and other intangible or incorporeal property wherever situated and includes any interest in such property.”

41 PPMLA, section 18.
42 Ibid, section 17.
43 Anti-Corruption Commission Act, Section 24.
45 Narcotic Drugs and Psychotropic Substances Act, 1993, sections 31–49.
46 Ibid, section 22.
47 The Financial Action Task Force Forty Recommendations became the internationally accepted anti-money laundering standard in 1996 after having been endorsed by more than 130 countries.

References


CHAPTER 3
MONEY LAUNDERING IN ZIMBABWE, 2004 TO 2006

Bothwell Fundira

Introduction

This chapter looks at money laundering in Zimbabwe between 2004 and 2006. It reviews the typologies of money laundering observed during this period and critically examines the responses that have occurred in the country. Anti-money laundering regulations include directives issued by regulatory authorities such as the central bank and a framework introduced through relevant statutes. The chapter also examines the adequacy of the country’s preventive and enforcement mechanisms. Finally, it considers the measures to facilitate international co-operation to combat money laundering.

Background

The causes and nature of money laundering in Zimbabwe need to be seen in the context of the country’s social, political and economic environment. This is dominated by an economy that is under persistent siege from internal and external forces. The most visible impact is the country’s rapidly falling currency: at the end of August 2006, inflation reached 1,204.6%, the highest in the world. There are no signs of a significant improvement in this rate as the economic situation continues to worsen.

Since 2003 banknotes have been unable to keep pace with inflation and as a result bearer cheques (which were meant to be temporary) were introduced in order to meet the ever increasing demand for cash. Bearer cheques have created their own legal and practical problems, some of which are connected to money laundering. The security features on the bearer cheques are inadequate and there have been several reports of counterfeit substitutes being used. The
illegality of taking bearer cheques out of the country was successfully challenged in the matter of Richard Floyd Mambo and Nigel Mahoko.1

The introduction of bearer cheques epitomises the extent of chaos in the economy and has also provided new opportunities for illegal speculative conduct and money laundering. The country’s rampant inflation has created an environment where capital is invariably eroded if it is invested in the traditional productive sector. Individuals and corporations stand to gain more by dealing in the illegal markets, especially the foreign exchange market. It is common cause that large corporate entities, including organisations affiliated to the fiscus, have raised foreign currency in the illegal markets in order to survive. To do this they have typically falsified records, which creates a fertile ground for a wide range of illegal activities since the audit trail is conveniently obliterated.

The use of the banking system is a challenge in Zimbabwe. In August 2006 the Governor of the Reserve Bank launched what he called Project Sunrise. Individuals and organisations were given a window period of 21 days to 31 August 2006 to exchange old bearer cheques for new ones. When individuals wished to deposit amounts of more than Z$100,000,000 (old currency, equivalent to UD$1,000)2 they had to produce proof of the source of the funds. Earlier, the governor had claimed that of the Z$43 trillion issued by the bank, only Z$10 trillion (or less than 25%) was in circulation in the official financial system. At the end of the exercise, Z$10 trillion worth of bearer cheques could not be accounted for, suggesting that the funds were in the underground markets and had never resurfaced. It has long been evident that a lot of money is circulating in the informal and sometimes illegal markets, which is perhaps not surprising given the high rate of inflation and the average interest rates of less than 100% per annum.

More worrying is the fact that there are already documented cases of forged bearer cheques being used in retail outlets.3 The terrain in Zimbabwe is thus fertile for money laundering to take place and flourish.

In its analysis of money laundering activities during the period 2004 to 2006, this chapter follows Reuter and Truman (2004) in distinguishing three kinds of scenarios. The first is where the institution involved was corrupt from inception, or corrupted by subsequent changes in ownership or changes in the economic environment. The use of such companies to launder the proceeds of crime is inevitable. The second scenario involves institutions with “willing or rogue employees who provide [money laundering] services on an ad hoc and non institutionalised basis”.4 In other words, the leadership of the institution is not corrupt, but the institution has been infiltrated by corrupt insiders. The third scenario consists of institutions that facilitate money laundering transactions unwittingly, either because they do not have mechanisms to detect money laundering or because of dereliction in applying the mechanisms that do exist.

Money laundering – the analytical framework

The anti-money laundering pillars discussed in the introduction to this monograph will be used as the analytical framework to analyse money laundering in Zimbabwe.

Anti-money laundering mechanisms should ideally comprise structures of prevention, enforcement and international co-operation. The table below shows the anti-money laundering pillars as understood worldwide at the moment.

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The extent to which these structures exist in Zimbabwe can best be examined against the background of the typical money laundering typologies in the country.

Typical money laundering activities in Zimbabwe, 2004 to 2006

The banking sector scandals

At the end of the chapter there is an analysis of whether the new infrastructure will be able to prevent similar occurrences.

