

**COMBATING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A  
WHOLE-OF-GOVERNMENT APPROACH**

by

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### **COMBATING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A WHOLE-OF-GOVERNMENT APPROACH**

I declare that *Combating Financial Crime: Evaluating the Prospect of a Whole-of-Government Approach* is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I have admitted the thesis to originality checking software. The result summary is attached.

I further declare that I have not previously submitted this work, or part of it, for examination at Unisa for another qualification or at any higher education institution.'



SIGNATURE

DATE: 4 February 2018

## **DEDICATION**

To my family

## **ACKNOWLEDGEMENTS**

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**Title:** Combating Financial Crime: Evaluating the Prospect of a  
Whole-of-Government Approach

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**ABSTRACT**

Tax crimes, money laundering and other financial crimes threaten the strategic, political and economic interests of developed and developing countries. The problems encountered by the researcher, is the broad and vague meaning of financial crime compounded by the confusing and ill-considered use of the term by law- and policymakers, politicians, government agencies, agency officials and practitioners weakening effective communication about the phenomenon. The literature shows that given the complexity and multi-faceted nature of financial crime, combating financial crime in all its facets cannot be undertaken by investigative agencies acting in isolation. This study was undertaken with the aim to describe and systematically categorise financial crime and evaluate the prospect of using a Whole-of-Government approach as a framework to harness the capacity of the existing government agencies to combat financial crime more effectively. The research was underpinned by a pragmatic paradigm allowing the researcher to apply a qualitative research methodology using an exploratory and evaluation research design. A detailed review of the literature available nationally and internationally was conducted to establish a conceptual and practical understanding of the issues under investigation. An interview schedule with predetermined questions was developed, pre-tested and administered to participants who are active practitioners involved in combating financial crime in

the primary government agencies responsible for combating financial crime based on a purposive sample. The data obtained from the literature and participants were analysed, interpreted and thematically listed according to the frequency with the aim of identifying and comparing similarities and differences between the data. The data was used to develop a system to categorise financial crime systematically based on descriptors used to describe the meaning and application of the term financial crime and to propose practical methods practises and models to combat financial crime more effectively. This research indicates that financial crime can be systematically categorised according to descriptors of the unlawful conduct and that the whole of government approach is a viable approach to combat financial crime more effectively according to the available models for arranging Whole-of-Government work.

## SUMMARY

*Co-operation is difficult at the international level. It is also equally challenging, and sometimes even harder, at the domestic level. There are serious obstacles to overcome. Efforts are often carried out in parallel by different agencies and organisations focus on their particular piece of the puzzle. Laws and rules sometimes prevent sharing.*

(Opening address by Richard Boucher, Deputy General Secretary of the OECD to delegates attending the OECD Tax and Crime Conference in Oslo, 2011.)

This study was conducted with the aim of evaluating the prospect of a Whole-of-Government approach by Government enabling integration of efforts, inter-agency cooperation, collaboration and sharing of information between key investigative agencies responsible for combating financial crime as a model institutional and operational arrangement to combat financial crime more effectively.

During the preliminary literature study, it emerged that internationally the Organisation for Economic Cooperation and Development (OECD), Financial Action Task Force (FATF), International Monetary Fund (IMF), United Nations Office on Drugs and Crime (UNODC) and World Bank are devoting considerable attention to the issue of combating financial crime. More specifically, the OECD is at the forefront of promoting intensified inter-agency cooperation and sharing of information in combating financial crime through what is referred to as a Whole-of-Government approach.

This qualitative, exploratory and evaluation research study explores what the Whole-of-Government approach is all about examining and determining the available options for application by investigative authorities in South Africa to empower them to combat financial crime more effectively. In this research, combating of financial crime concerns all the efforts undertaken by government agencies against the background of the legislative, policy, institutional and operational frameworks to achieve its objective implementing a Whole-of-Government approach.

Financial crime is a unique form of unlawful behaviour receiving attention because of its damaging effect on the economies of countries and its symbiotic relationship with other forms of crimes such as corruption, money laundering and financing of other illegal activities. The meaning of the concept financial crime is not always clear. The way financial crime and examples thereof are addressed in government publications and statements made by public officials shows a potential lack of shared understanding and characteristics of this category of crime. A substantial number of international organisations and authors have published literature regarding the emergence of financial crime and its meaning. In South Africa, there is little or no literature emerging about the phenomenon save for a few exceptions focusing on specific offences, for example, money laundering.

The meaning and application of the term financial crime generally and in the South African context from a South African perspective is explored and described. In addition to the conceptual vagueness, a practical explanation of the diverse unlawful conduct and behaviours included under the concept from a South African crime perspective does not exist.

This research provides a model for a systematic method of categorising financial crime providing a detailed reference to the conduct and characteristics used to describe that crime. The researcher analysed the relevant literature to determine the views of academia and authors and views expressed in government and organisational publications on the meaning and characteristics of financial crime. This research provides a degree of conceptual clarity of the concept financial crime thereby assisting practitioners involved in the combating of financial crime and policymakers to efficiently identify and communicate about the topic when developing policies and strategies to combat financial crime more effectively.

Internationally organisations and governments are studying, exploring and implementing programmes to ensure better inter-agency cooperation and collaboration amongst crucial agencies to combat financial crime more effectively. In South Africa, there are few examples of official attempts to initiate

efforts for closer collaboration and inter-agency cooperation to combat financial crime through official policies and programmes. The researcher conducted an in-depth analysis and review of the available literature related to the topic to expand on his understanding of the research problem under investigation. The researcher analysed the domestic legislation providing the legal framework for the establishment of the critical investigative agencies, their mandates relevant to the combating of crime generally and more explicitly financial crime and the extent for which it makes provision for cooperation and sharing of information for combating financial crime.

The concept of a Whole-of-Government approach is increasingly encouraged as an organisational model to enable inter-agency cooperation and coordination during the combating of financial crime. Reference to its application is increasingly finding its way into the literature and statements made by lawmakers and practitioners in the context of countering of financial crime (and other crime issues requiring an integrated and multi-disciplinary response). The concept is explained and evaluated in this research using sources of information such as the literature and feedback from the interviews. Once the concept is explained, the researcher evaluates the features of different models for application of a Whole-of-Government approach as an enabler for better co-operation and co-ordination of efforts to combat financial crime more effectively. Using the information obtained during the exploration of the literature and feedback from the participants the researcher considered the development of a conceptual model or strategy to illustrate its possibilities and viability. In practical terms, it is aimed at bridging the gap between the principals of a Whole-of-Government approach and practise in the context of combating financial crime.

The researcher is of the view that the results of this research will empower that the agencies to understand the meaning and types of financial crime within the South African criminal context and enable them to identify different organisational models that can be considered to implement a Whole-of-Government approach to combat financial crime more effectively.



## **KEY TERMS**

Financial Crime; Combating of Crime; Combating of Financial Crime; Whole-of-Government; Inter-agency Cooperation; Sharing of Information; Inter-agency Collaboration; Integrated Approach; Investigation of Crime; Crime Intelligence; Crime Detection.

## **ABBREVIATIONS AND ACRONYMS**

<b>ACC</b>	Australian Crime Commission
<b>ACIC</b>	Australian Criminal Intelligence Commission
<b>ACIMC</b>	Anti-corruption Inter-Ministerial Committee
<b>ACTT</b>	Anti-corruption Task Team
<b>AFP</b>	Australian Federal Police
<b>AFU</b>	Asset Forfeiture Unit
<b>AML</b>	Anti-money-laundering
<b>ANC</b>	African National Congress
<b>ATM</b>	Automated Teller Machine
<b>ATO</b>	Australian Taxation Office
<b>BAC</b>	Business Against Crime
<b>BMA</b>	Border Management Authority
<b>CCCU</b>	Commercial Crime Court Unit
<b>CEO</b>	Chief Executive officer
<b>CFT</b>	Combating the Financing of Terrorism
<b>CID</b>	Crime Intelligence Division
<b>CIT</b>	Cash-in-Transit
<b>CJS</b>	Criminal Justice System
<b>DPCI</b>	Directorate of Priority Crime Investigations
<b>ECOSOC</b>	The United Nations Economic and Social Council
<b>FAFI</b>	Financial and Asset Forfeiture Investigations
<b>FATF</b>	Financial Action Task Force on Money Laundering
<b>FEC</b>	Financial Expertise Centre (Netherlands)
<b>FIC</b>	Financial Intelligence Centre
<b>FICA</b>	Financial Intelligence Centre Act (38 of 2001)
<b>FIOD</b>	Fiscale Inlichtingen- en Opsporingsdienst (Netherlands)
<b>FIU</b>	Financial Intelligence Unit
<b>FSB</b>	Financial Services Board
<b>GN</b>	Guidance Notes
<b>ICCS</b>	International Classification of Crime for Statistical Purposes
<b>ICPC</b>	International Centre for the Prevention of Crime
<b>IMF</b>	International Monetary Fund

<b>IMC</b>	Inter-ministerial Committee
<b>IPID</b>	Independent Police Investigation Directorate
<b>IRBA</b>	Independent Regulatory Board for Auditors
<b>IT</b>	Information Technology
<b>JCPS</b>	Justice, Crime Prevention and Security Cluster
<b>JSOT</b>	Joint Serious Offences Team
<b>MAWG</b>	Multi-agency Work Group
<b>ML</b>	Money Laundering
<b>MoU</b>	Memorandum of Understanding
<b>MTSF</b>	Medium-term Strategic Framework
<b>NATJOINTS</b>	Joint Operational and Intelligence Structure
<b>NCA</b>	National Crime Agency (UK)
<b>NCCF</b>	National Crime Combating Forum
<b>NCPC</b>	National Crime Prevention Centre
<b>NCPS</b>	National Crime Prevention Strategy
<b>NDP</b>	National Development Plan
<b>NICOC</b>	National Intelligence Coordinating Committee
<b>NPA</b>	National Prosecuting Authority
<b>NPM</b>	New Public Management
<b>NPS</b>	National Prosecution Service
<b>NSS</b>	National Security Strategy
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OSEO</b>	Office for Serious Economic Offences
<b>PCC</b>	Public Compliance Communications
<b>PI</b>	Personal Interviews
<b>PGI</b>	Prosecutor-guided Investigations
<b>PMG</b>	Parliamentary Monitoring Group
<b>POCA</b>	Prevention of Organised Crime Act (121 of 1998)
<b>PRECCA</b>	Prevention and Combating of Corrupt Activities Act (12 of 2004)
<b>R.W. (r.w.)</b>	Read With
<b>SA</b>	South Africa(n)
<b>SABRIC</b>	South African Banking Risk Information Centre

<b>SACP</b>	South African Communist Party
<b>SAPS</b>	South African Police Service
<b>SAR</b>	Suspicious Activity Report
<b>SARB</b>	South African Reserve Bank
<b>SARS</b>	South African Revenue Service
<b>SCCU</b>	Specialised Commercial Crime Unit
<b>SCCCU</b>	Specialised Commercial Crime Court Unit
<b>SCOPA</b>	Standing Committee on Public Accounts
<b>SFCT</b>	Serious Financial Crime Task Force (Australia)
<b>SIU</b>	Special Investigation Unit
<b>SOCA</b>	Serious Organised Crime Agency (UK)
<b>SOP</b>	Standard Operating Procedures
<b>SPA</b>	Special-purpose Agency
<b>TOR</b>	Terms of Reference
<b>UN</b>	United Nations
<b>UNODC</b>	United Nations Office on Drugs and Crime

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**ATTACHMENTS**

ATTACHMENT A: Interview Schedule Form

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ANNEXURE B: Permission to do research in the South African Police Service: Directorate of Priority Crime Investigations

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## CHAPTER 1: GENERAL ORIENTATION

### 1.1 INTRODUCTION

The Organisation for Economic Co-operation and Development (OECD) asserts that financial crime has a detrimental impact on predominantly developing countries such as South Africa, as it deprives them of resources which could otherwise have been used for its long-term development (OECD, 2012a:5). In an article published in the 'Business Day,' a columnist (Theobald, 2013) lamented over the appalling and weak investigation and prosecution of serious financial crimes. He stated, "Without effective investigation and prosecution of serious financial crime, our investment markets are doomed". Theobald (2013), who often refers to the appallingly weak investigation and prosecution of serious financial crimes, cited as corroboration the disastrous Fidentia prosecution that resulted in little more than a slap on the wrist for former Fidentia Chief Executive Officer (CEO) J Arthur Brown. The judge in that case was scathing about the quality of the prosecution's performance. "The judgment told us we should be very worried about how well our prosecutors are doing" (Theobald, 2013). This article is just one of many that frequently appear in the printed and electronic media, referring to the poor state of South Africa's law enforcement efforts to curb financial crime.

The lack of cooperation and integration during the investigation and prosecution of financial crime was cited as a possible cause for the poor state of South Africa's law enforcement efforts to curb financial crime. Professor Gerhard Kemp of the law faculty of the University of Stellenbosch was quoted in an article published in the 'Mail & Guardian' newspaper, stating:

As a general point in all these economic crime cases, as soon as you are between the police and the NPA there are different approaches and one might get lost with methodology...it doesn't make sense from an investigative point of view" (Steyn, 2013).

During March 2011, the OECD hosted a Tax and Crime Conference in Oslo, Norway. The theme of the conference was (*Tax and Crime Conference ...*, 2011):

A Whole-of-Government Approach in Fighting Financial  
Crime.

In his opening address to the delegates attending the conference, Richard Boucher, Deputy General Secretary of the OECD, acknowledged that to combat financial crime effectively there must be cooperation between agencies (Boucher, 2011). Boucher further stated that separate agencies could not operate in “isolation” and further acknowledged that officials attached to various investigative agencies with the skills to investigate financial crimes are spread across these agencies.

## **1.2 BACKGROUND TO THE STUDY**

The background section is provided because it outlines the context within which the research will take place, and it gives insight into the developments that have preceded the research project “to understand what it is all about”, as averred by Denscombe (2012:51 & 52).

The “hard question” with regard to inter-agency cooperation and information sharing between investigative agencies during the combating (prevention, detection and investigation) of financial crime, Boucher (2011) suggested, was, “how to do so effectively” (my emphasis). In highlighting the problems associated with cooperation and information sharing between agencies involved in combating financial crime, Boucher (2011) stated the following:

Co-operation is difficult at the international level. It is also equally challenging, and sometimes even harder, at the domestic level. There are serious obstacles to overcome. Efforts are often carried out in parallel by different agencies and organisations focus on their particular piece of the puzzle. Laws and rules sometimes prevent sharing.



In the closing statement by Norway, as the host country, and the OECD as the organisers, it was noted that:

Tax crime, money laundering and other financial crimes thrive in a climate of secrecy, inadequate legal frameworks, lax regulation, poor enforcement and weak inter-agency cooperation. (*The launch of the Oslo Dialogue...*, 2011).

Among others, the Conference reached the following conclusions about “inter-agency cooperation (*The launch of the Oslo Dialogue...*, 2011):

There is a clear benefit to inter-agency cooperation covering tax, law enforcement, anti-money laundering authorities and where appropriate other agencies;

There is a need to identify and fill the legislative, policy and operational gaps that prevent effective domestic and international cooperation; and

Developing countries can also benefit from the Whole-of-Government approach and in particular significant improvements could be achieved through early detection, effective investigation, prosecution and recovery of assets by use of appropriate tools (my emphasis).

Implementing a Whole-of-Government approach starts with the development of a shared understanding of what it means to work in a Whole-of-Government manner (Melchor, 2008:5). According to Melchor (2008:5), this may involve some changes in structures and legislation, but most importantly it requires a change in organisational culture and individual expectation. Through a Whole-of-Government approach, horizontal coordination and integration are implanted in the process of policy design and implementation (Melchor, 2008:6).

From the stated excerpts and statements, it is clear that financial crime poses a serious threat and that there are now calls on governments to make the most of the capacity of various government agencies to work together. This includes working across agency boundaries, aiming to prevent, detect and prosecute financial crime through inter-agency cooperation, using a Whole-of-Government approach.

### **1.3 RATIONALE OF THE STUDY (PROBLEM STATEMENT)**

Creswell (2013:130) asserts that the intent of the problem statement in qualitative research is to provide a reason for studying a particular problem or issue. Creswell (2013:130) warns that the term problem may be a misnomer and suggests that instead of referring to a 'problem' it might be clearer if it is called a "need for the study" or to consider "creating a rationale for the study". Various authors Marshall & Rossman, 2011:59, & Flick, 2011:89) state that qualitative research can be conducted because of the experience of the researcher.

The researcher first dealt with "creating a rationale for the study" as a precursor to identifying "issues" dealt within the problem statement. In following this approach, the researcher decided that this section could be more appropriately described as "The rationale for research", as suggested by Creswell (2013:130).

The researcher is a former detective in the South African Police Service (SAPS), with 14 years' experience in the Commercial Crime Unit, investigating commercial and financial crime. He is currently a South African Revenue Service (SARS) official with 20 years' experience in the investigation of tax offences, and was previously seconded to other investigation agencies to investigate financial crime. In the researcher's experience and from the stated literature, the researcher is aware and concerned that the system to combat financial crime, which is institutionalised in sector-based silos (i.e. separate, single-purpose investigative agencies), has become fragmented and suffers from poor coordination and cooperation. In turn, this leads to an ineffective approach to combating financial crime. The researcher noticed with concern that the current system is not capable of effectively harnessing and integrating resources within and across the key

investigative agencies to meet the need for the effective combating of financial crime.

The apparent inability of government agencies to combat financial crime in an integrated fashion creates a need to explore an alternative approach such as the prospect of a Whole-of-Government approach, where there are horizontal cooperation and integration, sharing of information and harmonising of initiatives to combat financial crime. This should be entrenched in the process of a model policy framework or white paper and implementation by Government.

For reasons stated above, the researcher has identified “a need” to conduct a further scientific enquiry and in-depth analysis of the current situation with regard to the government policies, legal arrangements, practices, steering approaches to combating financial crime and the viability of implementing the Whole-of-Government approach as a model steering framework to combat financial crime in South Africa.

It is against the backdrop provided above that the researcher formulated the research problem statement as follows:

The system to combat financial crime in South Africa in the context of how financial crime is understood, the lack of a policy framework or strategic plan, and how separate key investigative agencies cooperate to combat financial crime is fragmented and not effective.

### **1.3.1 Ill-considered and confusing application of the term financial crime**

When lawmakers, heads of agencies and practitioners use the term financial crime, they often do so quoting various examples of crimes and ignoring others. The term financial crime is often used in conjunction with other categories of crime such as commercial crime and economic crime, creating confusion and miscommunication when using the term financial crime. The same concern applies to communication in official government documents.

### **1.3.2 Sector-based single purpose agencies**

The system to combat financial crime in South Africa is spread across a multitude of institutionalised, sector-based, 'single-purpose' investigative agencies with vertical responsibilities legally mandated for combating financial crime at various stages. Financial crime is a cross-agency problem and not only that of a single agency. The various agencies operate in isolation. Their efforts are fragmented and suffer from poor coordination and cooperation that render the combating of financial crime ineffective. Efforts to share information between agencies are dependent on the various authorising legislation relevant to separate investigation agencies.

### **1.3.3 No policy framework**

There is no or an ineffective policy framework to provide guidance and direction regarding the approach to accomplish a multidisciplinary and integrated synergy across agency boundaries dedicated to the combating of financial crime. There is no clear government policy that spells out what Government's approach is in respect of combating financial crime by integrating various agencies, and of what policies are in place to ensure inter-agency cooperation. There is no 'centre of government' operating in a guiding role to create a structure to set expectations, set a common agenda, ensure overall accountability or to coordinate the efforts of investigative agencies during the combating of financial crime.

Investigative authorities' function is based on a multitude of strategic plans that do not demonstrate harmonisation of a single approach to effectively combat financial crime. Many of these schemes never become operational. Apart from documented intentions and possible plans, there appears to be no clear, implemented, decisive strategic and operational policy stating the official approach or architecture to prevent, detect and investigate financial crime.

### **1.3.4 Obstructive elements**

There are several legislative provisions in a vast and complex array of statutes providing for procedures for cooperation and information sharing among the various agencies and authorities that may prove to be obstructive to interagency

cooperation. Disclosure of information does not necessarily mean reciprocating, and different procedures to share information apply to the various agencies. The use of information may be restricted to specific purposes.

There are also operational and political factors to consider. Operationally, obtaining information from another may include drawn-out procedures and in some cases even applying for court orders. Politically, there may be resistance to adopting arrangements or amendments to legislation to enable Whole-of-Government approaches.

#### **1.4 AIMS OF THE RESEARCH**

Denscombe (2012:49) states that the aims of the research indicate the direction the researcher is embarking on and points to the objectives the researcher wants to accomplish. In doing so, it should guide the reader of the research report as to the nature of the research (Denscombe, 2012:50).

The aim of this study is to evaluate the prospect of a Whole-of-Government approach by Government to enable integration of efforts, inter-agency cooperation, collaboration and sharing of information among the key investigative agencies responsible for combating financial crime that can be implemented as a model to combat financial crime more effectively.

#### **1.5 OBJECTIVES OF THE RESEARCH**

According to Fouché and De Vos (2011:94), the researcher must make a conscious decision about what the goal or purpose and objectives of the research are going to be. Fouché and De Vos (2011:94) caution that there is confusion in the terminology about the meaning of the terms purpose and objective and therefore its use. Fouché and De Vos (2011:94) assert that the purpose of research refers to the broader, more abstract commencement of “something which you [the researcher] plan[s] to achieve”, and also refers to the “central thrust of the study” (Fouché & De Vos, 2011:108).

According to Fouché and De Vos (2011:94), objective symbolises the more concrete, measurable and speedier commencement of accomplishing what the researcher plans to do, or sets out to achieve. It identifies the specific issues the researcher wants to examine (Fouché & De Vos, 2011:108). Fouché and De Vos (2011:94) suggest that the term objective refers to the steps the researcher should take one by one to accomplish the purpose, therefore indicating the intended result of the study. Fouché and De Vos (2011:95) believe that studies may propose a multitude of objectives but that there is usually one objective that is prominent.

Kumar (2011:50) asserts that stated objectives transform the research questions into “behavioural aims by using action-oriented words such as ‘to find out’, ‘to determine’, ‘to ascertain’ and ‘to examine’.” Fouché and De Vos (2011:95) agree, stating that it is useful to refine the study by expressing the actions by using a verb that translates to “explore, describe, explain, correlate, etc.” In doing so, different objectives will emerge (Fouché & de Vos, 2011:95). Fouché and De Vos (2011:109) propose a list of research objectives with which most researchers can easily identify. The list includes research with the objectives of:

- Exploring
- Describing
- Explaining
- Correlating
- Evaluating
- Developing
- Conceptualising
- Utilising.

Strydom and Delpont (2011b:288) suggest that it is accepted that a specific objective must be formulated for every research question. The detailed objectives of this research about achieving the research aim and developing knowledge in dealing with it are as follows:

- a. To explore and describe the concept, nature and characteristics of financial crime.

- b. To explain how financial crime can be systematically categorised (codified) practically, using as a reference a descriptor of the type of unlawful conduct.
- c. To explore and describe the application of 'combating' or to combat crime within the South African, legislative, policy and strategic framework.
- d. To determine the key investigative agencies and institutional arrangements for combating financial crime.
- e. To explore what the legal, institutional or organisational models are for ensuring inter-agency cooperation and integration of efforts to combat financial crime, considering what the legal framework provides in respect of legislative mandates and sharing of information.
- f. Determine what the concept Whole-of-Government entails and how it can be applied or adapted for implementation by the Government to serve as a model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime.
- g. To identify and explain models for implementation of a Whole-of-Government approach that can support the Government in implementing a strategy or policy framework, using all its key agencies to combat financial crime more effectively.

Given the stated objectives, the researcher believes that this study presents an original contribution to the clarification of the emergence of this category of crime, explicitly about the need to combat it more effectively, using a Whole-of-Government approach, in the context of South Africa having a multitude of agencies, each with its separate legal mandate, objectives and disciplines at its disposal.

## **1.6 RESEARCH QUESTIONS**

Research questions provide the specification of exactly what is to be investigated during the research (Denscombe, 2010a:15). According to Maxwell (2013:77), research questions identify the things that researchers want to understand and learn. Research questions should provide a snapshot of exactly what it is that is going to be investigated, and those are the things that must be observed,

measured and interrogated to illuminate the broader topic (Denscombe, 2010a:15-16). In providing detail and direction to the research, research questions in a sense operationalise the research by providing a basis for “tangible focused points of investigation” (Denscombe, 2002:31). This means that the ideas and the concepts that provided the background to the research is put into practice during the research (Denscombe, 2010a:15).

The research questions formulated by the researcher in this study are as follows:

- a. What do the concept, nature, characteristics and examples of financial crime entail?
- b. How can financial crime be categorised systematically (codified) in practical terms, using as a reference a description of unlawful conduct?
- c. What does ‘combating’ or to combat’ crime entail within the South African legislative, policy and strategic framework?
- d. Which are the key investigative agencies responsible for combatting financial crime?
- e. What institutional models are available for ensuring inter-agency cooperation and integration of efforts for combating financial crime, considering the legal framework that provide for legislative mandates and sharing of information?
- f. What does the concept Whole-of-Government entail and how can it be applied or adapted for implementation by the Government to serve as a model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime?
- g. Are models for implementing a Whole-of-Government approach available to support Government in implementing an organisational system, using all its key agencies and integrate efforts to combat financial crime more effectively?

## **1.7 PURPOSE OF THE RESEARCH**

According to Strydom (2013:149), different authors have different opinions about what the purpose of research should be called. Various authors use the terms research, design, strategies, purpose, objectives, goals or aims interchangeably



(Strydom, 2013:150). Strydom posits that before the design of a study can be formulated, the purpose of the study should be developed. Creswell (2013:134) states that the purpose statement is the most important statement in a qualitative study. Strydom (2013:160) suggests that for the sake of clarity the purpose of the study should be described separately.

Denscombe (2002:25) states that the purpose of the research relates to the reason for doing the research. According to Creswell (2013:134), the purpose statement is a declaration of intent providing the major objective of the study. Terrell (2016:21) expands by stating that the purpose statement in research informs the reader of what the overarching focus or goal of the study is.

Singleton and Straits (1999; as quoted by Dantzker & Hunter, 2006:37) identify three expectations of possible accomplishments for conducting research, namely exploring, describing and explaining. According to Denscombe (2010a:10), these represent different notions about what research should attempt to achieve. Engel and Schutte (2013; as quoted by Strydom, 2013:149) postulate that to explore, describe and explain can be regarded as the purpose of research more than any of the other terms but also includes an evaluative purpose. Strydom (2013:151) concludes that for purposes of social research the term research is distinguished as follows namely exploration, description, explanation, evaluation, intervention and participatory action research. Creswell and Plano Clark (2011:152) refer to the words describe, understand, explore and develop as action verbs to indicate an “exploration of the central phenomenon”. Alston and Bowles (2002; as quoted by Strydom, 2013:151) postulate that most studies may contain elements of all the purposes, and that the elements depend on the nature of the research problem and state of knowledge in the field.

Exploratory research provides the researcher with the opportunity to obtain additional insight about something of which there is already awareness but limited knowledge, and the why or how remains to be discovered (Dantzker & Hunter, 2006:37). Denscombe (2010a:10) states that explanatory research is aimed at explaining “why” things happen. Research is undertaken for explanatory endeavours to analyse and fully understand “why” as applied to

policies, frameworks, attitudes and opinions, to name but a few (Dantzker & Hunter, 2006:38). The alternatives as stated are not necessarily mutually exclusive and a research project may contain elements of more than one category (Denscombe, 2010a:10).

Terrell (2016:23) states that purpose statements for qualitative studies include the participants and location of the study, focusing on what is called the “central phenomenon” that is to be investigated. The central phenomenon contains words denoting the concept being explored in qualitative research (Creswell & Plano Clark, 2011:152). Creswell (2013:135) suggests that in formulating a statement of purpose, the researcher identifies the specific qualitative approach used in the study, using words that indicate the action of the research, and identifies the central phenomenon of the study related to the concept being explored or examined in the study and suggests referring to the participants and place of study.

Using the guidance provided by Creswell (2013:135-136) as noted above, the researcher proposes that the statement of purpose for the study be formulated as follows:

The purpose of this qualitative exploratory and evaluation research study is to explore what the Whole-of-Government approach is all about, and to define best practices for its application by the investigative authorities in South Africa to empower them to combat financial crime more effectively. In this research, it is submitted, combating of financial crime concerns all the efforts undertaken by government agencies within their legislative, policy, institutional and operational frameworks to achieve their objectives and the Whole-of-Government approach through an integrated governmental response.

Denscombe (2010a:11-12) provides additional guidance on how the researcher should arrive at specifying the purpose of the research. According to Denscombe (2002:26), the following notions of the kind of things social research endeavours to find out provide direction to the researcher in formulating the purpose of the study:

- Evaluating something (how well does something work?)
- Describing something (what is it like?)
- Developing good practice (how can it be improved?)
- Empowerment (how can it help those who are being researched?).

Regarding evaluating something as a purpose for doing research, Denscombe (2002:27) states that such research is driven by a desire to arrive at conclusions about the value of one thing when compared with alternatives. This is done by researchers investigating particular programmes or policies with the intention of weighing up their strengths and weaknesses and, of importance to this study, how things might be improved.

With regard to describing something, the purpose of the research may be to discover information that did not exist previously by doing exploratory research, thereby breaking into new territory and reporting back on what is found (Denscombe, 2002:27). This study endeavours to explore how financial crime is understood and how mechanisms and structures function to combat financial crime.

With regard to developing good practice, Denscombe (2002:27) explains that the driving force behind such a purpose for doing research is to solve practical problems or to improve procedures by setting best practices. According to this purpose, the aim is to arrive at recommendations for good practice that will address problems and enhance the performance of individuals and institutions by means of changes to processes and procedures.

Where the purpose of the study is empowerment, Denscombe (2002:27) asserts that in social research, the people or subject matter that are investigated are treated as the objects of the research, where such research is conducted on and about them. Denscombe (2002:28) proposes that the research should be viewed as being conducted for them with the aim of empowering them. Denscombe (2002:35) postulates that this approach stems from the questions regarding “who stands to gain from the knowledge produced by the research?”

Using the guidance provided by Denscombe as described above, the researcher submits that the purpose statement of the study can be further explained as follows:

In this study, the purpose is to describe the meaning and application of the term financial crime in general, and in the South African context from a South African perspective. This research explores methods of systematically categorising financial crime in accordance with the description of the type of conduct falling within a category of financial crime, as opposed to a clinical legal classification in accordance with the conventions of the South African legal system, i.e. the distinction between common law crimes and statutory crime. This exploration describes a reference to the type of unlawful and criminal conduct and characteristics that are used to describe financial crime. The exploration aims to empower practitioners involved in the combating of financial crime and policymakers to effectively identify and communicate about the topic when developing policies and strategies to combat financial crime more effectively.

The purpose of this research is also to evaluate the current situation regarding the efforts by the authorities to combat financial crime against the background of the legal, policy and strategic framework and how well agencies cooperate, coordinate and share efforts across agency boundaries during these efforts to determine how well it works. The researcher explored the literature for a model for classification that could be used or adapted for application in the South African context to do this. The information was obtained from the literature reviewed and feedback received from the participants.

The researcher explored the concept of a Whole-of-Government approach, which is increasingly encouraged as an organisational model to enable inter-agency cooperation and coordination in the combating of financial crime. Once the concept has been explained, the researcher evaluates the features of different models for the best practice of applying a Whole-of-Government approach to empower the authorities to cooperate better and coordinate their efforts to combat financial crime more effectively. Using the information obtained

during the exploration of the literature and feedback from the participants, the researcher considered the development of a conceptual model or strategy to illustrate its possibilities and viability. In practical terms, it is aimed at bridging the gap between the principles of a Whole-of-Government approach and practice in the context of combating financial crime.

The researcher is of the view that the results of this research, according to the statement of purpose, will enable the investigative agencies to understand the meaning and types of financial crime within the South African criminal context and to identify various organisational models that can be considered in order to implement a Whole-of-Government approach to combat financial crime more effectively. The researcher will report on the findings of the different aspects of this research in one or more journal articles in scientific journal(s), and in addition present lectures to audiences concerned with combating financial crime, such as the Association of Certified Fraud Examiners, the Institute of Commercial Forensic Practitioners, and the authorities, to share new knowledge and best practice obtained during this research project.

## **1.8 DELIMITATIONS OF THE STUDY**

This research is limited to the exploration of the current efforts of the Government within the, legislative, strategic, policies and legal framework to combat financial crime. Available options for improving efforts to combat financial crimes more effectively are limited to the prospect of implementing a Whole-of-Government approach and associated paradigms, such as inter-agency cooperation and an integrated and multidisciplinary approach as an organisational model to improve coordination across organisational boundaries.

The law is dynamic and develops continuously. Certain statutes referred to in this research at the time of writing may have been amended or repealed, or certain Bills may have been enacted. The same may apply to draft policies, discussion documents or White Papers published by Government. For obvious reasons, these changes could not have been considered and included in this study at the time of finalisation of the research report.

In this research, a reference to combating or to combat financial crime is used as a common description to include the concepts of prevention, detection and investigation of financial crime. This research is not intended to explore a rationalisation of existing agencies involved in combating financial crime or evaluating the prospect of dissolving or replacing any of the existing single-purpose agencies. This research is limited to the key investigative government agencies responsible for combating financial crime, their knowledgeable and experienced staff members, as well as other experts in the field with proven knowledge and experience in the various disciplines associated with the combating of financial crime. This research recognises the importance of partnerships between government agencies, the private sector, and non-governmental agencies in combating financial crime but avoids the theoretical discussion and practical application, due to the limited scope of this research, which is restricted to cooperation between statutory investigative agencies.

## **1.9 KEY CONCEPTS**

Definitions of concepts are provided to enable readers to have a clear understanding of the meaning of the concepts (Le Roy, 2013:27). According to Strydom and Delport (2011b:288), the definitions provided should be complemented by any specific meaning attached to them by the researcher and using the terms in the context of the study. The following are the definitions that represent the important concepts that form part of the research and discussion:

### **1.9.1 Agency**

An agency, according to the rather narrow description of Pollitt and Talbot, as referred to by Lægreid and Verhoest (2010:4), is a:

Structurally disaggregated body, formally separated from the ministry, which carries out public tasks, at a national level on a permanent basis, is staffed by public servants, is financed mainly by the state budget, and is subject to public legal procedures.

In this research, the term agency refers to an organ of state, a statutory body, authority, or department funded by the State, staffed by officials in the service of the State, with a legal mandate and powers to perform a function or duty in relation to the combating of financial crime.

### **1.9.2 Crime**

Joubert (2010a:44) concisely defines crime as: “Unlawful and blameworthy conduct that is defined by law as a crime.” A similar but more functional definition is presented by Gooch and Williams (2007:94) who define crime as, “[a]n act (or sometimes failure to act) that is deemed by statute or by the common law to be a public wrong and is therefore punishable by the State in criminal proceedings”. In South Africa, criminal conduct is sometimes referred to as a crime and sometimes as an offence. However, there is no technical difference between a crime and an offence (Snyman, 2008:5).

### **1.9.3 Crime detection**

According to the Oxford Dictionary, “crime detection” is the process of uncovering criminal activity (or verifying reported crime) and acquiring evidence in order to identify and prosecute its perpetrators (*Oxford Dictionary*, 2018).

For purposes of this research report, crime detection, detection of crime and detection are interpreted as similar terms. In the context of this study, crime detection refers to those activities undertaken by the SAPS and other agencies affiliated with the State by virtue of their respective statutory mandates.

### **1.9.4 Criminal investigation**

Benson, Jones and Horne (2015:19) present the following working definition to explain the concept criminal investigation:

Criminal investigation can be defined as a systematic, organised, thinking, reasoning, examination and analysis process designed to search for the truth, during which an

inquiry and thorough analysis is conducted of all types of crimes or unlawful acts.

For purposes of this research report, criminal investigation, investigation of crime and crime investigation are interpreted as similar terms. In the context of this research, criminal investigation refers to those undertaken by the SAPS and other agencies affiliated with the State by virtue of their respective statutory mandates and authority to conduct criminal investigations.

### **1.9.5 Crime prevention**

Lab (2014:27) defines crime prevention as, “any action designed to reduce the actual level of crime and perceived fear of crime”. In this research, the focus is on financial crime. In respect of financial crime prevention, Croall (2003:45) includes measures such as regulatory and control strategies. In the context of this research, crime prevention is limited to the actions of the SAPS and other agencies affiliated with the State by virtue of the SAPS’ statutory mandate.

### **1.9.6 Financial crime**

In explaining the meaning of financial crime, Gottschalk (2010b:2), while stating that the term financial crime expresses different concepts, depending on the jurisdiction and context, quotes Henning (2009:295), who states that:

Financial crime generally describes a variety of crimes against property, involving the unlawful conversion of property belonging to another person to one’s own personal use and benefit, more often than not involving fraud but also bribery, corruption, money laundering, embezzlement, insider trading, tax violations, cyber-attacks and the like.

### **1.9.7 Whole-of-Government**

In this research, Whole-of-Government denotes public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and



informal. They can focus on policy development, programme management and service delivery (*Connecting Government ...*, 2004:1). In the context of this research, the term does not necessarily refer to the literal interpretation of all of Government but to the departments with political oversight and agencies responsible for combating financial crime at some stage or another.

### **1.10 PHILOSOPHICAL WORLD-VIEW OFFERED IN THE STUDY**

According to Yin (2016:341), world-views represent “[a] broad and profound system of thinking about the methods to be used in social research, based on having a particular ontological perspective.” Creswell (2014:5) suggests that the broad research approach represents “the plan or proposal” to conduct research. Creswell (2014:3) offers three approaches to research, namely:

- Qualitative
- Quantitative, and
- Mixed methods

Creswell (2014:5) postulates that each of the above approaches to research involves philosophical assumptions and distinct approaches and procedures that intersect. Creswell (2013:15) posits that researchers will always bring certain philosophical assumptions to their research, whether they are aware of it or not. Creswell (2014:5) reminds us that during the planning of a research study, the researcher has to think through the philosophical world-view assumptions that he will bring to the study. The research design that the researcher applies to the study should be informed by the relevant philosophical world-view that he adopted (Creswell, 2014:5). Creswell (2014:6) suggests that researchers unambiguously state the larger philosophical views adopted because this will assist in explaining why a particular research approach was chosen for the research. Morehouse (2012:4) underscores the importance of the researcher, knowing which philosophical viewpoint underpins the study, as it is helpful to the “development within the inquirer of several important qualities” such as:

- enhancing the ability to detect research problems as they arise;
- the capacity to defend the work undertaken to supporters and critics;

- confidence to ask good research questions and then to match the issues to appropriate data collection methods and data analysis procedures.

Creswell (2014:6) sees 'world-view' as "[a] general philosophical orientation about the world and the nature of the research that a researcher brings to a study", meaning that it is a "basic set of beliefs that guide action". Other authors have, according to Creswell (2014:6), decided to refer to 'world-view' as 'paradigms' (Lincoln, Lynham & Guba, 2011, in Creswell, 2014:6). According to Grbich (Grbich, 2007 in Yin 2016:15), "[a] worldview establishes the position or epistemological location" for qualitative research. Yin (2016:15) explains that this philosophy refers to the belief one holds "about the ways of knowing what you know and how your research is intended to arrive at its findings and conclusions". The position or location referred to relates to the influence over the choice of study design and how the research intends to arrive at its findings and conclusion Yin, 2016:15). According to Morehouse (2012:4), an understanding of the philosophical underpinnings of a research project provides the foundation upon which:

- to select data-gathering strategies;
- to formulate research questions;
- to include or exclude methods of data analysis;
- to make a case for research choices as the research moves from one phase to the next.

Guba and Lincoln (1994:107-108) postulate that paradigms as basic belief systems are based on ontological, epistemological and methodological assumptions, defining what it is that they are about, and that fall within or outside the ambit of legitimate inquiry. According to Guba and Lincoln (1994:108), the core beliefs that define the paradigms of enquiry can be summarised by using the responses that proponents of any of the paradigms give when answering three fundamental questions. Guba and Lincoln (1994:108) suggest that the answers provided to any of the three key questions that are intersected in such a way, taken in any order, constrain how the others may be answered. The

following philosophical questions, according to Lincoln and Guba (1994:108), serve as the major focus around which the philosophical paradigms (world-views) can be considered:

- The ontological question (question of ontology)
- The epistemological question (question of epistemology)
- The methodological question (question of methodology)

Morehouse (2012:11) identifies the same philosophical questions as Lincoln and Guba above, except for issues of methodology, and identifies an additional three beliefs or assumptions, based on the following philosophical questions:

- The logical question (question of logic)
- The teleology question (question of teleology)
- The ethical question (question of ethics)

Morehouse (2012:11) suggests that in answering the philosophical questions, the researcher will be influenced in respect of the choice of methods of data collection and analysis. According to Morehouse (2012:11), with the benefit of knowing the background to the philosophical underpinnings of the research, the researcher will be better able to understand the extent to which the philosophy guides him/her in addressing the issues in a practical manner.

Yin (2016:3) posits that world-views range from positivism to constructivism, and those choices of world-view also include a comfortable middle ground consisting of postpositivist, critical theory, transformative and pragmatist world-views. According to Creswell (2014:6), the post-positivist world-view, the constructivist world-view, transformative world-view and the pragmatic world-view are widely discussed in the literature. Yin (2016:3) suggests that the pragmatist world-view probably takes the best advantage of the full spectrum of research methods and procedures that qualitative research has to offer.

The decision by a researcher to embrace a qualitative, quantitative or mixed-methods research approach will often be determined by the 'world-view' or set of beliefs the researcher brings to the inquiry (Creswell, 2014:6). The following

world-views will be presented in this research as the world-views adopted by the researcher to support the research approach in this study:

- Constructivism
- Postpositivism
- Pragmatism

According to Salvador (2016:6), researchers may adjust and adapt their paradigms to conform to their focuses and methodology. Salvador (2016:6) concludes by stating that world-views are not communally restrictive, rather leaving it up to the researcher's desire to reflect on which specific research to commence with. The research design that relates to the philosophical world-views and the specific methods of research that were applied in the research will then be offered.

#### **1.10.1 The constructivist world-view**

Kuper, Reeves and Levinson (2008:404) maintain that most qualitative researchers today share a different belief about knowledge, called “constructivism”. Yin (2016:334) ascribes the following meaning to constructivism:

The world-view that social reality is a joint product created by the nature of the external conditions but also by the person observing and reporting on these conditions. Following this view, all social reality, because it is constructed in this manner, therefore assumes a relativist rather than absolute nature (cf. **positivism** and **post positivism**)

According to De Vos, Strydom, Schulze and Patel (2011:7), the participants in a research study are often viewed as passive role-players in the researcher's quest to gather data mostly for his or her own purposes. Salvador (2016:5) postulates that in constructivism, the researcher transacts with the participants. Hence they become actively involved in all the phases of the process, thereby creating

findings as the engagement progresses. De Vos et al. (2011:7) concur, stating that the participants are partners in the entire research undertaking, as they seek understanding of the world in which they live and work.

Crotty (in Creswell, 2014:9) with regard to constructivism maintains that individuals seek an understanding of the world they live and work in. In this world-view, Salvador (2016:5) suggests that the objective is to create “unanimity/commonality” in constructions of scholarly and emerging themes that would mirror the lived experiences of the participants. To this extent, Constantino (2008:118) postulates that because constructivist research is naturalistic, inquiry happens in the settings where a phenomenon naturally occurs.

Among the methodology leading to the discovery and understanding of the social phenomena widely used by constructivists are semi-structured interviews and open-ended questionnaires (Salvador, 2016:6). According to Patton (2002:21), responses to open-ended questions allow one to understand the world as seen by the participant. Responses to open-ended questions are used by qualitative researchers to understand the perceptions, feelings and knowledge of people, thereby allowing them to construct the meaning of a situation. Creswell (2013:25) suggests that the more open-ended the questions are, the better, as the researcher listens carefully to what people say in their life settings, in the process generating meaning from the data collected in the field and also addressing the process of interaction among individuals. In this research, the intention of the researcher includes understanding the world that participants live and work in, and sharing their lived experiences; this world-view is appropriate and applicable to this study.

### **1.10.2 The postpositivist world-view**

According to Ponterotto (2005:129), postpositivism arose out of discontent with some aspects of the positivist standpoint. Positivists accept an objective, “apprehendable” reality. In contrast, postpositivists acknowledge an objective reality that is only imperfectly “apprehendable” (Guba and Lincoln in Ponterotto, 2005:129). Ponterotto (2005:129) asserts that this view holds that social,

intellectual mechanisms are flawed, and that life's phenomena are basically intractable, therefore one can never fully capture a "true" reality. In the words of Creswell (2014:7), this means that "we cannot be positive about our claims of knowledge when studying the behaviour and actions of humans".

According to Creswell (2014:7), the knowledge that develops through a postpositivist lens is based on careful observation and measurement of objective reality that exists "out there" in the world. Guba and Lincoln (1994:110) contend that the methodology requires making inquiries in more natural settings through increased use of qualitative techniques. Creswell (2014:7) posits that developing numeric measures of observation and studying the behaviour of individuals become paramount to the postpositivist. In this research, the researcher does not intend to collect information on a measuring instrument completed by participants. Observations may, however, be recorded by the researcher, implying that the postpositivist approach may to a lesser extent be appropriate during this study.

### **1.10.3 The pragmatic world-view**

Yin (2016:22) suggests that between the original positivist and constructivist world-view extremes there exists a middle ground for adopting different world-views. The middle ground offers world-views that have features such as more adaptability for conducting qualitative study than either the positivist or constructivist extremes. This, according to Yin (2016:23), means that unless the researcher must adhere to one of the two extremes as a critical ideological commitment, he/she may assume a world-view in the middle ground for conducting qualitative research. Yin (2016:23) favours a world-view in the middle ground and to this extent posits that the rise of the pragmatist world-view has been more prominent in the middle ground.

According to Creswell (2014:10), pragmatism as a world-view is opposed to antecedent conditions such as in postpositivism, which emphasises methods rather than focusing on the research problem and the use of all available approaches to understanding the problem. According to McCaslin (2008:2), "The central notion of pragmatism focuses on the nature of truth. In its simplest

explanation, pragmatism holds that truth is found in 'what works,' and that truth is relative to the current situation." Reality, according to the pragmatist, "is to be revealed and experienced." (McCaslin, 2008:2). Creswell (2014:11) believes that pragmatism provides a philosophical basis for research where individual researchers have the freedom of choice. The author explains that in having this freedom, researchers are free to choose the methods, techniques and procedures of research that best meet their needs and purposes. This world-view opens the door to multiple methods, different world-views, different assumptions, and various forms of data collection and different methods of data analysis (Creswell, 2014:11). Various forms of qualitative and quantitative data are blended to create a representative model (Christ, 2013:112).

In giving expression to a pragmatic philosophical basis for research, the researcher in this study is not bound by a critical ideological commitment. Thus, for conducting this qualitative research, the researcher assumed a world-view in the middle ground as viewed by Yin, (2016:22). Having been afforded this freedom of choice, the researcher could choose the most suitable data collection methods and techniques for analysing the data so as to address the issues being examined, leading to the discovery of data and finding the truth in what works, as viewed by McCaslin (2008:2).

### **1.11 RESEARCH METHODOLOGY**

Schensul (2008a:2) postulates that the term methodology is often used interchangeably with research methods. The author refers to the integral components of research methodology as being the guiding paradigms, aspects of research design methods of data collection, and analysis and dissemination. Research methods refer to the way the research will be undertaken. Methods refer to the way qualitative researchers collect data to build their argument (Schensul, 2008b:2).

Schensul (2008b:2) posits that, irrespective of the preferred guiding paradigms, all qualitative research methods have common characteristics. Research methods are conducted in an exchange between real people focusing on the

meaning as conveyed by participants in the research setting in addition to behaviour (Schensul, 2008b:2). The methods take into consideration the social, cultural and physical contexts within which individuals live, work and interact (Schensul, 2008b:2).

## **1.12 RESEARCH APPROACH AND DESIGN**

Creswell (2014:3) explains that research approaches are the plans and procedures for conducting research, spanning the steps from the conception of broad assumptions to specific methods for data collection, analysis and interpretation. The overall decision entails which approach should be used to study the topic. The decision is informed by the philosophical assumptions the researcher brings to the study, namely the research design and research methods of data collection, analysis and interpretation of data. Creswell (2014:3) further elucidates that the selection of the research approach is also based on the nature of the research problem, issues under investigation, the researcher's personal experiences, and the audiences at which the study is aimed. According to Creswell (2014:5), the specific research methods and procedures of research translate the research approach into practice.

The research approach involves the juncture between the philosophy, research designs and specific methods (Creswell, 2014:5). Creswell (2014:17) concludes by stating that the world-views, the designs, and the methods all contribute to a research approach that tends to be quantitative, qualitative or mixed. Faced by the choice of research approaches, the researcher does not only select a qualitative, quantitative or mixed-methods approach to the study, but he/she must also decide on the type of qualitative research design in the choice of study approach (Creswell, 2014:11-12). The informed research approach pursued in this research as identified by the researcher is that of a qualitative research approach.

Yin (2016:301) asserts that qualitative research is positioned to accommodate the broad variety of world-views, "extending from constructivist to pragmatic to postpositivist approaches". He also suggests that qualitative research is more



adaptive to accommodate pragmatist, constructivist worldviews, thus being more receptive than other methods, considering the reflective nature of research.

Maxwell (2013:3) states that in the design of a qualitative study it is unlikely that a researcher can just develop a sound strategy in advance and implement it faithfully. This researcher determined that the topic explored in this study is best suited to a qualitative research design, which is where the researcher will make knowledge claims, based on the various meanings of individual experiences, with the intention of developing theory or patterns (Creswell, 2003:18). According to Creswell (2003:18), in following a qualitative approach, the researcher collects open-ended, emerging data with the primary intent of developing themes from the data. The research process engages emerging questions, procedures and data that are typically collected at the participant's setting. The data analysis builds on the information obtained to reach a conclusion as to what the general themes are. The researcher then makes interpretations of the meaning of the data (Creswell, 2014:4).

According to Creswell (2014:4), qualitative research as an approach is used for exploring and understanding the meaning that individuals and groups attribute to a social or human problem. Qualitative research is used when the researcher wants to study an issue or problem to get a complex and detailed understanding of the subject under investigation (Creswell, 2013:48). According to the author (2013:48), this detailed understanding can be established only by talking directly to the people at their homes or places of work because, according to Creswell (2003:181), "this enables the researcher to develop a level of detail about the individual or place and to be highly involved in the actual experiences of the participants". The researcher engages with the participants at their place of work or in a natural setting, and it involves active participation by the participants during collection of data, in order to build rapport with them and to gain credibility in their eyes, as suggested by Creswell (2003:181).

According to Denscombe (2010a:109), qualitative studies tend to have an inherent flexibility. This view is supported by Creswell (2014:4) asserting that the final report in a qualitative study has a flexible structure. Flexibility allows the

researcher to make modifications to the original design as the research evolves, until the researcher is satisfied that the direction taken affords the greatest potential for discovery, meaningful answers to questions posed, or the generation of new questions (Cohen, Manion & Morrison, 2011:343). This allows the researcher, as Denscombe (2010a:110) rightly put it, to embark on a “voyage of discovery” and choose a qualitative design as the appropriate approach to pursue this study.

### **1.13 TARGET POPULATION AND SAMPLING PROCEDURES**

According to Welman and Kruger (2001:46), data is collected from the “objects of our enquiry”. The data is used to solve the “problem concerned” (Welman & Kruger, 2001:46). The research problem usually has a bearing on a part of a population that Kruger and Welman (2001:46) also refer to as “participants or subjects”, which may be individuals, groups, organisations, personal products and events, or the conditions to which they are exposed. In this research, the objects of analysis are the government agency officials and practitioners with past or current experience, expertise and knowledge of investigating or studying financial crime, and approaches to combating financial crime.

In qualitative research, the purpose of sampling may be to gain in-depth knowledge about a situation / event / episode (Kumar, 2011:192). In qualitative research, Kumar (2011:192) states that the researcher does not have a pre-determined sample size but rather waits to reach a point of data saturation during the data collection phase. Kumar (2011:192) asserts that in qualitative research, “information-rich” participants are purposely selected to provide the data required. Welman and Kruger (2001:46) distinguish between two types of samples, namely probability samples and non-probability samples. According to Kumar (2011:206), non-probability sampling designs are used when the number of elements in a population is either unknown or cannot be individually identified. In a non-probability sample, the probability that any of the units of analysis will be included in the sample cannot be specified. In some instances, certain members may not have a chance at all of being included (Welman & Kruger, 2001:61). In these situations, Kumar (2011:206) argues, the selection of elements is

dependent on other considerations. Kumar (2011:206) asserts that there are five commonly-used non-random designs that are each based on different considerations commonly used in qualitative and quantitative research. Examples of non-probability samples provided by Kumar (2011:206) include quota sampling; accidental sampling; purposive sampling; expert sampling and snowball sampling.

What differentiates the designs referred to above as quantitative or qualitative is the predetermined sample size (Kumar, 2011:206). Kumar (2011:206) states that in qualitative research, the researcher does not determine the number of participants in advance but continues to select additional cases until he/she realises that a saturation point has been reached. Kumar (2011:206) also states that in qualitative research, researchers will predominantly use purposive sampling and accidental sampling strategies to select the participants to the research.

According to Kumar (2011:207), the primary consideration in a purposive sample is the researcher's judgement regarding who can provide the best information to achieve the objectives of the study. The researcher approaches those persons who, in his opinion, are likely to be in possession of the required information and will be willing to share it (Kumar, 2011:207). In a purposive sample, researchers rely on experience, ingenuity and previous research findings to deliberately obtain units of analysis in such a manner that the sample obtained may be regarded as being representative of the relevant population (Welman & Kruger, 2001:63). Denscombe (2010b:34) states that purposive sampling works on the principle that the researcher is likely to get the best information by focusing on a relatively small number of people. They are deliberately chosen, based on their known attributes, which means that they are hand-picked for the research, based on the issue being investigated and their privileged knowledge or experience in respect of the topic. In this instance, as is proposed by Denscombe (2010b:35), purposive sampling works where the researcher already knows something about the specific people or events and selects particular ones because they are regarded as the ones to most likely produce the most valuable data.

For example, in this study, the researcher interviewed government agency officials and practitioners with past or current experience, expertise and knowledge of investigating or studying financial crime and approaches to combating financial crime. It is therefore crucial that the sample include persons nominated by the investigative agencies responsible for the combating and prosecution of financial crime, who are seasoned, experienced agency officials working for these agencies or who have previously worked at such an agency.

Welman and Kruger (2001:63) state that this type of sampling poses a problem in that various researchers may proceed in different ways to obtain a purposive sample, and therefore it is not possible to evaluate whether such a sample is representative of the relevant population. However, Denscombe (2010b:35) argues that when a wide cross-section of people is included in the sample and used in this way, purposive sampling is to a degree “emulating a representative sample”. For this reason, the researcher included officials from across all the key investigative agencies responsible for the investigation of financial crime.

In this study, issues under investigation include the confusion when it comes to communicating about financial crime and the failure of the government to implement a policy framework to combat financial crime effectively. This appears to be due mainly to a lack of horizontal cooperation between the separate agencies responsible for combating financial crime against the background of the widely-touted multidisciplinary and integrated approach. The researcher therefore conducted enquiries into the experiences and knowledge of practitioners and investigators employed by the respective investigative agencies identified as being responsible for combating financial crime. From the shared experiences of the participants, the researcher gained operational insight into the practical challenges experienced by the participants, developing “a level of detail” and being “highly involved in the actual experiences” of the participants, as suggested by Creswell (2003:181), regarding current efforts in combating financial crime and the structures that are in place. With this understanding of the experiences of the participants, the researcher evaluated the viability of the Whole-of-Government approach and sought to discover new ideas for approaches to more effectively combat financial crime.

Based on the above discussion of a purposive sample of non-probability sampling designs obtained during qualitative research and with consideration as to who could provide the best information to achieve the objectives of this study, the researcher made use of a purposive sampling design. In this regard, the researcher used key informant(s) to guide him and map out the agencies responsible for combating financial crime and to purposively draw from those agencies a group of participants based on their expertise, acquired knowledge and experience to achieve the objectives of the study.

Making use of the purposive sample, the researcher was guided towards ten officials who could partake as participants by the relevant agencies from which permission was sought to conduct interviews. The participants in the study represented the investigative authorities from the key agencies responsible for combating financial crime, which were identified as the South African Police Service (Directorate for Priority Crime Investigation), The South African Revenue Service (Enforcement: Criminal Investigations), The Financial Intelligence Centre and the National Prosecuting Authority (Commercial Crime Court Unit). Due to the clandestine nature of their occupations and to protect the identities of the participants, their titles, location and designations cannot be disclosed for fear of exposing their identities. Permission to conduct interviews with participants was obtained from the following agencies, and communications confirming the permission are attached as follows:

- Annexure B - Permission to do research in the South African Police Service: Directorate of Priority Crime Investigations (DPCI)
- Annexure C - Permission to do research in the South African Revenue Service (SARS)
- Annexure D - Permission to do research in the Financial Intelligence Centre (FIC)
- Annexure E - Permission to do research in the National Prosecuting Authority: (NPA)(CCCU)

## 1.14 DATA COLLECTION METHODS

According to Denscombe (2010b:4 & 153), research methods are the tools for data collection, and they help the researcher to gain a clearer picture of things, an accurate measurement of things, and facts and evidence about the subject matter. Denscombe (2010a:153) gives the following advice about choosing an appropriate research method to collect data:

- Although certain research strategies are associated with the use of certain research methods, this does not mean it rules out the possibility of choice. It is important that the researcher recognises that there is the likelihood of some scope to choose among different methods for use within any specific strategy.
- Each of the methods has its inherent strengths and weakness. Each data collection method has its assumptions and produces a type of data of which the usefulness depends on what the researcher is trying to achieve. It therefore follows that none of the possible methods can be regarded as perfect.
- When choosing a method, the researcher should base his/her decision on the condition of 'usefulness', instead of looking for a method that is superior to the others in a complete sense. The researcher should look for the most suitable procedure in practice. The researcher should ask him-/herself which method is most beneficial to the inquiry.
- A research method need not be seen as mutually exclusive. If a method is not inherently better than others, and if methods are to be chosen realistically, it opens up the possibility of combining methods. More than one method can be used for the research, with the clear understanding that weaknesses in one method can be compensated for by the strengths of another method.
- The use of more than one method allows the researcher to use triangulation. Combining the different methods can be used by the researcher to look at the research topic from a variety of viewpoints, as a means of evaluation and contrast, with each method approaching the topic from a different point of view.

Schensul (2008b:3) lists observation and interviews, among other things, as the major approaches to methods of data collection during qualitative research. In addition, Yin (2016:155) refers to the collection of objects in the field as a “data collection method”, which may include documents, artefacts, records and videos because these represent another form of primary evidence that can be invaluable in a qualitative study. For example, newspaper articles can provide important contextual information to complement fieldwork (Yin, 2016:155). Strydom and Delpont (2011a:376) refer to document study and analysis as an information collection method. In this study, taking cognisance of the assertion by Denscombe (2010b:4 & 153) that research methods are the tools for data collection, the researcher made use of the methods of data collection that are stated and discussed in the sections that follow.

#### **1.14.1 Document study**

Ritchie and Lewis (as quoted by Strydom & Delpont, 2011a:377) state that documentary analysis involves the study of existing documents, either to understand its useful content or to indicate a deeper meaning that may be exposed by its style and coverage. Strydom and Delpont (2011a:377) identify three categories of documents, namely personal documents, non-personal documents and documents aimed at the mass media. When these documents are studied and analysed for the purpose of scientific research, their use is operationalised to that of a data collection method. Strydom and Delpont (2011a:376-377) suggest that when a combination of methods such as interviewing, document study and secondary analysis is used for data collection, it provides a source for validation and cross-checking of findings.

Strydom and Delpont (2011a:377) assert that a broad range of documents is available to the social researcher as a source of information, and they differentiate between documents, based on the source or class of document. Yin (2016:157) suggests that for most topics covered by qualitative research, the researcher should spend time checking for relevant web-based information that is possibly pertinent to the research. Denscombe (2012:58) recommends that the works referred to should be those that come from “published sources that are

authoritative and credible". Regarding the recommendation above, Denscombe (2012:58) advises that the researcher should look for resources of material that emanate from:

#### **1.14.1.1 Books, for example, textbooks**

With regard to textbooks, works by academic authors and practitioners, the researcher made use of library catalogue searches to identify relevant titles and authors. The researcher also requested a UNISA librarian to conduct literary searches, using keywords related to the topic under investigation. The researcher evaluated the literature identified and consulted those that presented the most likely best sources of information.

#### **1.14.1.2 Other literature sources for example journals articles**

Over and above the same practical application as referred to above, the researcher also made use of Google Scholar, which is a web-based search engine that includes an index of most peer-reviewed academic journals and books, conference papers, theses and dissertations, pre-prints, abstracts, technical reports, and other scholarly literature to identify literature relevant to the research topic. The researcher made extensive use of journal articles to obtain information related to the topic under investigation during the research.

#### **1.14.1.3 Conference proceedings**

The researcher made use of the Google Scholar search and alert function on the Internet to alert him to conference proceedings that have dealt with the topic under investigation and where relevant information was readily available for use in the research.

#### **1.14.1.4 Official publications**

The researcher made use of the Internet to search official Government Web sites to find Government publications such as policy documents, White Papers, statutes and information related to the topic under investigation. The researcher also subscribed to the SA Government News Agency electronic notification



service to notify him whenever there was a publication or an article relevant to the topics under investigation.

#### **1.14.1.5 Reference material**

The researcher identified several references works, for example, subject dictionaries and encyclopaedias as possible sources of information and subsequently used them as such. In following the advice provided above (Denscombe, 2012:58), the researcher made extensive use of 'mass media', as referred to and listed by Strydom and Delport (2011a:379) as a source of information for a document study. According to Strydom and Delport (2011a:379), 'mass media' "includes all information that is freely available to the public and thus to any individual". Strydom and Delport (2011a:379) quote several different examples of 'mass media' or 'virtual documentation', referring to documents available in electronic format on the Web. Mass media serves various social functions, including dissemination of information, leisure and social control. Web sites can represent commercial, governmental, educational and other institutional interests, along with personal web sites and so-called 'blogs', which are frequently updated with the latest information (Strydom & Delport, 2011a:379). To stay up to date on information published on web sites as indicated above, the researcher subscribed to Google Alerts via the web to alert him to any new material matching the keywords specified by him. When receiving an alert, the researcher examined the relevant document, and if it related to the topic under investigation, the researcher printed a hard-copy version to be analysed at a later stage and included in the research when relevant and contributing to the information. In some instances, the alerts made the researcher aware of other leads to follow for relevant literature.

The examination of documents as a source of data may include newspapers, speeches, transcripts of meetings, and just about anything that appears in written form, including interviews (Rubin & Rubin, 2012:27). Cohen et al. (2011:350) refer to this information as "text as data", meaning that qualitative data exists in the form of text scripts that are commonly gathered from interviews, survey

questions, journals, recorded observations or existing documents, among other sources, and presumably also books.

Denscombe (2010b:220) suggests that the greatest attraction of documents as a source of data is their accessibility. Denscombe (2010b:220) further states that the Internet provides the researcher with access to Government Web sites, confirming what has already been noted above, that can provide a vast amount of information on social and economic factors, including policy issues. Denscombe (2010b:221) warns that documentary sources should never be accepted at face value and recommends that documents must be evaluated for authenticity, credibility and meaning. Yin (2016:157) offers the advice that, when using Web-based information, the researcher should note, understand and fully reference the source of the information, which this researcher adhered to. In this regard, the researcher verified that the document had been produced by the author or institution ascribed to it, as suggested by Strydom and Delport (2011a:380), or that the author or institution was taking responsibility for the Web site if it was a Web-based document. The researcher also checked the reliability of materials by establishing whether similar information had been published by another author or institution, quoting the same source or event, and whether they were factually in agreement.

Rubin and Rubin (2012:27) point out that some transcripts of official governmental meetings record every word spoken. In such instances, the researcher believes that transcripts of the sessions of the security and justice portfolios of Parliament may prove to be a useful source for document analysis. The researcher made use of the Parliamentary Monitoring Group (PMG), which is the official Web-based notification service for the functions of Parliament to alert him and provide access to content related to the topic under research. In addition, Rubin and Rubin (2012:27) point out that the web sites of government agencies provide the official views, reporting goals and accomplishments of the organisation. Rubin and Rubin (2012:28) further believe that if a participant is aware that the researcher knows about the downside of an organisation, such as a government agency that forms part of the study, it makes it easier for both conversational partners to talk about these problematic issues during the

interviews. Also, Rubin and Rubin (2012:28) argue that if the researcher masters the terminology found in the documents and shows familiarity with the organisation's activities, participants are more likely to recognise the interviewer as an informed person to whom it is worth talking about their experiences.

Denscombe (2010b:232) offers some advantages of documents as a source of data:

- Ease of access to data.
- It is cost-effective.
- The data is permanently available in a form that can be checked by others and is open to public scrutiny.

Strydom and Delpont (2011a:382) list the following additional advantages of a document study:

- **Non-reactivity:** This refers to the producers of documents not necessarily being aware that the contents of their documents are being studied or analysed at a later stage. The content of what they produce is therefore not influenced by the researcher.
- **Inaccessible subjects:** This relates to the fact that document study is the only method where the researcher does not have to make personal contact with the participant, allowing access to persons who the researcher may not otherwise have been able to study.

Denscombe (2010b:232) cautions against the following disadvantages of documents as a source of data:

- The researcher must evaluate the credibility of the source and establish the authority, the origin and the procedures used to produce the original data.
- The data contained in documents is originally produced for other purposes and not for the research. It therefore constitutes secondary data unless, of course, it is the original transcript of the research interview.

- Documents could owe more to the interpretation of those who drafted them than to an objective picture of reality.

### 1.14.2 Interviews

According to Brinkmann (2008:2), interviewing concerns a conversational practice where knowledge is produced through the interaction between an interviewer (cast in the role of the researcher) and the person being interviewed (cast in the role of a participant). An interview is most often conducted to serve the researcher's interests, external to the conversation itself to obtain knowledge about an issue under investigation. Greef (2011:342) states that "[t]he interview is a social relationship designed to exchange information between the participant and the researcher". Denscombe (2010b:174) states that interviews are used when the researcher wants to gain insight into things such as people's opinions, feelings, emotions and experiences. Interviewing is a method that is aligned to the complexity of the subject matter, specifically in-depth interviews which, according to Denscombe (2010b: 174), lend themselves to the collection of data based on:

- opinions, feelings, emotions and experiences. This has to be explored in depth and detail, as opposed to just a word or two;
- sensitive issues that require a careful and considerate approach during which the participants can be encouraged to discuss personal and sensitive matters in an open and honest manner;
- privileged information. In this case, the justification for interviews can be found in the premise that contact with the principal officials in the field who can provide privileged information, can provide in-depth information if the participants are willing to provide information that others could not. What they must be able to offer is insight into people in a particular position who are familiar with the issues being investigated in the study.

Denscombe (2010b:174) asserts that there are various types of research interviews that can be undertaken as one-to-one interviews, and he lists them as follows:

- Structured interview: Is a method that resembles a questionnaire method.
- Semi-structured interviews: In this type of interview, the researcher has a clear, predetermined list of questions to be answered. However, the interviewer is flexible and allows for the order of the topics to change, and, more importantly, allows the interviewee to develop ideas and speak more widely on the issues raised by the researcher. The questions are open-ended, and there is a great emphasis on allowing the interviewee to elaborate on points of interest.
- Unstructured interviews: This type of interview takes the emphasis of the interviewee's thoughts further in that the role of the researcher is to initiate the discussion by introducing a theme or topic and then letting the interviewee develop his/her ideas and follow his/her own train of thought.

Brinkmann (2008:2) asserts that most qualitative research interviews are semi-structured as a consequence of the agenda being set in accordance with the researcher's interest. A semi-structured interview is a qualitative data collection strategy during which the researcher asks the participants a series of predetermined but open-ended questions (Ayres, 2008:2). According to Greef (2011:351), researchers use semi-structured interviews in order to gain a detailed picture of a participant's beliefs about, or perceptions or accounts of, a particular topic. Semi-structured interviews are especially suitable if the researcher is particularly interested in a complex situation or process (Greef, 2011:352). The method gives the researcher and participant much more flexibility (Greef, 2011:351). Greef (2011:348) is of the opinion that the guided interview is ideal for obtaining comprehensive and comparable data. Responses can be coded, and tabulated, and descriptive statistics can be used to examine the data for relationships, because all respondents have been asked the same questions (Greef, 2011:348). Greef (2011:352) posits that during semi-structured interviews, questions are nearly always open-ended.

Roulston (2008:2) states that an open-ended question is a type of question posed by researchers to participants that enables them to choose how they orient themselves to the research topic. It allows participants the opportunity to select the terms with which to formulate their descriptions and strengthen the topics that are meaningful to them.

Denscombe (2010b:192) cites the following significant advantages of interviews considered by the researcher when deciding to conduct interviews:

- Interviews are particularly useful for producing data that deals with topics in-depth and in detail. Subjects can be probed, issues pursued, and lines of investigation followed over a relatively extended period.
- The researcher is likely to gain valuable insight based on the depth of the information gathered and the wisdom of key participants.
- Interviews require only simple equipment and build on conversational skills, which researchers already have.
- Interviews are an excellent method for producing data based on informants' priorities, opinions and ideas. Participants can expand on their thoughts, explain their views and identify what they regard as the crucial factors.
- Interviews as a method of data collection are probably the most flexible. The lines of inquiry can be adjusted during the interview. Interviewing allows for developing a line of inquiry.
- Interviews generate a high response rate because they are prearranged and scheduled for a convenient time and location.
- Direct contact at the point of the interview means that data can be checked for accuracy and relevancy as it is collected.

In this research, the researcher followed the advice provided by Denscombe (2010b:192), as listed above. The questions posed during the interviews were probing, seeking valuable insight based on the depth of the information gathered and the wisdom of key participants. The questions were open-ended, allowing for participants to expand on their ideas, explain their views and identify what they regard as crucial factors. During the interviews, scope was allowed for

adjustment, thereby allowing the development of a line of inquiry. Interviews were scheduled according to the availability of the participants, who were briefed on the nature of the study, areas of inquiry, the format of the interviews, and what they could expect during the interviews. When answers from participants would be checked and clarified, and could be elaborated on where required.

The researcher decided to use the semi-structured, one-on-one interviews with participants, as this method allowed him to check whether all points of interest had been covered. Another reason why the researcher used one-on-one interviews was because Denscombe (2010b:176) reasons that it presents advantages, such as:

- Relatively easy to arrange.
- The opinions and views expressed are those of one person, and that makes it easy for the researcher to link specific ideas to specific people
- It is relatively easy to control in that the researcher must grasp and interrogate one person's ideas, and guide only one person through the interview agenda.
- It makes the transcription of the recording of the interview easier because there are only two voices to identify and only one person talking at a time.

Other advantages of semi-structured one-on-one interviews are presented by Brinkmann (2008:2), who postulates that the one-on-one interview can be conducted informally and in a less structured manner, allowing for the participant to respond with spontaneous descriptions and narratives. Cook (2008:2) states that the researcher retains some control over the direction and content to be discussed, although it still allows the participants freedom to elaborate or take the interview in new but relevant directions. Cook (2008:2) also adds as an advantage the relative ease and cost-efficiency with which it can be conducted, endorsing what Denscombe (2012:176) referred to above.

During the semi-structured, one-on-one interview with participants, as noted above, the researcher made use of an interview schedule, as suggested

(interview schedule attached as Attachment A – page 509). One and the same interview schedule included as Attachment A (page 509), was used in relation to each of the participants during the interviews. During the semi-structured type of interview, the researcher made use of open-ended questions because, as suggested by Robson (2002:275), this type of interview is flexible; allows for in-depth exploration to clear up misunderstandings; enables testing of the limits of a participant's knowledge; encourages cooperation and support; provides a realistic assessment of what the participant believes; and can produce unexpected and/or unanticipated answers. According to Robson (2002:278), the interview schedule is likely to include introductory comments, a list of topical headings and possible key questions to ask under these headings, a set of associated prompts, and closing statements in compiling the interview schedule, the researcher heeded the advice given by Robson (2002:278) by including introductory comments, topical headings, key questions under the headings, and an opportunity for closing remarks by the participant.

What is stated above are all attributes of a data collection method that the researcher aspired to in the study and that he believes enabled him to obtain answers and knowledge about the subject matter under investigation. The researcher gained access to the prospective interviewees following facilitation by means of the correct official channels and agreement obtained from all parties to the research. However, from previous experience the researcher was aware that obtaining official authority to gain access to government agencies would prove to be an exhausting and frustrating process, burdened by bureaucracy and red-tape. In this research, it again turned out to be the case. The researcher used the proverbial “gatekeeper” to each specific agency to facilitate access to the agencies and interviewees. The interview method was viable regarding cost, time and travel because the agencies were not distributed across a large geographical area, and in conducting the interviews the researcher did not incur excessive costs.

Denscombe (2010b:172) cautions researchers that if a participant agrees to take part in an interview, the researcher must be alert to the following aspects:



- The participant **consents** to participate, as this confirms the ethical conduct of the researcher. This implies that the data should not be obtained by using underhanded methods. The participant should understand that the meeting is held to produce data for research purposes and should indicate that he/she understands this and agrees to it.
- The words of the participant are treated as 'on the record' and 'for the record', and the interviewee is made to understand that fact. However, an interviewee may request that the words not be attributed to him/her or made publicly available.
- The agenda for the interview is set by the researcher. However, the degree of control exercised by the researcher may vary in accordance with the style of interviewing.

In observing the caution presented by Denscombe (2010b:172) and elucidated above, the researcher administered to each participant, both vocally and by means of printed documents they were required to sign (namely an 'Informed Consent form, included as Annexure F and an undertaking by the participant on an 'Undertaking and Personal Details of Participant' form, included as Annexure G) to participate in the study, informing them of the various aspects referred to. All those involved in this study signed the relevant forms, providing their consent and acknowledging that they have been apprised of the ethical undertakings and other arrangements.

