

# DETAILED ASSESSMENT/MUTUAL EVALUTATION REPORT

## REPUBLIC OF ZIMBABWE

### EXECUTIVE SUMMARY

#### 1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Zimbabwe as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Zimbabwe's levels of compliance with the FATF 40+9 Recommendations (see Table 1).<sup>1</sup>

2. Serious crime in Zimbabwe has been characterised by the following general trends: various violations of exchange control rules, underground banking, cross border crime, organised syndicates both domestic and international, and increased co-operation between criminal networks and links with legal business activity resulting in serious corruption and bribery. The most common types of crimes considered to be the major source of illegal proceeds in Zimbabwe are:

- Drug trafficking;
- Illegal trade and smuggling of precious minerals, metals and stones;
- Parallel market activities involving foreign currency and commodities by individuals and companies;
- Corruption, in particular practices in the fuel industry involving both private and public institutions;
- Misrepresentation of quality, nature and value of exports;
- Armed robbery and theft of motor vehicles and stolen vehicle re-registration

3. Drug trafficking in Zimbabwe characterised the domestic use of African cannabis and some harder drugs such as heroin and cocaine and the trade of illicit drugs in which Zimbabwe is used as a transit point for cannabis and South Asian heroin,

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<sup>1</sup> Also see Table 1 for an explanation of the compliance ratings (C, LC, PC and NC).

mandrax and methamphetamines destined for the South African and European markets. Zimbabwe is being used by international drug traffickers as a transshipment country; local drug use is not perceived as a problem.

4. Parallel banking operations also pose a problem, for instance underground banking which appears to be gaining momentum and is used by criminal syndicates to launder their funds. Trading in precious minerals, metals and stones has not been properly regulated or supervised for AML/CFT purposes and also provides a means of moving proceeds of crime. Smuggling of stones and gold is easy to carry out and the border posts have been alerted of the increase in the smuggling of these items. . Violations of the Exchange Control Act extend to false declaration and trade in foreign currency, as well as dishonest exporters providing commission deductions above the standard 7.5% limit without prior authority of the Exchange Control to justify the commission payments. . Trading activities in the form of exports and imports involve externalizing funds through the source of high value exports in the country in which they are resident, for once off export to the proposed destination. Imports are overstated in order to facilitate the laundering of funds by payment of excess amounts into trust accounts. There are also problems regarding illegal immigrants entering Zimbabwe, in particular immigrants avoiding prosecution in neighbouring countries. The Police and Ministry of Home Affairs at large are working together to treat each illegal immigrant on a case by case basis.
5. In Zimbabwe, money seems to be laundered primarily through the banking system, underground banking networks, and through the purchase of assets. Assets purchased can later be sold and the proceeds laundered through the banking system. The Real Estate industry and services provided by Lawyers are vulnerable to money launderers since they have not implemented an effective AML/CFT regime and appear to be used as a vehicle to launder proceeds of crime. For instance in the Real Estate industry attention only appears to be given to transactions which have declared and paid tax on either the purchase or sale of a property. As long as the individual has shown payment of tax, the authorities don't feel the need to investigate any dealings with the transaction that may contain unscrupulous activity attached to it.
6. All Banks in Zimbabwe provide on the job training to new staff who are in contact with customers regarding KYC and record keeping procedures. Examples of

companies giving this training are Standard Chartered Bank, Stanbic Bank, First Bank, Commercial Bank of Zimbabwe and Zimbabwe Allied Banking Group.

7. Other institutions that are vulnerable to being utilized by launderers in Zimbabwe are building societies, moneylenders, insurance brokers. Building societies include the Beverley Building Society and FBC Building Society. Examples of insurance companies are March Insurance Companies and Jupiter Insurance Companies. Examples of official non-banking moneylenders are Tazmac (Pvt) Limited and Baur Investments (Pvt) Limited.
8. The Reserve Bank of Zimbabwe (“RBZ”) carries out examinations where emphasis is placed on increased customer due diligence and Know Your Customer (KYC) procedures, the need to establish the origin of the source of funds as well as identification and reporting of suspicious transactions to the Financial Intelligence Inspectorate and Evaluation Unit (“FIIES”) located within the RBZ. The FIIES is established under the Bank Use Promotion and Suppression of Money Laundering Act Guidelines 2002 (BUPSML) Act, 2002 and has received 200 suspicious transaction reports since its establishment. Complementing the (BUPSML) Act, 2002, are the Bank Use Promotion and Suppression of Money Laundering Act Guidelines 2002 (BUPSML) Guidelines No. 01-2006 on ML and TF (henceforth referred to as BUPSML Guidelines) that are provided to FIs and most DNBFPs. The FIIES also provides anti-money laundering compliance examination guidelines to FIs to review and analyse managements AML risk assessment of all major business lines and products to determine if the institution engages in activities that could expose it to potential money laundering activities.
9. The following types of financial institutions are authorised to operate in Zimbabwe: commercial banks, merchant banks, finance houses, discount houses, building societies, money transfer agencies and branches of foreign financial institutions. Commercial banks, acceptance houses, discount houses, money transfer agencies, and finance houses are registered under the Banking Act, 2001 and are supervised by the RBZ. Building Societies are registered in terms of the Building Societies Act [Chapter 24:02] and are supervised by The Reserve Bank of Zimbabwe. The Post Office Savings Bank (now known as the People’s Own Savings Bank) is also authorized to operate under the Post Office Savings Bank Act [Chapter 24:10] and is supervised by the Reserve Bank of Zimbabwe.