Events in the financial services sector indicate that financial institutions are at the very core of activities conducive to money laundering. A critical point for the banking sector was the maiden monetary policy statement by the then newly appointed governor, Gideon Gono, on 18 December 2003. This statement changed the financial landscape in the country overnight, as it instructed banks to refrain from undertaking non-core activities and withheld liquidity support for banks that engaged in such activities. In particular, banks were to stop participating in the illegal foreign exchange market. The monitoring of banks and financial institutions by the central bank was to be more stringent, and asset management firms that had hitherto been unregulated now had to obtain licences from the central bank after a rigorous screening process.

As already indicated, institutions can be classified into three categories. The first consists of those whose business models are consistent with money laundering activities right from the outset. An example of this is ENG Capital Asset Management (ENG), whose promoters set up a pyramid scheme and offered the gullible investment public unrealistically high interest rates in order to lure depositors. The promoters’ intentions in setting up this asset management company appeared to be sinister from the start. The role of lawyer Oscar Ziweni in misappropriating funds from the institution added an extra dimension to the money laundering puzzle. He tried to use his privileged position to advantage but was charged in his personal capacity. Some of these institutions were set up with good intentions but were taken over by other managers and from there on money laundering took place. Century Discount House was taken over by ENG, and was then used to raise funds from the public. The net result was that depositors lost their funds, which were applied to non-core activities.

The second category of institution comprises those that are set up legitimately and operate as such for a long period. Corrupt employees then see an opportunity to make money by engaging in money laundering activities. First Mutual, which had been in operation for decades, demutualised in 2004. A special-purpose vehicle was set up by management to enable them to subscribe for 20% of the new company’s equity. The case study below illustrates how back-to-back financial arrangements were set up with third parties in order to finance management. As a result, First Mutual policy-holders lost money, as did depositors in Royal Bank. Investors in First Mutual Asset Management lost their investments because the company had to be liquidated as a result of the back-to-back loans.

The third category involves institutions that unwittingly facilitate the laundering of funds. Century Discount House was disposed of to ENG because the Century Group needed liquidity to finance its operations. After the takeover, ENG used Century Discount House (whose former parent company was listed on the Zimbabwean stock exchange) to obtain deposits, which were used in non-core activities, including the purchase of shares in Century Holdings. Extravagant gifts were paid to dealers in the market in order to attract deposits to the institution.

National Discount House (NDH) extended deposits to Ellan Susie and ENG in an arrangement that appears to have been done in good faith, but ran into problems as indicated in the following case study.

Case study: ENG

Within days of the monetary policy statement of December 2003, serious cracks developed in the entire financial market. The ENG case study graphically shows how money laundering took place in the banking sector and affected no fewer than six financial institutions. In these cases the laundering basically occurred through the abuse of depositors’ funds.
After the December 2003 monetary policy statement, ENG placed advertisements in the press to the effect that their business plan would not enable their company to survive the economic challenges introduced by the new economic order. Investors who had placed money with the institution in the hope of above-average market returns were advised in the advertisements that their funds would be converted to equity.

The founding directors, Gilbert Muponda and Nyasha Watyoka, were arrested by the police for fraud. Their lawyer, Oscar Ziweni, was ‘specified’ in terms of the Prevention of Corruption Act. He disappeared for some time but resurfaced after his relatives paid Z$124 million (old currency) to some of the creditors of ENG. He died a few months after his reappearance and so a criminal case against him was never concluded. Ordinarily, lawyers are protected by lawyer-client confidentiality, but in this particular case the lawyer was specified for not handing over money that belonged to creditors.

At about the same time, First Mutual – the second largest insurance company after Old Mutual – demutualised. The management of First Mutual formed a company, Capital Alliance (Private) Limited (hereinafter referred to as Capital Alliance) in order to purchase a 20% equity share in First Mutual. ENG became one of the largest investors in Capital Alliance. It is significant that First Mutual Asset Management invested an amount in ENG that was equivalent to the amount that led to the latter’s demise.

Royal Bank is being sued by First Mutual for more than US$60 billion (old currency.) Because other efforts failed, First Mutual Asset Management applied for the liquidation of Royal Bank. In order to protect itself against the inevitable run on deposits, Royal Bank issued press advertisements to the effect that the amount claimed was security for funds invested on behalf of the management in Capital Alliance. On 4 August 2004 at 18:00, Robert McIndoe of the chartered accountancy firm Ernst and Young was appointed curator of Royal Bank. On the same day, the acting Minister of Finance placed First Mutual under the control of KPMG, another firm of chartered accountants. KPMG were to be given the task of investigating the company’s affairs, while the powers of management of First Mutual were placed under the control of the Commissioner of Insurance. During this period the company could not underwrite new insurance policies and the powers of all directors and management personnel were removed.

The top management of First Mutual are accused of setting up back-to-back arrangements with third parties to finance the purchase of shares from the company and indirectly using depositors’ funds as collateral security. This is what is at the centre of a court case between First Mutual Limited and Royal Bank. Like other institutions, NDH placed money on deposit with ENG. It also lent some money to Ellan Susie, an unregistered financial institution. NDH could not pay depositors for some time and was closed for more than a year, after which a reconstruction scheme was implemented, which included converting depositors’ funds to equity.

