

**AN EVALUATION OF MONEY LAUNDERING INVESTIGATION AT THE  
FINANCIAL AND ASSET FORFEITURE INVESTIGATION UNIT OF THE SOUTH  
AFRICAN POLICE SERVICE IN PRETORIA**

by

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## DECLARATION

I hereby declare that “An evaluation of money laundering investigation at the Financial and Asset Forfeiture Investigation Unit of the South African Police Service in Pretoria”, submitted in accordance with the requirements for the degree of Master of Arts in Criminal Justice is my own work and has not previously been submitted to another institution of higher education. All sources used in this dissertation have been appropriately cited or quoted, and are indicated and acknowledged in the comprehensive list of references.

A handwritten signature in black ink, appearing to read 'RP Baloyi', is written over a horizontal line.

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DATE: 18 February 2020

## **ACKNOWLEDGEMENTS**

I dedicate this dissertation to my daughters, Xiluva and Nhlalala, for their understanding throughout my studies.

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## **ABSTRACT**

This study evaluated money laundering investigation conducted at the Financial and Asset Forfeiture Investigation (FAFI) Unit of the Directorate for Priority Crime Investigation (DPCI) in Pretoria. Data were collected through semi-structured interviews conducted with financial and asset forfeiture investigators attached to the DPCI who are responsible for investigating money laundering. From the results of this study, it became apparent that participants experience a number of challenges in the investigation of money laundering. This study makes recommendations that could empower investigators at the FAFI of the DPCI with enhanced skills and knowledge to effectively investigate cases of money laundering.

### **Key terms**

Corruption, financial investigation, money laundering, proceeds of crime, Financial and Asset Forfeiture Investigation Unit

## LIST OF ABBREVIATIONS

<b>AFU</b>	Asset Forfeiture Unit
<b>CAS</b>	Crime Administration System
<b>CIPC</b>	Companies and Intellectual Properties Commission
<b>DOJ &amp; CD</b>	Department of Justice and Constitutional Development
<b>DPCI</b>	Directorate for Priority Crime Investigation
<b>ESAAMLG</b>	Eastern and Southern Anti-Money Laundering Group
<b>FAFI</b>	Financial and Asset Forfeiture Investigation
<b>FATF</b>	Financial Action Task Force
<b>FI</b>	Financial Investigation
<b>FIC</b>	Financial Intelligence Centre
<b>FICA</b>	Financial Intelligence Centre Act
<b>IMF</b>	International Monetary Fund
<b>IMF-FSAP DPCI</b>	International Monetary Fund – Financial Sector Assessment Program Directorate for Priority Crime Investigation
<b>INTERPOL</b>	International Policing Agency
<b>JSE</b>	Johannesburg Stock Exchange
<b>MLA</b>	Mutual Legal Assistance
<b>MER</b>	Mutual Evaluation Report
<b>NPA</b>	National Prosecuting Authority
<b>PRECCA</b>	Prevention and Combatting of Corrupt Activities Act
<b>POCA</b>	Prevention of Organised Crime Act
<b>POCDATARA</b>	Protection of Constitutional Democracy against Terrorism and Related Activities Act
<b>SA</b>	South Africa
<b>SABRIC</b>	South African Banks Risk Information Centre
<b>SAICB</b>	South African Insurance Crime Bureau
<b>SARPCCO</b>	Southern African Regional Police Chiefs Cooperation Organisation
<b>SARS</b>	South African Revenue Service
<b>SAPS</b>	South African Police Service

<b>STR</b>	Suspicious Transaction Reports
<b>SCCI</b>	Serious Commercial Crime Investigations
<b>SOCI</b>	Serious Organised Crime Investigations
<b>STR</b>	Suspicious Transaction Reports
<b>US</b>	United States

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## **CHAPTER 1: GENERAL ORIENTATION**

### **1.1 INTRODUCTION**

Financial crimes are being committed by criminals in order to enrich themselves with the proceeds of crime. According to the International Monetary Fund (IMF), financial crime constitutes crime that is not of a violent nature and that leads to financial losses (Ryder, 2011:2). The term 'financial crime' is not explained the same around the world (Ryder, 2011:2). Ryder (2011:2) further states that financial crime is commonly considered as covering the offences of fraud, terrorist financing, money laundering, bribery and corruption, and information security. Money laundering is one of the most commonly used types of financial crime and it can hinder the operations of financial institutions. Countries, including South Africa (SA), are targeted as a safe haven for money laundering activities and are mostly used by criminals to avoid or evade tax. These countries are targeted for money laundering as the launderers will either pay low or no tax on their illicit funds.

The next chapter outlines the background history of the Directorate for Priority Crime Investigation (DPCI), the mandate of the Financial and Asset Forfeiture Investigative (FAFI) unit, the problem statement, the delimitation of the study, the aim of the research, the purpose of the research, the research questions under investigation, the key theoretical concepts, the value of the research, the research design and approach, the target population and sampling, data collection, data analysis, the trustworthiness of the study and the ethical considerations.

### **1.2 BACKGROUND HISTORY**

The South African Police Service (SAPS) established an independent division under its wings (the DPCI) (also known as the Hawks) in July 2009 in terms of section 17C of the South African Police Service Act, No. 65 of 1995 (South Africa, 1995) (SAPS Act), as amended by the South African Police Service Amendment Act, No. 57 of 2008 (South Africa, 2008). As national priority crimes (serious organised and serious commercial crime, as well as serious corruption, including serious economic offences) constitute a major problem for South Africa, the DPCI should investigate these and find ways to combat and prevent them. This responsibility is given to the DPCI by section 17B and 17D of the SAPS Act of 1995 as amended (Directorate for

Priority Crime Investigation, 2014). The DPCI was instituted through passing an Act in Parliament and includes the Commercial Crime Unit, Financial and Asset Forfeiture Investigative Unit, Organised Crime Unit, the Priority Crime Management Centre and Support Services. The head of the DPCI is appointed by the Minister of Police and the rest of the personnel by the National Commissioner. All staff members in the employment of the DPCI must submit to certain criteria and can only be appointed after obtaining security clearances (Directorate for Priority Crime Investigation, 2011:1).

### **1.2.1 The mandate of the Financial and Asset Forfeiture Investigative Unit**

The FAFI component of the DPCI was established to ensure that financial gain is taken out of crime. Furthermore, the unit is mandated to utilise the relevant legislation optimally to investigate, identify, seize and forfeit the assets of criminals (and their organisations) that are the proceeds of crime or that were obtained through criminal activities (South African Police Service, [sa]:2).

Within the FAFI unit, the DPCI has two units, namely Financial Investigations and Asset Forfeiture Investigations. According to the FAFI Operational Plan 2013/2014 (South African Police Service, 2012(b)), the financial investigations unit focuses its responsibilities on the investigation of the financial aspects of national priority crime.

The operationalisation of the DPCI FAFI investigations is primarily guided by the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) as well as the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015). These directives focus on the mandate of the FAFI, standard operating procedures and the FAFI investigations strategy. These directives further set out financial investigative methodology procedures to ensure the efficient management of processes in financial investigation to and give direction and provide guidelines to assist the operational divisions of the DPCI FAFI to do investigations into financial deals and losses of assets in an effective and efficient manner.

The purpose of the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]) is to:

- highlight the importance of financial and asset forfeiture investigations.
- highlight the importance of the relevant legislation in South Africa.
- highlight the importance of international responsibilities with regard to financial investigation.
- provide guidance on the role and responsibilities of each of the SAPS investigators during investigation.
- provide guidance on the process of referring cases to the FAFI.

The *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) sets out financial investigative methodology procedures to ensure the smooth handling of processes in financial investigation and to give direction and provide guidelines to assist the operational divisions of the DPCI FAFI to do investigations into financial deals and losses of assets in an effective and efficient manner. The *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015). The purpose of this document is to give direction and provide guidelines to render an effective and efficient financial and asset forfeiture investigation service to the operational components of the DPCI FAFI and the Asset Forfeiture Unit (AFU) of the National Prosecuting Authority (NPA).

According to the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010), as well as the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015), the FAFI unit is mandated to conduct the following investigations:

- Any offence referred to in section 16 of the SAPS Act of 1995 (South Africa, 1995)
- Suspicious transaction reports (STR) referred to the DPCI by the Financial Intelligence Centre (FIC) as stipulated in section 40 of the Financial Intelligence Centre Act (FICA), No. 38 of 2001 (South Africa, 2001)
- Any offence referred to in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA), No. 33 of 2004 (South Africa, 2004a)

- Offences relating to racketeering activities – section 2 of the Prevention of Organised Crime Act (POCA), No. 121 of 1998 (South Africa, 1998)
- Offences relating to the proceeds of unlawful activities – sections 4, 5 and 6 of the POCA
- Life-style investigations in terms of section 22 of the POCA and section 23 of Prevention and Combatting of Corrupt Activities Act (PRECCA), No. 12 of 2004 (South Africa, 2004b).

The FAFI unit is responsible for providing support in terms of asset forfeiture investigations as required in criminal and civil forfeiture applications in terms of Chapter 5 (Criminal Forfeiture) and Chapter 6 (Civil Forfeiture) of the POCA of 1998 with specific focus on the following priority crimes:

- Organised crime where syndicates are involved (including endangered species)
- Narcotic-related crime
- Cash seizures where the amount involved is at least R30 000,00
- Serious violent crimes with an economic motive, such as cash heists
- Serious economic offences
- Serious corruption cases where senior state officials are involved
- Cases involving the abuse of attorneys' trust accounts
- Advanced fee payment scams
- Cases involving lifestyle criminals
- Identifying and reporting of non-compliance in terms of the POCA of 1998 (SAPS, 2013b).

Furthermore, the FAFI unit is responsible for section 205 applications to financial institutions in terms of section 71 of the POCA of 1998 and section 205 of the Criminal Procedure Act, No. 51 of 1977. This unit is also responsible for the execution of confiscation/forfeiture orders in terms of sections 27 and 38(4) of the POCA of 1998.

The *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information*

*Note 3/1/5* (South African Police Service, 2010) as well as the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015) set out the role and responsibilities of the FAFI financial and asset forfeiture investigators as follows:

- Conducting an investigation into possible money laundering offences that may be added to the criminal charges. The financial investigator will require copies of some documents that the criminal investigator has obtained such as bank account documents. Any documents obtained by the financial investigator will be prepared in such a way that they can be used as evidence in a court of law. That would include the taking of statements.
- Doing lifestyle investigations. These types of investigations may be conducted based on a criminal case docket or an enquiry, depending on the circumstances.
- Investigating suspicious transaction reports (STRs), which the FIC submits, as if an enquiry was made.

While the financial investigator performs the investigation, all the financial transactions will be inspected obtain evidence that money was laundered. During this investigation, the investigator may also identify the assets. It should be noted that in commercial crime cases, the criminal investigator may have already conducted a financial investigation. However, cognisance should also be taken of third-party involvement in criminal cases that must not be overlooked. The role of the financial investigator is a very important one.

The earnings from financial crimes as well as the way in which such crimes were conducted must be sought and found by the forfeiture investigator. During this investigation, the investigator will conduct searches on several databases, visit premises and perform more actions to obtain proof of ownership of assets and/or property. These investigators also provide information and assist prosecutors in making informed decisions about property that is targeted for forfeiture. The asset forfeiture investigator will also testify in court regarding his/her findings.

### **1.3 PROBLEM STATEMENT**

According to Creswell (2014:108), a study needs to be done when there is a problem or issue (also called the problem statement). A researcher cannot research his own complete interest in a certain topic and therefore has to limit the research to a particular research issue, which will be the research problem.

Chatain, McDowell, Mousset, Schott and Van der Does de Willebois (2009:xi) and Moshi (2007:2) state that the earnings derived from criminal exercises are increased and fraud is amplified by the concealment of money, which negatively influences the social, economic, political and cultural improvement of the people around the world. Moshi (2007:2) reiterates that legitimate and foreign investors will not in any way conduct business with or invest in a country where money laundering takes place and, in this way, the relevant country's access to foreign markets and investment will be severely hampered, which means that the economy of that country will not grow. Money laundering also harms critical financial sector institutions in a country. According to Moodley (2008:16), the integrity of financial markets and the country's reputation are put at risk by money laundering as it has an impact on the medium of exchange and interest rate of a country. According to McDowell and Novis (2001:6), money laundering encourages offences, such as dealing of drugs and illegal arms, terrorism and corruption (Goredema, 2006:10).