Pension funds, life and non-life insurance services are offered in Zimbabwe and are registered under the Insurance Act (Chapter 24:07), and are supervised by the Commissioner of Insurance under The Ministry of Finance. The Pension Association has been established by members, and is an umbrella body of Pension funds with intention and mandate to update and advise its members on any development that are likely to affect pension. All banking institutions belong to the Banker's Association and have received some training on financial crimes.

The Association expresses disuasive action for errant members who show poor compliance by disassociating themselves from such institutions. Moral suasion is the method used to ensure compliance.

10. Zimbabwe has a Stock Exchange that is governed by the Stock Exchange Act (1974). The Zimbabwe Stock Exchange is managed by a committee which reports to the Ministry of Finance. The Stock Exchange has a Charter that works as a code of conduct for its members. The Charter also provides for the registration and listing of companies. There are 17 registered Stock Brokers and there are 80 listed companies in the Stock Exchange market. The Stock Exchange is self regulatory and it provides monthly reports to the Minister of Finance. The reports cover capital adequacy, risk management and structure of their business operations.
  
11. The following types of non-financial businesses and professions operate in Zimbabwe: real estate agents registered in terms of the Estate Agents Act (Chapter 27:05), accountants registered in terms of the Public Accountants and Auditors Act (Chapter 27:12), legal practitioners registered in terms of the Legal Practitioners Act (Chapter 27:07) and supervised by the Law Society, and dealers in precious metals and stones are also licenced by Government. Lotteries, casinos (including Internet casinos) operate in Zimbabwe. Zimbabwe citizens may gamble on Internet casinos that are operated from a server located in another country, and Zimbabwe may offer such a service in Zimbabwe from outside Zimbabwe. Lawyers and auditors normally provide trust and company services. Trust and company services providers are not recognised as separate businesses. Trusts and company service providers can be independent entities although in terms of registration of a trust a lawyer is needed.

12. The types of legal persons existing in Zimbabwe are: limited companies, public limited companies (shareholders have limited liability), general partnerships, general partnerships with shared liability (partners have unlimited liability), limited partnerships (some partners have unlimited liability, others have limited liability), house building co-operatives, housing co-operatives, co-operative societies, foundations, savings banks and associations. All have legal persona. Foreign legal entities are not prohibited from having their main seat in Zimbabwe or from conducting business in Zimbabwe. Once a foreign trust is approved by the Zimbabwe Investment Centre (ZIC) for a foreign company it can legally operate in Zimbabwe.

## **2 Legal System and Related Institutional Measures**

13. Zimbabwe has criminalised money laundering under Sections 63 and 64 of The Serious Offences (Confiscation of Profits) Act enacted in 1990 and further amended in 2001. Money Laundering is also stated as a specified offence under Section 2 in the Act in which money laundering is referred to in relation to the proceeds of a serious narcotics offence.
14. The penalty for the offence of money-laundering in terms of an individual is a fine not exceeding \$ZWD20,000.00 or twice the value of the property, which ever is greater, or to imprisonment for a period not exceeding 10 years or to both fine and imprisonment. As for corporate persons, a penalty of a fine not exceeding \$ZWD500 000.00 or three times the value of the property, which ever is the greater is prescribed.
15. The Bank Use Promotion and Suppression of Money Laundering Act 2002 (“BUPSML”) under Chapter 24:24, also criminalises money laundering and requires the institutions designated in terms of the BUPSML to identify customers and maintain records of transactions. It also provides for confiscation, seizure and forfeiture of proceeds of crime. The Act also prohibits dealings, acquiring and holding of tainted property. The BUPSML Guidelines provide in detail ways in which the BUPSML Act, 2002, needs to be implemented by all accountable institutions to include FIs and most DNFBPs. The extent to which the BUPSML Guidelines are enforceable is limited since the BUPSML Guidelines only recently

came into force in April 2006 and as yet no sanctions have been taken against institutions for non-compliance.

16. The physical and material elements of the ML offence in the Serious Offences (Confiscation of Profits) Act, 1990 satisfy the Vienna and Palermo Conventions which require that conversion of transfer, concealment, possession, acquisition, and participation in, association to commit ML are stated clearly in the law. However a list of predicate offences for ML are not provided in either the Serious Offences (Confiscation of Profits) Act, 1990, nor the BUPSM Act and this creates some confusion as to how the authorities can prosecute a wide range of ML offences without a legal association of predicate offences to ML. The proceeds of a serious narcotic offence are the only proceeds referred to in the Serious Offences (Confiscation of Profits) Act 1990 that would provide some scope for prosecution of ML relating to narcotics offences.
17. The law does not provide that a person must be convicted of a predicate offence before a person can be convicted of the offence of ML. Hence a person may be convicted of the offence of ML even though no one has been convicted of the predicate offence.
18. The definition of proceeds of crime is stated in Section 2 of the Serious Offences (Confiscation of Profits) Act, 1990. The Act provides:

“proceeds of crime” means any property that is derived or realized, directly or indirectly,  
by any person from—

  - (a) the commission of any serious offence; or
  - (b) any act or commission which occurred outside Zimbabwe in relation to a narcotic substance and which, had it occurred in Zimbabwe would have constituted a serious narcotic offence;”
19. The said term covers an offence punishable in Zimbabwe or in a foreign country by imprisonment for a period of twelve months or by a more severe punishment; or (b) the value of the property derived or obtained from the commission of which is or is likely to be not less than twenty thousand dollars ZWD or such greater or

lesser amount as may be prescribed. However a conviction must be made before confiscation of the proceeds can be effected by the Zimbabwe authorities.

