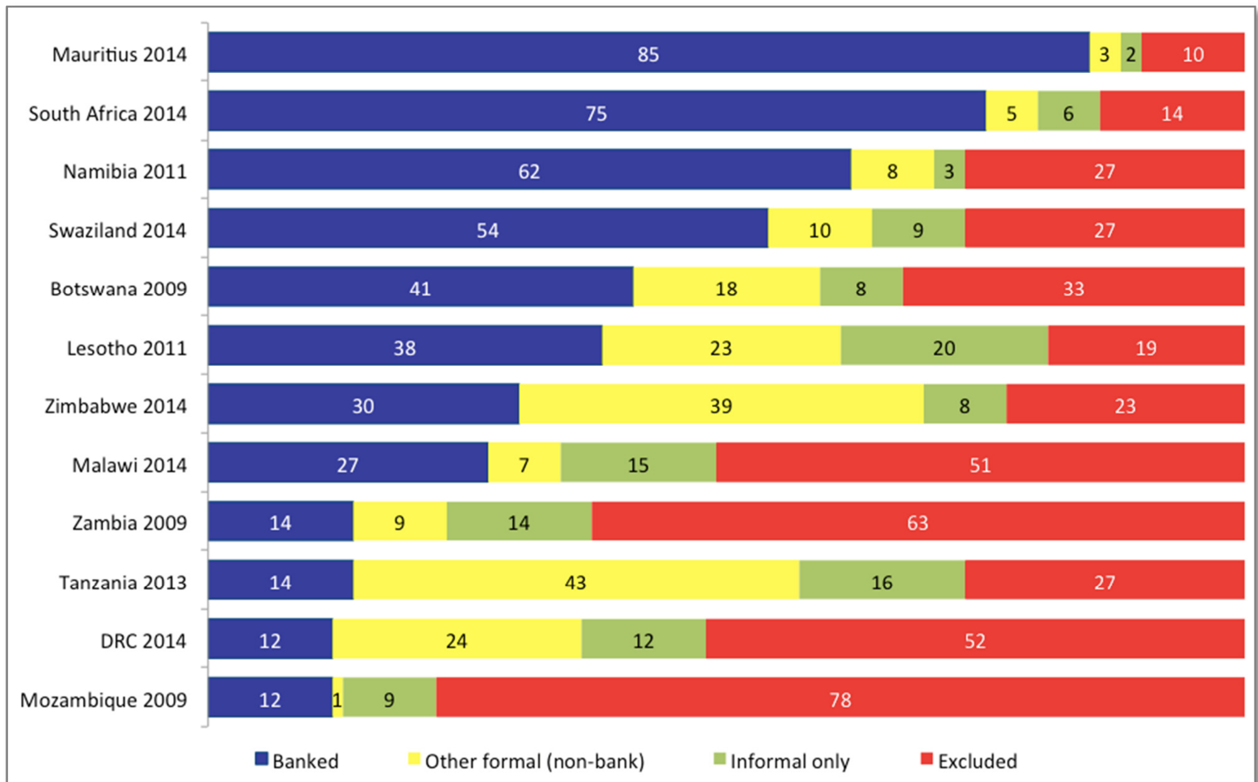
[17] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. February 2013. Page 17.

[18] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. February 2013. Page 15.

that there will be value in developing a SADC understanding thereof. This could be undertaken as part of a study designed to guide countries towards addressing such challenges without unduly compromising financial inclusion objectives.

It is useful to consider the financial inclusion profile of countries in the region. This is illustrated in the financial inclusion strands that are published in the FinScope survey[19]:

Figure 2: FinMark Trust access strands - Consumer[20]



The above reflects that although Mauritius and South Africa have relatively high financially included adult populations, while other countries in the region have low levels of financial inclusion. This is relevant from both an economic development purview, as well as from an AML/CFT standpoint. The promotion of financial inclusion is seen as an opportunity for encouraging economic development. On the other hand, the level of financial inclusion could, in itself, have an impact on the ML/TF risk in a country. In identifying, assessing and understanding ML/TF risks, the level of financial inclusion should be considered. Those

[19] FinMark Trust Access strands reflect the following analysis segments:

- Excluded: Financially excluded adults, i.e. they do not use any financial products/services – neither formal nor informal – to manage their financial lives;
- Informal only: Adults who have/use informal mechanisms only but NO formal products/services;
- Other formal: Adults who have/use formal non-bank products/services but NO commercial bank products – they might also have/use informal mechanisms; and
- Banked: Adults who have/use commercial bank products/services – they might also have/use other formal and/or informal mechanisms.

[20] Current FinMark Trust Access strands obtained from FinMark Trust. March 2015.

sectors of the population of a country that are informally served or excluded will, for the most part, fall outside of the purview of the regulatory authorities and the ML/TF risks may not be brought to light.

The table that is set out below indicates the level of informally served or excluded consumers in Sub-Sahara Africa countries (where FinMark Trust has prepared such an analysis and highlights high-level observations relating thereto).

Figure 3: Informally served and excluded consumers

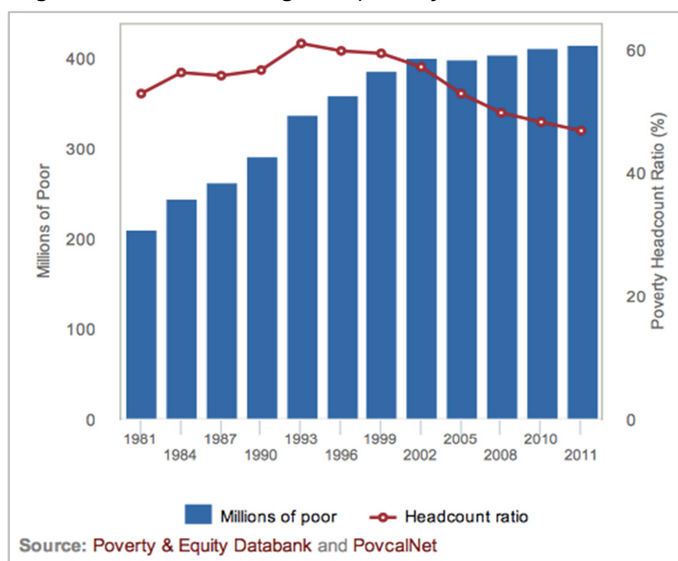
<table>
<tr><th>Country</th><th>% Informally Served or Excluded</th><th>Observations</th></tr>
<tr><td>Mozambique 2009</td><td>87</td><td rowspan="16">14 out of 16 (88%) of the countries have populations that are 30% or more informally served or excluded:
• 7 countries (44%) 50%-100% informal/excluded
• 7 countries (44%) 30%-49% informal/excluded
• 2 countries (12%) 0%-29% informal/excluded
In light of this profile, the ML/TF risk arising from informally served or financially excluded persons should be considered – as described in section 5.6 of this paper.
It is noted that the profiles of formally served consumers in some countries has changed significantly in recent years as a result of non-bank access. This is particularly evident in Zimbabwe where there is 39% non-bank formal access that has been driven by growth in mobile financial services. This compares to 14% non-bank formal access in 2011, a 25% increase over some 3 years. The drivers of such progress are relevant to understanding financial inclusion opportunities; perhaps most notably in respect of technology enabled delivery, as addressed in Focus Note 4 - Mobile services / technology.</td></tr>
<tr><td>Zambia 2009</td><td>77</td></tr>
<tr><td>Malawi 2014</td><td>66</td></tr>
<tr><td>Ghana 2010</td><td>59</td></tr>
<tr><td>Rwanda 2012</td><td>58</td></tr>
<tr><td>Nigeria 2012</td><td>57</td></tr>
<tr><td>Swaziland 2011</td><td>50</td></tr>
<tr><td>Uganda 2013</td><td>46</td></tr>
<tr><td>Tanzania 2013</td><td>43</td></tr>
<tr><td>Botswana 2009</td><td>41</td></tr>
<tr><td>Lesotho 2011</td><td>39</td></tr>
<tr><td>Kenya 2013</td><td>33</td></tr>
<tr><td>Zimbabwe 2011</td><td>31</td></tr>
<tr><td>Namibia 2011</td><td>30</td></tr>
<tr><td>South Africa 2014</td><td>20</td></tr>
<tr><td>Mauritius 2014</td><td>12</td></tr>
</table>

The level of poverty in the Sub-Sahara region provides the backdrop against which to view the need for economic development, i.e. in relation to the impact that AML/CFT requirements can have thereon. New technologies and delivery channels represent significant new opportunities for financial inclusion, i.e. as seen in the progress made in recent years in Zimbabwe (refer *Figure **3**: Informally served and excluded consumers*). However, a country will not be able to optimise these opportunities unless financial inclusion barriers are addressed, such as AML/CFT due diligence requirements that encourage overly conservative compliance by institutions. Mobile financial services have, in a number of SADC jurisdictions, facilitated a rapid increase in access to underserved and excluded populations. As a point of departure, an enabling regulatory environment is needed in this regard.

The aforementioned increase in access to financial services will have an impact on the lives of large segments of the populations of the countries in question. It is suggested that valuable insights will be

gained in tracking this impact in relation to relevant variables, including those relating to economic development and financial integrity.

Figure 4: World Bank regional poverty trends



The statistics contained in the graph on the left relate to the period ended 2011, however, the indications are that poverty levels remain high in the Sub-Sahara Africa region.

Although the proportion of the total population living below the poverty line[21] (population below $1.25 a day) is declining, the absolute number of people in this category is increasing. It is reasoned that, in light of the picture indicated above, economic development in the Sub-Sahara Africa region remains a priority, which in turn indicates the importance of financial inclusion friendly AML/CFT requirements in the region. Research relating to the levels of poverty in SADC in relation to identified contributing factors would yield useful insights.

Increasing access to finance and financial services within the SADC region has been identified as an opportunity to contribute towards alleviating poverty and stimulating economic development and growth. The identified barriers to financial inclusion, regulatory and other, should be considered against the picture outlined in the commentary above. Notably, the cost of financial services is crucial to encouraging formal access. Where costs are materially increased as a result of AML/CFT requirements, this will have a detrimental effect on financial inclusion. Due diligence requirements can serve as a barrier to financial inclusion where individuals do not have the documentation required to verify their identity. There are numerous other AML/CFT variables that should be considered in relation to financial inclusion. Consideration thereof is beyond the scope of this report. It is suggested that they could be addressed as part of a SADC study to address financial inclusion and AML/CFT matters. This could be leveraged off the recommendations made in a FinMark Trust initiated and funded report published in 2011 entitled "Conservative compliance behaviour: Drivers of conservative compliance responses in the South African financial services industry".[22] These would serve as a starting point and will be relevant in identifying

[21] Population below $1.25 a day is the percentage of the population living on less than $1.25 a day at 2005 international prices.

[22] Recommendations include: Consult with regulated institutions when drafting new laws to ascertain potential compliance responses; Clarify legal obligations; Allow adequate time for the implementation of regulatory requirements; Cooperate with the industry to increase compliance expertise; and Build mutual trust.

opportunities to develop a regulatory/supervisory environment that is focused on the achievement of AML/CFT and financial inclusion objectives.

5.5. AML/CFT regulatory requirements and financial inclusion

Various studies have indicated that AML/CFT regulatory requirements have a significant impact on individuals that would like to make use of the formal financial system. Notably, the concept of "overly conservative compliance" or "over compliant" responses by institutions was put forward in a FinMark Trust study published in 2011.[23] This identified that business management processes may support conservative compliance responses for a number of reasons, including; an institutional compliance culture, a conservative approach to risk in the industry, a need for uniformity in business management processes, lack of compliance management expertise, foreign compliance examples that inform local compliance responses, concern about penalties and sanctions, the desire to maintain a good relationship with regulators and supervisors, a belief that the supervisor is intolerant of compliance errors, law that is uncertain, appropriate management of other risks that may require a conservative approach, and business information systems that may dictate a conservative response.

There have been instances where a country's AML/CFT regulatory requirements have allowed for simplified due diligence in certain circumstances, but institutions have not necessarily taken advantage of this, for instance:[24] "In certain cases financial institutions adopt processes and procedures that go beyond what is required by applicable regulatory requirements. For example, regulators that allowed financial institutions to adopt simplified customer due diligence measures in respect of low risk customers and products to support greater financial inclusion found that some financial institutions continued to apply more comprehensive measures". The factors indicated in the preceding paragraph are relevant when considering the reasons for this.

Challenges faced by consumers that are financially excluded include low income levels and rural living circumstances that may not place them in a geographical position that enables or encourages the use of formal financial services. A detailed analysis of the drivers of financial exclusion is beyond the scope of this report. However, the most common reasons for not having a bank account are cited as follows[25]: Not enough money, do not need an account, family member already has an account, too expensive, too far away, lack of documentation, cannot get an account, lack of trust, and religious reasons.

A number of the aforementioned considerations relate directly to AML/CFT regulatory requirements, specifically in respect of due diligence documentation that is required and the increase in costs of financial services as a result thereof. Due diligence requirements also represent administrative challenges that can ultimately result in compliance risk for institutions.

These challenges have been recognised in research that has been carried out, for example:[26] "Absolute barriers prevent persons from using a service. For example, if the regulation requires certain formal

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[23] FinMark Trust. Conservative compliance behaviour: Drivers of conservative compliance responses in the South African financial services industry. Louis de Koker and John Symington. August 2011.

[24] FinMark Trust. Conservative compliance behaviour: Drivers of conservative compliance responses in the South African financial services industry. Louis de Koker and John Symington. August 2011. Page 4.

[25] World Bank. Global Financial Inclusion (Global Findex) Database 2014: Measuring Financial Inclusion around the World.

[26] Genesis. Hennie Bester, Prof Louis de Koker and Ryan Hawthorne. Access to Financial Services in South Africa: A brief case study of the effect of the implementation of the Financial Action Task Force Recommendations. April 2004.

documents to be presented, persons without the documents are effectively excluded from the service. Transaction costs, when unaffordable, can also prevent persons from using a service. If the transaction costs imposed on utilising formal sector services are too high, clients are likely to abandon the formal sector and turn to informal sector provision (the informal sector is by definition beyond the reach of regulation and the incremental transaction costs imposed by it). This defeats the very object of imposing the regulation in the first instance, and has negative consequences for the development of the society."

In view of the sensitivity to cost in the underserved and excluded market, it is recognised that AML/CFT requirements can represent a barrier to entry. Further, the regulatory framework should ideally enable the use of new technologies for access purposes. It is perhaps in this area where the greatest benefits could be derived from regulatory harmonisation. This is indicated in the following: "Historically, the high cost of building and operating traditional bank branches has been a major obstacle for reaching poor customers with financial services. Brick-and-mortar branches are expensive for banks to maintain in far-flung communities, while traveling to urban areas is costly for many rural customers. Digital finance helps providers overcome these barriers …".[27]

In view of the identified challenges relating to financial inclusion, the FinMark Trust reviews of the SADC country AML/CFT requirements have focused on whether they are consistent with the following FATF recommendations:

- Customer Due Diligence (CDD) (Recommendation 10);
- Record keeping requirements (Recommendation 11);
- Correspondent banking (Recommendation 13);
- Money or value transfer services (Recommendation 14);
- New technologies (Recommendation 15);
- Wire transfers (Recommendation 16);
- Reliance on third parties (Recommendation 17);
- Internal controls (Recommendation 18); and
- Reporting requirements for suspicious transactions (Recommendation 20).

The indications are that certain regulatory requirements that have been implemented, in respect of the above recommendations, vary from country to country and there are, in some jurisdictions, opportunities to consider the AML/CFT implications thereof from a financial inclusion perspective. This is addressed in the respective focus notes, as listed in section 1 (Introduction) of this document.

5.6. Financial exclusion risk

The identified opportunity to cover financial inclusion considerations relating to AML/CFT regulatory requirements in the SADC countries provides a platform from which to consider the benefits that can be derived from an economic development standpoint. However, at the same time, from an AML/CFT assessment perspective, the risk of financial exclusion should be identified, assessed and understood. Where a high proportion of a country's consumers are informally served or excluded, this will mean that a high proportion of consumers will fall outside of the formal identification and verification processes that are applied by financial institutions. They may not be subject to risk mitigation processes to the same extent as in the formal sector, which will mean that there will be limited opportunity to identify, assess, understand and monitor ML/TF risks relating to those informally served and excluded.

[27] CGAP. http://www.cgap.org/topics/digital-financial-services.

It follows that the higher the levels of financial exclusion in a country, the greater the potential for increased ML/TF risk as a result of limited opportunities for risk mitigation. The potential impact of financially excluded populations will depend on the size and nature of the informal sectors in the SADC countries – from both an economic development potential perspective and an AML/CFT risk assessment viewpoint.

ML/TF risks relating to the informal economy of countries should be subject to disciplined risk assessment processes with a view to understanding the overall risk relating thereto. For example, there should be an appreciation of proceeds of crime that flow into, within and out of the informal sector. Further, it would be beneficial to develop a regional understanding of the level of risk in relation to ML/TF threats and vulnerabilities. This would provide countries with a broad platform from which to frame national as well as institutional level risk assessment. Opportunities for such coordination are, to an extent, seen in Annex 12 that was added to the SADC Protocol of Finance and Investment (FIP) in 2012. This is addressed in Focus Note 5 - Harmonisation of regulatory frameworks in the SADC region.

5.7. Development of regulatory frameworks by countries

It is perhaps fair to say that the initial driver for the development of AML/CFT regulatory frameworks was the need for countries to comply with the FATF Recommendations. These were, to an extent, not put in place with a specific focus on the impact thereon in respect of non-AML/CFT related considerations. Structured (often inflexible) approaches taken by regulators have, in some instances, been conservative and have had an adverse impact on financial inclusion. Challenges have also been identified in respect of flexible risk-based approaches, notably where there are high levels of regulatory uncertainty.

