A comparative statutory analysis of the regulation of money laundering in Zimbabwe

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Thesis accepted in fulfilment of the requirements for the degree *Doctor of Laws with Mercantile Law* at the North-West University

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SOLEMN DECLARATION

I hereby declare that the thesis, titled: **A comparative statutory analysis of the regulation of money laundering in Zimbabwe,** is submitted in fulfilment of the requirements for the Doctor of Laws with Mercantile Law (LLD) degree is the product of my research and opinion with the exception of references of the sources acknowledged herein and that I have not at any prior time submitted it to any university or by any person for any qualification.

Signature of Candidate:

Signed at Potchefstroom on this … day of May 2024

Declared before me on this … day of May 2024

Signature of Supervisor

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All glory be to my Lord and Saviour Jesus Christ for bringing this work to completion. Surely, I can do all things through Christ which strengtheneth me.

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DEDICATION

For my Parents, Victor and Esther Jana.

This work is a testament to the solid upbringing and zeal for learning which you gave me.

You taught me to always question why, to go beyond the madding crowd; and there, find my own equilibrium.

Thank you.

ABSTRACT

Money laundering is the process whereby criminals mask the actual origins of their criminally acquired proceeds and profits, in order to integrate the illegal proceeds within legitimate financial markets and financial institutions. Money laundering usually occurs after the commission of a primary criminal offence which in turn has the effect of generating a financial benefit, for example, drug trafficking. The *Money Laundering and Proceeds of Crime Act* (*MLPC Act*) as amended, is the primary legislation that outlaws money laundering in Zimbabwe. In this regard, the *MLPC Act* establishes several statutory means to counter and curb money laundering activities in Zimbabwe. For example, the implementation of customer due diligence procedures as a means to assess the money laundering risk which is posed by customers on financial institutions. Several regulatory and enforcement authorities of Zimbabwe such as the Financial Intelligence Unit (FIU), the Criminal Investigations Department of the Zimbabwe Republic Police (ZRP) and the National Prosecuting Authority of Zimbabwe (NPAZ) as well as other regulated entities play a significant role in combatting money laundering in Zimbabwe. This research is informed by the weaknesses and inconsistencies in the enforcement of anti-money laundering (AML) laws in Zimbabwe. It investigates whether the current anti-money laundering laws are sufficiently robust and consistently enforced to effectively curb money laundering practices therein. Owing to several challenges, including rampant systemic corruption in Zimbabwe, the lack of political will to implement AML measures, a lack of adequate resources to implement AML measures, a largely informal financial sector and the lack of adequate enforcement measures, the researcher found that the AML regulatory framework of Zimbabwe is not sufficiently robust and adequate enough to curb and combat money laundering in Zimbabwe. As a developing economy that is affected by the lack of adequate resources and relevant infrastructure to effectively implement AML measures, Zimbabwe is faced with money laundering challenges that have affected the integrity of its financial markets. The systemic corruption and looting of state resources also pose a significant challenge to Zimbabwe's AML regime. In light thereof, this thesis also aims to establish solutions and measures that can be implemented to impede and detect money laundering in Zimbabwe and therefore enhance the AML

provisions which are provided under the *MLPC Act*. In light thereof, this thesis also aims to establish solutions and measures that can be implemented to impede and detect money laundering in Zimbabwe and enhance the AML provisions which are provided under the *MLPC Act*. This research is a comparative study of Zimbabwe's AML laws with those of South Africa, the United Kingdom (UK) and Australia, respectively. These jurisdictions present plausible lessons for Zimbabwe to enhance its AML framework. Some lessons include the establishment of special courts to prosecute money laundering cases in Zimbabwe, the establishment of more stringent penalties for AML offences, enhancing AML enforcement measures, AML education and awareness and encouraging regulatory cooperation between Zimbabwe's financial intelligence unit and other financial intelligence units internationally. The researcher hopes that the findings made in this thesis will be used by policy makers to enhance AML laws and enforcement measures to combat and curb money laundering in Zimbabwe.

Keywords: anti-money laundering; combat; financial intelligence unit; enforcement; measures

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CHAPTER ONE

RESEARCH OUTLINE AND CONTEXT

1.1 Introduction

Money laundering can appropriately be defined as the process of masking the proceeds of criminal activities such as drug trafficking, by converting the proceeds and profits of crime into legitimate assets or into the formal financial sector.[1] It is a global financial crime that poses significant threats to the stability and integrity of financial markets.[2] In this regard, money laundering reduces the efficiency of the financial markets and it retards economic growth by distorting market behaviour and reducing investor confidence. This follows that money laundering hinders the fair operation of markets and introduces uncertainty and financial risks into domestic and global financial markets.[3] Zimbabwe is not immune to money laundering and the negative effects thereof. Accordingly, several measures, such as the statutory regulation of anti-money laundering (AML), have been successively implemented by law enforcement authorities to regulate and combat money laundering activities in Zimbabwe.[4] Money laundering involves three

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1 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (*MLPC Act*), section 1; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 21; Goredema C "Money Laundering in Southern Africa Incidence, Magnitude and Prospects for its Control" 2004 *Institute for Security Studies Paper 92* 1, 4; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 282.

2 Muchemwa C "Money Laundering and Illicit Financial Flows in Zimbabwe: A Critical Review of the Legal and Institutional Frameworks" 2021 *Journal of Financial Crime* 78, 79; Ondiege P "Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) in Zimbabwe: An Assessment of the Effectiveness of the Regulatory Framework" 2018 *Journal of Financial Crime* 78, 79; Mulig EV and Murphy S "Understanding and Preventing Money Laundering" 2004 *Journal of Money Laundering Crime* 20, 23; Chinamasa P "Money Laundering in Zimbabwe: A Critical Analysis of the Legal and Institutional Frameworks" 2018 *Journal of Money Laundering Control* 327, 329.

3 Mulig and Murphy 2004 *Journal of Money Laundering Control* 22; Levi M "Money Laundering and Its Regulation" 2002 *The Annals of the American Academy of Political and Social Science* 181, 184; Yantis B, Attia M and Lethouris G "Money Laundering" 2018 *American Criminal Law Review* 1469, 1472.

4 Moyo J and Musvoto W "Anti-Money Laundering and Counter-Terrorism Financing Regime in Zimbabwe: A Review of the Effectiveness of the Legal Framework" 2020 *Journal of Financial Crime* 1128, 1130; Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 81; Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141; Adeleke F "Illicit Financial Flows and Inequality in Africa:

essential stages, the first being the placement, then followed by layering, and then thirdly, the integration of the proceeds of crime.[5] Placement involves the injection of illicit funds into the formal financial system.[6] At this stage, perpetrators aim to make illegal proceeds appear as though they are from legitimate sources. Layering relates to the use of complex financial transactions to conceal the origin and ownership of the funds.[7] The purpose of this stage is to create a complex chain or web of transactions that have the purpose of disguising the true origin of the illicit funds. Lastly, integration involves the re-introduction of the illicit funds into the legitimate economy so as to remove all traces of the illegal origin of the funds.[8] Integration of the proceeds of crime makes it surmountly hard for AML enforcement agencies to identify the illegal source of the funds. These three stages broadly and collectively constitute the money laundering process and each stage thereof serves a unique and machiavellian purpose to disguise the true source of the illegal proceeds.

Several legislative and AML regulatory steps have been taken by relevant financial sector role-players in Zimbabwe. The first statute to criminalise money laundering was enacted in 1990.[9] To date, several other statutes have been enacted to ensure that the Zimbabwean AML laws conform to the international standards that are provided by

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How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 372.

5 Chitimira and Ncube 2021 *PER/PELJ* 8; Mulig and Murphy 2004 *Journal of Money Laundering Crime* 23; Mugarura 2014 *Journal of Money Laundering Control* 83; see related discussion by Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 451, 458.

6 Teichmann F "Recent Trends in Money Laundering" 2020 *Crime, Law and Social Change* 237; 240; Mulig and Murphy 2004 *Journal of Money Laundering Crime* 23; Mugarura 2014 *Journal of Money Laundering Control* 83; Duri 2020 *Journal of Money Laundering Control* 455.

7 Chitimira and Ncube 2021 *PER/PELJ* 8; Mulig and Murphy 2004 *Journal of Money Laundering Crime* 23; Mugarura 2014 *Journal of Money Laundering Control* 83; Muchemwa 2021 *Journal of Financial Crime* 80.

8 Chitimira and Ncube 2021 *PER/PELJ* 8; Mulig and Murphy 2004 *Journal of Money Laundering Crime* 23; Mugarura 2014 *Journal of Money Laundering Control* 83; Muchemwa 2021 *Journal of Financial Crime* 80.

9 *Serious Offences (Confiscation of Profits) Act* [Chapter 9:17] 12 of 1990 (the *Serious Offences Act*), section 2; Gubbay AR "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 382; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2011 *Journal of Money Laundering Control* 112, 122.

organisations such as the Financial Action Task Force (FATF).[10] The current primary statute regulating money laundering in Zimbabwe is the *Money Laundering and Proceeds of Crime Act (MLPC Act)*,[11] which was enacted in 2013. The *MLPC Act* criminalises money laundering and it establishes the Financial Intelligence Unit (FIU) as the primary regulatory body which is responsible for implementing its provisions.[12] Zimbabwe has also signed and ratified several international conventions and protocols on money laundering such as the *United Nations Convention against Transnational Organized Crime of 2003* and its *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000*.[13]

Despite these noble efforts to combat and curb money laundering, Zimbabwe is still facing some challenges in regulating money laundering robustly and effectively. Some of these challenges stem from the lack of adequate resources which are necessary to effectively implement AML measures in Zimbabwe.[14] The FIU and other relevant bodies which are responsible for combatting money laundering, such as the Zimbabwe Revenue

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10 See for example section 2 of the *Serious Offences Act* and the *Prevention of Corruption Act* of [Chapter 9:16] 27 of 2004, section 5; See related comments by De Koker 2014 *Journal of Money Laundering Control* 289; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF Paris 2020); Nanyun NM "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2020 *Journal of Money Laundering Control* 1, 3; Pasara MT and Garidzirai R "The Boomerang Effects: An Analysis of the Pre and Post Dollarisation Era in Zimbabwe" 2020 *Economics* 32, 35.

11 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (*MLPC Act*) sections 14-23; Chitsove E "Legal Aspects of Combatting Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59; Gubbay 1998 *Journal of Money Laundering Control* 380; Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141.

12 Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 284; Duri 2020 *Journal of Money Laundering Control* 451; Shambira L "Exploring the Adoption of Artificial Intelligence in the Zimbabwe Banking Sector" 2020 *Electronic Journal of Social and Strategic Studies* 110, 116; Maguchu 2017 *Journal of Money Laundering Control* 141.

13 United Nations Convention Against Transnational Organized Crime 2000 (Parlemo Convention); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime 2000; Moshi HBP "Fighting Money Laundering: The Challenges in Africa" 2007 *Institute for Security Studies* Paper 152, 155; Maguchu 2018 *African Security Review* 280-281.

14 Mugarura 2014 *Journal of Money Laundering Control* 83; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" in Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa: An Introspection* (ISS Pretoria 2007) 54; Mangoma S "Country Report: Zimbabwe" 2005 *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders Resource Material Series No. 66* 179, 184; Maguchu 2018 *African Security Review* 283.

Authority (ZIMRA), often lack the necessary resources to carry out their functions effectively.[15] This follows that Zimbabwe is a developing economy and AML compliance requires advanced technology and specialised knowledge and skills which may be costly to acquire in an economy operating with thinly spread resources.[16] The other challenges which are faced by Zimbabwe in combatting money laundering include a shortage of expertise, insufficient government funding, and inadequate technological AML capabilities to detect money laundering activities.[17] Corruption also remains a significant challenge that undermines the effectiveness of the regulation of AML measures in Zimbabwe.[18] Corruption has enabled criminals to evade detection and prosecution for money laundering activities with impunity in Zimbabwe through compromised reporting mechanisms and the weak enforcement of AML measures.[19] Weak AML enforcement mechanisms are also a significant challenge that hinder the ability to combat and curb money laundering in Zimbabwe.[20] This follows that weak enforcement mechanisms create a gap between AML provisions and what is in practice, hence reducing the overall effectiveness of AML efforts. Although the *MLPC Act* provides for criminal sanctions against money laundering, their effectiveness is negatively affected by weak

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15 Mangoma S "Country Report: Zimbabwe" 182; Moshi 2007 *Institute for Security Studies* Paper 160; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 55; Mugarura 2014 *Journal of Money Laundering Control* 88.

16 Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116; Mangoma S "Country Report: Zimbabwe" 182; Moshi 2007 *Institute for Security Studies* Paper 160; Fundira B "Money Laundering in Zimbabwe, 2004 to 2006" 55; Mugarura 2014 *Journal of Money Laundering Control* 88.

17 Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116; Maguchu 2017 *Journal of Money Laundering Control* 141; Duri 2020 *Journal of Money Laundering Control* 451; Mugarura 2014 *Journal of Money Laundering Control* 89.

18 Nyoni T "The Curse of Corruption in Zimbabwe" 2017 *International Journal of Advanced Research and Publications* 1, 4; also see Goredema C "Money Laundering in East and Southern Africa: An Overview of the Threat" 2003 *Institutte for Security Studies Papers* 20, 25; Maguchu 2018 *African Security Review* 280; Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 315, 316.

19 Nyoni 2017 *International Journal of Advanced Research and Publications* 3; Duri 2020 *Journal of Money Laundering Control* 320; Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US dollar" 2022 *Journal of Money Laundering Control* 306, 308.

20 Nyoni 2017 *International Journal of Advanced Research and Publications* 4; Goredema 2003 Institutte for Security Studies Papers 25; Duri 2020 *Journal of Money Laundering Control* 316; see related comments by Chitimira H and Munedzi S "Selected Challenges Associated with the reliance on Customer Due Diligence to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 51.

enforcement.[21] This includes the compromised implementation of AML laws and policies due to factors such as corruption, political interference and ineffective penalties.

This research analyses the current money laundering regulatory framework in Zimbabwe to determine its effectiveness and to identify the shortcomings so as to recommend possible solutions to enhance AML regulation in Zimbabwe.

1.2 Background to the Study

There was no legislation to specifically outlaw money laundering in Zimbabwe until 1990.[22] This follows the fact that until the 1990s money laundering was not distinctly recognised as a serious crime and global awareness increased after the establishment of the Financial Action Task Force in 1989.[23] Also, the enactment of the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*[24] propelled Zimbabwe to join the international community in the fight against organised crimes such as drug trafficking and consequently, money laundering. It is compelling to state that during the 1980s, drug trafficking as part of the international illegal drug trade grew exponentially to an extent that it began to threaten the stability and security of the global financial economy. In response, and as countermeasure to this dangerous phenomenon, the global community sought to attack the drug trade by confiscating the proceeds of the trade. As a signatory to the *Vienna Convention*, Zimbabwe enacted the

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21 See sections 14-23 of the *MLPC Act*; see related comments by Maguchu 2018 *African Security Review* 286; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116.

22 *Bank Use Promotion and Suppression Money Laundering Act* [Chapter 24:24] 2 of 2004 (*BUPSML Act*), section 2; see also related comments by Feltoe G *Commentary on the Criminal Law (Codification and Reform) Act, 2004* (Legal Resources Foundation Harare 2006) 182; Fundira "Money laundering in Zimbabwe" 66; Maguchu 2018 *African Security Review* 281.

23 Ashin 2012 *Finance and Development* 40; Collin, De Koker, Juden, Myers, Ramachandran, Sharma and Tata 2015 *Center for Global Development Report* 3; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 358; see related comments by Stessens G *Money Laundering: A New International Law Enforcement Model* (Cambridge University Press Cambridge 2000) 3-4.

24 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance*, 1988 (Vienna Convention), article 3(1)(b); see also Maguchu 2018 *African Security Review* 279; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 36; Reuter and Truman *Chasing Dirty Money* 89 and 105.

Serious Offences Act[25] in 1990 to outlaw money laundering by creating the statutory offence of money laundering in relation to the proceeds of drug-related crimes only.[26] Conversely, the scope of the *Serious Offences Act* was limited to money laundering as a drug-related crime alone so as to align with the provisions of the *Vienna Convention*.[27] Therefore in the 1990s, money laundering as a crime, was narrowly understood as a crime which was committed only in relation to concealing the true origins of the profits or financial gains proceeding out of the furtherance of the drug trade. Accordingly, the researcher submits that the *Serious Offences Act* was not adequate nor sufficiently robust to curb money laundering activities in Zimbabwe because it only criminalised dealing in the proceeds of drug-related crimes and it did not outlaw the proceeds of other crimes, for example, fraud, corruption, or theft.[28]

Following upon international advancements in understanding money laundering and its relationship to other crimes as well as acknowledging the benefits and importance of international cooperation in curbing money laundering, Zimbabwe joined the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) in 1999.[29] Thereafter, Zimbabwe became a signatory to the *United Nations Convention against Transnational Organized Crime* in the year 2000.[30] In light of these international commitments, Zimbabwe enacted the *Bank Use Promotion and Suppression of Anti-Money Laundering Act*[31] in 2004 to align its AML provisions with international standards such as the FATF

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25 Section 63 of the *Serious Offences Act*; see related comments by Levi M "Money Laundering and Its Regulation" 2002 *The Annals of the American Academy of Political and Social Science* 181, 182; Maguchu 2018 *African Security Review* 281; Stessens *Money Laundering* 11.

26 Section 63 of the *Serious Offences Act*; Maguchu 2018 *African Security Review* 281; see related comments by Reuter and Truman *Chasing Dirty Money* 77; Stessens *Money Laundering* 4.

27 Section 63 of the *Serious Offences Act*; Article 3(1)(b) of the *Vienna Convention*, 36.

28 Maguchu 2018 *African Security Review* 280; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116; Duri 2020 *Journal of Money Laundering Control* 318; Fundira "Money Laundering in Zimbabwe" 63.

29 Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Maguchu 2017 *Journal of Money Laundering Control* 140; see also related comments by Reuter and Truman *Chasing Dirty Money* 78.

30 *United Nations Convention Against Transnational Organized Crime*, 2000 (*Parlemo Convention*); *BUPSML Guideline 01-2006* 17; Goredema C and Montsi F "Towards Effective Control of Money Laundering in Southern Africa" 2002 *African Security Studies* 5, 9; Maguchu 2018 *African Security Review* 279-280; see related comments by Reuter and Truman *Chasing Dirty Money* 89.

31 *Bank Use Promotion and Suppression Money Laundering Act* [Chapter 24:24] 2 of 2004 (*BUPSML Act*), section 2 read with section 41; see related discussion by Dzomira S "Analysis of Bank Failures during Financial Tumult in Africa-Zimbabwe: A Historical Review"

standards and the *Palermo Convention* to outlaw money laundering.[32] Accordingly, the *BUPSML Act* broadened the scope of money laundering beyond drug-related crimes to include information sharing and reporting obligations so as to enhance the money laundering detection in Zimbabwe.[33]

As a member state of the ESAAMLG, Zimbabwe's AML laws were subjected to a mutual evaluation by the ESAAMLG in 2006 so as to determine their adequacy and effectiveness to combat money laundering in Zimbabwe.[34] The ESAAMLG conducts mutual evaluation exercises of the anti-money laundering laws of its member countries as a means of assessing if they comply with the FATF recommendations on money laundering.[35] Following the mutual evaluation exercise, the ESAAMLG issued a report which highlighted a number of inadequacies in Zimbabwe's anti-money laundering laws such as the inconsistent supervision of regulated entities by the Financial Intelligence Unit (FIU).[36] Furthermore, the report noted that the FIU focused on supervising the banking sector only due to a lack of understanding of the money laundering risks that exist in other sectors.[37] The researcher argues that, the lack of skilled personnel and relevant expertise within regulatory bodies, financial institutions and law enforcement agencies has created loopholes and gaps in Zimbabwe's AML framework. This is due to a lack of awareness programs and initiatives to educate relevant personnel on the scope and risks associated

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2014 *Journal of Governance and Regulation* 75, 76; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 191.

32 Section 2 read with section 41 of the *BUPSML Act*; *BUPSML Guideline 01-2006* 17; see related discussion by Ashin 2012 *Finance and Development* 40; Chitimira and Ncube 2021 *PER/PELJ* 11.

33 Section 2 read with section 41 of the *BUPSML Act*; see related comments by Maguchu 2017 *Journal of Money Laundering Control* 141; Mugarura 2011 *Journal of Financial Regulation and Compliance* 180.

34 *Eastern and Southern Africa Anti-Money Laundering Group Report* 2007 Mutual Evaluation/Detailed Assessment Report Zimbabwe 1, 4; See related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Reuter and Truman *Chasing Dirty Money* 85, Maguchu 2017 *Journal of Money Laundering Control* 141.

35 Eastern and Southern Africa Anti-Money Laundering Group Report 2007 4; see related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Reuter and Truman *Chasing Dirty Money* 85, Maguchu 2017 *Journal of Money Laundering Control* 141.

36 Duri and Matasane 2017 *Journal of Anti-Corruption Law* 191; *Eastern and Southern Africa Anti-Money Laundering Group Report* 2007 21; also see Maguchu 2017 *Journal of Money Laundering Control* 141; Mugarura 2011 *Journal of Financial Regulation and Compliance* 179 and 186.

37 Duri and Matasane 2017 *Journal of Anti-Corruption Law* 191; Eastern and Southern Africa Anti-Money Laundering Group Report 2007 21; also see Maguchu 2017 *Journal of Money Laundering Control* 141; Mugarura 2011 *Journal of Financial Regulation and Compliance* 179 and 186.

with money laundering which consequently affects the effective implementation and enforcement of AML measures.

In 2013, Zimbabwe enacted the *MLPC Act* in order to correct and enhance its anti-money laundering provisions.[38] However, the *MLPC Act* did not strengthen the anti-money laundering provisions in Zimbabwe. This follows the fact that relevant anti-money laundering regulatory and enforcement authorities such as the FIU, the Zimbabwe Republic Police (ZRP) and the National Prosecuting Authority of Zimbabwe (NPAZ) did not make use of the information received from regulated entities to support their investigations of money laundering activities.[39] The failure to make use of the information received from regulated entities in terms of the risk-based approach, is a direct result of a lack of understanding and a lack of training on how to effectively enforce the AML provisions.[40] The researcher submits that this is undesirable for Zimbabwe following that financial intelligence that is not utilised renders the enforcement of AML laws to be inconsistent and ineffective.[41] This follows that inconsistent and ineffective enforcement negatively affects the detection of illicit transactions due to differing reporting standards and reporting obligations. The researcher further submits that the inability of the FIU, the ZRP and the NPAZ to understand financial information received from regulated entities creates opportunities for criminals to commit money laundering in the knowledge that their activities will not be understood or effectively investigated, prosecuted and punished by the FIU, the ZRP and the NPAZ.[42] This is due to the fact that misinterpretation of

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38 Duri and Matasane 2017 *Journal of Anti-Corruption Law* 179; see related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Chitimira and Ncube 2021 *PER/PELJ* 13; Maguchu 2017 *Journal of Money Laundering Control* 141.

39 Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177-178; Maguchu 2017 *Journal of Money Laundering Control* 141; see related discussion by Reuter and Truman *Chasing Dirty Money* 85; Chitimira and Ncube 2021 *PER/PELJ* 14.

40 Eastern and Southern Africa Anti-Money Laundering Group Report 2018 *5th Follow Up Report and Technical Compliance Rerating Zimbabwe* 1, 16; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 50; see related discussion by Adeleke 2019 *South African Journal of International Affairs* 380; Reuter and Truman *Chasing Dirty Money* 91.

41 Adeleke 2019 *South African Journal of International Affairs* 380; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 122; see related comments by Sultana S "Role of Financial Intelligence Unit (FIU) in Anti-Money Laundering Quest: Comparison between FIUs of Bangladesh and India" 2020 *Journal of Money Laundering Control* 931, 939.

42 Simwayi and Haseed 2011 *Journal of Money Laundering Control* 123; also see Sultana 2020 *Journal of Money Laundering Control* 940; see related comments by Jaleel A *et al* "The

financial intelligence renders the financial intelligence redundant and ineffective to detect money laundering activities.

Following a further mutual evaluation report[43] by the ESAAMLG in 2016, the *MLPC Act* was amended in 2018 to correct and enhance the AML provisions in Zimbabwe.[44] For example, the *MLPC Act* was amended to include the gatekeeping roles and functions of professionals such as lawyers and accountants.[45] Gatekeeping roles entail the duty of designated professions and institutions to report suspicious transactions in their daily interaction with clients.[46] Despite this amendment, the anti-money laundering laws of Zimbabwe are not robust enough as evidenced by the further evaluation reports that were issued by the ESAAMLG in 2018 and 2019.[47] The ESAAMLG 2018 and 2019 reports highlighted weaknesses in Zimbabwe's money laundering laws. For example, the ESAAMLG reports of 2018 and 2019 highlighted that the law enforcement authorities did not understand money laundering risks and they failed to consistently enforce the *MLPC Act*.[48] Moreover, the ESAAMLG 2018 report provided that regulated entities have also

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Effectiveness of the Financial Intelligence Unit in Maldives in Combating Money Laundering" 2021 *Asia-Pacific Management Accounting Journal* 409, 420.

43 Eastern and Southern Africa Anti-Money Laundering Group Report 2016 184; Sections 2-24 of the *MLPC Act*; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 7; Maguchu 2017 *Journal of Money Laundering Control* 141; Dzomira 2014 *Journal of Governance and Regulation* 78.

44 Section 2 to section 24 of the *MLPC Act*; Eastern and Southern Africa Anti-Money Laundering Group Report 2018 4; Maguchu 2017 *Journal of Money Laundering Control* 141; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116; Duri 2020 *Journal of Money Laundering Control* 451; Mugarura 2014 *Journal of Money Laundering Control* 89.

45 Section 15 of the *MLPC Act*; Maguchu 2017 *Journal of Money Laundering Control* 143; see related comments by Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *PER/PELJ* 14, 16; also see He P "A Typological Study on Money Laundering" 2010 *Journal of Money Laundering Control* 15, 22; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 116.

46 Maguchu 2017 *Journal of Money Laundering Control* 140; Pambo KO "Designating Lawyers as Reporting Entities under the Kenya's Anti-Money Laundering Regime" 2020 *Journal of Money Laundering Control* 637, 639; Mniwasa EE "Tackling Money Laundering in Tanzania: Are Private Legal Practitioners Crime Enablers or Ineffectual and Reluctant Gatekeepers?" 2021 *Journal of Money Laundering Control* 291, 293.

47 Eastern and Southern Africa Anti-Money Laundering Group Report 2018 16; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 7; see related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Maguchu 2017 *Journal of Money Laundering Control* 141; Pambo 2020 *Journal of Money Laundering Control* 639.

48 Eastern and Southern Africa Anti-Money Laundering Group Report 2018 16; see related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Maguchu 2017 *Journal of Money Laundering Control* 141; see related comments by Mniwasa 2021 *Journal of Money Laundering Control* 294.

not yet developed internal guidelines for implementing the risk-based approach to their business operations.[49] The researcher submits that the lack of adequate resources has deterred some financial institutions and businesses to implement AML measures. This has undermined the effectiveness of AML measures in Zimbabwe.

The researcher investigates the adequacy of the amendments made to the *MLPC Act* in 2018. This is done to determine whether the amendments are not a mere exercise to achieve technical compliance with the FATF recommendations so as to avoid grey-listing.[50] Nonetheless, it should be noted that Zimbabwe is not a signatory member of the FATF but participates in it through FATF style regional bodies that are associate members of the FATF, such as the ESAAMLG.[51] The hurried effort to amend the *MPLC Act* could be attributed to a lack of understanding of the risks of money laundering by the lawmakers in Zimbabwe. This follows that, amendments to the *MLPC Act* were rushed to avoid blacklisting and there was little discussion by relevant parties to enhance its effectiveness.[52] Consequently, the *MLPC Act* remains inadequate and ineffective to robustly curb money laundering in Zimbabwe despite its latest amendment. The researcher further explores whether the *MLPC Act* in its current form is robust enough to curb money laundering practices in Zimbabwe and whether it has enabled detection of money laundering practices in financial institutions. Consequently, the researcher also conducts a comparative analysis of Zimbabwe's money laundering regulatory framework

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49 Eastern and Southern Africa Anti-Money Laundering Group Report 2018 16; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 11; see related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 23; Maguchu 2017 *Journal of Money Laundering Control* 141; see related comments by Mniwasa EE "Institutionalizing the Fight Against Money Laundering in Tanzania: The Potential, Limitations and Challenges" 2022 *Journal of Money Laundering Control* 792, 780.

50 See related discussion by Blazejewski 2008 *Temple International and Comparative Law Journal* 26; Collin, De Koker, Juden, Myers, Ramachandran, Sharma and Tata 2015 *Center for Global Development Report* 7; Hugo and Spruyt 2018 *SALJ/TSAR* 233; Maguchu 2018 *African Security Review* 283-284.

51 Sections 12A-D of the *MLPC Act*; Maguchu 2017 *Journal of Money Laundering Control* 145; Maguchu *2018 African Security Review* 282; see related comments by Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19.

52 See related comments by Barugahara F "Financial Inclusion in Zimbabwe: Determinants, Challenges, and Opportunities" 2021 *International Journal of Financial Research* 260, 267; Maguchu *2018 African Security Review* 282; Maguchu 2017 *Journal of Money Laundering Control* 145.

with those of South Africa, the United Kingdom (UK) and Australia in a bid to recommend possible measures that could be adopted by Zimbabwean policymakers.

1.3 Statement of Problem

The *MLPC Act*[53] outlaws money laundering in Zimbabwe.[54] Money laundering is usually a result of the commission of an underlying criminal offence by perpetrators so as to generate a financial benefit for themselves.[55] The *MLPC Act* requires financial institutions to implement a risk-based approach to control money laundering in Zimbabwe.[56] However, this approach is not effectively implemented by the relevant AML regulatory and enforcement authorities of Zimbabwe.[57] This follows that the effective

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53 Section 8 of the *MLPC Act*; see also Adeleke 2019 *South African Journal of International Affairs* 367; Chitimira and Ncube 2021 *PER/PELJ* 13; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 179.

54 Although the *Bank Use Promotion Act* [Chapter 24:24] 2 of 2004 has been largely repealed by the *MLPC Act*, there are some provisions of the *Bank Use Promotion Act* which are still applicable to the regulation of money laundering in Zimbabwe. Sections 3, 4, 5 and 6 of the *Bank Use Promotion Act* still remain in force. See Grujić M and Šikman M "Certain Manifestation Forms and Proving Money Laundering in the Emerging Market" 2020 *Acta Economica* 175, 177-180; Chaikin D and Sharman JC *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave Macmillan New York 2009) 14; Reuter P and Truman E *Chasing Dirty Money* 3; Unger B *The Scale and Impacts of Money Laundering* (Edward Elgar Publishing Cheltenham 2007) 11.

55 See Article 6(1) *United Nations Convention Against Transnational Organised Crime and the Protocols thereto General Assembly Resolution A/RES/55/25 (Palermo Convention)*; Mugarura N "The Institutional Framework Against Money Laundering and its Underlying Predicate Crimes" 2011 *Journal of Financial Regulation and Compliance* 174, 179; Nguyen C "Criminalisation of Money Laundering in the International Anti-Money Laundering Regime and its Adoption by Vietnam" 2013 *Australian Journal of Asian Law* 1, 2-3; Beare ME and Schneider S *Money Laundering in Canada: Chasing Dirty and Dangerous Dollars* (University of Toronto Press Toronto 2007) 39-40.

56 Section 12B of the *MLPC Act*; A risk-based approach to the enforcement of anti-money laundering laws implies the process whereby a regulated entity's services and products are assessed to determine any possible risk of money laundering through the services and products. This helps regulated entities to develop internal policies to curb the risks of money laundering in respect of their services and products; see Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 49; also see De Koker L "Money Laundering Trends in South Africa" 2003 *Journal of Money Laundering Control* 27, 32.

57 Section 13 of the *MLPC Act* identifies regulated entities as banking institutions, building societies, moneylenders, collective investment schemes, asset managers, any person that holds or is deemed to hold a postal licence, the Minerals Marketing Corporation of Zimbabwe casinos, estate agents, precious stones dealers, precious metals dealers, legal practitioners, chartered secretaries, accountants and auditors, estate administrators, trust and company service providers and motor vehicle dealers; also see section 12B of the *MLPC Act*; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 191; Eastern and Southern Africa Anti-Money Laundering Group Report 2016 *Second Round Mutual Evaluation Report Zimbabwe* 1, 9; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 *6th Follow Up Report and Technical Compliance Rerating Zimbabwe* 1, 16.

implementation of the risk based approach relies on the availability of comprehensive and updated financial intelligence to determine the money laundering risk.[58] However, financial institutions in Zimbabwe often face constraints in accessing quality data due to limited resources and expertise.[59] The researcher further submits that the ineffective implementation of the risk-based approach by the FIU, the ZRP, the NPAZ and the regulated entities identified in the *MLPC Act*, arises from the lack of clear anti-money laundering guidelines which would enable them to understand and effectively implement anti-money laundering laws.[60] For instance, the *MLPC Act* requires regulated entities to waive client due diligence procedures when dealing with a customer who is not a regular client of the regulated entity.[61] This entails that customer due diligence measures are not consistently implemented for all financial transactions in Zimbabwe and this creates a gap that can be easily manipulated by perpetrators to commit money laundering. Customer due diligence is a significant AML measure regulated under the *MLPC Act,* which requires financial institutions to verify the identity of their customers prior to concluding any transactions.[62] Accordingly, the waiver of client due diligence procedures by some financial institutions in Zimbabwe undermines the efforts to detect and control money laundering in Zimbabwe. Perpetrators may use various new accounts to legitimise their

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58 Jayasekara SD "Challenges of Implementing an Effective Risk-Based Supervision on Anti-Money Laundering and Countering the Financing of Terrorism under the 2013 FATF Methodology" 2018 *Journal of Money Laundering Control* 601, 611; see related comments by Sathye M and Islam J "Adopting a Risk-based Approach to AMLCTF Compliance: The Australian Case" 2011 *Journal of Financial Crime* 169, 173; De Koker 2003 *Journal of Money Laundering Control* 35.

59 Jayasekara 2018 *Journal of Money Laundering Control* 611; Sathye and Islam 2011 *Journal of Financial Crime* 174; see related comments by Chitimira H and Torerai E "Policy Implications and Mobile Money Regulatory Approaches to Promote Financial Inclusion of the Poor in Zimbabwe after the COVID-19 Pandemic" 2023 *De Jure Law Journal* 241, 245.

60 Section 12B of the *MLPC Act*; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 191; Eastern and Southern Africa Anti-Money Laundering Group Report 2016 9; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 16.

61 Section 15(1)(b) of the *MLPC Act* prohibits regulated entities from concluding transactions with regular clients before concluding client due diligence procedures. However, the same provision allows regulated entities to conclude transactions with non-regular clients without conducting client due diligence procedures unless the transaction in question exceeds United States $ 5000.00.

62 See section 15 of the *MLPC Act*; also see Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 45; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *Journal of South African Law* 715, 720; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 136.

illegally obtained funds without being detected, a practice known as smurfing.[63] In addition, the *MLPC Act* requires regulated entities to specifically monitor high value transactions but does not require the monitoring of small transactions which creates a loophole by which "micro-structuring" activities could be carried out by money launderers.[64] According to Chitimira and Munedzi,[65] money launderers may inject smaller amounts of money into several accounts to avoid detection and suspicious account activities. Accordingly, the lack of monitoring mechanisms on small value transactions in Zimbabwe creates a gap for money launderers to place the proceeds of crime in the formal financial sector without detection. However, the researcher argues the lack of monitoring obligations on small value transactions could be a measure to ensure that the available resources are used to detect suspicious transactions. The downside of this approach is that Zimbabwe still lags in effectively implementing the risk-based approach so as to determine the money laundering risk which each customer poses to the financial institution.[66] In this regard, it becomes difficult to determine high-risk and low-risk customers to ensure that the customer due diligence waiver is applied effectively.

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63 Savona E *Responding to Money Laundering: International Perspectives* (Routledge 2005) 64; Muvirimi S *Impact of Money Laundering Leading to Tax Evasion: A South African Perspective* (LLD – dissertation University of Johannesburg 2018) 54; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 23; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 137.

64 Section 26(2)(a) of the *MLPC Act*. Micro-structuring is the process whereby a money launderer engages third parties to open bank accounts which can be controlled by the money launderer. The third parties, under instruction of the money launderer, make small transactions which do not trigger the legal reporting threshold requirements. In this manner, the splitting of transaction evades detection by the authorities and complicates the process of tracing the funds to a single source or beneficiary. See De Koker L "The Money Laundering Risk Posed by Low-Risk Financial Products in South Africa: Findings and Guidelines" 2009 *Journal of Money Laundering Control* 323, 330; Tupman W "Keeping Under the Radar: Watch Out for Smurfs" 2010 *Journal of Financial Crime* 152, 152 and 157; Welling SN "Smurfs, Money Laundering, and the Federal Criminal Law: The Crime of Structuring Transactions" 1989 Florida Law Review 287, 288; Whisker J and Lokanan ME "Anti-Money Laundering and Counter-Terrorist Financing Threats Posed by Mobile Money" 2019 *Journal of Money Laundering Control* 158, 160.

65 Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 48; also see De Koker 2009 *Journal of Money Laundering Control* 331; De Koker 2004 *Journal of South African Law* 725; De Koker 2003 *Journal of Money Laundering Control* 33.

66 Jayasekara 2018 *Journal of Money Laundering Control* 611; Sathye and Islam 2011 *Journal of Financial Crime* 174; see related comments by Chitimira H and Torerai *De Jure Law Journal* 245.

Consequently, the effective implementation of AML measures is hindered by the inconsistent application of customer due diligence measures by financial institutions.[67]

Another challenge that affects the effective implementation of AML measures in Zimbabwe is that the FIU lacks the capacity and authority to enforce AML provisions in Zimbabwe.[68] This follows that the FIU currently focuses only on the banking sector and neglects other regulated sectors such as the real estate sector which are equally vulnerable to money laundering activities[69] This is despite the significant money laundering threat that other financial sector departments face in Zimbabwe.[70] The inconsistent implementation of the AML measures provided under the *MLPC Act* should be revisited to ensure consistent application in the whole financial sector. The researcher posits that this should be addressed to prevent criminals from targeting poorly supervised sectors for money laundering activities and evade the risk of detection in well-supervised sectors.[71] The FIU's inconsistent supervision of regulated sectors creates opportunities for money launderers to integrate the proceeds of their crimes into Zimbabwe's financial markets and financial institutions without detection or punishment.[72] The recent Gold Mafia Exposé by the Al Jazeera investigations on Zimbabwe revealed money laundering

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67 See related comments by Mugarura 2011 *Journal of Financial Regulation and Compliance* 181; Ross S and Hannan M "Money Laundering Regulation and Risk-Based Decision-Making" 2007 *Journal of Money Laundering Control* 106, 110 and 112; Teichmann F "Recent Trends in Money Laundering" 2020 *Crime, Law and Social Change* 237, 241.

68 Adeleke 2019 *South African Journal of International Affairs* 380; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 122; see related comments by Sultana 2020 *Journal of Money Laundering Control* 939.

69 See related comments by Chitimira and Ncube 2021 *PER/PELJ* 16; Eastern and Southern Africa Anti-Money Laundering Group Report 2016 16; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 7; Fundira B "Money Laundering in Zimbabwe, 2004 to 2006" in Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa: An Introspection* (ISS Pretoria 2007) 47, 57 and 60.

70 Eastern and Southern Africa Anti-Money Laundering Group Report 2016 8; see related comments by Mugarura 2011 *Journal of Financial Regulation and Compliance* 181; Teichmann 2020 *Crime, Law and Social Change* 241; Jojarth C "Money Laundering: Motives, Methods, Impact, and Countermeasures" in Böll-Stiftung H and Schönenberg R (eds) *Transnational Organised Crime: Analyses of a Global Challenge to Democracy* (Transcript Verlag Bielefeld 2013) 21.

71 See related comments by Chitimira and Ncube 2021 *PER/PELJ* 4-5; Mugarura 2011 *Journal of Financial Regulation and Compliance* 181; Teichmann 2020 *Crime, Law and Social Change* 241.

72 Ashin P "Dirty Money, Real Pain: Money Laundering Harms Innocent Individuals but Can Also Impose Serious Costs on National Economies" 2012 *Finance and Development* 38, 41; *BUPSML Guideline 01-2006* 21; see also discussion by Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* (Routledge London 2016) 13-14; Reuter and Truman *Chasing Dirty Money* 89 and 105.

activities through illicit mineral dealings by Zimbabwe's prominent politicians.[73] The researcher contends that the illicit exportation of gold from Zimbabwe to Dubai constitutes money laundering. However, the FIU is not able to detect these illicit dealings because its mandate only extends to the detection of suspicious transactions concluded through regulated financial institutions. Accordingly, perpetrators have taken advantage of these legislative gaps to place and integrate the proceeds of crime within legitimate financial markets and financial institutions for speculative purposes.[74] Although these investigations have not been tried in Zimbabwean courts yet, the researcher argues that the inconsistent application of AML measures in all sectors by the FIU creates gaps that can be easily manipulated by perpetrators to commit money laundering.[75]

Furthermore, the scope and ambit of the *MLPC Act* only regulates Zimbabwe's formal financial sector. Thus, the provisions of the *MLPC Act* are only applicable to transactions which are concluded in the formal financial sector whereas Zimbabwe's financial sector is largely informal.[76] This is problematic considering that it is difficult to monitor and

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73 Al Jazeera Investigative Unit "Six Secrets Uncovered by Al Jazeera's Gold Mafia Investigation" (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-investigation accessed 18 May 2023; Mavhunga (6 April 2023) *VOA News* https://www.voanews.com/a/zimbabwe-freezes-assets-of-4-who-said-they-aided-gold-smuggling-money-laundering/7039722.html accessed 18 May 2023; Metelerkamp (17 April 2023) *Daily Maverick* https://www.dailymaverick.co.za/article/2023-04-17-al-jazeera-gold-mafia-expose-tip-of- the-iceberg-for-zim-corruption-but-accountability-remains-elusive/ accessed 18 May 2023.

74 An investor who purchases a speculative investment is focused on making profits from price fluctuations on the financial markets. Such an investor is more concerned with immediate profit creation based on sudden market value changes for that investment than long-term investing. See Feiger G "What is Speculation?" 1976 *The Quarterly Journal of Economics* 677, 677; Hart OD and Kreps DM "Price Destabilizing Speculation" 1986 *Journal of Political Economy* 927, 928; Janssen DJ, Füllbrunn S and Weitzel U "Individual Speculative Behavior and Overpricing in Experimental Asset Markets" 2019 *Experimental Economics* 653, 654; Ryan JA "The Ethics of Speculation" *International Journal of Ethics* 335, 335.

75 Alshaleel 2020 *European Company Law* 124; Saeed S, Mubarik F and Zulfiqar S "Money Laundering: A Thought-Provoking Crime" in Rafay A (ed) *Money Laundering and Terrorism Financing in Global Financial Systems* (IGI Global Hershey 2021) 12; Sittlington S and Harvey J "Prevention of Money Laundering and the Role of Asset Recovery" 2018 *Crime Law and Social Change Journal* 421, 422; Jojarth "Money Laundering" 18-22; see related comments by Unger B and den Hertog J "Water Always Finds its Way: Identifying New Forms of Money Laundering" 2012 *Crime, Law and Social Change* 287, 296-297.

76 Sections 2 of the *MLPC Act*; see related comments by Chitimira and Ncube 2021 *PER/PELJ* 16; Collin M, De Koker L, Juden M, Myers J, Ramachandran V, Sharma A and Tata G "Unintended Consequences of Anti–Money Laundering Policies for Poor Countries" 2015 *Center for Global Development Report* 1, 7; Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg*

regulate transactions concluded in the informal sector. In the informal financial sector of Zimbabwe, also referred to as the black market, transactions are uncapped and can be concluded in both the domestic currency and foreign currencies such as the United States Dollar and the South Africa Rand.[77] It is submitted that the informal financial sector of Zimbabwe creates a platform for money launderers to use their illicit funds without being detected.[78] This follows the fact that AML measures such as customer due diligence cannot be implemented in the informal sector as they are designed for implementation by regulated financial institutions to monitor client transactions.[79] Although efforts have been made to formalise Zimbabwe's financial sectors through measures such as mobile money accounts, the financial sector remains largely informal and hinders the effective implementation of AML measures.[80]

Mugarura identifies money laundering as a predicate offence for corruption.[81] This means that corruption is an offence that is used by perpetrators to create an opportunity to launder funds through the formal financial sector in Zimbabwe.[82] In Zimbabwe, corruption continues to deter the effective implementation of AML money laundering measures and

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227, 233; Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 280.

77 See related comments by Chitimira and Ncube 2021 *PER/PELJ* 16; Collin, De Koker, Juden, Myers, Ramachandran, Sharma and Tata 2015 *Center for Global Development Report* 7; Hugo and Spruyt 2018 *SALJ/TSAR* 233; Maguchu 2018 *African Security Review* 280.

78 See related discussion by Blazejewski KS "The FATF and its Institutional Partners: Improving the Effectiveness and Accountability of Trans-Governmental Networks" 2008 *Temple International and Comparative Law Journal* 1, 49-50; Financial Action Task Force Report 2020 *Annual Report 2019-2020* 1, 37; Gallant MM "Promise and Perils: The Making of Global Money Laundering, Terrorist Finance Norms" 2010 *Journal of Money Laundering Control* 175, 180; Mugarura 2011 *Journal of Financial Regulation and Compliance* 185.

79 Financial Action Task Force Report 2020 *Annual Report* 41; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 140-141.

80 Chitimira and Torerai 2021 *Potchefstroom Electronic Law Journal* 19; Chitimira and Torerai 2023 *De Jure Law Journal* 245; Barugahara 2021 *International Journal of Financial Research* 260.

81 Mugarura N "Uncoupling the Relationship between Corruption and Money Laundering Crimes" 2016 *Journal of Financial Regulation and Compliance* 74, 76; Mugarura N "The Institutional Framework against Money Laundering and Its Underlying Predicate Crimes" 2011 *Journal of Financial Regulation and Compliance* 174-194.

82 Mugarura N "The Global Anti-Money Laundering Court as a Judicial and Institutional Imperative" 2011 *Journal of Money Laundering Control Cambridge* 60, 71; Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Mugarura N "Anti-Money Laundering Law and Policy as a Double-Edged Sword" 2020 *Journal of Money Laundering Control* 899, 904; Moiseienko A "Does International Law Prohibit the Facilitation of Money Laundering?" 2023 *Leiden Journal of International Law* 109, 113.

prosecution of money laundering cases.[83] Such corruption is more prevalent amongst law enforcement agencies and reporting entities who are tasked with enforcing AML laws in Zimbabwe.[84] Thus, corrupt officials may be involved in money laundering schemes or are bribed to ignore money laundering activities they could be reporting or investigating. This has resulted in the lack of successful money laundering prosecutions in Zimbabwe due to inconclusive evidence to the fact.[85] On the other hand, the AML provisions under the *MLPC Act* do not incorporate measures to combat corruption so as to enhance the effectiveness of AML measures. The researcher argues that AML measures under the *MLPC Act* should be amended to incorporate measures to combat corruption associated with money laundering. This follows that, the prevalence of corruption in Zimbabwe will continue to undermine the effectiveness of AML measures and deter the prevention of money laundering in Zimbabwe.

In light of this context, the researcher submits that the regulation of AML measures under the *MLPC Act* should be reviewed and enhanced to guarantee their effectiveness and robustness to curb money laundering in Zimbabwe. This entails the amendment of the *MLPC Act* to, *inter alia*, enforce the consistent implementation of AML measures by the FIU, to ensure the consistent application of customer due diligence measures and to regulate effective collaboration and information sharing amongst all relevant role players. However, the lack of political will to redress the identified problems presents a major setback to the effective regulation of AML measures in Zimbabwe. The researcher makes

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83 Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications" 2020 *Journal of Money Laundering* Control 663, 664; Mugarura 2011 *Journal of Money Laundering Control Cambridge* 63; Chitimira and Ncube 2021 *PER/PELJ* 12.

84 Ashin 2012 *Finance and Development* 40; Ghoshray S "Compliance Convergence in FATF Rulemaking: The Conflict Between Agency Capture and Soft Law" 2015 *New York Law School Law Review* 521, 541-542; Morse J "Blacklists, Market Enforcement, and the Global Regime to Combat Terrorist Financing" 2019 *International Organization* 511, 511; Commonwealth Secretariat *Combatting Money Laundering and Terrorist Financing: A Model of Best Practice for the Financial Sector, the Professions and Other Designated Businesses* 2nd ed (Commonwealth Secretariat London 2006) 8.

85 Nyoni T "The Curse of Corruption in Zimbabwe" 2017 *International Journal of Advanced Research and Publications* 1, 4; Chitimira and Ncube 2021 *PER/PELJ* 13; Jayasekara 2020 *Journal of Money Laundering Control* 668; Mugarura 2020 *Journal of Money Laundering Control* 905.

plausible recommendations that could be implemented to enhance the regulation of AML measures and prevention of money laundering activities in Zimbabwe.

1.4 Aims and Objectives

1.4.1 Aims

For the purposes of this research, aims include the main overall goals and/or targets that are generally expected to be achieved by the researcher at the end of the research. Therefore, the research seeks to:

a) analyse the relevant provisions of the *MLPC Act* to establish whether they are adequate, sufficient and robust enough to combat money laundering in Zimbabwe.

b) investigate whether the relevant provisions of the *MLPC Act* have been consistently enforced by the RBZ, the FIU, the ZRP's Asset Forfeiture Unit, the NPAZ and other regulatory bodies that deal with the combatting of money laundering in Zimbabwe. Accordingly, the researcher discusses the role of selected Zimbabwean anti-money laundering regulatory and enforcement authorities to assess whether they are conducting their functions optimally; and

c) isolate and discuss the challenges affecting the enforcement of the relevant provisions of the *MLPC Act* in order to propose viable measures to boost the enforcement of such provisions in Zimbabwe.

1.4.2 Objectives

For the purposes of this research, the objectives include any measures or specific stages that are undertaken by the researcher to achieve the overall goals and aims of the research. In this regard the researcher:

a) investigates the adequacy of the relevant provisions of the *MLPC Act* to establish whether they are robust enough to combat money laundering in Zimbabwe.

b) discusses the role of the RBZ, the FIU, the ZRP's Asset Forfeiture Unit, the NPAZ and other regulatory bodies dealing with the combatting of money laundering in

Zimbabwe. This is done to investigate whether these authorities are performing their functions effectively and optimally to prevent money laundering activities in Zimbabwe; and

c) recommends possible measures that could be adopted by the RBZ, the FIU, the ZRP's Asset Forfeiture Unit, the NPAZ and other regulatory bodies to improve their ability to combat and curb money laundering in Zimbabwe.

1.5 Research Question

Is the AML regulatory framework provided under the *MLPC Act* sufficient and consistently enforced by the relevant authorities to curb and combat money laundering activities in Zimbabwe?

1.6 Rationale for the Study

This research investigates the flaws and shortcomings in the regulation, implementation, and enforcement of AML measures in Zimbabwe. It investigates whether the AML provisions under the *MLPC Act* are robust and adequately enforced to effectively curb money laundering practices in Zimbabwe. This is done to provide possible recommendations to enhance the prevention of money laundering in Zimbabwe. Countries with weak AML laws are attractive to criminals who can launder money without the fear of detection or prosecution.[86] Therefore, it is vital to remedy the gaps and flaws in Zimbabwe's AML regulatory framework so as to protect its financial markets from abuse by money launderers.[87] Furthermore, if the flaws and gaps that are embedded in Zimbabwe's AML framework are not adequately addressed, the FIU, the ZRP and the NPAZ will be unable to curb money laundering practices in its financial markets and financial institutions. This follows that the lack of express cooperation and information sharing procedures and instruments between the FIU and other relevant role players

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86 Jayasekara 2020 Journal of Money Laundering Control 664; McDowell and Novis 2001 *Economic Perspectives* 7; Ghoshray 2015 *New York Law School Law Review* 542; Terry and Robles 2018 *Fordham International Law Journal* 633-634.

87 Ashin 2012 *Finance and Development* 39; Hülsse and Kerwer 2007 *Organization* 627; Stessens *Money Laundering* 87; see related comments by Beare and Schneider *Money Laundering in Canada* 69.

under the *MLPC Act* has caused the inconsistent implementation of AML measures in Zimbabwe.[88]

Additionally, this thesis further investigates if the enactment of the *MLPC Act* has sufficiently improved the regulation of AML measures in Zimbabwe since its first AML legislation in 1990. In this regard, this thesis examines the effectiveness and adequacy of the current AML laws in Zimbabwe so as to enhance the fight against money laundering in Zimbabwe. The researcher traces the development of AML laws in Zimbabwe from 1990 to date so as to highlight the money laundering trends and risks in Zimbabwe. This is done to identify persistent challenges and legislative gaps in the regulation of AML measures in Zimbabwe so as to recommend plausible and commensurate measures to curb money laundering activities in Zimbabwe. Accordingly, this thesis recommends measures that are tailor-made to address the unique challenges faced by Zimbabwe in its current AML regime.

This thesis also investigates whether the relevant anti-money laundering regulatory and enforcement authorities such as the FIU, the ZRP and the NPAZ have consistently enforced the anti-money laundering laws in Zimbabwe. A unified approach to combat money laundering in Zimbabwe prevents regulatory gaps and enhances the effectiveness of AML measures. This can be achieved through established information sharing arrangements to ensure that financial intelligence collected by law enforcements agencies is up to date and accurate. Accordingly, this thesis underscores the importance of collaboration and information sharing to combat money laundering in Zimbabwe Moreover, the thesis also investigates whether the regulated entities effectively implement the AML measures provided under the *MLPC Act*. In light thereof, the investigation identifies bureaucratic obstructions and duplication of processes and duties among the FIU, the ZRP and the NPAZ. The duplication of tasks creates regulatory gaps that result in inconsistencies and arbitrages in the implementation of AML measures. When this occurs, the effectiveness of AML regulations is compromised. Accordingly, this

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88 See related discussion by Chitimira and Ncube 2021 *PER/PELJ* 14; Maguchu 2018 *African Security Review* 281; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 128; Chamisa MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 34.

research establishes measures to circumvent the duplication of tasks and regulatory arbitrages in Zimbabwe's AML framework to enhance its effectiveness.

1.7 Literature Review

According to Reuter and Truman, [89] an effective AML regulatory framework involves three pillars. The first pillar is the creation of a national regulatory framework.[90] The second pillar deals with the development of a firm legal and enforcement foundation. This pillar should be effectively enforced to develop a robust money laundering regulatory framework for Zimbabwe.[91] Without the consistent enforcement of AML laws, the money laundering provisions will exist only on paper while money laundering activities continue unabated to the detriment of the economy and the integrity of the financial markets and financial institutions.[92] Finally, Reuter and Truman posit that the third pillar relates to the requirement that both the public and private sectors must be closely involved in the implementation of the aforementioned elements.[93] The researcher concurs with Reuter and Truman that the private sector should be considered when developing an anti-money laundering regulatory framework in any country.[94] This is due to the fact that the effective implementation of the AML framework relies on acceptance and substantive cooperation

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89 Reuter and Truman *Chasing Dirty Money* 45; see also related comments by Carrington and Shams "Elements of an Effective AML/CFT Framework" 17; Fundira "Money laundering in Zimbabwe" 49; Maguchu 2018 *African Security Review* 280.

90 A national regulatory framework is a body of judicial, legislative, and executive measures which work together to achieve an intended outcome for a country; Reuter and Truman *Chasing Dirty Money* 45; see also related comments by Carrington and Shams "Elements of an Effective AML/CFT Framework" 17; Fundira "Money laundering in Zimbabwe" 49; Maguchu 2018 *African Security Review* 280.

91 Reuter and Truman *Chasing Dirty Money* 45; Carrington and Shams "Elements of an Effective AML/CFT Framework" 12; Levi M and Reuter P "Money Laundering" 2006 *Crime and Justice* 289, 333; Maguchu 2018 *African Security Review* 280.

92 Ashin 2012 *Finance and Development* 40; Eastern and Southern Africa Anti-Money Laundering Group Report 2019 16; see related comments by Reuter and Truman *Chasing Dirty Money* 77; Stessens *Money Laundering* 87.

93 Reuter and Truman *Chasing Dirty Money* 45; see related comments by Carrington and Shams "Elements of an Effective AML/CFT Framework" 12; Levi 2002 *The Annals of the American Academy of Political and Social Science* 190; Moshi 2007 *Institute for Security Studies Paper* 6.

94 Eastern and Southern Africa Anti-Money Laundering Group Report 2019 20-21; Carrington and Shams "Elements of an Effective AML/CFT Framework" 12; Moshi 2007 *Institute for Security Studies Paper* 6; see also Reuter and Truman *Chasing Dirty Money* 45.

of financial institutions in the private sector.[95] The researcher agrees with Reuter and Truman and submits that the legislature and policy makers in Zimbabwe should involve the private sector in implementing the AML framework in Zimbabwe. This follows the fact that, the consistent implementation of AML measures in both the private and public sector enhances the effectiveness of AML measures in Zimbabwe.[96]

De Koker asserts that the enactment of legislation that specifically addresses money laundering is essential to close regulatory gaps that exist between general criminal legislation and anti-money laundering legislation in any country.[97] In this regard, De Koker argues that specific anti-money laundering laws that exist within the context of well-developed general criminal laws will enable the removal of any legislative gaps which may be exploited by money launderers as a means of avoiding punishment for their illegal practices of laundering money in any country.[98] The researcher submits that the views advanced by De Koker are useful for Zimbabwe to enact a robust anti-money laundering framework. Therefore, the researcher submits that the *MLPC Act* should be amended to curb money laundering at all the three stages of money laundering, thus placement, layering and integration of the proceeds of crime which are then supported by the existing general criminal laws.[99]

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95 Reuter and Truman *Chasing Dirty Money* 45; see also Carrington and Shams "Elements of an Effective AML/CFT Framework" 12; Levi 2002 *The Annals of the American Academy of Political and Social Science* 190; Moshi 2007 *Institute for Security Studies Paper* 6.

96 See related discussion by Levi 2002 *The Annals of the American Academy of Political and Social Science* 189; Ross and Hannan 2007 *Current Issues in Criminal Justice* 139; Tang J and Ai L "Combating Money Laundering in Transition Countries: The Inherent Limitations and Practical Issues" 2010 *Journal of Money Laundering Control* 215, 222; Stessens *Money Laundering* 160.

97 De Koker L "Money Laundering Trends in South Africa" 2002 *Journal of Money Laundering Control* 27, 30-31; see related comments by Chong A and Lopez-De-Silanes F "Money Laundering and Its Regulation" 2015 *Economics and Politics* 78, 79-80; Goredema and Montsi 2002 *African Security Studies* 5; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 37.

98 De Koker 2002 *Journal of Money Laundering Control* 30-31; see related comments by Chong and Lopez-De-Silanes 2015 *Economics and Politics* 79-80; Nguyen 2013 *Australian Journal of Asian Law* 3-4; see also Muller "Anti-Money Laundering-A Short History" 64.

99 Chitimira and Ncube 2021 *PER/PELJ* 3; see related comments by Financial Action Task Force Report 2018 *FATF President's Paper: Anti-Money Laundering and Counter Terrorist Financing for Judges and Prosecutors* 1, 25; Reuter and Truman *Chasing Dirty Money* 25; Stessens Money Laundering 84.

Money laundering practices are more likely to thrive in countries which do not have robust judicial institutions.[100] Mugarura[101] argues that the judicial officers that enforce the relevant provisions of anti-money laundering laws should be specially trained so that they are aware of money laundering, including its methods, techniques and trends. This is important to enable the robust and consistent enforcement of anti-money laundering laws in Zimbabwe.[102] In this regard, the researcher concurs with Mugarura that the ordinary courts and the judicial officers therein may not be well trained to understand money laundering.[103] This follows that the investigation of money laundering cases requires relevant expertise to be able to understand, interpret and analyse financial intelligence so as to obtain accurate results. In Zimbabwe, money laundering crimes are prosecuted in the ordinary courts as it does not have specialised courts that are dedicated to adjudicating on money laundering offences.[104] Chitimira and Munedzi[105] argue that the lack of specialised courts to address matters relating to money laundering, delays the prosecution of money laundering cases as money laundering cases are complex and require relevant expertise to be appropriately resolved. The researcher concurs with this view and further submits that there is need for the establishment of courts, with experienced personnel, to prosecute and preside over matters relating to money

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100 Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 180-181; see related discussion by Ashin 2012 *Finance and Development* 38; Moshi 2007 *Institute for Security Studies Paper* 2; see related comments by; Levi and Reuter 2006 *Crime and Justice* 333.

101 Mugarura N "The Jeopardy of the Bank in Enforcement of Normative Anti-Money Laundering and Countering Financing of Terrorism Regimes" 2015 *Journal of Money Laundering Control* 352, 358; Mugarura 2016 *Journal of Financial Regulation and Compliance* 79; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 176.

102 Ashin 2012 *Finance and Development* 38; Financial Action Task Force Report 2018 FATF President's Paper 18; Moshi 2007 *Institute for Security Studies Paper* 2; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 180-181.

103 Financial Action Task Force Report 2018 FATF President's Paper 18; Madhuku An Introduction to Zimbabwean Law 73; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 181.

104 Section 78(1) *MLPC Act*; ESAAMLG "Eastern and Southern Africa Anti-Money Laundering Group Report" 13; Feltoe *Commentary on the Criminal Law* 182; Madhuku *An Introduction to Zimbabwean Law* 73; Chamisa 2019 *African Tax and Customs Review* 28.

105 Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 49; Chitimira H and Munedzi S "Historical Aspects of Customer Due Diligence and Related Anti-Money Laundering Measures in South Africa" 2023 *Journal of Money Laundering Control* 138, 147; Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789, 795; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 130.

laundering in Zimbabwe. This will enhance the investigation and prosecution of money laundering cases in Zimbabwean courts.

1.8 Premises, Assumptions and Hypotheses

1.8.1 Assumptions

This research is premised on the following assumptions:

a) the AML regulatory framework of Zimbabwe is not robust enough to effectively combat money laundering. This is evident by the continuous money laundering activities that are widespread in Zimbabwe, for example the Al Jazeera investigations on the Gold Mafia. Furthermore, the lack of successful investigations, prosecutions, or punishment of money laundering activities in Zimbabwe also shows that current AML regulatory framework in Zimbabwe is not adequate to combat money laundering in Zimbabwe.

b) the government of Zimbabwe, the RBZ, the FIU of Zimbabwe, the ZRP's Asset Forfeiture Unit, the NPAZ and other relevant regulatory bodies have not been able to consistently enforce the AML measures in Zimbabwe. This is due to the lack of clear cooperation and intelligence sharing arrangements amongst relevant role players in Zimbabwe to ensure the consistent implementation of AML measures.

c) the lack of adequate resources to effectively implement the regulated AML measures in Zimbabwe renders the AML laws inadequate and ineffective. The effective implementation of AML measures requires specialised systems to detect suspicious account activities and currently, the FIU is under-resourced to effectively fulfil its mandates.

1.8.2 Hypothesis

There is a need for consistent enforcement of AML laws in Zimbabwe to enable financial sector role players such as the RBZ, the FIU, ZRP's Asset Forfeiture Unit, the NPAZ and

other regulatory bodies to effectively fulfil their mandates.[106] It is submitted that Zimbabwe's AML laws are not robust enough to curb money laundering. This follows that money laundering activities remain a challenge in Zimbabwe without any successful prosecutions. Consequently, money laundering, as enabled by corruption, continues to affect the economic growth and development in Zimbabwe. The recent findings on the gold mafia documentary show that the AML measures which are currently provided under the *MLPC Act* are not robust enough to detect money laundering activities in all business sectors in Zimbabwe.

1.9 Limitations of the Study

This thesis only focuses on the relevant legislation on AML in Zimbabwe, the *MLPC Act*, to determine its adequacy to curb money laundering activities in Zimbabwe. Reference to AML laws in South Africa, the UK and Australia is done for comparative purposes. The thesis focuses on the statutory analysis of AML laws in Zimbabwe to establish whether they are adequately robust and consistently enforced to curb money laundering activities. This follows that Zimbabwe's AML framework follows a hard-law approach; thus, its AML measures are incorporated in statute. The research is further limited to an analysis of the anti-money laundering regulation framework tracing from 1990 to 2023. This time frame is relevant because prior to 1990, Zimbabwe did not have specific anti-money laundering laws as it only used its general criminal laws to prosecute money laundering and related crimes.[107] The research will only compare and discuss the relevant anti-money laundering laws from South Africa, the UK and Australia. The UK is generally considered to have a robust and effective AML regime, whilst Australia and South Africa have made significant progress by continuously updating their AML laws to conform to global AML standards. As such, the researcher submits that the UK, Australia and South Africa present relevant lessons for Zimbabwe to enhance its AML framework.

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106 Carrington and Shams "Elements of an Effective AML/CFT Framework" 12; Financial Action Task Force Report 2018 *FATF President's Paper* 25; Maguchu 2018 *African Security Review* 284; Ross and Hannan 2007 *Journal of Money Laundering Control* 110.

107 *BUPSML Guideline 01-2006* 13-14; See also related comments by Feltoe *Commentary on the Criminal Law* 182; Fundira "Money laundering in Zimbabwe" 54; Maguchu 2018 *African Security Review* 281.

1.10 Justification of Comparative Analysis

A comparative study is undertaken by considering South Africa, the UK and Australia since they have strong anti-money laundering laws which are steadily and dutifully applied by their relevant regulatory and enforcement authorities. The money laundering laws from South Africa are considered because Zimbabwe and South Africa share a mutual Roman-Dutch law foundation.[108] Furthermore, Zimbabwe and South Africa are neighbouring developing countries with major economic trade ties and they are likely to face similar challenges in their effort to curb money laundering.[109] Currently, South Africa is in the process of uprooting AML regulatory flaws following its FATF Mutual Evaluation Report. Accordingly, Zimbabwe could draw significant lessons from South African experiences. Since adopting the FATF recommendations into its national legislative framework by enacting the *Financial Intelligence Centre Act*[110] and making subsequent amendments thereafter, South Africa has effectively developed and implemented improvements and enhancements to strengthen its AML regulatory framework.[111] Furthermore, despite its

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108 Goredema C "Criminal Justice and the Truth in Zimbabwe: A Necessary Introspection" 1999 *South African Journal of Criminal Justice* 155, 155-156; Goredema C "The Attorney-General in Zimbabwe and South Africa: Whose Weapon-Whose Shield" 1997 *Stellenbosch Law Review* 45, 46; Madhuku L *An Introduction to Zimbabwean Law* (Weaver Press Harare 2010) 17; Ndlovu-Gatsheni S "Mapping Cultural and Colonial Encounters, 1880s-1930s" in Raftopoulos B and Mlambo A (eds) *Becoming Zimbabwe. A History from the Pre-Colonial Period to 2008: A History from the Pre-Colonial Period to 2008* (Weaver Press Harare 2010) 39.

109 Bester H, Chamberlain D, De Koker L, Hougaard C, Short R, Smith A and Walker R "Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines" 2008 *Genesis Analytics Report Version 5.2* 1, 42; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Goredema C "Organised Crime and Terrorism: Observations from Southern Africa" 2005 *Institute for Security Studies Paper 101* 1, 2; Nyathi M *The Southern African Development Community and Law* (Palgrave Macmillan Cham 2019) 1 and 4.

110 Section 1A of the *Financial Intelligence Centre Act* 38 of 2001 (*FIC Act*); Duri and Matasane 2017 *Journal of Anti-Corruption Law* 178; Financial Action Task Force Report 2020 *Mutual Evaluation Report South Africa* 1, 24; Hugo and Spruyt 2018 *SALJ/TSAR* 228.

111 Section 42 of the *Financial Intelligence Centre Amendment Act* 1 of 2017 *(FIC Amendment Act)*; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Hugo and Spruyt 2018 *SALJ/TSAR* 228; see related comments by Carrington I and Shams H "Elements of an Effective AML/CFT Framework: Legal, Regulatory, and Best Institutional Practices to Prevent Threats to Financial Stability and Integrity" Unpublished contribution delivered at the IMF *Seminar on Current Developments in Monetary and Financial Law* (23-27 October 2006 Washington DC) 1, 2.

recent grey-listing, South Africa has made considerable efforts to enhance its AML laws which presents viable lessons for Zimbabwe in this regard.[112]

The money laundering regulatory framework from the UK is considered because Zimbabwe's laws are influenced by English law because of the colonial relationship that existed between the UK and Zimbabwe from 1890-1980.[113] The UK is internationally recognised as a major financial hub[114] that has a well-developed regulatory framework on money laundering. Its financial markets and financial institutions are supported by a comprehensive anti-money laundering framework and related financial laws and regulations. Zimbabwe could also learn from the UK since it has managed to develop its money laundering legislation constantly and effectively.[115] According to the FATF,[116] the UK is an outstanding global example of a country that has taken the initiative to proactively develop its money laundering regulatory framework through comprehensive laws, policies, strategies, and activities to curb and combat money laundering.[117]

The money laundering regulatory framework from Australia is considered because it is one country that has made significant amendments to align its money laundering

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112 Section 3 and section 4 of the *FIC Amendment Act*; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Hugo and Spruyt 2018 *SALJ/TSAR* 228; see also Carrington and Shams "Elements of an Effective AML/CFT Framework" 2.

113 Goredema 1999 *South African Journal of Criminal Justice* 155-156; Goredema 1997 *Stellenbosch Law Review* 46; Madhuku *An Introduction to Zimbabwean Law* 17; Ndlovu-Gatsheni S "Mapping Cultural and Colonial Encounters" 39.

114 Financial Action Task Force Report 2018 *Fourth Round Mutual Evaluation Report United Kingdom* 1, 3-5; Saunders M and Stott C "Tough on Money Laundering and on the EU: UK Authorities Chart Their Course on AML Policy" 2012 *Journal of Investment Compliance* 14, 14-15; Padfield N "Country Report: Anti-Money Laundering Rules in the United Kingdom" in Pieth M and Aiolfi G (eds) *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (Edward Elgar Cheltenham 2004) 265.

115 Sections 52, 55, 63, 65 and 66 of the *Proceeds of Crime Act* 2002 (*Proceeds of Crime Act*); Financial Action Task Force Report 2018 3-5; Alshaleel 2020 *European Company Law* 127-128; Berg and McCarthy "An Introduction to the Challenges of Money Laundering" 27; Mugarura 2011 *Journal of Financial Regulation and Compliance* 182.

116 Financial Action Task Force Report 2018 3-5; Alshaleel 2020 *European Company Law* 127-128; Berg and McCarthy "An Introduction to the Challenges of Money Laundering" 27; Mugarura 2011 *Journal of Financial Regulation and Compliance* 182.

117 Alshaleel 2020 *European Company Law* 127-128; Berg and McCarthy "An Introduction to the Challenges of Money Laundering" 27; Mugarura 2011 *Journal of Financial Regulation and Compliance* 182; Muller WH "Anti-Money Laundering - A Short History" in Muller WH, Kalin CH and Goldsworth JG (eds) *Anti-Money Laundering: International Law and Practice* (Wiley New Jersey 2007) 7-8.

regulatory framework to international best standards as set by the FATF.[118] In 2006, Australia began a major process of reforming its federal anti-money laundering laws as a response to the changing nature of money laundering as well as a means to remedy the deficiencies that had been identified in its anti-money laundering laws by the FATF in its anti-money laundering regulatory framework report.[119] Australia has made significant developments and improvements to its federal money laundering laws.[120] For example, *inter alia*, Australia expanded the list of entities subject to AML regulations, introduced digital currency regulation and introduced penalties for non-compliance with AML measures. As a result, Australia has become a country with a robust, comprehensive and well-enforced federal anti-money laundering regulatory framework.[121] It is hoped that Zimbabwe will obtain valuable lessons from the anti-money laundering laws of South Africa, the UK and Australia.

1.11 Research Methodology

This research employs a qualitative research methodology. The qualitative research methodology is a form of undertaking research which incorporates an interpretative approach to its subject matter.[122] The researcher adopts a qualitative research

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118 *Anti-Money Laundering and Counter-Terrorism Financing and other Legislation Amendment Act* 133 of 2020 (Anti-Money Laundering Amendment Act 2020), section 3; Chaikin D "Risk-Based Approaches to Combatting Financial Crime" 2009 *Journal of Law and Financial Management* 20, 21; Financial Action Task Force Report 2005 Third Round Mutual Evaluation Report Australia 1, 8; Financial Action Task Force Report *2015 Fourth Round Mutual Evaluation Report Australia* 1, 7.

119 Chaikin 2009 *Journal of Law and Financial Management* 21; Financial Action Task Force Report 2005 8; Financial Action Task Force Report 2015 7; Ross S and Hannan M "Australia's New Anti-Money Laundering Strategy" 2007 *Current Issues in Criminal Justice* 135, 136.

120 Sections 6, 37A, 37B and 38 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (Anti-Money Laundering Act); Financial Action Task Force Report 2015 7; Chaikin 2009 Journal of Law and Financial Management 25; Ross and Hannan 2007 Current Issues in Criminal Justice 136.

121 Force Report 2005 Third Round Mutual Evaluation Report Australia 1, 8; Financial Action Task Force Report 2015 7; Chaikin 2009 *Journal of Law and Financial Management* 25; Ross and Hannan 2007 *Current Issues in Criminal Justice* 136.

122 Denzin NK and Lincoln YS "Introduction. The Discipline and Practice of Qualitative Research" in Denzin NK and Lincoln YS (eds) *The Sage Handbook of Qualitative Research* (Sage Publications Los Angeles 2005) 2; Flick U *An Introduction to Qualitative Research* 6th ed (Sage Publications Los Angeles 2018) 8-9; Hesse-Biber SN and Leavy P *The Practice of Qualitative Research: Engaging Students in the Research Process* 3rd ed (Sage Publications Los Angeles 2017) 4; Merriam SB *Qualitative Research in Practice: Examples for Discussion and Analysis* 1st ed (Jossey-Bass Inc San Francisco 2002) 5.

methodology because it aligns with the desk-top based research method which employs the use and collection of a variety of resources including observational, historical, interactional, and visual texts that describe routine and problematic events or processes.[123] The qualitative research methodology is mostly associated with the social constructivist theoretical approach where perspectives are influenced by the realities of society.[124] The researcher submits that reality is not a constant but it changes because of new perspectives that are obtained as part of ongoing learning experiences. The researcher further submits that money laundering is a crime that is constantly changing therefore it is vital for the anti-money laundering laws in Zimbabwe to be corrected in order to be effective in curbing money laundering crimes.

Relevant data will be analysed through the following research methods:

a. Primary and Secondary Sources

This thesis analyses the relevant data in existing primary and secondary sources. The primary sources include the *Constitution of Zimbabwe Amendment Act,* 2013 current money laundering legislation and relevant case law. The secondary sources consist of journal articles, books and other internet sources relating to the combatting of money laundering. For purposes of this research, the North-West University ***Potchefstroom Electronic Law Journal*** referencing style is be utilised.

b. Relevant Legislation

This thesis focuses on the statutory regulation of AML measures under the *MLPC Act*. This follows that the *MLPC Act* is the primary statute that provides for AML measures in Zimbabwe. Other relevant statutes such as the *Serious Offences Act* and the *BUPSML Act* are referred to where relevant and for comparative analysis.

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123 Denzin and Lincoln "Introduction" 2; Flick *An Introduction to Qualitative Research* 8-9; Hesse-Biber and Leavy *The Practice of Qualitative Research* 4; Merriam *Qualitative Research in Practice* 5.

124 Hoffman IZ "Some Practical Implications of a Social-Constructivist View of the Psychoanalytic Situation" 1992 *The International Journal of Relational Perspectives* 287, 289; Sivan E "Motivation in Social Constructivist Theory" 1986 *Educational Psychologist* 209, 210; Palincsar AS "Social Constructivist Perspectives on Teaching and Learning" in Daniels H (ed) *Introduction to Vygotsky* 2nd ed (Routledge Taylor and Francis Group London and New York 2005) 288; Spindler M *International Relations: A Self-Study Guide to Theory* (Verlag Barbara Budrich Opladen 2013) 12.

c. Relevant Case Law

Relevant case law that is pertinent to anti-money laundering laws is discussed and utilised in this research for reference purposes and to examine the different approaches which the courts use in deciding money laundering cases in Zimbabwe, South Africa, the UK and Australia.

d. Historical Analysis

This thesis follows a historical analysis in Chapter Two. This is done to provide a chronological overview of the anti-money laundering laws in Zimbabwe. The research traces the historical influences of Zimbabwe's anti-money laundering laws from 1990 when the first AML laws were enacted in Zimbabwe. Furthermore, the researcher discusses Zimbabwe's initial efforts at enacting anti-money laundering laws as well as subsequent legislative developments on AML regulation made thereafter. The historical analysis critically examines Zimbabwe's AML laws from 1990 until 2023.

e. Comparative Research Method

The statutory provisions on the regulation and prevention of money laundering offences in South Africa, the UK and Australia are examined for the purposes of drawing lessons to enhance Zimbabwe's AML measures. A comparative analysis is used as a means of identifying legislative gaps and/or flaws in Zimbabwe's AML laws. Furthermore, the comparative analysis is conducted to investigate the extent to which Zimbabwe could adopt similar measures to those adopted by South Africa, the UK and Australia in order to improve its anti-money laundering laws.

1.12 Statement Regarding Research Ethics

The research employs a qualitative research method. All the primary and secondary sources used in this research are referenced. The primary sources include the *MLPC Act*, other relevant AML legislations and relevant case law. The secondary sources consist of journal articles, books and other internet sources relating to money laundering and financial intelligence regulation in Zimbabwe. There are no individual or group interviews and questionnaires that will be used as instruments of research with the objective of

holding any discussions concerning any topic or issue that might be sensitive, embarrassing or upsetting to any person. The research will abide by the rules of the North-West University Senate Committee for Research Ethics and all applicable policies of the North-West University.

1.13 Relevance to the Research Unit

This research focuses on strengthening the AML laws in Zimbabwe. Accordingly, this research falls under the Faculty's Research Unit of Finance, Trade and Innovation/Investment sub-project of the Faculty of Law of the North-West University. The thesis examines the existing anti-money laundering laws in Zimbabwe. This examination is done to identify the possible strengths and weaknesses of the anti-money laundering laws in Zimbabwe with the aim of recommending legislative reform to adopt more comprehensive, robust and efficient anti-money laundering laws as well as to address deficiencies identified therein. It is hoped that the findings of this research will be contained in the final thesis and that some parts of it will be published as book chapters and/or journal articles.

1.14 Framework of Chapters

This research is divided into nine chapters including this one as outlined below:

Chapter One outlines the problem statement, the research question, presents the limitations of the study, explains the rationale of the thesis, aims and objectives of the study, research methodology, literature review and outlines the structure of the research.

Chapter Two conducts a historical overview of the regulation of money laundering in Zimbabwe. This chapter focuses on the methods and approaches to the combatting of money laundering in Zimbabwe between 1990 and 2023.

Chapter Three discusses the role-players that directly and indirectly deal with the regulation of money laundering in Zimbabwe such as the RBZ, the FIU of Zimbabwe, the Asset and Forfeiture Unit of the Zimbabwe Republic Police and the NPAZ. This is done to

determine whether the relevant financial sector role players are consistently and effectively fulfilling their mandate to combat money laundering in Zimbabwe.

Chapter Four discusses the flaws in the current AML legislation in Zimbabwe. The flaws and challenges are identified to enable the researcher to recommend viable solutions to the identified challenges.

Chapter Five discusses the regulation and implementation of anti-money laundering legislation in South Africa. This is done to draw valuable lessons from South Africa as it has made commendable advances in combatting money laundering in the SADC region for possible application in Zimbabwe.

Chapter Six discusses the regulation and implementation of anti-money laundering legislation in the UK. This is done to compare the anti-money laundering approaches that have been adopted and implemented in the UK for possible adoption in Zimbabwe.