20. ML committed abroad is punishable under Section 63 of the Serious Offences (Confiscation of Profits) Act in which a person is guilty of ML whether he is in or outside Zimbabwe and which involves the removal into or from Zimbabwe money or property which is the proceeds of crime. However predicate offences for ML are not provided for in the legislation making it difficult to punish criminals abroad for predicate offences for the purposes of money laundering.
21. The main pieces of legislation relating to terrorism and partly terrorist financing are the Public Order and Security Act, 2002, the Serious Offences (Confiscation of Profits) Act, 2001, and the Criminal Matters (Mutual Assistance) Act. In particular the Public Order and Security Act, 2002 provides for offences relating to recruiting or training terrorists, training as a terrorist, supplying weaponry or possessing weaponry to be used for terrorism, harbouring, concealing or failing to report terrorists. The Public Order and Security Act, 2002 does not clearly criminalise terrorist financing as defined by FATF recommendations SR1 or refer to any acts by organizations or any listed terrorist organizations.
22. The Suppression of Foreign and International Terrorism Bill 2004 (“SFIT Bill”) criminalizes the financing of terrorism. This bill adds to new legislation and consolidates all the relevant anti terrorism legislative provisions which were scattered in different pieces of legislation. The Bill outlines issues relating to anti-terrorism which include criminalisation of financing of terrorism, freezing, seizure and forfeiture of assets of both individuals and organisations related to terrorist activities.
23. Zimbabwe has focussed on measures that could enhance its ability to deprive criminals of the proceeds of crime. The law provides for two types of provisional measures—charging and seizing (which in practice, operates like a freezing mechanism for certain types of assets, such as funds in a bank account) and these measures are sufficient in most cases, though some minor enhancements such as the power to make seizing/charging orders against all of a defendant’s property could make it even more effective. The police and the prosecution authorities have a full range of powers to identify and trace assets.

24. In Zimbabwe, as at on-site visit there are generally no provisions in the law that expressly provide for the confiscation of the property of organizations that are found primarily criminal in nature. However, the Standing Act of the Serious Offences (Confiscation of Profits Act) provide forfeiture orders to be made in respect of property owned or controlled by, or on behalf of, a terrorist group.
25. There are no provisions for the confiscation of property of corresponding value in the event that property that is subject to the forfeiture order is not available.
26. The SFIT Bill provides that a judge can make a forfeiture order upon an application, if on a balance of probabilities the judge is satisfied that the property comes within subsection of the laws, since the burden of proof is that of a civil standard rather than that of a criminal standard.
27. Under Section 2 of the Serious Offences (Confiscation of Profits) Act, 2001, the authorities may freeze any “tainted property” which can include bank accounts if assets from money laundering are suspected to be held in such accounts. Under Section 40 of the BUPSM Act, police may seize and detain any currency which is being imported into or exported from Zimbabwe if such currency was derived from the commission of a serious offence or is intended to be used in the commission of a serious offence.
28. United Nations Security Council Resolution (UNSCR) S/RES/1267(1999) and its successor resolutions have yet to be properly implemented. The current laws provide some of the necessary measures by providing an authority to freeze, automatically incorporating any changes to the lists into the legal system, prohibiting anyone from making any funds available to entities listed, and providing for penalties of fines or imprisonment. Freezing can be legally challenged using normal legal mechanisms for challenging government decisions. Despite this, there is a lack of guidance to institutions and persons holding targeted assets, and no measures to monitor compliance. The effectiveness of the regime is noticeably reduced by the absence of any policies and procedures to handle freezing cases. Bank accounts have been frozen using the Serious offences (Confiscation of Profits Act) and The Bank Use Promotion and Suppression of Money Laundering Act. The provisions are in line with S/R/1267 (1999). No accounts have been seized using S/RES/1267(1999).

29. Zimbabwe has not implemented S/RES/1373(2001). There is a provision in the Public Order and Security Act, 2002 Act that allows property to be frozen when a person is suspected of terrorist offences. The decision to freeze is not based on a list, but on a case-by-case assessment based on evidence (to the criminal standard) that the person has directed or used particular funds/assets to support a terrorist act. This approach would make it very difficult to freeze on the basis that a person associates with a terrorist organisation or is known to finance terrorism in general, but cannot be connected to any specific act of terrorism.
30. The Bank Use Promotion and Suppression of Money Laundering Act provides guidelines and monitoring conditions to financial Institutions in Part IV and Part V of the Act and Section 14 of the Guidelines issued. Guidance to entities that may be holding assets covered by such a freezing action, and monitoring compliance is also provided. Implementation of S/RES/1373(2001) is premature in that the high burden of proof and tight timelines impede the effectiveness of the system and, in fact, use of these provisions has been unsuccessful up to now.
31. Overall, the freezing regime in Zimbabwe has implemented only few of the elements of Special Recommendation III. There is a lack of clear procedures for unfreezing and de-listing requests, authorising access to assets on humanitarian grounds, monitoring compliance and applying sanctions. An effective system for communication between government and the private sector needs to be established, and clear guidance provided to financial institutions.
32. Zimbabwe's capacity for the operation of a Financial Intelligence unit is provided by the FIIES located within the RBZ with a total staff compliment of 48. The FIIES is divided into various departments (1) Anti-Money Laundering, (2) Compliance/Bank Use Promotion which deal with the encouragement of cash transactions through banks, (3) investigations, (4) Precious Metals and Stones Monitoring. Suspicious transaction reporting in Zimbabwe takes place in two stages: (a) where a reporting entity suspects that a transaction is associated with the proceeds of crime, it must make further inquiries; (b) if those inquiries do not dispel the suspicion, then an STR has to be made to the FIIES. The transaction can be temporarily frozen by the Financial Intelligence Unit, but this power is rarely exercised.