Brinkman (2008:2) posits that before conducting the interview, the researcher prepares an interview schedule in which the research questions are posed in a format that renders them suitable to be asked directly as interview questions. In the literature, an interview schedule is also referred to as an 'interview guide', or 'interview protocol' (Brinkmann, 2013:59). According to Greef (2011:352), the interview schedule is a questionnaire developed by the researcher to guide interviews. According to King and Horrocks (2010:35), qualitative interviews make use of an interview guide (schedule) that outlines the main topics the researcher wants to cover but is flexible regarding the way the questions are

phrased or the order in which they are asked. This allows for the participant to lead the interaction in an unexpected direction. In this regard, Marshall and Rossman (2011:144) state that this method is in fact based on an assumption fundamental to qualitative research, which is that, “[t]he participant’s perspective on the phenomenon of interest should unfold as the participant views it, not as the researcher views it.”

Kumar (2011:158) advises that after having constructed a research instrument such as an interview schedule, the researcher tests it before using it for actual data collection. Keats (2000:76) advises that the researcher always carries out a pilot before the major data collection begins. Kumar (2011:158) refers to this process as ‘pre-testing’. Keats (2000:76) proposes that this could include a qualitative examination of the questions, and interviewing a small sample of the participants, using the intended interview schedule to ensure that all the requirements for an interview schedule have been complied with. Kumar (2011:158) asserts that pre-testing involves a critical verification of the understanding of each question and its meaning by the participant. Kumar (2011:158) counsels that the pre-test should be conducted under actual field conditions on a group of people like the study population, to identify problems that future participants may experience in understanding or interpreting the questions. The purpose is not to collect data but to determine whether it is difficult to understand a question as a result of how it was framed, the appropriateness of the meaning it communicates, whether different participants interpret a question differently, and to establish whether their interpretation is different to what the researcher wants to convey. Strydom (2011:241) suggests that the pilot study must be executed in the same manner as planned for the main investigation. In following the counselling provided in the literature, the researcher conducted five pre-test interviews with participants who volunteered to participate in the pre-test interviews. The pre-test participants represented a group of practising investigators working for investigation agencies concerned with combating financial crime. Interviews were conducted under actual field conditions. These participants were subjected to the same rigour regarding informed consent and anonymity as if they formed part of the sample. As the process unfolded, the open-ended questions and answers were critically

reviewed to remove any ambiguities and uncertainties. Corrections were made to the interview schedule as the process evolved until the researcher was satisfied that the schedule produced the required data.

In conducting the interviews, the researcher considered the guidelines provided by Leedy and Ormrod (2015:282-286) for conducting productive interviews. The guidelines provided by Leedy and Ormrod (2015:282-286) and their application in this research project are listed and discussed below:

#### ***1.14.2.1 Identify general interview questions in advance***

Leedy and Ormrod (2015:282) postulate that researchers often have greater success when they prepare general interview questions in advance, making sure that all questions are addressed at some point during the interview, and that the issues are related to the research questions and overall research problem. In this research project, the researcher made use of an interview schedule. Leedy and Ormrod (2015:282) suggest that the researcher should avoid asking leading questions, and that it is not necessary to ask each and every question explicitly, as the answers to some may emerge while the participant responds to others. Leedy and Ormrod (2015:282) suggest that questions can be asked in several interviews. The researcher gave the participants an opportunity to be interviewed during several sessions where it appeared appropriate under the circumstances or when requested.

#### ***1.14.2.2 Consider how participants' cultural backgrounds might influence their responses***

Leedy and Ormrod (2015:282) alerted the researcher to the possibility that culture may play a significant role in how participants respond to questions. The researcher did not anticipate that cultural differences could play a part in this research because culture was not relevant to the research questions, but he was nevertheless mindful of that fact.

### **1.14.2.3 *Make sure your participants are representative of the group***

Leedy and Ormrod (2015:284) recommend that the researcher should choose people who are expected to give the researcher common perceptions and perspectives. In this research, the researcher intentionally conducted interviews with practitioners attached to the investigative authorities involved at some stage or another during the combating of financial crime.

### **1.14.2.4 *Find a suitable location***

Leedy and Ormrod (2015:284) postulate that in theory, interviews can be conducted at any place where the participant is willing to be interviewed. Leedy and Ormrod (2015:284) suggest that the researcher would probably be more successful if the interview was conducted where it is quiet and there was no risk of being distracted. In this research, the researcher endeavoured to engage the participants at their places of work or a facility such as a boardroom or an office where they could feel comfortable in the surroundings familiar to them. Prior to the research, the researcher confirmed with the participants whether they were comfortable with the venue. In those instances where it was found that the surroundings were not conducive to a productive interview, the location was changed to a venue agreed upon by the researcher and participant, and with which the participant was familiar and comfortable.

### **1.14.2.5 *Get written permission***

Leedy and Ormrod (2015:285) recommend that the researcher explains the nature of the study and what the purpose of the research is. During the initial engagement with the participant, the researcher provided the participant with a synopsis of the research topic, research questions and aims of the research. Leedy and Ormrod (2015:285) recommend that the researcher obtain written permission from the participant and that the participant is requested to sign an informed consent form. The researcher obtained written permission and informed consent from all the participants in this study. The participants were required by the researcher to sign an "Informed Consent" form, included as Annexure F, and an undertaking by the participant on the form "Undertaking and Personal Details

of Participant”, included as Annexure G, to participate in the study. They were also informed of various aspects of the research.

Prior to approaching the participants and being referred to them for the purpose of a purposive sample, the researcher obtained written authorisation to conduct the research from the following relevant investigative agencies:

- The SAPS (DPCI) – Annexure B
- The SARS – Annexure C
- The FIC – Annexure D
- The NPA (SCCCU) – Annexure E

#### **1.14.2.6 Establish and maintain rapport**

To develop and maintain rapport between the researcher and participant, Leedy and Ormrod (2015:285) suggest that the researcher breaks the ice with small talk. The researcher is himself attached to an investigative agency and in this regard commenced discussions by referring to some topical issues of mutual interest to get a discussion going. Leedy and Ormrod (2015:285) advise that the researcher should be mindful during the interview that the purpose of the interview is to obtain information, therefore he/she should guard against disclosing his/her own thoughts, beliefs and opinions. To prevent the discussion from becoming lopsided and to maintain rapport, the researcher must show interest and understanding in other ways. During the interviews, the researcher demonstrated interest by making relevant comments and adapting his body language and facial expressions.

#### **1.14.2.7 Focus on the actual rather than on the abstract and hypothetical**

Leedy and Ormrod (2015:285) assert that the researcher would most likely obtain more revealing information if he asked the participant how he or she perceived a specific situation, or thought a situation should be dealt with, as opposed to asking about a person’s philosophy regarding the topic. In this research, the questions formulated by the researcher and the follow-up questions did not inquire about the abstract and hypothetical but rather focused on the participants’ interpretation, thoughts and experience of specific issues.

#### **1.14.2.8 Do not put words in people's mouths**

Leedy and Ormrod (2015:285) advise that participants should be allowed to choose their own way of expressing their thoughts and to let them say it in a way they want to say it. The researcher followed this advice and allowed participants to express their ideas in their own words in an open-ended fashion, enabling them to elaborate if they were so inclined.

#### **1.14.2.9 Record responses verbatim**

According to the advice given by Leedy and Ormrod (2015:285), everything that the participants say must be recorded, whether by way of handwritten notes, voice recording or otherwise, especially if the interview is unstructured. The researcher heeded the advice provided and made written notes as the interviews progressed, as well as verbatim recordings of the interviews. In some cases, concepts were better demonstrated by means of a drawing or a graph, which the researcher encouraged, as it provided graphic detail.

#### **1.14.2.10 Keep one's reactions to oneself**

Leedy and Ormrod (2015:285) suggest that the researcher is likely to acquire more accurate information if he/she does not show surprise, agreement or disapproval of what he/she is being told. The researcher followed the advice by not expressing or showing surprise, choosing to maintain a neutral stance on the position being presented during the interviews.

#### **1.14.2.11 The researcher is not necessarily getting the facts**

Leedy and Ormrod (2015:285) recommend that the researcher should be aware that the response by the participant may only represent a perception and not necessarily a fact. The researcher heeded this advice and so interpreted the participants' responses accordingly.

### **1.14.3 Participants**

The participants in the study with whom interviews were conducted represented the investigative authorities from the key agencies responsible for combating

financial crime. They were identified as the South African Police Service (Directorate for Priority Crime Investigation), The South African Revenue Service (Enforcement: Criminal Investigations), The Financial Intelligence Centre, and the National Prosecuting Authority (Commercial Crime Court Unit). Due to the requirement that the identities of the participants had to be protected, their titles, location and designations cannot be disclosed for fear of exposing their identities. The participants were chosen in view of their privileged knowledge, experience and expertise in respect of the topic, based on the purposive sample, and most likely to provide valuable information.

### **1.15 DATA ANALYSIS**

Denscombe (2010b:273) points out that qualitative data takes the form of the spoken word or text and visual images observed or creatively produced. Ruben and Ruben (2012:27) suggest that some documents, even though they do not originate from interviews, are treated in the same vein by researchers as transcripts from interviews. Document analysis is associated primarily with research methods such as interviewing, documenting and observing. Qualitative data, however, can be produced by other means, for example, the use of open-ended questions as the product of an interview can produce answers in the form of text that, once transcribed, can be treated as qualitative data. Brinkmann (2008:3) points out that it is the transcription of an interview rather than an original oral interview conversation that serves as the researcher's primary source of data when he/she is interpreting and analysing the interview. It therefore follows that the kind of research method used does not provide the defining characteristics of qualitative data. It is the nature of the data produced that is the crucial issue (Denscombe, 2010b:273). Henning (as quoted by Strydom and Delpont, 2011a:380) asserts that the real test for a credible qualitative research lies in the analysis of the data. This assertion, Strydom and Delpont (2011a:380) posit, holds especially true for document analysis.

Interviews have the propensity to produce hundreds of pages of transcripts that need to be critically examined and carefully interpreted (Cohen et al., 2011:352). Greef (2011:360) suggests that by employing qualitative analysis, an attempt is

made to capture the richness of themes emerging from participants' verbal communication. Cohen et al. (2011:344), referring to Patton (2002), assert that the goal of qualitative data analysis is to uncover emerging themes, patterns, concepts, insights and understandings. According to De Vos (2002:339), data analysis is the process of bringing order, structure and meaning to the mass of data collected during the research and adds that it should lead the reader to an understanding of the sense of the experience or the phenomenon being studied. Denscombe (2010b:274) has a similar view on the analysis of qualitative data, stating that data must be prepared and organised before it can be analysed. Denscombe (2010b:274) advises that in a raw state, qualitative data will be difficult to interrogate in a systematic and meaningful way. Denscombe (2010b:274) continues that it would probably be difficult for the researcher to compare aspects of the data or find recurrent themes. To solve this problem, Holliday (2013:3) advises that organising the raw data under thematic headings is an effective way of making sense.

Words combine to form meanings. The meanings must be sorted, interpretations considered, and conclusions reached (Cohen et al., 2011:350). According to Cohen et al. (2011:352), an excellent qualitative analysis should discover patterns, consistent themes, meaningful categories, and new ideas. Schurink, Fouché and De Vos (2011:397) postulate that qualitative research covers a variety of techniques, the core of which is covered by observation, interviewing and document study. Strydom and Delpont (2011a:380) posit that there are different techniques available to the researcher to analyse documents obtained in a document study. According to Greef (2011:360) there are several approaches to analyse the content of a document study and available interviews. According to Welman and Kruger (2001:194), a content analysis may be used to analyse data from qualitative research.

Jupp (quoted by Strydom & Delpont, 2011a:380) states that there are different techniques that the researcher can apply when it comes to the analysis of documents, depending on the goal of the study, among other things:



- **Content analysis**

According to Schreier (20013:2), qualitative content analysis helps to reduce the amount of material, therefore requiring the researcher to focus on selected aspects of meaning, namely that which relates to the overall research question. A content analysis tends towards a systematic and enumerative approach in a step to quantify the frequency of elements in a document, such as words. It relates to the transformation of the wording from a qualitative, unsystematic form into a systematic, quantitative form (Monette, Sullivan & De Jong, 2002:207 in Strydom & Delpont, 2011a:381).

- **Linguistic analysis**

During linguistic analysis, the meaning of words and phrases in a document or of text is explored (Strydom & Delpont, 2011a:380).

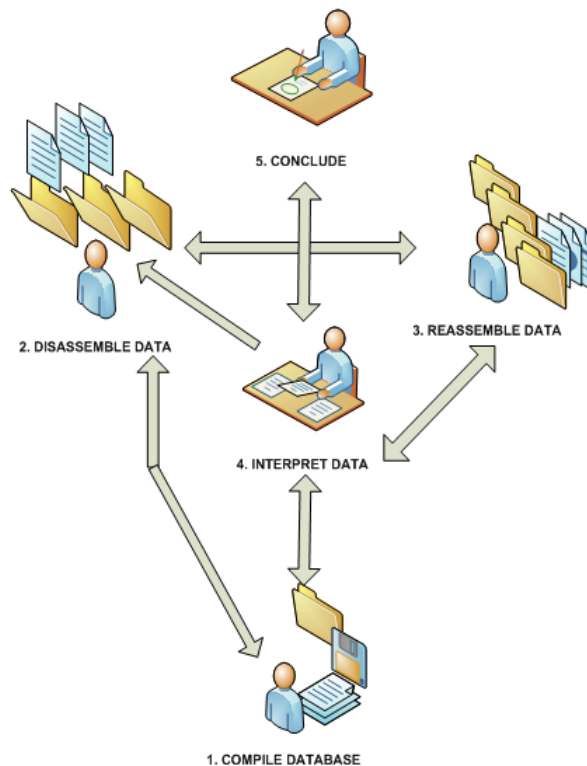
According to Strydom and Delpont (2011a:381), a combination of techniques can be used to analyse a document or documents. In this research, the researcher used content analysis and linguistic analysis as proposed above. The content analysis in combination with a language analysis was used to analyse the transcripts of interviews. The language analysis was used in respect of other forms of documents or the body of material obtained during the document study.

According to Roulston (2013:11), researchers analyse historical data, including interviews, to produce themes that represent patterns that can be observed across a data set (or data sets). Delpont and Fouché (2011:428) posit that themes are probably the most frequently used model to transform data into knowledge. Aurini, Heath and Howells (2016:198) refer to a process called “Frequency Coding”, stating that qualitative researchers tend not to think of themselves as counters. The authors do, however, point out that when a theme or a pattern is identified by the researcher, it isolates something that happens many times or in a specific manner (Aurini et al., 2016:198). According to Aurini et al. (2016:198), many things can be counted, such as words, phrases and events. Counting assists the researcher in identifying a category and a theme, and it can verify fundamental propositions “[a]bout what is going on in your data [in the data

collected]” and how the participants understand the social phenomenon being studied.

Yin (2016:185) asserts that the analysis in qualitative research does not follow an unyielding step-by-step procedure, but it is not entirely unstructured either. Yin (2016:185) explains that in most qualitative analyses, irrespective of the type or variant that is emulated, it does follow a generic “five-phased cycle” of analysis, and further explains that the analysis is likely to occur in a “non-linear” fashion. To better explain the sequence of the phases and the non-linear fashion of the analysis process, the researcher presents a graph, Figure 1.1, below depicting the complete cycle and the five phases as depicted by Yin (2016:186). The arrows in the graph depict the back and forth movement between the phases (Yin, 2016:185). The graphic depiction below was adapted from the illustration by Yin (2016:186), and is captioned “Five Phases of Analysis and Their Interactions”, namely compiling, disassembling, reassembling, interpretation and conclusion:

**Figure 1.1: Phases of analysis and their interactions**



(Source: Adapted from Yin, 2016:186)

Yin (2016:186) sets out the five phases and discusses them as follows:

### **The first phase: Compiling**

Yin (2016:186) posits that the first phase of the formal analysis of the data begins with the compilation and sorting of the information collected during the data collection. During the “compiling phase”, the information is formally arranged in some useful order and may be considered to resemble a database.

During this phase, the researcher first started to compile data when information was collected during the preliminary review of the literature. During this phase, the researcher commenced with interviewing participants, transcribing audio recordings of the interviews, and making back-up copies of recordings and transcripts. The researcher continuously collected literature on the issues under investigation and arranged it according to relevance.

### **The second phase: Disassembling**

Yin (2016:186) postulates that this involves breaking down the data into smaller pieces such as substantive themes based on a combination of disassembled items. Yin (2016:186) posits that although the second phase may involve breaking down the compiled data into fragments or pieces and assigning labels or codes in a formal coding procedure, it is not mandatory. During this phase, the researcher commenced by breaking down the text of the interviews into themes and tabulating the topics into tables related to the replies to the research questions.

### **The third phase: Reassembly**

During the third phase of the analysis process, namely the reassembly procedure, the arrangement of the data can be facilitated by depicting data graphically or by arranging it in lists and tables (Yin, 2016:187). During this phase, the researcher tabulated the themes in frequency tables and produced graphs to depict the data.

### **The fourth phase: Interpretation**

This cycle concerns the interpretation of the “reassembled” data to create new narratives, with accompanying tables and graphics where relevant. This phase

constitutes the key analytical part of the research report (Yin, 2016:187). In this phase, the researcher analysed and interpreted the reassembled data, integrating the interpretation with the text collected during the document study and presenting the data from the documents in a narrative format.

### **The fifth phase: Conclusion**

This phase of the analysis cycle is referred to as the “concluding” phase and calls for the drawing of findings from the entire study (Yin, 2016:187).

In this research, the researcher approached the analysis of the data in accordance with the guidance provided in the literature, as suggested by Yin (2016:185–187) In addition to approaching the analysis of the data in the manner suggested by Yin (2016:185-187) (referred to above), the researcher also consulted the literature for further guidance on how to prepare, organise and reduce the data into themes and interpret the results. Welman and Kruger (2001:195) assert that a content analysis can be conducted of the responses to open-ended questions and unstructured aspects of the interviews, to report the substance of the interviews in a quantitative way, in addition to making a qualitative analysis of the essence of the content of such an interview. According to Denscombe (2010b:281), a content analysis can be used with any text and is used as a way of “quantifying” the text that follows a logical and relatively straightforward procedure, which he describes in the following steps:

- a. The researcher should choose an appropriate sample of texts. The texts used are the transcripts of the responses to the open-ended questions used in the interviews with the participants. Welman and Kruger (2001:195) also state that a content analysis can be conducted of the responses to open-ended questions and unstructured aspects of the interviews to report the substance of the interviews in a quantitative way, in addition to making a qualitative analysis of the essence of the content of such an interview.
- b. The researcher broke the text down into smaller component units. Each individual word can be a unit for analysis.
- c. The researcher developed relevant themes for analysing the data. This took on the form of ‘keywords’ associated with the topic.

- d. According to Welman and Kruger (2001:195), content analysis involves the contents of the participants' responses to the open-ended questions being examined systematically to record the relative frequencies of themes and the ways in which these themes are portrayed.
- e. As part of the analysis, the researcher must then count the frequency at which the various themes occur.
- f. The researcher then analysed the text in respect of the frequency of the units and their relationship to other units that occur in the text. Leedy and Ormrod (2015:317) describe this step as one of the crucial stages of a content analysis in which it is required to tabulate the frequency of each characteristic found in the material being studied. Appropriate analyses were performed in respect of the frequencies or percentages obtained to determine whether significant differences exist between the sources of text in the literature and the answers of the participants relevant to the research question.

In preparing the data for analysis, Denscombe (2010b:275) advises that the researcher must make back-up copies of the data, whether it is in the form of recordings, computer files, visual documents or documents, such as the transcripts. Heeding the advice, the researcher continually made back-up versions of electronic data as well as copies of documents. Denscombe (2010b:275) suggests that if audio recordings are made during the interviews, they should be transcribed and annotated. He further envisages that transcriptions will help with detailed searches and comparisons of the data. Transcriptions are also necessary if the researcher intends to use data software during the analysis. In this research, the researcher transcribed the audio recordings made during the interviews and analysed the data from the text.

The analysis of documents as a source of data provided answers and shed light on the following issues:

- Government's approach and policy or lack thereof regarding the combating of financial crime.

- Official mandate of governmental investigative authorities about combating financial crime.
- Perceptions from experts and policymakers regarding Government's approach to combating financial crime.
- Understanding of the meaning of the concept Whole-of-Government and how this concept is applied elsewhere, especially regarding the combating of financial crime.
- Understanding of the meaning of the concept financial crime and how this is being categorised, using a structured approach and a description of the type of unlawful conduct.

### **1.15.1 Bracketing**

Starks and Trinidad (as quoted by Tufford & Newman, 2010:81) state that in qualitative studies, the researcher is the instrument for analysis across all stages of the research project. Because of the subjective nature of the research endeavour, it will result in the inevitable transmission of assumptions, values, interests, emotions and theories within and across the research. These are referred to collectively as “preconceptions” or “presuppositions”, which have the potential to influence how data are gathered, interpreted and presented (Tufford & Newman, 2010:81). Tufford and Newman (2010:81) describe “bracketing” as a method used by researchers to mitigate the potentially adverse effect of unrecognised preconceptions related to the research, thereby increasing the accuracy of the research. Gearing (2008:2) defines bracketing as “a rigorous process that suspends internal and external suppositions [preconceptions] thereby allowing the focusing in on a specific phenomenon to understand or see it as it is.”

Concerning the application of bracketing, Parse (2001:80) states that the researcher explicitly declares his/her beliefs about the phenomenon and “sets these aside” when approaching the participant’s descriptions. Spiegelberg (as quoted by Parse, 2001:80) states that it is important to “consider all of the data, real or unreal or doubtful and having equal rights, and investigate them without fear or favour.” Parse (2001:80) then concludes by stating that “Bracketing, then,

is an attempt to ensure that the various perspectives of the participants are considered in uncovering the essences of the phenomenon under study.” According to Marshall and Rossman (2011:97), in quoting Moustakas (1994:34), bracketing of the researcher’s personal experiences is important because it allows the researcher to perceive the phenomenon “freshly as if for the first time”.

In applying the practice of bracketing, Leedy and Ormrod (2015:274) recommend that during the interview, the researcher suspends any preconceived notions or personal experiences that may influence what the researcher “hears” the participant saying. Leedy and Ormrod (2015:274) acknowledge that such a suspension can be complicated if the researcher has personally experienced the phenomenon under study, but it is essential if the researcher is to gain an understanding of the typical experiences that people have had.

During the research, the researcher followed the advice provided by Leedy and Ormrod (2015:274) by suspending any preconceived notions or personal experiences that might have influenced what the researcher “heard” the participants saying in order to gain an understanding of the typical experiences that people have had. This process involved ‘bracketing’ by the researcher, setting aside his personal viewpoint to, live the experience “freshly as if for the first time”, as proposed by Maykut and Morehouse (1994:123) and Marshall and Rossman (2011:97). Bracketing enables the researcher “to remain open to what is in the data”, as suggested by Roulston (2013:9).

### **1.16 TRUSTWORTHINESS OF THE STUDY**

Validity is defined as “the extent to which the research produces an accurate version of the world” (Bloor & Wood, 2006:147). Validity is based on whether the findings are accurate from the viewpoint of the researcher, the participants or the readers of a version (Creswell & Miller, 2000:125). Kumar (2011:84) postulates that one of the areas of difference between quantitative studies and qualitative studies is the use of and importance given to the concepts of validity and reliability. Kumar also indicates that the debate concerns whether, given the framework of qualitative research, these concepts can or should even be applied

to qualitative research. White (2011:233-234) explains that validity is a term that applies equally to empirical, exegetic and qualitative approaches. However, validity distinguishes between internal and external validity that is applied and understood differently in empirical and qualitative studies.

Denscombe (2010b:298) believes the validity of research is something that “needs to be demonstrated” as part and parcel of the research process itself. Creswell and Miller (2000:124) agree, and state that there is a consensus that qualitative researchers must validate their studies as credible. Leedy and Ormrod (2015:103) are of the same view, stating that irrespective of which research methodology is chosen, the researcher must think about the general validity of the approach, taking cognizance of the likelihood that it will yield accurate, meaningful and credible results that can potentially assist in addressing the research problem.

Koonin (2014:252) states that the concepts validity and reliability are most commonly associated with quantitative studies, during which researchers tend to use research methods that produce measurable numerical and statistical results. They would often also seek for causal effects. They therefore want to repeat tests to determine whether the same cause, under the same circumstances, returns the same results. However, in qualitative research, the aim of research is to attempt to provide an in-depth understanding of a phenomenon. To this end, qualitative researchers prefer to use the concept trustworthiness to measure validity and reliability in qualitative studies (Koonin, 2014:253). If qualitative researchers still use the terms validity and reliability, the way in which they determine validity and reliability will differ from the way it is determined in quantitative studies (Koonin, 2014:254 with reference to Lincoln & Guba, 1985; Shenton, 2004).

In qualitative research, the term used to encapsulate the concept of validity and reliability is trustworthiness (Koonin, 2014:258). According to Lincoln and Guba (as quoted by Kumar, 2011:184), trustworthiness in qualitative research is determined by four indicators, namely credibility, transferability, dependability and confirmability. Kumar (2011:185), referring to Trochim and Donnelly (2007),



presents a table to illustrate how the four indicators proposed by Lincoln and Guba (1985) equate to validity and 'reliability' in quantitative research. The table, Table 1.1 is provided below to aid in the exposition that follows on the methods used in this research to ensure validity and reliability.

**Table 1.1: A comparison of the terms used to equate validity and reliability in qualitative research**

Traditional evaluation criteria for quantitative research	Alternative evaluation criteria for qualitative research
Internal Validity	Credibility (Par. 1.16.1)
External Validity	Transferability (Par. 1.16.2)
Reliability	Dependability (Par. 1.16.3)
Objectivity	Confirmability (Par. 1.16.4)

(Source: Adapted from Kumar, 2011:185)

A procedural perspective recommended by Creswell (2013:249-250) to check the accuracy of findings in research is to identify and discuss one or more available strategies. Creswell (2013:250) recommends the use of multiple approaches to enhance the researcher's ability to assess the accuracy of findings as well as convince readers of that precision. Creswell (2013:250) presents eight primary strategies, presented here in no specific order of importance:

- Triangulation
- Member checking
- Rich, thick description
- Clarifying bias
- Present negative or discrepant information
- Prolonged time in the field
- Peer debriefing
- Auditing

The researcher chose, and actively incorporated validation strategies recommended by Creswell (2013:250-253) as part of this research. The researcher identifies, discusses and reflects on the application of the applied strategies in the sections that follow below.

### **1.16.1 Credibility**

According to White (2011:236), credibility is broadly analogous to 'internal validity'. Schurink et al. (2011:397) assert that credibility (in qualitative research) is an alternative to internal validity. Rossouw (as quoted by Delpont & Fouché, 2011:428) agrees, postulating that credibility, as encountered in qualitative research, is a concept equivalent to validity in quantitative studies (Bloor & Wood, 2006:147). Validity is based on whether the findings are accurate from the viewpoint of the researcher, the participants, or the readers of a version (Creswell & Miller, 2000:125). Kumar (2011:185), with reference to Trochim and Donnelly (2007:149), declares that credibility involves establishing that the results of the research are credible or believable from the perspective of the participants. Creswell (2014:201) points out that credibility is one of the strengths of qualitative research and is founded on determining whether findings are accurate from the viewpoint of the researcher, the participants or the person who reads the version of an account

#### **1.16.1.1 *Triangulation of different methods***

Denscombe (2010b:346) explains that 'triangulation' involves the practice of viewing things from more than one perspective. This can mean the use of different methods, various sources of data or even different researchers within a study. The principle behind this is that the researcher gains a better understanding of the phenomenon that is being investigated if he/she views it from different positions. Viewing something from more than one viewpoint allows the researcher to get a better "fix" on it, which implies "to get [a] better knowledge of it". If the researcher succeeds in establishing the themes from a convergence of several sources of data, the process is adding validity to the data (Creswell, 2014:201).

Creswell (2014:201) recommends the use of multiple data collection strategies, thereby enhancing the researcher's ability to assess the accuracy of the findings as well as convincing the reader of the accuracy. The researcher used multiple data-collection strategies, namely interviews, a study of the literature, and document study. The researcher ensured credibility in that the data collected

addressed the research problem, aim and research during data collection. During the data analysis, the researcher compared different sets of data to identify similarities that provide evidence for making judgements about similarities between the various sets of information, thereby ensuring credibility. The researcher compared the data received from the various participants and other sources of evidence. The purpose of using triangulation in this research is to improve accuracy and to get a fuller picture by producing corresponding data to give the researcher added confidence in his research data and findings.

### **1.16.1.2 Member checking**

According to Yin (2016:337), member checking refers to the procedure whereby the findings of a study or draft material are shared with the participants in the study. The 'checking' allows the participants to correct or otherwise improve the accuracy of the study, simultaneously reinforcing collaborative and ethical relationships. Creswell (2013:252) states that according to Lincoln and Guba (1985:314), member checks are "the most critical technique for establishing credibility." This approach carries a lot of weight in most qualitative studies and involves taking data, analyses, interpretations and conclusions back to the participants so that they can judge the accuracy and credibility of the account.

According to Creswell (2013:252), member checking may involve determining the accuracy of the qualitative findings by taking the final report or specific descriptions or themes back to the participants and determining whether the participants feel that the findings are accurate. This does not necessarily mean taking back the raw transcripts to check for accuracy. Instead, the researcher takes back parts of the polished or semi-polished product, such as the main conclusions, the themes, and so forth. This procedure could involve conducting a follow-up interview with participants in the study and provide an opportunity for them to comment on the findings.

In this research, the researcher re-engaged with some of the participants to confirm whether he had correctly interpreted an answer, or to clarify certain aspects of their responses. The researcher took the final report, specific

descriptions and conclusions back to the participants and enquired from them whether they agreed with the findings of the researcher and whether the conclusions made sense, based on their own experiences. In applying this procedure, the researcher contextualised the sites or people in the study, providing as much detail as possible, which may include describing a small part of the interaction that took place or providing a detailed version of how people feel. The researcher constantly scrutinised the data and the interpretation of the data to ensure that assumptions made were acceptable and applied to the scope of the research.

### **1.16.1.3 Thick description**

According to Yin (2016:340), 'thick description' refers to the effort to collect data that has the attribute of describing real-world events in great detail. Increased detail not only provides a richer version of the facts but it can also assist in reducing any influences caused by selectivity and reflexivity on the part of the researcher when reporting about the event. Tracy (2010:843) posits that thick description is one of the most important means of achieving credibility.

Creswell and Miller (2000:129) assert that the process of writing, using a thick description, is intended to provide as much detail as possible. By using a rich, thick description when conveying the findings in a report, the description may transport readers to the setting and provide the discussion with an element of shared experiences. Offering several perspectives about the theme renders the result closer to reality and richer, adding validity to the findings (Creswell, 2014:202). Creswell and Miller (2000:129) argue that the purpose of a thick description is that it creates "verisimilitude" or a sense of credibility. That is, it creates the feeling that the reader has experienced, or could have experienced, or could experience the events described in a study. Creswell (2013:252), referring to Erlandson et al. (1993:32), states that with such detailed description, the researcher enables readers to transfer information to other settings and to determine whether the findings are transferable "because of shared characteristics". This is because the writer describes in detail the participants or setting being studied.

Creswell and Miller (2000:129) suggest that there is a measure of overlap between thick description as a strategy to ensure credibility, and such thick description as a strategy to ensure transferability. By providing vivid detail, the researcher assists readers to understand that the account given is credible, helping them to decide whether the findings are valid in relation to other settings or similar contexts (Creswell & Miller, 2000:129).

To enhance the credibility of the study, the researcher identified a target population from which rich, thick and 'real life' information was obtained. The rich, thick information gathered is an attempt to transport readers to the setting and give the discussion an element of shared characteristics (Creswell, 2013:252). In this research, the researcher provided a detailed description of the setting, and offered many perspectives on a theme. This resulted in the results becoming more realistic and richer. The researcher provided sufficient information about the context being studied and ensured that the research questions were appropriately addressed (Jensen, 2008:2).

#### ***1.16.1.4 Prolonged engagement and persistent observation***

Creswell (2013:250) refers to "prolonged engagement and persistent observation in the field". This includes building trust with the participants, learning the culture, and checking for misinformation that stems from distortions introduced by the researcher or informants. In this way, the researcher develops an in-depth understanding of the issues under investigation (Creswell, 2014:202). Creswell (2014:201) asserts that the more involvement the researcher has with the participants in their setting, the more validity and accuracy can be added to the version presented by the participant. Leedy and Ormrod (2015:106) refer to "extensive time in the field," stating that it includes extended periods in the field studying a particular phenomenon, forming a tentative hypothesis and continually looking for evidence that continually confirms or rebuts that assumption. Botes (2003:180) refers to "sufficient prolonged involvement", stating that this means the researcher should be entrenched in the field of study, having a prolonged interaction with the participants or study material.

To increase credibility, the researcher spent extended periods with the respondents to understand them better, gain their trust and to obtain insight into their lives regarding the problem under investigation, as proposed by Creswell (2013:251). The researcher developed an in-depth understanding of the phenomenon under study and conveys to the reader the detail about the site and the people, lending credibility to the narrative account as suggested by Creswell (2013:251). The researcher developed an in-depth understanding of the issues under investigation by visiting and interviewing the participants at their places of work. The researcher built trust and rapport with the participants to ensure that they were comfortable with disclosing certain information. Later on, the researcher reciprocated by providing feedback to the participants. This increased the credibility because the findings originated from participants' lived experience. Throughout the data collection phase of this study, the researcher immersed himself in the study material, documents and literature to ensure sufficient involvement, "thoroughly examining and studying all relevant sources", as suggested by Botes (2003:180).

#### **1.16.1.5 Clarifying bias**

Ogden (2008:2) asserts that "bias" refers to a predisposition or partiality. Ogden (2008:2) elucidates that in qualitative research, bias involves influences that compromise accurate sampling, data collection, data interpretation and the reporting of findings. Leedy and Ormrod (2015:106) refer to the "acknowledgement of personal biases", suggesting that rather than claiming to be an objective, impartial observer, the researcher describes personal beliefs and attitudes that may potentially be slanting the observations and interpretations. Ogden (2008:2) asserts that the real imperative is for researchers to be aware of their values and predispositions, and to acknowledge that these factors are inseparable from the research process. At the outset of this research report, the researcher stated his background and experience in the field and his concerns about the phenomenon under investigation. Where the researcher became aware that his personal beliefs and attitudes could possibly introduce bias into the findings, he alerted the reader to that fact. Ogden (2008:2) suggests that in

qualitative research, researchers word their interview questions so that they are not predisposed to elicit biased responses. In this regard, the researcher conducted a pilot or pre-test to identify questions with the potential to solicit preordained and biased responses from participants.

### **1.16.2 Transferability**

According to White (2011:234), external validity is also referred to as 'generalisability'. Generalisability is a measure of the extent to which research results can be extrapolated to another setting (White, 2011:234). White (2011:237) asserts that qualitative researchers apply the term transferability instead of generalisability. Denscombe (2010b:301) claims that most qualitative researchers accept that generalisability is relevant but argue that it has to be approached in a different way when being used in relation to qualitative research.

According to Creswell (2014:203-204), the value of qualitative research lies in the description and themes in the context of a specific site, and not to generalise the findings to individuals, sites or places outside of those under study. According to Denscombe (2010b:300), qualitative research tends to be based on the intensive study of a relatively small number of cases. This raises the question of how typical those cases are and how likely it is that what was found in those few cases will also be found elsewhere in cases addressing a similar issue. In research based on small numbers and qualitative data, this issue can be dealt with through what Lincoln and Guba (as quoted by Denscombe, 2010b:300) refer to as 'transferability'. This involves an inventive process whereby the reader of the research uses information about the instance that has been studied to arrive at a judgement as to what extent the findings of a study can be applied to other situations (Denscombe, 2010b:301). The question then becomes one of "to what extent could the findings [of one study] be transferred [applied] to other instances [situations]?" (Denscombe, 2010b:301). The following suggestions in the literature guided the researcher to address the issue of transferability:

According to White (2011:237), qualitative researchers facilitate transferability by providing detailed descriptions of all aspects of their research by means of the

application of thick description together with a reflexive account of themselves. With regard to thick description, Halaweh (2015:354) agrees, stating that thick description is also a strategy to ensure transferability. To this end, the researcher applied 'thick description' of this research, as discussed in the previous section. With regard to a reflexive account on the part of the researcher, Leedy and Ormrod (2015:278) state that good qualitative researchers actively try to identify personal, social, political or philosophical biases that can potentially affect their ability to collect and interpret data. This procedure is referred to as 'reflexivity'. Leedy and Ormrod (2015:278 & 353) suggest that the researcher takes whatever steps necessary to circumvent such influences, including alerting readers to any such biases that may have limited the researcher's ability to study the research problem with complete objectivity. This includes being upfront about any assumptions that may have influenced methods, analyses and interpretations. In this research, the researcher consciously thought about what his biases might be, speculating on the effects these biases may have had on his actions, the data collected and the interpretation of the results, and, where necessary, bringing it to the attention of the reader (Leedy & Ormrod, 2015:353).

According to Polit and Beck (2010:1453) transferability is considered to be a collaborative endeavour during which the researcher provides detailed descriptions that will allow readers to make inferences about extrapolating the findings to other settings. The function of transferability, however, is performed by readers and consumers of research. It is their function to evaluate the extent to which the findings of the research apply to new situations. It can thus be said that it is the readers and users of research who "transfer" the results.

White (2011:238) agrees, stating that transferability is a process carried out by other qualitative researchers after it had been facilitated by the original researcher. According to Kumar (2011:185), the researcher must extensively and thoroughly supply information that will enable others to gauge the process the researcher adopted so that they can follow and replicate it. To put it differently, to gauge to what extent the findings are transferable, the reader must be presented with relevant details on which to base a comparison. Armed with the appropriate



information, the reader can consider the transferability of the findings. It is, therefore, the responsibility of the researcher to ensure that there is sufficient contextual information about the fieldwork sites to enable the reader to make such a transfer (Lincoln & Guba; Firestone, as quoted by Shenton, 2004:69).

Jensen (2008:2) suggests that qualitative researchers use two strategies that could increase the transferability of a study, namely thick description (already discussed in the section above) and through purposive sampling. In this research, the researcher made use of purposive sampling. To this end, the researcher made sure that in this study the participants are important members of the community related to the study, i.e. practitioners and investigators being members of the key agencies involved in the combating of financial crime (Jensen, 2008:2).

### **1.16.3 Dependability**

According to White (2011:235), qualitative researchers usually adopt the notion of dependability rather than reliability. It is therefore very similar to the concept of reliability in quantitative research (Kumar, 2011:383). Reliability is concerned with whether the results will be the same if the same thing is observed twice - the greater the similarity between the results the greater the dependability (Kumar, 2011:383). White (2011:235) posits that dependability is a measure of the extent to which a reader of the account concurs with the findings of the research, based on the evidence presented.

Lincoln and Guba (1985; as quoted by Golafshani, 2003:601), argue that “since there can be no validity without reliability, a demonstration of the former is sufficient to establish the latter”. Patton (as quoted by Golafshani, 2003:602) holds the same view, citing that reliability is a consequence of the validity of a study. Golafshani (2003:601) asserts that this is an endorsement of the similarity of reliability and validity in qualitative research. Koonin (2014:259) argues that dependability refers to the quality of the process of integration that took place between the data collection methods, data analysis and theory generated from the data. Denscombe (2010b:300) posits that the issues around validity in

qualitative research can be resolved by demonstrating that the research reflects procedures and decisions that others can see and evaluate in terms of how far it constitutes “reputable procedures and reasonable decisions”, acting as a “proxy” for being able to replicate the research. Denscombe (2010b:300) argues that it is only when such information is supplied that it is possible to reach conclusions as to how feasible it is that another researcher would have been able to arrive at the same comparable findings.

White (2011:235) recommends that the primary mechanism enabling qualitative researchers to achieve dependability is a thick description. White (2011:235) pronounces that the richness of the description is indicative of the “density of the layers of meaning with which the interpretation has to deal” and a reflection of the authenticity of the research. White (2011:236) states that providing a thick description leaves an audit trail that enables readers to follow the interpretative process from the outset of the study and understand the findings derived from it. The concept of dependability as regards this study is relevant because the conclusions of the study are reliable and objectively real (White, 2011:235), can be trusted, and will be such that another researcher will make the same findings. By following the advice from the literature to ensure reliability and dependability, the researcher provides a thick description.

#### **1.16.4 Confirmability**

According to Morse, Barret, Mayan, Olson and Spiers (2002:13), confirmability is one of the elements of “trustworthiness”, which is a concept that runs parallel with validity and reliability in qualitative inquiry. White (2011:235) posits that in qualitative research, ‘confirmability’ complements ‘dependability’ as regards the extent to which a researcher’s interpretation of the research material can be corroborated. Confirmability refers to the degree to which the results could be confirmed or corroborated by others (Trochim & Donnelley, as quoted by Kumar, 2011:185). Confirmability is also like reliability in quantitative research. It is only possible if both researchers follow the process in an identical manner for the results to be compared (Kumar, 2011:185). Seale (1999:468) asserts that confirmability is a measure replacing the conventional measure of neutrality or

objectivity as a means to establish trustworthiness in research. With regard to confirmability, Shenton (2004:63) asserts that it equates to the qualitative researcher's concern with objectivity. Seale (1999:468) states that auditing is a useful strategy to establish confirmability. In this regard, Seale (1999:468) posits that auditing is “an exercise in reflexivity, which involves the provision of a methodologically self-critical account of how the research was done”. In observing confirmability, the researcher must take steps to ensure that the findings are derived from the participant’s experiences and ideas, and not those of the researcher’s own characteristics and preferences (Shenton, 2004:72). Shenton (2004:72) proposes triangulation as a step to ensure confirmability and reduce the effect of a researcher’s bias. This researcher, in following this advice, used triangulation in this research to address confirmability.

Shenton (2004:2) contends that a detailed methodological description enables the reader to determine the extent to which the data and the constructs that emerge from the data may be accepted. In this regard, the role of an audit trail is to allow the observer to trace the steps of the research “step-by-step” according to the decisions made and procedures described. This allows for tracking the way the concepts inherent to the research question gave rise to the work that followed (Shenton, 2004:72). According to Creswell and Miller (2000:128), the audit trail can be viewed by external observers such as the readers who examine the narrative account and can attest to its credibility (internal validity). Creswell and Miller (2000:128) propose that for researchers to establish an audit trail they must provide clear documentation of all research decisions and activities. To ensure confirmability, the researcher kept a detailed record of all the literature consulted. This provides proof that the findings did not originate in the imagination of the researcher but that they are clearly linked to the data, resulting in the findings of the study, determined by a review of the literature, as suggested by Liamputtong (2013:26).

### **1.17 ETHICAL CONSIDERATIONS**

Mcauley (2003:95) cautions that social research often involves an intrusion into people’s lives and therefore suggests that such research largely depends on a

successful relationship between the researcher and the participants. Central to this relationship is ethical responsibility, which is integral to the research topic and to research design and planning. The motivation for researchers to act ethically is partly a matter of professional integrity (Denscombe, 2002:175).

According to Leedy and Ormrod (2015:120), whenever human beings are the focus of research, the researcher should look at the implications of what he/she is proposing to do. UNISA provides guidelines about ethical considerations involving human participants in which the concerns outlined by Leedy and Ormrod (2015:120-123) are addressed (UNISA, 2007:9). UNISA (2007:9) prescribes, among other things that the following general ethics principles should be adhered to by researchers:

#### **1.17.1 Competence, ability and commitment to research**

The researcher is academically schooled and proficient in conducting research and the application of research methodology, having undertaken a research project and publishing a dissertation of limited scope at a master's level. Prior to undertaking this research project, the researcher had to comply with the requirement of having completed a research proposal module, in lieu of which he had to complete and submit a research proposal on which this study is based. The researcher is professional in his career and academically committed to the research topic.

#### **1.17.2 Respect for and protection of participants' rights**

The researcher took steps to ensure that the identity of all participants in this study is protected, thereby ensuring that they cannot be identified, victimised or intimidated because of their participation in this study. The participants are allocated a unique code during the interviews and to their responses, that is kept separate from their personal identity and known only to the researcher. This step ensures that their names are not visible to anyone but the researcher who was responsible for collecting the information and conducting the interviews. Where a quote, account, description, or answer is attributed to a participant in the research

study, the participant's code is provided with the in-text reference and the list of references.

### **1.17.3 Informed and non-coerced consent**

In this research, all the participants were informed of the purpose of the research and given a choice to participate in this research voluntarily. At all times during the research, the researcher was acutely aware that the participants participated on a voluntary basis. Before the interviews were conducted, participants were provided with a form entitled "Informed consent form". A copy of the said form is attached as Annexure C. The contents of the form were discussed with and explained to the participant. The following aspects are covered in the form:

- Purpose of the research
- Duration of the study
- Participant's role
- Selection of participants
- Risk and discomfort
- Protection of privacy
- Benefits to participants
- Benefit to others
- Maintaining confidentiality
- Statement regarding gifts and compensation/reimbursements
- Research-related inquiries
- Voluntary participation, without prejudice for non-participation or withdrawal from research
- Autonomy
- Security of data feedback regarding findings of research
- Access to developed products and sharing of benefits derived from products
- Benefit to local community and society at large
- Possible adverse impact on the community
- Dissemination of results

The participant could then voluntarily and freely elect to sign a declaration of informed consent, witnessed by the researcher at the place, on the date and at the time of affixing his or her signature. In addition to the declaration of informed consent, the participant was again informed of his/her right to confidentiality and anonymity, and given an opportunity to sign an undertaking to voluntarily agree to participate in the study on the understanding that he/she would be allocated a unique participant number and that his/her identity would be kept strictly confidential. The form is entitled “Undertaking and personal details of participant” attached hereto as Annexure G. The researcher kept this form separate from the interview schedule and participants’ responses. Before the research study could commence, the researcher had to obtain ethical clearance from the College of Law Ethical Clearance Committee, to confirm that the researcher had complied with all the conditions and had provided all the undertakings for ethical research. A copy of the said ethical clearance certificate is attached as Annexure A.

## **1.18 CHAPTER LAYOUT**

Financial crime is multifaceted and is conceptualised in many different guises. The combating of financial crime consists of many elements, is conducted in terms of several legislative provisions, and carried out by various investigative agencies at different stages, making use of their own legal mandates and powers. Whole-of-Government is a foreign concept to most, and its application as a steering concept in public management to address fragmented efforts to solve social issues requires further exploration.

The result of this research is set out in a research report in which the research design and research questions are presented and discussed. The following chapter layout is the result of using the guidelines provided by Denscombe (2010b:311) and the General Information Guide - Master’s and Doctor’s Degrees, published by UNISA (2009:8-9):

## **CHAPTER 2: FINANCIAL CRIME**

This chapter discusses the use and conceptualisation of the meaning of the term financial crime and its characteristics in the international sphere as presented in

the literature and document study, and in the South African context as is found in the literature, document study and feedback from participants. A system of categorising financial crimes consistent with the common descriptors, as identified in the literature and comments from the participants for practical application, is explored in this chapter. The crimes are then categorised systematically and codified according to the type and description of the unlawful conduct.

### **CHAPTER 3: COMBATING FINANCIAL CRIME**

This chapter determines the conceptual meaning of combating or to combat crime generally, and its subordinate elements within the South African legislative, policy and strategic framework. The focus then shifts more explicitly to financial crime. The legal, policy and strategic framework for combating financial crime in South Africa is determined. This chapter explores and discusses the current situation of cooperation between responsible government agencies and the integration of their efforts to combat financial crime, as experienced by the participants and according to the analysis of documents.

### **CHAPTER 4: INTER-AGENCY COOPERATION**

In this chapter, it is determined which key investigative agencies have, been assigned the legal mandates to combat financial crime. The availability of legal gateways and provisions enabling agencies to cooperate is identified and discussed. The availability of institutional or organisational arrangements to foster interagency cooperation and sharing of information to combat financial crime more effectively is determined and discussed.

### **CHAPTER 5: WHOLE-OF-GOVERNMENT**

In this chapter, the public management concept Whole-of-Government is demystified. The Whole-of-Government approach is evaluated as a prospective application to enable key investigative agencies to cooperate more effectively to combat financial crime. This chapter also identifies and explains models or strategies for implementing a Whole-of-Government approach that can support Government's efforts to combat financial crime effectively, making optimal use of available agencies, their respective mandates and resources. Based on the

models identified and studied, a concept model is demonstrated to illustrate the prospective viability of a 'Whole-of Government' approach.

## **CHAPTER 6: RESEARCH FINDINGS AND RECOMMENDATIONS**

In this chapter, the results of the research and conclusions based on the findings are presented. Recommendations are made, taking the research questions and purpose of the research into account.



## CHAPTER 2: FINANCIAL CRIME

### 2.1 INTRODUCTION

This chapter essentially addresses two integral aspects related to the concept financial crime. The first aspect being addressed is to determine the practical meaning of financial crime. For practical use, the second aspect being addressed is directed at categorising or classifying financial crime systematically and methodically in accordance with descriptors of the types of acts or conduct identifiable or associated with crimes/offences in terms of South Africa's laws. It is intended that the conceptual model for classifying financial crime should be applied by the South African crime-fighting authorities, agencies, departments, policy-makers and practitioners, as a system to correctly identify and facilitate communication about the types of financial crime.

Financial crime affects every South African, directly or indirectly, by robbing them of individual resources or draining the funds available for the country's development (*Combating Financial Crime ...*, 2012). The OECD agrees with this view, asserting that financial crime has a particularly damaging impact on developing countries such as South Africa, as it deprives them of resources which could otherwise have been used for its long-term development (OECD, 2012a:5).

One of the preliminary steps for Government, government agencies, agency officials and practitioners to combat financial crime is to understand the meaning and scope of financial crime and to know what type of unlawful acts and conduct constitutes crime that falls in the category of financial crime. Financial crime is not listed as a separate category of crime in the National Crime Statistics maintained by the SAPS, which is the primary law enforcement agency in South Africa. Financial crime as a separate category of offences is not addressed in the South African Police Service Strategic Plan for 2014-2019 (*Strategic Plan...*, 2014b). The absence of a reference to financial crime in these two critical SAPS publications does not help to shed light on the meaning or classification of financial crime from a South African primary law enforcement perspective. A study of the publications and literature produced by government departments

does not reveal Government's absolute definition of what financial crime is. There are, however, government publications, literature and statements made by politicians and government officials in which they refer to financial crime. These comments and references to financial crime are often accompanied by a reference to one or more examples of crimes which in their view is a financial crime.

The term financial crime is often loosely used by Government, politicians, government agencies, agency officials and practitioners when communicating about crime. A study of Government's literature, statements and publications reveals that there is a measure of terminological confusion when it comes to using the term financial crime. An example of the ill-considered use of the phrase financial crime by a politician when referring to crime, in general, is found in a media briefing by Minister David Mahlobo, on State security during the 2015/16 budget vote (*Media Briefing ...*, 2015). When referring to threats the agency took note of, Minister Mahlobo (*Media Briefing*, 2015) stated that, "[i]ncluded in these are other threats of ascendary [sic.] of non-state actors in drug trafficking, proliferation of arms and ammunition, money laundering, financial crime and [the] illicit economy". Minister Mahlobo further stated "[a]s we continue with our work, we shall focus on these threats, ensuring that we can advise Government accordingly." (*Media Briefing*, 2015).

In the above example, the terms money laundering and financial crime are used as if they relate to two unrelated concepts. Most, if not all, academic writers and practitioners would have assumed that money laundering is included in the scope of the concept financial crime. One can only assume that the minister, considering the lack of a conceptual explanation of the term financial crime, adopts a view that financial crime is a generally understood term and that people generally know what it entails, and that money laundering was quoted as an example.

A further example of the confusing use of terminology where it concerns public policy and strategies to combat financial crime is found in a speech by the Minister of Police, Mr Fikile Mbalula, MP, outlining the Ministry's Strategic Plan for the period 2017 – 2019. During the press conference hosted by the Minister of Police

on 25 April 2017, Mr Fikile Mbalula, MP, made the following statement (*Minister of Police's Press Conference ...*, 2017):

Crime is a major burden to society in terms of death, injury and the impact on families, and has incalculable value [harm]. Factors such as illicit financial outflows, cross-border traffic-related crimes, white-collar crime, cost to SAPS to fight crime, cost to secure property, and material losses for all victims through medical and life insurance, has [sic.] impacted on the individual and State.

The reference to 'white-collar crime' in the above quotation from the speech made by Minister Mbalula is a deviation from the apparently preferred term in official South African Police Service documents and South African Police Service Act, No. 68 of 1995, which generally refers to 'commercial crime' (*Minister of Police's Press Conference ...*, 2017). This may be an indication that in Government circles the terms economic crime, commercial crime and white-collar crime are used interchangeably or analogously. This underscores the lack of a common language that Government and policymakers can use when specifically addressing financial crime and/or its manifestations.

According to the literature, there is not an internationally accepted definition of financial crime. A plausible explanation can probably be offered for the differences in opinion held by ordinary citizens and laymen, depending on their experience and knowledge regarding the meaning of financial crime and what unlawful behaviour constitutes a financial crime. However, such a difference in understanding and conceptualisation can prove to be problematic from a strategic and crime combating point of view when the Government, policy-makers, the various investigative agencies and their officials hold divergent views of the meaning of the term financial crime and what it entails. Gottschalk (2010a:441) refers to this problem and states that there is confusion among researchers and practitioners when communicating about examples of financial crime. When different agencies communicate about financial crime, at an operational level and at a strategic level, they should have a clear view and common understanding

across the various agencies of the meaning of financial crime. This holds true in view of their respective mandates and those of others, especially when having to formulate strategies for actions to combat financial crime more effectively (Gottschalk, 2010a:441).

Naylor, Taylor and Bahramitah (2002:1) argue that having a common understanding of the meaning of financial crime goes further than a mere “simple lack of terminological neatness”. In the context of developing strategies, actions or policies to deal with financial crime, policy-makers and heads of investigative agencies should have a common understanding of what it is they must combat (Naylor et al., 2002:1).

Gottschalk (2010a:441) elaborates, stating that there is a need for classification of financial crime into categories to enable a structure within which policing, and law enforcement can work. Gottschalk (2010a:441) believes that this is important, especially in the context where there are various agencies responsible for the combating of financial crime in accordance with their respective mandates.

To solve the problem, Gottschalk (2010a:441) conducted exploratory research based on a literature review, to develop a systematic approach to classifying financial crime into main categories as well as subcategories. In the research report authored by Gottschalk (2010a:441) he proposes that future research be undertaken to refine further and improve the categories of financial crime (as this research is intent on). Gottschalk (2010b:5) illustrated his classification of financial crime in a schedule (Figure 2.7 – paragraph 2.9), captioned the main categories, and listed subcategories of financial crime.

The IMF states that countries have different legal classifications of specific acts, such as money laundering, corruption, and tax evasion (Boorman & Ingves, 2001:5). In this regard it should be noted that South African law does not, as in some other jurisdictions where other legal systems apply, classify (codify) crimes into categories or degrees. Traditionally, South African law recognises the distinction between conventions of the common law and statutory provisions, which are classified in accordance with the source of the provision (Joubert,

2010b: Vol. 6. par. 20). According to Joubert (2010b: Vol. 6. par. 20), jurists have developed their own classifications of common-law and statutory offences in accordance with the interests the provisions protect. Joubert (2010b: Vol. 6. par. 20) furthermore suggests that a novel approach is to systematise crimes, more particularly those of statutory origin, in accordance with the type of conduct (behavioural descriptors) that the particular statutory provision prohibits.

This assertion by Joubert is echoed in the statement by the United Nations Office on Drugs and Crime (UNODC) in their publication, *International Classification of Crime for Statistical Purposes* (ICCS), that for purposes of legal harmonisation, across different jurisdictions, “criminal acts” (or conduct) can be based on behavioural descriptions rather than strictly legal specifications derived from criminal laws (criminal offences as defined by each country’s substantive law or criminal system) (UNODC, 2015:8). The same may be equally applicable to the various agencies that are responsible for the combating of financial crime at some stage or another, or for practical use by practitioners in the criminal justice system.

When government agencies, non-governmental organisations and people have to communicate about financial crime in the South African context (and even at an international level), it is important that there should be a clear and common understanding of the type of conduct or behavioural descriptors they are communicating about. The type of prohibited conduct should constitute a crime in accordance with the conventions of the criminal law and statutory provisions that South African law recognises. The terminology and descriptors of the type of conduct used to describe the offences should be used frequently in the South African Criminal Justice System (CJS) and habitually by investigators, officials, policymakers and politicians, rather than just a strict legal specification.

If different views exist between the various agencies tasked to combat financial crime, as regards what conduct constitutes financial crimes, it raises the question of how they can assist each other in their common objective to combat financial crime, for example during inter-agency cooperation. To initialise actions to combat financial crime and allocate resources effectively it is incumbent on those

involved to know exactly what is meant when financial crime is referred to so that they have a shared understanding of what it is they are fighting against, and direct their efforts and resources accordingly. Where different agencies have different mandates, they would then at least be able to specify which type of criminal conduct it is that is being referred to that falls within the ambit of their respective mandates. They can then specify what type of conduct should be excluded from their investigative efforts.

This chapter explores and provides a descriptive analysis of the complex phenomenon of the concept of financial crime and endeavours to achieve the research objective (paragraphs 1.5(a) and (b) of Chapter 1), namely to:

- Explain the functional meaning and multifaceted characteristics of financial crime in general and in the South African context specifically.
- Divide financial crime into categories, using a systematic approach, enabling practitioners to identify the confusing variety of the types of conduct that fall in the category of financial crime.

In this chapter, aspects are addressed that relate to definitions of financial crime, its nature, classification, behavioural descriptors, characteristics and types of conduct according to the interpretations as presented by international regulators, international bodies, authors, scholars, researchers and commentators in the media and the literature. Conceptualisations for financial crime, as well as definitions, characteristics and classification of financial crime, based on an analysis of the feedback from participants, are presented by the researcher and subsequently integrated to present a conceptual system model for categorising or classifying financial crime for domestic application.

## **2.2 THE NATURE AND SCOPE OF FINANCIAL CRIME: ACADEMIC AND PRACTITIONER LITERATURE**

In determining the nature and scope of financial crime, a practical point of departure is to consider the meaning of financial. According to the *Oxford English Dictionary* (2017), “financial” relates or pertains to finance or money matters. According to the *Oxford Dictionaries* (2017), “finance” refers to the management

of large amounts of money, especially by governments or large companies, and “finances” refers to the monetary resources and affairs of a state, organisation or person.

“Financial Crime covers a broad range of offences, including tax evasion and tax fraud, money laundering, corruption, insider trading, bankruptcy fraud and terrorist financing.” (OECD, 2012b:9). The Australian Crime Commission (ACC) in its electronic publication titled “Financial Crimes” asserts that financial crimes cover a broad range of activities, often combining licit and illicit financial transactions, including activities ranging from fraud through to the active manipulation of the stock market, or laundering the proceeds of crime (*Financial Crimes ...*, 2013).

In a background paper prepared for the IMF by Boorman and Ingves (2001:20), the term, financial crime, according to the IMF, expresses different concepts, depending on the jurisdiction and the context. According to Boorman and Ingves (2001:5-20), the term financial crime has been used to describe several different concepts of varying levels of specificity. According to these levels of specificity:

At its absolute broadest, the term has occasionally been used to refer to any type of illegal activity that result [results] in a pecuniary loss. This would include violent crimes against the person or property such as armed robbery or vandalism.

At its next broadest, the term has often been used to refer only to *non-violent* crimes that result in a pecuniary loss. This would include crimes where a financial loss was an unintended consequence of the perpetrator’s actions, or where there was no intent by the perpetrator to realize a financial gain for himself or a related party (e.g. when a perpetrator hacks into a bank’s computer and either accidentally or intentionally deletes an unrelated depositor’s account records). Also, the term has occasionally been

used slightly more narrowly to refer only to instances where the perpetrator intends to benefit from the crime. Either way, criminal fraud (i.e. the act of illegally deceiving or misrepresenting information so as to gain something of value) for personal benefit is undoubtedly the most common.

The term has been used in a more narrow sense to refer only to those instances where a nonviolent crime resulting in a financial loss crime also involves a financial institution.

Even though financial crime is often thought of to be victimless, probably because it is thought of as being non-violent, Harrison and Ryder (2013:5) assert that this is far from the truth. In support of this assertion, Harrison and Ryder (2013:5) refer to an explanation provided by FATF (*Report on Money Laundering ...*, 2004:2), which states that “criminal proceeds have the power to corrupt and ultimately destabilise communities or whole national economies”, leading Harrison and Ryder (2013:5) to conclude that “financial crime will almost certainly also have an adverse impact on the economies of countries.” (my emphasis).

According to Harrison and Ryder (2013:6), financial crime can also be seen to impact on an individual level, which may include a reduced flow of wealth between generations. These authors furthermore maintain that the impact of financial crime should not be underestimated and may be just as significant as physical abuse.

According to Gottschalk (2010a:443), “financial crime comes in all kinds of shapes and colors”. Gottschalk (2014:1) further states that there “exists a variety of financial crime types”. The variety of criminal activity that is classified as financial crime is, according to Gottschalk (2010a:441), confusing. The term financial crime, Gottschalk (2010b:2) states, is expressed in different concepts, depending on the jurisdiction and the context. This statement is consistent with the statement made by the IMF, as already noted by Boorman and Ingves



(2001:5). To add to the differences in opinion on the meaning of financial crime, Pickett and Pickett (2002:3) use the terms financial crime, white-collar crime and fraud interchangeably, as observed by Gottschalk (2010c:13). The author (2014:xix) argues that white-collar crime is financial crime committed by white-collar criminals, and further argues that “white-collar crime is financial crime committed by higher class members of society for personal or organisational gain”.

In view of the above, it should be noted that Aslett (2010:2) states that economic crime and white-collar crime are not legal terms and that they refer to a wide range of offences. Aslett (2010:2) offers the following definition for white collar crime:

Non-violent crimes committed through acts of misrepresentation for the purpose of financial gain by persons in an entrepreneurial, professional or semi-professional position who use their occupational skills and opportunities to advance the commissioning of the crimes.

Bintliff (1993:6) takes a historical look at the terminology used to break with the tradition of referring to crimes perpetrated against companies as “white-collar crime”. Bintliff (1993:6) asserts that criminologists, sociologists, business executives, security professionals and law enforcement officials did not keep pace with the changes in the corporate world, and became confused about what to call the new onslaught of crimes against business, and therefore clung to the “white collar” explanation first offered by Sutherland. Few have tried to break with tradition by “testing the waters with a series of new titles and labels” (Bintliff, 1993:9). According to Bintliff (1993:6), new terms include occupational crimes, corporate crimes, economic crimes, blue-collar crimes, financial crimes and business crimes. Bintliff (1993:6) continues by adding that “although these labels vaguely or partly, describe forms of white-collar crime, they also add to the confusion factor”. Budhram and Geldenhuys (2017:8) posit that the understanding and scope of the concept white-collar crime have transformed,

and it now includes a variety of crimes that did not form part of the original arrangement.

Overarching terms that include words such as financial crime, economic crime, commercial crime and corporate crime are now used interchangeably with white-collar crime (Budhram & Geldenhuys, 2017:8). Referring to the term financial crime as a general and vague label that can mean any offence that involves money or its equivalent, Bintliff (1993:7) asserts that it is regularly used to describe specific situations related to financial frauds such as insider trading, stock swindles, major embezzlements and other high-finance crimes. Bintliff (1993:7) then argues that the term white-collar crime describes the same type of offence, and to avoid confusion, one term should be used.

Mwenda (2006:i) observes that there is a lack of a precise definition of the term financial crime in many jurisdictions, and also states that in different countries, words such as white-collar crime and fraud crime are used interchangeably with financial crime. Mwenda (2006:i) asserts that overall, fraud crimes are a larger category within the field of financial crime and includes criminal conduct such as identity theft, elder financial abuse, counterfeiting, bribery and various corporate wrongdoing and embezzlement crimes. Mwenda (2006:i) concludes by saying that by contrast, financial crime is wider in scope “and includes all aspects of financial victimization”.

Naylor, Taylor and Bahramitah (2002:1), while observing the lack of a precise definition and a subsequent overlap, states that umbrella terms such as economic crime, commercial crime and white-collar crime are frequently used interchangeably, even by so-called experts in the field. For example, when describing the typologies of white-collar crime, Gottschalk (2014:1) uses the terms white-collar crime and financial crime interchangeably.

In turn, Naylor (2003:82) states that the term economic crime is one of the worst examples of terminological vagueness, and asserts that the frequency with which the term is used contrasts starkly with the infrequency with which it is defined. Naylor et al. (2002:1) assert that the confusion extends further than a

mere “simple lack of terminological neatness”. According to Naylor (2003:82), the terms economic crime and commercial crime refer to acts conduct or activities), while white-collar crime refers to the category of actors (perpetrators) committing those acts. Levi (2009:223) asserts that financial crime is an imprecise term and that it is not self-evident what it includes and excludes. According to Levi (2009:224), fraud and financial crime are terms favoured in the American context, whereas the term economic crime is the modern European equivalent.

Regarding the references to economic crime in the above discussions, it is important to note that Betts (2017:2) elucidates that economic crime tends to relate to offences involving direct or indirect financial gain or loss, and can include the offences of money laundering, bribery, counterfeiting, computer misuses and other miscellaneous fraudulent offences.

The interchangeable use of financial crime, white-collar crime, economic crime, and commercial crime, as separate concepts, will not be critically compared for the purpose of this research, as it will not advantage or disadvantage the stated objective of this investigation, except to say that such interchangeable use between the various terms adds to the confusion regarding the meaning of financial crime. To this end, the researcher will argue that through this research, clarity will be provided regarding the type of unlawful conduct to include or exclude from the category of offences termed financial crime for application in the jurisdiction of South Africa.

According to the SAPS, crime statistics they generated are an important link in the statistical system that guides policy development and planning in the criminal justice system (*Crime Situation ...*, 2015). The national crime statistics for South Africa are provided by the SAPS in line with the broad objectives of the National Crime Prevention Strategy (Brodie: 2013). Its aim in this regard is stated as the “gathering [of] reliable crime information”, together with the parallel development of an “effective communications strategy”, based on such information that would “properly [inform] public opinion in the fight against crime” (Brodie, 2013).

An analysis of the SAPS' National Crime Statistics for 2014/15 (*Crime Statistics ...*, 2015) reveals that under the heading "Crime Category" no provision is made for Financial Crime. From a statistical perspective it would, therefore, appear that the SAPS do not recognise financial crime as a separate category of crime. It does, however, acknowledge "Commercial Crime" under the heading "Other Serious Crimes". It is, therefore, possible that some of the crimes stated in the literature and feedback from participants as financial crime may resort under the heading "commercial crime" for the purpose of SAPS' National Crime Statistics. The lack of recognising Financial Crime in the official crime statistics as a separate category of offences may explain the absence of clear "policy development and planning" with regard to financial crime. According to Brodie (2013), "other serious crimes" include commercial and financial crimes, which range from large-scale fraud and corruption to small-scale incidents such as shoplifting. Brodie (2013) asserts that the broad categories of crime mentioned in the National Crime Statistics are not arbitrary; they are, however, important when it comes to understanding, or attempting to understand, both motive and modus of the crimes, both of which are necessary to understand whether effective crime-prevention strategies are being deployed. Brodie (2013) also states that within these general categories there is often further confusion about or between specific crimes that could lead to misinformation or misinterpretation of data.

De Koker (2007:38) provides an authoritative outlook, stating that financial crime is not generally used in South Africa. De Koker (2007:38) further explains that South African law enforcement agencies normally use the terms commercial crime and economic crime to refer to instances such as theft, fraud, insider trading, money laundering and terrorist financing. Budhram and Geldenhuys (2017:7) assert that the concept of commercial crime is "closely related to white-collar crime, financial crime and economic crime". According to De Koker (2007:38), the term financial crime can be used to refer to offences such as serious fraud, insider trading, money laundering and terrorist financing.

An example of the explanation offered by De Koker above, regarding the use of the terms commercial crime and economic crime, is evident in a report on a global

economic crime survey conducted by financial services company PwC, titled *Global Economic Crime Survey 2016, 5th South African edition, March 2016* (Global Economic Crime ..., 2016). On page 9 of the report, under the heading “Breakdown of economic crime types”, the report lists a range of types of offences categorised as “economic crime types”, in relation to their prevalence in South Africa. These crimes include:

- Asset misappropriation (theft)
- Procurement fraud
- Bribery and corruption
- Cybercrime
- Human resources fraud
- Accounting fraud
- Money laundering
- Intellectual property infringement
- Tax fraud
- Mortgage fraud
- Insider trading
- Espionage (industrial and trade secrets)
- Competition law/antitrust infringements

Comparing the economic crime types listed above with examples of financial crime’ provided elsewhere in this research report, a lot of overlap is evident, proving that not much attention is given to the meaning and interchangeable use of the terms commercial crime, economic crime and financial crime as used in the South African context.

In a news report covering the conviction of a fraudster in one of the largest fraud cases heard by the Western Cape High Court, on charges relating to VAT fraud, racketeering, money laundering and reckless trading, the prosecutor, Senior State Advocate Freek Geysler, was quoted as saying, “The conviction is a victory in our struggle to ensure that financial crime does not pay” (Vilette, 2016). The reference to “financial crime” in the comments made by the prosecutor after sentencing, when referring to the range of offences for which the accused was

convicted of, is representative of the examples of financial crimes described in this section. It confirms that the term financial crime does find practical application in the South African CJS and is used by officers of the court.

Michel (2008:384) states that financial crimes remain part of the commercial crime family, as they share the same general characteristics; however, Michel (2008:387) asserts that when referring to financial crimes it should be narrowed down to the scope of activities that pertain to the financial market or the investment business. In the same vein, Michel (2008:348) contends that in the fight against financial crimes, the end-mission consists of “protecting the backbone of the economy, which essentially involves the trust of investors, the integrity of the markets and the safety of savings.” For all practical purposes, the previous assertions by Michel imply that financial crime is the category of economic crimes that adversely impact on or prejudice the financial systems of a country. Boorman and Ingves, (2001:3) state that financial crime is a subset of financial abuse which, according to them (2001:4), includes “illegal financial activities, many of which have the potential to harm financial systems...”.

Michel (2008:389) asserts that financial crime involves a combination of experts that work together for the same purpose, that is, to make a profit, and that opportunity is their motivator. According to Michel (2008:391), a feature of contemporary financial crime is the emergence of professionals from the expert community who are not related to criminal organisations but who act with wrongful intentions in business environments. Michel (2008:391) states that the strategies used by corporate executives to commit financial crime show a high degree of refinement and sophistication. The National Treasury Policy document, *A Safer Financial Sector to Serve South Africa Better* also observes that financial crimes have become more sophisticated (*A Safer Financial Sector ...*, 2011:73). Michel (2008:392) further asserts that an analysis of current financial crimes indicates that knowledge of procedures, roles and functions related to a specific environment provides the means to accomplish blameworthy conduct and that the perpetrators proceed with scant regard to governance or moral issues.

According to Gottschalk (2010b:2), financial crime is driven by profit, hence the reference to a 'profit-driven crime'. Naylor et al. (2002:2) state that a typical profit-driven crime is not an isolated act but "a complex series of interrelated actions" and that it applies to all offences where profit is at least partially the motive. In view of what has been stated by Joubert (2010b: Vol. 6. par. 20) as referred to above, it may be wise to consider the possibility that financial crime may be referring to types of offences categorised under umbrella terms such as commercial crime, economic crime, white-collar crime and the like that are prejudicial or harmful to the financial system of a country.

The information obtained from the text provided by the authors as cited will be analysed in more detail in the following paragraphs, starting with the definitions provided, followed by the characteristics and the examples given of the types and sub-types of financial crime, followed by the (systematic) classification of financial crime. The nature and scope of financial crime, according to the interpretation presented in the literature, as cited by a variety of academic authors and practitioners, were analysed, and the main themes emerging from the literature tabulated in Table 2.1 (paragraph 2.9) The frequency of the themes presented in Table 2.1 (paragraph 2.9), expressed as a percentage, is graphically depicted in Figure 2.1 (paragraph 2.9).

An analysis of the themes captured in Table 2.1 (paragraph 2.9) confirms the view expressed in the literature that there is confusion when determining what conduct is covered under the term financial crime, and demonstrates just how many differences of opinion there are about the nature and scope of the concept of financial crime. An analysis of the available definitions for financial crime, presented in the literature by academics and practitioners, shows that these persons almost invariably follow a similar approach when a definition of financial crime (refer to Table 2.3 – page 93) is formulated. They first provide a definition in accordance with their understanding of the meaning of the concept financial crime, its nature and unique characteristics, followed by examples of the offences or typologies of offences that fit within the definition.

The main themes emerging from the participants' answers were identified by using a content analysis for interpreting the response to question 2.1 in the interview schedule, "Do you think there is a common understanding of the meaning of financial crime? Please substantiate your answer". These topics are presented in Table 2.2 (paragraph 2.9), and it can be seen that, more than one participant could have provided the same answer. This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore simply have answered "yes" or "no" and elected to substantiate their answer and/or provided more than one response to justify their choice.

In response to question 2.1 in the interview schedule, "Do you think there is a common understanding of the meaning of financial crime?", the participants answered "yes" with a frequency of 50%, which is representative of the view that there is a common understanding of the meaning of financial crime. In response to the same question, the participants responded "no", with a frequency of 50%, which is representative of the view that there is not a common understanding of the meaning of financial crime. In addition, responding to the same question, the participants responded with a frequency of 20% that they were of the view that most people have a general idea of the meaning of financial crime.

The participants demonstrated that they were divided on whether there was a common understanding of the concept financial crime. This is an indication that there is no common understanding of the meaning of financial crime, a result that is consistent with the narrative that emerges from the literature. There is a 30% frequency of the theme presented that in South Africa the term financial crime is generally associated with the term commercial crime. There is a 10% frequency presented by the participants of the theme that financial crime and commercial crime can be used interchangeably. The emerging themes are consistent with the narrative that emerged from the literature with regard to the use of financial crime and commercial crime in South Africa, namely that local practitioners regard financial crime as:



- representative of that category of commercial crime from which a financial benefit is derived;
- representative of that category of commercial crime aimed at the financial sector or systems;
- being part of the commercial crime family.

### **2.3 DEFINING FINANCIAL CRIME**

According to the IMF, “No internationally accepted definition of financial crime exists”, and they further reiterate that “there is no single, broadly accepted understanding of the meaning of the term financial crime (Boorman & Ingves, 2001:5-20). Despite this fact, Harrison and Ryder (2013:1) state that the term “financial crime is often used in common parlance [phrasing] and thus is one of which we assume we know its meaning”, and that where definitions are found they are less precise than for instance the definitions of fraud, money laundering and terrorist financing, Pickett and Pickett (2002:1) agree with the assertion by the IMF, stating that there is no precise legal definition of financial crime and furthermore, that in practice there are numerous definitions of financial crime.