According to a report by Moodley (2008:11), money laundering has a global impact of more than 6 000 United States dollar. Of this amount, only approximately two percent is retrieved. According to Shevel (as cited by Moodley, 2008:3), an approximate amount of R70 billion to R80 billion is laundered in South Africa annually. Goredema (2006:8) states that these laundered moneys are largely earnings derived from crimes. De Koker (2012:3) mentions that nationally and universally, huge amounts of money are laundered; however, the amount of money involved is not known because sufficient statistics are not held to be able to conclude on an amount. South Africa is a soft target for international and local crime organisations due to the fact that it is the financial hub in Africa, has a sophisticated banking and financial sector, as well as a market that is mainly based on cash (South Africa, 2013).

Goredema (2006:7) states that despite the vastly increased scope for prosecutions created by the POCA (South Africa, 1998) and the FICA of 2001 (South Africa, 2001), state prosecutions for money laundering are still disappointingly few and far between. There has been a low conviction rate of money laundering cases since the establishment of FAFI in 2012. Statistics for the period February 2012 to November 2014 indicate that 63 cases and 52 STRs were referred to the FAFI unit (head office) for financial investigations. During the 2015/16 financial year, 31 cases and 103 STRs were registered at the FAFI unit. From these 31 cases, two were closed with no prospects of successful prosecution and 29 were being investigated and pending outcome at the time of this study. Eight STRs had been closed. After investigation, no crimes were detected from the eight closed STRs and prosecutors were reluctant to add money laundering charges (Directorate for Priority Crime Investigation Financial and Asset Forfeiture Investigation Case Control Registers 2015/2016, 2016). Emanating from these cases and STRs, only one conviction of money laundering has been secured as per the SAPS Garsfontein Case Administration System (CAS) 304/11/2011. The statistics of money laundering cases were not properly kept because the financial investigative capacity was not established within the DPCI. According to the SAPS Annual Report of 2015/16 (South African Police Service, 2016:202), there is no indication of money laundering statistics as investigated by the FAFI unit. This annual report of the SAPS indicates the crimes in terms of the POCA and, according to this report, one case has been received and one conviction secured during 2015 and 2016 in terms of section 4 of the POCA:

- The FAFI unit is a relatively new unit in the investigation of money laundering, and although it creates opportunities to deal more effectively with crime, it also comes with many challenges, such as the low conviction rate of money laundering cases. These low money laundering conviction rates could be as a result of limited skills and training of financial and asset forfeiture investigators when it comes to the investigation of money laundering. According to the Financial Action Task Force (FATF) (2012a:8), countries should ensure that their FAFI units are empowered with enough financial investigators who are properly trained and have experience to conduct financial investigations by using domestic laws and international conventions and standards. Furthermore, more attention is given to finding and indicting the offences leading to the money laundering than the actual money laundering itself (Financial Action Task Force, 2003: 1).

In addition, it is also possible that these cases are not often prosecuted because investigators are not knowledgeable about what exactly a financial investigation should look at or what the FAFI unit should do. Most of the referrals to the FAFI unit are enquiries and projects. These enquiries and projects are intelligence driven investigations where no criminal case is registered. Financial investigations will be conducted, but the matter will not be taken to court for money laundering before the investigator can establish the criminal link to money laundering. Financial investigations should be done together with investigations of normal or other predicate offences (FATF, 2012a:8).

In 2003, the FATF mentioned that South Africa does not have many money laundering prosecutions (*Mutual Evaluation Report-Executive Summary: Anti-Money Laundering and Combating the Financing of Terrorism – South Africa*, 2009:5). According to the FATF (2003:3), the unit came into being to find ways to stop money laundering. The G-7 Summit established the unit in 1989 to institute procedures to safeguard financial organisations worldwide against money laundering (Cox, 2011:16). Because South Africa belongs to the FATF, it has to comply with the anti-money laundering policies established by the unit and is measured on such compliance.

Organisations in the financial sector as well as the programmes of offshore financial centres have to implement and comply with the said anti-money-laundering standards and the International Monetary Fund (IMF) is responsible for the monitoring of such compliance (Moshi, 2007:4). South Africa has been assessed by the IMF in terms of money laundering investigations and prosecutions for the period from 2011 to 2013 (with a focus on money laundering linked to corruption and financial fraud) (SAPS, 2014a). According to the International Monetary Fund – Financial Sector Assessment Program Directorate for Priority Crime Investigation (IMF-FSAP DPCI) report (South African Police Service. Directorate for Priority Crime Investigation, 2014a), which was presented to the IMF, the statistics of money laundering cases in SA (2011 to 2013) are outlined as follows:

▪ Cases on hand	=	177
▪ Pending court	=	58
▪ Pending investigation	=	77
▪ Public prosecutor's decision	=	08
▪ Convictions	=	34

It is uncertain if law enforcement in South Africa is effective in this regard because of insufficient statistics, as found by the FATF's evaluation in 2003 (Geldenhuis, 2016:26). These statistics also highlighted that, at the end of 2010, the SAPS had received 477 STRs from the FIC. These STRs were dealt with in the following manner as per Table 1.1 below.

**TABLE 1.1 SUSPICIOUS TRANSACTION REPORTS**

<b>DESCRIPTION</b>	<b>NUMBER</b>
Balance brought forward	477
Investigation finalised	132
Reports converted to criminal cases	75
Reports under investigation	270

(South African Police Service. Directorate for Priority Crime Investigation, 2014a)

Notwithstanding the resources that South Africa has to make a success of convicting money laundering cases, there are very few convictions. In terms of finances and legal abilities, South Africa is capable to do many money laundering investigations and get prosecutions from these investigations because of the high level of organised crime in the country. However, still very few such investigations are done in the country, although there is a confirmed high level of organised crime and predicate offences (Financial Action Task Force, 2009:79).

The Commercial Crime: DPCI statistics of 2012 (SAPS, 2013a) indicate that six money laundering cases charged under the POCA (South Africa, 1998) were received for investigation. Out of these six cases, nine accused were convicted on 136 counts. In 2013, eight money laundering cases charged under the POCA were received for investigation and only six accused

were convicted of money laundering on 11 counts (SAPS, 2013a). According to the SAPS (2016:203), one money laundering case has been received and one conviction has been secured in terms of sections 4 and 5 of the POCA. These statistics show that although there are many money laundering cases in South Africa, not many are handed over for investigation and conviction. The statistics presented to the FATF by South Africa were not comprehensive. Previously, the statistics which were presented to the FATF were compiled by the NPA and the Commercial Crime Unit. The poor maintenance of statistics and data in South Africa needs to be corrected by the relevant authorities (FATF, 2009:39).

According to the *FAFI Standard Operating Procedure for Investigating Capacities: Information Note 3/1/5* (South African Police Service, 2010:1), historically, the SAPS has been involved in the investigation of the activities of criminal syndicates. De Koker (2012:2) states that law enforcement agencies were mainly concerned with the crime that was perpetrated to yield the earnings and they largely disregarded the acts performed to obtain these earnings. If these activities were indeed investigated, it was to establish a connection between the perpetrator and the crime. Organised crime is very lucrative and it flourishes worldwide. In South Africa, organised crime is rife and is perpetuated by organised groups. The types of crimes these groups are involved in include vehicle theft, the smuggling of narcotics and abalone, and trafficking in arms, humans, and mineral and precious stones. A total of 491 fraud schemes, counterfeit cheques, credit cards and pyramid schemes are used often in South Africa (FATF, 2003: 15).

The motive for organised crime is to generate profit. Money laundering is a crime committed mostly by organised criminals. Traditionally, law enforcement focused on arresting the criminals and paid no attention to seizing the ill-gotten gains (SAPS, 2011:1). However, this has now changed because the families of the criminals resume these activities while the criminals are in jail and upon their release, they also use the original proceeds of crime.

### **1.3.1 Researcher's experience in the investigation of money laundering**

The researcher is an investigator at the DPCI FAFI and investigates money laundering and conduct tracing of assets acquired from illegal activities. When a criminal matter is handed to this unit, the financial and asset forfeiture investigation is done jointly by investigators from the Financial Investigation Unit and the Asset Forfeiture Investigation Unit. The researcher is an asset forfeiture investigator and has been working in this capacity since 2012.

However, the researcher has set aside her previous experience of the phenomenon under examination and started to look into the opinions of the participants while being busy with the phenomenon. Creswell (2013:80) suggests that the feelings of researchers about the phenomenon are first considered and discussed and only then they involve the feelings of others. In the same vein, the researcher took a new approach to the phenomenon and did not regard her own experiences with the phenomenon after discussing them. This is called bracketing.

### **1.4 DELIMITATION OF THE STUDY**

This study was limited to the FAFI unit of the DPCI head office in Pretoria, South Africa. As mentioned in 1.2.1, the FAFI unit is mandated to investigate, identify, seize and forfeit the assets of criminals (and their organisations) that are the proceeds of crime or that were obtained through criminal activities. These investigations include the financial aspects of national priority crime, such as money laundering. As a result, this study evaluated money laundering investigations conducted at the FAFI unit in Pretoria.

### **1.5 AIM OF THE RESEARCH**

According to Denscombe (2010:14), a short summation of the aims of the investigation, which should include broad descriptions of the researcher's overall goals or target, should be given at the beginning of any research report.

This study aimed to evaluate the investigation of money laundering investigations conducted at the DPCI FAFI unit in Pretoria.

Official DPCI FAFI directives were primarily used as a measure to evaluate the investigation of money laundering investigations conducted at the DPCI FAFI unit in Pretoria since the establishment of the FAFI in 2012, as per the study's identified research aim. Consequently, these directives were also used as benchmark against participants' responses in order to address the purpose of the research as set out in section 1.6 and the research question as set out in section 1.7. The contents of these directives, as presented in Chapter 2, include the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) and the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015).

## **1.6 PURPOSE OF THE RESEARCH**

According to Denscombe (2010:8), the basis on which the research is evaluated is the knowledge the evaluator has of the purpose of the research, because the deliverables of the research project is underscored by the purpose (Zikmund, Babin, Carr & Griffin, 2012:118) indicate that research purposes are the deliverables of the research project. In harmony with Denscombe (2010:8) and Zikmund et al. (2012:118), the identified purpose of this study is as follows:

- To determine whether the DPCI FAFI unit is achieving its proposed investigative mandate to effectively investigate money laundering, as mentioned in section 1.2 above.
- To identify and describe challenges/shortcomings experienced by the DPCI FAFI investigators to effectively investigate money laundering.

## **1.7 RESEARCH QUESTION UNDER INVESTIGATION**

The aim of the research questions is to present the research problem in such a way that it would be easy to investigate it and from there define the nature and scope of the research (Lewis-Beck, Bryman & Ligo, 2004: 966). As a result of the low conviction rate of money laundering cases since the establishment of the FAFI in 2012, as illustrated in paragraph 1.3 above, the following primary research question was explored:

- What are the challenges/shortcomings experienced by DPCI FAFI investigators in the effective investigation of money laundering?

## **1.8 KEY THEORETICAL CONCEPTS**

According to Mouton (1996:187), a definition is a declaration of the restrictions and definitions of a word with respect to its meaning and what it refers to. The following concepts are central to this study:

### **1.8.1 Money laundering**

Madinger (2012:5) states that money laundering entails obscuring the identities of the persons who yielded proceeds from criminal activities and then using legitimate channels to make it seem as if the proceeds were yielded in a legal way. According to the FICA (South Africa, 2001), ‘money laundering’ or ‘money laundering activity’ relates to any occurrence that hides the truth about where the proceeds come from, as well as what is done with it after it has been obtained. It also hides the identification of people that were involved in these activities. These activities are stated as offences in section 64 of this Act or section 4, 5 or 6 of the POCA, Act 121 of 1998 (South Africa, 1998).

### **1.8.2 Fraud**

Fraud is defined by Snyman (2002:520) as the “unlawful and intentional making of a representation which causes actual prejudice or which is potentially prejudicial to another.”

### **1.8.3 Financial crime**

Financial crime involves “the use of deception for illegal gain, normally involving breach of trust, and some concealment of the true nature of the activities” (Pickett & Pickett, 2002:3).

### **1.8.4 Bank statement**

Bank statement is defined as “a detailed account of all financial activities (debits and credits) for a period for a bank account” (Deloitte, 2002: 41).

### **1.8.5 Financial Investigation**

According to the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:5), a financial investigation has as one of its aims the retrieval of documents proving the movement of money. Such documents are called a paper trail. Documents often used that constitute a paper trail are bank accounts, and documents proving ownership of fixed property or motor vehicles, among others. If such paper trail is found, very much information could be obtained as evidence that criminal activities took place. The following steps in this investigation are first to find the connection to show how the proceeds were obtained, where it was moved to from there and when, and finally where it is stored. A financial investigation creates a profile of the criminal and his businesses and relatives. Therefore, the financial investigation resembles a criminal investigation, with the difference being that the aim of the financial investigation is to find the proceeds yielded from the crime. Normal investigative techniques all apply and are merely transposed to the financial area, such as:

- making a direct comparison where records with a historical connection to the suspect are examined.
- comparing income against expenditure. Unidentified cash is questioned.
- examining the net worth of an individual – the assets and liabilities. Increases must have a reason, for instance increases in salary, legal business operations or proceeds from a criminal activity.