### **3 Preventive Measures - Financial Institutions**

33. During the past years, the authorities have adopted several measures in an effort to prevent the proliferation of money laundering and financing of terrorism, the details of which are listed below;

- During on-site examinations of financial institutions, RBZ examiners evaluate whether adequate AML procedures are in place and compliance to the BUPSMML Act and BUPSMML Guideline No. 01-2006.
- To be in line with the FATF's 9 Special Recommendations against Terrorist Financing, the SFIT Bill was drafted in 2006.
- Following the presentation on AML issues given to financial institutions, awareness appears to have developed among the institutions as evidenced in the number of suspicious transactions reported to FIIES.
- Enforcement agencies like the Police, Immigration, National Economic Conduct Inspectorate (NECI), Zimbabwe Revenue Authority (Customs and Tax Departments) and the Airport Services have increased their vigilance at the country's main points of entry and exit and this has had the effect of making it more difficult for drug traffickers to be able to get their illegal narcotics into the country. The installation of scanners at main points of entry and exit have enhanced the detection of contraband.
- Staff from the supervisory and enforcement agencies like the RBZ, the FIIES, NECI, ZIMRA, the Police and prosecutors from the Ministry of Justice have participated in regional meetings and seminars on AML/CFT and are committed to attending more in the future.
- The BUPSMML Act establishes a Financial Intelligence Unit (the "FIIES") whose main role is to receive, analyze, investigate and disseminate suspicious transaction reports for prosecution.
- The Department of Anti -Corruption and Anti-Monopolies was established in 2004 in the Office of the President and Cabinet (OPC). The Anti Corruption Commission (ACC) was established by the Government of Zimbabwe in terms of section 108 A of the Constitution of Zimbabwe. The day to day operations of the ACC are governed by the Anti Corruption Commission Act Chapter 9.22. In turn the department established the Anti-Corruption commission in terms of the anti corruption commission act to investigative cases of corruption. The department established an inter ministerial task force on the fight against

corruption. It comprises of representatives from the Ministries of Justice, legal and Parliamentary Affairs, Defence, Finance, Information and Publicity, State Security, Home affairs and Reserve Bank, ZIMRA and NECI.

- AML/CFT Training has been provided to most of the stakeholder agencies in Zimbabwe with the exception of the legal profession in Zimbabwe.

34. Zimbabwe AML legislation does not yet take into account the full obligations set out in the revised FATF Recommendations (2003). The definition of predicate offences and a list thereof does not appear in any of the AML legislation which would provide for wider prosecution of money laundering in which the proceeds of crime from all serious offences can be prosecuted as money laundering offences. While AML measures under the BUPSMML Act and BUPSMML Guidelines apply to all the banking institutions, insurances, legal practitioners, real estate agents, accountants, stock brokers, futures brokers, gaming houses, casinos and lotteries, it was evident during the evaluation that the BUPSMML Guidelines are not enforced by several of these entities nor was there any evidence for sanctions taken against these entities for non-compliance. Moreover traders in precious metals, minerals and stones are omitted from the BUPSMML Guidelines and are therefore not monitored for AML/CFT.
35. Although Zimbabwe has implemented basic customer identification obligations, it has not implemented full customer due diligence (CDD) requirements for all FIs and DNBFs. Reporting FIs are required to identify permanent and occasional customers (for large value transactions). A natural person's identity is normally verified by producing a document issued by a public authority, which normally contains full name, signature and photograph. A legal person's identity is verified by checking certain Registers. Where the customer is unable to produce the required identity documents, the Reporting FI should generally refuse to establish a customer relationship. Overall, there are weaknesses regarding the implementation of Recommendation 5, as the only measure currently in place for some FIs and NBFIs is a requirement to identify customers. Elements going beyond the initial establishment of the customer relationship such as beneficial ownership and other elements of CDD are either not required or very limited. These deficiencies need to be addressed as a matter of priority. In addition, specific identification requirements and procedures should be introduced that are tailored to the business practices of sectors other than banking for instance NBFIs.

Zimbabwe has implemented the applicable measures for politically exposed persons (PEPs) in the BUPSMML Act, and further enforced by the BUPSMML Guidelines under Section 11.