Century was a relatively new diversified financial services group with interests in leasing, asset management and commercial banking. It also had a discount house operation. In order to recapitalise, Century sold the discount house to ENG, but for more than six months it continued to operate as Century Discount House as it had not obtained regulatory approval to transfer its ownership to ENG. The directors of ENG purchased a significant number of Century Discount House shares, and when it was placed in liquidation they owned more than 20% of the publicly quoted Century Holdings Group. The management of Century Discount House were charged with negligence and acting contrary to their duties in terms of the Companies Act by letting the new owners divert funds for speculative activities.

In his monetary policy statement of 27 July 2004, the Governor of the Reserve Bank indicated that there were 41 banking institutions in the country, of which five were under curatorship, two were in liquidation, and four were under the Troubled Banks Fund. The reasons for these alarming figures are indicated above.
The same policy statement indicated that up to June 2004, an amount of US$778.6 million from export earnings had gone through the normal banking channels compared to US$301 million for the whole year to 31 December 2003.

**Prevention, enforcement and international co-operation**

The cases cited above involve actual or suspected money laundering offences. It is significant that none of the suspects has been charged with money laundering. This is mainly because many of the cases occurred in 2004 before comprehensive money laundering legislation had been enacted, but also because the law enforcement agencies were not familiar with money laundering and may therefore have opted to avoid prosecution.

The cases illustrate that international co-operation is weak because in all of them there was no mutual assistance to ensure that suspects were brought to book. One of the suspects is a senior lecturer at a prestigious university in South Africa. A senior official in the Attorney-General’s office confirmed that no efforts had been made to obtain assistance from South Africa to bring this individual and others back to Zimbabwe to stand trial.

**The prevention pillar**

As indicated in the Introduction, the prevention pillar comprises legislation and regulations that are enacted or issued from time to time. Its purpose is to prevent the commission of money laundering by both individuals and organisations. The following legislation has been passed in Zimbabwe to criminalise money laundering:

1. The Serious Offences (Confiscation of Profits) Act criminalised money laundering as far back as the early 1990s. According to section 63 of the Act, a person or body commits money laundering if he or it engages directly or indirectly, in a transaction, whether in or outside Zimbabwe, which involves the removal into or from Zimbabwe, of money or other property which is the proceeds of a crime: or receives, possesses, conceals, disposes of, brings into or removes from Zimbabwe, any money or other property which is the proceeds of crime: and knows or ought to have reasonably known that the money or other property was derived or realised, directly or indirectly from the commission of an offence.

   This fails to criminalise money laundering appropriately. Goredema (2003) defines money laundering as “[a]ll activities aimed at disguising or concealing the nature or source of, or entitlement to money or property derived from criminal and/or unlawful activities”. Section 63 of the Serious Offences (Confiscation of Profits) Act is too general and as a result it is difficult to achieve a successful prosecution under the Act. Money laundering typically involves the placement of the proceeds of an underlying offence, followed by moving the proceeds into a number of accounts (if deposited in a financial institution), and integrating them in the legitimate economy to avoid detection. The simplistic definition of money laundering in section 63 renders the Act outmoded in terms of preventing money laundering. In addition, the Act does not identify accountable institutions or specify reporting obligations.

2. The Prevention of Corruption Act is important because it criminalises corruption, which is typically a predicate offence for money laundering. The Act provides for the appointment of a special investigator who must carefully examine the affairs of the suspect individuals or organisations and report to the minister. However, although corruption is usually a predicate offence for money laundering, the Act does not deal with money laundering.

3. The Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) Regulations 2004 were ostensibly issued to facilitate investigations in cases of economic crime. Because money laundering falls into the category of economic crime the regulations are used as part of the anti-money laundering prevention pillar.

   The following explanatory note aptly summaries the aim and philosophy of the regulations:

   The amendment to the Criminal Procedure and Evidence Act effected by these regulations is intended to facilitate the investigation and prosecution of crimes affecting the economic interests of Zimbabwe. Section 2 of the regulations replaces the proviso to section 32(2) of the Criminal Procedure and Evidence Act to the fol-
lowing effect: in order to detain someone for seven days’ detention without possibility of bail for crimes affecting the security or economic interests of Zimbabwe, the court before which the person is brought must be satisfied that he or she was arrested in any of the circumstances specified in paragraph (a), (b) or (c) of subsection (1) of section 25 of the Criminal Procedure and Evidence Act, that is: the person must have committed the offence in the presence of the arresting officer; or (b) the arresting officer had reasonable grounds to suspect the person arrested of having committed the offence in question; or (c) the arresting officer found the person attempting to commit the offence, or clearly manifesting an intention to do so. If the court is so satisfied, the fact that there is no prima facie case against the accused at the time when the order or warrant for the further detention is sought is irrelevant.