## **1.9 VALUE OF THE RESEARCH**

Denscombe (2002:43) is of the view that research must contribute to the existing body of knowledge on the subject, satisfy practical needs and be significant to contemporary issues. It is important to undertake this study due to the fact that the economy of the country is being adversely affected by financial crimes, with special reference to money laundering in order to find out what the role of the FAFI unit is in investigations of money laundering. Previously, the criminals were convicted for the predicate offence but not punished for the benefits or profit that was derived from that predicate offence.

This study contributed the following value:

- Inadequacies and problems that are encountered by financial and asset forfeiture investigators were pinpointed.
- It assisted financial and asset forfeiture investigators to perform efficient investigations into money laundering.
- Brought more academic knowledge that students and researchers can use in future.
- Made a contribution to society in South Africa and added knowledge to the field of financial crime, which is extremely necessary due to the fact that money laundering keeps increasing and having a negative influence on South Africa's economy

## **1.10 RESEARCH METHODOLOGY**

According to O'Leary (2004:85) research methodology is a collection of classic ideas that will be used by the researcher when doing research. The following methodological framework was followed in this study:

### **1.10.1 Research design and approach**

In the research design some decisions are made in terms of the study field to be investigated and the population to be used. It also entails deciding on which research methods to use and what the goal of the research should be (Babbie, 2011:179). Bless, Higson-Smith and Kagee (2006: 71) define research design as a description of which actions must be performed to test a hypothesis in specific circumstances. According to TerreBlanche, Durrheim and Painter (2006:34), methods and techniques used by the researcher to collect and examine data in order to efficiently deal with the research problem are referred to as the research design.

According to Creswell (2014:12), biography (the course of a person's life), phenomenology (the study of structures of consciousness), grounded theory (forming of a theory), ethnography (the study and systematic recording of human cultures) and case study (intensive analysis of a person, group or situation) are all types of qualitative research designs. In this research, the researcher used a case study to inform the research problem. According to Lewis and McNaughton Nicholls (in Ritchie, Lewis, McNaughton Nicholls & Ormston, 2014:66) acknowledge case study usually falls within the ambit of qualitative research. Case study investigates a variety of perspectives that are embedded in a single specific context. All those

various perspectives originated from different accounts as people with different perspectives of the world are involved. Furthermore, not all case studies are equally complex. Some case studies might be less complex and use interviews of as few as two participants, while, on the other hand, it can also be so complex as to have interviews with 20 or more participants per case study. The latter might also incorporate documented data. According to Creswell (2014:241), in a case study the researcher explores a program, event, activity, process, or one or more individuals. The case for this study was the FAFI unit of the DPCI head office in Pretoria. This case study explored a particular activity in a specific context, meaning the investigation of money laundering conducted by FAFI investigators.

Creswell (2014:4) states that the way people or groups feel about the social world and believe it are explored in qualitative research; therefore, in this study, qualitative research was done in this study. The researcher evaluated money laundering investigations conducted by DPCI FAFI investigators and used qualitative methods to discover what types of information can be extracted from the data collected by doing an in-depth examination of the member that were selected for this purpose (TerreBlanche et al., 2006:47).

### **1.10.2 Target population and sampling**

A population is a large group of items or people on which the researcher will focus his attention and about which the researcher wants to find out more Bless et al. (2006:98). The ideal population for this study is the sum total of the DPCI FAFI investigators employed at branch offices nationally who investigate money laundering incidents. Each province has a DPCI FAFI branch office; however, it could not be confirmed how many DPCI FAFI investigators are operational nationally since the DPCI considered this information as confidential and refused to disclose this information to the researcher, irrespective of SAPS approval obtained to conduct this study. However, it was unrealistic to use the entire national population for the study and therefore it was narrowed down to a target population which consisted of 15 investigators who investigate money laundering at the FAFI unit of the DPCI head office in Pretoria.

As mentioned in paragraph 1.2.1, the DPCI has two units within the FAFI unit, namely the Financial Investigations Unit and the Asset Forfeiture Investigations Unit. Both these units collaboratively investigate money laundering cases, therefore no distinction is made in the sample of this study between these units. As a result, the FAFI unit in Pretoria was included as the target population.

When a selection is made of only some of the research participants in the population by means of considering settings and events, and behaviour or social processes, it is referred to as sampling (TerreBlanche et al, 2006:48). When a sample has been selected, it is assumed that the members in this sample will be representative of the entire population of the study (Gravetter & Forzano, 2003:138).

The researcher purposively selected the sample for this study as being investigators working in the FAFI unit and investigating money laundering cases handed to them and subsequently prosecuting such perpetrators. The researcher thus believes that these investigators have the required information to shed some light on the study. The sample consisted of 15 FAFI investigators that were purposely selected employed by the DPCI to perform investigations on money laundering cases. When the researcher forms an opinion of the characteristics of the representative sample it is known as purposive sampling (also known as judgemental sampling) (Bless et al., 2006:106). Gravetter and Forzano (2003:202) feel that the judgement of the researcher is the basis of purposive sampling as he selects the sample based on the people or items that exhibit most of the characteristics or features of the entire population. Because the members of a sample represent the entire population, the purpose of the research would be met..

### **1.10.3 Data collection**

The steps for data collection demarcates the ways in which information will be collected and include collecting information through interviews, documents and visual materials, as well as establishing the protocol for recording information.

This researcher decided on the following methods to collect data for the study:

### **1.10.3.1 Literature study**

Information for this study which relates to the topic was sought from various libraries. However, the researcher was unable to find information on the topic in libraries, and therefore, broke the topic down into different concepts such as ‘money laundering’ and ‘financial crime’. International and local literature was accessed to obtain information for the study, although there is little local literature on the topic.

De Vos, Strydom, Fouche and Delport (2005:96) state that literature should be obtained through a variety of methods. Other methods to search for literature have to be used to ensure that not only one method is depended on. Previous research can be used by a researcher as another method of research, as well as finding and documenting relevant literature (Welman & Kruger, 2001:33). Welman and Kruger (2001:33) caution that libraries are not the only place where literature can be obtained. As a result, the researcher used the internet as another method to access the literature for the study. According to De Vos et al (2005:128), making use of the internet for research is faster than other methods of research and the internet is available 24 hours per day with no limit to the length of time for which it can be used. Because of the vast amount of information available on the internet and the unlimited access available, research in all fields has now begun to use the internet to find information for their studies (Kumar, 2011:37).

### **1.10.3.2 Interviews**

According to Babbie and Benaquisto (2010:342), during qualitative interviews, the participant is free to give more detail in their responses to ensure a deeper knowledge of the issues. In this way, the participants can also steer the direction of the conversation. Gravetter and Forzano (2003:287) state that interviews are the most widely used method of data collection in qualitative research.

The researcher conducted semi-structured interviews since it allowed participants to provide in-depth information from their personal experiences as financial and asset forfeiture investigators in money laundering investigations. The researcher compiled a standardised interview schedule, as per Annexure D, which she used during the interviews, together with

predetermined questions that addressed the research problem, research questions and research aim. In a semi-structured interview there are predetermined questions, but these are not asked strictly in a predetermined sequence as is the case in a structured interview. There is certain level of flexibility in this type of interview. It also leaves the freedom to the participants to give open-ended answers to the questions asked Lewis-Beck et al (2004:1020). Pickett and Pickett (2002:160) are of the opinion that the best way to find out something is to ask someone in the know. Before commencement of the actual interviews, the researcher held pilot interviews with the participants. In these interviews the interview schedule as intended was used. The participants who participated in the pilot interview have extensive knowledge of and experience pertaining to financial investigations. Based on the feedback obtained from participants after testing the interview schedule, the final interview schedule was developed. The researcher asked consent from the interviewees to record the interviews on a voice recorder. This was done to do a proper analysis of the data obtained during the interviews at a later stage. The written consent of the participants was obtained for these voice recordings before the interviews started. The researcher made use of a voice recorder to record the interviews, with the view of transcribing such interviews for data analysis purposes, and obtained written consent from the research participants before commencing with the interviews. The interviews were conducted until saturation point had been reached.

#### **1.10.4 Data analysis**

During data analysis, the data are broken down into sections and examined in these different parts after which it is put together again (Creswell, 2014:1950). In the search for the answers to the research questions, the researcher sorts the data into different categories, ranks it, manipulates it and then summarises it (TerreBlanche et al., 2006:52; Gravetter & Forzano, 2003:218). When doing this, the data will be a true reflection of the perceptions of the participants. According to TerreBlanche et al. (2006:52), data analysis is aimed at using data to answer the research question.

Creswell (2013:82-188) explains the data analysis spiral, which method was used in this study for data analysis. In this spiral, data are first organised in a certain way. After this organisation, the current researcher read the transcripts made during the interviews a few times in order to

find the meaning of what the respondents said in each interview. After this, the data are broken down into various parts. In this study, the researcher wrote notes when she studied the data and in this way, the researcher classified the data into certain categories in which the study it. She developed strong descriptions of each of these categories and ranked the categories in themes. When all this was done, the researcher could interpret the views of the participants and link them to those in literature.

### **1.10.5 Trustworthiness of the study**

Trustworthiness is very important in any research and in qualitative research, it is measured by credibility, transferability, dependability and confirmability Guba and Lincoln (as cited in Kumar, 2011:184), which also indicate validity and reliability of the study. To ensure the trustworthiness of this study the researcher followed the strategies as advocated by Guba and Lincoln.

#### **1.10.5.1 Credibility**

Study participants are best equipped to tell whether what they feel and think are displayed in the findings of the research because the perceptions, experiences, feelings and beliefs of people are what are explored in qualitative studies. Hence, if there is a high level of participant similarity, it can be said that the quantitative research has credibility (or validity). In a qualitative study similarity can be measured by discussing the findings with the participants and if the level of similarity is high, the validity of the study is also high. (Kumar, 2011:185).

To ensure that this study had a high level of credibility, the following validation strategies as set out by Creswell (2014:200) were used:

- *Triangulation*: Evidence obtained was studied in this study was examined by comparing all the various sources used, after which an explanation was extracted from all the themes. The converging of several sources and perspectives of participants added value to the credibility of the study.
- *Member checking*: The researcher presented the participants with the preliminary themes for their comments on the accuracy of the findings which were used as member checking.

- *Researcher bias:* As explained right from the start, the researcher brings to the study a certain amount of bias because of past experiences, expectations, preconceptions and orientations from her life thus far. These would have an influence in her interpretation of and approach to the study.
- *Prolonged time in the field:* The researcher spent an extended time in the field to develop an in-depth understanding of the phenomenon under study that enabled her to convey detail about the participants that lend credibility to the narrative description.

#### **1.10.5.2 Transferability**

The researcher described the participants' responses very well because she made use of their verbatim words. The details were connected with each other by the comprehensive details that were shared among all of them. In the discussion of the setting used for the research, the users of the research could almost feel one with the setting and in this way, shared experiences were created. Furthermore, the detailed description assisted the reader in deciding how transferable the findings were to the larger community.

#### **1.10.5.3 Dependability**

For the research to be dependable, the procedures followed were documented extensively by the researcher. This makes it possible for other researchers to use these same procedures. With the written consent of the participants, their responses were audio-taped and transcribed later. These transcripts were verified by the researcher for accuracy.

#### **1.10.5.4 Confirmability**

According to Trochim and Donnelly (as cited in Creswell, 2014:185), if the results of a study can be confirmed or substantiated by others, the research has a high level of confirmability. In this study, the process followed in linking the analysis of the findings, recommendations and conclusions to the original sources in which they were found was written down and kept for future purposes. Furthermore, the electronic data and transcriptions were secured so that only the researcher had access to it.

## **1.11 ETHICAL CONSIDERATIONS**

In terms of research ethics, the researcher must handle all individuals affected by the results of their research studies honestly and with respect (Gravetter & Forzano, 2003:73). According to Yegeedis, Weinbach and Myers (2012:29), the term ethics is derived from the Greek word *ethos*, which refers to the principles within a society that reflect what the society generally views as right or wrong behaviour. The researcher in the current study used the *Policy on Research Ethics of the University of South Africa* (University of South Africa, 2007:7) to guide her in keeping the study ethical. In terms of this policy, the dignity, privacy and confidentiality of participants should be respected and kept at all times.

The researcher adhered to the following ethical guidelines during this study:

### **1.11.1 Informed consent**

In order to make it possible for the participants to make an informed decision regarding participation in the study, the researcher told them what the aim and purpose of the study is. To show that they had in fact consented to take part in the study, the participants had to sign informed consent forms, which indicated that they agreed to take part in the interviews and answer the questions. The participants were informed that they had the right to withdraw from the process at any time and that they did not have to give an explanation for their withdrawal. They were also informed that there would be no penalty or loss of benefit for them should they withdraw. Due to the voluntariness of participation, they were not entitled to any form of compensation or reimbursement for it.