Chapter Seven discusses the regulation and implementation of anti-money laundering legislation in Australia. This is done to draw lessons from Australia which Zimbabwe could adopt since Australia has successfully addressed weaknesses that were previously identified by the FATF in its 2005 mutual evaluation report until it is now globally recognised to be a country with well-developed federal anti-money laundering laws.[125]

Chapter Eight sets out an overall comparative analysis of the regulation, implementation and oversight of AML legislation in Zimbabwe, South Africa, the UK and Australia. This is done to draws lessons from the comparative analysis conducted on the AML framework in South Africa, the UK and Australia to enhance Zimbabwe's anti-money laundering legislation. The chapter investigates the extent to which Zimbabwe could adopt legislative and other measures taken by South Africa, the UK and Australia to enhance its AML laws.

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125 See also Chaikin 2009 *Journal of Law and Financial Management* 25; Financial Action Task Force Report 2005 1, 154; Jensen N "Creating an Environment in Australia Hostile to Money Laundering and Terrorism Financing: A Changing Role for AUSTRAC" 2008 *Macquarie Journal of Business Law* 93, 93-94; Muller "Anti-Money Laundering - A Short History" 7-8; Imobersteg Harvey A *Anti-money Laundering and Counter-terrorism Financing Law and Policy* (Brill Nijhoff Leiden 2019) 15.

Chapter Nine draws' conclusions from the findings of the research and provide recommendations with respect to the legislative measures that Zimbabwe could consider to develop robust anti-money laundering laws.

CHAPTER TWO

A HISTORICAL OVERVIEW OF THE REGULATION OF MONEY LAUNDERING IN ZIMBABWE

2.1 Introduction

This chapter provides historical aspects of the regulation of the anti-money laundering (AML) measures in Zimbabwe. The chapter undertakes a historical examination of the legislative developments that have taken place in the regulation of money laundering in Zimbabwe from 1990 to date. This follows the fact that in 1990, Zimbabwe began its first efforts to develop a statutory regulatory framework for AML measures through the enactment of the *Serious Offences Act*.[126] This is done to evaluate the effectiveness and robustness of AML laws in curbing money laundering and its effects on the Zimbabwean economy.[127] It is pertinent to trace the history of the development of the AML regulatory framework in Zimbabwe so as to provide adequate insights on the measures which have been adopted in the past to regulate money laundering in Zimbabwe.[128] Such insights are important to determine the aspects of Zimbabwe's AML regime that need to be revisited and remedied to strengthen the regulation of money laundering in Zimbabwe.

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126 *Serious Offences (Confiscation of Profits) Act* [Chapter 9:17] 12 of 1990 (*Serious Offences Act*), section 2; Gubbay AR "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 382; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 122.

127 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (*MLPC Act*); Chitsove E "Legal Aspects of Combatting Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59; Gubbay 1998 *Journal of Money Laundering Control* 380; Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141.

128 Chitsove 2018 *University of Botswana Law Journal* 43; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" in Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa: An Introspection* (ISS Pretoria 2007) 54; Mangoma S "Country Report: Zimbabwe" 2005 *United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders Resource Material Series No. 66* 179, 184; Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 280-281.

In the period between 1990 and 2013 there was no legislation expressly regulating AML measures in Zimbabwe.[129] Although money laundering has always been criminalised in Zimbabwe[130] prior to the enactment of the *MLPC Act*, money laundering offences were regulated by different pieces of legislation such as the *Serious Offences Act* and the *Criminal Matters (Mutual Assistance) Act*.[131] The disadvantage of having several legislations regulating AML measures is the creation of potential overlaps and inconsistencies on the implementation of AML measures, due to different standards and enforcement requirements, unlike with a unified statutory instrument. This chapter provides a historical analysis of the fragmented AML regulatory framework in Zimbabwe prior to the enactment of the *MLPC Act*.[132] The researcher analyses in detail, the provisions of the legislations that criminalised money laundering activities between 1990 to date. These include the *Serious Offences Act,* the *Prevention of Corruption Act*,[133] the

129 Munyoro J "Political Will and the Implementation of Anti-Money Laundering Measures: The Zambian Experience, 2004 to 2006" in Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa* (ISS Pretoria 2007) 23, 31; Chitsove 2018 *University of Botswana Law Journal* 43; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 54.

130 Section 63 of the *Serious Offences Act*; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 54; Gubbay A R "Zimbabwe: Proposed Additional Money Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 381; Goredema *Money Laundering in East and Southern Africa: An Overview of the Threat* 7.

131 *Criminal Matters (Mutual Assistance) Act* (Chapter 9:06) 13 of 1990, section 2; section 63 of the *Serious Offences Act*; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 68.

132 Kelley 2006 *The International Lawyer* 433; Levi 2002 *The Annals of the American Academy of Political and Social Science* 186; Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* (Routledge 2016) 1 and 51-52; Sharman 2008 *International Studies Quarterly* 648; Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

133 *Prevention of Corruption Act* of [Chapter 9:16] 27 of 2004, see section 2; see related comments by Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2011 *Journal of Money Laundering Control* 112, 115; also see Ngwenya B, Pelser T and Chivaura T "Perceptions of Post Multi-Currency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *South African Journal of Economic and Management Sciences* 1, 5; Gubbay 1998 *Journal of Money Laundering Control* 381.

Presidential Powers (Temporary Measures) Act[134] and the *Bank Use Promotion and Suppression Act.*[135]

2.2 The Historical Background of Anti-Money Laundering Legislation in Zimbabwe

At its independence in 1980,[136] Zimbabwe did not have a specific statute to regulate money laundering and related crimes. This could be attributed to the fact that at that time, the concept of money laundering as a financial crime had not gained much legal recognition in Zimbabwe.[137] This follows that the globalisation of financial markets gained momentum in the late 20th century and resulted in an increase in transnational crimes such as money laundering.[138] Consequently, the international community, through organisations such as the Financial Action Task Force (FATF) began the establishment of measures to combat and curb money laundering. Accordingly, the convergence of these factors exacerbated the need to establish an AML regulatory framework in Zimbabwe. It is also noteworthy that although the existence and practice of money laundering was acknowledged by the international community, it was not criminalised anywhere in the

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134 *Statutory Instrument Regulations Presidential Powers Act (Temporary Measures*) of 199 of 2006, see section 4 see related comments by Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; also see Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 4.

135 *Bank Use Promotion and Suppression of Money Laundering Act* [Chapter 24:24] 2 of 2004 (*BUPSML Act)*; see related comments by Shambira L "Exploring the Adoption of Artificial Intelligence in the Zimbabwe Banking Sector" 2020 *Electronic Journal of Social and Strategic Studies* 110, 13; Moyo G "The Bane of Financial Crime and Corruption amid Covid-19 Pandemic in Zimbabwe" 2020 *Global Journal of Management and Business Research* 37, 39; Chitimira and Ncube 2021 *PER/PELJ* 4.

136 Kelley 2006 *The International Lawyer* 433; Levi 2002 *The Annals of the American Academy of Political and Social Science* 186; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 1 and 51-52; Sharman 2008 *International Studies Quarterly* 648; Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

137 Madhuku L *An Introduction to Zimbabwean Law* (African Books Collective 2010) 19-20; Mtisi J, Nyakudya M and Barnes TA "War in Rhodesia, 1965-1980" in Raftopoulos B and Mlambo A (eds) *Becoming Zimbabwe: A History from the Pre-colonial Period to 2008* (Jacana Johannesburg 2009) 166; see related discussion by Stroligo, Intsch and Davis-Crockwell *Suspending Suspicious Transactions* 5.

138 Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 68; Gubbay 1998 *Journal of Money Laundering Control* 382; Simwayi and Haseed 2012 Journal of Money Laundering Control 119; Goredema *Money Laundering in East and Southern Africa: An Overview of the Threat* 7.

world until 1986.[139] This is when the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* was enacted to adopt measures to combat and curb money laundering activities linked to drug trafficking.[140] According to Maguchu, the criminalisation of money laundering could be regarded as a relatively modern phenomenon in Zimbabwe's criminal law.[141] This follows the fact that money laundering was regulated as a crime separate from drug trafficking for the first time in Zimbabwe in 1990.[142] During the 1980's, the reality of money laundering as a serious threat to global financial markets began to grow and it gained the attention of the international community.[143] Money laundering became a transnational crime that had to be addressed by all countries operating within the global financial markets.[144] It was also acknowledged by the global community, through the United Nations, that money laundering could not be generalised or addressed solely by combatting the underlying offences, like drug trafficking, that would give rise to money laundering activities.[145] This is evidenced by the establishment of the FATF to set global standards to specifically address money laundering and related challenges. The understanding that AML measures require

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139 Hülsse R and Kerwer D "Global Standards in Action: Insights from Anti-Money Laundering Regulation" 2007 *Organization*; Sharman 2008 *International Studies Quarterly* 637; Durrieu R *Rethinking Money Laundering and Financing of Terrorism in International Law: Towards a New Global Legal Order* (Brill Nijhoff Leiden 2013) 14; Zeldin MF "Money Laundering: Legal Issues" in Effros RC (eds) Current Legal Issues Affecting Central Banks: Volume 2 (International Monetary Fund Washington DC 1994) 209.

140 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, article 6; Harvey C "The Limited Impact of Financial Sector Reforms in Zimbabwe" 1996 *IDS Working Paper* 163, 168; Dzomira S "Analysis of Bank Failures during Financial Tumult in Africa-Zimbabwe: A Historical Review" 2014 *Journal of Governance and Regulation* 75, 76.

141 Maguchu 2017 *Journal of Money Laundering Control* 139; see related discussion by Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

142 Maguchu 2017 *Journal of Money Laundering Control* 139; Fundira "Money laundering in Zimbabwe, 2004 to 2006" 56; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 36.

143 *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,* 1988 (*Drugs Convention*), article 3(1)(b) *n*; see also Maguchu 2018 *African Security Review* 279; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 36; Reuter and Truman *Chasing Dirty Money* 89 and 105.

144 Article 3(1)(b) *of the Drugs Convention*; see also Maguchu 2018 *African Security Review* 279; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 36; Reuter and Truman *Chasing Dirty Money* 89 and 105.

145 Article 3(1)(b) *of the Drugs Convention*; The underlying offences to money laundering can be understood as any crime which gives rise to financial gain. See also Maguchu 2018 *African Security Review* 279; Mugarura N "The Institutional Framework against Money Laundering and its UnderlyingPredicate Crimes" 2011 *Journal of Financial Regulation and Compliance* 174, 175.

targeted legislation to ensure their adequacy and consistent enforcement exacerbates the need for express measures to combat and curb money laundering in Zimbabwe.

Efforts to combat money laundering in Zimbabwe began to gain momentum in the late 1980s and they were largely influenced by international measures such as the *Drugs Convention,* that were implemented during the same period.[146] In this regard, the international community, including Zimbabwe, had a narrow view of money laundering from the basis of drug trafficking-related crimes.[147] This is evidenced by the tenor and ambit of the provisions of the international conventions that were developed to combat money laundering during the 1980s.[148] For instance, the purpose of the *Drugs Convention* includes promoting cooperation among its member states to effectively combat drug trafficking and related crimes.[149] The researcher submits that the *Drugs Convention* is an essential measure to curb drug trafficking but is not effective and adequate to combat money laundering. This follows that the detection of money laundering requires specialised resources and skills which are not the same as those required for the detection of drug trafficking activities.[150] Furthermore, money laundering is a predicate crime of several other criminal activities such as corruption and human trafficking. Accordingly, the prevention of drug related crimes to curb money laundering activities was not effective and adequate enough to combat money laundering activities. Consequently,

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146 Article 7 of the Drugs Convention; Fundira "Money laundering in Zimbabwe, 2004 to 2006" 56; Maguchu 2017 *Journal of Money Laundering Control* 139.

147 Griffiths D "International Efforts to Combat Money Laundering: Developments and Prospects" 1993 *Commonwealth Law Bulletin* 1824, 1826; see related discussion by Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

148 Article 3(1)(c) of the *Drugs Convention*; Vousinas GL "Supervision of Financial Institutions: The Transition from Basel I to Basel III. A Critical Appraisal of the Newly Established Regulatory Framework" 2015 *Journal of Financial Regulation and Compliance* 383, 385; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 36; Kelley 2006 *The International Lawyer* 435.

149 Article 1 of the *Drugs Convention*; see related discussion by Ross S and Hannan M "Australia's New Anti-Money Laundering Strategy" *Current Issues in Criminal Justice* 135, 138; see related comments by Sarigul H "Money Laundering and Abuse of the Financial System" 2013 *International Journal of Business and Management Studies* 287, 293; Vousinas 2015 *Journal of Financial Regulation and Compliance 385.*

150 Brown A "Money Laundering: International Law and the Commonwealth" 1994 *Commonwealth Judicial Journal* 23, 24; see related comments by Dzomira 2014 *Journal of Governance and Regulation* 76; Goredema C and Montsi F "Towards Effective Control of Money Laundering in Southern Africa: Some Practical Dilemmas" 2002 *African Security Studies* 5, 8.

there was need for express provisions to combat money laundering in Zimbabwe and many other jurisdictions.

With a global drug trafficking trade that was beginning to threaten the integrity of the global financial markets, international organisations such as the Commonwealth[151] and the United Nations[152] saw the urgent need for their member states to develop national AML statutory frameworks.[153] It is within this context that, as a member of the international community, Zimbabwe embarked on efforts to enact legislation to combat money laundering activities in Zimbabwe. Accordingly, there was no legislation that expressly regulated AML measures in Zimbabwe between 1980 to 1990. The researcher submits that this could have been caused by the fact that until 1991, Zimbabwe's banking sector was foreign owned and externally regulated.[154]

2.3 The Regulation of Money Laundering under the Serious Offences (Confiscation of Profits) Act of 1990

The *Serious Offences (Confiscation of Profits) Act* was the first legislation to expressly criminalise money laundering activities in Zimbabwe in 1990.[155] The *Serious Offences Act* classified money laundering as any act or conduct whereby a person or body, directly or indirectly participates in the conclusion of a transaction, within or outside Zimbabwe, with

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151 Brown 1994 *Commonwealth Judicial Journal* 24; Ross and Hannan *Current Issues in Criminal Justice* 138; see related discussion by Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

152 *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna* 1988; Ross and Hannan *Current Issues in Criminal Justice* 138; see related discussion by Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

153 Brown A "Money Laundering: International Law and the Commonwealth" 1994 *Commonwealth Judicial Journal* 23, 25; *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna* 1988 Ross and Hannan *Current Issues in Criminal Justice* 138; see related discussion by Stroligo, Intscher and Davis-Crockwell *Suspending Suspicious Transactions* 5.

154 Chigumira G and Makochekanwa A "Financial Liberalization and Crisis: Experience and Lessons for Zimbabwe" 2014 *Zimbabwe Economic Policy Analysis and Research Unit* 1, 8; Boone C "State, Capital, and the Politics of Banking Reform in Sub-Saharan Africa" 2005 *Comparative Politics* 401, 409; Hanc G "The Banking Crises of the 1980s and Early 1990s: Summary and Implications" 1998 *Federal Deposit Insurance Corporation Banking Review* 1, 2.

155 Section 63 of the *Serious Offences (Confiscation of Profits) Act* (*Serious Offences Act*); Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 54; see related comments by Goredema C "Beyond Declarations of Intent" 2001 *African Security Studies* 78, 80; also see Gubbay 1998 *Journal of Money Laundering Control* 381.

the intention of removing or bringing into Zimbabwe, money or property that was acquired through the proceeds of crime.[156] The *Serious Offences Act* also provides that an act or conduct that includes receiving, possessing, concealing, disposing of, bringing into, or removing money or property that forms the proceeds of crime from Zimbabwe constitutes money laundering.[157] This definition was too general and did not adequately criminalise money laundering. In relation to these, any person or body that commits such acts or conduct should be reasonably aware that such money or property constituted the proceeds from a criminal offence for the crime of money laundering to be established.[158] The researcher argues that the definition of money laundering provided under the *Serious Offences Act* was not comprehensive enough to establish the elements of money laundering as it is known today.[159] This follows the fact that the definition of money laundering provided under the *Serious Offences Act* was too general and omitted some essential definitional elements of the crime, such as placement, layering and integration of the funds.

According to Goredema, money laundering entails any activity with the intention of disguising or concealing the source of money or property acquired from criminal or unlawful conduct.[160] In the same vein, Chitimira and Ncube argue that money laundering constitutes an act of disguising the origins of money obtained from criminal activities and

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156 Section 63(1)(a) of the *Serious Offences Act*; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 54; see related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; also see Chitimira and Ncube 2021 *PER/PELJ* 5.

157 Section 63(1)(b) of the *Serious Offences Act*; Fundira B "Money laundering in Zimbabwe, 2004 to 2006" 54; see related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; also see Chitimira and Ncube 2021 *PER/PELJ* 5.

158 Section 63 of the *Serious Offences Act*; see related comments by Sarigul 2013 *International Journal of Business and Management Studies* 291; also see Gubbay 1998 *Journal of Money Laundering Control* 381; Nurhadiyanto L "The Identification of Money Laundering on Drug Trafficking" 2020 *Asia Pacific Fraud Journal* 68, 70.

159 See section 63 of the *Serious Offences Act*; see related comments by Irwin ASM, Choo KKR and Liu L "An Analysis of Money Laundering and Terrorism Financing Typologies" 2012 *Journal of Money Laundering Control* 85, 88; also see Chitimira and Ncube 2021 *PER/PELJ* 3.

160 Goredema *Money Laundering in East and Southern Africa: An Overview of the Threat* 4; Goredema 2001 *African Security Studies* 79; Sullivan K *Anti-Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business Managers* (Apress Berkeley 2015) 2; Achim MV and Borlea SN *Economic and Financial Crime: Corruption, Shadow Economy and Money Laundering* (Springer New York 2020) 20-21.

channelling it into the legitimate financial sector without detection.[161] From these definitions, it is clear that an act of money laundering should include an act of concealing the source of money to channel the money into the formal financial system as though the money was obtained through legitimate activities.[162] However, the *Serious Offences Act* generalised the elements of money laundering such that it was difficult to procure successful prosecutions based on its definition.[163] For instance, the first stage of money laundering is the placement, which occurs when the perpetrator deposits the money obtained from illegal acts into the formal financial system, was not listed as an element of money laundering under the *Serious Offences Act*.[164] Placement is done by dividing large amounts of money into smaller amounts prior to depositing it into financial institutions such as banks.[165]

The *Serious Offences Act* also failed to provide that money laundering includes integrating the laundered funds into the legitimate economy through financial institutions and/or formal investments to avoid detection.[166] In relation to this, the researcher argues that the failure by the *Serious Offences Act* to comprehensively describe money laundering

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161 See section 30 of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 5; Sullivan *Anti-Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business Managers* 2; Achim and Borlea *Economic and Financial Crime: Corruption, Shadow Economy and Money Laundering* 21.

162 Chitimira and Ncube 2021 *PER/PELJ* 5; Sullivan *Anti-Money Laundering in a Nutshell: Awareness and Compliance for Financial Personnel and Business Managers* 2; Achim and Borlea *Economic and Financial Crime: Corruption, Shadow Economy and Money Laundering* 21.

163 See section 63 of the *Serious Offences Act;* Cox D Handbook of Anti-Money Laundering (Wiley Hoboken 2014) 13; Gjoni M, Gjoni AK and Kora HB "Money Laundering Effects, 2015" in *Proceedings of the International Conference on Management, Business and Economics* (November 2015) 13, 14.

164 Section 63(1)(a) of the *Serious Offences Act*; see related discussion by Sarigul 2013 *International Journal of Business and Management Studies* 287; Lokanan ME and Nasimi N "The Effectiveness of Anti-Money Laundering Policies and Procedures within the Banking Sector in Bahrain" 2020 *Journal of Money Laundering Control* 769, 771; see related comments by Leong A *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* 3rd ed (Ashgate Publishing Limited 2016) 35; Kruger A *Organised Crime and Proceeds of Crime Law in South Africa* 2nd ed (Lexis Nexis Durban 2013) 14.

165 See Lokanan and Nasimi 2020 *Journal of Money Laundering Control* 771; Leong *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* 35; Madinger J *Money Laundering: A Guide for Criminal Investigators* 3rd ed (CRC Australia 2011) 18; Sarigul 2013 *International Journal of Business and Management Studies* 287.

166 Section 63 of the *Serious Offences Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 54; Goredema 2004 *Institute for Security Studies* 4; see related comments by Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 81.

could have resulted in the lack of successful money laundering prosecutions in Zimbabwe during this time.[167] The provisions of the *Serious Offences Act* were more focused on the confiscation of illegal proceeds rather than on measures to prevent the recurrence of the crime. Accordingly, the researcher submits that the *Serious Offences Act* was not effective and robust enough to combat money laundering in Zimbabwe. The scope of the *Serious Offences Act* on money laundering was limited to confiscation and seizure of illicit proceeds and did not comply with the FATF definition of money laundering.[168] Furthermore, the *Serious Offences Act* did not establish, specify, or identify institutions that would be accountable for money laundering matters or reporting obligations.[169] The researcher submits that establishing institutions that specifically deal with matters relating to money laundering is an essential AML measure. This follows that such institutions enhance the detection and investigation of money laundering through their relevant expertise and specialised resources.[170]

The *Serious Offences Act* was enacted to deter money laundering and related crimes.[171] As such, the *Serious Offences Act* empowered the Zimbabwe Republic Police (ZRP) to confiscate and forfeit money or properties acquired through money laundering activities.[172] This entailed that the police were authorised to access information held by financial institutions to monitor the activities of suspected perpetrators.[173] Despite the

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167 Section 63 of the *Serious Offences Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 54; Goredema 2004 *Institute for Security Studies* 4; see related comments by Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 32.

168 See Part II and III of the *Serious Offences Act*; International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation, 2023 (FATF Recommendations), recommendation 3; Gubbay 1998 *Journal of Money Laundering Control* 380.

169 See related discussion by Gubbay 1998 *Journal of Money Laundering Control* 380; also see Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 54; see related comments by Henning JJ and Ebersohn GJ "Insider Trading, Money Laundering and Computer Crime" 2001 *Transactions of the Centre for Business Law: Combating Economic Crime* 105, 142.

170 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 123; see related comments by 2014 *Journal of Money Laundering Control* 90; Goredema and Motsi 2002 *African Security Studies* 8; De Koker 2014 *Journal of Money Laundering Control* 285.

171 See section 3 of the *Serious Offences Act*; see related comments by Chekenya NS "Rethinking Formalization of Zimbabwe's Informal Sector" 2016 *Undergraduate Economic Review* 1, 25.

172 Section 63(5) of the *Serious Offences*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55; see related comments by Goredema 2004 *Institute for Security Studies* 4.

173 See related comments by Chitimira C and Munedzi S "Overview International Best Practices on Customer Due Diligence and Related Anti-Money Laundering Measures" 2022 *Journal of Money*

efforts to regulate AML measures in Zimbabwe through the *Serious Offences Act*, the *Serious Offences Act* failed to impose stringent penalties for money laundering and related crimes.[174] The *Serious Offences Act* only regulated the confiscation and seizure of criminal proceeds as penalties to money laundering activities. The researcher argues that the seizure of the proceeds of crime does not discourage criminals from committing money laundering again. Some offenders could continue to commit money laundering to replace the confiscated funds.[175] Accordingly, there was a need for penalties that prevented the perpetrators from committing crimes, such as imprisonment, so as to control money laundering activities in Zimbabwe. Accordingly, it is submitted that the weak penalties under the *Serious Offences Act* were ineffective as they failed to deter criminals from committing money laundering in the future.[176] This is evidenced by the uncontrollable demise of the Zimbabwean economy due to failure to prevent the commission of financial crimes such as money laundering. As a result of, *inter alia*, financial crimes from around 1990.[177] Consequently, the *Serious Offences Act* was repealed and the *Prevention of Corruption Act*[178] was enacted to criminalise money laundering activities in Zimbabwe.

Laundering Control 53, 57; also see Leong *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* 87.

174 Section 64 of the *Serious Offences Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55; see related comments by Goredema 2004 *Institute for Security Studies* 6.

175 See related discussion by Chitimira H *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana and Zimbabwe* (Juta Cape Town 2022) 132; Kurebwa J "Implications of Illicit Financial Flows on Zimbabwe's Development" 2021 *International Journal of World Policy and Development Studies* 27, 30.

176 Sections 13-16 of the Serious Offences Act; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 57; Goredema 2004 *Institute for Security Studies* 11.

177 See related comments by Chekenya NS "Rethinking Formalization of Zimbabwe's Informal Sector" 2016 *Undergraduate Economic Review* 1, 2; also see Ndiweni E and Verhoeven H "The Rise of Informal Entrepreneurs in Zimbabwe: Evidence of Economic Growth or Failure of Economic Policies?" 2013 *African Journal of Accounting Auditing and Finance* 1, 12; Chitimira and Ncube 2021 *PER/PELJ* 4.

178 Sections 3-5 [now repealed] of the *Prevention of Corruption Act*; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; also see Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 5; see related comments by Gubbay 1998 *Journal of Money Laundering Control* 381.

2.4 The Regulation of Money Laundering under the Prevention of Corruption Act

The *Prevention of Corruption Act* was enacted in 2004 to criminalise corruption, which is habitually a corroborate offence for money laundering.[179] However, it should be noted that the *Prevention of Corruption Act* did not expressly regulate AML measures.[180] This follows that the *Act* regulated the prevention and criminalisation of corruption which is a predicate offence for money laundering.[181] The *Prevention of Corruption Act* provided for the appointment of a special investigator tasked with investigating any suspicious activities relating to the acquisition of money or property in Zimbabwe.[182] This entails that the *Prevention of Corruption Act* regulated the investigation and detection of money laundering through the appointment of a special investigator in Zimbabwe.[183] The private investigator was empowered to search the premises, access the suspect's bank records, and monitor their transactions to detect criminal activities.[184] In this regard, the researcher submits that the *Prevention of Corruption Act* also played a significant role in the investigation and detection of money laundering activities in Zimbabwe.

Notwithstanding the above, the researcher argues that the cooperation between the police, the special investigator, and the prosecuting authority is not adequately regulated

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179 Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55; see related comments by Ndiweni and Verhoeven 2013 *African Journal of Accounting Auditing and Finance* 15; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 8.

180 Sections 3-5 [now repealed] of the *Prevention of Corruption Act*; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; also see Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 5; see related comments by Gubbay 1998 *Journal of Money Laundering Control* 381.

181 See preamble of the *Prevention of Corruption Act*.

182 See section 22(2)(b) of the *Prevention of Corruption Act*; see related comments by Sithole STM and Mtetwa G "Bank Failures in Zimbabwe: Lessons from the 2003-2004 Bank-Wide Liquidity Crisis" 2009 *UniSWA Research Journal* 44, 45; also see Mawowa S and Matongo A "Inside Zimbabwe's Roadside Currency Trade: The 'World Bank' of Bulawayo" 2010 *Journal of Southern African Studies* 319, 323-324.

183 Section 22(1)(c) of the *Prevention of Corruption Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 60; see related comments by Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141; also see Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 285.

184 Section 22(2)-(3) of the *Prevention of Corruption Act*; see related comments by Maguchu 2018 *African Security Review* 285; also see Maguchu 2017 *Journal of Money Laundering Control* 143; also see Mawowa and Matongo 2010 *Journal of Southern African Studies* 325.

under the *Prevention of Corruption Act*.[185] The *Prevention of Corruption Act* made no provision for the investigators to collaborate and coordinate their functions with other role players such as the ZRP and the National Prosecuting Authority of Zimbabwe (NPAZ).[186] The researcher submits that it was essential for the police, the NPAZ and the appointed special investigator to collaborate and work together to ensure consistency and the successful prosecution of money laundering perpetrators.[187] Nonetheless, the *Prevention of Corruption Act* did not make adequate provision to ensure that there is coordination in this regard. Considering that neither the criterion on which the investigator was appointed, nor their expertise was established under the *Prevention of Corruption Act*, it is argued that the investigator could lack the required expertise to collate information for a successful prosecution.[188] The researcher submits that the appointment of such investigators should be based on experience and expertise to enhance the effectiveness of the investigations. Moreover, it was important that the investigator, the police, and the NPAZ work together to ensure the detection and prosecution of money laundering and related criminal activities in Zimbabwe. In this regard, the researcher submits that the *Prevention of Corruption Act* was not sufficiently robust and adequate to combat money laundering in Zimbabwe. It is submitted that the *Prevention of Corruption Act* could have expressly regulated the coordination of the functions of the investigators, the ZRP, the NPAZ, and other relevant financial role players to enhance the control of money laundering in Zimbabwe. The scope of the *Act* did not foster the detection of money laundering-related activities as it was centred on

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185 Section 8 of the P*revention of Corruption Act*; See related comments by Madhuku L *An Introduction to Zimbabwean Law* 19-20; also see Sithole and Mtetwa 2009 *UniSWA Research Journal* 44; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 61.

186 Sections 8 and 9 of the *Prevention of Corruption Act*; see related comments by Chitimira and Ncube 2021 *PER/PELJ* 11; Sifile O and Dangwa P "Corporate Governance and the Law Governing the Management of Companies in Zimbabwe" 2018 *Journal of Business Management* 66, 68; Chitsove E "Legal Aspects of Combatting Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 47.

187 Maguchu 2017 *Journal of Money Laundering Control* 143; also see Mawowa and Matongo 2010 *Journal of Southern African Studies* 325; Sithole and Mtetwa 2009 *UniSWA Research Journal* 44; see related comments by Chimbaru F "Report of UN Policy Working Group on the UN and Terrorism" *Country Report: Zimbabwe 132nd International Senior Seminar Participants' Papers 71* (24 April 2002 Geneva) 67, 74.

188 See section 23 of the *Prevention of Corruption Act;* see related comments by Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa: An Introspection* (Institute for Security Studies Pretoria 2007) 25.

combatting corruption instead. For example, the investigators could have been authorised to obtain information relating to the financial transactions of identified perpetrators. The obtained information could be shared with the Financial Intelligence Unit (FIU) for further investigation on money laundering activities.

2.5 The Regulation of Money Laundering Under the Troubled Financial Institutions (Resolution) Act

The *Troubled Financial Institutions (Resolutions) Act*[189] came into effect in 2005. The primary objectives of this *Act* include managing and overseeing the resolution of bank failures in Zimbabwe.[190] This was done through the implementation of various measures, such as the ongoing monitoring of financial transactions so as to detect and prevent money laundering and related crimes at financial institutions in Zimbabwe.[191] The objectives of the *TFI Act* included the regulation of the inspection of financial institutions by the Reserve Bank of Zimbabwe (RBZ) to ensure compliance with risk management measures and other financial sector laws.[192] Although the *TFI Act* did not expressly provide for measures to combat and curb money laundering, it created the office of an administrator.[193] The role of the administrator was the administration of failing banks through fostering the implementation of, *inter alia*, AML measures so as to prevent bank failures.[194] Accordingly, the researcher argues that, despite the lack of express AML

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189 *Troubled Financial Institutions (Resolution) Act* [Chapter 24:28] 31 of 2004 (*TFI Act*), section 6; see related comments by Chitimira and Ncube 2021 *PER/PELJ* 8; Mambondiani L, Zhang VF and Arun T "Corporate Governance and Bank Performance: Evidence from Zimbabwe" 2012 *International Journal of Economics and Financial Issues* 1, 9; also see Munoangira A and Kaja P "Strategies to Enhance Public Confidence in the Zimbabwean Banking Sector" 2016 *European Journal of Business and Management* 195, 202.

190 Section 6(1) of the *TFI Act*; Mambondiani, Zhang and Arun 2012 *International Journal of Economics and Financial Issues* 9; Munoangira and Kaja 2016 *European Journal of Business and Management* 195; Chitimira and Ncube 2021 *PER/PELJ* 8.

191 See sections 4-9 of the *TFI Act*; Dzomira S "Analysis of Bank Failures during Financial Tumult in Africa-Zimbabwe: A Historical Review" 2014 *Journal of Governance and Regulation* 75, 77.

192 Section 4(1)(d) of the *TFI Act*; see related comments by Munoangira and Kaja 2016 *European Journal of Business and Management* 195; Chitimira and Ncube 2021 *PER/PELJ* 8.

193 Section 4 of the *TFI Act*; Munoangira and Kaja 2016 *European Journal of Business and Management* 195; Chitimira and Ncube 2021 *PER/PELJ* 8; Pfumorodze and Nzonzo 2010 *Indian Journal of Corporate Governance* 58-59.

194 Section 4 of the TFI Act; Munoangira and Kaja 2016 *European Journal of Business and Management* 195; Chitimira and Ncube 2021 *PER/PELJ* 8; Pfumorodze and Nzonzo 2010 *Indian Journal of Corporate Governance* 58-59.

measures under the *TFI Act*, the role of the administrator was significant for ensuring compliance with AML laws and other financial sector laws in Zimbabwe. On the same note, the researcher submits that the functions of the administrator which are provided under the *TFI Act* could be regarded as an enforcement measure to enhance compliance with other AML laws.

The researcher submits that the failure by the *TFI Act* to combat money laundering in Zimbabwe could be attributed to the rampant inflation rates and poor security regulation features on the use of bearer cheques which rendered the implementation of AML measures impossible.[195] Bearer cheques were issued as a temporary measure to alleviate cash shortages between 2003 and 2009 in Zimbabwe.[196] This increased unmonitored and illegal foreign currency exchange transactions in the informal sector.[197] Consequently, the Reserve Bank of Zimbabwe (RBZ) lost control of the monetary policy and there was an increase in money laundering activities in Zimbabwe.[198] The bank failures that occurred in Zimbabwe since 2003 due to money laundering, fraud, and other related financial crimes rendered it difficult for the administrator to effectively execute its functions as many banks became insolvent and closed down.[199] More so, the failure of the *TFI Act* to control money laundering in Zimbabwe was inevitable considering that it was enacted at

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195 Fundira "Money Laundering in Zimbabwe" 48; Kavila W and Le Roux P "The Role of Monetary Policy in Zimbabwe's Hyperinflation Episode" 2017 *African Review of Economics and Finance* 131, 138; Makaye P and Mapuva J "Unpacking Zimbabwe's Enduring Economic Quagmire: Interrogating the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimASSET)" 2016 *Public Policy and Administration Research* 13, 16.

196 Robinson P *Zimbabwe's Hyperinflation: The House is on Fire – but does the Government Know it is Dousing the Flames with Petrol?* (Friedrich-Ebert-Stiftung, Referat Afrika Bonn 2006) 18; Makaye P and Mapuva J "Unpacking Zimbabwe's Enduring Economic Quagmire: Interrogating the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimASSET)" 2016 *Public Policy and Administration Research* 13, 14; Hove M "Endangered Human Security in Cash Strapped Zimbabwe, 2007-2008" 2017 *African Studies Quarterly* 45, 51.

197 Chekenya NS "Rethinking Formalization of Zimbabwe's Informal Sector" 2016 *Undergraduate Economic Review* 1, 15; Chitimira and Ncube 2021 *PER/PELJ* 15; Chokuda T, Nkomazana N and Mawanza W "A Bank Failure Prediction Model for Zimbabwe: A Corporate Governance Perspective" 2017 *Journal of Economics and Behavioral Studies* 207, 211.

198 See for example *S v Chikukwa* (HH 813/16 CRB NO 146/16) [2016] ZWHHC 813 (3 October 2016) para unknown; *Muyogo and 65 others v Guvamombe and Others* (HH181-2004) [2004] ZWHHC 181 (16 November 2004)*;* also see Munoangira and Kaja 2016 *European Journal of Business and Management* 195; Chitimira and Ncube 2021 *PER/PELJ* 9.

199 Dzomira 2014 *Journal of Governance and Regulation* 78; see related comments by Pfumorodze J and Nzonzo JC "Some Reflections on Corporate Governance in the Banking Sector in Zimbabwe" 2010 *Indian Journal of Corporate Governance* 51, 57; Chitimira and Ncube 2021 *PER/PELJ* 9; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 61.

a time when the economy of Zimbabwe was already collapsing.[200] This follows the fact that many banks and financial institutions became insolvent at the time and most financial transactions were conducted through the informal financial sector which cannot be monitored.[201] This rendered it impossible to conduct audits and risk management measures to control money laundering activities in Zimbabwe. The *TFI Act* was repealed in 2016.

2.6 The Regulation of Money Laundering under the Presidential Powers (Temporary Measures) Regulations

The *Presidential Powers (Temporary Measures) Regulations* were issued by the President's Office to regulate investigations of crimes relating to economic crimes in Zimbabwe.[202] The *Presidential Measures Regulations* classified money laundering as an economic crime in Zimbabwe.[203] As such, the *Presidential Measures Regulations* were employed by the President in 2018 as a measure to control money laundering activities in Zimbabwe.[204] The *Presidential Measures Regulations* authorised the police or relevant investigating officers to detain money laundering suspects for up to 21 days as they carried on investigations relating to money laundering.[205] This meant that the courts could

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200 Sections 4-9 of the *TFI Act*; Nyoka C "Banks and the Fallacy of Supervision: The Case for Zimbabwe" 2015 *Banks and Bank Systems* 8, 12; Mambondiani L, Zhang VF and Arun T "Corporate Governance and Bank Performance: Evidence from Zimbabwe" 2012 *International Journal of Economic and Financial Issues* 1, 9; Munoangira A and Kaja P "Strategies to Enhance Public Confidence in the Zimbabwean Banking Sector" 2016 *European Journal of Business and Management* 195, 202.

201 Chitimira and Ncube 2021 *PER/PELJ* 8; Nyoka 2015 *Banks and Bank Systems* 12; Mambondiani, Zhang and Arun 2012 *International Journal of Economic and Financial Issues* 9; Munoangira and Kaja 2016 *European Journal of Business and Management* 202.

202 *Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) Regulations* (*Presidential Measures Regulations*), section 3; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55; Makaye P and Mapuva J "Unpacking Zimbabwe's Enduring Economic Quagmire: Interrogating the Zimbabwe Agenda for Sustainable SocioEconomic Transformation (ZimASSET)" 2016 *Public Policy and Administration Research* 13, 15.

203 Section 37B of the *Presidential Measures Regulations*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 48; Dzomira 2014 *Journal of Governance and Regulation* 78; Munoangira and Kaja 2016 *European Journal of Business and Management* 203.

204 Section 2 of the *Presidential Measures Regulations*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55.

205 Section 2 of the *Presidential Measures Regulations*; also see *Criminal Procedure and Evidence Act* 2 of 2016 [Chapter 9:07] section 25; see related comments by Makaye and Mapuva 2016 *Public Policy and Administration Research* 17; Hove 2017 *African Studies Quarterly* 52.

not release money laundering suspects on bail until investigations were complete. The *Presidential Measures Regulations* rail against human rights by promoting detention without being formally charged.[206] In some instances, the suspects would never be formally charged due to a lack of sufficient evidence to prove the elements of money laundering.[207] Accordingly, the researcher submits that the enforcement of the *Presidential Measures Regulations* was problematic since the enforcement of its provisions raised human rights issues which were time-consuming and compromised money laundering cases.[208]

The *Presidential Measures Regulations* also created a new gatekeeping function for lawyers.[209] Gatekeeping refers to the measures and procedures implemented by established institutions to prevent money laundering activities.[210] This entails that legal practitioners and institutions became listed as institutions that should report any suspicious transactions concluded by their clients.[211] However, the *Presidential Measures* Regulations failed to ensure a regulatory balance between the duty of lawyers as gatekeepers of money laundering and the lawyers' ethical duties to their clients.[212] In this regard, the *Presidential Measures Regulations* could not be consistently implemented to combat money laundering in Zimbabwe. There is a need for the Law Society of Zimbabwe to establish an AML Task Force or Committee to ensure compliance with AML measures

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206 Section 37B of the *Presidential Measures Regulations*; See related comments by Maguchu 2018 *African Security Review* 279; Dzomira 2014 *Journal of Governance and Regulation* 79; also see Makaye and Mapuva 2016 *Public Policy and Administration Research* 15; Munoangira and Kaja 2016 *European Journal of Business and Management* 195.

207 Dzomira 2014 *Journal of Governance and Regulation* 78; Munoangira and Kaja 2016 *European Journal of Business and Management* 203; Maguchu S "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141.

208 Maguchu 2017 *Journal of Money Laundering Control* 143.

209 This role and function is discussed in paragraph 3.8 of this thesis. See related comments by Goredema C "Policing the Perimeter of Parliamentary Sovereignty: A Critique of the Decision in Forum Party of Zimbabwe & Others v. Minister of Local Government, Rural and Urban Development & Others (Unreported) S. C. 129/97" 1998 *Journal of African Law* 90, 113; Mangwaya M "ED Abusing Presidential Powers Act" *Newsday* (30 October 2020) Page Anon; Maguchu 2018 *African Security Review* 280.

210 He P "A Typological Study on Money Laundering" 2010 *Journal of Money Laundering Control* 15, 17; Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *PER/PELJ* 1, 4; Maguchu 2017 *Journal of Money Laundering Control* 142.

211 Section 25(1) of the *MLPC Act*; Maguchu 2017 *Journal of Money Laundering Control* 141; see related comments by He 2010 *Journal of Money Laundering Control* 17.

212 Maguchu 2017 *Journal of Money Laundering Control* 148; He 2010 *Journal of Money Laundering Control* 20; Maguchu 2018 *African Security Review* 279.

within the profession without affecting the lawyers' ethical duties. This follows that criminals may use lawyers trust accounts to launder the proceeds of crime and since lawyers have access to the accounts, they should be able to report suspicious transactions without compromising their ethical duties to confidentiality and client-attorney privilege.[213] This prevents legal institutions from being abused by criminals to channel the proceeds of crime into the legitimate financial system. Accordingly, the researcher submits that the *Presidential Measures Regulations* were not effective enough to combat money laundering especially due to technical flaws. Consequently, the *Presidential Measures Regulations* were only applied in one case which could not lead to successful prosecution.[214]

2.7 The Regulation of Money Laundering under the BUPSML Act

The *BUPSML Act* was enacted in 2004 as a measure to enhance the regulation of AML measures in Zimbabwe through the introduction of customer due diligence measures, an increase in money laundering penalties and the establishment of the Financial Intelligence Inspectorate Evaluation Unit (FIIE).[215] The *BUPSML Act* was also enacted to consolidate the regulatory instruments of AML measures into one piece of legislation in Zimbabwe.[216] At the time when the *BUPSML Act* was enacted, there were increasing incidents of money laundering in Zimbabwe.[217] This is evidenced by an increase in money laundering activities without any successful prosecutions between 2003 and 2009.[218] Unlike the

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213 See related comments by Utama P "Gatekeepers' Roles as a Fundamental Key in Money Laundering" 2016 *Indonesia Law Review* 180, 183; also see Valvi EA "The Role of Legal Professionals in the European and International Legal and Regulatory Framework against Money Laundering" 2022 *Journal of Money Laundering Control* 28, 31.

214 *SMM Holdings (Pvt) Ltd v Mawere and Another* (20235/2006) [2012] ZAGPJHC 186 (11 October 2012) in the judgement, the matter was regarded as a case of fraud rather that money laundering activities as purported; see related comments by Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 62-63.

215 Section 4(1) of the *BUPSML Act*; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Chitimira and Ncube 2021 *PER/PELJ* 10; Goredema 2004 *Institute for Security Studies* 5.

216 See Section 2 of the *Presidential Powers (Temporary Measures) Regulations*; sections 4-9 of the *TFI Act*; section 22(2)(b) of the *Prevention of Corruption Act*; Section 63 of the *Serious Offences Act*.

217 See for example the *Presidential Measures Regulations*; sections 4-9 of the *Troubled Financial Institutions (Resolutions) Act*; section 22(2)(b) of the *Prevention of Corruption Act*; Section 63 of the *Serious Offences Act*.

218 Chitimira and Ncube 2021 *PER/PELJ* 8; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 62-63; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 124.

aforementioned pieces of legislation, the *BUPSML Act* comprehensively regulates the implementation of AML measures through the promotion of formal and prudent banking practices.[219] The *Act* also provides a broad definition of money laundering to include concealing and disguising the origin and nature of money obtained from criminal activities.[220] This was one of the shortcomings of the *Serious Offences Act*.[221] Accordingly, it can be said that the *BUPSML Act* was also enacted to address the shortcomings of preceding AML legislations in Zimbabwe by establishing a comprehensive definition of money laundering and introducing new AML measures.

The *BUPSML Act* introduced the regulation of the know-your-customer (KYC) policy through designated accountable institutions.[222] The *BUPSML Act* established the FIE Unit to promote cashless transactions to enable an ongoing monitoring of transactions and detection of suspicious transactions.[223] The *BUPSML Act* also provided guidelines that should be followed by financial institutions to detect, report, and keep records of suspicious transactions.[224] This ensured that financial institutions uniformly implemented AML measures so as to detect money laundering trends and combat money laundering

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219 See for example *Presidential Powers (Temporary Measures) Regulations*; sections 4-9 of the *Troubled Financial Institutions (Resolutions) Act*; section 22(2)(b) of the *Prevention of Corruption Act*; Section 63 of the *Serious Offences Act*; Section 4(2) of the *Bank Use Promotion and Suppression of Money Laundering Act*; also see Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 56; Chitimira and Ncube 2021 *PER/PELJ* 10; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 124.

220 Section 2 of the *Bank Use Promotion and Suppression of Money Laundering Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 56; Gudhlanga ES and Madongonda AM "Surviving a Rabid Economy: The Current Cash Crisis and its Threat to Security and Governance in the Monetary Sector in Zimbabwe" 2019 *Africa Development* 87, 93; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 124.

221 Section 63(1)(a) of the *Serious Offences Act*; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; also see Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 5; see related comments by Gubbay 1998 *Journal of Money Laundering Control* 381.

222 Section 24 of the *BUPSML Act*; Gudhlanga ES and Madongonda AM "Surviving a Rabid Economy: The Current Cash Crisis and its Threat to Security and Governance in the Monetary Sector in Zimbabwe" 2019 *Africa Development* 87, 93.

223 Section 4 of the *Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 56; Chitimira and Ncube 2021 *PER/PELJ* 10; Goredema C (ed) *Confronting the Proceeds of Crime in Southern Africa: An Introspection* (ISS Pretoria 2007) 48; Gudhlanga and Madongonda 2019 *Africa Development* 93.

224 Sections 10-22 of the *Bank Use Promotion and Suppression of Money Laundering Act*; Goredema *Confronting the Proceeds of Crime in Southern Africa* 48; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 124; Gudhlanga and Madongonda 2019 *Africa Development* 94.

in Zimbabwe. The FIE Unit was established as a receiving point for all information relating to money laundering which could be accessed by law enforcement authorities during investigation of money laundering cases.[225] On the other hand, the *BUPSML Act* also authorised the Bank Use Promotion and Suppression of Money Laundering Unit (BUPSMLU) to identify and seize proceeds of crimes such as money laundering and drug trafficking.[226] However, the effectiveness of the identification and seizure measures was undermined by illicit trading activities and illegal foreign currency dealing carried out in the informal banking sector.[227] This follows that the authority and the scope of the BUPSMLU's function could only be carried out in the formal banking sector and could not detect money laundering activities in the informal sector.

Furthermore, one of the functions of the BUPSMLU was to promote the formalisation of all transactions concluded in Zimbabwe to enhance the detection of money laundering activities that could not be detected in the informal sector.[228] The *BUPSML Act* established the role of inspectors who were authorised to inspect and make inquiries on the accounts and records of any designated institution, trader or parastatal.[229] This was done to ensure that the BUPSMLU monitored all financial transactions to improve the detection of money laundering activities in Zimbabwe.[230] However, this was only applicable to transactions concluded through designated financial institutions in the formal financial sector and did not extend to the informal sector.[231] In relation to this, the researcher also argues that

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225 Sections 10-22 of the *Bank Use Promotion and Suppression of Money Laundering Act*; Munoangira and Kaja 2016 *European Journal of Business and Management* 203; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 57; Goredema *Confronting the Proceeds of Crime in Southern Africa* 48.

226 Sections 39-40 of the *Bank Use Promotion and Suppression of Money Laundering Act*; Chitimira and Ncube 2021 *PER/PELJ* 10; Gudhlanga and Madongonda 2019 *Africa Development* 92; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 127.

227 Gudhlanga and Madongonda 2019 *Africa Development* 94; Chitimira and Ncube 2021 *PER/PELJ* 11; Goredema *Confronting the Proceeds of Crime* 48.

228 Sections 10-22 of the *Bank Use Promotion and Suppression of Money Laundering Act*; Munoangira and Kaja 2016 *European Journal of Business and Management* 203; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 57; Goredema *Confronting the Proceeds of Crime in Southern Africa* 48.

229 Section 6 of the *BUPSML Act*.

230 Goredema *Confronting the Proceeds of Crime in Southern Africa* 48; Gudhlanga and Madongonda 2019 *Africa Development* 92; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 288.

231 See section 25(e) of the *Bank Use Promotion and Suppression of Money Laundering Act;* Munoangira and Kaja 2016 *European Journal of Business and Management* 203; Goredema

the KYC measures established under the *BUPSML Act* could not be implemented to detect money laundering activities in the informal financial sector.[232] The rise in informal foreign currency trade made it difficult for the BUPSMLU to keep track of all the transactions in Zimbabwe.[233] As a result, the adequacy and robustness of the *BUPSML Act* to combat money laundering in Zimbabwe was affected by the informal financial sector which is not regulated and cannot be monitored. Although the *BUPSML Act* remains in force, its applicability is limited to the formal financial sector, and it falls short of regulating innovative measures to detect money laundering activities amidst the rise in digital financial innovation in Zimbabwe.

2.8 The Influence of International Conventions and Protocols on the Regulation of Money Laundering in Zimbabwe from 1990 to 2013

Zimbabwe ratified the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*[234] and the *United Nations Convention against Transnational Organised Crime*.[235] The ratification of these international instruments between 1990 and 2023 was a progressive measure by Zimbabwe to cooperate with other jurisdictions and conform to international standards on curbing money laundering. This follows that money laundering is an international crime that requires global efforts to circumvent. The collaborative efforts of the global community to combat money laundering are therefore essential for sharing information relating to the global trends of money laundering and safeguarding market integrity.

Confronting the Proceeds of Crime in Southern Africa 47; Gudhlanga and Madongonda 2019 *Africa Development* 93; see related comments by Chitimira and Munedzi 2022 *Journal of Money Laundering Control* 55.

232 Section 12 of the *Bank Use Promotion and Suppression of Money Laundering Act;* Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 53; Goredema *Confronting the Proceeds of Crime in Southern Africa* 51.

233 Chitimira and Ncube 2021 *PER/PELJ* 8; Nyoka 2015 *Banks and Bank Systems* 12; Mambondiani, Zhang and Arun 2012 *International Journal of Economic and Financial Issues* 9; Munoangira and Kaja 2016 *European Journal of Business and Management* 202.

234 *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (*Vienna Convention*) of 1988; see discussion by Goredema *Confronting the Proceeds of Crime in Southern Africa* 76; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 63.

235 *United Nations Convention against Transnational Organised Crime* (*Palermo Convention*) of 2000; Gubbay 1998 *Journal of Money Laundering Control* 277; Moshi HBP "Fighting Money Laundering: The Challenges in Africa" 2007 *Institute for Security Studies* Paper 152, 155.

At the time that the *Serious Offences Act* was enacted, Zimbabwe was a member of the Commonwealth and was required to develop legislation that would give effect to the *Vienna Convention*.[236] The *Vienna Convention* is an international treaty that criminalises money laundering activities within the specific context of combatting drug trafficking.[237] The aim of the Vienna Convention is to combat money laundering through the confiscation of proceeds of drug trafficking and related crimes.[238] The *Vienna Convention* requires member states to establish measures to detect, identify, monitor, confiscate, and seize proceeds from criminal activities such as drug trafficking.[239] This entails that the *Vienna Convention* expects its member states to establish institutions that foster the combatting of organised crime and the investigation thereof. Accordingly, in Zimbabwe, the *Serious Offences Act* was enacted in compliance with the provisions of the *Vienna Convention*.[240] Zimbabwe's efforts to conform to international AML standards so as to enhance the regulation of AML measures in Zimbabwe in this regard is commendable.

The *Vienna Convention* also requires its member states to adequately identify and criminalise certain essential elements of the crime of money laundering to ensure that similar standards are implemented in all signatory jurisdictions.[241] The researcher submits that the *Vienna Convention* influenced the provision of a comprehensive money laundering money laundering definition under the *BUPSML Act* so as to ensure the

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236 Commonwealth Membership 2020 *Withdrawals and Suspension* https://www.commonwealthofnations.org/commonwealth/commonwealth-membership/withdrawals-and-suspension/ accessed 28 June 2022; Gubbay 1998 *Journal of Money Laundering Control* 277; Moshi HBP "Fighting Money Laundering: The Challenges in Africa" 2007 *Institute for Security Studies* Paper 152, 155.

237 Article 1 of the *Vienna Convention*; Gubbay 1998 *Journal of Money Laundering Control* 277; see related discussion by Rudnick A "Money Laundering: Legal Issues" in Effros RC (ed) *Current Legal Issues Affecting Central Banks* 2nd ed (International Monetary Fund Washington DC 1994) 223; Levi M "Money for Crime and Money from Crime: Financing Crime and Laundering Crime Proceeds" 2015 *European Journal on Criminal Policy and Research* 275, 279.

238 Article 3(1)(b) of the *Vienna Convention;* see related comments by Teichman F "Recent Trends in Money Laundering" 2020 *Crime, Law and Social Change Journal* 237, 238; also see Chitimira and Ncube 2021 *PER/PELJ* 17; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 63.

239 Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 63; Teichman 2020 *Crime, Law and Social Change Journal* 238; see related comments by De Koker 2014 *Journal of Money Laundering Control* 286.

240 See section 63 of the *Serious Offences Act*.

241 Article 3(1)(b) of the *Vienna Convention*; Teichman F 2020 *Crime, Law and Social Change Journal* 238; also see Chitimira and Ncube 2021 *PER/PELJ* 17; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 63.

adequacy of the *Act* to criminalise money laundering activities.[242] Accordingly, the researcher submits that the ratification of the *Vienna Convention* was an essential measure to enhance AML regulation in Zimbabwe and in the global financial markets. In relation to this, Zimbabwe also committed to ensuring that its AML statutory framework incorporated the standards required by the *Vienna Convention,*[243] for example, the forfeiture of assets derived from the proceeds of criminal activities.[244] Nonetheless, the researcher argues that the mere confiscation of the proceeds of money laundering is not sufficient to deter money laundering activities in the future. However, when combined with other measures such as imprisonment sentences, confiscation can disrupt money laundering activities.

2.9 Conclusion

Zimbabwe has made considerable efforts to establish an AML regulatory framework. This is evidenced by the enactment of statutory instruments and the establishment of an AML unit to detect and control money laundering activities in Zimbabwe. However, Zimbabwe has encountered several challenges that have undermined the effectiveness of its AML measures. Such challenges include the lack of adequate resources and an unstable economy characterised by informal transactions, fraud, and corruption. However, the demise of the Zimbabwean economy, from as early as 1990 has compromised the effectiveness of the AML regime. Despite rampant money laundering in the country, no prosecutions are taking place, and law enforcement agencies are reluctant to prosecute those suspected of money laundering.[245] The researcher argues that the statutory measures implemented to control and prevent money laundering in Zimbabwe were made

242 See section 4 of the *BUPSML Act*; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 58.

243 Article 3(1)(b) of the *Vienna Convention.*

244 Section 63(2) of the *Serious Offences Act;* see related discussion by Kavila W and Le Roux P "The Role of Monetary Policy in Zimbabwe's Hyperinflation Episode" 2017 *African Review of Economics and Finance* 131, 135; Munangagwa CL "The Economic Decline of Zimbabwe" 2009 *Gettysburg Economic Review* 110, 115.

245 Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 54; Goredema 2004 *Institute for Security Studies* 4; see related comments by Munoangira and Kaja 2016 *European Journal of Business and Management* 203; Goredema *Confronting the Proceeds of Crime in Southern Africa* 47; also see Gudhlanga and Madongonda 2019 *Africa Development* 93.

to keep abreast with the developments in the global financial standards regarding the combatting of money laundering.

The first statute enacted to combat money laundering in Zimbabwe, the *Serious Offences Act,* was inadequate to effectively combat money laundering due to a narrow definition of money laundering.[246] On the other hand, the *BUPSML Act* which was enacted as an enhancement to the *Serious Offences Act* is not robust enough to effectively combat money laundering activities in Zimbabwe. The *BUPSML Act* introduced some improvements, such as the KYC policy to enhance Zimbabwe's AML regulatory framework.[247] However, the *BUPSML Act* was not robust enough to combat money laundering activities due to unusual economic conditions prevailing from the year 2000 onwards.

The next chapter analyses the roles and functions of relevant financial sector role players to combat money laundering in Zimbabwe. This is completed with a view to establish whether the appropriate financial role players are effectively and adequately fulfilling their functions to control and combat money laundering activities in Zimbabwe.

246 See section 63 of the *Serious Offences (Confiscation of Profits) Act*; see related comments by Irwin, Choo and Liu 2012 *Journal of Money Laundering Control* 88; also see Chitimira and Ncube 2021 *PER/PELJ* 3; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55.

247 Sections 10-22 of the *Bank Use Promotion and Suppression of Money Laundering Act*.

CHAPTER THREE

THE FLAWS IN THE CURRENT ANTI-MONEY LAUNDERING LEGISLATION IN ZIMBABWE

3. 1 Introduction

The current anti-money laundering (AML) legislative framework in Zimbabwe has to a large extent been influenced by the recommendations and regulatory efforts of international role players such as the Financial Action Task Force (FATF)[248] and the Basel Committee on Banking Supervision (BCBS).[249] For example, the FATF has to date published 49 recommendations[250] which should be implemented by its member states to curb money laundering.[251] Although Zimbabwe is not a member state of the FATF, but it is committed to implementing the FATF recommendations through its membership in the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).[252] Since the progression and advancements in global AML efforts from around the 1980s, Zimbabwe

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248 Financial Action Task Force (FATF) "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation" FATF Recommendations (updated February 2023) recommendation 3.

249 Basel Committee on Banking Supervision "Core Principles for Effective Banking Supervision" *Bank for International Settlements* (updated September 2012) 5; see discussion by Dendere C and Taodzera "Zimbabwean Civil Society Survival in the Post-Coup Environment: A Political Settlements Analysis" 2023 *Interest Groups & Advocacy* 1, 12; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 13; Nanyun NM and Nasiri A "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2021 *Journal of Money Laundering Control* 234, 239.

250 Moiseienko A "Does International Law Prohibit the Facilitation of Money Laundering?" 2023 *Leiden Journal of International Law* 109, 113; Yeh SS "New Financial Action Task Force Recommendations to Fight Corruption and Money Laundering " 2022 *Laws* 1, 2, FATF recommendations provide the basis upon which all countries should meet the shared objective of tackling money laundering, terrorist financing and the financing of proliferation. FATF recommendations are not binding but are persuasive in the provision of effective and viable anti-money laundering regulatory regimes globally.

251 Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 280; Fituni LL "Terrorist Financing In Africa Under The New Normalcy of A Post-Pandemic World" in Segell G, Kostelyanets S and Solomon H *Terrorism in Africa: New Trends and Frontiers* (Moscow: Institute for African Studies; Haifa: University of Haifa, 2021) 117-126, 122; Nazri SNFSM "Mitigating Financial Leakages Through Effective Money Laundering Investigation" 2019 *Managerial Auditing Journal* 189, 192.

252 Duri J and Matasane A "Regulation of Beneficial Ownership in South Africa and Zimbabwe" 2017 *JACL* 175, 178; Maguchu 2018 *African Security Review* 281; Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141.

also developed its own AML legislation to augment regulatory efforts to curb money laundering and promote investor confidence.[253] However, Zimbabwe has failed to keep up with the constantly evolving global financial trends and standards to effectively prevent money laundering in Zimbabwe's financial markets.[254] The current AML framework in Zimbabwe is provided under the *Money Laundering and Proceeds of Crime Act*.[255] The *MLPC Act* regulates the implementation of customer due diligence measures, establishes a financial intelligence unit (FIU) to analyse and process money laundering reports and penalties for non-compliance with regulated AML measures.[256] However, as will be established later in this chapter, the AML provisions under the *MLPC Act* are not flawless, their effectiveness is affected by several challenges. For example, the lack of adequate resources to implement AML measures, inconsistent enforcement measures, lack of sufficient autonomy and/or independence of the FIU and the lack of political will to combat money laundering in Zimbabwe.

This chapter analyses the current AML measures provided under the *MLPC Act* and identifies the flaws and challenges of the current AML measures so as to recommend plausible measures to enhance the regulation of AML measures in Zimbabwe. This is done to adequately prevent and combat money laundering in Zimbabwe.

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253 Wronka C "Money Laundering through Cryptocurrencies - Analysis of the Phenomenon and Appropriate Prevention Measures" 2022 *Journal of Money Laundering Control* 79, 80; Levi M "Evaluating the Control of Money Laundering and Its Underlying Offences: The Search for Meaningful Data" 2020 *Asian Journal of Criminology* 301, 303; Rani MIA *et al* "The Money Mule Red Flags in Anti-Money Laundering Transaction Monitoring Investigation" 2022 *International Journal of Business and Economy* 150, 151.

254 Gilmour PM "Reexamining the Anti-Money Laundering Framework: A Legal Critique and New Approach to Combating Money Laundering" 2023 *Journal of Financial Crime* 35, 36; Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 412; Caulkins JP and Reuter P "How Much Demand for Money Laundering Services Does Drug Selling Create? Identifying the Key Parameters" 2022 *International Journal of Drug Policy* 1, 3.

255 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (*MLPC Act*), section 1; see related comments by Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 380; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 21; Goredema C "Money Laundering in Southern Africa Incidence, Magnitude and Prospects for its Control" 2004 *Institute for Security Studies Paper 92* 1, 4.

256 See sections 6, 8 and 13 of the *MLPC Act*; Adeleke 2019 2019 *South African Journal of International Affairs* 369; Chitimira and Ncube 2021 *PER/PELJ* 3.

3.2 The Regulation of AML Measures under the MLPC Act

The *MLPC Act* was enacted to further criminalise money laundering and to augment the detection, prevention, and prosecution of money laundering actions in Zimbabwe.[257] This comes after Zimbabwe had failed to comply with the FATF recommendations on combatting money laundering and terrorist financing.[258] Consequently, the *MLPC Act* established the National Task Force on Money Laundering and Terrorist Financing (National Task Force) to exercise gatekeeping functions in the financial markets and financial institutions.[259] The National Task Force comprises several financial role players such as the RBZ, ZIMRA, the FIU, the Serious Fraud Squad of the Criminal Investigations Department in the Zimbabwe Republic Police (ZRP) and the AFU which have been tasked with controlling access to financial markets and financial institutions.[260] The roles and functions of these role players will be discussed in more depth further in this chapter.[261]

The *MLPC Act* defines money laundering to include the conversion and transfer of money or property knowing, suspecting or believing that the money or property was obtained from criminal activities with the aim of concealing the origins of the money or property.[262]

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257 Maguchu 2018 *African Security Review* 281; Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 139; see related discussion by Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 451, 458.

258 Chitimira and Ncube 2021 *PER/PELJ* 13; Gubbay A "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 381; Gubbay A "Zimbabwe: Report on Money Laundering (No. 61)" 1998 *Journal of Money Laundering Control* 277, 281; see related comments by Bara A "Mobile Money for Financial Inclusion: Policy and Regulatory Perspective in Zimbabwe" 2013 *African Journal of Science, Technology, Innovation and Development* 345, 350.

259 Maguchu 2017 *Journal of Money Laundering Control* 140; Maguchu 2018 *African Security Review* 281; Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 380.

260 Section 12D(2) of the *MLPC Act*; Mashingaidze S "Corporate Governance: Effectiveness of Zimbabwean Hard Law on Block Holders' Protection" 2014 *Corporate Ownership and Control* 549, 554; see related comments by Dzomira S "Electronic Fraud (Cyber Fraud) Risk in the Banking Industry, Zimbabwe" 2014 *Risk Governance and Control: Financial Markets and Institutions* 16, 22.

261 See paragraph 3.3 of this chapter.

262 Section 2 of the *MPLC Act*; see related comments by Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications" 2020 *Journal of Money Laundering Control* 663, 670; also see Muchemwa C "Money Laundering and Illicit Financial Flows in Zimbabwe: A Critical Review of the Legal and Institutional Frameworks" 2021 *Journal of Financial Crime* 78, 80.

This definition of money laundering under the *MLPC Act* is more comprehensive and complies with the FATF recommendations unlike the previous definitions which are provided in other statutes before 2013.[263] This shows that the regulation of AML measures under the *MLPC Act* is guided by internationally accepted principles such as the FATF recommendations. However, the researcher submits that the effectiveness of these standards depends on the economic development and availability of resources in each country.[264] Zimbabwe is suffering from hyper-inflation, political instability and the lack of resources such that the implementation of some AML measures recommended by international standards is not possible.[265] In this regard, the researcher argues that the *MLPC Act*'s compliance with the internationally recognised definition of money laundering does not guarantee its robustness in combatting money laundering and related crimes in Zimbabwe.

The *MLPC Act* sets out AML obligations on financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs).[266] Such obligations include the application of customer due diligence measures, a risk-based approach and record

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263 *Serious Offences (Confiscation of Profits) Act* [Chapter 9:17], section 2; See article 6 of the Parlemo Convention; Chinamasa P "Money Laundering in Zimbabwe: A Critical Analysis of the Legal and Institutional Frameworks" 2018 *Journal of Money Laundering Control* 327, 332; Ondiege P "Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) in Zimbabwe: An Assessment of the Effectiveness of the Regulatory Framework" 2018 *Journal of Financial Crime* 78, 85; Muchemwa 2021 *Journal of Financial Crime* 80.

264 See related discussion by De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 290; also see De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 730; Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 81; Mulig EV and Murphy S "Understanding and Preventing Money Laundering" 2004 *Journal of Money Laundering Crime* 20, 29.

265 See related comments by Mugarura 2014 *Journal of Money Laundering Control* 81; Adeleke 2019 *South African Journal of International Affairs* 373; Ngwenya B, Pelser T and Chivaura T "Perceptions of Post-Multicurrency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *South African Journal of Economic and Management Sciences* 1-15; Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US Dollar" 2021 *Journal of Money Laundering Control* 306, 308.

266 See sections 14-23 of the *MLPC Act*; also see Chitimira and Ncube 2021 *PER/PELJ* 13; Shufti Pro "Zimbabwe - AML KYC Regulations" May 2020 https://shuftipro.com/compliances-reports/zimbabwe.pdf accessed 04 April 2022; Maguchu 2017 *Journal of Money Laundering Control* 141.

keeping requirements as regulated by the *MLPC Act*.[267] The *MLPC Act* provides that financial institutions and DNFBPs should identify and verify the identity of customers when they open accounts and prior to establishing a business relationship with a customer, when conducting occasional transactions with customers and when they suspect money laundering activities.[268] The customer due diligence (CDD) measures which are applied by financial institutions in Zimbabwe include the identification and verification of customers' identity, understanding the nature of the customer's business and determining the risks associated with the customer's transactions.[269] The purpose of customer identification and verification in this regard is to enhance the application of AML laws by ensuring close monitoring of customers transactions.[270] By closely monitoring the transactions of their customers, financial institutions can easily detect money laundering activities and question the suspected perpetrators. The researcher submits that the enforcement of CDD measures as an AML measure under the *MLPC Act* is essential for protecting financial institutions from manipulation and abuse for money laundering activities by perpetrators.[271] However, it should also be noted that the effectiveness of

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267 Section 15 of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; see related discussion by Chikoko L and Mangwendeza P "Financial Inclusion by Zimbabwean Commercial Banks in a Liquidity Constrained Environment" 2012 *Journal of Economics and International Finance* 252, 256.

268 Sections 15-23 of the *MLPC Act*; Reserve Bank of Zimbabwe "Anti-Money Laundering and Combating the Financing of Terrorism" June 2019 https://www.rbz.co.zw/anti-money-laundering/ accessed 12 March 2022; Mavhiki S, Nyamwana T and Shumba L "Impact of Mobile Banking on Traditional Banking Practices in Zimbabwe" 2015 *International Journal of Economics, Commerce, and Management* 1, 4; see related discussion by Alexandre C and Almazán M "From Cash to Electronic Money: Enabling New Business Model to Promote Financial Inclusion and Integrity" in Osikena J (ed) *The Financial Revolution in Africa: Mobile Payment Services in a New Global Age* (Foreign Policy Center 2012) 48.

269 Mangudhla T "More Zimbabweans Move to Mobile Banking Platforms" *The Independent* (26 July 2013) 5; see related comments by Mavhiki, Nyamwana and Shumba 2015 *International Journal of Economics, Commerce, and Management* 5; Shufti Pro "Zimbabwe - AML KYC Regulations" 3.

270 See related comments by Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 51; also see Chitimira H and Munedzi S "An Evaluation of Customer Due Diligence and Related Anti-Money Laundering Measures in the United Kingdom" 2023 *Journal of Money Laundering Control* 127, 133; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *Journal of South African Law* 715, 721.

271 See related comments by Unger B and den Hertog J "Water Always Finds Its Way: Identifying New Forms of Money Laundering" 2012 *Crime, Law and Social Change* 287, 288-289; Veng Mei Leong A "Chasing Dirty Money: Domestic and International Measures Against Money

CDD measures relies on the presence of a largely formal financial sector which enables the monitoring of customer transactions. The researcher argues that Zimbabwe's economy is largely informal and hinders the effective application of CDD measures; therefore, to combat and curb money laundering is difficult in Zimbabwe's informal economy.

3.2.1 The enforcement of CDD measures as an AML measure under the MLPC Act

The *MLPC Act* regulates the process of customer identification and verification by financial institutions prior to conducting business.[272] Financial institutions and DNFBPs are required to conduct CDD when signing up customers as an AML measure.[273] This entails that, prior to conducting business with a customer, the customer's identity should be verified by means of an identification document (ID).[274] The *MLPC Act* provides that customer identification should be conducted on:

a. a customer when establishing a business relationship with a financial institution.

b. a customer who wishes to transact in an amount that exceeds five thousand United States dollars.

c. legal practitioners involved in financial transactions with their clients.

d. domestic or international wire transfer transactions in the amount equal to, or exceeding one thousand United States dollars.

Laundering" 2007 *Journal of Money Laundering Control* 140, 142-145; Veng Mei Leong 2007 *Journal of Money Laundering Control* 142 and 145.

272 Section 15(1) of the *MLPC Act*; Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *PER/PELJ* 1, 18; see related comments by Mavhiki S, Nyamwanza T and Shumba T "Impact of Mobile Banking on Traditional Banking Practices in Zimbabwe" 2015 *International Journal of Economics, Commerce and Management* 1, 8; also see Mbengo P and Phiri MA "Mobile Banking Adoption: A Rural Zimbabwean Marketing Perspective" 2015 *Corporate Ownership and Control* 195, 200.

273 Section 15-20 of the *MLPC Act*.

274 Section 15(1) of the *MLPC Act*; Chitimira and Torerai 2021 *PER/PELJ* 7; Mugarura N "The Use of Mobile Phones in Changing the Banking Regulatory Landscape in Africa" 2019 *African Journal of International and Comparative Law* 308, 313-314; Munyoro G *et al* "The Significance of Mobile Money Transfer Facility to Zimbabwean Economy: A Case Study of EcoCash" 2017 *IMPACT: IJRBM* 1, 4.

e. customers suspected of money laundering or financing of terrorism; and

f. customers whose previous identification is authentically doubted.[275]

However, according to Chitimira and Torerai, such identification and verification processes for mobile money account opening are not as strict as those of traditional financial institutions such as banks, so as to promote financial inclusion in Zimbabwe.[276] The researcher argues that the relaxation of customer identification requirements to promote financial inclusion in Zimbabwe could jeopardise the efforts to combat money laundering in Zimbabwe. This follows the fact that perpetrators may use various mobile money accounts to legitimise the proceeds of crime. More so, perpetrators may use several mobile money accounts to deposit money into the formal financial sector and jeopardise the detection of money laundering. Appropriately therefore, the researcher posits that the relaxation of CDD measures in Zimbabwe should be reconsidered as it renders the detection of money laundering activities through mobile money accounts difficult.

The enforcement of CDD measures in Zimbabwe was influenced by the FATF recommendations which provide for enhanced due diligence as an AML measure.[277] The *MLPC Act* provides that enhanced due diligence should be applied on politically exposed persons (PEPs) and persons or companies related to them.[278] PEPs are regarded as high risk customers who pose a high money laundering risk on financial institutions due to the

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275 Section 15(2) of the *MLPC Act*.

276 Chitimira and Torerai 2021 *PER/PELJ* 8; see related comments by Mugarura 2019 *African Journal of International and Comparative Law* 315; also see Mavhiki, Nyamwanza and Shumba 2015 *International Journal of Economics, Commerce and Management* 12; Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas of Zimbabwe: Case of Mudzi District" 2015 *IJSER* 128-141.

277 FATF 2020 http://www.fatf-gafi.org/about/ accessed 25 April 2022; Scott KA and Stephenson R "Enhanced Customer Due Diligence for Banks in the UK and the US" 2008 *Journal of International Banking and Financial Law* 86, 89; De Koker L "Identifying and Managing Low Money Laundering Risk: Perspective on FATF's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 335; Choo K "Politically Exposed Persons (PEPs): Risks and Mitigation" 2008 *Journal of Money Laundering Control* 371, 375.

278 Section 20 of the *MLPC Act*; *Bank Use Promotion and Suppression of Money Laundering Act* [Chapter 24-24] (*BUPSML Act*), section 11; see related comments by Choo 2008 *Journal of Money Laundering Control* 377.

offices they hold.[279] PEPs are individuals who hold or have held high-level positions in the public sector, such as heads of state, politicians, government officials, military officers, executives of state-owned companies, and significant political party members.[280] Due to their access to significant power and authority, there is a risk that PEPs may exploit their positions for personal gain, by accepting bribes or embezzling funds. The channelling of these funds into the formal financial sector is money laundering. Accordingly, financial institutions and DNFBPs should apply enhanced due diligence on PEPs so as to monitor the transactions of PEPs and be able to detect suspicious transactions.

However, the implementation of enhanced due diligence in Zimbabwe is problematic in that there is no uniform standard applied to the same process when banks deal with accounts owned by PEPs. As a result, the researcher submits that there is a lack of consistency in the implementation of enhanced due diligence in banking institutions in Zimbabwe.[281] This lack of consistency in the implementation of the provisions of the *MLPC Act* could create regulatory gaps in the enforcement of AML measures in Zimbabwe. Such regulatory gaps will deter the prevention and detection of money laundering.

3.2.2 The application of ongoing due diligence as an AML measure under the MLPC Act

The *MLPC Act* provides that, despite the customer identification and verification procedures that are conducted prior to conducting business with a customer, financial institutions are also required to continuously monitor the transactions of customers.[282] This is known as ongoing due diligence. Ongoing due diligence entails that customer

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279 See related comments by Scott and Stephenson 2008 *Journal of International Banking and Financial Law* 89; Tuba M and Van der Westhuizen C "An Analysis of the "Know-Your-Customer Policy as an Effective Tool to Combat Money Laundering: Is it about Who or What to Know that Counts?" 2014 *International Journal Public Law and Policy* 53, 58; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 735.

281 See related comments by Maguchu 2018 *African Security Review* 280; Ines and Hichem 2018 *Journal of Money Laundering Control* 548; Chikoko and Mangwendeza 2012 *Journal of Economics and International Finance* 258.

282 Section 26(1) of the *MLPC Act*; Maguchu 2018 *African Security Review* 281; Shufti Pro "Zimbabwe - AML KYC Regulations" 3; Mavhiki, Nyamwana and Shumba 2015 *International Journal of Economics, Commerce, and Management* 5.

transactions are monitored beyond the initial registration of a customer's account so as to detect unusual transactions and ensure that the customer's activities comply with their risk profile.[283] According to Chitimira and Munedzi, ongoing due diligence also includes continuously updating customer data so as to ensure that appropriate risk-based approach measures are implemented.[284] The researcher submits that, despite the statutory requirement to continuously monitor transactions and update customer profiles, the implementation of this requirement in financial institutions seems problematic. This follows that the financial institutions in Zimbabwe still lag in adequate financial technologies and resources to implement this requirement. The lack of any specific provision under the *MLPC Act* that incorporates the use of artificial intelligence (AI) to detect and combat money laundering makes the situation worse for Zimbabwe.[285] In this regard, the researcher argues that the absence of adequate resources and technological devices to detect, curb and prevent money laundering renders the regulation of AML under the *MLPC Act* ineffective.[286]

3.2.3 Flaws in the Implementation of the Customer Due Diligence Measures under the MLPC Act

The *MLPC Act* provides that transfers which are less than USD1000 are not subject to client due diligence processes.[287] In terms of the *MLPC Act*, only wire transfers above

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283 Mangudhla *The Independent* 5; See related discussion by Chikoko and Mangwendeza 2012 *Journal of Economics and International Finance* 258; Maguchu 2018 *African Security Review* 284; Munyoro *et al* 2017 *IMPACT: IJRBM* 12.

284 Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 133; also see De Koker 2004 *Journal of South African Law* 719; see related comments by Njotini MV "The Transaction or Activity Monitoring Process: An Analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556, 569; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 49.

285 Chitimira and Ncube 2021 *PER/PELJ* 13; see related comments by Singh C and Lin W "Can Artificial Intelligence, RegTech and CharityTech Provide Effective Solutions for Anti-Money Laundering and Counter-Terror Financing Initiatives in Charitable Fundraising" 2020 *Journal of Money Laundering Control* 1, 12; also see Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 121.

286 Chitimira and Ncube 2021 *PER/PELJ* 13; see related comments by Singh and Lin 2020 *Journal of Money Laundering Control* 12; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 121.

287 Section 27 of the *MLPC Act*; see related discussion by Chitimira H and Torerai E "The Nexus between Mobile Money Regulation, Innovative Technology and the Promotion of Financial Inclusion in Zimbabwe" 2021 *PER/PELJ* 1, 14; Ngwenya B, Pelser T and Chivaura T

USD1000 give rise to the obligation on reporting entities to identify and verify the identity of the originator of such wire transfer.[288] The researcher submits that this high exemption threshold on conducting due diligence procedures for wire transfers creates an opportunity for criminals to conduct money laundering.

It follows that the high threshold exemption creates a loophole for criminals to move large amounts of money into the formal financial system through smurfing. Smurfing is the use of many accounts to deposit small shares of a large amount into a financial institution's system.[289] In other words, substantial amounts, but which fall short of the USD1000 threshold may be moved into the formal financial sector through various registered accounts. A large proportion of Zimbabwe's economy is informal and in order to manage chronic shortages of cash, a sizeable amount of business transactions is done through wireless or electronic means.[290] The exception to bypass client due diligence procedures on wireless transactions which are less than USD1000 is a flaw which should be urgently addressed and remedied in order to remove the loopholes and opportunities for criminals to commit money laundering without detection in Zimbabwe.

Furthermore, it is worrisome how the *MLPC Act* appears to create exceptions which warrant reporting entities to bypass client due diligence processes when conducting wire transfers for existing clients.[291] In terms of the *MLPC Act*, a financial institution is not

"Perceptions of Post-Multicurrency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *South African Journal of Economic and Management Sciences* 1, 8.

288 Section 27 of the *MLPC Act*; see related comments by Chitimira and Torerai 2021 *PER/PELJ* 14; Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 8.

289 Itzikowitz A "South Africa: Money Laundering – The Duty to Report under the Law" 2008 *Journal of Financial Crime* 182, 185; Savla S *Money laundering and Financial Intermediaries* (Kluwer Law International the Hague 2001) 10; Tuba M and Van der Westhuizen C "An Analysis of the 'Know Your Customer' Policy as an Effective Tool to Combat Money Laundering: Is it about Who or What to Know that Counts?" 2014 *International Journal Public Law and Policy* 53, 55.

290 Muparangi S, Makudza F and Makandwa G "Entrepreneurial Education: A Panacea to Formalisation Of the Informal Sector" 2022 *Management of Sustainable Development Journal* 11, 12; Chinjova F and Zinhumwe R "Causes of Liquidity Crisis in Zimbabwe after the Adoption of the Multicurrency in 2009" 2019 *International Journal of Research and Innovation in Social Science* 150, 150-151; Dzawanda B *et al* "Livelihood Outcomes of Informal Cross Border Traders Prior to the Rise of the Virtual Cash Economy in Gweru, Zimbabwe" 2023 *Journal of Borderlands Studies* 75, 77.