The effect of the regulations was to enable the police to detain individuals involved in corruption, money laundering, illegal grain transactions and foreign exchange transgressions for a period of up to 21 days in order to complete their investigations. The courts were stripped of the power to release the suspects on bail or otherwise. The regulations have been criticised because they encourage arrest in order to investigate. In practice, individuals have been held for lengthy periods without the option of bail, only to be released for lack of evidence.

4. The Bank Use Promotion and Suppression of Money Laundering Act (Act 2 of 2004) was passed to consolidate legislation and regulations that were fragmented to the extent that they negated both the prevention and the enforcement of the anti-money laundering regime. This is why it refers in some sections to the Serious Offences (Confiscation of Profits) Act concerning the implementation of the law. To date it is the most comprehensive piece of legislation in the country on money laundering. The Act tries to promote the use of the banking system so that an audit trail can be established to detect money laundering.

The Act (section 2) defines ‘money laundering’ as follows: “money laundering or laundering the proceeds of a serious offence means any act, scheme, arrangement, device, deception or artifice whatsoever by which the true origin of the proceeds of any serious offence is sought to be hidden or disguised.”

The Act names the accountable institutions that are required to observe ‘know your customer’ principles, and it sets up the Financial Intelligence Inspectorate and Evaluation Unit (FIIE Unit), the repository for money laundering information. It also provides for witness protection. Section 4 of the Act gives the purpose of the FIIE Unit as being to encourage the use of non-cash transactions, to receive suspicious transactions and report these to law enforcement agencies, to keep statistics of suspicious transactions, and to issue guidelines to financial institutions from time to time on how they should operate.

The first schedule to the Act lists the following as designated institutions:

- a financial institution, other than the Reserve Bank;
- a person registered as an insurer in terms of the Insurance Act (Chapter 24:07);
- a person registered as a legal practitioner in terms of the Legal Practitioners Act (Chapter 27:07);
- a person registered as a public accountant in terms of the Public Accountants and Auditors Act (Chapter 27:12);
- a person registered as an estate agent in terms of the Estate Agents Act (Chapter 27:05);
- a cash dealer;
- a moneylender;
- a pension fund registered in terms of the Pension and Provident Funds Act (Chapter 24:09);
- a person carrying on the business of import/export;
- a person carrying on the business as a manager or trustee of a unit trust or other collective investment scheme; and
- a person, other than a financial institution, who carries on the business, whether formally or informally, of providing money transmission services.

It is noteworthy that casinos are excluded from the list of accountable institutions. These need to be added to the schedule.

The designated institutions are required to apply ‘know your customer’ principles. This they must do by having sight of an identity document in the case of an individual, a certificate of incorporation in conjunction with a tax clearance return in the case of a company, and a certificate of registration in the case of other organisations. They must also establish that
Designated institutions are required to keep full details of the transactions they enter into with their customers. Section 25(e) emphasises that full details of the transaction are required, particularly where negotiable instruments are involved.

The designated institutions have to report all suspicious transactions within three days of the transaction. The institutions are required to appoint an officer who is responsible for collating all money laundering information. The officer must report suspicious transactions to the money laundering unit at the Reserve Bank. In line with witness protection principles, no employee shall be liable for any sanction whatsoever for reporting a transaction to the authorities if such a report is made in good faith.

The Director of the FIIE Unit is appointed by the Governor of the Reserve Bank. The unit comprises Reserve Bank employees, seconded Ministry of Finance personnel from the National Economic Conduct Inspectorate and employees of the Zimbabwe Revenue Authority. Expertise is drawn from different sources of law enforcement in order to achieve comprehensive investigations. The inspectors have the right to visit individuals and organisations to inspect documents unimpeded. Any individual, organisation, trader or parastatal that hinders or obstructs inspectors in their duties is liable to a fine or lengthy imprisonment.

5. The Exchange Control (Money Transfer Agencies) Order seeks to regulate the transfer of money from Zimbabweans in the diaspora. Money transfer agencies effectively took over the role that was played by bureaux de change, which were banned in 2002 on the pretext that they were being used to support illegal foreign currency activities. In October 2006 all money transfer agencies were closed by the Central Bank, with the exception of Homelink, the agency operated by the central bank.

It is noteworthy that bureaux de change and money transfer agencies were banned because they were considered to be prime conduits for illegal foreign currency activities. In other words, they were deemed to be facilitators of money laundering and not part of the preventive pillar to combat it.


In terms of the guidelines, which were intended to complement the Act, information communicated between lawyers and their clients continues to be protected from disclosure to third parties. Each institution has to appoint a transactions reporting officer and must inform the Reserve Bank through the FIIE Unit of the contact details of the officer. Banks are liable to pay a penalty of Z$1 million (US$4,000) for not following ‘know your customer’ principles and Z$5 million (US$20,000) for not reporting suspicious transactions. Professional intermediaries are required to indicate categorically that they know their clients when opening accounts. The Regulations require the internal audit function for financial institutions to be staffed by qualified personnel. Banks and cash dealers are required to appoint a compliance officer at management level whose job is to ensure ongoing compliance with regulations against money laundering and the financing of terrorism. Where a professional intermediary is used to open an account, banks have to identify the intermediary, who must give an undertaking that he/she has identified his/her client and obtained particulars of the client’s identity. ‘Know your customer’ principles also extend to correspondent banks. The regulations require due diligence to be exercised in respect of politically exposed persons (PEPS). Lastly, there must be ongoing vigilance of existing clients in order to discern and report suspicious transactions.