In general, countries in the SADC region did not develop their AML/CFT regulatory frameworks before conducting a full national risk assessment (as envisaged in the revised FATF Recommendations) and requiring institutions to contribute towards this assessment. This means that the respective laws, regulations and supervisory requirements that were brought into effect were, to an extent, based on the country's understanding of the FATF standards rather than on a robust identification, assessment and understanding of country specific ML/TF risks, perhaps most importantly in respect of financial inclusion considerations. Further, it is recommended that an assessment of the ML/TF risks in the SADC region could be undertaken prior to determining the approach that should be undertaken in respect of the design, development and implementation of a regulatory framework in a country. This could inform the methodology applied in each individual jurisdiction. The approach should ideally be designed to provide a sound understanding of local circumstances and position how best to tackle the intersect between financial integrity (avoidance of abuse of the financial system for ML/TF purposes) and financial inclusion (access to finance and financial services).

The Making Access to Financial Services Possible (MAP) initiative has played a role in addressing challenges relating to regulatory requirements.[28] An example of the output thereof is seen in the recently announced pilot Lesotho cross-border money transfer project. This is supported by the development of

[28] FinMark Trust has partnered with the United Nations Capital Development Fund (UNCDF) and Cenfri to develop and deliver the MAP initiative. This seeks to advance financial inclusion and support expanding access to an appropriate portfolio of financial services for individuals and micro and small businesses that are either underserved or un-served. An appropriate portfolio of financial services includes effective access to credit, savings, payments and insurance products. These products have the potential to improve the welfare of lower income people by helping to conduct and manage their financial lives more efficiently, increase income, better manage risks and build up wealth over time.

an exemption in terms of the Financial Intelligence Centre Act[29] in South Africa that allows for reduced client identification, verification and record keeping requirements when concluding single cross border remittance transactions of funds not exceeding R3000 per day and R10 000 per calendar month.[30] The exemption will, in all likelihood, have a positive impact on financial inclusion.

Countries that have AML/CFT regulatory requirements that have been in place the longest are less likely to have a framework that fully embraces a risk-based approach in a manner that conforms with the latest international standards and the current trends in ML/TF risk mitigation. For example, the South African due diligence requirements were brought into effect in 2003, i.e. at time when the risk-based approach was not mandatory. Accordingly, the core legislation[31] is essentially rules-based and there is a recognised need for amendments to keep pace with recent international developments. At the time that these focus notes were being finalised, the South African regulatory authorities published a draft Financial Intelligence Centre Act Amendment Bill for public comment. The Bill introduces a risk-based approach to customer due diligence and appears to provide room for financial inclusion friendly measures if, for example, ML/TF risk is mitigated in a manner that does not significantly impede access. The following has been indicated by the regulatory authorities relating to the AML/CFT approach that underpins the draft legislation:[32] "This approach will simplify the current complex and rules-based system of compliance, by providing financial institutions with the flexibility to determine how they verify their clients' identity, taking into account the particular circumstances pertaining to that client."

The draft amendments will provide a basis for a graduated client due diligence methodology. However, they will, by their nature, also mean that there may be high levels of uncertainty relating to what due diligence will meet the regulatory requirements relating to different levels of risk. Regulatory guidance will play a crucial role in this regard. The enablement of such guidance at country, sector or institutional levels should ideally involve private and public sector stakeholders in the interests of achieving regulatory objectives. Further, where there are plans to withdraw the rules-based exemptions (for example exemption 17) to make way for a flexible risk-based approach, an impact analysis should be conducted prior to implementation in order to determine the implications for financial inclusion.

5.8. Conservative AML/CFT responses

There is an increasing realisation that the FATF Recommendations are not necessarily at odds with a financial inclusion policy agenda. The recommendations are, in the main, principle-based and provide countries with the flexibility to implement regulatory frameworks that are appropriate to their circumstances. However, in practice, the reality can be seen quite differently. Countries may adopt inflexible and inclusion unfriendly frameworks, which, when coupled with rigorous supervisory practices, can lead to overly conservative compliance responses by institutions. For example, this is, in some respects, seen in the rules-based regulatory framework that was put in place in South Africa[33], although

[29] Act 38 of 2001.

[30] Financial Intelligence Centre. Public Compliance Communication No. 32. July 2015.

[31] Financial Intelligence Centre Act 38 of 2001 and Gazette 7541 No R 1595 Regulation in Terms of the Financial Intelligence Centre Act, 2001 (Money Laundering and Terrorist Financing Control Regulations, 2002) and the subsequent amendments thereto.

[32] The National Treasury and the Financial Intelligence Centre. Media Statement - Request for Public Comments on the Draft Financial Intelligence Centre Amendment Bill, 2015.

[33] Financial Intelligence Centre Act 38 of 2001.

certain exemptions that were implemented[34] have had a positive impact on financial inclusion. Another example can be found in Zambia where hard copies of AML/CFT-related records must be kept (for a minimum of 7 years), regardless of whether an electronic copy is kept.

Countries are assessed through a process of peer assessments called the "mutual evaluations" carried out by the FATF community to assess compliance with, and the effective implementation of, the FATF standard at a national level. The FATF's International Cooperation Review Group (ICRG) considers a jurisdiction's compliance with the FATF standards and issues statements identifying countries with strategic deficiencies. These statements generally call on FATF members to consider the risks arising from deficiencies in jurisdictions, i.e. in their financial engagements with such countries. In very serious cases, the FATF may advise countries to apply counter-measures to protect the international system from ML/FT risks arising from that country. Institutions in countries that are listed by the ICRG, in this context, may face increased costs of doing international business, termination of business relationships and a slower pace of transactions due to increased due diligence required by counterparts. These measures may impact negatively on the country's economy in the form of economic sanctioning from peers.

Therefore, the consequences for a country with strategic compliance deficiencies are so severe that many policy makers and regulators have tended to adopt very conservative practices and rules, fearing the punitive measures that may arise, which can adversely contribute towards financial exclusion. The revised 2012 FATF Recommendations attempt to deal with this concern. There is now scope to address the narrow approach that was adopted by certain countries as a result of overly conservative interpretations of the international standard. However, the existing legislation in some SADC jurisdictions is still founded on a conservative approach that was encouraged in the past, which can result in financial exclusion. FATF guidance has recognised the challenges in question: "The promotion of formal financial systems and services is central to any effective and comprehensive AML/CFT regime. However, applying an overly cautious approach to AML/CFT safeguards can have the unintended consequence of excluding legitimate business and consumers from the formal financial system."[35]

The FinMark Trust review has revealed that the SADC countries have developed differing AML/CFT regulatory frameworks and there are identified opportunities for regulatory harmonisation. For example, only in South Africa has the Exemption 17 approach been adopted. Refer to Focus Note 2 (risk-based approaches to AML/CFT) for details in this regard. This has provided institutions with a rules-based opportunity to apply simplified due diligence. Various regulatory harmonisation perspectives are covered in the focus notes that follow, however it should be remembered that the full spectrum of factors that impact on the behaviour of institutions should be considered. This will provide a base from which to understand financial inclusion supply side dynamics in an integrated way. In this regard, the factors indicated in section 5.5 above will be relevant. A focus on financial inclusion demand side considerations and the interrelationships between the various AML/CFT stakeholders, particularly between supervisors and institutions, will also provide valuable perspectives.

5.9. Recommendations

Effective co-ordination and communication relating to financial inclusion – Refer to section 5.3 above

[34] For example, exemption 17.

[35] FATF, 2013.

Effective co-ordination and communication relating to AML/CFT regulatory requirements, at the highest levels of government between stakeholders that are responsible for financial inclusion and financial integrity policies of a country, will highlight cross-functional challenges with a view to proactively addressing them. This could include formal consultation relating to existing or proposed new AML/CFT-related regulatory requirements by the AML/CFT regulatory authorities with those authorities that are responsible for financial inclusion / economic development in a jurisdiction (could include the Minister of Finance and the Minster of Trade and Industry).

Holistic view of financial inclusion and other variables – Refer to section 5.3 above

The relationship between financial inclusion and other variables that impact on economic development should be viewed in a holistic manner when considering the impact thereof in relation to AML/CFT objectives. These include, for example, the availability and use of technology, levels of education and literacy, new delivery channels, geographic and public/private sector governance variables, to name a few. It is noted that further research in this regard would yield valuable insights.

Risk assessment relating to the informal economy – Refer to section 5.4 above

The ML/TF risks in the informal economy should be addressed in order to obtain an overall understanding thereof in any particular jurisdiction. For example, in respect of proceeds of crime that flow into, within and out of the informal sector.

Evaluation of the impact of financial inclusion on economic development – Refer to section 5.4 above

An objective evaluation of the impact of financial inclusion on economic development would provide valuable insights in light of the relationship between financial inclusion and financial integrity objectives. This is perhaps best undertaken with input from financial institutions that are able to provide hands-on practical client-facing AML/CFT due diligence and financial inclusion related input.

Financial exclusion drivers – Refer to section 5.5 above

It is recommended that countries that have low levels of financial inclusion should identify and monitor financial exclusion drivers that arise out of AML/CFT regulatory requirements, with a view to developing an understanding thereof. This will serve as a platform from which to consider financial exclusion risk in the country (particularly where this could adversely affect the overall ML/TF risk in the country).

Design, development and implementation of a regulatory framework – Refer to section 5.7 above

An assessment of the ML/TF risks in the SADC region should ideally be undertaken prior to the design, development and implementation of a regulatory framework in a country, as well as any update or changes thereto. This should be designed to provide a sound understanding of local circumstances and position how best to address the intersect between financial integrity (avoidance of abuse of the financial system for ML and TF purposes) and financial inclusion (access to finance and financial services).

Achievement of regulatory objectives – Refer to section 5.7 above

Answering the question of whether AML/CFT objectives are being achieved in a country goes hand-in-hand with the question of whether a country's AML/CFT framework is effective or not. However, to an extent, it goes further in that the focus on the achievement of objectives means that the outcome thereof on the broad-based population of a country would be considered as a matter of course. Where a country

is committed to the achievement of both AML/CFT and financial inclusion objectives, this approach should be encouraged in the SADC countries together with an appropriate focus on the question of whether the county's AML/CFT requirements inappropriately impact on financial inclusion objectives.

Conservative AML/CFT responses – Refer to section 5.8 above

The full spectrum of factors that impact on the behaviour of institutions should be considered. This will provide a base from which to understand financial inclusion supply side dynamics in an integrated way. A focus on financial inclusion demand side considerations and the interrelationships between the various AML/CFT stakeholders, particularly between supervisors and institutions, will also provide valuable perspectives.

5.10. Conclusion

AML/CFT regulatory requirements can have a significant impact on access to financial services by currently excluded and informally served populations in the SADC region. The FinMark Trust review has revealed that the SADC countries have developed differing AML/CFT regulatory frameworks and that there are identified opportunities for regulatory harmonisation. However, in understanding conservative compliance behaviour by institutions, the full spectrum of factors that impact on the behaviour of institutions should be considered, as indicated in section 5.5. The impact of AML/CFT laws should not be viewed in isolation.

It is advisable, in the interests of encouraging financial inclusion and the achievement of financial integrity objectives, for countries to inform the development of their AML/CFT regulatory framework on the back of the output national level ML/TF risk assessments. This should incorporate consideration of financial exclusion risk, bearing in mind the implications thereof from the ML/TF and economic development perspectives.

The intersect between financial integrity objectives and financial inclusion matters should be addressed at a policy level. There should be appropriate communication between stakeholders at the highest policy making level.

6. Focus Note 2 - Risk-based approaches

6.1. Introduction

The adoption of a risk-based approach to the regulation of ML/TF is no longer optional - This is now required in terms of international standards[36]. Key aspects thereof are considered in this focus note with a view to identifying regulatory harmonisation opportunities as set out in Focus Note 5 (entitled "Harmonisation of regulatory frameworks in the SADC region").

Where financial inclusion friendly AML/CFT requirements are put in place, which allow for proportionate compliance responses according to the ML/CFT risk, this can play a positive role in promoting access to formal financial systems of the respective countries, and at the same time potentially reduce the use of informal mechanisms that are outside of the authorities' scrutiny. This theme is explored in the commentary that follows.

[36] In terms of FATF Recommendation 1.

6.2. Focus Note 2 executive summary

The risk-based approaches that are applied by countries and institutions are now shaped by the specifications set out in FATF Recommendation 1 and related interpretive note, which provide a platform for countries to develop regulatory and supervisory frameworks that allow flexibility to achieve financial integrity objectives while at the same time providing the room to address financial inclusion objectives.

The specification of standards and guidance relating to risk-based approaches has, perhaps to greater extent than in the past, brought the achievement of AML/CFT objectives into view. It is reasoned that there would be merit in unpacking this matter in that countries would, as a matter of course, be steered towards focusing on the effectiveness of AML/CFT requirements and the achievement of objectives, and, as a consequence, institutions would also be more AML/CFT output focused.

There has been progress towards developing an international understanding of how a national risk assessment should be undertaken, as illustrated in FATF guidance published in 2013[37], which provides guidance on the conduct of risk assessment at a national level. The outputs of the aforementioned will, over a period of time, provide valuable insights towards informing the development of regulatory frameworks going forward. Over half of the countries that participated in the study have AML/CFT laws that specifically allow for risk-based approaches. These allow for proportionate responses by institutions, which generally fall into the following categories: proven low ML/TF risk, lower ML/TF risk and higher ML/TF risk. Examples of risk-based approaches that may be allowed, in terms of regulatory requirements, are highlighted under the following heading in this focus note: Low Risk Exemption - General; Low Risk Exemption - Occasional Transactions; Low Risk Exemption - Wire Transfers; Simplified Due Diligence - Rules-Based; and Simplified Due Diligence - Principles-Based.

A country's regulatory framework could be structured so as to allow for appropriate country level support for financial inclusion, which could, in broad terms, include "low risk" exemptions as well as rules and principles-based simplified due diligence requirements that allow for proportionate risk responses, i.e. in a manner that provides for regulatory clarity on a level playing field, while at the same time allowing for adequate flexibility.

The FATF recommendations and guidance relating thereto is not prescriptive about the manner in which ML/TF risk assessments should be undertaken. However, the indications are that countries that are undertaking national risk assessments in the SADC region appear to be geared towards identifying, assessing and understanding the risks in the formal financial system of a country. They are not, at this juncture, scoped to deal with the risks that are inherent in the informal economy. Accordingly, the question of whether a country's risk assessment should also incorporate an assessment of the informal sector is relevant. This would shed light on the ML/TF risks relating to financial exclusion.

The FinMark Trust review of the AML/CFT regulatory frameworks in various SADC countries has revealed that progress has been made towards adopting risk-based approaches, i.e. in respect of implementing regulatory frameworks that allow simplified due diligence in respect lower ML/TF risks and provide exemptions relating to low ML/TF risks. The question of whether these developments have optimised opportunities to encourage financial inclusion should be considered. For instance, it can be argued that the increased flexibility allowed by the revised 2012 FATF Recommendations has not been fully embraced in the regulatory frameworks of some countries, and is perhaps not being used to its full potential to

[37] FATF Guidance. National Money Laundering and Terrorist Financing Risk Assessment. February 2013.

achieve AML/CFT objectives. This matter is covered in Focus Note 5 (entitled: "Harmonisation of regulatory frameworks in the SADC region"), which includes an analysis of the participating SADC country risk-based approaches to AML/CFT, with a view to identifying regulatory harmonisation opportunities.

6.3. FATF Recommendations

In terms of FATF Recommendation 1: "Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply resources, aimed at ensuring the risks are mitigated effectively. Based on that assessment, countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified".[38]

This provides the foundation for the efficient allocation of resources for AML/CFT purposes and the implementation of risk-based measures. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. On the other hand, where countries identify lower risks, they may decide to allow simplified measures under certain conditions.

Recommendation 1 also specifies that: "Countries should require financial institutions and designated non-financial businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks."

The risks that are faced by countries and institutions are addressed in the interpretive notes[39], which provide a platform for countries to develop regulatory and supervisory frameworks that allow flexibility to achieve financial integrity objectives, while at the same time providing room to address financial inclusion objectives. It is noted that, a national risk assessment[40] serves as an important source of reference in the design of these frameworks. This would involve a detailed identification of ML/TF-related threats and vulnerabilities, as well as crime and the proceeds of crime, i.e. providing a basis to inform the regulatory responses of countries. This should be sensitive to financial inclusion objectives in jurisdictions where a high proportion of the population is financially excluded or informally served. FATF guidance recognises opportunities in this regard:[41] "In addition to the objective of promoting access to formal financial services thus reducing the use of financial mechanisms that are outside of the authorities' scrutiny, FATF has a strong interest in articulating guidance that supports financial inclusion."

Each country is at liberty to establish regulatory and supervisory frameworks that are suitable for its circumstances, i.e. in achieving AML/CFT objectives. Such frameworks should be established in a manner that allows institutions to apply a proportionate response in light of the level of ML/TF risk in question.

[38] FATF Recommendation 1 - Assessing risks and applying a risk-based approach.

[39] Interpretive Note to FATF Recommendation 1 - Assessing risks and applying a risk-based approach.

[40] Required in terms of FATF Recommendation 1.

[41] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. February 2013. Page 7.

6.4. AML/CFT risk management objectives

Risk assessment and the mitigation of ML/TF risk should be seen as being part of a process and, as is the case in any process, there will be inputs and outputs, i.e. at both the national and institutional levels. For example, at a macro level, inputs would include obtaining detailed information relating to crime, proceeds of crime, suspicious transaction reports, ML/TF typologies and methods, prosecutions, convictions and other matters, while outputs of a country's AML/CFT regulatory framework and the supervision thereof can be seen in terms of whether national AML/CFT objectives have been achieved. On the other hand, at an institutional level, inputs will include those things that are done or obtained by financial institutions to mitigate against being used for ML/TF purposes (due diligence, reporting of suspicions, record keeping, training and operational matters and monitoring). The output of the aforementioned will be seen in terms of compliance with regulatory requirements and the extent to which institutions/DNFBPs have been used for ML/TF purposes, i.e. this will include an assessment of the ML/TF residual risk.

It is acknowledged that the FATF Recommendations do not explicitly guide countries towards addressing the AML/CFT challenge in this manner. However, there is value in tackling the questions that arise from this line of debate.