291 Section 27(4) of the *MLPC Act*; see related discussion by Chitimira and Torerai 2021 *PER/PELJ* 14; Ngwenya, Pelser and Chivaura 2018 *South African Journal of Economic and Management Sciences* 8; Jayasekara 2018 *Journal of Money Laundering Control* 610.

required to verify the identity of any customer with which it has an existing business relationship, if the financial institution is satisfied that it already knows and has verified the true identity of the customer.[292] This reasoning is flawed as it is not cognisant of the fact that client due diligence procedures are not conducted on a once-off basis but are expected to be a continuous process which is carried out throughout the duration of the business relationship between the financial institution and the client.[293] Therefore, the researcher proposes that customer due diligence and verification measures be done in an ongoing manner in order to address current loopholes.

3.3 The Regulation of Reporting Obligations under the MLPC Act

The *MLPC Act* provides that financial institutions, designated non-financial businesses and relevant professionals, such as accountants and lawyers, that reasonably suspect that any transaction, funds or property is linked to money laundering activities should submit a report establishing their suspicion to the FIU.[294] The *MLPC Act* further provides an exception for estate agents or lawyers, accountants or corporate service professionals to submit suspicious transactions reports (STRs) only when they, on behalf of their client, participated in a suspected money laundering transaction.[295] Lawyers may not submit STRs based on information obtained during the course of their duties and constitutes attorney-client privilege.[296] This entails that lawyers cannot report money laundering activities committed by their clients if such information was obtained from privileged communication as it breaches attorney-client privilege. The researcher argues that the exemption of lawyers from the duty to report STRs on their clients should be revisited.

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292 See section 16 of the *MLPC Act*; Sanderson, Mutandwa and Le Roux 2018 *International Journal of Economics and Financial Issues* 12; Jayasekara 2018 *Journal of Money Laundering Control* 610; Mazikana 2023 *Social Science Research Network Electronic Journal* 8.

293 Henning J and Hauman M "Fortifying a risk-based approach in the South African AML/CFT process" 2017 *Journal of Financial Crime* 520-528, 525.

294 See section 30(1) of the *MLPC Act*; Maguchu 2018 African Security Review 285; Duri and Matasane 2017 *JACL* 181; Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US Dollar" 2022 *Journal of Money Laundering Control* 306, 310.

295 See section 30(2) of the *MLPC Act*; Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 315, 316; Goredema C "Not Above the Law? The Role of Lawyers in Combating Money Laundering and Illicit Asset Flows" 2018 *The Global Initiative against Transnational Organised Crime* 107, 110.

296 Section 30(2)(b) of the *MLPC Act*.

This exemption creates room for concealing information relating to money laundering activities on the grounds of attorney-client confidentiality. There are no guidelines to determine whether such information indeed constitutes client privilege. Accordingly, the researcher argues that the provisions relating to reporting exemptions under the *MLPC Act* are not robust enough to adequately curb money laundering in Zimbabwe.

Furthermore, the *MLPC Act* imposes a short reporting time frame for the submission of any form of suspicious transaction reports by reporting entities.[297] The short reporting time frame may create gaps in reporting to the FIU, which in turn makes it difficult to detect and curb money laundering activities. Some transactions may only be detected as suspicious after the short reporting gap has lapsed. Further, for fear of being penalised for late reporting, the reporting entity may desist from reporting a transaction as the three-day reporting period would have lapsed.[298] Accordingly, the researcher argues that a deadline or cut-off date by which a report should be made could be extended in order to allow reporting entities to have sufficient time to report incidences of money laundering in Zimbabwe. In this way, the researcher argues that such an extended reporting time frame will allow for a more optimum platform for the reporting of money laundering practices in Zimbabwe. In other words, some transactions may be complex and might take more time to be investigated and identified as suspicious. In addition to this, the researcher argues that for reports which are filed much later than the three days prescribed in the *MLPC Act*, the suspicious transaction report must be accompanied by an explanation justifying the delay and the circumstances which occasioned the delay.

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297 Section 30(1) of the *MLPC Act* states that financial institutions, designated non-financial businesses and professionals, and their respective directors, principals, officers, partners, professionals, agents and employees, that suspect or have reasonable grounds to suspect that any property or any transaction or attempt to effect a transaction (a) involves or is the proceeds of crime; or (b) is related or linked to, or is to be used for, terrorism, terrorist acts or by terrorist organisations or those who finance terrorism; shall submit promptly, but not later than three working days after forming the suspicion, a report setting forth the suspicion to the Unit.

298 Section 30(1) of the *MLPC Act*; Sanderson, Mutandwa and Le Roux 2018 *International Journal of Economics and Financial Issues* 10; Jayasekara 2018 *Journal of Money Laundering Control* 605; Mazikana 2023 *Social Science Research Network Electronic Journal* 6.

3.3.1 The Lack of Clearly Defined Reporting Obligations under the MLPC Act

Reporting entities have a vital role in curbing money laundering in Zimbabwe.[299] This follows that reporting entities are in a position to report suspicious transactions and account activities for investigation and prosecution of money laundering activities in Zimbabwe. Therefore, the researcher submits that the AML framework of Zimbabwe largely dependents on STRs to initiate money laundering investigations. The researcher also submits that, to ensure the accuracy and efficiency of STRs, reporting entities should cooperate with the law enforcement authorities to ensure the investigation and detection of money laundering activities in Zimbabwe. However, effective reporting is contingent upon understanding of clearly outlined reporting obligations as well as plainly defined reporting channels for the reporting entities to comply with and follow. For the enforcement of AML laws in Zimbabwe to be effective, the *MLPC Act* should have sufficiently clear provisions. This is a principle of legal certainty. Legal certainty is an established and acknowledged pre-condition required for a law to be effectively complied with by the persons who are subjects thereof.[300] Hence, it is important for the reporting entities in Zimbabwe to be aware of their statutory obligations as set out in the *MLPC Act*.

Notably, there is no sufficient reference to a cash-threshold reporting in the *MLPC Act*, except once where it is mentioned without explanation or any further reference or clarification.[301] It is submitted that cash-threshold reporting is a valuable tool which can

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299 See related discussions by Hatchard J "The Role of Financial Intelligence Units in Combating Money Laundering: An African Perspective" 2022 *Journal of International & Comparative Law* 103, 127-129; Jaleel A *et al* "The Effectiveness of the Financial Intelligence Unit in Maldives in Combating Money Laundering" 2021 *Asia-Pacific Management Accounting Journal* 409, 425; Mazikana AT "The Role of the Auditor in Reducing Misappropriation of Funds in Governmental Institutions. A Case of Zimbabwean Parastatals" 2023 *Social Science Research Network Electronic Journal* 1, 45.

300 Van den Broek M *Preventing Money Laundering: A Legal Study on the Effectiveness of Supervision in the European Union* (Eleven International Publishing the Hague 2015) 46; Alexy R "Legal Certainty and Correctness" 2015 *Ratio Juris* 441, 441-442; see related discussion by Fathonah R and Kusworo DL "The Paradigm of Applying Zero Verdict Based on Principles Legal Certainty, Justice, and Benefit" 2023 *Hang Tuah Law Journal* 32, 33.

301 Section 30(6) of the *MLPC Act*; see related discussion by Sanderson A, Mutandwa L, and Le Roux P "A Review of Determinants of Financial Inclusion" 2018 *International Journal of Economics and Financial Issues* 1, 10; Jayasekara SD "Challenges of Implementing an Effective Risk-Based Supervision on Anti-Money Laundering and Countering the Financing of

be used by reporting entities in Zimbabwe to identify and flag financial transactions for further investigation or monitoring by the FIU. While the FATF recommendations state that cash-threshold reporting is not a mandatory requirement in AML laws, it is a useful additional measure which can protect financial institutions and financial markets against money laundering activities in Zimbabwe.[302] It is therefore argued that cash-threshold reporting is a protective measure which may be worth incorporating into Zimbabwe's AML regulatory framework.[303] The cash-threshold assists in enhancing the detection of any 'smurfing' activities which may be done by money launderers. Further, it also assists the FIU to generate financial intelligence which may be useful in conducting future money laundering investigations.[304]

Although the *MLPC Act* expressly requires reporting entities to submit suspicious transaction reports to the FIU.[305] However, the *MLPC Act* does not outline the process or channels which the reporting entities should follow in order to submit STRs. It is submitted that outlining the process and channels of submitting reports for suspicious transactions could induce accountability in the reporting obligations. The *MLPC Act* only establishes the duty to report without outlining the procedure to be followed and accountability measures.[306] The researcher argues that the lack of precise reporting procedures under the *MLPC Act* could result in non-compliance and consequently,

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Terrorism under the 2013 FATF Methodology" 2018 *Journal of Money Laundering Control* 601, 605.

302 *FATF Recommendation* 19; see related discussions by Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism" 2020 *Journal of Money Laundering Control* 663, 666; Pavlidis G "The Global Fight against Money Laundering: Informal Synergies between the FATF and the EU Listing of High-Risk Third Countries" 2022 Swiss Review of International and European Law 23, 37; De Koker L, Howell J and Morris N "Economic Consequences of Greylisting by the Financial Action Task Force" 2023 *Risks* 1, 3.

303 *FATF Recommendation* 19; Chaikin 2009 *Journal of Money Laundering Control* 242; see related discussion by Jayasekara 2020 *Journal of Money Laundering Control* 666.

304 Chaikin 2009 *Journal of Money Laundering Control* 245; Jayasekara 2020 *Journal of Money Laundering Control* 667; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2011 *Journal of Money Laundering Control* 112, 116.

305 Section 30 of the *MLPC Act*; see related discussions by Duri *Journal of Money Laundering Control* 320; Maguchu 2017 *Journal of Money Laundering Control* 141; Chitimira and Torerai 2021 *PELJ/PER* 9; Jayasekara 2018 *Journal of Money Laundering Control* 610.

306 Section 30(1) of the *MLPC Act*.

undetected money laundering activities.[307] Furthermore, the *MLPC Act* is not supported by any regulations or clear guidelines to assist the reporting entities to carry out their statutory duties of filing and submitting their suspicious transactions reports. In line with this, the *MLPC Act* should be amended in order to provide clear guidelines regarding reporting procedures and accountability mechanisms to ensure that reporting entities conduct their reporting obligations adequately. Alternatively, the *MLPC Act* should guide reporting entities to compile clear reports on suspicious transactions which they detect.

3.4 The Implementation of the Risk-Based Approach under the MLPC Act

The director-general of the FIU has an obligation to issue directives or guidelines which serve to clarify or elaborate on how reporting entities may implement the risk-based approach and incorporate it into their business operations.[308] The *MLPC Act* obliges the FIU to establish and implement appropriate supervision and monitoring programmes for reporting entities.[309] The FIU is required to take into account the money laundering risks affecting regulated entities in Zimbabwe and in so doing, assist the same entities to minimise these risks.[310] Nonetheless, the *MLPC Act* does not provide any guidelines relating to the application of the risk-based approach to detect money laundering activities. The researcher argues that the lack of express regulations on the implementation of the risk-based approach under the *MLPC Act* affects the enforcement of AML measures in Zimbabwe; without clear regulations and guidance on the

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307 Duri 2020 Kournal of Money Laundering Control 319; Jayasekara SD "Administrative Model of Financial Intelligence Units: An Analysis of Effectiveness of the AML/CFT Regime" 2021 *Journal of Money Laundering Control* 511, 513; Jayasekara SD "How Effective are the Current Global Standards in Combating Money Laundering and Terrorist Financing?" 2021 *Journal of Money Laundering Control* 257, 263.

308 Section 12B (5) of the *MLPC Act*; see also discussion by Chitimira and Torerai 2020 *PER/PELJ* 19; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 110; see related comments by Jaleel A *et al* "The Effectiveness of the Financial Intelligence Unit in Maldives in Combating Money Laundering" 2021 *Asia-Pacific Management Accounting Journal* 409, 420.

309 Section 3 (3a) of the *MLPC Act*; see related discussion by Chitimira and Torerai 2020 *PER/PELJ* 19; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 111; Jaleel *et al* 2021 *Asia-Pacific Management Accounting Journal* 421.

310 Section 3 (3a) of the *MLPC Act*; see related discussion by Chitimira and Torerai 2020 *PELJ/PER* 19; also see Duri J and Matasane MA "Regulation of Beneficial Ownership in South Africa and Zimbabwe" 2017 *JACL* 175, 180; Hatchard J "The Role of Financial Intelligence Units in Combating Money Laundering: An African Perspective" 2022 *Notre Dame Journal of International & Comparative Law* 103, 105.

implementation of the risk-based approach to monitor and detect money laundering threats.

The FATF emphasises the importance of mitigating money laundering risks through assessing the extent of risks which financial institutions are exposed to so as to determine the AML measures to apply.[311] This can be achieved by implementing a risk-based approach to prevent money laundering risks before they develop and actualise. In this regard, the *MLPC Act* provides that financial institutions or designated non-financial businesses or professions (DNFBPs) are required to implement CDD measures on a risk-sensitive basis depending on, *inter alia*, prescribed directives or regulations.[312] However, the researcher argues that the *MLPC Act* does not provide any such guidelines or provisions to ensure the effective implementation of the risk-based approach. Notwithstanding that risk assessment procedures improve deterrence to money laundering activities or the actions of perpetrators attempting to exploit vulnerable financial institutions, poor guidelines on the implementation of the risk-based approach affect its effectiveness. In this regard, the researcher argues that the absence of clear guidelines on the implementation of the risk-based approach by the FIU and DNFBPs is problematic.

3.5 The Establishment of the FIU to Enhance AML Measures under the MLPC Act

The FIU is defined in the *MLPC Act* as a competent authority which is tasked with the primary responsibility to detect and curb money laundering activities in Zimbabwe.[313] It is acknowledged that an FIU is an integral component within Zimbabwe's AML regulatory

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Jayasekara SD. "Challenges of Implementing an Effective Risk-based Supervision on Anti-Money Laundering and Countering the Financing of Terrorism under the 2013 FATF Methodology" 2018 *Journal of Money Laundering Control* 601, 603; Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 142.

312 Section 16(2) of the *MLPC Act*.

313 Section 6B of the *MLPC Act*; see related discussion by Gaviyau W and Sibindi AB "Global Anti-Money Laundering and Combating Terrorism Financing Regulatory Framework: A Critique" 2023 *Social Science Research Network Electronic Journals* 1, 7; Kurebwa J "Implications of Illicit Financial Flows on Zimbabwe's Development" 2021 *International Journal of World Policy and Development Studies* 27, 32.

framework.[314] The importance of the FIU emanates from its purpose and functions. In this regard, the FIU is the vehicle to receive and process information from regulated entities under the *MLPC Act.*[315] The information which is received by the FIU is analysed to become useful financial intelligence. Thereafter, the financial intelligence which is generated by the FIU is disseminated to other law enforcement departments for further investigations.[316] Further, the FIU in Zimbabwe also has a duty to disseminate the financial intelligence so gathered, to the FIUs of other jurisdictions, in order to assist their investigations of money laundering in their respective jurisdictions.[317] The FIU can therefore be viewed as having three fundamental objectives or functions within Zimbabwe's anti-money laundering regulatory framework.[318] These objectives are identified as firstly, the duty to receive and collect information from regulated entities.[319] The second duty is that of processing and analysing the information received or collected from the regulated entities into financial intelligence.[320] Thirdly, the FIU has a duty of distributing and sharing the financial intelligence it would have developed, with other law enforcement authorities in Zimbabwe.[321]

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314 FATF Recommendation 26; Jayasekara 2021 *Journal of Money Laundering Control* 514; Stroligo K, Hsu C and Kouts T *Financial Intelligence Units: Working with Law Enforcement Authorities and Prosecutors* (World Bank Washington 2018).

315 Section 6B (1) of the *MLPC Act;* see also Jayasekara 2021 *Journal of Money Laundering Control* 3; Gleason P and Gottselig G (Eds) "Financial Intelligence Units: An Overview" (International Monetary Fund Washington DC 2004) 32; Takats E "A Theory of Crying Wolf: The Economics of Money Laundering Enforcement" 2007 *IMF Working Paper 07/81* 1-546.

316 Jayasekara 2021 *Journal of Money Laundering Control* 1; Gleason and Gottselig *Financial Intelligence Units: An Overview* 4; Stroligo, Hsu and Kouts *Financial Intelligence Units: Working with Law Enforcement Authorities and Prosecutors* 7.

317 Jayasekara 2021 *Journal of Money Laundering Control* 1; Gleason and Gottselig *Financial Intelligence Units: An Overview* 32; Gaviyau and Sibindi 2023 *Social Science Research Network Electronic Journals* 7; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32.

318 Section 6B (1) of the *MLPC Act*; Jayasekara 2021 *Journal of Money Laundering Control* 2; Gleason and Gottselig *Financial Intelligence Units: An Overview* 9 and 23; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32.

319 Section 6B (1)(a) of the *MLPC Act*; FATF recommendation 13; Jayasekara 2021 *Journal of Money Laundering Control* 2; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32.

320 Section 6B (1)(b) of the *MLPC Act*; Jayasekara 2021 *Journal of Money Laundering Control* 2; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32; Jayasekara 2021 *Journal of Money Laundering Control* 3.

321 Section 6B (1)(c) of the *MLPC Act*; Jayasekara 2021 *Journal of Money Laundering Control* 2; Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Takats 2007 *IMF Working Paper* 6.

From the description and role of the FIU given above, it is evident that the effectiveness of the FIU in Zimbabwe is highly dependent upon the quality of information which it receives from the regulated entities. This follows that the FIU relies extensively on the information which it receives or collects to generate the financial intelligence which is necessary to understand and detect money laundering activities within the financial markets and financial institutions in Zimbabwe. The quality of the financial intelligence which is generated by the FIU is therefore crucial to the successful investigation, detection and prosecution of money laundering offences in Zimbabwe. Furthermore, any information which is received or collected by the FIU should be safeguarded from undue manipulation or distortion as it is essential for the detection of money laundering activities.[322] Moreover, the FIU must be diligent in protecting information which is received or collected from the reporting entities. This is essential because reporting entities provide crucial information on the basis of trust. In the absence of trust, the reporting entities will engage in excessive reporting or irrelevant information dumping as a means of avoiding any sanctions for non-compliance.[323] Excessive reporting adversely affects the quality of information which is analysed by the FIU.[324] For instance, in the absence of trust between the FIU and regulated entities, some entities may resist to share useful financial information which they obtain from their clients for fear of being penalised.[325] Further, some financial institutions may adopt a strategy of overwhelming

322 Zerzan A "Policing Financial Services: Surveying the Anti-Money Laundering Regulatory Regime" 2011 *Bill and Melinda Gates Foundation Paper* 1, 13; Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Jayasekara 2021 *Journal of Money Laundering Control* 7.

323 Takats 2007 *IMF Working Paper* 6, 4-5; Lagerwaard P and de Goede M "In trust we share: The Politics of Financial Intelligence Sharing" 2023 *Economy and Society* 202, 203; see related discussion by Bartolozzi D, Gara M, Marchetti DJ and Masciandaro D "Designing the Anti-Money Laundering Supervisor: The Governance of the Financial Intelligence Units" 2022 *International Review of Economics and Finance* 1093, 1101.

324 Takats 2007 *IMF Working Paper* 6, 4-5; see related discussion by Pellegrina L, Di Maio G, Masciandaro D and Saraceno M "Are Bankers "Crying Wolf"? Type I, Type II Errors and Deterrence in Anti-Money Laundering: The Italian Case" 2022 *Italian Economic Journal* 1, 17; Gara M, Manaresi F, Marchetti DJ and Marinucci M "Anti-Money-Laundering Oversight and Banks' Reporting of Suspicious Transactions: Some Empirical Evidence" 2023 *The Journal of Law, Economics, and Organization* 1, 20.

325 Zerzan 2011 *Bill and Melinda Gates Foundation Paper* 14; Takats 2007 *IMF Working Paper* 6, 4-5; see related discussions by Lagerwaard and de Goede 2023 *Economy and Society* 203; see related discussion by Bartolozzi, Gara, Marchetti and Masciandaro 2022 *International Review of Economics and Finance* 1101.

the FIU with excessive volumes of unfiltered and irrelevant data which negatively affects the quality of the financial intelligence which can be obtained from such information.[326]

Further, it is also important to note that the duties and functions of the FIU are highly sensitive as they are prone to manipulation. Therefore, in order to maintain the trust of reporting entities, the FIU in Zimbabwe should be accorded adequate operational independence in order to enable it to effectively fulfil its statutory mandates.[327] As a measure to safeguard this sensitive and important role from undue interference, it is submitted that it is essential for the FIU to be recognised as an independent unit from other government departments.[328] Furthermore, it is important for the FIU in Zimbabwe to be safeguarded from any undue external influences and pressures which may be exerted upon it to adversely affect its administration and functions.[329] Thus, the independence of the FIU should be adequately safeguarded. It is therefore important that there is an impartial interface between the regulated entities and professionals who are subject to reporting in terms of the *MLPC Act* and the FIU which is required to receive the information.[330]

It is acknowledged that the structural model of an FIU may of necessity, vary from country to country.[331] However, there has to remain a common element of the

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326 Takats 2007 *IMF Working Paper* 6, 4-5; Unger and Den Hertog 2012 *Crime, Law and Social Change* 294; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 118; Chamisa, MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 34.

327 Section 6B of the *MLPC Act*; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120; Chamisa 2019 *African Tax and Customs Review* 34.

328 Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120; Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 118.

329 Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

330 Gleason and Gottselig *Financial Intelligence Units: An Overview* 10; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

331 FATF Recommendation 29; Jayasekara 2021 *Journal of Money Laundering Control* 2; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 118.

independence of the FIU.[332] Regardless of the structural model which is adopted and implemented in Zimbabwe, the FIU must nevertheless remain independent.[333] Zimbabwe has adopted the administrative model for its FIU.[334] According to the administrative model, an FIU is usually established as part of the sub-structure of another government authority or another government department.[335] Alternatively, the FIU may be designated as an independent organisational unit within a larger regulatory body such as the government ministry which is assigned with the responsibility of economic affairs, for instance the ministry of finance. In Zimbabwe, the FIU is housed under the RBZ as an independent sub-unit within the central bank.[336]

In terms of the administrative model, the FIU is considered as the primary regulatory authority which interfaces between the regulated entities and other law enforcement authorities in the AML regulatory framework of the country.[337] In light thereof, the operational independence of an FIU is beneficial for improving the maintenance and balancing of trust between the regulated entities, the FIU and the law enforcement authorities. Accordingly, operational independence is a critical component within the design of an effective FIU.[338] Furthermore, the operational independence of Zimbabwe's

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332 FATF Recommendation 29; Jayasekara 2021 *Journal of Money Laundering Control* 5; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 110.

333 Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Jayasekara 2021 *Journal of Money Laundering Control* 5; Kurebwa 2021 *International Journal of World Policy and Development Studies* 32.

334 Section 6A (2) of the *MLPC Act*; see related discussion by Jayasekara 2021 *Journal of Money Laundering Control* 3; Duri *Journal of Money Laundering Control* 320; Maguchu 2017 *Journal of Money Laundering Control* 141.

335 Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

336 See related discussion by Gleason and Gottselig *Financial Intelligence Units: An Overview* 23.

337 Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

338 Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

FIU assists in sustaining its credibility, confidence, and the protection of highly sensitive information.[339]

The researcher argues that upon analysis of the *MLPC Act*, the FIU in Zimbabwe does not have sufficient autonomy in its administration. While the *MLPC Act* deliberately points out the independence of the FIU, it becomes clear, upon closer scrutiny that the governor of the RBZ effectively yields the decision-making powers over the administration of the FIU.[340] The powers of the governor of the RBZ over the director-general of the FIU are apparent through the statutory provisions contained in the *MLPC Act*, which impact on the appointment and dismissal of the director-general as the head of the FIU.[341]

The lack of full independence for the FIU is further demonstrated through the statutory requirement that the director-general should consult the RBZ governor before passing any strategic or important decisions. For instance, the FIU's director-general consults before issuing anti-money laundering guidelines to regulated entities.[342] This is regardless of the statutory provision that the FIU is designated as the primary AML supervisory authority over all regulated entities.[343] In this role, the FIU is mandated to issue guidelines and directives to regulated entities. These guidelines are meant to ensure that the regulated entities are able to effectively carry out their obligations as required by the *MLPC Act*. Before the director-general of the FIU may issue any written directive, which relate to the functions and obligations of other supervisory authorities and regulated entities, the *MLPC Act* requires that he or she should consult the governor of the RBZ.[344]

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339 See related discussion by Gleason and Gottselig *Financial Intelligence Units: An Overview* 23; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

340 Sections 4 and 6A(2)(a) of the *MLPC Act*; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

341 Section 6A(2)(a) of the *MLPC Act*; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

342 Section 4(1) of the *MLPC Act*; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

343 Section 3(2) of the *MLPC Act*; Pellegrina, Di Mai, Masciandaro and Saraceno 2022 *Italian Economic Journal* 17; Gara, Manaresi, Marchetti and Marinucci 2023 *The Journal of Law, Economics, and Organization* 120.

344 Section 4(1) of the *MLPC Act*; see related discussion by Maguchu P "The Role of Civil Society Organisations in Asset Recovery" 2022 *Indonesian Journal of International Law* 317, 318; Duri

In addition to this, the researcher argues that these undue reporting obligations to the governor of the RBZ undermine and neutralise the intended independence of the FIU from other authorities.[345]

3.6 The Regulation of Information Sharing Arrangements between the FIU, DNFBPs and other Relevant Institutions

The *MLPC Act* empowers the asset management unit of the FIU to have access and power to obtain information to enable its investigations on money laundering related matters.[346] The information so required in this regard, can be from any law enforcement agency, competent supervisory authority, public authority or public officer.[347] On the other hand, the *Revenue Authority Act* provides for the secrecy provisions which prohibit the Zimbabwe Revenue Authority (ZIMRA) to disclose certain information to any other institution.[348] The ZIMRA secrecy provisions provide that tax records should stay classified and may not be disclosed to third parties.[349] The researcher argues that the provisions relating to the powers of access to information under the *MLPC Act* are not adequate to authorise the FIU to access information withheld by other institutions. This follows that the secrecy or confidentiality legislative provisions which currently bind the ZIMRA from sharing information with third parties limit the functions of the FIU.[350] In this regard, the

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Journal of Money Laundering Control 320; Maguchu 2017 *Journal of Money Laundering Control* 141.

345 Gleason and Gottselig *Financial Intelligence Units: An Overview* 24; Duri *Journal of Money Laundering Control* 320; Maguchu 2017 *Journal of Money Laundering Control* 141.

346 Section 100F of the *MLPC Act*; see related comments by Jaleel *et al* 2021 *Asia-Pacific Management Accounting Journal* 420; Hatchard 2022 *Journal of International & Comparative Law* 103, 110; Duri 2020 *Journal of Money Laundering Control* 320.

347 See section 100B of the *MLPC Act*; Hatchard 2022 *Journal of International & Comparative Law* 103; Jaleel *et al* 2021 *Asia-Pacific Management Accounting Journal* 410; Duri 2020 *Journal of Money Laundering Control* 320.

348 *Revenue Authority Act* [Chapter 23:11] 17 of 1999 (*Revenue Authority Act*), section 34A (2); Nyatanga P *A Guide to Zimbabwe Taxation: Tax Study Text – Zimbabwe* 3rd ed (Google Books 2016) 248; Chamisa MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 34.

349 Section 34A (2) *Revenue Authority Act*; Nyatanga *A Guide to Zimbabwe Taxation: Tax Study Text – Zimbabwe* 248; Chamisa 2019 *African Tax and Customs Review* 35.

350 Section 34A (2) *Revenue Authority Act*; Nyatanga *A Guide to Zimbabwe Taxation: Tax Study Text – Zimbabwe* 248; Chamisa 2019 *African Tax and Customs Review* 35; Vingirayi I *et al* "Zimbabwean informal sector ZIMRA tax Revenue Collection Barriers" 2020 *Journal of Global Economics, Management and Business Research* 14, 19.

researcher argues that the *MLPC Act* should empower the FIU to access information withheld by any institutions regardless of secrecy provisions should the FIU reasonably believe that such information is relevant for money laundering investigations. The *MLPC Act* requires other law enforcement agencies to share information with the FIU which is necessary for the FIU to effectively perform and execute its duties.[351]

Information sharing between the FIU and law enforcement agencies is essential to improve the efficiency and effectiveness of AML measures and reduce the duplication of efforts in combatting money laundering in Zimbabwe.[352] However, the *MLPC Act* does not expressly provide how the FIU and other relevant role players should share information to foster money laundering investigations. Consequently, the FIU experiences challenges in accessing information from other institutions due to secrecy provisions. The generic concerns of confidentiality with regards to requests for information by the FIU to ZIMRA should not be invoked as reasons for refusal to share information which is required to fulfil the objectives of the *MLPC Act* if the other conditions for granting such request under the *Act* are fulfilled. Accordingly, the *MLPC Act* could be amended to provide stringent information sharing obligations between the FIU, law enforcement agencies such as the ZRP, the NPAZ and other relevant role players.

3.7 The Enforcement of AML Measures in Zimbabwe

The effectiveness of AML measures largely depends on the enforcement mechanisms.[353] The *MLPC Act* does not provide express enforcement measures to ensure compliance with AML measures.[354] The *MLPC Act* only provides that the FIU should enforce reporting obligations on reporting entities.[355] However, the *MLPC Act* does not establish

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351 Section 6E (1) of the *MLPC Act*; Hatchard 2022 *Journal of International and Comparative Law* 103; Jaleel *et al* 2021 *Asia-Pacific Management Accounting Journal* 410; Duri 2020 *Journal of Money Laundering Control* 320.

352 Section 6C of the *MLPC Act.*

353 Chamisa 2019 *African Tax and Customs Review* 35; Maguchu 2017 *Journal of Money Laundering Control* 142; Schroeder WR "Money Laundering: A Global Threat and the International Community's Response" 2001 *FBI Law Enforcement Bulletin* 1, 4.

354 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Fundira "Money Laundering in Zimbabwe. 2004-2006" 54; Pasara and Garidzirai 2020 *Economics* 10; Maguchu 2017 *Journal of Money Laundering Control* 142.

355 Section 6N *MLPC Act*.

enforcement mechanisms to this effect. On the other hand, the *MLPC Act* requires the FIU to report its findings to law enforcement agencies for further investigation without express guidelines on the enforcement of this obligation. The researcher argues that the absence of enforcement measures such as penalties or administrative sanctions for non-compliance undermines the adequacy and robustness of established AML measures. This follows that, without clear enforcement measures reporting entities, DNFBPs and relevant role players may abscond from fulfilling their AML functions and deter the prevention of money laundering in Zimbabwe.

Zimbabwe is not devoid of money laundering criminal acts. To date and most recently, there have been allegations of money laundering practices which seem to have gripped Zimbabwe for approximately 23 years.[356] The *modus operandi* of these money laundering practices involves the illicit exportation of gold by some prominent figures in Zimbabwe who were implicated in an Al Jazeera television station's broadcast documentary named "Gold Mafia".[357] In other words, the money launderers carry gold extracted from mines in Zimbabwe to Dubai, where it is then sold in exchange for cash in the form of United States of American Dollars (USDs).[358] Thereafter, this money is transferred into the bank accounts of the money launderers, who hand over an equivalent amount of their dirty dollars to the Zimbabwe government through smugglers.[359] This illicit exportation of gold

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356 Mavhunga C "Zimbabwe Freezes Assets of 4 Who Said They Aided Gold Smuggling, Money Laundering" (6 April 2023) *VOA News* https://www.voanews.com/a/zimbabwe-freezes-assets-of-4-who-said-they-aided-gold-smuggling-money-laundering/7039722.html accessed 18 May 2023; Metelerkamp T "Al Jazeera Gold Mafia Exposé 'Tip of the Iceberg' for Zim Corruption but Accountability Remains Elusive" (17 April 2023) *Daily Maverick* https://www.dailymaverick.co.za/article/2023-04-17-al-jazeera-gold-mafia-expose-tip-of-the-iceberg-for-zim-corruption-but-accountability-remains-elusive/ accessed 18 May 2023.

357 Al Jazeera Investigative Unit "Six Secrets Uncovered by Al Jazeera's Gold Mafia Investigation" (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-investigation accessed 18 May 2023; Mavhunga (6 April 2023) *VOA News* https://www.voanews.com/a/zimbabwe-freezes-assets-of-4-who-said-they-aided-gold-smuggling-money-laundering/7039722.html accessed 18 May 2023; Metelerkamp (17 April 2023) *Daily Maverick* https://www.dailymaverick.co.za/article/2023-04-17-al-jazeera-gold-mafia-expose-tip-of-the-iceberg-for-zim-corruption-but-accountability-remains-elusive/ accessed 18 May 2023.

358 Al Jazeera Investigative Unit (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-investigation accessed 18 May 2023; Nyashanu M "Zimbabwe: Gold Mafia Revelations Prove That Mnangagwa Not Fit for Office" *AllAfrica* (21 April 2023) https://allafrica.com/stories/202304210160.html accessed 18 May 2023.

359 Al Jazeera Investigative Unit (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-

to Dubai and the repatriation of USDs clearly constitutes money laundering.[360] Thus, the illegal exportation of gold which is then exchanged for cash is an act of money laundering in line with the *MLPC Act*. The researcher is aware that these allegations have not been tested before the courts of law in Zimbabwe. The researcher submits that the *MLPC Act* adequately covers elements that constitute money laundering. However, the *MLPC Act* does not provide clear and consistent measures to enforce AML measures in Zimbabwe.

3.8 Gaps in the Current Regulatory Framework

3.8.1 Non-Regulation of Virtual Assets Service Providers under the MLPC Act

Ongoing changes and advances in digital financial technology globally have resulted in the increased use of non-fiat currency such as cryptocurrency and other forms of virtual currencies.[361] These currencies, in many instances, are not supported or guaranteed by a central bank or a national government.[362] Virtual currencies and assets are a digital representation of monetary value and are tradeable as well as transferrable from one user to another in their digital or electronic form.[363] A further characteristic of virtual currencies or assets is that they can be used as a form of payment for services and

investigation accessed 18 May 2023; Rall S Zim "Government Orders Investigation Following 'Gold Mafia' Exposé on Gold and Money Laundering Syndicate" (4 April 2023) *IOL News* https://www.iol.co.za/news/africa/zim-government-orders-investigation-following-gold-mafia-expose-on-gold-and-money-laundering-syndicate-96375918-0a73-4728-88d5-56dc6d7c9c72 accessed 18 May 2023; Chirume AT "Financial Technology and Monetary Policy Design in Zimbabwe" 2018 *SSRN 3198052* 1, 4.

360 Alfar AJK, Kumpamool C, Nguyen DTK and Ahmed R "The Determinants of Issuing Central Bank Digital Currencies" 2023 *Research in International Business and Finance* 1, 1-2; Usmankhodjaev S, Zakirov J, Tashev A and Islamov K "The Regulation and Differences between Cryptocurrency, Stablecoin, Central Bank Digital Currency, E-Money Virtual Currency, and In-Game Currency" 2023 *Social Science Research Network Electronic Journal* 1, 3.

361 Alfar, Kumpamool, Nguyen and Ahmed 2023 *Research in International Business and Finance* 1-2; Usmankhodjaev, Zakirov, Tashev and Islamov 2023 *Social Science Research Network Electronic Journal* 3; Temperini J and Corsi M "The Role of Cryptocurrencies in Democratizing Money" 2023 *Social Science Research Network Electronic Journal* 1, 20.

362 Temperini and Corsi 2023 *Social Science Research Network Electronic Journal* 19; Van der Linden T and Shirazi T "Markets in crypto-assets regulation: Does it Provide Legal Certainty and Increase Adoption of Crypto-Assets?" 2023 *Financial Innovation* 1, 4; Rotta TN and Paraná E "Bitcoin as a Digital Commodity" 2022 *New Political Economy* 1046, 1047.

363 Bryans D "Bitcoin and Money Laundering: Mining for an Effective Solution" 2014 *Indiana Law Journal* 443, 444-445; Hou L and Shen W "Digital Currency and Regulatory Responses: A Tale of Two Alternative Money Models" 2022 *Banking & Finance Law Review* 305, 310; Tata F "Proposing an Interval Design Feature to Central Bank Digital Currencies" 2023 *Research in International Business and Finance* 1, 4.

commodities.[364] For instance, Bitcoin is a virtual currency which is used as a form of monetary exchange or as a store of value by its users.[365] Virtual assets service providers may also be identified as crypto-assets service providers.[366] The decentralised and wide use of digital financial data and cryptocurrencies has enabled digital money to be transferred and moved across jurisdictions rapidly, at the touch of a button.[367] In this regard, it is submitted that digital currencies are mostly preferred by money launderers due to their anonymity, decentralisation and lack of central bank supervision.

Generally, money laundering could be combatted through the increased transparency of financial transactions as well as the clear identification of the various parties to any property transaction.[368] To date, the *MLPC Act* is silent on the regulation of cryptocurrencies and the monitoring or identification of cryptocurrency users and the transactions they do. The risks of anonymity and lack of control of cryptocurrencies by the RBZ, FIU or any other relevant stakeholder in Zimbabwe compound the dangers of inadequate regulation of cryptocurrencies. Therefore, it is argued that for the *MLPC Act* to keep abreast of the technological advances and innovation in global currency forms, clear provisions should be made to regulate the use of cryptocurrency in Zimbabwe.[369] The silence of the *MLPC Act* regarding the regulation of cryptocurrency transactions is a flaw which creates a loophole for money launderers to thrive in the knowledge that transactions are not adequately monitored or regulated. In addition to this, there is a

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364 Bryans 2014 *Indiana Law Journal* 445; Hou and Shen 2022 *Banking & Finance Law Review* 311; Tata 2023 *Research in International Business and Finance* 5; Chirume 2018 *SSRN 3198052* 5.

365 Bryans 2014 *Indiana Law Journal* 458; Hou and Shen 2022 *Banking & Finance Law Review* 311; Tata 2023 *Research in International Business and Finance* 5; Chirume 2018 *SSRN 3198052* 6.

366 Bryans 2014 *Indiana Law Journal* 458; Hou and Shen 2022 *Banking & Finance Law Review* 311; Tata 2023 *Research in International Business and Finance* 5; Simser J "Bitcoin and Modern Alchemy: In Code we Trust" 2015 *Journal of Financial Crime* 156, 162.

367 Bryans 2014 *Indiana Law Journal* 444-446; Hou and Shen 2022 *Banking & Finance Law Review* 311; Tata 2023 *Research in International Business and Finance* 5; Simser 2015 *Journal of Financial Crime* 162.

368 Arman M "Money Laundering: A Three Step Secret Game" 2023 *Partners Universal International Innovation Journal* 34, 41; Wronka C "Anti-Money Laundering Regimes: a Comparison Between Germany, Switzerland and the UK with a Focus on the Crypto Business" 2022 *Journal of Money Laundering Control* 656, 660; see also related discussion by Clifton J and Pal LA "The Policy Dilemmas of Blockchain" 2022 *Policy and Society* 321, 324.

369 Bryans 2014 *Indiana Law Journal* 443-445; Simser 2015 *Journal of Financial Crime* 163; Chirume 2018 *SSRN 3198052* 6; Olorundare JK *et al* "Economic Prospect of Cryptocurrency: Nigeria as a Case Study" 2023 *International Journal of Research Publication and Reviews* 1, 2.

rapid increase in crypto-trading and crypto-scams despite the lack of express regulatory provisions that govern crypto-trading in Zimbabwe.[370] Although the RBZ recently introduced a new digital asset which will also be used as a legal tender, there is no express legislation which regulates cryptocurrencies and other digital currencies in Zimbabwe currently.

3.8.2 The Lack of AML Arrangements to Mitigate Crisis

The COVID-19 regulations were enacted to control and curb the spread of the virus in Zimbabwe.[371] Some restrictions imposed to control the spread of the virus included a national lockdown, travel bans, curfews and the closure of business.[372] Consequently, there was limited economic activity and transactions became more digitalised due to restricted movements and the fear of spreading the virus through paper-money.[373] Furthermore, as intercity travel had been restricted as well, this resulted in reduced trading hours and restricted access to goods and services for consumers. In a bid to continue to remain profitable against the wake of reduced traffic and customers, some unscrupulous businesses resorted to smuggling their goods out of Zimbabwe to sell in neighbouring countries.[374] The businesses that engaged in smuggling activities, viewed smuggling as a survival strategy and a means to access foreign currency from the regional markets in Southern Africa.[375] The researcher argues that during the pandemic, many

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370 See related comments by Olorundare 2023 *International Journal of Research Publication and Reviews* 2; Mazikana AT "The Impact of Cryptocurrencies in Zimbabwe. An Analysis of Bitcoins" 2018 *Social Sciences Research Network Online Journal* 1, 4; Freeman Law *Zimbabwe and Cryptocurrency* https://freemanlaw.com/cryptocurrency/zimbabwe/ accessed 22 May 2023.

371 Statutory Instrument 76 of 2020 Civil Protection (Declaration of State of Disaster: Rural and Urban Areas of Zimbabwe) (COVID-19) Notice, 2020 issued in terms of section 27(2) of the *Civil Protection Act* [Chapter 10:06]; Worobey M *et al* "The Huanan Seafood Wholesale Market in Wuhan was the Early Epicentre of the COVID-Pandemic" 2022 *Science* 951, 951-952.

372 Worobey *et al* 2022 *Science* 951-952; United Nations Zimbabwe 2020 "Immediate Socio-Economic Response to COVID-19 in Zimbabwe: A Framework for Integrated Policy Analysis and Support" 1, 3.

373 Section 3 of *Statutory Instrument 174 of 2020 Civil Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) (Amendment) Order, 2020 (No. 14) issued in terms of section 8(1) of the Public Health (COVID-19 Prevention, Containment and Treatment) Regulations, 2020* (published in Statutory Instrument 77 of 2020).
Geldenhuys K "Illegal Cigarettes - A Roaring Trade during Lockdown 2020" 2020 *Servamus Community-based Safety and Security Magazine* 10, 12.

375 Geldenhuys 2020 *Servamus Community-based Safety and Security Magazine* 12; Nyatanga *A Guide to Zimbabwe Taxation: Tax Study Text – Zimbabwe* 248; Goredema C "Money

financial transactions were concluded in the informal financial sector without any records thereof.[376] This follows that smuggling is an attractive means for perpetrators to conceal proceeds of their criminal activities.[377] Accordingly, the lack of stringent measures and regulations to monitor cross-border activities by the ZIMRA at all entry ports was exploited by perpetrators to smuggle the proceeds of crime and foreign currency in Zimbabwe.[378] Some of the funds obtained from criminal activities were channelled into the formal financial sector by various digital money platforms that had become popular as a measure to limit contact and promote paperless transactions in Zimbabwe. In this regard, the researcher submits that the outbreak of the COVID-19 created room for perpetrators to manipulate the situation and commit money laundering in Zimbabwe.

Furthermore, the *Customs and Excise Act* provides that smuggling offences which attract a penalty not exceeding five years imprisonment are not considered money laundering offences.[379] Accordingly, despite the various smuggling incidents reported in Zimbabwe, there has not been any successful prosecution of money laundering related charges. Accordingly, the researcher submits that it is important for the *MLPC Act* to be strengthened by a list of predicate offences which clearly defines all criminal activities that constitute money laundering. The researcher opines that this defined list will assist in removing the regulatory gaps which currently allow criminals to avoid liability for their actions.

Laundering in East and Southern Africa: An Overview of the Threat" 2003 *Institute for Security Studies Papers* 20, 27.

376 Section 182 (1)(b) of the *Customs and Excise Act* [Chapter 23:02] 16 of 1955 (as amended); Eastern and Southern Africa Anti-Money Laundering Group Report 2018 *Smuggling of Cigarettes and Associated Money Laundering in the ESAAMLG Region* 1, 23; Goredema 2003 *Institute for Security Studies Papers* 26.

377 Geldenhuys 2020 *Servamus Community-based Safety and Security Magazine* 12; see *Customs and Excise Act* [Chapter 23:02] 16 of 1955 (as amended) *(Customs and Excise Act)*, section 182; Mswazi TG "An Assessment of ZIMRA Anti-Smuggling Initiative on Tax Revenue: A case of Zimbabwe" 2021 *International Journal of Management IT and Engineering* 8, 11.

378 Chamisa 2019 *African Tax and Customs Review* 35; Nyatanga *A Guide to Zimbabwe Taxation: Tax Study Text – Zimbabwe* 248; Hatchard 2022 *Journal of International & Comparative Law* 110.

379 Section 182 (1)(b) of the *Customs and Excise Act*; Eastern and Southern Africa Anti-Money Laundering Group Report 2018 *Smuggling of Cigarettes and Associated Money Laundering* 23; Mswazi 2021 *International Journal of Management IT and Engineering* 12.

The declaration of a national state of disaster requires the government to prioritise and direct the use of resources towards curbing the national disaster. However, the *Civil Protection Act* does not provide adequate parliamentary oversight to address challenges caused by a national disaster.[380] Accordingly, the researcher submits that little was done to circumvent the challenges caused by the COVID-19 pandemic on the financial sector.[381] This follows that national resources were used to meet the demands of the healthcare systems that had become overburdened. In this regard, the researcher submits that there is need for specific provisions under the *MLPC Act* to manage a monetary crisis in the Zimbabwean financial sector. The *MLPC Act* should be amended to provide for the roles and functions of relevant financial role players to curb money laundering amidst crises. This will ensure that relevant role players do not abandon their functions to combat money laundering due to a crisis or other unforeseen circumstances.

3.9 Conclusion

Zimbabwe's AML framework is comprehensively provided under the *MLPC Act*.[382] The *MLPC Act* establishes several AML measures that are aimed at preventing and combatting money laundering activities in Zimbabwe. The *MLPC Act* established the FIU which plays a central role in receiving, analysing and disseminating financial intelligence to foster the investigation of money laundering activities in Zimbabwe. The FIU is empowered to receive and collect information which it deems necessary for the detection and investigation of money laundering in Zimbabwe.[383] Be that as it may, the FIU is required to submit its findings to law enforcement agencies for further investigation and

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380 Mavhura 2016 *Natural Hazards* 618; *S v Masiiwa and Chikare ZHCMA 09-17;* see related comments by Goredema C "Money Laundering in East and Southern Africa: An Overview of the Threat" 2003 *Institute for Security Studies Paper* 12-13; Munyoro I "Issues of Confidentiality and Public Interest: A Case Study from a Library Perspective" 2017 *Mousaion* 1-17, 2; Reserve Bank of Zimbabwe 2016 *RBZ Governor January 2016 Monetary Policy Statement* 1, 65-66.

381 Chirume S "The Effects of Covid-19 on the Financial Sector and the Role of Social Media as an Advertising Tool in these Trying Times in Zimbabwe" 2021 *Journal of Economics and Behavioral Studies* 8, 12; see related discussion by Wu D and Oslon DL "The Effect of COVID-19 on the Banking Sector" 2020 *Pandemic Risk Management in Operations and Finance* 1, 5.

382 See section 8 of the *MLPC Act*.

383 Section 6A-N of the *MLPC Act*; Simwayi and Haseed 2011 *Journal of Money Laundering Control* 116; Sultana S "Role of Financial Intelligence Unit (FIU) in Anti-Money Laundering Quest: Comparison between FIUs of Bangladesh and India" 2020 *Journal of Money Laundering Control* 931, 933.

prosecution. This shows that the *MLPC Act* acknowledges the importance of cooperation and collaboration to combat money laundering Zimbabwe. Nonetheless, the *Act* does not establish comprehensive collaboration mechanisms to enhance money laundering investigations in Zimbabwe. Apart from the roles and functions of the FIU, the *MLPC Act* also provides for CDD measures, that it encourages financial institutions and DNFBPs to implement on a risk-based approach.[384] The researcher argues that the risk-based approach under the *MLPC Act* is not well-established to warrant its effective implementation. The lack of guidelines and established risk-based approach mechanisms under the *MLPC Act* undermines the adequacy and robustness of the AML provisions under the *MLPC Act*.[385] Despite the provision of the aforementioned AML measures, the *MLPC Act* fails to provide mechanisms to enforce the implementation of these measures. The lack of transparency and accountability measures on the implementation of AML regulated AML measures is a flaw that undermines the efforts to prevent and curb money laundering in Zimbabwe.[386] Overall, this chapter has established that the inadequacy of Zimbabwe's AML framework is a result of several challenges that have undermined the efforts to curb money laundering activities. These challenges include the lack of adequate resources to implement AML measures, inconsistent enforcement measures, lack of sufficient autonomy and/or independence of the FIU and the lack of political will to effectively combat money laundering in Zimbabwe.[387]

The next chapter discusses the regulation of AML measures in South Africa. This is done to draw lessons from the South African AML regulatory framework so as to recommend plausible measures to address the challenges discussed in this chapter.

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384 Section 14 of the *MLPC* Act; Goredema 2003 *Institute for Security Studies Paper* 4; Maguchu 2017 *Journal of Money Laundering Control* 143.

385 See related discussion by Maguchu 2017 *Journal of Money Laundering Control* 141; Mswazi 2021 *International Journal of Management IT and Engineering* 12; Munoyoro 2017 *Mousaion* 12.

386 Section 14 of the *MLPC Act*; Hatchard 2022 *Notre Dame Journal of International & Comparative Law* 105; Maguchu and Ghozi 2022 *Indonesian Journal of International Law* 333.

387 Duri 2020 *Journal of Money Laundering Control* 321; Fundira 2007 *Institute for Security Studies* 60; Gubbay 1998 *Journal of Money Laundering Control* 282; Maguchu 2017 *Journal of Money Laundering Control* 141.

CHAPTER FOUR

THE ROLE-PLAYERS IN THE REGULATION OF MONEY LAUNDERING IN ZIMBABWE

4.1 Introduction

The *Money Laundering and Proceeds of Crime Act*[388] is the primary legislation that regulates money laundering in Zimbabwe. The *MLPC Act* was enacted to consolidate all anti-money laundering (AML) laws such as the *Serious Offences Act,*[389] the *Presidential Powers (Temporary Measures) Act*[390] and the *Bank Use Promotion and Suppression Act*[391] Zimbabwe so as to meet the international standards such as the Financial Action Task Force (FATF).[392] The *MLPC Act* is supported by the *Money Laundering and Proceeds of*

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388 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (*MLPC Act*), section 1; see related comments by Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 380; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 21; Goredema C "Money Laundering in Southern Africa Incidence, Magnitude and Prospects for its Control" 2004 *Institute for Security Studies Paper 92* 1, 4.

389 *Serious Offences (Confiscation of Profits) Act* [Chapter 9:17] 12 of 1990 (*Serious Offences Act*), section 2; see related comments by Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2011 *Journal of Money Laundering Control* 112, 115; also see Ngwenya B, Pelser T and Chivaura T "Perceptions of Post Multi-Currency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *South African Journal of Economic and Management Sciences* 1, 5; Gubbay 1998 *Journal of Money Laundering Control* 381.

390 *Statutory Instrument Regulations Presidential Powers Act (Temporary Measures*) of 199 of 2006, see section 4 see related comments by Simwayi and Haseed 2011 *Journal of Money Laundering Control* 115; also see Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 4.

391 *Bank Use Promotion and Suppression of Money Laundering Act* [Chapter 24:24] 2 of 2004 (*BUPSML Act)*; see related comments by Shambira L "Exploring the Adoption of Artificial Intelligence in the Zimbabwe Banking Sector" 2020 *Electronic Journal of Social and Strategic Studies* 110, 13; Moyo G "The Bane of Financial Crime and Corruption amid Covid-19 Pandemic in Zimbabwe" 2020 *Global Journal of Management and Business Research* 37, 39; Chitimira and Ncube 2021 *PER/PELJ* 4.

392 Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF Paris 2020); Nanyun NM "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2020 *Journal of Money Laundering Control* 1,3; Adeleke 2019 *South Africa Journal of International Affairs* 370; Pasara MT and Garidzirai R "The Boomerang Effects: An Analysis of the Pre and Post Dollarisation Era in Zimbabwe" 2020 *Economics* 1, 10.

Crime (Amendment) Regulations.[393] The *MLPC Act* outlines the role and functions of several role players that are directly and indirectly involved in the combatting of money laundering in Zimbabwe.[394] Such role players include the Asset and Forfeiture Unit (AFU) in the National Prosecuting Authority of Zimbabwe (NPAZ), the Financial Intelligence Unit of Zimbabwe (FIU), the Reserve Bank of Zimbabwe (RBZ), the Serious Fraud Squad of the Criminal Investigations Department in the Zimbabwe Republic Police (ZRP), the Securities and Exchange Commission of Zimbabwe (SECZ), relevant government departments and relevant professionals such as lawyers and accountants.[395] This is done to evaluate the effectiveness of these role players in the combatting of money laundering in Zimbabwe. Moreover, the discussion is undertaken to determine how the role-players are complying with the provisions of the *MLPC Act* and other relevant statutes.

4.2 The Roles and Functions of Anti-Money Laundering Role Players in Zimbabwe

An effective and robust AML framework is characterised by consistent enforcement mechanisms and proactive coordination between the law enforcement authorities and relevant financial sector role players.[396] It is essential for financial role players and law enforcement authorities to cooperate with each other in implementing established AML measures so as to ensure consistency, transparency and prevent regulatory flaws identified in the previous chapter of this thesis.[397] This also follows the fact that the FATF

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393 *Money Laundering and Proceeds of Crime (Amendment) Regulations*, 2021; see related comments by Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 281; Chitimira and Ncube 2020 *PER/PELJ* 7; also see Shambira L "Exploring the Adoption of Artificial Intelligence in the Zimbabwe Banking Sector" 2020 *Electronic Journal of Social and Strategic Studies* 110, 117.

394 See sections 3, of the *MLPC Act*; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 120; see related discussion by Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money Laundering Experiences* (ISS Pretoria 2006) 41.

395 *Anti-Corruption Commission Act* [Chapter 9:22] 13 of 2004, section 4(1).

396 Chitimira and Ncube 2021 *PER/PELJ* 13; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 380; Maguchu 2018 *African Security Review* 281.

397 Villányi B "Money Laundering: History, Regulations, and Techniques" *Oxford Research Encyclopedia of Criminology* 1, 10; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021

recommends cooperation, collaboration and information sharing amongst financial sector role players when implementing AML measures.[398] The law enforcement authorities such as the Zimbabwe Republic Police (ZRP) and the NPAZ rely on the financial intelligence obtained from the FIU, to undertake effective investigations and ensure successful prosecution of money laundering cases in Zimbabwe.[399] For example, the AFU and the NPAZ rely on the FIU to lead the regulatory efforts in combatting money laundering.[400] The FIU plays a leading role in combatting money laundering in Zimbabwe by obtaining information from financial institutions and designated non-financial businesses and professions (DNFBPs) for use in money laundering investigations.[401]

4.2.1 The Role and Functions of the FIU

The FIU was originally established in terms of the *Bank Use Promotion and Suppression of Money Laundering Act* as the Bank Use Promotion and Suppression of Money Laundering Unit (BUPSMLU) in 2004.[402] The BUPSMLU was subsequently renamed to Financial Intelligence Inspectorate Evaluation Unit (FIIE) in 2005. Thereafter, the FIIE was renamed in terms of the *MLPC Act* to the Financial Intelligence Unit.[403] The FIU performs three main functions within the anti-money laundering framework.[404] Firstly, it

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PER/PELJ 1, 21; Goredema C " Money Laundering in Southern Africa Incidence, Magnitude and Prospects for its Control" 2004 *Institute for Security Studies Paper 92* 1, 4; Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 281.

398 Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (FATF Paris 2020) 24.

399 Zerzan A "Policing Financial Services: Surveying the Anti-Money Laundering Regulatory Regime" 2011 *Bill and Melinda Gates Foundation Paper* 1, 11.

400 Section 6B of the *MLPC Act*; see related discussion by Stroligo K, Hsu C and Kouts T *Financial Intelligence Units: Working ith Law Enforcement Authorities and Prosecutors* (World Bank Washington 2018) 52; Sathye M and Patel C "Developing Financial Intelligence: An Assessment of the FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 393.

401 Zerzan 2011 *Bill and Melinda Gates Foundation Paper* 3; see related comments by Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money Laundering Experiences* (ISS Pretoria 2006) 45; also see Gleason P and Gottselig G (Eds) *Financial Intelligence Units: An Overview* (International Monetary Fund Washington DC 2004) 32.

402 *Bank Use Promotion and Suppression of Money Laundering Act* [Chapter 24:24] 2 of 2004 (*BUPSML Act*), section 3; Section 6A(1) of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 10.

403 Section 6A of the *MLPC Act*.

404 Section 6 of the *MLPC Act*; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa N "Challenges of

functions as the central collection point of information relating to financial transactions taking place within the financial markets and financial institutions of Zimbabwe.[405] Secondly, the FIU analyses the information received in order to determine its relevance in relation to money laundering investigations.[406] Thirdly, the FIU functions as a financial intelligence distribution point to other law enforcement authorities within the anti-money laundering framework.[407]

The FIU is responsible for receiving, analysing, and disseminating information regarding money laundering and terrorism financing in Zimbabwe.[408] The FIU plays a central role in the prevention and detection of financial crimes in Zimbabwe. This is done by collecting data from financial institutions and DNFBPS to identify suspicious patterns and financial transactions.[409] Although the reliance on Artificial Intelligence (AI) in detecting and preventing money laundering has become more common worldwide, it remains uncertain whether the FIU relies on AI technologies for this purpose in Zimbabwe.[410] This follows that there is limited information available on the specific technologies and tools used by the FIU in Zimbabwe to detect and prevent money laundering activities. On the same

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Establishing Financial Intelligence Units" in Goredema C (ed) *Money laundering experiences* (ISS Pretoria 2006) 41.

405 Section 6C of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

406 Section 6C of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

407 Section 6C(3) of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

408 Section 3 of the *MLPC Act*; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Chitimira and Ncube 2021 *PER/PELJ* 13; Author Anon "The Egmont Group of Financial Intelligence Units – Zimbabwe" https://www.egmontgroup.org/en/member-profiles/africa/zimbabwe accessed 13 May 2022.

409 See section 6A-C of the *MLPC Act*; Forget L and Hocevar VS *Financial Intelligence Units: An Overview* (International Monetary Fund Washington DC 2004); see related comments by Dobrowolski Z and Sułkowski L "Implementing a Sustainable Model for Anti-Money Laundering in the United Nations Development Goals" 2020 *Sustainability* 1, 15.

410 Chitimira and Ncube 2021 *PER/PELJ* 14; Forget and Hocevar *Financial Intelligence Units* 71-72; Chitimira and Torerai 2021 *PER/PELJ* 18; Arner DW, Berberis J and Buckley RP "Fintech, Regtech and the Reconceptualisation of Financial Regulation" 2016 *Northwestern Journal of International Law and Business* 1, 4.

note, the *MPLC Act* makes no provision relating to the use of AI technologies to detect money laundering in Zimbabwe.[411] The researcher submits that the absence of provisions on the implementation of AI measures to detect money laundering activities in Zimbabwe under the *MLPC Act* affects its adequacy and robustness in combatting money laundering. This follows the fact that the detection of money laundering activities, which sometimes take place on digital platforms, could require the implementation of AI measures to adequately control money laundering activities and the associated risks in respect thereof.[412]

The FIU operates as an administrative unit within the RBZ and in terms of this structure, the FIU is headed by a director-general who is appointed by the Governor of the RBZ in consultation with the Minister of Finance.[413] Accordingly, the director-general is responsible for managing and controlling the activities of the FIU as well as the staff and agents of the FIU.[414] However, the *MLPC Act* provides that the director-general can only recruit staff from persons in the civil service.[415] The researcher argues that the relationship between the FIU and the RBZ should be closely monitored to ensure transparency, accountability and prevent overlapping regulatory functions between the two financial role players.[416] Following the fact that the FIU is hosted by the RBZ's administrative unit, it is essential to safeguard against overlapping regulatory functions when fulfilling their mandates. The effects of overlapping regulatory functions include the duplication of tasks and regulatory which affect the objectives and mandates of the FIU

411 Chitimira and Torerai 2021 *PER/PELJ* 18; Forget and Hocevar *Financial Intelligence Units* 70; Chitimira and Ncube 2021 *PER/PELJ* 14.

412 Recommendation 23 of the FATF Recommendations; Arner, Berberis and Buckley *2016 Northwestern Journal of International Law and Business* 5; see related comments by Ahmad HA, Green C and Jiang F "Mobile Money, Financial Inclusion and Development: A Review with Reference to African Experience" 2020 *Journal of Economic Surveys* 753, 762.

413 Section 6A(2) of the *MLPC Act*; see related comments by Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 126.

414 Section 6C of the *MLPC Act*.

415 Section 6C of the *MLPC Act*. Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money laundering experiences* (ISS Pretoria 2006) 41.

416 Gwintsa N "Challenges of Establishing Financial Intelligence Units" 45; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 117; see related comments by Forget and Hocevar *Financial Intelligence Units* 70.

and RBZ regarding the curbing of money laundering in Zimbabwe. Accordingly, the researcher argues that the positioning of the FIU within the RBZ may affect the effective fulfilment of its regulatory mandate.

The FIU functions as the central collection point of information relating to financial transactions that take place in the financial markets and financial institutions of Zimbabwe.[417] The FIU analyses the information received in order to determine its relevance.[418] For example, the FIU assesses the potential money laundering risk linked to suspicious transactions reports (STRs) by taking into consideration the amount of the transactions and the background information of the client. The FIU functions as an intelligence distribution point to other law enforcement authorities within the AML framework.[419] Thus, after analysing STRs the FIU shares information relating to potential money laundering activities with law enforcement authorities such as the ZRP, AFU and the NPAZ for further investigation and prosecution. The director-general is also responsible for heading the National Taskforce on Anti-Money Laundering.[420] The *MLPC Act* also establishes the National Taskforce on Anti-Money Laundering to coordinate policy direction in combatting money laundering across government departments in Zimbabwe.[421] The FIU is also required to submit an annual report in respect of the activities of the FIU to the minister of finance. It is also obliged to submit an annual report regarding its activities to the Minister of Finance who will then take it before the parliament of Zimbabwe.[422] This shows that the FIU is accountable to the Parliament of

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417 Section 6E of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

418 Section 6E of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

419 Section 6D of the MLLPC Act; Chitimira and Ncube 2021 *PER/PELJ* 13; Financial Action Task Force *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* 24; Gwintsa "Challenges of Establishing Financial Intelligence Units" 41; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

420 Section 12D(3) of the *MLPC Act*; Jayasekara 2020 *Journal of Money Laundering Control* 670; also see Muchemwa 2021 *Journal of Financial Crime* 80.

421 Section 12D(4) of the *MLPC Act*.

422 Section 6G of the *MLPC Act*.

Zimbabwe when performing its roles and functions. Such accountability is essential for ensuring and monitoring that the FIU effectively fulfils its mandates in terms of the *MLPC Act*.[423] However, the researcher argues that the *MLPC Act* does not stipulate how such reports should be compiled, nor the information that the reports should furnish. This is important for ensuring that the reports are comprehensive, not ambiguous and contain relevant information for money laundering investigations. Accordingly, the researcher argues that the lack of express checks and balances in this regard may result in ambiguous reports which may fail to serve their purpose. Moreover, the review of the reports by the Parliament is also problematic considering that some members of the Parliament are politically elected individuals who lack expertise in financial regulation. This entails that their reviews are general and lack understanding of financial regulation standards.

The *MLPC Act* requires the FIU to cooperate with other financial institutions such as law enforcement agencies to combat money laundering in Zimbabwe.[424] Although the FIU is also required to collaborate with other cross-border financial intelligence units to investigate money laundering cases, there is no evidence to show any collaboration between the FIU and other international role players.[425] The FIU is empowered to request any information, from other law enforcement authorities, that is relevant to curbing money laundering activities.[426] In addition, the FIU has the statutory duty of providing guidance to other supervisory bodies, such as the SECZ, on how to oversee the regulated entities under their jurisdiction and to ensure compliance with the requirements of the *MLPC Act*.[427] In this regard, the director-general may also direct other regulated entities

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423 Section 6 of the *MLPC Act*.

424 Sections 6B(e) and 12A of the *MLPC Act*; see related comments by Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 42, 59; Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg* 227, 236-237.

425 Section 6N of the *MLPC Act*; see related comments by Hugo and Spruyt 2018 *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg* 237; Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money Laundering Experiences* (ISS Pretoria 2006) 41; see related comments by Sathye M and Patel C "Developing Financial Intelligence: An Assessment if FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 396.

426 Section 6E read with Section 12A of the *MLPC Act.*

427 Section 3(3) of the *MLPC Act*.

from doing business with a regulated entity that fails to implement the established AML measures.[428] The *MLPC Act* provides that the FIU should assist other delegated supervisory bodies in developing their own risk-based supervision and monitoring programmes over regulated entities.[429] By gaining a proper understanding of the risks that are presented by money laundering within each sector, the FIU together with the supervisory bodies, like the SECZ and the RBZ, may develop guidelines that are more useful and robust to curb money laundering activities from taking place.[430] However, the relationship between the FIU and the delegated supervisory authorities is not clearly defined as the *MLPC Act* states that the relationship between the FIU and the delegated supervisory authorities may be defined by a directive, as issued by the director of the FIU. It is also apposite to allude that the *MLPC Act* does not adequately outline the nature and extent of cooperation between the FIU and the delegated supervisory authorities.[431] Therefore, the researcher submits that the lack of stipulated boundaries relating to the coordination between the FIU and other financial institutions could result in regulatory gaps and overlapping functions if not closely monitored.[432] The researcher also submits that the success of any anti-money laundering regulatory programme is reliant on regular monitoring and supervision to ensure compliance and accountability.[433]

The financial intelligence generated by the FIU is thereafter distributed to law enforcement authorities to monitor, investigate and ultimately prosecute money launderers as part of their statutory mandates.[434] In its most basic design, an FIU is intended to receive suspicious and threshold transaction reports from regulated

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428 Section 20(3) of the *MLPC Act*.

429 Section 3(3a) of the *MLPC Act*; see related comments by Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 59; Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law/Tydskrif vir die Suid-Afrikaanse Reg* 227, 236-237.

430 See related comments by Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52; Hugo and Spruyt 2018 *SALJ/TSAR* 238.

431 Section 3(4) and Section 3 (5) of the *MLPC Act*.

432 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 130.

433 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 130.

434 Zerzan 2011 *Bill and Melinda Gates Foundation Paper* 3.

entities.[435] Thereafter, the FIU analyses the information that is collected in a bid to determine its relevance for money laundering investigations.[436] If the information is deemed to be useful intelligence, the FIU then distributes the intelligence to other law enforcement authorities for further action and investigation.[437] The FIU is in charge of supervising, guiding, monitoring and enforcing AML measures provided under the *MLPC Act*.[438] However, the researcher submits that the absence of money laundering convictions in Zimbabwe shows that the role and functions of the FIU are not adequate. This could be attributed to the fact that the functions of the FIU are limited to receiving, analysing and disseminating financial intelligence and does not have enforcement authority. The success of the FIU in combatting money laundering depends on various factors such as the availability of resources, political will, cooperation, collaboration and the commitment of other relevant role players to combat money laundering. The researcher submits that corruption, lack of resources and lack of political will create barriers for the FIU to adequately fulfil its mandate to combat money laundering in Zimbabwe.

4.2.2 The Role and Functions of the Zimbabwe Anti-Corruption Commission

The Zimbabwe Anti-Corruption Commission (ZACC) is a body that was established under the Constitution of Zimbabwe[439] in 2005 to specifically foster the prevention of corruption in Zimbabwe.[440] The *ZACC Act* provides the details relating to the roles and functions of the ZACC, but the body derives its existence from the *Constitution*.[441] The ZACC is a part

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435 Forget and Hočevar *Financial Intelligence Units* 4; Schott PA *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism: Second Edition and Supplement on Special Recommendation IX, January 2006* (The World Bank Washington DC 2006) 57.

436 Forget and Hočevar *Financial Intelligence Units* 4; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

437 Forget and Hočevar *Financial Intelligence Units* 4; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 57.

438 Section 6B (e) of the *MLPC Act*.

439 *Constitution of Zimbabwe Amendment (No. 17) Act, 2005*, section 108A.

440 *Zimbabwe Anti-Corruption Commission Act* (Chapter 9:22) (ZACC Act), section 3; Hodzi O "Zimbabwe Anti-Corruption Commission: A Critique of Its Effectiveness in the Fight against Corruption" 2018 *Journal of African Law* 231, 233; Zhou B "The Role of the Zimbabwe Anti-Corruption Commission in Fighting Corruption" 2018 *University of Zimbabwe Research Journal* 27, 28.

441 Section 108A of the *Constitution of Zimbabwe*; Sections 11-12 of the *ZACC Act*.

of the National Task Force on money laundering in Zimbabwe.[442] The ZACC is required to promote the investigation of serious cases of corruption and fraud as well as to make recommendations to the police to arrest and detain anyone who it reasonably suspects of committing money laundering.[443]

The ZACC is constituted by at least four commissioners up to a maximum number of nine commissioners who are appointed by the president of Zimbabwe.[444] According to the *ZACC Act*, the ZACC commissioners are required to be law abiding Zimbabwean citizens who have high integrity and are known for their knowledge and experience in investigating crime or prosecuting crime.[445] Furthermore, the ZACC commissioners membership must comprise of at least one legal practitioner, one auditor or public accountant and at least one person with at least 10 years' of experience in the investigation of crime.[446] The *ZACC Act* provides that the appointment of the ZACC chairperson and deputy chairperson relies on the unregulated powers of the president.[447] The *Act* does not require the president to obtain any input nor furnish reasons for his choices on the appointment of the chairperson and deputy chairperson of the ZACC. The researcher submits that the lack of regulated checks and balances on the appointment of the chairperson and deputy chairperson of the ZACC is questionable. Although the appointees are assumed to have no political affiliations, they are politically exposed.[448] The researcher argues that politically exposed persons (PEPs) present a high risk of money laundering and their appointment in this regard compromises the mandates of the ZACC to curb money laundering in Zimbabwe.

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442 Section 12D(2) (u) of the *MLPC Act*; Hodzi 2018 *Journal of African Law* 235; Zhou 2018 *University of Zimbabwe Research Journal* 29.

443 Section 11 and section 13 read with para 1(b) of the schedule of the *Anti-Corruption Commission Act*; Hodzi 2018 *Journal of African Law* 235; Zhou 2018 *University of Zimbabwe Research Journal* 29.

444 Section 108A(1) of the *Constitution of Zimbabwe*.

445 Section 108A(2) of the *Constitution of Zimbabwe.*

446 Section 108A(2) of the *Constitution of Zimbabwe.*

447 Section 4(1) of the *ZACC Act*.

448 See related comments by Hope 2020 *Journal of Financial Crime* 298; Heath 2000 *Journal of Financial Crime* 374; Ines and Hichem 2018 *Journal of Money Laundering Control* 548.

Corruption and money laundering are not the same, but they are closely connected to each other.[449] This follows the fact that corruption creates the proceeds of crime which give rise to the need to conduct money laundering activities that conceal the true origins of the criminal proceeds.[450] In other words, corruption and money laundering reinforce the existence of each other.[451] Therefore, the ZACC and the FIU should coordinate their efforts by enforcing the anti-money laundering laws to curb corruption which will in turn reduce money laundering.[452] The ZACC has a mandate to investigate cases of corruption and related financial crimes such as money laundering.[453] The commission can investigate individuals, businesses, and organisations suspected of engaging in money laundering.

The *ZACC Act* provides that the roles and functions of the ZACC are to foster the investigation of corruption, combat corruption in public and private organisations, educate the public on the causes and effects of corruption and effectively carry out the functions of the ZACC.[454] The *Act* provides a wide-range of the functions of the ZACC, including combatting corruption through preventive measures, awareness programs and running investigations.[455] The researcher argues that the broad functions of the ZACC negatively

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449 Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 59; Mugarura N "Uncoupling the Relationship Between Corruption and Money Laundering Crimes" 2016 *Journal of Financial Regulation and Compliance* 76.

450 Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Maguchu PS "The Law is Just the Law: Analysing the Definition of Corruption in Zimbabwe" 2018 *Journal of Financial Crime* 354, 358; Kyriakos-Saad N, Esposito G and Schwarz N "The Incestuous Relationship Between Corruption and Money Laundering" 2012 *International Review of Penal Law* 160, 162; Verdugo C, "Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis" 2016 *IMF Working Paper* 5.

451 Chaikin D "Commercial Corruption and Money Laundering: A Preliminary Analysis" 2008 *Journal of Financial Crime* 269, 270 and 274; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 59; Mugarura 2016 *Journal of Financial Regulation and Compliance* 85; Ekwueme E and Bagheri M "The Intersection of Commercial Corruption and Money Laundering: A look at International Responses and the Adequacy of Regulations" https://journals.sas.ac.uk/amicus/article/download/2184/2113 accessed 21 March 2023.

452 See related comments by Ekwueme and Bagheri "The Intersection of Commercial Corruption and Money Laundering: A look at International Responses and the Adequacy of Regulations" 21.

453 Section 12 of the *Zimbabwe Anti-Corruption Commission Act*.

454 Section 11 of the *Zimbabwe Anti-Corruption Commission Act*; see related comments by Ackerman SG *Corruption and Governments Causes, Consequences and Reforms* (Cambridge University Press Cambridge 1998) 32.

455 Section 10 of the *ZACC Act*; see related discussion by Chaikin D "Commercial Corruption and Money Laundering: A Preliminary Analysis" 2008 *Journal of Financial Crime* 269, 275; Goredema C and Madzima J "An Assessment of the Links Between Corruption and the Implementation of Anti-Money Laundering Strategies and Measures in the ESAAMLG Region" *ESAAMLG Group* (18 May 2009) 23.

affect the body's ability to effectively combat corruption in Zimbabwe. This follows that, the ZACC lacks the resources and expertise to effectively perform the wide range of functions it is tasked with. Despite providing a wide range of functions, the *ZACC Act* fails to provide a threshold to the powers and functions of the body. For example, the *Act* empowers the ZACC to establish its own methods to ensure that the administration of the body runs effectively.[456] Some of the powers and functions of the ZACC require coordination with other role players such as the ZRP, the NPAZ, the attorney general's office and the FIU. For instance, in *Moyo v Sgt Chacha and Others*[457] the Constitutional Court held that the ZACC had no authority to institute an arrest but can recommend that the police arrest a suspected criminal. This shows that there is a need for the ZACC to cooperate with other role players to effectively combat corruption and in-turn prevent money laundering. However, the researcher argues that such cooperation should be expressly regulated to avoid overlapping functions and regulatory gaps. Nonetheless, the *ZACC Act* fails to provide how such cooperation should be done to guarantee its effectiveness. This shows that the *ZACC Act* is not robust enough to combat corruption in Zimbabwe. Consequently, the failure to effectively curb corruption in Zimbabwe affects the effective implementation of AML measures in Zimbabwe.

On 26 October 2020, the president of the Zimbabwe Miners Federation, Ms Henrietta Rushwaya (the accused) was caught attempting to smuggle 6kgs of gold out of Zimbabwe.[458] Upon the accused's arrest, she attempted to bribe the military intelligence officers who arrested her with USD5000 on her person. On the 1st of November 2023, the NPAZ issued an official statement to the public, notifying that the accused was taken to trial at the Anti-Corruption Court, and convicted for smuggling charges in respect of the gold which she was found in illegal possession of. The accused now awaits sentencing

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456 Section 11(d) of the *ZACC Act*; see related discussion by Goredema and Madzima "An Assessment of the Links Between Corruption and the Implementation of Anti-Money Laundering Strategies and Measures in the ESAAMLG Region" 31.

457 *Moyo v Sgt Chacha and Others* (CCZ 19/17, Constitutional Application No CCZ 73/16) [2017] ZWCC 19; Schedule 1, section 13(4) of the *ZACC Act*; see related comments by Kruger A *Organised Crime and Proceeds of Crime Law in South Africa* 2nd ed (Lexis Nexis Durban 2013) 92.

458 See *S v Chin'ono* (294 of 2023) [2023] ZWHHC 228 (12 May 2023); *Customs and Excise Control Act* Chapter 23:02, section 182(1)(a).

which will take place on the 10th of November 2023.[459] It is noteworthy to mention that the charges which were preferred against the accused related only to smuggling and no mention of the offence of money laundering was made by the NPAZ.

This shows that corruption remains rampant in Zimbabwe and corruption is being used as a means to commit money laundering through gold smuggling. In the same case, the accused was immediately granted bail due to her close relations with the NPAZ Director. The researcher submits that the nexus between corruption and money laundering in Zimbabwe is significant. The role and functions of the ZACC have not been sufficient or adequate to combat corruption, and consequently money laundering in Zimbabwe. The researcher submits that this is exacerbated by the lack of political will to prevent corruption because PEPs benefit from such corruption.

4.2.3 The Role and Functions of the RBZ

The RBZ is the primary regulator of the financial sector in Zimbabwe.[460] It is responsible for ensuring that financial institutions comply with AML laws and counter-terrorism financing (CTF) regulations.[461] The RBZ conducts inspections and audits of financial institutions to assess their compliance with AML/CTF rules and guidelines. As the central bank, the RBZ is authorised to impose sanctions on institutions that fail to comply with AML/CTF regulations.[462] The RBZ conducts enhanced CDD and KYC procedures so as to establish the origins of funds when suspicious transactions are reported by any financial institution.[463] It should also be noted that the FIU is housed by the RBZ and the RBZ

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459 BBC "Henrietta Rushwaya: Zimbabwe president's relation convicted of gold-smuggling" 1 November 2023 https://www.bbc.co.uk/news/world-africa-67290992 accessed 1 November 2023.

460 Section 2 of the *RBZ Act*; Barugahara F "Financial Inclusion in Zimbabwe: Determinants, Challenges, and Opportunities" 2021 *International Journal of Financial Research* 261, 263; Ndlovu MW, Bhiri T and Mutambanadzo T "A Comparative Analysis of the Corporate Governance Practices in Multinational and Domestic Banks in Zimbabwe" 2013 *Journal of Emerging Trends in Economics and Management Sciences* 473, 474.

461 Section 7(3) of the *RBZ Act*; Barugahara 2021 *International Journal of Financial Research* 263; Ndlovu, Bhiri and Mutambanadzo 2013 *Journal of Emerging Trends in Economics and Management Sciences* 477.

462 Section 7 of the *RBZ Act*; Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Gwintsa N "Challenges of Establishing Financial Intelligence Units" 42.

463 Section 6 of the *RBZ Act*; see related comments by Levi M and Reuter P "Money laundering" in Tonry M (ed.) *Oxford Handbook on Crime and Public Policy* (Oxford University Press, Oxford 2012) 34, 48.

reports any suspicious transactions to the FIU for further investigation.[464] This shows that the RBZ does not fulfill its directives in seclusion from other role players. It collaborates with other financial sector role players such as the FIU and the ZACC to investigate suspicious transactions and control money laundering in Zimbabwe. The RBZ reports suspicious transactions to the FIU for further investigation into money laundering activities with Zimbabwe's financial sector. In this regard, the *MLPC Act* should be amended in order to augment the regulation mechanisms of the cooperation between financial sector role players to combat money laundering in Zimbabwe. The RBZ also conducts regulatory oversight over the banks in Zimbabwe.[465] This means that the RBZ is responsible for monitoring banking activities in Zimbabwe. The RBZ is also responsible for regulating and supervising non-bank financial services such as *bureau de change* to ensure that they properly implement the anti-money laundering laws. However, it should be noted that the RBZ is not responsible for regulating MNOs and mobile money services.[466] The researcher submits that this could have been done to ensure that the RBZ is not overburdened and fails to effectively fulfill its other roles and functions. Nonetheless, it is essential that AML measures are put in place to control money laundering through mobile money platforms in Zimbabwe.

The RBZ is responsible for oversight of the entire financial markets and institutions as well as the monetary policy in Zimbabwe.[467] The RBZ regularly conducts risk assessments so as to identify and mitigate potential money laundering and terrorist financing risks in the financial sector. The risk assessments conducted by the RBZ ensure that financial institutions are taking appropriate AML measures to prevent and detect money laundering activities. It should also be noted that the RBZ functions as an enforcement authority by

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464 Gwintsa N "Challenges of Establishing Financial Intelligence Units" 42; Adeleke 2019 *South African Journal of International Affairs* 380; Maguchu 2018 *African Security Review* 281.