### **1.11.2 Protection from harm**

Participants remained anonymous to protect them from any unnecessary physical or psychological harm. The researcher treated the participants with dignity and respect. The interviews were conducted in a safe environment where the participants felt comfortable. Permission to conduct the study had to be obtained from the participants' employer, which was done before commencement of the interviews. The researcher also made sure that she supplied the participants with enough relevant information on what the research entailed.

### **1.11.3 Anonymity and confidentiality**

Confidentiality was guaranteed since participants remained anonymous. The information that was obtained from the participants was kept confidential and was not made available to anyone other than the researcher.

### **1.11.4 Right to privacy**

The right to privacy of participants was respected and maintained.

## **1.12 SUMMARY**

This chapter outlined the general orientation of the study. This chapter provided an outline of the research methodology that was adhered to in order to respond to the research question. Accordingly, this chapter afforded the reader with an outline of the recognised research problem, the aim of the research and the subsequent research question. Furthermore, this chapter clarified the demarcation of the research and the purpose and value of the study. The research design and approach followed was described in sync with the related population and sampling method. Furthermore, the method of data collection and data analysis was reflected on, followed by the ethical characteristics followed in this research. Chapter 2 discusses the investigation of money laundering.

## **CHAPTER 2: THE INVESTIGATION OF MONEY LAUNDERING**

### **2.1 INTRODUCTION**

Recommendation 30 of the FATF states that because financial investigations form a fundamental part of an all-inclusive crime prevention strategy, countries should continuously examine their law enforcement authorities that perform money laundering investigations to make sure that they remain within the framework of national AML/CFT policies. Furthermore, all inquiries that relate to crime with financial gain should be done by financial investigators (FATF, 2012a:8).

Money laundering cannot take place on its own and there is always another criminal act involved in or underlying the process of money laundering. Such other act is called the predicate offence or the source of illegal financial gain. Fraud, theft, corruption, robbery, illegally operated gambling casinos, drug trafficking, human trafficking, kidnapping, customs violation and illegal firearms trafficking are the crimes underlying money laundering. Because money laundering cannot take place in isolation, the investigation of money laundering cases must on finding the money trail and therefore focus on the predicate offence to find evidence of money laundering.

This chapter outlines the legislative synopsis regulating money laundering and the proceeds of illegal activities, the Financial and Asset Forfeiture Unit, proceeds of unlawful activities, objectives of financial investigation, money laundering investigative strategy, parallel investigation in relation to financial investigation, process of conducting financial investigation and financial investigative techniques. The discussion that follows will focus on the legislation that regulates money laundering and the proceeds of illegal activities.

## **2.2 LEGISLATIVE FRAMEWORK REGULATING MONEY LAUNDERING AND THE PROCEEDS OF ILLEGAL ACTIVITIES**

South Africa has legislative frameworks that are in place for the prosecution of money laundering or the proceeds of illegal activities. Criminals continue to enjoy these proceeds even if they were found guilty for the offence committed, since they are not prosecuted for the proceeds derived from the crime committed. According to the SAPS (2013:1), the role of the financial investigator is clearly spelt out by legislation. The methods used for financial investigation can be used in any criminal investigation, but there are some Acts that leads the investigator to present the results of a financial investigation should a dispute arise.

The *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) and the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015) set out the following legislation enacted by the government where specific financial investigations are required:

### **2.2.1 Prevention of Organised Crime Act**

The Prevention of Organised Crime Act (POCA), No. 121 of 1998 (South Africa, 1998) was voted into law to assist in the fight against organised crime, money laundering, criminal gang activities and racketeering. In terms of this Act, the gains obtained through financial crimes can be recovered by means of civil and criminal forfeiture. The Mutual evaluation report: Anti-money laundering and combating the financing of terrorism (2009:3) the POCA, which came into effect on 21 January 1999, is the major Act in the combat against money laundering in South Africa. In terms of South Africa's "all crimes" approach, the predicate offences involved in money laundering can also be prosecuted. The introduction of the POCA and the FICA (as discussed in section 2.2.4 below) has placed South Africa in line with the standards set by the (FATF). It is the introduction of these Acts that makes the effective investigation and prosecution of money laundering possible.

There are three separate provisions of the POCA that make money laundering a criminal offence, including the conversion or transfer, concealment or disguise, possession, acquisition

of property in a manner that is largely consistent with the 1988 United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention) (Mutual evaluation report: Anti-money laundering and combating the financing of terrorism, 2009: 3).

The POCA is used by the FAFI unit as a tool to remove the incentives of criminal activities which require financial investigation methodologies to help prove the crime. The legislation introduced a comprehensive asset forfeiture regime which has been successfully used by the AFU. The AFU comprises State Advocates and asset/financial investigators. The AFU assists the relevant authorities to recover the gains obtained from financial crime, but it does not prosecute criminal cases. An investigation into the allegations of illegal activities is done first, and then the assets and gains are tracked and recovered (SAPS, 2013:2).

The POCA makes provision for the following two methods of seizing the assets or freezing the assets until the court finally decides whether the assets should be forfeited:

#### **Chapter 5 – Criminal forfeiture – based on UK system only after conviction**

Chapter 5 of the POCA provides for the criminal forfeiture of the proceeds of crime. It allows proceeds to be confiscated through a civil action after the accused has been convicted (NPA, [sa]:6-7).

#### **Chapter 6 – Civil forfeiture – based on USA system**

The POCA provides for the civil forfeiture of assets. Civil forfeiture states that the burden of proof lies on the state that a financial crime was committed. After the state has proven that the assets are the proceeds of a crime or were used to commit a crime, such assets can be recovered. The balance of probabilities of civil forfeiture can be used when there is enough evidence to prove guilt beyond reasonable doubt (NPA, [sa]:7).

The participants were asked the following question: “In your own words, explain what the mandate of the Financial and Asset Forfeiture Investigative Unit is?” The purpose of this

question was to ascertain whether the participants are familiar with the mandate of this investigative unit.

- Six participants were of the view that the mandate of the FAFI unit is to investigate how the money was moved and examine the documentation used for this moving in order to discover cases of money laundering.
- Two participants mentioned that the unit is mandated to follow the proceeds of crime or illegal activities.
- One participant indicated that the unit has to conduct parallel investigations to support criminal investigations.
- In contrast, one participant pointed out that the unit's mandate is to investigate the allegations in order to prove money laundering.
- Two participants outlined the mandate of the FAFI unit as to investigate STRs, dishonest and fraudulent business dealings, illegal and criminal actions and the life styles of people involved. One of these two participants further indicated that the unit has to investigate all cases that might possibly be illegal in a financial sense by collecting and examining relevant evidence.
- In contrast to the responses by the participants mentioned above, three participants were of the view that the unit is mandated to remove/seize the proceeds of crime in order to fight crime.

The responses of the participants indicated that a minority of the participants are not clear about the mandate of the unit since they pointed out that the unit has to analyse the bank statements and follow the money acquired through illegal proceeds. The mandate of the unit is, however, to ensure that financial gain is taken out of crime by investigating, identifying, seizing and forfeiting the assets of criminals, as outlined in this study in section 1.2.1.

The next discussion outlines the Prevention and Combatting of Corrupt Activities Act of 2004, and how it is applied by the FAFI unit to conduct investigations into unexplained wealth.

### **2.2.2 Prevention and Combating of Corrupt Activities Act**

The Prevention and Combating of Corrupt Activities Act (PRECCA), No. 12 of 2004 (South Africa, 2004b), was introduced in April 2004 in order to assist in the prosecution of corrupt activities by specific people and public officials. This Act states that when the National Director of Public Prosecutions has reasonable suspicion that a crime was committed, he can launch an investigation into the assets of the relevant individual. Section 20 of this Act creates an offence that overlaps with money laundering offences as per the POCA. According to Warren (2006:6), there is a connection between money laundering, bribery and corruption. However, this Act was not sufficient to fight these comprehensive financial crimes and therefore, the PRECCA was established (Cariston, Voker & Venter, 2011:71). The PRECCA makes the measures instituted to combat these crimes more enforceable. It also makes provision for the existence of corruption and related acts and provides investigative measures for the investigation of these crimes. In terms of the PRECCA, a register can be compiled which can place certain restrictions on identified individuals and organisations that have been found guilty and convicted of corruption in respect of tenders and contracts. The PRECCA also allows the state/FAFI unit to perform investigations into the wealth of individuals or organisations for which no reasonable explanation can be provided. However, such investigations must be based on a directive from a judge.

The next discussion focuses on the implementation of the POCDATARA when conducting money laundering investigations.

### **2.2.3 Protection of Constitutional Democracy Against Terrorist and Related Activities Act**

Included in the Protection of Constitutional Democracy Against Terrorist and Related Activities Act (POCDATARA), No. 33 of 2004 (South Africa, 2004a), are all possible acts an individual or organisation can perform to conduct terrorist activities. The Act has been established to provide for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for measures to prevent and combat the financing

of terrorist and related activities and to provide for investigative measures in respect of terrorist and related activities. Terrorists may engage in various crimes to fund their terrorist activities or they may use perfectly clean money to conduct terrorist activities. Charities are non-governmental organisations (NGOs) and due to the fact that they are in a sector that is not properly regulated, they become vulnerable to terrorist financing. Jorisch (2009:105) indicates that individual donors transfer large sums of money each year to charities, usually out of a genuine desire to help those in need. He further states that as a result of traditionally lax oversight, illicit actors are in an ideal position to exploit this goodwill for terrorism financing or other purposes. According to Cox (2011:162), because charities are dependent on donations from outside, it is easy for money launderers to use them for money laundering and terrorist financing. For this reason, they should be protected against such people. The POCDATARA enables the state/the FAFI unit to seize property that is associated with terrorist and related activities.

The next discussion outlines the importance of the FICA in the investigation of money laundering.

#### **2.2.4 Financial Intelligence Centre Act**

The Financial Intelligence Centre Act (FICA), No. 38 of 2001 (South Africa, 2001) was written to supplement the POCA. The Financial Intelligence Centre (FIC) is a national organisation that receives information when there is suspected or possible money laundering or terrorist financing. After receipt of this information, they distribute it to the relevant parties. Through the FIC, the country's legislation on money laundering is brought into line with global standards. The centre came into being in 2003 in terms of section 2 of the FICA to manage the FICA of 2001, as amended. One of the main priorities of the FIC is to identify gains from illegal activities and fight money laundering and other terrorist financing activities, as contemplated in section 3 of the FICA (South Africa, 2012:10).

De Koker (2012:77) outlines the objectives of the FIC as follows:

- To make information collected by it available to investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Service with a view to facilitating the administration and enforcement of the laws of South Africa in general
- To exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities and similar activities
- To supervise and enforce compliance with FICA or any directive made in terms of FICA and to facilitate effective supervision and enforcement by supervisory bodies

In terms of the Anti-money laundering and counter-terrorism financing legislation (South Africa, 2012: 10), the FIC has the following functions:

- Process, analyse and interpret information disclosed to and obtained by it in terms of this act
- Inform, advise and cooperate with investigating authorities, supervisory bodies, the South African Revenue Service and the intelligence services
- Monitor and give guidance to accountable institutions, supervisory bodies and other persons regarding the performance of and compliance by them of their duties and obligations in terms of this Act or any directive made in terms of this Act
- Retain the information all information received pursuant to compliance with the provisions of the FICA

The FIC has no investigative powers or mandate. It collects and disseminates intelligence, not evidence. The FIC supplies the information they collected to other investigative authorities, SARS and the intelligence agencies upon the signature of any officer who is registered with the FIC and is authorised to sign such request. The FICA also provides for the FIC to send information to the SAPS and other law enforcement agencies regarding any suspicious and unusual transactions that require the use of financial investigation methodologies to develop a criminal case (SAPS, 2010:2).

The FIC is an important source of information while conducting money laundering investigations as it has a database that makes it easier to access the information of an individual even in foreign countries. This information includes the financial status of the individual, the

bank accounts opened by the individual, the travel information out of the Republic of South Africa and the information on assets owned by the individual. The information obtained from the FIC is only used as intelligence by the FAFI unit investigators. The investigators have to follow up on the information provided by the FIC by obtaining evidence in support of that, so that it can be admissible in a court of law.

The next discussion outlines the legislative framework governing money laundering and the proceeds of illegal activities.