In order to effectively address the aforementioned, such outputs or objectives would need to be considered. For instance, obtaining documentation to verify the identity of customers would provide assurance that business with unknown persons will not be undertaken and that business will be undertaken with persons who are who they say they are. These objectives, together with other relevant objectives, would feed into a macro view of AML/CFT outcomes/objectives which could ultimately be seen in terms of whether the financial system of a country (both formal and informal) has been abused for ML/TF purposes. The level of assurance provided in respect of the aforementioned achievement of objectives, at both micro and macro levels, would be a function of the ML/TF mitigation structures and processes at both national and institutional levels. For example, the integrity of national identity systems will be relevant to institutions that must undertake customer due diligence and the identification/verification process and controls put in place by such institutions will need to take this into account.

Unintended consequences that can arise as a result of the introduction of AML/CFT requirements would, to some extent, as a logical outcome of the above approach, be addressed. This will include the likes of overly conservative responses from rigid rules-based laws, or from flexible regulatory approaches where there is a high level of uncertainty relating to how institutions/DNFBPs should comply with the requirements.

It is noted that detailed consideration of this theme is beyond the scope of this document, however, there would be value in flagging this topic for further consideration. Although the FATF Recommendations do not directly address AML/CFT from an output or achievement of objectives perspective, it is reasoned that there would be merit in unpacking this matter in that countries would, as a matter of course, be steered towards focusing on the effectiveness of AML/CFT requirements, as opposed to seeing AML/CFT in terms of compliance rules. Where this is the case, they will be encouraged to dynamically focus on what will achieve the established outputs of an AML/CFT risk process. Notably, if objectives are not being achieved, however measured, ongoing feedback and changes needed relating to the regulatory framework to the risk process will play a role in the continuous development thereof.

Importantly, what is measured in any process will have a significant impact on how stakeholders thereto will react. Supervisors and institutions may be well versed in assessing the adequacy and effectiveness of AML/CFT variables in respect of the pillars on which AML/CFT responses are built within institutions, i.e. customer due diligence, reporting of suspicions and unusual transactions, record keeping, training or other operational matters, and risk monitoring. However, an assessment of the achievement of high level AML/CFT objectives, as well as financial inclusion goals, enabled by appropriate regulatory/supervisory dynamics, would provide valuable insights from both the financial integrity and economic development perspectives. This will, to some extent, be addressed as an integral part of the national risk assessments that are being carried out by countries.

6.5. ML/TF risk considerations

The implementation of a full risk-based approach to the regulation of AML/CFT is, in many respects, not simple and there are multidimensional and interrelated challenges. It is recognised that risk assessment at national and institutional levels involves the consideration of a combination of factors that, taken together, will be used to assess ML/TF risk using an appropriate risk assessment methodology. For example, regulatory guidance[42] provided in South Africa recognises that a systematic approach to determine different risk classes is needed, which involves criteria to characterise clients and products. Importantly, it is understood that a "one size fits all" approach to risk management is not appropriate and the following factors may be relevant in the assessment process: product type, business activity, client attributes, source of income or funds, jurisdiction of clients, transaction value, type of client and politically exposed persons (this is not a complete listing and is included for illustration purposes).

Risk management disciplines in institutions have, in general, developed to the point where risk frameworks and processes embrace the concepts of risk appetite and risk tolerance. It is perhaps fair to say that this increasingly applies in an AML/CFT context in financial institutions. Notably, supervisors generally expect institutions to determine their ML/TF risk appetite and to specify risk tolerances, which should be subject to appropriate governance within institutions. The question of whether these matters should also be understood and addressed at country level should be considered. This could perhaps form part of a national risk assessment process. For instance, should a country level risk appetite be determined and should regulators/supervisors be expected to specify risk tolerances at country level? It is, however, reasoned that this could represent somewhat of a challenge in that where this is not done in a manner that facilitates practical engagement therewith by institutions, there could be unintended consequences, which could have an impact on financial inclusion where an overly cautious approach is adopted by institutions.

There has been progress towards developing an international understanding of how a national risk assessment should be undertaken, as illustrated in FATF guidance published in 2013[43], which provides guidance on the conduct of risk assessment at the national level. This relates to key requirements set out in FATF Recommendation 1 and paragraphs 3-6 of the interpretive note to Recommendation 1. The guidance recognises that ML/TF risk assessments may be undertaken at different levels and with differing purposes and scope, including supranational assessments (of a group of countries), national (country level) assessments and sub-national assessments (of a particular sector, region, or operational function within a country), although the obligation for assessing and understanding ML/TF risk rests with the country itself. The different risk assessments should relate to each other and different approaches can be

[42] Guidance Note 3A published by the South African Financial Intelligence Centre.

[43] FATF Guidance. National Money Laundering and Terrorist Financing Risk Assessment. February 2013.

followed. For example, a top down approach may mean that the supranational risk assessment takes place first and informs aspects of the national assessments at country level. This will provide a benchmark for certain judgments made in subsequent risk assessments at the country level. Alternatively, a bottom up approach may be undertaken where the supranational assessment is informed by the results of country-level or sub-national assessments. The outputs of these approaches will, over a period of time, provide valuable insights towards identifying opportunities for the harmonisation and calibration of SADC laws.

Given that a risk assessment is now required in all countries, and that the risk-based approach requires each country to respond proportionally and effectively to their ML/TF risks, it is logical that, over time, a sound understanding thereof will be developed. It is acknowledged that these risks will not be the same in all SADC countries and, accordingly, the AML/CFT control measures needed to address those risks may vary from country to country. This will, to an extent, determine how regulatory frameworks should develop going forward.

6.6. Proportionate AML/CFT responses

All of the countries that participated in the study have introduced regulatory requirements that allow for various aspects of proportionate AML/CFT responses, and it is noted that over half of the participating countries have AML/CTF laws that specifically allow for risk-based approaches. The question of whether these requirements optimise opportunities to implement country relevant regulatory frameworks should be considered. Notably, the regulatory requirements that enable risk-based approaches vary from country to country. While this is not, in itself, cause for concern, there is merit in highlighting features thereof. In this regard, the categories of regulatory/compliance responses that are proportionate to the ML/TF risks in question can be identified. These are, with reference to the FATF interpretive note to Recommendation 1, illustrated in the table set out below:

Figure 5: Proportionate AML/CFT responses

ML/TF Risk	AML/CFT Responses
Proven low ML/TF risk	Countries may decide not to apply some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided: • There is a proven low risk of money laundering and terrorist financing (in limited and justified circumstances) relating to a particular type of financial institution or activity, or DNFBP; or • A financial activity (other than the transferring of money or value) is carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of money laundering and terrorist financing.
Lower ML/TF risk	Countries may decide to allow simplified measures for some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided that a lower risk has been identified, and this is consistent with the country's assessment of its money laundering and terrorist financing risks. Independent of any decision to specify certain lower risk categories in line with the previous paragraph, countries may also allow financial institutions and DNFBPs to apply simplified customer due diligence measures, provided that financial institutions and DNFBPs take appropriate steps to identify, assess, understand, manage and mitigate their money laundering and terrorist financing

ML/TF Risk	AML/CFT Responses
	risks and there is supervision and monitoring of such risks.
Higher ML/TF risk	Where countries identify higher risks, they should ensure that their AML/CFT regime addresses these risks. Financial institutions and DNFBPs should take enhanced measures to manage and mitigate the risks in question. Various FATF Recommendations include specifications that address higher risks; i.e. in respect of politically exposed persons (Recommendation 12), correspondent banking (Recommendation 13), value or money transfer services (Recommendation 14), new technologies (Recommendation 15), wire transfers (Recommendation 16) and transactions with businesses and persons from high risk countries (Recommendation 19).

The above table contains a high level description of the risk responses that are appropriate in respect of "low", "lower" and "higher" ML/TF risks. It is not a comprehensive analysis of the specifications contained in Recommendation 1, and the interpretive note relating thereto, but outlines key aspects to serve as a point of departure in determining how a country could structure its regulatory framework in this regard, which could be framed using a "rules" or "principles" regulatory context.

For example, in South Africa, the core AML/CFT regulatory requirements[44] are primarily rules driven, although elements of a risk-based approach have been introduced - to a large extent by way of guidance published by the South Africa Financial Intelligence Centre. Notably, regulatory exemptions and simplified due diligence specifications are put in place using thresholds and other criteria in a rules-based format, i.e. in respect of low risk or lower risk ML/TF circumstances. However, certain aspects of the guidance that has been published by the Financial Intelligence Centre has introduced a principles approach to addressing ML/TF risk, which attempts to allow a level of flexibility in conducting customer due diligence.

On the other hand, countries may follow a more principles-based approach in drafting AML/CFT laws required – core and subordinate legislation. This approach will generally not be prescriptive and allows for a high level of flexibility. Regulatory requirements would be framed at a principle level and there would typically be a focus on regulatory outcomes that are required, which allows institutions to adapt their compliance responses when circumstances change. For example, Malawi Regulation 3(5)[45] permits a financial institution to apply simplified customer identification requirements for "low risk categories of customers, beneficial owners, beneficiaries or business relationships".

A rules approach is, to a large extent, an approach that allows a jurisdiction to take responsibility for identifying and assessing the risks in question and for providing institutions with a framework within which to comply with the requirements / criteria that are set by the authorities. This will typically provide for a uniform application of customer due diligence requirements, but can be inflexible and may not address the needs of all stakeholders, specifically in respect of low income customers where the requirements do not meet the changing needs of the market. Alternatively, a principles approach typically provides for a higher level of flexibility, but can encourage variable compliance responses by

[44] Financial Intelligence Centre Act 38 of 2001 and regulations and exemptions relating thereto.

[45] Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act.

institutions. Regulatory frameworks may have elements of both the rules-based and principles-based approaches. This is the approach that is preferred by the writers of this report, i.e. to allow for flexibility, but at the same time include regulatory specification that will avoid high levels of uncertainty.

A country's regulatory requirements should be periodically reviewed in light of its effectiveness relating to AML/CFT standards, and its impact on financial inclusion.

6.7. Examples of proportional responses

The table that is set out below has been prepared in order to illustrate practical approaches that have been applied in various SADC countries. This has been included in order to indicate how the aforementioned can be categorised, with a view to facilitating comparison of the approaches applied.

Figure 6: Practical Examples

Approach	Examples
Low Risk Exemption - General Due diligence exemptions where there is a proven low risk of ML/TF (in limited and justified circumstances) relating to a particular type of financial institution or activity, or DNFBP.	• Namibia exemption in respect of a client that is a public company the securities of which are listed on an exchange that meets specified criteria.46 • South African exemption for a prepaid instrument that meets strict criteria and conditions of usage.47
Low Risk Exemption - Occasional Transactions Due diligence exemptions for financial activities (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of ML/TF. Carrying out occasional transactions above the applicable designated threshold (USD/EUR 15 000).	• Angola's requirement48 that all reporting entities must identify and verify the identity of their clients and, where applicable, of their representatives, and of the beneficial owners, through the presentation of a valid support document whenever conducting an occasional transaction of an amount equal to or higher than the local currency equivalent of USD15 000, notwithstanding the transaction is conducted through a single operation or various operations that seem to be interrelated. • This will not apply when there is a suspicion that the operations, irrespective of their amount, are related to the crime of money laundering or terrorism financing, or where there are doubts as to the authenticity or conformity of client identification data.

[46] Paragraph 2.5 of Exemption Order No. 75: General Exemptions.

[47] Gazette 33309 on the 25 June 2010.

[48] Article 5(1) of Law nº 34/11.

Approach	Examples
Low Risk Exemption - Wire Transfers Due diligence exemptions for financial activities (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of ML/TF. Carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16.	• Zimbabwe's requirements49 include a de minimis threshold of USD1 000 (or such lesser or greater amount as may be prescribed). When undertaking wire transfers equal to or exceeding this amount, financial institutions, must undertake specified due diligence relating to the originator. • It is noted that there is some doubt as to what due diligence must be undertaken in respect of wire transfers below USD1 000, which illustrates the importance of regulatory clarity.
Simplified Due Diligence - Rules-Based Structured rules-based regulatory requirements that allow simplified due diligence measures to be applied in respect of lower ML/TF risks.	• Simplified due diligence requirements that are specified in terms of Exemption 17 in South Africa, i.e. where there is country level support for the ML/TF risks that are taken by institutions in terms of the nature and extent of the simplified due diligence required. • A more detailed description of Exemption 17 is included in the commentary that follows in this section of the report – i.e. in recognition of the value that this carve out has had on encouraging financial inclusion.
Simplified Due Diligence - Principles-Based Principles-based regulatory requirements that allow simplified due diligence measures to be applied in respect of lower ML/TF risks.	• Malawi Regulation 3(5)50 permits a financial institution to apply simplified customer identification requirements for "low risk categories of customers, beneficial owners, beneficiaries or business relationships". • It is noted that, for this regulatory approach to be effective, regulatory clarity/guidance is needed.

South Africa is, in some respects, seen as setting the benchmark in the SADC region with respect to providing for a special dispensation for financial inclusion in terms of the Financial Intelligence Centre Act, 2001.[51] Notably, South Africa put Exemption 17 in place in response to an identified need to support economic transformation in the country. This applies to business relationships and single transactions that fall within set transaction limits/criteria. Clients may only withdraw, transfer or make payments of an amount not exceeding R5 000 per day, and the cumulative transactions during any particular month may not exceed R25 000, and the transfer of funds outside of South Africa is not permitted. Further, the balance maintained in that account may not at any time exceed R25 000 and clients may also not

[49] Section 27 of the Zimbabwean Money Laundering and Proceeds of Crime Act 4 of 2013.

[50] Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act.

[51] Act 38 of 2001 - In South Africa exemptions are Gazetted.

simultaneously hold two or more such accounts with the same accountable institution, i.e. which meet the specified criteria and are similar in nature.[52]

The diagram set out below illustrates the Exemption 17 requirements[53].

Figure 7: Exemption 17

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APPLIES TO

- A person who carries out the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990)
- A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)
- The Postbank referred to in section 51 of the Postal Services Act, 1998 (act 124 of 1998)
- The Ithala Development Finance Corporation Limited
- A person who carries out the business of a money remitter

(but only in respect of transactions in terms of which both the sending and receipt of the funds in question take place in the Republic)

Places a limit on where the transaction can take place – domestic only

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TRANSACTION LIMITS

Every business relationship or single transaction which:

- Enables the client to withdraw, transfer or make payments of an amount not exceeding R5 000 per day and not exceeding R25 000 in a monthly cycle
- Does not enable the client to effect a transfer of funds to any destination outside the Republic, except for a transfer as a result of a point-of-sale payment or a cash withdrawal in a country in the Rand Common Monetary Area

CONDITIONAL ON

- The balance in such an account may never exceed R25 000
- The same person does not simultaneously hold two or more accounts which are similar in nature with the same institution

TIERED APPROACH

- No debit is allowed if the transaction limits have been exceeded until full KYC in terms of section 22 of the Act has been performed

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South Africa recognised the need for the encouragement of financial inclusion as an important factor in the journey towards economic transformation. Policy objectives where translated into banking industry strategic imperatives through the Financial Sector Charter. Specifically, the growth of the Mzansi account business, on the back of the Exemption 17 carve-out, has strongly prompted financial inclusion within the country.

Where countries identify proven low risk circumstances, exemptions may be appropriate, i.e. this allows consumers to make use of the financial services in question on the basis of a risk assessment that is undertaken by the appropriate regulatory authorities, as opposed to the organisations that provide financial services, thereby avoiding overly conservative responses relating to the low risks in question. For example, in 2010 South Africa issued a "low risk" exemption for a prepaid instrument that meets strict criteria and conditions of usage[54]. It is noted that the South African prepaid card effectively allows for anonymous accounts, which allows for the usage thereof without any due diligence. However, risks are mitigated by not allowing cash-outs and limiting the card usage (to an extent that is acceptable to the regulatory authorities). However, while this might reduce regulatory due diligence barriers in the

[52] PCC No. 21 clarified the scope and application of Exemption 17.

[53] FinMark Trust. AML/CFT and Financial Inclusion in SADC – South Africa Country Report. March 2015.

[54] Gazette 33309 on the 25 June 2010.

intended context, this approach would have limited application in relation to the broader market. For example, not allowing cash-out makes the exemption inappropriate for those living in a cash economy.

Other countries have developed tiered due diligence structures that recognise that higher levels of due diligence are required in respect of higher ML/TF risks. For instance, Nigeria has implemented a 3 tier due diligence structure and Mexico has a 4 tier approach. These rely on the specification of thresholds and other criteria that are designed to limit ML/TF risks, which provides institutions with a framework within which to comply with the respective due diligence requirements that are determined at country level. This means that there will, by design, be a level playing across all financial institutions that the framework applies to (in applying a structured rules-based tiered approach to due diligence).

Where a regulatory framework also allows institutions to apply simplified due diligence for lower ML/TF risks, they would then be able to apply these outside of the rules-based exemption, which would then allow them to determine the level of due diligence that is appropriate. However, where there is a high level of uncertainty relating to the amount of ML/TF risk that that can be tolerated and the consequences relating thereto, institutions may tend to favour conservative and restrictive compliance responses to limit their risk in this regard. Accordingly, it will be important for countries to consider how risk can be addressed at country level and action taken to assist institutions with the development of compliance programmes that are financial inclusion friendly – without limiting flexibility. Appropriate country level support for a risk-based approach can include regulations that avoid overly conservative due diligence processes in institutions that can adversely impact on financial inclusion imperatives.

The adoption of a risk-based approach to the regulation of AML/CFT has the potential to positively impact on the financial inclusion initiatives of financial institutions. However, this need not be the case in all instances, particularly where the regulatory/supervisory framework introduces a high level of regulatory uncertainty for institutions or where it is inflexible and relies on a one size fits all approach, which can have unintended consequences. Importantly, country circumstances and the profiles of threats and vulnerabilities will be relevant in considering the features of access friendly products. These may, in various respects, be complex in nature and have interdependencies and variables that may not be constant across different populations and geographies, and could change over time. Accordingly, it is advisable to monitor the impact that the risk-based approach has on financial inclusion on an ongoing basis.

6.8. ML/TF risk and country AML/CFT responses

As indicated in the commentary above, a country's regulatory framework could be structured so as to allow for appropriate country level support. It could include "low risk" exemptions and provide rules- and principles-based simplified due diligence requirements that allow proportionate risk responses, i.e. in a manner that provides for regulatory clarity on a level playing field, while at the same time allowing for adequate flexibility.