465 Sections 1 and 6(1) of the *RBZ Act;* Chitimira and Torerai 2021 *PER/PELJ* 13; Reserve Bank of Zimbabwe "Payment Services Providers and Participants: Anti-Money Laundering -Risk-Based Oversight and Supervision Guideline" 2021 *Annual Reports* 1, 12.

466 Chitimira and Torerai 2021 *PER/PELJ* 13; see related comments by Chitimira and Ncube 2021 *PER/PELJ* 18; Jayasekara 2020 *Journal of Money Laundering Control* 670; also see Muchemwa 2021 *Journal of Financial Crime* 80.

467 *Reserve Bank of Zimbabwe Act* [Chapter 22:15] 5 of 1999 as amended (*RBZ Act*), sections 6 and 45; see related comments by He P "A Typological Study on Money Laundering" 2010 *Journal of Money Laundering Control* 15, 22; also see Maguchu 2017 *Journal of Money Laundering Control* 145.

taking enforcement actions against financial institutions that fail to implement AML regulations. Such actions include the revocation of licences, fines and implementing compliance measures. However, the researcher argues that, despite the express role and functions of the RBZ, money laundering activities remain rampant in Zimbabwe. This is due to, *inter alia*, political interference which makes it difficult for the RBZ to fulfill its roles and functions independently.[468] In this regard, the researcher argues that the statutory regulation of AML measures alone is not adequate to combat money laundering in Zimbabwe.[469] The researcher submits that money laundering thrives in both formal and informal financial sectors.[470] The RBZ could consider the implementation of policy goals such as financial inclusion to enhance the adequacy of AML measures in Zimbabwe. This follows that the RBZ has not been successful in deterring money laundering activities in Zimbabwe. The researcher argues that imposing civil penalty orders on defaulting banks is often challenged on failure to follow the correct procedures and are subsequently withdrawn.[471] Accordingly, the researcher submits that the RBZ has not been successful in its attempts to combat money laundering in Zimbabwe. In this regard, it is important for the RBZ to determine and implement steady and stringent monetary policy measures to control money laundering activities in the Zimbabwean financial sector. "Black market" or informal market transactions, which are very common in Zimbabwe, also jeorpadise the effectiveness of the RBZ policies and AML measures. This is discussed in detail in the next chapter of this thesis.[472]

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468 Fundira B "Money Laundering in Zimbabwe. 2004-2006" in *Confronting the Proceeds of Crime in Southern Africa* (Institute for Security Studies Pretoria 2007) 56; Chitimira and Ncube 2021 *PER/PELJ* 3; see related comments by Menz M "Beyond Placement, Layering and Integration – The Perception of Trade-Based Money Laundering Risk in UK Financial Services" 2019 *Journal of Money Laundering Control* 614, 619; Sittlington S and Harvey J "The Consequences of Money Laundering and Financial Crime" 2018 *Crime Law and Social Change* 421, 430.

469 United Nations Office on Drugs and Crime"Zimbabwe: Progress and Challenges in Anti-Money Laundering and Combating the Financing of Terrorism." 2016 https://www.unodc.org/documents/terrorism/Publications/Zimbabwe_AML-CFT_Report_2016.pdf accessed 12 March 2023.

470 Zabyelina Y "Costs and Benefits of Informal Economy: Shuttle Trade and Crime at Cherkizovsky Market" 2012 *Global Crime* 95, 96; Vlcek W "Global Financial Governance and the Informal: Limits to the Regulation of Money" 2018 *Crime, Law and Social Change* 249, 251; Chitimira and Ncube 2021 *PER/PELJ* 5.

471 Banking (Money Transmission, Mobile Banking and Mobile Money Interoperability) Regulations, 2020 (SI 80 of 2020); Section 2(2) of *the Constitution*.

472 See paragraph 4.6 of this thesis.

4.2.4 The Role and Functions of the ZRP

A robust AML regulatory framework is dependent upon an effective police force.[473] The ZRP has a constitutional mandate to enforce the laws of Zimbabwe.[474] In terms of the current *Constitution* of Zimbabwe, the ZRP is responsible for the investigation, detection and deterrence of all forms of crime.[475] Thus, the main functions of the ZRP are to identify criminal offenders and criminal activities in order to prevent crimes and to ensure that criminal offenders are brought before the courts so as to be punished.[476] The ZRP is headed by the Commissioner of Police and is made up of various units such as the Duty Uniform Branch, the Traffic Branch, the Police Protection Unit, the Support Unit, the Criminal Investigation Department (CID), the Staff Branch, the Technicians' Branch and a Police Constabulary.[477] Moreover, the CID unit has a Serious Fraud Squad which enforces the *MLPC Act*.[478] In order for the CID to conduct effective investigations of money laundering activities in Zimbabwe, the officers therein should be specially trained and authorised to conduct specific undercover operations, asset investigations, and the use of specialised technical and technological resources to detect money laundering.[479]

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473 Matunhu J and Matunhu V "Policing and Law Enforcement in Zimbabwe" in Mbuba JM (ed) *Global Perspectives in Policing and Law Enforcement* 43; Makwerere D, Chinzete GT and Musorowegomo C "Human Rights and Policing: A Case Study of Zimbabwe" 2012 *International Journal of Humanities and Social Science* 129, 132.

474 Section 207(1)(b) of the *Constitution of Zimbabwe* read with section 219 of the *Police Act* [Chapter 11:10] 2 of 1995 (*Police Act*); Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 44; Dissel A and Frank C *Policing and Human Rights: Assessing Southern African Countries' Compliance with the SARPCCO Code of Conduct for Police Officials* (African Minds Cape Town 2012) 178.

475 Sections 207(1)(b) and 219 of the *Constitution of Zimbabwe*; read with section 219 of the *Police Act* [Chapter 11:10] 2 of 1995 (*Police Act*); Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 43; Dissel and Frank *Policing and Human Rights: Assessing Southern African Countries' Compliance with the SARPCCO Code of Conduct for Police Officials* 178.

476 Makwerere, Chinzete and Musorowegomo 2012 *International Journal of Humanities and Social Science* 132; Mashingaidze 2014 *Corporate Ownership & Control* 554; Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 44.

477 Sections 4 and 5 of the *Police Act*; Makwerere, Chinzete and Musorowegomo 2012 *International Journal of Humanities and Social Science* 130; Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 44 and 46.

478 Section 12D(2)(v) of the *MLPC Act*; Mashingaidze 2014 *Corporate Ownership & Control* 554.

479 See related comments by Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 97.

Accordingly, the CID unit is responsible for investigating all criminal matters in relationship with the financial institutions and financial markets in Zimbabwe.[480]

The National Task Force on Money Laundering consists of the CID Serious Fraud Squad department of the ZRP which is responsible for enforcing AML regulations provided in the *MLPC Act*.[481] The consistent implementation of AML laws also relies upon the police force for effective enforcement. In this regard, the ZRP is responsible for deterring, reporting and investigating all forms of crime, including money laundering offences.[482] Thus, the main functions of the ZRP are to identify criminal offenders and criminal activities in order to prevent crimes and to ensure that criminal offenders are brought before the courts so as to be punished.[483] The ZRP works closely with the FIU and other agencies to gather evidence and build cases against suspected money launderers.

The ZRP also conducts raids and seizures of assets that are believed to be the proceeds of crime. The ZRP cooperates with the NPAZ to investigate and gather relevant information required to prosecute suspected cases.[484] The ZRP also cooperates with the RBZ, the ZACC, the ZIMRA and the Auditor General to investigate and gather information relating to suspected money laundering cases. Such information will be used by the NPAZ to prosecute money laundering cases in court. The CID through its Interpol unit, cooperates with police forces from other countries to investigate money laundering activities in Zimbabwe.[485] It should be noted that, in order for the CID to conduct effective money laundering investigations in Zimbabwe, the officers should be specially trained and

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480 Dissel and Frank *Policing and Human Rights* 197; Mashingaidze 2014 *Corporate Ownership & Control* 554.

481 Section 12D(2)(v) of the *MLPC Act*; Mashingaidze 2014 *Corporate Ownership and Control* 554; Sections 4 and 5 of the *Police Act*; Makwerere, Chinzete and Musorowegomo 2012 *International Journal of Humanities and Social Science* 130; Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 44 and 46.

482 Section 219 of the *Constitution of Zimbabwe*.

483 Makwerere D, Chinzete GT and Musorowegomo C "Human Rights and Policing: A Case Study of Zimbabwe" 2012 *International Journal of Humanities and Social Science* 129, 132; Mashingaidze 2014 *Corporate Ownership and Control* 554; see related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 128.

484 Dissel and Frank *Policing and Human Rights* 197; Mashingaidze 2014 *Corporate Ownership and Control* 554.

485 Eastern and Southern Africa Anti-Money Laundering Group Report 2016 30; Mashingaidze 2014 *Corporate Ownership and Control* 554; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 129.

authorised to conduct specific undercover operations, investigations and the use of specialised technical and technological resources to detect money laundering.[486] However, the responsible authority has not been able to sponsor such training programmes to ensure that the department has adequate expertise and technology to investigate and detect money laundering activities in Zimbabwe.[487] The researcher argues that the lack of resources and relevant expertise in this regard has deterred successful investigations of money laundering cases by the ZRP in Zimbabwe.

The researcher submits that the ZRP has not been adequately contributing to the efforts to combat money laundering in Zimbabwe. Significantly, there has been a "catch and release" pattern by the ZRP in its money laundering investigations. Catch and release is a practice by the ZRP in which it arrests money laundering suspects but later releases them without pursuing any money laundering charges.[488] In *S v Chikukwa*[489] a prominent businessman was arrested in 2013 on charges of fraud and money laundering and was immediately released on bail. The ZRP never pursued this case to establish a conviction on money laundering charges. The researcher argues that the ZRP's catch and release practice aids perpetrators to escape prosecution and convictions on money laundering. The catch and release practice could be a direct result of bribery and corruption within the ZRP. The researcher submits that this practice enables money launderers to commit crime with impunity.

4.2.5 The Role and Functions of the NPAZ

The NPAZ is a statutory body corporate that was established under the *National Prosecuting Authority Act* to carry out criminal prosecutions on behalf of the state in

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486 See also related comments by Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 97; also see Simwayi and Haseed 2012 *Journal of Money Laundering Control* 128; Makwerere, Chinzete and Musorowegomo 2012 *International Journal of Humanities and Social Science* 130; Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 44 and 46.

487 Dissel and Frank *Policing and Human Rights* 197; Mashingaidze 2014 *Corporate Ownership and Control* 554; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 129.

488 See related comments by Matunhu and Matunhu "Policing and Law Enforcement in Zimbabwe" 45.

489 *S v Chikukwa* (CRB 146 of 2016; HH 813 of 2016) [2016] ZWHHC 813 (3 October 2016).

Zimbabwe.[490] The NPAZ is headed by the Prosecutor-General, who is responsible for instituting and conducting criminal proceedings on behalf of the state.[491] In executing this mandate, the Prosecutor-General is empowered to carry out any necessary functions that are incidental to instituting and conducting criminal proceedings.[492] In this regard, it can be said that the NPAZ contributes to the curbing of money laundering by conducting investigations on money laundering related matters and presiding over the prosecution of the cases in court. To ensure successful and effective prosecution of money laundering cases in Zimbabwe, the *MLPC Act* establishes the Asset Forfeiture Unit (AFU) as a department of the NPAZ.[493]

The AFU facilitates the identification, tracing, freezing and confiscation of the proceeds of crime. This entails that the AFU is specifically trained and equipped to perform such functions as a measure to control and curb money laundering in Zimbabwe. The researcher submits that the establishment of the AFU as a unit that specifically deals with the investigation of money laundering cases under the NPAZ is commendable. This follows the fact that the NPAZ is accountable for the investigation and prosecution of all criminal offences and the successful investigation and prosecution of money laundering cases requires relevant expertise. Accordingly, the establishment of the AFU was a relevant measure to curb and control money laundering in Zimbabwe.

The AFU of the NPAZ is required to carry out its roles and functions in collaboration with the FIU, the ZACC, the ZIMRA and other law enforcement authorities.[494] The NPAZ also collaborates with other international organisations by sharing information, assisting in

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490 The NPAZ is established in terms of section 258 of the *Constitution of Zimbabwe*; Section 3 of the *National Prosecuting Authority Act* [Chapter 7:20] 4 of 2014 (*National Prosecuting Authority Act*); Eastern and Southern Africa Anti-Money Laundering Group Report 2016 14.

491 Section 258 of the Constitution; Section 12(1)(a) of the *National Prosecuting Authority Act*; see r elated comments by Mujuzi JD "Private Prosecutions in Zimbabwe: Victim Participation in the Criminal Justice System" 2016 *African Journals Online* 37, 38.

492 Section 12(1)(a) of the *National Prosecuting Authority Act*; Mujuzi 2016 *African Journals Online* 39.

493 Section 27A(4) of the *MLPC Act*; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 35.

494 Section 27A(4) of the *MLPC Act*; see related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 132; Maguchu 2018 *African Security Review* 281; Maguchu 2017 *Journal of Money Laundering Control* 143.

investigations and supporting international efforts to combat money laundering.[495] The FATF recommendations require member states to cooperate and coordinate with each other to combat money laundering and other related offences.[496] In this regard, the roles and functions of the NPAZ conform to the FATF recommendation to cooperate and coordinate. The researcher submits that such cooperation is a prerequisite to effectively combat money laundering. This follows the fact that sharing information relating to money laundering with other cross-border financial role players ensures that the NPAZ remains updated on any information relating to money laundering globally. Accordingly, it can be said that the NPAZ plays a significant role in controlling and preventing money laundering in Zimbabwe. However, the researcher submits that the lack of successfully prosecuted cases relating to money laundering by the NPAZ in Zimbabwe shows that the NPAZ is not effectively fulfilling its mandates. This follows that in 2019, the RBZ reportedly froze 30 bank accounts for illegal foreign currency dealing.[497] Nonetheless, there is no record of successful prosecution of the perpetrators. The researcher submits that there is need for the NPAZ to actively cooperate with other role players such as the RBZ, the FIU and the ZRP to investigate money laundering matters in Zimbabwe.

It is argued that the Zimbabwe Republic Police (ZRP) and the NPAZ do not have a clear and adequate understanding of the *MLPC Act*. This assertion is evidenced by the case of *Mehluleli Dube v Mungwari Esquire NO and the State*.[498] In this case, the NPAZ sought to add money laundering charges inappropriately without considering the proper elements which are required to satisfy the conditions for the existence of a money laundering offence.[499] In fact, the High Court dismissed the money laundering charges which had

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495 See related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 132; Maguchu 2018 *African Security Review* 281; Maguchu 2017 *Journal of Money Laundering Control* 143.

496 Financial Action Task Force "International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation" Updated February 2023 (FATF Recommendations), Recommendation 2; Schott *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism* 86.

497 Mukwazhi T "Zimbabwe Central Bank Freezes 30 Accounts over Illegal Activities" *Africa News* (29 September 2019) 1.

498 *Mehluleli Dube V Mungwari Esquire N.O. and the State* HH-101-18; HC 10875/17 (*Dube* case).

499 Section 8 of the *MLPC Act;* see related discussion by Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 142; also see Gubbay AR "Zimbabwe: Report on Money Laundering (No. 61)" 1998 *Journal of Money Laundering Control* 277, 281.

been preferred against the accused as he was conducting his duties and there was no financial gain or any form of benefit to him at any point.[500] Therefore, the researcher submits that attempting to add money laundering charges indiscriminately to cases reflects an inadequate understanding of the *MLPC Act* by the law enforcement authorities. Without the guidance of comprehensive supporting regulations to the *MLPC Act*, it may remain difficult for the police to understand how to enforce the AML measures in order to effectively curb money laundering in Zimbabwe. In another case, a prominent businessman and politician, Philip Chiyangwa, was in 2017 arrested on suspicion of money laundering. He was released on bail and the NPAZ eventually withdrew and dropped charges against him without conducting any further inquiries into the charges nor substantive reasons for withdrawal. In an aforementioned case against the president of Zimbabwe Miners Federation[501] the charges against the accused were also withdrawn by the NPAZ due to suspected corruption and bribery within the NPAZ. In this regard, the researcher submits that due to political influence and corruption, the NPAZ has not adequately contributed to the efforts to combat money laundering in Zimbabwe. This is also evidenced by minimal case law on money laundering, despite Zimbabwe being labeled a high money laundering risk country.

4.2.6 The Role and Functions of the Securities and Exchange Commission of Zimbabwe

The Securities and Exchange Commission of Zimbabwe (SECZ) is a statutory body that was established in terms of the *Securities Act* in 2008.[502] The SECZ is recognised under the *MLPC Act* as a delegated supervisory authority of the securities industry in

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500 *Dube case* para 4; see discussion by Maguchu 2017 *Journal of Money Laundering Control* 142; Gubbay 1998 *Journal of Money Laundering Control* 281; Gubbay AR "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380-382.

501 See para 4.2.2 above.

502 *Securities and Exchange Act* [Chapter 24:25] 17 of 2004, section 3; Mazviona BW and Nyangara D "A Test of the Weak Form Efficiency of the Zimbabwe Stock Exchange After Currency Reform" 2013 *International Journal of Business, Economics and Law* 43, 44; Sunde T and Zivanomoyo J "The Random Walk Hypothesis for the Zimbabwe Stock Exchange" 2008 *Journal of Social Sciences* 216, 219.

Zimbabwe.[503] The roles and functions of the SECZ include preventing market manipulation, fraud and financial crime, providing investor protection and promoting market integrity and investor confidence in Zimbabwean financial markets.[504] The SECZ is tasked with overseeing the securities industry in Zimbabwe. This entails that the SECZ is responsible for investigating and enforcing penalties against market participants who violate securities laws. This function enables the SECZ to ensure that financial institutions and business entities comply with regulatory standards and conduct their business in a fair and transparent manner.[505] The SECZ is empowered to investigate any matters relating to market conduct violations in Zimbabwe.[506] The researcher submits that money laundering is a form of financial markets violation, which entails that the SECZ is responsible for imposing penalties against money laundering perpetrators. However, it should be noted that the *SECZ Act* does not expressly regulate money laundering.[507] Nonetheless, the researcher argues that the SECZ has a supervisory role of enforcing the anti-money laundering laws through its duty to create a safe and stable environment for investors.[508]

The SECZ plays a significant role in protecting investors and maintaining market integrity in Zimbabwe.[509] This is done by preventing financial crimes such as money laundering which affect the integrity of the financial markets. In this regard, the SECZ is tasked with reviewing and updating financial sector regulations to ensure that they conform to the

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503 Section 12D(2)(t) of the *MLPC Act*; Ncube P and Chitimira H "The Statutory Prohibition of Market Manipulation in Zimbabwe" 2020 *Juridical Tribune* 130, 133; Mazviona and Nyangara 2013 *International Journal of Business, Economics and Law* 45.

504 Section 4(1) of the *SECZ Act*.

505 See related comments by Chitimira H *Market Abuse Regulation in SADC: South Africa, Namibia,Botswana and Zimbabwe* (Juta Cape Town 2022) 107; Saungweme PW, Ricardo P and Pradeep B "A Framework for Combating Insider Trading on Developing Stock Exchanges: Evidence from the Zimbabwean Stock Exchange" 2013 *African Journal of Business Management* 1630, 1635; Chitimira H "Statutory Challenges Affecting the Enforcement of the Insider Trading Prohibition in Zimbabwe" 2021 *Acta Universitatis Danubius Juridica* 7, 12.

506 See related comments by Chitimira H and Mokone P "The Pros and Cons for Insider Trading Regulation in Zimbabwe" 2020 *Law and Financial Markets Review* 102, 106; Chitimira *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana and Zimbabwe* 108; Munangagwa CL "The Economic Decline of Zimbabwe" 2009 *Gettysburg Economic Review* 110, 115.

507 Sections 87-99 of the *SECZ Act.*

508 Mazviona and Nyangara 2013 *International Journal of Business, Economics and Law* 43.

509 See related comments by Saungweme, Ricardo and Pradeep 2013 *African Journal of Business Management* 1634; also see Chitimira and Mokone 2020 *Law and Financial Markets Review* 105; see also Munangagwa 2009 *Gettysburg Economic Review* 113.

continuously changing global financial markets standards. However, the researcher argues that the SECZ has failed to detect, investigate and influence any successful prosecution relating to money laundering cases in Zimbabwe.[510] The researcher submits that this could be due to the lack of expressly regulated cooperation and coordination between the SECZ, the ZRP, the NPAZ and other cross-border financial role players. In addition, the SECZ does not have access to any artificial intelligence systems to detect or gather information relating to money laundering activities in Zimbabwe.[511] The SECZ also lacks relevant expertise to effectively detect financial crimes, including money laundering, in Zimbabwe. In this regard, the researcher submits that there are several flaws and challenges that hinder the SECZ from adequately fulfilling its roles and functions in Zimbabwe. There have not been any successful money laundering cases investigated or reported by the SECZ. This shows that the enforcement mechanisms employed by the SECZ to curb money laundering are not adequate to curb money laundering.

4.2.7 The Role and Functions of the Zimbabwe Revenue Authority

ZIMRA is a statutory body corporate that was established in 2001 under the *Revenue Authority Act* to assess, collect and enforce the payment of taxes on behalf of the government of Zimbabwe.[512]In order to effectively carry out its duties, ZIMRA is empowered to do anything for the purposes of improving the skills, knowledge and usefulness of its employees such as providing training, education and research.[513] Moreover, ZIMRA can institute and defend proceedings in any court or tribunal for the

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510 Chitimira *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana and Zimbabwe* 146; Ncube PT and Chitimira H "The Statutory Prohibition of Market Manipulation in Zimbabwe" 2020 *Juridical Tribune Journal* 130, 141; Chitimira 2021 *Acta Universitatis Danubius Juridica* 22.

511 See related comments by Ncube and Chitimira 2020 *Juridical Tribune Journal* 141; Chitimira *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana and Zimbabwe* 147; Chitimira and Mokone 2020 *Law and Financial Markets Review* 105.

512 Section 3 of the *Revenue Authority Act* [Chapter 23:11] 17 of 1999 as amended (*Revenue Authority Act*); African Forum and Network on Debt and Development Report 2011 *What Has Tax Got to do With Development: A Critical Look at Zimbabwe's Tax System* 1, 15.

513 Para 17 of Schedule 2 of the *Revenue Authority Act*; Matamande W, Nyikahadzoi L, Taderera E and Mandimika E "The Effectiveness of Internal Controls in Revenue Management: A Case Study of Zimbabwe Revenue Authority (ZIMRA)(2011-2012)" 2014 *Journal of Case Research in Business and Economics* 1, 3; Mazikana AT "The Effect of Automating Customs Systems on Performance of Zimbabwe Revenue Authority" 2019 *Political Economy: Taxation, Subsidies, and Revenue eJournal* 1, 4.

recovery of any revenues, and to take such other steps as may be necessary to recover revenues on behalf of the government of Zimbabwe.[514] As part of carrying out its functions, ZIMRA has extensive powers of obtaining information, including information on any deeds, plans, instruments, books, records, accounts, trade lists, stock lists or documents held by any person in Zimbabwe.[515] Furthermore, ZIMRA has powers to enter any mine or premises in Zimbabwe to inspect, examine or take samples as part of information gathering to fulfil its duties.[516] ZIMRA is bound to secrecy in its functions and does not share the information that it obtains as it carries out its functions.[517] However, this secrecy and obligation of non-disclosure of information is set aside regarding any intelligence which may be required by the FIU as part of its efforts to detect, investigate or prevent money laundering activities in terms of the *MLPC Act.*[518] Money laundering is closely linked to the violation of tax laws since any income that is properly accounted for may invite further investigations by ZIMRA.[519]

Several measures have been implemented by the ZIMRA to combat corruption as an underlying crime of money laundering. Scanners have been installed at border entry

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514 Para 22 of Schedule 2 of the *Revenue Authority Act*; Matamande *et al* 2014 *Journal of Case Research in Business and Economics* 3; see related comments by Siavhundu T and Nyabunze A "An Investigation into the Effectiveness of Border Control Methods in Safeguarding Revenue: The Case of Zimbabwe Revenue Authority" 2020 *Diverse Journal of Business and Economic Growth* 8, 11.

515 Section 34F(2) of the *Revenue Authority Act;* see related comments by Matamande *et al* 2014 *Journal of Case Research in Business and Economics* 3; Siavhundu and Nyabunze 2020 *Diverse Journal of Business and Economic Growth* 11; Mazikana 2019 *Political Economy: Taxation, Subsidies, and Revenue eJournal* 4; Mswazi TG "An Assessment of ZIMRA Anti-Smuggling Initiative on Tax Revenue: A case of Zimbabwe" 2021 *International Journal of Management IT and Engineering* 8, 10.

516 Section 34F(10) of the *Revenue Authority Act;* see related comments by Matamande *et al* 2014 *Journal of Case Research in Business and Economics* 3; Siavhundu and Nyabunze 2020 *Diverse Journal of Business and Economic Growth* 11; Mazikana 2019 *Political Economy: Taxation, Subsidies, and Revenue eJournal* 4.

517 Section 34A of the *Revenue Authority Act*; see related comments by Eastern and Southern Africa Anti-Money Laundering Group Report 2016 48.

518 Section 34A(3a)(a-b) of the *Revenue Authority Act;* see related discussion by Adegbola O, Matowanyika K, and Chena T "An Analysis of the Aspects Hampering Informal Sector Tax Administration: Case of the Zimbabwe Revenue Authority" 2021 *International Journal of Financial Research* 10, 14; also see Mazikana 2019 *Political Economy: Taxation, Subsidies, and Revenue eJournal* 4.

519 Chaikin D "Money laundering: An Investigatory Perspective" 1991 *Criminal Law Forum* 467, 475; Adegbola, Matowanyika and Chena 2021 *International Journal of Financial Research* 14; Siavhundu and Nyabunze 2020 *Diverse Journal of Business and Economic Growth* 11; Mswazi 2021 *International Journal of Management IT and Engineering* 8, 10.

points to detect substances such as drugs, minerals and undeclared cash being smuggled in and out of the country through land border posts.[520] In some instances, the ZIMRA has also effected high-way patrols and roadblocks as a measure to prevent smuggling.[521] However, the success of these measures is often hindered by corrupt officials who accept bribes and let perpetrators in and out of the country. Accordingly, the researcher submits that there is need for stringent anti-corruption measures to ensure the effective operation of the ZIMRA to combat money laundering in Zimbabwe.[522] Overall, ZIMRA has not successfully implemented AML measures to combat and curb money laundering activities in Zimbabwe. Smuggling is one way that perpetrators successfully use to move money across borders due to poor surveillance measures at Zimbabwe's entry and exiting points.

4.2.8 The Role and Functions of Lawyers and Accountants

The amendments made to the *MLPC Act* through the *Presidential Powers (Temporal Measures) Act* included lawyers on the list of professionals who should implement AML measures to prevent and control money laundering in Zimbabwe.[523] In terms of these amendments, lawyers and accountants are required to conduct customer due diligence procedures on their clients, monitor their transactions and report any suspicious transactions to the FIU.[524] These measures are implemented in tandem with the FATF standards. According to Maguchu, lawyers and accountants are regarded as gatekeepers of money laundering activities due to their ability to access services that can assist

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520 Chamisa MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 35; Z imunya N *et al* "Reducing Illicit Financial Flows to Boost Domestic Resource Mobilisation for Financing Sustainable Development in Africa" 2022 *Futures-Ezekiel Guti University Journal of Leadership, Governance and Development* 24, 31.

521 Chamisa 2019 *African Tax and Customs Review* 32; Zimunya et al 2022 *Futures-Ezekiel Guti University Journal of Leadership, Governance and Development* 31; Adegbola, Matowanyika and Chena 2021 *International Journal of Financial Research* 14.

522 See related comments by Peurala D "Assessing the Corruption Prevention Measures and the Bribery Criminalisation in the Finnish: Anti-Corruption Framework" 2011 *European Journal of Crime, Criminal Law and Criminal Justice* 319, 331; Zimunya et al 2022 *Futures-Ezekiel Guti University Journal of Leadership, Governance and Development* 31.

523 Maguchu 2017 *Journal of Money Laundering Control* 139; see related comments by Paton PD "Cooperation, Co-option or Coercion? The FATF Lawyer Guidance and Regulation of the Legal Profession" 2011 *Journal of the Law Profession* 165, 168.

524 Maguchu 2017 *Journal of Money Laundering Control* 139; Zacharias FC "Lawyers as Gatekeepers" 2014 http://papers.ssrn.com/sol3/papers.cfm? abstract_id591655 accessed 19 January 2022.

perpetrators to conceal the proceeds of criminal activities.[525] For example, perpetrators can use lawyers' trust accounts as a bank account into which they deposit criminal proceeds for onward transfers to various payees according to the instructions of the clients.[526] In this regard, the researcher submits that there is a need for legal professionals to cooperate with other financial sector role players such as the FIU and the ZRP to safeguard against and prevent money laundering in Zimbabwe. This can be done through sharing relevant information with each other to detect suspicious transactions.

Lawyers and accountants are usually used by perpetrators because of the complexity of money laundering which normally involves domestic and international financial systems. As such, it is usually difficult for ordinary criminals to successfully conduct money laundering without detection, hence the need for professionals such as lawyers and accountants.[527] Lawyers also provide services that are connected to economic activities and involve large amounts of money, such as buying or selling of property, which can be easily used to conceal proceeds of crime.[528] Also, the conduct of lawyers is highly governed by professional ethics and privacy such that perpetrators do not worry that their criminal activities will be reported to responsible authorities. According to the Mutual Evaluation Report by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) lawyers and accountants in Zimbabwe are easily targeted by money launderers because they have not implemented AML measures in their businesses.[529] Despite the requirement for lawyers to implement AML measures such as CDD, enhanced

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525 Maguchu 2017 *Journal of Money Laundering Control* 139; Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *PER/PELJ* 65, 70; Zacharias "Lawyers as Gatekeepers " Page Anon.

526 Haman and Koen 2012 *PER/PELJ* 70; Paton 2011 *Journal of the Law Profession* 169; Maguchu 2012 *Journal of Money Laundering Control* 142.

527 Haman and Koen 2012 *PER/PELJ* 70; Paton 2011 *Journal of the Law Profession* 169; Maguchu 2012 *Journal of Money Laundering Control* 142; He P "A Typological Study on Money Laundering" 2010 *Journal of Money Laundering Control* 15, 28.

528 See related comments by Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 49; also see Chitimira and Munedzi 2023 J*ournal of Money Laundering Control* 135; He 2010 *Journal of Money Laundering Control* 28.

529 ESAAMLG "Anti-money Laundering and Counter-terrorist Financing Measures Zimbabwe 5th Follow-up Report on Technical Compliance Rerating" 2018 http://www.esaamlg.org accessed 12 May 2022; Maguchu 2012 *Journal of Money Laundering Control* 142.

due diligence, ongoing due diligence and reporting suspicious transactions,[530] lawyers have not been able to report suspicious cases of money laundering. The researcher submits that the failure by lawyers to report money laundering cases cannot be attributed to legal practitioner–client privilege and confidentiality provisions.[531] This follows the fact that in Zimbabwe, client confidentiality applies to all information obtained while acting on behalf of a client, whether obtained from the client or from a third party.[532] Nonetheless, the *Civil Evidence Act* provides that confidential information that renders a person liable for forfeiture in favor of the state in terms of any laws in Zimbabwe may not be protected.[533] Accordingly, the researcher submits that lawyers have always had a gatekeeping role in the AML laws in Zimbabwe. However, the researcher argues that the failure by lawyers to report suspicious transactions is attributed to the financial burden that law firms will bear to assess each client's profile, conduct continuous due diligence, record keeping and training of their personnel to detect money laundering activities. Consequently, lawyers fail to adequately implement AML measures and report suspicious transactions to curb money laundering in Zimbabwe.

4.2.9 The Role and Functions of the Government

The government of Zimbabwe plays a significant role in combatting money laundering in Zimbabwe. This follows that the government is responsible for establishing laws and policies to combat money laundering.[534] The government's functions in combatting

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530 See sections 15, 17, 18, 20, 24-26 and 30-31 of the *MLPC Act*; Maguchu 2012 *Journal of Money Laundering Control* 144; Zacharias "Lawyers as Gatekeepers" Page Anon.

531 See related comments by Crozier B *Legal Ethics: A Handbook for Zimbabwean Lawyers* (Legal Resources Foundation, Harare 2009) 35; Goredema C (ed) "Money Laundering Experiences" 2006 www.issafrica.org/uploads/ FULL124PDF.PDF (accessed 5 March 2021) Page Anon; Michmerhuizen S "Confidentiality, Privilege: A Basic Value in Two Different Applications, Centre for Professional Responsibility" 2007 www.americanbar.org/content/dam/aba/administrative/professional_responsibility/confidentiality or_attorney.authcheckdam.pdf (accessed 15 December 2022) Page Anon.

532 *Civil Evidence Act* [Chapter 8:01] section 8; Crozier *Legal Ethics: A Handbook for Zimbabwean Lawyers* 35; Goredema "Money Laundering Experiences" Page Anon.

533 Section 8(5)(b) of the *Civil Evidence Act*; Crozier *Legal Ethics: A Handbook for Zimbabwean Lawyers* 42.

534 Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US dollar" 2022 *Journal of Money Laundering Control* 306, 309; Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 315, 320.

money laundering are proactive and reactive. The role of the government in curbing money laundering is multifaceted and constitutes legal, regulatory, enforcement measures and international cooperation to prevent money laundering. The government of Zimbabwe has participated in initiatives to curb money laundering in Zimbabwe. In 2020, the government issued a directive to stop trade in fungible stock so as to place the foreign currency exchange rate under control.[535] This decision was influenced by the rise in illicit dealings regarding fungible stocks. However, this decision had adverse effects on Zimbabwe's economy as it negatively affected investor confidence and the integrity of Zimbabwe's financial markets. Accordingly, the researcher submits that the government's authority to enact laws and policies has in some instances been effective to curb money laundering in Zimbabwe.

The government's reactive role entails providing and maintaining the infrastructure and resources which are required by role players to combat money laundering. Thus, the government should provide role players with relevant resources to fulfil their money laundering mandates. On this note, the researcher submits that the government has not been successful in ensuring that financial role players and enforcement agencies have adequate resources to fulfil their mandates. This follows that the FIU and the SECZ experience challenges in fulfilling their mandates due to a lack of adequate resources. For example the FIU could enhance its functions by implementing AI systems to monitor transactions and detect suspicious transactions, which are currently unavailable in Zimbabwe.[536] Furthermore, the researcher provides that government officials have, to a greater extent, been responsible for the rise in money laundering in Zimbabwe.[537]

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535 Chtimira and Ncube 2021 *PER/PELJ* 6; See *Exchange Control (Suspension of Fungibility of Certain Shares) Order* General Notice 583 of 2020; Ndoro 2020 https://iharare.com/zimbabwe-suspends-fungibilityof-shares-to-control-exchange/ accessed 10 October 2023.

536 Han J, Huang Y, Liu S and Towey K "Artificial Intelligence for Anti-Money Laundering: A Review and Extension" 2020 *Digital Finance* 213, 215; Kute DV, Pradhan B, Shukla N and Alamri A "Deep Learning and Explainable Artificial Intelligence Techniques Applied for Detecting Money Laundering–A Critical Review" 2021 *IEEE Access* 82300, 82304; Alhajeri R and Alhashem A "Using Artificial Intelligence to Combat Money Laundering" 2023 *Intelligent Information Management* 284, 287.

537 Kurebwa J "Implications of Illicit Financial Flows on Zimbabwe's Development" 2021 *International Journal of World Policy and Development Studies* 27, 30; Goredema C and Montsi F "Towards Effective Control of Money Laundering in Southern Africa: Some Practical Dilemmas" 2002 *African Security Studies* 5-15.

Corruption and looting of state resources by government officials have also affected the adequacy and robustness of AML measures in Zimbabwe. During the COVID-19 pandemic, the Minister of Health was dismissed from office for looting COVID-19 relief funds and criminal abuse of office.[538] Accordingly, the researcher submits that the government of Zimbabwe has failed to implement measures to combat and curb money laundering in Zimbabwe. Government officials are corrupt and do not uphold statutory provisions to prevent money laundering in Zimbabwe.

4.3 Conclusion

To conclude, the AML/CTF regulatory framework in Zimbabwe involves the roles and functions of various financial sector role-players, such as the FIU, the RBZ, the ZRP, the SECZ and professionals such as lawyers and accountants. The researcher submits that, despite the express roles and functions of each financial sector role player, money laundering remains a threat to the Zimbabwean economy. This follows the fact that the relevant financial role players encounter several challenges that hinder the effective fulfillment of their functions to combat money laundering in Zimbabwe. Also, the researcher submits that the lack of express regulations to govern coordination between the financial role players to curb money laundering in Zimbabwe is also problematic. The effectiveness and adequacy of the roles and functions of the NPAZ and the ZRP are significantly affected by corruption and political influence. Money laundering cases against PEPs and influential persons are eventually withdrawn due to bribery and corruption with the NPAZ and the ZRP. Accordingly, the researcher submits that the roles and functions of relevant role players are affected by corruption, political influence, the lack of political will and adequate resources to combat money laundering in Zimbabwe.

The next chapter provides an analysis of the flaws and challenges that affect the regulation and implementation of AML measures in Zimbabwe. This is done to identify

538 Mpofu Mi, Tshuma L and Msimanga MJ "Digital Newspapers as Watchdogs of Corruption in '2nd Republic'Zimbabwe: A Critical Analysis of ZimLive. com and Zim Morning Post's 'Covidgate'Reports" 2023 *New Journalism Ecologies in East and Southern Africa: Innovations, Participatory and Newsmaking Cultures* 133, 135.

the regulatory gaps and flaws that exist in the current AML regulatory framework in Zimbabwe.

CHAPTER FIVE

THE REGULATION AND IMPLEMENTATION OF ANTI-MONEY LAUNDERING LEGISLATION IN SOUTH AFRICA

5.1 Introduction

In Southern Africa, South Africa has one of the largest economies and it has the most developed financial markets and financial institutions in the region.[539] By virtue of South Africa being the largest financial hub in Southern Africa, it lays bare and is lucrative for financial criminal practices as often, such practices are prevalent in countries with larger economies.[540] In this regard, South Africa's financial markets and financial institutions are inherently vulnerable to abuse by criminals through illicit activities such as money laundering, corruption, fraud and terrorism.[541] Annually, approximately eight billion United States of American Dollars (USDs) is laundered through the formal banking institutions in South Africa.[542] Thus, the enforcement of anti-money laundering legislation is pivotal in South Africa, just like in any country globally, in order to strengthen the efforts to curb money laundering.[543] In addition to this, anti-money laundering laws are

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539 Bekele DT and Degu AA "The Effect of Financial Sector Development on Economic Growth of Selected Sub-Saharan Africa Countries" 2021 *International Journal of Finance & Economics* 1, 4; Menyari YEI "Financial Development, Foreign Banks and Economic Growth in Africa" 2019 *African Development Review* 190, 198; Ho S "Macroeconomic Determinants of Stock Market Development in South Africa" 2019 *International Journal of Emerging Markets* 322, 332.

540 Gillmer J, Armadien N and Harwin J and Kleinsmidt L 2023 *Understanding South Africa's FATF Greylisting* https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html accessed 31 October 2023.

541 Chitimira H and Munedzi S "Overview International Best Practices on Customer Due Diligence and Related Anti-Money Laundering Measures" 2022 *Journal of Money Laundering Control* 53, 54; Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: a Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 1, 3; Mugarura N and Ssali E "Intricacies of Anti-Money Laundering and Cyber-Crimes Regulation in a Fluid Global System" 2021 *Journal of Money Laundering Control* 10, 20.

542 Lessambo FI *Anti-Money Laundering, Counter Financing Terrorism and Cybersecurity in the Banking Industry: A Comparative Study within the G-20* (Palgrave Macmillan Switzerland 2023) 197; Banker's Academy "Anti Money Laundering (AML) in South Africa" 2023 http://bankersacademy.com/resources/free-tutorials/57-ba-free-tutorials/610-aml-southafrica-sp-280 accessed 23 February 2023.

543 See related comments Chitimira H "The Reliance on Artificial Intelligence Measures to Curb Money Laundering Practices in the South African Banking Institutions and Real Estate Sector" 2020 *Acta Universitatis Danubius Journal Œconomica* 28, 31; Mugarura N "Customer Due Diligence

important in assisting South Africa to meet the international standards on anti-money laundering and countering the financing of terrorism (AML/FT).[544] In this chapter, the researcher critically discusses the regulation of anti-money laundering (AML) measures in South Africa. The primary AML legislation in South Africa is the *Financial Intelligence Centre Act,* [545] which comprehensively regulates measures to combat and curb money laundering in South Africa. In addition to *FICA*, there are other relevant laws and regulations that address AML in South Africa such as the *Prevention of Organised Crime Act*,[546] the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act*,[547] the *Protection of Constitutional Democracy against Terrorist and Related Activities Act*[548] and the Financial Intelligence Centre (FIC) Regulations. The researcher investigates the effectiveness of the AML legislation and the enforcement practices employed by the relevant role-players in South Africa so as to draw lessons to enhance AML regulation in Zimbabwe.

(CDD) Mandate and the Propensity of its Application as a Global Paradigm" 2014 *Journal of Money Laundering Control* 76, 81; De Koker L "Money Laundering Control: The South African Model" 2003 *Journal of Money Laundering Control* 166, 170.

544 See related discussions by Mekpor ES "Anti-Money Laundering and Combating the Financing of Terrorism Compliance Are FATF Member States just Scratching the Surface?" 2019 *Journal of Money Laundering Control* 451, 466; Bissett B "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Money Laundering Control* 1, 10; Stuart T, Baloyi N and Montalto PA "Sword of Damocles: South Africa's FATF Grey Listing" 2022 *Intellidex Research Report* 1, 15.

545 *Financial Intelligence Centre Act* 38 of 2001 as amended (*FICA*), sections 21-45; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 718; Tuba M "Prosecuting Money Laundering the FATF Way: An Analysis of Gaps and Challenges in South African Legislation from a Comparative Perspective" 2012 *Acta Criminologica* 103, 110.

546 See *Prevention of Organised Crime Act* (*POCA*) 21 of 1998, section 4; Kersop M and Du Toit SF "Anti-Money Laundering Regulations and the Effective Use of Mobile Money in South Africa – Part 1" 2015 *PER/PELJ* 1603, 1624; Tuba 2012 *Acta Criminologica* 109; Henning JJ and Ebersohn GJ "Insider Trading, Money Laundering and Computer Crime" 2001 *Transactions of the Centre for Business Law: Combating Economic Crime* 105, 112.

547 *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022, sections 18-20; National Treasury "Enactment of Key Anti-Money Laundering and Combating of Terror Financing Laws" *Media Statement* (06 January 2023) 2; Moonstone Information Refinery "Did Grey-Listing Threat Hasten SARB to Act Against Markus Jooste?" 20 October 2022 www.citizen.co.za accessed 22 October 2022 Page Anon.

548 *Protection of Constitutional Democracy against Terrorist and Related Activities Act* 33 of 2004, section 2; see Khumalo K "The Problem with the Removal of the Motive Requirement from the Offence of Terrorism–A Short Commentary" 2023 *African Security Review* 1, 2; Roach K "A Comparison of South African and Canadian Anti-Terrorism Legislation" 2005 *South African Journal of Criminal Justice* 127, 130.

5.2 A Historical Overview of the Anti-Money Laundering Legislative Framework in South Africa

5.2.1 The Regulation of Money Laundering under the Drugs and Drug Trafficking Act[549]

The enactment of the *DDT Act* in 1992 marked South Africa's first statutory attempt at regulating and curbing money laundering.[550] The *DDT Act*[551] criminalised money laundering in relation to the proceeds of narcotic trafficking in South Africa. In addition, the *DDT Act*[552] provided for the confiscation of the proceeds of drug trafficking practices to deter money laundering in South Africa.[553] In other words, the *DDT Act* entrenched provisions which sought to deprive criminals of their ill-gotten gains and strip them off their financial capacity to commit further crime.[554] Moreover, the *DDT Act* imposed an obligation on owners, occupiers or managers of any places of entertainment[555] and senior executives of financial institutions to report suspicious practices of money laundering.[556] Despite the lack of adequate measures to enforce this obligation (section 10 of the *DDT Act*), its effectiveness was also limited by the fact that the penalties for offenders merely

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549 *Drugs and Drug Trafficking Act* 140 of 1992 (*DDT Act*); see Omar AM "The Drug Trade in Southern Africa" 1997 *South African Journal of International Affairs* 141, 143; De Koker L "Money Laundering Trends in South Africa" 2002 *Journal of Money Laundering Control* 27, 27-28.

550 De Koker 2002 *Journal of Money Laundering Control* 28; Turkson E "South Africa: Money laundering" 1998 *Journal of Financial Crime* 393, 394; Scheibe A, Shelly S and Versfeld A "Prohibitionist Drug Policy in South Africa—Reasons and Effects" in Panizza U, Buxton J, Chinery-Hesse M and Tinasti K (eds) *International Development Policy* (Graduate Institute of International and Development Studies Switzerland 2020) 274, 283.

551 Section 14 of the *DDT Act*; Yesufu S "Illicit Drug Trafficking: a South African Report on the Extent of the Global Trading" 2022 *ScienceRise* 42; Turkson 1998 *Journal of Financial Crime* 394; De Koker 2002 *Journal of Money Laundering Control* 30.

552 Basdeo V "The Law and Practice of Criminal Asset Forfeiture in South African Criminal Procedure: A Constitutional Dilemma" 2014 *PER/PELJ* 1045, 1055.

553 Section 35 of the *DDT Act*; Turkson 1998 *Journal of Financial Crime* 394; see related comments by Kersop and Du Toit 2015 *PER/PELJ* 1624; Tuba 2012 *Acta Criminologica* 109.

554 Bosdeo V "The Law and Practice of Criminal Asset Forfeiture in South African Criminal Procedure: A Constitutional Dilemma" 2014 *PER/PELJ* 1048, 1055.

555 See section 1((xvii) of the *DDT Act*, a 'place of entertainment' refers to any premises, vehicle, vessel or aircraft, or any pan thereof, used for or in connection with any exhibition, show, performance, dance, amusement, game, competition or sport.

556 Section 10 of the *DDT Act*; Turkson 1998 *Journal of Financial Crime* 394; De Koker 2002 *Journal of Money Laundering Control* 30; Omar 1997 *South African Journal of International Affairs* 145.

served to punish offenders, failing to also deter offenders from similar practices.[557] Owing to this, Turkson[558] argues that the *DDT Act* is narrowly focused and inadequate in combatting money laundering in South Africa. This position is relatively true taking into consideration the fact that the *DDT Act* did not take into account, the effects of other factors such as corruption and fraud which could also influence money laundering.[559] In other words, corruption and money laundering are intricately linked in the sense that corruption may be an evil which is ignored by the government as they turn a blind eye to it whilst pursuing drug offenders for higher value offences.[560] This means that corruption generates illegal funds that are later legitimised through various money laundering schemes.[561] Therefore, in as much as the *DDT Act*[562] proscribed the manufacturing, use, possession, dealing in drugs and the acquisition of property using the proceeds of such drugs in order to curb money laundering, it lacked oversight in that money laundering could still be perpetuated through corrupt and fraudulent practices.[563] Against this background, it can be argued that the *DDT Act* failed to fully control and to curb money laundering in South Africa.

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557 See related comments by De Koker L and Henning JJ *Money Laundering Control in South Africa* (UOVS/UOFS Bloemfontein 1998) 28; also see Yesufu 2022 *ScienceRise* 44; Turkson 1998 *Journal of Financial Crime* 395; Oosthuysen G "The Illegal Drug Trade in Southern Africa" in Jan Smuts House *South African Institute of Foreign Affairs* (5-6 June 1997 Johannesburg) 23.

558 Sections 4-6 of the *DDT Act*; Turkson 1998 *Journal of Financial Crime* 394; also see De Koker and Henning *Money Laundering Control in South Africa* 29; Yesufu 2022 *ScienceRise* 44.

559 See related comments by Gordon R "Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing" 2011 *Duke Journal of Comparative and International Law* 503, 540; Kruger HB and Oosthuizen H "South Africa – Safe Haven for Human Traffickers? Employing the Arsenal of Existing Law to Combat Human Trafficking" 2012 *PER/PELJ* 283, 325; Bales K *Understanding Global Slavery* (University of California Press Los Angeles 2005) 133.

560 Bartulovic M, Aljinovic N and Piplica D "Determining the Relationship between Corruption and Money Laundering" 2023 *Montenegrin Journal of Economics* 109, 110.

561 Bartulovic, Aljinovic and Piplica 2023 *Montenegrin Journal of Economics* 110.

562 See sections 3-6 of the *DDT Act*; Omar 1997 *South African Journal of International Affairs* 145; De Koker 2002 *Journal of Money Laundering Control* 31; Kruger and Oosthuizen 2012 *PER/PELJ* 325.

563 Kruger and Oosthuizen 2012 *PER/PELJ* 325; David F "Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice" 2007 *Trends and Issues in Crime and Criminal Justice* 1, 4; Kruger A *Organised Crime and Proceeds of Crime Law in South Africa* (Lexis Nexis Durban 2008) 45.

5.2.2 The Regulation of Money Laundering under the Prevention of and Treatment for Substance Abuse Act

To curb the weakness and flaws of the *DDT Act* and strive towards the elimination of money laundering, the *Prevention of and Treatment for Substance Abuse Act*[564] was enacted in 2013 to dissuade the use of drugs in South Africa. Notably, the *PTSA Act*[565] provides mechanisms aimed at the early prevention, treatment, and re-integration programmes for drug users in South Africa. Such mechanisms include programmes which to date have included the "Ke Moja, I'm fine without drugs."[566] This programme was anchored on accelerating measures aimed at preventing drug dependency amongst children and the youth, providing information to the community on drug abuse, educating the youth regarding drug abuse and establishing registered treatment centres.[567] In addition to this, the Department of Basic Education (DBE) runs an alcohol and drug use prevention and management programme which is integrated into the school curriculum via the Life Orientation (LO) subject area in South Africa.[568] Contemporarily, South Africa's theme towards preventing widespread drug use, which is spearheaded by the Department of Social Development is entitled 'Leave no one behind: availability, affordability and access to prevention and treatment services.'[569] This initiative aims to

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564 Sections 2 of the *Prevention of and Treatment for Substance Abuse Act* 70 of 2008 (*PTSA Act*); see related discussion by Chitimira H "The Reliance on Artificial Intelligence Measures to Curb Money Laundering Practices in the South African Banking Institutions and Real Estate Sector" 2020 *Acta Universitatis Danubius. Juridica* 56, 58; also see Ali S; Aman L and Eric B "Money Laundering as a Financial Crime" 2020 *International Journal of Law* 99, 111.

565 See section 5 of the *PTSA Act*; see related comments by Beebeejaun A and Dullo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 412; also see Chitimira 2020 *Acta Universitatis Danubius. Juridica* 58.

566 Khosa P, Dube N and Nkomo TS "Investigating the Implementation of the Ke-Moja Substance Abuse Prevention Programme in South Africa's Gauteng Province" 2017 *Open Journal of Social Sciences* 70, 71.

567 Khosa, Dube and Nkomo 2017 *Open Journal of Social Sciences* 71.

568 South African Government 2023 *Alcohol and Drug Use Prevention and Management Programme* https://www.gov.za/about-government/government-programmes/alcohol-and-drug-use-prevention-and-management-programme accessed 1 November 2023.

569 United Nations Office on Drugs and Crime 2023 *World Drug Day 2023 in Southern Africa – Growing Engagement and Ownership by State and Local Actors People first: Stop Stigma and Discrimination, Strengthen Prevention* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi5-5aLn6OCAxU9UKQEHfi3CSsQFnoECBUQAQ&url=https%3A%2F%2Fwww.unodc.org%2Fdocumen

ensure that stakeholders, including the Department of Social Development, assist everyone irrespective of gender, race, sex and ethnicity to have access, afford and avail services to people suffering from substance use disorders.[570] The success of the above mentioned programmes and initiatives is questionable as many children and the youth in South Africa continue to use and abuse drugs.[571] This state of affairs may be attributable to the fact that, *inter alia*, the Department of Education does not have any specific intervention to address the drug use and abuse by children and the youth, other than relying on the LO, which aims to address a wide range of learner developmental areas.[572] Such developmental areas include personal, psychological, neuro-cognitive, motor, physical, moral, spiritual, cultural and socio-economic areas.[573] However, the delivery of LO seems to be fraught in challenges which include constraints at the individual, interpersonal, school, and community levels.[574] According to Mokwena and Setshego, the LO as a resource for substance abuse is too general as it does not address personal experiences and therefore appears to be insufficient in assisting learners with substance abuse challenges.[575] In addition to this, the Department of Basic Education's policy on the management of substance abuse in schools is neither known nor implemented, which implies that there is not much at school level that addresses the challenges of substance use and abuse amongst learners who are children and the youth.[576] This status quo is

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ts%2Fsouthernafrica%2F%2FStories%2F2022%2FWebstory_-_World_Drug_Day_2023_in_Southern_Africa_-_Growing_Engagement_and_Ownership_by_State_and_Local_Actors.pdf&usg=AOvVaw3boetG3jHpKtyzqFceS4Y3&opi=89978449 accessed 1 November 2023.

570 United Nations Office on Drugs and Crime 2023 https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwi5-5aLn6OCAxU9UKQEHfi3CSsQFnoECBUQAQ&url=https%3A%2F%2Fwww.unodc.org%2Fdocuments%2Fsouthernafrica%2F%2FStories%2F2022%2FWebstory_-_World_Drug_Day_2023_in_Southern_Africa_-_Growing_Engagement_and_Ownership_by_State_and_Local_Actors.pdf&usg=AOvVaw3boetG3jHpKtyzqFceS4Y3&opi=89978449 accessed 1 November 2023.

571 Mokwena KE and Setshego NJ "Substance Abuse Among High School Learners in a Rural Education District in the Free State province, South Africa" 2021 *South African Family Practice* 1, 4; Khoza A and Shilubane HN "Substance Use and Associated Factors Among in-school Adolescents in South Africa" 2021 *The Open Public Health Journal* 435, 438.

572 Mokwena and Setshego 2021 *South African Family Practice* 4.

573 Mokwena and Setshego 2021 *South African Family Practice* 4.

574 Mokwena and Setshego 2021 *South African Family Practice* 4.

575 Mokwena and Setshego 2021 *South African Family Practice* 4.

576 Mokwena and Setshego 2021 *South African Family Practice* 4.

true to contemporary South Africa and it is safe to say that the *PTSA Act's* substance abuse mechanisms are not sufficient enough to curtail substance abuse amongst children and the youth in South Africa. There is a need for the *PTSA Act* to expressly entrench measures and mechanisms aimed at making feasibility follow-ups on the LO's success in curbing drug abuse amongst children and the youth in South Africa.

At present, the mechanisms that are encapsulated in the *PTSA Act* are indeed insufficient. The *PTSA Act* provides a comprehensive national response for the combatting of substance abuse, to provide mechanisms aimed at demand and harm reduction in relation to substance abuse through prevention, early intervention, treatment and reintegration programs.[577] More robust measures are needed by the *PTSA Act* in order to curtail drug abuse amongst children and the youth in South Africa. In turn, this would reduce the demand for drugs and equally reduce the demand for drugs by the suppliers who then launder the money received from drug sales into the formal financial system of South Africa. The researcher submits that the enactment of the *PTSA Act* was important in providing a legal framework for dissuading drug use in South Africa. This follows that drug trafficking and money laundering often mutually facilitate each other.[578] In other words, drugs provide the funding for illicit practices of money laundering. Drug trafficking generates substantial illegal funds that need to be laundered, while money laundering helps legitimise the proceeds from drug trafficking.[579] The researcher submits that drug trafficking and money laundering operate in tandem to maintain the profitability and sustainability of the illicit drug trade in South Africa and in other jurisdictions globally.[580]

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577 Olofinbiyi SA and Mtambo T "Ending Illicit Drug Use in South Africa: Legislative Measures as Ways Forward" in Singh SB, Srivastava M and Sethi V *Crime, Criminality and Criminal Justice System* 1st ed (Wordscope Publishers India 2021) 31-48, 36; also see Chitimira 2020 *Acta Juridica Danibius Journal* 59; Ali, Aman and Eric 2020 *International Journal of Law* 112.

578 Farfan-Mendez C "The Structure of Drug-Trafficking Organisations and Money Laundering Practices: A Risk Appetite Hypothesis" 2019 *Journal of Illicit Economies and Development* 294, 296; Montalvo-Barbot A "Crime in Puerto Rico: Drug Trafficking, Money Laundering, and the Poor" 1997 *Crime and Delinquency* 533, 536; Force FA "What is Money Laundering" 1999 *Policy Brief* 1, 5.

579 Levi M "Money Laundering and its Regulation" 2002 *The Annals of the American Academy of Political and Social Science* 181, 185; Schneider F and Ursula W "Money Laundering: Some Facts" 2008 *European Journal of Law and Economics* 387, 398; Fabre G *Criminal Prosperity: Drug Trafficking, Money Laundering and Financial Crises after the Cold War* (Psychology Press 2003) 45.

580 See related discussion by Beebeejaun A and Dulloo L "A Critical Analysis of the Antimoney

Accordingly, the enactment of the *PTSA Act* is important for the combatting of drug trade and related money laundering activities in South Africa. Therefore, the researcher submits that the mechanisms (discussed above) provided by the *PTSA Act* to deter drug trafficking related money laundering in South Africa are not robust enough to combat money laundering and drug trafficking in South Africa.[581] This follows that drug use and abuse remain a challenge in South Africa, with an increasing rate of approximately 4.8% every year.[582]

5.2.3 The Regulation of Money Laundering under the Proceeds of Crime Act

The *Proceeds of Crime Act*[583] was primarily enacted to regulate the recovery of the proceeds of crime,[584] the prohibition of money laundering and the financial institutions' obligation to report suspicious money laundering activities.[585] Unlike the *DDT Act*, the *PCA* proscribed all forms of payments or other rewards received from any criminal activities without a restriction to illicit drug related activities.[586] This wider proscription

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Laundering Legal and Regulatory Framework of Mauritius: a Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 405.

581 Section 8 of the *PTSA Act*; see related comments by Smook B "Substance Abuse, Dependence and the Workplace: A Literature Overview" 2014 *Social Work Journals* 59, 64; Central Drug Authority "Central Drug Authority Annual Report 2011/2012" Department of Social Work Pretoria (12 February 2013) 15.

582 Olofinbiyi SA and Mulaudzi AN "Re-assessing Community Participation in the Fight against Illicit Drug Use in South Africa" 2022 *African Journal of Development Studies* 131, 141; Pillay Y and Johnson L "World AIDS Day 2020: Reflections on Global and South African Progress and Continuing Challenges" 2020 Southern *African Journal of HIV Medicine* 1, 2; Peltzer K and Phaswana-Mafuya N "Drug Use among Youth and Adults in a Population-Based Survey in South Africa" 2018 *South African Journal of Psychiatry* 24, 35.

583 Sections 3-6 of the *Proceeds of Crime Act* 76 of 1996 (*PCA*); De Koker 2002 *Journal of Money Laundering Control* 27; Turkson 1998 *Journal of Financial Crime* 394; Chitimira H and Munedzi S "Historical Aspects of Customer Due Diligence and Related Anti-Money Laundering Measures in South Africa" 2023 *Journal of Money Laundering Control* 138, 143.

584 Section 3 of the *PCA* provides that any payment or reward received or held by any suspected person while having effective control at any time, whether before or after the commencement of the PCA, in connection with any criminal activity carried on by him or her or any other person, such a payment or reward shall be deemed as proceeds of crime.; see related discussion by Olujobi OJ "Recouping Proceeds of Corruption: Is There Any Need to Reverse Extant Trends by Enacting Civil Forfeiture Legal Regime in Nigeria?" 2021 *Journal of Money Laundering Control* 806, 820.

585 Section 2 of the *PCA*; Olujobi 2021 *Journal of Money Laundering Control* 820; Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789, 795; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 143.

586 Section 2 of the *PCA*; Chitimira H "An Exploration of the Current Regulatory Aspects of Money Laundering in South Africa" 2021 *Journal of Money Laundering Control* 789, 790; De Koker 2002 *Journal of Money Laundering Control* 27 and 31; Turkson 1998 *Journal of Financial Crime* 394.

was a positive move towards enhancing legislative measures aimed at curbing financial crimes, especially money laundering in South Africa. This follows that the roles and functions of law enforcement authorities were increased by the *PCA* to ensure the detection and investigation of money laundering in South Africa.[587] The researcher submits that the increased scope of the *PCA,* as compared to the *DDT Act* and the *PTSA Act* was commendable for fostering effective enforcement of AML provisions by relevant role players like the state. For example, the *PCA* expressly regulated the financial institutions' obligation to report suspicious transactions to the Commercial Crime Unit of the South African Police Service (SAPS) as an AML measure for the first time in 1990 in South Africa.[588]

Further, the *PCA* increased the scope of money laundering offences in South Africa.[589] For instance, the offence of 'assisting another to benefit from the proceeds of crime' is an example.[590] This provision increased the prospects of more prosecutions on money laundering related matters especially related to third parties who benefit from money laundering in order to increase the scope of money laundering related matters. Notwithstanding its significant improvement in comparison to the *DDT Act* and the *PTSA Act*, the *PCA*, remained inadequate in fully combatting money laundering in South Africa.[591] The inadequacy arose due to, *inter alia*, the fact that reporting obligations under

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587 Section 29 of the *PCA*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 144; Itzikowitz A "Money Laundering" 2000 *SA Merc Law Journal* 302, 308; Itzikowitz A "South Africa: Money Laundering – The Duty to Report Under Law" 2008 *Journal of Financial Crime* 186, 187.

588 Section 31(1) of the *PCA*; Itzikowitz 2008 *Journal of Financial Crime* 187; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 144; Chitimira 2021 *Journal of Money Laundering Control* 793.

589 Sections 28-31 of the *PCA*; Turkson 1998 *Journal of Financial Crime* 394; see related comments by Chitimira 2021 *Journal of Money Laundering Control* 791; also see South African Law Commission "Money Laundering and Related Matters" Discussion Paper 64 (08 July 1996) 5; De Koker L "Money laundering: The South African Model" 2003 *Journal of Money Laundering Control* 166, 168.

590 Sections 28-31 of the PCA; Turkson 1998 *Journal of Financial Crime* 394; see related discussion by Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology and Arts* 317, 336; Chitimira 2021 *Journal of Money Laundering Control* 793.

591 Section 28 of the *PCA*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 144; Itzikowitz 2008 *Journal of Financial Crime* 187; Njotini MN "The Transaction or Activity Monitoring Process: An Analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2000 *Obiter* 556, 568.

the *PCA* were only restricted to business owners or persons in charge of businesses.[592] Consequently, there remained a gap in the accountability and reporting obligations due to the restrictive nature of the provisions of the *PCA*.[593] The wording 'any person who carries on a business or is in charge of a business…' does not expressly place an obligation on other persons like, for example, employees of such people who carry on or are in charge of a business. This, the researcher submits, leaves room for employees of businesspeople to let money laundering practices subsist without fear of any prosecution. This follows that the *PCA* did not provide and still does not provide for other financial role players' including the Financial Intelligence Centre (FIC) and the Prudential Authority (PA), the duty to report suspicious transactions to the law enforcement agencies including the SAPS whilst they perform integral functions like monitoring suspicious transactions in banks which function is anchored on, *inter alia*, combatting of money laundering in South Africa. In this regard, the researcher submits that the *PCA* was not effective enough to enforce AML and combat money laundering activities in South Africa.

Notably, juristic entities such as financial institutions were not obliged to report any suspicious transactions despite their significant vulnerability to money laundering abuse.[594] It is interesting to note that formal financial institutions such as banks were excluded by the *PCA* from reporting obligations whereas they are at a higher money laundering risk due to their function of accepting deposits from customers and transferring funds. This follows that perpetrators of money laundering use the formal financial institutions to convert the proceeds of crime to legitimate transactions or investments in South Africa.[595] This could be achieved by depositing several small

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592 Section 31(1) of the *PCA*; Turkson 1998 *Journal of Financial Crime* 394; Tuba M and Westhuizen C "An Analysis of the 'Know Your Customer' Policy as an Effective Tool to Combat Money Laundering: Is it About Who or What to Know That Matters?" 2014 *International Journal of Public Law and Policy* 53, 60; Itzikowitz 2008 *Journal of Financial Crime* 187.

593 See section 31(1).

594 Section 3 of the *PCA*; see related comments by Chitimira 2020 *Acta Universitatis Danubius. Juridica* 59; De Koker L *South African Money Laundering and Terror Financing Law* (LexisNexis 2014) 37; Itzikowitz 2008 *Journal of Financial Crime* 187.

595 Reuter P and Truman EM *Chasing Dirty Money: The Fight against Money Laundering* (Institute for International Economics Washington DC 2004) 25; Kruger A *Organised Crime and Proceeds of Crime Law in South Africa* 2nd ed (Lexis Nexis Durban 2013) 92; Njotini 2000 *Obiter* 558; De Koker 2003 *Journal of Money Laundering Control* 169.

amounts of the criminal proceeds using different accounts or people.[596] A process known as smurfing.[597] After concluding these transactions, without detection, the illegal proceeds become legitimate funds.[598] Therefore, the researcher argues that the non-inclusion of financial institutions from the obligation to lodge suspicious reports could be attributed to a limited understanding of money laundering and its risks at that time. Against this backdrop, the researcher submits that the *PCA* was inadequate in fully curbing money laundering in South Africa.

Similarly, professional services providers such as accountants, lawyers or real estate agents, who provide notable services in financial markets and institutions were not required to make any reports on suspicious money laundering activities under the *PCA*.[599] This regulatory gap also included other non-financial entities such as motor vehicle dealers who equally could have information on suspicious money laundering activities.[600] Due to these regulatory gaps, the *PCA* remained inadequate to curb money laundering in South Africa. As a result of the aforementioned, money launderers in South Africa identified gaps through which they could transact and abuse financial institutions knowing that there were various means of evading prosecution.

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596 Madinger J *Money Laundering: A Guide for Criminal Investigators* 3rd ed (CRC Australia 2011) 7; Itikowitz 2008 *Journal of Financial Crime* 186; Henning JJ and Ebersohn GJ "Insider Trading, Money Laundering and Computer Crime" 2001 *Transactions of the Centre for Business Law: Combating Economic Crime* 105, 108.

597 Kersop and D Toit 2015 *PER/PELJ* 1620; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 139; De Koker 2003 *Journal of Money Laundering Control* 170; Kruger *Organised Crime and Proceeds of Crime Law in South Africa* 23.

598 See related discussions by Corselli L "Italy: Money transfer, Money Laundering and Intermediary Liability" 2023 *Journal of Financial Crime* 377, 381; Tarmizi MA *et al* "Compliance determinants of Anti-Money Laundering Regime Among Professional Accountants in Malaysia" 2023 *Journal of Money Laundering Control* 361, 363.

599 See related discussions by Millard D "Hung Out to Dry? Attorney-Client Confidentiality and The Reporting Duties Imposed by The Financial Intelligence Centre Act 38 of 2001" 2013 *Obiter* 389, 395; also see Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 451, 458.

600 Millard 2013 *Obiter* 395; see related comments by Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *PER/PELJ* 1, 6; also see Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 140; Duri 2020 *Journal of Money Laundering Control* 458.

5.3 Current Statutory Regulatory Framework for Money Laundering in South Africa

5.3.1 The Regulation of Money Laundering under the Prevention of Organised Crime Act[601]

The *POCA*[602] was enacted in 1998 to introduce measures aimed at combatting organised crime,[603] money laundering[604] and criminal gang activities[605] in South Africa. Unlike predecessor legislations such as the *DTA Act,* the *PTSA Act* and the *PCA*, the *POCA* is comprehensive in its money laundering scope as it expressly proscribes racketeering, criminal gang activities and money laundering.[606] Unlike in the *DDT Act*, the *PTSA Act* and the *PCA*, money laundering is comprehensively defined under the *POCA*.[607]

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601 *Prevention of Organised Crime Act* 121 of 1998 (*POCA*); De Koker 2003 *Journal of Money Laundering Control* 27, 32; Duri 2020 *Journal of Money Laundering Control* 458; Basdeo V "The Legal Challenges of Criminal and Civil Asset Forfeiture in South Africa: A Comparative Analysis" 2013 *African Journal of International and Comparative Law* 303, 308.

602 See sections 4 and 9 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 790; McIntyre J, Aslett D and Buitendag N "Implementing Unexplained Wealth Orders in South Africa – What Are the Options?" 2023 *Journal of Money Laundering Control* 85, 92.

603 Sections 9-11 of the *POCA*; Bloomberg C "Organised Crime is Driving up Murder and Kidnapping Rates in South Africa" 2022 https://businesstech.co.za/news/business/627432/organised-crime-is-driving-up-murder-and-kidnapping-rates-in-south-africa/ accessed 23 February 2022; 2022 crime statistics recorded an increase in organised crime accounting for most murders with rise 38 per cent since 2010 while the number of kidnappings for ransom has quadrupled and there is an R187 billion annual impact from infrastructure theft such as the looting of copper-power cables in South Africa.

604 Sections 4-8 of the *POCA*; See South African Reserve Bank Prudential Authority "Assessment of Money Laundering, Terrorist Financing and Proliferation Financing Risk in the Banking Sector" *Prudential Authority Banking Sector Risk Assessment Report* (July 2022) 3, the nature and extent of money laundering, financing of terrorism and proliferation financing is on high risk especially in the banking institutions.

605 Sections 9-11 of the *POCA*; Van der Linde D "The Criminalisation of Gang Activity in South Africa Re-Assessing the Rationale" 2020 *South African Crime Quarterly* 1, 2 - Western Cape accounts for most gang related crime in South Africa ranging from murder and illicit drug use.

606 See section 7A of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 791; Witbooi E *et al* "Organized Crime in the Fisheries Sector Threatens a Sustainable Ocean Economy" 2019 *Nature* 48, 51.

607 Section 4 of the *POCA* states that a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is Iegally enforceable or not: or (b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person, which has or is likely to have the effect— (i) of concealing or disguising the nature, source, location, disposition or movement of the said property or its ownership or any interest which anyone may have in respect thereof or (ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere — (aa) to avoid prosecution; or (bb) to remove or

The *POCA* provides that money laundering refers to the actions of any person which involve having knowledge or reasonable knowledge that certain property are proceeds from criminal activities.[608] Furthermore, the *POCA*[609] provides that a person is guilty of money laundering if he or she enters into any agreement or transaction relating to the proceeds of crime with another person, regardless of the legal enforceability of such an agreement, or transaction. It follows that such actions may involve any person, either acting alone or in concert with any other persons, concealing or disguising the nature, source, location, disposition or movement or any interest which anyone may have in the property in question.[610] Thirdly, such actions may involve any person, whether acting alone or in concert with any other persons, enabling or assisting any person who commits or has committed an offence in South Africa or elsewhere, either to avoid prosecution or to remove or diminish the property in question.[611] The property referred to in this case could be money or any other movable, immovable, corporeal or incorporeal thing which may include any rights, privileges, claims, securities, interest and all proceeds that may flow from criminal activities.[612]

Additionally, any person may be found liable for an offence related to the proceeds of unlawful activities like money laundering, by assisting another to benefit from the proceeds of crime.[613] In this category, any person assumes liability if they knew or ought to have reasonably known that the money or property are proceeds of unlawful activities

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diminish any property acquired directly, or indirectly, as a result of the commission of an offence, shall be guilty of an offence.; Millard and Vergan 2013 *Obiter* 391; Reuter and Truman *Chasing Dirty Money* 25.

608 See section 4 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 791; De Koker 2003 *Journal of Money Laundering Control* 27; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 139.

609 See section 4(a) of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 791.

610 See section 4(b) of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 791; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 139.

611 See section 4(b)(i)(ii) of the *POCA*; see related discussion by Erasmus D and Bowden S "A Critical Analysis of South African Anti-Money Laundering Legislation with Regard to Crypto Currency" 2020 *Obiter* 309, 318; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; De Koker *South African Money Laundering and Terror Financing Law* 45.

612 See section 1(xvi) of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 791; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 144; Millard and Vergan 2013 *Obiter* 391.

613 Section 5 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 792; De Koker *South African Money Laundering and Terror Financing Law* 45; Millard and Vergan 2013 *Obiter* Millard and Vergan 2013 *Obiter* 391391.

and proceeds to enter into any agreement for the retention, control or use of such proceeds for their own benefit.[614] Moreover, any person who acquires, uses, or is in possession of property with knowledge or reasonable knowledge that the property in question forms part of the proceeds of unlawful activities of another person can be held liable.[615] The *POCA*[616] further places an obligation on persons carrying on business to make reports on any suspicious business activity. This obligation makes the *POCA* a more comprehensive legislation in curbing money laundering in South Africa.

Furthermore, the *POCA*[617] prohibits racketeering activities, namely, corruption, fraud, extortion, and robbery.[618] The *POCA* defines the "patterns of racketeering" as planned, ongoing participation in at least two schedule 1 offences, of which one of the offences occurred after the commencement of the *POCA* and the other within ten years after the commission of a schedule 1 offence.[619] Notably, the *POCA* does not expressly define racketeering as an independent offence. This means that the *POCA* only refers to "patterns of racketeering" and not a comprehensive definition of racketeering. The phrase "patterns of" is ambiguous and not clearly ascertainable as the *POCA* does not provide

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614 Section 5 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 792; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; De Koker *South African Money Laundering and Terror Financing Law* 45.

615 Section 6 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 792; Millard and Vergan 2013 *Obiter* 391; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 139.

616 Section 7 of the *POCA*; Chitimira 2021 *Journal of Money Laundering Control* 792; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 139; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320.

617 Sections 2-3 of the *POCA*; See discussion by Van der Linde DC "Managing and Participating in a Criminal Enterprise Under POCA: Duplication of Convictions? A Discussion of the Conflict Between S v Prinsloo and S v Tiry" 2022 *South African Law Journal* 526, 527; Nanima RD "The Prevention of Organised Crime Act 1998: The Need for Extraterritorial Jurisdiction to Prosecute the Higher Echelons of Those Involved in Rhino Poaching" 2019 *PER/PELJ* 1, 13; Anderson A "General Principles and Specific Offences" 2021 *South African Journal of Criminal Justice* 372, 376.

618 See section 2 of the *POCA*; see related discussion by Zweni A and Yan B "The Role of Municipal Officials in Financial Crimes and the Effects Thereof: A Conceptual Framework to Combat Financial Crimes in South African Municipalities" 2022 *African Renaissance* 35, 41; Kempen A "Community Safety Tips What Can Governments & Individuals do to Prevent Organised Crime? " 2022 *Servamus Community-based Safety and Security Magazine* 51, 51.

619 *Criminal Procedure Act* 51 of 1977, schedules 1 and 2; see section 1 (xii) of the *POCA*; *Savoi and Others v National Director of Public Prosecutions and Another* [2014] ZACC 5 para 4; Le Roux M "Building a Chain Link by Link - Constructing a Solid Organised Crime Case - Using the Fisheries Environment as an Example" 2018 *Servamus Community-based Safety and Security Magazine* 26, 27.

any aids to its interpretation. In this regard, the researcher argues that the lack of an express definition of racketeering under the *POCA* could result in misinterpretation of the elements of the offence. Such misinterpretations could jeopardise the effectiveness of AML measures due to a lack of successful prosecutions of money laundering related offences, such as racketeering.[620]

In addition to the above, the *POCA* was enacted to criminalise activities associated with gangs and have the propensity to perpetuate money laundering in South Africa, for example drug related offences.[621] The *POCA* defines a "criminal gang" as any formal or informal ongoing organisation, association or group of three or more persons with an identifiable name or identifying sign or symbol, which has as one of its activities the commission of one or more criminal offences as individual or collective members.[622] Such criminal offences include money laundering.[623] The above definition aptly encapsulates the gang activities prevalent in the current criminal gangs of Cape Town which are identifiable by the numbering system and are primarily responsible for most criminal activities like drug trafficking, robberies and money laundering in South Africa.[624] For the greater part, drug trafficking and gangsterism are rife in Cape Town, South Africa.[625] Funds generated from such criminal gang activities, including drug trade, are often legitimised by channelling the funds into the formal financial system through smurfing

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620 Sections 1 ((xii) of the *POCA*, the definition of 'patterns of racketeering' requires the commission of two schedule 1 offences, of which 1 of such offences ought to have been committed after the operation of the *POCA*. See related discussion by Borlini L "The Economics of Money Laundering" in Reichel P and Abanese J (eds) *Handbook of Transnational Crime and Justice* (SAGE Publications 2014) 228.

621 Section 9-11 of the *POCA*; Van der Linde D "The Criminalisation of Gang Activity in South Africa Re-assessing the Rationale" 2020 *South African Crime Quarterly* 1, 2; Borlini "The Economics of Money Laundering" 228.

622 Section 9 of the *POCA*; Nanima 2019 *PER / PELJ* 5; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; Anderson 2021 *South African Journal of Criminal Justice* 375.

623 Section 9 of the *POCA*; Nanima 2019 *PER / PELJ* 5; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; Anderson 2021 *South African Journal of Criminal Justice* 375.

624 Van der Linde 2020 *South African Crime Quarterly* 2; Borlini "The Economics of Money Laundering" 230; Boles JR "Anti-Money Laundering Initiatives for the South African Real Estate Market Study Space IX Cape Town, South Africa" 2017 *Journal of Comparative Urban Law and Policy* 197, 198.

625 Van Uhm D, South N and Wyatt T "Connections Between Trades and Trafficking in Wildlife and Drugs" 2021 *Trends in Organized Crime* 425, 438; Linde DC "An Overview of the Sentencing Regime for Gang Members under the Prevention of Organised Crime Act 121/1998 and the potential for Restorative Justice" 2021 *Journal for Juridical Science* 56, 59; Geldenhuys K "Will the Gang Problem ever be Solved through Policing?" 2022 *Servamus Community-based Safety and Security Magazine* 30, 30.

and the acquisition of property.[626] In this regard, the researcher submits that there is a need for stringent measures to combat criminal activities like criminal gang drug trafficking which often perpetuates money laundering in South Africa. In light of this context, the provisions of the *POCA* should be effectively enforced in order to stop drug related offences and consequently curb money laundering practices in South Africa. The researcher argues that the lack of an express definition for criminal gang activity under the *POCA* could present challenges of interpretation by the courts.[627] There is a need for the legislature and policy makers to provide a clear and ascertainable definition of criminal gang activity to enable the South African courts to successfully prosecute gang-related criminal offences.

Statistics provided by the National Prosecuting Authority (NPA) of South Africa show that there is a prevalence of criminal gang activities in South Africa.[628] However, despite the proscription of criminal gang activities under the *POCA*, most convictions by the South African courts are founded in the common law and other legislations.[629] The reasoning behind this is unclear but the researcher submits that the state is reluctant to charge alleged people for participating in criminal gang activity as the onus of proving criminal gang activity under the *POCA* is burdensome as opposed to common law crimes and other crimes defined by other legislations.[630] This position renders the *POCA*[631] inadequate in

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626 Boles 2017 *Journal of Comparative Urban Law and Policy* 198; Van Uhm, South and Wyatt 2021 *Trends in Organized Crime* 426; Geldenhuys K "Money Laundering Typologies Criminals' ways to "wash" Dirty Money" 2022 *Servamus Community-based Safety and Security Magazine* 20, 21.

627 See discussion by Van de Linde D "The Overlap between the Common Law and Chapter 4 of the Prevention of Organised Crime Act: Is South Africa's Anti-Gang Legislation Enough" 2020 *South African Journal of Criminal Justice* 273, 283; Boles 2017 *Journal of Comparative Urban Law and Policy* 198; Van Uhm, South and Wyatt 2021 *Trends in Organized Crime* 426.

628 See Thomas K "Prosecuting with the Prevention of Organised Crime Act: A Review of South Africa's Anti-Gang Provisions" 2022 *ENACT Africa* 1, 28; Tuba D "Prosecuting Money Laundering the FATF Way: An Analysis of Gaps and Challenges in South African Legislation from a Comparative Perspective" 2012 *Acta Criminologica: African Journal of Criminology & Victimology* 103, 112.