Participants were asked to respond to the following question: “Are you familiar with the legislative framework governing money laundering and the proceeds of illegal activities?” The purpose of this question was to explore whether the participants are familiar with the legislation that legalise the investigation of money laundering. Participants’ responses are summarised below as follows:

- Fourteen participants indicated that the POCA is the main legislation that governs money laundering. From these 14 participants, seven also pointed out that the POCA works in conjunction with the PRECCA and FICA. Six of the 14 participants further elaborated that sections 3, 4 and 5 of Chapter 3 of POCA are utilised in order to charge the person according to what he has done in the commission of crime and what he has benefitted from the crime.
- In contrast with the above responses, one participant pointed out that the legislation which criminalises money laundering is the POCA of 1998.

The responses given by participants led the researcher to believe that they are knowledgeable about the legislation controlling money laundering, although it is evident that some participants are not conversant with other applicable legislation, which clearly indicates that they only focus on the POCA while conducting money laundering investigations. None of the participants mentioned the POCDATARA as the legislation that can be applied in the investigation of money laundering.

### **2.3 THE FINANCIAL AND ASSET FORFEITURE UNIT**

The charging and prosecution of criminals are some of the key responsibilities of the National Prosecuting Authority (NPA) of South Africa. Its mandate is set out in section 179(2) of the Constitution of the Republic of South Africa, No. 108 of 1996) in terms of which the NPA can charge and prosecute criminals on behalf of the state and to take other actions related to instituting criminal proceedings. According to Cariston et al. (2011:147), the FAFI unit has been established in May 1999 to ensure that the powers stipulated in the POCA to seize criminal assets are used effectively to remove the profit of crime.

This unit restricts and surrenders gains yielded from criminal activities and used in committing these crimes. When such moneys are forfeited, it is paid over to the Criminal Asset Recovery Account (CARA) in a manner which is explained by Geldenhuys (2016:23) or to the people identified to have suffered from these crimes. These moneys are also disseminated to law enforcement agencies that has as its aim to fight against organised crime, money laundering, criminal gang activity and crime in general, and to assist victims of crime.

The *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015) prioritises training and development of FAFI investigators regarding these aspects as important for the effective functioning of investigators:

- The FAFI unit has as its aim the upskilling of its members and giving them better investigating capabilities by providing focused training and resources to use in these investigations.
- Priority 4 – Effectively training members of the FAFI to develop skills and knowledge
- The proper training and development of members assigned to the component to provide members with the required, specialised skills and knowledge to conduct investigations into national priority offences.
- Training exposure and positive engagements with other consultants, for example, training at tertiary institutions and benchmarking.
- This document acknowledge insufficient subject-specific training for the skill enhancement of the members as a risk.

The participants were asked the following question: “Have you undergone training to investigate money laundering? If affirmative, was the training intervention/s efficient or not?” The purpose of this question was to determine if the participants were fully equipped with the required skills and knowledge to efficiently investigate money laundering. Participants’ responses are summarised below as follows:

- Fourteen participants pointed out that they have received training in the investigation of money laundering and indicated that the training was sufficient as it enabled them to:
  - investigate money laundering cases
  - differentiate money laundering investigations from criminal investigations
  - know how suspects conceal and spend the money obtained through illegal activities
  - compile subpoenas in terms of section 205 of the CPA and statements to be presented to the prosecutors
  - know how the illicit earnings of crime can be concealed through money laundering
  - conduct a financial and asset forfeiture investigation and obtain a clear understanding of the Public Finance Management Act.
  
- One participant has not undergone any formal training course, but has attended weekly workshops, which were efficient because she has established that in most of the commercial crimes, there is money laundering, and she is able to identify the cases that have money laundering potential due to the informal training she received.

From the participants’ responses to this question, it is evident that all participants have undergone some form of training in the investigation of money laundering, whether formal training courses or training workshop. The responses also indicated that money laundering investigation is different from criminal investigation, so it requires specialised investigators who have such skills and knowledge. However, from the participants’ responses it became evident that training interventions to investigate money laundering are limited to formal in-house training courses and do not include exposure and positive engagements with other consultants, for example, training at tertiary institutions and benchmarking.

The following discussion outlines the proceeds of unlawful activities.

## **2.4 THE PROCEEDS OF UNLAWFUL ACTIVITIES**

Perpetrators are benefitting from the commission of crime they are involved in daily. The benefits that were obtained through crime can be regarded as proceeds of unlawful activities. The proceeds can be in the form of money, assets and properties, and are tainted or dirty considering the origin or source. According to Geldenhuys (2016: 20), the reach of POCA spans a wide range which includes many kinds of criminal activities, including commercial crime. POCA was established mainly to remove the incentive for criminal activity.

### **2.4.1 Section 4 of POCA – Money laundering**

According to the Anti-Money Laundering and Counter Terrorism Financing Legislation (South Africa, 2012:143) in section 4 of the POCA provides that “a person is guilty of an offence if he or she knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities, and commits an offence if he/she:

- enters into any agreement, arrangement or transaction in connection with the property;
  - performs any other act in connection with the property;
- which has the effect or is likely to have the effect:
- of concealing or disguising the nature, source, location, disposition or movement of the property or the ownership of the property or any interest in the property; or
  - of enabling or assisting any person who committed an offence in South Africa or elsewhere:
    - to avoid prosecution; or
    - to remove or diminish any property acquired directly or indirectly as a result of an offence.”

### **2.4.2 Section 5 of POCA – Assisting another to benefit from the proceeds of unlawful activities**

Section 5 of POCA provides that “a person commits an offence if he knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities and enters into any transaction, agreement or arrangement:

- in terms of which the retention or the control by or on behalf of that other person of the proceeds of unlawful activity is facilitated; or
- in terms of which the proceeds are used:
  - to make funds available to that person;
  - to acquire property on his behalf; or
  - to benefit him in any other way.”

Section 5 is aimed at any agreement, arrangement or transaction:

- which is entered into by a person
- which will assist another person to enjoy the benefits of proceeds of crime.

### **2.4.3 Section 6 of POCA – Acquisition, possession or use of proceeds of unlawful activities**

Section 6 of POCA provides that “a person who:

- acquires;
- uses; or
- possesses property;

and who knows or ought reasonably to have known that it forms part of the proceeds of unlawful activities of another person, commits an offence under section 6 of POCA.”

### **2.4.4 Penalties**

According to the Anti-Money Laundering and Counter-Terrorism Financing Legislation (South Africa, 2012:145), an individual who is found guilty of an offence set out in section 4, 5 or 6 of the POCA will have to pay a fine of no more than R100 million rand or will be incarcerated for not longer than 30 years.

The following discussion outlines the objectives of financial investigation.

## 2.5 OBJECTIVES OF FINANCIAL INVESTIGATION

According to the FATF (2012a:3), a financial investigation seeks to indicate that money has been moved in the course of the criminal activity and record this movement. The relation between the origin of the money, the persons who received it, when was it received and where it was kept, can be established and can provide valuable information. The FATF (2012a:6) further outlines the objectives of financial investigation as follows:

- The identification of proceeds of crime, the tracing of assets and the confiscation of assets
- The commencing with money laundering investigations
- The exposure of or transnational organised crime and the gathering of knowledge on the modus operandi

The SAPS (2013:1) states that financial investigations are performed to assist with the approaches to investigating financial crime in order to prove that a crime has been committed. It also uses documents obtained in the paper trail to pinpoint people or syndicates that were involved in the crime and obtain information on their whereabouts and involvement in the crime and in this way assist the investigation of the acts that lead to the money laundering. Financial investigations also make the forfeiture of gains obtained from the laundering possible. Furthermore, financial investigations produce strategic information to use in order to find out the extent of the gains obtained from the illegal activities, to find these properties and seize them (Pheijffer as cited in Jordaan, 2007:19).

According to the *International Terrorist Financing and Money Laundering Course Manual* (2007:6) “a financial investigation is conducted in order to:

- determine the size and structure of an organisation
- develop evidence that proves premeditation or the criminal intent of the subject
- identify co-conspirators supplying or receiving money
- uncover assets used to facilitate the crime.”

It is further outlined in the FATF (2012a:9) that financial information can bring the following benefits for a parallel investigation into predicate offences:

“Identify motives, associations and links to people and places.

- Identify the use of other services such as phones, transport and amenities relevant to the case.
- Locate or identify suspects, witnesses or victims.
- Provide information on a suspect’s movements.
- Provide information to address the issue of prolific and priority offenders where no previous method has been successful.
- Trace persons.”

The primary objective of the FAFI unit is to contribute to the successful prevention, combating and investigation of national priority crime offences by conducting financial and asset forfeiture investigations (*Financial and Asset Forfeiture Investigations Strategy 2015-2020*, South African Police Service, 2015).

The participants were asked the following question: “In your opinion, what are the objectives of a financial investigation?” The purpose of this question was to explore the participants’ opinion regarding the objectives of the financial investigation. Their responses are summarised as follows:

- Eight participants were of the view that financial investigations are done to find out how financial crimes were committed, and where the gains from these crimes were moved to..
- Two participants felt that financial investigations are don to trace and identify the suspect by gathering the relevant information from different stakeholders. Analyse the evidence and confirm that the suspect has benefitted from the crime and present the findings to the prosecutors.
- Two participants pointed out that a predicate offence has to be strengthened by analysing and interpreting the bank statements, and the money has to be followed in order to incriminate the suspect.

- In contrast to the responses above, two participants felt that the only reason for a financial investigation is to identify allegations of money laundering and then examine these allegations by means of a cash flow analysis.
- One participant pointed out that the objective of financial investigation is to investigate national priority crimes related to finances.

Upon analysis of the responses of the participants it was revealed that most of them did not really know what the reasons for doing financial investigations were. Most felt that such investigations only use bank statements of the alleged offenders in order to prove that a crime was committed. Not one of the participants thought that a financial investigation is supposed to support a criminal investigation in its attempts to prove that a crime was committed. Furthermore, the seizing of the gains obtained from such crimes were not mentioned by any of the participants.

The money laundering investigative strategy is outlined in the next discussion.

## **2.6 MONEY LAUNDERING INVESTIGATIVE STRATEGY**

Over the past couple of years, South Africa has built a strong and all-inclusive legislative structure to ensure that law enforcement agencies are able to investigate and prosecute cases of money laundering effectively. This legislative structure includes the POCA and the FICA, which are of the same standard as legislation in other countries and on par with the standards set by the FATF (FAFI Guidance Document [sa]).

According to the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015), the investigative concept of the FAFI model is based on the following:

- Taking away the gains to be made from illegal activities in an attempt to stop them from doing it again.
- Finding evidence to produce a profile of economic activity associated with the subject of an investigation.

- Removing the proceeds and benefit from crime leaving the criminal powerless and economically vulnerable.
- Ensuring convictions of money laundering and ensuring devotion of forfeited assets to the combating of crime.

The participants were asked the following question: “Do you experience challenges/shortcomings to effectively investigate money laundering?” The purpose of this question was to examine if the participants encounter challenges in the investigation of money laundering. A summary of the responses from the participants is outlined below:

All the participants agreed that they do experience challenges in the investigation of money laundering, except one participant who pointed out that she has never encountered any challenges while conducting investigations. The participants’ motivation for their answers included the following:

- Resistance from the referring units due to the fact that they do not understand the mandate of FAFI.
- There is no good relationship with the criminal investigators who are referring the matters for money laundering investigation.
- Some of the criminal investigators from the referring units within the DPCI, the members from the stations and members of the public have no clear understanding and knowledge of money laundering.
- Late referrals of cases to FAFI only to find that the case has been on the court roll for a prolonged period. When the financial investigation is complete and presented to the prosecutors to add money laundering charges to the predicate offence, the prosecutors indicate that the charge sheet has already been drawn, therefore, no other charges will be added.
- Criminal investigators providing incomplete information of the suspects. For example, an incomplete ID number of the suspect, which will cause a delay in the investigation since there is nothing that can be conducted without the ID number.
- It takes time to process information requested from other stakeholders and feedback is not obtained timeously by financial and asset forfeiture investigators.

- STR investigations do not yield any positive results due to the fact that the magistrates are reluctant to authorise the subpoenas in terms of section 205 of the CPA, indicating that there is no case docket which has been registered; in other words, no crime has been committed. The investigators always compile the report of the findings of the investigation indicating the money laundering offences, but they are turned away by the magistrates.
- Financial institutions, especially the banks, keeping record only for a specific time. For example, a case is reported after ten years and the request is made at the bank for the opening documents and statement of the bank account being investigated. The banks keep the records for a minimum of five years, so only the bank statements will be obtained with no documents of the account holder. This makes investigation difficult since in such cases, the culprit is unknown.
- Prosecutors are reluctant to add money laundering charges, alleging that money laundering investigations will take long and delay the process of prosecuting the predicate offence.

From the participants' responses to this question, it was evident that there are various challenges experienced by FAFI investigators when investigating money laundering. Investigators are not guided by the prosecutors during the process of investigation.