South African regulators indicated that the existing AML/CFT regulatory requirements will be changed/updated to fully embrace FATF Recommendation 1 specifications, i.e. to comprehensively address the adoption of risk-based approaches at national and institutional levels. Draft requirements have been published in this regard. It is noted that the aforementioned could involve the withdrawal of all current exemptions. This may not, in itself, represent a challenge in respect of financial inclusion, provided that the anticipated changes to the South African regulatory framework, in the light of the national risk assessment that will be carried out in South Africa, provides national level support for institutions to apply simplified measures that would be equally effective as the likes of the current

Exemption 17 (in the achievement of financial inclusion objectives). However, eliminating exemptions will, in all likelihood, have a negative impact on financial inclusion in the absence of clear guidance/specification in terms of the risk-based approach in question. Where institutions/DNFBPs are left to determine thresholds on their own, this could lead to much more conservative due diligence approaches that could materially affect financial inclusion outcomes. This will be the case where there is an increased level of uncertainty as to how to comply with the regulatory requirements and what the implications of non-compliance will be. Clear guidance that is developed by both regulatory and business stakeholders will alleviate risks in this regard. It is reasoned that where guidance is developed by regulators/supervisors in conjunction with institutions, this is far more likely to address the wider business realities in a manner that will keep pace with changing circumstances.

In any event, bearing in mind the consequences of financial exclusion, an impact analysis should be undertaken at country level prior to the implementation of new regulatory requirements.

Institutions will take on ML/TF risk whenever they do business. By virtue of its very nature, when risk is taken on, this will mean that an institution will not, in every instance, get its risk rating entirely accurate. Accordingly, levels of uncertainty relating to ML/TF risk will have an impact on the compliance responses of organisations. Further, supervisory practices will play an important role in influencing an institution's compliance approach. As a consequence, it is important that regulators / supervisors consider the implications of risk in discharging their regulatory / supervisory responsibilities. It is suggested that regulators / supervisors should be open to working with institutions in developing risk-based approaches.

Countries and institutions will also not be able to identify or anticipate all ML/TF risks, and criminals are often one step ahead of regulatory developments. Accordingly, there will be a constant need to keep pace with developments that are needed to achieve regulatory objectives. Although AML / CFT should not be a purely "hind-sight game", there should an ongoing feedback loop in countries and in institutions.

In the past, MNOs in some countries have indicated that the regulatory environment has favored banks. However, this has, in certain countries, to an extent, been reversed and it has been argued that MNOs are advantaged in terms of due diligence requirements that are in place. In principle, the regulatory requirements should be framed, implemented and supervised in a manner that allows a level playing field. Where this is not the case, AML/CFT objectives and business imperatives can be compromised.

6.9. ML/TF risk assessment in respect of the informal sector

The FATF recommendations, and guidance relating thereto, is not prescriptive about the manner in which ML/TF risk assessments should be undertaken. However, the indications are that countries that are undertaking national risk assessments in the SADC region appear to be geared towards identifying, assessing and understanding the risks in the formal financial system of a country and are not, at this juncture, scoped to address the risks that are inherent in the informal economy, which may be significant in some jurisdictions. For instance, those countries that have adult populations that are largely financially excluded or informally served may, in particular, have unknown ML/TF risks if a full national risk assessment is not conducted. In view of the level of financial exclusion in countries that have cash-based economies, an assessment of both the formal and informal sectors to arrive at an overall country risk assessment would represent some practical challenges, but could yield valuable insights. There would be limited data on which to carry out a comprehensive assessment of the informal sector, however, the question of whether it makes sense to only assess the formal sector in understanding the overall AML/CFT risk picture of a country should be addressed.

Countries will be in a position to consider some aspects of ML/TF risks in respect of exposures that will relate to the informal market such as hawala[55], black market currency exchange, loan sharks and informal remittances. This will be a starting point from which to understand the risks in question, and may go some way towards providing an overall country risk assessment.

In any event, where the strategic AML/CFT focus in a jurisdiction is placed purely on the formal financial system, a potentially substantial component of the jurisdiction's economic activity will not be addressed from a planning and resource allocation perspective. This may result in the development of regulatory frameworks that are not optimised to address the overall ML/TF risk posed therein.

6.10. AML/CFT risk-based approach recommendations

AML/CFT outputs/objectives – Refer to section 6.4 above

Although the FATF Recommendations do not directly address AML/CFT from an output or achievement of objectives perspective, it is reasoned that there would be merit in unpacking this matter so that countries would, as a matter of course, be steered towards focusing on AML/CFT effectiveness (over and above technical compliance with the FATF Recommendations).

Risk appetite and tolerance – Refer to section 6.5 above

The question of whether risk appetite and tolerance should also be understood and addressed at country level should be considered. This could perhaps form part of a national risk assessment process and can inform AML/CFT approaches in relation to access to finance.

Monitoring of the impact of laws on financial inclusion – Refer to section 6.6 above

An assessment of the impact of laws on financial inclusion is complex in nature and has interdependencies and variables that may not be constant across different populations and geographies, and could change over time. Accordingly, it is advisable to monitor the impact that the risk-based approach has on financial inclusion on an ongoing basis.

Regulatory frameworks – Refer to sections 6.7 and 6.8 above

A country's regulatory framework should be structured so as to allow for appropriate country level support, which could, in board terms, include "low risk" exemptions as well as rules and principles-based simplified due diligence requirements that allow for proportionate risk responses, i.e. in a manner that provides for regulatory clarity on a level playing field, while at the same time allowing for adequate flexibility. It is advisable to undertake an impact analysis when developing new laws.

ML/TF risk assessment in respect of the informal sector – Refer to section 6.9 above

Where the strategic AML/CFT focus in a jurisdiction is placed purely on the formal financial system, a substantial component of the jurisdiction's economic activity may not be addressed from a planning and

[55] "Hawala and other similar service providers (HOSSPs) arrange for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time. What makes them distinct from other money transmitters is their use of non-bank settlement methods." Refer http://www.fatf-gafi.org/documents/documents/role-hawalas-in-ml-tf.html

resource allocation perspective. This may result in the development of regulatory frameworks that are not optimised to address the overall ML/TF risk posed therein.

6.11. Focus Note 2 conclusion

AML/CFT risk-based approaches provide opportunities to develop financial inclusion friendly AML/CFT frameworks in respect of lower ML/TF risks (allowing simplified due diligence, which could be rules-based or principles-based) and low ML/TF risks (providing for exemptions - general, occasional transactions, and wire transfers).

It is suggested that there should be an increasing focus on the achievement of AML/CFT objectives, which will, to an extent, be encouraged through the developing appreciation of the contribution made by ML/TF risk assessment and the role that this plays in AML/CFT.

7. Focus Note 3 - AML / CFT due diligence and related matters

7.1. Introduction

It is recognised that customer due diligence that is undertaken by institutions is an important foundation on which AML/CFT compliance responses must rest. It is an essential component of any AML/CFT programme. Accordingly, this focus note has been prepared in order to highlight key considerations in respect of customer due diligence and related matters. This is done in light of relevant FATF Recommendations[56], specifically in view of financial inclusion dynamics, i.e. for the purpose of identifying themes that are relevant in the SADC region. Reference is made to the FinMark Trust country reviews[57] in this regard.

7.2. Focus Note 3 executive summary

Various FATF Recommendations are considered in order to provide the context for the analysis set out below, specifically in respect of the following: Customer due diligence (CDD) (Recommendation 10), record keeping requirements (Recommendation 11), wire transfers (Recommendation 16), reliance on third parties (Recommendation 17), internal controls (Recommendation 18), reporting requirements for suspicious transactions (Recommendation 20) and guidance and feedback (Recommendation 34).

The FinMark Trust country reviews of the regulatory requirements imposed in the SADC region indicates that all countries that participated in the study have core legislation in place to control ML/TF, and most also have subordinate legislation relating thereto. This reflects the progress that has been made towards addressing the international AML/CFT standards. It is noted that two countries have not issued regulations under the core legislation, but have published guidelines. One country only has draft subordinate legislation and has not yet published guidelines.

The review of regulatory requirements in the respective SADC countries reveals that all countries generally require that a customer's full name, date of birth, ID number, nationality and residential address

[56] Customer Due Diligence (CDD) (Recommendation 10); Record keeping requirements (Recommendation 11); Correspondent banking (Recommendation 13); Reliance on third parties (Recommendation 17); Internal controls (Recommendation 18); and Reporting requirements for suspicious transactions (Recommendation 20).

[57] Published 13 May 2015.

must be obtained. Additional information such as contact details, profession or occupation, source of funds, or tax number may also be required. However, the regulatory requirements relating to the aforementioned vary from country to country. All countries accept an ID Card / Book or Passport as an acceptable form of identity verification, and the majority of countries specify that a driving license is acceptable. Some countries have specified that voter's cards are acceptable. Nearly half of the participating countries specifically allow financial institutions to rely on alternative means of identification, which can provide an element of flexibility that can support financial inclusion objectives. Accordingly, there are opportunities for countries to consider regulatory opportunities in this regard. It is recommended that the approach adopted should not inappropriately exclude persons from the formal financial system. It should also be flexible enough to include identification opportunities that are available as a result of new technologies.

Achieving a balance between clear specification of what due diligence documentation is acceptable and allowing adequate flexibility, so as to avoid due diligence requirements becoming overly restrictive or uncertain, represents a challenge. This is seen in light of the large segments of SADC populations that do not live in formal residences that have street addresses, particularly in respect of informal settlements and in rural areas, which can represent due diligence challenges. It is reasoned that country regulatory frameworks should recognise these realities in addressing AML/CFT and financial inclusion objectives.

There are opportunities for countries to consider the thresholds that are set in respect of occasional transactions (the thresholds set are generally significantly lower than FATF designated threshold - USD/EUR 15 000) and wire transfers (only two countries have set a *de minimis* threshold – USD1 000 per the interpretive note to FATF Recommendation 16) where this could provide benefits from a financial inclusion standpoint. This should be done in a balanced manner that does not unnecessarily hamper financial inclusion. It is recommended that countries should consider applying thresholds, taking into account the ML/TF risks in each jurisdiction.

Financial institutions should be required to keep records[58] obtained through customer due diligence measures and records of transactions. However, the period of time for which such records must be kept may vary from country to country and may exceed the FATF recommended 5 year time frame, i.e. for periods that range from 7 to 10 years. Although the increased record keeping time period may be conservative from a financial integrity standpoint, there may be significant implications from a financial inclusion perspective. This may mean that the cost of doing business with clients that fall into the inclusion sector will be increased. Where low value / margin business is being targeted, there will be less opportunity to do this in a lower cost format. This will, in turn, have an adverse impact on access opportunities. It is noted that the manner in which records must be kept can also have an impact on financial inclusion opportunities.

From a financial inclusion perspective, the ability to rely on third parties to secure customers is vital to the sustainability of delivery channels that depend on new technologies and branchless banking models. The FinMark Trust reviews of country regulatory frameworks indicate that most countries permit financial institution reliance on third parties to perform certain customer due diligence measures. This provides a platform for institutions to develop products that are designed for the underserved or excluded market, i.e. where third parties undertake due diligence measures.

[58] In terms of the FATF Recommendation 11.

Other matters addressed in this focus note include 1) reporting of suspicions[59], which is relevant from a financial inclusion perspective in that the reporting in question will provide information relating to the ML/TF risk profile of products and clients, and 2) guidance and feedback[60] where experience has shown that the nature and extent of guidance often requires development.

7.3. FATF Recommendation 10 - customer due diligence

In terms of FATF Recommendation 10:
"Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names".
Recommendation 10 also requires that:
"Financial institutions should be required to undertake customer due diligence (CDD) measures when:
(i) establishing business relations;
(ii) carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15 000); or (ii) that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16;
(iii) there is a suspicion of money laundering or terrorist financing; or
(iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data."

In view of the above, there is an opportunity for countries to set due diligence thresholds that adhere to the above criteria, i.e. in respect of occasional transactions of some USD15 000 or wire transfers of some USD1 000 (refer to the interpretive note to FATF Recommendation 16), provided that there is no suspicion of ML/TF or doubts about the veracity or adequacy of previously obtained customer identification data. It is noted that the thresholds that are indicated in terms of FATF guidance will be applied in view of the national risk assessments that are carried out in the SADC countries, as well as risk assessments that are conducted by institutions. In other words, the thresholds that are applied should be introduced taking into account the identified and assessed ML/TF risks relating thereto and should be reviewed in a manner that provides an effective understanding thereof.

In broad terms, FATF Recommendation 10 requires financial institutions to 1) identify customers and verify the customer's identity using reliable, independent source documents, data or information; 2) identify beneficial owners and take reasonable measures to verify the identity of beneficial owners; 3) understand and, as appropriate, obtain information on the purpose of the intended relationship; and 4) to conduct ongoing due diligence on the business relationship and scrutinise transactions throughout the course of the relationship to monitor that they are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

The due diligence related recommendations set out in FATF Recommendation 10 should be read together with FATF Recommendation 1 and the interpretive notes relating to both these recommendations. Notably, in terms of the Interpretive Note to Recommendation 10[61]: "Where the risks of money laundering or terrorist financing are lower, financial institutions could be allowed to conduct simplified CDD measures, which should take into account the nature of the lower risk. The simplified measures

[59] FATF Recommendation 20.
[60] FATF Recommendation 34.
[61] Paragraph 21.

should be commensurate with the lower risk factors (e.g. the simplified measures could relate only to customer acceptance measures or to aspects of ongoing monitoring). Examples of possible measures are:

- Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship (e.g. if account transactions rise above a defined monetary threshold);
- Reducing the frequency of customer identification updates;
- Reducing the degree of on-going monitoring and scrutinising transactions, based on a reasonable monetary threshold; and
- Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.

Simplified CDD measures are not acceptable whenever there is a suspicion of money laundering or terrorist financing, or where specific higher-risk scenarios apply."

It is noted that the FinMark Trust country reviews of the regulatory requirements imposed in the SADC region indicates that all countries that participated in the study have core legislation in place to control ML/TF. It is noted that most countries also have subordinate legislation relating thereto. This reflects on the progress that has been made towards addressing the international AML/CFT standards. It is noted that two countries have not issued regulations under the core legislation, but have published guidelines, and one country only has draft subordinate legislation and has not yet published guidelines.

However, the progress that has been made, which is, to an extent, seen in the number of changes that have been made to regulatory requirements by participating countries in recent years, is viewed in the light of the need to comply with FATF Recommendations. However, this is not necessarily, at this juncture, a reflection of the level of effectiveness of country or institutional level compliance. Countries will be able to comply with FATF Recommendations without unnecessarily hampering access to financial services by excluded populations. When considering effectiveness in the aforementioned context, it should be remembered that this would also embrace risks relating to financial exclusion.

7.4. Customer identification and verification

The review of regulatory requirements in the respective SADC countries reveals that all countries generally require that the following identification information must be obtained:

- Full name;
- Date of birth;
- ID number;
- Nationality; and
- Residential address.

Countries may also require additional information such as contact details, profession or occupation, source of funds, or tax number (depending on country context). However, the regulatory requirements relating to the aforementioned vary from country to country. Accordingly, there are opportunities for countries to consider regulatory harmonisation prospects.

All countries accept an ID card/book or passport as an acceptable form of identity verification. The majority of countries specify that a driving license is acceptable. Some countries have specified that voter's cards are acceptable. Nearly half of the participating countries specifically allow financial institutions to rely on alternative means of identification, which can provide an element of flexibility that

can support financial inclusion objectives. In this regard, due diligence processes in financial institutions will, to an extent, be dependent on the integrity of these alternative forms of identification.

Independent verification sources of address verification that are specified differ across countries in the SADC region. These include the following:

- Address validation & verification service;
- Bank statement;
- Cellular or telephone account;
- Credit reference agency,
- Insurance policy;
- Lease or tenancy agreement;
- National database or register;
- Personal visit to the home of the applicant;
- Rates or utility bill;
- Reference from a bank;
- Reference from customary authority;
- Reference from known customer of bank;
- Reference from well-known professional / government official;
- Reference or affidavit from an employer;
- Revenue service;
- Telephone book; and
- Television license.

The above items (identified in the respective country regulatory frameworks) are not a complete listing of all verification sources. They serve as a reference point for regulatory stakeholders. The status of the respective sources differs from country to country and reliance thereon will depend on the ML/TF risks in question. Clearly, some sources will provide more reliable due diligence than others. The acceptability thereof in a jurisdiction will be a function of the regulatory requirements that are put in place, which should, in the interests of both AML/CFT and financial inclusion, not inappropriately exclude relevant sources (where this will undermine financial inclusion opportunities).

It is noted that a number of countries do not have national identification systems that can be relied on to verify the identity of customers. While it is not a FATF requirement to have national identification systems, due diligence processes can be compromised where the integrity of identification systems, national or otherwise, do not enable efficient and effective due diligence processes.

Achieving a balance between clear specification of what due diligence documentation is acceptable, and allowing adequate flexibility so as to avoid due diligence requirements becoming overly restrictive or uncertain, represents a challenge. This is illustrated in rules-based due diligence requirements imposed, which can represent a challenge in designing products for the underserved and excluded market. On the other hand, there is limited specification[62] of how identification and verification should be carried out in some jurisdictions, for example in the Seychelles where it would be beneficial if there were provisions in the regulations dealing with acceptable forms of identity and reliable and independent verification sources[63]. A further example is seen in Botswana where the regulatory requirements[64] do not state the

[62] Neither the Anti-Money Laundering Act, 2006 (as amended), nor the Anti-Money Laundering Regulations, 2012 contain provisions setting out identification measures or verification sources.

[63] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Seychelles Country Report. March 2015.

information that is to be obtained from each customer, i.e. they specify that institutions must "establish and verify the identity of the customer". Further, the banking regulations[65] do not contain detailed due diligence specifications, which provides a high level of flexibility but at the same time can lead to uncertainty from a due diligence perspective and may lead to a lack of consistency[66].