Ryder (2011:3) suggests that a useful departure point for defining financial crime in the United Kingdom (UK) may be the definition of financial crime found in UK legislation, namely the Financial Services and Markets Act, 2000 (United Kingdom, 2000), which states that financial crime includes any offence involving fraud or dishonesty; misconduct in, or misuse of, information relating to a financial market, or handling the proceeds of crime. However, Fleming (2009:2) observes that financial crime, as defined by the Financial Services and Markets Act (UK legislation), relates to a broad and potentially indistinct range of offences.

Pickett and Pickett (2002:1) assert that the definitions of financial crime tend to be similar. According to the authors, the definitions also tend to cover many “key aspects of human behaviour”. This observation is consistent with the definitions observed in the literature where not only examples of crimes are given but also the type of human conduct associated with financial crime (Pickett & Pickett, 2002:2).

Harrison and Ryder (2013:3) do not formulate their own definition of financial crime; instead, they follow an approach of defining what a financial criminal is. According to Harrison and Ryder (2013:3), a financial criminal is “someone who has committed a financial crime and who has some degree of standing (i.e. that of management) within a business or corporation.”

The following definitions for financial crime, formulated by practitioners and academic authors as listed below, have been provided in the literature as cited as follows:

a. Boorman and Ingves for the IMF

The IMF interprets financial crime in a broad sense, stating that “it can refer to any non-violent crime that generally results in a financial loss, including financial fraud. It also includes a range of other illegal activities, such as money laundering and tax evasion” (Boorman & Ingves, 2001:3).

b. Henning

Henning (2009:295) states that:

Financial crime generally describes a variety of offences against property, involving the unlawful conversion of goods belonging to another person to one’s own personal use and benefit, more often than not involving fraud but also bribery, corruption, money laundering, embezzlement, insider trading, tax violations, cyber-attacks and the like.

c. Gottschalk

According to Gottschalk (2010b:2), financial crime is “profit-driven crime to gain access to and control over property that belonged to someone else”.

d. Pickett and Pickett

Pickett and Pickett (2002:3) define financial crime as a crime that:

... involves the use of deception for illegal gain, normally involving breach of trust, and some concealment of the true nature of activities. We now have a working definition, but it covers a whole

array of activities that fall under the general banner of financial crime.

e. De Koker

De Koker (2006), as cited in Botha (2009:28), states that financial crime is a vague term but that it can be defined as:

[T]hose economic crimes which target and abuse financial systems and institutions which include offences such as insider trading, money laundering, tax evasion and investor fraud.

The information obtained from the literature regarding the definitions of financial crime by the respective authors was analysed and its focus, as emphasised by the researcher, tabulated in Table 2.3 below.

**Table 2.3: Literature - definitions of financial crime**

DEFINITIONS OF FINANCIAL CRIME	
Definition	Source
"[Financial crime] ... can refer to <u>any non-violent crime</u> that generally results in a <u>financial loss</u> , including financial fraud. It also includes a range of illegal activities such as money laundering and tax evasion."	(Boorman & Ingves, 2001:3)
"Financial crime generally describes a variety of <u>offences against property</u> , involving the <u>unlawful conversion of property belonging to another person</u> to one's <u>own personal use and benefit</u> , more often than not involving fraud but also bribery, corruption, money laundering, embezzlement, insider trading, tax violations, cyber-attacks and the like."	(Henning, 2009:295)
Financial crime is <u>profit-driven crime</u> to <u>gain access to and control over property that belonged to someone else</u> ".	(Gottschalk, 2010b:2)
"Financial crime involves the <u>use of deception</u> for <u>illegal gain</u> , normally involving <u>breach of trust</u> , and some <u>concealment of the true</u> nature of activities. We now have a working definition, but it covers a whole array of activities that fall under the general banner of financial crime."	(Pickett & Pickett, 2002:3).
"[Financial crime refers to] those <u>economic crimes</u> which <u>target and abuse financial systems and institutions</u> which include offences such as insider trading, money laundering, tax evasion and investor fraud."	(De Koker, 2006; as quoted by Botha, 2009:28)

(Source: Analysis of the literature as indicated)

What is evident from an analysis of the themes and focus areas presented in the literature regarding definitions for financial crime is the lack of clarity it provides, and the divergent views presented when defining financial crime. It confirms the notion that "[no] internationally accepted definition of financial crime exists", and that "[t]here is no single, broadly accepted understanding of the meaning of the

term financial crime (Boorman & Ingves, 2001:5-20). It also confirms the assertion by Pickett and Pickett (2002:2) that definitions also tend to cover many “key aspects of human behavior”. This observation is consistent with the definitions observed in the literature, where not only examples of crimes are given but also the types of human conduct associated with financial crime.

When integrated, the various focuses described by the authors of the definitions, presented in Table 2.3 (page 93), offer the following practical definition for financial crime:

Financial crime refers to a variety of non-violent, profit-driven, unlawful conduct that targets financial systems, financial institutions, or property belonging to another, gaining access or control thereof or converting property for one’s own personal use or benefit, that generally results in a financial loss. It may involve the use of deception, breaches of trust, concealment of the truth, often including criminal offences such as fraud, theft, corruption, money laundering and tax evasion.

In addition to the above practical definition, De Koker (2007:38), from a South African perspective, argues that financial crime is a subset of the categories of crime generally referred to in South Africa as “economic crime” or “commercial crime” that specifically “target and abuse financial systems and institutions” (De Koker, 2006), as cited in Botha (2009:28).

Inclusive of the insight provided above, an operational definition for understanding the meaning of financial crime applicable to the South African context, according to the literature as referred to above, can be formulated as follows:

Financial crime is understood as a subspecies of the category of offences generally referred to as ‘economic crime’ or ‘commercial crime’ that specifically targets and abuses the financial sector, systems and institutions, or property belonging to another, gaining access or control

thereof or converting it for one's own personal use or benefit, that generally results in a financial loss and is non-violent and profit-driven. It may involve the use of fraud, deception, breaches of trust, concealment of the truth, often including crimes such as fraud, theft, corruption, money-laundering and tax evasion.

### **2.3.1 Official SA Government documents**

A literature search for publications by the Government of the RSA and its national departments yielded only a few official publications or documents referring to or about financial crime, but these publications do not define financial crime. They merely refer to financial crime and then cite a few examples of crimes or conduct that fall into the category of financial crime.

It would, therefore, appear from the available literature that the Government of the RSA has not formulated a formal or official definition for financial crime. It might be that the SA Government either assumes that there is a common understanding of the term financial crime when the term is communicated, or that it is unaware that the term financial crime does not necessarily have a common understanding among its audience when communicated. This confirms the need for a domestically accepted, functional definition of financial crime that can be used by government departments, agencies and officials to identify financial crime, and that is supported by a systematic classification according to the nature and type of criminal conduct, or type of fraud or deceit.

### **2.3.2 Printed and electronic national news media**

After extensive research and monitoring of the printed and electronic news media, the researcher could not find or come across a definition for financial crime provided in the news media, although reference may have been made to financial crime and examples quoted.

### 2.3.3 Statutory meaning

The Government recently published the Financial Sector Regulation Bill (Bill No. B 34B of 2015) (hereafter referred to as the Financial Sector Regulation Bill). At the time of the finalisation of this chapter, the Financial Sector Regulation Bill had not yet been implemented. In the Memorandum on the Objects of the Financial Sector Regulation Bill that was published together with the Bill it is stated that:

The object of the Bill is to achieve a financial system that works in the interests of financial customers, and supports balanced and sustainable economic growth in the Republic, by establishing, in conjunction with the other financial sector laws, a regulatory and supervisory framework that promotes—

- financial stability;
- the safety and soundness of financial institutions;
- the fair treatment and protection of financial customers;
- the efficiency and integrity of the financial system;
- the prevention of financial crime;
- financial inclusion; and
- confidence in the financial system.

Of significance to this research is the reference to “the prevention of financial crime” as is evident in the above quote. In that regard, the legislator has provided a definition of “financial crime” to assist with its interpretation of clause 1 of the Financial Sector Regulation Bill. Although the Bill did not come into operation at the time of writing, it provides insight into what a statutory definition for “financial crime” may look like in future. It is submitted that the Bill presents an indication that where it concerns financial crime, the legislator, at least in this instance, is inclined to associate financial crime with those criminal acts that target the financial system. The recurring reference to the term “financial” in the object of the Financial Sector Regulation Bill is an indication of the focus of the Bill. In

clause 1 of the Bill the legal drafters have provided the following statutory definition of “financial crime”:

**“financial crime”** includes an offence in terms of—

- (a) a financial sector law;
- (b) sections 2, 4, 5 and 6 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
- (c) the Financial Intelligence Centre Act; or
- (d) section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (33 of 2004) (hereafter referred to as the Protection of Constitutional Democracy against Terrorist and Related Activities Act).

To interpret the above definition, clause 1 of the Financial Sector Regulation Bill provides the following definition for “financial sector”:

**“financial sector law”** means—

- (a) this Act [The Financial Sector Regulation Act, once promulgated];
- (b) a law listed in Schedule 1;
- (c) a Regulation made in terms of this Act or made in terms of a law referred to in Schedule 1; or
- (d) a regulatory instrument made in terms of this Act or made in terms of a law referred to in Schedule 1;

Schedule 1 to the Financial Sector Regulation Bill provides the following list of the laws referred to above under paragraphs (b), (c) and (d):

- Pension Funds Act (24 of 1956)
- Friendly Societies Act (25 of 1956)
- Banks Act (94 of 1990)
- Financial Services Board Act (97 of 1990)

- Financial Supervision of the Road Accident Fund Act (8 of 1993)
- Mutual Banks Act (124 of 1993)
- Long-term Insurance Act (52 of 1998)
- Short-term Insurance Act (53 of 1998)
- Financial Institutions (Protection of Funds) Act (28 of 2001)
- Financial Advisory and Intermediary Services Act (37 of 2002)
- Collective Investment Schemes Control Act (45 of 2002)
- Co-operative Banks Act (40 of 2007)
- Financial Markets Act (19 of 2012)
- Credit Rating Services Act (24 of 2012)

According to the definitions in the Financial Sector Regulation Bill as set out above, financial crime per its statutory definition will constitute an offence:

- created for in the to be promulgated Financial Sector Regulation Act;
- any offence provided for in the Prevention of Organised Crime Act, 1998 (121 of 1998);
- an offence provided for in section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (33 of 2004);
- any offence provided for in the current legislation listed in Schedule 1.

#### **2.3.4 Participants**

Using a content analysis for interpreting the response to question 2.2 in the interview schedule, “How would you define the term financial crime in your own words?”, the main themes emerging from the participants’ answers were identified. These topics are presented in the frequency table, Table 2.4 (paragraph 2.9). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in their response to the question.



Evident from the answers given by the participants regarding definitions for financial crime (question 2.2 in the interview schedule) is the lack of providing clarity, similar to the lack in the literature. The divergent views held by the participants when defining financial crime confirm the view that from a domestic perspective, just as from an international perspective, no accepted, shared definition of financial crime exists. It confirms that there is no single, broadly accepted understanding of the meaning of the term financial crime, as asserted by Boorman and Ingves (2001:5-20).

Using an integration of the main themes emerging from the answers provided by the participants during the interviews as tabulated in Table 2.4 (paragraph 2.9), the following definition for financial crime from a participant perspective can be offered as formulated by the researcher:

Financial crime is any unlawful, non-violent conduct that is financially prejudicial to another [person] or society at large, often making use of fraud and dishonesty aimed at financial systems, business and individuals, with the intent to obtain a financial benefit, or for self-enrichment to which the perpetrator is not legally entitled, or for the purpose of use by a criminal business enterprises system.

The conceptual definition derived at above is in broad terms vaguely similar to the definition formulated from the themes presented in the literature. The reference to intent and unlawful in the definition above could possibly be a conscious reference to the definitional elements of intent and unlawfulness in common-law crimes and more specifically fraud, as there is also a reference to the causal element of prejudice to others.

## **2.4 CHARACTERISTICS OF FINANCIAL CRIME**

From a study of the literature it is evident that scholars and practitioners include characteristics of the type of conduct and perpetrators of financial crime in their writings. In the sections below, these characteristics are identified and analysed as part of the literature study.

### 2.4.1 Academic and practitioner literature

When defining or discussing financial crime in the literature, the authors referred to below provide their own unique characteristics associated with financial crime. A summary of the characteristics is given below:

a. Boorman and Ingves (IMF)

According to the definition of financial crime provided by Boorman and Ingves (2001:3), the following characteristics related to financial crime are evident:

- It is non-violent
- It results in financial loss

b. Henning

An analysis of the definition of financial crime provided by Henning (2009:295) identifies the following characteristics associated with financial crime:

- It concerns crime against property belonging to another person
- It involves the unlawful conversion of property
- The crimes are perpetrated for one's own personal benefit and the use of the proceeds.

c. Gottschalk

In the definition of financial crime provided by Gottschalk (2010b:2), the author describes the nature of financial crime according to its associated conduct, characteristics and components, which are the following:

- It is profit-driven
- It concerns property belonging to someone else

Gottschalk (2014:xix) also asserts that financial crime often makes use of fraud.

d. Pickett and Pickett

The characteristics of financial crime according to the definition of Pickett and Pickett (2002:3) are that:

- It makes use of deception;
- It breaches trust;
- It conceals the true nature of activities;
- It is perpetrated for illegal gain.

According to Pickett and Pickett (2002:2), white-collar crime or financial crime, as it is interchangeably referred to by Pickett and Pickett (2002:3), contains several clear additional components to the ones stated above:

- It is deceitful
- It is intentional
- It involves losses
- It may be concealed or hidden

e. Michel

Michel (2008:384) states that financial crimes share the following general characteristics with commercial crime but states that even as obvious as these characteristics may seem, some of it may not be as well understood as one would expect:

- It is opportunity-driven
- It requires rapid conversion of profits into cash
- It is a mechanical process

f. Harrison and Ryder

As already stated, financial crime, according to Harrison and Ryder (2013:3), is perpetrated by a person or persons who have a certain level of standing within a business or corporation.

g. Levi

Levi (2009:225) states that financial crime makes use of a variety of deceptions used against a spectrum of victims. The unique characteristics of financial crime, according to a content analysis of the literature, as cited by a variety of academic authors and practitioners, were analysed and the main emerging themes tabulated as illustrated in Table 2.5 (paragraph 2.9). In the literature, one author may have provided more than one characteristic, and more than one author may have provided the same characteristic. The frequency of the themes as presented in the literature and reflected in Table 2.5 (paragraph 2.9), expressed as a percentage, is graphically depicted in Figure 2.2 (paragraph 2.9).

An analysis of the themes captured in Table 2.5 (paragraph 2.9) confirms the view expressed in the literature that there is confusion when categorising the term financial crime. It demonstrates just how many unique characteristics are attributed to financial crime and how many different views and opinions there are. All this adds to the difficulty of determining what the distinguishing characteristics of financial crime are according to the literature. One characteristic of financial crime that is noticeable in the frequency Table 2.5 (paragraph 2.9) and the graph in Figure 2.2 (paragraph 2.9) is that financial crime makes use of fraud and deception.

#### **2.4.2 Government documents**

An extensive search of the available literature for publications by the Government of the RSA or its national departments referring to the characteristics of financial crime yielded one document that referred to the characteristics of financial crime. In a National Treasury Policy document: *A Safer Financial Sector to Serve South Africa Better*, it is stated that financial crimes have become “more sophisticated” (*A Safer Financial Sector...*, 2011:73).

#### **2.4.3 Printed and electronic national news media**

After extensive research and monitoring of the national printed and electronic news media, the researcher could not find or come across news articles or reports that could provide information regarding the characteristics of financial crime.

#### **2.4.4 Interviews**

The main themes emerging from the participants’ answers were identified by using a content analysis for interpreting the response to question 2.3 in the interview schedule, “What do you think are the identifiable characteristics of financial crime?”. These themes are presented in the frequency table, Table 2.6 (paragraph 2.9), from which can be seen that, one participant may have provided more than one theme, while more than one participant may have provided the same theme.

As is evident in Table 2.6 (paragraph 2.9), the participants provided a more extensive range of characteristics associated with financial crime than those found in the literature (Table 2.5 – paragraph 2.9). Some of the themes identified in the feedback from the participants in Table 2.6 (paragraph 2.9) match some of the themes identified from their responses to question 2.2 in the interview schedule, namely “How would you define financial crime in your own words?”, tabulated in Table 2.4 (paragraph 2.9). The themes presented by the participants in Table 2.6 (paragraph 2.9) and that broadly match those characteristics presented in the participants’ definition in Table 2.4 (paragraph 2.9), are summarised as follows, where the first frequency as a percentage represents the themes in the definition, Table 2.4 (paragraph 2.9) and the latter the characteristics presented by the participants in Table 2.6 (paragraph 2.9):

- Non-violent (10% - 10%)
- Gaining a direct or indirect financial/monetary advantage/benefit (60% - 60%)
- Direct or indirect financial/monetary loss for victim (50% - 50%)
- It is crime aimed at the financial systems of a country (10% - 10%)
- The focus of financial crime is on the criminal economic and business systems (10% - 10%)
- Makes use of fraud/misrepresentation (10% - 30%)
- The proceeds are invariably laundered (10% - 10%).

The feedback from participants is broadly consistent with the characteristics found in the literature as listed above in Table 2.5 (paragraph 2.9), which shows/displays a comprehensive version of the characteristics of financial crime. The themes presented by the participants in Table 2.6 (paragraph 2.9) that are broadly consistent with those presented in the literature (Table 2.5 – paragraph 2.9) are summarised as follows, where the first frequency as a percentage represents the participants’ and the second the literature:

- Makes use of fraud/misrepresentation (30% - 42%)
- Direct or indirect financial/monetary loss for victim (50% - 29%)
- Gaining a direct or indirect financial/monetary advantage/benefit (60% - 14%)

- It is directed at illegally obtaining property (10% - 14%)
- Focus on money (10% - 14%)

## **2.5 EXAMPLES OF FINANCIAL CRIME**

Academic authors and practitioners referred to in the literature almost invariably follow up on their definitions of financial crime with examples of the crimes or conduct that they associate with financial crime. When reference is made to financial crime in Government documents, it is often followed by an example of a crime or criminal conduct that according to the source falls under the category of financial crime. Persons representing Government also tend to provide examples of crimes and conduct when referring to financial crime. In the following sections, an analysis is provided, where this pattern has been observed in the literature and analysed by the researcher.

### **2.5.1 Academic and practitioner literature**

The following authors provide examples of crimes or descriptions of unlawful conduct in their discussions or definitions of financial crime, and accordingly fitting the label of financial crime in terms of their interpretation:

#### **a. Boorman and Ingves for the IMF**

Boorman and Ingves (2001:4) quote the following financial crimes:

- Money laundering
- Financial fraud
- Cheque fraud
- Credit card fraud
- Mortgage fraud
- Insurance fraud
- Tax evasion
- Circumvention of exchange restrictions
- Sale of fictitious financial instruments
- Sale of fictitious insurance policies
- Embezzlement of non-financial institutions
- Stock manipulation

b. Henning

Henning (2009:295) provides the following examples of financial crimes:

- Fraud
- Bribery
- Corruption
- Money laundering
- Embezzlement
- Insider trading
- Tax violations
- Cyber-attacks

c. Gottschalk

Gottschalk (2010b:2) asserts that financial crime often involves fraudulent conduct, thus he provides a substantial list of fraud typologies such as cheque and credit card fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, point-of-sale fraud, currency fraud and healthcare fraud. In addition to the illegal act of fraud as noted, Gottschalk (2010b:2) also lists the following illegal acts: insider trading, tax violations, kickbacks, identity theft, embezzlement, identity theft, cyber-attacks and money laundering.

Gottschalk (2010b:2) then provides examples of the types of fraud and “illegal acts” that comply with those components and characteristics according to the definition provided by Gottschalk (2010b:2), as:

- Cheque and credit card fraud
- Mortgage fraud
- Medical fraud
- Corporate fraud
- Bank account fraud
- Point-of-sale fraud
- Currency fraud
- Insider trading
- Tax violations

- Kickbacks
- Embezzlement
- Identity theft
- Cyber-attacks
- Money laundering

d. Pickett and Pickett

Pickett and Pickett (2002:3) elaborate on their definition by stating that a lot of the illegal activity that constitutes financial crime can occur in both the commercial and public sectors. Pickett and Pickett (2002:3) list some of the illegal activities as:

- Consumer fraud
- Credit card fraud
- Kickbacks
- Bid rigging
- Inflated invoices
- External fraud
- Inventory theft
- Theft of cash
- Basic company fraud
- Subsistence claims
- Cheque fraud
- Identity fraud
- Misappropriation schemes
- Computer-related crimes
- Identity theft
- Financial statement fraud
- Fraud in general

e. Michel

According to Michel (2008:388) the following constitute a summary of common financial crime schemes identified by him during his “empirical observations”:

- Misleading information



- 'Pump and dump' (stock price manipulation)
- Insider trading
- Accounting fraud
- Embezzlement
- Money laundering
- False documentation
- Extortion

f. Harrison and Ryder

When referring to individual financial crimes, Harrison and Ryder (2013:7) refer to the following examples in their discussion:

- Money laundering
- Terrorist financing
- Fraud
- Insider dealing
- Market abuse
- Bribery and corruption

g. Levi

Levi (2009:223) states that conventional usage among American, British and international regulators and policing bodies suggests that financial crimes include:

- fraud;
- market abuse (e.g. insider trading);
- money laundering;
- other forms of illicit corporate conduct for profit.

h. Australian Crime Commission

The ACC provides the following examples of crimes which, according to them, constitute a financial crime (*Financial Crimes ...*, 2013).

- Fraud
  - securities fraud
  - bank fraud

- identity fraud
- Manipulation of the stock market
- Money laundering
- Pyramid investment schemes
- Tax evasion
- Embezzlement
- Insider trading

i. Bintliff

Bintliff (1993:7) asserts that the term financial crime is regularly used to describe conduct related to financial frauds such as:

- insider trading;
- stock swindles;
- major embezzlement.

j. De Koker

According to De Koker (2007:38,) the term financial crime can be used to refer to crimes such as:

- serious fraud;
- insider trading;
- money laundering;
- terrorist financing.

## 2.5.2 Government documents

Literature searches concerning official publications by national departments of the RSA yielded only a few official publications or documents featuring a reference to or a view on financial crime. The National Treasury Policy document, *'A Safer Financial Sector to Serve South Africa Better'*, quotes the following examples of crimes that, according to the document, constitute financial crimes (National Treasury Policy document: *A Safer Financial Sector ...*, 2011:73):

- Corruption
- Blackmail
- Money laundering

- Advance fee fraud
- Banking fraud
- Identity theft
- Organised crime

According to an information booklet published by the FIC entitled “Combating Financial Crime in South Africa: Typologies Report”, 2012, it aims to raise awareness of financial crimes committed in South Africa by focussing on a selection of prevalent crimes (presumably financial crimes) defining each scheme (*Combating Financial Crime ...*, 2012.) The following unlawful behaviour is described in the booklet as examples of types of conduct that constitute a financial crime:

- 419 Scams
- Pyramid scheme
- Account hijacking
- Trade-based money laundering
- Ponzi scheme
- Use of front companies
- Drug mules

Examples of financial crime emerging from the literature published by Government and non-governmental organisations, academics and scholars were tabulated in Table 2.7 (paragraph 2.9). As can be seen from the examples presented in Table 2.7 (paragraph 2.9), one author could have provided more than one example of a financial crime, and more than one author could have provided the same example. The frequency of examples of financial crimes from the literature, as reflected in Table 2.7 (paragraph 2.9) and expressed as a percentage, is graphically depicted in Figure 2.3 (paragraph 2.9).

An analysis of the examples of financial crime captured in Table 2.7 (paragraph 2.9) confirms the view expressed in the literature that financial crime covers a broad range of offences and that the term has been used to describe many different concepts at varying levels of specificity (Boorman & Ingves, 2001:5-20).

### **2.5.3 Printed and electronic national news media**

After researching and monitoring publications in the national printed and electronic news media, the researcher could not find or come across new information that provided contemporary insight into the types of conduct that constitute financial crime.

### **2.5.4 Interviews**

During the interviews the participants were asked to differentiate between examples of financial crimes falling within the category of common law offences and those which fall in the category of statutory offences. This was done because of the way South African law distinguishes between the two categories of offences.

#### **2.5.4.1 Common-law offences**

Using a content analysis for interpreting the response to question 2.4 in the interview schedule, “According to your understanding of financial crime, what common-law offences according to South African law fall within the category of offences referred to as financial crime?”, the main themes emerging from the participants’ answers were identified. These themes are presented in the frequency table, Table 2.8 (paragraph 2.9). As can be seen from the themes presented in Table 2.8 (paragraph 2.9), a participant could have provided more than one example of a common-law crime that falls under the category of financial crime, and more than one participant could have provided the same example.

The frequency of the themes, as presented (in Table 2.8 – paragraph 2.9)) by the participants, on what common law offences according to South African law can be categorised as financial crime (question 2.4 in the interview schedule) is graphically depicted as a percentage in Figure 2.4 (paragraph 2.9).

According to the frequency of themes presented by the participants in response to question 2.4 in the interview schedule, i.e. “... what common-law offences according to South African law fall within the category of offences referred to as financial crime?”, the common-law offences of fraud (90% frequency), theft (50% frequency) and forgery (40% frequency) occupy the high end of responses.

Bearing in mind that the examples of financial crime in the literature do not draw a distinction between statutory and financial crime, it is important to note that fraud (general), tax fraud (evasion) and theft (embezzlement) feature at the high end of the frequency of examples provided in the literature and by the participants.

Some of the examples of the offences offered by the participants as common-law offences are not classified as such in terms of the strict conventions of South African law, for example 'kite flying', which is a metaphor used to describe the manifestation of a type of fraud. This may be an indication that when practitioners refer to examples of common-law crime classified as financial crime according to their own classification, they tend to think of it in descriptive terms (describing the nature of the conduct), or of a typology rather than the strict classification under the legal convention. The feedback from participants in how they refer to examples of types or manifestations of fraud, for example "advance fee fraud", is consistent with how financial crime is categorised in the literature, which is mostly in accordance with the type of conduct or manifestation of the type of conduct, or descriptive of a typology.

#### **2.5.4.2 Statutory crimes**

Using a content analysis for interpreting the response to question 2.5 of the interview schedule, i.e. "According to your understanding of financial crime, what statutory offences according to South African law fall within the category of offences referred to as financial crime?", the main themes emerging from the participants' answers were identified. These themes are presented in the frequency table, Table 2.9 (paragraph 2.9), from which can be seen that, a participant could have more than one answer, and more than one participant could have provided a similar answer.

The frequency of the themes, as illustrated in Table 2.9 (paragraph 2.9) by the participants regarding which statutory offences according to South African law can be categorised as financial crime (question 2.5 in the interview schedule), is graphically depicted as a percentage in Figure 2.5 (paragraph 2.9).

The participants provided examples of types of unlawful conduct to describe the statutory offences, rather than the specific contravention of a specific statute that

criminalises that type of conduct. This is interpreted as an indication that practitioners have developed a practical and descriptive way in which to identify the types of conduct that constitute financial crimes, as opposed to identifying the types in accordance with the strict legal conventions. This ostensibly supports the conception that a proposed practical classification of financial crime for use by lawmakers and practitioners could follow a similar approach.

According to the frequency of themes presented by the participants in response to question 2.5 in the interview schedule, i.e. "... what statutory offences according to South African law fall within the category of offences referred to as financial crime?", the statutory offences commonly referred to as tax evasion (90% frequency), money laundering (70% frequency) and corruption (60% frequency) occupy the high end of financial crime according to the frequency of themes presented by the participants. Bearing in mind that the examples of financial crime in the literature do not draw a distinction between statutory and financial crime, it is important to note that fraud (general), tax fraud (evasion) and theft (embezzlement) feature at the high end of the frequency of examples provided in the literature and by the participants.

Various characterisations of financial crime presented in the literature and by participants are consistent with the views expressed by Boorman and Ingves (2001:5), namely that countries have different legal characterisations of specific (unlawful) acts or conduct. The themes provided by the participants regarding statutory financial crime support the suggestion by Joubert (2010b: Vol 6. par. 20), who states that a novel approach is to systematise crimes, more particularly those of a statutory origin, according to the type of conduct that the particular statutory provision prohibits.

The researcher presents the graph in Figure 2.6 to illustrate the departure from the approaches to identify financial crime in accordance with descriptors, and classification in accordance with the differentiation between common-law offences and statutory offences in terms of the conventions of South African law. In compiling the graph, the researcher used the data from Table 2.7 (examples of financial crime found in the literature – paragraph 2.9), Table 2.8 (examples of financial crimes, according to common law – paragraph 2.9) and Table 2.9

(examples of financial crimes according to statutory law – paragraph 2.9). The examples of financial crimes presented in the literature are presented as examples of unlawful conduct, irrespective of whether it is classified as common law or statutory law. On the other hand, the examples of financial crime presented by the participants in Tables 2.8 (paragraph 2.9) and 2.9 (paragraph 2.9) distinguish between common law and statutory-law offences.

The data represented in the graph as Figure 2.6 (paragraph 2.9) indicates a convergence of the following themes at various levels of frequency between the unlawful conduct identified in the literature and the financial crimes identified by the participants:

- Money laundering
- Insider trading
- Embezzlement
- Identity fraud/theft
- Stock manipulation
- Bribery/corruption
- Fraud in general
- Cheque fraud
- Terror financing

## **2.6 CLASSIFICATION OF FINANCIAL CRIME**

As noted in paragraph 2.1 above, South African law does not, as in some other jurisdictions where other legal systems apply, classify or codify crimes into categories or degrees of crimes. Traditionally, South African law recognises the distinction between conventions of the common-law and statutory provisions, which are a classification in accordance with the source of the provision. This means that the crime originates from the common law, or it is a creature of statute, i.e. a contravention of a statute created by Parliament (Joubert, 2010b: Vol. 6. par. 20). This implies that the highest level of categorisation of crime, according to the conventions of South African law, is that it can be categorised as either a common-law crime or statutory offence, depending on its source, as explained by Joubert (2010b: Vol. 6. par. 20). However, according to Joubert (2010b: Vol. 6. par. 20), jurists have developed their own classifications of common-law and

statutory offences in accordance with the interests it protects. This is probably a practical arrangement, as can be seen in most South African criminal-law textbooks where crimes are categorised in accordance with the interest it protects. However, this practical arrangement does not provide for a category of offences referred to as financial crime. However, some of the crimes listed under the common-law crimes in criminal-law textbooks do fall under the category of financial crime, such as fraud and theft, according to the findings of this research. This confirms the need for some form of classification for the category of crimes referred to as financial crime that will enable practitioners to readily identify which crimes fall in the category of financial crime in accordance with the nature and type of the conduct, irrespective of whether it is sourced from the common law or the statutes.

As can be seen from the use of the term financial crime and other umbrella terms such as economic crime, commercial crime and white-collar crime, as indicated in the literature by Naylor, Taylor and Bahramitah (2002:1), it appears that jurists are not the only group who have developed their own classification of crimes in accordance with the interests they protect. Scholars, practitioners and authorities have also developed their own classification of financial crimes according to their characteristics, manifestations and type of conduct. One such author is Gottschalk (2010b:5), whose classification will be discussed in more detail below. According to the UNODC, crimes or offences as defined in law are typically associated with actions or behavioural and contextual characteristics that are universally considered to be an offence (UNODC, 2015:8). Referring to theirs as an “event-based” approach to crime classification, the UNODC (UNODC, 2015:8) argues that it avoids issues created by legal complexities, resulting in a simplified applicable classification. The event-based approach of crime classification proposed by the UNODC is discussed in more detail in paragraph 2.6.2.

### **2.6.1 Previous research**

Based on exploratory research, Gottschalk (2010b:5) developed a model in which he suggests that there are four main categories of financial crime, namely:

- Fraud
- Theft



- Manipulation
- Corruption

Under the main categories framed by Gottschalk, he then listed subcategories or sub-types of crimes, which he asserts are financial crimes that fall under the main category, namely fraud, theft, manipulation and corruption. Gottschalk (2010b:5) illustrated his model referred to above in a schematic format as can be seen from Figure 2.7 (paragraph 2.9).

When analysing Gottschalk's model as depicted in Figure 2.5 (paragraph 2.9), it will be observed under the main category, for example Corruption, that there are four sub-categories. These categories, namely bribery, kickbacks, organisation and public, represent sub-categories of corruption based on the nature or type of criminal conduct, and the type of deception or fraud used to facilitate the crime of corruption. For example, it can be stated that X committed corruption by means of the criminal conduct of bribery.

Gottschalk (2010b:5) suggests that the categories as proposed in the model can be refined and improved through research. The main categories of crime listed by Gottschalk (2010b:5), namely fraud, theft and corruption, are familiar South African crimes. The category of crime referred to by Gottschalk as "manipulation" is not known along those terms as a crime according to the South African legal conventions. It would, however, seem that according to the model proposed by Gottschalk, he is referring to financial crime, which, for example, concerns manipulation of the bankruptcy system. A discussion of the main categories of financial crime as presented by Gottschalk (2010b:5) in the literature follows below:

#### **2.6.1.1 Fraud**

The first main category of financial crime developed by Gottschalk (2010b: 5) is labelled "Fraud". Gottschalk (2010b:5) provides a substantial list of sub-categories according to the nature or type of criminal conduct and the type of deception or fraud to commit the crime of fraud. Gottschalk, with apparent

approval, quotes the definition of fraud as referred to by Henning (2009:299) after the definition in South African law of fraud by Snyman (2008:531), who defines fraud as “the unlawful and intentional making of a misrepresentation which causes actual prejudice, or which is potentially prejudicial to another.” For the purpose of the classification of financial crime in this research, the definition of fraud provided by Snyman (2008:531) can be applied for domestic application to describe this category. However, the criminal conduct and type of deception or fraud described as embezzlement, as stated under the main category of fraud, will constitute an act of theft according to the unlawful act the South African common law recognises as theft.

### **2.6.1.2 Theft**

The second main category of financial crime developed by Gottschalk (2010b:5) is labelled “Theft” and refers to those financial crimes where the act of theft is used to facilitate the commissioning of the crime. The author provides a substantial list of the nature or type of criminal conduct, which he lists as sub-types. Gottschalk (2010b:5) illustrated his model, referred to above, in a schematic format, as can be seen in Figure 2.7 (paragraph 2.9). In explaining the category of theft, Gottschalk (2010b:13) refers to the following definition of theft, “The illegal taking of another person’s, group’s or organisation’s property without the victim’s consent”. Although theft is a crime in terms of South African law, its definition in terms of South African common law is:

**A person commits theft if he unlawfully and intentionally appropriates movable, corporeal property which**

- (a) belongs to, and is in the possession of, another;
- (b) belongs to another but is in the perpetrator’s own possession: or
- (c) belongs to the perpetrator but is in ~~the~~ another’s possession and such other person has a right to possess it which legally prevails against the perpetrator’s own right of possession provided that the intention to

appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property, of such property (Snyman, 2008:483).

A brief examination of the definitional elements of the crime of theft as provided above shows that all the essential elements of the crime of theft according to the definition in South African common law are not included in the definition of theft as conceptualised by Gottschalk (2010b:13). For the purpose of the classification of financial crime in this research, the definition of theft provided by Snyman (2008:483) as quoted above should be applied to describe this category. The listing of the nature or type of criminal conduct under the category of theft is consistent with the nature and type of conduct that would constitute theft in the South African common-law definition of theft.

### **2.6.1.3 Manipulative crime**

The third main category of financial crime developed by Gottschalk (2010b:5) is labelled “Manipulation”. It refers to those financial crimes where manipulation is used to facilitate the commissioning of financial crime, and the author provides a substantial list of the nature or type of criminal conduct and type of deception or fraud used to commit manipulation. According to Gottschalk (2010b:16), crimes by “manipulation” can be defined as “a means of gaining illegal control or influence over others’ activities, means and results”. The main category manipulation is difficult to conceptualise in the South African legal context, as it is not an accepted crime or descriptive term for a range of offences under South African law. However, the criminal conduct and type of deception described in the subcategories listed under manipulation are recognisable under South African criminal statutory law. For example, the criminal conduct and type referred to as bankruptcy is likely to be catered for under the Insolvency Act (24 of 1936) and tax under the Tax Administration Act (28 of 2011) (hereafter referred to as the Tax Administration Act), as the source of the statutory offence/s (being bankrupt or entering insolvency does not constitute an offence per se).

#### **2.6.1.4 Corruption crime**

The fourth main category of financial crime suggested by Gottschalk (2010b:5) is labelled “Corruption”, and refers to those financial crimes where corruption is used to facilitate the commissioning of the crime. Gottschalk provides a substantial list of the nature or type of criminal conduct, which he lists as subtypes of corruption. For categorising corruption, Gottschalk (2010b:23) describes corruption as conduct that aims “to destroy or pervert the integrity or fidelity of a person in his discharge of duty, it is to induce to act dishonestly or unfaithfully, it is to make venal, and it is to bribe.”

Under South African law, corruption is criminalised under the Prevention and Combating of Corrupt Activities Act (12 of 2004) (hereafter referred to as the Prevention and Combating of Corrupt Activities Act). The nature or type of criminal conduct and type of deception or fraud associated with corruption listed as subcategories are not identifiable as criminal conduct, according to the Prevention and Combating of Corrupt Activities Act. For example, “ghost” and “bid” probably relate to ‘ghost’ bidders or ‘bid rigging’, for instance, but that type of conduct will resort under the main category of Fraud.

In the South African context, Gottschalk’s classification of financial crime into main categories and subtypes (refer to Figure 2.7 – paragraph 2.9) could serve as an example of what a classification system could look like by following a systematic approach (Gottschalk, 2010b:5). The main categories according to the type of conduct, i.e. financial crime using fraud, theft, manipulation or corruption, will be determined by the outcome of the findings of the research. Although some of the categories and sub-categories listed by Gottschalk in Figure 2.7 (paragraph 2.9) are recognisable according to the description of the unlawful conduct, they must be refined and improved for domestic application. Against the backdrop of the discussion about the conceptualisation, meaning, descriptions and characterisation of financial crime, the categorization, based on behavioural descriptors rather than strict legal conventions derived from criminal law, as suggested by the UNODC, will be examined for application in the section below (UNODC, 2015)

## 2.6.2 Events-based approach

“The International Classification of Crime for Statistical Purposes (ICCS) is a classification of criminal offences which is based on internationally agreed concepts, definitions and principles to enhance the consistency and international comparability of crime statistics, and improve analytical capabilities at both the national and international levels” (UNODC, 2015:7). The ICCS has been developed by the UNODC to overcome the problem of various data sources, often within the same jurisdiction, using different definitions and concepts to organise crime data, which are often based on legal rather than statistical principles (UNODC, 2015:8), for purposes of statistical analysis.

The ICCS addresses the issues highlighted by the UNODC by providing a methodological and statistical standard and a common definitional framework to improve data quality and comparability. Offences are grouped in a meaningful and systematic way, resulting in an improvement in the capability to produce, disseminate and analyse crime data accurately in order to inform the public, and tailor policies and programmes in the areas of crime prevention, the rule of law and criminal justice reform (UNODC, 2015:8). In terms of the Events-based approach as used in the ICCS the purpose is to (UNODC, 2015:8):

... consider “criminal” acts in national and international laws as the universe of acts that are subject to classification within the ICCS. However, the specific classification of such acts (i.e. their allocation to analytical categories) is based on behavioural descriptions [the type of conduct or behaviour exhibited during the commissioning of the crime] rather than strictly legal specifications derived from criminal laws [such as the common- or statutory law]. Crimes as defined in criminal law are typically associated with actions or behavioural and contextual attributes that are universally considered to be an offence (for example, wounding or injuring, or taking property without consent). This event-based approach avoids issues created by legal

complexities, resulting in a simplified and globally applicable classification. It is important to note that the ICCS uses specific terms, such as “rape”, “harassment” or “burglary”, which is widely recognised and defined in criminal legislation. These terms are given a specific description in the ICCS [Unlike the model provided by Gottschalk in Figure 2.7], which is intended to be used for statistical purposes. The adoption of the ICCS at the national level will require the attentive translation of offences as defined by national legislation into ICCS categories, with careful consideration of the full act/event descriptions and explanatory notes.

An advantage of the ICCS suggested by the researcher is that besides classifying criminal offences, the ICCS could also be used in relation to other events or conditions related to the criminal justice process, such as arrests, prosecutions, convictions and prison sentences. It might, as argued by the researcher below, be used to classify or categorise financial crime by means of a systematic process of classification in accordance with a description of the conduct for domestic use.

After studying the concept described as an Events-based approach, the researcher realised that the approach followed by the UNODC in the ICCS could be used as a basis to classify financial crime for use at a domestic level, according to which offences are grouped in a meaningful and systematic way to communicate more effectively about financial crime in general, and when tailoring policies and programmes for combating financial crime. The ICCS was developed by the UNODC as “a classification of criminal offences which is based on internationally agreed concepts, definitions and principles in order to enhance the consistency and international comparability of crime statistics, and improve analytical capabilities at both the national and international levels” (UNODC, 2015:1). It is proposed that an Events-based approach could solve some of the problems experienced when categorising financial crime in accordance with its strict legal definition (according to the conventions of South African law), as opposed to using the behavioural conduct shown by the perpetrators of crime. For this study it is, therefore, important to explain how the ICCS is applied and

then later developed by means of this research to serve the purpose of categorising financial crime that will enhance understanding of the concept at a general level.

It was determined that the categories provided by Gottschalk (2010b:5) through his research and presented in Figure 2.7 (paragraph 2.9) in paragraph 2.6.1 above were too broad, and the nature and type of conduct too vague to use as a classification of financial crime in the domestic context, mainly because in South Africa, crime has its origin in either the common law or statutory law, and sometimes the types overlap. For example, tax fraud in South Africa can either be prosecuted as fraud or as a contravention of section 235 of the Tax Administration Act, No. 28 of 2011. The researcher decided to respond to the suggestion by Gottschalk (2010b:5) to refine and improve the categories provided by Gottschalk (2010b:5) by means of research, as presented and discussed in paragraph 2.7 below.

#### **2.6.2.1 Principles used during the application of the UNODC ICCS**

According to the UNODC (UNODC, 2015:18), to implement the ICCS approach it is necessary to properly allocate any given offence to one of the ICCS categories. Knowledge of the ICCS structure is required before attempting to classify offences. As previously mentioned, the ICCS is a hierarchical classification, and the first step is to identify which Level 1 category is the most relevant to the particular offence in question. To allow easy reference to the appropriate category, each Level 1 category is defined by the broad actions, attributes or events that it encompasses. For example, all acts leading to death or intending to cause death are classified under Level 1, category 01. Similarly, all acts involving fraud, deception or corruption are classified under Level 1, category 07. It is then necessary to classify an offence into a Level 2, 3 or 4 categories. There are residual categories represented by the word “other” in the category name (i.e. other acts of fraud) for cases in which an offence cannot be classified in an established category. Offences should be classified into these residual categories as sparingly as possible and only upon a thorough review of the full classification to ensure that a category is not overlooked.

### **2.6.2.2 The unit of classification of the UNODC ICCS**

The unit of classification of the ICCS is the conduct or unlawful behaviour that constitutes a criminal offence (UNODC, 2015:10). This is a very important consideration, as it is easy for most persons to understand the nature or type of conduct or description of the type of fraud or deceit, as opposed to a strict legal definition that is the source of the provision. The description of the criminal offence is provided in accordance with the criminal or unlawful behaviour (the conduct) shown by the perpetrator(s) of a crime. The behaviour observed is in most cases sufficient to define an offence for the purposes of the ICCS, while in some cases, additional elements have to be taken into account, such as the intention (state of mind) of the perpetrator or the condition/status of the victim (for example, whether he/she is a minor). In other cases, a crime is defined by a sequence of behaviours, as in the case of trafficking in persons, for example (UNODC, 2015:10).

### **2.6.2.3 Criteria used to build the UNODC ICCS**

According to the UNODC (UNODC, 2015:12), criminal offences can be recognised and classified from a multitude of angles: their impact on victims, the way they have been perpetrated, the offender's motive, and the seriousness of the offence, among other things. In building the classification, the UNODC (UNODC, 2015:12) states that it had given priority to criteria that are particularly relevant from a policy perspective: the categories should provide information that can be easily understood and used when developing crime prevention and criminal justice policies. This is an important aspect, considering that one of the outcomes of this research is to put in place a classification system for financial crime that can be used by policy-makers when they develop policy or crime-combating strategies. A number of criteria have been used to build the hierarchical structure of the ICCS in particular; the following criteria have been used to form categories of the ICCS (UNODC, 2015:12):

- policy area of the act/event [conduct] (protection of property rights, protection of health, etc.)
- the target [victim] of the act/event (e.g. person, business premises, State, etc.)



- the seriousness of the act/event (e.g. acts leading to death, acts causing harm, etc.)
- means by which the act/event is perpetrated (e.g. by fraud, deception or corruption, etc.).

Based on these criteria, criminal offences can be grouped into homogeneous categories (refer to Figure 2.8 – paragraph 2.6.2.3), which are aggregated at four different hierarchical levels: Levels 1, 2, 3 and 4. There are 11 Level 1 categories designed to cover all acts or events that constitute a crime within the scope of the ICCS (UNODC, 2015:13). Criminal offences at Levels 2, 3 and 4 can be summed to provide observations at more aggregated levels, while observations at higher levels can be subdivided into lower-level categories. Criminal offences can be identified at the level of detail that is of interest, which in the case of this research is financial crime and its categories.

The numerical coding of the categories is in accordance with their level of classification: Level 1 categories are the broadest categories and have a two-digit code (e.g. 01); Level 2 categories have a four-digit code (e.g. 0101); Level 3 categories have a five-digit code (e.g. 01011); and Level 4 categories, the most detailed level, have a six-digit code (e.g. 010111) (UNODC, 2015:13). The ICCS (UNODC, 2015:13) lists 11 Level 1 categories, as depicted in Figure 2.8 below, for illustrative purposes, of which Categories “5” and “7” under Level 1 should be of particular interest in this research study, as an example of how the principles are applied by using the Events-based approach in relation to crimes which in this research have been identified as examples of categories of financial crime and specific crimes.

**Figure 2.8: Level 1 Categories according to the coding of categories used in the ICCS classification approach**

LEVEL 1 CATEGORIES	
1	Acts leading to death or intending to cause death
2	Acts leading to harm or intending to cause harm to the person
3	Injurious acts of a sexual nature
4	Acts against property involving violence or threat against a person
5	Acts against property only
6	Acts involving controlled psychoactive substances or other drugs
7	Acts involving fraud, deception or corruption
8	Acts against public order, authority and provisions of the State
9	Acts against public safety and state security
10	Acts against the natural environment
11	Other criminal acts not elsewhere classified

(Source: UNODC, 2015:13)

According to this approach, all categories at each level of the classification are described in detailed terms. Each offence has an event-based actor description (conduct), which is the core set of actions, behavioural and contextual attributes that define the offence. The categories of the ICCS capture and describe the nature of criminal offences. Descriptions are accompanied by legal inclusions and exclusions to identify the most common or important criminal offences included in, or excluded from, the category (UNODC, 2015:14).

For this research and classification of financial crime in accordance with a systematic approach, the inclusion and exclusions are not included but rather replaced with the legal provisions in accordance with the substantive SA legal provisions, which criminalise the described criminal conduct. What will, however, determine whether a particular act of criminal conduct or descriptive behaviour is included in or excluded from the category of offences referred to as financial crimes, is whether it fits the description in accordance with the criteria determined by this research.

#### **2.6.2.4 Broad and detailed structure of the UNODC ICCS**

Figure 2.9 (paragraph 2.9) serves to illustrate in tabular format the broad and detailed structure of the ICCS approach, which for the purpose of this example

will refer to the Level 1 category according to the ICCS, which is “acts involving fraud, deception or corruption” (UNODC, 2015:27) and the detail of the structure, as is evident from Figure 2.9 (paragraph 2.9).

#### **2.6.2.5 Acts involving fraud, deception or corruption**

Figure 2.10 (paragraph 2.9) serves to illustrate in tabular format the complete classification of the category of acts involving fraud, deception or corruption according to the ICCS, and showing all the levels in detail according to the ICCS classification (UNODC, 2015:68). For the purpose of this illustration, only the Level 1 of fraud (Category 0701) and of forgery/counterfeiting (Category 0702) is shown in Figure 2.10 (paragraph 2.9).

### **2.7 CONCEPTUAL MODEL FOR CATEGORISING FINANCIAL CRIME**

For this research, the researcher applied an adapted version of the Events-based approach to categorising financial crime, based on the data received from the participants and a review of the literature. A system of numbering (or codification of) the various categories, starting with category 01, denotes the first of the Level 1 category of financial crime. It progresses to the next category, namely Level 1 crime, which is denoted 02, and so on. In addition to the types of financial crime commonly referred to by investigators, practitioners and policymakers, the crimes as referred to according to the common law and statutory law, for which the perpetrator can be criminally charged in a court of law, have been added, which makes it a useful reference from a practical and criminal justice perspective.

The researcher decided on this approach because it is systematic and expresses financial crime in terminology in accordance with the type of conduct or behaviour that constitutes financial crime, as opposed to the strict legal definition in terms of the conventions of substantive law commonly used by investigators, practitioners and policymakers when communicating about financial crime (feedback from participants and analysis of the literature). It is, therefore, a more practical means of categorising financial crime. The categories are not necessarily extensive, which implies that they can be extended as and when perceptions change, or

criminal conduct evolves, or new forms of criminal conduct appear, especially where the use of technology is involved.

In providing the behavioural descriptors of the type of conduct that perpetuates the financial crime at Level 1 and Level 2 sub-types, the researcher opted to use more functional descriptions or definitions obtained from the literature or feedback from participants, rather than legal definitions used in the legal text, such as statutes that criminalise the unlawful conduct.

The researcher developed a classification for financial crime in accordance with the general Level 1 categories and Level 2 sub-types of financial crime, following an Events-based approach as described above. In following this approach, the researcher used feedback from participants and examples of financial crime and types of unlawful conduct described in the literature, feedback from participants, South African Common Law and statutes. In consolidating this information, the researcher developed a conceptual classification for financial crime, as illustrated in Figure 2.10 (paragraph 2.9). The conceptual model represents a classification of financial crime according to the description of the conduct and following a systematic approach. It is not intended to be representative of a comprehensive classification of the full spectrum of unlawful conduct that falls within the classification of financial crime. It is suggested that this is an endeavour that can be undertaken as part of a future research project.

The concept described above is not intended to provide a comprehensive and final description of all the types of criminal acts (events) that constitute the category of offences termed financial crime. It is also not intended to provide a full list of all the common-law offences and offences under the statutory law for which criminal liability can be incurred as a result of perpetrating the type of unlawful conduct described in the conceptual model.

The conceptual model is intended to illustrate a system for categorising various types of unlawful acts that may constitute financial crime according to the general description of the type of conduct deemed to be unlawful. The general descriptions are extrapolated to possible applicable offences under South African law. It is suggested that an endeavour to compile a comprehensive list could be

the subject of further research, or the research could be undertaken by a research institution and the result used as a source of reference to indicate conduct that can be classified as financial crime.

## **2.8 SUMMARY**

Academics, practitioners, governments and non-governmental agencies have a shared view that financial crime has a significant detrimental impact on the economies of countries and even more so on those of developing countries where it diminishes individual resource and drains funds that would otherwise be available for countries to develop. There is agreement at an international and national level that more concerted efforts should be made, and policies put in place to combat financial crime. This research, however, shows that academics, practitioners, governments and non-governmental agencies do not share a common view of what financial crime entails and exactly what type of criminal behaviour or conduct falls within that category of offences labelled as financial crime.

In this chapter, the use and conceptualisation of the term financial crime were considered from the perspective of the literature and from the participants' domestic viewpoint. From the literature reported on in this chapter, it is apparent that the concept financial crime is a vague term that is broadly used to describe a variety of criminal acts, and even differs from jurisdiction to jurisdiction and the context within which it is used. The research shows that the term financial crime is used to describe many concepts at varying levels of specificity and sometimes used interchangeably with other terms such as economic crime, white-collar crime and commercial crime, mainly because of a lack of systematic definition. There is even confusion in the same jurisdiction as to the scope of the concept financial crime. This confusion and lack of understanding of the conceptual meaning of financial crime, its behavioural descriptors and specific crimes according to the conventions of common law and statutory law could create problems when there is a need to communicate about financial crime. The literature indicates that there is at least some agreement among academics, governments and practitioners that money laundering, fraud, corruption and bribery, and insider trading resort under the category of financial crime.

The defining characteristic of financial crime is that it is crime that relates to a variety of non-violent, profit-driven, unlawful conduct aimed at financial systems, financial institutions, or property belonging to another, gaining access or control thereof or converting property for one's own personal use or benefit, that generally results in a financial loss. The characteristics attributed to the crimes that form part of the category of offences categorised as financial crime have been individualised. From a South African perspective, the concept financial crime is used to refer to a subset of commercial or economic crimes associated with criminal conduct aimed at prejudicing financial systems or institutions financially.

The general discussion regarding the concept financial crime and how it is understood by academics, governmental and non-governmental agencies is followed by an analysis of the various definitions for financial crime presented by academics, governmental and non-governmental agencies in the literature. The definition of financial crime as a category of offences is examined and explained in accordance with the literature and feedback from participants during interviews. From a South African perspective it is possible to offer a definition of financial crime in accordance with the main themes presented by the participants that are broadly compatible with those that emerged from the literature.

Examples of individual crimes and descriptions of criminal conduct cited by academics, governmental and non-governmental agencies as falling within the category of financial crime are systematically listed according to similar typologies and behavioural descriptors. Various types of available models for classifying financial crime systematically were considered. An adaptation of the classification system used by the UNODC, based on an Events-based approach, provides a viable, flexible and practical system of classification for financial crime. This has been tailored for domestic application, using the behavioural descriptors (types of unlawful conduct) as the units for classification rather than their strict descriptions or definitions of the crime in accordance with the applicable legal conventions. The units or descriptors were obtained from the systematic list of similar typologies and behavioural descriptors as presented in the literature and feedback from participants.

The need for a systematic system of classification of crimes that resort under the category of financial crime is examined and explained. In this chapter it is suggested that a systematic classification of financial crime, based on a common understanding of the behavioural descriptors of the type of unlawful conduct associated with specific crimes and contraventions, according to the conventions of the common law and statutory law, could assist government departments and agencies, their officials, policymakers and practitioners when they have to communicate about financial crime, especially when developing policies or integrating efforts and resources to combat financial crime.

In Chapter 3, consideration is given to the application of combating or to combat crime generally, and then in more specific terms of financial crime within the current structural, operational and legal mandatory framework. A determination is made whether the arrangement is effective and what government policies and strategies are in place to guide Government's response to financial crime in a coordinated and integrated fashion.

## 2.9 TABLES AND FIGURES REFERRED TO IN CHAPTER 2

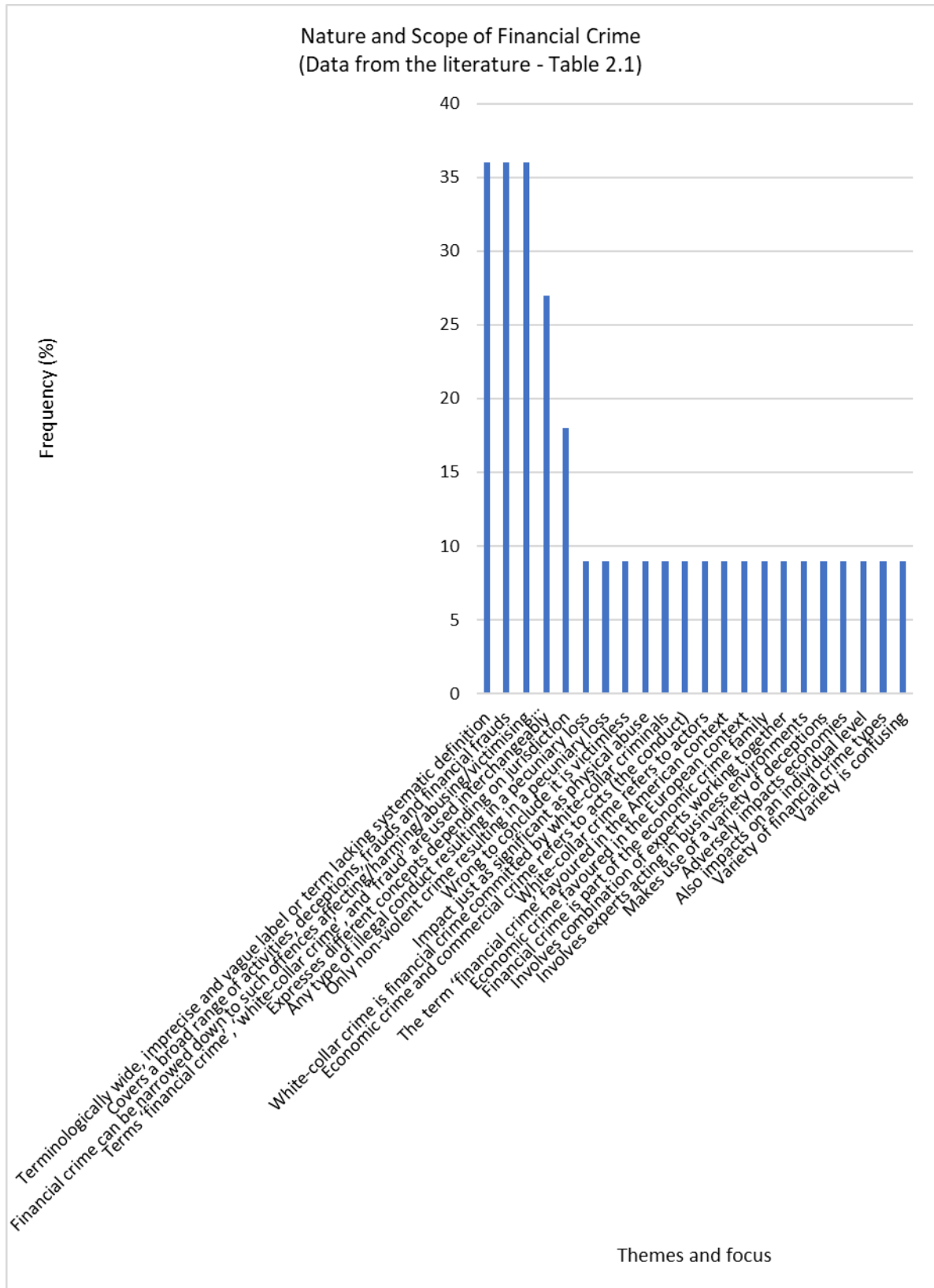
**Table 2.1: Terms in the literature used to describe the nature and scope of financial crime**

THE NATURE AND SCOPE OF 'FINANCIAL CRIME'											Quantification of themes (%)	
Themes or focus emerging from the literature	Scholars and practitioner's literature											
	ACC	Boorman and Ingves	Mwenda	Gottschalk	Pickett and Pickett	Michel	Levi	Naylor et al.	Harrison and Ryder	Bintliff		De Koker
Terminologically wide, imprecise and vague label or term lacking systematic definition			X				X	X		X		36
Covers a broad range of activities, deceptions, frauds and financial frauds	X		X				X				X	36
Financial crime can be narrowed down to such offences affecting/harming/abusing/victimising financial markets, financial systems, investment and the economy		X	X			X					X	36
Terms 'financial crime', 'white-collar crime', and 'fraud' are used interchangeably			X		X			X				27
Expresses different concepts depending on jurisdiction		X		X								18
Any type of illegal conduct resulting in a pecuniary loss		X										9
Only non-violent crime resulting in a pecuniary loss		X										9
Wrong to conclude it is victimless									X			9
Impact just as significant as physical abuse									X			9
White-collar crime is financial crime committed by white-collar criminals				X								9
Economic crime and commercial crime refers to acts (the conduct)								X				9
White-collar crime refers to actors								X				9
The term 'financial crime' favoured in the American context									X			9
Economic crime favoured in the European context									X			9
Financial crime is part of the economic crime family						X						9
Involves combination of experts working together						X						9
Involves experts acting in business environments						X						9
Makes use of a variety of deceptions							X					9
Adversely impacts economies									X			9
Also impacts on an individual level									X			9
Variety of financial crime types				X								9
Variety is confusing				X								9

(Source: Analysis of the literature)



**Figure 2.1: Frequency of themes emerging from the literature describing the nature and scope of financial crime**



(Source: Data from Table 2.1)

**Table 2.2: Frequency table with participants indicating whether there is a common understanding of the term financial crime**

Question 2.1: Do you think there is a common understanding of the meaning of financial crime? Please substantiate your answer		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Yes	5	50
No	5	50
In the South African context, it is generally referred to as commercial crime	3	30
Depending on the agency they work for, some individuals may include offences and others may exclude offences	3	30
People will have a general idea	2	20
It should be viewed from the perspective of the offences that the FATF aims to combat	2	20
Financial crime refers to the classification of offences according to what is being targeted, as opposed to how it is identified according to the legal convention	2	20
Financial crime includes making use of fraud	1	10
The terms financial crime and commercial crime are used interchangeably	1	10
This category of crime is not codified, therefore there is no common understanding of the unlawful conduct that categorises financial crime.	1	10
Confuse the nature of unlawful conduct with actual common law and statutory law offences according to the conventions of SA law	1	10
It is a subspecies of commercial crime	1	10
The category of commercial crime where financial benefit is derived	1	10

(Source: Feedback from participants)

**Table 2.4: Frequency of participants' themes presented in their definitions of financial crime**

Question 2.2: How would you define the term financial crime in your own words?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
For financial gain/benefit/enrichment	6	60
Financially prejudicial to another or society at large	5	50
Intentional unlawful conduct	3	30
It is the same as commercial crime	2	20
Any offence prejudicing the financial position of a business enterprise or government.	1	10
Not entitled to	1	10
Forms part of the criminal business enterprise system	1	10
Aimed at financial systems	1	10
Aimed at individuals and companies	1	10
Non-violent criminal conduct	1	10
Makes use of fraud and dishonesty	1	10
An offence derived at from a predicate offence	1	10

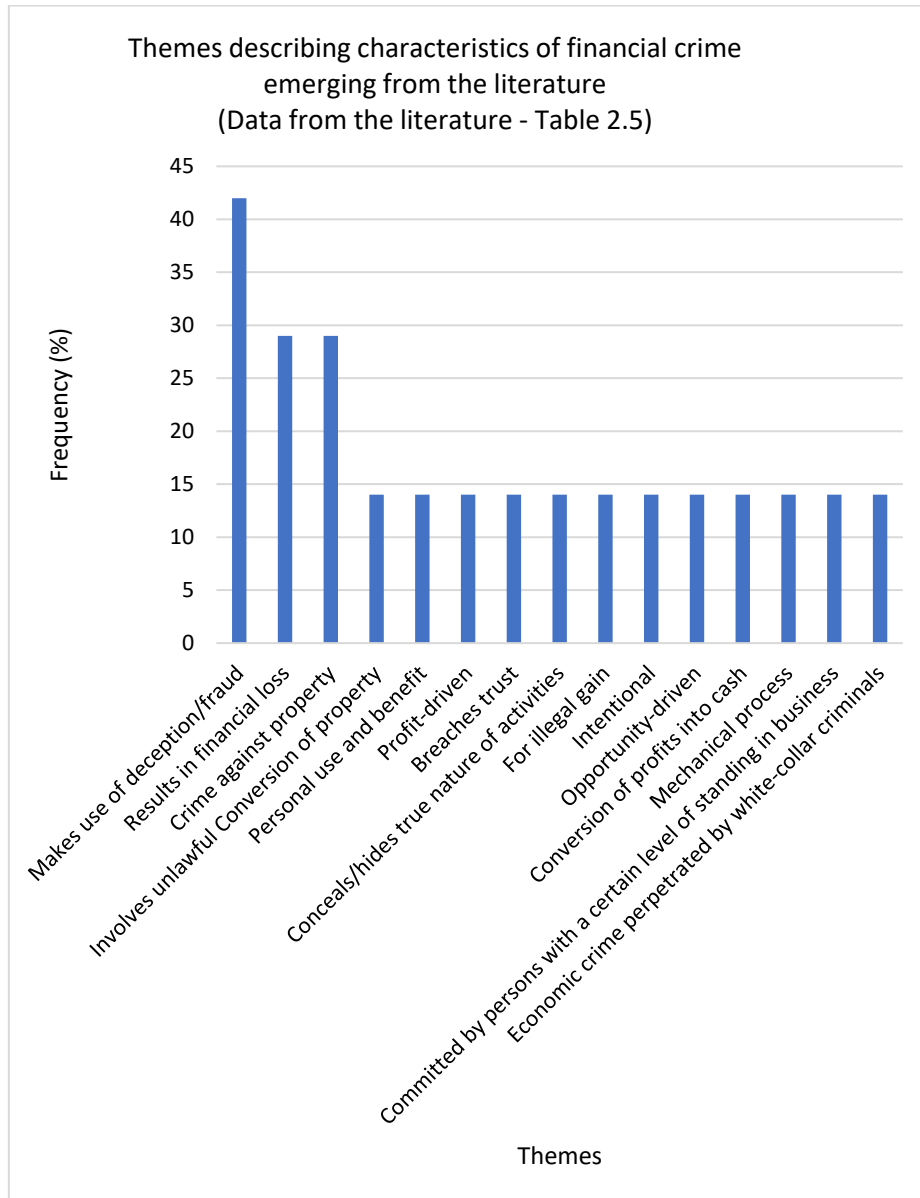
(Source: Feedback from participants)

**Table 2.5: Authors and their focus on characteristics of financial crime**

UNIQUE CHARACTERISTICS OF FINANCIAL CRIME PRESENTED IN THE LITERATURE								Quantification of themes or focus (%)
Themes or focus from the literature	Authors							
	Boorman and Ingves (2001:3)	Henning (2009:295)	Gottschalk (2010b:2 & 2014:xix)	Pickett and Pickett (2002:2 & 3)	Michel (2008:384)	Levi (2009:225)	Harrison and Ryder (2013:3)	
Makes use of deception/fraud			✓	✓		✓		42
Results in financial loss	✓			✓				29
Crime against property		✓	✓					29
Involves unlawful conversion of property		✓						14
Personal use and benefit		✓						14
Profit-driven			✓					14
Breaches trust				✓				14
Conceals/hides true nature of activities				✓				14
For illegal gain				✓				14
Intentional				✓				14
Opportunity-driven					✓			14
Conversion of profits into cash					✓			14
Mechanical process					✓			14
Committed by persons with a certain level of standing in business							✓	14
Economic crime perpetrated by "white-collar criminals."			✓					14

(Source: Content analysis of the literature)

**Figure 2.2: Frequency of themes emerging from the literature to describe unique characteristics of financial crime**



(Source: Authors listed in Table 2.5)

**Table 2.6: Frequency table showing participants' themes for the characteristics of financial crime**

Question 2.3: What do you think are the identifiable characteristics of financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Gains a direct or indirect financial/monetary advantage/ benefit	6	60
Direct or indirect financial/monetary loss for victim	5	50
Makes use of fraud/misrepresentation	3	30
Involves various methods	2	20
Involves sophisticated methods	2	20
Non-violent	1	10
Proceeds are invariably laundered	1	10
Motivated by greed	1	10
Usually involves documents	1	10
Usually involves technology (cyber technology)	1	10
Can be either organised or transactional crime	1	10
When organised, same characteristics as organised crime.	1	10
Bridges conventional borders and jurisdictions	1	10
State responses battle to keep up with technology in financial systems.	1	10
Focus of financial crime is on criminal economy and business systems.	1	10
Represents crimes related to illicit economy.	1	10
Directed at illegally obtaining property	1	10
Focuses on money	1	10
Crime aimed at the financial systems of a country	1	10

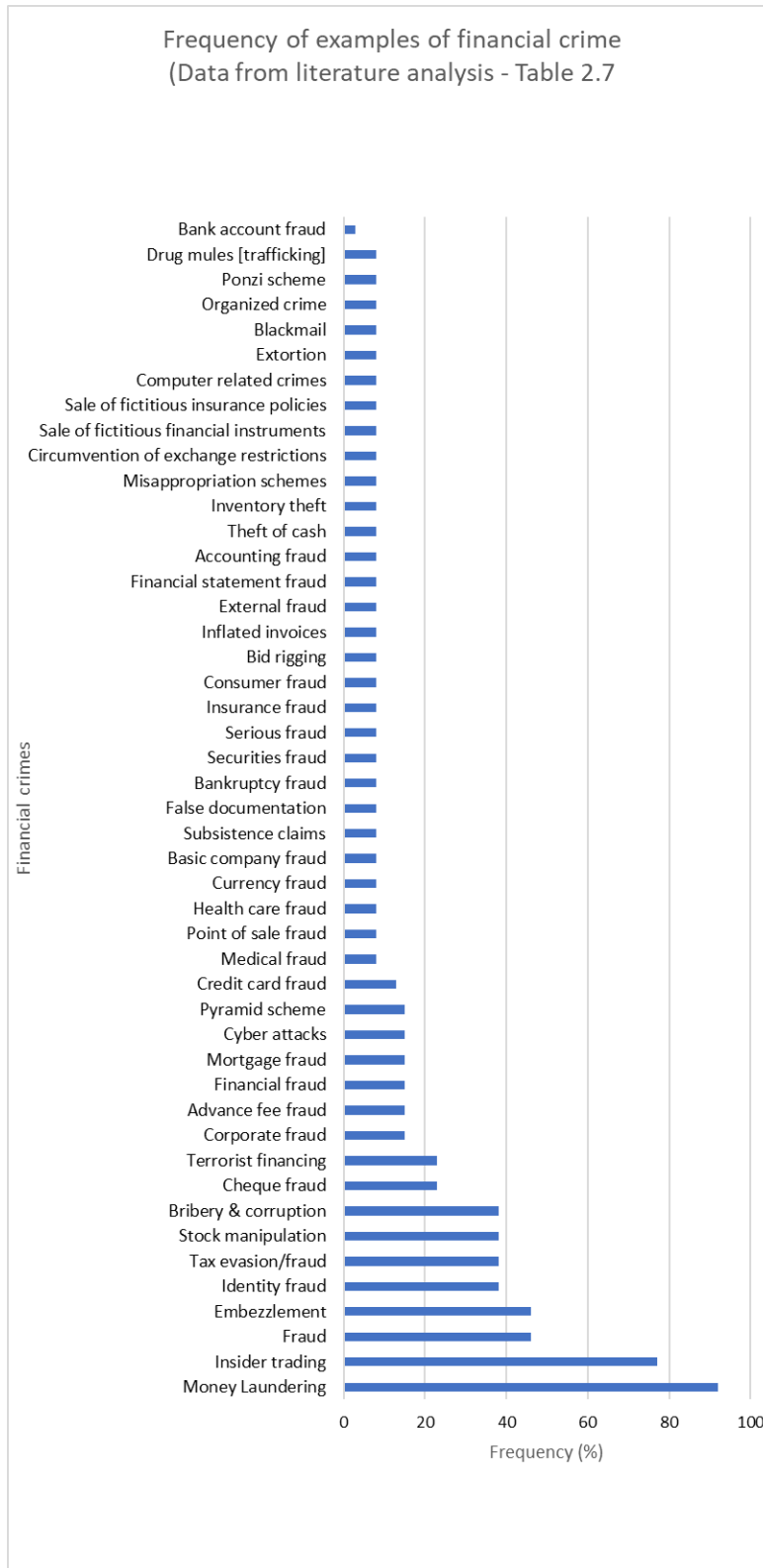
(Source: Feedback from participants)

**Table 2.7: Examples of financial crime presented in the literature**

EXAMPLES OF FINANCIAL CRIME IN THE LITERATURE															
ACADEMIC AUTHORS, PRACTITIONERS AND GOVERNMENT LITERATURE															
Examples	Boorman and Ingves	Henning	Gottschalk	Pickett and Pickett	Michel	Harrison and Ryder	RSA Treasury policy doc.	FIC Booklet	OECD	Levi	ACC	DE Koker	Binliff	Number of times presented in the literature	Frequency (%)
Money Laundering	X	X	X	X	X	X	X	X	X	X	X	X		12	92
<b>Fraud</b>		X	X	X	X	X				X				6	46
Identity fraud			X	X			X	X			X			5	38
corporate fraud			X							X				2	15
advance fee Fraud							X	X						2	15
medical fraud			X											1	8
point of sale fraud			X											1	8
health care fraud			X											1	8
currency fraud			X											1	8
basic company fraud				X										1	8
subsistence claims				X										1	8
false documentation					X									1	8
Bankruptcy Fraud									X					1	8
Securities Fraud											X			1	8
Serious Fraud												X		1	8
<b>Financial Fraud</b>	X												X	2	15
cheque fraud	X		X	X										3	23
credit card fraud	X		X	X										3	13
mortgage fraud	X		X											2	15
insurance fraud	X													1	8
consumer fraud				X										1	8
bid rigging				X										1	8
inflated invoices				X										1	8
external fraud				X										1	8
financial statement fraud				X										1	8
accounting fraud				X										1	8
bank account fraud			X				X				X			3	3
<b>Theft</b>															
theft of Cash				X										1	8
inventory Theft				X										1	8
misappropriation schemes				X										1	8
embezzlement	X	X	X	X							X		X	6	46
<b>Other</b>															
Insider trading		X	X	X	X	X			X	X	X	X	X	10	77
Tax Evasion/Fraud	X	X	X						X		X			5	38
Stock manipulation	X			X		X					X		X	5	38
Bribery & Corruption		X	X	X		X	X							5	38
Terrorist financing						X			X			X		3	23
Cyber attacks		X	X											2	15
Pyramid Scheme								X			X			2	15
Circumvention of exchange restr	X													1	8
Sale of fictitious financial instrum	X													1	8
Sale of fictitious insurance polic	X													1	8
Computer related crimes				X										1	8
Extortion				X										1	8
Blackmail							X							1	8
Organized Crime							X							1	8
Ponzi Scheme								X						1	8
Drug mules								X						1	8

(Source: Analysis of the literature)

**Figure 2.3: Frequency of the examples of financial crimes emerging from the literature**



(Source: Frequency Table 2.7)

