



South Africa

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Presentation Structure

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ML Stakeholders

South Africa and Money Laundering (Sample of Key stakeholders)

LEA's

- FIC
- Saps (DPCI and subsidiary units)
- SIU
- NPA
- SARS
- SARB

Other/Private sector

- Real estate
- Legal sector(various services offered)
- Accountants
- Trust companies
- Casinos
- Vasps(12 crypto trading platforms as @ 2019)



General ML risks in SA



- South Africa has a relatively high volume of and intensity of crime and more than half of reported crimes fall into categories that generate proceeds.
- The main domestic proceeds-generating predicate crimes are corruption and bribery, tax crimes, trafficking in illicit drugs, environmental type crimes, and fraud See below for more about the phenomenon described as “*state capture*”.
- As a large economy and a regional financial hub for sub-Saharan Africa, South Africa has a notable exposure to the threat of foreign proceeds of crime generated in the region being laundered in or through the country
- South Africa is exposed to TF risks associated with the financing of foreign terrorism, foreign terrorist fighters, and potential domestic terrorism
- There is widespread use of cash and a large informal economy including informal cross-border remittances in the region which often involve physical movement of cash

General ML(and TF) risks in SA(ctd)

- Use of cash is prevalent in South Africa, and it has been assessed as a high risk for ML and TF, including cross-border movement
- South Africa obtained one TF conviction seven years ago and is currently prosecuting two cases



Findings-SA Mutual Evaluation)

2020(Key)

- Domestic ML threats is understood but not their scale
- Understanding of TF risks is underdeveloped and uneven
- Some ML risks are being mitigated but significant risks exist in relation to the abuse of legal persons and trusts, cross-border movement of cash, and pursuing predicate crime rather than ML
- TF risks are not being adequately addressed



SARS- challenges with ML

Context

- The main domestic proceeds-generating predicate crimes in South Africa are tax crimes, corruption and bribery, trafficking in illicit drugs, environmental and resource type crimes, and fraud.
- Tax crimes encompass evasion of a broad range of taxes and fees, including corporate and personal income and customs and excise taxes as well as tax fraud (e.g., VAT fraud).
- Incidents of corruption and bribery are widespread, across state-owned, provincial, and municipal entities, particularly irregularities in procurement involving the private sector Including: mainly illegal mining, then illegal abalone fishing, and to a lesser extent wildlife trafficking (although proceeds generated in South Africa from wildlife trafficking are not be vast and are modest compared to other crimes).
- The geographic and economic position of South Africa potentially exposes it to the threat of foreign proceeds of crime from the region being laundered in or through South Africa, and of being used as a transit route for illicit goods and people smuggling

SARS- challenges with ML

Current process

- SARS is also obliged to report AML/CFT information it comes across during investigations to the FIC (FIC Act, s.36) or to share information with other relevant LEAs (POCA, ss. 71 and 73).
- The initial referral of the criminal investigation to SAPS is for the purpose of obtaining a case number and for the assignment of a SAPS investigator to pursue the case and possible additional offences outside the purview of SARS and for the purpose of the NPA deciding to prosecute.
- A senior SARS official must authorize the laying of a criminal complaint with SAPS whether the offence constitutes a non-compliance offence or a serious tax offence and when an offence concerns a customs offence.

SARS- challenges with ML

Current process (ctd)

- The NPA **decides if a prosecution should be instituted and for what offences, which depending on the facts of the case may go beyond tax offences.** If elements of ML are identified NPA may work with SAPS:DPCI to prepare the ML case for court.
- SARS or the relevant LEA may also **use s71 of the TA Act** to disclose such information which is not covered by s71 of POCA

SARS- challenges with ML

- Thus, SARS does not have a mandate to actively investigate ML cases. From 2016-2017 SARS referred 660 tax offences to the NPA for prosecution, from 2017-2018 it referred 500 offences, and from 2018- 2019 it referred 468 offences. . These offences mainly involved failing to submit tax returns and tax fraud matters