The enforcement pillar

1. The Serious Offences (Confiscation of Profits) Act empowers the police to investigate money laundering and enables them to confiscate and, where relevant, to secure the forfeiture of the proceeds of money laundering activities. In addition, the Act empowers investigating officers to obtain information from financial institutions about a person’s or an organisation’s financial status or about transactions that are important for their investigations.

The Act provides for the lifting of the corporate veil in circumstances where individuals use companies to perpetrate offences. Furthermore, it provides for the seizure, forfeiture and confiscation of tainted property.

The Serious Offences (Confiscation of Profits) Act falls short in that it does not appropriately define money laundering and the penalties it imposes...
are small in relation to the crimes that have been committed. As a result, the Act is not a deterrent. On the positive side, however, it provides for the investigation, seizure and confiscation of the proceeds of crime, which is a good starting point for deterring people from committing money laundering.

2. The Prevention of Corruption Act criminalises corruption, which is a major predicate offence for money laundering. Individuals and organisations suspected of having committed a crime can be ‘specified’ by the Minister of Special Affairs in the President’s Office Responsible for Anti-Corruption. This power used to be vested in the Minister of Justice, Legal and Parliamentary Affairs. The minister can specify individuals or organisations on the basis of suspicion that they have been involved in illegal activities that include corruption. This is done in order to facilitate investigations because people who are specified are stripped of the power to deal in their own right. Once a person is specified, the minister is required to appoint a special investigator who will look into the matter in order to give substance to the suspicion. The investigator has the power to search premises, collect information from witnesses under oath and examine bank records belonging to the specified person or his/her spouse or those associated with him/her.

The relationship between the investigator and the police is blurred. It has been argued that the special investigator could undermine the carriage of justice through lack of expertise in collating information for a successful prosecution or by being corrupt himself. The Act does not clarify procedures for sharing information with the police in circumstances where the police were investigating the matter before the appointment of the special investigator.

3. According to the Bank Use Promotion and Suppression of Money Laundering Act, an inspector or police officer has the power to detain cash where he believes there is reasonable suspicion that an offence has been perpetrated. Of particular significance is the detention of cash that is used to buy or sell foreign currency by individuals or organisations that are not authorised dealers.

The Act also indemnifies designated institutions, officers, employees or other representatives of the institutions from lawsuits arising from information given in the ordinary course of business and in good faith relating to money laundering. The identity of the designated institution cannot be disclosed in court or without the consent of the institution. Staff of the Reserve Bank and the FIIE Unit are similarly indemnified. This introduces a modicum of witness protection to the country’s anti-money laundering measures.

4. In 2004 the Presidential Powers (Temporary Measures) (Reconstruction of State-Indebted Insolvent Companies) Regulations were put into effect to enable the Minister of Justice in conjunction with the Minister of Finance to issue ‘reconstruction orders’ for state-indebted companies that are unable to repay the state as a result of fraud, mismanagement or any other cause. A reconstruction order can also be issued in circumstances where the state has become or is likely to become liable for payment in terms of a guarantee it has issued for a distressed organisation. The regulations are part of the enforcement pillar of money laundering. The Minister of Justice is entitled to appoint an administrator to run the company in the best interests of all stakeholders. At the same time there is provision for lifting the veil in circumstances where individuals have used the company for fraudulent personal gain.

It has been argued that the regulations were enacted in order to expropriate the assets of one Mutumwa Mawere, purchased by virtue of a government guarantee. The assets comprised Shabanie Mashaba Mines (SMM) and related operations. The companies are involved in the mining and processing of asbestos.

Case study: Mutumwa Mawere

Mutumwa Mawere was charged with allegedly siphoning funds out of the country using his companies in Zimbabwe and South Africa. As a result, the companies under his control became insolvent. Afaras Gwaradzimba of AMG Global was appointed as the administrator of Mawere’s businesses.

The state alleges that African Associated Mines (AAM), of which Mawere is chairman and a substantial shareholder, violated exchange control regulations by failing to account for foreign currency received to the Reserve Bank as required by law. According to the state, the amounts involved are US$50,293,797.80, C$11,491,423.75 and ZAR19,350,170.80.
According to Reserve Bank regulations, companies are required to fill in Control Document 1 (CD 1), which confirms foreign currency charges and the proceeds received from a transaction, within 90 days of receiving payment.

Police have unsuccessfully tried to extradite Mawere from South Africa on allegations of the externalisation of foreign currency.

The regulations effectively provide for civil forfeiture and could be challenged for being in conflict with the Constitution of Zimbabwe, especially since the regulations have so far been applied in the case of only one individual.