629 Thomas 2022 *ENACT Africa* 28; Tuba 2012 *Acta Criminologica: African Journal of Criminology & Victimology* 112; Schlenther B "The Taxing Business of Money Laundering: South Africa" 2013 *Journal of Money Laundering Control* 126, 130; De Koker 2003 *Journal of Money Laundering Control* 170.

630 For example, *Intimidation Act* 72 of 1982, section 1(1)(*a*); *Firearms Control Act* 60 of 2000, se section 9(2)(a); Thomas 2022 *ENACT Africa* 11; see related comments by De Koker 2003 *Journal of Money Laundering Control* 170.

631 Section 9 of the *POCA*; Nanima 2019 *PER / PELJ* 5; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; Anderson 2021 *South African Journal of Criminal Justice* 375.

providing a robust framework to curb money laundering related crimes in South Africa. Accordingly, the researcher argues that there is a need for the NPA to be mandated to effectively apply the provisions of the *POCA*,[632] where *prima facie* suitable, in order to enhance the effectiveness of the *POCA* in curbing money laundering and related criminal offences in South Africa. The scanty application of the *POCA*, as is presently the case, renders the *POCA* ineffective and inadequate to combat money laundering in South Africa. For instance, in *S v Thomas*,[633] the accused was charged with common law offences, namely, murder, intimidation, conspiracy and assault in tandem with managing a "criminal enterprise".[634] In this matter, the court applied provisions of the *Intimidation Act* and the *Firearms Control Act* instead of the most comparable offence under *POCA* which relates to racketeering.[635] The researcher argues that, the failure by South African courts to effectively apply the *POCA* and prosecute money laundering related crimes like racketeering, undermines the effectiveness of the *POCA* to curb money laundering in South Africa. Nonetheless, this shows that common law charges may be coupled with statutory charges (*POCA* in this instance) in order to give full effect of the law and optimally curb crime, especially money laundering in South Africa.

Furthermore, the *POCA* provides for the confiscation of the proceeds of unlawful activities.[636] The *POCA* authorises South African courts to conduct further inquiries into any benefits which might have accrued to an accused and request payment of any the

632 Section 9 of the *POCA*; Nanima 2019 *PER / PELJ* 5; Lawack 2013 *Washington Journal of Law, Technology and Arts* 320; Anderson 2021 *South African Journal of Criminal Justice* 375.

633 *S v Thomas* 2015 JDR 1932 (WCC) (*Thomas* case); see related cases like *S v Klaas* (CC16/2020) [2021] ZAECPEHC 12; *S v Mitchell* and others (unreported) case number 04/2018.

634 Section 1(v) of the *POCA* states that 'enterprise includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact although not a juristic person or legal entity.'

635 Sections 9 and 10(2) of the *POCA*; section 1(1)(a) of the *Intimidation Act*; section 9(2)(a) of the *Firearms Control Act*; also see Van der Linde 2022 *South African Law Journal* 538.

636 Section 18 of the *POCA*; see related comments by Powell CH "South Africa's Legislation against Terrorism and Organised Crime" 2002 *Singapore Journal of Legal Studies* 104, 111; also see Gastrow P "Triad Societies and Chinese Organised Crime in South Africa" 2001 *Institute for Security Studies Papers* 43, 51; Van der Linde 2022 *South African Law Journal* 538; Gupta D "Republic of South Africa's Prevention of Organised Crime Act: A Comparative Bill of Rights Analysis" 2002 *Harvard Civil Rights-Civil Liberties Law Review* 159, 168.

equivalent amount.[637] The amount payable by the accused must not exceed the accused's proceeds from the charged crime nor an amount which in the opinion of the court might be so realised.[638] It is submitted that the provisions are important in deterring crimes especially money laundering as they highlight the fact that "crime does not pay".[639] The researcher argues that the regulation of confiscation as a criminal penalty for organised crimes such as money laundering is too minimal and fails to deter future criminal conduct. This follows that the proceeds derived from money laundering activities exceed the value which the court may find reasonable for the accused to pay.[640] Also, the high burden of proof that is required for criminal offences in South Africa renders it difficult for the NPA to successfully prosecute money laundering cases. The researcher submits that the robustness of the *POCA* to control and deter money laundering in South Africa remains limited. The *POCA* has been amended numerously in order to, *inter alia*, improve its effectiveness in curbing money laundering committed through criminal gang activities, racketeering and wildlife crimes.[641] However, it still falls short of robustly prosecuting criminals in higher echelons involved in wildlife crimes and fully curbing incidences of gang related crime and money laundering in South Africa.[642] This is evidenced by the prevalence of gang related crimes in South Africa, especially in the Western Cape.[643]

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637 Section 18(1) of the *POCA*; see related comments by Powell 2002 *Singapore Journal of Legal Studies* 112; also see Gastrow 2001 *Institute for Security Studies Papers* 45; Gupta 2002 *Harvard Civil Rights-Civil Liberties Law Review* 168.

638 Section 18(2) of the *POCA*; see related comments by Van der Linde 2022 *South African Law Journal* 538; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145; Nkoane P "The Prevention of Organised Crime Act: The Proving of "Instrumentality" in Cases of Obscured Use of Intangible Things" 2016 *Stellenbosch Law Review* 182, 190.

639 See *Thomas case* para 65; Van der Linde 2020 *South African Journal of Criminal Justice* 285; Thomas 2022 *ENACT Africa* 25.

640 See related comments by Chitimira H *Market Abuse Regulation in SADC: South Africa, Namibia, Botswana, and Zimbabwe* (Juta 2022) 169; Mabina TT and Chitimira H "A Comparative Synopsis of the Statutory Prohibition of Insider Trading in Namibia and South Africa" 2019 *Juridical Tribune Journal* 492, 508.

641 Cowling MG "Some Developments in the Prevention of Organised Crime Act: Comment on National Director of Public Prosecutions v. Carolus" 1999 *South African Journal of Criminal Justice* 379, 383; Nkoane 2016 *Stellenbosch Law Review* 189.

642 Nanima 2019 *PER / PELJ* 13; Govender D "A Conceptual Analysis of Strategies to Combat Organised Crime in South Africa" 2015 *Insight on Africa* 120, 130; see related comments by Bullock K, Clarke RV and Tilley N (eds) *Situational Prevention of Organised Crimes* (Taylor & Francis 2010) 86.

643 See *Thomas case* para 65; Van der Linde 2020 *South African Journal of Criminal Justice* 285; Thomas 2022 *ENACT Africa* 2; Govender 2015 *Insight on Africa* 130.

5.3.2 The Regulation of Money under the Financial Intelligence Centre Act[644]

The *FICA* established the Financial Intelligence Centre (FIC), whose primary objectives include the identification of the proceeds of unlawful activities, combatting of money laundering activities and the financing of terrorist and related activities.[645] This is done through, *inter alia*, the customer due diligence standards which are established by the *FICA*[646] and will be explained in further detail below.

5.3.2.1 The Regulation of Customer Due Diligence as an AML Measure under the *FICA*

As a general rule, financial institutions in South Africa are required to establish and verify the identity of their clients prior to concluding any financial transactions.[647] In this regard, the *FICA* obliges South African financial institutions to establish and verify the identity of their prospective clients, a process known as customer due diligence.[648] Customer identification and verification includes verifying the identity of a third party who is acting on behalf of a client.[649] This is done to ensure that all account activities are monitored so

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644 *Financial Intelligence Centre Act 38 of 2001* (*FICA*); Njotini 2000 *Obiter* 560; Nanima 2019 *PER / PELJ* 13; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

645 Section 3(1)(a) and (b) of the *FICA*; Hatchard J "The Role of Financial Intelligence Units in Combating Money Laundering: An African Perspective" 2022 *Journal of International Criminal Law* 103, 115; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145; Njotini 2000 Obiter 560-561.

646 See sections 20-25 of the *FICA* as amended by the *Financial Intelligence Centre Amendment Act* 1 of 2017 (*FICA Amendment Act*).

647 See section 20A of the *FICA Amendment Act;* According to section 1 of the *FICA*, a business relationship means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis. This definition does not provide clarity on the type of transactions which fall under the business relationship under the *FICA*. It is submitted that a clearer and streamlined definition ought to be provided by the *FICA* for a business relationship. The researcher recommends that this definition could be amended to read, 'a business relationship means an arrangement between a client and an accountable institution for the purpose of concluding transactions (as per each accountable institutions' founding document) on a regular basis.' It is hoped that this amended definition will restrict and confine 'transactions' to only those transactions an accountable institution is permitted to provide under its founding document.

648 See section 21 of the *FICA*; see also FIC Guidance Note 3A for accountable institutions on customer identification and verification and related matters; see also *Energy Measurements (Pty) Ltd v First National Bank of SA Ltd* 2001 (3) SA 132 (W) (*Energy Measurements Case*), para 114.2; Beebeejaun A and Dulloo A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2022 Journal of Money Laundering Control 1, 13.

649 Section 21(1)(c)(i)-(ii) of the *FICA*; see related discussion by Ahlosani W *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE's Financial Intelligence Units* (Palgrave Macmillan London 2016) 45; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

as to prevent suspicious transactions. Financial institutions use the customer's name, permanent address, nationality, date and place of birth, identity number, signature, occupation and name of the employer to identify clients.[650] The *FICA* further provides that customer records must be constantly updated and monitored on an ongoing basis.[651] This is done to ensure that the client's profile remains commensurate with the money laundering risk which the client is known to pose to the financial institution and to detect any suspicious account activities. The researcher argues that the requirement for ongoing monitoring should only be applied to high-risk customers and not to all accounts.[652] This follows that South Africa is a developing economy, therefore, it is essential that the available resources be used effectively to detect money laundering activities. For example, resources should be used to conduct ongoing monitoring on clients who pose high money laundering risk to banks and financial institutions.

The *FICA*[653] provides for the retrospective application of customer due diligence measures and the RMCP standards discussed above. Through this, the *FICA* aims to provide a better guard against money laundering and terrorist financing which might emanate from business relationships which were established before the enactment of the *FICA,* between financial institutions and their clients.

5.3.2.2 Understanding and Obtaining Information on Business Relationship

In addition to the identification and verification requirements which are discussed above, the *FICA* requires financial institutions to obtain information regarding the nature and

650 Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 57; also see Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE's Financial Intelligence Units* 58.

651 See section 23(a) of the *FICA*; Financial Intelligence Centre "Guidance Note 3 on the Implementation of Various Aspects of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001)" *Guidance Note* (28 March 2013), note 3.

652 Scott KA and Stephenson R "Enhanced Customer Due Diligence for Banks in the UK and the US" 2008 *Journal of International Banking and Financial Law* 86, 89; De Koker 2003 *Journal of Money Laundering Control* 27, 30; Itzikowitz 2008 *Journal of Financial Crime* 191.

653 Section 21(2) of the *FICA*; De Koker 2003 *Journal of Money Laundering Control* 166; see related comments by Van Jaarsveld IL "Mimicking Sisyphus? An Evaluation of the Know Your Customer Policy" 2006 *Obiter* 228, 240; also see Itzikowitz A "Money Laundering" 2000 *SA Merc Law Journal* 302, 309; Kersop and Du Toit 2015 *PER/PELJ* 1624.

purpose of the intended business relationship in line with their RMCP.[654] The *FICA* requires financial institutions to obtain information on the source of funds which clients expect to use in the conclusion of transactions in the course of the business relationship concerned.[655] The purpose of this requirement is to ensure that financial institutions record clients' details according to their risk profile. The researcher submits that determining the client's source of funds is also essential for detecting suspicious transactions which could be linked to money laundering activities.[656] The determination of suspicious transactions is based on a comparison between the client's profile *vis-à-vis* their source of funds and the value of transactions concluded by the client. It should be noted that customer due diligence measures are also applied to legal persons such as trusts and/or partnerships.[657] This follows that, due to the high-level of credence that follows lawyers trust accounts, they can be easily transformed into criminal instruments.[658] Accordingly, it is essential to ensure that financial transactions which are concluded though trust accounts be constantly monitored to detect suspicious account activities. Moreover, the *FICA* requires financial institutions to keep and maintain records of every transaction including the amount, currency, parties to, and the nature of the transaction[659] for at least five years from the date on which that transaction is

654 Section 21A (a) and (b) of the *FICA Amendment Act*; Kersop and Du Toit 2015 *PER/PELJ* 1624; Tuba 2012 *Acta Criminologica* 112; De Koker 2003 *Journal of Money Laundering Control* 35.

655 Section 21A(c) of the *FICA Amendment Act*; Tuba M and Van der Westhuizen C "An Analysis of the "Know-Your-Customer Policy as an Effective Tool to Combat Money Laundering: Is it about who or What to Know that Counts?" 2014 *International Journal Public Law and Policy* 53, 58; Tuba 2012 *Acta Criminologica* 112.

656 De Koker 2003 *Journal of Money Laundering Control* 32; Scott and Stephenson 2008 *Journal of International Banking and Financial Law* 90; Madinger J *Money Laundering: A Guide for Criminal Investigators* 3rd ed (CRC Australia 2011) 55.

657 Section 21B(1)-(5) of the *FICA Amendment Act*; 2021 *Journal of Comparative Law in Africa* 57; also see Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

658 Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 142; Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *PER/PELJ* 55, 58; He P "A Typological Study on Money Laundering" 2010 *Journal of Money Laundering Control* 15, 20.

659 See section 22A (2) of the *FICA Amendment Act*; Henning 2017 *Journal of Financial Crime* 526; See related comments by Padified N "Country Report: Anti-Money Laundering Rules in the United Kingdom" in Pieth M and Aiolfi G *A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the United Kingdom and the USA* (Edward Elgal Cheltenham 2004) 265, 269; also see Hudson A *The Law of Finance* 2nd ed (Sweet and Maxwell 2013) 434.

concluded.[660] This is done to ensure that such information can be used for future investigations should there be money laundering related crimes linked to the customer. Nonetheless, the researcher argues that this could cause a strain on available resources considering that South Africa is a developing economy, affected by challenges relating to the availability of limited resources. Instead, the researcher submits that such ongoing monitoring should be conducted only on high-risk customers or suspected perpetrators to ensure better utilisation of resources.

Financial institutions have an ongoing duty to monitor the consistency in the source of funds of each client and their background so as to detect unusual large amount transactions.[661] The *FICA* requires financial institutions to repeat customer due diligence procedures at any time during the course of the business or bank-customer relationship where there is reasonable doubt on the veracity or adequacy of such previously obtained information.[662] This is essential to enable the detection of money laundering and related crimes. This follows that ongoing due diligence enables financial institutions to detect unusual account activities so as to conduct further investigations and circumvent the possibility of money laundering activities.[663] If, at any stage, the financial institution is unable to carry out the customer due diligence measures, the financial institution should terminate its existing business relationships with the client or customer.[664] The financial institution may make a report to the FIC to this effect. This is done to ensure the consistent implementation of customer due diligence by all financial institutions in South

660 Section 23B of the *FICA*; see related comments by Hudson *The Law of Finance* 433; Padified N "Country Report: Anti-Money Laundering Rules in the United Kingdom" 270; see related discussion by Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE's Financial Intelligence Units* 58.

661 See sections 21C (a)-(b) *FICA Amendment Act*; De Koker 2014 *Journal of South African Law* 720; Chitimira 2020 *Acta Universitatis Danubius. Juridica* 57; He 2010 *Journal of Money Laundering Control* 15.

662 Section 21D of the *FICA Amendment Act*; De Koker 2014 *Journal of South African Law* 720; Chitimira 2020 *Acta Universitatis Danubius. Juridica* 57; see related comments by Maguchu 2017 *Journal of Money Laundering Control* 138.

663 Section 21C of the *FICA Amendment Act*; see also De Koker 2014 *Journal of South African Law* 723; Financial Intelligence Centre Guidance Note 07 para 127; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

664 Section 21E of the *FICA Amendment Act*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145; Chitimira and Munedzi 2022 *Journal of Comparative Law in Africa* 59.

Africa. The researcher submits that the consistent implementation and enforcement of AML measures guarantees effectiveness.

5.3.3 The Role and Functions of the FIC

The FIC is an independent statutory body that was established under the *FICA.*[665] The FIC plays a central role in curbing money laundering and other financial crimes in South Africa.[666] The researcher submits that the independence of the FIC is an essential measure to ensure objective and impartial analysis of financial intelligence. This minimises any ineffectiveness of the FIC which may be due to influence from other institutions or bodies.

The role and functions of the FIC include collecting, processing, and analysing financial intelligence received from reporting institutions such as banks.[667] The FIC uses the financial intelligence to identify trends, patterns and potential money laundering threats.[668] The FIC also requires financial institutions to report suspicious and unusual transactions.[669] This is relevant for further investigations in relation to potential money laundering threats. The FIC also performs inspection and assessment roles to ensure that financial institutions comply with AML obligations provided under the FIC.[670] Therefore, it can be said that the FIC also plays an enforcement role. However, the researcher argues

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665 Section 2 of the *FICA*; Lesambo FI "AML/CFT and Cybersecurity Laws in South Africa" in Lessambo FI *Anti-Money Laundering, Counter Financing Terrorism and Cybersecurity in the Banking Industry* (Palgrave Macmillan, Cham 2023)197, 200; Erasmus and Bowden 2020 *Obiter* 314; De Koker *South African Money Laundering and Terror Financing Law* 21.

666 See related comments by Beebeejaun and Dulloo 2022 *Journal of Money Laundering Control* 410; Chitimira 2020 *Acta Universitatis Danubius. Juridica* 56; Marakalala MC and Mokwena RJ "Forensic Investigation: The Impact of Money Laundering during Lockdown in South Africa" 2023 *International Journal of Social Science Research and Review* 523, 525.

667 Section 4 of the *FICA*; see related discussion by Simwayi and Haseed 2011 *Journal of Money Laundering Control* 118; De Koker 2002 *Institute for Security Studies* 6; Marakalala and Mokwena 2023 *International Journal of Social Science Research and Review* 525.

668 See related discussion by Simwayi and Haseed 2011 *Journal of Money Laundering Control* 118; De Koker 2002 *Institute for Security Studies* 6; Marakalala and Mokwena 2023 *International Journal of Social Science Research and Review* 525.

669 Section 5 of the *FICA*; Yozi M *The Identification and Verification of Clients by Banks in South Africa: A Financial Intelligence Centre Act Requirement* (University of Johannesburg South Africa 2020) 18; De Koker 2003 *Journal of Money Laundering Control* 254.

670 Section 4 of the *FICA*; De Koker 2003 *Journal of Money Laundering Control* 253; Spruyt W and Hugo C "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227, 230.

that the criteria for the appointment of members of the FIC is not regulated by the *FICA* such that any person can be appointed as a staff member of the FIC. The *FICA* only provides that such persons should undergo security screening prior to their appointment.[671] In this regard, the researcher argues that the roles and functions of the FIC require expert personnel to effectively fulfil its mandates. Accordingly, the *FICA* expressly regulates the appointment and prerequisites for FIC members to ensure that such members have the relevant expertise to effectively discharge the functions of the FIC and combat money laundering in South Africa.

Nonetheless, the FIC encounters challenges that hinder its effective performance.[672] Such challenges include the lack of adequate resources to conduct ongoing risk assessment and jurisdictional boundaries which limit its influence beyond South Africa. The researcher argues that there is need for effective international cooperation measures to enable the FIC to access information relating to money laundering from cross-border financial institutions.[673] This is essential following the fact that money laundering is a global crime that requires international cooperation and information sharing to combat effectively.

5.3.4 The Enactment of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act

The *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* was enacted in 2022.[674] The *Anti-Money Laundering Act* was enacted to strengthen South Africa's AML regulatory framework and to comply with the international

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671 Sections 12-13 of the *FICA*; De Koker 2003 *Journal of Money Laundering Control* 254; Njotini 2000 Obiter 569; Kruger *Organised Crime and Proceeds of Crime Law in South Africa* 19.

672 Simwayi and Haseed 2011 *Journal of Money Laundering Control* 121; De Koker 2002 *Institute for Security Studies* 35; Marakalala and Mokwena 2023 *International Journal of Social Science Research and Review* 528.

673 *Financial Sector Regulation Act* 9 of 2017, see section 76; Burchell J Organised "Crime and Proceeds of Crime Law in South Africa" 2010 *South Africa Journal of Criminal Justice* 177, 180; De Koker 2002 *Journal of Money Laundering Control* 33.

674 *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022 (*Anti-Money Laundering Act*); see related comments by De Koker L "Editorial: Regulatory Impact Assessment Towards a Better Approach for the FATF" 2022 *Journal of Money Laundering Control* 265, 266; also see Gaviyau W and Sibindi AB "Customer Due Diligence in the FinTech Era: A Bibliometric Analysis" 2023 *Risks Special Issue* 1, 4.

AML/CFT standards.[675] The enactment of the *Anti-Money Laundering Act* was South Africa's response to the deficiencies identified in its FATF Mutual Evaluation Report of 2021.[676] The *Anti-Money Laundering Act* introduced amendments to the *FICA* to ensure the enhancement of customer due diligence.[677] This will ensure that financial institutions obtain relevant and useful information from their clients during identification and verification. The findings of the FATF Mutual Evaluation Report allude the inadequacy of the FIC's ability to effectively produce financial intelligence which is relevant for the investigation and tracing of money laundering crimes in South Africa. Accordingly, the *Anti-Money Laundering Act* was enacted to enhance the implementation of customer due diligence measures in South Africa.

Nonetheless, the researcher submits that the enactment and existence of the *FICA* has failed to guarantee the effectiveness and adequacy of AML measures in South Africa. This follows that there remains a need for adequate resources and enforcement mechanisms to ensure the effectiveness of AML laws in South Africa.[678] This is evidenced by the fact that despite the existence of several pieces of legislation, such as the *FICA*, the *POCA*

675 Section 2 of the *Anti-Money Laundering Act*; National Treasury "Enactment of Key Anti-Money Laundering and Combating Terror Financing Laws" www.treasury.gov.za accessed 13 May 2023; Gaviyau W and Sibindi AB "Global Anti-Money Laundering and Combating Terrorism Financing Regulatory Framework: A Critique" 2023 https://www.preprints.org/manuscript/202305.1626/v1 accessed 14 June 2023.

676 See Financial Action Task Force "Anti-Money Laundering and Counter-Terrorist Financing Measures – South Africa" *Mutual Evaluation Report* (21 October 2021) 3; National Treasury "Enactment of Key Anti-Money Laundering and Combating Terror Financing Laws" 3; Gaviyau and Sibindi "Global Anti-Money Laundering and Combating Terrorism Financing Regulatory Framework: A Critique" 6.

677 Section 21E of the *FICA*; Gaviyau and Sibindi "Global Anti-Money Laundering and Combating Terrorism Financing Regulatory Framework: A Critique" 6; Burchell 2010 *South Africa Journal of Criminal Justice* 180; Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 406.

678 See related comments by Mniwasa E "Money Laundering Control in Tanzania: Did the Bank Gatekeepers Fail to Discharge their obligations?" 2019 *Journal of Money Laundering Control* 796, 810; also see Emerson CA "Is There a Commendable Regime for Combatting Money Laundering in International Business Transactions?" 2021 *Journal of Money Laundering Control* 163, 172; Oana C "Money Laundering Internationally" 2019 *Perspectives of Law and Public Administration* 74, 77.

and the *POCDATARA*, to curb money laundering, South Africa was grey listed for failing to comply with the FATF recommendations.[679]

5.3.5 The Implementation of FATF Recommendations to Combat Money Laundering in South Africa

The Financial Action Task Force (FATF) was founded in 1989 as an intergovernmental organisation by the Group of Seven (G7), anchored on developing international policies to combat money laundering globally.[680] In 2001, the G7 expanded the scope of the FATF to include measures in identifying and combatting the financing of regional and global terrorism.[681] Such measures include measures to design and monitor due diligence frameworks intended to prevent funding of activities as diverse as the illicit arms trade, cyber fraud and the drugs trade.[682] To date, FATF has issued 49 recommendations[683] which are applicable to all countries globally.[684] The FATF ensures compliance with its

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679 De Koker 2022 *Journal of Money Laundering Control* 266; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4; Gaviyau and Sibindi "Global Anti-Money Laundering and Combating Terrorism Financing Regulatory Framework: A Critique" 6.

680 The G7 is an intergovernmental organisation that meets periodically to address international and economic monetary issues. See Alam A, Sajid IA and Hussain S "Money Laundering as an Organized crime: The Legal and Institutional Measures for Controlling Money Laundering in Pakistan" 2022 *Journal of Social Sciences Review* 1, 4; Alexander K "The International Anti-Money Laundering Regime: The Role of the Financial Action Task Force" 2001 *Journal of Money Laundering Control* 231, 232.

681 Rosenthal J "Stopping Domestic Sources of International Terrorist Financing: Amending the Anti-Money Laundering Act of 2020" 2020 *Suffolk Transnational Law Review* 127, 128; see related comments by Alexander 2001 *Journal of Money Laundering Control* 234.

682 Colegrave A 2023 *Imminent FATF Grey Listing of South Africa February* https://www.whitecase.com/insight-alert/imminent-fatf-grey-listing-south-africa accessed 1 March 2023; see related comments by Kemsley D, Kemsley SA and Morgan FT "Tax Evasion and Money Laundering: A Complete Framework" 2022 *Journal of Financial Crime* 589, 593; Pol RF "Anti-Money Laundering: The World's Least Effective Policy Experiment? Together We Can Fix It" 2020 *Policy Design and Practice* 73, 78.

683 Financial Action Task Force 2023 *FATF Recommendations* https://www.fatf-gafi.org/en/topics/fatf-recommendations.html accessed 1 March 2023. The FATF 40 recommendations are divided into regulations and operational measures' sub-categories which include AML/CFT Policies and Coordination, Money laundering and confiscation, Terrorist financing and financing of proliferation, Preventive measures, Transparency and beneficial ownership of legal persons and arrangements, Powers and responsibilities of competent authorities and other institutional measures and international cooperation.

684 Chitimira 2021 *Journal of Money Laundering Control* 797; De Koker L "Financial Action Task Force Standards and Financial Inclusion: What Should be done – and What Should Not be Done - To Improve the Alignment Between Integrity and Inclusion Policy Objectives?" 2020 *Social Sciences Research Network* 1, 14; see related discussion by Yeh SS "New Financial Action Task Force Recommendations to Fight Corruption and Money Laundering" 2022 *Laws* 1, 18; According to Hatchard 2022 *Journal of International Criminal Law* 106, the FATF has established a regional

recommendations through the grey and black-listing procedure which is punitive in nature (a form of economic sanction procedure) as it often leads to a loss of foreign investments.[685] The grey-list consists of jurisdictions which are placed under increased monitoring of their anti-money laundering and terrorist financing laws as well as the effective implementation of such laws by the FATF.[686] The black-list, on the other hand, is comprised of countries with a large incidence of money laundering, terrorist financing and proliferation financing.[687] Accordingly, the countries which are placed on the grey-list, would have made commitments towards resolving the identified issues of non-compliance with the FATF recommendations.[688]

The FATF employs a risk-based approach as one of the measures to enforce its recommendations.[689] The risk-based approach means that countries, competent authorities and banks ought to identify, assess and understand the money laundering and terrorist financing risk to which they are exposed.[690] After this, they adopt appropriate

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bodies to monitor member countries' compliance with FATF recommendations. In Africa, these include the East and Southern Africa Anti-Money Laundering Group (ESAAMLG), Inter-governmental Action Group against Money Laundering (GIABA), Middle East and North Africa FATF (MENAFATF) and the Task Force on Money Laundering in Central Africa (GABAC). Notably, all African countries are members of one of these regional bodies and are required to implement the FATF Recommendations in full.

685 Bissett B, Steenkamp P and Aslett D "An Analysis of the 2021 South African FATF Mutual Evaluation Report: Terrorist Financing and NPOs" 2023 *Journal of Financial Crime* 1, 9-11; Shah AR "The Geopolitics of Pakistan's 2018 Greylisting by the Financial Action Task Force" 2021 *International Journal* 280, 281; Packin NG and Jabotinsky HY "Blacklisting Crypto (and More) " 2022 *Social Sciences Research Network* 1, 24.

686 Tsingou E "Effective Horizon Management in Transnational Administration: Bespoke and Box Ticking Consultancies in Anti-Money Laundering" 2021 *Public Administration* 522, 525; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 9; Schmidt A "Virtual Assets: Compelling a New Anti-Money Laundering and Counter-Terrorism Financing Regulatory Model" 2022 *Journal of Internet Law* 1, 11.

687 Financial Action Task Force 2022 *High-Risk Jurisdictions subject to a Call for Action – 21 October 2022* https://www.fatf-gafi.org/en/publications/High-risk-and-other-monitored-jurisdictions/Call-for-action-october-2022.html accessed 1 March 2023; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 9; Wagman S "Cryptocurrencies and National Security: The Case of Money Laundering and Terrorism Financing" *Harvard National Security Journal* 1, 6.

688 Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 9; De Koker L "Regulatory Impact Assessment: Towards a Better Approach for the FATF" 2022 *Journal of Money Laundering Control* 265, 266.

689 Ferwerda J and Reuter P "National Assessments of Money Laundering Risks: Do Governments Understand Risk Well Enough to Implement a Risk Based Approach?" 2020 World Bank Group 1, 5; Chitimira 2021 *Journal of Money Laundering Control* 797; Murrar F "Adopting a Risk-Based Approach for Non-Profit Organisations" 2022 *Journal of Money Laundering Control* 19, 22.

690 Financial Action Task Force 2012 *Risk-Based Approach for the Banking Sector* https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html

mitigatory measures and mobilise sufficient resources to effectively combat such activities in their countries in line with the level of identified risk.[691] In other words, the risk-based approach is flexible and allows a more efficient use of resources as banks and the relevant regulatory authorities are free to decide on the most effective ways on mitigating money laundering and related crimes.[692] Thus, banks and other financial institutions must focus their resources and enforce stricter and enhanced measures in situations where the risks are higher, apply simplified measures where the risks are lower and perhaps exempt low-risk activities.[693] Accordingly, it is the role of financial role players such as the FIC to identify and assess the different threats and money laundering activities in order to categorise them accordingly and then distribute adequate resources to avert them. As such, the FIC issues, *inter alia*, guidance notes for accountable institutions on customer identification and verification and related matters.[694] These guidance notes do not have a binding effect on financial institutions and merely serve to compliment AML legislative instruments in order to guard against money laundering in South Africa.[695] To date, the successful application of the risk-based approach in South African financial institutions is debatable.[696] This follows that, due to smurfing, financial institutions may fail to

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accessed 2 March 2023; Murrar 2022 *Journal of Money Laundering Control* 23; Simonova A "The Risk-Based Approach to Anti-Money Laundering: Problems and Solutions" 2011 *Journal of Money Laundering Control* 346, 350.

691 Kerimov A *et al* "The Methods of Managing for Risk of Combating Money Laundering (Legalization) of Proceeds from Crime and the Financing of Terrorism" 2020 *International Scientific Conference on Economic and Social Development* 846, 846-847; Chitimira 2021 *Journal of Money Laundering Control* 797; Murrar 2022 *Journal of Money Laundering Control* 24; Siminova 2011 *Journal of Money Laundering Control* 350.

692 Financial Action Task Force 2012 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html accessed 2 March 2023; Chitimira 2021 *Journal of Money Laundering Control* 797; see related comments by Shepherd KL "Guardians at the Gate: The Gatekeeper Initiative and the Risk-Based Approach for Transnational Laws" 2009 *Real Property, Trust and Estate Law Journal* 603, 625.

693 Ferwerda and Reuter 2022 *World Bank Group* 9; Financial Action Task Force 2012 https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Risk-based-approach-banking-sector.html accessed 2 March 2023; Chitimira 2021 *Journal of Money Laundering Control* 797.

694 Chitimira 2021 *Journal of Money Laundering Control* 798; see related comments by De Koker 2022 *Journal of Money Laundering Control* 266; Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 9; De Koker L "Identifying and Managing Low Money Laundering Risk: Perspective on FATF's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 336.

695 Section 4 of the *FICA Amendment Act*; Chitimira 2021 *Journal of Money Laundering Control* 798; see related comments by Shepherd 2009 *Real Property, Trust and Estate Law Journal* 603.

696 Chitimira 2021 *Journal of Money Laundering Control* 798; see related comments by De Koker 2022 *Journal of Money Laundering Control* 266; Henning JJ and Hauman M "Fortifying a Risk-based Approach in the South African AML/CFT Process" 2017 *Journal of Financial Crime* 520, 529.

determine the exact risk which is associated with a client.[697] Thus, perpetrators may pose as low-risk clients whilst they conduct money laundering activities through depositing small amounts into several accounts. Accordingly, the researcher submits that the risk-based approach has not been an effective measure to combat money laundering in South Africa.

To determine the extent of each country's compliance with its anti-money laundering obligations, a compulsory mutual evaluation process is undertaken by experts from other FATF member countries to compile a comprehensive report including actionable recommendations.[698] The FATF mutual evaluation's outcomes are presented through the 11 'immediate outcomes' which are coupled with rankings.[699] According to the key findings of the FATF Mutual Report 2021,[700] South Africa has been grey-listed following eight major regulatory deficiencies especially in line with adequately curbing money laundering and corruption.[701] The following, *inter alia*, were established by the FATF as the deficiencies accounting for South Africa's grey-listing.

One of the deficiencies established by the FATF was the lack of adequate understanding of foreign money laundering threats by the relevant authorities in South Africa.[702] The FATF Mutual Report 2021 indicated that although there is a commendable understanding of the key domestic money laundering threats by relevant authorities like the FIC, there

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697 De Koker 2009 *Journal of Financial Crime* 336; see related comments by Stott C and Ullah Z "Money Laundering Regulations 2007: Part 1" 2008 *Journal of International Banking Law and Regulation* 175, 177; also see Tuba and Van der Westhuizen 2014 *International Journal Public Law and Policy* 55.

698 Hatchard 2022 *Journal of International Criminal Law* 106; Henning and Hauman 2017 *Journal of Financial Crime* 530; Gordon R "Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing" 2011 *Duke Journal of Comparative and International Law* 503, 506.

699 Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; see related comments by Hatchard 2022 *Journal of International Criminal Law* 106; Henning and Hauman 2017 *Journal of Financial Crime* 530; Gordon 2011 Duke *Journal of Comparative and International Law* 508.

700 Financial Action Task Force "Anti-Money Laundering and Counter-Terrorist Financing Measures - South Africa" *FAFT Mutual Evaluation Report* (October 2021) 1.

701 National Treasury of South Africa "What Does FATF Greylisting Mean for a Country?" *National Treasury of South Africa Work Sheet* (February 2023) 3.

702 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 3; see related discussion by Moonstone "Information Refinery Did Grey-Listing Threat Hasten SARB to Act against Markus Jooste?" 20 October 2022 www.citizen.co.za accessed 22 April 2023 Page Anon.

is little understanding of global money laundering threats which are linked to South Africa by relevant authorities.[703] The lack of an adequate understanding of international money laundering trends has affected the implementation of measures to mitigate such threats by relevant authorities.[704] This might be exacerbated by the fact that most AML measures which have been implemented in South Africa, predominantly place an emphasis on domestic money laundering threats. These include the identification and verification procedures which are emphasised by the *FICA*. The same does not exist for procedures regarding foreign money laundering linked with South Africa. There is a need to augment the regulation of cross-border money laundering patterns in South African AML legislation.

The second deficiency which was established by the FATF was with regards to "state capture".[705] The mutual report indicated that state capture seems to have befallen South Africa for quite some time and is characterised by a myriad of money laundering and corruption related crimes in South Africa.[706] The Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State (the Commission of Inquiry) stated that banks such as Nedbank and Standard Bank were instruments of money laundering following their failure to report the Gupta linked cash flow anomalies.[707] Efforts to curb these crimes were only initiated around 2018 by the government of South Africa; including replacing key staff and increasing

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703 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 1; see related discussion by Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

704 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 6; see related discussion by Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

705 According to a related discussion by Dassah MO "Theoretical Analysis of State Capture and its Manifestation as a Governance Problem in South Africa" 2018 *The Journal for Transdisciplinary Research in Southern Africa* 1, 2, State capture in South Africa may be defined as a form of corruption in which corporations and politicians conspire to influence a country's decision-making process to advance their own interests.

706 Financial Action Task Force *FATF Mutual Evaluation Report* (October 2021) 7; Madonsela S "Critical Reflections on State Capture in South Africa" 2019 *Insight on Africa* 113, 123; Van Niekerk T, L'Heureux AV and Holtzhausen N "State Capture in South Africa and Canada: A Comparative Analysis" 2022 *Public Integrity* 1, 3.

707 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 10; see related comments by Dassah 2018 *The Journal for Transdisciplinary Research in Southern Africa* 5; Madonsela 2019 *Insight on Africa* 125.

resources at key law enforcement and judicial agencies.[708] Considering the fact that the corrupt activities surrounding the state capture started long before 2018, these measures were employed untimely to deter money laundering activities in South Africa.[709] There is a need for regulatory authorities like the FIC to be consistently on high alert in order to timeously identify money laundering threats.

The FATF mutual report also indicated that only a few cases relating to money laundering are prosecuted in South African courts. Most cases of money laundering convictions relate to fraud cases whereas there are fewer prosecutions of other high-risk money laundering cases including the 'state capture'.[710] This state of affairs is true considering the failure of the prosecution of the Guptas for money laundering, corruption, and related charges to date.

Another deficiency which is highlighted in the FATF mutual report is the reliance and use of cash for transactions. There is a widespread and rampant use of cash as a medium of exchange instead of other methods, such as electronic funds transfer (EFT), in South Africa.[711] However, South Africa is obliged to implement AML measures in line with the FATF standards to curb money laundering activities through illicit money remittances.[712] It is submitted that the reliance of cash as a medium of exchange increases the chances of money laundering as such transactions cannot be monitored through the formal financial stream. Accordingly, there is a need for incentive-based mechanisms for cashless transacting to be implemented by the relevant authorities, including the South African Reserve Bank (SARB), so as to enhance the detection of money laundering activities in

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708 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 11; see related discussion by Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

709 Section 21C (a)(i) places an ongoing CDD duty on banks to constantly monitor each client's source of funds to ensure that the transactions are consistent with the accountable institution's knowledge of the client and the client's business and risk profile.

710 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 2; see related comments by Murray K "The Cost of Not Wanting to Know – The Professions, Money Laundering and Organised Crime" 2018 *Journal of Financial Crime* 218, 221.

711 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 2; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 54; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

712 Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 54; see sections 20A–45 and Schedule 1(19) of the *FICA*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 145.

South Africa. It is hoped that such measures may reduce cash-based transactions and curb money laundering in South Africa through increased transaction monitoring.

The FATF mutual report also indicated that there is lack of adequate data on beneficial ownership information about companies and trusts. Such information is relevant for authorities like the FIC to accurately gather sufficient and updated information to enhance the investigation of money laundering in companies and trusts.[713] Therefore, there is a need for the FIC to access customer due diligence related information on companies and trusts inorder to timeously detect and curb money laundering and related crimes.

Another deficiency highlighted by the FATF mutual report was that there appears to be more confiscation of criminal proceeds, particularly using civil forfeiture powers, than assets in other high-profile crimes like corruption.[714] Some of these proceeds have already been transferred to other jurisdictions. It appears that the present legislation does not optimally regulate the confiscation of proceeds located outside South Africa. In this regard, some money laundering activities are undetectable as soon as the proceeds leave South Africa.

Moreover, the FATF mutual report also highlighted that larger banks are more developed at understanding their money laundering risks and implementing mitigating measures commensurate with those risks unlike smaller banks.[715] Inversely, smaller banks and Designated Non-Financial Businesses and Professions (DNFBPs) are focused on compliance, not on identifying and understanding the risks associated with money laundering.[716] There is a need by the FIU to spearhead a process of accelerating the use of risk-based approaches in smaller banks in order to adequately equip them in cases of

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713 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 3; see related discussion by Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

714 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 4; Madonsela 2019 *Insight on Africa* 117; Chitimira 2021 *Journal of Money Laundering Control* 798; see related comments by De Koker 2022 *Journal of Money Laundering Control* 266.

715 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 4; see related discussion by Bissett, Steenkamp and Aslett 2023 *Journal of Financial Crime* 2; also see Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

716 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 4; Chitimira 2021 *Journal of Money Laundering Control* 798; see related comments by De Koker 2022 *Journal of Money Laundering Control* 266; Gaviyau and Sibindi 2023 *Risks Special Issue* 4.

any money laundering client activities occurring. In addition, the potentially high-risk sectors of dealers in Precious Metals and Stone (DPMS) and Company Service Providers (CSPs) are not regulated against possible money laundering and combatting of terrorist finance practices, as is also the case for Virtual Asset Service Providers (VASPs).[717] There is a growing need to appropriately regulate dealings in DPMS in order to curb money laundering in South Africa.

The FATF mutual report further indicated that South Africa provides constructive mutual legal assistance which ought to help resolve some criminal cases in other countries.[718] Nonetheless, this process has proven to be slow due to the poor prioritisation of international cooperation in investigations by relevant authorities in South Africa.[719] South African authorities ought to be proactive and more cooperative with other international regulatory authorities for prosecution of criminal offences such as money laundering.

5.4 Conclusion

Although it has been recently grey-listed, South Africa is the only African member state of the FATF.[720] Membership into the FATF is coupled with a responsibility to comply with the 49 recommendations published by the FATF to date to combat money laundering and terrorist financing as well as the financing of proliferation of weapons of mass destruction. In line with this, South Africa has enacted legislation aimed at curbing money laundering such as the *POCA* and the *FICA* as amended. The state capture, high incidence of drug trafficking and the grey listing of South Africa by the FATF as discussed above suggests that the current legislation and its enforcement by the FIC and other relevant regulatory bodies are inadequate. Given this inadequate enforcement, the researcher submits that

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717 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 4; Gaviyau and Sibindi 2023 *Risks Special Issue* 4; De Koker 2022 *Journal of Money Laundering Control* 267.

718 Financial Action Task Force *FAFT Mutual Evaluation Report* (October 2021) 5; see also the *Co-operation in Criminal Matters Act* 75 of 1996; Mujuzi JD "The South African International Cooperation in Criminal Matters Act and the Issue of Evidence" 2015 *De Jure* 351, 352.

719 Mujuzi 2015 *De Jure* 35; Chitimira and Munedzi 2022 *Journal of Money Laundering Control* 54; Beebeejaun and Dulloo 2023 *Journal of Money Laundering Control* 8; Mugarura and Ssali 2021 *Journal of Money Laundering Control* 20.

720 Hatchard 2022 *Journal of International & Comparative Law* 106; Mujuzi 2015 *De Jure* 355; also see Chitimira 2020 *Actus Danibuis Juridica* Journal 60; Munedzi and Chitimira 2022 *Journal of Money Laundering Control* 58.

more still needs to be done to optimally curb money laundering in South Africa. However, it is hoped that the recent enactment of the *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act*[721] and the need for increased surveillance on money laundering threats as necessitated by the FATF's grey listing can enhance the curbing of money laundering practices in South Africa.

The next chapter discusses the AML statutory framework and its implementation in the United Kingdom (UK). This is done to compare the AML approaches that have been adopted by the UK so as to draw lessons to enhance the regulation of AML measures in Zimbabwe.

721 *General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act* 22 of 2022 (AML Amendment Act); see discussion by Beebeejaun and Dulloo 2023 *Journal of Money Laundering Control* 12.

CHAPTER SIX

THE REGULATION AND IMPLEMENTATION OF ANTI-MONEY LAUNDERING LEGISLATION IN THE UNITED KINGDOM

6.1 Introduction

The United Kingdom (UK) is a country that boasts as one of the world's major economies.[722] The UK's well established legal system and stable political environment significantly encourages business and boosts investor confidence and market participation. Its capital the city of London is one of the world's largest financial centres with numerous financial institutions and stock exchanges.[723] The UK has well-developed financial markets and institutions that provide a diverse range of services which include international bank lending, international insurance, the issuance of international debt securities, company secretarial, and trust services.[724] It is clear that the UK is a global financial hub that processes large volumes of domestic and international transactions. However, it can be noted that well-developed and diversified international financial markets and institutions attract honest investors, as well as criminals. In this regard, the UK faces a constant threat of being targeted by criminals especially those who want to launder money.[725]

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722 Financial Action Task Force "Fourth Round Mutual Evaluation Report United Kingdom" *UK Mutual Evaluation Reports* (October 2018) 1, 21; Pieth M and Aiofli G *A Comparative Guide to Anti-Money Laundering* (E. Elgar 2004) 18; Parveen R "Impact of Anti-Money Laundering Legislation in the United Kingdom and European Union" 2020 *International Journal of Economics and Management Systems* 5, 7; see related comments by Yeoh P "Enhancing Effectiveness of Anti-Money Laundering Laws through Whistleblowing" 2014 *Journal of Money Laundering Control* 34, 35.

723 FATF 2018 *UK Mutual Evaluation Report* 21; Booth R *et al Money Laundering Law and Regulations: A Practical Guide* (Oxford University Press 2011) 7; Harrison K and Ryder N *The Law Relating to Financial Crime in the United Kingdom* (Ashgate Publishing Limited 2013) 15; Goldsmith JG, Kalin C and Muller WH *Anti-Money Laundering International Law and Practice* (John Wiley West Sussex 2007) 3.

724 FATF 2018 *UK Mutual Evaluation Report* 21; see related comments by Chitimira H and Munedzi S "An Evaluation of Customer Due Diligence and Related Anti-Money Laundering Measures in the United Kingdom" 2023 *Journal of Money Laundering Control* 127, 129; Fisher J "The Anti-Money Laundering Disclosure Regime and the Collection of Revenue in the United Kingdom" 2010 *British Tax Review* 235, 239; Alldridge P "Money Laundering and Globalisation" 2008 *Journal of Law and Society* 440, 443.

725 See Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 129; Hufnagel S and King C "Anti-money Laundering Regulation and the Art Market" 2020 *Legal Studies* 131, 140; Lowe RJ Anti-Money Laundering – The Need for Intelligence" 2017 *Journal of Financial Crime* 472, 475.

Given the above, money laundering is estimated to negatively affect the economy of the UK by at least 37 billion pounds annually.[726] Furthermore, the UK's National Crime Agency estimates that between 2019 and 2022, 4 542 organised crime groupings were in operation within the UK.[727] Therefore, a robust anti-money laundering (AML) regulatory framework is an important pillar towards supporting the integrity of the financial markets and institutions in the UK. It is from this perspective that this chapter seeks to provide a comparative analysis of the UK's AML regulatory framework to draw lessons for Zimbabwe to enhance its own AML regulatory framework.

6.2 Overview of the Current Anti-Money Laundering Laws in the UK

The UK's AML regulatory framework is underpinned by several legislations and regulations that are consistently enforced to combat money laundering in the UK. The AML legislations enacted in the UK include the *Proceeds of Crime Act*,[728] as amended by the *Serious Organised Crime and Police Act*,[729] the *Criminal Finances Act*[730] , and the *Money Laundering Terrorist Financing and Transfer of Funds Regulations*.[731] It should be noted that prior to the promulgation of these statutes, AML measures were regulated by the now repealed *Drug Trafficking Offences Act.*[732]

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726 HM Treasury 2019 *Economic Crime Plan 2019-22 Policy Paper* 7; Hossain MB "Acquiring an Awareness of the Latest Regulatory Developments Concerning Digital Assets and Anti-Money Laundering" 2023 *Journal of Money Laundering Control* 113, 118; Esoimeme EE "Balancing Anti-Money Laundering Measures and Financial Inclusion: The Example of the United Kingdom and Nigeria" 2020 *Journal of Money Laundering Control* 64, 69.

727 HM Treasury 2019 *Economic Crime Plan 2019-22 Policy Paper*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 129.

728 *Proceeds of Crime Act* 2002, Chapter 29 (POCA), see part 7; Booth R *et al Money Laundering Law and Regulations: A Practical Guide* (Oxford University Press 2011) 14-16; Harrison and Ryder *The Law Relating to Financial Crime in the United Kingdom* 16; Allridge 2008 *Journal of Law and Society* 442.

729 *Serious Organised Crime and Police Act* 2005, Chapter 15, see section 107.

730 *Criminal Finances Act* of 2017 (*CFA*), see section 6; Keesoony S "International Anti-Money Laundering Laws: The Problems with Enforcement" 2016 *Journal of Money Laundering Control* 130, 135.

731 *Money Laundering, Terrorist Financing and Transfer of Funds Regulations* 2017 No. 2157 (*Money Laundering Regulations*); Keesoony 2016 *Journal of Money Laundering Contro*l 135; Esoimeme 2020 *Journal of Money Laundering Control* 64; Stokes R and Arora A "The Duty to Report under the Money Laundering Legislation within the United Kingdom" 2004 *Journal of Business Law* 332, 335.

732 *Drug Trafficking Offences Act* 1986, Chapter 32, sections 1-5; Booth *Money Laundering Law and Regulations: A Practical Guide* 19; Keesoony 2016 *Journal of Money Laundering Control* 135.

6.2.1 The Regulation of Money Laundering under the POCA

The *POCA* is the main money laundering statute in the UK and creates the cornerstone of AML regulation. The *POCA* was enacted to, *inter alia*, introduce a broad range of powers that authorised the law enforcement authorities in the UK to target the proceeds of crime.[733] According to the *POCA*, all criminal activities, including money laundering, are deemed to give rise to the illegal proceeds of crime.[734] Furthermore, the *POCA* created several mechanisms through which the proceeds of crime can be targeted.[735] Such measures include provisions that enable the law enforcement authorities to confiscate the proceeds of crime after a criminal conviction or provisions enabling the recovery of the proceeds of crime through civil proceedings, in the absence of a criminal conviction.[736] However, the researcher submits that the confiscation of criminal proceeds relies on successful prosecution which may not always be the case. Consequently, the application of confiscation orders is limited and does not adequately deter criminal from committing organised crimes such as money laundering.

The *POCA* criminalises money laundering and related activities.[737] When the *POCA* was enacted, it became the primary statute by which money laundering is prosecuted in the UK.[738] The *POCA* incorporated all aspects of the money laundering crime into one statute

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733 Section 327 of the *POCA*; Powles E "All That Glisters is not Gold: Laundering the UK Money Laundering Regime" 2006 *Cambridge Law Journal* 1, 41; Harvey J "Just How Effective is Money Laundering Legislation?" 2008 *Security Journal* 189, 193; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 131.

734 Section 5 of the *POCA*; Powles 2006 *Cambridge Law Journal* 41; Fisher J "The Anti-Money Laundering Disclosure Regime and the Collection of Revenue in the United Kingdom" 2010 *British Tax Review* 235, 238; Yasin NM "Statutory Obligations for Banks to Comply with the Anti-Money Laundering Legislation in Malaysia: Lessons from the United Kingdom" 2015 *Journal of Banking Regulation* 326, 330.

735 See section 327 of the *POCA*; see related discussion by Van Jaarsveld IL *Aspects of Money Laundering in South African Law* (unpublished LLD – Dissertation University of South Africa 2011) 336; Fisher 2010 *British Tax Review* 240; Keesoony 2016 *Journal of Money Laundering Control* 134; see related comments by Yasin 2015 *Journal of Banking Regulation* 330.

736 Section 340(3) of the *POCA*; Sproat PA "An Evaluation of the UK's Anti-Money Laundering and Asset Recovery Regime" 2007 *Crime Law Soc Change* 169, 170; Bell E "Concealing and Disguising the Criminal Property" 2009 *Journal of Money Laundering Control* 268, 270.

737 Section 340 (1) of the *POCA;* Bell 2009 *Journal of Money Laundering Control* 270; Harvey 2008 *Security Journal* 193.

738 Preller SF "Comparing AML Legislation of the UK, Switzerland and Germany" 2008 *Journal of Money Laundering Control* 234, 235; Sproat 2007 *Crime Law Soc Change* 174; Yakubu S "Combating the Laundering of Proceeds of Crime in the United Kingdom: An Analysis of the Criminal Finances Act 2017" 2017 *Amicus Curiae* 43, 46.

in the UK. Thus, the *POCA* recognises the dealing in proceeds from crimes such as fraud, corruption, and drug trafficking as money laundering acts.[739] In other words, the *POCA* has broadened the anti-money laundering laws to incorporate any form of dealing in criminal property as an underlying offence of money laundering.[740] The *POCA* also imposes criminal sanctions against money launderers.[741] The *POCA* also imposes criminal penalties against individuals and businesses who become reasonably aware of or suspect money laundering but do not report to the UK Financial Intelligence Unit (UKFIU).[742] The criminal penalties imposed under *POCA* include fines or imprisonment for up to six months.[743]

In particular, the *POCA* creates three specific types of money laundering offences.[744] The first money laundering offence is deemed to take place if a person conceals, disguises, converts, transfers, or removes any property from the UK, which property is, or represents, the proceeds of crime.[745] In addition, the person must be aware or have a suspicion that the property in question, forms part of or represents the proceeds of crime.[746] The second money laundering offence is deemed to take place when 'a person enters into, or becomes involved in an arrangement that he knows or suspects' that it

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739 Section 327(1) of the *POCA;* Leong A *The Disruption of International Organised Crime: An Analysis of Legal and Non-Legal Strategies* 3rd ed (Ashgate Publishing Limited 2016) 53; Ahlosani W *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units (Palgrave Macmillan London 2016)* 19.

740 Al-Rashidi KS "Indirect Method of Proof and the Kuwaiti Anti-Money Laundering Law: A Lesson from the UK" 2021 *Criminal Law Forum* 405, 422; Preller 2008 *Journal of Money Laundering Control* 235 and 243; Sproat 2007 *Crime, Law and Social Change* 174.

741 See Part 7 of the *POCA*.

742 Section 330 of the *POCA*; Terrill II JA and Breslow MA "The Role of Lawyers in Combating Money Laundering and Terrorist Financing: Lessons from the English Approach" 2015 *NYLS Law Review* 430, 442; Al-Rashidi 2021 *Criminal Law Forum* 405.

743 Section 330(4) of the *POCA*; Terry SL "An Introduction to the Financial Action Task Force and Its 2008 Lawyer Guidance" 2015 *Journal of Professional Law* 3, 29; Terrill and Breslow 2015 *NYLS Law Review* 442.

744 Sections 327-329 of the *POCA*; Fortson R "Money Laundering Offences under POCA 2002" in Blair W and Brent R (eds) *Banks and Financial Crime: The International Law of Tainted Money* (Oxford University Press 2008) 165, 169; *R v Montila* [2004] UKHL 50.

745 Section 327 of the *POCA*; Srivastava A, Simpson M and Moffat N *International Guide to Money Laundering Law and Practice* 5th ed (Bloomsbury Professional 2018) 42; Forston "Money Laundering Offences under POCA 2002" 169; Gentle S "Proceeds of Crime Act 2002: Update" *Compliance Officer Bulletin* (May 2008) 14.

746 Section 328 of the *POCA*; Forston "Money Laundering Offences under POCA 2002" 171; Srivastava, Simpson and Moffat *International Guide to Money Laundering Law and Practice* 145; Preller 2008 *Journal of Money Laundering Control* 243.

will facilitate another person to acquire, retain, use, or control the criminal property.[747] In addition, the person must be aware or reasonably have a suspicion that the property in question is criminal property.[748] Finally, the third money laundering offence is deemed to take place where a person acquires, uses, or has possession of property that he knows or suspects to be the proceeds of a crime.[749] The researcher submits that, the *POCA* clearly defines money laundering and what it entails. This is an essential measure ensuring the robustness of AML laws in any jurisdiction. This follows that, in countries like Zimbabwe, the lack of successful prosecutions on money laundering offences is largely attributed to the lack of a clear and concise description of the offence.[750] Consequently, perpetrators are prosecuted on less serious offences or are acquitted of money laundering charges due to failure to prove the definitional elements beyond a reasonable doubt. Accordingly, the researcher submits that the UK can be applauded for providing a clear-cut definition of money laundering and related offences to prevent ambiguity and legal uncertainty that hinder successful prosecutions.

The *POCA* also regulates the confiscation and seizure of proceeds of crime as an AML measure.[751] The *POCA* sets out four methods to secure the recovery of the proceeds of crime, namely, confiscation after a criminal conviction has been secured, civil recovery proceedings without a conviction taking place, cash seizure and forfeiture, as well as

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747 Section 328 of the *POCA*; Chitimira and Munedzi 2023 Journal of Money Laundering Control 131; Bell 2009 *Journal of Money Laundering Control* 270; Forston "Money Laundering Offences under POCA 2002" 172.

748 Section 328 of the *POCA*; Chitimira and Munedzi 2023 Journal of Money Laundering Control 131; Bell 2009 *Journal of Money Laundering Control* 270; Forston "Money Laundering Offences under POCA 2002" 172.

749 Section 329 of the *POCA*; Gentle *Compliance Officer Bulletin* 14; see related discussion by Ulph J and Tugendhath M *Commercial Fraud. Civil Liability, Human Rights and Money Laundering* (Oxford University Press 2006) 16; Srivastava, Simpson and Moffat *International Guide to Money Laundering Law and Practice* 19.

750 Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 140; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2011 *Journal of Money Laundering Control* 112, 120; see related comments by Tuba M "Prosecuting Money Laundering the FATF Way: An Analysis of Gaps and Challenges in South African Legislation from a Comparative Perspective" 2012 *Acta Criminologica* 103, 115.

751 Section 329 of the *POCA*; Gentle *Compliance Officer Bulletin* 14; see related discussion by Ulph and Tugendhath *Commercial Fraud. Civil Liability, Human Rights and Money* 16; Srivastava, Simpson and Moffat *International Guide to Money Laundering Law and Practice* 19.

taxation of the proceeds of crime.[752] In the civil recovery process, the law enforcement authorities are not required to prove the unlawful conduct but are however required to show a link between the proceeds of crime to the criminal activity for the civil recovery process to be successful.[753] In terms of the *POCA*, law enforcement authorities in the UK are authorised to seize cash that is suspected of forming the proceeds of crime.[754] To satisfy the conditions for conducting cash seizure and forfeiture operations, there should be reasonable grounds to suspect that the cash in question forms the proceeds of crime or was intended to be used in committing a crime. However, cash seizure and forfeiture proceedings are civil and not criminal. Furthermore, the proceedings may take place against the cash to be seized or forfeited and not a person. As the proceeds are civil in nature, the burden of proof in cash seizure and forfeiture proceedings is on a balance of probabilities and there is no obligation to prove the existence of any specific unlawful conduct.[755] In such a case, however, it should be shown that the cash in question may probably be related to an unlawful activity. The researcher argues that the burden of proof required for the seizure of money laundering proceeds should be revisited to enhance the investigation of money laundering offences in the UK. Despite property seizure, the *POCA* also provides for the imposition of both civil and criminal penalties against money launderers as a measure to deter criminal from committing crime again. This has enhanced efforts to deter criminals from committing money laundering again since they do not get to enjoy the proceeds.

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752 Section 328 of the *POCA*; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 131; Bell 2009 *Journal of Money Laundering Control* 270; Forston "Money Laundering Offences under POCA 2002" 172.

753 Al-Rashidi 2021 *Criminal Law Forum* 420; Forston "Money Laundering Offences under POCA 2002" 172; Srivastava, Simpson and Moffat *International Guide to Money Laundering Law and Practice* 19.

754 Section 328 of the *POCA*; see related comments by Tuba 2012 *Acta Criminologica* 116; Ulph and Tugendhath *Commercial Fraud. Civil Liability, Human Rights and Money* 22; Anyaoku *Combating Money Laundering and Terrorist Financing: A Model of Best Practice for the Financial Sector, the Professions and other Designated Businesses* 122.

755 Al-Rashidi 2021 *Criminal Law Forum* 422; Yakubu S Combatting the "Proceeds of Crime in the United Kingdom: An Analysis of the Criminal Finances Act 2017" 2017 *Amicus Curiae* 42, 43; Stratton 2022 *Journal of Criminal Law* 32; Padfield N "The Criminal Finances Act" 2017 *Criminal Law Review* 505, 509.

Monitoring and reporting suspicious transactions and account activities is an essential AML measure which is regulated under *POCA*.[756] The *POCA* provides that businesses and persons, including legal professionals, who fail to disclose suspicious transactions and activities will be guilty of a criminal offence.[757] The *POCA* offers legal protection to individuals who disclose money laundering activities as a measure of encouraging the disclosure of money laundering activities in the UK. However, the *POCA* waives criminal sanctions for legal professionals who do not disclose information relating to money laundering that was obtained under privileged circumstances.[758] The researcher argues that the waiver of reporting obligations on legal professionals renders the implementation of customer due diligence (CDD) measures to combat and curb money laundering unnecessary and useless.[759] Whilst CDD measures do not conflict with legal professionals' ethical obligations, nothing will be done with the result of implementing CDD measures. This follows that any information which is disclosed between the lawyer and the client is protected by client confidentiality ethical obligations. Therefore, any suspicious activities identified by the legal professional during CDD cannot be reported for money laundering investigations. In this regard, the researcher submits that the waiver of reporting obligations on legal professionals under the *POCA* may create room for abuse by perpetrators.

6.2.2 The Regulation of Money Laundering under the CFA

The *CFA* was promulgated to address money laundering, financing of terrorism, corruption, and unexplained wealth in the UK.[760] The *CFA* strengthens the regulation of AML measures under the *POCA*. For instance, the *CFA* amended Part 7 of the *POCA* to

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756 Section 333A of the *POCA*; Terrill and Breslow 2015 *NYLS Law Review* 442; Forston "Money Laundering Offences under POCA 2002" 172; Al-Rashidi 2021 *Criminal Law Forum* 420.

757 Section 330(5) of the *POCA*; also see Recommendations 20-21 of the FATF Recommendations; Goldby MA *Research Handbook on Ethics in Banking and Finance* (Edward Elgar Publishing 2018) 23; Sciurba M "The Heart of Know Your Customer Requirements: The Discriminatory Effect of AML and CTF Policies in Times of Counter-Terrorism in the UK" 2018 *European Journal of Crime, Criminal Law and Criminal Justice* 222, 228.

758 Sections 327-329 of the *POCA*; see *Bowman v. Fels* [2005] EWCA (Civ) 226, [41]–[42] (Eng.).

759 Section 330(10) of the *POCA*.

760 Section 10 of the *CFA*; Yakubu 2017 *Amicus Curiae* 44; Stratton H "Guilt by Lottery: Criminal Failure to Prevent Facilitation of Tax Evasion under the Criminal Finances Act 2017" 2022 *Journal of Criminal Law* 29, 32.

extend the moratorium period from 31 days to 186 days.[761] A moratorium period is the period when suspicious assets are temporarily frozen to enable investigators to collect evidence on the source of the assets.[762] This was done to enable law enforcement agencies to properly investigate reported suspicious money laundering cases.[763] Prior to this extension, the *POCA* permitted a 31-day moratorium period which could not be extended. The researcher submits that the period of 31 days was an insufficient time for law enforcement agencies to collect evidence and complete investigations, especially when evidence may be located outside the UK or the case involves other serious crimes such as corruption.[764] Accordingly, it is submitted that the enactment of the *CFA* was an essential measure to enhance the investigations on money laundering cases in the UK.

The *CFA* introduces the concept of unexplained wealth orders for the first time in the UK.[765] Unexplained wealth orders are the power granted to law enforcement authorities to compel a suspected criminal to explain their wealth acquisitions that are disproportionate to their income. The failure to explain how the wealth was acquired warrants a money laundering investigation.[766] The researcher submits that the concept of unexplained wealth orders under the *CFA* shows the UK government's commitment to enhance AML efforts by increasing transparency and discouraging the illegal acquisition

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761 See section 10 of the *CFA*; also see Part 7 of the *POCA*; see Fisher JS and Clifford A *The Criminal Finances Act 2017* (Taylor and Francis 2018) 31; see related comments by Stratton 2022 *Journal of Criminal Law* 32.

762 Mehta M, Kaul R "Loan Moratorium 2020 - Its Impact on Indian Banks" 2020 *Australian Finance and Banking Review* 1, 3; Payne J "An Assessment of the UK Restructuring Moratorium" 2021 *SSRN 3759730* 6; Yakubu 2017 *Amicus Curiae* 43.

763 Baldwin FN and DiPerna TA "The Rule of Law: An Essential Component of the Financial War against Organized Crime and Terrorism in the Americas" 2007 *Journal of Financial Crime* 405, 409; Smyth E and Blunden J "Criminal Finances Act 2017" *Kingsley Napley* (2 May 2017) 3.

764 Section 10(4) of the *CFA*; Yakubu 2017 *Amicus Curiae* 44; Laird K "The Criminal Finances Act 2017: An Introduction" 2017 *Criminal Law Review* 915, 920; Thomas H "A Critical Analysis and Evaluation of the Key Changes Introduced by the *Criminal Finances Act* 2017 and their likely Impact in Combatting Financial Crime and Terrorist Financing" 2018 *SOAS Law Journal* 173, 180.

765 Section 1 of the *CFA*; Yakubu S *A Critical Appraisal of the Law and Practice Relating to Money Laundering in the USA and UK* (LLD-dissertation University of London 2017) 197; Thomas-James B "Editorial: Unexplained Wealth Orders in the Criminal Finances Bill: A Suitable Measure to Tackle Unaccountable Wealth in the UK? " 2017 *Journal of Financial Crime* 178, 183.

766 Section 1 of the CFA; Thomas-James 2017 *Journal of Financial Crime* 184; Nakhwal J and Querée N "The Criminal Finances Act 2017: Account Freezing and Forfeiture Provisions" 2017 *Criminal Law and Justice* Weekly 303, 304.

of wealth. Unexplained wealth orders also assist in deterring money laundering by disrupting money laundering activities and requiring criminals to explain their wealth. Another important AML mechanism which is provided under the CFA is that, of sharing of information relating to money laundering activities, between the UKFIU, the police and other relevant financial sector role players.[767] Information sharing enhances money laundering investigations by availing comprehensive information and evidence which is relevant for prosecution. The researcher submits that money laundering can be easily detected during the placement stage. This is when criminals place the proceeds of crime into the formal financial sector through financial institutions or other reporting entities.[768] As such, the sharing of information between reporting entities, the UKFIU, the NCA, the police and other relevant role players could expose and promote the prevention of money laundering activities. To augment information sharing provisions under the *CFA*, the *POCA* provides penalties for reporting entities for non-compliance.[769] Accordingly, the researcher submit that the *CFA* came in to fill the gaps of the *POCA* and enhance the combatting of money laundering in the UK. The two statutes complement each other to provide a comprehensive AML framework in the UK.

6.2.3 The Regulation of Money Laundering under the Money Laundering Regulations of 2017

The *Money Laundering Regulations* of 2017[770] embody the customer due diligence (CDD) approach and its implementation as an AML measure in the UK. The Money Laundering Regulations were influenced by the FATF standards on customer due diligence

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767 Section 339ZB of the CFA; See related discussion by Strokes R and Arora A "The Duty to Report Under the Money Laundering Legislation within the United Kingdom" 2004 *Journal of Banking Law* 110, 115; Simonova A "The Risk-Based Approach to Anti-Money Laundering: Problems and Solutions" 2011 *Journal of Money Laundering Control* 346, 352.

768 Alldrigde P "Money Laundering and Globalisation" 2008 *Journal of Law and Society* 440, 441; Madinger J *Money Laundering: A Guide for Criminal Investigators* 2nd ed (CRC Press New York 2006) 6; Hopton D *Money Laundering: A Concise Guide for All Business* (Gower Hampshire 2006) 6.

769 Section 7 of the *CFA*; section 336(1) of the *POCA*; Thomas-James 2017 *Journal of Financial Crime* 184; Nakhwal Querée 2017 *Criminal Law and Justice* Weekly 308.

770 *Money Laundering and Terrorist Financing (Amendment) Regulations* 2019 (*Money Laundering Regulations*), regulation 27(1); Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 131; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 55; Njotini 2010 *Obiter* 564.

measures.[771] CDD is an AML measure that is implemented by financial institutions to assess customers' money laundering risk prior to conducting business with the customers.[772] The CDD procedure involves establishing a customer's identity by produce of an identification document, verifying the customer's identity, establishing the nature of business which the customer seeks and the customers' source of income and/or occupation.[773] The *Money Laundering Regulations* provide that designated financial institutions are mandated to establish and maintain a set of internal AML controls and processes.[774] The aims of the CDD processes include preventing and detecting money laundering risks that customers might expose the financial institution to.[775] This is achieved by verifying customer identities and their sources of funds and keeping the information in the institution's records. This information is essential for customer profiling and the detection of unusual transactions that could be linked to money laundering activities.[776] Customer profiling entails the classification of customers according to their money laundering risk, thus low-risk and high-risk customers.[777] Customer profiling is essential for determining the level of CDD measures that should be implemented during customer intake. Thus, high-risk customers require enhanced due diligence measures to effectively monitor their transactions and detect money laundering activities.[778] The

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771 Recommendation 5 of the FATF Recommendations; Regulation 7 of the Money Laundering Regulations; Chatain PL *et al Integrity in Mobile Phone Financial Services: Measures for Mitigating Risks from Money Laundering and Terrorist Financing* (The World Bank Washington 2008) 43-45.

772 Hudson A *The Law of Finance* 2nd ed (Sweet and Maxwell 2013) 428; Harrison and Ryder *The Law Relating to Financial Crime in the United Kingdom* 141; Jung T and Lishan A "The International Standards of Criminal Due Diligence and Chinese Practice" 2009 *Journal of Money Laundering Control* 406, 407.

773 Regulations 27-37 of the *Money Laundering Regulations* 2017; Hudson The Law of Finance 428-430; Njotini 2010 *Obiter* 564; Jung Lishan 2009 *Journal of Money Laundering Control* 410.

774 Regulation 25 of the *Money Laundering Regulations.*

775 Al-Rashidi "'Indirect Method of Proof' and the Kuwaiti Anti-Money Laundering Law: A Lesson from the UK" 56; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 55; Njotini 2010 *Obiter* 564.

776 Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 129; Fisher 2010 *British Tax Review* 239; Alldridge 2008 *Journal of Law and Society* 443.

777 Adeyemi 2018 *Journal of Money Laundering Control* 207; Mugarura 2014 *Journal of Money Laundering Control* 81; De Koker 2014 *Journal of Money Laundering Control* 290; De Koker 2004 *TSAR* 750.

778 Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 131; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 55; Njotini 2010 *Obiter* 564.

researcher submits that a coordinated approach to implementing CDD measures in the UK ensures that CDD procedures are implemented in a manner that is commensurate to the money laundering risk to effectively curb money laundering.

Additionally, the CDD process is not an isolated action. Instead, the CDD process is supposed to be conducted regularly throughout the duration and subsistence of the business relationship between the reporting entity and the client.[779] In this regard, any changes to the information previously obtained from the client should be duly recorded and any changes in the ownership or control structure, source of wealth or income of the client, or business purpose of the client should also be duly recorded.[780] Where any of the changes made raise suspicion, the reporting entity is required to lodge or submit a suspicious activity report to the UKFIU.[781] The importance of the CDD process cannot be over emphasised as it lies at the core of unmasking multiple layers of legal structures or arrangements that may be created by money launderers as a means of concealing the true controller or owner behind a client.[782] For instance, the leakage of documents such as the Panama Papers and Pandora Papers serves to show the extent to which juristic entities may be elaborately structured.[783] Juristic entities are layered and structured in ways that are designed to frustrate the CDD process and obscure the ultimate controllers or owners of property or funds in transactions.

The researcher submits that *Money Laundering Regulations* play a significant role in ensuring the detection of money laundering risks and suspicious transactions. The UKFIU

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779 Campbell 2018 *Criminal Law Review* 108; Menz 2019 *Journal of Money Laundering Control* 623; De Koker 2014 *Journal of Money Laundering Control* 290; Al-Rashidi "'Indirect Method of Proof' and the Kuwaiti Anti-Money Laundering Law: A Lesson from the UK" 56.

780 Campbell 2018 *Criminal Law Review* 108; Lowe 2017 *Journal of Financial Crime* 472; Mugarura 2014 *Journal of Money Laundering Control* 81.

781 Campbell 2018 *Criminal Law Review* 108; Lowe 2017 *Journal of Financial Crime* 475; Mugarura 2014 *Journal of Money Laundering Control* 85; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 131.

782 Campbell 2018 *Criminal Law Review* 111; Soudijn M "Removing Excuses in Money Laundering" 2012 *Trends in Organized Crime* 146, 150; Singh K and Best P "Anti-Money Laundering: Using Data Visualization to Identify Suspicious Activity" 2019 *International Journal of Accounting Information Systems* 45, 49; Schwarz P "Money Launderers and Tax Havens: two sides of the same coin?" 2011 *International Review of Law and Economics 38.*

783 Campbell 2018 *Criminal Law Review* 111; Gilmour P "Lifting the Veil on Beneficial Ownership: Challenges of Implementing the UK's Registers of Beneficial Owners" 2020 *Journal of Money Laundering Control* 717, 725; Subashi R "The Beneficiary Ownership and Joint Stock Companies" 2014 *Journal of Finance, Accounting and Management* 1, 6.

2022-2023 report indicate a rise in suspicious transaction reports in the UK. This illustrates better vigilance and awareness of money laundering risks by reporting entities. Therefore, the researcher submits that the application of the provisions of the *Money Laundering Regulations* significantly assists financial institutions and reporting entities to detect suspicious transactions through ongoing due diligence and transaction monitoring.

6.3 The Role and Functions of Relevant Role Players in Combatting Money Laundering in the UK

6.3.1 The Role and Functions of the United Kingdom Financial Intelligence Unit

The UKFIU is the financial intelligence unit of the UK. The UKFIU was established by the UK government as a measure to combat money laundering.[784] The role and functions of the UKFIU are outlined in the *POCA* and Money Laundering Regulations of 2017.[785] The UKFIU forms part of the National Crime Agency (NCA). The UKFIU was established as the central authority for receiving, analysing, and sharing financial intelligence with other financial role players in the UK.[786] The primary function of the UKFIU is to process financial intelligence relating to suspicious activity reports (SARs) received from financial institutions to detect money laundering activities.[787] The UKFIU relies on the information which it receives from entities such as banks, financial institutions, regulated businesses,

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784 Parveen 2020 *International Journal of Economics and Management Systems* 7; Jayasekara 2020 *Journal of Money Laundering Control* 670; Othman MB *et al* "Monitoring Lawyer's Compliance with Anti Money Laundering Legislation: Some Evidence from Malaysia" 2018 *European Proceedings of Social and Behavioural Sciences* 52, 55; Araujo 2008 *Journal of Money Laundering Control* 69.

785 Section 335 of the *POCA*; Parveen 2020 *International Journal of Economics and Management Systems* 7; Jayasekara 2020 *Journal of Money Laundering Control* 670.

786 Jayasekara 2020 *Journal of Money Laundering Control* 673; see related discussion by Killick M and Parody D "Implementing AML/CFT Measures that Address the Risks and not Tick Boxes" 2007 *Journal of Financial Regulation and Compliance* 210, 212; also see Ross S and Hannan M "Money Laundering Regulation and Risk-Based Decision-Making" 2007 *Journal of Money Laundering Control* 106, 109; Bello *Improving Anti-Money Laundering Compliance* 33.

787 Parveen 2020 *International Journal of Economics and Management Systems* 7; Jayasekara 2020 *Journal of Money Laundering Control* 670; Ryder N *Money laundering - An Endless Cycle*: A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada (Routledge: Abingdon 2012) 25; Yakubu 2017 *Amicus Curiae* 44.

and reports from the public to generate financial intelligence.[788] To fulfil its role and functions, the UKFIU is supported by other law enforcement agencies such as the National Intelligence Hub (NIH), the HMRC Risk Intelligence Service, the Serious Fraud Office Intelligence Unit (SFOIU), the Financial Conduct Authority (FCA), the Joint Money Laundering Intelligence Taskforce (JMLIT), the Joint Financial Analysis Centre (JFAC), and the Security Service (MI5).[789] Although these law enforcement agencies do not have express AML mandates, they assist the UKFIU in conducting money laundering investigations by sharing any information the UKFIU might require to fulfil its functions.

The UK AML regime can be described as both repressive and preventive.[790] Thus, the AML measures are implemented in a manner that hinders and prevents perpetrators from committing money laundering. The UKFIU has implemented several measures to combat and curb money laundering, including information-sharing mechanisms with other financial intelligence units (FIUs) and organisations, risk assessment and compliance oversight.[791] Given that money laundering is a global crime, sharing financial intelligence with international FIUs enables the UKFIU to stay updated with global AML trends and implement effective AML measures.[792] The UKFIU serves as the central communication

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788 *Money Laundering and Terrorist Financing (Amendment) Regulations* 2019 (Money Laundering Regulations), Regulation 104A; Sabrina FP "Comparing AML Legislation of the UK, Switzerland and Germany" 2008 *Journal of Money Laundering Control* 234, 239; Mugarura N "Anti-Money Laundering Law and Policy as a Double Edged Sword" 2020 *Journal of Money Laundering Control* 899, 905; Silva PG "Recent Developments in EU Legislation on Anti-Money Laundering and Terrorist Financing" 2019 *New Journal of European Criminal Law* 57, 63.

789 Schedul 6A of the Money Laundering Regulations; FATF 2018 *UK Mutual Evaluation Report* 24; Storm A "Integrity…Courage…Honour: A Comparative Study of Law Enforcement Agencies" *World Journal of Social Science Research* 119, 124; Matanky-Becker and Cockbain 2021 *Crime, Law and Social Change* 5; Van den Broek M *Preventing Money Laundering: A Legal Study on the Effectiveness of Supervision in the European Union* (Eleven International Publishing the Hague 2015) 17-18.

790 Zavoli I and King C "The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis" 2021 *Modern Law Review* 740, 748; Stessens G *Money Laundering: A New International Law Enforcement Model* (Cambridge: CUP 2000) 108.

791 Stessens *Money Laundering: A New International Law Enforcement Model* 113; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 35; Marcus AJ and Martini M *Financial Intelligence Units (FIUs):: Effective Institutional Design, Mandate and Power* (Transparency International 2019) 10; Binns J "Who Bears the Burden?" 2021 *Solicitors Journal* 164, 173.

792 Egan M "The Role of the Regulated Sector in the UK Anti-Money Laundering Framework: Pushing the Boundaries of the Private Police" 2010 *Journal of Contemporary European Research* 272, 280; Sabrina 2008 *Journal of Money Laundering Control* 240.

point amongst other international FIUs through its database system.[793] This enhances the quality of intelligence that the UKFIU receives and analyses as well as the detection of money laundering activities. This follows that the UKFIU receives information relating to suspicious transactions and account activities from all reporting entities. However, the suspicious activity reports (SARs) system in the UK is often criticised for its design which is more commensurate with the banking sector than other financial sectors.[794] The researcher argues that this creates a regulatory challenge that could be abused by perpetrators to commit money laundering through other financial institutions and regulated businesses which are under less monitoring. Accordingly, the researcher submits that transaction monitoring mechanisms by the UKFIU should be applied uniformly across all financial institutions in the UK to adequately prevent money laundering.

The UKFIU has a comprehensive structure of crime investigation since it operates within the NCA, which includes many sections, task forces, and bodies focused on fighting money laundering.[795] The UK FIU stands out in ensuring the effective sharing of information, the prompt availability of reports to all investigative bodies, and enhanced cooperation during the whole process.[796] The researcher argues that the positioning of the UKFIU within the NCA could adversely affect the effective fulfilment of its roles and functions. The UKFIU has significantly contributed to the investigation and prevention of

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793 Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 38; Jayasekara 2020 *Journal of Money Laundering Control* 672; Zavoli and King 2021 *Modern Law Review* 759.

794 Zavoli and King 2021 *Modern Law Review* 759; Campbell A and Campbell E "Solicitors and Complying with the Anti-Money Laundering Framework: Reporting Suspicions, Applying for Consent and Tipping-Off" in Ryder N, Turksen U and Hassler S (eds) *Fighting Financial Crime in the Global Economic Crisis* (Abingdon: Routledge, 2015) 76, 82; Hopkins M and Shelton N "Identifying Money Laundering Risk in the United Kingdom: Observations from National Risk Assessments and a Proposed Alternative Methodology" 2019 *European Journal on Criminal Policy and Research* 63, 70.

795 Zavoli and King 2021 *Modern Law Review* 760; Campbell and Campbell "Solicitors and Complying with the Anti-Money Laundering Framework: Reporting Suspicions, Applying for Consent and Tipping-Off" 80; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 38.