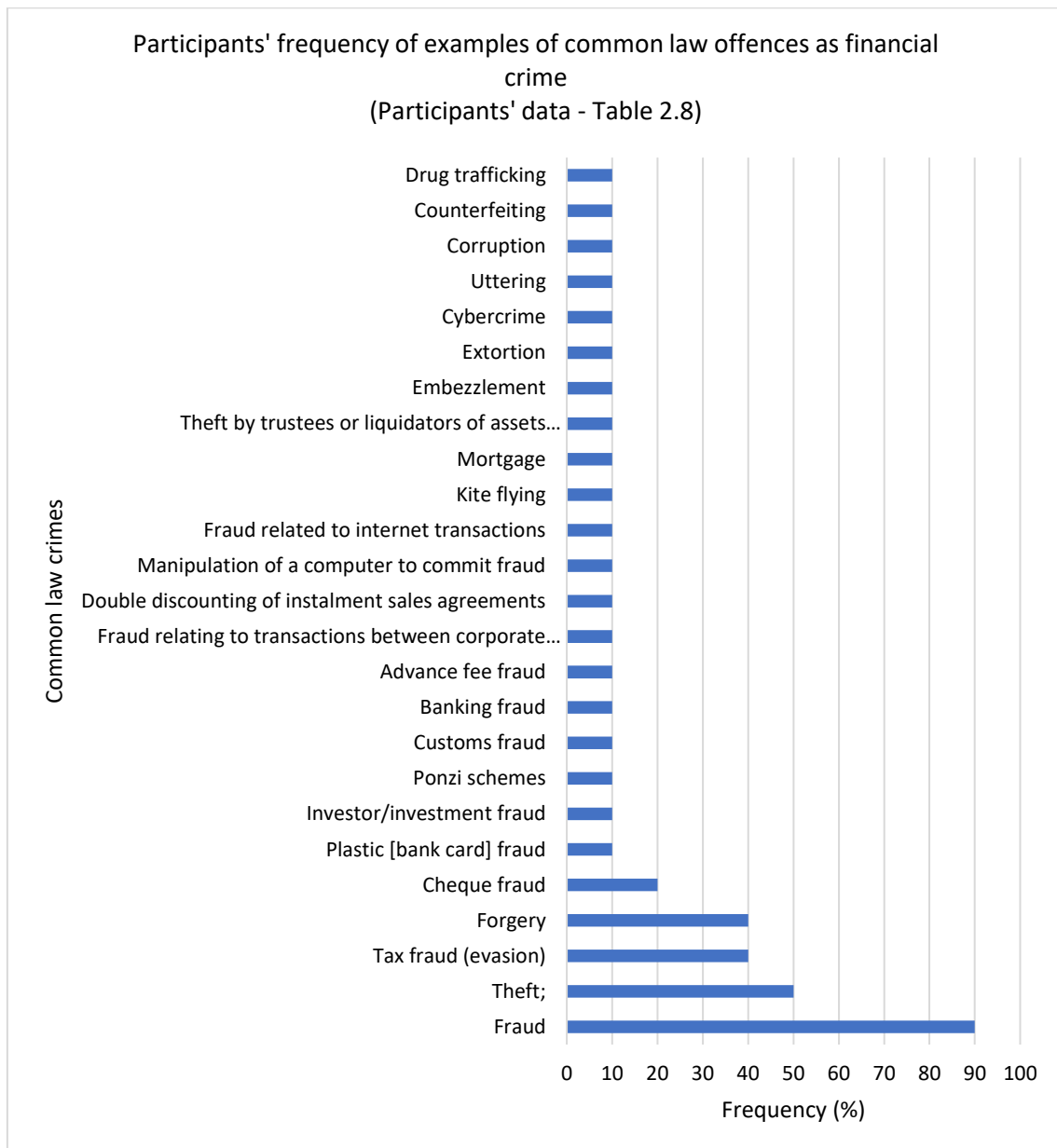


**Table 2.8: Frequency table indicating participants' answers about common-law crimes in the category of financial crime**

Question 2.4: According to your understanding of financial crime, what common-law offences according to South African law fall within the category of offences referred to as financial crime?		
Participants' answers	Quantification of this theme	Frequency of this theme (%)
<b>Fraud;</b>	<b>9</b>	<b>90</b>
• Tax fraud (evasion)	4	40
• Cheque fraud	2	20
• Plastic fraud	1	10
• Investor/investment fraud	1	10
• Ponzi schemes	1	10
• Customs fraud	1	10
• Banking fraud	1	10
• Advance-fee fraud	1	10
• Fraud relating to transactions between corporate entities.	1	10
• Double discounting of instalment sales agreements	1	10
• Manipulation of a computer to commit fraud	1	10
• Fraud related to Internet transactions	1	10
• Kite-flying	1	10
• Mortgage	1	10
<b>Theft;</b>	<b>5</b>	<b>50</b>
• Theft by trustees or liquidators of assets belonging to an estate	1	10
• Embezzlement	1	10
<b>Other;</b>		
• Forgery	4	40
• Extortion	1	10
• Forgery	4	40
• Cybercrime	1	10
• Uttering	1	10
• Corruption	1	10
• Counterfeiting	1	10
• Drug trafficking	1	10

(Source: Feedback from participants)

**Figure 2.4: Participants' frequency of themes for common-law crimes**



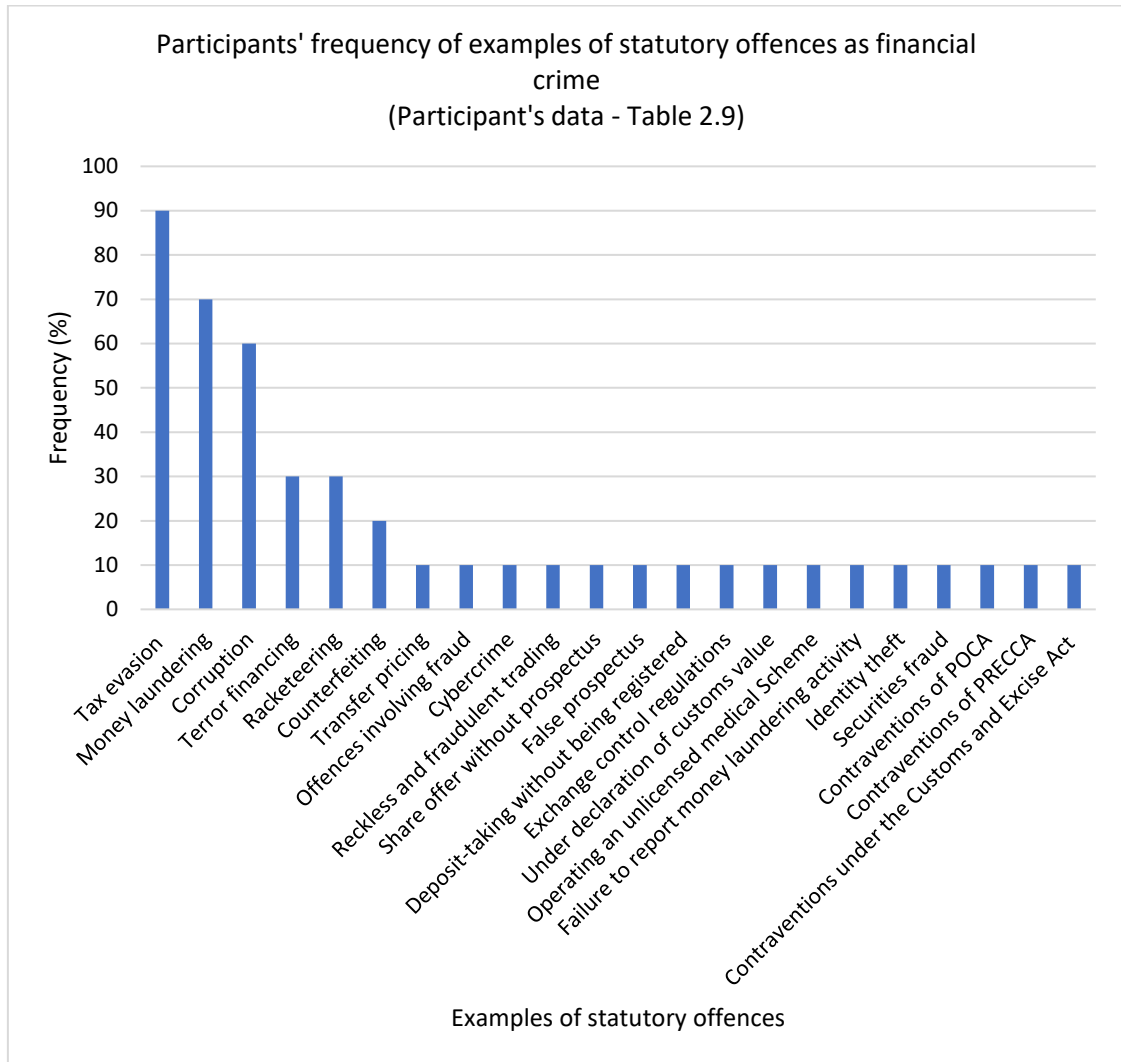
(Source: Frequency Table 2.8)

**Table 2.9: Frequency table indicating participants' answers related to statutory crimes falling within the category of financial crime**

Question 2.5: According to your understanding of financial crime, what statutory offences according to South African law fall within the category of offences referred to as financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Tax evasion	9	90
Money laundering	7	70
Corruption	6	60
Terror financing	3	30
Racketeering	3	30
Counterfeiting	2	20
Transfer pricing	1	10
Offences involving fraud	1	10
Cybercrime	1	10
Reckless and fraudulent trading	1	10
Share offer without prospectus	1	10
False prospectus	1	10
Deposit-taking without being registered	1	10
Exchange Control Regulations	1	10
Under-declaration of customs value	1	10
Operating an unlicensed medical scheme	1	10
Failure to report money-laundering activity	1	10
Identity theft	1	10
Securities fraud	1	10
Contraventions of the Prevention of Organised Crime Act	1	10
Contraventions of the Protection of Constitutional Democracy against Terrorist and Related Activities Act	1	10
Contraventions under the Customs and Excise Act	1	10

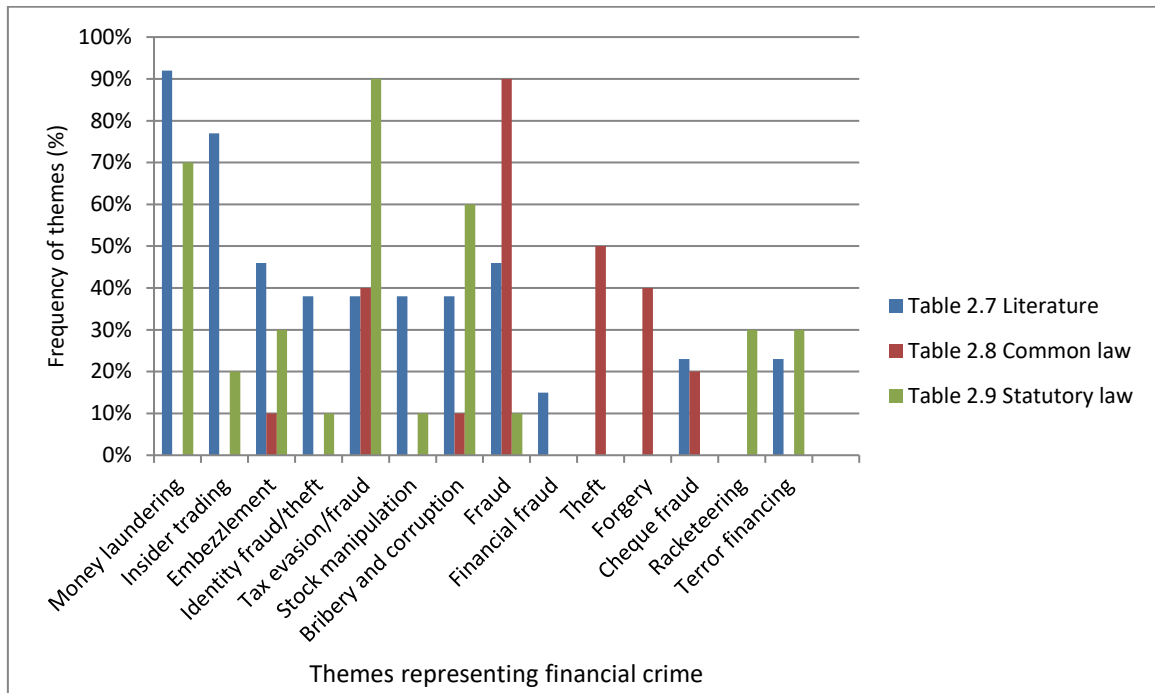
(Source: Feedback from participants)

**Figure 2.5: Participants' frequency of themes presented on statutory offences in the category financial crime**



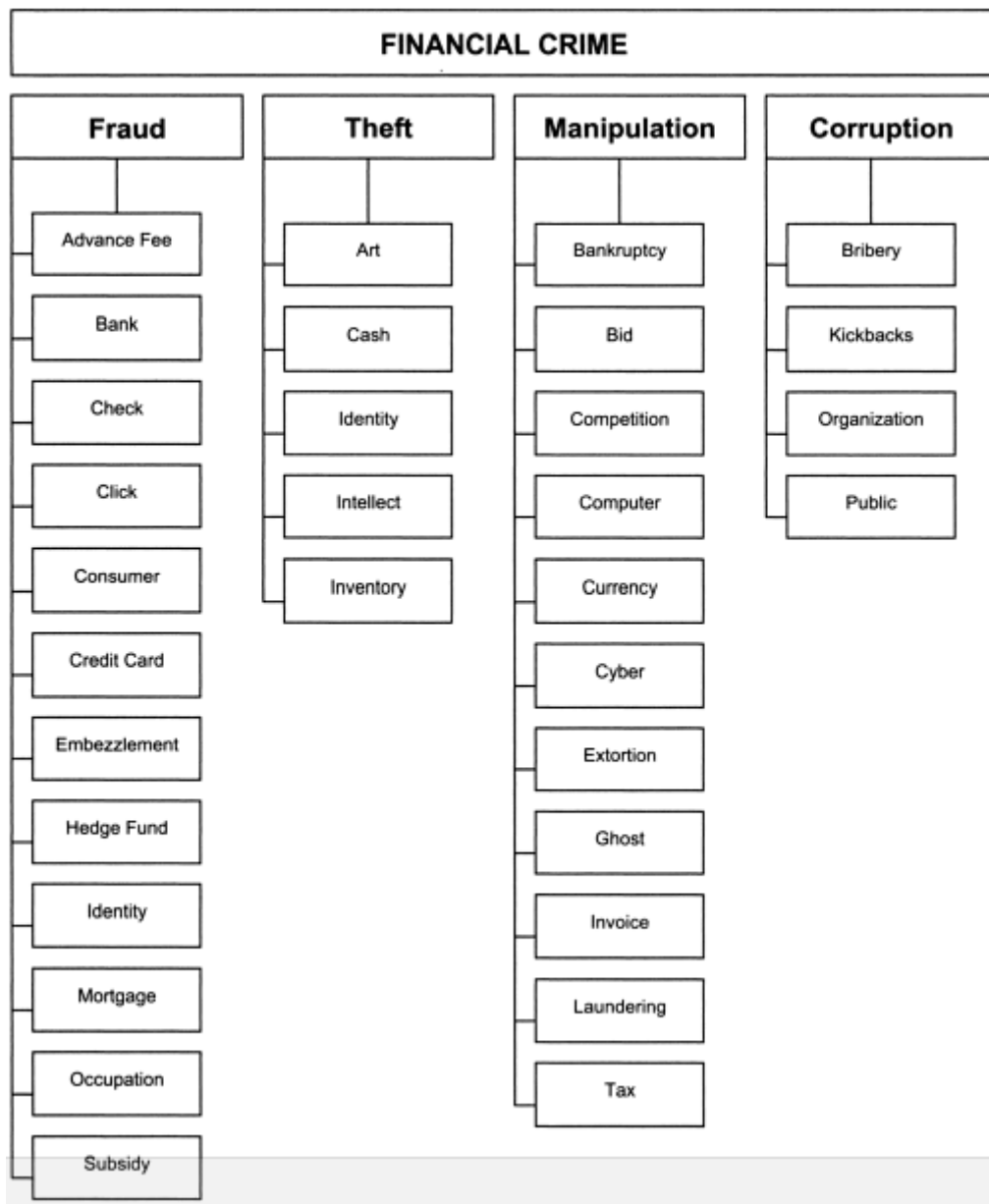
(Source: Frequency Table 2.9)

**Figure 2.6: Graph depicting the disparity between classification of financial crime according to descriptors of the type of crime and the legal classification according to common-law and statutory law**



(Source: Data from Tables 2.7, 2.8 and 2.9)

**Figure 2.7: Main categories and subcategories of financial crime as categorised by Gottschalk**



(Source: Gottschalk, 2010b:5)

**Figure 2.9: Broad and detailed structure of the classification of acts involving fraud, deception or corruption**

<b>Section 07 Acts involving fraud, deception or corruption</b>			
<b>DIVISION</b>	<b>GROUP</b>	<b>CLASS</b>	<b>CRIME</b>
<b>0701</b>			<b>Fraud</b>
	07011		Financial fraud
		070111	Financial fraud against the State
		070112	Financial fraud against natural or legal persons
	07019		Other acts of fraud
<b>0702</b>			<b>Forgery/counterfeiting</b>
	07021		Counterfeiting means of payment
		070211	Counterfeiting means of cash payment
		070212	Counterfeiting means of non-cash payment
	07022		Counterfeit product offences
	07023		Acts of forgery/counterfeiting documents
	07029		Other acts of forgery/counterfeiting
<b>0703</b>			<b>Corruption</b>
	07031		Bribery
		070311	Active bribery
		070312	Passive bribery
	07032		Embezzlement
	07033		Abuse of functions
	07034		Trading in influence
	07035		Illicit enrichment
	07039		Other acts of corruption
<b>0704</b>			<b>Acts involving the proceeds of crime</b>
	07041		Money laundering
	07042		Illicit trafficking in cultural property
	07049		Other acts involving the proceeds of crime

(Source: ICCS, 2015:27)

**Figure 2.9: Broad and detailed structure of the classification of acts involving fraud, deception or corruption**

SECTION 07		ACTS INVOLVING FRAUD, DECEPTION OR CORRUPTION	
<b>0701</b>	<b>Fraud</b> Obtaining money or other benefit, or evading a liability through deceit or dishonest conduct.	+	<b>Inclusions:</b> Mortgage fraud, financial fraud, quackery, impersonation, identity theft; possession, creation or use of false weights for measure; apply all inclusions listed in 07011 - 07019
		-	<b>Exclusions:</b> Obtaining money without dishonest conduct but with intent to withhold it from the owner (0502); fraudulent insolvency, insider trading and other acts against commercial financial regulations (08042); electoral fraud (08079); illicit enrichment (07035)
<b>07011</b>	<b>Financial fraud</b> Fraud involving financial transactions for the purpose of personal gain. This includes using financial consumer products such as bank accounts, credit cards, cheques, store cards or online banking systems. - Fraud as defined in 0701.	+	<b>Inclusions:</b> Bank fraud; investment fraud; cheque/credit card fraud; store card fraud; online banking fraud; writing bad cheques; apply all inclusions listed in 070111 - 070112
		-	<b>Exclusions:</b> Financial transactions to conceal, transfer or disguise the proceeds of crime (07041); embezzlement (07032); apply all exclusions listed in 0701
<b>070111</b>	<b>Financial fraud against the State</b> Financial fraud against the State. - Financial fraud as defined in 07011.	+	<b>Inclusions:</b> Procurement and contractor fraud; false claims fraud not amounting to medical fraud
		-	<b>Exclusions:</b> Social welfare and tax fraud (08041); apply all exclusions listed in 07011
<b>070112</b>	<b>Financial fraud against natural or legal persons</b> Financial fraud against natural or legal persons. <sup>99</sup> - Financial fraud as defined in 07011.	+	<b>Inclusions:</b> Mortgage fraud; securities fraud; investment fraud; bank fraud
		-	<b>Exclusions:</b> Apply all exclusions listed in 07011
<b>07019</b>	<b>Other acts of fraud</b> Fraud not described or classified in 07011. - Fraud as defined in 0701.	+	<b>Inclusions:</b> Possession, creation or use of false weights for measure; medical fraud or quackery not amounting to malpractice or medical negligence; fraudulent failure to supply consumer goods or obtaining goods by fraud; false accounting; hiding or destroying money; wire fraud; insurance fraud; unlicensed/unregistered practice in a trade or profession; identity theft; false representation of identity or professional status; impersonation; fraudulent pretence of marriage; setting up or operating a pyramid scheme; swindling
		-	<b>Exclusions:</b> Financial transactions to conceal, transfer or disguise the proceeds of crime (07041); embezzlement (07032); illicit enrichment (07035); tax fraud (08041); apply all exclusions listed in 0701
<b>0702</b>	<b>Forgery/counterfeiting</b> Creating, manufacturing, selling, passing or possessing a false imitation of goods, or an instrument to create a false imitation of goods.	+	<b>Inclusions:</b> Fraudulently making or altering goods, documents or currency; fraudulently making, receiving, obtaining or possessing instruments, articles, computer programs and other means of counterfeiting; importing, exporting, transporting, receiving or obtaining counterfeit goods, currencies or documents with the knowledge that they are counterfeit; apply all inclusions listed in 07021 - 07029
		-	<b>Exclusions:</b> Creating a false identity or impersonating a person (07019); using a forged visa (0805); possession, creation or use of false weights for measurement (07019); unlawfully copying, using, reproducing or other infringements inflicted upon copyrights, patents, trademarks or other intellectual property (0503); smuggling of goods (08044)
<b>07021</b>	<b>Counterfeiting means of payment</b> Creating, manufacturing, passing, using or possessing counterfeit means of payment or an instrument to create a false imitation with or without the use of computer systems.	+	<b>Inclusions:</b> Counterfeiting coins or notes; counterfeiting stamps or tickets; possession of an article for the creation of counterfeit means of payment; counterfeit means of payment other than cash; apply all inclusions listed in 070211 - 070219
		-	<b>Exclusions:</b> Apply all exclusions listed in 0702
<b>070211</b>	<b>Counterfeiting means of cash payment</b> Creating, manufacturing, passing, using or possessing counterfeit means of cash payment or an instrument to create a false imitation with or without the use of computer systems. <sup>100</sup>	+	<b>Inclusions:</b> Fraudulently making or altering notes and coins; fraudulently making, receiving, obtaining or possessing instruments, articles, computer programs and other means of counterfeiting or altering notes and coins; importing, exporting, transporting, receiving or obtaining counterfeit notes and coins with the knowledge that they are counterfeit
		-	<b>Exclusions:</b> Counterfeiting means of non-cash payment (070219); financial fraud (07011); acts involving the proceeds of crime (0704); apply all exclusions listed in 07021
<b>070212</b>	<b>Counterfeiting means of non-cash payment</b> Creating, manufacturing, passing, using or possessing counterfeit means of non-cash payment or an instrument to create a false imitation with or without the use of computer systems. <sup>101</sup>	+	<b>Inclusions:</b> Fraudulently making or altering non-cash forms of payment; fraudulently making, receiving, obtaining or possessing instruments, articles, computer programs and other means of counterfeiting or altering non-cash forms of payment; importing, exporting, transporting, receiving or obtaining counterfeit non-cash payment with the knowledge that it is counterfeit
		-	<b>Exclusions:</b> Counterfeiting means of cash payment (070211); financial fraud (07011); acts involving the proceeds of crime (0704); apply all exclusions listed in 07021

(Source: ICCS, 2015:69)



**Figure 2.10: Concept for classification of the category of acts involving fraud, deception or corruption according to the ICCS system**

FINANCIAL CRIME CATEGORIES				
SECTION 01	ACTS INVOLVING FRAUD, DECEPTION AND FORGERY		CRIMINAL LIABILITY	
0101	<b>Fraud:</b> making of a misrepresentation that causes actual prejudice or is potentially prejudicial to another (Snyman, 2008:531)		The crime of "fraud", as defined in common law	
	01011	<b>Financial Fraud:</b> Fraud involving deceptive financial transactions for the purpose of personal or organisational gain. This includes using consumer products such as bank accounts, credit cards, cheques, store cards or online banking systems (ICCS, 2015:68).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.	
		010111	<b>Cheque Fraud:</b> Fraud involving the use of a cheque or forged document purporting to be a legitimate cheque, or a stolen cheque purporting to have been signed by the legitimate account holder.	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
		070112	<b>Credit Card Fraud:</b> Fraud involving the use of a credit card or cloned credit card purporting to be a legitimate credit card, or a stolen credit card being used illegitimately.	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document as defined in common law.

	070113	<b>Bank fraud:</b> Making use of a fraudulent scheme to defraud a financial institution (Gottschalk, 2010b: 5)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
01012	<b>Financial Investment Fraud:</b> These are fraud scams that often look and sound like plausible investments. Using professional-looking websites, accompanied by corporate brochures and deceptive sales tactics that make the company appear legitimate, they usually promise high returns and low risk, and utilise convincing and pressured selling techniques (Betts, 2017: 85)		The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
	010121	<b>Pyramid Scheme:</b> In the classic "pyramid" scheme, participants attempt to make money solely by recruiting new participants into the programme. The hallmark of these schemes is the promise of sky-high returns in a short period of time for doing nothing other than handing over your money and getting others to do the same. ( <i>Pyramid Schemes ...</i> , 2015).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
	010122	<b>Advance-fee fraud:</b> Involves the use of attempts to secure a prepaid commission for an arrangement that is never actually fulfilled, or work that is never done (Gottschalk, 2010b: 5).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a

		forged document, as defined in common law.
010123	<b>Insider trading:</b> Involves the use of as yet undisclosed price-sensitive information obtained in one's privileged professional capacity to make personal profit or avoid loss (Levi, 2009: 232)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
01013	<b>Corporate Fraud:</b> Occurs within an organisation. Involves deliberate dishonesty to deceive the public, investors or lending companies, usually resulting in financial gain. ( <i>Corporate Fraud ...</i> , 2015)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
010131	<b>Asset-stripping:</b> Taking company funds or assets of value while leaving behind the debts. Transfer only the assets of one company to another and not the liabilities. ( <i>Asset Stripping ...</i> , 2015) <i>Targeting of company or companies to take ownership, move the assets and then put the stripped entity into liquidation; Moving assets from one limited company to another to 'secure' benefits of one business and avoid liabilities. (Asset Stripping ...</i> , 2015)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft. The statutory offence of contravening section 22 r.w. section 214 of the Companies Act (71 of 2008) hereafter referred to as the Companies Act).

	010132	<b>Fraudulent Trading:</b> Carries on business with the intention of defrauding creditors or for any fraudulent purposes ( <i>Fraudulent Trading ...</i> , 2015). Applies whether the company is trading, has ceased trading or is in the process of being wound up ( <i>Fraudulent Trading ...</i> , 2015)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft. The statutory offence of contravening section 22 r.w. section 214 of the Companies Act.
	010133	<b>Publishing false information:</b> Creates, destroys, conceals, or falsifies an account, record or report that is deliberately misleading regarding the company's financial position, thus misleading investors and creditors and keeping a failing company trading ( <i>Publishing false information ...</i> , 2015).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
01014	<b>Other Acts of Fraud:</b>		The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also theft, forgery and uttering a forged document, as defined in common law.
	010141	<b>Identity Fraud:</b> Can be described as the intentional acquisition of identifiers of one individual without his or her authority, to successfully impersonate that individual and commit unlawful activities such as fraud (Miri-Lavassani, Kumar, Moayed & Kumar, 2009: 367).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also

		theft, forgery and uttering a forged document, as defined in common law.
<b>010142</b>	<b>Procurement fraud:</b> Making use of fraud or corrupt activities within the procurement life cycle of goods, products, services or maintenance contracts between a customer and a supplier (Ross & Chacko, 2016:105)	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also, forgery and uttering a forged document, as defined in common law and, depending on the circumstances, offences provided for in the Prevention and Combating of Corrupt Activities Act (12 of 2004) (hereafter referred to PRECCA in this table).
<b>010143</b>	<b>Tender fraud:</b> Making use of fraud or corrupt activities within the tendering life-cycle of goods, products, services or maintenance contracts between a customer and a supplier	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also forgery and uttering a forged document, as defined in common law and, depending on the circumstances, offences provided for in PRECCA.

SECTION 02	ACTS INVOLVING THEFT		
0201	<b>Theft:</b> The unlawful appropriation of movable, corporeal property that belongs to, and is in the possession of, another; belongs to another but is in the perpetrator's own possession; or belongs to the perpetrator but is in another's possession, and such other person has a right to possess it, provided that the intention to appropriate the property includes an intention to permanently deprive the person entitled to the possession of the property, of such property (Snyman, 2008:483).		The common-law crime of "theft", as defined in criminal law.
	02011	<b>Theft of property or funds by persons in a position of control or trust:</b>	The common-law crime of "theft", as defined in criminal law.
	020111	<b>Theft of trust monies:</b> committed by a person who is legally obliged to keep a separate trust account.	The common-law crime of "theft", as defined in criminal law.
	020112	<b>Theft or dissipation of assets of insolvent estates or estates under curatorship:</b> Committed by trustees or liquidators responsible for the winding-up of such estates	The common-law crime of "theft", as defined in criminal law.
	020113	<b>Theft from deceased estates:</b> committed by executors of deceased estates.	The common-law crime of "theft", as defined in criminal law.
	020114	<b>Theft by persons in a fiduciary capacity, committed over a period,</b> by means of the manipulation of accounting records of businesses and financial institutions	The common-law crime of "theft", as defined in criminal law.
	02012	<b>Identity Theft:</b> Identity theft is the crime of acquiring another person's personal information without their knowledge. It is an enabler of identity fraud (Gottschalk, 2010b:15).	The common-law crime of "fraud", as defined in criminal law and, depending on the nature of the criminal conduct, also the common-law offence of theft, forgery and uttering a forged document, as defined in criminal law.

SECTION 03	ACTS INVOLVING CORRUPT ACTIVITIES		
0301	<b>Bribery and Corruption:</b> These terms relate to the improper influencing of people in positions of trust (Gooch & Williams, 2007: 38). The criminal conduct grouped under this expression is now dealt with under the Prevention and Combating of Corrupt Activities Act of 2004 (Joubert, 2010b: Vol. 6. par. 221)		Statutory offences under the PRECCA and, depending on the nature of the offence, also the common-law offence of fraud as defined in criminal law.
	03011	<b>Corruption</b>	Contravention of section 3 of PRECCA, 2004
	130111	Corrupt activities relating to public officers	Contravention of section 4 of PRECCA, 2004
	130112	Corrupt activities relating to foreign public officials	Contravention of section 5 of PRECCA, 2004
	130113	Corrupt activities relating to agents	Contravention of section 6 of PRECCA, 2004
	130114	Corrupt activities relating to members of legislative authority	Contravention of section 7 of PRECCA, 2004
	130115	Corrupt activities relating to judicial officers	Contravention of section 8 of PRECCA, 2004
	130116	Corrupt activities relating to members of the prosecuting authority	Contravention of section 9 of PRECCA, 2004
	130117	Offences of receiving or offering of unauthorised gratification by or party to an employment relationship	Contravention of section 10 of PRECCA, 2004
	130118	Offences in respect of corrupt activities relating to witnesses and evidential material during certain proceedings	Contravention of section 11 of PRECCA, 2004
	130119	Offences in respect of corrupt activities in relation to contracts	Contravention of section 12 of PRECCA, 2004
	130120	Offences in respect of corrupt activities relating to procuring and withdrawal of tenders	Contravention of section 13 of PRECCA, 2004

	<b>130121</b>	Offences in respect of corrupt activities relating to auctions	Contravention of section 14 of PRECCA, 2004
	<b>130122</b>	Offences in respect of corrupt activities in relation to sporting events	Contravention of section 15 of PRECCA, 2004
	<b>130123</b>	Offences in respect of corrupt activities in relation to gambling games or games of chance	Contravention of section 16 of PRECCA, 2004
	<b>130124</b>	Other offences relating to corrupt activities – accessory to or after offence, as contemplated above or section 21 hereunder	Contravention of section 20 of PRECCA, 2004
	<b>130125</b>	Other offences relating to corrupt activities – attempt, conspiracy and inducement of another person to commit offence in terms of the PRECCA	Contravention of section 21 of PRECCA, 2004
<b>SECTION 04</b>	<b>ACTS INVOLVING THE PROCEEDS OF CRIME AND THE INSTRUMENTALITY OF AN OFFENCE</b>		
<b>0401</b>	<b>Money Laundering:</b> Is the process by which proceeds of criminal conduct are sanitised to disguise their illicit origins, and generally involves the processes of placement, layering and integration (Gooch & Williams, 2007:245).		Contraventions under the Prevention of Organised Crime Act (121 of 1998) (hereafter referred to as POCA in this table)
	<b>04011</b>	<b>Money laundering</b> is committed when any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and who then enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or who then performs any other act in connection with such property, whether it is performed independently or in concert with any other person, that has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest that anyone may have in respect thereof; or who enables or assists any person who has committed or commits an offence, whether in the Republic or elsewhere—to avoid prosecution; or to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence.	Contravention of section 4 of POCA
	<b>040111</b>	Assisting another to benefit from proceeds of unlawful activities by any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities,	Contravention of section 5 of POCA



		and who enters into any agreement with anyone or engages in any arrangement or transaction whereby the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way.	
	<b>040112</b>	Acquisition, possession or use of proceeds of unlawful activities by any person who acquires, uses, or has possession of property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person.	Contravention of section 6 of POCA
<b>SECTION 05</b>	<b>ACTS INVOLVING THE EVASION OF TAXES</b>		
<b>0501</b>	<b>Tax evasion:</b>		
	<b>05011</b>	<b>Evasion of tax and obtaining undue refunds by means of fraud or theft, which is perpetrated by persons with intent to evade or assist another person to evade tax or obtain an undue refund under a tax Act:</b>	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 of the Tax Administration Act.
	<b>050111</b>	Makes or causes or allows to be made, any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true.	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 (a) of the Tax Administration Act.
	<b>050112</b>	Gives a false answer, whether orally or in writing, to a request for information made under the Tax Administration Act, 2011.	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 (b) of the Tax Administration Act.

	<b>050113</b>	Prepares, maintains or authorises the preparation or maintenance of false books of account or other records, or falsifies or authorises the falsification of books of account or other records.	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 (c) of the Tax Administration Act.
	<b>050114</b>	Makes use of, or authorises the use of, fraud or contrivance	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 (d) of the Tax Administration Act.
	<b>050115</b>	Makes any false statement for the purpose of obtaining any refund of or exemption from tax	The common-law offence of fraud, alternatively the statutory offence of a contravention of section 235 (e) of the Tax Administration Act.
	<b>05012</b>	<b>Evasion of duties on goods or to qualify for a refund or drawback</b>	Contravention of section 212(1)(d) of the Customs Duty Act (30 of 2014) (hereafter referred to as the Customs Duty Act)
<b>0502</b>	<b>Smuggling:</b> Importing or exporting prohibited goods, or without paying the duties on dutiable goods; which practice is a fraud on the revenue, and is accordingly restrained by the statutes relating to Customs Control and Custom Duties		
	<b>05021</b>	<b>Offences in relation to failing to clear goods and not being assessed for liability of duties or taxes on dutiable goods.</b>	The common-law offence of fraud, alternatively contravention of section 118(1) or (2) of the Customs Control Act, (31 of 2014) (hereafter referred to as the Customs

			Control Act) r.w. section 19 of the Customs Duty Act.
<b>05022</b>	<b>Offences in relation to importing or exporting prohibited or restricted goods</b>		
	<b>050221</b>	Clearance of prohibited goods	Contravention of section 775(1)(a) r.w. section 802(1)(a) of the Customs Control Act
	<b>050222</b>	Clearance of restricted goods	Contravention of section 784(1)(a) r.w. section 802(1)(a) of the Customs Control Act.
	<b>050223</b>	Collusion or arrangement of whatever nature with any other person inside or outside the Republic to defeat or evade a provision of Chapter 35 of the Customs Control Act, 2014, in relation to any prohibited, restricted or sectorally controlled goods imported or to be imported into, or exported or to be exported from, the Republic.	Contravention of section 802(1)(b) of the Customs Control Act.

(Source: Concept developed and compiled by the researcher)

## CHAPTER 3: COMBATING FINANCIAL CRIME

### 3.1 INTRODUCTION

In March 2011, the OECD concluded that tax crimes, money laundering and other financial crimes could threaten the strategic, political and economic interests of both developed and developing countries (*The launch of the Oslo Dialogue...*, 2011). The OECD warned that these unlawful activities prosper in an environment of secrecy, careless regulation, poor enforcement and, of critical importance to this study, weak inter-agency cooperation (*The launch of the Oslo Dialogue...*, 2011). The OECD opined that to combat such activities requires greater transparency, more strategic intelligence gathering, and improved efforts to harness the capacity of different key investigative agencies to work together to “detect, deter and prosecute these crimes (a Whole-of-Government approach).” (*The launch of the Oslo Dialogue...*, 2011).

There is confusion about what the term combating or to combat crime generally entails. In general, the terms prevention and combating crime are sometimes used interchangeably or analogously. Considering that this research deals with the combating of crime and more explicitly the combating of financial crime, as the topic of the research report suggests, it is of the utmost importance to understand what the concept entails. In this chapter, the meanings of combating crime or to combat crime as well as their components are clarified. The focus then shifts to more explicitly clarifying the concept of combating financial crime.

Despite the clear dangers presented by financial crime, there is no official government policy or strategic plan to harness the capacity of different key investigative agencies to work together by implementing an integrated methodology and multidisciplinary approach to effectively combat financial crime specifically. While agency heads and lawmakers proclaim that investigation activities follow an integrated and multidisciplinary approach, the way that Government operates constrains the implementation of integrated approaches.

A further research objective to address in this chapter is to determine the current situation regarding Government's efforts to combat financial crime. In considering the current state of Government's efforts it is essential to review the policy and legal frameworks providing Government and the investigative agencies with their strategic direction, legal mandate, duties and obligations to combat crime generally, and more specifically regarding financial crime. In making the stated determinations, the researcher intends answering the questions regarding, firstly the current state of inter-agency cooperation, secondly the integration of efforts between the responsible government agencies in combating financial crime, and thirdly what the current situation is, as experienced by investigating officials and practitioners.

This chapter thus considers four aspects related to combating of crime. The first aspect addressed covers conceptualising and defining combating of crime and its components, as it provides the general background and conceptual clarity for the discussion and arguments about the various components of combating financial crime.

The second aspect addressed focuses on conceptualising the combating of financial crime more explicitly. The various facets or components encountered during the combating of financial crime are identified and discussed. The third aspect addressed concerns the legal, policy and strategic framework to combat financial crime. The fourth aspect addressed concerns the current situation regarding cooperation between, the investigative authorities and government agencies responsible for combating financial crime in South Africa, as well as the integration of their efforts.

### **3.2 COMBATING CRIME**

The concept combating of crime includes the concepts prevention, investigation, detection and intelligence, and forms an essential part of this research project. It therefore makes sense to conceptualise the meanings of combating of crime and each of its components before advancing to a discussion of the combating of financial crime and its components. According to Burger (2007:9), the term

combating of crime is frequently used. As evident from the discussions in Chapter 2, the term combating is just as often used regarding financial crime.

### **3.2.1 Conceptualising the combating of crime**

According to Hough and Du Plessis (2003:8), combating of crime used in a generic sense can be used to “denote the totality of efforts at different levels to reduce, contain and manage crime in South African society, inclusive of crime prevention in the broader and the combating of crime in the narrower sense”. Hough and Du Plessis (2003:8) therefore suggest that cognisance should be taken of the context within which the relevant concepts are used.

Burger (2007:147) suggests that the term crime combating is an overarching term or concept that encompasses the terms crime prevention and policing. Burger (2007:10) through his research adopted the following definition for the concept crime combating:

Crime combating entails any lawful activity aimed at reducing crime, whether it refers to measures aimed at the prevention of crime, or whether it is an activity associated with proactive or reactive policing.

### **3.2.2 Nature and scope of combating crime**

Burger (2007:9) states that the term combating of crime is often applied inconsistently, and users are frequently confused about its correct meaning. Burger (2007:9) asserts that the term combating is sometimes used when the term prevention of crime is intended and vice versa. Hough and Du Plessis (2003:8) assert that the terminology creates confusion, especially the use of and distinction between combating of crime and crime prevention. Hough and Du Plessis (2003:8) suggest that combating of crime is often used in the narrower, short-term, departmental and operational context whereas crime prevention denotes a broader, long-term national and strategic approach within a social context.

Burger (2007:10) maintains that it is "... obvious that combating is much more than prevention alone." and that it should be construed to include activities such as crime prevention and policing. According to Burger (2007:10), this means that crime combating could be regarded as an umbrella term for all kinds of legal activities "aimed at fighting crime, whether it is to prevent, reduce control deter or to solve crime, and may also include policing activities such as law enforcement, the maintenance of public order and visible policing." Burger (2007:10) convincingly argues that the terms crime combating, and crime fighting can be used interchangeably and phrases such as tackling crime has an analogous meaning.

According to section 205(3) of the Constitution of the RSA, the object of the police is "to prevent, combat and investigate crime". It appears that the intention of the legislator is that prevention and combating must be treated as separate concepts and that SAPS has a duty in respect of each of those functions separately. Burger (2007:10), however, warns that in a study of official SAPS documents, he encountered what he refers to as "terminological confusion" with regard to the use of the terms crime combating and crime prevention. Burger (2007:15) further states that the use of the word combat in addition to the use of the word prevent, as encountered in section 205(3) of the Constitution of the RSA, implies a different meaning of the two concepts, but unfortunately neither of them is explained.

Burger (2007:10) further suggests that crime prevention is always part of the broader concept of crime combating, while crime combating, on the other hand, can never be part of crime prevention. Against the background of the above discussion and to eliminate the "terminological confusion" inherent in the wording of section 205(3) of the Constitution of the Republic of South Africa (108 of 1996) (hereafter referred to as the 1996 Constitution), Burger (2007:15) proposes that it makes more sense "to clearly separate functions and objects in the tasking of the police".

A study of the South African Police Service Act (68 of 1995) (hereafter referred to as the South African Police Service Act) indicates that where a reference is

made to either prevention or combating of crime, it does so in the context of referring to two different concepts. For example, in the preamble to the South African Police Service Act, the following is stated:

AND WHEREAS there is a need to provide for a Directorate [referring to the Directorate for Priority Crime Investigation] in the Service [the SAPS] that is dedicated to the prevention, investigation and combating of national priority offences, .....

In respect of the provisions of the South African Police Service Act, it is then also implied, as in the 1996 Constitution that the legislator intended that prevention and combating of crime be treated as two separate concepts and that they are therefore apparently conceptually different. Where the interchangeable use by the SAPS of the concepts combating of crime and crime prevention is encountered in official literature referred to in this study, the reader will be alerted to that. This “terminological confusion”, where it exists, may cause some overlapping in the discussion that follows, when referring to SAPS’ duty to combat and prevent crime. Not unlike the 1996 Constitution, the South African Police Service Act does not provide a definition or interpretation regarding the meaning of the terms combating or prevention of crime.

The main themes emerging from the participants’ answers were identified by using a content analysis to interpret the response to question 3.1 in the interview schedule, namely to “Define the concept combating of crime or to combat crime in your own words”. These themes are presented in the frequency table, Table 3.1 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question. Others provided a single-construct definition according to their understanding of the concept.

The frequency of the themes, as presented in Table 3.1 (paragraph 3.11) by the participants defining the meanings of combating of crime or to combat crime in



their own words, expressed as a percentage, is graphically depicted in Figure 3.1 (paragraph 3.11).

The low frequency of themes recurring in the answers provided by participants is not adequately consistent to enable the researcher to develop a definitive functional definition of the concepts combating of or to combat crime according to the participants' understanding. The relatively large number of themes (20) identified from the answers provided by the participants is the result of the term combating of crime often being applied inconsistently, and because users are often confused about its correct meaning, as stated by Burger (2007:9) in the discussion of the literature.

The above-mentioned statement does, however, not imply that the themes presented by the participants do not correspond to the themes emerging from the literature. In fact, the following themes identified in the answers provided by the participants are broadly consistent, albeit low in frequency, with the narrative about the nature and scope of crime combating that emerged from the literature referenced in the discussion in paragraph 3.2:

- It includes measures to prevent crime (30% frequency of themes)
- Combating of crime includes a whole package (10% frequency of themes) of activities
- Concept includes various actions (20% frequency of themes)
- Synonymous with the concept of fighting crime (20% frequency of themes)
- Includes proactive and reactive measures (10% frequency of themes)
- It includes investigation measures (40% frequency of themes)
- It includes detection of crime (20% frequency of terms)

This is an indication that the participants are aware that the term combating of crime should be construed to include a host of activities “aimed at fighting crime, whether it is to prevent, reduce, control, deter or to solve crime”, as suggested by Burger (2007:10). The above-mentioned themes provide an insight into how the participants understand the concept combating crime.

### **3.3 COMPONENTS OF COMBATING CRIME**

In this research, the concepts of crime combating (or to combat crime) and prevention of crime will be treated as two separate concepts. Crime combating (or to combat crime) is therefore viewed as an overarching term or concept, inclusive of the terms prevention, detection, intelligence and the investigation of crime in accordance with the guidance provided in the literature. In this chapter, the focus is therefore on the following components of combating crime and later in more specific terms on the components of crime combating in relation to financial crime:

- Crime prevention
- Investigation of crime
- Crime detection
- Crime intelligence

#### **3.3.1 Crime prevention**

In paragraph 3.2.2, the ill-considered use of the terms combating and prevention of crime, as alerted to by Burger (2007:9), was established. It is, therefore, essential to provide additional information devoted to clarifying the meaning of the concept prevention of crime as a separate component of the broader concept, namely combating of crime.

According to Nel (2000:4), the term crime prevention means different things to different people. Burger (2007:12) asserts that defining crime prevention will always be problematic. The following definition of crime prevention, offered by Nel (2000:5,) aids with understanding the concept:

Crime prevention involves responding to a few priority problems, using targeted multi-agency programmes. These programmes aim to address the causes of and opportunities for crime problems. They should also enforce laws, ensure that order is maintained in the day to day activities of the community and reduce public fear of crime.

The following definitions for crime prevention found in the literature are also presented to assist with understanding the concept of crime prevention:

- a. Lab (2014:27) defines crime prevention as, “[a]ny action designed to reduce the actual level of crime and/or perceived fear of crime”. Lab (2014:28) further explains that crime prevention noticeably denotes an attempt to eliminate crime either prior to the initial occurrence or before further activity can take place. Lab (2014:27) affirms that crime prevention actions are not confined to the efforts of those involved in the criminal justice system and that they could include activities by individuals and groups in both the public and the private sector.
- b. According to Gooch and Williams (2007:94), Crime prevention is: “The act of preventing the commission of a criminal offence by both reducing opportunity for offending and deterrence.”
- c. The UNODC Guidelines for the Prevention of Crime (*ECOSOC Resolution 2002/13 ...*, 2002) defines prevention of crime as comprising “strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes”.

The UNODC Guidelines for the Prevention of Crime (*ECOSOC Resolution 2002/13 ...*, 2002) asserts that crime prevention encompasses a wide range of approaches, including, *inter alia*, those that “[p]revent the occurrence of crimes by reducing opportunities, increasing risks of being apprehended and minimising benefits, including through environmental design, and by providing assistance and information to potential and actual victims referred to as situational crime prevention. Gottschalk (2010d:214) maintains that some theorists believe that crime can be reduced by using deterrents such as crime prevention, arguing that the goal of crime prevention assumes that criminals or potential criminals will think carefully before committing a crime if the likelihood of getting caught and/or the fear of swift and severe punishment is present.

According to the UNODC, Guidelines for the Prevention of Crime (*ECOSOC Resolution 2002/13 ...*, 2002), “there is clear evidence that well-planned crime prevention strategies not only prevent crime and victimisation but also promote community safety and contribute to the sustainable development of countries.” The contribution of crime prevention to the sustainable development of countries is an important factor in the context of this research, where it is stated in paragraph 2.1 that financial crime has a particularly damaging impact on developing countries such as South Africa, as it deprives them of resources that could otherwise have been used for its long-term development (OECD, 2012a:5).

Welsh and Farrington (2012:11) assert that situational prevention is separated from other crime prevention strategies by specifically focusing on the setting or place in which criminal acts take place, as well as its crime-specific focus. Welsh and Farrington (2012:11) refer to the notion by Clarke (2009), stating that situational prevention is concerned with, among other things, large-scale systems, such as improvements in the banking system to reduce money laundering. In the context of this research, situational prevention is an important concept, as it relates to the type of approach, which is probably the most suitable approach to the prevention of financial crime.

The main themes emerging from the participants’ answers were identified by using a content analysis for interpreting the response to question 3.2 in the interview schedule, “Define the concept crime prevention in your own words”. These themes are presented in the frequency table, Table 3.2 (paragraph 3.11). This was an open-ended question to which participants could provide their own answers, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question. Others provided a single-construct definition according to their understanding of the concept. The frequency of the themes, as presented in Table 3.2 (paragraph 3.11) by the participants in their own words, with regard to defining the meaning of crime prevention, and expressed as a percentage, is graphically depicted in Figure 3.2 (paragraph 3.11).

The low frequency of themes recurring in the answers provided by participants is not adequately consistent to enable the researcher to develop a definitive functional definition of the concept crime prevention according to the participants' understanding. The relatively large number of themes (16 themes) identified from the answers provided by the participants coupled with the low frequency that accompanies 15 of the themes presented indicates that there is no common definitive understanding of the concept of crime prevention among the participants.

The feedback from the participants is broadly consistent with the features emerging from the literature in that the term crime prevention means different things to different people (Nel, 2000:4) and that defining crime prevention will always be problematic (Burger, 2007:12).

This does not, however, imply that the themes presented by the participants do not correspond to the focus regarding crime prevention in the literature, namely that crime prevention includes proactive measures to reduce the opportunity for crime or of crime occurring. As can be seen from Figure 3.2 (paragraph 3.11), there was a 60% frequency of the theme "Proactive measures to reduce the opportunity for crime (e.g., fraud awareness, due diligence, governance measures)" presented by the participants. The high frequency of this theme occurring is an indication that by and large there is a common understanding by the participants of the broad objectives of crime prevention consistent with the literature.

### **3.3.2 Investigation of crime**

Investigation of crime is a very important function of the police (Olivier, 1997:227) and one of the activities associated with combating of crime (Burger, 2007:10). Olivier (1997:228) affirms that effective investigation of crime is a useful technique to prevent crime and deter criminals from committing crime.

Benson et al. (2015:19) state that Criminal Investigation can be defined as:

[A] systematic, organised, thinking, reasoning, examination and analysis process designed to search for the truth, during which an inquiry and thorough analysis is conducted of all types of crimes or unlawful acts, to legally gather information and evidence using investigation methods and techniques guided by the applicable legislative framework for bringing a criminal case before a court of law and ensuring a successful prosecution.

According to Meyer, Stumptner, Casanovas, and De Koker (2017:1), investigations conducted by law enforcement agencies generally follow a logical, recurring process of information collection, assessment, investigation planning, execution, and preparation of brief of evidence, where each step either produces new information or relies on information that was collected earlier in the investigation process. Innes (2003:176) states that the investigation process can be viewed as follows: "Crime investigations are composed of a number of discrete yet linked investigative actions, which are directed towards the production of knowledge about how and why a crime or transgression was committed."

Stelfox (2009:2) asserts that the objectives of crime investigation have changed. He argues that previously its sole purpose was to bring offenders to justice. Investigative practices were formulated as a result of the requirement to identify suspects and gather evidence to support prosecutions. Stelfox (2009:2) states that the criminal landscape has since changed. Now, asset forfeiture, intelligence gathering, disruption of criminal networks, and taxing the proceeds of crime also must be considered, and are fundamental objectives of the criminal investigation process (Stelfox, 2009:2). The investigation of crime becomes a necessity when laws and police patrols fail as deterrents, and the police do not apprehend offenders soon after a crime has been committed (Folley in Olivier, 1997:227). Depending on the legal mandate and powers to investigate, the investigation approach followed by other statutory investigative agencies may differ from the approach followed by the SAPS.

Using a content analysis for interpreting the response to the question (question 3.3 in the interview schedule) “Define the concept investigation of crime in your own words”, the main themes emerging from the participants’ answers were identified. These themes are presented in the frequency table, Table 3.3 (paragraph 3.11). This was an open-ended question to which the participants could provide their own answers, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question. Others provided a single-construct definition according to their understanding of the concept. The frequency of the themes, as presented in Table 3.3 (paragraph 3.11) by the participants, as regards defining the meaning of investigation of crime in their own words, expressed as a percentage, is graphically illustrated in Figure 3.3 (paragraph 3.11).

The responses obtained from the participants offer a large variety of themes (23) at levels of frequency ranging from 10% to 70%. The three themes at the peak of frequency descending from high to low are the following:

- Obtaining/collecting/gathering of evidence (60% frequency of themes)
- For purposes of criminal prosecution (40% frequency of themes)
- For court purposes (30% frequency of themes)

Using the three themes at the highest level of recurrence enabled the researcher to offer the following high-level definition to express the participants’ understanding of criminal investigation:

Criminal investigation concerns the obtaining, collecting and gathering of evidence for court purposes, including for use in criminal proceedings.

The researcher discovered no meaningful categories or ideas that had emerged from the themes presented by the participants in response to the question (question 3.3 in the interview schedule). The formulated high-level definition of investigation of crime offered is commensurate with some of the focus areas found in the definitions of criminal investigation presented in the literature but not

nearly as pronounced, which indicates that the participants have a broad understanding of the meaning of investigation of crime and its derivatives.

### **3.3.3 Crime detection**

Crime detection can be regarded as one of the activities associated with the combating of crime (Burger 2007:10). Newburn (2007:1) asserts that the police have many functions and responsibilities, and he also states that understanding the balance between these has led to considerable academic debate. Newburn (2007:1), however, points out that in the mind of the public, over and above the fact that the police provide reassurance, there is no doubt that prevention, investigation and detection of crime are the central part of the police mandate. This assertion by Newburn confirms what was stated by Hough and Du Plessis (2003:8) when they refer to a “totality of efforts”, where such efforts are likely to include the detection of crime.

The SAPS’ strategic plan in paragraph 4.3 regarding crime detection, states as follows under the heading “National Crime Detection Strategic Framework” (*Strategic Plan...*, 2014b:7):

The detection of crime is a crucial element of both the CJS and the SAPS as a main stakeholder. While mainly driven by the investigative process, crime detection is not a singular activity performed solely by the investigation capability. It involves the [immense] operational capabilities vastly [sic.] within the SAPS. This process starts from the moment the SAPS becomes aware of a crime, whether the latter is reported to the police or otherwise discovered by the police.

The Crime Detection Strategy will, therefore, involve all relevant internal police capabilities, both operational and operational [sic.] support but also the establishment of partnerships with other stakeholders who contribute directly to crime detection as an integral part of criminal justice.



These *inter alia* include the Department of Justice and Correctional Services, the National Prosecuting Authority, the business sector and other private entities, with a specific emphasis on individuals who are the victims of crime. These external partnerships will contribute towards an integrated approach to safety from a crime detection perspective.

In the above-stated intent communicated in the SAPS strategic plan (*Strategic Plan ...*, 2014b) regarding detection of crime, the role and contribution of the other stakeholders “who contribute directly to crime detection as an integral part of criminal justice”, i.e. “the Department of Justice and Correctional Services, the National Prosecuting Authority...”, are unclear. For obvious reasons, the Department of Correctional Services sits at the very end of the criminal justice value chain. The role of the Department of Correctional Services regarding detection of crime is a rather improbable reference in the absence of any clarification. The role and responsibility of the Department of Justice and the NPA in the detection of crime, as suggested by SAPS in its strategic plan, are also just as inconceivable, without any explanation offered of how they are in practice supposed to contribute to detection of crime towards “... an integrated approach to safety from a crime detection perspective” (*Strategic Plan ...*, 2014b). The preceding analysis agrees with that of Burger (2007:10), who states that in a study of official SAPS documents he encountered “terminological confusion”.

The following definitions provided in the sources below aid in conceptualising crime detection or detection of crime:

- a. Travis and Edwards (2015:65) define detection “[a]s the discovery of crime or probable crime by the police”.
- b. According to the Oxford Dictionary, “Crime detection” is the process of uncovering criminal activity (or verifying reported crime) and acquiring evidence in order to identify and prosecute its perpetrators (*Oxford Dictionary*, 2018).
- c. According to Britannica Academic, in most countries the detection of crime is the responsibility of the police, though special law enforcement agencies may be responsible for the discovery of particular types of crime, e.g.

customs agencies may be assigned to deal with combating smuggling and related customs offences (*Britannica Academic*, 2018).

According to *Britannica Academic*, “detection of crime falls into three distinguishable phases: the discovery that a crime has been committed, the identification of a suspect, and the collection of sufficient evidence to indict the suspect before a court (*Britannica Academic ...*, 2018). According to Travis and Edwards (2015:165), detection of crime is one of the principal decision points in the CJS that occurs during the law enforcement process. The other two are investigation and arrest (Travis & Edwards, 2015:165).

Travis and Edwards (2015:165) maintain that the detection of crime occurs in two ways, either proactively or reactively. Reactive crime detection occurs when the police become aware of a crime through receipt of a complaint. Others come to the attention of the police through the actions of related agencies and the like. These occurrences can be referred to as “reactive detection” because in these instances the police learn about the commissioning of the offence from a complaint. Some crimes are detected by the police proactively as a result of undercover operations or observations by officers on patrol (Travis & Edwards, 2015:165).

Using the definitions for crime detection provided in the literature, it was possible for the researcher to arrive at the following practical definition of detection of crime:

Crime detection is a pro- or reactive process, during which a crime or a possible crime is detected or uncovered by the police or law enforcement via the receipt of a complaint, or by an indication of the commissioning of an offence or possible offence requiring verification, investigation and identification of the perpetrator for prosecution.

Using a content analysis for interpreting the response to the request (question 3.4 in the interview schedule) to “Define the concept crime detection in your own

words”, the main themes emerging from the participants’ answers were identified. These themes are presented in the frequency table, Table 3.4 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question. Others provided a single-construct definition in accordance with their understanding of the concept. The frequency of the themes, as presented in Table 3.4 (paragraph 3.11) as a result of the participants defining the meaning of crime detection in their own words, expressed as a percentage, is graphically portrayed in Figure 3.4 (paragraph 3.11).

The frequency of recurrent themes presented in the answers provided by the participants (question 3.4 in the interview schedule) is not sufficiently conclusive to enable the researcher to develop a definitive functional definition of the concept crime detection in accordance with the participants’ understanding. The researcher discovered no new expressive categories or ideas that had emerged from the themes presented by the participants in response to the question.

The following recurrent themes presented by the participants intersect with the focus emerging from the definitions and discussions of detection of crime in the literature:

- Processes in place to detect crime (40% frequency of themes)
- Uncovering or discovering crime (10% frequency of themes)
- Identification of a suspect (10% frequency of themes)
- Proactive process (20% frequency of themes)
- Reactive response to crime (10% frequency of themes)

#### **3.3.4 Crime intelligence**

Mashiloane (2014:2) maintains that as a police officer attached to the Crime Intelligence Unit of the SAPS, he believes that crime intelligence plays a pivotal role in the prevention of crime, subject to its proper management and use. Mashiloane (2014:2) states that if crime intelligence is correctly applied in policing, huge successes in crime prevention and combating can be achieved.

According to these affirmations, crime intelligence is viewed as an activity associated with combating of crime.

Gottschalk (2009:176), quoting Brown et al. (2004), explains that intelligence was traditionally understood to mean “information from criminals about criminal activity by a covert source”. Gottschalk asserts that in present times, intelligence is viewed as a “systematic approach to collecting information with the purpose of tracking and predicting crime to improve law enforcement”. Mashiloane (2014:53) cites Zinn (2010:120), who defines crime intelligence as “information about crime that has been systematically processed into a form that can be readily accessed and used to track down criminals and combat crime.” In his inaugural lecture, Zinn (2011:13) stated, “[t]he essence of effectively combating crime is, inter alia, the availability of reliable and accurate information on crime in the form of crime intelligence.” It is therefore evident that crime intelligence is a component essential to combating crime. Zinn (2011:13) further explained that “[c]rime intelligence is based on crime information that has been properly collected, recorded, analysed, interpreted, verified and processed.”

According to Lowe (2017:475), the police or law enforcement in general, from a preventive and proactive investigations perspective, seeks to identify, prevent or gather evidence of future crime (Lowe, 2017:476). In this regard, police mostly rely on predictive and actionable intelligence. Lowe (2017:476) posits that information is gathered from human sources, making use of intelligence-gathering techniques such as:

- intrusive collection techniques;
- physical surveillance;
- undercover deployment of officers.

Analysing and matching information with information from other sources, such as Suspicious Activity Reports (SARs), available from the financial sector or Financial Intelligence Units (FIUs), provides verification to identify the who, what and where of future crime (Lowe, 2017:476). Lowe (2017:476) asserts that processed and assessed intelligence supports the deployment of resources. It

supports making use of powers under judicial supervision to pursue investigation objectives, with the ultimate objective to discover and present evidence to make arrests. Lowe (2017:476) suggests that police are increasingly seeking to rely more on huge amounts of data and the use of data analytics to process and match information in order to build a richer, more accurate picture, and to predict suspicious activity, with the ultimate objective of making arrests. To accomplish this, police and law enforcement generally require accurate intelligence that predicts suspicious activity.

Mashiloane (2014:53), referring to the definitions by Zinn and the National Strategic Intelligence Act (39 of 1994) (hereafter referred to as the National Strategic Intelligence Act), asserts that it should be clear that crime intelligence is intelligence about criminal activities. Mashiloane (2014:53) also states that crime intelligence is generated to prevent, combat, or investigate criminal activities, and concludes his conceptualisation of crime intelligence by stating that intelligence products that are used to prevent, combat or investigate crime are the end-results of items of information that are collected from various sources. In terms of the National Strategic Intelligence Act, “crime intelligence” means intelligence used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders”.

In explaining the treatment of the information gathered, Gottschalk (2009:176) states that analysts investigate who the crimes are being perpetrated by and “how, when, where, and why” they are perpetrated. Analysts, using information obtained, and then provide recommendations for how to stop and combat the offences, producing profiles of crime problems and individual targets, and providing both strategic and tactical assessments within the parameters set by a police force (Gottschalk, 2009:177). This statement is broadly in line with Bacarese and Critchell (2012:321) who, when referring to the flow of information and how it is evaluated, analysed and disseminated to law enforcement agencies, conclude that the challenge is to package the product in such a manner that it “provides meaningful and value-added direction to law enforcement agencies about complex criminal activity...”.

Using a content analysis for interpreting the response to question 3.5 in the interview schedule, “Define the concept crime intelligence in your own words”; the main themes emerging from the participant’s answers were identified. These themes are presented in the frequency table, Table 3.5 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question. Others provided a single-construct definition according to their understanding of the concept. Table 3.5 (paragraph 3.11) shows the themes regarding the meaning of crime intelligence, as defined by the participants in their own words. The frequency of the themes is graphically depicted in Figure 3.5 (paragraph 3.11) and expressed as a percentage.

A wide variety of themes (28) emerged from the feedback from the participants in their response to defining the term crime intelligence (question 3.5 in the interview schedule). The low frequency of recurring themes presented in the answers provided by participants is insufficient to enable the researcher to develop a definitive, functional definition of the concept crime intelligence in accordance with the participants’ understanding. The researcher did not discover any new or significant categories or ideas that had emerged from the themes presented by the participants in response to the question.

The following themes presented by the participants broadly correspond to the themes emerging from the definitions and discussion regarding crime intelligence in the literature:

- Collecting information about criminal activity (70% frequency of themes)
- Analysing information (20% frequency of themes)
- Information to avert crime (20% frequency of themes)
- Information to advance criminal investigation (20% frequency of themes)

- Identification, analysis, processing and dissemination of information (30% frequency)
- Ensuring that effective policing can take place (10% frequency of themes)
- Assisting with the gathering of information to investigate crime (10% frequency of themes)

There is also some overlapping between the themes shown above. The researcher's analysis shows that the participants do not have a common, definitive understanding of the meaning of the concept crime intelligence in accordance with the literature but only a broad or generic understanding.

### **3.4 THE LEGISLATIVE FRAMEWORK FOR COMBATING CRIME**

For reasons of constitutional oversight, legal compliance and lawfulness, it is important that activities aimed at prevention, combating and investigation of crime generally comply with the authority, requirements and legislation. This ensures that any procedural aspect that may render any activities in this regard unconstitutional or inconstant with the law is circumvented.

#### **3.4.1 The 1996 Constitution of the Republic of South Africa**

The 1996 Constitution is superior to Parliament and is the yardstick by which all other laws are judged. It applies to all organs of Government - including parliament, the presidency, the police force, the army and the public service (*What is Constitutional Supremacy? ...*, 2016). The supreme status of the 1996 Constitution is set out early in the text. Section 2 of Chapter 1 of the 1996 Constitution - which deals with founding provisions - is a crucial one. It is entitled "Supremacy of Constitution" and states: "This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

Section 199(1) of the 1996 Constitution provides for the establishment of the security services. The 1996 Constitution makes provision for prevention, combating or investigation of all crime generally. A study of the 1996 Constitution

reveals that no specific provision is made for the treatment of or combating of financial crime, neither does it entrust this duty to any specific entity. The 1996 Constitution does not make any provision that excludes the SAPS from preventing, combating or investigating financial crime.

Section 199(1) of the Constitution of the RSA, 1996 (the Constitution of the RSA) makes provision for the establishment of the security services of the RSA, including a single police service. It provides as follows:

**199. Establishment, structuring and conduct of security services:** (1) The security services of the Republic consist of a single defence force, a single police service and any intelligence services established in terms of the Constitution.

Section 205(3) of the Constitution of the RSA makes provision for the objects of the police service and states as follows:

(3) The objects of the police service are to **prevent, combat and investigate crime**, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law. (Emphasis added by researcher.)

The South African Police Service (*Constitutional Framework ...*, 2014a) summarises the responsibility of the SAPS in terms of the provisions of section 205(3) of the Constitution of the RSA as follows:

- Prevent, combat and investigate crime.
- Maintain public order.
- Protect and secure the inhabitants of the Republic and their property, and uphold and enforce the law.
- Create a safe and secure environment for all people in South Africa
- Prevent anything that may threaten the safety or security of any community.
- Investigate any crimes that threaten the safety or security of any community.



- Ensure that criminals are brought to justice.
- Participate in efforts to address the causes of crime.

### 3.4.2 The South African Police Service Act

Effect was given to the requirement in section 199 of the Constitution for the establishment of a police service through the enactment of the South African Police Service Act. As already stated above, the SAPS is governed by, among other things, section 205(3) of the 1996 Constitution of the RSA that stipulates that the SAPS (*Constitutional Framework ...*, 2014a) has, *inter alia*, a responsibility to prevent, combat and investigate crime. Chapter 6A of the South African Police Service Act provides for the establishment of the DPCI. Section 17B of the South African Police Service Act provides that in the establishment of the DPCI, recognition should be given to the need to establish a directorate in the police service to, *inter alia*, “[p]revent, combat and investigate national priority offences, in particular, serious organised crime, serious commercial crime and serious corruption.” This requirement is given effect in section 17D (1) of the South African Police Service Act, which refers to the functions of the DPCI, as follows:

**17D. Functions of Directorate** — (1) The functions of the Directorate are to prevent, combat and investigate—

(a) national priority offences, which in the opinion of the National Head of the Directorate need to be addressed by the Directorate, subject to any policy guidelines issued by the Minister and approved by Parliament;

(aA) selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); and

(b) any other offence or category of offences referred to it from time to time by the National Commissioner, subject to any policy guidelines issued by the Minister and approved by Parliament.

Section 16 of the South African Police Service Act provides for “National prevention and investigation of crime”. In instances of crime that require “national prevention”, or crimes that require “specialised skills in the prevention thereof”, Chapter 6 of the South African Police Service Act provides for the establishment of the Organised Crime Unit to fulfil this role. From a constitutional perspective, the SAPS is the primary government agency charged with a constitutional duty and the powers to combat all crimes, encompassing the prevention and investigation of all types of crime, including financial crime.

### **3.5 POLICY FRAMEWORK FOR COMBATING CRIME**

Crime prevention has become an increasingly important component of many national strategies for public safety and security (UNODC, 2010:9). One of the most important aspects of investing in crime prevention policies is that they could result in significant reductions in the costs of criminal justice and other public services, and bring considerable benefits to society (UNODC, 2010:3). With regard to crime prevention, the UNODC highlights the importance of Government leadership in developing strategic policies and facilitating their implementation (UNODC, 2010:3). It has been observed that the SAPS have a primary statutory duty to prevent crime, i.e. prevent, combat and investigate crime (*Constitutional Framework ...*, 2014a). It is not uncommon for the Government or the police or one of the non-statutory bodies somehow involved in policing, crime prevention or the criminal justice system to publish strategies, policies or plans to combat crime. In Section 3.5.1 below, Government strategies, plans or policies are identified and discussed in detail.

#### **3.5.1 National Crime Combating Strategy**

Burger (2007:116) states that the SAPS developed a Crime Combating Strategy, resulting from a “strategic focus”, which was first expressed in an article in the SAPS Bulletin, entitled “The new strategic focus of the SA Police Service for 2000-2003”. The strategy that was developed was named the National Crime Combating Strategy (NCCS), designed to focus on four operational and two organisational priorities (Burger, 2007:116). The National Crime Combating

Strategy, as its name suggests, was intended to be functional from 2000 to 2003 only.

### **3.5.2 National Crime Prevention Strategy**

After the transition to democracy, it was realised that South Africa needed a new paradigm for enhancing safety and security that would, *inter alia*, change the emphasis from an exclusive focus on crime control to include crime prevention (Omar, 2012:4). An approach to change the emphasis from an exclusive focus on crime control to one that includes crime prevention was first articulated in the National Crime Prevention Strategy (NCPS) in 1996 (Omar, 2012:3). According to a South African Government publication entitled *National Crime Prevention Strategy: Summary (NCPS: Summary ..., 2016)*, the NCPS is a strategy document prepared by an interdepartmental strategy team comprising the Departments of Correctional Services, Defence, Intelligence, Justice, Safety and Security, and Welfare. The NCPS was initiated by Cabinet in March 1995. The strategy is the result of an extensive process of research and analysis, and has drawn on international experiences (*NCPS: Summary ..., 2016*). This strategy is based on a fundamentally new approach by Government. In particular, it requires the development of wider responsibility for crime prevention and a shift in emphasis from reactive "crime control"; which deploys most resources towards responding after crimes have already been committed, towards proactive "crime prevention", aimed at preventing crime from occurring at all (*NCPS: Summary ..., 2016*). According to Hough and Du Plessis (2003:6-7, 181), the NCPS refers to a long-term, interdepartmental strategy at a national level, involving various government departments and civil society, and containing a mixture of both policy and strategy. The strategy seeks to establish a comprehensive, integrated policy framework to address South Africa's crime problems and to develop national crime prevention programmes (Hough & Du Plessis, 2003:182). Hough and Du Plessis (2003:7) further state that the NCPS is not a comprehensive national strategy but a national crime prevention strategy. The NCPS, according to Hough and Du Plessis (2003:9), has lost momentum and has become latent as a strategy.

### **3.5.3 White Paper on Safety and Security**

A White Paper on Safety and Security was published by the Civilian Secretariat for the SAPS in 2016 (White Paper on Safety and Security, 2016b). The Paper supports the approaches adopted in the National Development Plan and Integrated Social Crime Prevention Strategy. The objectives of the Paper are, among other things, to provide an overarching policy for safety and prevention of crime and violence (White Paper on Safety and Security, 2016b:7). The Paper confirms the need for an integrated approach involving multiple stakeholders from communities, civil society and all spheres of Government to, among other things, achieve a crime-free South Africa (White Paper on Safety and Security, 2016b:31). The national Government is tasked with establishing a functional mechanism that would oversee the implementation of the White Paper (Kruger, Lancaster, Landman, Liebermann, Louw & Robertshaw, 2016:12).

### **3.5.4 White Paper on Policing**

A White Paper on Policing was published by the Civilian Secretariat for Police Service in 2016 (South Africa, 2016a). The Paper provides insight into the principles and approaches that will probably form the foundation and guide Government and, more explicitly, the role, approaches and responsibilities of the SAPS as the leading agency regarding the combating of crime generally (South Africa, 2016a).

In a speech by the Minister of Police, Mr Fikile Mbalula, MP, to mark the event of outlining the Ministry of Police's Strategic Plan for the period 2017 – 2019, Mr Mbalula stated that for the SAPS to succeed in the fight against crime, and to ensure effective crime prevention, the SAPS needs a comprehensive partnership strategy to mobilise all role-players and stakeholders, to strengthen service delivery by the police service, and to ensure the safety and security of communities. Mr Mbalula explained that such a partnership strategy must be underpinned by the following themes, derived from the White Paper on Safety and Security (*Minister of Police's Press Conference ...*, 2017):

- Effective CJS
- Early intervention to prevent crime and violence, and promote safety

- Victim support
- Effective and integrated service delivery for safety, security, and violence and crime prevention
- Safety through environmental design
- Active public and community participation.

The minister referred to the following additional actions in crime prevention (*Minister of Police's Press Conference ...*, 2017):

- Identifying and concluding Memoranda of Agreement (MoAs) with strategic stakeholders in the fight against crime
- Enhancing stakeholders and community participation in safety and crime prevention programmes through izimbizo, work groups, Community Safety Forums (CSFs) and Community Policing Forums (CPFs)
- Organising and facilitating provincial and national dialogue conferences to deliberate on combating crime and making our community safer
- Strengthening school safety committees and forums to prevent crime and violence at schools and higher learning institutions.

### **3.5.5 South African Police Service Strategic Plan**

The SAPS annually publishes a strategic plan, which Burger (2007:125) asserts is nothing but a continuation of the written police plans in another form and that cover longer periods. For this research, reference will be made only to the current published SAPS Strategic Plan, covering the period 2014 – 2019 (*Strategic Plan 2014– 2019 ...*, 2014b). The current SAPS strategic plan, in respect of combating of crime states as follows in paragraph 6.1 on page 14 (*Strategic Plan 2014 – 2019 ...*, 2014b under the heading “Operational Strategic Priorities”):

#### **Crime Prevention**

Building safety using an integrated approach.

The reduction of contact crime such as murders and aggravated robberies remains a challenge, specifically where vulnerable groups such as women, children, people with disabilities and the elderly are involved. Given the prevailing socio-economic conditions, the Department has identified the need to develop an integrated approach in the combating of crime. This has to manifest in the implementation of various crime combating strategies to address specific elements of contact crime.

The above quotation, published under the heading “Crime Prevention”, followed by a statement of strategic intent, based on combating of crime, underscores the statement by Burger (2007:128), when he asserts that “It is not surprising that the police, despite their apparent understanding of their role in crime prevention, continue to make confusing reference to the concept, both in terms of terminology and in practice”. Although the above excerpt refers to contact crimes, the reference to “various crime combating strategies” is noticeable. Without any reference to what the elements are and what the strategies entail, it is unclear why a multitude of crime-combating strategies are required to combat one form of crime.