International co-operation

The following international conventions and protocols are reviewed in order to identify gaps in achieving international compliance:

- the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention);
- the Southern African Development Community (SADC) Protocol Against Corruption (2001); and

Zimbabwe has ratified all these international instruments, but has not ratified the Convention for the Suppression of Financing of International Terrorism (1999). As UN Security Council Resolution 1373 (2001) covers the same issues as the convention, non-ratification makes no difference.

The protocols and conventions criminalise dealing in drugs, directly or indirectly. State parties are also required to outlaw the laundering of proceeds related to drug dealing.

The aim of the SADC Protocol Against Corruption (2001) is “[t]o promote and strengthen the development, by each of the State Parties, of mechanisms needed to prevent, detect, punish and eradicate corruption in the public and private sector”.

The United Nations Convention Against Transnational Organised Crime (2000) requires each member state to

institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions.

The United Nations Convention Against Corruption (2003) requires member states to have a comprehensive regulatory framework for banks and non-bank financial institutions. There is a need for customer and beneficial owner identification. State parties are required to put in place an infrastructure to detect the movement of cash and negotiable instruments across borders. Financial institutions are to keep records on the originators of electronic fund transfers.

The Vienna Convention advocates structures to facilitate the confiscation of the proceeds of drug offences. The convention also requires member states to put in place mechanisms to identify, trace, seize, confiscate and forfeit proceeds or property derived from crime. Structures should be in place to ensure that records of banking, financial or commercial transactions are made available or seized if they are connected to criminal activity.

The convention regards it as necessary to ensure that bank secrecy does not interfere with international criminal investigations. Offences related to drugs should be extraditable, and where there is no formal extradition treaty the convention should be used as the basis for the extradition.

The SADC Protocol Against Corruption requires member states to protect individuals who act in good faith and report acts that are related to
corruption. Each state party is required to put in place structures to enable the confiscation and seizure of proceeds emanating from corrupt activities. According to the protocol, acts of corruption should be treated as extraditable offences.

The Palermo Convention requires members to ensure that there are “administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering”. Like the other protocols and conventions ratified by Zimbabwe, it requires member states to adopt measures that allow for the confiscation and seizure of the proceeds of crime and the extradition of criminals as necessary. At the same time, there should be structures in place for the protection of witnesses and victims of criminal activities. The convention emphasises that “law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by [the] Convention” should receive thorough training in all aspects of money laundering.

Furthermore, it encourages member states to consider “the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering”. The Vienna Convention requires the parties that have ratified the agreement to co-operate closely with one another. More specifically, it encourages them to establish and maintain channels of communication; to co-operate with one another in conducting enquiries; to establish joint investigative teams; to provide, when appropriate, necessary quantities of substances for analytical or investigative purposes; to facilitate effective co-ordination between their competent agencies; to promote the exchange of personnel and other experts; and to assist one another to plan and implement research and training programmes.

The Palermo Convention requires the parties to “co-operate and exchange information at the national and international levels ...”. As in the Vienna Convention, parties are encouraged to develop structures to detect the movement of cash and other negotiable instruments across borders. They are also urged to “use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering”. State parties should “endeavour to develop and promote global, regional, subregional and bilateral co-operation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering”. Finally, the parties are required to provide each other with mutual legal assistance in investigations, prosecutions and judicial proceedings.

**Legislation in Zimbabwe that supports international co-operation**

The Criminal Matters (Mutual Assistance) Act (Chapter 9:06) deals with inter-territorial co-operation with other countries on criminal activities. The Minister of Justice, Legal and Parliamentary Affairs may, if satisfied that reciprocal arrangements have been made by another country to facilitate mutual assistance in criminal matters, by way of a statutory instrument declare that the provisions of the Criminal Matters (Mutual Assistance) Act apply to relations with that country. The minister can make specific modifications to the statutory instrument to govern relations with a foreign country. The mutual assistance listed in section 4 of the Act includes:

- obtaining of evidence, documents or other articles;
- providing documents and other records;
- finding witnesses or suspects;
- search or seizure;
- arranging for persons to give evidence or assist in investigations;
- forfeiting or confiscating the proceeds of crime;
- recovering fines and other financial penalties;
- freezing of assets that could be forfeited or confiscated, or that may be needed to satisfy pecuniary penalties;
- finding property that could be forfeited, or that may have to be sold to pay fines; and
- serving court documents.
The Act includes money laundering under offences as defined in section 63 of the Serious Offences (Confiscation of Profits) Act.

The international conventions to which Zimbabwe is a party basically provide for the criminalisation of money laundering and terrorism. They require accountable institutions to be defined, and stipulate that these institutions should observe know your customer principles. According to the conventions, there should be an infrastructure for the seizure and forfeiture of the proceeds of crime. A repository of financial intelligence information should be set up and a facility should be established for mutual assistance in criminal activities, including money laundering. Lastly, there is the need to put in place structures for witness protection.