796 Jayasekara 2020 *Journal of Money Laundering Control* 672; Zavoli and King 2021 *Modern Law Review* 759; Matanky-Becker and Cockbain 2021 *Crime, Law and Social Change* 6; Ryder, Turksen and Hassler (eds) *Fighting Financial Crime in the Global Economic Crisis* 115; Van den Broek *Preventing Money Laundering: A Legal Study on the Effectiveness of Supervision in the European Union* 45.

money laundering in the UK. The 2023 UKFIU report indicates that there has been significant compliance with AML regulations amongst financial institutions and reporting entities in the UK.[797] This follows a reported 21% increase in SARs received from reporting entities in the UK. The researcher submits that the significant increase in compliance with reporting obligations shows that the UK FIU is doing considerably well in enforcing the obligation to report suspicious money laundering activities.

6.3.2 The Role and Functions of the NCA to Combat Money Laundering in the UK

The NCA was established by the *Crime and Courts Act* in 2013.[798] The NCA was established to reduce organised crime by ensuring fulfilment of crime-reduction activities.[799] The NCA fulfils its functions by gathering, storing, processing, analysing, and distributing relevant information to detect serious and organised crime in the UK.[800] The functions of the NCA also include the investigation of offences relating to organised crimes such as money laundering.[801] It should be noted that the NCA has developed proactive cooperation and teamwork agreements with other law enforcement agencies, such as the UK FIU, to increase its effectiveness in combatting crime.[802] Ordinarily, the information

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797 United Kingdom Financial Intelligence Unit "Suspicious Activity Report (SARs) Annual Report 2022" 25 January 2023 https://nationalcrimeagency.gov.uk/who-we-are/publications/632-2022- sars-annual-report-1/file accessed 5 July 2023.

798 C*rime and Courts Act* 2013, (chapter 22), section 1; Pontes R, Lewis N, MacFarlene P and Craig P Anti-Money Laundering in the United Kingdom: New Directions for a More Effective Regime" 2022 *Journal of Money Laundering Control* 401, 407; Levi M, Reuter P and Halliday T "Can the AML System be Evaluated Without Better Data?" 2018 *Crime, Law and Social Change* 307, 310.

799 Section 1(4) of the *Crime and Courts Act*; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 38; Loh XT "Suspicious Activity Reports (SARs) Regime: Reforming Institutional Culture" 2020 *Journal of Money Laundering Control* 514, 516.

800 Section 5 of the *Crime and Courts Act*; section 341(5) of the *Proceeds of Crime Act* 2002; HM Treasury 2019 *Economic Crime Plan 2019-22 Policy Paper* 13; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 38.

801 Section 7(b) of the *Crime and Courts Act*; Matanky-Becker R and Cockbain E "Behind the Criminal Economy: Using UK Tax Fraud Investigations to Understand Money Laundering Myths and Models" 2021 *Crime, Law and Social Change* 1, 2.

802 Section 9(a)-(b) of the *Crime and Courts Act*; Walker GA "UK Regulatory Revision – A New Blueprint for Reform" 2012 *International Lawyer* 787, 790; Melecky M and Podpiera AC "Institutional Structures of Financial Sector Supervision, their Drivers and Historical Benchmarks" 2013 *Journal of Financial Stability* 420, 430; Loh 2020 *Journal of Money Laundering Control* 519.

which is required to effectively combat money laundering is usually held by various reporting entities and businesses independently.[803] As such, effective information-sharing arrangements between the NCA, the UK FIU, the police, the HMRC and other relevant role players are essential to further the NCA's AML mandate. To date, the NCA, in collaboration with other law enforcement such as the NIH, the HMRC Risk Intelligence Service, the SFOIU, the FCA, the JMLIT, the JFAC, and the Security Service, has successfully frozen, forfeited or restrained the proceeds of illegal activities to the value of £114 million from £60 million in the previous year.[804] This shows that asset forfeiture and account freezing orders through the NCA are an effective AML measure to combat money laundering in the UK. Accordingly, the researcher posits that teamwork and collaboration between the NCA and the UK FIU, the JMLIT and reporting entities is crucial to augment the detection and succesful investigation of money laundering and other organised crimes in the UK.

The NCA has also improved its money laundering investigations through the moratorium extensions which were introduced by the *CFA*.[805] The moratorium period enables the NCA to efficiently conduct more and complex money laundering investigations due to the increased time period. Reportedly, this has increased the number of successful money laundering investigations and asset forfeitures in the UK. Accordingly, the researcher submits that the role and functions of the NCA to combat and prevent money laundering in the UK has been considerably successful.

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803 Zavoli and King 2021 *Modern Law Review* 761; Pontes, Lewis, MacFarlene and Craig 2022 *Journal of Money Laundering Control* 410; Levi, Reuter and Halliday 2018 *Crime, Law and Social Change* 310; Jayasekara 2020 *Journal of Money Laundering Control* 672.

804 United Kingdom Financial Intelligence Unit "Suspicious Activity Report (SARs) Annual Report 2022" Page Unknown; National Crime Agency "Protecting the Public from Serious and Organised Crime" https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/money-laundering-and-illicit-finance accessed 12 January 2023; Ryder *Money laundering - An Endless Cycle* 55; Campbell and Campbell "Solicitors and Complying with the Anti-Money Laundering Framework: Reporting Suspicions, Applying for Consent and Tipping-Off" 91.

805 Sections 7 and 10 of the *CFA.*

6.3.3 The Role and Functions of the National Economic Crime Centre to Combat Money Laundering in the UK

The NECC was established in 2018 to be a collaborative information-sharing and crime fighting body linking various law enforcement agencies in the UK.[806] The NECC is part of the NCA and comprises of the Serious Fraud Office (SFO), HMRC, the FCA, the Crown Prosecution Service (CPS), and the City of London Police.[807] The NECC brings together law enforcement agencies, regulatory bodies, government departments, and the private sector to collaborate in combatting organised crimes such as money laundering and safeguarding the integrity of the UK financial markets.[808]

Among its objectives, the NECC was established to ensure that all law enforcement agencies collaborate more effectively with each other by developing uniform and clear communication procedures and channels to combat crimes including money laundering.[809] Therefore, the NECC, collaborates with the DNFBPs to receive information which is relevant to combatting money laundering. Such information is then submitted to the UKFIU and the NCA to generate financial intelligence relevant for money laundering investigations. The NECC also coordinates its activities with the JMLIT to optimise the use of sectors outside of banking to identify how best their skills, experience, and capability can be harnessed to combat money laundering.[810] The researcher submits that the NECC also relies on Artificial Intelligence to enhance money laundering detection and

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806 Matanky-Becker and Cockbain 2021 *Crime, Law and Social Change* 6; HM Treasury 2019 *Economic Crime Plan 2019-22 Policy Paper* 13; see related comments by Rhodes QC, R Palastrand and Palastrand S "A Guide to Money Laundering Legislation" 2005 *Journal of Money Laundering Control* 9, 15.

807 HM Treasury 2019 *Economic Crime Plan 2019-22 Policy Paper* 13; National Crime Agency "Protecting the Public from Serious and Organised Crime" 4; Zavoli and King 2021 *Modern Law Review* 761; Pontes, Lewis, MacFarlene and Craig 2022 *Journal of Money Laundering Control* 410.

808 Section 7 of the *Crime and Courts Act*; Ryder *Money laundering - An Endless Cycle* 38; National Crime Agency "Protecting the Public from Serious and Organised Crime" 3; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 38.

809 HM Treasury 2019 Economic Crime Plan 2019-22 Policy Paper 13; see related discussion by Rhodes, Palastrand and Palastrand 2005 *Journal of Money Laundering Control* 15.

810 HM Treasury 2019 Economic Crime Plan 2019-22 Policy Paper 41; see comments by Yeoh P "Enhancing Effectiveness of Anti-Money Laundering Laws through Whistleblowing" 2014 *Journal of Money Laundering Control* 327, 332.

investigation.[811] For example, the Threat and Risk Assessment, Capability Exploration and Research (TRACER) is a collaborative function that ensures that the NECC and other role players stay updated with new money laundering trends and relevant in the digital space.[812] Accordingly, the researcher submits that the integration of technology as an AML measure by the NECC should be applauded. This follows that the financial sector has become digitalised and requires innovative measures to detect and combat financial crime. Although there is no indicating the NECC's success in combatting money laundering in the UK, the NECC plays a significant role in facilitating collaboration between law enforcement agencies such as the UK FIU and the NCA to combat money laundering in the UK. Accordingly, the researcher submits that the NECC is an important role player in the fight against money laundering in the UK.

6.3.4 The Role and Functions of the FCA to Combat Money Laundering in the UK

The FCA is the primary supervisor of the financial services firms and financial markets in the UK.[813] It was established under the *Financial Services Act* in 2013 as a statutory body, with powers of oversight over the conduct of the financial services firms to prevent abuse from criminal activities such as money laundering and maintaining the integrity of the UK's financial markets in the UK.[814] The FCA's general mandate is to ensure that the UK's financial markets function effectively to protect and enhance its integrity.[815] The FCA's

811 National Crime Agency "Protecting the Public from Serious and Organised Crime" 3; Wronka C "Anti-Money Laundering Regimes: A Comparison between Germany, Switzerland and the UK with a Focus on the Crypto Business" 2022 *Journal of Money Laundering Control* 656, 660; Hopton D *Money Laundering: A Concise Guide for all Business* (Routledge 2020) 43.

812 Wronka 2022 *Journal of Money Laundering Control* 662; Al-Rashidi KS "'Indirect Method of Proof' and the Kuwaiti Anti-Money Laundering Law: A Lesson from the UK" in *Criminal Law Forum* 3rd ed (Springer Netherlands 2021) 45, 52; Hopton *Money Laundering: A Concise Guide for all Business* 47.

813 *Financial Services Act* 2012, Section 6(2); Norton JJ "Global Financial Sector Reform: The Single Financial Regulator Model Based on the United Kingdom FSA Experience - A Critical Reevaluation" 2005 *International Lawyer* 15, 58; Kallasidou N "The United Kingdom's Response to Crisis: A Critical Examination of the New Regulatory Structure of Financial Services Supervision" 2013 *Bristol Law Review* 117, 118.

814 section 6 of the *Financial Services Act*; Georgosouli A "The FCA-PRA Coordination Scheme and the Challenge of Policy Coherence" 2013 *Capital Market Law Journal* 62, 63; Kallasidou 2013 *Bristol Law Review* 119.

815 Section 1B(2)-(3) of the *Financial Services Act*; Georgosouli A "The FCA, the PRA and the Idea of Resilience as a Narrative for Policy Coherence" 2012 *SSRN Working Paper Series* 5, 8; Hopton *Money Laundering: A Concise Guide for all Business* 53.

role to promote financial integrity entails ensuring that the UK financial markets are not abused for money laundering and related offences.[816] To fulfil its mandates, the FCA requires financial institutions under its supervision to conduct customer due diligence (CDD) measures to obtain information relating to the origin of their clients' funds and assets.[817] Such information is used to detect suspicious transactions as an AML preventive measure. However, available reports show that the number of reports relating to suspicious transactions is not commensurate with the number of financial institutions regulated by the FCA.[818] The researcher argues that this disproportionality is a reflection of the inefficiency and ineffectiveness of the reporting measures implemented by the FCA and in the UK in general. It should be noted that the FCA's mandate relies on effective reporting of suspicious transactions and account activities to adequately detect money laundering.[819] This entails that the FCA can robustly curb money laundering activities if it receives detailed reports and information on suspicious transactions timeously. Accordingly, the researcher submits that there is a need for a collaborative approach between the FCA and the reporting firms to ensure the adequacy of suspicious reports to combat money laundering. The FCA may also impose penalties on financial institutions that make vague and undetailed reports.

The FCA also relies on the implementation of CDD measures as an AML measure to fulfil its mandates.[820] CDD refers to measures implemented to identify customers and ensure that their profiles match the value of transactions they conclude.[821] The FATF

816 Section 1D of the *Financial Services Act*; Adeyemi A "Slipping through the Net: The Financial Conduct Authority's Approach in Lessening the Incidence of Money Laundering in the UK" 2018 *Journal of Money Laundering Control* 203, 205.

817 Adeyemi 2018 *Journal of Money Laundering Control* 206; Cox D *Handbook of Anti Money Laundering* (John Wiley and Sons, New York 2014) 176.

818 Transparency International "Don't Look Won't Find: Weaknesses in the Supervision of the UK's Anti-Money Laundering Rules" 2020 *Transparency International Report* 12.

819 Adeyemi 2018 *Journal of Money Laundering Control* 206; Cox D *Handbook of Anti Money Laundering* (John Wiley and Sons, New York 2014) 176.

820 Al-Rashidi "'Indirect Method of Proof' and the Kuwaiti Anti-Money Laundering Law: A Lesson from the UK" 56; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 55; Njotini M "The Transaction or Activity Monitoring Process: An Analysis of the Customer Due Diligence Systems of the United Kingdom and South Africa" 2010 *Obiter* 556, 560.

821 Njotini 2010 *Obiter* 558; Van Jaarsveld "Mimicking Sisyphus? An Evaluation of the Know Your Customer Policy" 2006 *Obiter* 228, 230; Pieth C "International Standards Against Money

recommends that its member states implement CDD measures to detect and combat money laundering.[822] The FCA requires financial institutions to conduct customer identification and verification procedures before the initiation of any business, as a measure to ensure that the client is not listed on the money laundering risk list.[823] The extent of verification and the degree of the CDD procedure depends on the money laundering risk associated with such customers.[824] Accordingly, it is the mandate of the FCA to ensure that firms implement CDD measures that are commensurate with the money laundering risk that the customers pose.

However, a major challenge that the FCA faces in fulfilling its regulatory roles is the courts' inconsistencies in addressing matters relating to reporting suspicious money laundering activities. In *AG of Zambia v Meer Care and Desai;*[825] the court held that a person who fails to report suspicious transactions is guilty of dishonesty and breach of trust. However, in *R v Da Silva*[826] the court held that a solicitor who failed to follow the Solicitors Regulation Authority guidelines on reporting suspicious money laundering activities was not dishonest but merely careless. Accordingly, the researcher submits that the lack of a strict approach in enforcing the duty to report suspicious activities is confusing and uncertain. This undermines the FCA's efforts to combat money laundering through uncertainty as firms may become relaxed to report suspicious activities. Therefore, the

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Laundering" in Pieth C and Aiolfi R (eds*) A Comparative Guide to Anti-Money Laundering: A Critical Analysis of Systems in Singapore, Switzerland, the UK and the USA* (2004) 8.

822 Recommendation 21 of the FATF Recommendations; Core Guidance to the Money Laundering Regulations 2007, regulation 17; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 290; also see De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 730.

823 Adeyemi 2018 *Journal of Money Laundering Control* 207; Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 81; De Koker 2014 *Journal of Money Laundering Control* 290.

824 Njotini 2010 *Obiter* 564; Padfield "Country Report: Anti-Money Laundering Rules in the United Kingdom" 323; Mugarura 2014 *Journal of Money Laundering Control* 85; De Koker 2014 *Journal of Money Laundering Control* 290.

825 *A.G of Zambia v Meer Care and Desai* 2006 EWCA Civ 390; Adeyemi 2018 *Journal of Money Laundering Control* 207; see related comments by Balani H "Assessing the Introduction of Anti-Money Laundering Regulations on Bank Stock Valuation: An Empirical Analysis" 2019 *Journal of Money Laundering Control* 76, 83.

826 *R v Da Silva* 2006 EWCA Crim 1654; Adeyemi 2018 *Journal of Money Laundering Control* 207; see related comments by Rettig C "The Panama Papers and Lessons Learned from Years of Offshore Leaks" 2016 *Journal of Tax Practice and Procedure* 29, 32.

researcher opines that there is a need for enhanced collaboration between the FCA and the courts to enhance the effectiveness of reporting obligations as an AML measure in the UK.

6.3.5 The Role and Functions of the Dedicated Card and Payment Crime Unit to Combat Money Laundering in the UK

The UK has also established a specialised unit called the Dedicated Card and Payment Crime Unit (DCPCU) to combat economic crimes such as money laundering.[827] It was established in 2002 and it is not a creature of statute. The DCPCU is a police unit that was established as a collaborative effort between the City of London Police, the Metropolitan Police, the Home Office as well as UK Finance.[828] The DCPCU is wholly funded by the financial sector in the UK. The DCPCU is mandated to curb fraud and other criminal activities related to payment cards, electronic payments, and online banking. It should be noted that the DCPCU does not have an express AML mandate. However, its roles and functions may intersect with efforts to combat money laundering in the UK. For instance, the DCPCU operates in line with the overall goal of curbing digital fraud and criminal activities related to online transactions and payments.[829] Also, financial institutions and payment service providers should cooperate with the DCPCU by reporting suspicious transactions and sharing information to aid investigations.[830] The researcher submits that this is essential for combatting money laundering. As such, it is submitted

827 Hayashi F "Remote Card Payment Fraud: Trends and Measures Taken in Australia, France, and the United Kingdom" 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 1, 4; HM Treasury 2019 Economic Crime Plan 2019-22 Policy Paper 14; Rettig 2016 *Journal of Tax Practice and Procedure* 34.

828 Hayashi F "Remote Card Payment Fraud: Trends and Measures Taken in Australia, France, and the United Kingdom" 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 1, 4; UK Finance is the trade association for the UK banking and financial services sector.

829 Fletcher N "Challenges for Regulating Financial Fraud in Cyberspace" 2007 *Journal of Financial Crime* 190, 195; Levi M and Burrows J "Measuring the Impact of Fraud in the UK: A Conceptual and Empirical Journey" 2008 *The British Journal of Criminology* 293, 290; Betts MJ "Investigation of Fraud and Economic Crime" 2017 *OUP Catalogue* 15.

830 Ayling J "Force Multiplier: People as a Policing Resource" 2007 *International Journal of Comparative and Applied Criminal Justice* 73, 79; Levi and Burrows 2008 *The British Journal of Criminology* 292; Hayashi 2020 *Federal Reserve Bank of Kansas City Briefing* 10.

that the DCPCU also plays an essential investigative role in combatting money laundering in the UK.

6.3.6 The Role and Functions of the JMLIT to Combat Money Laundering in the UK

The JMLIT is a task force which facilitates information sharing between the law enforcement authorities such as the UK FIU, the NCA, the NECC and the private sector in the UK.[831] The JMLIT is a collaborative measure between law enforcement agencies, government bodies, and financial institutions to combat money laundering and financial crimes that was established in 2015.[832] The JMLIT was established to create a common platform through which the UKFIU, supervisory bodies, the private sector, and law enforcement agents could share information to combat money laundering activities in the UK.[833] It is focused primarily on curbing unlawful activities, with a particular focus on curbing economic crimes such as money laundering.[834] The JMLIT promotes proactive dialogue and information sharing as an essential measure to curb money laundering in the UK.[835] Regular meetings are held by the JMLIT member institutions to discuss current money laundering trends and identify innovative measures to collectively detect and prevent money laundering activities.[836] Consequently, about 30 JMLIT reports on

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831 Esoimeme EE "Leveraging Anti-Money Laundering Policies And Procedures To Combat Illicit Trafficking In Narcotic Drugs" 2020 *AML Working Paper* 11; Pontes, Lewis, MacFarlene and Craig 2022 *Journal of Money Laundering Control* 409; Levi, Reuter and Halliday 2018 *Crime, Law and Social Change* 312.

832 Robson C and Ryder N "How and to What Extent has Public-Private Financial Information Sharing Improved the UK's Counterterrorist Financing Reporting Regime?" in Jasinski D, Phillips A and Johnston E (eds) *Organised Crime, Financial Crime, and Criminal Justice* (Routledge 2023) 83, 90; Pontes, Lewis, MacFarlene and Craig 2022 *Journal of Money Laundering Control* 409.

833 FATF UK MER 2018 47; Campbell 2018 *Criminal Law Review* 103; Marzouk MJ "Trade-Based Money Laundering (TBML) Empowers Criminals to Run Free Post-Brexit" 2022 *Journal of Money Laundering Control* 376, 381; Menz M "Beyond Placement, Layering and Integration–The Perception of Trade-Based Money Laundering Risk in UK Financial Services" 2019 *Journal of Money Laundering Control* 614, 620.

834 FATF UK MER 2018 47; Campbell 2018 *Criminal Law Review* 103; Hayashi 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 5; Betts 2017 *OUP Catalogue* 15.

835 Robson and Ryder "How and to What Extent has Public-Private Financial Information Sharing Improved the UK's Counterterrorist Financing Reporting Regime?" 84; Pontes, Lewis, MacFarlene and Craig 2022 *Journal of Money Laundering Control* 409; Levi, Reuter and Halliday 2018 *Crime, Law and Social Change* 312.

836 Esoimeme 2020 *AML Working Paper* 12; Adilah FB, Mohd Z, Mohd Z, Hasani MS and Ali H "A Study of Malaysian Anti-Money Laundering Law and the Impact on Public and Private Sector" 2023 *Journal of Money Laundering Control* 831, 839; Campbell 2018 *Criminal Law Review* 103.

suspicious money laundering activities have been issued to direct financial institutions to implement transactional monitoring systems as an AML measure.[837]

Through the JMLIT, law enforcement authorities can proactively request information from certain private sector organisations, which information may assist in their investigations to curb money laundering.[838] Moreover, the JMLIT also provides a shared platform whereby information that is relevant in curbing money laundering activities may be shared between and among entities within the private sector in the UK.[839] Since its establishment, the JMLIT has developed over 500 money laundering investigations, contributed to 130 money laundering-related arrests and the seizure of £13 million.[840] The JMLIT has, to date, identified more than 5 000 accounts linked to money laundering activities.[841] In light of the aforementioned, the researcher submits that the importance of partnership between law enforcement authorities and relevant financial role players to combat money laundering cannot be overemphasised. The JMLIT continuously develops and enhances measures to mitigate money laundering through proactive collaboration and information sharing. The UK FIU 2021-22 report indicates that there has been progressive collaboration between reporting entities and law enforcement agencies such as the UK FIU and the NCA, facilitated by the JMLIT, to investigate money laundering in the UK.

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837 National Crime Agency "National Economic Crime Centre" https://www.nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre accessed 28 May 2022; Adilah *et al* 2023 *Journal of Money Laundering Control* 839.

838 FATF UK MER 2018 47; Campbell 2018 *Criminal Law Review* 103; Robson and Ryder "How and to What Extent has Public-Private Financial Information Sharing Improved the UK's Counterterrorist Financing Reporting Regime?" 84; Menz 2019 *Journal of Money Laundering Control* 621.

839 FATF UK MER 2018 47; Campbell 2018 *Criminal Law Review* 103; Robson and Ryder "How and to What Extent has Public-Private Financial Information Sharing Improved the UK's Counterterrorist Financing Reporting Regime?" 86; see related comments Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanction: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227, 232.

840 Adilah *et al* 2023 *Journal of Money Laundering Control* 839; Esoimeme 2020 *AML Working Paper* 12; Hayashi 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 5.

841 Adilah *et al* 2023 *Journal of Money Laundering Control* 839; Esoimeme 2020 *AML Working Paper* 12; Hayashi 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 5; see related discussion by Lowe RJ "Anti-money laundering - The Need for Intelligence" 2017 *Journal of Financial Crime* 472, 474.

6.4 The UK's Cooperative and Collaborative Approach to Combatting Money Laundering

From the above, it can be argued that the UK has adopted the approach of combatting money laundering activities through the implementation of various collaborative, multi-agency approaches to the enforcement of anti-money laundering regulations. Furthermore, the UK also makes significant use of public-private partnerships between governmental agencies and private sector organisations to combat money laundering activities.[842]

The Joint Money Laundering Steering Group (JMLSG) is an organisation that comprises the industry association groupings which are found within the financial services sector of the UK.[843] Members of the JMSLG include the Association of British Credit Unions Limited (ABCUL), the Association of British Insurers (ABI), the Building Societies Association (BSA) and the Electronic Money Association (EMA).[844] The JMLSG provides a collaborative mechanism among the key financial role players and it aims to create consistent AML practices across all financial institutions in the UK. A key objective of the JMLSG is curbing money laundering in the financial services sector by guiding the implementation of AML measures to its member institutions.[845] The guidance which is provided by the JMLSG is meant to assist its members in understanding, adequately comply with their AML obligations and uniformly implementing AML measures in the UK.[846] However, such

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842 Section 6 of the *Financial Services Act*; Georgosouli 2013 *Capital Market Law Journal* 63; Kallasidou 2013 *Bristol Law Review* 119; Lowe 2017 *Journal of Financial Crime* 474; Hugo and Spruyt 2018 *Journal of South African Law* 229.

843 Campbell 2018 *Criminal Law Review* 103; Lowe 2017 *Journal of Financial Crime* 474; Hugo and Spruyt 2018 *Journal of South African Law* 229; Menz 2019 *Journal of Money Laundering Control* 621.

844 The members of JMLSG are: Association of British Credit Unions (ABCUL), Association of British Insurers (ABI), Association for Financial Markets in Europe (AFME), Association of Foreign Banks (AFB), British Venture Capital Association (BVCA), Building Societies Association (BSA), Electronic Money Association (EMA), European Values & Intermediaries Association (EVIA), Finance & Leasing Association (FLA), Investment Association (IA), Loan Market Association (LMA), Personal Investment Management & Financial Advice Association (PIMFA), Tax Incentivised Savings Association (TISA) and UK Finance (UKF); Campbell 2018 *Criminal Law Review* 103.

845 Lowe 2017 *Journal of Financial Crime* 472; Hugo and Spruyt 2018 *Journal of South African Law* 229; Menz 2019 *Journal of Money Laundering Control* 621.

846 Lowe 2017 *Journal of Financial Crime* 472; Adilah *et al* 2023 *Journal of Money Laundering Control* 839; Esoimeme 2020 *AML Working Paper* 12.

guidance cannot be legally enforced and is without statutory force. The researcher submits that the lack of enforcement measures on the JMSLG guidelines undermines the effectiveness and implementation of the AML guidelines. Enforcement measures could enhance compliance and curb money laundering. Despite its lack of statutory force, the guidance which is issued by the JMLSG is nevertheless, approved by HM treasury, for distribution by the JMLSG among its member institutions.[847]

6.5 Conclusion

The AML regulatory framework in the UK is comprehensive and relies on effective cooperation and collaboration amongst financial role players, reporting entities and DNFBPs. The *POCA*, the *CFA* and *the Money Laundering Regulation*s provide detailed AML provisions that are being adequately implemented by role players such as the UK FIU, the NAC, the NECC, the FCA and the JMLIT to detect and prevent money laundering in the UK. The 2022-2023 UKFIU Report indicates progressive improvement in the prevention of money laundering in the UK. Notwithstanding that money laundering remains a challenge that requires global cooperation to curb, the AML mechanisms in the UK are commendable. The UK FIU also contributes to the efforts of combatting money laundering globally by cooperating and collaborating with other international FIUs. This chapter has also brought to light that the UK relies on information sharing and collaboration with cross-border financial role players to effectively implement AML measures to combat and curb money laundering in the UK. The UK FIU also plays a significant role in ensuring compliance with reporting obligations and other AML measures by financial institutions and reporting entities. The consistent enforcement of AML measures in the UK is commendable and presents plausible lessons for other jurisdictions such as Zimbabwe.

847 Hayashi 2020 *Federal Reserve Bank of Kansas City: Payments System Research Briefing* 5; Lowe 2017 *Journal of Financial Crime* 472; Adilah *et al* 2023 *Journal of Money Laundering Control* 839; Campbell 2018 *Criminal Law Review* 103.

The next chapter discusses the AML statutory framework and its implementation in Australia. This is done to compare the AML approaches that have been adopted by Australia to draw lessons to enhance the regulation of AML measures in Zimbabwe.

CHAPTER SEVEN

THE REGULATION AND IMPLEMENTATION OF ANTI-MONEY LAUNDERING LEGISLATION IN AUSTRALIA

7.1 Introduction

Australia follows a statutory approach to regulate anti-money laundering (AML) measures. In this regard, the *Anti-Money Laundering and Counter-Terrorism Financing* Act[848] is the main AML legislation in Australia. The *AML/CFT Act* was enacted to provide measures to deter and detect money laundering activities through a risk-based approach in Australia.[849] The *AML/CFT Act* provides six key measures for to detect and prevent money laundering activities in Australia.[850] The AML measures established under the *AML/CFT Act* include customer due diligence (CDD), ongoing due diligence, reporting obligations, developing and maintaining AML programs, record keeping, and registration with the Australian Transaction Reports and Analysis Centre (AUSTRAC).[851] The AUSTRAC is Australia's primary AML/CTF regulator and financial intelligence unit.[852] The AUSTRAC was established in 1989 to coordinate efforts of financial institutions, reporting entities

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848 *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (*AML/CTF Act*), section 4; Chaikin D "A Critical Analysis of the Effectiveness of Anti-Money Laundering Measures with Reference to Australia" in King C, Walker C and Gurule J (eds) *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018) 293, 298; Unger B *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar Publishing 2014) 43.

849 Section 2 of the *AML/CFT Act*; see related discussion by Gilmore W *Dirty Money: The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism* 3rd ed (Council of Europe 2004) 89; Unger B and Van der Linder D (eds) *Research Handbook on Money Laundering* (Edward Elgar Publishing 2013) 56; also see Sathye M "Estimating the Cost of Compliance of AMLCTF for Financial Institutions in Australia" 2008 *Journal of Financial Crime* 347, 350.

850 McNeil C "The Australian Anti-Money Laundering Reform in International Context" 2007 *Journal of International Banking Law and Regulation* 340, 346; see related discussion by Rosdol A "Are OFCs leading the Fight against Money Laundering" 2007 *Journal of Money Laundering Control* 337, 340; Hunter E "Australia" in Simpson M, Smith N and Srivastava A (eds*) International Guide to Money Laundering Law and Practice* (Haywards Heath: Bloomsbury 2010) 255, 257; Ryder N *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* (Routledge 2012) 12.

851 Sections 27, 36, 40 and 49 of the *AML/CFT Act*.

852 Section 49 of the *AML/CFT Act*; Jensen N "Creating an Environment in Australia Hostile to Money Laundering and Terrorism Financing: A Changing Role for AUSTRAC" 2008 *Macquarie Journal of Business Law* 93-120; McNeil 2007 *Journal of International Banking Law and Regulation* 343.

and other businesses to combat money laundering in Australia.[853] However, despite the establishment of the aforementioned AML measures to curb money laundering, Australia still faces an inherent risk of money laundering activities from organised criminal groups who move their criminal proceeds between Australia, South-East Asia, the Asia-Pacific region, and South America.[854] This follows that Australia has substantial financial markets and strong international trade ties which renders it attractive to money launderers. In addition, Australia has diversified and well-developed financial institutions and financial markets which are often abused by criminals to gain access to the financial markets in the Middle East and Europe.[855] However, Australia has constantly developed and improved its AML regulatory framework to enhance the prevention of money laundering.[856] Accordingly, significant lessons can be drawn from Australia to enhance AML measures in Zimbabwe. Australia has introduced several reforms, such as the regulation of virtual assets to enhance its AML regulatory measures and enhance corrective measures.[857] This chapter seeks to analyse Australia's AML regulatory framework to draw lessons that can be recommended to enhance the AML framework in Zimbabwe.

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853 See related comments by Cotton J "Australia: Taking Stock of the Financial Reporting Legislation – Senate Committee Review and Government Response" 2000 *Journal of Money Laundering Control* 181, 183; Morris-Cotterill "Money Laundering Update 2006" 2006 *Compliance Office Bulletin* 1, 5; see related comments by Radomyski M "What Problems has Money Laundering Posed for the Law Relating to Jurisdiction? " 2010 *Coventry Law Journal* 4, 6.

854 Financial Action Task Force Report 2015 *Fourth Round Mutual Evaluation Report Australia* 1, 7; see related discussion by Doyle T "Cleaning up Anti-Money Laundering Strategies: Current FATF Tactics Needlessly Violate International Law" 2002 *Houston Journal of International Law* 279, 287; also see Morais H "Fighting International Crime and its Financing: The Importance of Following a Coherent Global Strategy Based on the Rule of Law" 2005 *Villanova Law Review* 583, 591.

855 Financial Action Task Force Report 2005 *Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism Australia* 1, 16. Brown A "Australia's Anti-Money Laundering Law on Financial Institutions" 2009 *The Finance Industry* 5, 10; Radomyski 2010 *Coventry Law Journal* 7.

856 Saputra B "Modelling Australian Transaction Reports and Analysis Centre (AUSTRAC) for Indonesia in Order to Combat Financial Crime" 2021 *NEGREI: Academic Journal of Law and Governance* 81, 85; Harvey A *Anti-Money Laundering and Counter-terrorism Financing Law and Policy* (Nijhof Law Specials 2019) 187.

857 Saputra 2021 *NEGREI: Academic Journal of Law and Governance* 86; Harvey *Anti-Money Laundering and Counter-terrorism Financing Law and Policy* 72; Miralis D and Gibson P "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" in Norton A (ed) *Anti-Money Laundering 2020: A Practical Cross-Border Insight Into Anti-Money Laundering Law* 3rd ed (Ashford Colour Press Ltd) 27, 31.

7.2 Historical Overview of the Regulation of Money Laundering in Australia

The origins of the promulgation of anti-money laundering legislation in Australia can be traced from the findings of the Costigan Royal Commission (CRC) and the Stewart Royal Commission (SRC) from the period between 1980 and 1984.[858] The CRC and the SRC found that criminal organisations abused the financial institutions in Australia to conduct money laundering activities and move the proceeds of crime around Australia through illicit cash transactions, money mules and informal money transfer systems such as *Hawala*.[859] Moreover, the CRC and the SRC also recommended the implementation of specific legislative measures to curb money laundering in Australia to ensure uniformity in AML measures in all Australian states.[860] Consequently, the first AML statute was introduced in Australia as the *Proceeds of Crime Act* in 1987.[861] The *POCA* provided a conviction-based confiscation approach to combat money laundering.[862] The conviction-based approach is a procedure whereby the state acquires a confiscation order for the value of illegal proceeds against the defendant.[863] Thus, the *POCA* authorised the courts to confiscate property that constitutes proceeds of crime or order the perpetrator to pay an amount equivalent to proceeds derived from criminal activities.[864] The researcher

858 Walters J, Smith RG, Davis B, Choo KKR and Chadwick H "The Anti-Money Laundering and Counter-Terrorism Financing Regime in Australia: Perceptions of Regulated Businesses in Australia" *AIC Report 117: Research and Public Policy Series* (Australian Institute of Criminology Canberra 2012) 3; Bell RE "An Introductory Who's Who for Money Laundering Investigators" 2010 *Journal of Money Laundering Control* 287, 290.

859 Harvey A *Anti-Money Laundering and Counter-terrorism Financing Law and Policy* (Brill Nijhoff Leiden 2019) 59; Walters, Smith, Davis, Choo and Chadwick AIC Report 117: Research and Public Policy Series 3; Morris R "The Employer's Free Choice and the Waterfront Closed Shop" 1981 *Journal of Industrial Relations* 49, 53.

860 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 3; Jones G "Assets Forfeiture: Proceeds of Crime, Limitation Periods and Failure to Advise" 2007 *Law Society Journal* 70, 73-74; Freiberg A and Fox R "Evaluating the Effectiveness of Australia's Confiscation Laws" 2000 *Australian and New Zealand Journal of Criminology* 239, 248.

861 *Proceeds of Crime Act* 1987 (Cth) (*POCA*), section 2; Lusty D "Civil Forfeiture of Proceeds of Crime in Australia" 2002 *Journal of Money Laundering Control* 345, 348; Cotton J "Australia: Lawyers Should be Treated like Banks, Bookmakers and Bullion Dealers" 1998 *Journal of Money Laundering Control* 255, 256.

862 Section 5 of the *POCA* 1987.

863 Lusty 2002 *Journal of Money Laundering Control* 350; Freiberg and Fox 2000 *Australian and New Zealand Journal of Criminology* 242; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30.

864 Section 5 of the *POCA*; Lusty 2002 *Journal of Money Laundering Control* 348; *NSW Crime Commission v Crotty* [1999] NSWSC 146 1999, para. 31; Skead N and Murray S "The Politics of Proceeds of Crime legislation" 2015 *The University of New South Wales Law Journal* 455, 460.

submits that one controversial aspect of the *POCA* is that the conviction-based confiscation provisions do not deter perpetrators from committing the same crimes again in the future.[865] This follows that the conviction-based approach relies on successful convictions which are not always the case. Accordingly, the *POCA* was neither adequate nor robust enough to prevent money laundering in Australia due to inadequate penalties which could not deter money laundering activities and was therefore repealed in1992. As a result, Australia has remained under threat for money laundering and related crimes from organised groups. This follows that Australia is exposed to major tax frauds and is a market for illegal drugs.

As part of the outcomes of the CRC and SRC findings, the *Financial Transaction Reports Act* was enacted in 1988 to create reporting obligations for financial institutions such as banks, building societies, credit unions, as well as entities in the insurance industry, the travel industry, and the gambling industry.[866] In this regard, the *FTR Act* initially focused on curbing money laundering by creating reporting requirements for domestic suspicious transactions exceeding AUD10000 and large cash transactions by reporting entities.[867] This was done to deter criminals from using the Australian financial sector to launder the proceeds of crime. However, the scope of the *FTR Act* was later expanded by a Senate Committee to include the reporting and monitoring obligations of certain international transactions by reporting entities.[868] Accordingly, the *FTR Act* was enacted to provide financial intelligence on money laundering activities in Australia to law enforcement

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865 See related comments by Freiberg and Fox 2000 *Australian and New Zealand Journal of Criminology* 259; Lusty 2002 *Journal of Money Laundering Control* 355; Ryder N '"To Confiscate or not to Confiscate? A Comparative Analysis of the Confiscation of the Proceeds of Crime Legislation in the United States of America and the United Kingdom'" 2013 *Journal Fall* 1, 35.

866 *Financial Transaction Reports* Act 1988 (Cth) (*FTR Act*), sections 3-6; Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: Research and Public Policy Series 3; Cotton 1998 *Journal of Money Laundering Control* 160; Coad B and Richardson B "Financial Transactions Reports Act, Part II" 1994 *Australian Journal of Forensic Sciences* 15, 18.

867 Section 7 of the FTR Act; Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: *Research and Public Policy Series* 3; Lusty 2002 Journal of Money Laundering Control 348; Skead and Murray 2015 *The University of New South Wales Law Journal* 461.

868 See sections 3A and 17B-E of the FTR Act; Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: Research and Public Policy Series 3; Cotton 1998 *Journal of Money Laundering Control* 160; Coad and Richardson 1994 *Australian Journal of Forensic Sciences* 15.

agencies.[869] The *FTR Act* was promulgated mainly to regulate Australia's cash economy, which, if not regulated, could inadvertently facilitate the proliferation of money laundering crimes.[870] Additionally, the *FTR Act* regulated measures on the reporting of suspicious cash transactions by cash dealers.[871] Thus, the *FTR Act* sought to create reporting obligations for certain businesses and set out penalties for non-compliance.[872] The researcher argues that this was not adequate to deter money launderers from criminal activities and the scope of the *FTR Act* did not cover all financial institutions.[873] This left room for unregulated entities to be abused by criminals as they moved illicit funds.[874] The scope and functions of the *FTR Act* were only applicable to businesses and could not be extended to financial institutions such as banks.[875] As such, it is submitted that the initial measures to combat and curb money laundering through the *FTR Act* were ineffective and inadequate due to its limited scope. The *FTR Act* provided for identification measure without complementing verification provisions.[876] The reporting obligations under the *FTR Act* have now been replaced by obligations under the *AML/CFT Act*.

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869 Section 8 of the *FTR Act*; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 3; Neil J "Creating an Environment in Australia Hostile to Money Laundering and Terrorism Financing: A Changing Role for AUSTRAC" 2008 *Macquarie Journal of Business Law* 93, 95.

870 *R v Guo; R v Qian* [2010] NSWCCA 170 (5 August 2010) para 92; *Leask v Commonwealth of Australia* [1996] HCA 29; 187 CLR 579 at 596-597; also see Neil 2008 *Macquarie Journal of Business Law* 94.

871 Financial Action Task Force Report 2005 *Australia* 7; *R v O'Driscoll* [2003] NSWCCA 166; 57 NSWLR 416 at 420-421 [13]- [14]; *R v Guo; R v Qian* [2010] NSWCCA 170 (5 August 2010) para 92.

872 Section 15 of the *FTR Act*; Morris-Cotterill 2006 *Compliance Officer Bulletin* 5; Cotton 1998 Journal of Money Laundering Control 160; Coad and Richardson 1994 *Australian Journal of Forensic Sciences* 15.

873 Lusty 2002 *Journal of Money Laundering Control* 350; Freiberg and Fox 2000 *Australian and New Zealand Journal of Criminology* 242; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30.

874 Section 25 of the *FTR Act*; Sathye 2008 Journal of Financial Crime 359; Mcneil 2007 Journal of International Banking Law and Regulation 342; Hunter "Australia" 256.

875 Section 25 of the *FTR Act*; Sathye 2008 *Journal of Financial Crime* 359; Mcneil 2007 Journal of International Banking Law and Regulation 342; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 33.

876 See section 26 of the *FTR Act*.

In 2005, the Financial Action Task Force (FATF) conducted a mutual review of the AML regulatory framework in Australia.[877] The FATF found that Australia's AML regulatory framework was not sufficiently robust to curb money laundering activities.[878] The FATF reported that, *inter alia*, the lack of money laundering prosecutions in Australia proved that the established AML measures were not effectively implemented and the sentences for money laundering were too low.[879] It was also found that the designated non-financial businesses and professions (DNFBPs) operating in Australia at the time had no statutory obligations to report suspicious transactions to the AUSTRAC. This created a gap that could be exploited by perpetrators to commit money laundering through DNFBPs. Therefore, to remedy the deficiencies identified in the FATF report and to strengthen its anti-money laundering regulatory framework, Australia promulgated the *Anti-Money Laundering and Counter-Terrorism Financing Act* of 2006 (Cth).[880] The *AMLCTF Act* will be discussed in more detail under the current regulatory framework of money laundering in Australia.

7.3 The Current Statutory Regulatory Framework for Money Laundering in Australia

7.3.1 The Regulation of Money Laundering under the Criminal Code Act

At the federal level, money laundering is generally regulated through the *Criminal Code Act* of 1995.[881] The *Criminal Code Act* was enacted to codify criminal activities such as

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877 Financial Action Task Force Report 2005 *Third Round Mutual Evaluation Report Australia* 1, 7-8; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30.

878 Financial Action Task Force Report 2005 *Australia* 7-8; McSherry B "Terrorism Offences in the Criminal Code: Broadening the Boundaries of Australian Criminal Laws" 2004 *University of New South Wales Law Journal* 354, 360; Woolf T "The Criminal Code Act 1995 (Cth): Towards a Realist Vision of Corporate Criminal Liability" 1997 *Criminal Law Journal* 257, 263.

879 FATF "Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism" 14 October 2005 https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/MER%20Australia%20ES.pdf.coredownload.pdf accessed 12 October 2023.

880 *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (Cth) (*AMLCTF Act*); Deitz A and McLeod C "Anti-Money Laundering and Counter-Terrorism Financing Act 2006" 2007 *Australian Insolvency Journal* 18, 20; Tyree A "Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (CTH) and the Conversion of Cheques" 2007 *Journal of Banking and Finance Law and Practice* 133, 135.

881 Section 400.6 of the *Criminal Code* Act, 1995 (Cth) (*Criminal Code* Act); *R V Jacques* [2021] SASCA 94 (9 September 2021) paragraph 40; *R v Huang, R v Siu* [2007] NSWCCA 259 (4

money laundering as well as establish penalties for such crimes.[882] The *Criminal Code Act* criminalises dealing with property or money that was obtained through criminal activities.[883] One is guilty of the offence of money laundering where they become involved in or obscure the proceeds of crime, enter into transactions with the intention of dealing with the proceeds of crime, and/or possess the proceeds of criminal activities.[884] The codification of money laundering and related offences under this *Act* was an essential measure to establish legal certainty and consistency in the prevention and detection of money laundering in Australia. Furthermore, the scope of the *Criminal Code Act* extends to both primary perpetrators who generate illicit proceeds as well as perpetrators who facilitate criminal activities by laundering the proceeds.[885] However, the researcher argues that the *Criminal Code Act* is too lengthy and complex to be user-friendly. This could result in unintended interpretation and application challenges amongst DNFBPs and other relevant role players. Moreover, the *Criminal Code Act* is not adequate enough to deter money laundering activities because it is more focused on establishing the definitional elements and penalties of the offences than on establishing deterrence measures to prevent the same offences in the future.[886] It should be noted that the *Criminal Code Act* is not the main AML statute in Australia. The *Criminal Code Act* provides the definitional

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September 2007) paragraph 26 and 31; *R v Guo; R v Qian* [2010] NSWCCA 170 (5 August 2010) para 16; Smith RG and Walker J "The Illegal Movement of Cash and Bearer Negotiable Instruments: Typologies and Regulatory Responses" 2010 *Trends and Issues in Crime and Criminal Justice* 1, 3.

882 Section 400 of the *Criminal Code Act*; Woolf 1997 *Criminal Law Journal* 258; McSherry 2004 *University of New South Wales Law Journal* 360; Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 15.

883 Section 400.3 of the *Criminal Code Act*; Financial Action Task Force Report "Summary of the Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism" 2005 *Australia* 6; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 5; Ferguson PR "Constructing a Criminal Code" 2009 *Criminal Law Forum* 139, 142.

884 Section 400.4-6 of *the Criminal Code Act*; McSherry 2004 *University of New South Wales Law Journal* 360; Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 16.

885 Section 4002B of the *Criminal Code Act*; Taylor G "Dr Pennefather's Criminal Code for South Australia" 2002 *Common Law World Review* 62, 70; MacDonald E and Williams G "Combating Terrorism: Australia's Criminal Code since September 11, 2001" 2007 *Griffith Law Review* 27, 30.

886 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 23; Ferguson 2009 *Criminal Law Forum* 143; Taylor 2002 *Common Law World Review* 75; Macdonald and Williams 2007 *Griffith Law Review* 30.

elements and penalties for various criminal offences in Australia, including money laundering and terrorism financing. Accordingly, the *Criminal Code Act* is one component of a broader AML legal framework and is not adequate to combat money laundering independently.

7.3.2 The Regulation of Money Laundering under the Proceeds of Crime Act (POCA)

The *POCA* is another statute in Australia's AML framework.[887] The *POCA* provides for the prosecution of money laundering crimes and the recovery of proceeds of crime.[888] The *POCA* provides for the confiscation and forfeiture of the proceeds of crime through both criminal and civil proceedings.[889] The *POCA* has two main aims which are, firstly, to strip criminals of the profits of their illegal actions and secondly, to prevent criminals from re-investing the profits of their unlawful actions to further other criminal activities.[890] In this regard, the *POCA* includes conviction-based and non-conviction-based provisions to confiscate the proceeds of crime from criminals.[891] This entails that, the *POCA* authorises regulatory authorities such as the AUSTRAC to confiscate proceeds of crime before and after conviction of the perpetrators.[892] Accordingly, the AUSTRAC can also effect confiscation and forfeiture-based on the criminal conduct of a person (*actio in personam*) or directly, against the property which forms part of the proceeds of the crime or was

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887 *Proceeds of Crime Act* 85 of 2002 (*POCA*), sections 1 and 4; Financial Action Task Force Report 2005 *Australia* 6; Tubex H *et al* "A Criminological Analysis of Proceeds of Crime Legislation in Three Australian States" 2022 *Criminology and Criminal Justice* 1, 3; Gallant MM *Money Laundering and the Proceeds of Crime: Economic Crime and the Civil Remedies* (Cheltenham: Edward Elgar 2005) 8.

888 Section 6 of the *POCA*; Financial Action Task Force Report 2005 *Australia* 6; Lusty 2002 *Journal of Money Laundering Control* 348; Sittlington S and Harvey J (2018) "Prevention of Money Laundering and the Role of Asset Recovery" 2018 *Crime Law and Social Change* 421, 430.

889 Section 7 of the *POCA*.

890 Sittlington and Harvey 2018 *Crime Law and Social Change* 430; Zavoli I and King C "The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis" 2021 *Modern Law Review* 740, 751; see related discussion by Thornton J "Objectives and Expectations of Confiscation and Forfeiture Legislation in Australia: An Overview" 1994 *Canberra Law Review* 43, 50.

891 Sections 47 and 49 of the *POCA*; Gray A "Forfeiture Provisions and the Criminal/Civil Divide" 2012 *New Criminal Law Review* 32, 45; Goldsmith A, Gray D and Smith R "Criminal Asset Recovery in Australia" in Collin K and Walker C (eds) *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Routledge 2014) 131, 142.

892 See section 48 of the *POCA*; Tubex 2022 *Criminology and Criminal Justice* 5; Gray 2012 *New Criminal Law Review* 46; Goldsmith A, Gray D and Smith R "Criminal Asset Recovery in Australia" 145.

used to commit the offence (*actio in rem*).[893] Asset forfeiture and confiscation under the *POCA* is meant to deprive perpetrators of the benefits of criminal activities such as money laundering and also deter from committing similar offences.[894] The researcher submits that confiscation of the proceeds of crime plays a significant role in combatting money laundering by discouraging criminals who commit crime to derive financial benefit.

There are five main types of final confiscation and forfeiture orders in terms of the *POCA*.[895] Firstly, forfeiture orders are awarded based on a conviction.[896] Secondly, non-conviction-based forfeiture orders permit confiscation to be made even without prosecution.[897] This occurs when the court deems a person to have committed a serious offence, or where the court deems that the property to be forfeited is part of the proceeds of an offence or was used to enable the commission of a serious offence.[898] Thirdly, the court also awards pecuniary penalty orders. Pecuniary penalty orders require the criminal to pay a defined amount of money which is calculated or determined based on the value of the benefits that he or she obtained from their criminal activities.[899] Fourth, the *POCA* also provides for literary proceeds orders. The literary proceeds order requires the criminal to pay a defined amount of money which is based on the proceeds that they derived from the commercial exploitation of their criminal notoriety.[900] For instance,

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893 Zavoli and King 2021 *Modern Law Review* 751; Thornton 1994 *Canberra Law Review* 51; Sittlington and Harvey 2018 *Crime Law and Social Change* 432; Tubex et al 2022 *Criminology and Criminal Justice* 4.

894 See section 48 of the *POCA*; Tubex 2022 *Criminology and Criminal Justice* 5; Gray 2012 *New Criminal Law Review* 46; Goldsmith A, Gray D and Smith R "Criminal Asset Recovery in Australia" 145.

895 Section 15A of the *POCA*; Skead N, Tubex H, Murray S, *et al* "Pocketing the Proceeds of Crime: A Case for Legislative Reform" 2021 *Criminal Law Journal* 46, 52; Sittlington and Harvey 2018 *Crime Law and Social Change* 432; Skead N and Murray S "The Politics of Proceeds of Crime Legislation" 2015 *University of New South Wales Law Journal* 455, 462.

896 Section 48 of the *POCA*.

897 Section 49 of the *POCA*.

898 Section 54 of the *POCA*; Tubex *et al* 2022 *Criminology and Criminal Justice* 7; Odgers S "Proceeds of Crime: Instrument of Injustice?" 2007 *Criminal Law Journal* 330, 331; Laird K "Statutory Interpretation, Absurdity, and the 'Proceeds of Crime Act 2002'" 2019 *Law Quarterly Review* 390, 393; Skead *et al* 2021 *Criminal Law Journal* 51.

899 Section 115 of the *POCA*; Laird 2019 *Law Quarterly Review* 394; Skead N, Tulich T, Murray S and Tubex H "Reforming Proceeds of Crime Legislation: Political Reality or Pipedream?" 2019 *Alternative Law Journal* 176, 180; Skead and Murray 2015 *University of New South Wales Law Journal* 455, 462.

900 Section 152 of the *POCA*; Tubex *et al* 2022 *Criminology and Criminal Justice* 7; Odgers 2007 *Criminal Law Journal* 331; Goldsmith A, Gray and Smith "Criminal Asset Recovery in Australia" 142.

proceeds from television interviews or book sales of their criminal exploits. Literary proceeds orders are enforced as though they are an order made in civil proceedings, a judgement debt.[901] Finally, there are unexplained wealth orders.[902] These unexplained wealth orders require the criminal to pay a proportion of their wealth to the state in instances where the court is not adequately satisfied that their wealth was legitimately earned.[903] It should be understood that the *POCA* is not a dedicated AML statute. However, the *POCA* provides essential guidelines on the forfeiture and confiscation of procced of organised crimes like money laundering so as to deter criminals from benefiting from crime. The effectiveness of the provisions under the *POCA* in combatting money laundering in Australia partly relies on the successful prosecution of money laundering crimes. Arguably, successful prosecutions rely on effective coordination between the AUSTRAC, law enforcement authorities and the courts. However, the *POCA* does not provide for regulatory coordination to combat and detect money laundering, and this could undermine its effectiveness in curbing same.

Attempts by the federal government to confiscate the proceeds of crime have been far less successful. This is due to the fact that, the primary role of the police is to investigate the criminal offence while the prosecutors are required to prove the elements of the criminal offence. Therefore, the primary aim of the police and the prosecutors is to focus on proving the criminal offence but in doing so, do not investigate or seek to prove the profits that are obtained from the commission of the crime. This approach is inadequate to combat money laundering because it fails to prove all the definitional elements of money laundering.[904] This follows that the investigation and analysis which is required to

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901 Section 167(2) of the *POCA*; Gray and Smith "Criminal Asset Recovery in Australia" 142; Zavoli and King 2021 Modern Law Review 755; Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 129.

902 Section 179B of the *POCA*; Gray and Smith "Criminal Asset Recovery in Australia" 142; Zavoli and King 2021 Modern Law Review 755; Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 129.

903 Skead, Tubex, Murray *et al* 2021 *Criminal Law Journal* 52; Sittlington and Harvey 2018 *Crime Law and Social Change* 432; Skead and Murray 2015 *University of New South Wales Law Journal* 462; Gray and Smith "Criminal Asset Recovery in Australia" 45.

904 See related comments by Alldridge P *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Bloomsbury Publishing 2003) 56; also see Smellie A "Prosecutorial Challenges in Freezing and Forfeiting Proceeds of

prove the proceeds of money laundering are usually beyond the expertise of either the police or the prosecutor. Therefore, to counteract this weakness, a reverse onus is placed on the criminal in unexplained wealth proceedings. Despite this, however, if the criminal explains, regardless of its merits, the onus is shifted back to the prosecution.[905] The researcher submits that the extensive powers granted to law enforcement authorities in the confiscation and forfeiture procedures are too broad and could be abused if not adequately regulated and monitored. The abuse of such powers could hinder the effectiveness of the *Act* and the prevention of money laundering in Australia. Overall, the researcher submits that Australia pursues proceeds of money laundering activities through proceeds of crime action governed by the *POCA*.

7.3.3 The Regulation of Money Laundering under the AMLCTF Act

The *AMLCTF Act* is the primary AML legislation in Australia.[906] The *AMLCTF Act* was promulgated to regulate measures to enable the detection and prevention of money laundering and related crimes in Australia.[907] Put differently, the *AMLCTF Act* was enacted as a measure to curb and disrupt money laundering activities by reporting entities and law enforcement authorities in Australia.[908] Through the effective implementation of the *AMLCTF Act*, Australia seeks to strengthen the ability of its financial institutions and financial markets to combat money laundering.[909] This objective is fulfilled through the

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Transnational Crime and the Use of International Asset Sharing to Promote International Cooperation" 2005 *Journal of Money Laundering Control* 104, 110; Laird 2019 *Law Quarterly Review* 394.

905 Financial Action Task Force Report 2005 *Australia* 120; Bastin 2009 *Federal Law Review* 320; King 2012 *International Journal* 339; Smellie 2005 *Journal of Money Laundering Control* 111.

906 Section 3(1)(aa) of the *AMLCTF Act*; Newbury M "Designated Non-Financial Businesses and Professions: The Weak Link in Australia's AML/CTF Regime" 2017 *Journal of Money Laundering Control* 247, 251; Choo K "Designated Non-Financial Businesses and Professionals: A Review and Analysis of Recent Financial Action Task Force on Money Laundering Mutual Evaluation Reports" 2014 *Security Journal* 56, 62.

907 Section 3(1)(aa) of the *AMLCTF* Act; Newbury 2017 *Journal of Money Laundering Control* 252; Choo 2014 *Security Journal* 62; West M "Money Laundering Burden Yet to Hit Property Market" *The Sydney Morning Herald* (11 May 2015) 11; McNeil 2007 *Journal of International Banking Law and Regulation* 342.

908 Section 3(1) (aa) of the *AMLCTF Act*; Jensen N "Creating an Environment in Australia Hostile to Money Laundering and Terrorism Financing: A Changing Role for AUSTRAC" 2008 *Macquarie Journal of Business Law* 93, 98; West *the Sydney Morning Herald* 11; Newbury 2017 *Journal of Money Laundering Control* 252.

909 See preamble of the *AMLCTF Act*; Harvey AI "Australian AML/CTF Legislation in the International Context" 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 14, 29;

regulation of necessary internal controls and powers that are tasked with reporting entities to identify and curb and prevent money laundering in financial institutions and financial markets.[910]

The *AMLCTF Act* establishes three physical elements of the money laundering offence.[911] These elements are, firstly, the accused should have dealt with money.[912] In terms of this element, the accused must have had an intention of dealing with the money which forms or may become an instrument or proceed of crime.[913] Therefore, the prosecution is required to prove that the accused person had an intention of dealing with the money in question.[914] In this context, a person will be deemed to deal with money which forms or may become an instrument or proceeds of crime if they receive it, possess it, or dispose of it. Secondly, it is deemed reasonable to suspect that the money which the accused dealt with, forms, or is part of the proceeds of crime, because absolute liability attaches to the second element of the offence of money laundering.[915] Therefore liability will be established regardless of whether the accused person had no knowledge that the money which they dealt with, was part of the proceeds of crime or was to be used as an instrument of crime.[916] Finally, in respect of establishing the third element of the offence

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Jensen 2008 *Macquarie Journal of Business Law* 99; Sathye M and Islam J "Adopting a Risk-Based Approach to AMLCTF Compliance: The Australian Case" 2011 *Journal of Financial Crime* 169, 170.

910 Section 3(1) (ad) of the *AMLCTF Act*; Choo R "Money Laundering Risks of Prepaid Stored Value Cards" 2008 *Australian Institute of Criminology* 1, 5; Sathye and Islam 2011 *Journal of Financial Crime* 172; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

911 Section 400.9 of the *AMLCTF Act*; *DPP v Zhang* [2021] VCC 416 (1 December 2021) Case No. CR-19-00751 paragraph 16; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 16; West *The Sydney Morning Herald* 11; Newbury 2017 *Journal of Money Laundering Control* 252.

912 *DPP v Zhang* paragraph 16; McNeil 2007 *Journal of International Banking Law and Regulatio*n 342; Sathye and Islam 2011 *Journal of Financial Crime* 170; Newbury 2017 *Journal of Money Laundering Control* 252.

913 *DPP v Zhang* paragraph 16; Laird 2019 *Law Quarterly Review* 394; Sathye and Islam 2011 *Journal of Financial Crime* 170-171; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 16.

914 *DPP v Zhang* para 16-17; Laird 2019 *Law Quarterly Review* 394; Sathye and Islam 2011 *Journal of Financial Crime* 170-171; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 16.

915 Section 400.10 of the *AMLCTF Act*.

916 McNeil 2007 *Journal of International Banking Law and Regulation* 342; Sathye and Islam 2011 *Journal of Financial Crime* 170; Newbury 2017 *Journal of Money Laundering Control* 252; Laird 2019 *Law Quarterly Review* 394.

of money laundering, the amount of the money which the accused dealt with, should have had a value of at least AUD100 000 at the time of the offence.[917] Similar to the second element of the offence of money laundering, absolute liability also follows the third element.[918] In the circumstances, the prosecution is not required to prove that the money which forms the subject of the inquiry, is part of the proceeds of a crime that has been committed.[919] In this regard, the researcher submits that the comprehensive description of money laundering and elements thereof under the *AMLCTF Act* creates legal certainty which is essential for the investigation and prosecution of the crime. In Zimbabwe, the lack of a clear and substantive definition of money laundering has hampered the effective prosecution of money laundering matters.[920]

To enable the effective and robust implementation of the Australian AML regulatory framework, the *AMLCTF Act* is supported by comprehensive supporting regulations. These regulations are contained in the *Anti-Money Laundering/Counter-Terrorism Financing (AML/CTF) Rules*.[921] The *AML/CFT Rules* are a crucial element of Australia's AML framework. The rules are structured to detect suspicious transactions, verify customer identity, establish compliance standards, and report suspicious transactions.[922] The *AMLCTF Act* also makes provision for a risk-based approach as a measure to curb

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917 Section 400.11 of the *AMLCTF Act*; *DPP v Zhang* paragraph 16; See Sathye and Islam 2011 *Journal of Financial Crime* 172; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

918 *DPP v Zhang* McNeil 2007 *Journal of International Banking Law and Regulation* 342; Sathye and Islam 2011 *Journal of Financial Crime* 170; Newbury 2017 *Journal of Money Laundering Control* 252; Laird 2019 *Law Quarterly Review* 394.

919 DPP v Zhang paragraph 16; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19; West *the Sydney Morning Herald* 12; Choo 2014 *Security Journal* 56.

920 Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 289; see related discussion by Chamisa MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 31; Goredema C "Money Laundering in East and Southern Africa: An Overview of the Threat" 2003 *Institute for Security Studies Paper* 4.

921 The Anti-Money Laundering/Counter-Terrorism Financing Rules (AML/CTF Rules) are subordinate legislation made in terms of section 229 of the *AMLCTF* Act. See Sathye and Islam 2011 *Journal of Financial Crime* 172; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

922 Ross S and Hannan M "Money Laundering Regulation and Risk-Based Decision-Making" 2007 *Journal of Money Laundering Control* 106-115; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19; West *The Sydney Morning Herald* 12.

money laundering in Australia.[923] In terms of the risk-based approach, a reporting entity is permitted to conduct an assessment of the specific risks of money laundering abuse that it is exposed to in all its business areas.[924] Thereafter, based on the findings of the risk assessment, and with the use of the legislative framework to inform the necessary measures to be implemented, the reporting entity develops a set of internal processes and controls.[925] The internal processes and controls are designed to curb money laundering through the business and inform the CDD measures that are implemented by the reporting entity.[926] Furthermore, all reporting entities are obliged to report their compliance with the *AMLCTF Act* to the AUSTRAC on an annual basis.[927] In light thereof, the AML processes and controls are then implemented by the reporting entity to act as an internal mechanism that curbs the occurrence of the identified risks of money laundering to the business.[928]

The risk-based approach therefore allows the reporting entity to identify and manage the money laundering risks that are specific to it.[929] Furthermore, the risk-based approach enables the reporting entity to apply its anti-money laundering resources optimally to

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923 Section 165 (1) and (2) of the *AMLCTF* Act; Sathye and Islam 2011 *Journal of Financial Crime* 170; Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 25; Tham J "A Risk-Based Analysis of Australia's Counterterrorism Financing Regime" 2007 *Social Justice* 142.

924 Sathye and Islam 2011 *Journal of Financial Crime* 170; Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: Research and Public Policy Series 25; Tham 2007 *Social Justice* 142; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

925 Sathye and Islam 2011 *Journal of Financial Crime* 170; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 4; Tham 2007 *Social Justice* 142; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

926 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 7; Johnson J "Australia's Response to the FATF's 2003 40 Recommendations" 2005 *Journal of Money Laundering Control* 297, 298; Ross S and Hannan M "Australia's New Anti-Money Laundering Strategy" 2007 *Current Issues in Criminal Justice* 135, 142.

927 Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 7; Brown A "Australia's Anti-money Laundering Law on Financial Institutions" 2009 *Legal Issues in Business* 5-16; Sathye and Islam 2011 *Journal of Financial Crime* 170.

928 Sathye and Islam 2011 *Journal of Financial Crime* 170; Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 4; Ross and Hannan 2007 *Current Issues in Criminal Justice* 143; Johnson 2005 *Journal of Money Laundering Control* 299.

929 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 25; Tham 2007 *Social Justice* 142; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19.

focus on the business areas that are vulnerable to money laundering.[930] In terms of the *AMLCTF Act*, a financial institution, or any other person who provides services that are listed in section 6, is referred to as a reporting entity.[931]

Apart from the risk-based approach, the *AMLCTF Act* also regulates the implementation of CDD as an AML measure.[932] This is a process of identification and verification of customer identity that is implemented by financial institutions, especially to determine the money laundering risk that a customer poses to the institution.[933] Like in the UK, the level of due diligence implemented depends on the risk profile of the client.[934] High-risk clients are customers who, based on their profile, are *prima facie*, liable to present a high money laundering risk to the financial institution, such as politically exposed persons (PEPs).[935] Low-risk clients are customers who *prima facie*, present a low money laundering risk to the financial institution.[936] This means that customers are classified as

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930 Sathye and Islam 2011 *Journal of Financial Crime* 170; Walters, Smith, Davis, Choo and Chadwick *2012 AIC Report 117: Research and Public Policy Series* 25; Harvey 2019 *Anti-Money Laundering and Counter-Terrorism Financing Law and Policy* 19; West *The Sydney Morning Herald* 12.

931 Section 4 of the *AMLCTF* Act; De Koker L, Supriya S, and Capal J "Closure of Bank Accounts of Remittance Service Providers: Global Challenges and Community Perspectives in Australia" 2017 *University Queensland Law Journal* 119, 124.

932 Section 27 of the *AMLCTF Act*; Shust PM and Dostov V "Implementing Innovative Customer Due Diligence: Proposal for Universal Model" 2020 *Journal of Money Laundering Control* 871, 874; Quiazon J "Customer Due Diligence Coming to a Practice Near You" 2004 *Law Society Journal* 58, 61; De Koker L and Harwood K "Supplier Integrity Due Diligence in Public Procurement: Limiting the Criminal Risk to Australia" 2015 *Sydney Law Review* 217-241.

933 Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 52; Choo KR "Challenges in Dealing with Politically Exposed Persons" 2010 *Trends and Issues in Crime and Criminal Justice* 1-6; Jun T and Ai L "The International Standards of Customer Due Diligence and Chinese Practice" 2009 *Journal of Money Laundering Control* 406, 418.

934 See related discussion by Demetis D and Angell I "The Risk-Based Approach to AML: Representation, Paradox, and the 3rd Directive" 2007 *Journal of Money Laundering Control* 412, 418; Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 76, 81; Turner S and Bainbridge J "An Anti-Money Laundering Timeline and the Relentless Regulatory Response" 2018 *Journal of Criminal Law* 215, 219.

935 Choo K "Politically Exposed Persons (PEPs): Risks and Mitigation" 2008 *Journal of Money Laundering Control* 371, 374; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 286; De Klerk A "The Importance and Relevance of Financial Institutions Doing Business With Politically Exposed Persons In The Global Fight Against Money Laundering" 2007 *Journal of SA Law* 368, 370.

936 Demetriades G "Is the Person Who he Claims to Be?" Old Fashion Due Diligence May Give the Correct Answer!" 2016 *Journal of Money Laundering* 79, 84; Geister D *Concepts in Customer Due Diligence: Meeting the Challenges of Regulatory Expectation* (Lexis Nexis New York 2009) 65;

low-risk and high-risk customers. Relaxed due diligence is implemented for low-risk customers and enhanced due diligence is implemented for high-risk customers and PEPs.[937] However, the researcher argues that money laundering risks are constantly evolving, and perpetrators continuously innovate and devise new methods to evade detection.[938] It is essential to ensure that CDD mechanisms are kept up to date to prevent perpetrators from gaining access through low-risk customer profiles. This follows that over time, constant implementation of CDD measures may also lead to compliance fatigue at financial institutions such that vigilance is lost after customer intake and during ongoing monitoring. However, to circumvent these weaknesses, financial institutions and regulatory authorities in Australia continually review and update their AML measures to ensure their relevance and this could be an important lesson for Zimbabwe.

In addition to providing AML measures, the *AMLCTF Act* also sets penalties for non-complying financial institutions. This is a measure to ensure that financial institutions and regulatory bodies comply with their roles and functions, relative to the prevention and exposure of money laundering activities. For example, in 2017 the Commonwealth Bank of Australia was ordered to pay 700 million dollars and in 2020, the Westpac Bank of Australia was ordered to pay 1.3 billion dollars for breaching AML regulations provided in the *AMLCTF Act*.[939] Generally, this shows that reporting and enforcement mechanisms in Australia are efficient and effectively implemented. However, the researcher submits that it remains worrisome that regardless of the AML measures in place, some financial

Harrison K and Ryder N *The Law Relating to Financial Crime in the United Kingdom* (Ashgate Publishing Limited 2013) 45.

937 Choo 2008 *Journal of Money Laundering Control* 375; De Koker 2014 *Journal of Money Laundering Control* 285; De Klerk 2007 *Journal of SA Law* 372; Geister *Concepts in Customer Due Diligence: Meeting the Challenges of Regulatory Expectation* 65.

938 See related discussion by Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 62; Kipkemboi K, Woodsome J and Pisa M "Overcoming the Know Your Customer Hurdle: Innovative Solutions for the Mobile Money Sector" 2019 http://www.gsma.com/mobilefordevelopment/wp-content/uploads/2019/02/Overcoming-the-KYC-hurdle-Innovative-solutions-for-the-mobile-money-sector.pdf accessed 23 August 2023.

939 Tiwari M, Gepp A and Kumar K "A Review of Money Laundering Literature: The State of Research in Key Areas" 2020 *Pacific Accounting Review* 271, 285; Lokanan ME "Data Mining for Statistical Analysis of Money Laundering Transactions" 2019 *Journal Money Laundering Control* 753, 756; Alsuwailem AAS and Saudagar AKJ "Anti-Money Laundering Systems: A Systematic Literature Review" 2020 *Journal of Money Laundering Control* 833, 840.

institutions still fail to constantly and effectively implement the provisions of the *AMLCTF Act*.

In 2017, the *AML/CTF Act* was amended to empower the AUSTRAC to regulate and monitor digital currency markets.[940] Digital currency exchange providers are required to register their business and comply with reporting obligations provided under the *AML/CFT Act*.[941] The researcher submits that, considering the rise in digital accounts and electronic-commerce globally, the *AML/CTF Act* adequately provides measures to prevent money laundering activities through digital markets. The legislative amendment follows recommendations by the FATF that digital currency markets present a high money laundering risk by facilitating of criminal activities such as cybercrime. Accordingly, it was deemed essential for the AUSTRAC to be authorised to monitor digital transactions and receive transaction reports from digital currency exchange providers. The researcher submits that the amendments to the *AML/CTF Act* in this regard are commendable. The AML/CFT provides comprehensive AML measures to adequately curb money laundering in Australia. The amendments place digital currency exchange providers predominantly in check with traditional financial and property exchange markets, to aid the effective implementation of AML measures.

Money laundering is transnational in nature, this entails that money laundering is not limited by national boundaries.[942] As such, the *AML/CFT Act* requires the AUSTRAC to collaborate and share information relating to money laundering with international FIUs to detect and combat money laundering.[943] Accordingly, the researcher submits that

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940 *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017* (Cth), Part 2 section 4 4; see related comments by Tiwari, Gepp and Kumar 2020 *Pacific Accounting Review* 276; Alsuwailem and Saudagar 2020 *Journal of Money Laundering Control* 842.

941 See section 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill;* Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 34; Lokanan 2019 *Journal Money Laundering Control* 759.

942 Tiwari, Gepp and Kumar 2020 *Pacific Accounting Review* 276; Alsuwailem and Saudagar 2020 *Journal of Money Laundering Control* 842; Lokanan 2019 *Journal Money Laundering Control* 759.

943 Section 132 of the *AML/CFT Act*.

AML/CFT Act is a comprehensive piece of legislation that adequately provides measures to prevent money laundering activities in Australia.

7.4 Overview of the Role of Selected Role-Players in Combatting Money Laundering in Australia

7.4.1 The Role of the Australian Criminal Intelligence Commission

The Australian Criminal Intelligence Commission (ACIC) is a statutory body that was established by the *Australian Crime Commission Act*.[944] The ACIC is mandated to curb serious crime by collecting and converting criminal information into intelligence.[945] The ACIC is empowered by the Australian Crime Commission Act to obtain information from partner agencies for use in money laundering investigations.[946] The ACIC is a national law enforcement agency with an overarching role to support and strengthen the efforts of all the law enforcement authorities across all the states and territories in combatting money laundering and related offences in Australia.[947] The ACIC contributes to the fight against money laundering by providing financial intelligence that may be required for money laundering investigations.[948] Although the functions of the ACIC are primarily focused on combatting organised crime, its efforts are linked to AML initiatives, for

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944 Section 7(1) of the *Australian Crime Commission* Act 2002; *Lusty v CRA20* [2020] FCA 1737 para 10; Outram SM "Protecting Sport from Itself: A Critical Analysis of the 2013 Australian Crime Commission's Report into Crime and Drugs in Sport" 2015 *International Journal of Sport Policy and Politics* 605, 606.

945 Section 7A (a) of the *Australian Crime Commission Act*; Springer C "Organised Crime and Drugs in Sports, Australian Crime Commission, Canberra, 2013" 2015 *Trends Organised Crime* 261, 265; Choo K "Designated Non-Financial Businesses and Professionals: A Review and Analysis of Recent Financial Action Task Force on Money Laundering Mutual Evaluation Reports" 2012 *Security Journal* 1, 5; Syed M, Zolkaflil S and Omar N "Mitigating Financial Leakages through Effective Money Laundering Investigation" 2019 *Managerial Auditing Journal* 189, 190.

946 Section 7A(f)(i) of the *Australian Crime Commission Act*; Springer 2015 *Trends Organised Crime* 265; Choo 2012 *Security Journal* 5; Syed, Zolkaflil and Omar 2019 *Managerial Auditing Journal* 192.

947 Financial Action Task Force Report 2005 *Australia* 22; Outram 2015 *International Journal of Sport Policy and Politics* 605; Sullivan CL and Smith E "Trade-Based Money Laundering: Risks and Regulatory Responses" 2012 *Australian Institute of Criminology* 1, 5; Choo 2008 *Journal of Money Laundering Control* 380.

948 Financial Action Task Force Report 2005 *Australia* 22; Springer 2015 *Trends Organised Crime* 265; Choo 2012 *Security Journal* 5; Syed, Zolkaflil and Omar 2019 *Managerial Auditing Journal* 192.

example the generation of intelligence in response to crime.[949] Money laundering is also identified as a serious organised crime in Australia. Accordingly, the researcher submits that the functions of the ACIC are relevant towards AML initiatives.

The researcher submits that the ACIC adequately and efficiently carries out its mandates by reducing organised crimes in Australia. This is done through collaborative mechanisms with other regulatory bodies and law enforcement agencies to combat organised crimes like money laundering.[950] In 2012, the ACIC became part of and the head of Task Force Vestigo, an enforcement group comprising of FIUs from the United Kingdom (UK), Canada and the United States of America (USA).[951] This was an initiative by the ACIC to foster cooperation and collaboration as a measure to combat money laundering. The researcher submits that in 2021, the Task Force Eligo successfully collaborated on investigating a matter relating to the use of informal value and remittance transfers to commit money laundering.[952] The investigation led to the seizure of money laundering proceeds to the value of AUD580 million. Accordingly, the researcher submits that the ACIC is significantly contributing to combatting money laundering and related crimes in Australia. The researcher further submits that the ACIC effectively collaborates with other financial role players to fulfil its mandates and combat money laundering.

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949 Financial Action Task Force Report 2005 Australia 22; Sullivan and Smith 2012 Australian Institute of Criminology 6; Outram 2015 *International Journal of Sport Policy and Politics* 605; Choo 2008 *Journal of Money Laundering Control* 380.

950 Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 33; Mann M "New Public Management and the 'Business' of Policing Organised Crime in Australia" 2017 *Criminology & Criminal Justice* 382, 386.

951 Financial Action Task Force Report 2005 Australia 22; Sullivan and Smith 2012 *Australian Institute of Criminology* 6; Outram 2015 *International Journal of Sport Policy and Politics* 605; Choo 2008 *Journal of Money Laundering Control* 380; Zolkaflil and Omar 2019 *Managerial Auditing Journal* 192.

952 Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 34; see related discussion by Mann 2017 *Criminology and Criminal Justice* 387; Morgan A and Payne J "Organised Crime and Criminal Careers: Findings from an Australian Sample" *Trends and Issues in Crime and Criminal Justice* 1-20.

7.4.2 The Role of the Australian Transaction Reports Analysis Centre

The AUSTRAC is the primary financial intelligence unit in Australia.[953] The AUSTRAC was established under the portfolio of the Attorney-General as the primary AML laws enforcement agency in Australia.[954] One of the main functions of the AUSTRAC is to receive financial transaction reports from reporting entities in Australia.[955] The reports received by the AUSTRAC include suspicious transactions reports, international funds transfer reports (regardless of amount), cash transactions reports, and reports on large incoming or outgoing currency movements that exceed AUD10 000.[956] After receiving the various reports, the AUSTRAC analyses it to generate financial intelligence.[957] The financial intelligence is then disseminated to other law enforcement authorities in Australia as well as internationally to other FIUs as and where necessary.[958] The financial intelligence gathered by the AUSTRAC is then used to detect money laundering activities and trends as well as determine potential money laundering risks.[959] The AUSTRAC is also tasked with identifying money laundering threats and advising other regulatory

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953 Section 12 of the *FTR Act*; Financial Action Task Force Report 2005 *Australia* 7; Montano E "Wealth Hidden, Tax Evaded: Strategies for Revelation" 2002 *Journal of Money Laundering Control* 263, 263; Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 4.

954 Financial Action Task Force Report 2005 *Australia* 7; Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 29; Ryder N *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 59.

955 Financial Action Task Force Report 2005 *Australia* 7; Deitz and Mcleod 2007 *Australian Insolvency Journal* 22; Bell 2010 *Journal of Money Laundering Control* 293; Sathye 2008 *Journal of Financial Crime* 359.

956 Financial Action Task Force Report 2005 *Australia* 7; Deitz and Mcleod 2007 *Australian Insolvency Journal* 22; Bell 2010 *Journal of Money Laundering Control* 293; Sathye 2008 *Journal of Financial Crime* 359.

957 Financial Action Task Force Report 2005 *Australia* 7; Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 29; Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 4.

958 Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 29; Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 4.

959 Johnson J "Australia: The Continuing Fight against Money Laundering—Financial Institutions and FATF's Recommendation 19" 2000 *Journal of Money Laundering Control* 56, 60; Condoleon N "Anti-Money Laundering: Risky Business: AML Regulation and Legal Ethics" 2019 *Proctor* 26-27; Ai L "A Cost-Effective Strategy of Implementing International Anti-Corruption Initiatives: Enhancing The Role of Anti-Money Laundering in Combating Corruption" 2012 *Journal of Money Laundering Control* 83, 86.

bodies on mitigating measures.[960] In the 2018-19 AUSTRAC Report it is reported that the AUSTRAC successfully 2500 cases of stolen identities by money laundering criminals and money laundering threats targeting non-profit organisations.[961] The researcher submits that the AUSTRAC's efforts to combat money laundering in Australia are commendable.

It is notable to state that the AUSTRAC is an administrative FIU.[962] The AUSTRAC is also empowered to enforce AML measures to the extent of seeking penalties for non-complying entities.[963] The AUSTRAC's enforcement role enhances the constant implementation of and compliance with AML measures in Australia. In particular, the AUSTRAC's primary duty is to provide law enforcement agents such as the police with financial intelligence to assist in the effective enforcement of the AML laws in Australia.[964]In addition, the AUSTRAC is also mandated with regulatory powers to supervise and monitor reporting entities for compliance with anti-money laundering regulations.[965] To achieve this role, the AUSTRAC provides guidance to reporting entities on how to effectively implement and comply with the AML laws in Australia.[966] The

960 Section 132 of the *AML/CFT Act*; Miralis D and Gibson P "Australia: An Increasingly Global Approach" 2019 *Global Investigations Review* 1, 4; Johnson 2000 *Journal of Money Laundering Control* 59.

961 AUSTRAC "Australian Transaction Reports and Analysis Centre" 2019 *Fintel Alliance: Annual Report 2018-2019* 35–47; Miralis and Gibson 2019 *Global Investigations Review* 5; Spicer J "AUSTRAC and the Financial Sector-Partners in Crime Prevention: A Look into AUSTRAC's Money Laundering/Terrorism Financing Risk Assessments" 2018 *Journal of the Australian Institute of Professional Intelligence Officers* 1, 3.