Large segments of SADC populations do not live in formal residences that have street addresses, particularly in respect of informal settlements and in rural areas, which can represent due diligence challenges. This is illustrated in Lesotho where each customer is required to provide a street address in an environment where many people live in areas that do not have formal street addresses and, in the past, there have been challenges relating to acceptable identification systems[67]. On the other hand, in support of Malawi's financial inclusion agenda, regulatory requirements[68] allow for the acceptance of unofficial identification documents on a risk-based approach and for alternative means of obtaining a customer's address[69] - Regulation 4(1)(c) reads "his physical address including street names and plot numbers, or a detailed description of the location named in Malawi where the physical address is not available." This recognises that people live in areas that do not have street names and, to avoid excluding such people from the formal financial system, alternative address verification measures may be used. For example, a person could describe the location or draw a map of where they stay[70], i.e. which serves to promote an approach that recognises the realities of the jurisdiction in question and assists in supporting financial inclusion objectives.

From a financial inclusion perspective, countries should consider the acceptance of "alternative" forms of identification (other than formal identification systems), particularly where a national identification system is not in place or parts of the population of a country are excluded from mainstream identification for any reason. This would be advisable where usage of formal identification systems is limited and could result in financial exclusion in a jurisdiction. However, only five counties specifically state in law, regulation or guidelines that alternative forms of identification are permitted.

The FATF recommendations do not specify that financial institutions/DNFBPs must verify the residential address of all customers. This is recognised in FATF guidance: "The FATF Recommendations do not specify the exact customer information (referred to by certain countries as "identifiers") that businesses subject to AML/CFT obligations should collect to carry out the identification process properly, for standard business relationships and for occasional transactions above USD/EUR 15 000."[71]

Countries that participated in the study have regulatory requirements that, in various ways, specify address verification requirements. There would be value in considering the reasons why the approaches adopted are often conservative in respect of the aforementioned and why approaches that are adopted are not changed in the short term when they do not yield the results needed to achieve objectives.

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[64] Financial Intelligence Agency Act, 2009.

[65] Banking (Anti-Money Laundering) Regulations, 2003.

[66] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Botswana Country Report. March 2015.

[67] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Lesotho Country Report. March 2015.

[68] Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations, 2011.

[69] Regulation 4 of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations, 2011.

[70] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Malawi Country Report. March 2015.

[71] FATF, APG and World Bank. FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion. February 2013.

It is recommended that the due diligence approach that is adopted by a country should not inappropriately exclude persons from the formal financial system. It should also be flexible enough to include identification opportunities that are available as a result of new technologies. There are opportunities to develop a harmonised approach to customer due diligence in SADC countries in this regard.

7.5. Occasional (one-off) transactions

As specified in FATF Recommendation 10, financial institutions should be required to undertake customer due diligence measures when carrying out occasional transactions above the applicable designated threshold (USD/EUR 15 000) – refer to section 7.3 above.

The FinMark Trust review indicates that the majority of the countries that participated in the study have, in their regulatory frameworks, included due diligence carve-outs in respect of occasional or one-off transactions, i.e. through the specification of thresholds under which certain customer due diligence is not required. Notably South Africa, Botswana and Zambia have not adopted this approach.

However, the thresholds that are set in some of these countries are significantly lower than the FATF recommended threshold of USD 15 000. For example, in the Seychelles, Regulation 5 of the Anti-Money Laundering Regulations, 2012 defines a "once-off-transaction" as a transaction carried out other than as part of a business relationship that exceeds SCR100 000 or SCR50 000 in the case of cash transactions, whether the transaction is carried out in a single operation or several operations which appear to be linked." SCR100 000 is equivalent to USD 7 812 and SCR50 000 to USD 3 906, which are both well below the threshold suggested by the Financial Action Task Force (FATF)[72].

It is noted that the thresholds that are set, in respect of an occasional transactions, will be determined by countries in light of ML/TF risk assessments that are undertaken. The lower amounts that have been specified, may, under the circumstances, be appropriate in the countries in question, however, there may be opportunities to consider the aforementioned where this could provide benefits from a financial inclusion standpoint.

7.6. Wire transfer *de minimis* exemption

FATF Recommendation 16 requires countries to ensure that financial institutions include required and accurate originator information, and required beneficiary information on wire transfers[73] and related messages and that the information remains with the wire transfer or related message throughout the payment chain. The scope, ambit and implications of the *de minimis* threshold, as formulated in FATF Recommendation 16, is succinctly summarised by the European Commission DG Internal Market and Services (DG MARKT) as follows:

"The *de minimis* threshold of USD/EUR 1 000 has been retained in the new Recommendation; however, the new Recommendation spells out clearly what information is still required for international wire

[72] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Seychelles Country Report. March 2015.

[73] As defined by FATF, wire transfer refers to any transaction carried out on behalf of an originator through a financial institution by electronic means with a view to making an amount of funds available to a beneficiary person at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person.

transfers under this threshold. This includes the names of the originator and the beneficiary, as well as the account number of both parties. The latter can be replaced by a unique transaction reference number. The address/national ID number/customer ID number/date and place of birth are no longer required. The accuracy of the information need only be verified in the case of suspicion of money laundering[74]."

Only two of the participating countries have introduced the *de minimis* thresholds that are referred to above, i.e. Mozambique and Zimbabwe. Financial institutions would not have to verify the name of the originator, the name of the beneficiary and the account number for each, or a unique transaction number for occasional cross-border wire transfers below the threshold in question (USD1 000), i.e. such that there is a low risk of ML/TF. It is noted that where such thresholds are applied, compliance with all specifications set out in relevant FATF Recommendations and the interpretative notes relating thereto is needed.

Countries that have not yet incorporated the USD1 000 *de minimis* threshold in their regulatory frameworks have an opportunity to consider its implementation in the light of their AML/CFT context. This should be viewed in terms of each country's circumstances and the risks that are inherent in the aforementioned would be assessed at national and institutional levels, i.e. at the time of introduction and ongoing (with appropriate specification in respect of domestic and cross-border electronic transfers).

FinScope[75] data indicates that 23% of South African adults have either sent money to, or received from, family members, parents, and children within South Africa, usually on a monthly basis (20% in 2013). The following changes (in absolute numbers) have been noted in 2014 in comparison to 2013:

- Remittances through banks: increased by 4.2% (from 2.4 million to 2.5 million);
- Remittances through supermarkets: increased by 22% (from 1.8 million to 2.2 million); and
- Remittances through cellphones: increased by 15% (from 1.3 million to 1.5 million).

This is an indication of the importance of the different channels in providing access to financial services in South Africa. The growth in non-banking channels is indicated.

Cross border remittances are an important consideration in the SADC. For example, South Africa is home to a large number of immigrants from neighbouring countries that remit funds to their home countries. AML/CFT requirements represent a barrier that can exclude individuals that do not have all of the required identification and address documentation needed to participate in the formal financial system. This can result in individuals resorting to the use of informal remittance options. Reference is made to the cross-border money transfer project that is being undertaken with assistance of FinMark Trust. This is briefly described in Focus Note 4 - Mobile services / new technology.

7.7. Provision for deferred due diligence

All countries require that customer identification and verification must be undertaken prior or during the course of establishing a business relationship or conducting occasional transactions. However, over half of the countries that were included in the study have AML/CFT due diligence requirements that allow for deferred approaches to the verification of identity of customers in certain circumstances, i.e. on condition that due diligence measures are undertaken as soon as reasonably practicable. It is noted that the ML/TF risk would need to be effectively managed in this regard.

[74] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Mozambique Country Report. March 2015.

[75] FinScope. South Africa. 2014.

For example, in Angola, regulatory requirements[76] permit reporting entities, whenever the risk of money laundering or financing of terrorism is low, to verify identity after commencing the business relationship. However, this is only allowed when the risk of money laundering or the financing of terrorism is low and where such an action is essential not to interrupt the normal conduct of business. However, such customer due diligence measures must be carried out within the shortest possible time after commencing the business relationship[77].

A further example is seen in Malawi[78] which permits financial institutions to adopt a deferred approach to customer verification. If a financial institution establishes a business relationship prior to verification, financial institutions are required, in line with a risk-based approach, to limit the number, type and amount of transactions that can be performed. This deferred verification is however only permitted if the financial institution has effective risk management systems. In the absence of such, the financial institution is not permitted to enter into a business relationship before the customer's identity has been verified. However, given the capacity of institutions/DNFBPs in many countries, they may not have the systems required. This will mean that they might be prevented from serving excluded populations. It can also limit the appropriateness or physical accessibility (for example if limits are put on non-face-to-face transactions) of a product.

On the other hand, Botswana does not have a deferred approach and customer due diligence measures are required before establishing a business relationship or before concluding a transaction with the customer. The relevant regulatory requirements[79] specifically state that "where a specified party had established a business relationship with a customer before the coming into force of this Act, the specified party shall not conclude a transaction in the course of that relationship unless it has complied with subsection (1)". This implies that no room was provided for the leniency allowed by FATF Recommendation 10 with respect to completing the verification process as soon as reasonably practicable and "where this is essential not to interrupt the normal conduct of business"[80].

It is noted that there are various risks associated with adopting a deferred approach to verification. These should be addressed by institutions that make use of the flexibility that is offered in this regard. However, the approach provides opportunities to limit the need to exclude customers when they do not have all of the documentation needed to verify their identity at the time of establishing a business relationship, where it is appropriate to do so. Consideration should be given to including such requirements in countries where a deferred approach is not enabled (in AML/CFT regulatory requirements).

7.8. Record-keeping

In terms of the FATF Recommendations[81], "financial institutions should be required to keep all records obtained through CDD measures (e.g. copies or records of official identification documents like passports, identity cards, driving licences or similar documents), account files and business

[76] Article 6(2) of Law nº 34/11.

[77] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Angola Country Report. March 2015.

[78] Deferred (tiered) due diligence in terms of Regulation 9(2).

[79] Section 10(2) of the Financial Intelligence Agency Act, 2009.

[80] FinMark Trust. AML/CFT and Financial Inclusion in SADC – Botswana Country Report. March 2015.

[81] FATF Recommendation 11.

correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual large transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction". Further, "financial institutions should be required to maintain, for at least five years, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved, if any) so as to provide, if necessary, evidence for prosecution of criminal activity".

However, the period of time for which records must be kept may vary from country to country and may exceed the FATF recommended 5 year time frame. Angola, Democratic Republic of the Congo, Malawi, Mozambique, the Seychelles and Zambia, whether through core or subordinate legislation, specify periods that range from 7 to 10 years for which respective due diligence and client transaction related records must be kept. It is noted that five of these countries require records to be kept for ten years.

Although the increased record keeping time period (i.e. where the timeframe exceeds FATF recommended five years) may be conservative from a financial integrity standpoint, there may be significant implications from a financial inclusion perspective, i.e. the cost of doing business with clients that fall into the inclusion sector will be increased. Where low value / margin business is being targeted, there will be less opportunity to do this in a lower cost format, which will, in turn, have an adverse impact on access opportunities.

In principle, where there are lower ML/TF risks, it can be reasoned that it is appropriate to keep records for shorter periods of time, i.e. for periods that do not exceed the FATF recommended a five year time line. Most countries allow for records to be kept in electronic format. However, where the records in question are required to be kept in paper format in terms of regulatory requirements (for example in respect of Malawi[82]) or supervisory practices, i.e. regardless of whether they may also be kept electronically, this will mean that administration thereof will, to a large extent, rely on manual documentation handling processes. This can be relatively costly and pose operational challenges. Five countries do not specifically address the manner in which records may be kept, i.e. to specifically allow electronic record keeping. Further, it is noted that, although the regulatory requirements may enable records to be kept electronically, this is not necessarily allowed in practice.

7.9. Reporting of suspicious transactions

In terms of the FATF Recommendations[83]: "If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU)".

All countries that participated in the study have introduced regulatory requirements relating to the aforementioned, but the indications are that two of them have not done this in a manner that complies

[82] Regulation 17 of the Money Laundering, Proceeds of Serious Crime and Terrorist Financing Regulations, 2011 reads: "17(1) A financial institution shall keep all records in soft and hard copy and it shall ensure that appropriate backup and recovery procedures are in place. (2) A financial institution shall take reasonable steps, in respect of an existing business relationship, to maintain the correctness of records in compliance with regulations 4 to 15 by undertaking a two-year review of existing records, particularity for higher risk categories of customers and business relationships."

[83] FATF Recommendation 20.

with the specifications contained in Recommendation 20. It is noted that, in one country, the banking legislation addresses reporting requirements that are in conflict with the requirements set out in the applicable AML/CFT legislation, i.e. the banking legislation currently requires reporting to be submitted to the bank supervision authorities as the financial intelligence agency is not fully operational.

A review of the regulatory requirements in the above context, undertaken as part of this study, does not necessarily reflect on the effectiveness or the achievement of regulatory objectives in each jurisdiction, but nevertheless provides the regulatory foundation relating to the reporting of suspicions.

It is noted that the reporting of suspicions is relevant from a financial inclusion perspective in that the reporting in question will provide information relating to the ML/TF risk profile of products and clients.

7.10. Reliance on third parties

In terms of FATF Recommendations:
"Countries may permit financial institutions to rely on third parties to perform elements (a)-(c) of the CDD measures set out in Recommendation 10 or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for CDD measures remains with the financial institution relying on the third party."

Accordingly, financial institutions should be able to rely on third parties to perform due diligence measures to introduce business. However, financial institutions relying on third parties must ensure that copies of identification data and other relevant documentation relating to customer due diligence be made available to the financial institution from the third party upon request and without delay. Financial institutions must also satisfy themselves that the third party is regulated, supervised or monitored, and has measures in place to meet the CDD and record keeping requirements set out in FATF Recommendations 10 and 11.[84]

From a financial inclusion perspective, the ability to rely on third parties to secure customers is vital to the sustainability of delivery channels that depend on new technologies and branchless banking models. The FinMark Trust reviews of country regulatory frameworks indicates that most countries permit financial institution reliance on third parties to perform certain customer due diligence measures. This provides a platform for institutions to develop products that are designed for the underserved and excluded market, i.e. where third parties undertake due diligence measures.

It is noted that recommendation 17 does not apply to outsourcing or agency relationships. The third party, defined in Interpretive Note 17, paragraph 3 as "financial institutions or DNFBPs that are supervised or monitored and that meet the requirements under Recommendation 17", will usually have an existing business relationship with the customer, which is independent from the relationship to be formed by the customer with the third party, and would apply its own procedures to perform the customer due diligence measures. This can be contrasted with an outsourcing/agency scenario, in which the outsourced entity

[84] Recommendation 17 states that, "When a financial institution relies on a third party that is part of the same financial group, and (i) that group applies CDD and record-keeping requirements, in line with Recommendations 10, 11 and 12, and programmes against money laundering and terrorist financing, in accordance with Recommendation 18; and (ii) where the effective implementation of those CDD and record-keeping requirements and AML/CFT programmes is supervised at a group level by a competent authority, then relevant competent authorities may consider that the financial institution applies measures under (b) and (c) above through its group programme, and may decide that (d) is not a necessary precondition to reliance when higher country risk is adequately mitigated by the group AML/CFT policies."

applies the due diligence measures on behalf of the delegating financial institution, in accordance with prescribed procedures, and is subject to the delegating financial institution's control of the effective implementation of these procedures, by the outsourced entity.

It is noted that a country's AML/CFT requirements relating to agents, including the definition thereof, could unnecessarily restrict institution's/DNFBP's use of third parties in the delivery of financial services.

7.11. Guidance and feedback

In terms of FATF Recommendations[85]:
"The competent authorities, supervisors and SRBs should establish guidelines, and provide feedback, which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and, in particular, in detecting and reporting suspicious transactions."

All participating countries have regulatory requirements that allow the relevant regulatory authorities to issue guidelines or guidance notes. However, four countries have not yet issued such guidelines. In the writer's experience, although guidance may have been issued, there is often not enough guidance and the guidance that has been issued does not comprehensively cover AML/CFT challenges that they are faced with. It is recommended that countries should actively assess the quantity and quality of guidance provided by the authorities. This should be done with input from all relevant stakeholders.

Guidance relating to due diligence that is required in respect of the underserved and excluded market is crucial, particularly in light of the need to keep costs as low as possible while at the same time addressing financial integrity objectives. It is also important to encourage adequate communication between institutions and regulators/supervisors. This would typically involve both informal and formal communication. A forum for industry communication purposes is an effective platform from which to generate two-way communication.

Where there is a consistent interpretation of the letter of the law across all institutions in a jurisdiction, and there is consistent treatment of all institutions under such law, this provides an opportunity for a so-called "level playing field" in which the regulated institutions can do business. Experience has shown that adequate regulatory guidance is crucial in guiding the compliance responses of organisations. This assists with the interpretation of requirements and serves to reduce the level of uncertainty in an environment where non-compliance with regulatory requirements can attract fines, penalties, sanctions and impairment to the reputation of institutions. Further, the intention of the regulatory requirements is relevant from a compliance perspective. The so-called "spirit of the law" is brought into focus here.

A consistent interpretation of AML/CFT requirements that provides regulatory clarity will assist in avoiding overly conservative AML/CFT compliance responses by institutions. This could have a positive impact on financial inclusion.

7.12. Due diligence related recommendations

Sources of identity verification – Refer to section 7.3 above

[85] FATF Recommendation 34.

The acceptability of sources of identity verification in a jurisdiction will be a function of the regulatory requirements that are put in place. These should, in the interests of both AML/CFT and financial inclusion, not inappropriately exclude relevant sources. There would be value in countries undertaking periodic reviews relating to the aforementioned.

Country identity system / framework – Refer to section 7.4 above

Countries that do not have a national identification system / framework that effectively supports the due diligence activities of institutions will adversely impact on the effectiveness of the identification and verification activities of institutions. This could be specifically addressed in a country's national risk assessment.

Identity and the process of identification – Refer to section 7.4 above

Large segments of SADC populations do not live in formal residences that have street addresses, particularly in respect of informal settlements and in rural areas, which can represent due diligence challenges. There would be value in further research into the concept of identity and the process of identification – as appropriate for the SADC region.

Alternative forms of identification – Refer to section 7.4 above

From a financial inclusion perspective, countries should consider the acceptance of "alternative" forms of identification (other than formal identification systems), particularly where a national identification system is not in place or parts of the population of a country are excluded from mainstream identification for any reason.

