



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

Focus Note 5: Harmonisation of regulatory frameworks in the SADC region

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Prepared for FinMark Trust
July 2015

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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 Trust⁵.

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-Saharan 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 Cenfri⁶, undertaking a project⁷ designed to engage AML/CFT stakeholders in Sub-Saharan countries in order to provide a platform from which to develop a sound understanding of national as well as sectoral AML/CFT risk assessments⁸. 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-Saharan 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 2012⁹, 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 2011¹⁰, 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 AFI¹³ and CGAP¹⁴, which illustrates the growing momentum that has been gained and the international understanding of the impact of AML/CFT requirements on financial inclusion.

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 5 - Harmonisation of regulatory frameworks in the SADC region

5.1. 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.

5.2. 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.

5.3. 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 learning 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.

5.4. 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 learning 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.

5.5. 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 2: 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. ¹⁵
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 ¹⁶

¹⁵16A(4) of Proceeds of Serious Crime Act, 1990 (PSCA).

¹⁶ 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. <ul style="list-style-type: none"> • 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.¹⁷ 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.

5.6. 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 3: Occasional Transaction Threshold (OTT)

Country	OTT ¹⁸	Amount	Commentary
Angola	Yes	USD15 000	Occasional transactions below USD15 000. ¹⁹
Botswana	No	n/a	n/a
DRC	Yes	USD10 000	The identification of one-time clients shall be effected in

¹⁷Paragraphs 6.96 to 6.99 Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions, 2005

¹⁸Due 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 – Occasional transactions below a specified threshold.

¹⁹Article 5(1)(b) of Law No. 34/11.

Country	OTT ¹⁸	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. ²⁰
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; ²¹ 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). ²²
Seychelles	Yes	SCR100 000	Reporting entities are required to undertake CDD

²⁰Article 9 of Act No. 04/016.

²¹Regulation 4(2)(c)

²²Exemption Order No. 75 General Exemptions: Financial Intelligence Act, 2007.

Country	OTT ¹⁸	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 Emalangen (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 Trust²³. 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.

²³ Published by FinMark Trust. 13 May 2015.

5.7. Wire transfer *de minimis* threshold

As indicated in Focus Note 2, exemptions²⁴ 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 4: Analysis of country *de minimis* thresholds

Country	Wire Transfer Threshold ²⁵	Amount USD	
Angola	No	-	<p>Zimbabwe: <i>de minimis</i> 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.</p> <p>Mozambique: <i>de minimis</i> exemption for occasional wire transfers below a maximum limit of thirty thousand meticals (USD 947) which is within the USD 1 000 <i>de minimis</i> threshold permitted by the interpretive note to FATF Recommendation 16.</p>
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.

²⁴ Carrying out occasional transactions that are wire transfers is covered by the interpretive note to FATF Recommendation 16.

²⁵ 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.

5.8. 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 5: 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: <ul style="list-style-type: none"> • 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.²⁶
Malawi	✓	✗ ²⁷	✓	✗	Simplified due diligence – Relating to: <ul style="list-style-type: none"> • 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.²⁸

²⁶ Article 9 of Law No. 34/11

²⁷ 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: <ul style="list-style-type: none"> • Licensed bank; • Recognised foreign bank;

²⁸Regulation 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
					<ul style="list-style-type: none"> • 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	✓	✓	✗	✓	<p>Simplified/tiered due diligence: Exemption 17 applies to Banks, Mutual Banks, the Post Bank, Ithala Development Finance Corporation and Domestic Money Remitters. Key features:</p> <ul style="list-style-type: none"> • 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.²⁹ <p>Exemption 17 is essentially a rules-based special dispensation that is designed to encourage financial inclusion.</p>
South Africa	✓	✓	✗	✓	<p>Simplified/tiered due diligence: Circular 6 applies to cell-phone (mobile phone) banking product covered by exemption 17.</p> <p>Non-face-to-face account opening only regarded as adequate for low-value transactions – debits from accounts limited to R1 000 per day.</p>

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.

5.9. Record keeping

AML/CFT related record keeping requirements³⁰ 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.

²⁹Exemption 17.

³⁰ In terms of the FATF Recommendation 11.

Figure 6: 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 ³¹	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 ³²	✗	✗	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗	✗
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.

5.10. 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

³¹This 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.

³²Under 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)³³ 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.

5.11. Recommendations

Regional AML/CFT understanding – Refer to section 5.3 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 5.4 above

³³ 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 5.4 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 5.5, 5.6, 5.7, 5.8 and 5.9 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 5.10 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.

5.12. 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.

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