### **3.6 LEGISLATIVE MANDATES FOR COMBATING CRIME**

With regard to the provisions of the Constitution and the South African Police Service Act, as referred to above, the SAPS is mandated to combat all crime generally in South Africa, irrespective of whether the concepts of crime combating, and crime prevention are understood to be separate concepts or used interchangeably. In paragraph 4.2 of the SAPS Strategic Plan 2014 – 2019, under the heading “Legislative Mandate” it is stated in no uncertain terms that “the SAPS is responsible for preventing, combating and investigating any crime” (*Strategic Plan 2014 – 2019 ...*, 2014b).

According to the UNODC Guidelines for the Prevention of Crime (*ECOSOC Resolution 2002/13 ...*, 2002), one of the basic principles of crime prevention is that:

Cooperation/partnerships should be an integral part of effective crime prevention, given the wide-ranging nature of the causes of crime and the skills and responsibilities required to address them. This includes partnerships working across ministries and between authorities, community organisations, non-governmental organisations, the business sector and private citizens.

The UNODC Guidelines for the Prevention of Crime (*ECOSOC Resolution 2002/13 ...*, 2002) recommends that “governments should include prevention as a permanent part of their structures and programmes for controlling crime, ensuring that clear responsibilities and goals exist within government for the organisation of crime prevention, ...”. The statutory and legal framework providing for the establishment and functions of several government departments, agencies and institutions with the responsibility or at least some responsibility regarding the prevention of crime, in general, is discussed below.

### **3.6.1 The South African Police Service**

In describing SAPS’ legislative mandate in its strategic plan for 2014 - 2019 (*Strategic Plan 2014 – 2019 ...*, 2014b), the SAPS pronounce that “[t]he SAPS is responsible for preventing, combating and investigating any crime.”

As already stated above, the SAPS is governed by Chapter 11 of the Constitution, which stipulates that the SAPS (*Constitutional Framework ...*, 2016) has, *inter alia*, a responsibility to prevent, combat and investigate crime. In the discussion about the statutory duties of the police regarding the combating of crime, the legislation quoted refers to the separate function of the prevention of crime, therefore it is not necessary to repeat it here.

The SAPS hosted the International Centre for the Prevention of Crime (ICPC) Biannual Colloquium in February 2012. The 10th Colloquium entitled “Filling the gaps: integrated approaches to crime prevention and safety” took place in Cape Town. During this event, Pienaar (2012:1-15), referring to the role of SAPS during crime prevention, stated that “crime prevention is not the sole responsibility of the SAPS”. Pienaar (2012:1-15), referring to SAPS’ approach to crime prevention, added that the SAPS pursue an “integrated approach”, with the focus on proactive policing and an “integrated and multidisciplinary approach to support early intervention...”. In respect of an “integrated approach”, Pienaar (2012:1-15) referred to the roles of the following:

- The Justice, Crime Prevention and Security Cluster (JCPS)
- Joint Operational and Intelligence Structures (NATJOINTS)
- Identification and involvement of all internal and external role-players, for example:
  - Government
  - Other law enforcement agencies
  - Non-governmental organisations
  - Civil society
  - Business

### **3.6.2 Non-statutory institutional framework**

The institutions discussed in this section are not established by statute. They represent efforts by the Government to ensure the alignment of Government-wide priorities, and to facilitate and monitor the implementation of priority programmes. Clusters are aimed at improving Government planning by means of proper coordination of all Government programmes at national and provincial levels. When the Government sets its priorities, policy coordination and implementation of the respective departments, it views them in terms of the “clusters” that have been formed by means of the Inter-Ministerial Committees (IMCs) (Department of Communications, 2014:1-3).



### **3.6.2.1 National Crime Prevention Centre**

The National Crime Prevention Centre (NCPC) was established to achieve the objectives of the National Crime Prevention Strategy (NCPS). Omar (2012:7) states that the NCPS was located in the Secretariat for Safety and Security but was later relocated to function as a component of visible policing within the SAPS, and became the lead agency for the implementation of the NCPS. The NCPS is, however, based on an ongoing programme of action that is being implemented by a range of departments. In addition, Omar (2012:7) commented that the NCPS was never fully implemented, due to inherent limitations.

### **3.6.2.2 Justice, Crime Prevention and Security Cluster**

According to the UNODC (*Handbook on the Crime Prevention Guidelines...*, 2010:32), the JCPS acts as advisor in respect of crime prevention efforts in South Africa and is composed of national and provincial departments responsible for security, law enforcement and crime prevention. During a briefing of parliament in 2014, Minister Jeff Radebe stated that the JCPS had intensified the fight against crime, thereby confirming that the JCPS plays a role in the combating of crime (Manyathi-Jele, 2014:13). The cluster deals with crime prevention and the transformation of the judicial system of South Africa. The JCPS is chaired by the Minister of Defence and Military Veterans, and the deputy is the Minister of Police. Ministries in this cluster include (Department of Communications, 2014:1-3):

- Justice and Correctional Services
- Defence
- Home Affairs
- Police
- State Security

## **3.7 COMBATING FINANCIAL CRIME**

In the previous chapter it was established that there is agreement at an international and national level that more concerted efforts should be made, and policies put in place to combat financial crime. This research indicates that there is not a single official policy, plan or strategy explicitly dedicated to the combating

and prevention of financial, commercial or economic crime. In the absence of such mechanisms explicitly dedicated to the combating of financial crime, it appears that such approaches must be inferred from the official policies, plans or strategies dealing with all crime generally, as discussed in paragraph 3.5 above. The research thus far has shown that academics, practitioners, governments and non-governmental agencies do not share a common view of what financial crime entails and exactly what type of criminal behaviour or conduct falls within that category of offences labelled as financial crime. The research shows that the term financial crime is used to describe several concepts at varying levels of specificity and sometimes used interchangeably with other terms such as economic crime, white collar crime and commercial crime, mainly because of a lack of systematic definition.

In the official documents, policies and strategies thus far studied in this chapter, the treatment of financial crime is not singled out as a separate category of crime where it concerns combating and prevention of specific crimes such as, for example, “serious and violent crimes”. Based on the summary of Chapter 2 and the official documents, policies and strategies studied thus far in this chapter, relating to the combating and prevention of crime, the term commercial crime appears to be a preferred superordinate term when referring to the crimes and types of conduct found in this research to fall into the category of financial crime. However, this does not imply that the terms commercial crime and financial crime should be seen as analogous.

It can be argued that, for this chapter, the interchangeable use of the terms financial crime, white-collar crime, economic crime and commercial crime when used in the context of combating and prevention of crime, is irrelevant. The reason that is put forward to advance this argument is that where reference is made in the literature and official documents to the combating and prevention of crimes, using terms such as financial crime, white collar crime, economic crime and commercial crime, it will inadvertently include crimes and types of conduct that fall within the category of crimes categorised as financial crimes. In some instances, however, reference might be made to the combating and prevention of specific crimes, for instance money laundering, terrorist financing and

corruption, which clearly fall within the category of crimes and conduct categorised as financial crime. In such instances, it can be readily inferred, unless indicated otherwise, that the measures to combat specific crimes are unique and distinctive of the type or category of conduct or offence.

In the previous sections of this chapter, discussions and explanations of the concepts related to combating of crime generally and its elements were undertaken to provide conceptual clarity for the discussion and arguments on the combating of crime and its components. In the following sections, the focus of combating crime will be narrowed to the combating of financial crime against the background of the literature, legislation, mandates, policies, strategies and feedback from the participants.

Gottschalk (2010b:231) asserts that financial crime is a growing threat internationally, thereby compelling many public authorities to give high priority to detecting, investigating and confronting this problem and bringing offenders to justice. Ideas and procedures to combat financial crime are exchanged and developed during these efforts (Gottschalk, 2010b:232).

### **3.7.1 Prevention of financial crime**

Bowron and Shaw (2007:6) assert that financial crime has a devastating impact on individuals, companies and governments, adding that traditional methods of control, consisting predominantly of investigation and prosecution, have failed to stem the rise of both fraud and money-laundering crimes. According to Bowron and Shaw (2007:7), tackling financial crime often involves preventive measures instituted by private-sector institutions.

Bowron and Shaw (2007:9) assert that a solution to the serious challenges posed by financial crime to the efficient functioning of global economies should be seen from a holistic perspective, arguing that while law enforcement clearly has a role to play in the suppression of financial crime, prevention is always a more effective proposition. In this regard, Bowron and Shaw (2007:9) further argue that there must be recognition of the fact that reactive resources will never match the sheer

volume or frequency of financial crime occurring. Bowron and Shaw (2007:9) recommend that to create a hostile environment to perpetrators of financial crime, Government, business and individuals must combine their resources to eliminate financial crime at its source.

Concomitant with the recommendation stated above, the UNODC guidelines for the prevention of crime (*ECOSOC Resolution 2002/13 ...*, 2002) state that “there is clear evidence that well-planned crime prevention strategies not only prevent crime and victimisation but also promote community safety and contribute to the sustainable development of countries.” The reference to crime prevention in relation to the sustainable development of countries is an important consideration in the context of this research. In paragraph 2.1 above it is stated that financial crime has a particularly damaging impact on developing countries, such as South Africa, as it deprives them of resources that could otherwise have been used for its long-term development (OECD, 2012a:5). Crime or the perception of crime discourages foreign investment, and clearly this has an adverse effect on development (*Handbook on Planning and Action ...*, 2008:110). According to the UNODC (*Handbook on Planning and Action ...*, 2008:111), one particular form of crime, namely corruption, is often seen as an even bigger obstacle to investment than violent crime. The World Bank believes that corruption is the single greatest obstacle to social and economic development (*Handbook on Planning and Action ...*, 2008:111).

According to the UNODC (*Handbook on the crime prevention guidelines ...*, 2010:12), there are various crime-prevention approaches and programmes that have been developed over the past twenty years, including a wide range of responses, of which “situational crime prevention” deserves to be highlighted. The UNODC (*Handbook on the Crime Prevention Guidelines...*, 2010:13) states that situational crime prevention covers approaches that aim to reduce the opportunities for people to commit crimes, to increase the risks and costs of being caught, and to minimise its benefits. Situational techniques are designed to be directed at highly specific forms of crime and assume that would-be offenders make rational decisions about the potential risks and rewards of breaking the law. They involve the management, design or manipulation of the immediate

environment in a systematic and permanent way (*Handbook on the Crime Prevention Guidelines...*, 2010:14). Considering the nature and characteristics of financial crime, as discussed in Chapter 2, it would, therefore, appear that situational crime-prevention approaches are particularly suited as an approach to prevent financial crimes.

The White Paper on Policing (South Africa, 2016a) does not refer to financial crime or the combating thereof in explicit terms. The White Paper on Policing (South Africa, 2016a:23) does, however, refer to commercial crime, which is a term that is apparently inclusive of the term financial crime in the South African context. The White Paper on Policing (South Africa, 2016a:23) acknowledges that investigation of commercial crime is a specialised police function, and that in dealing with incidences of dire risk “[d]emands targeted and continuous training, specialised skills, appropriate resourcing, unambiguous and transparent management and control, and considered leadership and planning”. (South Africa, 2016a:23). Strangely, it does not recommend the development of any policy, strategies or strategic plans to combat commercial crime but refers only to operational issues.

The White Paper on Policing (South Africa, 2016a:32), referring to “essential policing services”, states among other things:

Over the past 20 years, crimes such as **cybercrime** have become more prevalent. The impact of globalisation and rapid advances in the development of information communication technology (ICT) together have created the space for the establishment of intricate networks of criminal activity. The costs of these crimes to business and economic growth and stability are far-reaching, and the SAPS must remain current in its policing approach to respond appropriately to a constantly shifting criminal landscape.

The above excerpt confirms that the Government is cognisant of the prevalence and increase in sophistication of financial crimes such as cybercrime, and the economic impact that these crimes have on the economy of the country. The intention of Government is therefore to align its policing response to the shifting criminal landscape (White Paper on Policing, 2016a:23).

The White Paper on Policing (2016a:32), regarding the function of the DPCI, states as follows:

A dedicated capacity to identify, counter and deal with selected organised and transnational crime, corruption and serious national priority crimes based on sound analysis of crime threats, patterns and trends, intelligence forecasting and information sharing, and integrated transversal planning is required. The **Directorate for Priority Crime Investigation** (DPCI), the Hawks, provides the duly institutionalised capacity and needs to enjoy a protected and adequate budget, a dedicated competent staff component across all divisions of the Directorate, structured and institutionalised relationships both within and across jurisdictional and state boundaries, and adequate operational independence (but with sufficient accountability mechanisms) that allows for it to fulfil its mandate without fear or favour.

The above excerpt confirms that it is the function of the DPCI “to identify, counter and deal with selected organised and transnational crime, corruption and serious national priority crimes based on sound analysis of crime threats, patterns and trends, intelligence forecasting and information sharing”. It is submitted that “to identify, counter and deal with” can be interpreted as analogous to combat, which implies that the White Paper on Policing recognises the combating of organised and transnational crime, corruption and serious national priority crimes as a responsibility of the DPCI. What is apparent from the above excerpt from the White Paper on Policing (2016a:32), dealing with the functioning of the DPCI, is

the absence of a specific reference to Serious Commercial Crime, although section 17B of the South African Police Service Act makes a specific reference thereto.

### **3.7.2 Investigation of financial crime**

Gottschalk (2010b:231) asserts that during the investigation of financial crime concerning financial affairs, a multidisciplinary approach is required that may include accounting, auditing, legal, fiscal and banking expertise. Gottschalk (2010b:232) further states that effective cross-border cooperation, judicial and policing authorities play a significant role in facilitating access to the relevant expertise to reduce the incidence of financial crime. Chaikin and Sharman (2009:1) draw attention to the symbiotic relationship between corruption and money laundering. Chaikin and Sharman (2009:1) state that corruption and money laundering not only tend to co-occur but that the presence of one “tends to create and reciprocally reinforce the incidence of the other”, meaning that they are closely interrelated. According to Chaikin and Sharmin (2009:2), current strategies to deal with financial crimes such as money laundering and corruption have not had the desired effect because the problem has been considered in isolation. Chaikin and Sharmin (2009:2) contend that money laundering and corruption should be investigated in a systematic and, more importantly, integrated fashion. The current National Anti-Corruption Strategy Discussion Document (*National Anti-Corruption Strategy ...*, 2016:2) serves as a case in point, dealing with only one aspect of financial crime, namely corruption in isolation, as opposed to dealing with it holistically, considering the symbiotic relationship with other financial crimes.

### **3.7.3 Detection of financial crime**

Financial crimes are becoming increasingly more sophisticated. Significant sums of money are accumulated by criminals by means of offences such as drug trafficking, investment fraud, extortion, corruption, embezzlement, tax evasion and tax fraud (OECD, 2013:7). According to Pickett and Pickett (2002:75), financial crime is detected by means of controls, by accident, whistle-blowing, auditors and well-constructed programmes of detection (Pickett & Pickett,

2002:5). Gottschalk (2009:113) asserts that the detection of financial crime is difficult because it is not as visible as conventional crime. It could be argued that the increase in sophistication must play a role in preventing its detection by investigative agencies. The sharing of information between key investigative agencies can be an important tool for the detection and investigation of financial crimes (OECD, 2013:10). It is conceivable that when financial crime is detected in the manners referred to, it will be reported to the authorities. Crimes can be detected by the police or authorities upon the receipt of a crime report (Benson et al., 2015:22).

#### **3.7.4 Financial crime intelligence**

According to Bacarese and Critchell (2012:321), the utilisation of intelligence-based techniques to investigate fraud and economic crime is increasingly becoming the norm. Intelligence provides a basis for many different aspects of an investigation. It does, however, have a predominantly prominent role during tracing of the proceeds of economic crime and corruption (Bacarese & Critchell, 2012:321).

According to Bacarese and Critchell (2012:325), trailing a criminal's finances is an accepted method according to which law enforcement agencies can obtain intelligence and establish evidence to prove the existence of criminal activity. During the investigation of offences, of which the objective is the acquisition of financial gain, such as corruption, or those that involve the movement of money, one of the most important sources available to investigators is financial intelligence (Bacarese & Critchell, 2012:325).

### **3.8 LEGAL FRAMEWORK FOR COMBATING FINANCIAL CRIME**

According to De Koker (2007:34), South Africa has been adopting new laws and launching initiatives to combat financial crime since the 1990s. The researcher agrees with De Koker's assertion (2007:380) that South Africa has a comprehensive legal framework to combat financial crime. For reasons of constitutional oversight, legal compliance and lawfulness it is important that activities aimed at prevention, combating and investigation of financial crime



explicitly comply with the authority, requirements and prescripts of the law. This ensures that any procedural aspect that may render any activities in this regard unconstitutional or inconstant with the law is circumvented.

### **3.8.1 The South African Police Service Act**

The SAPS was established through the enactment of the South African Police Service Act, giving effect to section 199 of the 1996 Constitution. The South African Police Service Act introduced several provisions related to the prevention, combating and investigation of crime. The South African Police Service Act, as discussed in paragraph 3.4.2, confirms the legal mandate of the SAPS in the prevention, combating and investigation of:

- crimes that require “specialised skill in the prevention thereof” (section 16 of the South African Police Service Act);
- national priority offences, in particular serious organised crime, serious commercial crime and serious corruption (section 17B of the South African Police Service Act);
- national priority offences and selected offences not limited to offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act (section 17D of the South African Police Service Act).

The South African Police Service Act does not list the crimes that require “specialised skill in the prevention thereof”, nor does it define “serious organised crime”, “serious commercial crime” and “serious corruption”. What is, however, clear from the legislation, is that the SAPS also have a specific legal mandate to prevent, combat and investigate the offences listed in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act.

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

The common-law crime of bribery, which was committed in respect of or by officials of the state, was abolished in 1992. Bribery of persons who were not state officials was an offence under the Prevention of Corruption Act (6 of 1958) (hereafter referred to as the Prevention of Corruption Act). The Corruption Act

(94 of 1992), passed in 1992, repealed both the common-law crime of bribery and the previous Prevention of Corruption Act (6 of 1958), and created a new offence called corruption, which incorporates both the common-law crime of bribery and the offences created by the repealed Prevention of Corruption Act. The situation is now dealt with by the Prevention and Combating of Corrupt Activities Act, which is South Africa's first comprehensive anti-corruption legislation (Joubert, 2010b: Vol. 6. par. 221). For the first time, as a result of section 5 of the Prevention and Combating of Corrupt Activities Act, South Africa follows international trends by extending its national law to address bribery of foreign public officials by its nationals (Omphemetse, 2005:1). Omphemetse (2005:2) adds that the Prevention and Combating of Corrupt Activities Act contains far-reaching and interrelated provisions, which signal the commitment and intention of the Government of South Africa to unbundle corruption by defining and prohibiting various actions and corrupt practices.

Section 34 of the Prevention and Combating of Corrupt Activities Act imposes the obligation on persons in a position of authority to report certain corrupt conduct and/or transactions, as well as conduct that amounts to theft, fraud, extortion, forgery, and uttering of a forged document. Section 34 of the Prevention and Combating of Corrupt Activities Act further requires that the report must be made in the prescribed format to a member of the Directorate of Priority Crime Investigation DPCI.

Theft, fraud, extortion, forgery, and uttering of a forged document are all offences in their own right, according to the conventions of current SA law. In perpetrating the illegal act of corruption, certain elements of the crime of corruption may overlap with these offences and vice versa. It probably explains why these offences are included in the reporting obligations under section 34 of the Prevention and Combating of Corrupt Activities Act.

Omphemetse (2005:4) asserts that: "From a commercial point of view, corruption and related activities have far-reaching ramifications. No matter how non-violent it may be, the use of bribes or corrupt practices in commercial transactions is

costly and deadly like a malignant tumour.” Omphemetse (2005:4) further describes the insidious and non-transparent nature of bribery by pointing out that:

The payment of bribes corrodes the pillars of fair competition and procurement because the outcome of a business deal is determined by a bribe instead of merit. Socially and politically, bribery undermines equity, integrity and efficiency in the public service as well as in international business relations.

### **3.8.3 Prevention of Organised Crime Act**

According to the long title of the Prevention and Combating of Corrupt Activities Act, the Prevention and Combating of Corrupt Activities Act was legislated with the intent and aspirations to, among other things:

- provide for the strengthening of measures to prevent and combat corruption and corrupt activities;
- provide for the establishment and endorsement of a register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts;
- provide for investigative measures in respect of corruption and related corrupt activities;
- place a duty on certain persons holding a position of authority to report certain corrupt transactions.

The preamble to the Prevention and Combating of Corrupt Activities Act acknowledges, among other things, that:

- there are links between corrupt activities and other forms of crime, in particular, organised crime;
- corruption is a transnational phenomenon that crosses national borders and affects all societies and economies and is equally destructive and reprehensible within both the public and private spheres of life so that regional and international cooperation is essential to prevent and control corruption and related corrupt

activities and economic crime, including money laundering (my emphasis);

- a comprehensive, integrated and multidisciplinary approach is required to prevent and combat corruption and related corrupt activities efficiently and effectively (my emphasis);
- the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution building, to prevent and combat corruption and related corrupt activities efficiently and effectively.

It is worth noting the reference to “economic crime” as it appears above, as well as the inclusion of “money laundering” in this category of the Prevention and Combating of Corrupt Activities Act. It is seemingly used as an analogy to commercial crime where it appears elsewhere in national legislation, implying that money laundering is an economic crime to Smit (2001:21), money laundering allows organised criminal groups and individuals to continue their criminal activities without fear of punishment and with the prospect of enriching its members or themselves. Smit (2001:21-22) asserts that the aim of the money launderer during the laundering process and often associated corruption of Government, law enforcement officials, politicians and individuals in the business community is to gain sufficient control over the institutions of the financial system. This, in turn, facilitates the recycling of future profits derived from criminal activity (Smit, 2001:22). Smit (2001:23) emphasises that money laundering should be combated to protect society and in particular the commercial and financial spheres and institutions that function within those spheres.

The Prevention of Organised Crime Act, which came into effect on 21 January 1999, consolidated money-laundering offences in one Act. According to De Koker (2002:176), the Prevention of Organised Crime Act and the Financial Intelligence Centre Act (38 of 2001) (hereafter referred to as the Financial Intelligence Centre Act) provide a comprehensive legislative framework for money-laundering control in South Africa to be divided between the Prevention of Organised Crime Act and Financial Intelligence Centre Act. Regardless of the naming convention of the

Prevention of Organised Crime Act, the provisions relating to money laundering, criminal confiscation and civil forfeiture apply to all types of crime, whether committed by organised crime syndicates or individuals acting on their own (De Koker, 2002:166).

In keeping with international standards, the Prevention of Organised Crime Act creates the normal money-laundering offences by criminalising any conduct in respect of proceeds of crime that is likely to have the effect of concealing or disguising the nature, location or movement of the proceeds of crime, or that is likely to assist a criminal to avoid prosecution, or to remove or diminish such proceeds. The Prevention of Organised Crime Act imposes a legal obligation on every person carrying on business and every employee of a business to report any transaction, whether it was completed or not, which that person suspects involves the proceeds of crime, or of facilitating the transfer of such proceeds (De Koker, 2002:166). De Koker (2002:166) asserts that the laundering provisions of the Prevention of Organised Crime Act are some of the broadest in force internationally.

Since it was recognised that effective legislative measures are necessary to prevent and combat the financing of terrorist and related activities, and to effect the preservation, seizure and forfeiture of property owned or controlled by, or on behalf of, an entity involved in terrorist and related activities, the Prevention of Organised Crime Act was amended by the Protection of Constitutional Democracy against Terrorist and Related Activities Act (12 of 2004) to provide for such measures. The Prevention and Combating of Corrupt Activities Act realises the commitment of forfeited assets and proceeds to the combating of organised crime, money laundering and the financing of terrorist and related activities.

#### **3.8.4 The Financial Intelligence Centre Act**

Kempen (2016:26) states that one of the purposes of the Financial Intelligence Centre Act is to combat money-laundering activities. De Koker (2002:166) asserts that the Financial Intelligence Centre Act completes the broad legislative

framework for money-laundering control in South Africa. The Financial Intelligence Centre Act supplements the legislation against mainly criminal activities and creates the administrative framework for money-laundering control (De Koker, 2003:83). The Financial Intelligence Centre Act established the Financial Intelligence Centre and a Counter-money-laundering Advisory Council to combat money-laundering activities and the financing of terrorist and related activities. De Koker (2007:48) believes that South Africa has a comprehensive framework for money-laundering control.

De Koker (2002:170-176) captures the significant money-laundering control features of the Financial Intelligence Centre Act under the following headings:

a. Money-laundering control obligations

The Financial Intelligence Centre Act imposes various money-laundering control obligations on a variety of persons and accountable institutions. These obligations include a duty to:

- identify clients;
- keep records of business relationships and single transactions;
- report certain transactions;
- appoint a compliance officer;
- train employees to fulfil their money-laundering control obligations.

b. Access to information

Several provisions of the Financial Intelligence Centre Act regulate the access to information by the FIC, as well as access to information held by the FIC (De Koker, 2002:174). In essence, investigating authorities, SARS and the intelligence services have access to information held by the FIC by way of request or the initiative of the FIC (De Koker, 2002:174).

c. Measures to promote compliance by accountable institutions

De Koker (2002:175) declares that the Financial Intelligence Centre Act introduces the normal compliance obligations associated with money-laundering

control systems, which require every accountable institution to formulate and implement internal rules concerning the following:

- The establishment and verification of the identity of persons that it must identify in terms of the Financial Intelligence Centre Act.
- The information that must be kept in terms of the Financial Intelligence Centre Act.
- Prescripts on how and where those records must be kept.
- Steps to be taken to determine when a transaction is reportable to ensure that the institution complies with its reporting duties under the Financial Intelligence Centre Act.
- Other matters as may be prescribed by regulation (De Koker, 2002:175).

d. Offences

The Financial Intelligence Centre Act gives rise to many offences (De Koker, 2002:175). The offences that occur as a result of FICA relate to failure to comply with obligations and duties imposed by FICA. Alberts (2016) states that the duties and obligations provided in the FICA create a framework that assists in the prevention of financial crimes, or that may be of assistance in the investigation thereof. The obligations and duties referred to, of which failure to comply with creates offences, are summarised by Alberts (2016) in Table 3.6 (paragraph 3.11).

e. Search, seizure and forfeiture

Under section 30 of the Financial Intelligence Centre Act, cash that is transported across South Africa's borders may be forfeited if the required report is not filed. The report must contain the prescribed particulars concerning the conveyance of the cash to a person authorised by the Minister of Finance for this purpose. In terms of section 30, a report must be made in the prescribed manner to a person authorised by the Minister. Section 28 of the Financial Intelligence Centre Act makes it obligatory for all accountable and reporting institutions to report cash transactions above the prescribed limit. The Financial Intelligence Centre Act provides for the seizure of any cash that is transported or is about to be

transported across South Africa's borders if the cash exceeds the prescribed limit, and there are reasonable grounds to suspect that an offence under section 54 of the Financial Intelligence Centre Act has been or is about to be committed. If a person is convicted of the offence, the court must, in addition to any punishment that may be imposed, declare the cash amount that should have been reported, to be forfeited to the State (De Koker, 2002:176).

In addition to the money-laundering control measures identified by De Koker above, the Financial Intelligence Centre Act also makes provision for matters related to the financing of terrorist and related activities. According to Hübschle (2006; as quoted by Hübschle, 2007:4), the enactment of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, amended the Prevention of Organised Crime Act and Financial Intelligence Centre Act to accommodate measures against terrorist financing.

### **3.8.5 Protection of Constitutional Democracy against Terrorist and Related Activities Act**

Moodley (2008:1) asserts that criminal and terrorist activities share a common trait, that is, the need to disguise the source and the utilisation of funds that are obtained during these illicit activities. Disguising these funds in the manner mentioned, amounts to money laundering. Moodley (2008:76) asserts that money laundering is the means by which a criminal protects the proceeds of criminal activity, while a terrorist uses money laundering to fund the necessary tools to support the spread of terror.

Moodley (2008:2) states that:

The security implications of money laundering illustrate how the symbiotic nature of the relationship that was once exclusively related to the trafficking in narcotics has been transformed into the funding of terrorism to the promoting [promotion] of corruption. Sourcing funds has become essential to providing terrorists with a way to pay for the



necessary means to pursue their goals with money laundering acting as the mechanism to shield these funds from confiscation and the sources from prosecution as accomplices.

The Protection of Constitutional Democracy against Terrorist and Related Activities Act is a legislative effort aimed at combating money laundering and terrorist financing. Moodley (2008:76) asserts that the purpose of the Protection of Constitutional Democracy against Terrorist and Related Activities Act was to incorporate into domestic legislation the support that South Africa renders to the United Nations (UN) Counterterrorism Conventions and Protocols, and the African Union Convention on the Prevention and Combating of Terrorism. The Protection of Constitutional Democracy against Terrorist and Related Activities Act targets money laundering by making the laundering of funds for the purposes of financing of terrorist activities an offence.

### **3.8.6 Acts Administered by SARS**

SARS' powers to conduct criminal investigations and generally to administer the tax Acts, its legal mandate to investigate offences related to tax evasion and tax fraud, and arrangements for disclosure of taxpayer information to other government agencies, are contained in the following tax Acts administered by the Commissioner for SARS:

- The Tax Administration Act
- The Customs Control Act (31 of 2014) (hereafter referred to as the Customs Control act)

#### **3.8.6.1 *The Tax Administration Act***

SARS is legally authorised in section 3 of the Tax Administration Act to conduct a criminal investigation during the administration of a tax Act under the control and direction of the Commissioner to ascertain whether a tax offence has been committed. After the laying of criminal charges by SARS in respect of the suspected commission of a tax offence, SARS may continue to provide the assistance to the SAPS and the NPA that is reasonably required for the investigation and prosecution of the tax offence. In providing the assistance,

SARS may use the powers assigned to it in terms of information-gathering, provided for under Chapter 5 of the Tax Administration Act. When appropriate, and when authorised thereto, investigators may resort to using provisions of the Criminal Procedure Act (51 of 1977) (hereafter referred to as the Criminal Procedure Act), once criminal proceedings have commenced.

SARS officials must be granted written authority by a senior SARS official to conduct a criminal investigation, as referred to in Part B of Chapter 5 of the Tax Administration Act. Chapter 5 deals with the information-gathering powers that SARS need to execute its duties, including that of criminal investigations. The Tax Administration Act provides for statutory non-compliance tax offences (section 234 of the Act), the offences of evasion of tax, and obtaining undue refunds by means of fraud or theft (Section 235 of the Act). The offences related to evasion of taxes are for all practical purposes the statutory version of the common-law crime of fraud referred to as tax fraud.

### **3.8.6.2    *The Customs Control Act***

The Customs administration plays a critical role in the context of international trade and tourism by ensuring effective controls that secure revenue recovery, facilitation of legitimate trade, and protection of society at large (Preamble to the Customs Control Act). Section 749 of the Customs Control Act provides that the provisions of Chapter 33 do not preclude a Customs officer from conducting a criminal investigation, whether an offence in terms of the Customs Control Act or a tax-levying Act has been committed, including a related common-law offence affecting the implementation or enforcement of the Customs Control Act. The Customs Control Act provides for general enforcement functions assigned to SARS and authorised Customs officials. At the time of finalising this research report, the Customs Control Act has not yet become effective and is awaiting the date of implementation to be announced in the Government Gazette.

The purpose of these general enforcement functions is to provide powers to SARS and Customs officials for the effective enforcement of the Customs Control Act to:

- ensure that tax and any other money owed to the Commissioner in terms of this Act or a tax-levying Act are paid;
- ensure that goods that are subject to Customs control are dealt with in accordance with this Act and the tax-levying Acts;
- prevent, investigate and take appropriate action against acts or omissions constituting breaches of this Act or a tax-levying Act.

The enforcement functions conferred on Customs officers in terms of the Customs Control Act include the following powers:

- Access areas, premises and facilities
- Customs access to vessels, aircraft, trains, railway carriages and vehicles
- Searching of areas, premises, facilities, vessels, aircraft, trains, railway carriages or vehicles
- Investigative powers
- Powers of arrest
- Carrying and use of arms and ammunition

The Customs Control Act provides for a wide range of statutory offences where there has been a contravention of or failure to comply with a provision of the Customs Control Act or tax-levying Act. Section 887 of the Customs Control Act criminalises conduct aimed at providing false, incorrect or misleading information, or omission of information with the intention to mislead, which otherwise can also amount to criminal liability for the common-law offence of fraud.

### **3.9 GOVERNMENT'S EFFORTS TO COMBAT FINANCIAL CRIME**

In this chapter, the components of combating crime in general have been identified and discussed. The policy framework, legal framework and key agencies responsible for combating financial crime, making up the totality of Government initiatives and measures to combat financial crime have been determined. It is around this framework and measures that the status of Government's efforts to combat financial crime is considered. The views expressed in the news media, journal articles and statements by politicians,

heads of agencies and practitioners provide valuable insight into the current state of Government's efforts to combat financial crime. The participants share their personal knowledge, experiences and perceptions of Government's efforts to combat financial crime. In the following sections, the current situation regarding cooperation and integration of efforts and other factors enabling or constraining efforts to combat financial crime effectively is explored.

According to a global economic crime survey conducted by financial services company PwC, titled *Global Economic Crime Survey 2016, 5th South African edition, March 2016*, the following results are of significance in that they provide a view of the current state of efforts to combat economic crime (*Global Economic Crime ...*, 2016):

- South African organisations have reported the highest rate of economic crime in the world over the last two years
- Economic crime is at a pandemic level in South Africa
- South Africans exhibit a significantly low level of confidence in local law enforcement agencies
- 70% of organizations believe investigative agencies are inadequately resourced and trained to investigate and fight economic crime
- The survey found that asset misappropriation (theft) reported by 68% of participants is the most prevalent form of economic crime, followed by procurement fraud (41%) and bribery and corruption (37%)

PwC also observed that from a South African perspective, the top seven most reported types of economic crime in South Africa show higher reported levels than the global average, except for cybercrime, which is on par with the global figure for this crime (*Global Economic Crime ...*, 2016).

The former Regional Head of the NPA: Specialised Commercial Crime Unit (SCCU) and commercial crimes prosecutor responsible for prosecuting financial crimes, advocate Glynis Breytenbach, was quoted by Baron (2014:9) in the *Sunday Times' Business Times* supplement as saying, "[t]he capacity to investigate and prosecute commercial crime has deteriorated to an

'unimaginable' extent due to massive demoralisation and a haemorrhaging of skills." Among other things, Breytenbach cited: "The obvious and overt politicisation of the NPA", which has made many people who are qualified in the area of commercial crime uncomfortable and not happy with the NPA. This comment by Breytenbach implies that the investigation and prosecution of financial crimes are not effective because of political meddling and exodus of skills.

In an article by Baron (2015:9), the author reports on the failure of the investigating authorities to act on wrongdoing uncovered and reported by auditors. In the article, Baron (2015:9) quotes the CEO of the Independent Regulatory Board of Auditors, Bernard Agulhas, as stating, "Auditors are doing 'an excellent job' of reporting white collar crime, but the authorities don't do anything about it". Agulhas blames the dramatic increase in white-collar crime on the fact that perpetrators are getting away with it (committing white-collar crimes). Agulhas told Baron that, "But mostly the authority to which the board refers reported irregularities in the police. And for the most part, the South African Police Service doesn't respond at all." Agulhas suggested that there is a need for a separate police unit to deal with irregularities, "so that the police give it priority and respond to it.", stating further that "First prize for us would be if the specialised commercial crimes unit in the NPA could be strengthened." Theobalt (2015) blames the failure of the authorities to investigate and prosecute corporate criminality on the fact that police do not act on reports of irregularities, and "the abolition of the Scorpions, the dismantling of the Specialised Commercial Crime Unit and the National Prosecuting Authority, and the shockingly poor top leadership of the police."

Reflecting on the quality of financial crime investigations undertaken by the Hawks, as the DPCI is known, Hunter (2017:6) quotes a source in the NPA, stating that: "There was mounting frustration among senior prosecutors over the tardiness and sloppiness of the Hawks. Simple things like tracking people take forever."

De Koker (2007:37) asserts that South Africa generally has sufficiently robust and comprehensive laws to address financial crime. De Koker, however, believes the weaknesses lie in the institutional structures that are required to implement these laws and refers to law enforcement, which is hampered by a lack of expertise, resources and coordination, emphasising that coordination is a major sticking point.

Using a content analysis for interpreting the response to the question (question 3.6 in the interview schedule), “Do you think that financial crime is effectively combated in South Africa by the agencies responsible for combating financial crime? Please substantiate your answer”, the main themes emerging from the participants’ answers were identified. These themes are presented in the frequency table, Table 3.7 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants all responded with a “no” answer to the question whether they thought that financial crime was effectively combated in South Africa by the agencies responsible for combating financial crime (question 3.6 in the interview schedule), resulting in a 100% numeral frequency rate. The participants provided a diverse range of reasons why they were of the view that financial crime was not effectively combated in South Africa by the agencies responsible for combating financial crime. The main themes at the higher end of the scale of frequencies provided as reasons by the participants are the following:

- Mandates and functions are not collectively coordinated (50% frequency of themes)
- Weak and unstructured public sector inter-agency cooperation (40% frequency of themes).

The main reasons for all participants believing that financial crime is not effectively combated in South Africa by the agencies responsible for combating financial crime are related to:

- agencies having different mandates that were not aligned, and insufficient efforts to coordinate strategies and activities at combating financial crime;
- cooperation between the various agencies being fragmented.

The participants' responses correspond to the narrative emerging from the literature that to combat financial crime effectively there must be cooperation and an integrated approach between the various agencies when combating financial crime.

### **3.9.1 Policy framework and strategic direction**

According to Gottschalk (2009:191), scholars and practitioners emphasise the need for improvement in the implementation of strategies in law enforcement and policing. Gottschalk (2009:191) asserts that failing to carry out strategies could cause lost opportunities, duplication of efforts, incompatibility of organisational structures, and waste of resources. Gottschalk (2009:192) argues that the measure of the success of strategies against its objectives is determined by the implementation. Gottschalk (2009:192) asserts that the lack of implementation leads to police officers (investigators) feeling dissatisfied and reluctant to continue doing strategic planning type of work. Lack of implementation (of strategies, policies, etc.) also creates complications regarding the establishment and maintenance of priorities in future planning.

In the study of the literature during the preliminary literature review and referred to during the research, it was established that a hypothesis could be developed, indicating that the Government's efforts to accomplish a multidisciplinary and integrated synergy across agency boundaries during the combating of financial crime fall short. According to Rehbock (2016), delegates from 43 countries attended an anti-corruption summit in May 2016. Rehbock (2016) was invited to attend the leader's summit, styled as a gathering only for those countries willing to tackle corruption "head-on". Several countries made country-specific commitments to combat corruption, and were willing to go on record on an international platform to describe their strategies. Rehbock (2016) points out that the document prepared by South Africa contained no encouraging pledges

compared to those of other countries' pledges. The only notable proposition was that South Africa was working on redrafting its national anti-corruption strategy, something that has been happening for the past couple of years in any case. Rehbock (2016) lamented that the feeling among civil society representatives was that South Africa's submission was one of the weakest, and bluntly labelled it as "bland" and a failure for providing decisive action.

There is no clear government policy that spells out what Government's approach is to combat financial crime through the integration of various agencies and what policies are in place to ensure inter-agency cooperation. There is no centre of government operating in a guiding role to create a structure to set expectations, set a common agenda, ensure overall accountability or to coordinate the efforts of investigative agencies during the combating of financial crime.

Investigative agencies function based on a multitude of strategic plans that do not demonstrate harmonisation of a single approach to effectively combat financial crime. Many of these plans never become operational. Apart from documented intentions and possible plans, there appears to be no clear, implemented, decisive, strategic, operational policy stating the official approach or architecture to prevent, detect and investigate financial crime.

The main themes emerging from the participants' answers were identified by using a content analysis for interpreting the response to the question (question 3.7 in the interview schedule), "How do policies and strategies for combating financial crime or the lack thereof impact on coordination, cooperation and a collaborative effort to combat financial crime effectively?". These themes are presented in the frequency table, Table 3.8 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants offered a diverse range of views, opinions and reasons regarding the impact of policies or the lack thereof on efforts to combat financial crime. The



low frequency of consistent themes may be an indication that participants have in practise not been giving adequate attention to the role that government policies or strategies play in the approaches to combating financial crime.

The main themes emerging from the participant's answers were identified by using a content analysis for interpreting the response to the question (question 3.8 in the interview schedule), "Are you aware of any government agency or body that is developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime? If so, provide the details of the agency or body and the policies and strategy it is developing or implementing." These themes are presented in the frequency table, Table 3.9 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded with a frequency of 60% that they were not aware of any government agency or body that is developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime (question 3.8 in the interview schedule). The rest of the participants responded with a frequency of 40% that they were aware of a government agency or body that is developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime.

The following agencies were identified with a frequency of 10% by participants as government agencies or bodies that are developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime:

- The Anti-Corruption Task Team (ACTT)
- Outcome 3 of National Development Plan
- The DPCI Strategic Plan
- The Round-table Initiative
- National Intelligence Estimates

- The National Intelligence Coordinating Committee (NICOC) established various interdepartmental work groups

The participants are not in agreement with regard to identifying a government agency or body that is developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime.

### **3.9.2 Cooperation, collaboration and information sharing between agencies**

During an address by the (then) Minister of Finance at the event of a high-level conference on illicit financial flows, the Minister made the following statement (Gordhan, 2016:8):

Coordination is key – do not work in silos. Enforcement agencies must coordinate and communicate, domestically and internationally, on financial crime and abuses. Domestic enforcement agencies must take care not to fall into the trap of silo-approaches and territorial battles.

Mabuza (2012) reported that during a crime summit hosted by the SAPS and Prisons Civil Rights Union, Professor Somadoda Fikeni, a political analyst, warned about the dangers of a lack of coordination. He stated that “... it is yet another challenge that has made our criminal justice system less effective”, and also adding that “You will find that find [sic.] military intelligence, crime intelligence and other intelligence agencies do not share information they should be sharing.”

Although collaboration between various agencies responsible for combating financial crime does happen and sometimes successfully so, this does not necessarily imply the existence or implementation of a multidisciplinary and integrated approach to combating financial crime, as is so often proclaimed by politicians, SAPS and other investigative authorities. However, examples of

successful cooperation between the NPA and investigative agencies have been reported on in the media. Two such examples are the collaboration between the SCCU of the NPA and the DPCI responsible for the investigation of commercial crime, and between the NPA and SARS responsible for the investigation of tax evasion.

Addressing a news conference ahead of his budget speech, the Justice Minister stated that the CJS has often been criticised for being too fragmented, with too many disparate agencies fighting corruption in silos. The Minister continued to explain that “there is a visible growing synergy in the fight against corruption amongst the law enforcement agencies which include the Special Investigation Unit, the Anti-Corruption Task Team, the Asset Forfeiture Unit (AFU) and the Hawks.” Minister Masutha referred to this synergy between departments as a “new approach” (Hartley, 2014). Unfortunately, the Minister did not explain how the “new approach” differed from the previous approaches and how the “visibly growing synergy” between the different agencies that ostensibly did not exist before, was accomplished.

In October 2014, the Commissioner for SARS addressed the closing plenary session of the 35<sup>th</sup> Annual Crime Stoppers International Conference, Cape Town International Convention Centre (*Commissioner Tom Moyane ...*, 2014). Referring to the combating of crime, in general, the SARS Commissioner, Mr Tom Moyane, was quoted as saying “[s]haring information and knowledge, pooling resources, strengthening of cooperation and mobilising all our citizens that we will win this fight [the ongoing fight against crime]”. About cooperation and collaboration with other state agencies, the Commissioner stated that SARS was bound by the provisions of tax and customs law to safeguard the confidentiality of taxpayer information. SARS had put in place a range of operational arrangements and Standard Operating Procedures (SOPs) that define how SARS cooperated and collaborated with law enforcement agencies that they worked with. Regarding sharing of information, Commissioner Moyane added that “A senior SARS official, working together with a committee of legal and functional experts, has been designated to review and decide on all instances where disclosure of SARS information to law enforcement agencies may be

needed, to ensure that we do not breach any taxpayer confidentiality provisions.” From these excerpts, SARS, at least in principle, supports collaboration and information sharing with other government agencies, subject to it happening within the confines of the law.

Referring to the successful prosecution of tax crimes and cooperation between the National Prosecution Service (NPS) and SARS during the investigation, Narsee (2016), reporting on a judgement handed down in the Parow Regional Court, quotes the presiding magistrate Sikhwivhilu as saying, “Beware – you will be caught. We have a highly effective NPS-SARS team that will catch you, and when we do, you will pay dearly for the damage you are doing to society.” The magistrate further warned, “We are not a team of debt collectors – if we catch you, you will go to prison.” This newspaper report illustrates the type of impact that can be achieved from effective cooperation between investigators and the prosecution and that serves as a deterrent for tax crimes.

The following excerpt from a news article by Moloji (2015) provides an example of the lack of communication, collaboration and flow of information between various investigative authorities responsible for combating financial crime. Moloji, following up on the confiscation of R78m from the suspected Hawala gang members at OR Tambo International Airport during August 2015, attempted to establish from the authorities why the gang members had not yet been charged. Moloji reported that attempts to obtain an answer hit a brick wall. According to Moloji (2015), SARS and SAPS claimed not to know what had happened to the suspects. In response to queries, SARS referred Moloji to the SAPS, who in turn informed Moloji that they also did not know what had happened to the suspects. According to Moloji, SARS’ e-mail, drafted by spokesperson Luther Lebelo, stated, “The necessary evidence together with the apprehended people was handed over to the police. The police should be able to assist you in this regard”. The SAPS’ spokesperson, Vishnu Naidoo, responded that the police had not received any case number from SARS or a statement, hence had not arrested any suspects. Naidoo was quoted as saying, “I do not know about this case. It was never handed over to us, so we don’t know where the suspects are. I don’t know why SARS keeps referring everyone to us”. However, a spokesperson from

the DPCI (Hawks), Brigadier Hangwani Malaudzi, acknowledged that the Hawks knew about the case but refused to give details, “due to the sensitivity of the matter” (Moloi, 2015). The above example provides an account of an apparent breakdown of coordination and cooperation between two agencies pursuing the combating of financial crime across mandates, despite putting into place “a range of operational arrangements”, as proclaimed by Commissioner Moyane (*Commissioner Tom Moyane ...*, 2014).

The main themes emerging from the participants’ answers were identified by using a content analysis for interpreting the response to the question (question 3.9 in the interview schedule), “Do you think there is effective inter-agency coordination among government agencies during efforts to combat financial crime? Please substantiate your answer”. These themes are presented in the frequency table, Table 3.10 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded “no” with a frequency of 90% and “yes” with a frequency of 10% to the question whether they thought there was effective inter-agency coordination among government agencies during efforts to combat financial crime (question 3.9 in the interview schedule). The participants provided a diverse range of reasons why they were of the view that there was not effective coordination by the agencies responsible for combating financial crime. The main reason, with a frequency of 30% for ineffective inter-agency coordination, was that the sharing of information between agencies is restricted by legislation. The participants responded with a frequency of 20% that one agency very seldom wanted to accept the responsibility for taking the initiative in respect of the coordination of efforts. Coordination among government agencies during efforts to combat financial crime is ineffective, due mainly to legislation preventing effective sharing of information, according to the participants.

The main themes emerging from the participants’ answers were identified by using a content analysis for interpreting the response to the question (question

3.10 in the interview schedule), “Do you think there is effective inter-agency cooperation among government agencies during efforts to combat financial crime? Please substantiate your answer”. These themes are presented in the frequency table, Table 3.11 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded “no” with a frequency of 90% and “yes” with a frequency of 10% to the question whether they thought there was effective inter-agency cooperation between government agencies during efforts to combat financial crime (question 3.10 in the interview schedule). The participants provided a wide range of reasons why they were of the view that there was not effective cooperation between the agencies responsible for combating financial crime. The main reason, with a frequency of 30% for ineffective inter-agency cooperation, was that the different agencies pursue their own objectives and goals. The participants’ responded with a frequency of 20% that once an agency was identified to take the lead in an investigation, there was effective inter-agency cooperation among government agencies during efforts to combat financial crime.

The main themes emerging from the participants’ answers were identified by using a content analysis for interpreting the response to the question (question 3.11 in the interview schedule), “Do you think there is effective inter-agency collaboration among government agencies during efforts to combat financial crime? Please substantiate your answer”. These themes are presented in the frequency table, Table 3.12 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded “no” with a frequency of 80% and “yes” with a frequency of 20% to the question whether they thought there was effective inter-agency collaboration among government agencies during efforts to combat

financial crime (question 3.11 in the interview schedule). The participants provided a wide range of reasons why they were of the view that there was no effective collaboration between the agencies responsible for combating financial crime. The themes presented by the participants were too diverse and low in frequency of recurring themes to be conclusive about the reasons for collaboration between government agencies not being effective.

The main themes emerging from the participant's answers were identified by using a content analysis for interpreting the response to the question (question 3.12 in the interview schedule), "Do you think that the sharing of information among government agencies during efforts to combat financial crime is effective? Please substantiate your answer". These themes are presented in the frequency table, Table 3.13 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded "no" with a frequency of 80% and "yes" with a frequency of 20% to the question whether they thought that the sharing of information among government agencies during efforts to combat financial crime was effective (question 3.12 in the interview schedule). The participants provided a diverse range of reasons why they were of the view that the sharing of information among government agencies during efforts to combat financial crime was not effective. The themes presented by the participants were too diverse and low in frequency to enable the researcher to arrive at a conclusion as to the reasons why they are of the view that the sharing of information among government agencies during efforts to combat financial crime was not effective.

To gain a better understanding of the views held by the participants regarding the status of cooperation, collaboration, information sharing and coordination of efforts to combat financial crime, the researcher compared the themes emerging from the answers provided in Tables 3.10, 3.11, 3.12 and 3.13 (paragraph 3.11). The researcher identified the themes recurring three or four times in the different

tables. The following themes occurred more than three times in all the tables. (The number of times the themes recurred is provided in brackets.):

- Mandates of the different agencies not coordinated to achieve the desired outcome (four times)
- Intelligence agencies focus on specific incidents and not on the protection of the financial sector or system (four times)
- The execution of the multidisciplinary approach and the development of integrated methodologies are hampered by fragmented mandates, organisational culture, lack of joint planning, and lack of shared funding and resource allocations (four times)
- Inconsistent data and information (three times)
- Agencies pursue their own respective objectives and performance goals (three times)
- Strategies are not aligned (three times)
- There is no Government structure or mechanism dedicated to the combating of financial crime (three times)
- Weak public sector and private sector coordination (three times)

The graph in Figure 3.6 (paragraph 3.11) illustrates the recurrence of themes across the various tables, as indicated above, regarding the status of cooperation, collaboration, information sharing and coordination of efforts to combat financial crime. These are the themes that represent the main themes of what the participants view as the status of cooperation, collaboration, information sharing and coordination of efforts to combat financial crime. The reasons presented above are broadly consistent with the reasons found in the literature as to why governments fail to combat financial crime effectively. The identified themes confirm the necessity for investigating the prospect of a Whole-of-Government approach as an enabler to ensure better coordination, cooperation, collaboration and sharing of information during combating of financial crime.

### **3.9.3 Constraints**

In the context of effective cooperation, collaboration and information sharing during the combating of financial crime, officials in the various agencies, including



those from the revenue authorities, the customs authority, FIUs, police, specialist law enforcement agencies and prosecution authorities, should recognise that the skills and expertise to investigate financial crimes are spread across these agencies (OECD, 2013:26). The prevalence of constraints or barriers may prevent agencies responsible for combating financial crime from obtaining the full benefit of this spread of knowledge and skills, thus limiting the prospect of effective inter-agency cooperation (OECD, 2013:26). The constraints or barriers mainly fall into three broad groups: legal; operational and political (OECD, 2013:26). Countries' strategies to combat financial crime should operate within the broader context of their legal systems, administrative practices and cultures (OECD, 2013:26).

### **3.9.3.1 Legal constraints**

Legal barriers may include specific restrictions and prohibitions that apply to prevent one agency from obtaining access to relevant information from another (OECD, 2013:26). There are several legislative provisions contained in a vast array of statutes providing for various procedures providing the legal framework for cooperation and information sharing between SAPS, as the primary law enforcement agency responsible for the investigation of crime, and other investigative agencies and authorities that may prove to be obstructive to interagency cooperation and sharing of information. There are also operational and political factors to consider that may be contributing to the current state of Government's perceived dismal efforts and actions to combat financial crime effectively. The existence of such factors is explored in the sections below.

The main themes emerging from the participants' answers were identified by using a content analysis for interpreting the response to the question (question 3.13 in the interview schedule), "Are you aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer." These themes are presented in the frequency table, Table 3.14 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could

choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded “yes” with a frequency of 60% and “no” with a frequency of 40% to the question of whether they were aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime (question 3.13 in the interview schedule). The legislation providing for the disclosure of information includes specific restrictions and prohibitions that apply to prevent one agency from gaining access to relevant information from another. The constraints regarding the sharing of information are consistent with the literature.

### **3.9.3.2 Operational constraints**

Operational constraints may include complex or lengthy procedures for an agency to obtain information from another, the lack of awareness of the availability of information from another agency or other mechanisms for cooperation, or a lack of specialist knowledge that reduces the effectiveness of gateways to information which may exist (OECD, 2013:26). Due to a lack of knowledge, officials from the relevant agencies may not be aware of what the correct procedure is to request information, the circumstances under which information can be requested and ought to be provided, and under which legislative provision it must be requested. This may lead to frustration and discord between agencies. The provisions of MoUs signed between agencies to establish mechanisms for cooperation may not be sufficiently inculcated among members of agencies, or incorrectly interpreted, resulting in frustration and discord. Considering the nature of financial crime and the challenges it poses to investigation thereof, there is a need for cooperation and coordination of efforts. Despite this realisation, diverse agencies may find that during cooperation they revert to focusing on their traditional roles and approaches - usually in a silo manner, which they do not wish to change for the common good of cooperating with another agency.

The main themes emerging from the participants' answers were identified by using a content analysis for interpreting the response to question 3.14 in the interview schedule, "Are you aware of any operational constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer." These themes are presented in the frequency table, Table 3.15 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded "yes" with a frequency of 90% and "no" with a frequency of 10% to the question whether they were aware of any operational constraints that hampered inter-agency coordination, cooperation and collaboration during efforts to combat financial crime (question 3.14 in the interview schedule). The participants provided a diverse range of reasons as to why they were of the view that operational constraints hampered inter-agency coordination, cooperation and collaboration during efforts to combat financial crime.

The participants believe that there are operational constraints and that these are mainly centred around the procedures for obtaining information by one agency from another, and the lack of awareness of the availability of information from another agency and mechanisms for cooperation. This is consistent with the literature.

### **3.9.3.3 *Political constraints***

Political constraints may include a lack of political support for agencies to adopt new approaches to combating financial crime, and to make the changes required to reduce the level of legal and operational constraints (OECD, 2013:26). Mabuza (2012) reported that during a crime summit hosted by the Police and Prisons Civil Rights Union, Professor Somadoda Fikeni, a political analyst, warned that law enforcement agencies should not engage in political battles to the detriment of

good law enforcement work. Professor Fikene was quoted as saying “intelligence agencies are encroaching on political battles. That is why we cannot discover who bombed an ATM.” (Mabuza, 2012).

The main themes emerging from the participant’s answers were identified by using a content analysis for interpreting the response to the question (question 3.15 in the interview schedule), “Are you aware of any constraints of a political nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer.” These themes are presented in the frequency table, Table 3.16 (paragraph 3.11). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants responded “yes” with a frequency of 60% and “no” with a frequency of 40% to the question whether they were aware of any constraints of a political nature that hamper inter-agency coordination, cooperation, and collaboration during efforts to combat financial crime (question 3.15 in the interview schedule). The participants provided a diverse range of reasons why they were of the view that constraints of a political nature hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime.

The themes presented by the participants are focused mainly on perceptions or experiences of political interference during investigations, inequality in prosecutions, and political appointments in the agencies responsible for investigations and prosecutions. The current internal political discord is presented as a reason for ineffective coordination, cooperation and collaboration during efforts to combat financial crime.

### 3.10 SUMMARY

Combating of crime or to combat crime are frequently-used terms that are just as frequently used in the context of financial crime as, for example, combating of corruption, or combating of farm attacks. The terms are often inconsistently applied, and users often confuse their use with the term prevention of crime and vice versa. The terms combating of crime and prevention of crime are conceptually different. What is, however, important is that the concept combating of crime is an “overarching concept” and includes the elements of prevention of crime, detection of crime, investigation of crime, and crime intelligence. The Constitution of the RSA determines that the objective of the police is to prevent, combat and investigate crime, confirming that combating is an umbrella term for all kinds of legal activities aimed at fighting crime.

Understanding the concept crime prevention also proves to be problematic. There are several definitions available for clarifying the concept. What is, however, clear is that it refers to any or all the activities, strategies or measures aimed at reducing the risk of crime occurring in the first instance. The research indicates that situational (crime) prevention probably offers the best strategy to combat financial crime, as it focuses on the setting or place where the crimes take place, and it is crime-specific.

Conceptualising investigation of crime or crime investigation is less problematic, as the literature provides for very specific definitions, of which the one provided by Benson, Jones and Horne (2015:19) is practically applicable within the South African legal jurisdiction. The scope of criminal investigation can be said to have evolved beyond the scope of just resolving crime and now also includes asset forfeiture, intelligence gathering, disruption of criminal networks and taxing the proceeds of crime, as fundamental objectives of the criminal investigation process. This is an important factor to consider as part of the conception of a multidisciplinary approach to combating financial crime.

Detection of crime, which is “driven by the investigative process”, forms part of the “totality of efforts” (Hough & Du Plessis, 2003:8) to combat crime (*Strategic*

*Plan 2014 – 2019 ...*, 2014b). Detection of crime is one of the essential parts of the police mandate and is a crucial element of both the criminal justice system and SAPS as the main stakeholder. It involves all of SAPS' operational capabilities. Crime detection generally involves activities associated with the discovery of crime.

Criminal investigation is one of the activities associated with the combating of crime. This research reveals that there is consensus in the literature regarding the conceptualisation of criminal investigation, especially in the South African context, in terms of the applicable legal framework. Investigative processes are no longer concerned only with bringing offenders to justice. Important in the context of this research is that asset forfeiture, intelligence gathering, disruption of criminal networks, and taxing the proceeds of crime also have to be considered as objectives of the criminal investigation process. Crime intelligence, when correctly applied and generated, can contribute to the success of combating, prevention and investigation of criminal activities, and provides direction to law enforcement agencies about complex criminal activity.

South Africa has a comprehensive legal framework, which authorises the SAPS as the leading policing agency in South Africa to combat crime in general and perform the duties and exercise the powers to prevent, detect, investigate and gather crime intelligence in relation to all criminal activities in general. The relevant legal provisions were identified and discussed. Similarly, a comprehensive legal framework authorises and empowers the key agencies that form part of Government's institutional framework to combat financial crime. The relevant legislation has been identified and the provisions relevant to the respective mandates and combating of financial crime have been discussed. Despite having this robust and sophisticated legal framework, the inability of agencies to combat financial crime effectively can be traced to a lack of clear policies, and because of various agencies with single mandates operating in silos, which culminate in fragmented approaches with regard to cooperation, sharing information, and integration of efforts to combat financial crime.

This research reveals that there is a plethora of policies, strategies and plans offered by the Government to combat and prevent crime. This research further reveals that despite the statements of intent expressed in policy and strategic frameworks, there is very little, if any, information available on how these plans and strategies are to be implemented and maintained or whether the implementation is monitored.

This research reveals that there is not a single published government policy, plan or strategy dedicated to the combating of financial crime or, for that matter, commercial crime or economic crime explicitly. Against the background of the conceptualisation of the combating of crime and its elements in general, this research moved its focus to the more specific combating of financial crime.

This research indicates that with regard to financial crime there are calls that investigation thereof requires a multidisciplinary approach. Financial crime intelligence plays an increasingly important role as a technique to investigate fraud and economic crime. It plays a prominent role during the tracing of the proceeds of economic crime and corruption, and is one of the most important sources of financial intelligence available to investigators. This is an important element of the combating of financial crime, especially when considering the role and function of the FIC or FIUs generally in the combating of financial crime.

In the next chapter, the various institutional models available internationally to combat financial crime, with specific reference to cooperation and sharing of information, are identified and discussed. The key investigative agencies that form part of Government's institutional or organisational framework to combat financial crime as determined by the South African legislative framework are identified and discussed. The institutional models available to the South African jurisdiction to enable effective inter-agency cooperation by making optimal use of existing legal gateways are identified and discussed.

The available legal gateways for exchanging information between key investigative agencies are identified and analysed. The availability and relevancy of legal gateways between the various agencies are analysed and compared to

indicate how information held by one agency can be shared with others, making use of such gateways.



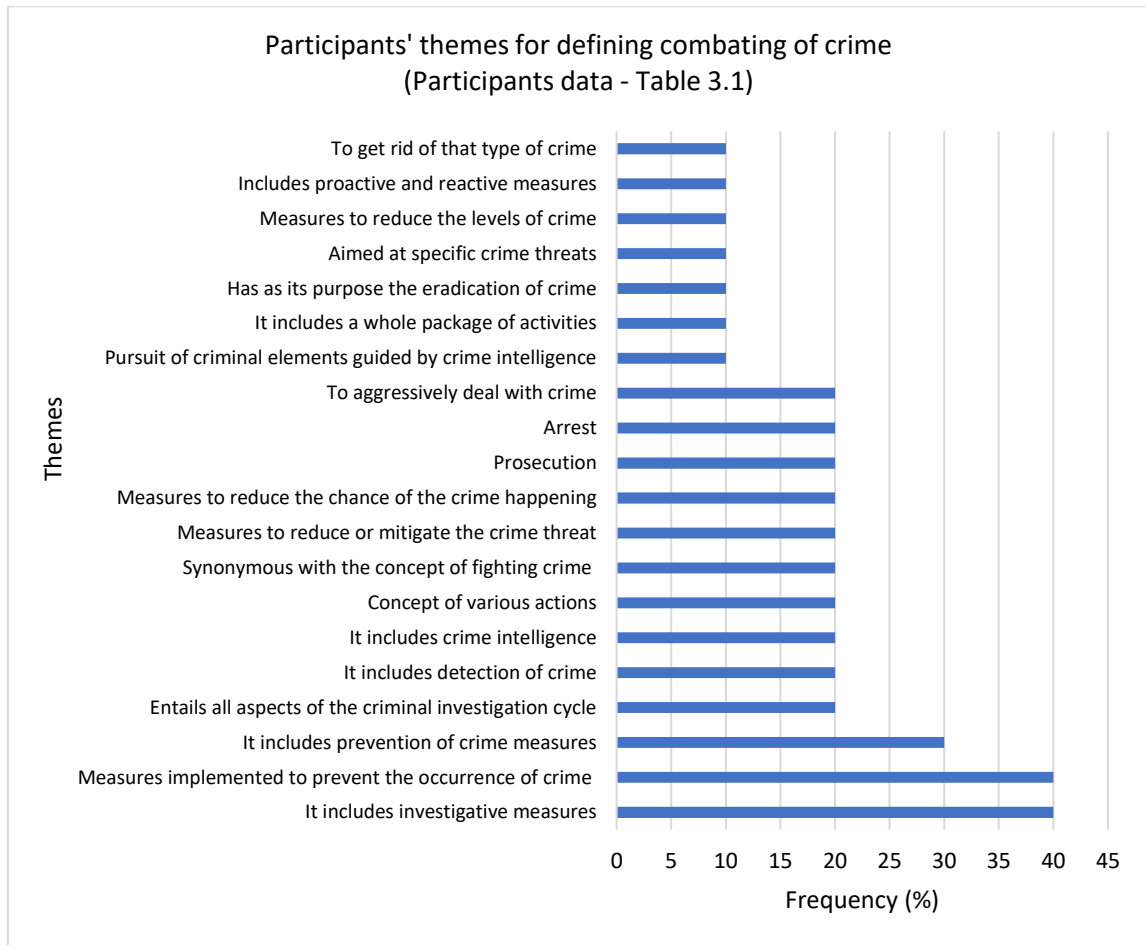
### 3.11 TABLES AND FIGURES REFERRED TO IN CHAPTER 3

**Table 3.1: Frequency table indicating participants' definitions for combating of crime**

Question 3.1: Define the concept combating of crime or to combat crime in your own words		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
It includes investigative measures	4	40
Measures implemented to prevent the occurrence of crime	4	40
It includes prevention of crime measures	3	30
Entails all aspects of the criminal investigation cycle	2	20
It includes detection of crime	2	20
It includes crime intelligence	2	20
Concept includes various actions	2	20
Synonymous with the concept of fighting crime	2	20
Measures to reduce or mitigate the crime threat	2	20
Measures to reduce the chance of the crime happening	2	20
Prosecution	2	20
Arrest	2	20
To aggressively deal with crime	2	20
Pursuit of criminal elements guided by crime intelligence	1	10
It includes a whole package of activities	1	10
Has as its purpose the eradication of crime	1	10
Aimed at specific crime threats	1	10
Measures to reduce the levels of crime	1	10
Includes proactive and reactive measures	1	10
To get rid of that type of crime	1	10

(Source: Feedback from participants)

**Figure 3.1: Participants' frequency of themes defining combating of crime**



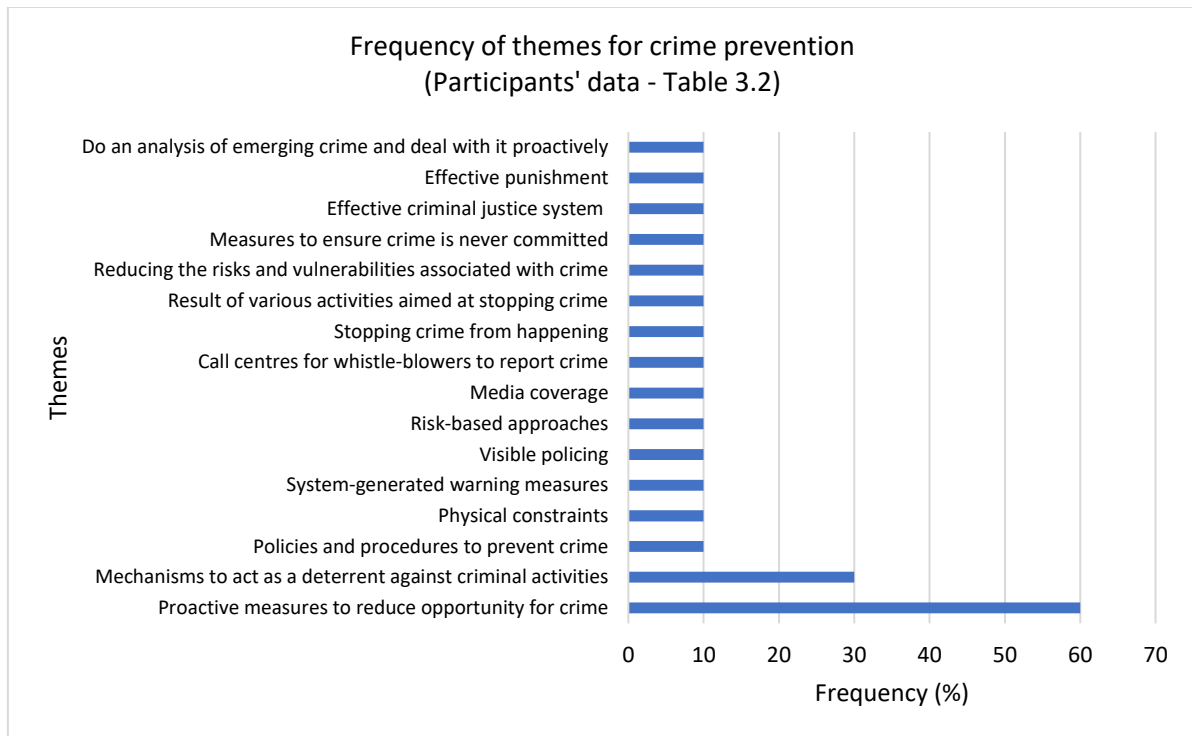
(Source: Data presented in Table 3.1)

**Table 3.2: Participants' frequency of themes defining crime prevention**

Question 3.2: Define the concept crime prevention in your own words		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Proactive measures to reduce the opportunity for crime (e.g. fraud awareness, due diligence, governance measures)	6	60
Mechanisms to act as a deterrent against criminal activities	3	30
Policies and procedures to prevent crime	1	10
Physical constraints	1	10
System-generated warning measures	1	10
Visible policing	1	10
Risk-based approaches	1	10
Media coverage	1	10
Call centres for whistle-blowers to report crime	1	10
Stopping crime from happening	1	10
Result of various activities aimed at stopping crime	1	10
Reducing the risks and vulnerabilities associated with crime	1	10
Measures to ensure crime is never committed	1	10
Effective criminal justice system	1	10
Effective punishment	1	10
Do an analysis of emerging crime and deal with it proactively	1	10

(Source: Feedback from participants)

**Figure 3.2: Participants' frequency of themes defining crime prevention**



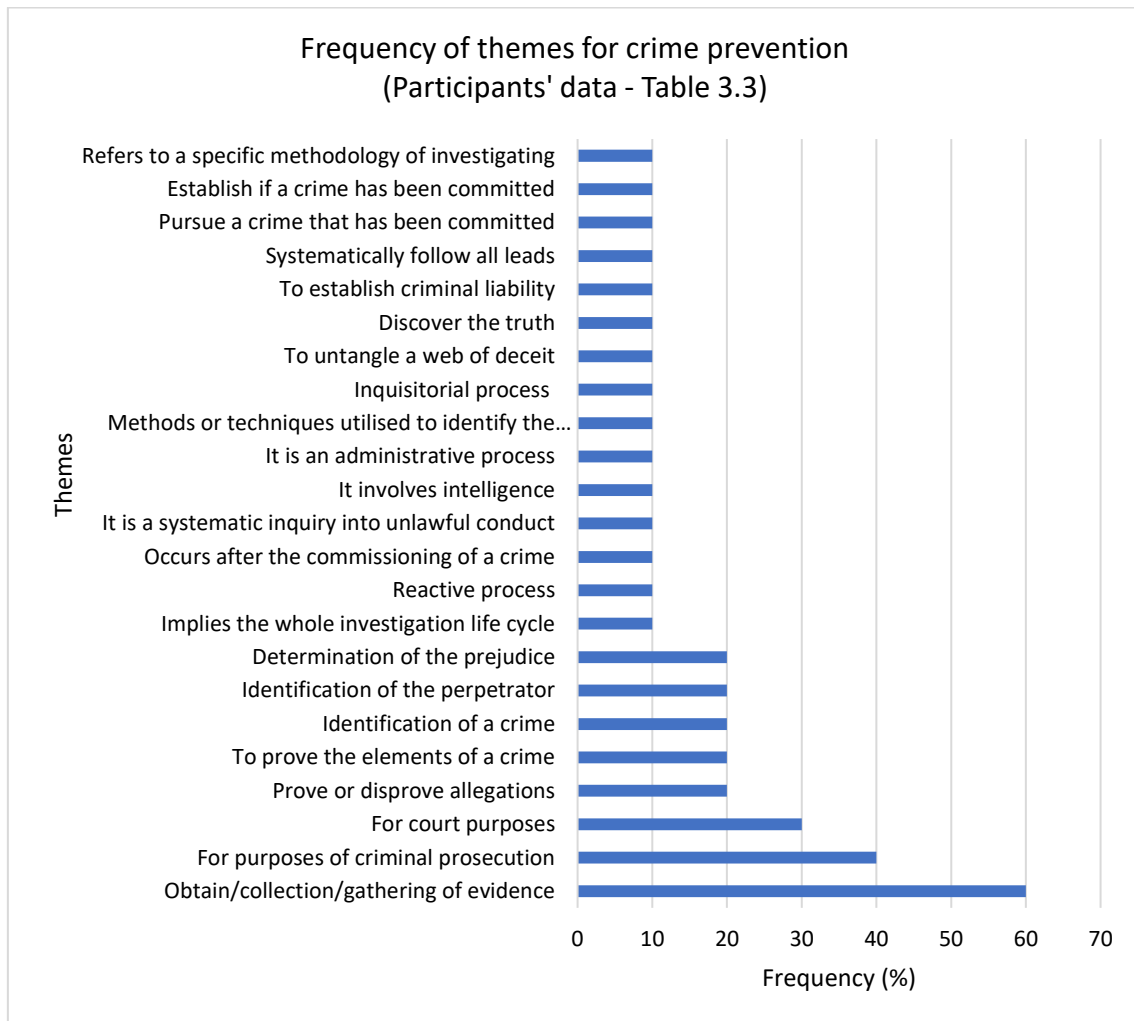
(Source: Data presented in Table 3.2)

**Table 3.3: Participants' frequency of themes defining investigation of crime**

Question 3.3: Define the concept investigation of crime in your own words		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Obtain/collection/gathering of evidence	6	60
For purposes of criminal prosecution	4	40
For court purposes	3	30
Prove or disprove allegations	2	20
To prove the elements of a crime	2	20
Identification of a crime	2	20
Identification of the perpetrator	2	20
Determination of the prejudice	2	20
Implies the whole investigation life-cycle	1	10
Reactive process	1	10
Occurs after the commissioning of a crime	1	10
It is a systematic inquiry into unlawful conduct	1	10
It involves intelligence	1	10
It is an administrative process	1	10
Methods or techniques utilised to identify the elements of a crime	1	10
Inquisitorial process	1	10
To untangle a web of deceit	1	10
Discover the truth	1	10
To establish criminal liability	1	10
Systematically follow all leads	1	10
Pursue a crime that has been committed	1	10
Establish if a crime has been committed	1	10
Refers to a specific methodology of investigating	1	10

(Source: Feedback from participants)