962 Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: Research and Public Policy Series 4; Ai 2012 *Journal of Money Laundering Control* 86; Johnson 2000 *Journal of Money Laundering Contro*l 60; Spicer 2018 *Journal of the Australian Institute of Professional Intelligence Officers* 3, 6.

963 Montano 2002 *Journal of Money Laundering Control* 263; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 4; Naheem MA "Money Laundering and Illicit Flows from China – The Real Estate Problem" 2017 *Journal of Money Laundering Control* 15, 19.

964 Montano 2002 *Journal of Money Laundering Control* 263; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 4; Monroe B "Austrac Faces Parliamentary Inquiry Over AML Effectiveness, Financial Institution Oversight 'Failings'" 2021 https://www.acfcs.org/austrac-faces-parliamentary-inquiry-over-aml-effectiveness-financial-institution-oversight-failings/ accessed 23 August 2023.

965 Montano 2002 *Journal of Money Laundering Control* 263; Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 6; Naheem 2017 *Journal of Money Laundering Control* 19; Spicer 2018 *Journal of the Australian Institute of Professional* Intelligence Officers 7.

966 Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 6; Newbury 2017 *Journal of Money Laundering Control* 251; Al-Rashdan M "An Analytical Study of

AUSTRAC also has the authority to accept enforceable undertakings by reporting entities and apply for civil penalty orders against reporting entities.[967] In 2020, the AUSTRAC applied to the Federal Court for a civil penalty against Westpac Bank Corporation to the value of approximately AUD391 trillion for failing to comply with AML measures.[968] This shows that the AUSTRAC is effectively fulfilling its mandate by implementing penalties for non-compliance in Australia.

In 2018, the FATF's Mutual Evaluation Report (MER) found that Australia failed to comply with one-third of the FATF recommendations and called for urgent action.[969] As a result, the roles of the AUSTRAC were extended to ensure compliance with the FATF recommendations. For example, its reporting obligations were extended to designated non-financial businesses and professions (DNFBPs), the protection of information relating to suspicious matter reports (SMR), and obliging financial institutions to submit reports detailing their CDD procedures.[970] The AUSTRAC published detailed guidelines on the AML reforms on its online platforms to ensure its accessibility and transparency.[971] The researcher submits that constantly updating AML provisions is an essential AML measure. This follows that money laundering trends are continuously changing and require innovative measures to detect and monitor suspicious activities. However, it can be

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the Financial Intelligence Units' Enforcement Mechanisms" 2012 *Journal of Money Laundering Control* 483, 489.

967 Walters, Smith, Davis, Choo and Chadwick *AIC Report 117: Research and Public Policy Series* 6; Al-Rashdan 2012 *Journal of Money Laundering Control* 489; Monroe "Austrac Faces Parliamentary Inquiry Over AML Effectiveness, Financial Institution Oversight 'Failings'" Page Unknown.

968 Australian Transaction Reports and Analysis Centre https://www.austrac.gov.au/about-us/media-release/civil-penalty-orders-against-westpac accessed 9 October 2023; Miralis and Gibson 2019 *Global Investigations Review* 5; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 31.

969 Monroe "Austrac Faces Parliamentary Inquiry Over AML Effectiveness, Financial Institution Oversight 'Failings'" Page Unknown; Singh K and Best P "Anti-Money Laundering: Using Data Visualization to Identify Suspicious Activity" 2019 *International Journal of Accounting Information Systems* 34, 37.

970 Section 123 of the *AMLCTF Act*; Langdale J "Money Laundering in Australian Casinos" 2022 *Journal of Money Laundering Control* 99, 102; Hendriyetty N and Grewal B "Macroeconomics of Money Laundering: Effects and Measurements" 2017 *Journal of Financial Crime* 65, 70; Singh and Best 2019 *International Journal of Accounting Information Systems* 38.

971 Monroe "Austrac Faces Parliamentary Inquiry Over AML Effectiveness, Financial Institution Oversight 'Failings'" Page Unknown; Dunstone S "Adequacy and Efficacy of Australia's Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Regime" *Parliament House Publications* (27 July 2021) 4; Mathias E and Wardzynski A "Leveraging Anti-money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues" 2023 *Working Paper 23/83* 12.

argued that the evolving functions of the AUSTRAC may also cause burdens on small businesses due to limited resources. Compliance costs may pose a challenge. Accordingly, this may affect the fulfilment of the AUSTRAC's roles and functions.

The AUSTRAC also contributes to global AML efforts by collaborating with other international FIUs. The AUSTRAC has concluded Memorandums of Understanding (MoUs) with China and the USA's FIUs to enhance its function as a financial intelligence receiving agency in Australia.[972] The MoUs establish collaboration and information sharing arrangements between Australia, China, and the USA. The AUSTRAC also contributes to the global AML efforts by providing training to other international FIUs such as Thailand, Bangladesh, Philippines, and Cambodia.[973] Accordingly, the researcher submits that the AUSTRAC effectively collaborates with other financial role players to combat money laundering. In 2016, the AUSTRAC, in collaboration with China's FIU successfully seized property to the value of AUD8.5 million from shell companies established by Chinese nationals in Australia.[974] In this regard, the researcher submits that established cooperation and collaboration arrangements between the AUSTRAC and other international FIUs plays a significant role in combatting money laundering in Australia.

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972 Australian Transaction Reports and Analysis Centre, http://www.austrac.gov.au/media/media-releases/ austrac-signs-historic-mou-china accessed 7 May 2023; Australian Transaction Reports and Analysis Centre, http://www.austrac.gov.au/media/media-releases/australia-strengthens-international-partnerships-fight-against-financial-crime, accessed 7 May 2023; Lokanan 2019 *Journal Money Laundering Control* 760.

973 Monroe "Austrac Faces Parliamentary Inquiry Over AML Effectiveness, Financial Institution Oversight 'Failings'" Page Unknown; Singh and Best 2019 *International Journal of Accounting Information Systems* 37; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 34.

974 Australian Federal Police https://www.afp.gov.au/news-media/media-releases/afp-operation-targets-chinese-nationals-allegedly-laundering-proceeds, accessed 10 October 2023; Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 34.

7.4.3 The Role of the Australian Federal Police

The Australian Federal Police (AFP) is a law enforcement authority that is mandated by the *Australian Federal Police Act*[975] to enforce criminal laws at national level.[976] The *AMLCTF Act* also confers a duty to enforce AML reporting obligations on the AFP.[977] The *AMLCTF Act* provides that reports relating to suspicious transactions or the movement of money into and out of Australia should be submitted to the AFP.[978] The AFP is then required to submit the reports to the AUSTRAC within five days for further investigation.[979] The *FTR Act* also authorises the AFP to search any person who is suspected of having undeclared cash when travelling into or out of Australia.[980] This is done to ensure that perpetrators do not move illicit cash in or out of Australia undetected. This follows that in some instances, money launderers deal in cash to avoid being detected through suspicious account activities and transactions. Accordingly, the AFP plays an important role in safeguarding against the movement of illicit cash into and out of Australia. Therefore, it can be said that the AFP has a statutory responsibility to prevent and curb money laundering crimes in Australia.[981] To effectively curb money laundering

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975 *Australian Federal Police Act* 167 of 2012, section 6; Pol RF "Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?" 2018 *Journal of Money Laundering Control* 215, 217; Van der Zahn M *et al* "The Anti-Money Laundering Activities of the Central Banks of Australia and Ukraine" 2007 *Journal of Money Laundering Control* 116, 122.

976 In Australia, the commonwealth is the terminology for national applicability of laws; see *Australian Federal Police Act* 1979, section 5; Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; Langdale 2022 *Journal of Money Laundering Control* 102; Singh and Best 2019 *International Journal of Accounting Information Systems* 38.

977 Section 54(7) of the *AMLCTF Act*; Sathye and Patel 2007 *Journal of Money Laundering Control* 397; Baker D "The Reinvention of Australian Federal Policing in the Pursuit of National Security" 2004 *International Journal of Comparative and Applied Criminal Justice* 145, 152; Graycar A and Smith RG (eds) *Handbook of Global Research and Practice in Corruption* (Edward Elgar Publishing 2011) 54.

978 Section 52 of the *AML/CFT Act.*

979 Section 48 and 57 of the *AMLCTF Act*; Sathye and Patel 2007 *Journal of Money Laundering Control* 397; Baker 2004 *International Journal of Comparative and Applied Criminal Justice* 152; Graycar and Smith *Handbook of Global Research and Practice in Corruption* 55.

980 Sections 15 and 33(3A) of the *FTR Act*; Chaikin D "How Effective are Suspicious Transaction Reporting Systems?" 2009 *Journal of Money Laundering Control* 238, 246; Syed, Zolkaflil and Omar 2019 *Managerial Auditing Journal* 192; Van der Zahn et al 2007 *Journal of Money Laundering Control* 120.

981 Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; Langdale 2022 *Journal of Money Laundering Control* 102; Singh and Best 2019 *International Journal of Accounting Information Systems* 38; Sathye and Patel 2007 *Journal of Money Laundering Control* 396.

crimes, the AFP has established a unit that specialises in financial investigations in all its regional offices in Australia.[982]

Moreover, to fulfil its AML statutory duties, the AFP cooperates with other law enforcement and government agencies at state, territory, and commonwealth levels to implement the laws of Australia.[983] The AFP actively cooperates with the AUSTRAC to combat money laundering. For example, the AFP submits all reports it receives on money laundering to the AUSTRAC and the AUSTRAC also refers money laundering matters to the AFP for investigation.[984] However, it should be noted that inter-agency coordination is not regulated by statute in Australia. This follows that Australia has adopted a 'soft law' approach to AML, as opposed to a 'hard law' approach which is followed in South Africa and the UK, in order to regulate cooperation and teamwork between financial role players.[985] To date, this approach has been effective in fostering proactive coordination that is not bound by stringent statutory requirements. In this regard, regulatory coordination between the AFP and other relevant role players is important in monitoring and preventing money laundering in Australia. Since 2017, the AFP has demonstrated increased international collaboration to combat, *inter alia*, the growth in money laundering activities.[986] Accordingly, the AFP has to date deployed 300 members internationally to enhance information sharing arrangements with international law

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982 Financial Action Task Force Report 2005 *Australia* 21; Schneider S "Privatizing Economic Crime Enforcement: Exploring the Role of Private Sector Investigative Agencies in Combating Money Laundering" 2006 *Policing & Society* 285, 298; Sathye and Patel 2007 *Journal of Money Laundering Control* 396.

983 Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; Schneider 2006 *Policing & Society* 298; Syed, Zolkaflil and Omar 2019 *Managerial Auditing Journal* 193; Van der Zahn et al 2007 *Journal of Money Laundering Control* 120.

984 Section 48 and 57 of the *AML/CFT Act*; Sathye and Patel 2007 *Journal of Money Laundering Control* 397; Baker 2004 *International Journal of Comparative and Applied Criminal Justice* 152; Graycar and Smith *Handbook of Global Research and Practice in Corruption* 55.

985 Godwin A., Kourabas S and Ramsay I "Twin Peaks and Financial Regulation: The Challenges of Increasing Regulatory Overlap and Expanding Responsibilities" 2016 *International Lawyer* 273, 283; Van Niekerk G and Van Heerden G "The Importance of a Legislative Framework for Cooperation and Collaboration in the Twin Peaks Model of Financial Regulation" 2020 *SALJ* 108, 129; Godwin AJ and Schmulow AD "The Financial Sector Regulation Bill in South Africa, Second Draft: Lessons from Australia" 2015 *SALJ* 756, 757.

986 Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 32; Langdale 2022 *Journal of Money Laundering Control* 102; Singh and Best 2019 *International Journal of Accounting Information Systems* 38.

enforcement authorities.[987] The AFP has also concluded MoUs with international law enforcement authorities such as the Cambodian National Police and the Chinese National Commission of Supervision. The researcher submits that the AFP has successfully established international cooperation and collaboration with other law enforcement authorities to augment the combatting of money laundering. This has enhanced the AFP's task to collect information required for money laundering investigations in Australia.

7.4.4 The Role of the Director of Public Prosecutions

The powers and functions of the Director of Public Prosecutions (DPP) are regulated by the *Director of Public Prosecutions Act*.[988] The *DPP Act* authorises the DPP to prosecute all criminal activities that contravene federal law, including those related to money laundering and terrorism financing.[989] It should be noted that the *DPP Act* does not expressly confer an AML role on the DPP. However, the DPP's roles and functions indirectly intersect with AML measures. This follows that the DPP is responsible for prosecuting all criminal matters, including money laundering offences. The DPP may also be involved in seeking forfeiture orders against illicitly obtained funds and property.[990] The DPP also collaborates with other role players, such as the AFP and the AUSTRAC, to investigate money laundering-related matters. Accordingly, although there are no express statutory obligations on the DPP in relation to money laundering matters, the DPP plays a significant role in combatting money laundering in Australia. The researcher submits that the DPP is doing fairly well to fulfil its AML function. This follows that since 2005,

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987 Miralis and Gibson "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 32; Langdale 2022 *Journal of Money Laundering Control* 102; Singh and Best 2019 *International Journal of Accounting Information Systems* 38.

988 *Director of Public Prosecutions Act 1983* (*DPP Act*), section 2; Roule TJ and Salak M "The Anti-Money Laundering Regime in the Republic of Nauru" 2004 *Journal of Money Laundering Control* 75, 78; Bricknell S "Misuse of the Non-Profit Sector for Money Laundering and Terrorism Financing" 2011 *Trends and Issues in Crime and Criminal Justice* 1, 3.

989 Section 5 of the *DPP Act*; see related comments by Van der Zahn M *et al* "The Anti-Money Laundering Activities of the Central Banks of Australia and Ukraine" 2007 *Journal of Money Laundering Control* 116, 125; also see Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 129.

990 Roule and Salak 2004 *Journal of Money Laundering Control* 78; Bricknell 2011 *Trends and Issues in Crime and Criminal Justice* 3; see related comments by Van der Zahn 2007 *Journal of Money Laundering Control* 125.

there has been an increase in money laundering prosecutions in Australia. This shows that the DPP effectively collaborates with the AFP and the AUSTRAC to analyse and process financial intelligence.

7.4.5 The Role of Reporting Entities

Reporting entities are businesses and organisations that are required by the *AML/CTF Act* to report suspicious transactions and suspicious account activities to the AUSTRAC for the investigation of money laundering.[991] Examples of reporting entities provided under the *AML/CTF Act* include financial institutions, DNFBPs, casinos, real estate agencies and insurance companies.[992] The *AML/CTF Act* requires reporting entities are required to comply with the AML laws including obligations to conduct CDD procedures, monitor client transactions, and submit relevant financial transaction reports to the AUSTRAC.[993] The AUSTRAC functions as the supervisor and regulatory body for all reporting entities in Australia.[994] Reporting entities are required to submit three types of reports to the AUSTRAC.[995] Firstly, reporting entities are required to submit suspicious transactions reports (STRs) when there is a reasonable suspicion that a transactions constitutes proceeds of crime.[996] Primarily, STRs are submitted according to the suspicion which is

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991 Walters, Smith, Davis, Choo and Chadwick 2012 AIC Report 117: Research and Public Policy Series 38; Ryder *Money Laundering – An Endless Cycle? A Comparative Analysis of the Anti-Money Laundering Policies in the United States of America, the United Kingdom, Australia and Canada* 129.

992 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 38; Pok WC, Omar N, and Sathye M "An Evaluation of the Effectiveness of Anti-Money Laundering and Anti-Terrorism Financing legislation: Perceptions of bank Compliance Officers in Malaysia" 2014 *Australian Accounting Review* 394, 396.

993 Montano 2002 *Journal of Money Laundering Control* 263; Singh and Best 2019 *International Journal of Accounting Information Systems* 38; Irwin SM, Choo R and Liu L "An Analysis of Money Laundering and Terrorism Financing Typologies" 2011 *Journal of Money Laundering Control* 85, 92.

994 Financial Action Task Force Report 2005 Australia 24; Montano 2002 *Journal of Money Laundering Control* 263; Singh and Best 2019 *International Journal of Accounting Information Systems* 38; Irwin, Choo and Liu 2011 *Journal of Money Laundering Control* 93.

995 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 6; Pok, Omar and Sathye 2014 *Australian Accounting Review* 396; Singh and Best 2019 *International Journal of Accounting Information Systems* 38; Irwin, Choo and Liu 2011 *Journal of Money Laundering Control* 93.

996 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 6; Pok, Omar and Sathye 2014 Australian Accounting Review 396; Singh and Best 2019 *International Journal of Accounting Information Systems* 38; Irwin, Choo and Liu 2011 *Journal of Money Laundering Control* 93.

formed by a reporting entity and are therefore filed subject to the reporting entities' discretionary judgement.[997] According to the *AML/CTF Act*, suspicious transactions are transactions to the value of AUD10 000 for low-risk customers.[998] However, this is determined on a case-by-case basis.

In addition to STRs, reporting entities such as financial institutions, real estate agents and DNFBPs are also required to submit threshold transaction reports to the AUSTRAC.[999] Threshold transaction reports are reports of any cash transaction that is carried out by a client that exceeds a particular or specified value in terms of money laundering regulations.[1000] Unlike suspicious transaction reports, threshold transaction reports are mandatory and they are to be submitted to the AUSTRAC as long as the transaction in question exceeds a particular amount.[1001] In addition to the above categories of reports which are to be submitted to the AUSTRAC, reporting entities are also obliged to submit reports of any international electronic transactions which are conducted by their clients.[1002] Threshold reports are mandatory and are therefore to be submitted without regard to any value threshold.[1003] However, the researcher argues that the FATF MER of 2017 shows that there remains a compliance challenge to ensure the effectiveness of reporting obligations. The researcher submit that reporting entities play an essential role in combatting money laundering in Australia. This follows that the AUSTRAC cannot possibly monitor all transactions concluded in Australia, as such the role of reporting

997 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 6; McNeil 2007 *Journal of International Banking Law and Regulation* 342; Sathye and Islam 2011 *Journal of Financial Crime* 170; Newbury 2017 *Journal of Money Laundering Control* 252.

998 See section 43 of the *AMLCTF Act*; Ferwerda J "The Economics of Crime and Money Laundering: Does Anti-money Laundering Policy Reduce Crime?" 2009 *Review of Law & Economics* 903, 910; Ross and Hannan 2007 *Journal of Money Laundering Control* 112.

999 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 37; Ferwerda 2009 *Review of Law and Economics* 910; Ross and Hannan 2007 *Journal of Money Laundering Control* 113; Choo RKK "Money Laundering and Terrorism Financing Risks of Prepaid Cards Instruments?" 2009 *Asian Journal of Criminology* 11, 20.

1000 At present, the transaction threshold is set at AUD10,000 or more.

1001 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 37; Sathye 2008 *Journal of Money Laundering Control* 358; Sathye and Islam 2011 *Journal of Financial Crime* 170; Choo 2009 *Asian Journal of Criminology* 21.

1002 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 35; Sathye 2008 *Journal of Money Laundering Control* 358; Sathye and Islam 2011 *Journal of Financial Crime* 170; Choo 2009 *Asian Journal of Criminology* 21.

1003 Walters, Smith, Davis, Choo and Chadwick 2012 *AIC Report 117: Research and Public Policy Series* 35.

entities to monitor transactions and report STRs is essential for detecting suspicious transactions. However, the researcher argues that some reporting entities may lack adequate resources to efficiently monitor transactions and this could render their STRs inaccurate and unreliable. It is essential for AUSTRAC to ensure that all reporting entities have relevant infrastructure and resources to monitor transactions and detect money laundering activities.

7.4.6 The Role of the Fintel Alliance

The Fintel Alliance is a public-private partnership led by AUSTRAC and was established to combat money laundering in Australia.[1004] The Fintel Alliance was established with the intention to make financial institutions and financial markets efficient in detecting and curbing money laundering in Australia.[1005] It was also intended to be an alliance to facilitate the cooperation of the financial institutions and financial markets in Australia to support law enforcement authorities by providing timely and relevant information in respect of their investigations into serious crimes such as money laundering.[1006] Accordingly, the Fintel Alliance facilitates or creates a neutral platform for the exchange of information between law enforcement authorities and the private sector with the aim of curbing and combatting money laundering.[1007] The Fintel Alliance therefore generates and shares intelligence to detect, curb, and prevent money laundering in Australia. The Fintel Alliance comprises of the Commonwealth Bank of Australia, National Australia Bank, Australia and New Zealand Banking Group, Westpac, Paypal, Western Union, NSW Police

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1004 White A "The Payments Industry in Australia: Status and Future Developments" 2022 *Journal of Payments Strategy and Systems* 181, 185; Jackson-Maynes K and Farrell S "Anti-Money Laundering Laws and Regulations Australia 2023" 2023 https://iclg.com/practice-areas/anti-money-laundering-laws-and-regulations/australia accessed 12 August 2023.

1005 Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; Walker-Munro B "A Case for the Use of Cyber-Systemics to Combat Financial Crime in Australia" 2020 *Kybernetes* 3082, 3086.

1006 Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; White 2022 *Journal of Payments Strategy and Systems* 185; Walker-Munro 2020 *Kynernetes* 3086.

1007 Chadderton P and Norton S "Public-Private Partnerships to Disrupt Financial Crime: An Exploratory Study of Australia's Fintel Alliance" 2019 *SWIFT Institute Working Paper* 1, 4; Maxwell J "Expanding the Capability of Financial Information-Sharing Partnerships" 2019 *RUSI Occassional Papers* 1, 15; Johnson 2000 *Journal of Money Laundering Control* 60.

Force, Australian Taxation Office and the National Crime Agency (UK).[1008] The researcher submits that the member institutions of the Fintel Alliance suggest a highly specialised partnership that has relevant skill and expertise to analyse financial intelligence and suspicious money laundering activities. The AUSTRAC 2018-19 Annual Report provides that the Fintel Alliance successfully closed 90 high-risk bank accounts in 2019 alone.[1009] Accordingly, the researcher submits that the Fintel Alliance creates an important platform for its constituent members to collaborate efforts to combat money laundering. The researcher further submits that the membership of the National Crime Agency (UK) in the Fintel Alliance also shows that international cooperation has been a relevant and useful mechanism to combat money laundering in Australia.

7.6 Conclusion

The researcher submits that, the AML framework in Australia is largely compliant with the FATF recommendations. This is evidenced by its ongoing vigilance, compliance with AML/CTF regulations, and adaptability to emerging risks which are essential to maintaining the integrity and sustainability of Australia's financial markets. Australia's proactive approach to AML regulation reflects its commitment to combatting money laundering and protecting the integrity of its financial sector. The researcher acknowledges the collaboration and commitment of all role players, including regulatory authorities and reporting entities to implement and enforce AML measures. The researcher concludes that Australia plays a significant role in the prevention of money laundering in the global financial markets. The AUSTRAC plays a pivotal role in combatting money laundering in Australia. The AUSTRAC is the primary money laundering regulator, and it relies on a collaborative approach to implement AML measures and enforce compliance. The AML/CFT also provides a comprehensive AML framework that adequately

1008 Miralis "Anti-Money Laundering in the APAC Region: An Overview of the International Law Enforcement and Regulatory Framework" 30; White 2022 *Journal of Payments Strategy and Systems* 185; Walker-Munro 2020 *Kynernetes* 3086.

1009 AUSTRAC "Australian Transaction Reports and Analysis Centre" 2019 *Fintel Alliance: Annual Report 2018-2019* 35–47; Miralis and Gibson 2019 *Global Investigations Review* 5; Spicer J "AUSTRAC and the Financial Sector-Partners in Crime Prevention: A Look into AUSTRAC's Money Laundering/Terrorism Financing Risk Assessments" 2018 *Journal of the Australian Institute of Professional Intelligence Officers* 1, 3.

fosters the detection of money laundering in Australia. Nonetheless, non-compliance amongst reporting entities and other role players undermines the robustness of AML measures in Australia. The researcher submits that the AML framework of Australia presents plausible lessons for Zimbabwe in relation to enforcement mechanisms, non-compliance penalties and the importance of cooperation, collaboration and information sharing to detect suspicious activities and to combat money laundering.

The next chapter is a comparative discussion on the regulation of AML measures in all the jurisdictions discussed in this study. The jurisdictions are Zimbabwe, South Africa, the UK and Australia. The comparative discussion is done to draw lessons that Zimbabwe can adopt from other jurisdictions. There could be lessons that other jurisdictions can also learn from Zimbabwe. Ultimately, the chapter provides recommendations on what Zimbabwe should do to enhance its AML regulatory framework.

CHAPTER EIGHT

OVERALL COMPARATIVE ANALYSIS OF THE ANTI-MONEY LAUNDERING REGULATORY FRAMEWORKS IN ZIMBABWE, SOUTH AFRICA, THE UNITED KINGDOM AND AUSTRALIA

8.1 Introduction

This chapter provides a comparative analysis of the anti-money laundering (AML) regulatory frameworks in Zimbabwe, South Africa, the United Kingdom (UK), and Australia.[1010] This is done to determine whether the AML statutory frameworks in the stated countries are robust and effective enough to combat money laundering. What is common in the four jurisdictions is the need to combat money laundering due to the negative effects it poses on market integrity, financial stability, and economic growth.[1011] However, the AML regulatory frameworks differ in all the four mentioned jurisdictions. In this regard, each country has its own unique challenges and economic conditions that require tailor-made regulatory approaches to curb money laundering.[1012] Ultimately, the comparative analysis aims to provide lessons for Zimbabwe to enhance its AML regulatory framework.

1010 See chapters 3 and 5-7 of this thesis. The chapters discuss in detail; the AML measures implemented in Zimbabwe, South Africa, the UK and Australia respectively.

1011 See related comments by Crotty J "Structural Causes of the Global Financial Crisis: A Critical Assessment of the "New Financial Architecture" 2009 *Cambridge Journal of Economics* 563, 568; Kourabas S "Trends and Theory in Financial Regulation and Regulatory Design after the Global Financial Crisis" in Arner D, Wan W, Godwin A, Shen W and Gibson E (eds) *Research Handbook on Asian Financial Law* (Elgar Online 2020) 30, 37; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 15.

1012 Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 93; Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 51; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 735.

8.2 Overall Analysis of the Adoption of Customer Due Diligence to Combat Money Laundering

The Basel Committee on Banking Supervision (BCBS) designed the first international best practices for combatting money laundering, the *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, in 1988.[1013] The *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering* principles established customer identification and verification as an essential policy that should be implemented by all financial institutions prior to commencing business with a customer.[1014] In 1989, the Financial Action Task Force (FATF) also established the implementation of customer due diligence (CDD) as an AML measure in its member states.[1015] Australia, the UK and South Africa are member states of the FATF, whilst Zimbabwe is not a member state of the FATF. However, Zimbabwe committed to comply with the FATF recommendations by becoming a member state of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), an associate body of the FATF.[1016] Since 1988, CDD has remained an essential AML measure applied across the globe.[1017] However, the regulation and implementation of CDD differs from country to country owing to the availability of

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1013 Basel Committee on Banking Supervision "Prevention of Criminal Use of the Banking System for The Purpose of Money Laundering" 1988 3; Shust PM and Dostov V "Implementing Innovative Customer Due Diligence: Proposal for Universal Model" 2020 *Journal for Money Laundering Control* 871, 874; Chitimira H and Munedzi S "Overview International Best Practices on Customer Due Diligence and Related Anti-Money Laundering Measures" 2021 *Journal of Money Laundering Control* 53, 55.

1014 Chitimira and Munedzi 2021 *Journal of Money Laundering Control* 55; De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 283; De Koker L "Money Laundering Control and Suppression of Financing of Terrorism: Some Thoughts on the Impact of Customer Due Diligence Measures on Financial Exclusion" 2006 *Journal of Financial Crime* 26, 27.

1015 Chitimira and Munedzi 2021 *Journal of Money Laundering Control* 57; see related comments by Chitimira and Ncube 2021 *PER/PELJ* 9; Lyman T, De Koker L, Meier CM and Kerse M "Beyond KYC Utilities: Collaborative Customer Due Diligence for Financial Inclusion" *Consultative Group to Assist the Poor Working Paper* (August 2019) 3.

1016 See Duri J and Matasane MA "Regulation of Beneficial Ownership in South Africa and Zimbabwe" 2017 *Journal of Anti-Corruption Law* 175, 180; Shust and Dostov 2020 *Journal of Money Laundering Control* 875; Chitimira and Ncube 2021 *PER/PELJ*; Chitimira and Munedzi 2021 *Journal of Money Laundering Control* 55.

1017 Mugarura 2014 *Journal of Money Laundering Control* 83; Jayasekara SD "How Effective are the Current Global Standards in Combating Money Laundering and Terrorist Financing?" 2021 *Journal of Money Laundering Control* 257, 260; Kang S "Rethinking the Global Anti-Money Laundering Regulations to Deter Corruption" 2018 *International and Comparative Law Quarterly* 695, 697.

resources and needs of that particular country.[1018] This follows that different countries experience different money laundering risks, which requires commensurate measures to address the risks of each country. Shust and Dostov argue that CDD standards should be regulated globally as an AML measure.[1019] Conversely, Mugarura advances that the application of CDD as a global AML policy tool will not guarantee its effectiveness and universal application.[1020] The researcher also submits that CDD regulations should be tailor-made according to the circumstances of each country. For instance, the challenges experienced in Zimbabwe and South Africa, such as the lack of adequate resources to effectively implement AML measures, differ from those experienced in developed countries such as the UK and Australia; such that the same AML measures cannot be uniformly implemented across all jurisdictions to address money laundering challenges.[1021] Accordingly, despite the need to implement CDD measures in a manner commensurate to each country's need, the researcher submits that CDD remains an essential measure to combat money laundering in the four jurisdictions.

The *G20 Principles for Innovative Financial Inclusion (2010)*[1022] recommend the application of the "proportionality principle" when implementing CDD measures. The proportionality principle entails that financial institutions should balance the money laundering risks and benefits of CDD to curb money laundering without causing undue

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1018 De Koker 2014 *Journal of Money Laundering Control* 286; Mugarura 2014 *Journal of Money Laundering Control* 93; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 54; Shust and Dostov 2020 *Journal of Money Laundering Control* 876.

1019 See Shust and Dostov 2020 *Journal of Money Laundering Control* 874; De Koker 2014 *Journal of Money Laundering Control* 285; Lyman, De Koker, Meier and Kerse *Consultative Group to Assist the Poor Working Paper* 5; Kang 2018 *International and Comparative Law Quarterly* 699.

1020 Mugarura 2014 *Journal of Money Laundering Control* 92; see related discussion by Chitimira and Munedzi 2021 *Journal of Money Laundering Control* 56; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 59; Jayasekara 2021 *Journal of Money Laundering Control* 262.

1021 See related comments by Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications" 2020 *Journal of Money Laundering Control* 663, 670; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Ngwenya and Chivaura 2018 *South African Journal of Economic and Management Sciences* 11; Muchemwa 2021 *Journal of Financial Crime* 85.

1022 G20 *Principles for Innovative Financial Inclusion* (2010), principle 5; De Koker L *South African Money Laundering and Terror Financing Law* (LexisNexis Durban 2014) 45; Zoppei V "Money Laundering: A New Perspective in Assessing the Effectiveness of the AML Regime" 2015 *The European Review of Organised Crime* 130, 136.

regulatory burdens on the country's resources.[1023] This means that financial institutions should carefully apply a risk-based approach to avoid excluding other customers from accessing financial services due to a lack of adequate customer due diligence requirements.[1024]

The CDD requirements applied in South Africa are too stringent and, in some instances, have unintendingly steered the continued exclusion of low-income earners from the ability to gain access to basic financial services.[1025] This follows that some people from economically marginalised areas and low-income earners fail to access financial services due to stringent CDD requirements.[1026] To alleviate financial exclusion caused by CDD requirements in South Africa, the Financial Intelligence Centre (FIC) recommended the application of simplified customer due diligence on low-risk customers.[1027] Low-risk customers refer to customers who pose little or no money laundering risk to the financial institutions they do business with.[1028] However, the application of simplified CDD on low-risk customers often reduces the effectiveness of CDD measures to combat and curb

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1023 G20 *Principles for Innovative Financial Inclusion* Principle 5; FATF *Guidance: Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (2013) 15; Zoppei 2015 *The European Review of Organised Crime* 136.

1024 Financial Intelligence Centre *Guidance Note 3A: Guidance for Accountable Institutions on Client Identification and Verification and Related Matters* (28 March 2013) (Guidance Note 3A); Van Jaarsveld IL *Aspects of Money Laundering in South African Law* (LLD thesis University of South Africa 2011) 85; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Muchemwa 2021 *Journal of Financial Crime* 85.

1025 De Koker L "Aligning Anti-Money Laundering, Combating of Financing of Terror and Financial Inclusion: Questions to Consider when FATF Standards are Clarified" 2011 *Journal of Financial Crime* 361, 366; see also Mugarura 2014 *Journal of Money Laundering Control* 80; De Koker 2014 *Journal of Money Laundering Control* 285; Lawack VA "Mobile Money, Financial Inclusion and Financial Integrity: The South African Case" 2013 *Washington Journal of Law, Technology and Arts* 317, 321.

1026 Lawack 2013 *Washington Journal of Law, Technology and Arts* 323; Alldridge P "Money laundering and Globalisation" 2008 *Journal of Law and Society* 440, 441; Van Jaarsveld *Aspects of Money Laundering in South African Law* 88; Zavoli I and King C "The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis" 2021 *The Modern Law Review* 740, 745.

1027 Financial Intelligence Center *Guidance Note 3A: Guidance for Accountable Institutions on Client Identification and Verification and Related Matters* Exemption 7; De Koker L "Money Laundering Control and Suppression of Financing of Terrorism: Some Thoughts on the Impact of Customer Due Diligence Measures on Financial Exclusion" 2006 *Journal of Financial Crime* 26, 27; Muchemwa 2021 *Journal of Financial Crime* 85.

1028 See Jayasekara 2020 *Journal of Money Laundering Control* 670; see related comments by Chitimira H and Animashaun O "The Adequacy of the Legal Framework for Combatting Money Laundering and Terrorist Financing in Nigeria" 2023 *Journal of Money Laundering Control* 110, 118; Zavoli and King 2021 *The Modern Law Review* 746.

money laundering.[1029] This follows that simplified CDD may enable criminals to integrate their illegal assets into the formal financial sector through depositing small amounts into several accounts and identity fraud.[1030] The relaxation of CDD measures does not apply to financial institutions offering mobile money financial services only.[1031] Accordingly, the application of CDD measures in South Africa remains stringent. It should be noted that simplified CDD entails the relaxation of some identification and verification requirements for low-risk customers and does entail the abandonment of the requirements completely. In South Africa, the typical and additional assemblage of normal client data is still obligatory even during the completion of simplified due diligence processes, unlike in the United Kingdom where the financial institutions do not carry out identification and verification procedures during simplified due diligence processes.[1032] The UK approach enables financial institutions to save resources on low-risk customers and avail the resources towards comprehensive CDD measures required for high-risk customers. This follows that, simplified due diligence involves reduced verification and scrutiny which requires minimum resources than enhanced and comprehensive CDD. The same can also be said about the application of simplified due diligence measures in Australia. The *Anti-Money Laundering and Counter-Terrorism Financing Act* provides that low-risk customers are subject to a modified CDD procedure which requires limited resources.[1033] This is due

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1029 FATF Recommendations (2012), *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* updated October 2016 Paris France; Van Rensburg WJ "Anti-Money Laundering is now Focused on Effectiveness: Does your System Work?" *Dispute Resolution Alert* (25 October 2017) 2-3.

1030 Kersop M and Du Toit SF "Anti-Money Regulations and the Effective Use of Mobile Money in South Africa – Part 2" 2015 *PER/PELJ* 1636, 1638; Lawack 2013 *Washington Journal of Law, Technology and Arts* 322; Allridge 2008 *Journal of Law and Society* 443; Mugarura 2014 *Journal of Money Laundering Control* 92.

1031 De Koker L "The 2012 Revised FATF Recommendations: Assessing and Mitigating Mobile Money Integrity Risks Within the New Standards Framework" 2013 *Washington Journal of Law, Technology and Arts* 165, 170; Kersop and Du Toit 2015 *PER/PELJ* 1640; Chitimira and Animashaun 2023 *Journal of Money Laundering Control* 118; Mugarura 2014 *Journal of Money Laundering Control* 92.

1032 Mugarura N "The Implications of Brexit for UK Anti-Money Laundering Regulations: Will the Fourth Anti-Money Laundering Directive be Implemented or be Binned?" 2018 *Journal of Money Laundering Control* 5, 16; Van Jaarsveld *Aspects of Money Laundering in South African Law* 88; Kersop and Du Toit 2015 *PER/PELJ* 1642; Zavoli and King 2021 *The Modern Law Review* 746.

1033 *Anti-Money Laundering and Counter-Terrorism Financing Act* 169 of 2006, section 33; see Ross S and Hannan M "Australia's New Anti-Money Laundering Strategy" 2019 *Current Issues in Criminal Justice* 135, 138; Walker J "The Illegal Movement of Cash and Bearer Negotiable Instruments:

to the fact that low-risk customers pose a low money laundering risk on the financial institution. This entails that, like in the UK, uniform CDD procedures are not applied to all customers in Australia. This approach ensures that available resources are used effectively to detect money laundering activities during comprehensive due diligence and ongoing monitoring.

Zimbabwe also follows a stringent approach toward the application of CDD measures.[1034] The application of CDD as an AML measure in Zimbabwe was adopted from the FATF recommendations without any attempt to conform the standards to the local financial circumstances.[1035] The *MLPC Act* does not provide for the waiver of some identification and verification of documents during the CDD procedure.[1036] Thus, financial institutions apply CDD measures uniformly for all customers. The researcher argues that, considering the limited resources available in Zimbabwe's financial institutions, the uniform application of CDD measures is unjustified. Zimbabwe still struggles to conform to the FATF AML standards due to lack of adequate resources. The researcher argues that this could be circumvented by applying CDD measures according to the client's risk profile, like in Australia and the UK, so as to channel more resources towards high-risk profiles.

In this regard, the researcher submits that the UK and Australian approaches to the application of CDD measures to combat and curb money laundering are preferable as they target high-risk profiles to ensure the effective implementation of CDD measures. Australia and the UK present a better position on the implementation and application of CDD measures to combat and curb money laundering. CDD measures should not be

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Typologies and Regulatory Responses" 2010 *Trends and Issues in Crime and Criminal Justice* 1, 5.

1034 Section 15 of the *MLPC Act*; Jayasekara 2020 *Journal of Money Laundering Control* 672; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 120; see related discussion by Dzomira S "Electronic Fraud (Cyber Fraud) Risk in the Banking Industry, Zimbabwe" 2014 *Risk Governance and Control: Financial Markets and Institutions* 16, 22.

1035 Mugarura M "Anti-Money Laundering Law and Policy as a Double Edged Sword" 2020 *Journal of Money Laundering Control* 899, 915; Munyoro J "Challenges of Combating Money Laundering in Bureaux de Change" in Goredema C (ed.) *Money Laundering Experiences* (Institute for Security Studies, Cape Town 2006) 1, 10; Mugarura 2014 *Journal of Money Laundering Control* 92.

1036 See sections 15-16 of the *MLPC Act;* Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Dzomira 2014 *Risk Governance and Control: Financial Markets and Institutions* 23; Jayasekara 2020 *Journal of Money Laundering Control* 670.

implemented uniformly, high regard should be put on the client's money laundering risk profile so as to determine the extent of CDD measures applicable. Accordingly, Zimbabwe and South Africa should draw lessons regarding the effective application of CDD measures from the UK and Australia. It is essential for Zimbabwe and South Africa as developing economies to use resources effectively to curb money laundering activities so as to prevent challenges that hinder the effective implementation of AML resources due to lack of adequate resources. Zimbabwe should strongly consider developing tailor-made CDD requirements that conform to its needs to avoid challenges such as financial exclusion as a result of stringent identification and verification requirements. Financial exclusion subsequently results in increased informal transactions which cannot be monitored and could increase money laundering activities in Zimbabwe.

8.3 Overall Analysis of the Operational Independence of the Financial Intelligence Units

There are significant differences in the operation of Financial Intelligence Units (FIUs) in different countries, including Zimbabwe, the UK, Australia, and South Africa. The FIUs in each country operate under different legal frameworks. In the UK, the National Crime Agency (NCA) serves as the country's FIU and is established under the *Proceeds of Crime Act*.[1037] The NCA is responsible for receiving, analysing, and disseminating information about suspected money laundering or terrorist financing to law enforcement agencies in the UK.[1038] The NCA has established collaboration mechanisms, such as information sharing, with other financial role players in the UK to enhance the fulfilment of its role and functions.[1039] The NCA cooperates with the Bank of England (BOE) and other

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1037 *Proceeds of Crime Act* 2002, section 3; Harrison K and Ryder N *The Law Relating to Financial Crime in the United Kingdom* (Ashgate Publishing Limited 2013) 35; Ahlosani W *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units (Palgrave Macmillan London 2016)* 14; Stokes R and Arora A "The Duty to Report under the Money Laundering Legislation within the United Kingdom" 2004 *Journal of Business Law* 332, 335.

1038 Harrison and Ryder *The Law Relating to Financial Crime in the United Kingdom* 36; see related comments by Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Sultana S "Role of Financial Intelligence Unit (FIU) in Anti-Money Laundering Quest: Comparison between FIUs of Bangladesh and India" 2020 *Journal of Money Laundering Control* 931, 939.

1039 *Financial Services Act* 2012 (*FSA*), section 6; Cox L *et al* "United Kingdom Regulatory Reform: Emergence of the Twin Peaks" 2012 *COB* 1, 5; Ackemann J "The New Architecture of Financial

international bodies to collect and analyse financial intelligence. The researcher submits that the participation of the NCA in international AML cooperation enables it to stay updated with global money laundering trends and innovative measures to prevent money laundering in UK banking and financial institutions. Similarly, in South Africa, the Financial Intelligence Centre (FIC) operates as the primary AML regulator and is established under the *Financial Intelligence Centre Act.*[1040] The FIC is tasked with receiving reports of suspicious transactions from financial institutions and forwarding these reports to law enforcement agencies in South Africa.[1041] The *FICA* provides that the FIC is required to cooperate with other financial role players in South Africa to receive information and investigate money laundering.[1042] To date, the FIC has concluded several Memorandums of Understanding with other role players to share information on matters of common interest.[1043] This has enhanced the functions of the FIC and access to financial intelligence relevant for combatting money laundering in South Africa. In Australia, the Australian Transaction Reports and Analysis Centre (AUSTRAC) was established under the *Anti-Money Laundering and Counter-Terrorism Financing Act*.[1044] The functions of the AUSTRAC include preventing and detecting money laundering activities in Australian financial institutions.[1045] The AUSTRAC's approach to combatting money laundering in

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Regulation: Will it Prevent Another Crisis" 2010 *Special Paper* 190, 198; Moloney N, Ferran E, Payne J *et al The Oxford Handbook of Financial Regulation* (Oxford University Press 2015) 68.

1040 *Financial Intelligence Centre Act* 38 of 2001 (*FICA*), sections 2 and 3; Van Jaarsveld *Aspects of Money Laundering in South African Law* 25; Kersop and Du toit 2015 *PER/PELJ* 1642; Henning JJ "Fortifying a Risk-Based Approach in the South African AML/CFT Process" 2017 *Journal of Financial Crime* 520, 526.

1041 Section 3 of the *FICA*; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 56; De Koker 2014 *Journal of Money Laundering Control* 286; Van Jaarsveld *Aspects of Money Laundering in South African Law* 25.

1042 Section 4 of the *FICA*; also see Van Niekerk G and Van Heerden G "The Importance of a Legislative Framework for Cooperation and Collaboration in the Twin Peaks Model of Financial Regulation" 2020 *SALJ* 108, 129.

1043 Financial Intelligence Centre and the South African Reserve Bank and the Prudential Authority "Memorandum of Understanding between the FIC and the SARB and the PA" 03 October 2018 https://www.fic.gov.za/Documents/MOU%20-%20SARB%20%20FIC%20(Combined).pdf accessed 23 October 2023 para 5.

1044 Section 31 of the *Anti-Money Laundering and Counter-Terrorism Financing Act*; Brown A "Australia's Anti-Money Laundering Law on Financial Institutions" 2009 *The Finance Industry* 5, 10; *Chief Executive Officer of Australian Transaction Reports and Analysis Centre v TAB Limited* [2016] FCA 122; Newbury M "Designated Non-Financial Businesses and Professions: The Weak Link in Australia's AML/CTF Regime" 2017 *Journal of Money Laundering Control* 247, 248.

1045 Walters J, Smith RG, Davis B, Choo KKR and Chadwick H "The Anti-Money Laundering and Counter-Terrorism Financing Regime in Australia: Perceptions of Regulated Businesses in

Australia prioritises proactive cooperation and constant dialogue between the AUSTRAC and other reporting entities.[1046] This has influenced the quality of reporting in Australia and consequently, the effectiveness of the AUSTRAC's role in combatting money laundering.

Overall, the NCA, the FIC, and the AUSTRAC function as independent AML/CFT regulatory bodies in their respective jurisdictions. This means that the NCA, the FIC, and the AUSTRAC operate separately and independently from other financial regulators and central banks. The researcher submits that the independence of financial intelligence units is essential for optimum operation and for preventing undue influence from third parties. This follows the fact that financial intelligence units receive and process information that is deemed useful intelligence for the purpose of criminal investigation.[1047] As such, it is imperative to maintain the operational independence of the financial intelligence units.

Contrary to the positions in Australia, the UK, and South Africa, Zimbabwe's FIU which was established under the *MLPC Act* operates as an administrative unit within the Reserve Bank of Zimbabwe (RBZ).[1048] The functions of the FIU include receiving reports on suspicious transactions from other financial institutions so as to detect money laundering

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Australia" 2012 *Research and Public Policy Series* 3; Ryan P, Glass H, Governatori G, Lindsay D, Lumsden A, Nayyar R, Salon B and Watt M "Sydney Node" 2018 *Stanford Journal of Blockchain Law & Policy* 90, 100-105; Ross and Hannan 2019 *Current Issues in Criminal Justice* 138.

1046 Newbury 2017 *Journal of Money Laundering Control* 248; Jensen N "Creating an Environment in Australia Hostile to Money Laundering and Terrorism Financing: A Changing Role for AUSTRAC" 2008 *Macquarie Journal of Business Law* 93, 96; Walters *et al* 2012 *Research and Public Policy Series* 5.

1047 Scott BF "Red Teaming Financial Crime Risks in the Banking Sector" 2021 *Journal of Financial Crime* 98, 99; Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227, 236-237; Walters *et al* 2012 *Research and Public Policy Series* 5.

1048 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Fundira B "Money Laundering in Zimbabwe. 2004-2006" in *Confronting the Proceeds of Crime in Southern Africa* (Institute for Security Studies Pretoria 2007) 56; Chitsove E "Legal Aspects of Combating Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59; Kurebwa J "Implications of Illicit Financial Flows on Zimbabwe's Development" 2021 *International Journal of World Policy and Development Studies* 27, 29.

activities in Zimbabwe.[1049] The FIU is headed by a Director-General who is appointed by the Governor of the RBZ in consultation with the Minister of Finance.[1050] Accordingly, the Director-General is responsible for managing and controlling the activities of the FIU as well as the staff and agents of the FIU. The Director-General may only appoint the FIU staff in consultation with the head of the government department from where they will be employed. The FIU also operates within the administration of the RBZ.[1051] The researcher submits that, in light of the aforementioned, it is difficult to imagine the FIU as an independent body that operates separately from the RBZ. This follows that the FIU is headed by the Governor of the RBZ and shares the same administration as the RBZ.[1052] Notwithstanding the fact that the sharing of the same administration between the RBZ and the FIU could have been a measure to share limited resources, the researcher argues that the FIU should operate as an independent body.[1053] This owes to the fact that the nature of information received and processed by the FIU should be treated in privacy and protected from bias.[1054] The involvement of the Minister of Finance and other relevant government officials with the FIU could jeopardise the functions and independence of this entity. Generally, government officials are high-risk individuals who present a high

1049 Section 6A(1) of the *MLPC Act*; Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money Laundering Experiences* (ISS Pretoria 2006) 41; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 126.

1050 Section 6A(2) of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 10; see related comments Mugarura N "Uncoupling the Relationship Between Corruption and Money Laundering Crimes" *2016 Journal of Financial Regulation and Compliance* 76; Kurebwa 2021 *International Journal of World Policy and Development Studies* 29.

1051 Section 6A(1) of the *MLPC Act*; Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 126.

1052 Section 6A(3) of the *MLPC Act*; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 371.

1053 See related comments by Di Noia C and Di Giorgio "Should Banking Supervision and Monetary Policy Tasks be Given to Different Agencies?" 1999 *International Finance* 361, 372; also see Ioannidou VP "Does Monetary Policy Affect Central Bank's Role in Bank Supervision" 2005 *Journal of Financial Intermediation* 54, 60; Qumba MF "A Comparative Analysis of the Twin Peaks Model of Financial Regulation in South Africa and the United Kingdom" 2022 *SALJ* 78, 96.

1054 See related comments by Di Noia and Giorgo 1999 *International Finance* 372; Qumba 2022 *SALJ* 96; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa "Challenges of Establishing Financial Intelligence Units" 44.

risk of money laundering abuse to financial institutions in Zimbabwe.[1055] In this regard, the researcher submits that the UK, Australian, and South African approaches are commendable and should be adopted in Zimbabwe. It is essential that the FIU in Zimbabwe operates independently to uphold the privacy required in processing financial intelligence. Financial intelligence units should operate independently of other financial role players.[1056] However, this does not entail that the financial intelligence units should not collaborate and/or cooperate with other financial sector role players to detect and investigate money laundering activities.[1057] Accordingly, the researcher submits that Zimbabwe should draw a lesson from the operational independence of the FIC, the NAC, and the AUSTRAC to ensure that its FIU operates independently from the RBZ and the influence of politically exposed persons (PEPs).

8.4 Overall Comparative Analysis of Compliance with FATF Standards

Compliance with the FATF's recommendations on AML regulation is not only a prerequisite for its member states but is also necessary to avoid reputational damage and economic sanctions.[1058] It is important for member states to comply with FATF recommendations so as to protect their financial markets from money laundering and contribute to the global efforts to curb money laundering trends. The FATF established widely recognised

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1055 Choo K "Politically Exposed Persons (PEPs): Risks and Mitigation" 2008 *Journal of Money Laundering Control* 371, 375; Tuba M and Van der Westhuizen C "An Analysis of the 'Know Your Customer' Policy as an Effective Tool to Combat Money Laundering: Is it about Who or What to Know that Counts?" 2014 *International Journal Public Law and Policy* 53, 61; Nkhwashu N "Is South Africa's Anti-Money Laundering and Counter Terrorism Financing Regime Effective?" *De Rebus* (1 May 2018) 26.

1056 Sathye M and Patel C "Developing Financial Intelligence: An Assessment if FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 396; Broome J *Anti-Money Laundering: International Practice and Policies* (Thomson, Hong Kong 2005) 65; Masciandro D "Financial Supervisory Unification and Financial Intelligence Units" 2005 *Journal of Money Laundering Control* 354, 263.

1057 Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Adeleke 2019 *South African Journal of International Affairs* 370.

1058 Mekpor ES, Aboagye A, and Welbeck J "The Determinants of Anti-Money Laundering Compliance among the Financial Action Task Force (FATF) Member States" 2018 *Journal of Financial Regulation and Compliance* 45, 48; Mekpor ES "Anti-Money Laundering and Combatting the Financing of Terrorism Compliance: Are FATF Member States just Scratching the Surface?" 2019 *Journal of Money Laundering Control* 78, 80; Jensen N and Png CA "Implementation of the FATF 40+ 9 Recommendations: A Perspective from Developing Countries" 2011 *Journal of Money Laundering Control* 110, 115.

recommendations that serve as the global best practices for AML/CFT regulation.[1059] The researcher submits that compliance with these standards is necessary to demonstrate a country's pledge to effectively combat and curb money laundering and terrorist financing. Additionally, compliance with the FATF recommendations also bears practical benefits for countries. For instance, countries with strong and consistent AML/CFT regulatory frameworks attract foreign direct investment, promote market integrity and protect their financial markets from abuse by criminal organisations and terrorist groups that commit financial crimes.[1060] Notwithstanding the advantages of complying with the FATF standards of AML regulation, the researcher argues that the evaluation of compliance should be outcome-focused and not a tick-box exercise.[1061] This entails that, compliance should be distinguished from the adoption or incorporation of the FATF recommendations into domestic laws and regulations. Put differently, countries should implement the FATF standards in a manner commensurate with their needs and circumstances to augment the effectiveness of money laundering regulation.[1062]

Zimbabwe's goal of achieving compliance with the FATF's AML standards has been focused on implementing FATF recommendations into its AML laws but there has not been progressive outcomes in this regard.[1063] This follows the fact that Zimbabwe is still ranked as a high-risk money laundering jurisdiction according to the 2020 Basel Index

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1059 FATF Recommendations *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* updated October 2016 Paris France; see related comments by Chitimira and Munedzi 2021 *Journal of Money Laundering Control* 56; Mekpor 2019 *Journal of Money Laundering Control* 80.

1060 Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation and Compliance* 53; Mekpor 2019 *Journal of Money Laundering Control* 80; Jensen and Png 2011 *Journal of Money Laundering Control* 119; Adeleke 2019 *South African Journal of International Affairs* 373.

1061 FATF *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* Paris 2013; see related comments by Pol RE "Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?" 2018 *Journal of Money Laundering Control* 215, 218; Deleanu IS and Ferwerda J "Effectiveness: Threat and Policy Response" in Unger B, Ferwerda J, Van Den Broek M and Deleanu I (eds) *The Economic and Legal Effectiveness of the European Union's Anti-Money Laundering Policy* (Edward Elgar, Cheltenham 2014) 45, 55.

1062 See comments by Mugarura 2014 *Journal of Money Laundering Control* 91; De Koker 2006 *Journal of Financial Crime* 32; De Koker 2011 *Journal of Financial Crime* 367; Chitimira and Munedzi 2023 *Journal of Money Laundering Control* 62.

1063 Maguchu 2018 *African Security Review* 285; Kondongwe S "Anti-Money Laundering and Combatting of the Financing of Terrorism – Focus on Zimbabwe" 2017 *SSRN 3046227* 18, 22; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 180; Mugarura 2014 *Journal of Money Laundering Control* 89.

ratings.[1064] This entails that, money laundering remains a big threat to the Zimbabwean financial markets despite its efforts to comply with the FATF recommendations. Mugarura posits that the execution of CDD measures as a global AML tool is effective only to a lesser extent, in developing countries like Zimbabwe and South Africa due to challenges such as financial exclusion and the lack of adequate resources to implement AML measures effectively.[1065] The researcher inclines to this view and further submits that Zimbabwe and South Africa lack adequate and social and economic structural frameworks to implement AML measures according to international best practices as compared to the UK and Australia.[1066] This follows the fact that the challenges experienced in Zimbabwe and South Africa, such as financial exclusion and corruption, prevent the effective implementation of AML measures whereas these challenges are not highly prevalent in the UK and Australia.[1067] Accordingly, the researcher argues that the evaluation of compliance with the FATF standards should be outcome-focused and not a mere tick-box practice.

Zimbabwe was removed from the FATF grey-list in 2019 following the FATF's report which noted that Zimbabwe had made significant steps to enhance its AML/CFT framework.[1068]

1064 Mukwazhi T "Zimbabwe Central Bank Freezes 30 Accounts over Illegal Activities" *Africa News* (29 September 2019) 1; see related comments by Kondongwe 2017 *SSRN 3046227* 25; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 181; Mugarura 2014 *Journal of Money Laundering Control* 94.

1065 Mugarura 2014 *Journal of Money Laundering Control* 89; Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* (Routledge 2016) 42; Mugarura N "The Use of Anti-Money Laundering Tools to Regulate Ponzi and Other Fraudulent Investment Schemes" 2017 *Journal of Money Laundering Control* 231, 241; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 51.

1066 Mugarura 2014 *Journal of Money Laundering Control* 89; Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 42; Chitsove E "Legal Aspects of Combating Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59; Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications" 2020 *Journal of Money Laundering Control* 663, 670.

1067 See related comments by Pol 2018 *Journal of Money Laundering Control* 220; Deleanu and Ferwerda "Effectiveness: Threat and Policy Response" 55; Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation and Compliance* 53; Muchemwa C "Money Laundering and Illicit Financial Flows in Zimbabwe: A Critical Review of the Legal and Institutional Frameworks" 2021 *Journal of Financial Crime* 78, 80.

1068 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US dollar" 2021 *Journal of Money Laundering Control* 306, 308; Muchemwa 2021 *Journal of Financial Crime* 81.

However, as noted already, Zimbabwe remains listed as a high-risk money laundering jurisdiction. The UK has been evaluated by the FATF several times and has consistently been found to have a strong AML/CFT regulatory framework that is largely compliant with FATF's recommendations.[1069] In 2015, the FATF noted that Australia had made significant progress in addressing the risks of money laundering and terrorist financing, and in 2018, the country was found to have made further progress in implementing the FATF's recommendations.[1070] This follows that the AUSTRAC increased the number of reporting entities in Australia so as to enhance the accuracy of its financial intelligence. This has improved the detection of money laundering activities in Australia due to increased familiarity with AML measures by financial institutions.[1071] Consequently, this also entails increased compliance with FATF standards in Australia. Accordingly, the researcher submits that Australia's compliance with FATF AML standards is commendable and cannot be questioned.

However, in February 2023, South Africa was grey-listed for non-compliance with FATF recommendations.[1072] This decision was greatly influenced by factors such as state capture, the Phala Phala saga and the violent protests which affected investor confidence in the viability of South Africa's financial markets.[1073] As alluded to earlier, money laundering is a predicate crime of other underlying crimes such as corruption and drug

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1069 Harrison and Ryder *The Law Relating to Financial Crime in the United Kingdom* 35; Ahlosani *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 14; Stokes and Arora 2004 *Journal of Business Law* 335; see related comments by Maguchu 2021 *Journal of Money Laundering Control* 309.

1070 Mekpor 2019 *Journal of Money Laundering Control* 83; Jensen and Png 2011 *Journal of Money Laundering Control* 119; Mekpor, Aboagye and Welbeck 2018 *Journal of Financial Regulation and Compliance* 58.

1071 Ai L "A Cost-Effective Strategy of Implementing International Anti-Corruption Initiatives: Enhancing the Role of Anti-Money Laundering in Combating Corruption" 2012 *Journal of Money Laundering Control* 83, 86; Pol RF "Anti-Money Laundering Effectiveness: Assessing Outcomes or Ticking Boxes?" 2018 *Journal of Money Laundering Control* 215, 222; Johnson J "Australia: The Continuing Fight against Money Laundering—Financial Institutions and FATF's Recommendation 19" 2000 *Journal of Money Laundering Control* 56, 60.

1072 Moonstone Information Refinery "Did Grey-Listing Threat Hasten SARB to Act against Markus Jooste?" 20 October 2022 www.citizen.co.za accessed 2 April 2023 Page Anon; National Treasury "What Does FATF Greylisting Mean for a Country?" 2023 *Fact Sheet* 2.

1073 Gillmer J, Amardien N, Harwin J and Kleinsmidt L "Understanding South Africa's FATF Greylisting" 29 March 2023 https://www.cliffedekkerhofmeyr.com/en/news/publications/2023/Practice/Corporate/corporate-and-commercial-alert-29-march-Understanding-South-Africas-FATF-greylisting-.html accessed 12 October 2023.

trafficking.[1074] Resultantly, South Africa's AML regime was found lacking and inadequate to combat money laundering activities such that it was placed under increased monitoring. The researcher is of the view that, compliance with FATF recommendations depends on several factors such as availability of resources, political influence and the AML legal framework. These factors have affected South Africa's compliance with the FATF recommendations.

The researcher argues that compliance with FATF recommendations does not guarantee the effectiveness of AML measures. The AML regulatory framework in South Africa was largely adopted from international standards. For example, the first AML regulations under the *Drugs and Drug Trafficking Act* were adopted from the *Vienna Convention*.[1075] Similarly, the definition of money laundering under the *MLPC Act* of Zimbabwe was adopted from the FATF recommendations.[1076] Like the UK, Zimbabwe and South Africa should focus on developing context-sensitive AML regulations to combat money laundering instead of adopting regulations from international instruments without conforming them to their contexts.[1077] Context-sensitive and tailor-made regulations will take into account the different challenges experienced by the two countries and develop AML regulations that are effective and applicable to the money laundering challenges experienced in Zimbabwe.[1078] Accordingly, the researcher submits that, like the UK and

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1074 Mugarura N "Uncoupling the Relationship between Corruption and Money Laundering Crimes" 2016 *Journal of Financial Regulation and Compliance* 72, 76; Kimeu S "Corruption as a Challenge to Global Ethics: The Role of Transparency International" 2014 *Journal of Global Ethics* 231, 235; Rusanov G and Yury P "Money Laundering and Predicate Offenses: Models of Criminological and Legal Relationships" 2018 *Journal of Money Laundering Control* 20, 24.

1075 *Drugs and Drug Trafficking Act* 140 of 1992 (*Drugs Act*), section 14; Article 3(c)(i) of the *Vienna Convention;* see also De Koker L and Henning JJ "Money Laundering Control in South Africa" 1998 *Transactions of the Centre for Business Law* 24; Johnson 2000 *Journal of Money Laundering Control* 56.

1076 Section 2 of the *MLPC Act*; Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 35; FATF *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems* 36; Sherman T "International Efforts to Combat Money Laundering: The Role of the Financial Action Task Force" in MacQueen H (ed) *Money Laundering* (Edinburgh University Press 1993) 16.

1077 Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 35; Mugarura 2014 *Journal of Money Laundering Control* 89; Pol 2018 *Journal of Money Laundering Control* 219; see related comments by Sherman "International Efforts to Combat Money Laundering: The Role of the Financial Action Task Force" 34.

1078 Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 35; Mugarura 2014 *Journal of Money Laundering Control* 89; Pol 2018 *Journal of Money*

Australia, Zimbabwe, and South Africa should develop their own context-sensitive AML regulations and refer to international standards like the FATF recommendations for checks and balances.

8.5 Overall Comparative Analysis of the Enforcement of AML Measures

The effectiveness of prescribed regulations also relies on the enforcement of policies and measures accompanying them. This follows that the mere prescription of laws is not sufficient without corresponding measures to foster compliance and promote legal certainty.[1079] Australia is one of the largest financial markets in the Asia-Pacific region, which makes it susceptible to illicit financial activities such as money laundering.[1080] Therefore, several measures have been implemented by the Australian Prudential Regulation Authority (APRA) as well as other relevant role players to ensure the effectiveness of the AML regulations in Australia. One of these measures is the power vested in the AUSTRAC to impose penalties and enforce the regulations against non-complying financial institutions in Australia.[1081] Australia's regulatory culture is generally flexible, thus the AUSTRAC actively utilises both hard and soft sanctions to enforce compliance with AML measures.[1082] The AUSTRAC implements both civil and criminal

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Laundering Control 219; see related comments by Sherman "International Efforts to Combat Money Laundering: The Role of the Financial Action Task Force" 34.

1079 Ferran E and Alexander K "Can Soft Law Bodies be Effective? The Special Case of the European Systemic Risk Board" 2010 *ELR* 751, 760; Kelly CR "The Sociological Pull of Soft Law" 2012 *American Society of International Law Proceedings* 320, 327.

1080 Sathye M "Estimating the Cost of Compliance of AML/CFT for Financial Institutions in Australia" 2008 *Journal of Financial Crime* 347, 350; Cotton J "Australia: Taking Stock of the Financial Reporting Legislation = Senate Committee Review and Government Response" 1997 *Journal of Money Laundering Control* 181, 182; McNeil C "The Australia Anti-Money Laundering Reform in the International Context" *2007 Journal of International Banking Law and Regulation* 340, 342; Saputra B "Modelling Australian Transaction Reports and Analysis Centre (AUSTRAC) for Indonesia in Order to Combat Financial Crime" 2021 *NEGREI: Academic Journal of Law and Governance* 81, 87.

1081 Newburry M "Designated Non-Financial Businesses and Professions: The Weak Link in Australia's AML/CTF Regime" 2017 *Journal of Money Laundering Control* 247, 253; Choo K "Designated Non-Financial Businesses and Professionals: A Review and Analysis of Recent Financial Action Task Force on Money Laundering Mutual Evaluation Reports" 2014 *Security Journal* 45, 52; Saputra 2021 *NEGREI: Academic Journal of Law and Governance* 87.

1082 Abbott KW and Snidal D "Hard Law and Soft Law in International Governance" 2000 *International Organisation* 421, 425; Shaffer GC and Pollack MA "Hard vs Soft Law: Alternatives, Complements and Antagonists in International Governance" 2010 *Minnesota LR* 706, 710; Ferran E and Alexander K "Can Soft Law Bodies be Effective? Soft Systemic Risk Oversight Bodies and the

sanctions, such as external audits, compliance monitoring, remedies to parties affected by an institution's non-compliance and the prosecution of perpetrators.[1083] The researcher submits that the flexible approach implemented by Australia is preferable. This follows that in some instances, harsh sanctions can negatively affect the country's financial markets such that soft sanctions are ideal. As such, the availability of both harsh and soft sanctions for non-compliance is an essential measure to deter non-compliance in financial institutions.

In the UK, criminals commonly use the banking system to commit money laundering, which puts banking institutions at a high money laundering risk.[1084] As such, several measures have been implemented by the UK Financial Intelligence Unit (UKFIU) and other relevant bodies to protect the BOE and other banking institutions from abuse by money launderers. For example, the BOE collaborates with other central banks and cross-border financial role players by sharing information relating to emerging systemic risks and global money laundering trends so as to implement relevant preventive measures to combat and curb money laundering.[1085] The UK has also designated several regulatory authorities to enforce AML regulations by imposing penalties, sanctions, and licence revocations on

Special Case of the European Systemic Risk Board' 2011 *Legal Studies Research Paper Series* 4, 5.

1083 Saputra 2021 *NEGREI: Academic Journal of Law and Governance* 8; Spicer J "AUSTRAC and the Financial Sector-Partners in Crime Prevention: A Look Into AUSTRAC's Money Laundering/Terrorism Financing Risk Assessments" 2018 *Journal of the Australian Institute of Professional Intelligence Officers* 3, 9; Norton S *Australia-China Law Enforcement Cooperation* (Australian Strategic Policy Institute 2019) 34.

1084 Dinov S "The Bank of England: A Comparison of the Function of the Bank of England, the Federal Reserve and the European Central Bank" in Dinov S (ed*) Central Banks as a Bank Supervisor: A Comparison of the Functions of the BOE and the Federal Reserve and the European Central Bank* (Cambridge University Press 2018) 27, 35; Buiter WH "Lessons from the 2007 Financial Crisis" 2008 *Centre for Economic Policy Research* 1, 3; HM Treasury "A New Approach to Financial Regulation: Judgement, Focus and Stability" para 1.26.

1085 Doumpos M, Gaganis C and Pasiouras F "Central Bank Independence, Financial Supervision Structure and Bank Soundness: An Empirical Analysis around the Crisis" 2015 *Journal of Banking and Finance* 69, 72; Scott KA and Stephenson R "Enhanced Customer Due Diligence for Banks in the UK and the US" 2008 *Journal of International Banking and Financial Law* 86, 89; Georgosouli A "Judgement Led Regulation: Some Critical Reflections" 2012 *SSRN Research Paper* 10, 14; Correia de Brito, A, Kauffmann C and Pelkmans J "The Contribution of Mutual Recognition to International Regulatory Co-operation" 2016 *OECD Regulatory Policy Working Papers* 2, 18; Satragno L *Monetary Stability as a Common Concern in International Law: Policy Cooperation and Coordination of Central Banks* (Brill Singapore 2022) 52.

financial institutions which are not compliant with the AML regulations.[1086] The regulatory authorities include the Prudential Regulation Authority (PRA), the Financial Conduct Authority (FCA), and the HM Revenue and Customs (HMRC).[1087] The imposition of penalties and revocation of licences on non-complying financial institutions is a common enforcement measure between the UK and Australia. This measure ensures that financial institutions do not abscond from implementing AML regulations and become vulnerable to money laundering activities. The researcher submits that this measure also ensures that financial institutions continuously monitor customer transactions on an ongoing basis and update customer profiles regularly. This is essential for safeguarding the financial system from criminal activities and the effectiveness of AML regulations. However, unlike Australia, the UK strictly follows a hard law approach to enforce AML measures. The researcher argues that soft sanctions are flexible and can be easily amended to conform to the changing AML standards and trends and the same cannot be said about harsh sanctions for non-compliance implemented in the UK.

Notwithstanding the importance of AML regulations enforcement measures to safeguard the effectiveness of AML measures, the researcher submits that Zimbabwe and South Africa still lag behind in enforcing AML regulations. Zimbabwe and South Africa are developing economies and their enforcement authorities require adequate resources to improve their operational capacity.[1088] According to the FATF, the effective operation of enforcement agencies relies on adequate budget allocations, expertise, and adequate technical know-how.[1089] In Zimbabwe, cases of non-compliance have been identified but

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1086 Scott and Stephenson 2008 *Journal of International Banking and Financial Law* 89; Georgosouli 2012 *SSRN Research Paper* 14; HM Treasury "A New Approach to Financial Regulation: Judgement, Focus and Stability" para 5.

1087 See related comments by Noked N "Financial Services Act 2012: A New UK Financial Regulatory Framework" *HLS Forum on Corporate Governance and Financial Regulation* (24 March 2013) 3; Lopez C and Saeidinezhad E "UK Financial Reforms: Bank of England 2.0" 2016 *Milken Institute Publications* 3, 5; Ferran E "The Break-up of the Financial Services Authority" 2011 *Oxford Journal of Legal Studies* 450, 455.

1088 Moshi HPB "Fighting Money Laundering: The Challenge in Africa" 2007 *Institute of Security Studies* 1, 6; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 35; Muchemwa 2021 *Journal of Financial Crime* 83; Chitimira and Ncube 2021 *PER/PELJ* 13; ESAAMLG 2019 *5th Follow-Up Report* 16.

1089 FATF Recommendation 31; Sherman T "International Efforts to Combat Money Laundering: The Role of the Financial Action Task Force" 18; Fundira B "Money Laundering in Zimbabwe. 2004-

appropriate action has not been implemented by the relevant regulatory bodies and enforcement agencies.[1090] In some instances, the FIU lacks relevant techniques to detect non-compliance by financial institutions.[1091] The researcher argues that the failure to take action by enforcement authorities can be attributed to limited resources and the lack of expertise to conduct further inquiries and investigations.[1092] Nonetheless, the researcher also submits that non-compliance by financial institutions could be attributed to non-stringent accountability measures in Zimbabwe. The *MLPC Act* does not provide accountability measures for the relevant sector role players to fulfill their mandates. For instance, the *MLPC Act* requires lawyers to implement ongoing due diligence and investigate the money laundering risks associated with their clients.[1093] However, to date, the Law Society of Zimbabwe has not issued guidelines in furtherance of ensuring compliance with the provisions of the *MLPC Act* among its members.[1094]

The researcher submits that Zimbabwe and South Africa should strengthen their enforcement mechanisms to ensure the effectiveness of AML regulations. Like Australia and the UK, Zimbabwe should authorise the FIU to penalise non-complying financial

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2006" 56; Nance MT "The Regime that FATF Built: An Introduction to the Financial Action Task Force" 2018 *Crime Law Society Change* 109, 115.

1090 Malaba L "Judicial Transparency and Accountability" Address by the Chief Justice of Zimbabwe: The Occasion of the Opening of the 2020 Legal Year 13 January 2020 https://jsc.org.zw/jscbackend/upload/Publications/CHIEF%20JUSTICES%20SPEECH%202020%*20LEGAL%20%20YEAR%20OPENING-13-01-2020.pdf* accessed 17 May 2022 6; Ngwenya BPT and Chivaura T "Perceptions of Post Multi-currency Regime Financial Inclusion Confidence Challenges in Zimbabwe" 2018 *South African Journal of Economic and Management Sciences* 1, 11; Maguchu 2018 *African Security Review* 281.

1091 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Ngwenya and Chivaura 2018 *South African Journal of Economic and Management Sciences* 11; Muchemwa 2021 *Journal of Financial Crime* 85; Mugarura *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* 35.

1092 Ngwenya and Chivaura 2018 *South African Journal of Economic and Management Sciences* 11; Moshi 2007 *Institute of Security Studies* 6; Kimeu S "Corruption as a Challenge to Global Ethics: The Role of Transparency International" 2014 *Journal of Global Ethics* 231, 235; Maguchu 2017 *Journal of Money Laundering Control* 149.

1093 See section 25 of the *MLPC Act*; Maguchu 2017 *Journal of Money Laundering Control* 147-8; see related comments by Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *Potchefstroom Electronic Law Journal* 1, 6; Chinamasa P "Money Laundering in Zimbabwe: A Critical Analysis of the Legal and Institutional Frameworks" 2018 *Journal of Money Laundering Control* 327, 332.

1094 Crozier B *Legal Ethics: A Handbook for Zimbabwean Lawyers* (Legal Resources Foundation, Harare 2009) 62; Maguchu 2017 *Journal of Money Laundering Control* 147-8; see related comments by Kimeu 2014 *Journal of Global Ethics* 234; Maguchu 2018 *African Security Review* 285.

institutions. This entails that, the powers and functions of the FIU should expressly regulate the FIU's mandate as an enforcement agency. The researcher further submits that the FIU should not rely on the Zimbabwe Republic Police (ZRP) or other law enforcement authorities to enforce AML regulations. This follows that the police force may fail to institute penalties timeously and cause unnecessary delays in investigating money laundering crimes. It is also submitted that the government of Zimbabwe and other relevant stakeholders should ensure that the FIU has adequate resources to fulfil its functions. The government of Zimbabwe should incentivise financial institutions and other relevant financial role players and supply them with resources to effectively implement AML measures. Like Australia, the researcher submits that Zimbabwe should also establish soft penalties for non-compliance with AML measures. This follows that, soft sanctions are flexible and can be easily amended from time to time considering the constantly changing money laundering risks and AML global standards. Accordingly, the Australian approach to enforce compliance with AML measures is preferred in this regard.

8.6 Overall Analysis of International Cooperation and the Role Played by Central Banks to Combat Money Laundering

Several international organisations, such as the BCBS, the FATF and the Organisation for Economic Cooperation and Development (OECD) have reiterated the importance of cross-border cooperation and information sharing as a global measure to curb money laundering and the financing of terrorism across the globe.[1095] The researcher submits that money laundering is a global challenge that requires the interconnectedness of cross-border financial sector role players to prevent and manage money laundering risks.[1096]

1095 Core Principles for Effective Banking Supervision 2012, principle 3; FATF Recommendations 2002, recommendation 2; OECD Convention on the Organisation for Economic Co-operation and Development December 1960, article 5(b); Satragno L *Monetary Stability as a Common Concern in International Law: Policy Cooperation and Coordination of Central Banks* (Brill Singapore 2022) 34.

1096 Jung NR "The Present and Future of the Financial Services Industry: Convergence, Consolidation, Conglomeration, and Collaboration" 2011 *Quinnipiac Law Review* 729, 734; William AA and Moessner R "Central Bank Co-operation and International Liquidity in the Financial Crisis of 2008-9" 2013 *BIS Working Paper* 78, 79; Keenan PJ "A New Chapter to Meet the Growing Need to Regulate Cross-Border Insolvencies" 2006 *Norton Journal of Bankruptcy Law and Practice* 128, 135.

Money laundering is not bound by national borders and requires a coordinated approach to prevent contagion to the global financial markets. The corona virus (COVID-19) pandemic was an eye-opener on the importance of coordination of efforts to combat global financial risks.[1097] The COVID-19 pandemic posed imminent threats to global financial strength and there was a need for a coordinated approach to alleviate the global financial system despite the unexpected pause in economic activities.[1098] This follows that the COVID-19 pandemic threatened financial stability and the integrity of global financial markets. The FATF recommends international cooperation amongst international financial sector role players to enhance the information-sharing mechanisms.[1099] The researcher submits that regulatory coordination is an important AML measure that fosters the sharing of information relevant for money laundering detection and investigations. Australia follows a soft law approach to regulatory cooperation.[1100] This means that, coordinational arrangements between the AUSTRAC and other relevant financial role players in Australia are not regulated by statute.[1101] Coordinational arrangements amongst financial

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1097 See related comments by Cecchetti SG "Monetary Policy Lessons Learned from the Crisis and the Post-Crisis Landscape" 2011 *Bank for International Settlements* 1, 2; Crotty J "Structural Causes of the Global Financial Crisis: A Critical Assessment of the 'New Financial Architecture'" 2009 *Cambridge Journal of Economics* 563, 569; Cecchetti SG "Monetary Policy Lessons Learned from the Crisis and the Post-Crisis Landscape" 2011 *Bank for International Settlements* 1, 5; Keenan 2006 *Norton Journal of Bankruptcy Law and Practice* 134.

1098 Bank of England "The UK Economy during Covid-19: Insights from the Bank of England's Citizens' Panels" 2021 *England's Citizens Panel* 1; Susskind D and Vines D "The Economics of the COVID-19 Pandemic: An Assessment" 2020 *Oxford Review of Economic Policy Journal* 1, 3; Akhtaruzzaman MD, Boubaker S and Sensoy A "Financial Contagion during COVID-19 Crisis" 2021 *Finance Research Letters* 1, 6; Satragno L *Monetary Stability as a Common Concern in International Law: Policy Cooperation and Coordination of Central Banks* 39.

1099 Recommendation 2 of the FATF Recommendations; Ennis J "Cleaning up the Beaches: The Caribbean Response to FATF's Review to Identify Non-Cooperative Countries or Territories" 2002 *Law and Business Review of the Americas* 637, 641; Stessens G "The FATF 'Black List' of -Cooperative Countries or Territories" 2004 *Leiden Journal of International Law* 199, 200; Johnson J "Blacklisting: Initial Reactions, Responses and Repercussions" 2001 *Journal of Money Laundering Control* 211, 216.Ennis 2002 *Law and Business Review of the Americas* 642; Johnson 2001 *Journal of Money Laundering Control* 216; Stessens 2004 *Leiden Journal of International Law* 205.

1100 Schmulow A "Financial Regulatory Governance in South Africa: The Move towards Twin Peaks" 2017 *African Journal of International and Comparative Law* 393, 396; Schmulow AD "Approaches to Financial System Regulation: An International Comparative Survey" 2015 *Centre For International Finance and Regulation (CIFR) Research Working Paper Series* 45, 46; Schmulow A "Twin Peaks: An Analysis of the Australian Architecture" in Jung HJ (ed) Proceedings of the 2016 Global Forum for Financial Consumers (Cambridge University Press 2016) 3.

1101 Jensen A and Kingston M "The Australian 'Twin Peaks' Framework of Financial System Regulation: Australia and UK Compared" 2010 *Journal of International Banking and Financial Law* 548, 549;

regulators and role players are established in MoUs concluded by the financial role players. The FATF also provides that member states should implement measures to foster domestic cooperation between domestic financial institutions with a view to augment the control of money laundering.[1102] Accordingly, the AUSTRAC has concluded MoUs with domestic role players such as the APRA and the Reserve Bank of Australia (RBA), as well as cross-border role players such as the UK FCA as a measure to combat financial crime.[1103] Although Australia does not statutorily regulate regulatory coordination, there is proactive coordination between the AUSTRAC and other role players in Australia. However, the disadvantage of following a soft law approach in this regard is the lack of established enforcement measures to ensure compliance with the provisions of the MoUs.[1104] The FATF does not prescribe the approach that member states ought to follow, instead the FATF requires effective and proactive collaboration and information sharing to combat money laundering. As such, Australia cannot be faulted for following a soft law approach in this regard.

In South Africa and in the UK the duty to cooperate is provided in legislative instruments.[1105] In South Africa, the FIC is obliged to join forces with other financial sector role players in order to effectively fulfil its statutory mandates.[1106] However, the *MLPC Act* does not provide express regulations for the financial sector role players to cooperate

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Schmulow 2017 *African Journal of International and Comparative Law* 398; Van Niekerk and Van Heerden 2020 *SALJ* 110.