The following discussion outlines parallel investigations in relation to financial investigation.

## **2.7 PARALLEL INVESTIGATIONS IN RELATION TO FINANCIAL INVESTIGATION**

Where financial investigations are concerned, a parallel investigation is used as it investigates the predicate offence simultaneously with the money laundering offence (FAFT, 2012a:9). When these two types of investigations are used simultaneously they complement each other and lead to a more comprehensive investigation of a crime. It is stipulated in SAPS (2015:8) that it is essential that the investigating officers in the criminal case, the financial investigation and the asset forfeiture investigation work together during the course of an investigation. It further states that a criminal investigation is no longer the sole responsibility of one

investigating officer, but is rather a team effort without duplication, since each discipline has a different focus of investigation.

The researcher is of the opinion that one of the responsibilities of the criminal investigating officer is to investigate a crime in order to gather sufficient evidence to prove the guilt or innocence of a suspect. The financial investigating officer will conduct investigations into money laundering offences by performing lifestyle audits and investigating suspicious transaction reports. The investigative units within the DPCI refer their matters to the FAFI unit for financial and asset forfeiture investigations and, by doing so, both the investigative units share information about their investigations. This is done during the operational meetings where all the stakeholder involved in the investigation give feedback.

Based on experience, the researcher is of the opinion that the authorities tasked with law enforcement must make use of a parallel investigation to prove that the money laundering or terrorist financing have taken place, while the financial investigation tries to prove that the proceeds have been moved during the crime as well as to find where it has been moved to. When it is established what the connection is between the origin of the money, to whom it was transferred when, and where it went from there, proof of criminal activity can be obtained.

## **2.8 THE PROCESS OF CONDUCTING FINANCIAL INVESTIGATION**

The FATF (2012a:6) states that the process of financial investigation includes the gathering, organising and analysing of the information available, as it is only by doing this that prosecution for a crime can be done, and the seizing of the proceeds can take place. There are no records or literature in South Africa, which indicates how money laundering should be investigated. According to the researcher, it is the responsibility of the financial investigators to collect information that will assist in the investigation of money laundering. The operational units within the DPCI are responsible for the investigation of these cases. Cases where there is a potential for money laundering are referred to the FAFI unit for further financial and asset forfeiture investigation.

According to the South African Police Service ([sa]), when a matter is referred to the FAFI unit the following should be used as a guideline:

- The value involved in the criminal case
- The complexity of the criminal case
- Public interest
- Interest of justice
- Whether there is asset forfeiture potential
- Whether there is money laundering potential
- Whether a suspect has been identified
- Organised crime groups

The research participants were asked the following question: “According to you, what is your role and responsibilities as a financial and asset forfeiture investigator during the investigation of money laundering?” The question wanted to evaluate whether the participants are clear about and well conversant with their mandate and job descriptions. Participants’ responses were summarised as follows:

- Six participants pointed out that after receiving a case docket from the referring units, they ensure that the case has financial investigation potential. Profiling is conducted on the suspects and if it appears that there is a suspicion, an application is made in terms of section 205 of the CPA for bank statements in order to follow the trail of money. Bank statements and the other information gathered are analysed to establish who benefitted from the crime and how the dirty money was cleaned using the three stages of money laundering. A report with regard to the findings is compiled and presented to the prosecutor to add the money laundering charges to the predicate offence. Two of the six participants further pointed out that they are responsible for investigating STRs, conducting lifestyle investigations and testifying in court.
- In contrast, two participants were of the opinion that the role of financial investigators is to assist the criminal investigation by ensuring that the proceeds of crime are followed by analysing the bank statements. An example was given by the participant indicating that,

previously, a person was only charged for a predicate offence like fraud, corruption or theft but not for money laundering.

- One participant indicated that the role of the financial investigator is to look in detail into the flow of money when it is paid into the bank accounts. It should be proven that money laundering took place and the red flags in those bank accounts should be showed.
- One participant pointed out that a financial investigator, in collaboration with the NPA, should find the assets obtained through money laundering and then then seize and forfeit it.
- Three participants indicated that the role of the financial investigator is to determine what happened to the proceeds of crime and identify people who benefitted from that crime.
- One participant indicated that his role as a financial investigator is to give a clear picture to the court of how the proceeds of unlawful activities were utilised.
- One participant was of the view that a financial investigator should find evidence that proceeds have been yielded by means of money laundering, identify the source of the money and determine whether the money was obtained legally or illegally.

It appeared from the responses that the majority of the participants are familiar with their roles and responsibilities as financial investigators, although some could not explain their role in detail; but the fact of the matter is that they have an understanding that the money trail should be followed to prove money laundering. The emphasis is on the analysis of bank statements.

The following discussion focuses on the referral of cases to FAFI for investigation.

### **2.8.1 Referral of cases to the FAFI unit**

Requests are received for internal financial investigation from the following units:

- Commercial Crime Investigation
- Organised Crime Investigation
- Anti-Corruption Investigation
- Detective Service Investigators
- Crime Intelligence and Protection Services
- Individual Investigators
- Suspicious Transaction Reports

Requests received for external financial investigation support from other law enforcement agencies/government stakeholders are as follows:

- South African Revenue Services (SARS) (Customs)
- Financial Services Board (FSB)
- South African Reserve Bank (SARB)
- Environmental Crime Management
- FIC
- NPA (Mainstream prosecutions)
- NPA-AFU
- Metro Police

International requests guided by multi-lateral and bi-lateral agreements are as follows:

- Police to police
- Eastern and Southern Anti-Money Laundering Group (ESAAMLG)
- FATF
- Camden Asset Recovery Interagency Network (CARIN)
- Asset Recovery Interagency Network of Southern Africa (ARINSA)
- Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO)

When the FAFI unit receives the requests for financial investigation from the units mentioned above, such information is recorded and a determination is made regarding whether the request has potential for a financial investigation. If there is potential for a financial investigation, an enquiry file is opened and allocated to the investigator for investigation.

In addition, participants were asked the following question: “According to you, what are the reason/s for the low conviction rate of money laundering?” The purpose of this question was to explore the factors resulting in the low conviction rate of money laundering. In summary, the participants responded as follows to this question:

- Fourteen participants believed that prosecutors contribute to the low conviction rate of money laundering and the following motivations were provided:

- Prosecutors are reluctant to add money laundering charges to the predicate offence.
- Lack of knowledge by some of the magistrates and prosecutors about money laundering.
- Prosecutors are not prepared for lengthy trials, so they are apprehensive to prosecute money laundering charges.
- The accused are usually advised by their legal representatives and prosecutors to enter into a plea bargain so that they can be convicted for a predicate offence and receive lighter sentences, while money laundering charges will be removed.
- Prosecutors are alleging that money laundering will prolong the trial and prosecution.
- Prosecutors do not know what is involved in money laundering and that different people can be charged with money laundering offences according to what they have contributed to and benefitted from the crime.
- When prosecutors have indicated that there are no money laundering charges, there is nothing more that the investigators will do.
- One participant pointed out that he has investigated a Free State case where 291 charges of money laundering were proven, but it took him half a day to convince the prosecutor to add money laundering charges.
- Investigators work very hard to prove money laundering, but cases are occasionally dismissed by prosecutors.
- In contrast to the participants' responses outlined above, one participant disagreed by pointing out that investigators are not properly trained to investigate money laundering and this leads to insufficient evidence being presented to the prosecutors. He further mentioned the fact that the unit is understaffed and the work volume is very high.
- One participant pointed out that criminal investigators are not interested in money laundering charges; they only concentrate on the predicate offence.

It appears from the participants' responses, that even though they perform money laundering investigations to the best of their abilities and consequently provide sufficient evidence that such crime has been committed challenges exist in the prosecution of money laundering charges since it is customary to only prosecute the predicate offence.

### **2.8.2 Investigation plan**

The investigator will acknowledge the receipt of request for investigation and then compile an investigation plan in order to address the following (*FAFI Standard Operating Procedure for Investigating Capacities: Information Note 3/1/5* (South African Police Service, 2010:9)):

- Collect available information
- Draw a basic financial profile by the identification of sources (systems search)
- Analyse products of search
- Determine the financial investigation required
- Schedule dates according to tasks to be performed
- Identify internal and external role players in financial investigation
- Define objectives of the investigation/outcomes

The next discussion outlines the sources of information while conducting a money laundering investigation.

### **2.8.3 Gathering of information**

Financial investigators need to collect and gather information about the targets under investigation. The collection of such information is not simple because the information has to be admissible in court, therefore it needs to be obtained legally. Criminals are always one step ahead of law enforcement with their techniques of hiding the proceeds of crime, which makes the task of law enforcers to trace these proceeds very difficult. Criminals usually hide their assets or proceeds of crime by registering them in other family members' or their attorneys' names in an attempt to avoid prosecution. The following requests/statements are compiled in order to obtain information:

- According to section 205(1) of Juta Statutes Editors (2012:181-182), “a regional court magistrate or a magistrate may, upon the request of a Director of Public Prosecutions or a public prosecutor authorised thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination, of any person who is likely to give material or relevant information as to any alleged offence.” Section 205 of the Criminal

Procedure Act of 1977 states that “an investigator has to compile a statement, which will be signed by the prosecutor and authorised by the magistrate.” For example, a subpoena in terms of section 212 of the Criminal Procedure Act of 1977 is compiled and authorised by the magistrate in order to be submitted to the financial institutions and other institutions for information. Information from the financial institutions could be bank statements, which will indicate the movement of funds in the account. In addition, information could also be obtained from other institutions, for example motor dealerships on how a suspect’s vehicle/s were purchased, and information from the deeds office on how a suspect’s properties have been purchased. The following entities could serve as sources of information:

- FIC
- South African Banks Risk Information Centre (SABRIC)
- NPA to SARS – sharing of information in terms of a section 73 request
- Companies and Intellectual Properties Commission (CIPC)
- South African Insurance Crime Bureau (SAICB)

According to the FATF (2012a:18), law enforcement and competent authorities can use the following sources of information in furtherance of financial investigations:

### **2.8.3.1 Criminal records and intelligence**

Some types of information used in proving that criminal activity has taken place are criminal records and intelligence (obtainable from banks); information on previous arrests, prosecutions, sentences; as well as possible linkages with known criminals (all obtainable from the SAPS Criminal Record Centre database).

### **2.8.3.2 Financial information**

In order to understand the nature of and resources used in criminal activities, financial information is used, which is information on the operations of the relevant entities. It includes bank accounts, other records of personal or business financial transactions and information

collected in the context of meeting customer due diligence. Such financial information is also helpful in predicting future activity and to find the assets obtained.

### **2.8.3.3 Classified information**

Classified information is information that the state regards as sensitive and it must be protected. It includes information on terrorist financing and is kept for national security. In terms of law, only certain people or organisations can obtain access to such information.

### **2.8.3.4 Open source**

This type of information can be obtained by means of sources that are open to anybody to use, for instance the internet, all kinds of media (social, print and electronic), and public and private registries.

### **2.8.3.5 Regulatory information**

Regulatory information is information that is maintained by regulatory agencies; access is typically restricted to official use only. This category of information could be held by central banks, tax authorities and other revenue collecting agencies.

The study participants were asked the following question: “In your opinion, are you empowered with sufficient resources to effectively investigate money laundering?” The purpose of this question was to identify whether the participants are well equipped with resources to enable them in the investigation of money laundering. Participants’ responses to this question are summarised below:

- All the participants agreed that they have sufficient resources which enable them to properly conduct money laundering investigations. The participants’ motivation to their answers included the following:
  - High scanning machines are available that can extract bank statements data from PDF into Excel spreadsheets, which makes analysing of the bank statements easier.
  - Internet access
  - Vehicles are available for all members

- All the participants have laptops
- Access to profiling systems
- All the participants are issued with cellular phones
- Guidance from the commercial crimes advocates
- Access to analyst notebook to link the suspects with their associates and properties
- Investigation is mostly conducted in the offices as bank statements have to be interrogated
- In contrast, three participants also raised the concern that the resources are partly sufficient. The motivation for their answers is offered below:
  - Software in place needs to be developed due to the fact that technology is ever changing.
  - Shortage of manpower resulting from promotions where experienced investigators left the unit and are not replaced.
  - Criminals are always knowledgeable about the methods of hiding assets and the proceeds of illegal activities.

It appeared from the participants' responses, that the investigators have sufficient resources to investigate money laundering effectively.

The following discussion focuses on the financial investigative techniques.

## **2.9 FINANCIAL INVESTIGATIVE TECHNIQUES**

Recommendation 31 of the FATF (2012a:25-28) states that there are many different ways in which criminal activities can be investigated. These include undercover operations, tapping of communications and computers, or controlled delivery. The following investigative techniques are highlighted in this report:

- **Physical surveillance:** This method assists in obtaining information about an individual's/business's movements and relations. When suspects are observed, it might be possible to find where records relating to financial crime are kept, validate financial data and find other people/businesses possibly involved.