**Figure 3.3: Participants' frequency of themes defining investigation of crime**



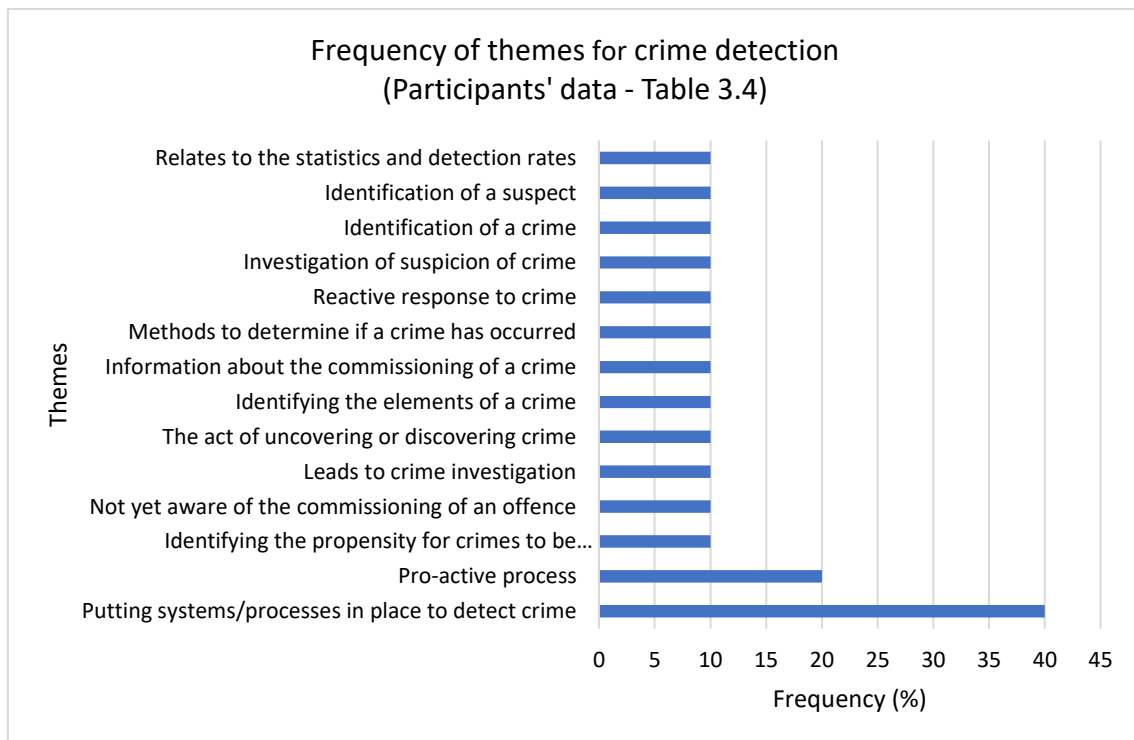
(Source: Data presented in Table 3.3)

**Table 3.4: Participants' frequency of themes presented to define crime detection**

Question 3.4: Define the concept crime detection in your own words		
Participants themes	Quantification of this theme	Frequency of this theme (%)
Putting systems/processes in place to detect crime	4	40
Pro-active process	2	20
Identifying the propensity for crimes to be committed	1	10
Not yet aware of the commissioning of an offence	1	10
Leads to crime investigation	1	10
The act of uncovering or discovering crime	1	10
Identifying the elements of a crime	1	10
Information about the commissioning of a crime	1	10
Methods to determine if a crime has occurred	1	10
Reactive response to crime	1	10
Investigation of suspicion of crime	1	10
Identification of a crime	1	10
Identification of a suspect	1	10
Relates to the statistics and detection rates	1	10

(Source: Feedback from participants)

**Figure 3.4: Participants' frequency of themes defining crime detection**



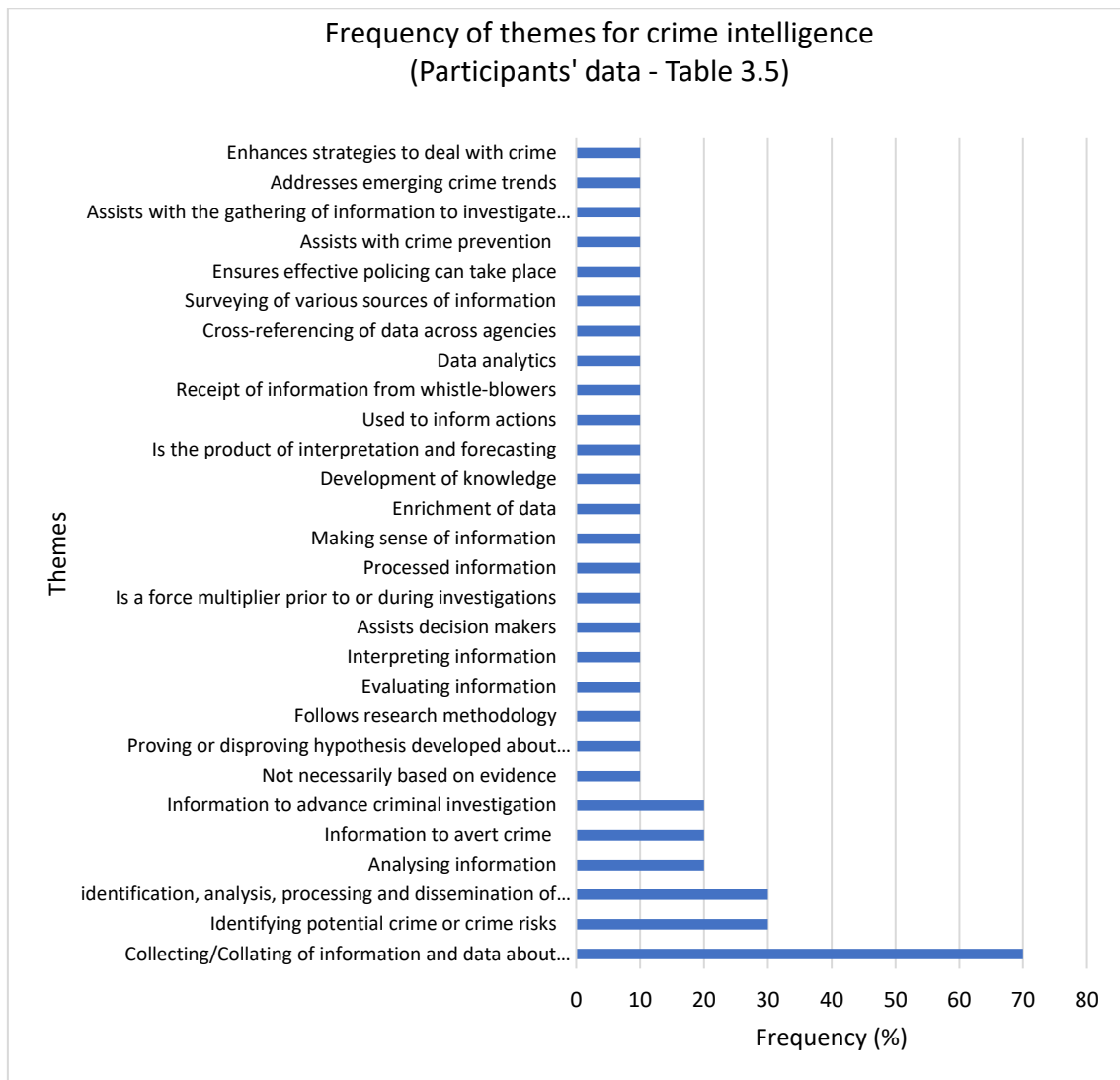
(Source: Data presented in Table 3.4)

**Table 3.5: Participants' frequency of themes defining crime intelligence**

Question 3.5: Define the concept crime intelligence in your own words		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Collecting/Collating of information and data about criminal activity, perpetrators of crime and crime trends	7	70
Identifying potential crime or crime risks	3	30
Identification, analysis, processing and dissemination of information	3	30
Analysing information	2	20
Information to avert crime	2	20
Information to advance criminal investigation	2	20
Not necessarily based on evidence	1	10
Proving or disproving hypothesis developed about perceived crime risks	1	10
Follows research methodology	1	10
Evaluating information	1	10
Interpreting information	1	10
Assists decision-makers	1	10
Is a force multiplier prior to or during investigations	1	10
Processed information	1	10
Making sense of information	1	10
Enrichment of data	1	10
Development of knowledge	1	10
Is the product of interpretation and forecasting	1	10
Used to inform actions	1	10
Receipt of information from whistle-blowers	1	10
Data analytics	1	10
Cross-referencing of data across agencies	1	10
Surveying of various sources of information	1	10
Ensures effective policing can take place	1	10
Assists with crime prevention	1	10
Assists with the gathering of information to investigate crime	1	10
Addresses emerging crime trends	1	10
Enhances strategies to deal with crime	1	10

Source: (Feedback from participants)

**Figure 3.5: Participants' frequency of themes defining crime intelligence**



(Source: Data presented in Table 3.5)



**Table 3.6: Offences related to non-compliance with the Financial Intelligence Centre Act**

Duty	Conduct (section)	Offence (section)	Regulations	Guidance
Identify and verify client	21	46	Regulation 2 to 19 & 21	GN 1, 2, 3 PCC03, 03A, 08, 09, 10, 11, 14
Duty to keep records	22; 23 & 24	47	Regulation 20, 24 & 26	PCC02
Reporting duties: <ul style="list-style-type: none"> <li>• CTRs</li> <li>• TPRs</li> <li>• STRs</li> </ul>	28; 28A & 29	51 51A 52	Regulation 22; 22A; 22B; 22C; 23; 24; 27A; 27B & 27C	GN 4 & 5 PCC04
Formulation and implementation of internal rules	42	61	Regulation 25; 26 & 2	
Training of employees regarding the FIC Act and internal rules	43(a)	62(a)		
Appointment of the compliance officer	43(b)	62(b)		PCC 12
Registration with the Centre	section 43B	61A	27A	GN05 PCC05, 06, 07
Compliance related to an inspection	45B(2)(a)	62A		
Failure to comply with: <ul style="list-style-type: none"> <li>• Section 26 – warrant</li> <li>• Section 27 – Request</li> <li>• Section 32 – Request</li> <li>• Section 34 – Directive</li> <li>• Section 35 – monitoring order</li> </ul>	49 50 57 58 59			
<b>Explanatory note:</b>				
<ul style="list-style-type: none"> <li>• The purpose of Public Compliance Communications (PCCs) and Guidance Notes (GNs) is to provide an interpretation of issues arising from the FICA</li> <li>• The “FIC Act” as referred to above means the Financial Intelligence Centre Act.</li> </ul>				

(Source: Alberts, 2016)

**Table 3.7: Themes presented by participants on whether they think financial crime in South Africa is combated effectively**

Question 3.6: Do you think that financial crime is effectively combated in South Africa by the agencies responsible for combating financial crime? Please substantiate your answer		
Participants' answers	Quantification of this theme or focus	Frequency of this theme or focus (%)
No	10	100
No - Mandates and functions are not collectively coordinated	5	50
No - Weak and unstructured public sector inter-agency co-operation	4	40
No - They have different views of what financial crime entails	2	20
No - Lack of skills	2	20
No - Fragmented approaches	2	20
No – Too much reliance on external organisations	1	10
No - Their efforts are not directed by crime intelligence	1	10
No - Lack of insight on complex matters	1	10
No - Lack of qualifications	1	10
No – Lack of resources	1	10
No - Lack of knowledge	1	10
No – Dissonance about who investigates what	1	10
No - Loss of focus	1	10
No - Different mandates in SAPS' units responsible for investigating financial crime	1	10
No - Weak and unstructured private sector cooperation	1	10
No – Absence of governance structure to direct efforts	1	10
No - Intelligence not directed at protecting the financial system.	1	10
No – No common line of sight between departments	1	10
No – Lack of information sharing	1	10
No – Guarding of own turf	1	10
No – Regulators do not enforce regulations and monitor offenders	1	10
No – Regulators do not follow up and monitor indicators of crime	1	10
No - Regulators tend to focus on licensed individuals and entities	1	10
No - Agencies do not act in time, leaving it to others to do the job	1	10
No - Crime intelligence fails to identify and monitor suspicious individuals	1	10
No - High incidence of financial crime is testament to ineffectiveness	1	10
No – Too many perpetrators get off scot-free	1	10
No - Too much time between commissioning and conviction.	1	10
No - Driving force is greed and therefore difficult to combat	2	10
No -There is an absence of a task force concept	1	10
No - There are legislative bottlenecks when it comes to information	1	10

(Source: Feedback from participants)

**Table 3.8: Frequency table of themes on how policies and strategies for combating financial crime, or the lack of policies, impact on coordination, cooperation and a collaborative effort to combat financial crime**

Question 3.7: How do policies and strategies for combating financial crime, or the lack of policies, impact on coordination, cooperation and a collaborative effort to combat financial crime effectively?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Uncoordinated efforts lead to an activity-based approach deviates from government's outcomes-based approach	2	20%
Lack of implementation leads to failure	2	20%
There is no common understanding of what financial crime entails	1	10%
Until there is a common understanding of what financial crime entails there will not be a common approach or strategy to combat financial crime	1	10%
When departments operate in isolation and dedicate resources haphazardly, financial crime as a separate category of crime will not be effectively addressed.	1	10%
MTSF establishes a framework to which all departments should align their mandate	1	10%
Lack of monitoring leads to failure	1	10%
Lack of a focused strategy	1	10%
It creates space for crime to flourish	1	10%
There is no will to cooperate	1	10%
What is required is overarching legislation to force/enable agencies to cooperate	1	10%
No flexibility in sharing of resources	1	10%
Requires buy-in from all heads of agencies	1	10%
Practical solutions must be implemented	1	10%
Prosecutors dealing with more than one investigator in various cases simultaneously	1	10%
It ensures that priorities are aligned between agencies involved	1	10%
Ensures that there <b>is collaboration</b> between all the agencies involved	1	10%
Makes SA vulnerable to financial crime	1	10%

(Source: Feedback from participants)

**Table 3.9: Participants’ awareness of government agencies or bodies developing or implementing policies or strategies that ensure inter-agency coordination, cooperation and collaboration to combat financial crime.**

Question 3.8: Are you aware of any government agency or body that is developing or implementing government policies or strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime? If so, provide the details of the agency or body and the policies and strategy it is developing or implementing		
Participants’ theme	Quantification of this theme	Frequency of this theme (%)
No	6	60%
Yes	4	40%
No - As a matter of policy, Government should prioritize the combating of financial crime	1	10%
Yes - The ACTT	1	10%
All government departments are affected	1	10%
Outcome 3 of the NDP – Tangent points with commercial crime	1	10%
Yes - The DPCI strategic plan targets proceeds of crime, commercial crime and serious economic offences through a multidisciplinary approach and integrated methodologies	1	10%
Yes – The Round-table initiative	1	10%
Yes – NICOC established various interdepartmental work groups	1	10%
Yes – National Intelligence Estimates	1	10%

(Source: Feedback from participants)

**Table 3.10: Frequency table indicating participants' answers as to whether they think there is effective Inter-agency coordination among government agencies during efforts to combat financial crime**

Question 3.9: Do you think there is effective inter-agency coordination among government agencies during efforts to combat financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
No	9	90
Yes	1	10
No – Information sharing is lacking/constrained by legislation	3	30
No - Very seldom an agency taking the lead on coordinating	2	20
No - Only on paper, not in the execution	1	10
No - Scramble to get agencies on board for concerted efforts	1	10
No - The various mandates and functions are not collectively coordinated or focused on achieving the required outcomes.	1	10
No - Weak and unstructured private and public-sector cooperation	1	10
No - There are no appropriate governance structures or mechanisms to direct the combating of financial crime.	1	10
No - The intelligence services are focusing on incidents and not the protection of the financial systems	1	10
No - The multidisciplinary approach and the development of integrated methodologies are hampered by uncorrelated mandates, organisational culture, joint planning and the lack of shared funding and resource allocations, either jointly or individually	1	10
No – No common line of sight between departments	1	10
No – Each agency is protecting its own turf	1	10
No – Few joint operations	1	10
No – Data or core information inconsistent	1	10
No – Scope of investigations/ extending mandate constrained by legislation	1	10
No – Misaligned strategies	1	10
No - Priorities of government misaligned with priorities of agencies	1	10
No - Cooperation is difficult	1	10
No - Disjointed coordination	1	10
No - Different goals	1	10
No - Different objectives	1	10
No – Different performance objectives	1	10
No - Performance outcomes are measured differently	1	10

Source: (Feedback from participants)

**Table 3.11: Frequency table of participants’ answers to whether they think there is effective inter-agency cooperation among government agencies during efforts to combat financial crime**

Question 3.10: Do you think there is effective inter-agency <u>cooperation</u> among government agencies during efforts to combat financial crime?		
Participants’ answers	Quantification of this theme	Frequency of this theme (%)
No	9	90
Yes	1	10
No – Agencies pursue their own objectives and performance goals	3	30
Yes – as soon as a lead agency is identified for specific project, cooperation is sufficient	2	20
Room for improvement	2	20
No - Very seldom an agency taking the lead in coordinating	1	10
No - Only on paper, not in the execution	1	10
No - Coordination between agencies limited to their own objectives and targets	1	10
No – Information sharing is lacking/difficult/constrained by legislation	2	10
No – Scope of investigations/ extending mandate constrained by legislation	1	10
No- Weak and unstructured private and public-sector cooperation	1	10
No - There are no appropriate governance structures or mechanisms to direct the combating of financial crime.	1	10
No - The intelligence services are focusing on incidents and not the protection of the financial systems	1	10
No - The multidisciplinary approach and the development of integrated methodologies are inhibited by uncorrelated mandates, organisational culture, joint planning and the lack of shared funding and resource allocations, either jointly or individually	1	10
No – There is no common line of sight between departments	1	10
No – Information sharing is lacking	1	10
No – Each agency is guarding its territory	1	10
No – Low number of joint operations	1	10
No – Data of core information inconsistent	1	10
No – Misaligned strategies	1	10
When cooperation does occur, it appears to be effective	1	10

(Source: Feedback from participants)

**Table 3.12: Frequency table of participants' answers as to whether they think there is effective inter-agency collaboration among government agencies during efforts to combat financial crime**

Question 3.11: Do you think there is effective inter-agency collaboration among government agencies during efforts to combat financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
No	8	80
Yes	2	20
No - I am not aware of sharing or exchange of resources	1	10
Yes - Task teams are formed		10
No - The various mandates and functions are not collectively coordinated or focused on achieving the required outcomes.	1	10
No - Weak and unstructured private and public-sector cooperation	1	10
No - There are no appropriate governance structures or mechanisms to direct the combating of financial crime.	1	10
No - The intelligence services are focusing on incidents and not on protection of the financial systems	1	10
No - The multidisciplinary approach and the development of integrated methodologies are inhibited by uncorrelated mandates, organisational culture, joint planning and the lack of shared funding and resource allocations, either jointly or individually	1	10
No – No concerted efforts to coordinate collaboration, irrespective of enabling legislation.	1	10
No – Legislative mandates constrain collaboration	1	10
No – Agencies focus on their own objectives	1	10
Constraints in sharing information	1	10
Constraints in cooperation	1	10
Misalignment of strategies	1	10
Cases are dealt with in silos	1	10
Collaboration affected by insufficient financial resources	1	10
Collaboration affected by insufficient human resources	1	10
Yes - When there are secondments involved	1	10

(Source: Feedback from participants)

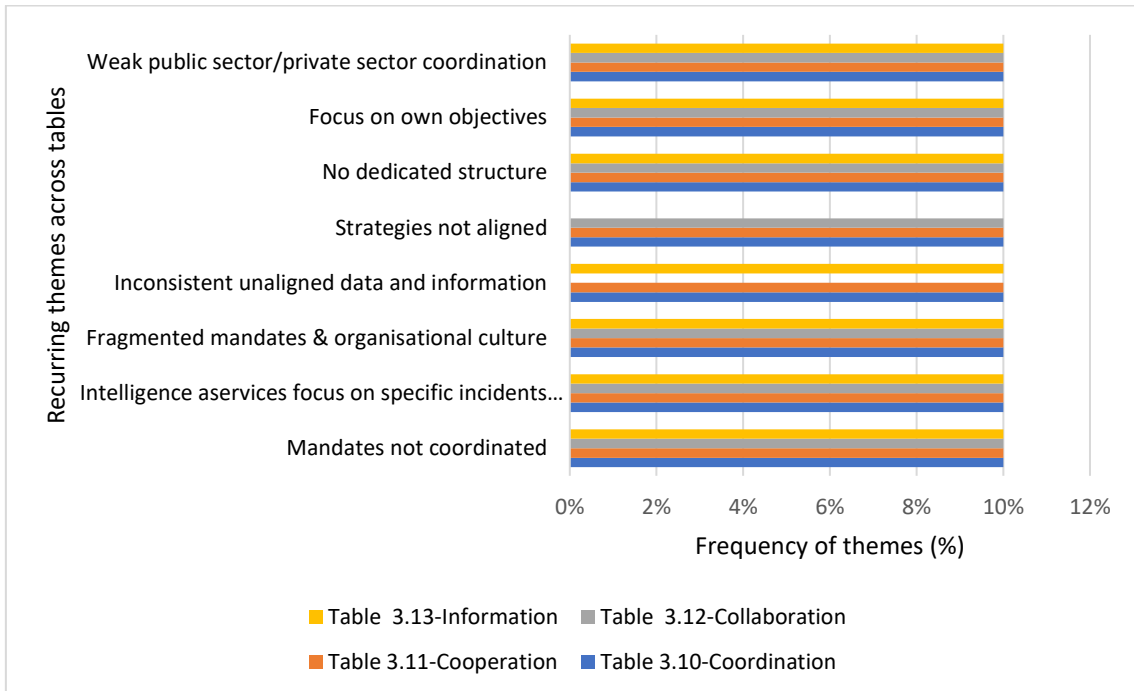
**Table 3.13: Frequency table with participants' answers as to whether they think that the sharing of information among government agencies during efforts to combat financial crime is effective**

Question 3.12: Do you think that sharing of information among government agencies during efforts to combat financial crime is effective?		
Participant's themes	Quantification of this theme	Frequency of this theme (%)
Yes	2	20
No	8	80
No - Concern is how that information is used	1	10
No - Concern that the information is not used for ulterior purposes	1	10
No -Legislative limitations between some agencies	1	10
No - Databases and access to databases not integrated	1	10
No - The various mandates and functions are not collectively coordinated or focus on achieving the required outcomes.	1	10
No - Weak and unstructured private and public-sector cooperation	1	10
No - There are no appropriate governance structures or mechanisms to direct the combating of financial crime.	1	10
No - The intelligence services are focusing on incidents and not on the protection of the financial systems	1	10
No - The multidisciplinary approach and the development of integrated methodologies are inhibited by uncorrelated mandates, organisational culture, joint planning and the lack of shared funding and resource allocations, either jointly or individually	1	10
No – Effectiveness should reflect in the number of successful prosecutions, confiscation orders or seizures. These are generally low.	1	10
No – Agencies pursue their own objectives and performance goal	1	10
No – Information sharing is lacking/constrained by legislation	1	10
No – Legislative mandates constrain collaboration	1	10
No – Information is not shared on time	1	10
No -There is fragmentation	1	10
No - Separate budgets, goals, objectives and targets to chase	1	10
No- Where there has been cooperation on projects the successes were as a result of effective sharing of information	1	10
No - Pedantic application of secrecy provisions	1	10

(Source: Feedback from participants)



**Figure 3.6: Recurring themes across tables regarding the status of cooperation, collaboration, information sharing and coordination**



(Source: Data from Table 3.10, Table 3.11, Table 3.12 and Table 3.13)

**Table 3.14: Frequency table indicating participants' answers as to whether they are aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime**

Question 3.13: Are you aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Yes	6	60
No	4	40
No - Legal gateways are in place to enable sharing of information	3	30
Yes – Legal confidentiality provisions prohibit sharing of information and intelligence	2	20
Yes - Legal provisions are incorrectly executed	1	10
Yes - Agencies expect abuse of powers	1	10
Yes - Gaps in legislation that prevent sharing of information	1	10
No - Chapter 3 of the Constitution provides for the principles of cooperative government and intergovernmental relations.	1	10
No – The superseding provisions of POCA also open gateways for sharing information	1	10
Yes – Provisions of POCA must just be implemented and executed.	1	10
Yes – Problem lies with the legal battles faced by heads of agencies	1	10

(Source: Feedback from participants)

**Table 3.15: Frequency table indicating participants' answers as to whether they are aware of any operational constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime**

Question 3.14: Are you aware of any operational constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Yes	9	90
No	1	10
Yes – insufficient skills	2	20
Yes – insufficient resources	2	20
Yes- Disjointed actions or operations with the same target in mind	1	10
Yes - No centralised coordination	1	10
Yes -Targets and objectives not integrated	1	10
Yes - Absence of a national security system and financial crime risk assessment provided by the intelligence agencies to direct efforts to address financial crime risks and threats through targeted actions.	1	10
Yes – insufficient logistics	1	10
Yes – Ignorance of the legal provisions enabling cooperation and information sharing	1	10
Yes – resources shared do not have the necessary level of authority to make decisions	1	10
Yes – SOP prohibits sharing of information	1	10
Yes – Several levels of authority required before information can be shared	1	10
Yes – Caseloads between prosecutors and investigators are fragmented	1	10
Yes – Because of fragmentation of caseloads, prioritisation is impossible	1	10
Lack of resources forces agencies to focus on their own priorities.	1	10
Usually, where there is a political will, operational constraints are worked around	1	10

(Source: Feedback from participants)

**Table 3.16: Frequency table indicating participants' answers as to whether they are aware of any constraints of a political nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime**

Question 3.15: Are you aware of any constraints of a political nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer?		
Participants' themes or focus	Quantification of this theme	Frequency of this theme (%)
Yes	6	60
No	4	40
Yes - Political interference in the appointment of senior officials	3	30
Yes - Political interference creates dissonance among agencies	2	20
Yes - Instability in DPCI due to political interference	2	20
Yes - Authority of the state corroded by corruption	2	20
Yes – Crony appointments of people not fit and able to fill prominent positions. HAWKS and NPA are examples	2	20
Yes - Lack of common ground regarding financial crime	1	10
Yes - Lack of approach regarding financial crime	1	10
Yes - Instability in NPA due to political interference	1	10
Yes - Breaks down trust among agencies	1	10
No - JCPS established by politicians to ensure collaboration	2	10
Yes - Capture of political office inhibits the execution and oversight over legal mandates of stakeholders	1	10
Yes – Interference especially in corruption investigations	1	10
Yes – The investigation of criminal offences against certain individuals is suppressed.	1	10
Yes- A prominent example is the failure of agencies to act against the head of state facing allegations of corruption	1	10
Ordinary subjects are prone to investigation, whereas political allies are not.	1	10

(Source: Feedback from participants)

## CHAPTER 4: INTER-AGENCY COOPERATION

### 4.1 INTRODUCTION

During an engagement of three parliamentary committees with the Treasury, SARS, the FIC, the Reserve Bank, the Department of Mineral Resources, SAPS and the NPA, it emerged that significant gaps in law enforcement and coordination were a source of concern in that the fight against illicit financial flows and profit-shifting was not effective. Regarding financial crimes, the Finance Committee chairman, Yunus Carrim, was quoted as saying that there was a need for greater coordination between regulators (Ensor, 2017:10). Given the complexity and multifaceted nature of financial crime, combating it in all its facets cannot be undertaken by a single agency acting in isolation, irrespective of how competent the agency and its officers may be. Depending on the legal mandate of agencies in respect of combating one or more of the facets of financial crime, one agency, such as SARS, may have a legal mandate in respect of investigating tax fraud, while another has the legal mandate to seize and forfeit the proceeds of the predicate offence (World Bank, 2011:4). Because of the difference in responsibilities in terms of agencies' legal mandates, it is essential that there be effective coordination and cooperation between the various critical investigative agencies at a national level. Due to the traditional role and arrangement of the various agencies in what can be referred to as a silo approach which is focused on a particular agency's role, there is a requirement to explore and develop practical ways to enhance cooperation and coordination during combating of financial crime (World Bank, 2011:6).

Cooperation requires that the relevant government agencies responsible for combating financial crime interact with each other at policy as well as operational level. The interaction can be in the form of exchanging information, cooperation in investigations that cut across different agencies, and exchange of staff who can share expertise. Generally, it also refers to participation in inter-agency forums on a frequent and ongoing basis (World Bank, 2011:5).

Not only is the ability of governments to share information an indicator of their effectiveness to proactively identify risks pertinent to their mandate, but also a

prerequisite for effective inter-agency cooperation (Schlenthher, 2016:2), and as such it relates to the problem addressed in this chapter and highlighted below. Regarding inter-agency cooperation and exchange of information between investigative agencies during the combating (prevention, detection and investigation) of financial crime, Boucher (2011) suggested that the critical question to ask is how to do so effectively. In highlighting the problems associated with cooperation and exchanging information between agencies involved in combating financial crime, Boucher (2011) states that cooperation is difficult and challenging, at both an international and domestic level. Cooperation between agencies during the various stages of combating financial crime is essential (Schlenthher, 2016:2). From a financial crime-combating perspective, several government agencies may be involved in part or throughout the life-cycle of the investigation, depending on the circumstances (Schlenthher, 2016:2).

The OECD (2013:8) conducted “an in-depth analysis of inter-agency cooperation in fighting financial crime” in 32-member countries. The OECD published their findings in a report titled, “Effective Inter-Agency Co-operation in Fighting Tax Crimes and Other Financial Crimes” (2012). During the survey, models for cooperation were identified, with a focus on how tax administrations per se share information with other key agencies during the combating of financial crime.

In 2013, the OECD (2013:8) published a second edition of the report, with the same title. This time it included 48-member countries in its survey. An addition to the second edition is the recognition of the essential role that customs authorities play as a critical agency in combating financial crime, and their ability to exchange information for use by other agencies during the combating of financial crime (OECD, 2013:8). The arrangements and actions for inter-agency cooperation, coordination and sharing of information, as viewed by the OECD, are regarded as providing a framework from which to explore, build upon and enhance in this research. The researcher deepens the level of exploration and analysis at a domestic level in this research. In this chapter, the ability to exchange information between the key agencies as well as cooperation are considered and analysed.

The research question regarding the identification of the critical investigative agencies for combating financial crime is addressed in this chapter, together with

identification of the available institutional settings for ensuring inter-agency cooperation within the confines of the legal framework and mandates for exchanging (sharing) information. In answering the stated research question, the researcher addresses the research objective of identifying the vital investigative agencies and institutional arrangements for combating financial crime in South Africa. In addition, it relates to the objective of identifying the legal framework enabling government agencies to cooperate, coordinate and share information during efforts to combat financial crime.

In this chapter, the key agencies in the frontline of combating financial crime during the different stages, as well as their roles, are reviewed. The focus then shifts from the key agencies and their roles, based on an international generic framework, to an in-depth analysis of the South African organisational modality, as informed by the South African legal framework, literature and feedback from participants.

Sharing of information between key agencies is a fundamental requirement and prerequisite for inter-agency cooperation (Schlenter, 2016:2). The flow of information between agencies enables them to combat financial crime efficiently (Schlenter, 2016:2). The available gateways that make the lawful exchange of information possible are analysed. The existence of legal gateways, according to South African law, enabling the flow of information between the key agencies as a prerequisite for inter-agency cooperation, is identified. An analysis of the legal gateways is undertaken in respect of each principal agency in relation to the others to indicate the prospect of exchanging information legally.

The various operational models available at an international level, generally to ensure effective inter-agency cooperation, making optimal use of the legal gateways that exist and enabling agencies to work together for their mutual benefit, are identified in this chapter. These models relate to the various ways in which the respective agencies can arrange themselves for purposes of cooperation. Similar operational models available in South Africa are identified and analysed in this chapter.

## 4.2 KEY AGENCIES

Government's efforts to combat financial crime throughout the various stages are made up of an institutional framework of government agencies and bodies. Some of these agencies are part of the country's historical institutional framework for law enforcement. More recent policy decisions reflect new additions to the institutional framework to combat financial crime. When developing strategies for inter-agency cooperation, consideration must be given to the distinct features of each organisational or institutional framework to ensure that the maximum benefits of cooperation are achieved. To reap the desired benefit from cooperation between agencies will depend on what agency has responsibility for which activity. This will have a direct bearing on the processes and agreements required (OECD, 2013:29). When agencies are combating financial crime, their activities are spread across various agencies and involve officials attached to various agencies, such as the revenue authority, customs administrations, FIUs, law enforcement agencies, specialised investigation agencies, and prosecuting authorities. These agencies may individually hold operational and strategic information that is pertinent to the activities of other agencies for combating financial crime (OECD, 2013:29). The various stages of combating financial crime may comprise prevention, gathering of intelligence, detection, investigation, prosecution, as well as recovering and taxing the proceeds of financial crimes.

The complexity of financial crime investigations requires the support of the relevant agencies that might have a part to play in solving a case, even if it is at a marginal level, hence the importance of identifying the key agencies. An understanding of the different roles of the key agencies is essential in order to appreciate inter-agency cooperation at an international as well as a domestic level. For example, if the responsibility for investigating corruption lies with the DPCI, the activities of the DPCI directly impact on the arrangements with other agencies required to investigate the aspects of tax and proceeds of crime. In South Africa, SARS is legally mandated and responsible for initiating, directing and conducting a criminal investigation where there is an indication of the commissioning of a tax offence. SARS is charged with the subsequent laying of formal criminal charges at the SAPS, followed by rendering assistance to the



SAPS and NPA with regard to the investigation and prosecution of the offence as required (section 3(2)(f), section 43, section 44 and section 235(3) of the Tax Administration Act).

In the following paragraphs, the general responsibility of individual agencies is described regarding the combating of financial crime, as structured internationally and domestically. This information is provided to facilitate an understanding of the inter-agency cooperation or relationship in existence. Later in this chapter, the institutional framework to combat financial crime in South Africa is explicitly identified and the roles of the various agencies elaborated on.

From the research conducted of the national legislation, literature and feedback from the participants it is apparent that South Africa does not have a dedicated agency or authority with the sole legal mandate to combat and prevent financial crime exclusively. From what has previously been stated in this research it is evident that other agencies and authorities also play a role and may be involved at any of the stages of combating financial crime. Just as there are different statutes that deal with different financial crimes and types of conduct that fall in the category of financial crime, there are agencies and investigative authorities with specific legal mandates dealing with financial crimes or sub-categories thereof at various stages. In the discussions that follow in this chapter, the focus of the examination is on the legislative responsibilities, duties and functions of the respective agencies and authorities during the various stages of combating financial crime, in accordance with the relevant empowering (authorising) statutes.

Using a content analysis for interpreting the response to question 4.1 in the interview schedule, “List the government agencies and/or investigative authorities responsible for combating financial crime in South Africa”, the entities emerging from the participants’ answers were listed and presented in the frequency table, Table 4.1 (paragraph 4.8). The question was open-ended, therefore they could provide their own answers to the questions, as no choices were provided from which they could choose to answer. Some of the participants could therefore have listed more than one entity in response to the question. The frequency of the

themes as presented in Table 4.1 (paragraph 4.8) by the participants regarding a listing of the government agencies and/or investigative authorities responsible for combating financial crime in South Africa expressed as a percentage is graphically depicted in Figure 4.1 (paragraph 4.8).

The AFU is represented by a relatively low frequency of 30% in the answers provided by participants (question 4.1 in the interview schedule). The most prominent themes emerging from the answers of the participants regarding listing the government agencies and/or investigative authorities responsible for combating financial crime in South Africa in descending order are:

- The FIC, with a frequency of 100%
- SAPS, DPCI, Crime Intelligence Unit, with a frequency of 100%
- SARS with a frequency of 100%
- South African Reserve Bank (SARB), with a frequency of 70%
- NPA with a frequency of 60%
- Financial Services Board (FSB) with a frequency of 50%
- Special Investigation Unit (SIU) with a frequency of 50%

The identification by the participants of the government agencies and/or investigative authorities responsible for combating financial crime in South Africa is consistent with the agencies identified in the literature and discussions that follow below.

#### **4.2.1 Tax administration**

Tax administration is generally responsible for revenue collection on behalf of a government, and includes obtaining and processing information about individuals and corporate entities that are subject to tax, including their personal details, property titles, investments, financial transactions and business operations for purposes of assessing their tax liability (OECD, 2013:30). Tax administrations employ large numbers of trained specialists and investigators with experience in auditing and analysing financial data, and investigating suspicious or irregular transactions. Tax administrations are likely to have extensive powers to access information and documentation from taxpayers and third parties. They typically

play a central role in preventing, detecting and investigating tax crime. Once the suspicion of a tax crime exists, individual countries apply different models to determine the extent to which a tax administration may be involved in a subsequent criminal investigation and prosecution (OECD, 2013:30).

Generally, there are four models for comparing tax authorities, based on criteria that may impact on the tax authority's role and ability to participate in the combating of financial crime and obtaining information from other authorities relevant to an investigation (OECD, 2013:30). The four primary models or configurations are as follows:

- a. The tax administration directs and conducts investigations.
- b. The tax administration conducts investigations as directed by a prosecutor.
- c. A specialist tax agency outside the tax administration conducts investigations.
- d. The police or prosecutor conducts investigations.

Established in terms of the South African Revenue Service Act (34 of 1997) (hereafter referred to as the South African Revenue Service Act) as an autonomous agency, SARS is responsible for administering the South African tax system and customs service. SARS' statutory responsibilities include (*What SARS does ...*, 2016):

- the collection and administering of all national taxes, duties and levies;
- the collection of revenue that may be imposed under any other legislation, as agreed on between SARS and a state entity entitled to the revenue;
- providing a customs service that facilitates trade, maximises revenue collection, and protects South Africa's borders from illegal importation and exportation of goods, and
- advising the Minister of Finance on all revenue matters.

Within SARS, there is a specific division that has as its function the combating of tax evasion and customs offences, as well as assistance to other law

enforcement agencies in efforts to combat crime, from a revenue and customs perspective. Their activities are described below (OECD, 2013:331):

- Conducting preliminary investigations and enquiries where there are grounds to believe that tax or customs offences of a serious nature have been committed. The aim is to determine the most appropriate action based on the circumstances of the individual case. The relevant division considers capacity and workload in the greater CJS and seeks alternatives beyond criminal proceedings, such as administrative penalties, as a deterrent.
- Conducting criminal investigations aimed at proving criminal liability in order to lay criminal charges at the SAPS or NPA, and aid these two institutions, as is reasonably required for the successful investigation or prosecution of the case.
- Conducting financial investigations, as provided for in section 45 of the Financial Intelligence Centre Act.
- Conducting project-driven criminal investigations involving tax offences in accordance with the provisions of Chapter 5 of the Tax Administration Act.
- Conducting accelerated debt management activities, i.e. liquidation or sequestration of taxpayers, agent appointments, pursuing third-party liabilities, and preservation of asset orders.

When enforcing the Acts administered by the Commissioner for SARS, the latter plays a particular role within the CJS. SARS is legally mandated to conduct criminal investigation into tax offences. When an investigation of an alleged tax offence is finalised, a criminal complaint is filed at the SAPS to gain access to the CJS. The evidence collected is presented to the NPA to decide whether the person or entity should be charged with a crime and prosecuted (*SARS and the criminal justice system ...*, 2016). SARS supports other government agencies in the investigation of money laundering and corruption activities. SARS is an active participant in the Multi-Agency Work Group (MAWG) and the ACTT that are assigned to combat corruption in Government. Working through these forums has empowered SARS to challenge elaborate international schemes that SARS

cannot achieve on its own. There is also legislation, such as the Financial Intelligence Centre Act, the Prevention of Organised Crime Act and Prevention of and Treatment for Substance Abuse Act (70 of 2008), which oblige SARS to support the SAPS, the FIC and other agencies in criminal investigations (*SARS and the criminal justice system ...*, 2016).

Swanepoel and Coetzee (2014:2) assert that when fraud or corruption is committed, taxation may come into play. Swanepoel and Coetzee (2014:2) further state that, depending on the nature or extent of the fraud committed, SARS may be deprived of revenue as a result of one of the tax-levying Acts. Chaikin and Sharman (2009:38) state that a country's tax system is a natural source of intelligence on corruption and money laundering, as it is dependent on the generation and analysis of vast amounts of financial information. This notion is underscored when considering the legal arrangements for the exchange of specific information between SARS and the FIC regarding money-laundering activities and tax evasion. A practical way to illustrate the interaction between tax evasion and other forms of financial crime such as money laundering is found in the question posed by Swanepoel and Coetzee (2014:2), when they ask: "Do fraudsters perpetrate fraud or corruption to conceal taxation consequences, or do the taxation consequences merely result from the perpetration of fraud or corruption?" The answer to this question can possibly be found in the opinion offered by Spreutels and Grijseels (2000:2) who assert that, although money laundering and tax evasion are separate crimes, there is a relationship between them. The successful execution of each of these crimes is dependent on the capability to hide the financial trail of the income. Money launderers, such as those involved in financial crime, seek to transform illegally-earned income into legal income for fear of the income being recovered, while tax evaders seek to conceal income, whether legally or illegally earned, from detection and confiscation by the tax authorities (Spreutels & Grijseels, 2000:2). This affirmation intersects with the statement by Chaikin and Sharman (2009:1) regarding the symbiotic relationship between financial crimes.

The interaction in existence between tax evasion and other forms of financial crime, as illustrated above, requires that close attention be given to reporting obligations, disclosure and sharing of information between SARS and other

agencies. Chaikin and Sharman (2009:38) observe that revenue authorities in most countries have strong investigative powers to combat tax evasion and that such powers are useful in advancing investigations into other forms of financial crime. This observation is confirmed in the following declaration provided in paragraph 2.1 of the *Memorandum to the Objects of the Tax Administration Bill, 2011* (The Tax Administration Bill, 20, B11B of 2011 was assented to by the State President on 2 July 2012 and is now known as the Tax Administration Act. The Tax Administration Act extends SARS' powers, for example, its information gathering, assessment and collection powers to enhance tax compliance. In this regard, the following:

- a. The Tax Administration Act gives recognition to the fact that most taxpayers are compliant and want a more modern and responsive revenue administration, but that there is a minority that seeks to evade tax or defraud the Government.
- b. SARS has a duty to actively pursue tax evaders to maintain confidence in the integrity of the tax system.
- c. Tax evasion undermines compliant taxpayers' morale and places an unfair burden on them if it is not efficiently countered.
- d. Over the years, it became apparent that stricter enforcement powers are required to target increasingly sophisticated tax evaders and tax evasion schemes.

The participants were undivided in their view that the SAPS (DPCI), SARS and the FIC are responsible for combating financial crime. It would therefore follow that a participant who did not identify a specific agency in response to question 4.1 in the interview schedule would not be able to respond to the question regarding the responsibility of that agency when answering question 4.2 in the interview schedule, as listed in Table 4.1 (paragraph 4.8).

Using a content analysis, the themes focused on by the participants who referred to SARS were identified and listed. The themes are presented in the frequency table, Table 4.2 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were

provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The themes presented by the participants regarding the responsibility of the SARS to combat financial crime are consistent with the literature. The researcher observed from the themes presented by the participants that although the question referred to “combating” of financial crime, the themes refer mainly to investigation and enforcement. No reference is made to the other facets of combating referred to in the literature, namely prevention, detection and provision or obtaining crime intelligence. When participants are asked to consider the responsibility of specific agencies as regards the combating of financial crime, the focus shifts to the specific mandates of the agencies, namely responding to financial crime in a reactive manner, and not considering all the aspects of combating financial crime, including proactive measures.

#### **4.2.2 Customs authority**

Customs authorities are vital agencies in preventing, detecting and investigating financial crime. Customs agencies are adept at monitoring the movement of people, goods and funds across national borders, using sophisticated systems. During the administration of customs control, customs and excise duties and Value-added Tax (VAT), Customs maintains records on individuals, companies and transactions. Customs authorities may be established as agencies separate from that of the tax authority, or in some countries they form part of a joint tax authority (OECD, 2013:33). In South Africa, the customs administration forms part of a single tax and customs revenue agency.

The customs administration is a division housed within SARS under the control of the Commissioner for SARS. The core functions are to (OECD, 2013:331):

- enforce customs as well as related trade laws;
- collect duties and taxes;
- ensure the social welfare of the citizens of South Africa by controlling the import and export of prohibited and restricted goods;
- ensure timely clearance of goods and facilitate the speedy movement of travellers through South African borders;

- support South Africa's integration into the global economy in a way that benefits all South Africans;
- ensure that where elements of serious duties/levies evasion are identified, such matters are handed over to the Tax and Customs Investigations Unit for further investigation and enforcement activities.

SARS has a role in administering laws that are not necessarily related to revenue collection or customs control but are essential to protect the South African economy. For example, Customs must prevent harmful goods from entering South Africa, such as alien species that may endanger the natural resources or South African citizenry (*SARS and the criminal justice system ...*, 2016).

#### **4.2.3 The police and other specialist enforcement agencies**

Essentially, the police are the primary or lead agency with the responsibility of enforcing the law, protecting property and maintaining law and order. In some countries, the capacity to investigate crime is institutionalised within the police, or some functions may be established as separate agencies outside the police, as specialist units (OECD, 2013:36). In other countries there may be specialist units within or outside the structure of the police responsible for the investigation of financial crime or aspects of it, or for types of financial crime (OECD, 2013:36). The role and position of the police and other specialised law enforcement agencies with regard to the combating of financial crime are expanded on below

##### **4.2.3.1 The South African Police Service**

The SAPS is a separate state organ resorting under the control of the Minister of Police, and is statutorily tasked to (OECD, 2013:36):

- prevent, combat and investigate crime;
- maintain public order;
- protect and secure the inhabitants of the Republic and their property;
- uphold and enforce the law.

The SAPS have the principal statutory duty to combat and prevent crime generally, which by default includes financial crime, irrespective of whether it has



been stated explicitly as such. The SAPS is mandated to prevent and combat national priority offences such as serious organised crime, serious commercial crime and serious corruption (section 17B of the South African Police Service Act), as well as offences referred to in Chapter 2 and section 34 of the Prevention and Combating of Corrupt Activities Act.

The themes focused on by the participants who referred to the SAPS were identified and listed, using a content analysis the themes are presented in the frequency table, Table 4.3 (paragraph 4.8). The question was put as an open-ended question. The participants could give their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The themes presented by the participants regarding the responsibility of the SAPS in combating financial crime are consistent with the literature. The researcher observed from the themes presented by the participants that although the question referred to “combating” of financial crime, the themes mainly refer to investigation (frequency of 50%), prevention (frequency of 20%) and combating of crime (frequency of 20%). This is generally consistent with the literature. There is, however, no reference made to the other components of combating as referred to in the literature, namely detection and the provision of crime intelligence. There is little focus on crime detection and the gathering or provision of crime intelligence during the combating of financial crime.

#### **4.2.3.2    *The Directorate for Priority Crime Investigation***

The SAPS has established specialist units for combating financial offences. These units are part of the DPCI and are nicknamed “the Hawks”. The DPCI was established as an independent directorate within the SAPS in terms of Section 17C of the South African Police Service Act. In terms of Section 17B and 17D of the South African Police Service Act, the DPCI is statutorily responsible for the combating, prevention and investigation of national priority crimes such as serious organised crime, serious commercial crime and serious corruption which, in the opinion of the Head of the Directorate, must be addressed by the

Directorate. Such a directive may be subject to policy guidelines issued by the Ministerial Committee. The DPCI also investigates any other offence or category of offences referred to it from time to time by the National Commissioner of Police. Such referral may be subject to policy guidelines issued by the Ministerial Committee. The DPCI organisationally forms part of the SAPS as an organ of state, but Parliament effectively oversees the functioning of the Directorate (section 17K(1) of the South African Police Service Act), and not the National Commissioner of Police, in order to enjoy adequate independence to perform its functions.

Regarding its independence, Mashego (2016) quotes [Brigadier] Malaudzi who stated that “The Directorate for Priority Crime Investigation is an independent entity and is not accountable to Brooklyn [Police Station].” This statement confirms the separate functioning of the DPCI, which is in accordance with the provisions of section 17K of the South African Police Service Act.

The SAPS is responsible for administering the reporting obligation imposed by section 34 of the Prevention and Combating of Corrupt Activities Act. The report must be made to a member of the DPCI. Section 34 of the Act regarding the duty to report corrupt transactions and the process to follow to make the report, provides as follows:

**34. Duty to report corrupt transactions—** (1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service Act.

(3)(a) Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in

the manner directed by the National Head of the Directorate for Priority Crime Investigation, appointed in terms of section 17C(2)(a) of the South African Police Service and forthwith provide the person who made the report with an acknowledgment of receipt of such report.

(4) For purposes of subsection (1), the following persons hold a position of authority, namely—

(a) the Director-General or head, or equivalent officer, of a national or provincial department;

(b) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act (117 of 1998);

(c) any public officer in the Senior Management Service of a public body;

(d) any head, rector or principal of a tertiary institution;

(e) the manager, secretary or a director of a company as defined in the Companies Act (61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act (69 of 1984);

(f) the executive manager of any bank or other financial institution;

(g) any partner in a partnership;

(h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means;

(i) any other person who is responsible for the overall management and control of the business of an employer; or

(j) any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.

Within the DPCI there are sub-units responsible for the investigation of certain aspects and different types of financial crimes. These units are identified as focusing on three primary areas (personal interview with participant P003, 2016):

- Serious Organised Crime Investigations
- Serious Corruption Investigations
- Priority Crime Specialised Investigations
- Priority Crimes Management Centre
- Serious Commercial Crime Investigations
  - Specialised Technical Investigations
    - Cybercrime
    - Digital Forensic Lab
  - Financial and Asset Forfeiture Investigations (FAFI)
    - Money Laundering
    - Asset Forfeiture
    - Investigation Support
  - Forensic Investigation and Specialised Research

In executing its mandate accordingly, the DPCI takes the lead role in preventing, combating and investigating national priority offences, serious organised crime, serious commercial crime, and serious corruption (section 17B(a) of the South African Police Service Act). According to an article, “Hawks tell SACP: Present your evidence in court” (2016), a spokesman for the “Hawks”, Brigadier Hangwani Malaudzi, was quoted as saying, “We [the Hawks] would like to remind the SACP that the Hawks has one mandate, which is to combat, prevent and investigate all serious corruption and serious commercial crime.”

The themes focused on by the participants who referred to the DPCI were identified and listed, using a content analysis. The themes are presented in the frequency table, Table 4.4 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore simply have provided more than one theme in response to the question.

The researcher observed that the themes presented by the participants focused mainly on the investigation, prevention and combating of crime. The common themes presented by the participants regarding the responsibility of the DPCI in combating financial crime are broadly consistent with the literature. However, no reference was made to the other components of combating crime as referred to in the literature, namely detection and the provision of crime intelligence. Another observation is the reference to “Investigate large and complex commercial crimes” in the context of combating financial crime. The participants use the terms financial crime and commercial crime interchangeably and view them as similar concepts.

#### **4.2.4 Financial intelligence units**

Schott (2006:VII-1) states that those who are engaged in the fight against money laundering and terrorist financing must have access to certain kinds of financially-related information in order to conduct financial investigations. In this regard, the FIU has a critical role to play in the process. An FIU is defined as follows (Egmont Group of Financial Intelligence Units, 2004:3):

A central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering.

#### **4.2.4.1 The function of a financial intelligence unit**

Schott (2006:VII-3) summarises the requirements set by the FATF, which is recognised as the international standard-setter for anti-money-laundering and combating the financing of terrorism, provided in *The Forty Recommendations on Money Laundering* (The Forty Recommendations) as follows:

Each country should establish an FIU [Financial Intelligence Unit]. Further, FATF urges countries to impose measures on financial institutions and certain non-financial businesses and professions requiring them to maintain records on the identities of their clients and their transactions and to report any suspicious transactions. Information generated by these reporting and recordkeeping requirements is to be reported to the country's FIU and is used to reconstruct transactions, to establish the link between individual clients and a particular business, to prove the "state of mind" of an individual, and finally, to identify the role of an individual in a criminal or terrorist financing activity. Information reporting and recordkeeping requirements generate substantial financial data, much of which is not readily usable by competent authorities without further analysis. If a country's AML [Anti-money-laundering] and CFT [Combating the Financing of Terrorism] institutional frameworks are to be at all effective, the country must institute a reliable, efficient system for processing, analysing, and disseminating this information. Without such a system in place, law enforcement has a much more difficult time detecting criminal or terrorist financial dealings.

Schott (2006:VII-4), using the Forty Recommendations set by the FATF as a reference, lists the core functions of an FIU as follows:

- Centralised repository of reported information
- Analytical function
- Domestic information sharing

- International information sharing

Schott (2006:VII-9) asserts that countries generally choose one of four primary models in establishing or improving the operations of an FIU. According to the descriptions of the four primary models provided by Schott (2006:VII-9), the “administrative model” proposed by Schott most closely resembles the model configured for South Africa. The features of an administrative-type FIU are described by Schott as those of “a separate agency, placed under the supervision of a ministry or administration (autonomous).” The rationale behind this arrangement is to “establish an [sic.] ‘buffer’ between the financial sector (and, more generally, non-financial businesses and professionals subject to reporting obligations) and the law enforcement authorities in charge of financial crime investigations and prosecutions.”

Individual countries apply different models in respect of where the FIU should be situated within their financial systems or law enforcement agencies. The various models encountered in respect of individual countries where an FIU has been established are as follows (OECD, 2013:37):

- FIU established within police or public prosecutor’s office
- FIU established within financial regulator
- FIU established within or under Ministry of Finance
- FIU established under Ministry of Justice
- FIU established within or under another agency

In South Africa, the model that has been adopted is that of the FIU situated within or under the Ministry of Finance (OECD, 2013:37).

#### **4.2.4.2 The Financial Intelligence Centre**

From the above discussion it should be clear that the FIC represents the South African version of a Financial Intelligence Unit, as prescribed by the FATF. South Africa has a long-standing commitment to combating money laundering and the financing of terrorism, having ratified the United Nations Convention against Corruption in 2004, and joining the multilateral FATF in 2003.

In its draft Guidance on the Implementation of New Measures to be introduced by the Financial Intelligence Centre Amendment Act (1 of 2017), the FIC states (*Draft Guidance on ...*, 2017:2):

The Financial Intelligence Centre Act, 2001 (the FIC Act) established the Centre which is the national point for the gathering, analysis and dissemination of financial intelligence. The Centre was established to identify proceeds of crime and combat money laundering and the financing of terrorism and in so doing has a primary role to protect the integrity of South Africa's financial system. The Centre develops and provides financial intelligence to a range of agencies supporting the investigation and prosecution of criminal activity by helping to identify the proceeds of crime, combat money laundering and the financing of terrorism.

The FATF is an inter-governmental body that sets standards and develops and promotes policies to combat money laundering, the financing of terrorism, and the proliferation of weapons of mass destruction. These standards are used as benchmarks in formal peer review and evaluation processes to test the robustness of a country's measures against these illicit activities, and the integrity of its financial systems (Memorandum on the Objects of Financial Intelligence Centre Amendment Bill (B 33B of 2015). The function of FIC is to (*National Treasury 2011/12 Annual Report...*, 2012):

- identify the proceeds of crime;
- combat money laundering and the financing of terrorism;
- share relevant information with law enforcement authorities, SARS and state security agencies.



The FIC also shares such information with its counterparts globally. Key focus areas for the FIC include:

- legal and policy (responsible for the administration of the FICA, engagement with international organisations and providing strategic policy advice);
- compliance;
- prevention (responsible for oversight of the FICA and guidance to accountable and reporting institutions, supervisory bodies and others regarding their obligations);
- monitoring and analysing (receives and conducts an analysis of financial transaction data, shares relevant analysis with law enforcement authorities, intelligence agencies and SARS, where necessary, for further follow-up);
- information and communication technology (provides information technology infrastructure and business system support).

Burrell (2000:304) quotes the OECD, stating that “Money laundering authorities should be committed to the greatest extent possible to pass information to their tax authorities to support the investigation of tax-related crime”. Much of the work undertaken by an FIU (such as the FIC) concerns the identification and analysis of assets, capital flows and financial transactions. It is, therefore, possible that an FIU (such as the FIC) may hold significant information, which may be relevant to a country’s revenue authority for tax administration and assessing of tax liability (OECD, 2013:82). It has been reported that the FIC has said that (Ramothwala, 2016:1):

It shares the products of its analyses with a range of competent authorities including law enforcement agencies, intelligence services, SARS and supervisory bodies. The information shared by the FIC assists these authorities in discharging their responsibilities by, for example, enabling them to conduct investigations, prosecutions and the forfeiture of assets based on the leads supplied by the FIC.

Most countries have strict confidentiality provisions governing the disclosure of information obtained by FIUs. In the countries where the revenue authorities have access to this information, there is a legal basis, sometimes expressed as a legal “gateway”, to provide this access. In South Africa, the FIC may disclose information relevant to the administration of tax and assessment to SARS on request (OECD, 2013:84).

The themes focused on by the participants who referred to the FIC were identified and listed, using a content analysis. The themes are presented in the frequency table, Table 4.5 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants presented a diverse range of themes in response to the question regarding the responsibility of the FIC in combating financial crime. The recurrent themes are broadly consistent with the responsibilities of the FIC identified in the literature. The participants have a broad, general understanding of the responsibility of the FIC in respect of combating financial crime.

#### **4.2.5 The prosecuting authority**

The prosecuting authority is the government agency responsible for representing the State in criminal matters before a criminal court of law. The prosecution office can be structured according to the following different models (OECD, 2013:39):

- Central prosecution authority responsible for criminal investigations
- Central prosecution authority with no responsibility for criminal investigations
- Law enforcement agencies may prosecute offences directly

In South Africa, the prosecuting authority is arranged according to the second model, which means that judges and the prosecution are not directly involved in the investigation. Prosecutors may, however, advise investigative agencies on the judicial process and law of evidence. Investigations are conducted by the

police, revenue authority or other agencies, and cases are forwarded to the central public prosecution authority for consideration. A prosecutor may then submit the case for prosecution before a court, refer it back to the investigating agency with a request for further evidence, or a 'decline to prosecute' (OECD, 2013:41).

#### **4.2.5.1 The National Prosecuting Authority**

Section 179 of the 1996 Constitution created a single NPA. Legislation governing the prosecuting authority is the National Prosecuting Authority Act (32 of 1998) (hereafter referred to as the National Prosecuting Authority Act). The 1996 Constitution, read in conjunction with the National Prosecuting Authority Act, provides the prosecuting authority with the power to institute criminal proceedings on behalf of the State and to carry out any necessary functions incidental to instituting criminal proceedings and discontinuing criminal proceedings. The NPA is a separate state organ under the control of the Ministry of Justice (*Effective Inter-Agency Co-operation ...*, 2013).

The NPA comprises seven core business units, of which the following relate to the prosecution, possible prosecution or combating of financial crimes (*About the NPA ...*, 2014):

- Asset Forfeiture Unit (AFU)
- Specialised Commercial Crime Unit (SCCU)

The themes focused on by the participants who referred to the NPA were identified and listed, using a content analysis. The themes are presented in the frequency table, Table 4.6 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

Four participants participating in answering question 4.1 in the interview schedule did not identify the NPA as a principal agency with responsibility for combating financial crime and therefore did not provide feedback in response to this question in relation to the NPA (question 4.2 in the interview schedule). The recurring

themes are broadly consistent with the responsibilities of the NPA identified in the literature. The participants have a broad, general understanding of the responsibility of the NPA in combating financial crime.

#### **4.2.5.2 Specialised Commercial Crime Unit of the NPA**

In an answering affidavit submitted to the South Gauteng High Court (Case No. SS40/06) in the matter of *Porrit and Bennett v The National Director of Public Prosecutions AO*, the Senior Deputy Director of Public Prosecutions, advocate Glynnis Breytenbach in her capacity as the Regional Head of the Specialised Commercial Crime Unit of the NPA (hereafter referred to as the SCCU) made the following statement with regard to the background and operations of the SCCU:

6. The SCCU was established on 1 August 1999 to improve the investigation, prosecution and adjudication of commercial crime. The SCCU emerged from a partnership between the South African Police Service (“SAPS”), the NPA, the Department of Justice and Constitutional Development and Business against Crime (“BAC”).

7. The BAC was established in 1996 in response to a request from the former South African President, Nelson Mandela, inviting business to join hands with the South African Government in the fight against crime. The National Crime Prevention Strategy approved by the Government has the active support of BAC, which provides funding for many of the projects implemented in terms of this strategy in an attempt to assist with the combating of crime in South Africa.

8. The innovative approach adopted by the SCCU lies in the nature of the working relationship and procedural integration between the prosecutors and the police officers responsible for the investigation. Although SAPS remain primarily responsible for the investigation of cases, these

investigations are conducted in a consultative manner with the appointed prosecutor at the SCCU.

Altbeker (2002:31) asserts that the investigators, prosecutors and magistrates form a virtually seamless criminal justice process, entirely dedicated to dealing with cases falling within the mandate of the SAPS Commercial Crime Unit in the jurisdiction of the relevant regional courts. Altbeker (2002:31) further states, “The existence of this court, and, more importantly, the integration of the three main functions of the CJS — investigation, prosecution and adjudication — is regarded by many as one of the best examples of successful criminal justice reform implemented.” Altbeker (2002:31) states that the SCCU consists of a team of prosecutors led by a deputy director of public prosecutions, and is tasked with bringing cases of commercial criminality to trial. The court consists of regional courts, presided over by distinguished magistrates.

The SCCU and, therefore, the Commercial Crime Court, handle criminal cases investigated by the Commercial Crime Unit within the DPCI and brought before it by the SCCU of the NPA. These cases involve cases of “commercial criminality”, as the name suggests (Altbeker, 2002:33). Altbeker (2002:31) asserts that this is a “somewhat vague classification” and that it involves crimes such as a range of different types of fraud, some categories of theft, and a variety of statutory offences centred on the conduct of business in South Africa, irrespective of the classification of the crimes. Altbeker (2002:33) maintains that the core work of the unit revolves around fraud and theft cases that fall within the jurisdiction of the regional courts.

Altbeker (2002:33) states that the staff attached to the SCCU maintain that there are several advantages to the model used by the SCCU that include the following: Investigations, being the joint responsibility of investigators and prosecutors, are generally better managed and completed more speedily.

- Prosecutors are better prepared when their cases eventually come to trial.
- All role-players, magistrates included, understand and appreciate the legal and factual issues at stake in these cases because of their high level of expertise and experience.

#### **4.2.5.3 Asset Forfeiture Unit**

The AFU was established in May 1999 in the Office of the National Director of Public Prosecutions to focus on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act. The AFU was created to ensure that the powers in the Prevention of Organised Crime Act to seize criminal assets would be used to their maximum effect in the fight against crime, and particularly organised crime. One of the key objectives of the AFU is to establish excellent relationships with its key partners, especially the SAPS, and the SARS (*Asset Forfeiture Unit ...*, 2014).

#### **4.2.6 Financial regulators**

Financial regulators, including central banks, are usually responsible for maintaining confidence in the financial system and ensuring the competence of the providers of financial services. This encourages stability and good governance in the financial sector. Financial regulators accomplish good governance through regulation and supervision, together with the investigation of possible statutory or regulatory breaches. They are also responsible for combating crime related to financial markets, such as insider trading and market manipulation, and during their supervisory and regulatory activities, collect and hold information on individuals, institutions and transactions (OECD, 2013:42).

##### **4.2.6.1 The South African Reserve Bank**

SARB is a separate organ resorting under the control of the Ministry of Finance. The Bank Supervision Department is a component within the SARB, resorting under the control of the Governor of the SARB (OECD, 2013:333).

The Financial Surveillance Department of the SARB is responsible for the administration of exchange control in terms of the authority delegated by the Minister of Finance. The responsibilities of the Financial Surveillance Department, inter alia, entail (Participant P002, 2016):

- implementing exchange control policy and administering the Exchange Control Regulations;

- gathering, analysing and disseminating information on cross-border flows;
- ensuring compliance by authorised dealers in foreign exchange, who adhere to anti-money-laundering control measures in terms of the FICA.

The Bank Supervision Division of the SARB is one of the bank's core divisions, which is committed to achieving its mission of promoting the soundness of the domestic banking system and contributing to financial stability. The Review Team of the SARB conducts specific reviews on banks and/or the banking sector to assess compliance with the Banks Act (94 of 1990) the regulations relating to banks, and other relevant legislation, such as the Financial Intelligence Centre Act (Participant P002, 2016).

#### **4.2.6.2 Financial Services Board**

The FSB is a statutory body established in terms of section 2 of the Financial Services Board Act (97 of 1990), and is an independent regulatory institution established by law to oversee the South African non-banking financial services industry. It governs South Africa's non-bank financial services sector, including securities firms, participation bond schemes, portfolio management, insurance companies, pension funds, and mutual funds. The FSB is a separate organ under the control of the Ministry of Finance (OECD, 2013:333). The Executive Officer of the FSB is, in terms of various statutes, the Registrar, for purposes of enforcing legislation applicable to financial institutions. As such, the Executive Officer is the Registrar of Long-term and Short-term Insurance, the Registrar of Collective Investments Schemes, the Registrar of Pension Funds, the Registrar of Friendly Societies, the Registrar of Security Services, and the Registrar of Financial Services Providers (Participant P002, 2016).

A graphic portrayal of a summary of the key investigative agencies and regulatory bodies that comprise the framework to combat financial crime in accordance with the survey conducted by the OECD (2013) and its South African equivalents as per the literature and feedback from the participants is presented in Figure 4.2

(paragraph 4.8). The key investigative agencies (mentioned in the literature) responsible for combating financial crime and the roles of their South African counterparts are summarised in Table 4.7 (paragraph 4.8).

### **4.3 INFORMATION SHARING AS PREREQUISITE FOR COOPERATION**

Sharing of information between agencies is a necessary prerequisite for effective inter-agency cooperation (OECD, 2013:13). Schlenker (2016:15) asserts that the “foundations for cooperation lie first and foremost in information sharing”. It is only then that there can be collaboration that is premised on a clear line of sight among agencies of the objective, which is to combat financial crime. While performing their duties and exercising their powers, various agencies responsible for combating financial crime, collect and control information on individuals, corporate entities and transactions that may be regarded as relevant to other agencies that are also combating financial crime (OECD, 2013:14). Other agencies may find it useful for the purpose of analysis, to detect breaches of law and regulations, or for use in ongoing investigations.

According to Meyer et al. (2017:3), the timely sharing of information is crucial to the success of many investigations conducted by investigative agencies in the law enforcement domain. Meyer et al. (2017:3) assert that many investigations are hampered by one or more of many constraints related to efficiently sharing of information among investigators and organisations. These may include technical, workflow and legal constraints.

The sharing of information may prove useful as intelligence to agencies combating financial crime because it may provide clues to possible contraventions of laws or regulations, or new avenues of inquiry in ongoing investigations. In some cases, the agency obtaining the information attains a type of information it cannot directly access in the ordinary course of its responsibilities, especially where the information is of a specialised nature such as, for instance, from SARS, subject to following the correct legal process (gateways). An additional investigative advantage is that agencies do not have to duplicate requests for information from third parties if the information requested



by one agency from a third party can be shared with other agencies, thereby increasing effectivity and reducing the costs of investigations.

The use of information obtained from various sources has the potential to increase investigators' understanding of crime-related aspects, or the activities of a suspect. This, in turn, may lead to a more effective investigation. The likelihood of the proceeds of crime being recovered is increased through mechanisms enabling information sharing. It may also aid in improving the prevention and detection of financial crimes, enabling investigations to be conducted more effectively and efficiently, resulting in faster and more successful prosecutions (OECD, 2013:14). Establishing operational arrangements to share information may lead to the development of relationships between agencies and essential personnel in those agencies that in turn may foster enhanced forms of inter-agency cooperation (OECD, 2013:45).

A content analysis was used for interpreting the response to question 4.3 in the interview schedule, "What do you think are the benefits of sharing information among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime? Please substantiate your answer." The central themes emerging from the participants' answers were listed and are presented in the frequency table, Table 4.8 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

In response to the question regarding the benefits of sharing information among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime (question 4.3 in the interview schedule), the participants offered a broad and diverse range of themes (30 themes offered). The frequency of the themes recurring is too low to provide new, meaningful categories in respect of the benefits of sharing information. The participants have their own individual views about the benefits of sharing information. Each of the benefits as viewed by the participants has its

own merits, and underscores the importance of sharing information between agencies in the combating of financial crime.

Using a content analysis for interpreting the response to question 4.4 in the interview schedule, “In your opinion, what can be done to improve sharing of information among government agencies in an effort to combat financial crime more effectively? Please substantiate your answer”, the themes emerging from the participants’ answers were listed and are presented in the frequency table, Table 4.9 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

In response to the question regarding what steps can be taken to improve information sharing between the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime (question 4.4 in the interview schedule), the participants offered a broad and diverse range of answers (23 themes offered). The frequency of the themes recurring is too low to provide new ideas that can be used to improve the sharing of information. Each of the participants has his/her own view about the steps that can be taken to improve the sharing of information. Each of the measures proposed by the participants has its own merit that can be considered.

A participant who requested to remain anonymous (Participant P003, 2017) elaborated on measures to improve the sharing of information, stating: “It should be contextualised by understanding its purpose, as each area has different needs for information”. The participant provided the following exposition of suggested measures to improve sharing of information among government agencies to combat financial crime more effectively:

- The management of financial crime risks
- The determination of financial crime threats
- Investigation or law enforcement related to financial crime

The above-mentioned are three areas to articulate the understanding and is not an exhaustive list, or necessarily mutually exclusive.

### The Management of Financial Crime Risks

This relates to information sharing by and within those entities affected by financial crime with the aim of reducing vulnerability, risk exposure, or potential harm that could be associated with the maturing of such risk. Government finances, the economic sector and industry, and civil society are three key nodes where financial crime poses economic risks over the short, medium and longer terms.

Securing such “nodes” is necessary for the sustainable growth and development of the South African economy, including combating the illicit economy.

The sharing of such information between sectors or even [business] competitors will enhance the prevention of financial crime exposure [to risk] and incidents, but will inherently also provide for strategic and tactical exposure between and with the sectors.

An example is the South African Banking Risk Information Centre (SABRIC) where the sharing of information with regard to bank, Automated Teller Machine (ATM) and Cash-in-transit (CIT) robberies exposed the risk of individual banks to competitors. The simple use of information on ATM robberies, where one bank’s ATMs were more prone to attacks could be exploited by competitors and cause a client shift between banks. This was resolved by establishing a *trust circle and confidentiality systems* within the SABRIC Stakeholders supported by the Banking Council of South Africa.

Information sharing could be enhanced by the following:

- The enhancement of sectoral and industry cooperation with regard to serious crime that poses as collective threat
- The establishment or enhancement of sectoral forums to establish a trust circle and confidentiality systems for the sector or industry
- Conducting of focussed Financial Crime Risk assessments and information sharing agreements affecting industries

#### The Determination of Financial Crime Threats

Financial crime in its various forms poses direct national security threats to well-being, development and upliftment of the South African people, the stability of the Republic, the constitutional order and state institutions and the sustainable growth and development of the South African economy.

The National Intelligence Coordinating Committee (NICOC) is the specific intelligence sharing mechanism established by the government for the sharing of actionable information between stakeholders. Inter-sectoral cooperation with NICOC should be enhanced.

#### Investigation or law enforcement related to Financial Crime

A working relationship has to be developed, integrated and formalised between Government and industry. The relationship can be facilitated through a partnership with the SAPS to create a formal mechanism to enable a more effective, coordinated and integrated strategic approach towards the prevention, combating and investigation of

serious crimes, including financial crime. Such a formal mechanism will secure an undertaking by both parties to work towards long-term strategic and coordinated partnership mechanisms between the Government and industry.

#### **4.4 LEGAL GATEWAYS**

For information to be shared, legal gateways must exist between the relevant agencies. In some countries, enhanced forms of cooperation have been put in place to obtain maximum benefit from legal gateways that may exist between agencies for sharing information (OECD, 2013:13). The disclosure and sharing of information between agencies must be legally authorised and executed in accordance with the prescribed legal prescripts and procedures for its use to be legitimate and admissible in court proceedings. Among the constraints related to efficiently sharing information between investigators and organisations are legal issues that concern restrictions on information use and sharing (Meyer et al., 2017:3). Information obtained under a warrant for a specific investigation by one agency may not be used to advance an investigation performed by another agency. Agencies are restricted in respect of what information they can share with other agencies. Where the sharing of information may actually be legally permitted in specific instances, concerns about prudence and governance may result in restrictions of what may actually be shared through the adoption of policies and SOPs.

The disclosure or sharing of information between various agencies may take on different forms. National legislation provides the legal framework for cooperation. Legislation may require that one agency is obliged to share a particular type of information with another, or is entitled to receive such information. In other instances, legislation may place restrictions on the disclosure of certain types of information or strictly control it. This may hamper agencies' ability to share or disclose information, which may strain relationships between agencies. Where legal gateways for sharing and disclosure of information do exist, these can be followed up or strengthened through operational agreements or Memoranda of Understanding (MoU) to ensure that operational procedures are in place for

requesting and receiving information. These measures must be within the confines of what is permitted by law.

In the South African context, the use of the term sharing of information has to be considered. Sharing may imply a two-way returning flow of information, which is legally and practically not necessarily the case. In the South African context, the disclosure of information by one agency to another may be legally authorised, subject to specific requirements and preconditions having been met, and then only for the purposes authorised. (OECD 2013:14). For all types of cooperation with respect to sharing information among different agencies, it is essential to protect the confidentiality of information and the integrity of work carried out by other agencies.

With regard to sharing information among various agencies, four different categories of legal gateways generally in existence have been identified among the 48 countries surveyed by the OECD (2013:45). These categories are:

- direct access to information contained in agency records or databases
- a legal obligation to provide information spontaneously (sometimes expressed as a reporting obligation)
- an ability, but not an obligation, to provide information spontaneously
- an obligation or ability to provide information only on request

The various categories and their applicability across the key agencies responsible for combating financial crime are explained and analysed in the sections that follow.

#### **4.4.1 Direct access to records and databases**

Individual agencies may allow direct access to their records and information stored in their databases to designated individuals from other authorities. Access may be provided for a variety of purposes, or limited to specific cases or circumstances. The advantage of this model is that an agency requiring information can search for the information directly and obtain it quickly. However, individual databases may contain large quantities of data that has been arranged for the purposes of the holding agency and not those of the receiving agency.

This may prove difficult for officials unfamiliar with the other agency's systems to identify the relevant information. In some instances, where officials investigating are unaware of information contained in a database, it goes unexploited, even though access is available. Direct access to records may carry a risk in that data may be accessed for purposes other than those for which access was authorised. It may, therefore, be sensible for countries to reduce their risk by introducing safeguards to protect the confidentiality of sensitive information, for example by restricting access to databases to a small number of designated individuals and maintaining records of what information was accessed and for what purpose (OECD, 2013:45).

During this research, information could not be found in the literature that could clarify whether there are agencies in South Africa that are engaged in combating financial crime that have linked or shared databases or have direct access to records or databases held by or in the custody of another agency. Agencies are therefore compelled to obtain access to information or records held by another agency by making use of one or more of the arrangements explained in the sections below.