36. The BUPSMML Act does not prohibit where a customer is introduced by one part of a financial institution's group from outside Zimbabwe to another, provided the identity of the customer has been verified by the introducing branch or subsidiary in line with requirements equivalent to those of Zimbabwe and those identification records are freely available on request to the other parts of the group on request, it is not necessary for identity to be re-verified or for the records to be duplicated.
37. Normally, the establishment of non-face-to-face business relationships is not allowed and the customer must physically appear either at the Reporting FI where identification and verification is performed.
38. A legal duty of confidentiality requires employees of financial institutions to keep customer information confidential, but does not inhibit disclosure of information, nor impede the RBZ in performing its supervisory role.
39. Record keeping requirements are generally satisfactory, with Reporting FIs being obligated to retain copies of any documents used to verify the customer's identity for more than five years after termination of the customer relationship, and to keep transaction records for five to ten years. There is no minimum retention period stipulated in the Bank Act or Banking Regulations. However banking institutions, like other companies are compelled to retain financial records for at least five years in terms of the Income Tax Act [Chapter 23:06]. Some financial institutions have internal policies which stipulate retention periods for more than seven years.
40. The legal system for reporting is generally satisfactory, but there are some issues concerning its effectiveness. Monitoring of unusual transactions is conducted. Reporting FIs are required to report transactions to the FIIES. Employees are not liable to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for reporting any information in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of money-laundering or serious offence.

41. “Tipping off” a customer or any third party in connection with reporting a Suspicious Transaction Reports (STR) is prohibited. Banks and Monetary Value Transmission Service Providers (MVTs) report the largest number of STRs, though none of them were related to terrorist financing. The number of STRs being reported by other non-bank financial institutions is very small. There are also some other effectiveness concerns and a need to ensure that appropriate action is taken in cases of non-compliance.
42. Zimbabwe has published in the BUPSMML Guidelines the FATF List of Non-Cooperative Countries and Territories and it was stated by the banks interviewed that they paid attention to the NCCT list. Zimbabwe has enacted the NCCT list under the RBZ regulations. Additional NCCT countermeasures do not appear to have been applied by the non-banking institutions such as the insurances, legal practitioners, real estate agents and public accountants.
43. Controls and Monitoring of Cash and Cross Border Transactions Under the Exchange Control Act (no Zimbabwe resident is permitted to take cash outside of Zimbabwe, notes of the value totalling - \$1000.00 USD or \$100,000.00 ZWD. Cross border monitoring of Cash is enforced by the Zimbabwe Revenue Authority.. There is a legislative frame work which provides for the reporting of suspicious cross-border transportation of currency. As a result currency crossing the Zimbabwe borders under suspicious circumstances is investigated by the Zimbabwe Revenue Authority (ZIMRA) and they will pass the investigation on to the Zimbabwe Republic Police. However the FIU needs to be included in the investigative process.
44. The Police may search any person suspected of being in possession or having in his possession anything unlawfully obtained. There are large cash transactions reporting requirements including large foreign exchange transactions. Aggregate data on foreign exchange transactions is provided by the local banks and provided to the RBZ. .
45. Cash plays a major role in Zimbabwe cash based economy. Transactions involving financial institutions are mostly conducted by cash or cheques however the use of debit cards for point-of-sale transactions and ATM cash withdrawals is rising. There are a total of 20 financial institutions which offer Automated Teller Machine (ATM) services across the country as indicated below.

- Commercial Banks **14**
- Building Societies **4**
- Merchant Bank **1**
- Savings Bank **1**

46. There are no requirements to report cross-border movements of gold or other high value items such as diamonds or gems as long as they are for personal use. There is large scale trade of gold, diamond and gemstone in Zimbabwe and permits are required for the exportation of such items for business purposes. These must be declared to ZIMRA or else they could be seized and subsequently confiscated.
47. The Police conduct searches in the country of persons suspected of being involved in parallel market operations. If found to be in possession, of foreign currency with unlawful intent the foreign currency can be forfeited by the court under Section 7 of the Exchange Control Act, 1975.
48. Some local commercial banks have an internal policy whereby all large deposits above a set threshold, is reported to either management or to the MLRO who reviews the report and after carrying out further investigations as to the source of the funds, decides whether to refer the transaction to the FIIES for investigation.
49. All Reporting FIs must establish certain internal control and communications procedures, and appoint an AML officer. Some Reporting FIs must have an internal audit function and designate a compliance officer within senior management. The Compliance Officer is required to 'establish an audit function to test its anti-money laundering and financing of terrorism procedures and systems. Special training programmes for employees and other relevant persons on AML/CFT obligations are required. While these measures are generally satisfactory regarding checking the existing laws, they do not implement the full range of measures required under the Recommendations and it appears that institutions have not voluntarily implemented higher standards. There are five foreign branches of Zimbabwe institutions in southern and eastern Africa. Information on these institutions was supplied at the final report discussions on 20 July 2007. It should be noted that during the onsite the team was advised there

were no Ifs outside of Zimbabwe with head office in Zimbabwe. As a result no follow up questions were given.

50. The RBZ is the regulator of financial institutions in Zimbabwe. These include banking institutions and money transfer agencies. The RBZ is the authority responsible for administering the Banking Act, 2001 and the BUMSML Act, 2002. When a financial institution is granted a licence, checks are conducted to ensure that the general manager and directors meet fit and proper requirements. Fit and proper checks for directors are done before the institution is licensed in terms of the Banking Act [Chapter 24:20] and the Banking Regulations, SI 205 of 2000.
51. The RBZ has adequate powers to supervise and inspect the policies, practices and internal controls of Reporting FIs. It is also authorised to impose a broad range of administrative sanctions for non-compliance, from letters requesting corrective action through to fines or de-licensing. Sanctions can be applied against both institutions and officers/employees. To date the RBZ has not imposed any sanctions for breaches of AML/CFT obligations (beyond issuing letters requesting that corrective action be taken), though there have been sanctions taken against financial institutions for other offences for instance the collapse of Time Bank.
52. At the end of 2005, the RBZ had 1676 employees. Its supervisory department is responsible for supervising commercial banks (14), merchant banks (5), finance houses (3), discount houses (6) including designated non-financial businesses (e.g.: Money Transfer Agencies, Bureau De Change). The RBZ is understaffed and requires more staff to assist with conducting supervision of FIs registered under the Banking Act, 2001. The Reserve Bank conducts two types of on site inspections i.e. targeted examination and full scope examination. Targeted inspections are generally ad hoc and focus on identified areas of supervisory concern while risk based onsite examinations are scheduled and conducted according to a predetermined supervisory plan. On average nearly 5% of banking institutions are inspected every one to two years which translates to over 30 examinations in a calendar year. The frequency of examinations on a specific institution is also dependant on the condition and risk profile of the institution and its systemic importance in relation to the banking system.
53. The RBZ has, as its primary goal, the maintenance of the internal and external value of the Zimbabwean currency. In this regard, the RBZ is responsible for the