Occasional transactions – Refer to section 7.5 above

There are opportunities to consider the thresholds that are set, in respect of occasional transactions (above the applicable designated threshold - USD/EUR 15 000), where this could provide benefits from a financial inclusion standpoint - provided that this does not materially compromise AML/CFT objectives in a jurisdiction.

Wire transfer de minimis threshold – Refer to section 7.6 above

Countries that have not yet incorporated the USD1 000 wire transfer *de minimis* threshold have an opportunity to consider this in the light of their circumstances, i.e. with a view towards supporting financial inclusion objectives.

Provision for deferred due diligence – Refer to section 7.7 above

There is an opportunity for countries to consider AML/CFT due diligence requirements that allow for deferred approaches to the verification of identity of customers in certain circumstances, i.e. on condition that due diligence measures are undertaken as soon as reasonable practicable.

Record keeping period – Refer to section 7.8 above

Consideration should be given to limiting record keeping time period requirements to the FATF recommended 5 years, specifically where lower risk ML/TF exposures are identified and assessed. Further, it is recommended that record keeping should be allowed in electronic format in terms of

regulatory requirements and supervisory practices. Regulatory frameworks should enable paperless audit trails.

Record keeping manner – Refer to section 7.8 above

Record keeping requirements should be evaluated in relation to the impact thereof on financial inclusion. For example, where records are required to be kept in paper format, regardless of whether they may also be kept electronically, this will mean that administration thereof will, to a large extent, rely on manual documentation handling processes. This can be relatively costly and pose operational challenges.

Reliance on third parties – Refer to section 7.10 above

From a financial inclusion perspective, the ability to rely on third parties to secure customers is vital to the sustainability of delivery channels that depend on new technologies and branchless banking models. There would be value in countries periodically reviewing the effectiveness of their laws in supporting financial inclusion and AML/CFT objectives in this regard.

Guidance and feedback – Refer to section 7.11 above

Guidance relating to due diligence that is required in respect of the underserved and excluded market is crucial, particularly in light of the need to keep costs as low as possible while at the same time addressing financial integrity objectives. It is recommended that countries should actively assess the quantity and quality of guidance provided by the authorities. This should be done with input from all relevant stakeholders.

Communication between institutions and regulators/supervisors – Refer to section 7.11 above

Adequate communication between institutions and regulators/supervisors should be encouraged. This would typically involve both informal and formal communication. A forum for industry communication purposes plays a valuable role in this regard.

7.13. Focus Note 3 conclusion

Countries in the SADC region are making progress towards adopting AML/CFT due diligence requirements that are appropriate to the region. Opportunities to utilise the flexibility offered in the revised FATF recommendation to develop financial inclusion friendly AML/CFT requirements are increasingly understood, and the rules and principles-based regulatory frameworks.

However, in view of the challenges identified in FinMark Trust country reviews, it is noted that there would be benefit from further research that is designed to provide a detailed, on-the-ground analysis of the practical identification and verification practices within institutions. In this regard, benefit would be derived from reference to opportunities that are offered in respect of new technology and delivery channels, for example in respect of biometric or digital identity.

8. Focus Note 4 - Mobile services / new technology

8.1. Introduction

This focus note highlights key aspects of opportunities that can be derived from the introduction of mobile services and new technologies in the SADC region, i.e. in light of identified opportunities to support financial inclusion objectives.

8.2. Focus Note 4 executive summary

Various FATF Recommendations are considered in order to provide the context for the analysis set out below, specifically in respect of the following: money or value transfer services (Recommendation 14), new technologies (Recommendation 15) and wire transfers (Recommendation 16).

It is recognised that new technology opportunities and mobile services offer solutions that will, to a far greater extent than in the past, provide opportunities to deliver financial services to the underserved or excluded market. Technology advances enable broad-based, remote off-line, non-face-to-face, lower cost, secure delivery that should be appropriately regulated and supervised. While it is acknowledged that they may represent new ML/TF risks, and it is accepted that appropriate measures must be in place to address these in institutions, they may also bring with them new opportunities for financial inclusion as well as new opportunities for ML/TF risk mitigation. This should be seen holistically from an AML/CFT perspective and should specifically consider the risk of financial exclusion. The degree to which these can be leveraged to offer financial inclusion opportunities will, to a large extent, depend on the AML/CFT regulatory requirements that are in place in a jurisdiction.

The ability to move money or value, domestically or cross border, from one person to another, is central to financial inclusion objectives. It is increasingly recognised that financial service delivery channels must address challenges that are evident in reaching the geographical spread of populations in the SADC region in a manner that is cost effective. This should, in the interests of financial inclusion, be enabled in the AML/CFT regulatory frameworks of the countries in question. The pilot cross-border money transfer project[86] that is designed to assist Basotho who are legally working and residing in South Africa to send money home to Lesotho through an affordable, convenient, safe and real-time channel is an example of a due diligence approach that supports financial inclusion. The service targets the unbanked workers who have been using informal methods that are typically high risk and high cost.[87] Challenges relating to non-face-to-face business, and the use of agents, are also addressed in this focus note.

There is currently no consensus across the SADC region on the scope, ambit and regulatory approach to e-money, mobile payments, prepaid cards and other forms of emerging payment technology. Where countries have issued regulations and guidelines, these often do not contain cross-reference to the AML/CFT Laws and regulations in force in a country. There is an opportunity to address this in a coordinated manner. A harmonised or coordinated approach relating to the aforementioned would assist countries in addressing the emerging challenges relating thereto.

[86] Project that was facilitated by FinMark Trust.

[87] FinMark Trust media release. Shoprite money transfer launched in Maseru - allows for remittances at low affordable rates. 9 July 2015.

FinMark Trust is currently in the process of facilitating the designing of mobile money guidelines for SADC. The overall purpose of this initiative is to develop guidelines to assist SADC member countries to harmonise their legal and regulatory frameworks for mobile money in support of financial inclusion and market development in the region.

8.3. FATF Recommendations - New technologies

Recommendation 15 addresses new technologies that may require enhanced CDD measures and specifies that countries and financial institutions identify and assess the ML/TF risks that may arise in relation to the development of new products, new business practices and delivery mechanisms.

"Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to (a) the development of new products and new business practices, including new delivery mechanisms, and (b) the use of new or developing technologies for both new and pre-existing products. In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks."

Notably, innovations in the payments space, including new channels of delivery such as the internet and mobile banking, online credit card payments and advances in various products (prepaid cards, hybrid cards, mobile money transfer etc.), mean that many transactions are conducted in a non-face-to-face environment. Whilst FATF has not released an interpretive note for Recommendation 15, it has released a risk-based approach, guidance note on prepaid cards, mobile and internet payment services[88].

Risk assessment in relation to the development of new products, business practices and delivery mechanisms is now a specific requirement in terms of the revised FATF recommendations. While it can be argued that the requirement to "undertake a risk assessment prior to the launch of a new product, new business practice or the use of new or developing technologies" can conceivably be read into the requirement for financial institutions to have policies and procedures to prevent the misuse of technological development, none of the fourteen SADC countries expressly require accountable institutions to undertake a risk assessment prior to the launch of a new product, new business practice or the use of new or developing technologies.

Regulations in Angola, Malawi, Mozambique, Zambia and Zimbabwe already contain provisions that require financial institutions to develop programmes that include policies and procedures to prevent the misuse of technological developments.

It is understood that new products, business practices and delivery mechanisms may represent new ML/TF risks and it is accepted that appropriate measures must be in place to address these in institutions. However, they may also, as a result of new technologies, bring with them new opportunities for financial inclusion as well as new opportunities for ML/TF risk mitigation, which should be seen holistically from an AML/CFT perspective. The regulatory frameworks of countries should be flexible enough to take advantage of the aforementioned and contain checks and balances that assist in determining whether the related objectives are being achieved.

[88] http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-RBA-NPPS.pdf

8.4. New technologies and delivery channels

It is evident that banking and other financial services that are delivered primarily through traditional branch networks will not typically reach all of the populations that are currently underserved or excluded. Alternative delivery channels have been identified as a way in which to reach such populations i.e. to address challenges relating to the likes of the cost thereof and geographical reach. Developing countries have, in particular, recognised the opportunities relating to mobile money and branchless banking models.

Importantly, there have been numerous developments in technology that have provided opportunities for market access via broad-based delivery to populations in a jurisdiction, notably in respect of mobile services and card-based solutions. The use of biometric identification, in a secure technology platform, also supports financial inclusion outcomes, where biometric enabled identification and verification is undertaken when establishing a business relationship and is then used in respect of all transactions undertaken. However, the degree to which these can be leveraged to offer financial inclusion opportunities will, to a large extent, depend on the AML/CFT regulatory requirements that are in place in a jurisdiction. Accordingly, it is reasoned that countries should review their AML/CFT frameworks on an ongoing basis with a view to keeping pace with improvements/developments that are available to assist in achieving both AML/CFT and financial inclusion outputs.

Access to finance and financial services in the SADC region will, to a large extent, rely on delivery platforms that are able to reach people in both urban and rural areas in a cost effective manner. Traditional "bricks and mortar" banking, through bank branches, will not serve the financial services needs of all people in a country, particularly those situated in dispersed rural settings. This is a function of a number of factors, including proximity to bank branches / outlets and the cost of providing services. The market in question is, for obvious reasons, sensitive to the cost of financial services. Where costs are significantly increased for any reason, this will have a significant impact on inclusion opportunities.

The roll-out of mobile services and new technologies will, to a large extent, be dependent on existing mobile networks that are facilitated by an existing footprint across the geographical region in question. On the other hand, secure offline process capabilities have been developed (in a manner that integrates securely into existing payment systems), which will assist in financial services penetration in rural areas.

In a report published by GSMA, the following was stated: "The full potential of mobile money has not yet been realised, with 2.5 billion people in developing countries still lacking a viable alternative to the cash economy and informal financial services. 1.7 billion of them have mobile phones, but the mobile money industry has found it challenging to launch and scale services for the unbanked because yet many policy and regulatory environments are not genuinely enabling"[89].

Effective delivery of financial services to financially excluded people will depend on the following:

- Effective proportionate due diligence;
- Effective due diligence audit trails;
- Cost of the delivery of the access to finance and financial services;
- Appropriateness of the finance products and financial services to the target market;
- Proximity to financial services to the target market through physical presence or through technology enabled delivery channels; and

[89] GSMA. Mobile Money: Enabling regulatory solutions. Simone di Castri. February 2013.

- Delivery to both urban and rural areas.

Mobile services / new technology provides a platform through which many people can be serviced and through which many people can access the formal financial system. This represents an exciting opportunity for financial inclusion.

In an article on mobile money, the author makes reference to a speech by Bill Gates who points out that: "governments trying to stay on alert for suspicious activity should actually welcome the prospect of widespread mobile payment systems. After all, digital money transfers are far easier to track than cash." When someone has a mobile phone in Africa," Gates said, "you can see who they've called, where they're located, you can see *their* whole history…. we have that on record. Would you rather have that or just have these $100 bills that the U.S. chose to print and hand out all over the world?"[90]

Mobile services / new technologies bring opportunities to mitigate ML/TF risk. This can include the ability to monitor and track, as well as facilitate the effective identification of clients. Functionality relating to record keeping and reporting may also be used to achieve required AML/CFT outputs.

8.5. Non-face-to-face business

The interpretive note to FATF Recommendation 10[91] lists non-face-to-face business relationships or transactions as a potentially high risk factor under the category product, service, transaction or delivery channel risk factors. From a financial inclusion perspective, the risks of identity fraud have to be balanced with the ML/FT risks of newly banked people on a case-by-case basis to decide if it is appropriate to apply enhanced due diligence measures (FATF, 2013). Non-face-to-face transactions may be undertaken by an agent of an institution or by non-institution agents (in countries where this is permitted by law or regulation), such as retail agents or mobile network agents.

Regulatory requirements in four countries that participated in the study require financial institutions to apply enhanced due diligence measures for non-face-to-face transactions.

The financial access potential relating to non-face-to-face business links with opportunities that are arising out of mobile services and new technologies, as described in the previous section of this report. Where regulatory requirements inappropriately limit access, this can have adverse implications for the underserved or excluded market.

8.6. Money or value transfer services and agents

The ability to move money or value, domestically or cross border, from one person to another is central to financial inclusion objectives. It is increasingly recognised that financial services delivery channels must address challenges that are evident in reaching the geographical spread of populations in the SADC region in a manner that is cost effective, which should, in the interests of financial inclusion, be enabled in the AML/CFT regulatory frameworks of the countries in question.

[90] Financial Regulators Should Listen to Bill Gates on Mobile Money by Sarah Todd published in American Banker, October 14, 2014.

[91] Paragraph 15.

The realities that are faced by persons that remit money across borders can be seen in the statistics that are published[92]. Remittances from South Africa to the SADC region are the most expensive in the world, with fees in excess of 22% for a remittance value of $200. The value of remittances from South Africa to other countries in the SADC region is large and a substantial portion of these remittances is informal. For example, they are sent via cross-border mini-bus taxis or given to friends to pass on to next of kin.

The importance of remittances is indicated in the following extract:[93] "Although smaller than the official development assistance and foreign direct investment inflows, remittances constitute important resource inflows to the region. In 2012 remittances accounted for about 4 percent of the GDP of a typical country in Sub-Saharan Africa with consistent data on official remittances inflows, and accounted for over 5 percent of the GDP in about ten of the countries in the region."

In terms of FATF Recommendation 14: "Countries should take measures to ensure that natural or legal persons that provide money or value transfer services (MVTS)[94] are licensed or registered, and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendations. Countries should take action to identify natural or legal persons that carry out Money Value Transfer Service (MVTS) without a license or registration, and to apply appropriate sanctions.

Any natural or legal person working as an agent should also be licensed or registered by a competent authority, or the MVTS provider should maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate. Countries should take measures to ensure that MVTS providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes."

The above is relevant from a financial inclusion standpoint, i.e. in respect of the requirement that any natural or legal person working as an agent should be licensed or registered by a competent authority, or the MVTS provider should maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate. It is noted that this requirement relates to money and value transfer services and not to other types of financial services covered by the FATF Recommendations. It is noted that requirements relating to agents are crucial for improving financial inclusion. If AML/CFT controls relating thereto are overly cumbersome or costly, financial inclusion will be negatively impacted.

The SADC country review that has been carried out revealed that most countries require that money or value transfer services be undertaken by licenced banks or through arrangements with licenced banks. Further, where cross border business is undertaken, foreign exchange requirements may be imposed. However, in some jurisdictions, there are no requirements relating to MVTS provider's use of agents. It is

[92] FinMark Trust Media Release. Lesotho corridor allows remittance at low affordable rates. Johannesburg, 03 March 2015.

[93] World Bank Group. Policy Research Working Paper. Gemechu Ayana Aga, Maria Soledad Martinez Peria. International Remittances and Financial Inclusion in Sub-Saharan Africa. July 2014.

[94] As defined by FATF: Money or value transfer services (MVTS) refers to financial services that involve the acceptance of cash, cheques, other monetary instruments or other stores of value and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the MVTS provider belongs. Transactions performed by such services can involve one or more intermediaries and a final payment to a third party, and may include any new payment methods. Sometimes these services have ties to particular geographic regions and are described using a variety of specific terms, including hawala, hundi, and fei-chen.

recommended that a country's AML/CFT requirements should specifically address agents in the context of FATF Recommendation 14. The regulatory requirements that are imposed should be developed taking into account opportunities to encourage financial inclusion.

Notably, agents may be used by institutions to reach currently excluded as well as informally or underserved consumers. They may also be used to deliver financial services in a lower cost manner, i.e. where such consumers would not typically make use of traditional branch financial services delivery channels. MVTS providers should be allowed to maintain a current list of its agents accessible by competent authorities in the countries in which the MVTS provider and its agents operate, i.e. in a manner that does not unduly result in increased costs or an administrative burden.

The approach adopted in the Democratic Republic of the Congo is noteworthy, where those carrying on retail foreign exchange operations are required to check the identity of their clients through the presentation of a valid official document containing a photograph. A copy of this document must be made prior to any transaction for an amount in Congolese francs equal to or in excess of 500 USD, or for any unusually or unjustifiably complex transaction, i.e. indicating the limit/requirements over which due diligence is required. In South Africa[95], cross-border remittance activities can only be provided by Authorised Dealers in foreign exchange[96]. While there are different classes of Authorised Dealer licences, these are still mostly awarded to registered banks.

Harmonisation, or rather a SADC coordinated approach in respect of AML/CFT challenges relating to money or value transfer services may be appropriate. In particular, the facilitation of a uniform understanding of requirements in respect of cross border transactions would provide valuable insights. There would be benefits from understanding the control environment / risk mitigation needed to achieve objectives.

8.7. New technology regulations/guidelines

The following is stated in an Association of Supervisors of Banks of the Americas (ASBA) publication that focuses on strengthening banking supervision for improved access to financial services in the Americas:
"The survey identified difficulties in the regulation, assessment, and control of new technologies that support the provision of financial services. Given the increasing significance of this topic, which is reflected in its widespread use (current and future), we believe that this issue should be treated as a priority".[97]

This indicates the need to focus attention on the development of regulatory frameworks that appropriately address opportunities arising from new technologies, which is perhaps a worldwide challenge. In the absence of a coordinated SADC approach in this regard, each country will individually develop its own laws and supervisory approach, without reference to a template / framework to inform them.

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[95] FinMark Trust. AML/CFT and Financial Inclusion in SADC. South African Country Report. March 2015.

[96] Regulation 2 of the Exchange Control Regulations promulgated under section 9 of the Currency and Exchanges Act, 193396 and Postbank pursuant to the Postal Services Act 124, 1998 and Exchange Control Regulations.

[97] ASBA. Best Financial Regulatory and Supervisory Practices on Anti-Money Laundering and Countering the Financing of Terrorism. 2014. Page 8.

Only two countries, namely the DRC and Namibia, have legally enforceable e-money regulations[98]. South Africa has issued e-money guidelines. The Bank of Zambia reported in early 2013 that they are in the process of preparing an e-money directive, but this has yet to be released. Botswana is currently working on an e-money policy paper with the technical assistance of the IMF and Zimbabwe is working on an e-money / electronic payments guideline. The Central Bank's position on e-money in South Africa is contained in the South African Reserve Bank issued Position Paper NPS 01/2009 on Electronic Money. It must be pointed out however that position papers are not legally binding and serve to present approaches, procedures and policy matters, which are applicable at a particular time.