#### **4.4.2 Reporting obligation**

An agency may be required by law to willingly provide specific categories of information to another agency, without the receiving agency having to request the information. This type of legal gateway is referred to as a reporting obligation. The benefit of a reporting obligation is that the information to be shared or disclosed is identified by officials working at the agency in whose custody and control it is. They are likely to have a better understanding of the information under their control (OECD, 2013:4). However, for this type of sharing to be efficient, the holding agency must have clear rules, procedures and mechanisms in place to identify the type of information it must share in accordance with its obligation. This may be simple, where a legal obligation exists to provide all information of a particular type, class, category or description (for example information obtained by a tax authority during an audit that may be indicative of money laundering occurring or having occurred). This may, however, be complex where discretion must be applied to identify the information that is potentially

relevant to an investigation or for specific use by another agency. This arrangement does not allow for investigating officials requesting information to advance an investigation. This type of information is pertinent to alert another agency of possible unlawful activities, previously not known.

In South Africa, several reporting obligations are imposed on agencies provided for in different statutes. These legal provisions stipulate that information held by an agency, or which comes into possession of the agency during the execution of its duties or exercising of its powers, must be disclosed to the agency authorised to receive the information.

#### **4.4.3 Spontaneous sharing of information**

Individual agencies may have the authority to provide specific categories of information freely but may exercise its discretion in deciding whether to do so or not (OECD, 2013:46). Where this process functions well, it can be at least as useful as the previous method. Information is shared freely, but officials in the holding agency may exercise their discretion to provide only information deemed valuable and not all information of a specific class or category. This type of gateway for sharing information is useful when it is supported by operational agreements between agencies and a good understanding by officials in each agency of the information needs of the other agency. This means that, even where a specific reporting obligation does not exist, information sharing between agencies can be very useful.

In South Africa, however, such spontaneous and discretionary sharing of information may be statutorily limited to specific types of information and only in a manner prescribed by law (for example information obtained by a tax authority in the administration of a tax Act relevant to the SAPS, but not related to a tax offence can be shared only if it relates to specific threats, and then only by means of a court order authorising SARS to disclose that information). Where models exist for information sharing that requires discretion to be exercised, it requires clear rules for how this is to be executed. The effectiveness of this type of legal gateway depends on the ability of officials to identify relevant information and



their preparedness to exercise discretion to provide information (OECD, 2013:46).

#### **4.4.4 Sharing information on request**

In this category of gateway, an agency provides information only upon request from another. This can be regarded as the simplest of the four categories of gateways for sharing information. There is less need for rules or mechanisms to identify information for sharing or to provide access to records. It also has the added benefit of allowing agency officials to specify precisely the information required (OECD, 2013:46).

In the South African context, it is possible for some agencies to request information from another legally. However, there are often legal prescripts and requirements for doing so and in some instances, only in relation to specific types or categories of information, which may further be limited to information only for specific purposes.

#### **4.5 ANALYSIS OF LEGAL GATEWAYS**

In the preceding sections, the categories of gateways for the exchange or disclosure of information held by one agency to another have been identified, and their nature discussed. The advantages and disadvantages that have also briefly been referred to will vary, depending on the agencies involved, the type of information requested, and the purpose for which the information is required. In South Africa, a combination of the respective models is applied, depending on the legal provisions that provide gateways to facilitate the exchange or disclosure of information. In this section, the details of the legal gateways available to the various agencies responsible for combating financial crime are analysed. These gateways relate to information and records held by the following entities:

- The South African Revenue Service
- The Customs Division of the South African Revenue Service
- The South African Police Service
- The Directorate for Priority Crimes Investigation
- The National Prosecuting Authority
- The Financial Intelligence Centre

The result of the analysis is set out in the sections below, with comments on practices. For practical reasons, it does not consider the complexity of the different types of information and prevailing circumstances under which information can be made available. It indicates the legal provisions that provide the gateway in existence for exchanging or disclosing information, as well as the enabling mechanisms between agencies.

#### **4.5.1 Information held by SARS**

The Memorandum on the Objects of Tax Administration Bill, 2011, states that in several developed countries and in South Africa it is recognised that it is essential that tax information be available to other organs of state within the legal prescripts. In the context of law enforcement, where specific information is likely to be of value to a criminal investigation, and in the interest of the public that taxpayer information be made available to law enforcement agencies within the legal prescripts, such limited disclosure will ensure that there is a potential for the exchange of information in two directions, i.e. between the revenue authority and law enforcement and vice versa.

The disclosure of taxpayer information and SARS confidential information in the custody and control of SARS to, among others, the SAPS, the FIC, the AFU and the NPA, is regulated by the provisions of Chapter 6 of the Tax Administration Act. This Chapter 6, dealing with “Confidentiality of Information”, clearly gives effect to the intent regarding the availability of tax information to other organs of state expressed in the Memorandum on the Objects of Tax Administration Bill, as referred to above.

The legal provisions providing the gateways for the disclosure of information per its various categories held by SARS, thereby establishing the ability to share information between SARS and other agencies, are identified and described in the sections that follow:

#### **4.5.1.1 Direct access to records and databases**

In terms of the provisions of Chapter 6 of the Tax Administration Act, which arranges for disclosure of taxpayer information and SARS confidential information held by SARS, there are no legal prospects for agencies involved in the combating of financial crime that will enable them to have direct access to records held by and information stored on SARS' database.

#### **4.5.1.2 Reporting obligations**

In terms of the provisions of section 36 of the Financial Intelligence Centre Act, the SARS has a duty to report to the FIC any knowledge or suspicion that an accountable institution wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities, or has been used or may be used in future for money-laundering purposes. SARS should furnish the FIC with all information and any records regarding that knowledge or suspicion that the FIC may reasonably require identifying the proceeds of unlawful activities or to combat money-laundering activities or financing of terrorist and related activities.

In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, a person in the employ of, *inter alia*, SARS, who holds a position of authority and who knows or ought reasonably to have known or suspected that another person has committed an offence under Part 1, 2, 3 or 4, or section 20 or 21 (insofar as it relates to the afore-mentioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act; or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000,00 or more, must report such knowledge or suspicion or enable the reporting of such knowledge or suspicion to the police official in the DPCI referred to in section 17C of the South African Police Service Act.

#### **4.5.1.3 An ability, but no obligation, to provide information freely**

In terms of the provisions of section 69(2) of the Tax Administration Act, a current or former SARS official may in the performance of his or her duties under a tax Act or customs and excise legislation, disclose taxpayer information to the SAPS

or NPA if the information relates to, and constitutes material information for the proving of a tax offence.

Section 71(3) of the Tax Administration Act provides that when a senior SARS official is of the opinion that SARS has information that may reveal evidence that an offence (other than a tax offence) has been or may be committed in respect of which a court may impose a sentence of imprisonment of exceeding five years; that may be relevant to the investigation and prosecution of the offence; or of an imminent and serious public safety or environmental risk, SARS may apply *ex parte* to a judge in chambers for an order authorising SARS to disclose the information stated above.

#### **4.5.1.4 An obligation or ability to provide information only on request**

Section 71(4) of the Tax Administration Act provides that the National Commissioner of the SAPS, the National Director of Public Prosecutions or a person acting under their respective control may bring an *ex parte* application to a judge in chambers for an order requiring SARS to disclose information relating to, *inter alia*, an offence that is not a tax offence, which has been or may have been committed in respect of which a court may impose a sentence of imprisonment of exceeding five years, and that may be relevant to the investigation and prosecution of that offence (including an offence that fits the description of a financial crime).

Section 71 of the Prevention of Organised Crime Act, dealing with access to information, provides that the National Director of Public Prosecutions may request that any person employed in or associated with, *inter alia*, SARS to furnish him or her with all information that may reasonably be required for any investigation in terms of the Prevention of Organised Crime Act, and such person shall, notwithstanding anything to the contrary contained in any law that prohibits or precludes him or her from disclosing any information relating to the activities, affairs or business of any other person; or from permitting any person to have access to any registers, records or other documents, or electronic data that have a bearing on the said activities, affairs or business, be compelled to furnish the National Director of Public Prosecutions with such information and permit the

National Director to have access to any registers, records, documents, and electronic data that may contain such information.

Section 73 of Prevention of Organised Crime Act, notwithstanding the confidentiality provisions of Chapter 6 of the Tax Administration Act, and with regard to any other secrecy provision in similar legislation, provides that, whenever any investigation is instituted in terms of the Prevention of Organised Crime Act, including an investigation into any offence referred to in Schedule 1 of Prevention of Organised Crime Act, and an investigation into the property, financial activities, affairs or business of any person, the Commissioner of the SARS, or any official designated by him or her for this purpose, shall be notified of such investigation with a view to mutual cooperation and the sharing of information.

In analysing the provisions above, a summary in tabular format indicating the availability of legal gateways that enable other agencies to obtain information held by SARS is provided in Table 4.10 below:

**Table 4.10: Availability of legal gateways to obtain information held by SARS**

Categories of gateway in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY SARS				
	SAPS	DPCI	NPA	FIC	CUSTOMS
Direct access to records and databases	No	No	No	No	Yes
Reporting obligation	No	Yes	No	Yes	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### **4.5.2 Information held by the Customs Division of SARS**

Chapter 1, Part 5, of the Customs Control Act regulates the confidentiality provisions that arrange for disclosure of any information acquired by the customs authority that results from the exercising of powers or duties by its officials.

The legal provisions providing the gateways for the disclosure of information per its different categories held by the SARS Customs division, thereby establishing

the ability to share information between SARS Customs division and other agencies, are identified and described in the sections below:

#### **4.5.2.1 Direct access to records and databases**

In terms of the provisions of Chapter 1, Part 5 of the Customs Control Act, there are no legitimate prospects for agencies involved in the combating of financial crime that enable them to have direct access to records held by and information stored in the Customs authority's databases.

#### **4.5.2.2 Reporting obligations**

The Customs Division of the SARS is subject to the same reporting obligations imposed on SARS as discussed under paragraph 4.5.1.2 above.

#### **4.5.2.3 An ability, but no obligation, to provide information freely**

In terms of the provisions of section 21 of the Customs Control Act dealing with the confidentiality of information acquired by SARS and its officials in the exercising of powers or duties, no SARS official, customs officer or person referred to in section 12 (3) (a) of the Customs Control Act and no person who was such an official, officer or person, may disclose any information acquired by him or her in the exercising of powers or duties concerning the private or confidential matters of any person, except, *inter alia*:

- if there is a serious and imminent risk to public health or safety or the environment and the public's interest in the disclosure outweighs the official, officer or person's duty of confidentiality
- if the person that will be affected by the disclosure has consented to the disclosure
- to an authorised recipient, subject to the provisions of section 22 of the Customs Control Act
- that such disclosure will be authorised subject to the provisions of section 22 of the Customs Control Act, which limits any disclosure in terms of section 21 (as provided above) to, *inter alia*

- the SAPS or the National Director of Public Prosecutions, to be confined to information relating to the alleged commission of offences
- the Director of the FIC, to be confined to information required for the performance of the Centre's functions in terms of the FICA.

An authorised recipient may use the information disclosed as described above only for the purpose for which the information was disclosed. Information disclosed by the SAPS or the National Director of Public Prosecutions may be used only for investigating the alleged commission of an offence and as evidence in prosecuting a person for an offence.

In terms of the provisions of section 69 (2) of the Tax Administration Act, a current or former SARS official may in the performance of his or her duties under a tax Act or customs and excise legislation disclose a taxpayer's information to the SAPS or NPA if the information relates to, and constitutes, material information for proving a tax offence.

#### **4.5.2.4 *An obligation or ability to provide information only on request***

In terms of the provisions of section 21 of the Customs Control Act dealing with the confidentiality of information acquired by SARS and its officials in exercising their powers or duties related to the private or confidential matters of any person, no SARS official, customs officer or person referred to in section 12 (3) (a) of the Customs Control Act and no person who was such an official, officer or person, may disclose any information acquired by him or her in the exercising of powers or duties related to the private or confidential matters of any person, except if that official, officer or person is summoned to give evidence as a witness before a court or tribunal, and the Commissioner has authorised that official, officer or person to disclose the information, or is required to do so by a court.

The provisions of sections 71 and 73 of the Prevention of Organised Crime Act, as referred to in paragraph 4.5.1.4, above, are applicable to the Customs division in SARS.

A summary of the analysis of the above-mentioned provisions, indicating the availability of legal gateways that enable other agencies to obtain information held by SARS Customs division, is provided in Table 4.11 below.

**Table 4.11: Availability of legal gateways to obtain information held by Customs**

Categories of gateways in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY CUSTOMS				
	SAPS	DPCI	NPA	FIC	SARS
Direct access to records and databases	No	No	No	No	Yes
Reporting obligation	No	Yes	No	Yes	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### 4.5.3 Information held by the SAPS

The South African Police Service Act does not contain specific provisions that regulate the disclosure of records or information held by or in the custody of the SAPS to other agencies involved in the investigation of financial crime. Section 70 of the South African Police Service Act provides for a general prohibition on the unauthorised disclosure of information by a member of the SAPS. Section 70 of the South African Police Service Act provides as follows:

70. Unauthorised disclosure of information. —Any member who willfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service of the powers or the functions referred to in section 215 [sic.] of the Constitution, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Although there is a general prohibition in respect of the disclosure of information, it applies only to a disclosure by a member of SAPS if the disclosure is or may be prejudicial to the performance by the Service, or to the powers or the functions of



SAPS referred to in section 215 [sic.] of the Constitution. A member wishing to make a disclosure must exercise caution before making such a disclosure, to ensure that it is not prejudicial or potentially prejudicial to the performance by the Service of the powers or the functions referred to in section 215 [sic.] of the Constitution. It is important to note that the reference to “section 215 of the Constitution”, as referred to above, is apparently a printing error or an erroneous reference, and that the legislator probably had **section 205** of the Constitution in mind, which is the relevant section of the 1996 Constitution dealing with the establishment and objectives of the SAPS.

The legal provisions providing the gateways for the disclosure of information per its different categories held by SAPS, thereby establishing the ability to share information between SAPS and other agencies, are identified and described in the sections below:

#### **4.5.3.1    *Direct access to records and databases***

In view of the provisions of section 71 of the South African Police Service Act, it is inconceivable that any SAPS officer will authorise another investigative agency’s direct access to information held by SAPS or the SAPS database, in order to combat financial crime. Although it is technically possible for a SAPS officer to authorise another agency’s direct access to information held by SAPS or its databases for combating financial crime, no evidence of such an arrangement emerged during this research.

#### **4.5.3.2    *Reporting obligations***

The SAPS is not exempt from the reporting obligations under section 34 of the Prevention and Combating of Corrupt Activities Act. It is conceivable that the reporting obligation under this section will apply to the SAPS only with regard to the SAPS becoming aware of new suspicions of offences, as referred to in section 34, other than those that have already been reported under the reporting obligation of section 34 of the Prevention and Combating of Corrupt Activities Act, or that are being investigated by SAPS.

#### **4.5.3.3 An ability, but not an obligation to provide information freely**

Section 70 of the South African Police Service Act does not exclude the possibility of a SAPS official disclosing information that does not fall within the ambit of the prohibition on the disclosure of information. It is therefore conceivable that under the provisions of section 70 of the South African Police Service Act, a member of SAPS could exercise discretion to disclose information in circumstances other than those where he or she knows, or could reasonably be expected to know, that such a disclosure will or may be prejudicial to the exercise or the performance by the SAPS of the powers or the functions referred to in section 205 of the Constitution.

#### **4.5.3.4 An obligation or ability to provide information only on request**

Section 71 of the Prevention of Organised Crime Act, dealing with access to information, provides that the National Director of Public Prosecutions may request that any person employed in or associated with, *inter alia*, SAPS to furnish him or her with all information that may reasonably be required for any investigation in terms of the Prevention of Organised Crime Act, and such person shall, notwithstanding anything to the contrary contained in any law that prohibits or precludes him or her from disclosing any information relating to the activities, affairs or business of any other person; or from permitting any person to have access to any registers, records or other documents, or electronic data that have a bearing on the said activities, affairs or business, furnish the National Director with such information and permit the Director to have access to any registers, records, documents, and electronic data that may contain such information.

A summary of the analysis of the above-mentioned provisions, indicating the availability of legal gateways that enable other agencies to obtain information held by SAPS, is provided in Table 4.12 below:

**Table 4.12: Availability of legal gateways to obtain information held by SAPS**

Categories of gateways in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY SAPS				
	DPCI	NPA	FIC	SARS	CUSTOMS
Direct access to records and databases	Yes	No	No	No	No
Reporting obligation	Yes	No	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### 4.5.4 Information held by the DPCI

The discussion under paragraph 4.5.3 relating to information held by SAPS, applies to the DPCI. In addition, it must be borne in mind that section 17B of the South African Police Service Act determines that there is a requirement to ensure that, where appropriate, the DPCI implements a multidisciplinary approach and an integrated methodology involving the cooperation of all relevant government departments and institutions.

In this research and especially in this chapter it has emerged that cooperation between the relevant agencies to a considerable extent concerns the capability or at least potential of sharing information between the relevant agencies, and the existence of legal gateways to enable and ensure the flow of relevant information. An analysis of the South African Police Service Act indicates that it is possible to lawfully disclose information held by SAPS to other agencies. There are, however, no specific provisions regulating or prescribing the process for SAPS to disclose information to other agencies or for agencies to request that information in the context of “the cooperation of all relevant government departments and institutions”, as envisaged in section 17B of the South African Police Service Act.

The legal provisions providing the gateways for the disclosure of information per the respective categories held by the DPCI, thereby establishing the ability to share information between the DPCI and other agencies, are identified and described in the sections below:

#### **4.5.4.1 Direct access to records and databases**

The discussion in paragraph 4.5.3.1 is applicable to this heading.

#### **4.5.4.2 Reporting obligations**

The discussion in paragraph 4.5.3.2 is applicable to this heading.

#### **4.5.4.3 An ability, but no obligation, to provide information freely**

The discussion in paragraph 4.5.3.3 is applicable to this heading.

#### **4.5.4.4 An obligation or ability to provide information only on request**

The discussion in paragraph 4.5.3.4 is applicable to this heading.

A summary of the analysis of the above-mentioned provisions, indicating the availability of legal gateways that enable other agencies to obtain information held by the DPCI, is provided in Table 4.13 below:

**Table 4.13: Availability of legal gateways to obtain information held by the DPCI**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE DPCI				
	SAPS	NPA	FIC	SARS	CUSTOMS
Direct access to records and databases	Yes	No	No	No	No
Reporting obligation	Yes	No	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### **4.5.5 Information held by the NPA**

The National Prosecuting Authority Act provides for the general prohibition of the unlawful disclosure of information to any person that has come to the knowledge of another person in the performance of his or her functions in terms of the National Prosecuting Authority Act or any other law. Section 41(6) of the National Prosecuting Authority Act provides as follows:

(6) Notwithstanding any other law, no person shall without the permission of the *National Director* or a person authorised in writing by the *National Director* disclose to any other person— (a) any information which came to his or her knowledge in the performance of his or her functions in terms of *this Act* or any other law;

(b) the contents of any book or document or any other item in the possession of the *prosecuting authority*; or

(c) the record of any evidence given at an investigation as contemplated in section 28 (1), except—

(i) for the purpose of performing his or her functions in terms of *this Act* or any other law; or

(ii) when required to do so by order of a court of law.

Although the National Prosecuting Authority Act does not explicitly exclude the prospect of the disclosure of information or data held by the NPA to another person, subject to the requirements provided, it does not make any special arrangements for procedures to enable other investigative agencies to obtain information or data, or for the disclosure of such information or data to other investigative agencies.

The legal provisions providing the gateways for the disclosure of information as per the different categories held by the NPA, thereby establishing the ability to share information between the NPA and other agencies, are identified and described in the sections below:

#### **4.5.5.1 Direct access to records and databases**

Considering the provisions of section 41(6) of the National Prosecuting Authority Act, it is inconceivable that the National Director or a person authorised in writing by the National Director will authorise the direct, unsupervised access to records and databases held by the NPA.

#### **4.5.5.2 Reporting obligations**

In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, a person in the employ of, *inter alia*, the NPA, holding a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence under Part 1, 2, 3 or 4, or section 20 or 21 (insofar as it relates to the aforementioned offences) of Chapter 2; or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000,00 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the DPCI referred to in section 17C of the South African Police Service Act.

It is conceivable that the reporting obligation will apply only to a person holding a position of authority in the NPA in circumstances where the said offence came to the attention of the person holding a position of authority because of an internal matter, or where the commissioning of the said offence was not previously known to or investigated by SAPS or the DPCI.

#### **4.5.5.3 An ability, but no obligation, to provide information freely**

Under the provisions of section 41(6) of the National Prosecuting Authority Act, a “person”, as envisaged in section 41(6) of the National Prosecuting Authority Act, will be able to disclose information to another agency if that “person” has permission of the National Director or a person authorised in writing by the National Director to disclose any information or if the disclosure is made for the purpose of performing his or her functions in terms of the National Prosecuting Authority Act or any other law.

#### **4.5.5.4 An obligation or ability to provide information only on request**

Under the provisions of section 41(6)(c)(ii) of the National Prosecuting Authority Act, a “person” will potentially be able or obliged to disclose information held by the NPA to another agency in terms of a court order obtained, as envisaged in section 41(6)(c)(ii) of the National Prosecuting Authority Act.

An analysis of the provisions detailed above is summarised in Table 4.14 below and indicates the availability of legal gateways that enable other agencies to obtain information held by the NPA.

**Table 4.14: Availability of legal gateways to obtain information held by the NPA**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE NPA				
	SAPS	DPCI	FIC	SARS	CUSTOMS
Direct access to records and databases	No	No	No	No	No
Reporting obligation	No	Yes	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### **4.5.6 Information held by the FIC**

Section 40 of the Financial Intelligence Centre Act regulates and authorises the disclosure of information held by the FIC. Regarding the disclosure of that information, it is essential to consider that one of the objectives of the FIC is to share information with law enforcement authorities, supervisory bodies, intelligence services and SARS.

The legal provisions providing the gateways for the disclosure of information per its different categories held by the FIC, thereby establishing the ability to share information between the FIC and other agencies, are identified and described in the sections that follow:

##### **4.5.6.1 *Direct access to records and databases***

In terms of the provisions of Section 40 of the Financial Intelligence Centre Act, there are no legitimate prospects for agencies involved in the combating of financial crime to enable them to have direct access to records held by and information stored on the FIC's database.

#### **4.5.6.2 Reporting obligations**

In terms of section 34 of the Prevention and Combating of Corrupt Activities Act, a person in the employ of the FIC, holding a position of authority, who knows or ought reasonably to have known or suspected that any other person has committed an offence under Part 1, 2, 3 or 4, or section 20 or 21 (insofar as it relates to the aforementioned offences) of Chapter 2; or the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000,00 or more, must report such knowledge or suspicion, or must cause such knowledge or suspicion to be reported to the police official in the DPCI referred to in section 17C of the South African Police Service Act.

#### **4.5.6.3 An ability, but no obligation, to provide information freely**

Section 44 of the Financial Intelligence Centre Act provides that, where the FIC in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body that is subject to the provisions of the Financial Intelligence Centre Act, has contravened or failed to comply with any provision of the Financial Intelligence Centre Act, or any rule or guideline applicable to that accountable institution, or person that facilitates compliance with the Financial Intelligence Centre Act, it may, if it considers it appropriate to do so, refer the matter *to, inter alia*, a relevant investigating authority together with any recommendation the Centre considers appropriate. An investigating authority is defined in section 1 of the Financial Intelligence Centre Act as “an authority that in terms of national legislation may investigate unlawful activities”.

In terms of section 40(7) of the Financial Intelligence Centre Act, the FIC may make available any information obtained by it during an inspection of, *inter alia*, an organ of state.

#### **4.5.6.4 An obligation or ability to provide information only on request**

Section 40(1)(a) of the Financial Intelligence Centre Act states that no person is entitled to information held by the Centre, except an investigating authority inside the Republic, the South African Revenue Service, and the intelligence services,



which may be provided with such information subject to the written authority of an authorised officer if the latter reasonably believes that such information is required to investigate suspected unlawful activity or at the initiative of the FIC, if the FIC reasonably believes such information is required to investigate suspected unlawful activity.

An “authorised officer” is defined in section 1 of the Financial Intelligence Centre Act as any official from the following entities:

- The SAPS, authorised by the National Commissioner (of SAPS) to act under the Financial Intelligence Centre Act
- The NPA, authorised by the National Director of Public Prosecutions to act under the Financial Intelligence Centre Act
- An intelligence service, authorised by the Director-General of that service to act under the Financial Intelligence Centre Act
- The SARS, authorised by the Commissioner for that Service to act under the Financial Intelligence Centre Act

In terms of the provisions of section 40(3) of the Financial Intelligence Centre Act, the Director of the FIC may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in, *inter alia*, subsection (1) (a) (as referred to above) as the Director of the FIC considers appropriate to maintain the confidentiality of that information.

The provisions of sections 71 and 73 of Prevention of Organised Crime Act, as referred to in paragraph 4.5.5.2 above, also apply to the FIC. An analysis of the provisions detailed above is summarised in Table 4.15 below and indicates the availability of legal gateways that enable other agencies to obtain information held by the NPA.

**Table 4.15: Availability of legal gateways to obtain information held by the FIC**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE FIC				
	SAPS	DPCI	FIC	SARS	CUSTOMS
Direct access to records and databases	No	No	No	No	No
Reporting obligation	No	Yes	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

#### 4.6 OPERATIONALISING INTER-AGENCY COOPERATION

As is abundantly evident, a prerequisite for effective inter-agency cooperation in the combating of financial crime is the exchange of information between agencies. To enhance inter-agency cooperation, countries must make progress and develop operational models that make the most efficient use of the legal gateways that exist for the sharing of information. The failure of agencies or departments to link information/intelligence often plagues complex financial crime investigations (FATF, 2012:11). Mechanisms that can be employed to promote a productive exchange of information and inter-agency cooperation are as follows:

- Establishing information-sharing systems whereby all incorporated investigative agencies would be aware of previous or ongoing investigations carried out against the same persons and/or legal entities, and avoiding replication.
- Conducting conflict resolution discussions and promoting cross-fertilisation.
- Establishing policies and procedures that promote the sharing of information/intelligence within intra-agency and inter-agency cooperative frameworks; such policies and procedures should promote the strategic sharing of the necessary information.
- Establishing a process whereby intra-agency or inter-agency disputes are resolved in the best interests of the investigation.

- Competent authorities should consider establishing written agreements such as MoUs or similar agreements to formalise these processes.

The central themes emerging from the participants' answers were listed and interpreted, using a content analysis for interpreting the response to question 4.5 in the interview schedule, "What do you think are the benefits of cooperation and collaboration among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime? Please substantiate your answer". These themes are presented in the frequency table, Table 4.16 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

In response to the question regarding the benefits of cooperation and collaboration between the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime (question 4.5 in the interview schedule), the participants offered a diverse variety of themes (24 themes identified). The frequency of recurring themes is too low to provide meaningful categories or new ideas about the benefits of cooperation and collaboration. Each of the participants has his/her own view about the benefits of cooperation and collaboration. Each of the benefits as viewed by the participants has its own merits and underscores the importance of sharing of information between agencies during the combating of financial crime. Many of the themes identified are broadly consistent with the literature.

To obtain a better understanding of the views held by the participants regarding the benefits of sharing information (Table 4.8 – paragraph 4.8) and cooperation and collaboration (Table 4.16 – paragraph 4.8), the researcher compared the common themes emerging from their answers provided in Table 4.8 (paragraph 4.8) and Table 4.16 (paragraph 4.8). The following themes are common to the ones presented in Tables 4.8 (paragraph 4.8) and 4.16 (paragraph 4.8):

- The same information is viewed from different perspectives
- It creates several propositions for prosecution
- It clarifies mandates among the respective agencies
- Data held by various agencies can be compared
- More cost-effective
- Guides prioritisation

The themes listed above are uppermost in the minds of the participants when considering cooperation and sharing of information between agencies.

Examples exist where several countries have developed operational models for enhancing the exchange of information and cooperation, thus enabling agencies to work together for their mutual benefit. These operational models should not be viewed separately but rather as part of a strategy, requiring agencies to coherently move forward in the same direction towards a common goal. Ideally, agencies should endeavour to move beyond the gateways for sharing information, but from a practical viewpoint they should add mechanisms for working together and sharing knowledge and skills (OECD, 2013:104).

Using a content analysis for interpreting the response to Question 4.6 in the interview schedule, “From your experience and observations, can you describe how the agencies responsible for combating financial crime in South Africa are arranged?”, the central themes emerging from the participant’s answers were listed and are presented in the frequency table, Table 4.17 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The frequency of the themes recurring is too low to provide meaningful categories or a definitive idea of how the agencies responsible for combating financial crime in South Africa are arranged. The following themes emerging from the answers by the participants, as presented in Table 4.17 (paragraph 4.8), are consistent with those found in the literature:

- Various agencies conduct financial crime investigations

- SAPS/DPCI is the leading agency to conduct financial crime investigations
- Different aspects of financial crimes are pursued by different agencies
- Agencies operate in silos

Participant P003, as well as all other participants during the interview, was asked the question, “From your experience and observations, can you describe how the agencies responsible for combating financial crime in South Africa are arranged? (question 4.6 in the interview schedule). The participant, who wished to remain anonymous, explained to the researcher that the current arrangement of agencies to combat financial crime is divided into three areas, each focusing on a different category of operational capability, namely regulatory enforcement, detection of financial crime, and resolving of financial crime (Participant P003, 2017). The participant then proceeded to list the agencies under each operational capability together with its responsibility. The researcher developed a graph to illustrate the arrangement of the agencies in accordance with the exposition provided by the participant (Participant P003, 2017). The graph, illustrating the arrangement of the agencies, is shown in Figure 4.3 (paragraph 4.8).

From a practical point of view, there is no real limit, barring legislative constraints, to the ways in which agencies can be arranged in organisational structures to work together (OECD, 2013:103). From the literature it emerged that internationally there are several operational models available that demonstrate the possibility that agencies could make structural arrangements to enable them to work together, based on their requirements and experience. These operational models have been identified as consisting of four primary structures (OECD, 2013:103):

- Joint investigation teams
- Inter-agency centres of intelligence
- Secondment and co-location of personnel
- Other models

The above-mentioned operational models are evaluated and discussed in Chapter 5, as approaches to enable effective cooperation, coordination and sharing of information during efforts to combat financial crime.

#### **4.6.1 Joint investigation teams**

By nature, financial crimes are complex and sophisticated. Criminal activity may include several crimes that are interconnected. Different agencies may be involved in the investigation of different crimes that interconnect. Although there may be legal gateways in place to share information between the agencies involved in investigating the various offences, in several countries joint investigation teams are used to enable agencies to cooperate directly in the investigation of the various offences. Such mechanisms allow for several agencies to share information directly and coordinate their investigations to make the best use of their specific technical skills and legal powers. Joint investigation teams offer the following benefits (OECD, 2013:104):

- Enables officials from different agencies to develop a network of contacts
- Increases the level of understanding of each other's work
- Improves efficiency of other areas of cooperation
- Enables cost savings by reducing duplication during parallel investigations

In South Africa, investigative agencies often cooperate by forming joint investigation teams comprising specialists from the various agencies. Where SARS assigns officials to joint investigation teams, a SARS official may not use the legislative powers to conduct criminal investigations into tax offences or to obtain information during the administration of the tax Acts with the objective of furthering investigations into offences other than a tax offence. Where criminal conduct includes other offences as well as tax offences, the SARS will cooperate but run its own parallel investigation and share information with the joint investigation team in accordance with the provisions of the legal gateways provided (Sections 67(1) and (2) of the South African Revenue Service Act).

#### **4.6.2 Inter-agency centres of intelligence**

These are centres for intelligence that are organised in different ways and for different purposes. They are generally established to coordinate exchanges of information and in some cases, the transfer of practical skills between agencies. In some instances, inter-agency centres of information may be established to focus on operational or strategic information. Operational information relates to specific information or investigations. Strategic Information relates to the assessment of specific risks or threats. In some instances, the centre performs analyses of information obtained directly or from other agencies, or obtained via legal gateways for information sharing, or by means of its own information-gathering powers where they exist. Inter-agency centres of intelligence offer the following benefits (OECD, 2013:210):

- Cost-effective way of obtaining intelligence and conducting analysis
- Each agency gains access to a broader range of experts than what it would generally employ
- Staff gain experience in the legal and practical aspects of information sharing, which can be used to improve the effectiveness of legal gateways

An international example of an inter-agency centre of intelligence is the Australian Criminal Intelligence Commission (ACC). The ACC is overseen by an inter-agency board, comprising members of the tax administration, federal police, state and territory police, the Customs and Border Protection Service, the Australian Securities and Investment Commission, the Australian Security Intelligence Organisation and the Attorney-General's department. The ACC has enforceable powers, enabling it to source information that may be unavailable through traditional methods, and in addition maintains the national criminal intelligence database (OECD, 2013:119). The ACC has since been replaced by the Australian Criminal Intelligence Commission (ACIC), which commenced duties on 1 July 2016. It was established through the merger of the ACC and Australia's Police CrimTrac Agency. The example of the ACC and ACIC is provided here to illustrate the composition of the inter-agency board as represented by the various agencies.

During this research, the existence of a government body within the intelligence structures, styled as the NICOC became evident. From the information provided during the interviews, it appears that NICOC may be representative of a domestic example of an inter-agency centre of intelligence. The researcher could not establish the availability of any official documentation regarding the work of NICOC with regard to the combating of financial crime. According to a participant (Participant P003, 2017), NICOC “plays a pivotal role in the sharing of actionable information between government agencies and industry stakeholders”.

#### **4.6.3 Secondment of personnel between agencies**

In some countries, secondments and co-location of personnel are used as an instrument to improve collaboration between agencies. This instrument augments the efficiency of other arrangements for inter-agency cooperation. It has the additional benefit of improving the capability of agencies to recognise the potential for cooperation and to increase the speed and efficiency of information sharing. It enables officials to work near one another. It furthermore encourages the exchange of skills and networking between officials, who often help to build prospects for continued future cooperation. In several countries, arrangements exist for secondments of officials between separate agencies. (OECD, 2013:118).

In South Africa, section 17F (2) of the South African Police Service Act makes provision for the secondment of personnel from any other government department or institution to the DPCI in order to ensure, whenever necessary, the adequate performance of the functions of the DPCI. In terms of the provisions of section 17F (3) of the South African Police Service Act, the DPCI shall be assisted in the performance of its functions by personnel seconded by the relevant government departments or institutions, which may include personnel from the SARS, the FIC, and the Department of Home Affairs. According to the provisions of section 17F (4) of the South African Police Service Act, the National Director of Public Prosecutions must ensure that a dedicated component of prosecutors is available to assist and cooperate with members of the Directorate in conducting its investigations. Section 17F (6) of the South African Police Service Act states that the Directorate shall be supported by the Crime Intelligence Division (CID) of



the SAPS to gather, correlate, evaluate, coordinate and use crime intelligence in the performance of its functions.

The extent to which the DPCI makes use or has made use of the legal apparatus to second officials from other agencies to the DPCI is not known, and evidence of it has not emerged in this research. The aspect of the aspirations of the DPCI to implement a multidisciplinary approach is attended to in section 4.6.4 below.

#### **4.6.4 Multidisciplinary groups or task teams**

Large, complex financial investigations may require that multidisciplinary groups or task teams be assembled to ensure the efficient handling of the investigation, prosecution and eventual confiscation (FATF, 2012:10). It is judicious that there should be a strategic approach to intra-agency and inter-agency cooperation. This should be aimed at efforts to support sharing of information/intelligence within and between the various agencies participating in the group or team.

Multidisciplinary groups or task teams may comprise a range of individuals, including specialised investigators, experts in financial analysis, forensic accountants, forensic computer specialists, prosecutors, and tax officials (FATF, 2012:10). Such individuals may be appointed or seconded from other agencies, such as a regulatory authority, the FIU, a tax authority, or even drawn from the private sector on an as-needed basis. Multidisciplinary groups could possibly include individuals with the expertise necessary to analyse significant volumes of financial, banking, business and accounting documents, including wire transfers, financial statements and tax or customs records. They should also include investigators with experience in gathering business and financial information/intelligence, identifying elaborate illegal schemes, following the money trail, and using such investigative techniques as undercover operations, intercepting communications, accessing computer systems, and controlling delivery.

Multidisciplinary groups should also include criminal investigators who have the necessary knowledge and experience in effectively using traditional investigative techniques within their legal mandates and within the parameters of the legal framework that governs their activities (FATF, 2012:11). Prosecutors also require

similar expertise and experience to present the case in court effectively. After assembling a multidisciplinary group or task team, it is imperative to maintain efficient and effective coordination between members of the team as well as all agencies involved.

It is possible to conceive that the “multidisciplinary approach and an integrated methodology”, as referred to in section 17B(b)(i) and the provision for secondment of personnel from other agencies, as provided for in section 17F of the South African Police Service Act, is a hybrid between the models, secondment of personnel between agencies (refer to par. 4.6.3) and multidisciplinary groups or task teams.

#### **4.6.5 Multi-agency task forces**

Where agencies have different information gathering and sharing powers (as is the case on the domestic front), multi-agency task forces have proved to be a notable model for effective cross-agency collaboration (*Inquiry into financial ...*, 2015:7). The Australian Project Wickenby is mentioned as a notable example of an efficient task force that combined expertise and resources from various agencies working together in a collaborative manner to achieve common goals (*Inquiry into financial ...*, 2015:10). The Project Wickenby multi-agency task force was established in 2006 to protect the integrity of Australia's financial and regulatory systems by preventing people from promoting or participating in the abusive use of secret havens (OECD, 2013:23). The Australian Taxation Office (ATO) was the lead agency of the overall project. The other participating agencies in the project were the ACC, the Australian Federal Police, the Australian Securities and Investments Commission, the Commonwealth Director of Public Prosecutions, the FIU, the Attorney-General's Department and the Australian Government Solicitor. Legislation that was specially enacted enabled agencies to share information more widely for the purposes of Project Wickenby investigations than was generally allowed.

It was announced in 2015 that the very successful Project Wickenby was to be terminated in 2015 and replaced by a new task force styled named the “Serious Financial Crime Taskforce” to build on the excellent work done during the

existence of Project Wickenby. It draws on the best practice and experience gained during Project Wickenby, and for different agencies to extend their cooperative reach across the broader financial crime risk (*Inquiry into financial ...*, 2015:14). One of the views expressed by the committee conducting the Inquiry into Financial Crime by the Parliamentary Joint Committee on Law Enforcement (*Inquiry into financial ...*, 2015:14) was that multi-agency task forces have more effective arrangements in the sharing of information and intelligence, something that would otherwise not have been possible in a non-task-force setting. A South African example of a joint investigation team comprising specialists from different agencies is the ACTT. A discussion of the ACTT follows in Chapter 5, par. 5.9.2.4.

#### **4.6.6 Other models**

Other models for improved cooperation include shared databases, intelligence briefings, and training sessions between agencies and joint committees. These approaches, of which some are quite pioneering in nature, often supplement other models for sharing information or enhanced cooperation (OECD, 2013:120). In South Africa, there are mechanisms for enabling joint working ventures, which include inter-agency committees under the control of different government departments or ministries (OECD, 2013:123). There is the MAWG, which seeks to improve compliance and identify system solutions to failures in the finance and procurement system. The central themes emerging from the participants' answers were listed and interpreted, using a content analysis for interpreting the response to question 4.7 in the interview schedule, "Are you aware of any available models that can be applied or modified for domestic application to improve sharing of information, coordination, cooperation and collaboration among agencies in their efforts to combat financial crime more effectively? If so, please describe what these models entail." The themes are presented in the frequency table, Table 4.18 (paragraph 4.8). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one theme in response to the question.

The participants provided a description or an example of a variety of models they believe can be applied or modified for domestic application to improve sharing of information, coordination, cooperation and collaboration among agencies in their efforts to combat financial crime more effectively. The frequency of recurring themes is, however, too low to discover consistent ideas. Some of the themes identified from the answers provided by the participants corresponded to the examples found in the literature.

The participants, including Participant P003 (2017), were asked question 4.7 in the interview schedule, “Are you aware of any available models that can be applied or modified for domestic application to improve sharing of information, coordination, cooperation and collaboration among agencies in their efforts to combat financial crime more effectively? If so, please describe what these models entail”. The participant, wishing to remain anonymous, provided the following exposition to the researcher (Participant P003, 2017):

Formal information-sharing models and mechanisms that are focused on improving the sharing of information, coordination, cooperation and collaboration are the following, in accordance with their individual mandates:

- Government
  - National Intelligence Coordinating Committee
  - Financial Intelligence Centre
  - ACTT up to 2015
- Sectoral Partnerships
  - Business Against Crime South Africa
  - Insurance Industry
    - South African Insurance Association
    - South African Insurance Crime Bureau
  - Banking Industry
    - South African Banking Risk and Information Centre

- Retail Industry
  - Consumer Goods Council South Africa
- Vehicle Rental and Leasing Industry
  - Southern African Vehicle Rental and Leasing Association
- Petroleum Industry
  - Petroleum Security Initiative
- Mining Industry
  - Chamber of Mines
- Tourism Industry
  - Tourism Business Council of South Africa

The above answer is an indication that there are efforts underway between Government and sectorial partnerships regarding the sharing of information, and that these efforts can be regarded as formal models for cooperation and sharing of information. The participant's answer also provides insight into the various business sectors and the initiatives established to cooperate and share information. The participant did not elaborate on how the information-sharing models and mechanisms that are focused on improving the sharing of information, coordination, cooperation and collaboration are to be operationalised.

#### **4.7 SUMMARY**

Sharing of information between agencies responsible for combating financial crime and inter-agency cooperation is a fundamental and essential requirement for effective combating of financial crime. In this chapter, the researcher identifies and analyses the arrangements available internationally for ensuring inter-agency cooperation and integration of efforts by the various key agencies responsible for combating financial crime, as well as how to do so effectively. For practical purposes, the available arrangements for inter-agency cooperation are categorised and sub-categorised as follows:

- Key agencies responsible for combating financial crime

- Identification of the key agencies responsible for combating financial crime
- Role of agencies during the various stages of combating financial crime
- Sharing of information as a prerequisite for inter-agency cooperation
  - Legal gateways as requirement for sharing information
  - Legislative requirements and conditions for sharing information
  - When and how information can be shared
- Operational arrangement between agencies for enhanced inter-agency cooperation

In this chapter, the identification of the key agencies responsible for combating financial crime, as well as their main activities in the international spectrum, are determined. The analysis focused on their South African counterparts, according to the literature and feedback from participants. The principal agencies responsible for combating financial crime in South Africa, according to the literature and feedback from participants, are graphically depicted in Figure 4.2 (paragraph 4.8).

Government agencies are at various stages involved in the combating of financial crime. These stages may include prevention, gathering of intelligence, detection, investigation, prosecution as well as recovery and taxing the proceeds of crime. The roles of the key agencies in the various stages of combating financial crime are divided among the respective agencies, and these roles are summarised in Table 4.7 (paragraph 4.8). These institutions may generally, as the OECD (2013:30-42) survey indicates, include revenue authorities, customs authorities, financial intelligence agencies, law enforcement agencies (police), specialised investigation agencies, authorities or units, and prosecution authorities (refer to Figure 5.1 – paragraph 5.14).

Sharing of information as a prerequisite for better cooperation between the agencies is dependent on the existence of legal gateways that allow for the legal exchange of information between the various key agencies. The legal gateways provide for various reporting obligations and the potential of sharing information

or having access to information. The various legal gateways, as presented in South African legislation relevant to the various agencies, are analysed and commented on. Operational arrangements for sharing of information are dependent on the existence of legal gateways to enable the lawful exchange of information. Regarding the sharing of information among various agencies responsible for combating financial crime, it has been established that there are four different categories of cooperation determined by legislation, namely:

- Direct access
- A legal obligation to provide information
- Spontaneous disclosure of information
- Provision or disclosure of information only on request

These categories are then contextualised to the South African legislative provisions for sharing of information between the various agencies and summarised accordingly. The process of sharing or disclosing information between the respective agencies is determined in accordance with the various requirements and conditions in the legal provisions that provide the legal gateways. Once the legal gateways in existence between the agencies for sharing information had been determined, an analysis of the legal gateways was undertaken. The result of the analysis is presented in tables, showing the possibility of exchanges of information between the respective agencies. Sharing or disclosure of information can be undertaken between agencies in accordance with the various categories for information sharing (refer to Tables 4.11 to 4.15 above in this chapter).

The failure between agencies to link information/intelligence can hamper complex financial investigations. To make the most efficient use of gateways for sharing information, agencies have to advance and develop operational arrangements, i.e. to give effect to the intention to enhance cooperation, which enables agencies to work together for their mutual benefit. In this chapter, the various operational arrangements in existence among countries surveyed by the OECD (2013) who are making optimal use of existing legal gateways, are identified and analysed. Operational models for enhanced cooperation should not be viewed in isolation but rather as part of a strategy requiring agencies to have a common line of sight

onto their common objective and how to achieve it by means of mutual cooperation. From a practical viewpoint, barring legislative constraints, there is no limit to the ways in which agencies are capable of working together operationally. The following examples of operational arrangements models were presented and evaluated. To a certain extent, some have been applied in South Africa, with varying levels of success and transparency:

- Joint investigation teams
- Inter-agency centres of intelligence
- Secondment of personnel
- Other models

In the next chapter, the management principle known as a Whole-of-Government approach is examined and explained. The prospect of applying Whole-of-Government as an approach to more efficiently operationalising cooperation, coordination and sharing of information among the various key agencies is evaluated. The purpose of the evaluation is to determine whether the Whole-of-Government approach could provide a model for ensuring that key agencies communicate effectively, make efficient use of legal gateways to share information, and cooperate and coordinate activities efficiently towards a common goal.



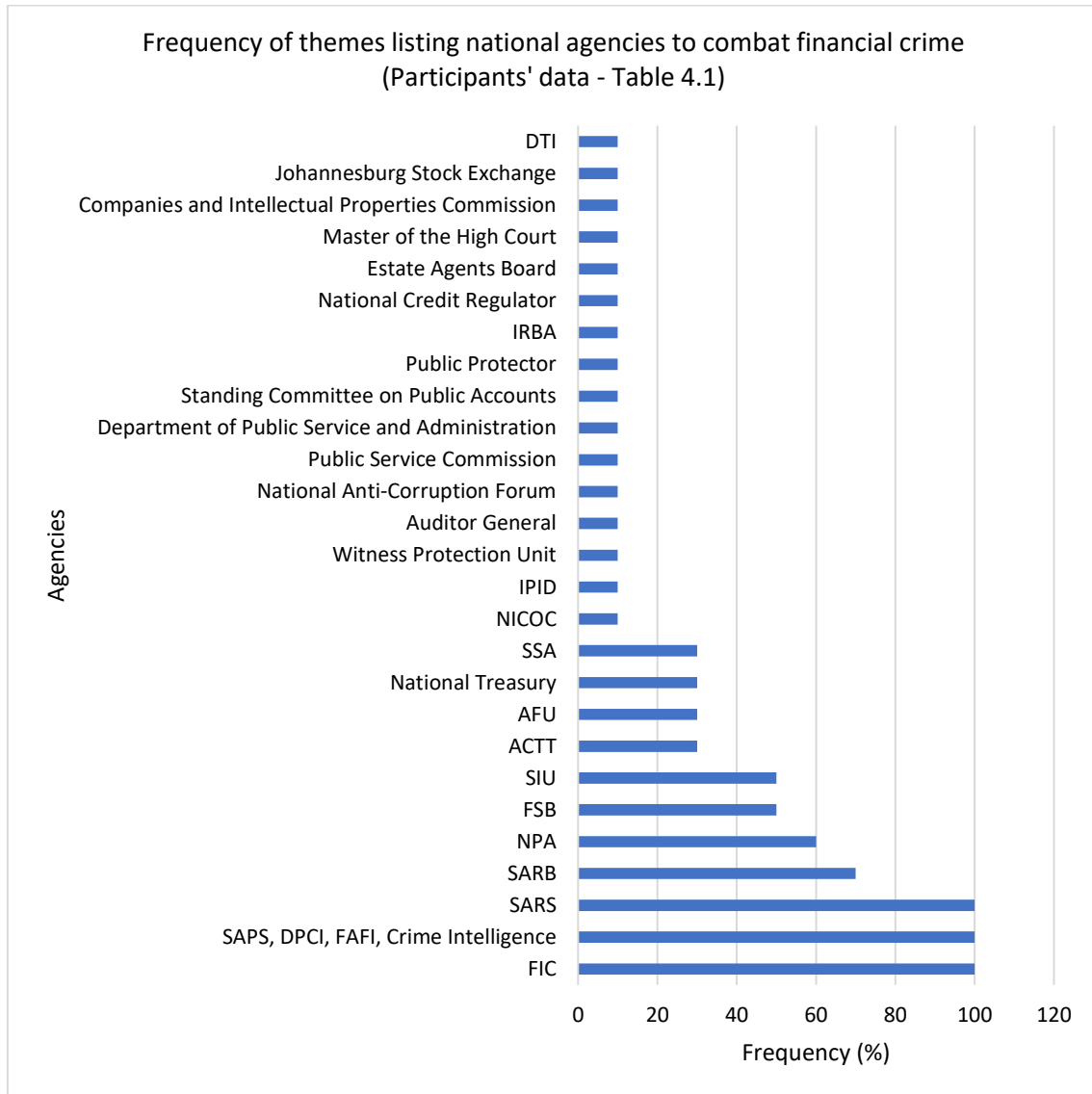
#### 4.8 TABLES AND GRAPHS REFERRED TO IN CHAPTER 4

**Table 4.1: Frequency table of participants' listing the agencies responsible for combating financial crime**

Question 4.1: List the government agencies and/or investigative authorities responsible for combating financial crime in South Africa		
Participants' theme	Quantification of this theme	Frequency of this theme (%)
FIC	10	100
SAPS - DPCI, Crime Intelligence	10	100
SARS	10	100
SARB	7	70
NPA	6	60
FSB	5	50
SIU	5	50
ACTT	3	30
AFU	3	30
National Treasury	3	30
SSA	3	30
NICOC	1	10
IPID	1	10
Witness Protection Unit	1	10
Auditor General	1	10
National Anti-corruption Forum	1	10
Public Service Commission	1	10
Department of Public Service and Administration	1	10
Standing Committee on Public Accounts	1	10
Public Protector	1	10
IRBA	1	10
National Credit Regulator	1	10
Estate Agents Board	1	10
Master of the High Court	1	10
Companies and Intellectual Properties Commission	1	10
Johannesburg Stock Exchange	1	10
DTI	1	10

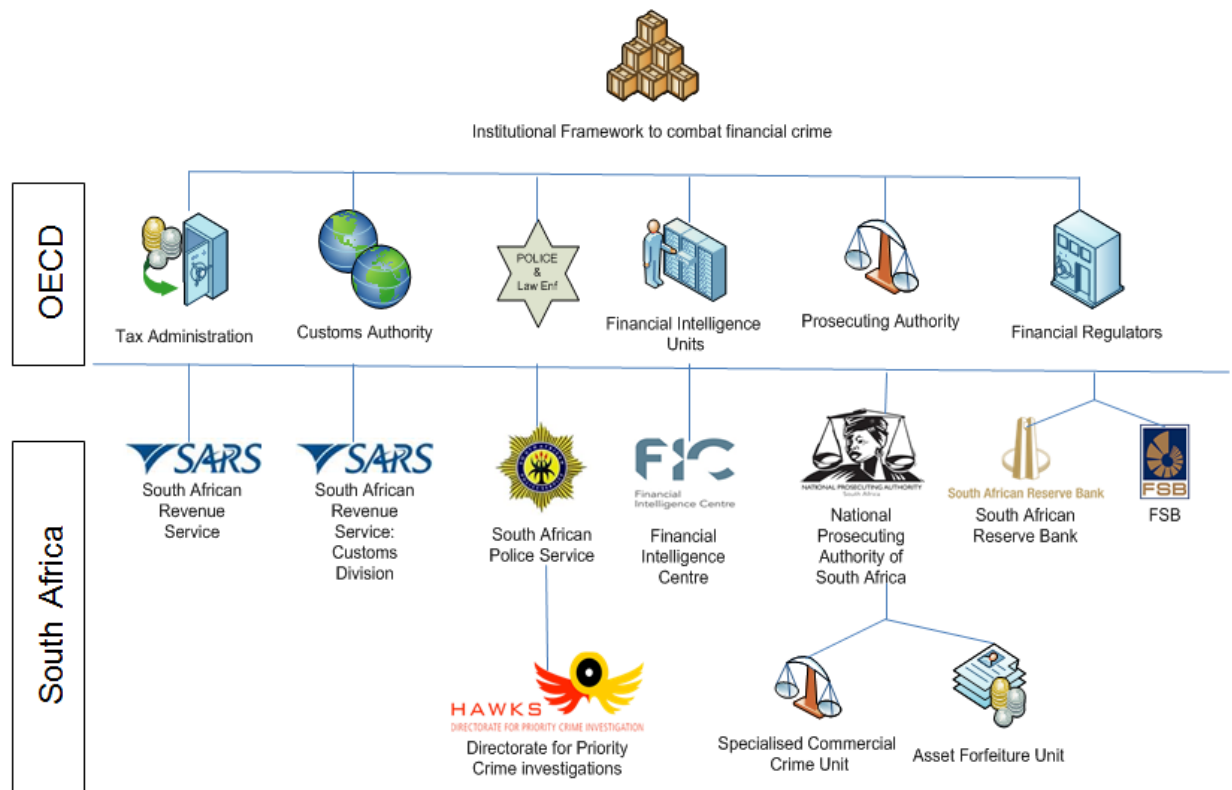
(Source: Feedback from participants)

**Figure 4.1: Participants' frequency of themes regarding listing national agencies responsible for combating financial crime**



(Source: Data from Table 4.1)

**Figure 4.2: Graph of the composition of the key agencies responsible for combating financial crime**



(Source: Analysis of the literature and feedback from participants presented in Table 4.1)

**Table 4.2: Frequency table indicating participants’ focus on the responsibility of SARS to combat financial crime**

Question 4.2: What is the responsibility of SARS, regarding combating of financial crime?		
Participants’ themes	Quantification of this theme	Frequency of this theme (%)
To conduct tax crime investigations	8	80
Focus on tax crimes	1	10
Investigate tax-related corruption	1	10
Investigate tax fraud	2	20
Enforcement of tax laws/legislation	3	30

(Source: Feedback from participants)

**Table 4.3: Frequency table indicating participants' focus on the responsibility of the SAPS to combat financial crime**

Question 4.2: What is the responsibility of the SAPS as regards combating of financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Crime prevention	2	20%
Combat crime	2	20%
Investigate crime	5	50%
Investigate fraud, theft, racketeering, money laundering, bribery, corruption	3	30%
Investigate commercial crimes	5	50%

(Source: Feedback from participants)

**Table 4.4: Frequency table showing participants' focus on the responsibility of the DPCI to combat financial crime**

Question 4.2: What is the responsibility of the DPCI as regards combating of financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Crime investigation	5	50
Prevent national priority crimes	2	20
Combat national priority crimes	2	20
Investigate priority crimes	2	20
Must implement a multidisciplinary approach	1	10
Investigate organised financial crime	1	10
Functions overlap with those of SAPS	1	10
Investigate large and complex commercial crimes	1	10
Investigate large and complex frauds involving listed companies	1	10
Investigation of priority commercial crime	1	10
Conducting financial investigations	1	10
Asset recovery investigations	1	10
Investigate financial aspects of crime	1	10

(Source: Feedback from participants)

**Table 4.5: Frequency table indicating participants' focus on the responsibility of the FIC to combat financial crime**

Question 4.2: What is the responsibility of the FIC, as regards combating of financial crime?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Making available information to other investigation agencies	3	30
Gathering information	2	20
Exchange of information with external agencies.	2	20
Develops financial intelligence	2	20
Combat money-laundering activities	2	20
Identification of proceeds of unlawful activities	2	20
Combat financing of terrorism	2	20
Processing, analysing, and interpreting information disclosed to it	2	20
Administrates the anti-money-laundering measures.	1	10
Coordinate the exchange of information	1	10
Protect the integrity and stability of financial systems	1	10
Exchange information with FIUs in other countries	1	10
Informing, advising, and cooperating with investigative authorities, supervisory bodies, the SARS and the intelligence services	1	10
Monitoring and giving guidance to accountable institutions, supervisory bodies, and other persons regarding the performance of their duties and compliance with the provisions of FICA	1	10
Retaining all information received pursuant to compliance with the provisions of FICA	1	10
Identify money laundering	1	10
Identify terrorist financing	1	10
Gathering of intelligence	1	10
Reporting and investigation in terms of the FICA	1	10
Support to investigators	1	10
Deal with SARs received from financial institutions	1	10
Deal with the cash threshold reports fed from the financial institutions	1	10
Detect if crime has been committed	1	10

(Source: Feedback from participants)

**Table 4.6: Frequency table indicating participants' focus on the responsibility of the NPA to combat financial crime**

Question 4.2: What is the responsibility of the NPA as regards combating of financial crime?		
Participants' themes or focus	Quantification of this theme	Frequency of this theme (%)
Criminal prosecution	4	66
Prosecution of financial crimes (SCCU)	2	33
Institute criminal proceedings on behalf of the state	1	17
Power to discontinue proceedings	1	17

(Source: Feedback from participants)

**Table 4.7: Different agencies' roles in combating financial crime**

According to the Literature	Key South African Agency	Role in Combating FC
Tax Administration	South African Revenue Service	Tax administration detects, directs and conducts criminal investigation into tax crimes. Taxes proceeds of crime
Customs Administration	Customs Division within the SARS	Customs administration detects, directs and conducts criminal investigation into tax crimes. Taxes the proceeds of crime
Police and other law enforcement agencies	South African Police Service	Combats financial crime and serious financial crime
Financial Intelligence Units	Financial Intelligence Centre (FIC)	Detects the proceeds of crime, combats money laundering and financing of terrorism, and shares information with relevant investigation agencies. Maintains financial intelligence records and disseminates information
Prosecution Authority	NPA	Institutes prosecution on behalf of the State, and carries out the functions incidental thereto
Financial regulators	South African Reserve bank; and Financial Services Board	Maintains confidence in the financial system and takes measures aimed at detecting and addressing abuses of the products and services offered by financial institutions.
Recovery of the proceeds of crime	Asset Forfeiture Unit	Applies the provisions of Chapters 4 & 5 of the POCA to seize criminal assets to its maximum effect

(Source: Analysis of the literature and feedback from participants)

**Table 4.8: Frequency table indicating participants' focus on the benefits of sharing information among agencies**

Question 4.3: What do you think are the benefits of <u>sharing information</u> among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies in combating financial crime? Please substantiate your answer.		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Effective decision-making	2	20
Not aware of any	1	10
It is a prerequisite for cooperation	1	10
It is a precondition for inter-agency cooperation	1	10
It is required for all the stages of prevention, detection, investigation, prosecution and recovery of proceeds of crime.	1	10
Information is viewed from different perspectives, enhanced and <del>the</del> reintegrated	1	10
Establishes possible predicate offences	1	10
Creates different options for prosecution	1	10
It allows agencies to become aware of threats relating to their specific mandates	1	10
It assists in clarifying an agency mandate to other agencies	1	10
Data-matching can be performed	1	10
Enforcement will be more effective and efficient	1	10
Expedites appropriate actions	1	10
Increases detection, prevention and prosecution	1	10
Increases economic activity	1	10
Increases investor confidence	1	10
Increases revenue collection	1	10
If applied correctly, the benefits can be huge	1	10
More cost-effective	1	10
Time-saving	2	10
Better focus	1	10
Informed prioritisation	1	10
Better identification of 'quick win' cases	1	10
The benefits can be huge	1	10
It can prevent minor financial crimes from escalating	1	10
Can demonstrate that we are a Whole-of-Government at work	1	10
It enables an integrated understanding of the financial crime risks, threats, responses.	1	10
It results in addressing financial crimes as a collective concern among all stakeholders.	1	10
Reduces the vulnerability and harm of stakeholders affected by financial crime	1	10
It empowers stakeholders in their efforts to combat financial crime as part of a Whole-of-Government and Societal Approach	1	10%

(Source: Feedback from participants)



**Table 4.9: Frequency table indicating participants' focus on suggestions to improve sharing of information among government agencies**

Question 4.4: In your opinion, what can be done to improve <u>sharing of information</u> among government agencies in an effort to combat financial crime more effectively?		
Participants' themes or focus	Quantification of this theme	Frequency of this theme (%)
Sharing of information should be contextualised by understanding its purpose, as each area has different needs for information	2	20
The political will to combat financial crime	1	10
Appointment of suitably qualified persons as heads of agencies	1	10
Appointment of suitably qualified personnel	1	10
A Whole-of-Government approach should be adopted	1	10
Government should prioritise financial crime as a specific focus area	1	10
A specific agency should take ownership of the execution of commonly-defined strategy	1	10
More guided effort should be undertaken to obtain relevant information	1	10
Change legislation to enable legal gateways between agencies to share information for cooperative purposes	1	10
Share common goals	1	10
Interaction between agencies	1	10
Use resources proactively and on time	1	10
Sharing of information should be enforced and regulated by legislation	1	10
Compulsory monthly meetings between agencies	1	10
Establish information-sharing platforms	1	10
Establish a multidisciplinary unit	1	10
Inclusive of all agencies involved in the combating of financial crime	1	10
Divide unit into teams led by investigator and prosecutor.	1	10
Focus on crimes with potential to generate income for the State	1	10
Focus on impactful cases	1	10
Creation of a task force focusing on financial crime	1	10
Model can be agreed on in terms of terms of reference where the principles are agreed	1	10
Needs the concurrence of all the affected ministers	1	10
Sharing of information should be contextualised by understanding its purpose as each area has different needs for information	2	20

(Source: Feedback from participants)

**Table 4.16: Frequency table indicating the benefits of cooperation and collaboration between agencies.**

Question 4.5: What do you think are the <u>benefits of cooperation and collaboration</u> among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime? Please substantiate your answer.		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Saves time	3	30
More cost-effective	2	20
Prevents duplication of efforts	2	20
Better flow of information between agencies	1	10
Assists in understanding each other's mandate	1	10
Assists in understanding each agency's contribution towards specific issues	1	10
Allows for the pooling of resources for specific high-profile investigations	1	10
Better understanding among agencies regarding their activities	1	10
Assist with matching data held by different agencies	1	10
The same information is viewed from different perspectives	1	10
Information is enhanced and reintegrated, providing prosecutors with the best options to advance a case.	1	10
It may establish predicate offences from which to advance an investigation	1	10
Better focus	1	10
Informed prioritisation	1	10
Better identification of 'quick win' cases	1	10
See the picture from different angles	1	10
Cooperation enables the flow of information	1	10
From cooperation, collaboration follows, where required	1	10
Action can be expedited	1	10
Prevent dissipation of assets or destruction of evidence	1	10
Prevents knee-jerk reactions when investigations must be done under pressure, when red flags were visible, but information was not shared	1	10
Enables a more effective and coordinated, integrated and strategic approach towards the combating of serious crimes, including financial crime	1	10
Assists in the establishment of an integrated or Whole of Government approach towards collaboratively reducing the threat of financial crime	1	10
It enables the utilisation of a broad range of legal mandates and legal instruments to address the business system of crime	1	10

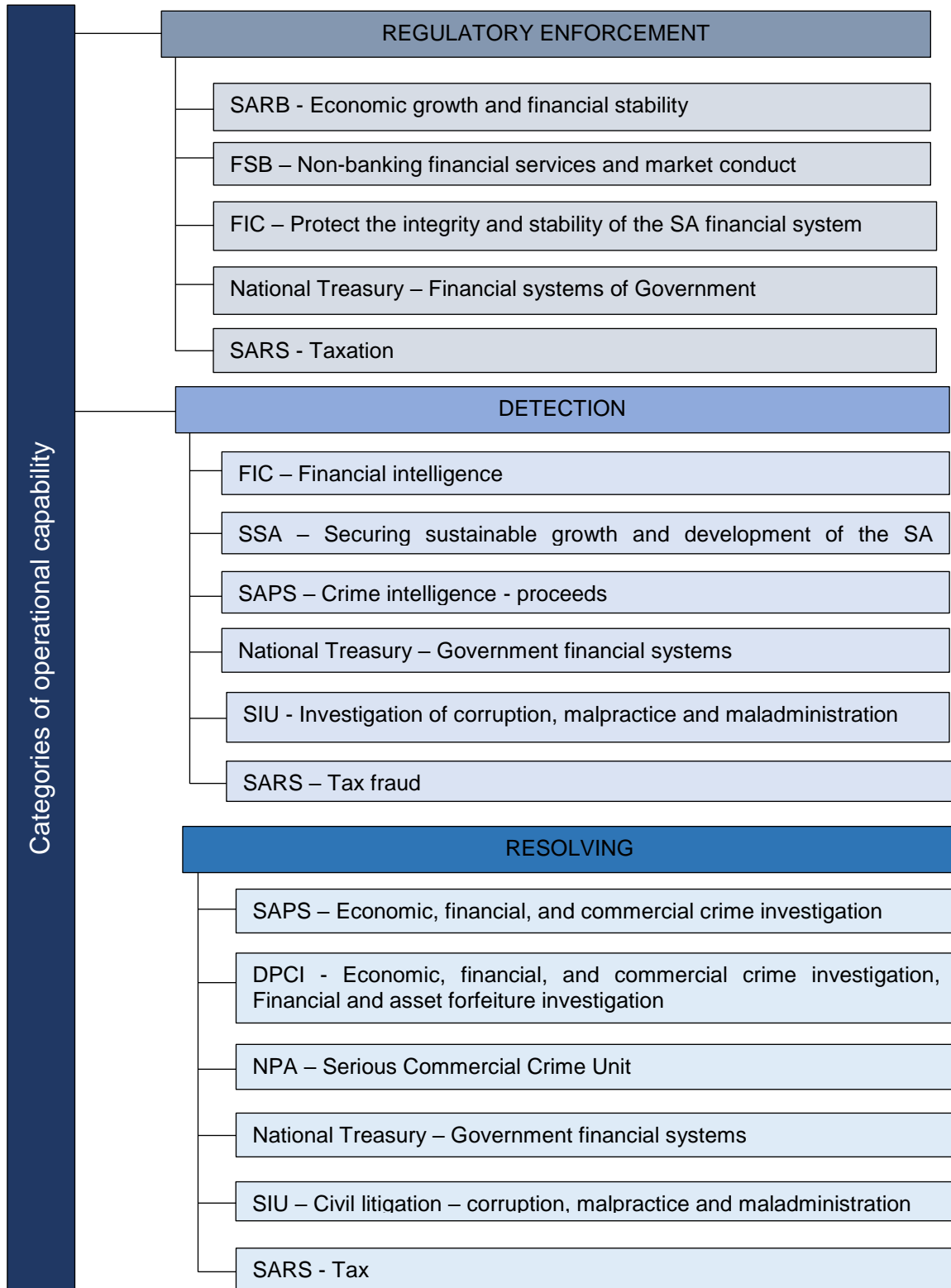
(Source: Feedback from participants)

**Table 4.17: Frequency table listing participants' themes describing the institutional arrangement of agencies to combat financial crime**

Question 4.6: From your experience and observations, can you describe how the agencies responsible for combating financial crime in South Africa are arranged?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Various agencies conduct financial crime investigations.	3	30
SAPS is the leading agency to conduct financial crime investigations	2	20
Agencies operate in silos.	2	20
They are arranged in several ministerial departments for political oversight	2	20
Other agencies conduct financial investigations in support of SAPS:	1	10
Different aspects of financial crimes are pursued by different agencies, National and regional offices	1	10
Sometimes task teams are established	1	10
Regulatory enforcement	1	10
Detection	1	10
Resolving crime,	1	10
Civil recovery litigation	1	10

(Source: Feedback from participants)

**Figure 4.3: Arrangement of agencies to combat financial crime in accordance with operational capability**



(Source: Feedback from Participant P003, 2017)

**Table 4.18: Frequency table listing participants' models to improve sharing of information, coordination, cooperation and collaboration among agencies**

Question 4.7: Are you aware of any available models that can be applied or modified for domestic application to improve sharing of information, coordination, cooperation and collaboration among agencies during efforts to combat financial crime more effectively? If so, please describe what these models entail.		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Task teams such as the ACTT	2	20
Not aware of any	1	10
Netherlands Tax and Customs administration criminal investigations (FIOD)	1	10
A centralised agency: nodal point for case management and evaluation of completed cases, develops networks of cooperation; establishes and maintains partnerships for sharing information; Explores new strategies and techniques to combat money laundering	1	10
Coordinating agency consisting of representatives of the different agencies.	1	10
Coordinating agency responsible for giving operational guidance and coordinating intelligence that directs the activity of the agencies	1	10
Secondments of personnel between agencies	1	10
Joint Investigation teams on a small scale and case-by-case basis	1	10
Collaboration with special interest groups on digital Web-based platforms	1	10
Must have a prosecutorial component	1	10
Must have sufficient teams, adequately staffed	1	10
One agency has the responsibility for directing and conduction investigations	1	10
Agencies conduct investigations under the auspices of the public prosecutor	1	10
Specialist agency is constituted outside the departmental framework but under the auspices of a ministry to conduct investigations	1	10
The police or the public prosecutor has the responsibility for conducting all investigations	1	10
Serious Organised Crime Agency (SOCA), UK	1	10
A permanent task team for the purposes of combating financial crime as part of an integrated anti-corruption and anti-money-laundering strategy	1	10
High-level body responsible for setting policy in the fight against financial crime.	1	10
Collaboration that is joined together by way of memoranda of understanding or agreed terms of reference	1	10
The establishment of a dedicated task force	1	10
The affected ministries must concur with the terms of reference	1	10
There must be a lead department whose minister takes responsibility	1	10
Formal Information-sharing models and mechanisms that are focused on improving sharing of information, coordination, cooperation	1	10

(Source: Feedback from participants)

## CHAPTER 5: WHOLE-OF-GOVERNMENT

### 5.1 INTRODUCTION

The system to combat financial crime in South Africa is institutionalised into single-purpose agencies with vertical responsibilities for combating certain aspects of financial crime at various stages. Certain agencies operate in isolation. They work in silos, and their efforts have become fragmented, with the result that cooperation and coordination suffer, which renders their efforts ineffective. Agencies carry out their efforts in parallel and focus on their own piece of the puzzle.

Montesh (2009:192) argues against the implementation of what he terms a “multi-agency approach” to deal with organised crime, corruption, and financial or economic crime. According to Montesh (2009:192), a multi-agency approach has proved to be problematic and inefficient, adding that it has become an international norm that a single-agency approach is used to deal with organised crime, corruption, and financial or economic crime (a multi-agency should not be confused with a multi-purpose agency, where the latter is a reference to a single agency performing more than one purpose). The reference to “multi-agency” is seemingly a reflection on numerous agencies that have been assigned separate functions to safeguard South Africans against, among other things, financial or economic crime and to combat such crime. According to Montesh (2009:192) it is an international norm that a “single-agency approach” is used to solve these problems. Montesh (2009:192) therefore argues in favour of the establishment of a “single-agency approach”. The reference to “single-agency” is a reference to one overarching agency taking responsibility for all the functions performed by the respective agencies in combating, among other things, financial and economic crime. The current system to combat financial crime in South Africa is organised into distinct and specialised “single-purpose” agencies. What Montesh is apparently referring to here is what Cilliers and Greyvenstein (2012:2) describe as “organisational silos”. However, since the publication of the research report by Montesh (2009), Government has strengthened the multi-agency approach with regard to combating financial crime, using multiple agencies. For example, the

legislator has enacted legislation that grants the SARS new and enhanced single-purpose criminal investigative powers by covering only tax and customs offences (Sections 3(2)(f) and 44 of the Tax Administration Act and section 4D of the Customs and Excise Act (91 of 1964). This arrangement forms part of a multi-agency approach.

The arrangement of key investigative agencies in silo-based, single-purpose agencies provides an opportunity to explore alternative approaches such as a Whole-of-Government response to combat financial crime, favoured by the OECD, which focuses on increased inter-agency coordination and collaboration between single-purpose agencies.

In Chapter 4 it was established that an essential requirement for effective cooperation between the main agencies involved in the combating of financial crime is the sharing of information. It was shown that various structural or organisational arrangements are available to facilitate cooperation and exchange of information between the main agencies. It was determined that in South Africa, various agencies have separate legal mandates regarding their roles and function during the various stages of combating financial crimes, and that there are various legal gateways for disclosing information in respect of each agency. Cooperation is arranged between agencies by using various legal and institutional arrangements or models, but fundamentally each agency remains responsible for its own role and mandate.

However, in this research, the prospect is explored of using a Whole-of-Government approach as a framework to harness the capacity of the existing single-purpose government agencies that are in existence, in order to combat financial crime more effectively. This chapter is concerned with examining the prospect of implementing Whole-of-Government approaches as a response to fragmented efforts to combat financial crime, and to enhance integration, cooperation, sharing of information, coordination and capacity.

Accordingly, in this chapter, the Whole-of-Government approach, as a model to strengthen cooperation across the respective key agencies responsible for

fighting financial crime, is investigated as an enabler to integrate efforts to combat financial crime more effectively. This relates to the objectives and research question examined in this chapter, about determining what the concept Whole-of-Government entails and how can it be applied or adapted for implementation by the Government to serve as a model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime. In this chapter, a conceptual model is proposed for implementing a Whole-of-Government approach that can support the Government in implementing a system that uses all its key agencies to combat financial crime more effectively. The conceptual model serves to illustrate the prospect or possibility of having a single agency with multiple functionalities operating across institutional boundaries to achieve a common objective, namely to combat financial crime more effectively.

## **5.2 PERSPECTIVES ON SILO FORMATION**

Ho (2017:18) declares that governments are organised into vertical silos, not unlike any large hierarchy. The literature and responses by participants in this research prove that the structures or arrangement of key agencies by Government to combat financial crime are organised in silos representing single-purpose agencies. Besides, in this study it is highlighted that one of the shortcomings of the current system of multiple or single-purpose agencies responsible for combating financial crime is the fact that they function in silos. The short discussion below about organisational silos is presented to foster an understanding of the meaning and relevance of silos in the context of the discussion of a Whole-of-Government approach, as explained in this chapter.

Cilliers and Greyvenstein (2012:9) assert that the concept of silos is often used in practice. As is evident in this research, this figure of speech is used by participants and in the literature to describe a form of organisational arrangement of the main government agencies, and is cited as a contributing factor as to why the current system is failing to combat financial crime. One of the limitations of multiple single-purpose agencies being responsible for combating financial crime



and which the Whole-of-Government approach aims to address is the formation of silos, as it inhibits cooperation and fosters a fragmented approach.