formulation and implementation of monetary policy, directed at ensuring low and stable inflation levels. A further core function of the Bank is to maintain a stable banking system through its supervisory and lender of last resort functions. Other secondary roles of the Bank include the management of the country's gold and foreign exchange assets. The bank is the sole issuer of currency and acts as banker and advisor to Government. Although AML/CFT assessments are integral part of the RBZ's regular visits, they seem to be too limited in scope and not conducted frequently enough. AML/CFT assessments are not held annually, but only when there are indications that an assessment would be necessary. Only one thematic inspection focusing solely on AML issues has been conducted starting in December 2006. No certificate for compliance has been issued as yet. Check lists specifically tailored for AML/CFT are not used by the RBZ on site Bank Supervision team. This situation needs to be reviewed. The RBZ should consider how it can best enhance focus on AML/CFT issues, for example, by having a team of examiners that checks compliance with AML/CFT on an ongoing basis for all supervised entities.

54. Some steps have been taken concerning guidance. The BUPSMML Guidelines are issued to financial institutions and non-financial institutions by the RBZ by virtue of powers conferred it by sections 24 and 26 of the BUPSMML Act, 2002. The BUPSMML Guidelines came into force on 1<sup>st</sup> April 2006 and are binding. They are also a statement of the minimum standards expected of all financial and non-financial institutions. The RBZ in the exercise of its supervisory duties will monitor adherence to these Guidelines and failure to measure up to the standards contained in these BUPSMML Guidelines will be dealt with in line with the appropriate penalties. It is a criminal offence for financial institutions and non-financial institutions to fail to take measures as contained in the BUPSMML Guidelines to prevent their institutions or the services their institutions offer from being used to commit or to facilitate the process of money laundering. The BUPSMML Guidelines offer some guidance on the manner of reporting but this applies to financial institutions and only some non-financial institutions. The BUPSMML Guidelines also contain notes on the detection of complex and unusual transaction reports.
55. DNFBPs are not equally supervised for AML/CFT. Most DNFBPs are accountable for AML/CFT under the BUPSMML Act, 2002 and BUPSMML Guidelines, they include insurances, legal practitioners, real estate agents, accountants, stock

brokers, futures broker, gaming houses, car dealers, jewellers, casinos and lotteries. Traders in precious metals and stones are designated by the BUPSMML Guidelines. The guidance seems to be premature and ineffective since the BUPSMML Guidelines only came into force in April 2006 and reporting entities (both financial institutions and DNFBPs) met by the assessment team asked for additional and more sector-specific guidance (particularly in the area of typologies). Such guidance should be provided, as should increased outreach to DNFBP sectors. Additionally, the RBZ should enhance its general and specific feedback concerning the status of particular STRs and the outcome of certain specific cases.

56. Unauthorised MVTS providers are illegal, and Zimbabwe has detected some underground banking. Regulated MVTS providers (banks) are subject to the FATF Recommendations, albeit not adequately. This negatively impacts on the effectiveness of AML/CFT measures in the MVTS and other financial institution sectors. Zimbabwe should take steps to properly implement Recommendations 5-7, 15 and 22, and SR VII overall. The RBZ is responsible for monitoring MVTS operators however there are concerns about the effectiveness of this supervision. The RBZ should take immediate steps (including applying sanctions if necessary) to correct these problems.

#### **4 Preventive Measures – Designated Non-Financial Businesses and Professions**

57. The following DNFBP are subject to AML/CFT obligations: real estate agents, lawyers and other independent legal professionals, auditors and accountants, auctioneering firms and commission agents in connection with cash transactions and pawnshops. Land-based casinos, trust/company service providers (as a separate defined business sector) exist in Zimbabwe. All trust/company services are handled by registered lawyers using their designation as a notary public. There is a legal prohibition from other persons establishing such businesses in Zimbabwe..
58. AML/CFT obligations for Reporting FIs/DNFBPs are generally not the same. Consequently, the same serious deficiencies in the implementation of customer identification requirements (Rec.5) exist; customer identification requirements and CDD requirements for FIs have been implemented, but reliable customer identification and full CDD requirements for DNFBPs have not. Zimbabwe should

correct these deficiencies as a matter of priority. Dealers in precious metals/stones are required to obtain a licence from the government of Zimbabwe. They are required to maintain a register on how much they produce. The register is checked on a regular basis by the CID Gold Squad and the Mineral Marketing Corporation of Zimbabwe. Failing to maintain balanced records under The Gold Trade Act and the Precious Stone Trade Act is a prosecution offence. The dealers in precious metals and stones are only legally authorized to sell to the Government of Zimbabwe. Occasional customer rules do not apply to lawyers, independent legal professionals, real estate agents, accountants or auditors since, due to the nature of their work, they do not have occasional customers.