There is currently no consensus across SADC countries on the scope, ambit and regulatory approach to e-money, mobile payments, prepaid cards and other forms of emerging payment technology. Where countries have issued regulations and guidelines, these often do not contain cross-reference to the AML/CFT Laws and regulations in force in a country.

A regional template for developing a harmonised or coordinated approach relating to e-money, mobile payments, prepaid cards and other forms of emerging payment technology would assist countries in addressing the emerging challenges relating thereto.

Following the development of a SADC Payment Systems Model Law, it is understood that FinMark Trust is planning to commission a study on e-money and mobile money guidelines. This has been prioritised in view of the developing importance of access to finance through mobile technology in SADC. This initiative will provide a template for countries to develop their frameworks. It will also support regulatory harmonisation objectives.

In this regard, it is recommended that there would be value in specifically focusing on how the pillars of an AML/CFT programme apply in an e-money or mobile money environment. This should include due diligence, reporting of suspicions, record keeping, training and monitoring. It is also recommended that the concept of identity and the process identification and verification should be considered.

8.8. Wire transfers

Most countries that participated in the study have provisions relating to wire transfers – either in core legislation, regulations or guidelines. However, only Zambia[99] and Zimbabwe[100] are close to meeting all of the requirements of FATF Recommendation 16. This indicates that SADC countries have ground to cover in fully addressing the relevant FATF standard. However, it is recognised that the FATF Recommendations allow flexibility that can be leveraged by countries to promote financial inclusion. Accordingly, it is noted that being fully compliant does not mean strict controls that unnecessarily impede financial inclusion.

In the case of Zambia, financial institutions undertaking any wire transfers equal to, or above, such amounts as may be prescribed are required to: identify and verify the identity of the originator; obtain and maintain the account number of the originator, or in the absence of an account number, a unique reference number; obtain and maintain the originator's address or, in the absence of address, the national

[98] DRC Directive No. 24 on the Issuance of Electronic Money and Electronic Money Issuing Institutions and the Namibian Payment System Determination (PSD - 3) Determination on Issuing of Electronic Money.

[99] Financial Intelligence Centre Act, 2010 (FICA).

[100] Money Laundering and Proceeds of Crime Act, 2013 (MLPCA).

identity number, or date and place of birth; and include information listed above in the message or payment form accompanying the transfer. Where a financial institution acts as an intermediary in a chain of payments, it is required to re-transmit all of the information it received with the wire transfer. As is the case with respect to several provisions in the FICA that contain the words "as may be prescribed" or "as prescribed by the Minister", nothing has been prescribed with respect to the thresholds applicable to wire transfers. This illustrates the scope of the Zambian requirements, which largely mirrors FATF Recommendation 16.

In the recent Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) report on financial inclusion,[101] it is noted that, "none of the countries that participated in the survey allow simplified CDD for cross-border financial services.[102] Given the current levels of cross-border money flows in the ESAAMLG region and the objectives of increased integration, it is worth considering whether general frameworks for simplified CDD in relation to cross-border financial services should be developed. This is a matter that national regulators should consider jointly. Frameworks may provide simply for communication between relevant regulators when providers approach a regulator in one country with a proposed product or service. They may also extend to a more detailed tiered system that would enable providers to develop a range of different products within different risk-based parameters set by regulators jointly for such services in the region."

There is scope to address the simplified due diligence that will be appropriate in respect of cross-border transactions. Countries should consider applying *de minimis* thresholds, taking into account the ML/TF risks in each jurisdiction. Zimbabwe has included a *de minimis* exemption of US$1 000 in section 27 of the Money Laundering and Proceeds of Crime Act, 2013 (MLPCA). The other country that has implemented a wire transfer *de minimis* exemption is Mozambique for transfers below a maximum limit of thirty thousand meticais (USD 947), which is within the USD 1 000 *de minimis* threshold permitted by the interpretive note to FATF Recommendation 16.

Reference is made to the cross-border money transfer project[103] that involved consultations with the South African Reserve Bank, Shoprite South Africa and Shoprite Lesotho, as well as Capitec Bank in South Africa. The purpose of this initiative is to assist Basotho who are legally working and residing in South Africa to send money home through an affordable, convenient, safe and real-time channel using a chain of Shoprite, U-save and Checkers stores across South Africa. The service is targeting the unbanked workers who have been using informal methods that are typically high risk and high cost. This is a pilot project that is designed to identify any regulatory constraints that will prohibit future initiatives of a two-way money transfer (sending and receiving money) into and out of the country as well as the other countries within the Common Monetary Area. Each transfer costs the sender a fixed amount of M9.99 while the receiver receives the money for free on provision of a valid identity document (ID card, Passport or voter's card). The project has established daily and monthly remittance limits.[104]

[101] Alliance for Financial Inclusion / Eastern and Southern Africa Anti-Money Laundering Group (2013) *Public and Private Sector Survey Report on Financial Integrity and Financial Inclusion Frameworks and Compliance Practices.*

[102] Twelve countries, namely, Botswana, Comoros, Kenya, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Zambia and Zimbabwe participated in the survey.

[103] Project that was facilitated by FinMark Trust.

[104] FinMark Trust media release. Shoprite money transfer launched in Maseru - allows for remittances at low affordable rates. 9 July 2015.

The cross-border money transfer project is an example of an approach that can be used to navigate through the complexities of the regulatory landscape. Where the aforementioned results in improved access and significant cost reduction for the target market, this will be a valuable contribution towards improving the welfare of the people in question.

8.9. Recommendations

New opportunities for risk mitigation – Refer to section 8.3 above

New technologies bring with them new opportunities for financial inclusion as well as new opportunities for ML/TF risk mitigation, which should be seen holistically from an AML/CFT perspective. The regulatory frameworks of countries should be flexible enough to take advantage of the aforementioned.

New technologies and delivery channels – Refer to section 8.4 above

The extent to which new technologies and delivery channels can be leveraged to offer financial inclusion opportunities will, to some extent, depend on the AML/CFT regulatory requirements that are in place in a jurisdiction. Accordingly, it is reasoned that countries should review their AML/CFT frameworks on an ongoing basis, with a view to keeping pace with technology improvements/developments that are available to assist in achieving both AML/CFT and financial inclusion outputs.

Non-face-to-face business – Refer to section 8.5 above

The financial access potential relating to non-face-to-face business links with opportunities that are arising out of mobile services and new technologies. This should be considered when developing regulatory requirements for a country in order to avoid inappropriately introducing barriers to access.

Harmonised or coordinated approach to new technologies – Refer to section 8.6 above

A regional template for developing a harmonised or coordinated approach relating to e-money, mobile payments, prepaid cards and other forms of emerging payment technology would assist countries in addressing the emerging challenges relating thereto.

Regional template – Refer to section 8.7 above

A regional template for developing a harmonised or coordinated approach relating to e-money, mobile payments, prepaid cards and other forms of emerging payment technology would assist countries in addressing the emerging challenges relating thereto.

Cross-border transactions – Refer to section 8.8 above

There is scope to address the simplified due diligence that will be appropriate in respect of cross-border transactions. The pilot cross-border money transfer project is an example of an approach that can be used to navigate through the complexities of the regulatory landscape.

8.10. Guidance Note 4 conclusion

The rapid development of mobile services delivery channels and new technologies have the potential to provide access to formal financial services to an extent that has not been possible in the past. This is an exciting prospect that could bring with it economic development opportunities and it is crucial that

AML/CFT regulatory frameworks in countries are able to keep pace, i.e. in a way that supports the use of mobile services and new technologies which facilitate financial inclusion.

9. Focus Note 5 - Harmonisation of regulatory frameworks in the SADC region

9.1. Introduction

This focus note addresses AML/CFT harmonisation opportunities relating to regulatory frameworks of countries in the SADC region, i.e. where this will enhance legal certainty and regulatory predictability as well as support the strategic objective of increasing financial integration and access to financial services in the respective countries.

9.2. Focus Note 5 executive summary

The FinMark Trust review of the AML/CFT requirements in SADC countries concentrated on compliance with FATF Recommendations, i.e. with a view to identifying opportunities to harmonise requirements across jurisdictions in relation to the FATF standards.

The development of a generic understanding of AML/CFT challenges in SADC countries is addressed in this focus note and it is recognised that the SADC Protocol of Finance and Investment (FIP) could serve as a point of departure in this regard. Where there is a consistent understanding of how the FATF Recommendations should be applied in SADC countries. This will assist in reducing the learning curve towards achieving financial integrity objectives and, at the same time, place appropriate focus on financial inclusion goals.

A review of the AML/CFT regulatory requirements in the participating SADC countries reveals that all of them have incorporated elements of a risk-based approach to AML/CFT. However, the individual country approaches vary significantly from country to country. For example, a country may have adopted an exemption for occasional transactions or wire transfers below a specified threshold, but then may not have provided for broader simplified due diligence when lower ML/TF risks are identified using a rules- or principles-based approach.

There is an opportunity to consider the AML/CFT risk-based approaches that have been adopted in SADC countries. To this end, the analysis that is set out in various tables in this focus note provides a platform to identify key features thereof, specifically in respect of:

- Low risk exemption;
- Occasional transactions threshold;
- Wire transfers de *minimis* threshold; and
- Simplified due diligence.

The above mentioned are intended to serve as a source of reference for countries that would like to encourage an inclusion friendly regulatory environment.

9.3. Harmonisation of AML/CFT requirements

In light of the expansion of African and international financial service providers in the SADC region, legal harmonisation or a more appropriate calibration of regulatory requirements would have a positive impact on the development and release of financial services and products in the region.

Harmonisation of regulatory requirements in the SADC region is not an end in itself. Outputs thereof should be seen in terms of the contribution that is made towards the adequacy and effectiveness of the AML/CFT framework, i.e. towards the achievement of financial integrity objectives as well as financial inclusion goals. However, there are a number of advantages from such harmonisation, for example in respect of leveraging the AML/CFT learning curve to the advantage of the respective SADC countries in achieving desired AML/CFT outputs. There will also be regulatory consistency across jurisdictions in the region. This will mean that institutions will be able to roll out products across borders without having to customise or change them to cater for the different laws in each jurisdiction, potentially leading to operational efficiencies and lower cost delivery to the underserved and excluded market.

Countries in the region are at various stages of development and implementation of their AML/CFT regulatory. Supervisory frameworks and coordinated support for AML/CFT developments can reduce AML/CFT and financial inclusion leaning curves relating thereto.

Two broad options have been identified in respect of the approach that could be used to promote regulatory harmonisation:

- Development of template AML/CFT laws that could be used by countries to benchmark their regulatory requirements and use this as a baseline from which to update their regulatory requirements; or
- Development of high level AML/CFT understanding that can be used by countries as a platform to identify regulatory development opportunities that will be appropriate for each country.

Each jurisdiction will have its own particular AML/CFT circumstances. As a consequence, a one-size-fits-all template law will not be uniformly applicable in addressing the varying regulatory opportunities and challenges across the region. Accordingly, it is recommended that the development of a regional understanding of AML/CFT challenges would be the preferred option.

With a view to promoting the development of AML/CFT regulatory frameworks that are financial inclusion friendly, it is suggested that this could be structured under the following headings:

- AML/CFT and financial inclusion;
- Risk-based approaches to AML/CFT;
- Customer due diligence relating to low, lower and higher ML/TF risks;
- Exemption in relation to occasional transactions;
- *De minimis* exemption for wire transfers;
- Timing of customer due diligence;
- Record-keeping period and manner;
- Money and value transfer services;
- New technologies;
- Reliance on third parties;
- Internal controls; and
- Suspicious transaction reporting.

The development of the aforementioned is beyond the scope of this document. The commentary set out above is included to serve as a point of departure in this regard.

9.4. SADC Protocol of Finance and Investment (FIP)

Article 2(2)(m) of the SADC Protocol of Finance and Investment (FIP), which was signed in 2006 and entered into force in April 2010, requires member states to cooperate with regard to AML matters.

Annex 12 on Anti-Money Laundering was added to the in 2012. The preamble to Annex 12 states that "harmonisation of key aspects of relevant laws and policies will increase the effectiveness of the measures taken by the State Parties to address money laundering and financing of terrorism in the region and support finance and investment." It also states that "harmonisation of key aspects of the relevant laws and policies will create an enabling environment for increased access to financial services in the region, minimise compliance costs for affected Regulated Institutions that operate cross-border in the region and lessen the danger that criminal acts will be displaced from one State Party to another."

Article 3 of Annex 12 to the FIP specifically states that "each State Party agrees that it will adopt and maintain, in accordance with the FATF Recommendations, measures that are effective and proportionate to combat money laundering and the financing of terrorism and that it will do so cognisant of the impact that such measures may have, at national and regional levels, on:

- Crime;
- Financial regulation and the regulation of affected businesses and professions;
- Access to financial services by low-income persons;
- The management by Regulated Institutions of their duties to comply;
- The institutional framework for the implementation of the measures including law enforcement, policy-makers and supervisory authorities.

The above variables should specifically include reference to financial inclusion and perhaps also to economic development imperatives. An additional bullet point could be added, which could be framed along the following lines:

- AML/CFT objectives and financial inclusion.

The aforementioned could be addressed under the second bullet point in the listing above "Financial regulation and the regulation of affected businesses and professions", however, it is advisable, in view of the importance of encouraging financial inclusion, to focus separate attention thereon.

There will also be an opportunity to address the specifics relating to AML/CFT and financial inclusion via an appropriate SADC forum. There should ideally be structures and an appropriate regional focus that will serve as a platform to avoid duplication of effort in each of the respective jurisdictions. Where there is appropriate regional coordination, this will contribute towards avoiding separate/isolated leaning curves across SADC. Further, the aforementioned will provide a frame of reference from which to enhance legal certainty and regulatory predictability as well as support the strategic objective of increasing financial integration and access to financial services in the respective countries. The SADC structures in question could play a valuable role in supporting the achievement of FIP objectives from an AML/CFT and financial inclusion perspective. This initiative would require adequate resources and ongoing leadership/ management.

It is suggested that the SADC role in respect of the aforementioned should be considered in relation to ESAAMLG. The interests of these organisations will, in all likelihood, be aligned. ESAAMLG is an important role-player from an AML/CFT perspective as a FATF-Style Regional Body (FSRB). There is an opportunity to consider specifically addressing Annex 12 matters that are of mutual interest.

9.5. Low risk exemption

As indicated in Focus Note 2 (entitled: "Risk-based approaches to AML/CFT"), countries may decide not to apply some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions. This is appropriate provided there is a proven low risk of money laundering and terrorist financing (in limited and justified circumstances) relating to a particular type of financial institution or activity, or DNFBP, or a financial activity (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of money laundering and terrorist financing.

The table set out below provides examples of exemptions with a view to providing countries. This reflects perspectives that may be useful in benchmarking country AML/CFT frameworks.

Figure 8: Examples of low risk exemptions

Key used:

Inst.	= Applies in respect of Institutions
Prod/Tran.	= Applies in respect of products / transactions
Cust.	= Applies in respect of customers
Val.	= Applies in respect of value/threshold

Country	Inst.	Prod/ Tran.	Cust.	Val.	Commentary
Botswana	✓	×	×	×	Exemption: When a designated body enters into a business relationship, concludes a transaction or provides a service of a kind specified for another designated body or a body corresponding to a designated body in a state or country prescribed.[105]
Botswana	✓	✓	×	✓	Exemption: From s16A(6) and s16A(7) that require institutions to obtain the required proof of identity of the person - Long term insurance where – (a) the amount of the periodic premiums to be paid in respect of the life policy in any 12 month period does not exceed the amount prescribed in Regulations (b) a single premium to be paid in respect of a life policy does not exceed the amount prescribed in Regulation[106]

[105] 16A(4)of Proceeds of Serious Crime Act, 1990 (PSCA).

[106] In terms of section 9, paragraph (a) of subsection 8 excludes (a) a person scheme taken out by virtue of a contract of employment or the occupation of the person to be insured under the life policy provided that the life policy in question does not contain a surrender and may not be used as collateral (b) a transaction or series of transactions taking place in the course of long term insurance business in respect of which payment is made from an account held in the name of the other party with a designated body or a body corresponding to a designated body prescribed under subsection (4).

Country	Inst.	Prod/ Tran.	Cust.	Val.	Commentary
Mauritius	✓	✓	✗	✗	Exemption: Verification of identity is not required. • Public companies listed on a recognised, designated and approved Stock/Investment Exchange • Parastatal bodies in Mauritius • Once-off transactions in which the proceeds of the transaction are not paid but are directly reinvested on behalf of the person to whom the proceeds are payable in another transaction.[107] Financial institutions should obtain a written declaration from other financial institutions that it holds documentary evidence of the existence of the legal entity and its regulated or listed status.
South Africa	✓	✓	✗	✓	Exemption: Prepaid Low Value Product Exemption Value of every transaction cannot exceed R200, available balance cannot exceed R1,500 at any time, monthly load limited to R3 000. Prepaid card can only be used domestically, and cannot be used for domestic or cross-border remittances or to withdraw cash at an ATM or facilitate cash back.

9.6. Occasional transaction threshold

As indicated in Focus Note 2, due diligence exemptions may be appropriate for financial activities (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (with regard to quantitative and absolute criteria), such that there is low risk of ML/TF, i.e. in respect of carrying out occasional transactions above the applicable designated threshold (USD/EUR 15 000).

The table below illustrates the approaches adopted in participating SADC countries.

Figure 9: Occasional Transaction Threshold (OTT)

Country	OTT[108]	Amount	Commentary
Angola	Yes	USD15 000	Occasional transactions below USD15 000.[109]
Botswana	No	n/a	n/a
DRC	Yes	USD10 000	The identification of one-time clients shall be effected in

[107] Paragraphs 6.96 to 6.99 Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions, 2005

[108] Due diligence exemption where there is a proven low risk of ML/TF (in limited and justified circumstances) relating to a particular type of financial institution or activity, or DNFBP – Occational transactions below a specified threshold.