- Trash runs: This involves searching through the suspect's trash because people sometimes throw away things that could be used as evidence in a financial investigation. It might be possible to find in the trash indications of where proceeds from crime might be kept.
- Interviews: Investigators should arrange interviews with suspects in order to obtain statements from them, to gather evidence or to remind investigators and witnesses of the events that took place in the course of criminal activities.
- Controlled delivery: This technique is used when illegal imports, money or monetary instruments that were discovered in the course investigation and prosecution of financial crime, are shipped to a suspected violator while such suspect is being watched by law enforcement officers. When performing controlled deliveries, it is possible to:
  - find out who the possible criminals are
  - interrupt organisations while smuggling illegal substances, money or other assets across borders
  - enlarge the investigation and in this way find other criminals possibly of a higher level and obtain evidence
  - obtain tangible proof that the criminals were aware of the fact that they were in possession of substances or money
  - find the proceeds so obtained in order to seize it.
- Intercepting communications: Tapping into suspects' electronic communications such as internet, cable, telephonic or fibre-optic communications and using devices to track their movements can assist in identifying co-perpetrators, becoming aware of criminal operations and finding instantaneous evidence that could assist in finding the assets, financial records and other evidence.
- Undercover operation: Although this technique is truly helpful in a financial investigation, it has some inherent risks. In an undercover operation any person working for a law enforcement agency obtains information under the control of the law enforcement agency.

- Methods of proving income: It is often helpful in the financial investigation to establish the amount of proceeds derived from illegal activity, as this could indicate why the crime was committed and give circumstantial evidence of the predicate offence.
- Compulsory measures to obtain evidence: When the means mentioned above, do not lead to any evidence of criminal activity, it would be necessary to resort to compulsory measures to obtain evidence, such as using search warrants and other instruments.

The *FAFI Standard Operating Procedure for Investigating Capacities: Information Note 3/1/5* (South African Police Service, 2010:16) clearly sets out various financial investigative strategies that should be followed when conducting financial investigation. These strategies include profiling; formalised analysis practices; for example, linkage analysis and network analysis; data analysis software that can provide investigators with a trail of evidence that money laundering was committed; data mining software applications available to investigators to assist with investigations and public and non-public records that can assist an investigator with information about a person or business. In addition, this document further sensitises investigators to use the services of service providers to gather information when conducting financial investigation, such as telecommunication and financial service providers. Moreover, this document advocates the collection of information from government and non-government organisations, such as credit bureaus, the deeds office, the Home Affairs office, the SABRIC, the Financial Intelligence Centre (FIC) and the Johannesburg Stock Exchange (JSE), as part of the FAFI investigative strategy.

Participants were asked this question: “What investigative technique/s or strategy do you use during the investigation of money laundering?” The purpose of this question was to ascertain whether the participants are using any investigative techniques while conducting money laundering investigations. The responses are summarised below:

- All the participants stated that bank statements are the main technique they use during the investigation by making an application of section 205 subpoenas in terms of the CPA from the banks. The bank statements are analysed in order to establish the flow of money. Participants indicated that during the analysis of bank statements, it would be

possible for them to establish where the money came from and where it went to. People who benefitted from the proceeds of crime can be detected through bank statement analysis.

- Three of the participants also pointed out that interviews are conducted with the witnesses or the people who benefitted from the crime and their statements are obtained.
- Seven participants added that profiling of the suspects and of their family members is done to establish the properties that were acquired through the illegal proceeds.
- Four participants also indicated that requests of information about the suspects are made from different stakeholders like: Home Affairs, FIC, SABRIC, CIPC, movement control, conveyances and dealerships.
- In contrast, three participants further pointed out that the findings of the analysis are presented to the prosecutors, and the criminal investigators are also updated about the findings.

The responses of the participants clearly indicated that investigators do not use a range of investigative techniques while conducting money laundering investigations and it is clear that the participants cannot differentiate between investigative techniques and the methods used to gather information. The emphasis is on the methods of gathering information and not on the investigative techniques.

## **2.10 SUMMARY**

To deal effectively with crime, it must become true that “crime does not pay”. If we are able to fight and combat money laundering, crime can be reduced and criminals can be weakened by applying the legislation regulating money laundering and the proceeds of illegal activities. The methodology of financial and asset forfeiture investigations as a supporting tool for criminal investigations is a dynamic evolution in the field of investigation. The FAFI unit has to be considered to assist with the dismantling of organised crimes and the successful forfeiting of the proceeds of crime. This can be achieved through the use of the FAFI unit and applying the legislation which legalises money laundering investigation. The FAFI unit as a specialised unit needs dedicated capacity of financial investigators due to the nature and the extent of the types of crimes the unit deals with.

Criminals do not always regard a jail sentence as punishment. It is merely seen as part of the job. However, they want to know that their families are well taken care of while they are incarcerated and that they will be rich upon their release (NPA: Asset forfeiture unit, 2004:5). Removing the profits of illegal activities and putting the families of perpetrators on the street will cause a real problem for the criminals compared to spending a sentence in prison. Criminals find it difficult to forfeit the assets derived from illegal activities. They are willing to serve their jail sentence, irrespective of the years, but not to forfeit the assets.

The objectives of financial investigation have been outlined as finding and confiscating the gains obtained from financial crimes. The task of law enforcement agencies is made easier by the POCA and the FICA as these regulate the investigation and prosecution of money laundering. As already mentioned, parallel investigations are performed to ensure that the crime is investigated at all levels.

The process of conducting financial investigation has been outlined as the collection, collation and analysis of available information with a view to assisting in the prosecution of crime and taking away the proceeds of crime. Chapter 3 presents the study findings and consequent recommendations based on these findings.

## CHAPTER 3: FINDINGS AND RECOMMENDATIONS

### 3.1 INTRODUCTION

The researcher evaluated the investigation of money laundering. This evaluation was benchmarked against the literature review conducted, participants' feedback as well as the DPCI FAFI primary directives, including the *FAFI Standard Operating Procedure for Investigating Capacities: Information Note 3/1/5* (South African Police Service, 2010), the *FAFI Investigations Strategy 2015-2020* (South African Police Service, 2015) and the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]). These directives set out financial investigative methodology procedures to ensure the smooth handling of processes in financial investigation and it gives direction and provide guidelines to assist the operational components of the DPCI FAFI to do investigations into financial deals and losses of assets in an effective and efficient manner.

This chapter summarises Chapter 1 and Chapter 2, after which the findings are presented and recommendations discussed.

### 3.2 SUMMARY

Chapter 1 outlined the general orientation of the study as well as the background of the DPCI and the mandate of the FAFI unit. The problem statement, the aim, purpose and research question of the study were also identified and presented.

The aim of this study was

- To evaluate the investigation of money laundering investigations conducted at the DPCI FAFI unit in Pretoria.

The purpose of the study was:

- To determine whether the DPCI FAFI unit is achieving its proposed investigative mandate to effectively investigate money laundering, as mentioned in section 1.2 above.

- To identify and describe challenges/shortcomings experienced by the DPCI FAFI investigators to effectively investigate money laundering.

The following primary research question was posed and adequately addressed:

- What are the challenges/shortcomings experienced by DPCI FAFI investigators in the effective investigation of money laundering?

The target population and the sample drawn for the study were investigators from the DPCI FAFI unit in Pretoria. The research methodology used in this study was discussed. This chapter concluded with the ethical considerations as guided by the *Policy on Research Ethics of the University of South Africa*.

Chapter 2 outlined the legislative synopsis regulating money laundering and the proceeds of illegal activities. Various aspects related to money laundering were further discussed and included the following: the mandate of the FAFI unit, proceeds of unlawful activities, objectives of financial investigation, money laundering investigative strategy, parallel investigation in relation to financial investigation, process of conducting financial investigation and financial investigative techniques.

### **3.3 FINDINGS**

In order to address the study's research question relating to the challenges/shortcomings experienced by DPCI FAFI investigators in the effective investigation of money laundering, the following research findings are made. These research findings are based on empirical data obtained from the semi-structured interviews conducted with DPCI FAFI investigators.

#### **3.3.1 Findings on participants' familiarity with the legislative framework governing money laundering and the proceeds of illegal activities**

- The majority of the participants recognised the POCA as the primary legislation that governs the investigation of money laundering.

- Participants are not entirely conversant with legislative framework applicable to the investigation of money laundering, other than the POCA. The *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) and the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015) clearly set out the POCDATARA, PRECCA and FICA promulgated by the government, which activate the role of the financial investigator. However, a number of participants did not recognise these acts as primary pieces of legislation that govern money laundering.
- Fewer than half of the participants acknowledged that the POCA should also be interpreted in conjunction with the PRECCA and FICA when investigating money laundering. The ignorance of the other investigators pertaining to the PRECCA and FICA thus questions these investigators' knowledge of these pieces of legislation and its value in financial investigations.

### **3.3.2 Findings on participants' skills and knowledge to efficiently investigate money laundering cases**

- Participants have undergone some form of training, whether formal training courses or training workshops, in the investigation of money laundering. However, training interventions to investigate money laundering are limited to formal in-house training courses and do not include exposure and positive engagements with other consultants, for example, training at tertiary institutions and benchmarking.

### **3.3.3 Findings on participants' familiarity with the mandate of the Financial and Asset Forfeiture Investigative Unit**

- Participants' understanding of the mandate of the FAFI unit differs and it is evident that they are not fully knowledgeable of this unit's mandate. Most of the participants correctly outlined the mandate of FAFI as to investigate the flow of funds and to follow the money in order to detect money laundering offences. However, participants'

understanding of the FAFI unit's mandate are thus limited when taking into consideration the unit's mandate as illustrated in the DPCI FAFI *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010), as well as the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015), as illustrated in section 1.2.1.

### **3.3.4 Findings on participants' knowledge regarding the objectives of a financial investigation**

The majority of the participants have no clear understanding of the objectives of financial investigation. Most of the participants placed the emphasis solely on the analysis of bank statements. None of the participants mentioned that the ultimate goal of the financial investigation is to assist in the criminal investigation to help prove the crime. Participants also did not mention the confiscating of the properties believed to be the proceeds of crime after a cash flow analysis has been done.

### **3.3.5 Findings on participants' challenges experienced in the investigation of money laundering**

The following challenges as experienced by FAFI investigators emerged in the investigation of money laundering:

- According to participants, prosecutors generally are reluctant to add the money laundering charges to the predicate offence citing that money laundering is too complex to prosecute and it takes too long to prosecute.
- The poor relationship between FAFI investigators and criminal investigators is not conducive to effective money laundering investigation.

- The late referral of cases to FAFI by referring units makes it difficult for FAFI investigators to expedite the investigation, bearing in mind that the predicate offence is already on the court roll. When the financial investigation is concluded and the findings presented to the prosecutors to add money laundering charges, they are turned down by the prosecutors stating that the charge sheet has already been drafted.
- Criminal investigators supply incomplete information, which causes a delay in the investigation.
- Feedback is not always received timeously from the stakeholders whereby requests are made for information.
- The investigation of STRs does not yield positive results, since magistrates are often reluctant to authorise subpoenas for obtaining documents from various institutions, indicating that no crime was committed.
- Financial institutions keeping record for specific a period of time; for example, banks keep records for only five years. When the case is reported after a long time, there is a possibility that some of the information would not be obtainable.

### **3.3.6 Findings on the role and responsibilities of financial and asset forfeiture investigators during the investigation of money laundering**

- The majority of the participants indicated that after receiving the case docket, they analyse it to establish if the facts presented indicate money laundering activity, conduct profiling, apply for bank statements and conduct an analysis. A report on the findings is compiled and presented to the prosecutor outlining the flow of funds.
- The minority of the participants outlined that they are responsible for investigating STRs, lifestyle audits and testifying at court.

### **3.3.7 Findings on contributing factors resulting in the low conviction rate of money laundering**

- Most of the respondents felt that not many money laundering cases are convicted because prosecutors think that adding charges of money laundering to the initial predicate offence would make the trial last longer and therefore do not want to add these charges.<sup>1</sup>.
- Some participants believe many prosecutors do not really understand what money laundering as well as the legislation directing it entails. They also do not know that this legislation can be used to charge other persons for to their involvement in the commission of crime.
- Accused persons are encouraged by prosecutors to enter into a plea bargain whereby they will only be prosecuted for the predicate offence, and not money laundering also.
- FAFI inputs are ignored by prosecutors, even though the evidence is presented to court that the crime of money laundering has been committed.
- One participant pointed out that some of the investigators are incompetent in the investigation of money laundering. There is a lack of skills and knowledge.