*Regulations that tend to negate the anti-money laundering regime*

The Zimbabwe Investment Regulations were put in place to harness capital from potential hard-currency investors in the country. The possession of foreign currency is still virtually a passport to remain in the country: individuals in possession of US$1 million are granted permanent residence. An amount of US$300,000 will entitle sole proprietors to a three-year residence permit. If individuals with special skills have access to US$100,000, they will also be entitled to a three-year residence permit.

In order to improve the inflow of foreign currency, certain measures were taken that tend, ironically, to assist money laundering.

The Homelink system aimed at harnessing foreign currency from individuals was introduced in the quarterly monetary policy statement in April 2004. Under the scheme, individuals can bring money into the country and no questions will be asked about the source of the funds. Initially recipients of funds transmitted through the Homelink arrangement could elect to receive the money in hard currency. It was later discovered that the funds thus transmitted were making their way into the underground parallel market. As a result, funds received through the Homelink system are now converted at the ruling exchange rate into Zimbabwe dollars on the day of receipt. This change came about as part of the monetary policy review of 27 July 2004. In the monetary policy statement of 27 July 2004 the Governor of the Reserve Bank indicated that between 1 May and 19 July 2004, a total of about US$23 million had been received through money transfer agencies but had not entered the formal system.

In order to attract even greater foreign currency inflows, Zimbabweans in the diaspora were given the opportunity to invest in Zimbabwe a minimum amount of US$1,000 for a 12-month period. The bills earn an interest rate, payable half yearly, of LIBOR (London Interbank Offered Rate) plus six percentage points. The bills are guaranteed by the Reserve Bank, are tradable, and both interest and capital are fully remittable.

In other words, to attract much-needed foreign capital, the authorities can turn a blind eye to tainted money.

This brings into focus the question of whether the analytical framework referred to earlier is appropriate for a country like Zimbabwe, since the authorities are unlikely to put in place structures that would jeopardise the economic survival of the country. Regulations like the immigration regulations and the special dispensations for those working in the diaspora tend to be more important than the need to curb money laundering.

In October 2006 the Governor of the Reserve Bank issued new regulations to the effect that bank licences would henceforth be reviewed and issued annually, subject to the institutions practising, among other things, acceptable anti-money laundering measures.

The table below summarises the manner in which the legislative and other measures discussed tend to assist or hinder the prevention of money laundering.

**Conclusion**

Could the infrastructure created over the years have prevented some of the money laundering activities that took place during the review period? One of the reasons why money laundering occurred in the financial sector was that there was inadequate screening of the promoters of financial institutions. It was therefore possible for individuals who should not have been given a
**Table 2: Measures that facilitate or impede money laundering**

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Prevention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious Offences (Confiscation of Profits) Act</td>
<td>Makes money laundering an offence</td>
</tr>
<tr>
<td>Prevention of Corruption Act</td>
<td>Criminalises corruption, a major predicate offence for money laundering. Enables asset seizure, forfeiture and ‘specification’ of individuals and companies</td>
</tr>
<tr>
<td>Exchange Control (Money Transfer Agencies) Order</td>
<td>Promotes money laundering. Banned October 2006</td>
</tr>
<tr>
<td>Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) Regulations</td>
<td>Suspects can be detained for 21 days without right to bail to facilitate full investigation</td>
</tr>
<tr>
<td>Presidential Powers (Temporary Measures) (Reconstruction of State-Indebted Insolvent Companies) Regulations (Statutory Instrument 187 of 2004)</td>
<td>Takeover of shares and penalties for individuals</td>
</tr>
<tr>
<td>Criminal Matters (Mutual Assistance) Act</td>
<td>Recognises money laundering as a transnational crime</td>
</tr>
<tr>
<td>Reserve Bank Guidelines on Anti-Money Laundering and Combating Terrorism</td>
<td>Financial institution obligations elaborated</td>
</tr>
<tr>
<td>Investment Regulations</td>
<td>Tend to be potentially contrary to prevention</td>
</tr>
<tr>
<td>Bank Use Promotion and Suppression of Money Laundering Act</td>
<td>‘Know your customer’ regulations a key measure. Accountable Institutions spelt out. Penalties increased, though still inadequate. Setting up of FIIEU Unit as repository of financial intelligence a key anti-money laundering initiative</td>
</tr>
</tbody>
</table>

**Enforcement**

<table>
<thead>
<tr>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phenomenon not accurately defined. Paltry fines.</td>
</tr>
<tr>
<td>Corruption not linked to money laundering in Act</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>Detention acts as a deterrent, though the constitutionality of this has been challenged</td>
</tr>
<tr>
<td>Forfeiture, criminal penalties</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>Enforcement regulations extra-territorial</td>
</tr>
<tr>
<td>Penalties for defaulting institutions</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>Powers of the central bank for successful prosecution not clear</td>
</tr>
</tbody>
</table>