1102 Recommendation 31 of the FATF Recommendations; see related comments by Ennis 2002 *Law and Business Review of the Americas* 642; Johnson 2001 *Journal of Money Laundering Control* 216; Stessens 2004 *Leiden Journal of International Law* 205.

1103 Recommendation 31 of the FATF Recommendations; see related comments by Papadia F "Central Bank Cooperation during the Great Recession" 2013 *Bruegel Policy Contribution* 35, 36; Johnson 2001 *Journal of Money Laundering Control* 216; Stessens 2004 *Leiden Journal of International Law* 205.

1104 Jensen and Kingston 2010 *Journal of International Banking and Financial Law* 550; Godwin AJ and Schmulow AD "The Financial Sector Regulation Bill in South Africa, Second Draft: Lessons from Australia" 2015 *SALJ* 756, 757; Godwin A and Ramsay I "Twin Peaks - The Legal and Regulatory Anatomy of Australia's System of Financial Regulation" 2015 *Journal of Banking and Finance Law and Practice* 240, 245.

1105 *Financial Sector Regulation Act* 9 of 2017, section 76; *Financial Services Act* 2012 (*FSA*), section 6; *Australian Prudential Regulation Authority Amendment Act* 1998 Chapter 50 (*APRA Act*), section 10A; Qumba MF "A Comparative Analysis of the Twin Peaks Model of Financial Regulation in South Africa and the United Kingdom" 2022 *SALJ* 78, 87.

1106 *Financial Sector Regulation Act* 9 of 2017 (*FSR Act*), section 76; Van Niekerk and Van Heerden 2020 *SALJ* 115; Qumba 2022 *SALJ* 87; Godwin and Schmulow 2015 *SALJ* 759.

to combat money laundering. The Reserve Bank of Australia (RBA), the BoE, and the South African Reserve Bank (SARB) have taken considerable measures to cooperate with other central banks and relevant cross-border financial institutions to combat money laundering. For example, the SARB entered into an MoU with the European Securities and Markets Authority (ESMA) where they agreed to share information regarding the protection of financial markets from financial crimes such as money laundering.[1107] On the other hand, the RBA also cooperates with the ESMA to protect Australian financial markets from any threats.[1108] The researcher submits that international cooperation between central banks enables central banks to coordinate their AML efforts and protect their jurisdictions from abuse by money launderers.

Zimbabwe should draw a lesson from Australia, the UK, and South Africa by participating in international cooperation as an AML measure. As alluded to earlier in this thesis,[1109] the implementation of AML measures in Zimbabwe is often deterred by a lack of adequate resources. The researcher argues that the RBZ should also cooperate with other central banks such as the RBA and the BoE which have more resources to access financial intelligence. This follows the fact that information-sharing arrangements involved in international cooperation could enhance the detection and investigation of money laundering activities in Zimbabwe due to access to relevant information. The researcher further submits that, like South Africa and the UK, Zimbabwe should also have express regulations on domestic cooperation between the RBZ, the FIU, and other role players to combat money laundering and related crimes. The active participation of the SARB, the UK, and the RBA in this regard is also an important lesson for Zimbabwe. Thus, the RBZ should actively collaborate with other central banks to curb money laundering and other

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1107 ESMA, SARB, FSCA and PA "Memorandum of Understanding between ESMA and South Africa's Financial Sector Conduct Authority, Prudential Authority and the South African Reserve Bank Related to CCPs Established in South Africa" 03 August 2022 https://www.esma.europa.eu/sites/default/files/library/revised_mou_esma_south_african_authoriti es.pdf accessed 10 May 2023; Van Niekerk and Van Heerden 2020 *SALJ* 115; Qumba 2022 *SALJ* 87.

1108 ESMA, ASIC and RBA "Memorandum of Understanding between ESMA, ASIC and RBA Related to CCPs Established in Australia" 9 February 2022 https://www.esma.europa.eu/sites/default/files/library/20220127_memorandum_of_understandin g _between_rba_asic_and_esma.pdf accessed 10 May 2023; Van Niekerk and Van Heerden 2020 *SALJ* 115; Qumba 2022 *SALJ* 91; Godwin and Schmulow 2015 *SALJ* 760.

1109 See paragraph 4.4 of this thesis.

financial risks. This follows that the RBZ is the central bank of Zimbabwe and is tasked with the duty to protect financial stability and promote market integrity. Accordingly, it is important for the FIU and the RBZ to collaborate with other financial sector role players to enhance AML measures and information sharing so as to detect and investigate money laundering activities.

8.7 Conclusion

The comparative analysis made in this chapter shows that Zimbabwe still lags behind in the implementation and application of effective and robust AML measures. The AML framework provided under the *MLPC Act* leaves out a lot to be desired. The lack of effective and consistently implemented AML and enforcement measures deter the robustness of Zimbabwe's AML regulatory framework. The UK and Australia have established enforcement measures that are commendable and can be adopted by Zimbabwe to enhance its AML framework. For example, the Zimbabwe FIU should operate independent from the central bank, whilst complying with the FATF standards, Zimbabwe should establish tailor-made AML measures that are commensurate to its money laundering risk.[1110] For example, Zimbabwe could follow the Australian approach and develop a risk-based approach that guides the implementation of measures such as CDD to combat money laundering. In addition, the lack of proactive collaboration between the FIU, the RBZ and other financial role players also negatively affect Zimbabwe's AML measures and participation in the international fight against money laundering.[1111] Despite its recent grey-listing, South Africa provides a comprehensive and stringent AML framework that Zimbabwe can draw lessons from as another developing economy. There is a need for urgent reform of the current AML laws in Zimbabwe to address the challenges and flaws raised in this thesis. The researcher has observed that

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1110 See related comments by Di Noia and Giorgo 1999 *International Finance* 372; Qumba 2022 *SALJ* 96; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Sathye M and Patel C "Developing Financial Intelligence: An Assessment if FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 396.

1111 Broome J *Anti-Money Laundering: International Practice and Policies* 66; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122; Ngwenya and Chivaura 2018 *South African Journal of Economic and Management Sciences* 11; Muchemwa 2021 *Journal of Financial Crime* 85.

the interdependence of the FIU on the RBZ and the influence of PEPs on the functions and operation of the FIU is a regulatory flaw that should be corrected.[1112] Several lessons can be drawn from the experiences of South Africa, the UK, and Australia to reform the AML regulation in Zimbabwe in this regard.

The next chapter is the last chapter of this thesis. It provides the overall conclusion of this thesis and proposes recommendations that could be implemented to develop a robust and effective AML regime in Zimbabwe. The recommendations made are based on the lessons that have been drawn from this chapter.

1112 Choo K "Politically Exposed Persons (PEPs): Risks and Mitigation" 2008 *Journal of Money Laundering Control* 371, 373; Tuba M and Van der Westhuizen C "An Analysis of the 'Know Your Customer' Policy as an Effective Tool to Combat Money Laundering: Is it about Who or What to Know that Counts? " 2014 *International Journal Public Law and Policy* 53, 55.

CHAPTER NINE

CONCLUSION AND RECOMMENDATIONS

9.1 Introduction

This is the closing chapter of this thesis, and it provides the overall conclusions and recommendations on how Zimbabwe's anti-money laundering (AML) regulatory framework should be revisited to enhance its effectiveness. The recommendations made in this chapter seek to address the shortcomings of the current AML regulatory framework in Zimbabwe.[1113] Several lessons were drawn from the AML frameworks of South Africa, the United Kingdom (UK), and Australia to develop robust and effective AML regulations in Zimbabwe.[1114] In this regard, the researcher proposes a new AML regulation model that can be adopted to enhance and address the flaws in the current regulatory framework in Zimbabwe. The researcher hopes that the recommendations made in this chapter will be used by policymakers and other relevant bodies to address the challenges affecting the effectiveness of the AML regulatory framework in Zimbabwe.

9.2 General Observations

This thesis was centred on answering the question of whether the AML regulatory framework under the *Money Laundering and Proceeds of Crime Act*[1115] is sufficient and consistently enforced by the relevant authorities, such as the Financial Intelligence Unit

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1113 See chapter 4 of this thesis; see related comments by Gwintsa N "Challenges of Establishing Financial Intelligence Units" in Goredema C (ed) *Money Laundering Experiences* (ISS Pretoria 2006) 41; Maguchu P "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 145; Adeleke F "Illicit Financial Flows and Inequality in Africa: How to Reverse the Tide in Zimbabwe" 2019 *South African Journal of International Affairs* 367, 380; Kurebwa J "Implications of Illicit Financial Flows on Zimbabwe's Development" 2021 *International Journal of World Policy and Development Studies* 27, 31.

1114 See related comments by Maguchu P "Revisiting Money-Laundering Legislation in Zimbabwe and the Role of International Organisations" 2018 *African Security Review* 278, 281; Shambira L "Exploring the Adoption of Artificial Intelligence in the Zimbabwe Banking Sector" 2020 *Electronic Journal of Social and Strategic Studies* 110, 117; Chitimira H and Ncube M "Towards Ingenious Technology and the Robust Enforcement of Financial Markets Laws to Curb Money Laundering in Zimbabwe" 2021 *PER/PELJ* 1, 15; Pasara MT and Garidzirai R "The Boomerang Effects: An Analysis of the Pre and Post Dollarisation Era in Zimbabwe" 2020 *Economics* 1, 10.

1115 *Money Laundering and Proceeds of Crime Act* [Chapter 9:24] 4 of 2013 (the *MLPC Act*), sections 6-30.

(FIU), to prevent and combat money laundering activities in Zimbabwe.[1116] The researcher developed three approaches in order to address the research question. The first one required an analysis of the relevant provisions of the *MLPC Act* to establish whether they are adequate, sufficient, and robust enough to combat money laundering in Zimbabwe.[1117] In chapter three of this thesis, the researcher provides an analysis of Zimbabwe's current regulatory framework as regulated under the *MLPC Act*. In this regard, the researcher submits that the regulation of AML measures under the *MLPC Act* is not robust enough to effectively and adequately combat money laundering and related crimes in Zimbabwe.[1118] Currently, the *MLPC Act* does not regulate how financial sector role players such as *inter alia*, the FIU, the Zimbabwe Anti-Corruption Commission (ZACC), the National Prosecuting Authority of Zimbabwe (NPAZ), the Reserve Bank of Zimbabwe (RBZ) and the Zimbabwe Republic Police (ZRP) should collaborate their regulatory and enforcement functions in combatting money laundering in Zimbabwe.[1119] Prescribed and regulated coordination measures ensure accountability and prevents duplication of regulatory mandates, which are both essential for effective cooperation.[1120]

1116 See related comments by Chitsove E "Legal Aspects of Combating Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59; Gubbay 1998 *Journal of Money Laundering Control* 380; Maguchu PS "Money Laundering, Lawyers and President's Intervention in Zimbabwe" 2017 *Journal of Money Laundering Control* 138, 141; Chitimira and Ncube 2021 *PER/PELJ* 13.

1117 See paragraph 3.1 of this thesis; see comments by Maguchu 2017 *Journal of Money Laundering Control* 148; Chitsove 2018 *University of Botswana Law Journal* 62; Adeleke 2019 *South African Journal of International Affairs* 380; Ondiege P "Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) in Zimbabwe: An Assessment of the Effectiveness of the Regulatory Framework" 2018 *Journal of Financial Crime* 78, 85.

1118 Section 6 of the *MLPC Act*; see related comments by Jayasekara SD "Deficient Regimes of Anti-Money Laundering and Countering the Financing of Terrorism: An Analysis of Short-Term Economic Implications" 2020 *Journal of Money Laundering Control* 663, 670; also see Muchemwa C "Money Laundering and Illicit Financial Flows in Zimbabwe: A Critical Review of the Legal and Institutional Frameworks" 2021 *Journal of Financial Crime* 78, 80; Maguchu PS "Challenges of Money Laundering for Sovereign States that Uses the US Dollar" 2021 *Journal of Money Laundering Control* 306, 308.

1119 See sections 10-22 of the *MLPC Act*; see related comments by Mulig EV and Murphy S "Understanding and Preventing Money Laundering" 2004 *Journal of Money Laundering Crime* 20, 29; Hope Sr KR "Channels of Corruption in Africa: Analytical Review of Trends in Financial Crimes" 2020 *Journal of Financial Crime* 294, 298 Van Niekerk G and Van Heerden C "The Importance of a Legislative Framework for Cooperation and Collaboration in the Twin Peaks Model of Financial Regulation" 2020 *SALJ* 108, 115.

1120 Van Niekerk and Van Heerden 2020 *SALJ* 110; Jayasekara 2021 *Journal of Money Laundering Control* 7; Maguchu 2021 *Journal of Money Laundering Control* 306; Ondiege 2018 *Journal of Financial Crime* 78.

Notwithstanding the importance of regulatory coordination to combat money laundering in Zimbabwe, the researcher submits that the *MLPC Act* fails to establish the operational independence of the FIU.[1121] This follows that the FIU operates under the administration of the RBZ and is headed by a Director-General who is appointed by the Governor of the RBZ.[1122] The FIU is the financial intelligence agency that receives confidential information relating to money laundering activities from other domestic and cross-border financial sector role players.[1123] Accordingly, it is essential that the FIU operates independently to maintain the trust and confidence of other financial sector role players, such as the ZACC, the ZRP and the NPAZ that are tasked with sharing confidential information with the FIU.[1124] In this regard, the researcher argues that the operational independence of the FIU underpins its effectiveness in implementing the AML provisions of the *MLPC Act*.[1125] The independence of the FIU prevents the capture of the FIU by government and political persons which could affect its credibility and functions. As such, the failure of the *MLPC Act* to establish the operational independence of the FIU affects the overall effectiveness and robustness of the *MLPC Act* to curb money laundering through the FIU in Zimbabwe due to potential bias during the processing and analysis of financial intelligence. The

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1121 Jayasekara 2021 *Journal of Money Laundering Control* 5; see related comments by Muchemwa 2021 *Journal of Financial Crime* 84; Chinamasa P "Money Laundering in Zimbabwe: A Critical Analysis of the Legal and Institutional Frameworks" 2018 *Journal of Money Laundering Control* 327, 332; Ondiege P "Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) in Zimbabwe: An Assessment of the Effectiveness of the Regulatory Framework" 2018 *Journal of Financial Crime* 78, 85.

1122 Section 6A(2) of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 10; see related comments Mugarura N "Uncoupling the Relationship Between Corruption and Money Laundering Crimes" *2016 Journal of Financial Regulation and Compliance* 76; Kurebwa 2021 *International Journal of World Policy and Development Studies* 29.

1123 Section 6B(1) of the *MLPC Act*; Maguchu 2021 *Journal of Money Laundering Control* 312; Muchemwa 2021 *Journal of Financial Crime* 83; Jayasekara 2021 *Journal of Money Laundering Control* 4.

1124 Gleason P and Gottselig G (Eds) *Financial Intelligence Units: An Overview* (International Monetary Fund Washington DC 2004) 32; Stroligo K, Hsu C and Kouts T *Financial Intelligence Units: Working with Law Enforcement Authorities and Prosecutors* (World Bank Washington 2018) 52; Takats "A Theory of Crying Wolf: The Economics of Money Laundering Enforcement" 2007 *IMF Working Paper 07/81* 1, 45; Kurebwa 2021 *International Journal of World Policy and Development Studies* 31.

1125 Muchemwa 2021 *Journal of Financial Crime* 83; Jayasekara 2021 *Journal of Money Laundering Control* 4; Chinamasa 2018 *Journal of Money Laundering Control* 330; see related comments by Gleason and Gottselig *Financial Intelligence Units: An Overview* 32.

researcher submits that the *MLPC Act* is not adequate to combat money laundering activities in Zimbabwe and this necessitates amendments to enhance its adequacy.

The second approach of this thesis was to investigate whether the relevant provisions of the *MLPC Act* have been consistently enforced by the RBZ, the FIU, the ZRP's Asset Forfeiture Unit, the NPAZ, and other regulatory bodies tasked with combatting money laundering in Zimbabwe.[1126] The researcher discussed the enforcement mechanisms employed in Zimbabwe to ensure compliance with AML provisions provided under the *MLPC Act*. The roles and purposes of selected financial role players were discussed in Chapter Three of this thesis to determine whether they are fulfilling their functions optimally. The researcher submits that the AML framework in Zimbabwe does not have effective enforcement measures to ensure compliance and transparency.[1127] This follows that the *MLPC Act* does not authorise the FIU to enforce AML measures in Zimbabwe.[1128] The *MLPC Act* does not provide express provisions relating to reporting obligations on the relevant financial sector role players. This entails that, the financial sector role players, such as the FIU, the RBZ and the Zimbabwe Revenue Authority (ZIMRA), are not obliged to report on the fulfilment of their roles and functions in line with AML measures under the *MLPC Act*. The researcher submits that the lack of enforcement measures, such as penalties and sanctions for non-compliance, under the *MLPC Act* affects transparency and accountability which are both essential for the effective implementation of AML measures.[1129] This follows that role players could easily abscond from fulfilling their AML

1126 See related comments by Chitimira and Ncube 2021 *PER/PELJ* 5; Maguchu 2018 *African Security Review* 283; also see Duri J "Dirty Money as Legal Fees in Namibia and Zimbabwe: Are Lawyers Laundering Proceeds of Crime?" 2020 *Journal of Money Laundering Control* 451, 458; Maguchu 2017 *Journal of Money Laundering Control* 143.

1127 See related comments by Van den Broek M *Preventing Money Laundering: A Legal Study on the Effectiveness of Supervision in the European Union* (Eleven International Publishing the Hague 2015) 46; Chitimira and Ncube 2021 *PER/PELJ* 5; Maguchu 2018 *African Security Review* 283.

1128 See section 6F of the *MLPC Act*; Simwayi M and Haseed M "The Role of Financial Intelligence Units in Combating Money Laundering: A Comparative Analysis of Zambia, Zimbabwe and Malawi" 2012 *Journal of Money Laundering Control* 112, 121; Maguchu 2018 *African Security Review* 284; Muchemwa 2021 *Journal of Financial Crime* 84.

1129 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; see related discussion by Dzomira S "Electronic Fraud (Cyber Fraud) Risk in the Banking Industry, Zimbabwe" 2014 *Risk Governance and Control: Financial Markets and Institutions* 16, 22; Ondiege 2018 *Journal of Financial Crime* 86.

role without any effect to their other functions and undermine the effectiveness of the AML regime. Without clear provisions on transparency and accountability, it will be difficult to determine whether financial sector role players like the FIU are consistently enforcing the provisions of the *MLPC Act*.[1130]

The third approach was to isolate and discuss the challenges affecting the enforcement of the *MLPC Act* provisions so as to recommend possible measures to enhance the enforcement of AML laws in Zimbabwe.[1131] Addressing the challenges identified in this thesis will potentially enhance the regulation and implementation of AML measures in Zimbabwe. In this regard, the researcher observed that there are several challenges affecting the effective implementation and enforcement of AML measures in Zimbabwe. These challenges include corruption, lack of adequate resources, a largely informal financial sector, and lack of international cooperation with cross-border financial role players.[1132] Recommendations to address these challenges are based on the lessons drawn from South Africa, Australia, and the UK. These jurisdictions were chosen because, for example, South Africa and Zimbabwe are neighbouring developing countries with major economic trade ties and they are likely to face similar challenges in their effort to curb money laundering.[1133] On the other hand, the UK and Australia have generally well-established AML regulatory frameworks which present viable lessons for Zimbabwe.

1130 See comments by Nanyun NM "Role of FATF on Financial Systems of Countries: Successes and Challenges" 2020 *Journal of Money Laundering Control* 1, 6; Maguchu 2018 *African Security Review* 283; Maguchu 2017 *Journal of Money Laundering Control* 143; Chamisa MG "Curbing Illicit Financial Flows and Trade Mispricing in Zimbabwe: The Role of the Legislature, Judiciary and Tax Administration" 2019 *African Tax and Customs Review* 28, 32.

1131 See chapter 4 of this thesis.

1132 Muchemwa 2021 *Journal of Financial Crime* 83; Maguchu 2021 *Journal of Money Laundering Control* 310; Chitimira and Ncube 2021 *PER/PELJ* 13; Chikoko L and Mangwendeza P "Financial Inclusion by Zimbabwean Commercial Banks in a Liquidity Constrained Environment" 2012 *Journal of Economics and International Finance* 252, 256; Singh C and Lin W "Can Artificial Intelligence, RegTech and CharityTech Provide Effective Solutions for Anti-Money Laundering and Counter-Terror Financing Initiatives in Charitable Fundraising" 2020 *Journal of Money Laundering Control* 1, 12; Chitsove E "Legal Aspects of Combating Corruption in Zimbabwe" 2018 *University of Botswana Law Journal* 41, 59.

1133 Bester H, Chamberlain D, De Koker L, Hougaard C, Short R, Smith A and Walker R "Implementing FATF Standards in Developing Countries and Financial Inclusion: Findings and Guidelines" 2008 *Genesis Analytics Report Version 5.2* 1, 42; Duri and Matasane 2017 *Journal of Anti-Corruption Law* 177; Goredema C "Organised Crime and Terrorism: Observations from Southern Africa" 2005 *Institute for Security Studies Paper 101* 1, 2; Nyathi M *The Southern African Development Community and Law* (Palgrave Macmillan Cham 2019) 1 and 4.

The researcher also observed that the AML framework in Zimbabwe has, to a large extent, been shaped by the persuasive influences of international standards in combatting money laundering.[1134] For example, the *Serious Offences (Confiscation of Profits) Act* was enacted through external influences and was not based on addressing the domestic need to combat organised crime in Zimbabwe.[1135] This is evidenced by the *Act*'s focus on preventing drug trafficking rather than money laundering with the aim to conform to international standards.[1136] The researcher acknowledges Zimbabwe as a member of the international community and the importance of complying with international AML standards so as to uphold the stability and integrity of global financial markets. Nonetheless, the researcher argues that there is a need for Zimbabwe to develop its unique AML regulatory framework to effectively combat money laundering.[1137] Owing to this, challenges, like lack of resources and a largely informal financial sector, underpinning the ineffectiveness of the current AML regulatory framework are unique to the Zimbabwean economy and therefore require tailor-made solutions for this purpose. International standards such as the Financial Action Task Force (FATF) recommendations are not tailor-made to address the challenges of Zimbabwe.[1138]

1134 Unger B and den Hertog J "Water Always Finds Its Way: Identifying New Forms of Money Laundering" 2012 *Crime, Law and Social Change* 287, 288-289; Veng Mei Leong A "Chasing Dirty Money: Domestic and International Measures against Money Laundering" 2007 *Journal of Money Laundering Control* 140, 142-145; Nanyun 2020 *Journal of Money Laundering Control* 9.

1135 *Serious Offences (Confiscation of Profits) Act* [Chapter 9:17] 12 of 1990 (the *Serious Offences Act*), sections 2 and 6; see discussion by Goredema C "Money Laundering in East and Southern Africa: An Overview of the Threat" 2003 *Institute for Security Studies Paper* 1, 12-13.

1136 Gubbay AR "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 386; Chitsove 2018 *University of Botswana Law Journal* 56; see related comments by Duri and Matasane 2017 *Journal of Anti-Corruption Law* 175.

1137 See related discussion by Mugarura N "Customer Due Diligence (CDD) Mandate and the Propensity of its Application as a Global AML Paradigm" 2014 *Journal of Money Laundering Control* 77, 93; Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 51; De Koker L "Client Identification and Money Laundering Control: Perspectives on the Financial Intelligence Centre Act 38 of 2001" 2004 *TSAR* 715, 735.

1138 See comments by Mugarura 2014 *Journal of Money Laundering Control* 93; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52; De Koker 2004 *TSAR* 735.

9.3 Recommendations

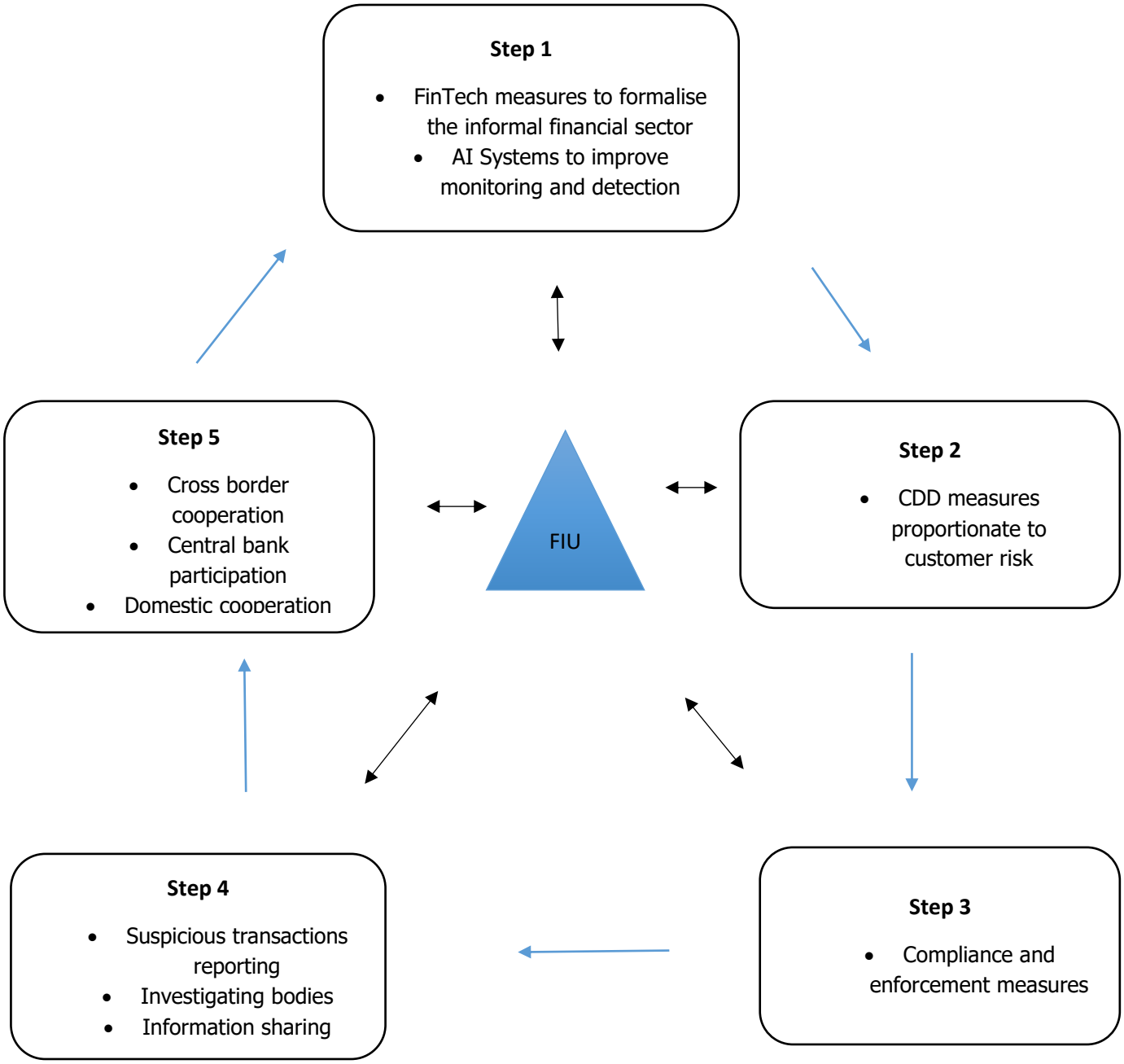
The researcher proposes recommendations that could be implemented to enhance the AML regulatory framework in Zimbabwe and ensure its robustness and effectiveness in combatting money laundering activities. It is hoped that the recommendations made below will be utilised by policymakers and enforcement agencies to combat money laundering in Zimbabwe:

a) *The Adoption of a New AML Regulatory Model for Combatting Money Laundering in Zimbabwe*

The researcher proposes a new AML regulatory model that illustrates the reforms that should be made to effectively combat money laundering activities in Zimbabwe. The model above illustrates the proposed AML regulatory framework for Zimbabwe. In Figure 1 below, the FIU is strategically positioned to play a central role in the regulation of AML measures in Zimbabwe. The cycle portrays the FIU as an operationally independent body that only cooperates with other role players to fulfil its AML mandate. The first step in the proposed AML model is the introduction of Artificial Intelligence (AI) systems to enhance the combatting of money laundering in Zimbabwe.[1139]

[1139] Chitsove 2018 *University of Botswana Law Journal* 59; Singh and Lin 2020 *Journal of Money Laundering Control* 12; Chitimira and Ncube 2021 *PER/PELJ* 3; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52.

The Regulation Model



The incorporation of AI technologies, particularly data analytics, presents a paradigm shift in the fight against money laundering.[1140] AI offers the capability to analyse vast datasets

1140 Han J, Huang Y, Liu S and Towey K "Artificial Intelligence for Anti-Money Laundering: A Review and Extension" 2020 *Digital Finance* 213, 215; Kute DV, Pradhan B, Shukla N and Alamri A "Deep Learning and Explainable Artificial Intelligence Techniques Applied for Detecting Money

with speed and accuracy beyond the scope of traditional methods. By leveraging machine learning algorithms, AI systems can discern patterns, anomalies, and trends indicative of potential money laundering activities. This not only enhances the efficiency of AML processes but also provides a proactive approach to identifying emerging threats. Moreover, the adaptability of AI systems allows them to evolve in tandem with the dynamic nature of money laundering techniques, ensuring a sustained and effective defence against illicit financial activities. However, the *MLPC Act* makes no provision for the implementation and application of AI measures to combat and curb money laundering in Zimbabwe.[1141] Accordingly, the researcher proposes an AML regime that incorporates the integration of AI systems to analyse data and detect money laundering activities.[1142] Utilising predictive and predefined binary rules, AI algorithms automatically analyse transaction input and output, allowing the system to detect anomalies in the provided data, thereby flagging and detecting suspicious transactions.[1143] AI emerges as a key technology for enhancing data management, improving the speed, efficiency, and accuracy of services.[1144] By comprehending customer behaviours, such as transaction frequency, amounts, and network usage, algorithms powered by AI can be developed to effectively detect and prevent fraudulent activities. Accordingly, the introduction of AI measures in the AML framework of Zimbabwe is a necessity. However, the researcher

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Laundering–A Critical Review" 2021 *IEEE Access* 82300, 82304; Alhajeri R and Alhashem A "Using Artificial Intelligence to Combat Money Laundering" 2023 *Intelligent Information Management* 284, 287.

1141 Chitimira and Ncube 2021 *PER/PELJ* 13; see related comments by Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115; Singh and Lin 2020 *Journal of Money Laundering Control* 12.

1142 Munyanyi W "Banking the Unbanked: Is Financial Inclusion Powered by Ecocash a Veracity in Rural Zimbabwe?" 2014 *Greener Journal of Banking and Finance* 22, 25; Klein M and Mayer C "Mobile Banking and Financial Inclusion, The Regulatory Lessons" 2011 *World Bank Policy Research Working Paper* 5664 12; Robb G, Tausha I and Vilakazi T "Competition and Regulation in Zimbabwe's Emerging Mobile Payments Markets" in Klaaren J, Roberts S and Vilakazi T (eds*) Competition Law and Economic Regulation in Southern Africa* (2017) 210, 215.

1143 Braniff L "Building a Digital Finance Ecosystem in Zimbabwe" 2016 *Burnham* 67, 69; Chitsove 2018 *University of Botswana Law Journal* 56; Mugarura 2014 *Journal of Money Laundering Control* 93; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52; De Koker 2004 *TSAR* 735.

1144 Han, Huang, Liu and Towey 2020 *Digital Finance* 215; Kute, Pradhan, Shukla and Alamri 2021 *IEEE Access* 82304; Alhajeri and Alhashem 2023 *Intelligent Information Management* 287; Xu C, Liu C, Nie D and Gai, L "How Can a Blockchain-Based Anti-Money Laundering System Improve Customer Due Diligence Process?" 2021 *Journal of Forensic and Investigative Accounting* 95, 99.

acknowledges that the lack of adequate resources to implement AI innovations to combat money laundering in Zimbabwe is a prevalent challenge.[1145] Therefore, Zimbabwe should collaborate with countries such as the UK and Australia that have integrated AI systems to enhance its AML measures. More resources should also be availed in developing technology-driven operations of the FIU given the pace at which financial services are turning digital.

The second step of the proposed AML model depicts the implementation of customer due diligence (CDD) measures as an AML tool. The researcher acknowledges the current provisions relating to CDD measures under the *MLPC Act*.[1146] Zimbabwe follows a uniform approach to the implementation of CDD measures regardless of the money laundering risk posed by the customer to the financial institution. However, drawing lessons from the UK experience,[1147] the application of CDD measures should be done proportionate to the money laundering risk the customer poses to the financial institutions or the financial sector as a whole.[1148] In this regard, the researcher proposes the adoption of a statutory framework that prioritises risk assessment during the implementation of CDD measures. This is essential considering that Zimbabwe is under-resourced and the available resources should be utilised to detect complex, suspicious money laundering activities. Accordingly, Zimbabwe should draw lessons from the UK and Australian examples regarding the implementation of CDD measures in a manner that is commensurate to the risks posed by the customer. This position is important in informing the proportional distribution of resources meant to curb AML challenges.[1149] Thus, more resources will be

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1145 Chitimira and Ncube 2021 *PER/PELJ* 13; see related comments by Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115; Singh and Lin 2020 *Journal of Money Laundering Control* 12.

1146 See sections 10-16 of the *MLPC Act*; see related discussion by Munyanyi 2014 *Greener Journal of Banking and Finance* 27; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115; Maguchu 2021 *Journal of Money Laundering Control* 310.

1147 See paragraph 6.3 of this thesis.

1148 De Koker L "The FATF's Customer Identification Framework: Fit for Purpose?" 2014 *Journal of Money Laundering Control* 281, 285; De Koker L "Identifying and Managing Low Money Laundering Risk: Perspective on FATF's Risk-Based Guidance" 2009 *Journal of Financial Crime* 334, 339; Chitimira H and Munedzi S "Selected Challenges Associated with the Reliance on Customer Due Diligence Measures to Curb Money Laundering in South African Banks and Related Financial Institutions" 2021 *Journal of Comparative Law in Africa* 42, 53.

1149 See Jayasekara 2020 *Journal of Money Laundering Control* 670; see related comments by Chitimira H and Animashaun O "The Adequacy of the Legal Framework for Combatting Money

used to monitor suspicious transactions and account activities of high-risk customers so as to detect money laundering activities and transactions.[1150]

The third step of the model is crucial for any effective AML framework. It depicts the enforcement of AML measures to ensure compliance and the optimum operation of all relevant role players. The *MLPC Act* does not expressly provide enforcement mechanisms to ensure compliance and the effective implementation of AML measures in Zimbabwe. Instead, the *Act* requires the FIU to report its findings to other enforcement agencies. As such, the researcher posits the model depicted in Figure 1 above and proposes the FIU to apply it and ensure the effective enforcement of AML measures in Zimbabwe. The researcher argues that the FIU actively participates in the investigation of money laundering activities in Zimbabwe, and this places it in a better position to enforce compliance with AML measures by all financial institutions Zimbabwe.[1151] Accordingly, the failure to empower the FIU with enforcement authority should be revisited.

The fourth step of the model reinforces the reporting obligations of all financial sector role players such as the RBZ, the ZACC, the NPAZ, the SECZ and the ZIMRA. This relates to the aforementioned role players' mandate to conduct ongoing monitoring so as to report suspicious transactions or activities by their clients.[1152] The researcher proposes amendments to the *Legal Practitioners Act*[1153] to expressly regulate the legal practitioners'

Laundering and Terrorist Financing in Nigeria" 2023 *Journal of Money Laundering Control* 110, 118; Mugarura N "The Implications of Brexit for UK Anti-Money Laundering Regulations: Will the Fourth Anti-Money Laundering Directive be Implemented or be Binned?" 2018 *Journal of Money Laundering Control* 5, 16.

1150 Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 49; De Koker 2014 *Journal of Money Laundering Control* 286; Mugarura 2014 *Journal of Money Laundering Control* 88; see related comments by De Koker 2009 *Journal of Financial Crime* 338.

1151 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa N "Challenges of Establishing Financial Intelligence Units" 44; Sathye M and Patel C "Developing Financial Intelligence: An Assessment if FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 396; Jayasekara 2020 *Journal of Money Laundering Control* 672.

1152 Section 25 of the *MLPC Act*; see related discussion by Chitimira and Ncube 2021 *PER/PELJ* 6; Maguchu 2018 *African Security Review* 282; Chitimira H and Torerai E "Selected Role- Players in the Regulation and Use of Mobile Money to Promote Financial Inclusion for the Poor and Low-Income Earners in Zimbabwe" 2023 *Acta Universitatis Danubius Juridica* 76, 80.

1153 *Legal Practitioners Act* [Chapter 27:07]; see section 25 of the *MLPC Act*; Maguchu 2017 *Journal of Money Laundering Control* 147-8; see related comments by Hamman AJ and Koen R "Cave Pecuniam: Lawyers as Launderers" 2012 *Potchefstroom Electronic Law Journal* 1, 6; Crozier B *Legal Ethics: A Handbook for Zimbabwean Lawyers* (Legal Resources Foundation, Harare 2009) 68.

reporting obligations. This follows that the *Presidential Powers (Temporary Measures) Act*[1154] confers a gatekeeping duty on legal practitioners. The gatekeeping function entails legal practitioners implementing CDD measures on their clients, monitoring their clients' transactions, and reporting any suspicious account activities.[1155]

The fifth step of the model illustrates the role of domestic cooperation and international cooperation in combatting money laundering in Zimbabwe. The arrows in the diagram depict the interconnection between all the stages in the model. This illustrates the importance of active cooperation between the FIU and other role players such as the ZIMRA, the ZACC, the NPAZ, the SECZ and the RBZ to ensure the optimum operation of the model.[1156] Active cooperation entails establishing information sharing arrangements, constant dialogue, and disclosure of any relevant information to ensure fulfilment AML obligations. The UK, South Africa and Australian have established domestic and cross-border cooperation mechanisms, such as concluding MoUs and coordinating bodies, for financial sector role players to fulfil their regulatory mandates.[1157] Although Australia does not follow a statutory regulatory approach to foster regulatory coordination, there is an established culture of collaboration between the central bank and financial sector role players to, *inter alia*, combat financial crime.[1158] On the other hand, South Africa and the UK enacted statutory provisions to foster regulatory coordination, a valuable lesson for

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1154 *Presidential Powers (Temporary Measures) Act* [Chapter 10:20], section 12; Maguchu 2017 *Journal of Money Laundering Control* 147-8; Jayasekara 2020 *Journal of Money Laundering Control* 670; Maguchu 2018 *African Security Review* 282.

1155 Maguchu 2017 *Journal of Money Laundering Control* 147-8; Jayasekara 2020 *Journal of Money Laundering Control* 670; Maguchu 2018 *African Security Review* 282; see related comments by Hamman and Koen 2012 *PER/PELJ* 4.

1156 Van Niekerk and Van Heerden 2020 *SALJ* 110; Jayasekara 2021 *Journal of Money Laundering Control* 7; Maguchu 2021 *Journal of Money Laundering Control* 306; Ondiege 2018 *Journal of Financial Crime* 78.

1157 Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Gwintsa N "Challenges of Establishing Financial Intelligence Units" 44; Sathye and Patel 2007 *Journal of Money Laundering Control* 398.

1158 *Australian Prudential Regulation Authority Amendment Act* 1998 Chapter 50 (*APRA Act*), section 10A; Van Niekerk and Van Heerden 2020 *SALJ* 110; Godwin AJ and Schmulow AD "The Financial Sector Regulation Bill in South Africa, Second Draft: Lessons from Australia" 2015 *SALJ* 756, 757; Godwin A and Ramsay I "Twin Peaks - The Legal and Regulatory Anatomy of Australia's System of Financial Regulation" 2015 *Journal of Banking and Finance Law and Practice* 240, 245.

Zimbabwe.[1159] As such, the researcher proposes an AML framework that also prioritises the regulation of cooperation domestically and internationally. Such cooperation measures must be expressly regulated to avoid cumbersome cooperation which may become flawed and cause regulatory gaps and duplication of tasks.

b) The MLPC Act should be amended to Establish the Operational Independence of the FIU

The FIU was established under the *MLPC Act* as a competent authority with the primary responsibility to detect and curb money laundering activities in Zimbabwe.[1160] However, the FIU is not adequately equipped to effectively carry out its mandates. It is acknowledged that the FIU is an integral component within Zimbabwe's AML regulatory framework.[1161] It follows that the FIU receives and processes all information relating to financial intelligence from other financial sector role players.[1162] This entails that the FIU plays a central role in the detection and investigation of money laundering activities in Zimbabwe.[1163] It is also essential to note that, the duties and functions of the FIU are highly sensitive as they are prone to manipulation. Therefore, to maintain the trust of reporting entities, the FIU in Zimbabwe should operate independently to enable it to effectively fulfil its statutory mandate of receiving information. The independence of the FIU is important for safeguarding its role and functions from undue interference and bias. The researcher submits that it is essential for the FIU to be recognised as a body independent from the central bank and government officials to safeguard its credibility

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1159 *Financial Sector Regulation Act* 9 of 2017, section 76; *Financial Services Act* 2012 (*FSA*), section 6; Van Niekerk and Van Heerden 2020 *SALJ* 113; Qumba MF "A Comparative Analysis of the Twin Peaks Model of Financial Regulation in South Africa and the United Kingdom" 2022 *SALJ* 78, 87.

1160 Section 6A of the *MLPC Act*; Chitsove 2018 *University of Botswana Law Journal* 56; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Fundira B "Money Laundering in Zimbabwe. 2004-2006" in *Confronting the Proceeds of Crime in Southern Africa* (Institute for Security Studies Pretoria 2007) 56.

1161 Jayasekare 2021 *Journal of Money Laundering Control* 1, 5; see related comments by Sathye M and Patel C "Developing Financial Intelligence: An Assessment of the FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 393; Masciandaro D "Financial Supervisory Unification and Financial Intelligence Units" 2005 *Journal of Money Laundering Control* 354, 360.

1162 See paragraph 3.3.1 of this thesis.

1163 Section 6C of the *MLPC Act*; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Chitimira and Ncube 2021 *PER/PELJ* 13; Author Anon "The Egmont Group of Financial Intelligence Units – Zimbabwe" 2.

and prevent bias whilst fulfilling its mandate.[1164] Furthermore, it is important for the FIU in Zimbabwe to be safeguarded from any undue external influences and pressures that may be exerted upon it by other role players to adversely affect its administration and functions.[1165] This follows that, corruption remains a challenge in Zimbabwe and can be employed to influence the investigations of the FIU.

In this regard, the researcher recommends that, like in Australia, South Africa, and the UK,[1166] Zimbabwe's FIU should operate independently from the RBZ and political influence. The operational independence of the FIU is essential for its optimum operation and for ensuring compliance with its roles and functions as outlined in the *MLPC Act*.[1167] Currently, the FIU operates under the administration of the RBZ, and its Director-General is appointed by the Governor of the RBZ.[1168] The FIU operates under the patronage of the RBZ and any issues affecting the operation of the RBZ may easily affect the FIU and its functions. Accordingly, the AML regulation model proposed above depicts that the FIU should be independent of the RBZ and other role players but collaborate with to fulfil its mandates and to curb money laundering in Zimbabwe. The proposed AML model confers several roles and functions on the FIU. For example, enforcement of AML provisions and overseeing compliance with AML measures. The researcher recommends that the FIU should be an independent entity that is adequately equipped to operate without the

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1164 Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Masciandro D "Financial Supervisory Unification and Financial Intelligence Units" 2005 *Journal of Money Laundering Control* 354, 363; Sathye M and Patel C "Developing Financial Intelligence: An Assessment if FIUs in Australia and India" 2007 *Journal of Money Laundering Control* 391, 396; Hugo C and Spruyt W "Money Laundering, Terrorist Financing and Financial Sanctions: South Africa's Response by Means of the Financial Intelligence Centre Amendment Act 1 of 2017" 2018 *Journal of South African Law* 227, 236-237.

1165 Gwintsa "Challenges of Establishing Financial Intelligence Units" 44; Masciandro 2005 *Journal of Money Laundering Control* 363; Sathye and Patel 2007 *Journal of Money Laundering Control* 391, 396; Hugo and Spruyt 2018 *Journal of South African Law* 236-237.

1166 See paragraph 8.2 of this thesis.

1167 Section 6C of the *MLPC Act*; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 120; Chitimira and Ncube 2021 *PER/PELJ* 13; Author Anon "The Egmont Group of Financial Intelligence Units – Zimbabwe" 2.

1168 Section 6A(2) of the *MLPC Act*; Chitimira and Ncube 2021 *PER/PELJ* 10; see related comments Mugarura N "Uncoupling the Relationship Between Corruption and Money Laundering Crimes" *2016 Journal of Financial Regulation and Compliance* 76; Kurebwa 2021 *International Journal of World Policy and Development Studies* 29.

influence and resources of the RBZ so as to prevent undue influence and spillage of regulatory challenges and flaws.

c) The MLPC Act Should be Amended to Integrate the use of AI to Combat Money Laundering in Zimbabwe

The integration of AI in AML regulation in Zimbabwe could enhance the effectiveness and robustness of the AML regime. This follows that Zimbabwe has been struggling to meet the international AML standards due the use of traditional measures to combat and curb money laundering.[1169] The researcher submits that money laundering requires measures that conform to international standards to effectively combat it. Effective data management is crucial for streamlined delivery of financial services. AI emerges as a key technology for enhancing data management, improving the speed, efficiency, and accuracy of services.[1170] By comprehending customer behaviours, such as transaction frequency, amounts, and network usage, algorithms powered by AI can be developed to effectively detect and prevent fraudulent activities.[1171] Given the detrimental economic effects of money laundering, on financial markets, financial institutions must remain vigilant, and AI technologies play a pivotal role in proper customer identification to combat such criminal acts. The increase in money laundering activities in Zimbabwe has resulted in the poor performance of the Zimbabwean financial markets as demonstrated by the prolonged interruption of the Zimbabwe Stock Exchange (ZSE) due to the liquidity crisis.[1172] Accordingly, the researcher submits that the regulation of AI mechanisms to

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1169 Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115; Chitimira and Ncube 2021 *PER/PELJ* 3; Pasara and Garidzirai 2020 *Economics* 10; Hugo and Spruyt 2018 *Journal of South African Law* 237.

1170 Životić I, Ristić K and Mirković Z "The Impact of Security Management in the Detection of Money Laundering with Consequences on the Economy" 2022 *Oditor* 90, 94; Chitimira and Ncube 2021 *PER/PELJ* 6; Beebeejaun A and Dulloo L "A Critical Analysis of the Anti-Money Laundering Legal and Regulatory Framework of Mauritius: A Comparative Study with South Africa" 2023 *Journal of Money Laundering Control* 401, 406; Ofoeda I, Tuffour JK and Nketia EA "The Impact of Anti-Money Laundering Regulations on Inclusive Finance: Evidence from Sub-Saharan Africa" 2023 *Cogent Economics and Finance* 2235821, 2235824.

1171 Životić, Ristić and Mirković 2022 *Oditor* 90; Chitimira and Ncube 2021 *PER/PELJ* 6; Beebeejaun and Dulloo 2023 *Journal of Money Laundering Control* 405; Ofoeda, Tuffour and Nketia 2023 *Cogent Economics and Finance* 2235825.

1172 Nyakurukwa K "Information Flow Between the Zimbabwe Stock Exchange and the Johannesburg Stock Exchange: A Transfer Entropy Approach" 2021 *Organisations and Markets in Emerging Economies Journal* 353, 355; see related comments by Petros J "The Effect of the Stock Exchange on Economic Growth: A Case of Zimbabwe Stock Exchange" 2012

combat money laundering under the *MLPC Act* could the detection of money laundering activities by increasing transaction monitoring, performing risk assessment, conducting enhanced due diligence, and fostering regulatory compliance.[1173] Additionally, AI measures are programmed to detect suspicious activities and to continuously monitor account activities to detect suspicious transactions. AI measures can be used to analyse various financial transaction data and identify suspicious patterns and activities that point to money laundering activities by financial institutions.[1174] Financial institutions should also integrate AI measures to enhance the detection of suspicious transactions by comparing historical transaction data with new transaction patterns. AI can foster compliance and enforcement of AML measures through the implementation of automated transaction monitoring systems by financial institutions and the generation of customer activity reports.[1175]

In this regard, the researcher submits that AI measures should be utilised to combat money laundering in Zimbabwe. The *MLPC Act* should be amended to incorporate the use of AI measures to combat and curb money laundering in Zimbabwe. However, despite its efficiency in analysing financial transaction trends, detecting suspicious transactions, and fostering regulatory compliance, AI systems should be implemented in conjunction with human expertise. The integration of AI systems requires human expertise to ensure that the AI systems effectively align with the financial institution's needs, produce accurate

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Research in Business and Economics Journal 1, 8; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115.

1173 World Economic Forum "The Role of AI in Anti-Money Laundering and Counter-Terrorist Financing" 2020 https://www.weforum.org/whitepapers/the-role-of-ai-in-anti-money-laundering-and-counter-terrorist-financing accessed 12 October 2022; Kute DV, Pradhan B, Shukla N and Alamri A "Deep Learning and Explainable Artificial Intelligence Techniques Applied for Detecting Money Laundering - A Critical Review" 2021 *IEEE Access* 17, 21; Han J, Huang Y, Liu S and Towey K "Artificial Intelligence for Anti-Money Laundering: A Review and Extension" 2020 *Digital Finance* 211, 215.

1174 Kute, Pradhan, Shukla and Alamri 2021 *IEEE Access* 22; Han, Huang, Liu and Towey 2020 *Digital Finance* 215; Singh C and Lin W "Can Artificial Intelligence, RegTech and CharityTech Provide Effective Solutions for Anti-Money Laundering and Counter-Terror Financing Initiatives in Charitable Fundraising" 2021 *Journal of Money Laundering Control* 464, 470; Chitimira and Ncube 2021 *PER/PELJ* 13.

1175 Colladon AF and Remondi R "Using Social Network Analysis to Prevent Money Laundering" 2017 Expert Syst Appl 49, 53; Bellomarini L, Laurenza E and Sallinger E "Bule-Based Anti-Money Laundering in Financial Intelligence Units: Experience and Vision" in 4th International Joint Conference on Rules and Reasoning (29 June-1 July 2020 virtual) 1, 5; Han J *et al* "Artificial Intelligence for Anti-Money Laundering: A Review and Extension" 2020 *Digital Finance* 1, 18.

results, and are integrated commensurate with existing systems. In this regard, the researcher further recommends that financial role players should train their personnel to be able to effectively implement and apply AI systems to combat money laundering in Zimbabwe.

d) The MLPC Act Should be Amended to Empower the FIU to Enforce Compliance with the Current Money Laundering Acts and their Provisions

Zimbabwe continuous to struggle to comply with international AML standards due to poor and inconsistent enforcement of financial sector laws, including the *MLPC Act*.[1176] To date, Zimbabwe has failed to adequately incorporate and enforce effective risk management measures to combat money and curb laundering practices in accordance with the FATF standards.[1177] This is evidenced by the rise in money laundering cases in Zimbabwe as depicted in the recent documentary by Al Jazeera, the Gold Mafia. This shows that the enforcement measures implemented by relevant role players to combat money laundering in Zimbabwe are ineffective and inadequate.[1178] This could be attributed to the lack of adequate resources to implement enforcement mechanisms and the lack of expertise to understand the nature of money laundering and its related crimes. Consequently, money laundering remains a challenge in Zimbabwe due to poor enforcement mechanisms.

The researcher submits that the functions of the FIU under the *MLPC Act* should be amended to include the enforcement of AML provisions and measures in all financial institutions. This follows that the FIU plays a central role in analysing and processing financial intelligence that is relevant for the detection and investigation of money laundering in Zimbabwe such that its personnel have a better understanding and

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1176 Chitimira and Ncube 2021 *PER/PELJ* 2; Maguchu 2018 *African Security Review* 282; Duri 2020 *Journal of Money Laundering Control* 320; Maguchu 2017 *Journal of Money Laundering Control* 142.

1177 Chitimira and Ncube 2021 *PER/PELJ* 16; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 119; Fundira "Money Laundering in Zimbabwe. 2004-2006" 54; Pasara and Garidzirai 2020 *Economics* 10.

1178 Gwintsa "Challenges of Establishing Financial Intelligence Units" 52; Masciandro 2005 *Journal of Money Laundering Control* 360; Sathye and Patel 2007 *Journal of Money Laundering Control* 398; Hugo and Spruyt 2018 *Journal of South African Law* 239; Schroeder WR "Money Laundering: A Global Threat and the International Community's Response" 2001 FBI Law Enforcement Bulletin 1, 4.

comprehension of money laundering activities.[1179] However, the *MLPC Act* does not confer an express duty on the FIU to enforce compliance with AML provisions by relevant role players and financial institutions. Like in the UK and Australia, the roles and functions of the financial intelligence units are central to the AML framework.[1180] The AUSTRAC and the National Crime Agency (NCA) are empowered to enforce AML provisions, supervise compliance with AML provisions, provide guidance on implementation of AML measures and receive reports on suspicious transactions.[1181] This has safeguarded consistent enforcement of AML provisions in the UK and Australia. Accordingly, the researcher recommends the amendment of the *MLPC Act* to substantively empower the FIU to play a central role in the application and implementation of AML measures in Zimbabwe.

e) The Anti-Corruption Provisions in Zimbabwe Should be Strictly Enforced to Ensure its Effectiveness in Curbing Corruption in Zimbabwe

Money laundering is often associated with other crimes, such as drug trafficking, terrorism financing and corruption.[1182] This entails that the adequacy of AML mechanisms also relies on the effectiveness of anti-corruption measures and other related crimes. Zimbabwe is ranked at the top of the most corrupt countries in Africa and corruption has affected the implementation of AML measures.[1183] Corrupt government officials and leaders

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1179 Section 10-25 of the *MLPC Act*; Shambira 2020 *Electronic Journal of Social and Strategic Studies* 115; Chitimira and Ncube 2021 *PER/PELJ* 3; Pasara and Garidzirai 2020 *Economics* 10.

1180 Walters J, Smith RG, Davis B, Choo KKR and Chadwick H "The Anti-Money Laundering and Counter-Terrorism Financing Regime in Australia: Perceptions of Regulated Businesses in Australia" 2012 *Research and Public Policy Series* 3; Brown A "Australia's Anti-Money Laundering Law on Financial Institutions" 2009 *The Finance Industry* 5, 10; Stokes R and Arora A "The Duty to Report under the Money Laundering Legislation within the United Kingdom" 2004 *Journal of Business Law* 332, 335.

1181 Sultana S "Role of Financial Intelligence Unit (FIU) in Anti-Money Laundering Quest: Comparison between FIUs of Bangladesh and India" 2020 *Journal of Money Laundering Control* 931, 939; Ahlosani W *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units (Palgrave Macmillan London 2016)* 14.

1182 Mugarura N "Uncoupling the Relationship between Corruption and Money Laundering Crimes" 2016 *Journal of Financial Regulation and Compliance* 74, 79; Chaikin D "Commercial Corruption and Money Laundering: A Preliminary Analysis" 2008 *Journal of Financial Crime* 269, 275; Rusanov G and Yury P "Money Laundering and Predicate Offenses: Models of Criminological and Legal Relationships" 2018 *Journal of Money Laundering Control* 22, 24.

1183 Maguchu 2018 *African Security Review* 279; see related comments by Gubbay A "Zimbabwe: Proposed Additional Money-Laundering Legislation" 1998 *Journal of Money Laundering Control* 380, 381; Maguchu PS "The Law is Just the Law: Analysing the Definition of Corruption in Zimbabwe" 2018 *Journal of Financial Crime* 354, 356.

continuously engage in shady deals, looting and abusing the country's economy without being prosecuted. The recent Gold Mafia documentary shows that government officials and political leaders exploit state minerals and resources from mines in Zimbabwe to Dubai, where it is then sold in exchange for cash in the form of United States of American Dollars (USDs).[1184] Thereafter, this money is transferred into the bank accounts of the money launderers, who hand over an equivalent amount of their dirty dollars to the Zimbabwe government through smugglers.[1185] The researcher submits that these actions are facilitated by corruption and bribery at all Zimbabwe's entry points The high levels of corruption allegations against senior politicians in Zimbabwe, particularly in the extraction of minerals such as gold and diamonds, create a nexus between corruption and money laundering.[1186] The FATF has also extended its mandate to include the combatting of corruption. Corruption is regarded as a predicate offence that gives rise to money laundering activities.[1187] Money laundering activities are inextricably connected to corruption wherein corruption can be used as a "means to an end or as an end in itself".[1188] It cannot be doubted that money laundering cases are more rampant in

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1184 Al Jazeera Investigative Unit (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-investigation accessed 18 May 2023; Nyashanu M "Zimbabwe: Gold Mafia Revelations Prove That Mnangagwa Not Fit for Office" *AllAfrica* (21 April 2023) https://allafrica.com/stories/202304210160.html accessed 18 May 2023.

1185 Al Jazeera Investigative Unit (14 April 2023) *Aljazeera* https://www.aljazeera.com/news/2023/4/14/six-secrets-uncovered-by-al-jazeeras-gold-mafia-investigation accessed 18 May 2023; Rall S Zim "Government Orders Investigation Following 'Gold Mafia' Exposé on Gold and Money Laundering Syndicate" (4 April 2023) *IOL News* https://www.iol.co.za/news/africa/zim-government-orders-investigation-following-gold-mafia-expose-on-gold-and-money-laundering-syndicate-96375918-0a73-4728-88d5-56dc6d7c9c72 accessed 18 May 2023; Chirume AT "Financial Technology and Monetary Policy Design in Zimbabwe" 2018 *SSRN 3198052* 1, 4.

1186 Oke T "Money Laundering Regulation and the African PEP: Case for Tougher Civil Remedy Options" 2016 *Journal for Money Laundering Control* 32, 45; Maguchu 2018 *African Security Review* 279; Duri J "Combating Corruption-Related Illicit Financial Flows from Africa: Legal Approaches and Challenges" 2018 *African Human Rights YB* 321, 325.

1187 United Nations Convention against Corruption of 2005, see preamble; Mugarura N "The Effect of Corruption in Harnessing Global Anti-Money Laundering Regimes" 2010 *Journal of Money Laundering Control* 272, 275; Goredema C "Money Laundering Control in Southern Africa" in Goredema C (ed) *Profiling Money Laundering in Eastern and Southern Africa* (Institute for Security Studies Pretoria, 2003) 87, 90.

1188 Mugarura N "The Effect of Corruption Factor in Harnessing Global Anti-Money Laundering Regimes" 2010 *Journal of Money Laundering Control* 272, 275; Mugarura 2016 *Journal of Financial Regulation and Compliance* 74, 78; Chimbari P "Public Sector Corporate Governance in Zimbabwe: The Nexus between the ZimCode and State-Owned Enterprises" 2017 *IJECM* 212, 218.

countries with high corruption rates.[1189] Accordingly therefore, the researcher submits that corruption undermines the effectiveness of AML laws to combat money laundering in any jurisdiction.

The researcher recommends the establishment of mandatory corporate authority supervision mechanisms that are strictly enforced by the relevant role-players to combat corruption and money laundering in Zimbabwe. It is also recommended that Zimbabwe's AML laws should incorporate the implementation of robust anti-corruption policies and their enforcement mechanisms. Corruption thrives in bad governance characterised by weak law enforcement measures and lack of requisite institutional oversight mechanisms.[1190]

f) Policy Makers Should Consider Adopting More Stringent Money Laundering Penalties

A significant challenge that is hampering the combatting of money laundering activities in Zimbabwe is the reliance on inadequate money laundering penalties.[1191] The *MLPC Act* provides that money laundering offences are punishable through imprisonment for not more that twenty-five years and/or a fine not exceeding 500 000 Zimbabwean dollars (ZWL).[1192] The *MLPC Act* does not provide for any administrative or civil penalties for money laundering offences. The researcher argues that the penalties provided under the *MLPC Act* are not efficient to foster deterrence and prevention of future similar crimes.[1193] Significantly, the payable fine of ZWL500 000 is too minimal considering the high inflation rates on the local currency in Zimbabwe. Accordingly, the researcher argues that the profits obtained from money laundering activities far exceed the fine imposed on the perpetrators. In the UK, the penalties for money laundering offences are severe and

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1189 Mugarura 2010 *Journal of Money Laundering Control* 275; Mugarura 2016 *Journal of Financial Regulation and Compliance* 78; see related comments by Duri 2018 *African Human Rights YB* 328; Chimbari 2017 *IJECM* 218.

1190 Mugarura 2010 *Journal of Money Laundering Control* 273; Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Duri 2018 *African Human Rights YB* 328; Rusanov and Yury 2018 *Journal of Money Laundering Control* 24.

1191 Duri 2018 *African Human Rights YB* 328; Chimbari 2017 *IJECM* 218; Chitimira and Torerai 2023 *PER/PELJ* 7; Mugarura 2010 *Journal of Money Laundering Control* 281.

1192 See section 8(8)(a)-(c) of the *MLPC Act*.

1193 Mugarura 2010 *Journal of Money Laundering Control* 273; Mugarura 2016 *Journal of Financial Regulation and Compliance* 76; Chitimira and Torerai 2021 *PER/PELJ* 3.

constitute of both civil and criminal actions such as fines, imprisonment, civil recovery, restraint orders and property seizure, against offenders.[1194] South Africa imposes criminal, civil and administrative penalties on money laundering offenders.[1195] Accordingly, Zimbabwe could draw significant lessons from South Africa and the UK and impose stringent penalties for money laundering offences. For instance, the *MLPC Act* could provide for the disgorgement of money laundering proceeds, a ban from assuming managerial or leadership roles, warnings indicating that the perpetrator is a money laundering risk and if the perpetrator is a juristic person, banning its participation in the financial markets.

On the other hand, the *MLPC Act* could also establish administrative sanctions for non-complying institutions and role players. For example, the *MLPC Act* could revoke the licences of non-complying institutions or impose a ban on the institution's functions. The researcher recommends the adoption of adequate penalties to foster compliance with AML measures and deterrence from money laundering activities.

g) The Legislature Should Consider the Implementation of Policy Goals as an AML Measure

The current AML measures in Zimbabwe are more focused on deterring and preventing money laundering activities. Despite the potential of deterrence measures to curb money laundering, the researcher proposes a shift of focus to other policy goals like digital financial inclusion. The challenges associated with financial exclusion and related challenges in Zimbabwe include a largely informal sector where financial transactions are concluded informally or through the black market.[1196] The black market is an illegal

1194 *Proceeds of Crime Act* 2002, section 38; Ahlosani W *Anti-Money Laundering: A Comparative and Critical Analysis of the United Kingdom and the UAE'S Financial Intelligence Units* 109; Rusanov and Yury 2018 *Journal of Money Laundering Control* 22.

1195 *Financial Intelligence Centre Act* 38 of 2001, sections 68-70; Chitimira and Munedzi 2021 *Journal of Comparative Law in Africa* 52; De Koker 2004 *TSAR* 735.

1196 Siwela and Njaya 2021 *International Journal of Economics, Commerce and Management* 59; Chinakidzwa M, Mbengo P and Nyatsambo M "Mobile Money Usage in Rural Areas of Zimbabwe - Case of Mudzi District" 2015 *International Journal of Scientific and Engineering Research* 122, 128; Munyoro G, Kutesera P, Tanhara J and Mazuvawanda P "The Significance of Mobile Money Transfer Facility to Zimbabwean Economy: A Case Study of EcoCash" 2017 *International Journal of Research in Business Management* 1, 5.

parallel market that accounts for over 90 percent of cash transactions and foreign exchange.[1197] The application of AML measures such as CDD is limited to the regulated financial sector and transactions which are concluded in the informal financial sector are not traceable. This renders it difficult to detect money laundering activities in the informal financial sector.[1198] Accordingly, the researcher recommends that the legislature in Zimbabwe should focus on establishing policies that promote digital financial inclusion to enable the application of AML measures such as CDD measures. The promotion of digital financial inclusion efforts in Zimbabwe could enhance ongoing monitoring of transactions and account activities in order to better detect suspicious transactions.

h) The MLPC Act Should be Amended to Expressly Regulate Domestic and International Cooperation between the FIU and Other Role Players to Fulfil their Regulatory Functions to Combat Money Laundering in Zimbabwe

Domestic and international cooperation play a significant role in fulfilling regulatory mandates by preventing regulatory gaps and the duplication of regulatory tasks.[1199] Cooperation between financial sector role players, such as the RBZ, the FIU, the NPAZ, the SECZ and the ZACC, fosters the establishment of information-sharing arrangements through constant dialogue in the financial sector. This entails that when financial sector role players, effectively and adequately cooperate, they share information relevant to fulfilling their mandates.[1200] The lack of adequate cooperation between the FIU, the RBZ,

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1197 Mwareya R "ZimBollar: A Guide to Zimbabwe's Black Market" GroundUp (18 October 2018) 2; Chagonda T "The Other Face of the Zimbabwean Crisis: The Black Market and Dealers during Zimbabwe's Decade of Economic Meltdown, 2000-2008" 2015 Review of African Political Economy 131, 134; Makochekanwa A "Zimbabwe's Black Market for Foreign Exchange" 2007 UP Working Papers 14, 16.

1198 Durai and Stella 2019 *Journal of Emerging Technologies and Innovative Research* 122-124; Chitimira and Ncube 2021 *Interdisciplinary Journal of Economics and Business Law* 68; Barugahara 2021 *International Journal of Financial Research* 262; see related comments by Abiona O and Koppensteiner MF "Financial Inclusion, Shocks, and Poverty: Evidence from the Expansion of Mobile Money in Tanzania" 2020 *Journal of Human Resources* 2, 5.

1199 Jung NR "The Present and Future of the Financial Services Industry: Convergence, Consolidation, Conglomeration, and Collaboration" 2011 *Quinnipiac Law Review* 729, 734; William AA and Moessner R "Central Bank Co-operation and International Liquidity in the Financial Crisis of 2008- 9" 2013 *BIS Working Paper* 78, 79; Ennis J "Cleaning up the Beaches: The Caribbean Response to FATF's Review to Identify Non-Cooperative Countries or Territories" 2002 *Law and Business Review of the Americas* 637, 641.

1200 See related comments by Van Niekerk and Van Heerden 2020 *SALJ* 109; also see Mwenda KK "The Regulatory and Institutional Framework for Unified Financial Services

the SECZ, the ZIMRA, the NPAZ, the ZACC and other relevant role players has affected the successful prosecution of money laundering cases in Zimbabwe.[1201] This follows that there has not been consistent application of AML measures due to lack of transparency and accountability which could be a direct effect of proactive regulatory coordination.[1202] Like the UK, South Africa and Australia, Zimbabwe should also establish express provisions for regulatory coordination to combat money laundering.[1203] There is a need for the FIU to actively cooperate with the RBZ to analyse transaction patterns and detect suspicious transactions to effectively curb money laundering in Zimbabwe.[1204]

According to Maguchu, most of the laundered funds in Zimbabwe are the proceeds of illegal dealings in minerals such as gold and diamonds which are accessed by corrupt PEPs.[1205] The researcher submits that there is need for AML provisions that are corruption-sensitive and foster active cooperation between the FIU, the ZACC, and the Ministry of Mines and Mining Development to detect suspicious dealings in minerals. Like the *FSR Act*[1206] in South Africa, the *MLPC Act* should be amended to regulate cooperation between the FIU and relevant financial role players such as the RBZ, the SECZ, the ZIMRA, the NPAZ and the ZACC. Such provisions should authorise financial role players to request information relevant to money laundering investigations from any institution. In South Africa, the FIC is required to cooperate and collaborate with the central bank

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Supervision in the United Kingdom and Zambia" 2005 *Michigan State Journal of International Law* 347, 350; Marcacci A "IOSCO: The World Standard Setter for Globalised Financial Markets" *2012 Richmond Journal of Global Law and Business* 23, 31.

1201 Gwintsa "Challenges of Establishing Financial Intelligence Units" 51; see related comments by Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* (Routledge 2016) 42; Mugarura N "The Use of Anti-Money Laundering Tools to Regulate Ponzi and Other Fraudulent Investment Schemes" 2017 *Journal of Money Laundering Control* 231, 241.

1202 Chitsove 2018 *University of Botswana Law Journal* 45; Maguchu 2018 *African Security Review* 279; Gwintsa "Challenges of Establishing Financial Intelligence Units" 43; Van Niekerk and Van Heerden 2020 *SALJ* 118.

1203 Van Niekerk and Van Heerden 2020 *SALJ* 119; Maguchu 2018 *African Security Review* 279; Sultana 2020 *Journal of Money Laundering Control* 939; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122.

1204 Van Niekerk and Van Heerden 2020 *SALJ* 119; Maguchu 2018 *African Security Review* 279; Sultana 2020 *Journal of Money Laundering Control* 939; Simwayi and Haseed 2012 *Journal of Money Laundering Control* 122.

1205 Maguchu 2018 *African Security Review* 279; see related comments by Oke 2016 *Journal for Money Laundering Control* 45; Duri 2018 *African Human Rights YB* 328; Gwintsa "Challenges of Establishing Financial Intelligence Units" 51.

1206 See section 76 of the *FSR Act*.

and other relevant role players to fulfil its mandates.[1207] Zimbabwe could draw a lesson from South Africa in this regard and enact provisions to mandate the FIU to cooperate and collaborate with the RBZ, the NPAZ, the SECZ, the ZIMRA, the ZACC and other role players to fulfil its mandates.

Like in Australia, South Africa, and the UK,[1208] the researcher also recommends that the *MLPC Act* should regulate international cooperation between the FIU, the RBZ, and other cross-border financial role players.[1209] This follows that money laundering is a global phenomenon that requires collaborative platforms and collective ability to combat. Therefore, the researcher submits that AML mechanisms require alignment with international and cross-border frameworks to strengthen their effectiveness and robustness. The *MLPC Act* should be amended to mandate the FIU and the RBZ to employ cross-border collaboration to enhance money laundering detection.[1210] It should also be noted that the scope and ambit of such cooperation should be expressly governed by the *MLPC Act* to prevent gaps and flaws that emanate from cumbersome coordination.[1211]

Accordingly, the researcher recommends that the *MLPC Act* should provide measures for cooperation and collaboration between the FIU and the RBZ, the NPAZ, the SECZ, the ZIMRA, the ZACC to combat money laundering in Zimbabwe and collaboration between the FIU and other cross-border financial role players such as the AUSTRAC, the FIC and the NCA.

i) The FIU Should Adopt Educational and Awareness Programs to Enhance the Regulation of AML Measures in Zimbabwe

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1207 Section 76 of the *FSR Act*; Van Niekerk and Van Heerden 2020 *SALJ* 112; Qumba 2022 *SALJ* 80.

1208 See para 8.6 above.

1209 Recommendation 2 of the FATF Recommendations; Nanyun 2020 *Journal of Money Laundering Control* 6; Hossain AT and Kryzanowski L "Global Financial Crisis after Ten Years: A Review of the Causes and Regulatory Reactions" 2019 *Managerial Finance Journal* 904, 905; Georgosouli A "The FCA, the PRA and the Idea of Resilience as a Narrative for Policy Coherence" 2012 *SSRN Working Paper Series* 5, 9.

1210 Section 76 of the *FSR Act*; See related comments by Van Niekerk and Van Heerden 2020 *SALJ* 115; see related comments by Ondiege 2018 *Journal of Financial Crime* 85; Maguchu 2021 *Journal of Money Laundering Control* 310.

1211 Godwin and Schmulow 2015 *SALJ* 757; Van Niekerk and Van Heerden 2020 *SALJ* 113; Qumba 2022 *SALJ* 80.

AML education and awareness programs are strategies planned to educate the community, organisations and financial institutions on the risks and effects of money laundering on the financial markets and economic activities.[1212] There are no initiatives or education awareness programs in place regarding money laundering and AML measures in Zimbabwe.[1213] Education programs on money laundering and related offences are essential for raising awareness and understanding of illicit activities so as to report any suspicious activities and assisting perpetrators to commit money laundering without being aware that they are committing a crime. Zimbabwe could draw a lesson from the initiatives employed through the Financial Sector Conduct Authority (FSCA) in South Africa. The *FSR Ac*t in South Africa introduces financial consumer education and standards for consumer education to ensure that financial consumers and market participants are educated on, *inter alia*, financial crime and illicit activities.[1214] The National Consumer Financial Education Committee (NCFEC) was established to fulfil this purpose.

Accordingly, the researcher recommends that the FIU could consider implementing educational and awareness programs for financial institutions, market participants and financial customers to ensure that all relevant stakeholders have an understanding of money laundering and what it entails.

j) Establishment of Specialised Money Laundering Courts in Zimbabwe

Many jurisdictions have established specialised courts that function parallel to general courts.[1215] Specialised courts are established to deal with specific matters or to address

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1212 See related comments by Chitimira H "Overview of Selected Role-Players in the Detection and Enforcement of Market Abuse Cases and Appeals in South Africa" 2014 Speculum Juris 108, 113; also see Crozier B *Legal Ethics: A Handbook for Zimbabwean Lawyers* (Legal Resources Foundation, Harare 2009) 106.

1213 Maguchu 2018 *African Security Review* 279; see related comments by Oke 2016 *Journal for Money Laundering Control* 45; Duri 2018 *African Human Rights YB* 328; Gwintsa "Challenges of Establishing Financial Intelligence Units" 51.

1214 Section 56 of the *FSR Act*; see Magau PT "The regulatory Nexus between the Promotion of Financial Education and Financial Inclusion in Enhancing Consumer Protection in South Africa" 2023 *De Jure Law Journal* 220, 228; Chitimira H and Magau P "A Legal Conspectus of Some Role-Players in the Development of Financial Education in South Africa" 2022 *EIRP Proceedings* 360, 365.

1215 See related discussion by Musiza C "Jurisdictional Issues in Intellectual Property Disputes in Zimbabwe" 2019 *South African Intellectual Property Law Journal* 99, 103; Kajongwe C, Chinyena E, Chitanga P and Mataba AT "Dynamic of Labour Court in Dispute Settlement in

specialised jurisdictional issues such as financial crime. Accordingly, procedures in specialised courts are tailor-made to suit the needs of the specific case and matters are facilitated by presiding officers with relevant expertise.[1216] This entails that money laundering matters will be prosecuted by experienced personnel. Specialised courts also guarantee speedy and timeous proceedings as they are not swamped like the general courts. Unlike in the UK where there is a Crown Sentencing Court that specifically deals with organised crimes, there are currently no specialised money laundering courts in Zimbabwe.[1217] In this regard, the researcher recommends that the Zimbabwean legislature follows the UK example and establish specialised money laundering courts to ensure the effective and timeous prosecution and investigation of money laundering cases in Zimbabwe.

In *S v Telecel Zimbabwe Ltd*[1218] the need for specialised money laundering courts was apparent. In this matter Telecel, a mobile network operator (MNO) company pleaded guilty to the charge of obtaining foreign currency from an unlicenced foreign currency trader in violation of the *Exchange Control Act.*[1219] Telecel was not prosecuted for money laundering, instead the court relied on a statutory mandatory sentence. The researcher argues that the court should have made an inquiry into the elements of money laundering in this matter, but Telecel was found guilty of a lesser offence. The court held that Telecel was guilty of breaching the law out of necessity for survival.[1220] The researcher submits that this matter shows poor investigation and prosecution of money laundering matters in Zimbabwe. Therefore, the researcher recommends the establishment of specialised courts, facilitated by expert judges and presiding officers to ensure accuracy in the investigation and prosecution of money laundering cases in Zimbabwe.

Zimbabwe: An Analysis of the Effectiveness of Various Methods of Dispute Settlement in Labour Relations" 2020 *Journal of Popular Education in Africa* 48, 52.

1216 See related comments by Musiza 2019 *South African Intellectual Property Law Journal* 105; Kajongwe et al 2020 *Journal of Popular Education in Africa* 56.

1217 Pina-Sanchez J and Linacre R "Sentence Consistency in England and Wales: Evidence from the Crown Court Sentencing Survey" 2013 *British Journal of Criminology* 1118, 1120; Walsh C "The Trend Towards Specialisation: West Yorkshire Innovations in Drugs and Domestic Violence Courts" 2001 *The Howard Journal of Criminal Justice* 26, 29.

1218 *S v Telecel Zimbabwe Ltd* HH55/2006.

1219 *Exchange Control Act*, section 5(1)(a)(i).

1220 *S v Telecel Zimbabwe Ltd* para 87.

9.4 Conclusion

The current AML regulatory framework provided under the *MLPC Act* is inadequate and not robust enough to prevent money laundering activities in Zimbabwe. This thesis has established that the AML framework in Zimbabwe needs an overhaul to adequately curtail money laundering in Zimbabwe. The AML regulations under the *MLPC Act* do not conform to the global AML standards set by the FATF to curb money laundering in all its member states. This could be a result of lack of cooperation arrangements between the RBZ, the FIU, and cross-border financial role players, the lack of adequate resources to implement AML measures in Zimbabwe, rampant corruption in Zimbabwe financial sector, inconsistent enforcement mechanisms and the lack of accountability measures. Corruption remains a challenge that hinders the effective implementation of AML measures in Zimbabwe.[1221] The current status of Zimbabwe's economy, that is characterised by a largely informal financial sector also renders the AML measures under the *MLPC Act* ineffective. Some AML measures regulated under the *MLPC Act* such as the customer due diligence procedures cannot be effectively implemented without transactions concluded in the formal financial sector.[1222]

The researcher submits that inconsistent implementation of AML measures under the *MLPC Act* renders the AML measures ineffective. This follows that the effectiveness of AML regulations depends on stringent enforcement mechanisms that foster compliance by relevant financial sector role players and financial institutions. The lack of enforcement measures under the *MLPC Act* results in non-compliance and the ineffectiveness of AML regulations in Zimbabwe. Therefore, the need for adequate AML regulations enforcement measures cannot be overemphasised. The law enforcement authorities such as the ZRP should ensure that financial institutions comply with AML regulations. The role of lawyers and accountants as gatekeepers should be well-established without jeopardising their

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1221 Mugarura 2010 *Journal of Money Laundering Control* 275; Mugarura 2016 *Journal of Financial Regulation and Compliance* 78; see related comments by Duri 2018 *African Human Rights YB* 328; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55.

1222 See section 15 of the *MLPC Act*; Duri 2018 *African Human Rights YB* 328; Fundira "Money Laundering in Zimbabwe, 2004 to 2006" 55; Gwintsa "Challenges of Establishing Financial Intelligence Units" 51.

ethical obligations. In this regard, several amendments should be made to ensure the effectiveness of the *MLPC Act* to combat money laundering in Zimbabwe.

The researcher hopes that the recommendations made in this thesis can be taken into consideration by policymakers and other relevant stakeholders to enhance the enforcement and regulation of AML measures in Zimbabwe. The curbing of money laundering in Zimbabwe is essential for economic development and boosting investor confidence to improve Zimbabwe's participation in global economic activities.

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List of Abbreviations

AFP	Australian Federal Police
AFU	Asset Forfeiture Unit
AI	Artificial Intelligence
AML	Anti-Money Laundering
APRA	Australian Prudential Regulation Authority
AUSTRAC	Australian Transaction Reports and Analysis Centre
BOE	Bank of England
BUPSMLU	Bank Use Promotion and Suppression of Money Laundering Unit
CDD	Customer Due Diligence
CRC	Costigan Royal Commission
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
FATF	Financial Action Task Force

FCA	Financial Conduct Authority
FIC	Financial Intelligence Centre
FIU	Financial Intelligence Unit
HMRC	HM Revenue and Customs
MOU	Memorandum of Understanding
NPAZ	National Prosecuting Authority of Zimbabwe
NPAZ	National Prosecuting Authority Zimbabwe
OECD	Organization for Economic Cooperation and Development
PEP	Politically Exposed Persons
PER/PELJ	Potchefstroom Electronic Journal
PRA	Prudential Regulation Authority
RBA	Reserve Bank of Australia
RBZ	Reserve Bank of Zimbabwe
SALJ	South African Law Journal
SARB	South African Reserve Bank
STR	Suspicious Transactions Reports
UK	United Kingdom
ZACC	Zimbabwe Anti-Corruption Commission
ZIMRA	Zimbabwe Revenue Authority
ZRP	Zimbabwe Republic Police
ZSE	Zimbabwe Stock Exchange

List of Figures

Figure 1: Anti-Money Laundering Regulatory Model for Combatting Money Laundering in Zimbabwe.