59. In general, Reporting DNFBPs have not satisfactorily implemented record keeping requirements. Although Reporting DNFBPs are not allowed to establish non-face-to-face business (customers must physically appear at the Reporting DNFBP or its agent/outsourcer for identification and verification), there are some concerns about the effectiveness of this system in practice.
60. Reporting DNFBPs must monitor their accounts and report suspicious activity to the supervisory authority. Lawyers are obliged to report suspicious transactions of any nature except for privileged information. So far, there are no lawyers, accountants, auditors and real estate agents who have filed STRs. There are preliminary concerns about AML/CFT effectiveness because most of the DNFBP sectors met during the on-site visit (particularly real estate agents, lawyers, and dealers in precious metals/stones) had premature measures in place to deal with AML/CFT. While most DNFBPs are listed in the BUPSML Guidelines as Accountable Institutions, many have not developed their own internal policies and procedures for dealing with AML/CFT. More tailored and sector-specific AML/CFT guidance should be issued to the Reporting DNFBPs as soon as possible to address these concerns.
61. Real estate agents, accountants and auditors must collectively be licensed by an independent authority in order to be authorised to carry out their business. An entity needs to supervise these entities, issue guidance to them on an ad hoc basis and be empowered to apply administrative sanctions. This authority needs to conduct audits on a yearly basis. Furthermore law firms need to be properly supervised by the Law Society for non-compliance for AML/CFT compliance.

62. There are land-based casinos in Zimbabwe and they are closely regulated.

## **5 Legal Persons, Arrangements & Non-Profit Organisations**

63. A number of publicly available registers contain some information concerning the ownership and control of Zimbabwe legal persons. All Zimbabwe legal persons must register with the Zimbabwe Registrar of Companies in terms of the Companies Act, Chapter 24:03, which provides all new companies with ID used to identify the legal person in all public business and industry registers. Numerous other registers are specifically associated to the Central Co-ordinating Register and collect their information from it. Although foreign companies are not obligated to keep information on ownership and control available in Zimbabwe, any foreign company conducting business in Zimbabwe must register in the Business Register. Private and public limited companies must maintain a publicly available shareholder register that includes information about the legal control of the entity.

64. Charitable organisations are obligated to register with the Ministry of Public Service, Labour and Social Welfare. They can operate bank accounts in their corporate or legal name. Signatories must be settlers or board of Trustees members. When a charitable organization is registered it is then the registered name which is used officially in business. If they are not legal entities they are not allowed to operate. The RBZ specifically advises reporting FIs that collection accounts for charitable organisations should not be exempt from the requirements to produce identity documents. Zimbabwe has not reviewed its laws/regulations relating to non-profit organisations (NPOs) as required by Special Recommendation VIII. Zimbabwe should do so, and implement appropriate CFT measures in this sector.

65. Zimbabwe law recognises the legal concept of a trust or similar legal arrangements, including trusts created in other countries. Zimbabwe lawyers do occasionally handle trusts established abroad. Zimbabwe reports that when doing so, they are not subject to the full range of AML/CFT obligations; and existing AML legislation would benefit from being clarified in that regard. Once Trusts are registered in Zimbabwe they become legal entities.

## **6 National and International Co-operation.**

66. Zimbabwe has partially implemented the elements of the Vienna, Palermo and Terrorist Financing Conventions that are relevant to the FATF Recommendations. Zimbabwe has partially implemented the basic legal provisions of S/RES/1267(1999), but should implement measures to monitor or supervise for compliance with these requirements. Zimbabwe's implementation of S/RES/1373(2001) is inadequate, and should be improved.
67. On an operational level, the NECI is authorised to co-operate with other domestic supervisors, law enforcement authorities and foreign supervisors for AML/CFT. Several informal mechanisms, including regular contact meetings and forums exist to improve interagency co-operation between the police, Prosecution Authority, customs and ZIMRA and supervisors with regards to AML/CFT. However, solid outcomes do not always seem to result. Although a recent government action plan sets out a strategy for enhanced co-operation and co-ordination among all government bodies with regards to the implementation of AML/CFT measures, actual implementation of these recommendations will be problematic if implementing AML/CFT measures is not prioritised when allocating budgetary resources to law enforcement/prosecutorial authorities. Zimbabwe should improve co-ordination, particularly at the operational level and with regards to allocation of budget and human resources.
68. Mutual legal assistance and extradition measures apply to money laundering since money laundering is a criminal offence and both the Criminal Matters (Mutual Assistance) Act and the Extradition Act provide that measures must be taken against "any" criminal offence. However since terrorist financing has not yet been criminalized there is no scope for mutual legal assistance or extradition. Zimbabwe can only respond to both mutual legal assistance and extradition requests regarding other serious offences and in the absence of an applicable treaty. Mutual legal assistance is regulated by the Attorney General's Department of Zimbabwe.
69. Although in general, there are no legal or practical impediments to rendering assistance, provided that both Zimbabwe and the requesting country criminalise the conduct underlying the offence, the application of dual criminality may create obstacles to both mutual legal assistance and extradition where the underlying offence relates to the following types of money laundering/terrorist financing activity that have not been properly criminalised in Zimbabwe: (i) conspiracy to

commit money laundering or terrorist financing outside of the context of an organised criminal group; and (ii) obtaining or collecting funds/assets to be used by a terrorist organisation/individual terrorist where their use/intended use cannot be connected with a specific terrorist act. Zimbabwe should take measures to address this problem, in particular, by properly criminalising these activities.