### **3.3.8 Findings on the adequacy of resources to effectively investigate money laundering**

- All the participants outlined that the physical resources at their disposal are sufficient to effectively perform their duties.
- Few participants raised the shortage of human resources as a challenge as this hampers the investigation, indicating that the posts of members who left the unit were never filled.

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<sup>1</sup> The NPA did not form part of the sample of this study, therefore these statements by participants cannot be tested with prosecutors. All statements made by participants involving prosecutors are presented solely based on participants' experiences as gathered from interviews.

### **3.3.9 Findings on the investigative technique/s used during the investigation of money laundering**

- The majority of the participants viewed the analysis of bank statements as the main technique to utilise during a money laundering investigation.
- The minority participants have pointed out that interviews are conducted with the witnesses to obtain information on how they benefitted from the crime.
- It has been established that limited investigative techniques are utilised by investigators since they lack knowledge of other investigative techniques.

## **3.4 RECOMMENDATIONS**

The researcher makes the following recommendations after consideration of the findings discussed above:

### **3.4.1 Recommendations on participants' familiarity with the legislative framework governing money laundering and the proceeds of illegal activities**

- An assessment pertaining to DPCI FAFI investigators' knowledge of the relevant legislation governing money laundering should be carried out in order to establish the challenges and shortcomings with regard to the interpretation of relevant legislation with particular focus on in-service and external training in the money laundering legislative framework.
- According to the *FAFI Strategic Planning (2015: 9-10)*, specific portions of legislation provide for offences and asset forfeiture processes that will be dealt with by the FAFI investigators. Consequently, DPCI FAFI investigators should be familiarised with the following legislative framework governing money laundering:

- POCA
- PRECCA
- POCDATARA
- FICA
- The International Cooperation in Criminal Matters Act

### **3.4.2 Recommendations on participants' skills and knowledge to efficiently investigate money laundering cases**

- The skills and investigating capabilities of FAFI investigators should be enhanced through focused training and development to equip investigators with the required specialised skills and knowledge to investigate national priority offences, such as money laundering. In addition, the performance of these investigators should also be monitored and interventions implemented where required.
- Investigators attached to the DPCI FAFI unit should be exposed to external subject-specific training interventions in their external environment. Consequently, positive engagements with external consultants, for example, training at tertiary institutions and benchmarking, would be facilitated.
- Training programmes should be designed in such a way that sufficient time is allocated for investigators to acquire the skills and knowledge about the investigation of money laundering.
- Official DPCI FAFI directives and investigative methodologies, such as the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) and the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015) should be reviewed continuously to benchmark international best practices in the investigation of money laundering.

### **3.4.3 Recommendations on participants' familiarity with the mandate of the Financial and Asset Forfeiture Investigative Unit**

The operationalisation of the FAFI mandate, as outlined in the *Guidance Document: Financial and Asset Forfeiture Investigations* (South African Police Service, [sa]:8), the *Standard Operating Procedure for Investigation Capacities: Information Note 3/1/5* (South African Police Service, 2010) as well as the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015), should be communicated to investigators through effective communication and marketing strategies.

Workshops, information sessions and awareness campaigns should be provided to criminal investigators at station level and other units, in order to empower them with sufficient knowledge about the mandate of the FAFI unit.

### **3.4.4 Recommendations regarding participants' knowledge regarding the objectives of a financial investigation**

FAFI investigators should be sensitised to the primary objective of the unit as stipulated in the *Financial and Asset Forfeiture Investigations Strategy 2015-2020* (South African Police Service, 2015). In addition, investigators should be informed that the objective of financial investigation is not limited to the analysing of bank statements. However, investigators should be made aware that the ultimate goal of the financial investigation is to assist in the criminal investigation to help prove the crime. Investigators should understand the entire picture of financial investigation, for example, that the confiscating of the properties believed to be the proceeds of crime such as money laundering, after a cash flow analysis has been done, forms part of the objective of such investigation.

### **3.4.5 Recommendations on participants' challenges experienced in the investigation of money laundering**

Internal and external relationships should be created and strengthened with relevant stakeholders, such as the SABRIC, the FIC, Banking Institutions and the NPA, through continuous consultation. The involvement of stakeholders from various spheres that would support the DPCI in combatting money laundering is imperative. A multi-disciplinary approach that will enable and assist the DPCI to achieve its objectives should be followed. The establishing and maintaining of such partnerships would promote cooperation and sharing of information to address money laundering; improve service delivery at all levels; jointly evaluate and assess threats, trends and modus operandi that could be utilised operationally; formulate strategies to achieve objective and set targets. When such relationships are created and strengthened, it would carry out the intent of section 41 of the Constitution of the Republic of South Africa, 1996, which states that all organs of state in all areas of government must work together in the interest of all and in good faith.

### **3.4.6 Recommendations on the role and responsibilities of financial and asset forfeiture investigators during the investigation of money laundering**

It is imperative that FAFI investigators realise that their role and responsibilities are not limited to the analysis of bank statements or profiling; however, investigators' responsibilities also include lifestyle audits and investigate suspicious transaction reports. In addition, the investigating officer should obtain evidence to prove that the money that was obtained through the committing of the crime was laundered through financial and/or administrative systems to hide the origin/source of the money. In terms of lifestyle and suspicious transaction investigations, it is the responsibility of the financial investigating officer to point out where the money came from and do an investigation to find out if it had been obtained through legal means or otherwise.

### **3.4.7 Recommendations on contributing factors resulting in the low conviction rate of money laundering**

- A good working relationship between FAFI and the NPA should be nurtured to facilitate successful prosecutions of money laundering.
- In order to facilitate improved conviction rates the FAFI should:
  - implement and maintain a database on operational issues
  - determine and analyse the performances of the branch offices
  - collect information to be utilised for the formulation and implementation of strategies to improve conviction rates

These processes should be monitored continuously through the application of specific measuring processes to ensure successful convictions and to plan future operations.

- Collaboration and communication should be created between the NPA and FAFI investigators to enhance the investigation and prosecution of money laundering.
- There should be an alignment of the AFU, the NPA and FAFI priorities through consultation.
- Continuous legal support should be available from the NPA, the AFU and the courts for FAFI investigators.

### **3.4.8 Recommendations on the adequacy of resources to effectively investigate money laundering**

- All resources, including human and physical resources, at the FAFI unit should be effectively managed and administered.
- A dedicated investigative capacity should be appointed within FAFI to conduct profiling to enhance the investigation.
- The unit should secure access to relevant search engines and software by means of applications.

- The plans of the unit (short term, medium term and long term) should include resources such as human and physical resources.
- Filling of vacant posts and procurement of physical resources should be prioritised to enhance the investigative capacity at the FAFI unit.

### **3.4.9 Recommendations on the investigative technique/s used during the investigation of money laundering**

- Investigative techniques such as undercover investigations, the interception of communications and hacking of computer systems should be used by the FAFI investigators during investigations. These investigative techniques should include techniques, such as:
  - making a direct comparison where records with a historical connection of the suspect are examined
  - comparing income against expenditure
  - questioning unidentified cash and conducting investigations relating to acquired proceeds of unlawful activities to determine unexplained wealth
  - verifying the net worth of an individual – the assets and liabilities
  - conducting a financial analysis
  - conducting an investigation relating to the acquired proceeds of unlawful activities on STRs
  - acquiring any documentary evidence to confirm that a financial crime has been perpetrated (such as bank statements) and submitting their findings to the prosecutor to enable prosecution on charges of money laundering.
- For a successful investigation of money laundering, investigators should be exposed to training and workshops on different investigative techniques that can be applied during a money laundering investigation.

### **3.5 CONCLUSION**

This study aimed to determine the quality of money laundering investigations done by the FAFI unit. The researcher obtained new information by seeking and finding literature pertaining to the research problem. Furthermore, interviews were conducted with the participants to also obtain data in this way. The researcher used a suitable research design and methodology to enable her to address the research aim, research purpose and research question of the study.

The study attempted to answer the research question through the empirical research design and methodology that were used. The investigation needs specialised investigators who clearly understand the crime itself. Investigators should make use of different investigative techniques that are in place to investigate money laundering effectively. The study also established that the magistrate and prosecutors are part of the challenges in the investigation, by being reluctant to prosecute money laundering. Prosecutors are not concerned about the money laundering charges as they only focus on the predicate offence. The financial investigators are the ones who should follow the paper trail by making use of the relevant documents obtained and in this way bring enough evidence to ensure that money laundering charges could be added to the charge sheet. They also have to convince the prosecutors to add these charges.

Magistrates, prosecutors and financial investigators play a crucial role in ensuring that the perpetrators are prosecuted. The researcher is of the opinion that this research will empower the financial and asset forfeiture investigators with enhanced knowledge in the investigation of money laundering. Members of the SAPS can access this study through the internet in order to enhance their knowledge and understanding about money laundering.

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**APPENDIX A            LETTER OF APPROVAL TO CONDUCT RESEARCH IN THE  
SOUTH AFRICAN POLICE SERVICE**



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Ms Rhulani Portia Baloyi  
85 Johnston Street  
401 Abbyvale North  
Sunnyside  
Pretoria  
0002

Dear MS Rhulani Portia Baloyi

**RE: FORMAL RESEARCH APPLICATION: AN EVALUATION OF MONEY  
LAUNDERING INVESTIGATION: DIRECTORATE FOR PRIORITY CRIME  
INVESTIGATION: MS RHULANI PORTIA BALOYI**

1. Your application dated 08 July 2015 refers
  
2. Approval has been granted for you to conduct research in the Directorate for Priority Crime Investigation with the following conditions:
  - a. The research will be limited to closed dockets.
  
  - b. The research will be limited to 15 investigators as requested by yourself unless otherwise agreed with Brigadier Bokaba who will be your contact Senior Officer.
    - Email address: [BokabaM@saps.gov.za](mailto:BokabaM@saps.gov.za)
  
  - c. Access to the research report should be restricted to the following individuals
    - Prof JG van Graan - Research Supervisor
  
  - d. The final draft will be tested with the Acting National Head: DPCI Major General Ntlemenza to confirm that the research conditions have been adhered to.
  
3. A copy of your final research document should be submitted to this office for record purposes.

COLONEL

**SECTION COMMANDER: MANAGEMENT INFORMATION AND STRATEGIC PLANNING:  
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

**RM MATTHEWS**

Date:



COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 2015-06-25

Reference: ST 89  
 Applicant: R P Baloyi

Dear R P Baloyi

**DECISION: ETHICS APPROVAL**

Name	R P Baloyi
Proposal	An evaluation of money laundering investigation at the Financial and Asset Forfeiture Investigation Unit
Qualification	MTech

Thank you for the application for research ethics clearance by the College of Law Research Ethics Review Committee for the above mentioned research. **Final approval is granted.**

*The application was reviewed in compliance with the Unisa Policy on Research Ethics.*

*The proposed research may now commence with the proviso that:*

- The researcher will ensure that the research project adheres to the values and principles expressed in the Unisa Policy on Research Ethics which can be found at the following website:*  
  
[http://www.unisa.ac.za/cmsys/staff/contents/departments/rps\\_policies/docs/Policy\\_Research%20Ethics\\_rev%20app%20Council\\_22.06.2012.pdf](http://www.unisa.ac.za/cmsys/staff/contents/departments/rps_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf)
- Any adverse circumstances arising in the undertaking of the research project that is relevant to the ethicality of the study, as well as changes in the methodology, should be communicated in writing to the College of Law Ethical Review Committee.*



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**LETITIA GREENBERG**  
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1 December 2019

To whom it may concern

With this letter, I confirm that I have language edited the document *An evaluation of money laundering investigation at the Financial and Asset Forfeiture Investigation unit of the South African Police Service in Pretoria*, written by Rhulani Portia Baloyi with student number 33601461 in fulfilment of the degree of Master of Arts: Criminal Justice at the University of South Africa.

With a relevant degree and honours degree, I am fully qualified to undertake such editing.

Yours faithfully



Letitia Greenberg

## APPENDIX D

## INTERVIEW SCHEDULE

1. Are you familiar with the legislative framework governing money laundering and the proceeds of illegal activities?
2. Have you undergone training to investigate money laundering? If affirmative, was the training intervention/s efficient or not?
3. In your own words, explain what the mandate of the Financial and Asset Forfeiture Investigative Unit is?
4. In your opinion, what are the objectives of a financial investigation?
5. Do you experience challenges/shortcomings to effectively investigate money laundering?
6. According to you, what is your role and responsibilities as a financial and asset forfeiture investigator during the investigation of money laundering?
7. According to you, what are the reason/s for the low conviction rate of money laundering?
8. In your opinion, are you empowered with sufficient resources to effectively investigate money laundering?
9. What investigative technique/s or strategy do you use during the investigation of money laundering?