**Comments**

- Legislation inadequate to prevent, curtail or control money laundering
- Act deals with some aspects that are important to money laundering, but not explicitly. Administration of the Act now delegated to an authority not within the mainstream anti-money laundering regime. Financial penalties too small
- Money transfer agencies were banned because they were perceived to be facilitators of money laundering
- Good legal instrument to build on. Other relevant legislation needs to be incorporated into it
- Legislation limited to state-indebted companies. Legislation has only been used in one case. In apparent conflict with constitutional provisions
- Allows for extra-territorial investigation, enforcement and forfeiture
- Guidelines good for clarification
- Promote money laundering, unless subjected to monitoring by the FIIEU Unit
- Positive step towards comprehensive legislation for money laundering. However, needs to be beefed up with provisions for forfeiture and link with corruption as predicate offence to money laundering
banking licence to get one. In December 2003 the central bank took over the licensing and control of financial institutions, including asset managers. However, the licensing of financial institutions reverted to the Ministry of Finance in 2005. Despite this reversal, the central bank is doing a good job of monitoring financial institutions and it is unlikely that a financial institution licence will be granted to unsuitable individuals. Where there are individuals bent on money laundering within an organisation, the top management (screened) would be a deterrent, but this would not completely eliminate the problem. Though there has been a growing awareness of the harm that money laundering can cause, the general public is still not certain what money laundering is.

In conclusion, Zimbabwe has come a long way in putting together an anti-money laundering infrastructure. As a developing country, it is faced with the need to attract foreign capital. Unfortunately the general downward drift of the economy, coupled with some of the measures taken to resuscitate it, have compromised the effectiveness of the anti-money laundering regime. It is ironic, however, that despite rampant money laundering in the country, no prosecutions are taking place. Law enforcement agencies, including the police and the judiciary, are reluctant to prosecute those suspected of money laundering because this would take them out of their comfort zones. They are more comfortable prosecuting the predicate offences. It is therefore extremely important for the law enforcement agencies to be trained in the investigation and prosecution of money laundering. Training should be done in conjunction with the commercial banks and the central bank to take advantage of the practical experience that has been built up over the last few years.

Notes

1 A magistrate in Chinhoyi (a small town in Zimbabwe) ruled that bearer cheques were not currency in terms of exchange control regulations. The magistrate was deciding a case where Richard Floyd Mambo and Nigel Mahoko were facing charges of contravening the regulations by attempting to cross the border between Zimbabwe and Zambia without declaring Z$575 million (US$5,75 million) worth of bearer cheques concealed in their Toyota Corona vehicle. The accused successfully argued that the bearer cheques were not the official medium of exchange in terms of existing legislation. New regulations introduced in July 2006 have incorporated bearer cheques into the definition of currency.

2 As part of currency changes, the Zimbabwe dollar was divided by a factor of 1 000.

3 On 25 October 2006 Raphael Magate was arrested for purchasing fuel on the black market using fake bearer cheques. In a similar incident a shop owner in Borrowdale, Zoran Savic, was duped of $7 million after conmen bought a colour television using fake bearer cheques.


6 The authority to specify delinquent individuals and corporations was shifted by statutory Instrument 128 of 2006. This shift may create undesirable tension and inefficiency. It was logical to assign specification power to the Minister of Justice, as he or she presides over a ministry of which the Attorney-General is a senior member. Police traditionally work closely with the Attorney-General’s office. The functional relationship between the police, the FIIE Unit, the Attorney-General and the Minister of Special Affairs in the President’s Office Responsible for Anti-Corruption is not as well streamlined. The roles of these bodies still need clarification in order to improve the administration of justice.


9 Ibid.

10 Ibid.

11 Ibid.

12 Ibid.

13 Ibid.

14 Ibid.
CHAPTER 4

CONFRONTING MONEY LAUNDERING IN SOUTH AFRICA: AN OVERVIEW OF CHALLENGES AND MILESTONES

Charles Goredema

Introduction

The website of the East and Southern African Anti-Money Laundering Group (ESAAMLG) sets out the expected impact of adopting and implementing measures against money laundering and the financing of terrorism. As part of the argument for advocating the implementation of a three-year strategic plan covering 2005 to 2008, ESAAMLG (2005) claims that

[The benefits of implementing these measures are great and include the increased stability of a country’s financial sector, the potential for increased credit-worthiness and greater investment, as well as providing law enforcement with additional tools in order to protect countries from the negative effects of crime and the activities of criminal syndicates. These measures will lead to the financial institutions and others becoming more robust and better able to participate in the global financial and trading systems.]

This claim, which has an implicit development orientation, addresses itself to four sectors – policy makers, law enforcement agencies, financial institutions and the public, and assigns to each a stake in combating money laundering. At the same time, it sets benchmarks for evaluating the impact of the measures comprising the strategic plan. Rather controversially, the statement appears to attribute financial instability and other manifestations of the development crisis to criminal syndicates, specifically to money laundering. It is not the purpose of this chapter to debate the validity of what is certainly a questionable assertion.

South Africa’s initiatives to address money laundering date back to the 1990s, while measures to combat funding of terrorism are more recent. This chapter