70. Generally, mutual legal assistance requests are forwarded through the Attorney General's Department. Zimbabwe reports that requests are given priority; however, there are no statistics concerning the length of processing times for either mutual legal assistance or extradition requests. Duties of confidentiality do not impede mutual legal assistance. Assistance can be provided even where the offence is considered to involve fiscal matters. A wide range of mutual legal assistance can be provided, including compelling witness testimony, order the production of documents and seizing evidence.

71. Where a foreign state (that is not a signatory to the Vienna or Strasbourg Conventions) requests Zimbabwe to execute a foreign freezing/seizing/confiscation order, Zimbabwe can only recognise the order, but cannot give effect to it without starting its own proceedings. A procedure that requires a case to be made out before a local court on the basis of foreign evidence is inherently less effective than one where Zimbabwe court satisfies itself that a foreign court has made a freezing/seizing/confiscation order, and then simply gives effect to that order. Zimbabwe should enhance the effectiveness of its system by enacting legislation that would clearly allow for confiscation in situations other than those covered by the Vienna Convention and should consider enacting measures that would allow it to give effect to a foreign freezing/seizing/confiscation order without the necessity of starting its own domestic proceedings. Although there are no special permanent arrangements for co-ordinating seizure/confiscation actions with other countries, Zimbabwe does co-ordinate on a case-to-case basis. No asset forfeiture fund exists.

72. Zimbabwe is party to the following conventions relating to international co-operation:

- UN Convention on Psychotropic Substances Vienna, 1998
- UN Convention against Transnational Organized Crime (Signed: 12

December 2000

- UN Convention against Corruption (Signed: 20 February 2004)
- Africa Union Convention on Preventing and Combating Corruption (in process of being prepared for signature)
- Memorandum of Understanding on Anti-Money Laundering with members of ESAAMLG (signed 1999)
- Southern African Regional Police Chiefs Cooperation [SARPCCO] signed on 1 Oct 1997
- Memorandum of Understanding between FIIES and FIC of the Republic of South Africa (signed February 2006) and Egypt.

73. Zimbabwe has not signed the International Convention for the Suppression of Financing of Terrorism.
74. Zimbabwe has not collated statistics on the number of requests for mutual legal assistance, extradition, freezing/seizing/confiscation and requests from foreign FIUs. Zimbabwe needs to establish a register that provides these statistics including those relating to the nature of mutual legal assistance/extradition requests, whether the request was granted/refused, and how much time was required to respond.
75. Zimbabwe law enforcement authorities are authorised to conduct investigations on behalf of foreign counterparts. Information is exchanged with foreign counterparts on the condition that it only be used for professional purposes, and is not made subject to disproportionate or unduly restrictive conditions. Generally, the attitude of Zimbabwe law enforcement is to respond rapidly to requests from co-operating agencies abroad.
76. Under The Banking Act, 2001, RBZ may on a reciprocal basis exchange information on supervisory matters whether based on a Memorandum of Understanding or not, with supervisory authorities in other countries. Under Section 46 of the Banking Act, 2001, RBZ Bank Supervision Unit may enter into a MOU with foreign supervisory authorities setting out the scope, procedures and further details for the exchange of information on a reciprocal basis. The exchange of such information may include confidential information provided that the RBZ has satisfied itself that the information submitted shall remain confidential at the foreign supervisory authority.

77. So far, no MOU has been entered into with any foreign supervisors with regard to carrying out any on-site inspections. It should be noted that International Banks conduct regular audits and inspections on branches in Zimbabwe. The most recent request that Zimbabwe has received relating to ML was at the beginning of 2006 from the United Kingdom involving a convicted person, a Zimbabwean currently resident in the UK who was involved in fraudulently obtaining student permits for students intending to study in the UK and using the proceeds from such acts to purchase several assets in Bulawayo, Zimbabwe. Upon request being granted the UK authorities managed to identify several of the properties in Bulawayo and to record several statements for purposes of supporting the forfeiture application in the UK which is still to be finalized.
78. The Attorney General's Department has received one request for assistance from non-Commonwealth country, that being Brazil. The request was for evidence gathering by Brazil in a case involving a Nigerian National using a fake Malawian passport in Brazil. It was believed he was in Zimbabwe at the time of the request. Unfortunately due to the nature of the request, assistance could not be given. Requests for Mutual Legal Assistance have been denied because there are no MOUs in place. The denials have not involved ML or FT cases to date. The below chart reflects the statistics on mutual assistance requests received from Commonwealth Countries including extradition requests.

<b>Year</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Number of cases	0	4	3	4

79. Zimbabwe has received several requests for Mutual Legal assistance from Commonwealth countries and to date there has been no denials of cooperation. However requests by Zimbabwe to other countries have been returned with no assistance given. Statistics on the number of cases of Mutual Legal Requests received by the Attorney General's Office on suspected cases of Money Laundering and Extradition are as follows.

<b>Mutual Legal assistance requests</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>

To Zimbabwe	3	1	2
From Zimbabwe	4	4	3
Total	7	5	5

<b>Extradition Requests</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
To Zimbabwe	0	3	1	3
From Zimbabwe	1	1	0	1
Total	1	4	1	4