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

Focus Note 4:
Mobile services / technology

Compliance & Risk Resources
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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 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 put in place, which allow for proportionate compliance responses according to the

[1] In terms of FATF Recommendation 1.

Focus Note	Brief Description
	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] 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).

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.

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 0 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,

[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.

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 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]

[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.

[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.

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.

5. Focus Note 4 - Mobile services / new technology

5.1. 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.

5.2. 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

[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.

project[15] 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.[16] 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.

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.

5.3. 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[17].

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

[15] Project that was facilitated by FinMark Trust.

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

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

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.

5.4. 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"[18].

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
- 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?"[19]

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.

5.5. Non-face-to-face business

The interpretive note to FATF Recommendation 10[20] 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.

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

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

[20] Paragraph 15.

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.

5.6. 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.

The realities that are faced by persons that remit money across borders can be seen in the statistics that are published[21]. 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:[22] "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)[23] 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."

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

[22] 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.

[23] 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.

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 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[24], cross-border remittance activities can only be provided by Authorised Dealers in foreign exchange[25]. 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.

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

[25] Regulation 2 of the Exchange Control Regulations promulgated under section 9 of the Currency and Exchanges Act, 193325 and Postbank pursuant to the Postal Services Act 124, 1998 and Exchange Control Regulations.

5.7. 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".[26]

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.

Only two countries, namely the DRC and Namibia, have legally enforceable e-money regulations[27]. 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.

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

[27] 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.

5.8. 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[28] and Zimbabwe[29] 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 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,[30] it is noted that, "none of the countries that participated in the survey allow simplified CDD for cross-border financial services.[31] 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.

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

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

[30] 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.*

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

Reference is made to the cross-border money transfer project[32] 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.[33]

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.

5.9. Recommendations

New opportunities for risk mitigation – Refer to section 5.3 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 5.4 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 5.5 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 5.6 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.

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[32] Project that was facilitated by FinMark Trust.

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

Regional template – Refer to section 0 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 5.8 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.

5.10. 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.

6. 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