[109] Article 5(1)(b) of Law No. 34/11.

Country	OTT[108]	Amount	Commentary
			accordance with the terms set out in Article 8 paragraph 2, for any transaction involving an amount in Congolese francs equal to or in excess of, USD10 000.[110]
Lesotho	Yes	M100 000	Section 9(d) provides an exemption for occasional transactions below M100 000 and reads, "nothing in this section shall require the production of any evidence of identity where the transaction is an occasional transaction not exceeding M100 000 or any amount as may be prescribed by the Minister by notice in a Gazette, unless the accountable institution has reason to suspect that the transaction is suspicious or unusual."
Malawi	Yes	K500 000	Regulation 3(1) requires a financial institution to establish the identity of every customer when - (b) in the absence of a continuing business relationship, conducts any transaction exceeding K500 000; (c) carrying out several transactions within fourteen days, which appear to be linked and when consolidated, add up to K500 000.
Mauritius	Yes	350 000 rupees	CDD measures are required: in respect of a one-off transaction, where payment is to be made by, or to the applicant for business of an amount in excess of 350 000 rupees or an equivalent amount in foreign currency;[111] and in respect of 2 or more one-off transactions, where it appears at the outset or subsequently to a relevant person dealing with any of the transactions, that the transactions are linked and that the total amount, in respect of all of the transactions, which is payable by or to the applicant for business is in excess of 350 000 rupees or an equivalent amount in foreign currency.
Mozambique	Yes	n/a	n/a
Namibia	Yes	N$5 000	Paragraph 2.1 exempts accountable institutions from establishing the identity of a client concluding a single cash transaction subject to the condition that such single cash transaction is less than or equal to the amount specified by the FIC under section 13(1) of the Act. This amount has been specified as N$5 000 (N$25 000 for casinos and other gaming institutions).[112]
Seychelles	Yes	SCR100 000	Reporting entities are required to undertake CDD

[110] Article 9 of Act No. 04/016.

[111] Regulation 4(2)(c)

[112] Exemption Order No. 75 General Exemptions: Financial Intelligence Act, 2007.

Country	OTT[108]	Amount	Commentary
		SCR50 000	measures when: carrying out a one-off transaction. Regulation 5 defines a "once-off-transaction" as a transaction carried out other than as part of a business relationship that exceeds SCR100 000 or SCR50 000 in the case of cash transactions, whether the transaction is carried out in a single operation or several operations which appear to be linked."
South Africa	No	n/a	n/a
Swaziland	Yes	E2 500	CDD measures listed in sections 6(1), 6(2) and 6(3) do not apply in the following circumstances: if the transaction is an occasional transaction not exceeding two thousand, five hundred Emalangeni (E2 500) unless the accountable institution has reason to suspect that the transaction is suspicious or unusual.
Zambia	No	n/a	n/a
Zimbabwe	Yes	USD5 000	Every financial institution and designated non-financial business or profession is required to identify each one of its customers and verify a customer's identity by means of an identity document: when the customer, who is neither an account holder nor in an established business relationship with the financial institution, wishes to carry out a transaction in an amount equal to or exceeding five thousand United States dollars USD5 000 (or such lesser or greater amount as may be prescribed, either generally or in relation to any class of financial institution), whether conducted as a single transaction or several transactions that appear to be linked, provided that the amount of the transaction is unknown at the time it is commenced, the customer's identification shall be verified as soon as the amount of the transaction has reached the prescribed amount.
Total "Yes"	10		
Total "No"	3		

The above table has been prepared based on the SADC country reviews that have been undertaken for FinMark Trust[113]. This provides a high level view of each country's utilisation of the opportunities that are available when adopting a risk-based approach to AML/CFT. By the same token, the table also provides an indication of opportunities for countries to identify potential aspects of a risk-based AML/CFT approach that are not currently included in the regulatory framework of the respective countries.

[113] Published by FinMark Trust. 13 May 2015.

9.7. Wire transfer *de minimis* threshold

As indicated in Focus Note 2, exemptions[114] may be framed for financial activities (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of ML/TF.

The table set out below provides examples of regulatory requirements that specify *de minimis* thresholds in respect of wire transfers, i.e. with a view to providing countries with perspective that may be useful in benchmarking their AML/CFT frameworks.

Figure 10: Analysis of country de minimis thresholds

Country	Wire Transfer Threshold[115]	Amount USD	
Angola	No	-	Zimbabwe: *de minimis* exemption for occasional wire transfers below USD1 000 - CDD is required when the customer, whether or not he or she is in an established business relationship with the financial institution, wishes to carry out a domestic or international wire transfer or monetary amounts in the amount equal to or exceeding one thousand United States dollars (or such lesser or greater amount as may be prescribed, either generally or in relation to any class of financial institution. Mozambique: *de minimis* exemption for occasional wire transfers below a maximum limit of thirty thousand meticais (USD 947) which is within the USD 1 000 *de minimis* threshold permitted by the interpretive note to FATF Recommendation 16.
Botswana	No	-	
DRC	No	-	
Lesotho	No	-	
Malawi	No	-	
Mauritius	No	-	
Mozambique	Yes	$947	
Namibia	No	-	
Seychelles	No	-	
South Africa	No	-	
Swaziland	No	-	
Zambia	No	-	
Zimbabwe	Yes	$1 000	
Total "Yes"	2		
Total "No"	11		

Only two of the thirteen countries that participated in the study have specified *de minimis* thresholds. There is an opportunity to develop a discussion that will support other countries in considering the adoption of such thresholds, i.e. in a manner that supports the achievement of both AML/CFT and financial inclusion objectives.

[114] Carrying out occasional transactions that are wire transfers is covered by the interpretive note to FATF Recommendation 16.

[115] Due diligence exemptions for financial activities (other than the transferring of money or value) carried out by a natural or legal person on an occasional or very limited basis (having regard to quantitative and absolute criteria), such that there is low risk of ML/TF.

9.8. Simplified due diligence

As indicated in Focus Note 2, countries may decide to allow simplified measures for some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided that a lower risk has been identified, and this is consistent with the country's assessment of its money laundering and terrorist financing risks.

The table set out provides examples of regulatory requirements that allow for simplified due diligence with a view to providing countries with perspectives that may be useful in benchmarking their AML/CFT frameworks.

Figure 11: Analysis of country regulatory requirements that allow for simplified due diligence

Key used:

Inst.	= Applies in respect of Institutions
Prod/Tran.	= Applies in respect of products / transactions
Cust.	= Applies in respect of customers
Val.	= Applies in respect of value/threshold

Country	Inst.	Prod/ Tran.	Cust.	Val.	Commentary
Angola	✓	×	×	×	Simplified due diligence: Sufficient information must be obtained to verify if the client fits within certain categories or professions as well as monitor the business relationship in order to be able to detect complex transaction or abnormally high amount that does not seem to be for economic objective or legal purpose: • A State or a public corporation, of any kind, that is part of the central or local administration • Client is a public authority or organ that is subject to transparent accounting practices and object of audit.[116]
Malawi	✓	×[117]	✓	×	Simplified due diligence – Relating to: • Financial institutions subject to Regulations; • Public companies that are subject to regulatory disclosure requirements; • Customers whose average monthly income does not exceed K50 000; • Other forms of low risk categories of customers, beneficial owners, beneficiaries or business relationships.[118]

[116] Article 9 of Law No. 34/11

[117] The Regulation does not however to low risk products with specific requirements and limits, although upon a broad interpretation of the wording, this may be inferred.

Country	Inst.	Prod/ Tran.	Cust.	Val.	Commentary
Mauritius	✓	×	×	×	Simplified due diligence: If an applicant for business is a regulated financial services business based in Mauritius or in an equivalent jurisdiction, provided that the Licensee is satisfied that the applicant for business is not acting on behalf of underlying principals. Licensees must obtain and retain documentary evidence of the financial services business and its regulated status.
Mauritius	✓	×	×	×	Simplified due diligence: If a public company is listed on the Stock Exchange of Mauritius or on recognised, designated and approved stock/ investment exchanges or subsidiaries thereof. Licensees must obtain a copy of the annual report and accounts of that public company and must verify that the individuals who purport to act on behalf of such entity have the necessary authority to do so. Licensees must also obtain and retain documentary evidence of the existence of the public company and of its listed status.
Mauritius	✓	×	×	×	Simplified due diligence: Government administrations or enterprises and statutory bodies. Licensees must obtain and retain documentary evidence of identification and verification of identity.
Mauritius	✓	✓	×	×	Simplified due diligence: Pension, superannuation or similar scheme which provides retirement benefits to employees where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme. In all transactions undertaken on behalf of an employer-sponsored scheme, Licensees must, at a minimum, identify and verify the identity of the employer and the trustees of the scheme (if any) as per the criteria set out in this Code.
Seychelles	✓	✓	×	×	Discretionary simplified CDD: In respect of: • Licensed bank; • Recognised foreign bank;

[118] Regulation 8(3) requires customers to (a) determine the extent of customer due diligence measures on a risk sensitive basis depending on (i) the type of customer, business relationship, product or transaction; and (ii) the guidelines issued by the FIU which are not inconsistent with the Act or the Regulations. Reporting entities must also be able to demonstrate to their supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering, financing of terrorism or other criminal conduct.

Country	Inst.	Prod/ Tran.	Cust.	Val.	Commentary
					• Central Bank of Seychelles; • A public body in Seychelles; or there is reasonable grounds for believing that the product related to the relevant transaction is a pension, superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deductions from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.
South Africa	✓	✓	✗	✓	Simplified/tiered due diligence: Exemption 17 applies to Banks, Mutual Banks, the Post Bank, Ithala Development Finance Corporation and Domestic Money Remitters. Key features: • Business relationships (accounts and single transactions). • Transaction limits – R5 000 per day, R25 000 per month. • Balance limit – R25 000. • Only one account per institution and no cross border transfers.[119] Exemption 17 is essentially a rules-based special dispensation that is designed to encourage financial inclusion.
South Africa	✓	✓	✗	✓	Simplified/tiered due diligence: Circular 6 applies to cell-phone (mobile phone) banking product covered by exemption 17. Non-face-to-face account opening only regarded as adequate for low-value transactions – debits from accounts limited to R1 000 per day.

The analysis set out above illustrates the different approaches adopted in countries in the SADC region. This serves as a source of reference in identifying regulatory harmonization opportunities relating thereto.

9.9. Record keeping

AML/CFT related record keeping requirements[120] have a significant impact on the delivery of products and services to the underserved and excluded market. As identified in Focus Note 3, the period of time for which such records must be kept may vary from country to country and may exceed the FATF recommended 5 year time frame, i.e. for periods that range from 7 to 10 years.

[119] Exemption 17.

[120] In terms of the FATF Recommendation 11.

Figure 12: Analysis of record keeping requirements

Record keeping law and regulations	**Angola**	**Botswana**	**DRC**	**Lesotho**	**Malawi**	**Mauritius**	**Mozambique**	**Namibia**	**Seychelles**	**South Africa**	**Swaziland**	**Zambia**	**Zimbabwe**
Institutions required to keep records for at least 5 years	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Number of years that records must be kept	10	5	10	5	7 [121]	5	5	5	7	5	5	10	5
Records obtained through CDD measures must be kept	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Information and documents may be kept in electronic format	✓	✓	✗	✓	✓	✓	✓	✓	✓	✓	✗	✓	✗
Explicit requirement that a photocopy of ID documents be kept[122]	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗
CDD information and transaction records to be made available to domestic competent authorities	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

The above table illustrates regulatory harmonisation opportunities relating to the period for which records must be kept, specifically in respect of periods that exceed 5 years regardless of the ML/TF risk in question, as well as the manner in which they must be kept, i.e. whether they may be kept in electronic format.

9.10. SADC AML/CFT understanding

A principle-based understanding of AML/CFT that is published for the SADC region would positively impact on the harmonisation of AML/CFT requirements in the respective countries. This will provide a base from which to encourage a uniform approach that is appropriate in the region. There are opportunities to leverage regionally relevant perspectives and reduce the learning curve of countries, notably in relation to ensuring that financial inclusion objectives are not compromised.

However, it is noted that feedback from some countries has indicated that, in some instances, there is resistance to regulatory harmonisation. For example, in response to the recommendation that there should be harmonisation of regulatory requirements in the region, a SADC country stakeholder indicated that "harmonisation for the sake of harmonisation is not helpful". It is acknowledged that harmonisation is not necessarily an end in itself. However, it is advisable, to the extent that it will enhance financial

[121]This is consistent with paragraph 9.4.3 of the RBM *Guidelines for Mobile Payment Systems, 2011* that requires all settlement records to be retained for a minimum period of seven years.

[122]Under the FATF Recommendations, the record keeping requirement does not require retention of a photocopy of the identification documents presented for verification purposes. It merely requires that the information and documents be stored and kept for five years.

integrity as well as financial inclusion objectives, to develop a regional understanding of AML/CFT challenges that can be used to inform the approaches that are adopted in each of the respective jurisdictions.

The question of whether the risks, threats and vulnerabilities differ significantly across the SADC region, and how will this impact on harmonisation of a risk-based approach across SADC, is relevant. It is accepted that each individual country's ML/TF and other circumstances will be different. Further, risk assessment at national, regional or institutional levels may identify varied risks, threats and vulnerabilities. Countries will also have different levels of financial sector development and will each have their own specific motivations for financial inclusion. Accordingly, different AML/CFT frameworks may be appropriate in each country.

This challenge is recognised in the introduction to the FATF Recommendations:
"The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats".

It is recommended that harmonisation opportunities relating to AML/CFT regulatory responses in the SADC region should be pursued at a principle level. The development of a "one-size-fits-all" template law is not seen as the preferred option.

There will be regional benefits from the coordination of an AML/CFT understanding out of a SADC forum that could address AML/CFT regional circumstances. This could build off the analysis set out in this focus note, taking into account the numerous interrelated variables that impact on AML/CFT and financial inclusion objectives. The forum could be structured to address AML/CFT regulatory harmonisation in the interests of financial inclusion. It will provide a platform for countries to work together towards achieving objectives, and will provide an opportunity to set an agenda that appropriately supports economic development and regional circumstances. This initiative should ideally work hand-in-hand with the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)[123] and ensure that there is alignment. To be effective, countries in the SADC region would need to actively participate. However, where the SADC AML/CFT initiative does not gain the momentum needed; it is envisaged that ESAAMLG could play a regional leadership role. Engagement with the organisations in question is beyond the scope of this paper.

9.11. Recommendations

Regional AML/CFT understanding – Refer to section 9.3 above

Each country will have its own particular AML/CFT challenges and development of high level understanding of AML/CFT challenges that can be used by countries as a guide to identifying regulatory development opportunities that will be appropriate for each country is recommended.

Protocol of Finance and Investment – Refer to section 9.4 above

[123] In terms of the ESAAMLG mission it seeks to "consolidate and sustain the combined efforts to combat money laundering and terrorist financing in the Eastern and Southern Africa region through effective implementation of AML/CFT international standards in all ESAAMLG member countries".

Article 3 of Annex 12 to the Protocol of Finance and Investment (2012) should ideally specifically make reference to financial inclusion considerations, and perhaps also to economic development imperatives. This would, in line with the developing appreciation that financial integrity objectives are not necessarily in conflict with financial inclusion objectives, provide SADC countries with guidance that is relevant to the circumstances in the region.

Regional coordination – Refer to section 9.4 above

Regional SADC structures and resources will be needed to achieve the objectives of Annex 12 to the Protocol of Finance and Investment (2012). Where there is effective regional coordination relating to AML/CFT and financial inclusion, this will provide a frame of reference from which to enhance legal certainty and regulatory predictability as well as support the strategic objective of increasing financial integration and access to financial services in the respective countries.

Regulatory requirements – Refer to sections 9.5, 9.6, 9.7, 9.8 and 9.9 above

There are opportunities to benchmark SADC country regulatory requirements relating to AML/CFT risk sensitive approaches, specifically in respect of the analysis set out in this focus note relating to occasional transactions thresholds, wire transfers *de minimis* thresholds, simplified due diligence, as well as record keeping.

SADC AML/CFT understanding – Refer to section 9.10 above

It is reasoned that a principle-based understanding of AML/CFT that is published for the SADC region would positively impact on the harmonisation of AML/CFT requirements. This will provide a base from which to encourage a uniform approach, which is appropriate in the region, which could, in itself, leverage regionally relevant perspectives and reduce the learning curve of countries, notably in relation to ensuring that financial inclusion objectives are not compromised.

9.12. Focus Note 5 conclusion

The development of a uniform understanding of how the FATF recommendations are applicable in the SADC region represents an opportunity to address challenges relating to the development of AML/CFT regulatory requirements in a manner that is appropriate to the circumstances of the region and at the same time address the implications thereof from a financial inclusion perspective. In this regard, the FIP represents an opportunity to assist in ensuring a coordinated approach to AML/CFT, the purview of which could be expanded to embrace the development of AML/CFT guidelines for countries.

10. End-note

The achievement of AML/CFT objectives through the AML/CFT regulatory requirements and the supervision thereof in a manner that does not unduly compromise financial inclusion is a thread that runs through all aspects of this report.

Two overarching opportunities have been identified over the course of the study in this regard, i.e. which could be addressed in further projects:

- Development of a SADC relevant understanding of the application of FATF Recommendations, perhaps with a view to aligning this with relevant specifications contained in the FIP; and

- Undertaking of a SADC supra-national ML/TF risk assessment, perhaps with a view to informing the regulatory approaches that are adopted in SADC countries.

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Abbreviations/glossary

The following abbreviations are used:

AML – Anti-Money Laundering

CFT – Counter Terrorist Financing

CDD – Customer Due Diligence

DNFBP – Designated Non-Financial Businesses and Professions

EDD – Enhanced Due Diligence

ESAAMLG – Eastern and Southern Africa Anti-Money Laundering Group

FATF – Financial Action Task Force

FIP – SADC Protocol of Finance and Investment

ICRG – International Cooperation Review Group

MAP – Making Access to Financial Services Possible

ML – Money Laundering

MNO – Mobile Network Operator

OTT – Occasional Transaction Threshold

TF – Terrorist Financing