What's going well



- Achieved some good results proactively pursuing confiscation of criminal proceeds, particularly using civil forfeiture powers (less successful to date at recovering assets from “State capture” and proceeds which have been moved to other countries. Some recent cases suggest that this situation is improving)
- In the private sector, the ‘ large financial institutions(big 4 banks) are better at understanding ML risks and somewhat better at implementing appropriate mitigating measures
- Risk-based AML/CFT regulation and supervision is relatively new(**opportunity?**)
- South Africa provides constructive mutual legal assistance which has resulted in resolution of some criminal cases in other jurisdictions
- Confiscations

FAFT-Recommendations

Priority actions for SA



- Develop **policies** to address higher ML/TF risks in relation to: (i) beneficial ownership; (ii) **use of cash and its cross-border movement physically and through illegal MVTS** ; (iii) investigation and prosecution of third-party ML; (iv) foreign predicate crimes; (v) TF, and (vi) to ensure all FIs, DNFBPs and VASPs are subject to AML/CFT obligations and supervision or monitoring unless they pose proven low risks.
- Increase **staffing** at SAPS DPCI and FIC
- Establish better **mechanisms** to collect BO information
- Supervisors to improve **understanding** on ML risks
- Ensure **Professional enablers** *examples* securities sector, attorneys and estate agents, are supervised or monitored for AML/CFT commensurate with their risk profiles, by increasing supervisory resources and closing gaps in sectorial coverage.

SA Initiatives to address ME findings

LEA's

- Various task teams formed in response to the findings
- Working groups(in each LEA) established to address findings
- Training initiatives
- Structural gaps being addressed in LEA's
- Legislative changes being drafted

Success story 1

Krechir



The FIC received a request for assistance for PROJECT VEYRON, PROJECT TRUST and PROJECT DANUBE concerning syndicates involved in Gold smuggling, murder, drug smuggling, assault, Fraud, vehicle cloning and many others. Charges of Tax evasion and customs related offences were also brought against them which resulted in the recovery of more than R 287 855 095-00. Charges related to Money laundering resulting from the numerous Predicate offences were registered against members of the large syndicate.

The FIC conducted analyses on different accounts with transactional data, Regulatory reports (CTR / STR / Cross Border), persons profile, property and vehicle databases, Company and Intellectual Property and various other databases that the FIC has access to.

Upon completion of the initial base line analyses, it was discovered that the role players of the different cases overlapped and that they were all involved in different stages of the financial flows and transactions identified.

The FIC shared the information gathered with a multi-agency task team, its findings on an intelligence basis, enabling the successful prosecutions against numerous of the syndicate members. The multi-agency task team consisted of members from the Receiver of Revenue (SARS), Directorate Priority Crime Investigation (DPCI), State Security Agency (SSA) and the National Prosecuting Authority (NPA).

Success Story 2

Case Example—VAT Fraud

- The accused registered 18 companies for VAT with SARS and were allocated VAT numbers.
- The companies initially traded but ceased to trade and thereafter solely existed for purposes of claiming fraudulent VAT refunds from SARS. VAT refunds in the amount of R 216 million were claimed, of which R 148 million was paid out to the companies.
- The case came to light when SARS did an **audit** on one of the entities.
- Through this audit, they established that the export and import documents supplied by the entity were false.
- Further investigation established that this entity was linked with the other 17 entities, because the same person submitted the VAT returns.
- SARS **obtained the company documents from CPCI** and established that the accused were directors of all 18 entities.
- The bank accounts and opening documents were subpoenaed with the assistance of the DPCI and established that three accused had **signing powers** on these accounts.
- SARS did a forensic investigation on the **flow of the monies** and established that the accused transferred the monies from one entity account to another, and within a month withdrew the bulk of the monies in cash. They purchased property, paid investments and paid credit card instalments.
- The charges preferred against the accused were **fraud, forgery, uttering and 78 counts of money laundering**. On the money laundering charges, the accused were sentenced to **20 years** imprisonment and for the other offences to 25 years imprisonment

Thank you
Re a leboha
Re a leboga
Ndza Khensa
Dankie
Ndi a livhuwa
Ngiyabonga
Enkosi
Ngiyathokoza