The reference to 'silos' is a metaphor used in the literature to describe organisational behaviour that refers to grain silos (Greenberg & Baron, as quoted by Cilliers & Greyvenstein, 2012:3). In the literature, silos have also been compared figuratively to a tube (Mulgan, 2005:177). The image provided by Mulgan (2005:177) is one where "the tubes or silos [represent conduits] down which money flows from [the] government to people and localities" and is part of the reason why the Government is inept at solving problems. Silos provide an image of how, for example, the respective key agencies of an organisation, in this case the State, function in a manner that is disconnected from the others (Cilliers & Greyvenstein, 2012:2). Cilliers and Greyvenstein (2012:2) maintain that the concept is based on the traditional view and systematic way in which organisations are structured. Silo structures often emerge as a feature of differentiation and specialisation, which is one of the hallmarks of a traditional bureaucracy (Weber, as quoted by Finn & Bannister, 2010:122). Mulgan (2005:177) posits that vertical organisations by their nature angle government efforts away from certain functions, such as prevention, stating that the benefits of preventive action often flow to another department. Mulgan (2005:177) argues that over time, "siloes" organisations reinforce a tendency common to many bureaucracies of devoting more energy to the protection of turf than to serving the public.

The silo metaphor is used to signify dysfunction and fragmentation in organisations (Cilliers & Greyvenstein, 2012:2). It is likened to the left hand not knowing what the right hand is doing. It creates an image of one silo (individual or single-purpose agency) in the organisation being in opposition to the other silos (Cilliers & Greyvenstein, 2012:2). According to Cilliers and Greyvenstein (2012:3), silos create barriers, fragmenting organisations, and in doing so create an "us and them mentality", which makes crossing the boundaries difficult. The nature of silos and the obstacles they present, as highlighted above, hampers integration of efforts between agencies and prevents cooperation and collaboration between the various agencies to combat financial crime effectively.

According to Finn and Bannister (c2010:122), coordination between activities in silo-oriented organisations tends to be poor and in some cases even non-existent. This lack of coordination leads to anomalies that may include duplication of processes and data, conflicts in activities, inconsistency and replication of work (Finn & Bannister, c2010:122).

A practical example of uncoordinated and fragmented approaches manifesting in silos emerged during a briefing delivered by the Home Affairs Director-General, Mkuseli Apleni, to the National Assembly Committee on Home Affairs (*Meeting report BMA ...*, 2016). During the briefing, Mr Apleni, referring to control of South Africa's borders, remarked that various structures had been put in place to coordinate the mandates and actions of the respective organs of state, including immigration control, customs control and border policing, and that these structures resulted in the emergence of a silo approach to border control, border law enforcement and border protection. These structures did not have authority and enforcement powers, and thus failed to address systemic and structural problems of the coordination model associated with fragmented border management. Ho (2017:18) claims that organisations that dismantle vertical silos encourage the natural horizontal flow of information, thereby improving the chances of forming connections that would otherwise have been hidden, and ensuring that complexities are discovered early.

### **5.3 THE IMPORTANCE OF INTEGRATION**

The term integration is often referred to in the literature in the context of Whole-of-Government. Before a meaningful discussion on Whole-of-Government can commence, it is essential that the meaning and relevance of the words integrated, integrate or integration in relation to cooperation between agencies are understood. The DPCI has a clear objective and legal mandate to pursue an "integrated methodology" and "multidisciplinary" approach that involves requiring the cooperation of all relevant Government departments and institutions as part of its efforts to combat organised crime and serious commercial crime (Section 17B of the South African Police Service Act). There are several practical examples where the concept of a multidisciplinary and integrated approach is

bandied about by heads of agencies or public officials in statements to the public. In the absence of conceptual clarity, the use of the concepts multidisciplinary and integrated approach in conjunction with, or to denote, the concept of Whole-of-Government is sometimes confusing. It is not always clear in what context the term integration is used and what it means, given the context.

The following analysis of the concepts integrated and multidisciplinary in the context of fighting financial crime is provided to clarify their usage and meaning, and to avoid confusion in the context of Whole-of-Government. Integration refers to the forming of a single multidisciplinary and inter-agency team to perform a task (*The Integrated Approach ...*, 2010). Integration is driven by the process of resources from different agencies consisting of varied disciplines working alongside each other at several levels to ensure that their mandates and roles support each other to improve the impact of activities. The researcher interprets that the reference to various disciplines “working alongside each other” is an apparent reference to a multidisciplinary integration of the skills and knowledge that officials from other agencies may contribute to the effort or team. With regard to the scope and nature of integration, Ryan (2016:2) quotes the UK Stabilisation Unit (*The Integrated approach*, 2010), which states that:

Integration is forming a single multidisciplinary and multi-departmental team to take on a task. The task may be planning, it may be designing a programme, or it may be delivering a project. When asked to work together, government departments generally look to liaise or coordinate, to retain their own teams whilst negotiating with other departments. Experience from the field has shown in the complex, fast moving and highly pressurised environment of conflict this does not work. (my emphasis)

Integration requires cooperation at the operational level, coordination at a mid-level and an alignment of strategic objectives at a senior level (*The Integrated Approach ...*, 2010). The aim of integration is to improve the flow of information, and to achieve a shared understanding of stabilising challenges and responses.

Integration should lead to a reduction of policies and delivery of public services in a manner opposed to the provision of services in silos (which is not the ideal situation).

### **5.3.1 Integrated methodology**

Chapter 6A of the South African Police Service Act makes provision for the establishment of the DPCI. Section 17B(b)(i) in Chapter 6A of the Act provides that the DPCI implements, where appropriate, a multidisciplinary approach and an integrated methodology whereby the cooperation of all relevant government departments and institutions is recognised and considered. This provision clearly articulates in no uncertain terms the intentions and aspirations of the legislature, namely that the DPCI in fulfilling its objectives must ensure that it does so by using a multidisciplinary and integrated methodology.

The South African Police Service Act does not explain the concept of a multidisciplinary approach and integrated methodology, although it does refer to the secondment of officials from other departments to the DPCI, as well as the cooperation of all relevant government departments. A multidisciplinary approach implies the involvement or mobilisation of all relevant investigative agencies (World Bank, 2009:5) to combat financial crime. The Council of the European Union (2011:17) provides some guidance on the rationale behind a multidisciplinary approach, when stating the following with regard to the combating of organised crime: “...acknowledging the multi-faceted aspects of organised crime and thus the necessity to forge a multi-disciplinary response.” Considering the multi-faceted aspects of financial crime, it can be argued that the same rationale for a multidisciplinary approach will apply to financial crime. A multidisciplinary approach is not an alternative to the criminal law approach to combating crime but should be a complementary strategy (Council of the European Union, 2012:3).

Using a content analysis to interpret the response to the question (question 5.1 in the interview schedule), “In your own words, explain what an integrated methodology and multidisciplinary approach means to you”, the focus areas

emerging from the participant's answers were listed and presented in the frequency table, Table 5.1 (paragraph 5.14). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one answer in response to the question.

There is little or no clarification or definition in South African literature regarding the meaning of integrated methodology and multidisciplinary approach in relation to combating of financial crime by the responsible agencies in South Africa. The question (question 5.1 in the interview schedule) was posed to the participants to shed light on the meaning of "integrated methodology and multidisciplinary approach". A diverse variety of themes (28 themes) emerged from the feedback from the participants. The theme with the highest recurring frequency (50%) regarding the meaning of "integrated methodology and multidisciplinary approach is, "[i]t brings together different skills sets and expertise". The low frequency of recurring themes in the remainder of the answers provided by participants is insufficient to enable the researcher to develop new ideas about the meaning of an "integrated methodology and multidisciplinary approach".

#### **5.4 CONTEXTUALISING WHOLE-OF-GOVERNMENT**

The multi-agency approach can be equated to a theory and concept in the realm of public management sciences, referred to as New Public Management (NPM). A central principle of the NPM concept is that separate agencies each have specialised single roles, functions and tasks (single-purpose organisations). NPM organises public agencies into distinct and separate sectoral pillars or silos. They have specialised roles, functions and tasks, which would, at least in theory, make them more efficient, avoid overlap, produce clearer role enactment, assign accountability and lead to systematic changes (Christensen & Lægreid, 2011:13).

A central principle of the NPM steering concept in the public management sphere is single-purpose organisations, which organise public organisations into distinct and separate sectoral pillar or silo. They have specialised roles, functions and tasks, which would, in theory, make them more efficient, avoid overlap, produce

clearer role enactment, assign accountability and lead to systematic changes (Christensen & Lægheid, 2011:13).

After many years of applying NPM, there is a change of emphasis away from structural devolution, disaggregation, and single-purpose organisations toward a Whole-of-Government approach (Christensen & Lægheid, 2007:1059). Christensen and Lægheid (2011:13) argue that the horizontal challenge has become greater than the vertical because the number of sectoral pillars or silos that have been created appears to obstruct solutions to horizontal problems, bringing about greater fragmentation and complexity. It strains political and administrative leaders' capacity to solve problems in society (Christensen & Lægheid, 2011:15). The discontent regarding fragmentation and complexity is concomitant with the problems identified by Montesh in his thesis (2009:192) and the general theme of the OECD conference arguing in favour of a Whole-of-Government approach. At the OECD conference, the notion of a Whole-of-Government approach was introduced during the conference proceedings as a means to combat financial crime more effectively (*The launch of the Oslo Dialogue...*, 2011). In response to the greater complexity and fragmentation brought about by NPM, there is now an increased focus on the idea of increased inter-agency coordination and collaboration. According to Ho (2017:17), given the complexity of today's environment, interdisciplinary collaboration is essential for solving the significant challenges. Ho (2017:17) concludes by saying "there has to be a lot of internal coordination, and sharing of information."

Several of the countries participating at the OECD Tax and Crime Conference in Oslo, Norway in 2011 have experience in the Whole-of-Government approach (Colgan, Kennedy & Doherty, 2014:15). These countries include Canada, Australia, Britain, New Zealand, Finland and the Netherlands (*The Launch of the Oslo Dialogue ...*, 2011). As indicated in the previous paragraph, it was during this conference that the notion of a Whole-of-Government approach was proposed. The proposal was put forward as a solution to "weak inter-agency cooperation" and to promote "greater transparency, more strategic intelligence gathering and improved efforts to harness the capacity of various government

agencies to work together to detect, deter and prosecute these crimes [financial crimes]” (*The Launch of the Oslo Dialogue ...*, 2011).

## 5.5 CONCEPTUALISING WHOLE-OF-GOVERNMENT

According to Colgan, et al. (2014:9) it is fair to say that there is “difficulty in untangling the concept of Whole-of-Government.” Definitions for Whole-of-Government vary (Colgan et al., 2014:9). Colgan et al. (2014:09) highlight the following focus areas presented in various definitions to clarify the meaning of Whole-of-Government presented in the literature. The areas are summarised for comparison in Table 5.2 below:

**Table 5.2: Summary of focus in definitions for Whole-of-Government in the literature**

Focus	Source
“... enhance <u>coordination and integration</u> within public sectors ...” (my emphasis).	(The Efficacy Unit, 2009)
“...seek to <u>align</u> incentives, structures and cultures of authority ...” (my emphasis).	(The Efficacy Unit, 2009)
“... a <u>shared goal</u> and an <u>integrated</u> response ...” (my emphasis).	( <i>Connecting government ...</i> , 2004:1)
“... where the aim is to generate outcomes that cannot be achieved by units <u>working in isolation.</u> ” (my emphasis)	Halligan, Buick & O’Flynn, 2011:75)

(Source: Adapted from a summary of definitions in Colgan et al., 2014:09)

The following definition, which is often quoted in the literature, is provided to aid in conceptualising the term Whole-of-Government:

Whole-of-Government denotes public service agencies working across portfolio boundaries to achieve a shared goal and an integrated government response to particular issues. Approaches can be formal and informal. They can focus on policy development, program management and service delivery (*Connecting government ...*, 2004:1).

In analysing the above definitions and definitional focus areas identified by Colgan et al. (2014:9), as presented in Table 5.2 above, the following functional definition of Whole-of-Government was developed by the researcher to demonstrate its applicability as an enabler to combat financial crime more effectively:

The Whole-of-Government approach in combating financial crime denotes key agencies working across portfolio boundaries to achieve a shared goal and an integrated response to barriers preventing effective cooperation, collaboration, sharing of information and resources. Approaches can be formal and informal, focusing on policies and operational agreements to combat financial crime, and development and implementation of organisational structures to carry out Whole-of-Government work during efforts to combat financial crime.

The concept of Whole-of-Government is referred to as joined-up government in the United Kingdom, while in Australia integrated or collaborative government are used as similar terms (Hunt, 2005:8). According to Hunt (2005:8), Whole-of-Government likely refers to a “set of processes” that is intent on more integrated policy and service delivery outcomes for Government. Christensen and Lægreid (2011:17) conclude that Whole-of-Government appears to be mostly about working together in a practical and intelligent manner. Its distinguishing characteristic is that there is an emphasis on objectives shared across organisational boundaries, as opposed to working solely within an organisation (*Connecting Government ...*, 2004:3). Ling (2002:616) provides more conceptual clarity by describing Whole-of-Government as an encapsulating term for a category of responses to address the problem of increased fragmentation of the public sector and utilities. The term is used where there is a desire to improve integration, coordination and capacity. Ho (2017:18) describes Whole-of-Government as “an environment in which officers consider the spill-over effects of what they do and their impact on the policies and plans of other agencies”.



The focus areas emerging from the participants' answers were listed and presented in the frequency table, Table 5.3 (paragraph 5.14), using a content analysis to interpret the response to the question (question 5.2 in the interview schedule), "Are you aware of an approach referred to as a Whole-of-Government approach, which aims for actions to more effectively combat financial crime?". This was an open-ended question where the participants could provide their own answers to the question, and no choices were presented from which they could choose. Some of the participants could therefore have provided more than one answer in response to the question.

The participants answered "no" with a frequency of 20%, "yes" with a frequency of 20%, and a 40% "heard of it" frequency regarding being aware of an approach referred to as a "Whole-of-Government approach". Several other themes were presented by the participants, although the frequency of recurring themes was too low to discover any significant pattern or meaningful categories. The participants are of the view that the term Whole-of-Government is a buzzword that is lobbied about and used as a catchphrase that does not find practical application in the field.

Participant P009, as well as all other participants during the interview, was asked the question (question 5.2 in the interview schedule), "Are you aware of an approach referred to as a Whole-of-Government approach, which aims for actions to more effectively combat financial crime?". The participant, wishing to remain anonymous, provided the following answer to the researcher (Participant P009, 2017).

No, I am not. However, the term Whole-of-Government approach may be a difficult term to understand unless it is simplified to the fact that all government departments that play a role in combating financial crime must cooperate and provide members to the teams to be formed under one collocated investigation and prosecution unit. (my emphasis)

The exposition provided by the participant represents a conceptualisation of the term Whole-of-Government in the context of combating financial crime from the perspective of a practitioner (Participant P009, 2017). The theme of cooperation between all government departments that play a role in combating financial crime and the sharing of resources within a single body (single-agency performing more than one purpose) responsible for combating financial crime clearly comes to the fore. The participant's response focuses on the investigation and prosecution of financial crime (Participant P009: 2017). The above-mentioned answer is also applicable to the question posed to the participants regarding their understanding of the Whole-of-Government approach in relation to the actions to combat financial crime effectively that are recorded in Table 5.4 (paragraph 5.14).

## **5.6 OPERATIONALISING WHOLE-OF-GOVERNMENT**

Implementing a Whole-of-Government approach starts with the development of a shared understanding of what it means to work in a Whole-of-Government manner (Melchor, 2008:5). Whole-of-Government requires a mentality among officials to willingly work together to achieve common outcomes benefiting society as a whole, as opposed to serving the specific interest of individual agencies (Ho, 2017:18). According to Melchor (2008:5), this may involve some changes in structures and legislation, but most importantly it requires a change in organisational culture and individual expectation. Through a Whole-of-Government approach, horizontal coordination and integration are implanted in the process of policy design and implementation (Melchor, 2008:6). The reference to public service agencies "working across portfolio boundaries", as encountered in the definition of what Whole-of-Government means, is a reference to a large proportion of the collaborative activities undertaken between agencies on a day-to-day basis (*Connecting Government ...*, 2004:9). An example is the constant contact between an FIU and a revenue authority on financial crime issues. It can thus be argued that the day-to-day realities of trying to work across boundaries will be the real challenge of Whole-of-Government work (*Connecting Government ...*, 2004:9). This translates to what the researcher likens to a close

fellowship between the various agencies on a day-to-day basis in pursuit of a common goal or objective, irrespective of their own specific mandates.

Ho (2017:18) asserts that although Whole-of-Government looks highly viable on paper, it is not easily achieved. Ho (2017:18) asserts that this might be because of a “deeply-ingrained bureaucratic instinct to operate in silos” that contributes to critical information not being shared. Institutional identity is so strong that it determines how an agency views national interests or priorities (Ho, 2017:18). For Whole-of-Government to work properly, the instinct to work in silos must be overcome. This requires of leaders to constantly remind officials that a Whole-of-Government approach takes precedence over narrow, sectoral interests and views so that information can flow horizontally to reach other agencies (Ho, 2017:18).

Although the literature suggests that there is conviction about the effectiveness of Whole-of-Government responses, it warns about its ill-considered use, stating that it is costly and that competing political agendas could undermine its objectives (*Connecting Government ...*, 2004:10). Literature suggests that Whole-of-Government approaches should not be undertaken as a response to dealing with everyday, straightforward issues. These can be addressed by means of a “culture of collaboration” to assist easy sharing of research, experience and expertise in dealing with obstinate problems (*Connecting Government ...*, 2004:10).

The literature further suggests that Whole-of-Government could be especially useful to solve complex issues in what is sometimes referred to as ‘wicked problems’ (De Bri & Bannister, 2010 in Colgan et al., 2014:14). Wicked problems refer to far-reaching issues, such as crime, poverty, education and health. Ho (2017:14) says that wicked problems “hardly ever sit conveniently within the responsibility of one agency”. Ho (2017:14) also asserts that wicked problems tend to have many stakeholders, each of whom sees the problems from different perspectives and has his/her own goals. Ho (2017:15) concludes that no one agency is equipped to deal with a wicked problem in its entirety. Ho (2017:18) states that the Whole-of-Government approach is a significant response to

dealing with complexity and wicked problems. In what is regarded as being of great importance to this research is the suggestion in the literature that a Whole-of-Government approach is suitable for ensuring that a specific issue is given joint priority and attention by the relevant agencies, for example, fighting financial crime (*Connecting Government ...*, 2004:11). Whole-of-Government responses may also be suitable for a limited time to address a particular issue, as an approach to ensure that it is given joint priority and attention by the relevant agencies (*Connecting Government ...*, 2004:11).

In deciding whether a Whole-of-Government approach is an appropriate response, the literature suggests that every situation should be evaluated on a case-by-case basis. Where issues are of such importance, the initiative to address the issue by using a Whole-of-Government approach may be the prerogative of Parliament or the political head of a department. In other instances, the challenge to Government is to realise when an issue is of such importance that it should be addressed by using a Whole-of-Government approach. Promoting and supporting a Whole-of-Government approach has been a common focus and priority for public administrations in a range of countries and international organisations, as is evident in the notion announced by the OECD for countries to respond to financial crime by using a Whole-of-Government approach (*Connecting Government ...*, 2004:11).

Using a content analysis for interpreting the response to the question (question 5.3 in the interview schedule), “What is your understanding of the Whole-of-Government approach in relation to the actions to combat financial crime effectively?”, the focus areas emerging from the participant’s answers were listed and presented in the frequency table, Table 5.4 (paragraph 5.14). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one reply in response to the question. The frequency of the themes listed in Table 5.4 by the participants regarding their understanding of the Whole-of-Government approach in relation to the actions to combat financial crime effectively expressed as a percentage is graphically depicted in Figure 5.1 (paragraph 5.14).

A diverse variety of themes emerged from the feedback from the participants in their response to their understanding of the Whole-of-Government approach in relation to the actions to combat financial crime (question 5.3 in the interview schedule). The following recurring themes are meaningful, as they intersect with the objectives of Whole-of-Government as presented in the literature:

- Coordination between departments (40% frequency of theme)
- The Whole-of-Government and society to target crime as a collective concern and responsibility (30% frequency of theme)
- Working towards a common goal/objective (30% frequency of theme)

The participants have a broad understanding of the concept in relation to combating financial crime. However, other themes indicate that they are sceptical about its implementation. The participants are unsure about the operationalisation of a Whole-of-Government approach as an organisational approach or architecture for enabling single-purpose agencies to work across boundaries, and they did not provide new ideas about how to ensure its implementation.

## **5.7 PRACTICAL UNDERPINNING OF WHOLE-OF-GOVERNMENT**

According to Christensen and Lægreid (2011:15), “A feature of Whole-of-Government is the notion that working across organisational boundaries will enable more efficient and/or effective policy development, implementation and service delivery”. The trend is a move away from fragmentation and autonomous, single-purpose, silo-based agencies, towards integration, and multi-agency and collaborative partnership approaches (Christensen & Lægreid, 2011:15). This notion seems to be in agreement with the themes of interagency and multi-agency cooperation between various agencies, sharing information and resources, and working together, encountered in the OECD narrative promoting the notion of a Whole-of-Government approach. Colgan et al. (2014:9) state that the justification for Whole-of-Government is as follows:

- Eliminate silos
- Prevent departments working in isolation from each other

- Achieve a seamless (integrated) Government approach
- Avoid having various cross-cutting policies undermining each other
- Optimise the impact of Government by using all the resources at the disposal of the State in an integrated way to deliver specific outcomes
- Reduce costs and inefficiencies

Using a content analysis for interpreting the response to the question (question 5.4 in the interview schedule), “According to your understanding, describe what it means for different agencies to work together, across agency boundaries with the aim of combating financial crime through inter-agency coordination, cooperation and collaboration by following a Whole-of-Government approach” the focus areas emerging from the participants’ answers were listed and presented in the frequency table, Table 5.5 (paragraph 5.14). This was an open-ended question where the participants could provide their own answers to the question, and no choices were provided from which they could choose. Some of the participants could therefore have provided more than one entity in response to the question.

The literature provides information that enables the conceptualisation of the term Whole-of-Government and an understanding of what it entails. The literature does not provide sufficient information to enable understanding of what it entails to combat financial crime by using a Whole-of-Government approach, as promoted by international institutions concerned with combating financial crime. To provide clarity, the participants were asked to describe what it means in practice for various agencies to work together, across agency boundaries, with the aim of combating financial crime through inter-agency coordination, cooperation and collaboration in accordance with a Whole-of-Government approach.

The participants offered a wide range of themes in their response to the question (question 5.3 in the interview schedule). The participants’ themes recurred with a low frequency. The themes are too inconsistent to formulate meaningful

categories or develop new ideas to provide clarity about the convergence of a Whole-of-Government approach and the combating of financial crime.

A participant (Participant P003, 2016), as well as all other participants during the interview, was asked the question about understanding and describing what it means for different agencies to work together, across agency boundaries, with the aim of combating financial crime through inter-agency coordination, cooperation and collaboration, following a Whole-of-Government approach. The participant, wishing to remain anonymous, provided the following detailed exposition to the researcher regarding the question posed (Participant P003, 2016):

The fight against serious crime and corruption is a continuous and dynamic process, and as new manifestations are revealed, gaps in the existing approach, strategies, interventions and application of existing legislation and policies are identified for review and strengthening. In the majority of Government's recent policy deliberations, and its strategic policy documents, we [Government] acknowledge the significant challenges posed by crime and corruption and how it undermines good governance, state authority and service delivery.

These challenges and its [their] root causes have been clearly articulated in the National Planning Commission's Diagnostic Report in 2011 and in the 20 Year Review. The National Security Strategy (NSS), approved by Cabinet in December 2013, elevates countering corruption and serious crime to a national security priority. This compels the Government and different agencies to work together and to adopt a Whole-of-Government approach towards executing its mandate through a multidisciplinary approach.

This approach places new demands for executive and operational capabilities and structures in collaboration with other stakeholders such as the National Intelligence Coordinating Committee (NICOC) for addressing national priority offences.

Such an approach would be dependent on the following key factors:

- The development of a collective approach across Government to targeting the financial systems and benefits of crime.
- The collective planning and governance to embed such an approach in an outcome-based planning framework for Government, government clusters and the departments through its strategic and operational plans and budget submissions.
- The collective development of new crime-fighting practices and capabilities in line with the FATF

The exposition provided above assists with providing clarification from the perspective of an active practitioner of what has to be done, and the approach that should be taken to adopt and implement a Whole-of-Government approach to combat financial crime.

## **5.8 BENEFITS OF WHOLE-OF-GOVERNMENT**

Mulgan (2009) in Colgan et al. (2014:9) states that the benefits of Whole-of-Government are acquired as a result of the ability to integrate resources, confronting problems early, and using other benefits that are also associated with Whole-of-Government, such as timeous information sharing. This allows governments to act preventively and in a pre-emptive manner before problems become too costly and severe. Colgan et al. (2014:12) assert that the benefits of Whole-of-Government approaches are as follows:



- **It increases or improves:**
  - Efficiency
  - Information sharing
  - Working environment
  - Competitiveness
  - Accountability
  - Policy coherence, and
- **Decreases or reduces:**
  - Costs
  - Waste
  - Duplication of work
  - Conflicting policies
  - Time needed to complete a task.

Having determined the benefits of Whole-of-Government, it is important to recognise that different governments have varied approaches about how to drive Whole-of-Government responses, consistent with their philosophies and approaches to public sector management (*Connecting Government ...*, 2004:11). The next section identifies and provides a discussion of the respective organisational structures for implementing Whole-of-Government, as presented in the literature.

## **5.9 ORGANISATIONAL STRUCTURES FOR WHOLE-OF-GOVERNMENT**

When implementing Whole-of-Government, it is imperative to realise that there is no one size fits all approach to Whole-of-Government. Several organisational options should be available to successfully deliver outcomes across organisational boundaries. Whichever structure is selected, it should match the task (*Connecting Government ...*, 2004:11). The organisational options available to address the fighting of financial crime that are most likely to deliver favourable Whole-of-Government outcomes are explored and discussed in the sections below (*Connecting Government ...*, 2004:17).

According to Colgan et al. (2014:9), the focus of Whole-of-Government work can vary quite considerably. Colgan et al. (2014:10) assert that Whole-of-Government work could be aimed at:

- an organisational level, for example interdepartmental or national, or at a local level;
- particular social groups such as disabled persons and the youth;
- a specific policy issue, for instance, the Information and Communication Technologies Policy for South Africa;
- a specific geographical area such as the regeneration of a city centre;
- a mode of service delivery such as a one-stop system for social grants and services.

The literature presents several possible organisational structures that can be used for Whole-of-Government work. Traditionally, Whole-of-Government work has been conducted via interdepartmental committees, but in recent years, according to (*Connecting Government ...*, 2004:25; Colgan et al., 2014:50), it has also been supplemented by the introduction of the following:

- Task forces
- Interdepartmental partnerships forming joint teams
- Cross-departmental partnerships forming agency arrangements
- Special-purpose agencies forming frontier agencies

The type of organisational structure that can be utilised will depend on the nature of the task, its urgency, priority, level of connection and difficulty, and availability of resources (*Connecting Government ...*, 2004:25). These decisions are usually taken at a senior level. Different agencies may influence decisions, based on the examples of organisational structures as shown below. Once a decision has been made, agencies may recommend which best practices to follow, depending on the mechanism selected to perform the Whole-of-Government work (*Connecting Government ...*, 2004:25; Colgan et al., 2014:50). The various types of organisational structures, their features and applications as presented in the literature are elaborated upon in the following sections, namely:

- Interdepartmental committees

- Task force / task team
- Interdepartmental joint teams
- Cross-departmental agency arrangements
- Special-purpose/frontier agencies

### **5.9.1 Interdepartmental committees**

The most traditional form of cross-departmental coordination is found in interdepartmental or IMCs (*Connecting Government ...*, 2004:25). International experience indicates that the term “interdepartmental committee” comes across as quite formal and bureaucratic. This has led to interdepartmental committees sometimes being referred to as task forces or work groups (*Connecting Government ...*, 2004:27). Task forces should not be a synonym for an interdepartmental committee. For this discussion, as suggested in the literature (*Connecting Government ...*, 2004:27), the term task force denotes a less representative form of cross-departmental structure. An intergovernmental committee may also present itself as a standing committee, especially with regard to the execution of established policies, or for an ad hoc committee to address a particular issue or event (*Connecting Government ...*, 2004:27). According to the literature (*Connecting Government ...*, 2004:27), interdepartmental committees are ideal for coordinating action, assigning responsibilities for shared tasks, and documenting agreements. International experience indicates that interdepartmental committees work very well, and they continue to be the organisational structure of choice for most formal interdepartmental coordination (*Connecting Government ...*, 2004:27).

#### **5.9.1.1 Characteristics defining interdepartmental committees**

The features that define interdepartmental committees are (*Connecting Government ...*, 2004:26; Colgan et al., 2014:50) as follows:

- Employees meet formally as representatives of their departments
- They are expected to speak to their department’s authority and seek appropriate clearance for the positions they advance
- The scope of business and membership of the committee are defined and its establishment authorised at a suitable level

- Decision-making is by consensus
- Records of outcomes are kept
- The minimum expectation is to clarify options and establish agreed facts
- Could be efficient and responsive to Government, but less useful for an agreement on contentious issues where stakeholders disagree
- Interdepartmental committees could become a bureaucratic habit

#### **5.9.1.2 Domestic examples of interdepartmental committees**

In the South African context, the corresponding term for an Interdepartmental Committee is likely to be an Inter-Ministerial Committee. IMCs form part of the establishment of a new system of governance to enhance efficiency and effectiveness (*President Zuma appoints ...*, 2014). IMCs are nominated by the president and in some instances by the Cabinet to serve a very specific purpose that is deemed to require the dedicated attention of a certain team of ministers (*President Zuma appoints ...*, 2014). IMCs are responsible for streamlining and coordinating the work of Government for faster and better results. Their mandates are limited to the matter that they are established to execute.

An example of an IMC is the “IMC on the Prevention and Combating of Corruption” (*President Zuma appoints ...*, 2014). The mandate of the Anti-corruption Inter-ministerial Committee (ACIMC) is to coordinate and oversee the work of state organs aimed at fighting and combating the scourge of corruption in public and private sectors (National Assembly Question No. 3977 ..., 2015). According to this description, the ACIMC in broad terms is useful to the activities described above. The Minister in The Presidency for Planning, Performance Monitoring chairs the ACIMC, which comprises the following ministers (*President Zuma appoints ...*, 2014):

- Minister of Justice and Correctional Services
- Minister of State Security
- Minister of Police
- Minister of Cooperative Governance and Traditional Affairs
- Minister for Public Service and Administration

- Minister of Finance
- Minister of Home Affairs
- Minister of Social Development
- Minister in the Presidency responsible for Planning, Monitoring and Evaluation

The following departments are represented in the ACIMC (*National Assembly Question No. 3977 ...*, 2015):

- The Presidency (as the lead department)
- Department of Public Service and Administration
- Department of Social Development
- Department of Justice and Constitutional Development
- Department of Home Affairs
- National Treasury
- State Security
- South African Police Service

Achievements of the ACIMC include the following (*National Assembly Question No. 3977 ...*, 2015):

- Coordinated approach for the implementation of Government agenda on the prevention and combating of corruption, as stipulated in the National Development Plan
- Coordinated reporting on identified international anti-corruption obligations

Another domestic example of what appears to be an interdepartmental committee is the Ministerial Clusters (*Ministerial Clusters Reconfigured ...*, 2009). They were introduced as part of Government's efforts to improve coordination within Government and enhance the delivery of services. Ministerial clusters were established "to foster an integrated approach to governance that is intended to improve planning, decision making and service delivery". The main objective is to ensure proper coordination of all public programmes at national and provincial levels. According to this description, the ministerial clusters, in broad terms, are

useful to the activities described in paragraph 5.9.1.2 above, especially with regard to programme management, service delivery and cross-cutting activities (*Ministerial Clusters Reconfigured ...*, 2009).

The main functions of ministerial clusters are the following (*Ministerial Clusters Reconfigured ...*, 2009):

- Ensuring alignment of Government-wide priorities
- Facilitation and monitoring of priority programmes
- Implementation of priority programmes
- Provisioning of a consultative platform on cross-cutting priorities and matters dealt with by Cabinet

In the context of this research, the ministerial cluster to take note of from a combating of crime perspective is the JCPS. The naming convention of the JCPS does not imply that it is representative of an interdepartmental committee. It is surmised that it is rather the composition and stated function that imply that it is an Interdepartmental Committee. The cluster deals with crime prevention and the transformation of the judicial system of South Africa. The JCPS is chaired by the Minister of Defence and Military Veterans, and the deputy is the Minister of Police. Ministries in this cluster include (Department of Communications, 2014:1-3):

- Justice and Correctional Services
- Defence
- Home Affairs
- Police
- State Security

The literature and Government publications provide little information about the type of work undertaken by the JCPS in relation to the combating of financial crime. In fact, little information about the work of the JCPS, in general, is available from the literature and Government publications. From time to time, Government releases information to the press that does not contain much detail about the work the JCPS undertakes. The press releases mention statements and comments regarding criminal justice, public safety and security matters but not

much about the nature of actual work being done. Their Whole-of-Government work is obscure. In an apparent reference to the credibility of the JCPS in respect of their efficiency an editorial in the *Sunday Times* puts it as follows: “At the heart of it all is a state security cluster that is collapsing because of political interference and high-level infiltration by criminal networks” (Sunday Times, 2017:16). What is also noticeable in relation to the composition of the JCPS with regard to the combating of financial crime is the absence of the Minister of Finance, under whose political oversight the SARS, FIC, SARB and FSB resort. They are regarded as essential agencies in combating financial crime. According to feedback received from a participant during an interview, the JCPS was established by politicians to ensure collaboration between departments (Participant P002, 2015).

### **5.9.2 Task force/Task team**

A modality for organising structures for Whole-of-Government work that has become popular in recent years is task forces, aimed at addressing specific issues whose lifespan is limited. Task forces/teams became popular because of concerns about the slow and consensual nature of interdepartmental committees (*Connecting Government ...*, 2004:29-30). By their nature, task forces have the capacity to do fresh and original work, and have proved to be very effective at solving difficult problems and developing complexly integrated packages. They enable highly skilled agency officials to put their departmental interests behind them and join expert and creative outsiders to focus on developing outcomes backed by comprehensive analysis (*Connecting Government ...*, 2004:30).

Unlike interdepartmental committees, the decisions taken by a task force are not necessarily by consensus. The head of a task force/team accepts responsibility for its decisions/recommendations. Senior employees frequently lead task forces/teams seconded from other departments for the duration of the life of the task force (*Connecting Government ...*, 2004:29-30).

### **5.9.2.1 Characteristics defining task forces / task teams**

According to the literature (*Connecting Government ...*, 2004:30-31; Colgan et al., 2014:50), the characteristics that define task forces are as follows:

- Task forces/teams focus on joint problem-solving for a shared outcome
- A task force/team is a stand-alone structure
- Members have time limits and objectives to provide a clear outcome
- Members are engaged to bring skills and experience to joint problem-solving
- Members are sometimes expected to keep their home agency informed and involved in support of the task force's work
- Members can be drawn from outside the public service, as well as from the departments directly concerned, and reflect an appropriate range of disciplines and experience
- Members are frequently engaged full-time in the Whole-of-Government task and are accountable to the task force leader
- Members frequently undergo a conscious separation from line accountabilities in the host department
- Members often report to a political departmental head, parliamentary committee or both
- Members often engage with a consultative interdepartmental committee drawn from the affected departments and conduct consultations with community organisations
- Members put their agency's interests behind them
- Task forces/teams can be expensive and may fail to consider all the options
- Task forces/teams offer participants valuable development opportunities but may alienate people from their home agencies

### **5.9.2.2 International example of task force / task team**

An international example of a task force/team is the Australian Serious Financial Crime Task Force (SFCT). The SFCT forms part of the Australian Federal Police-



led, Multi-agency Fraud and Anti-Corruption Centre (*Serious Financial Crime ...*, 2015:1). The Australian Federal Police leads the coordination of cross-agency efforts to address SFCT priorities. The heads of each SFCT agency meet regularly to provide governance and focus on cross-agency collaborative efforts. The SFCT is a multi-agency task force that includes the following entities:

- Australian Federal Police
- Australian Tax Office
- Australian Crime Commission
- Attorney-General's Department
- Australian Transaction Reports and Analysis Centre
- Australian Securities and Investments Commission
- Commonwealth Director of Public Prosecutions
- Australian Border Force.

The SFCT was established to bring together the knowledge, resources and experiences of appropriate law enforcement and regulators to identify and address severe and complex financial crimes (*Serious Financial Crime ...*, 2015:1). The resources of the task force are focused on operational activities, collecting and sharing intelligence, and identifying and initiating reform measures to:

- remove wealth from criminal activity and prosecute facilitators and promoters of severe financial crime;
- deploy deterrent and preventive strategies other than criminal justice action.

The intelligence priorities of the SFCT focus on financial retirement products and investment fraud, identity crime and professional facilitators (*Serious Financial Crime ...*, 2015:2). A professional facilitator is an industry professional or service provider that assists to facilitate criminal activity. Some facilitators are willing and paid helpers; others may help because they are coerced through blackmail and intimidation. Some may be unaware that they are facilitating crime. The operational activities focus on Phoenix fraud, trust fraud and international tax

evasion fraud. Phoenix fraud involves a company deliberately liquidating assets to avoid paying creditors, taxes and employee entitlements.

### **5.9.2.3 Domestic example of task force/task team**

A South African example of a joint investigation team comprising specialists from various agencies cooperating with each other, is the ACTT. The ACTT was established in 2010 under the auspices of the DPCI. The objective was to better coordinate government's efforts to deal with issues of corruption and fraud from various angles by adopting a multi-agency approach comprising a range of institutions (The Anti-Corruption Task Team is ..., 2015). Although the ACTT is labelled a task team, it functionally represents a joint interdepartmental team, as referred to in paragraph 5.9.3 below. The team consists of employees from two or more departments working together while they continue to be subject to the management and control of their relevant agency. As an example of a joint team set up by the Government in South Africa to combat a specific type of financial crime, namely corruption, the ACTT does not receive approval. Dubase (2016) quotes the chairperson of the Standing Committee on Public Accounts (SCOPA) as saying that the ACTT "is a toothless body which has dismally failed in carrying out its mandate". Task teams set up by SAPS to investigate specific crimes are criticised in a newspaper editorial, captioned,

"Brazen heist shows the rot in our security" by stating that: "[b]ut as we all know, police task teams have acquired the same reputation as the commissions of enquiry set up by the president – they seldom result in criminal prosecutions" (Sunday Times, 2017:16).

### **5.9.3 Interdepartmental joint teams**

Joint teams represent a new and relatively uncommon form of interdepartmental cooperation. They differ from task forces because they are mixed structures that do not stand on their own. They do not represent a separate unit reporting to one leader who has the final say. Joint teams consist of employees from two or more departments working together in a common management structure while

continuing to be subject to the management control of the relevant head of the agency (*Connecting Government ...*, 2004:33).

For interdepartmental arrangements to be successful requires a high level of trust between the executives of the partner departments, as well as their political heads, and among the members of the joint team. Clearly, the mission of the team should be relevant to all the partners and more readily achieved jointly than separately. Agency cultures must be broadly compatible, and team members must be prepared to commit to understanding and appreciating the differences where they exist. Success breeds success, and real experiences in a joint team could encourage better relations and joint work in other areas (*Connecting Government ...*, 2004:33).

#### **5.9.3.1 Characteristics defining interdepartmental joint teams**

According to the literature (*Connecting Government ...*, 2004:33; Colgan et al., 2014:51), the features that define interdepartmental joint teams are as follows:

- Mixed, not stand-alone, structures
- Officials from two or more agencies work together to deliver shared outcomes in a mixed functional organisation with an expected lifespan of several years
- No agency has the lead role, and joint decision-making occurs between the team managers, the heads of the departments and the ministers, as appropriate
- There are adequate governance arrangements to allow this to happen efficiently
- Formal financial accountability for funds appropriated to the team rests with each agency, and each department remains accountable under the relevant legislation in terms of which its employees were appointed. Such employees continue to work under the personnel provisions of their home agency
- Cross-delegations enable joint team managers to administer mixed groups

- To external clients, employees are identified as members of the joint team rather than in terms of their home agencies
- Trust at the highest level is essential
- Joint teams comprise officials from two or more agencies but they are co-located
- Funding is appropriated to one agency, but decisions about allocations are made jointly
- Joint governance mechanisms are needed

### **5.9.3.2 *International example of an interdepartmental joint team***

An international example of a joint team aimed at combating financial crime is the Joint Serious Offences Team (JSOT) established in 2013 in Ontario, Canada. It is an enforcement partnership between the Ontario Securities Commission, Ontario Provincial Police Anti-rackets Unit; The Royal Canadian Mounted Police Financial Crimes Program, and the Ontario Ministry of the Attorney General, in order to share information and facilitate investigations across boundaries (*About our partners ...*, 2017). According to Mann (2014), quoting Karen Manarin, the deputy director of the enforcement for the Ontario Securities Commission, the JSOT was established to combat the worst of financial crimes. It acts like a partnership, made up of specialists, including investigators, litigators ~~investigators~~ and forensic accountants. It operates very much in the same way as an independent law enforcement agency (Mann, 2014).

### **5.9.3.3 *Domestic example of an interdepartmental joint team***

An example of a hybrid joint team/task force organisational arrangement between different agencies under the auspices of a lead agency to conduct a criminal investigation, using Whole-of-Government, was reported in the Daily Dispatch Live newspaper (Mukhuthu, 2017). In the article, the DPCI spokesman, Brigadier Hanghwani Malaudzi, is quoted as saying that a municipal manager was arrested on charges of fraud and corruption by members of a special task team formed by the Hawks in Pretoria. The task team was appointed by the national head of the Hawks, Lieutenant-General Mthandazo Ntlemeza. It was reported that the team was led by a brigadier with extensive experience and skills, and that the task team

comprised investigators from the Hawks, the AFU and NPA prosecutors. From the facts mentioned, it emerged that the hybrid choice of a task force/joint team was applied for Whole-of-Government work, managing an emerging crisis where multi-disciplinary skills and resources were required. A first decision could be identified, and clearly defined links existed between the agencies. Joint task team arrangements are suited for cross-agency engagement where there are complex issues, a high-level of cooperation required, and clear governance arrangements exist (*Connecting Government ...*, 2004:32).

#### **5.9.4 Cross departmental agency arrangements**

Another form of organisational adaptability of Whole-of-Government structures is for an existing Government department or agency to deliver services on behalf of one or more others. This may typically occur because of an ability of an agency to provide more efficient or more convenient service (*Connecting Government ...*, 2004:36).

##### **5.9.4.1 Characteristics defining cross-departmental agency arrangements**

According to the literature (*Connecting Government ...*, 2004:36-37; Colgan et al., 2014:51), the characteristics that define cross-departmental partnerships or agency arrangements are as set out below:

- An existing Government department or agency delivers services on behalf of one or more others
- Agency services are provided via
  - core platforms
  - staffing networks
  - functions
  - skill sets
- Policy agencies set standards that providers deliver
- One-stop shops provide a single point of service
- One-stop shops aim to meet citizens' demands for seamless delivery
- There is potential for involvement in policy development processes

#### **5.9.4.2 International example of cross-departmental agency arrangements**

The Australian Customs service provides an excellent example of one government agency delivering a service on behalf of another agency. In providing a customs control function at an international border, it provides a range of services to other government portfolios (*Connecting Government ...*, 2004:36). A customs officer performing an inspection at a border post can detect offences in respect of the illegal possession, smuggling and transportation of a variety of illicit goods, counterfeit goods, prohibited goods, restricted goods and substances, as well as currency, wildlife or people smuggling.

#### **5.9.4.3 Domestic example of cross-departmental agency arrangements**

The Customs Division of the SARS represents a good domestic example of one agency delivering services on behalf of others. SARS has a role in administering laws that are not necessarily related to tax and customs but are essential to protect the South African economy. For example, Customs must prevent dangerous goods from entering South Africa, such as alien species that may endanger our natural resources or South African residents (*SARS and the Criminal Justice System...*, 2016). For Customs to fulfil its customs control function, the importation and exportation of certain goods are subject to controls required by other government agencies (*Customs External Standard ...*, 2016:3). SARS' Customs Division is mandated to control prohibited and restricted goods on behalf of other government agencies, including the following:

- Department of Trade and Industry
- Department of Agriculture, Forestry and Fisheries
- Department of Environmental Affairs

SARS provides revenue collection services and administration of various other taxes levied by other departments, for instance unemployment insurance levies from employers on behalf of the Department of Labour (section 4(1)(a)(ii) of the South African Revenue Service Act). The SARS also provides other agencies

with access to data to trace defaulters who do not comply with their obligations to pay back study loans to the State once they start employment and earn an income. National Student Financial Aid Scheme spokesperson Kagisho Mamabolo was quoted as saying he believes that working with state agencies would make it easier for the National Student Financial Aid Scheme to track down all non-paying debtors (*SARS to disclose ...*, 2016).

### **5.9.5 Special-purpose frontier agencies**

Special-purpose or frontier agencies are created outside of the normal departmental or ministerial structures to deal with issues that are important, thus their establishment symbolises their Whole-of-Government status. The creation of these Special-purpose Agencies (hereafter referred to as SPAs) is facilitated by amendments to existing legislation and new laws. (*Connecting Government ...*, 2004:36).

The agents deployed or seconded to an SPA will probably be drawn from several home agencies. Early planning is essential to the successful creation of a frontier agency. Planning should focus on inculcating a new set of values related to the new agency's charter and could encompass physical co-location, single Information Technology (IT) and financial systems, and staff development work to create a new culture and set of values relevant to the new agency's charter or founding legislation (*Connecting Government ...*, 2004:41).

#### **5.9.5.1 Characteristics defining special-purpose agencies**

According to the literature (*Connecting Government ...*, 2004:39-40; Colgan et al., 2014:51), the features that define SPAs are as follows:

- Frontier agencies are structures that symbolise to stakeholders a coherent Whole-of-Government approach to a contentious and complex issue.
- They provide expertise, dispassionate advice and programme administration in respect of complex issues.
- Employees will probably be drawn from several home departments, and at first the structure may represent conflicting policy views or will

focus on a narrower group of external stakeholders that they dealt with before.

#### **5.9.5.2 *International examples of a special-purpose (frontier) agency***

The examples provided in the sections below illustrate the notion that when implementing Whole-of-Government, it is essential to realise that there is no one size fits all approach to Whole-of-Government. Although the examples indicated below share characteristics and application with those of a frontier agency engaged in Whole-of-Government work, there is room for deviation and ingenuity to suit the specific outcomes sought. More than one example of organisational arrangements is provided to emphasise the point.

##### **a. The National Crime Agency (NCA) (UK)**

The National Crime Agency is a crime-combating law enforcement agency in the UK, responsible for leading the UK's fight to combat serious and organised crime. The NCA supersedes the UK's Serious Organised Crime Agency (SOCA). Johnston (2013) refers to it as a "front-line organisation in the war against the crime bosses". Johnston (2013) quotes the then Home Secretary, Theresa May, as stating that it [NCA] would "relentlessly" hunt down underworld crime lords and confront the growing menace of international gangs and cyber warfare in a coordinated way. The NCA was ostensibly established and based on the same rationale for the establishment of SOCA, i.e. a necessity to merge several specialist crime-fighting forces because of a perceived lack of joined-up (Whole-of-Government) thinking and cooperation. The view was held that criminals were being allowed to get away with their crimes because the overlapping structures of various agencies diminished the effectiveness of the latter. The myriad organisations involved include MI5, MI6, GCHQ, Customs and Excise, local Special Branches, the Serious Fraud Office, specialist investigators attached to the Immigration Department and the Inland Revenue, as well as the international links of Interpol, Europol, Eurojust (the EUs judicial cooperation unit), Cepol (the European Police College), Olaf (the European Anti-fraud Office) and others. In defending the establishment of the NCA, Theresa May argued that when it came to tackling organised crime, "no one was in charge of operations. Worse still,



agencies operated more like rivals, often failing to share information, protecting their own patches and building their own empires.”

b. Fiscale Inlichtingen- en Opsporingsdienst (FIOD)

(The Fiscal Information and Investigation Service of the Netherlands)

It is the policy of the Government of the Netherlands that fraud can be combated effectively only if Government organisations work together. The Netherlands, therefore, has a Government-wide (joined-up or Whole-of-Government) anti-fraud strategy (*Combating tax and benefit fraud ...*, [s.a.]). In following a Government-wide approach, the Netherlands Government services work together more closely to identify the most effective means to detect and prosecute fraudsters, and they coordinate their operations. For example, the various law enforcement organisations coordinate their use of the criminal law. The FIOD is the special tax and customs investigation component of the revenue authority of the Netherlands (*FIOD Aansprekend Opsporen ...*, 2014:4).

The FIOD gives effect to a Government-wide approach during fraud investigations. FIOD investigates (*Combating tax and benefit fraud ...*, [s.a.]) the following:

- Tax fraud, e.g. VAT carousel fraud excise duty fraud and undeclared foreign assets
- Financial and economic fraud, e.g. insider trading, bankruptcy fraud, property fraud and money laundering
- Fraud in relation to particular goods, e.g. strategic goods and sanctions, raw materials for drugs, and intellectual property

To combat fraud as efficiently as possible, the FIOD works in close collaboration with the tax authority and other regulating authorities, such as the (*Combating tax and benefit fraud ...*, [s.a.]) following:

- National Crime Squad of the Police Services Agency
- Financial Intelligence Unit of the Netherlands
- Inspectorate of the Ministry of Social Affairs and Employment
- Human Environment and Transport Inspectorate

- Information and Investigation Service of the Dutch Food and Consumer Product Safety Authority

Any of these authorities can present cases to FIOD for possible criminal investigation (*FIOD Aansprekend Opsporen ...*, 2014:9). Decisions regarding the pursuance of criminal investigations take place in consultation with the regulating authority, the FIOD and the public prosecutor.

The FIOD also works closely with other special investigation services in the Financial Expertise Centre (FEC) (*Combating tax and benefit fraud ...*, [s.a.]). The FEC is responsible for supervision, control, investigation and prosecution in the financial sector to strengthen the sector's integrity. In turn, the FEC partners with the following entities:

- General Intelligence and Security Service
- Netherlands Authority for the Financial Markets
- Dutch Central Bank
- Public Prosecution Service
- Netherlands Police

Cooperation and knowledge-sharing between criminal investigations services are crucial. Each service has a specific field of work (*FIOD Aansprekend Opsporen ...*, 2014:7). Exchange of information is vital, subject to privacy laws and secrecy provisions in the legislation. The special investigation services actively join forces in the fight against crime, for example the fight against organised crime, fraud and money laundering, but also people trafficking, illegal trade in animal species, and environmental crime. The special investigation services are working more closely together and combine their efforts by sharing information, capacity and expertise. Through the utilisation of specific skills and knowledge of the specific special investigation service, they contribute to identifying and detecting corruption and unethical conduct in the financial services industry.

Allegations and suspicions of fraud are reported to the FIOD on a daily basis (*FIOD Aansprekend Opsporen ...*, 2014:9). The reports are received from the tax

and customs administration and other regulatory agencies. Reports are also received from industry, business and individuals. The FIOD always works in close collaboration with the prosecuting authority. Ultimately, it is the prosecutor who will decide which cases will be investigated for criminal prosecution. FIOD collaborates with the prosecuting authority on a strategic and operational level. The FIOD consults on the use of capacity, nature and extent of the case, but also about the best approach to dealing with an investigation. For instance, when a suspect is questioned or placed under surveillance, it will not happen without the consent of the prosecutor. The FIOD presents a high-level graphic depiction of how it is structured for interdepartmental and interagency cooperation (*FIOD Aansprekend Opsporen ...*, 2014:9). From a South African perspective, it is possible to relate to the graphic depiction because the political arrangement of Dutch ministerial departments and agencies responsible for combating financial crime more or less mirrors the domestic arrangement. The formation of silos is perceptible in the graph, with the arrows indicating the operationalisation of a Whole-of-Government approach to enable cooperation between departments and agencies to combat financial crime. A high-level depiction of the organisational structure of the FIOD as provided by FIOD (*FIOD Aansprekend Opsporen ...*, 2014:9) is presented in Figure 5.2 (paragraph 5.14).

### **5.9.5.3 Domestic example of a special-purpose (frontier) agency**

An example of what in future may constitute an SPA is the Border Management Authority (BMA), of which the proposed establishment is provided for in the Border Management Authority Bill, No. B9 of 2016 (Border Management Authority Bill, 2016). In the preamble to the Border Management Authority Bill, the intention of the legislator is stated as follows:

RECOGNISING that border management is exercised by multiple organs of state with the purpose of securing the borders of the Republic and protecting national interest;  
RECOGNISING FURTHER that there is a need for integrated and coordinated border management that

facilitates secure travel and legitimate trade in accordance with the ...

During public hearings on 13 September 2016, with Minister of Home Affairs in attendance under the chairmanship of Mashile (ANC), the Minister of Home Affairs briefed the Committee on the outstanding concerns surrounding the Border Management Authority Bill that had been raised at a previous meeting (*Border Management Authority Bill [B9-2016]: public hearings ... 2016*):

He described the three underlying principles on which the Cabinet had based the functioning of the BMA. These were that the BMA should be responsible and accountable for the entire border environment, its role should be to ensure its coordination, collaboration, oversight, control and management, and the proper management of BMA would be achieved through an integrated and cooperative system. From the outset, the view of the Cabinet had been that the BMA would be an integrated entity, which would take control of the entire management of the borders. This conclusion had been reached simply because all entities that were currently managing the borders were regulated by various [pieces of] legislation, establishing different mandates. As a result, mandates and visions were fragmented, resulting in management being fragmented. What had been problematic was the absence of a single entity among equals, which could play the role of integrating the fragmented mandates.

The above excerpts are clearly representative of the hallmarks of a special-purpose or frontier agency. There are complex issues at stake, there are disputes across a range of stakeholders, and there are governance arrangements to ensure Whole-of-Government approaches. The establishment of a BMA for South Africa presents an interesting conceptual framework for establishing a special-purpose agency to combat financial crime across a range of agencies regulated by various legislation and several mandates.

## 5.10 OPERATIONALISING

There is no one favoured blueprint for organising a structure for Whole-of-Government work. The discussions above referring to the various organisational options should be helpful when one considers what the most suitable organisational structure is for Whole-of-Government work, depending on the requirements of the relevant agencies and the desired outcomes. Keeping in mind the complexities of financial crime, the symbiotic nature, several key agencies with different mandates involved at various stages, and the notion that there is no “one size fits all” approach, the Government can consider which of the organisational structures are best suited for Whole-of-Government work.

The type of criminal conduct that constitutes a financial crime is wide-ranging. Fighting the various types of conduct that manifest as financial crime falls within the mandate of various essential investigative agencies, and in some cases, there is an overlap between mandates. In other instances, separate stages of combating financial crime are conducted by various organisational structures working as joint teams or task forces responsible for several categories or types of financial crime. The state of affairs concerning the current efforts to combat financial crime is reminiscent of the reasons offered by Home Affairs Director-General Mkuseli Apleni for the establishment of a single Border Management Authority, i.e. as a solution to ensure South Africa’s security, since the coordinating arrangement at the time was inadequate. There was no single command and control. Apleni is quoted as having said: “We are all under one roof, but we are not sharing information” (Merten, 2016).

The establishment of a Border Management Authority provides an example of a blueprint for further exploration of what a prospective model for a front-line agency to combat financial crime may look like if further pursued and developed. It is against the backdrop of having explored various organisational arrangements, examined in this chapter, that the researcher proposes that a special-purpose frontier agency may provide a model for a long-term Whole-of-Government solution to combat serious financial crime. However, any of the other organisational modalities for Whole-of-Government work, depending on the

specific requirements, could have been explored, using the guidelines provided for direction.

A high-level outline and discussion to establish a policy framework (White Paper) for the establishment of a special-purpose frontier agency to combat financial crime are provided below as an example. Such an agency should consider the symbiotic nature and interconnectedness of financial crime, which tends to spawn other criminal acts. For example, people involved in the illicit trade of rhino horn will almost invariably launder the proceeds of crime for fear of the predicate crime being detected by the authorities and their income being taxed. In some cases, the proceeds may be used to fund terrorist activities or other criminal enterprises. If any government officials are involved in the illegal trade, as is often the case, corruption will invariably be present and will, in turn, spawn additional tax evasion and money-laundering offences. For this reason and the fact that financial crimes are detrimental to the financial systems of a country, it is conceivable that such a front-line agency should represent an organisation with a Whole-of-Government responsibility outside of the normal departmental structures. It should work across the range of functions, symbolising its Whole-of-Government status and being accountable to the minister responsible for the Treasury. Such an agency should have clear terms of reference or a mandate from Government expressed in legislation. For illustrative purposes, an imaginary naming convention or derivatives thereof reflecting on the intent and purpose of such a special-purpose agency are used in this discussion and presented as follows:

Serious Financial Crimes Agency (hereafter referred to as the Agency).

It will be noted that the naming convention refers to serious financial crime. It is inconceivable that all financial crime can be combated by a single special-purpose agency. This implies some case-selection criteria or case-screening method. Some types of crimes, although eligible for being categorised as financial crimes, constitute mere statutory non-compliance conduct, which does not necessarily require any form of specialised skills or expert knowledge to investigate. These can be dealt with by the SAPS Commercial Crime Unit and other investigative

authorities with a mandate to conduct legal investigations into non-compliance financial crimes.

Using a content analysis for interpreting the response to the question (question 5.5 in the interview schedule), “Do you think that a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively?”, the focus areas emerging from the participant’s answers were listed and presented in the frequency table, Table 5.6 (paragraph 5.14). This was an open-ended question where the participants could provide their own answers to the question, and no choices were presented from which they could choose. Some of the participants could therefore have provided more than one reply in response to the question.

The literature does not provide information on whether a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. To establish what the view is of practitioners in the field, the participants were asked the question to obtain clarity on the issue.

The participants answered “yes” with a frequency of 100% on whether a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. Some of the participants expanded on their answers to the question and offered the insights listed in the themes presented in Table 5.6 (paragraph 5.14).

A participant (Participant P003, 2016), as well as all other participants during the interview, were asked the question (question 5.5 in the interview schedule) whether they thought a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. The participant, requesting to remain anonymous, provided the following detailed

exposition to the researcher regarding the question posed (Participant P003, 2016b):

The combating of financial crime is not an exclusive focus or functional mandate of a single agency. It cuts across administrative functionalities such as National Treasury, the Financial Services Board, the civil investigative and litigation responsibilities of the Special Investigating Unit (SIU), the intelligence functions of the South African Intelligence Community, in specific [sic.] the Financial Intelligence Centre (FIC), and the enforcement focus of the SA Police Service, the Directorate for Priority Crime Investigation and the National Prosecuting Authority through its prosecutions and asset forfeiture.

The development of new single agencies to address financial crime is a costly endeavour.

The Whole-of-Government approach is currently the only viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. The mandate of the Directorate for Priority Crime Investigation is representative of operationalising such an approach.

It is however heavily dependent on collective governance, strategic and operational leadership to implement.

Using a content analysis for interpreting the response to the question (question 5.6 in the interview schedule), “How, in your opinion, should a Whole-of-Government approach be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively?”, the focus areas emerging from the participant’s answers were listed and presented in the frequency table, Table 5.7 (paragraph 5.14). This was an



open-ended question where the participants could provide their own answers to the question, and no choices were presented from which they could choose. Some of the participants could therefore have provided more than one reply in response to the question.

The literature does not provide information on how, in the opinion of the participants, a Whole-of-Government approach should be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. To establish what the view is of practitioners in the field, the participants were asked the question to obtain clarity on the issue.

The participants offered a wide range of themes in their response to the question (question 5.6 in the interview schedule) on how, in their opinion, the Whole-of-Government approach should be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. The participants' recurring themes are presented with a low frequency. The themes are too inconsistent to formulate meaningful categories or ideas on how a Whole-of-Government approach must be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively.

A participant (Participant P009, 2017), as well as all other participants during the interview, was asked the question how, in their opinion, a Whole-of-Government approach should be applied (implemented) to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively (question 5.6 in the interview schedule) The participant, requesting to remain anonymous, provided the following detailed exposition to the researcher regarding the question posed (Participant P009, 2017):

A multidisciplinary unit consisting of representatives of all the different government units involved in combating and investigating financial crime, collocated and working in teams where each prosecutor and investigating officer

(primary responsible persons) and everyone assigned to the team take collective responsibility for the cases assigned to them. The ideal would be to limit the cases dealt with by these teams to those cases that has [sic.] the most potential to bear fruits [sic.], save or make money for the State [AFU] and would have the biggest effect of discouraging financial crime.

The participant added (Interview with Participant P009: 2017):

Such a unit could function in a manner very similar to that of the previous Office for Serious Economic Offences before it became the Scorpions. The Directorate of Special Operations, however, would prosecute its own cases and not refer them to any of the Directors of Public Prosecutions.

The participant's focus in the response above is on a multi-disciplinary approach, with resources divided into teams and forming part of a specialised investigation authority responsible for the investigation and prosecution of cases. Participant P010 and the other participants in the interview were asked the question how, in their opinion, a Whole-of-Government approach should be applied (implemented) to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. The participant, requesting to remain anonymous, provided a schematic drawing of how he saw the implementation of a Whole-of-Government approach to combat financial crime. Due to the participant's handwriting being identifiable on the draft schematic drawing, the researcher converted it into graphics, as presented below (Participant P010, 2017). Figure 5.3 (paragraph 5.14) is a schematic representation of a conceptual model for the organisational structure of how a Whole-of-Government structure can be organised to combat financial crime.

The participant's view is based on a three-tier level of responsibility, with one department, namely the Department of the Treasury, taking the overall political responsibility and the other departments sharing functional responsibilities for combating financial crime by means of the agencies reporting to the respective political heads. The coordination of these functions should be undertaken by a

secretariat consisting of the relevant directors-general of the relevant departments. The above-mentioned concept intersects with features of the FIOD model shown in Figure 5.2 (paragraph 5.14), where in this case the secretariat can be seen to fulfil the coordinating and operational function of the FIOD.

## **5.11 A CONCEPTUAL FRONT-LINE AGENCY MODEL**

The proposal for a conceptual model takes some of its leads from the public management principles related to Whole-of-Government examined in this chapter, the arrangement of the FIOD, and the example provided for in the development and establishment of a single special-purpose frontier Border Management Authority (Africa, 2016:1). In the Netherlands, just as in South Africa, the functions related to the combating of financial crime are distributed among various agencies.

Similarly, the responsibility for managing the security and safety of South Africa's borders is also spread among several agencies. A broad outline of a project to develop a policy framework, principles and draft legislation to establish a special-purpose frontier agency with the objective to combat serious financial crime is presented and discussed in the following sections. The conceptual and essential elements for a proposed conceptual frontline agency are also provided, together with operational steps for executing the work.

### **5.11.1 Develop a policy framework (White Paper)**

Colgan et al. (2014:33) suggest that the Whole-of-Government implementation process starts with a systematic policy development stage. At this juncture, policymakers ascertain whether a Whole-of-Government approach provides a suitable answer to the particular policy challenge (Colgan et al., 2014:33). In this research, the present challenge to effectively combating financial crime is identified as the fragmented and uncoordinated efforts between the various agencies responsible for combating financial crime.

To address these issues, Government may want to consider developing a policy framework (White Paper) in which it is acknowledged that financial crime in all its

manifestations presents a grave risk to the financial systems of the country, and that it is detrimental to the socio- and economic development of the country. Government has shown that it is not averse to developing national strategies to address specific issues or achieve specific objectives. Policy-makers are also familiar with the concept of Whole-of-Government and have entertained the idea in strategic documents, policies or White Papers addressing specific issues, as is evident from the following documents published by Government:

- National Anti-Corruption Strategy Discussion Document: Towards a National Anti-Corruption Strategy for South Africa (*National Anti-Corruption Strategy ...*, 2016:2).
- National Integrated ICT Policy: White Paper (*National Integrated ICT Policy ...*, 2016:6).

The policy framework may further contain an expression of intent to establish a front-line agency in South Africa to combat financial crime in an integrated manner. The policy may consider:

- that since 1994, SA has made big strides in introducing legislation to combat financial crime, criminalising conduct that constitutes a financial crime, and introducing various capabilities and agencies to give effect to the combating of financial crime;
- the symbiotic nature and interconnectedness of financial crime;
- formulating a catalogue containing the classification of the types of criminal conduct classified as financial crime;
- the consequence of establishing these various organs of state, e.g. FIC, SARS, DPCI, NPA, FSB, SIU, SARB and other regulators, which resulted in the emergence of a silo approach to combating financial crime;
- that various structures were put in place to attempt to or assist in coordinating the mandates and actions of these distinct organs of state in fighting financial crime:
  - ACTT
  - Multi-agency Work Group
  - Justice, Crime Prevention and Security Cluster

- Various investigating task teams established in terms of section 17F of the South African Police Service Act;
- that those perceptions of the public, reports in the media citing specific cases, studies and reports have pointed to the failure of these structures to effectively combat financial crime, which is associated with an uncoordinated, fragmented approach;
- that the piecemeal approach to combating financial crime results in:
  - non-alignment and inefficiencies in the fight against financial crime, and unfavourable outcomes of investigations;
  - compromised joint efforts and results arising from various intelligence sources, ineffective dissemination of information risk management tools and approaches;
  - the ineffective utilisation of public resources due to limited information sharing;
  - failure to enforce a standard approach in dealing with serious financial crime;
  - an inability to identify predicate offences to money laundering and tax evasion;
  - failure to identify money laundering and tax fraud or evasion in instances where the existence of income from crime and criminal enterprises is identified or suspected;
  - failure to confiscate proceeds of crime that are subject to forfeiture;
  - corruption and organised crime thriving in a fragmented management environment;
  - formation of silos, with agencies focusing on their own mandates.

### **5.11.2 Develop principles and draft legislation**

Principles guiding the development of a White Paper and Bill should be identified and formulated (Africa, 2016:16) The Bill must ensure the establishment of a special-purpose agency and give expression to the principles guiding the Bill. It is proposed that in formulating the Bill, principles should be considered to indicate that there are clear governance arrangements to ensure a Whole-of-Government

approach. It is suggested that the principles can be applied, among other things, to address the following aspects:

#### **5.11.2.1 Culture and capability**

“Culture and capability critically shape the success of Whole-of-Government activities.” (*Connecting Government ...*, 2004:45). To inculcate culture and capability within the agency, the following issues should be considered for provision in the legislation:

- Uniform organisational culture and identity
- Alignment of culture and skills development to the objectives and outcome of the agency
- Rational and efficient grouping of issues

#### **5.11.2.2 Single implementation entity and budget**

- Under a single executive authority, e.g. the Treasury
- Constituted as a single accounting authority
- Established by an enabling Act, e.g. Serious Financial Crimes Agency Act (illustrative purposes only)

#### **5.11.2.3 Information management and infrastructure**

Information is critical, as it empowers agencies to deliver on Government’s outcomes and to meet community expectations. More and more, effective sharing of information is essential to the success of Whole-of-Government outcomes. Information and communications technology reinforces and allows for improved information sharing as well as data management approaches by agencies. Exchange of information plays a critical role in generating better decision-making and delivery of outcomes (*Connecting Government ...*, 2004:60). The capacity to share information across systems must be available to all agencies to improve productivity and ease of data transfer and exchanges (*Connecting Government ...*, 2004:61). The following guidelines are presented in the literature regarding the management of information in a Whole-of-Government fashion (*Connecting Government ...*, 2004:59-60):

The requirement for sharing information among agencies or across the Whole-of-Government broadly falls into four categories:

- a. Dealing with an emergency or pulling together all available information about a specific issue.
- b. Integration of information custodians through acquiring, integrating and analysing available information across government agencies.
- c. Integrating efforts by providing outcomes across agencies in a seamless way, for example, instituting prosecution, forfeiture of proceeds of crime, and taxing income from the proceeds of crime.
- d. Managing areas of joint activity by encouraging the sharing of information within Government and throughout all jurisdictions.

#### ***5.11.2.4 Assuming control of all activities in relation to the combating of financial crimes***

The policy-makers and legislative drafters should consider that all the functions concerned with the combating of financial crime shall fall within the operational responsibility of the agency. This may include the following:

- Obtainment of financial intelligence relevant to the investigation of financial crime
- Obtainment and analysis of crime intelligence
- Prevention of financial crime
- Detection of financial crime
- Identification and forfeiture of proceeds of financial crime
- Identification and criminal investigation of financial crimes
- Prosecution of financial crimes

#### ***5.11.2.5 Several of the main agency's functions and resources to be seconded and transferred to the frontier agency***

The enabling legislation should provide for the secondment or transfer of officials from the key agencies to perform a variety of functions, while retaining their powers from the transferring agency and assuming any new powers and duties that the Agency may lawfully assign to them such as:

- analysing and developing crime intelligence;
- obtaining, analysing and disseminating financial information;
- conducting financial investigations to trace financial flows; conducting direct and indirect methods to ascertain income and growth in net worth;
- conducting criminal investigation of serious financial crime such as corruption, money-laundering and tax evasion;
- tracing and securing proceeds of financial crime and assets for forfeiture proceedings;
- sharing information with other investigative authorities and foreign jurisdictions where legally permissible and subject to any treaties.

#### **5.11.2.6 Lessons learnt and best practises**

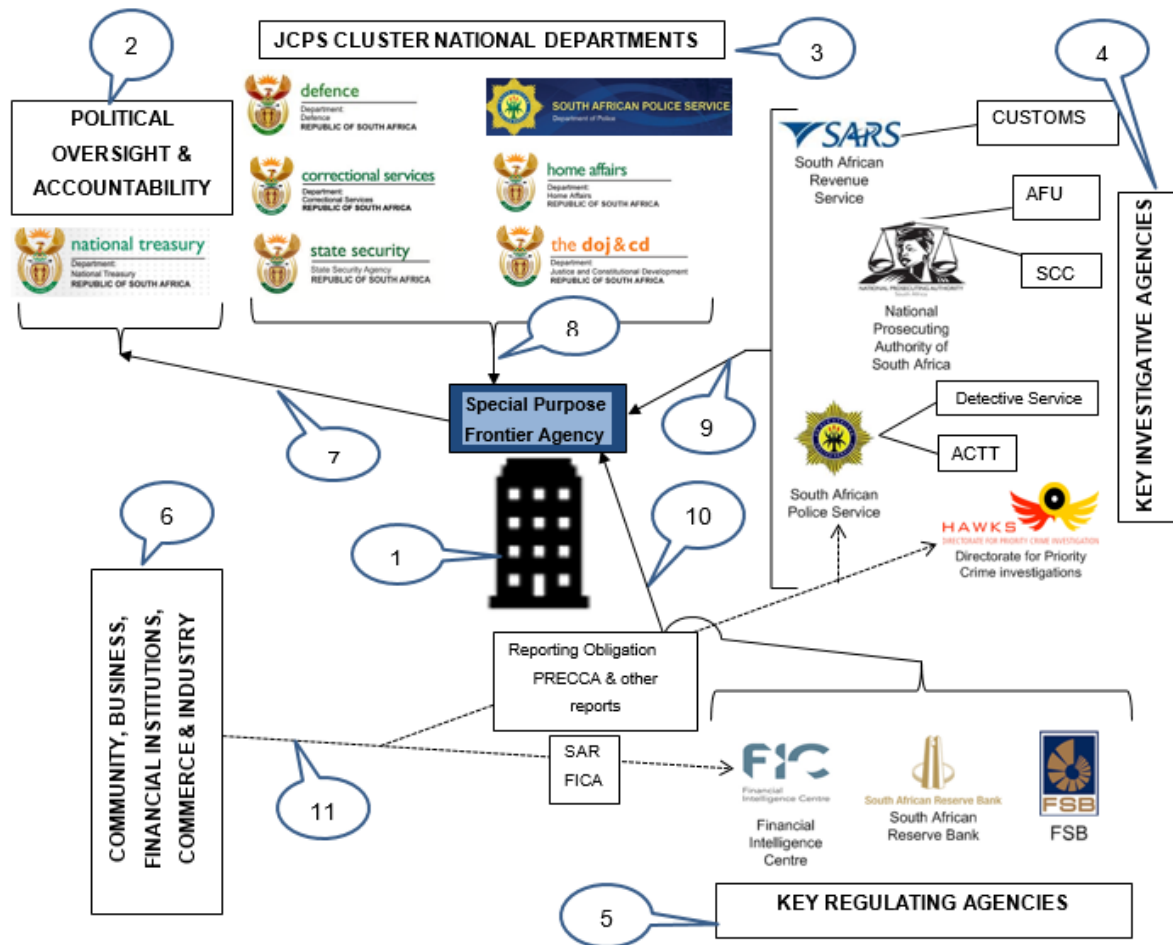
Lessons learnt, and best practices observed from developing and implementing the Border Management Authority and Border Management Authority Bill can be carried over to the development work on the “Serious Financial Crimes Agency”. Together with the guidance from the literature regarding a special-purpose frontier agency and the example of FIOD, the conceptual model described in section 5.12 is presented as an operationally viable model for combating financial crime, using a Whole-of-Government approach.

### **5.12 CONCEPTUAL MODEL FOR A FRONTIER AGENCY**

Based on the discussion and examples in the literature of an organisational structure for a frontier agency to facilitate a Whole-of-Government approach, the researcher developed a conceptual model for an agency to combat financial crime. To illustrate the functioning of the conceptual model for a Whole-of-Government single-purpose frontier agency to combat financial crime, a high-level diagram is provided in Figure 5.4 below. The final development of such a model will have to be guided by a White Paper/policy discussion on a Whole-of-Government financial crime-combating approach and enabling legislation.



**Figure 5.4: Concept Operational Frontier Agency Model**



(Source: Concept developed by researcher)

### 5.12.1 Essential elements of the conceptual model

The explanation of the key elements provided in the concept operations model, Figure 5.4 above, is aimed at providing insight into the potential for operationalisation of a Whole-of-Government frontier agency model for implementation by Government. The explanation below is for illustrative purposes only, to demonstrate the scope of creating a frontier agency based on the organisational structure discussed in paragraph 5.11. The paragraph numbers below relate to the corresponding numbers assigned to the entities depicted in Figure 5.4 above:

### **(1) Special-purpose frontier agency**

The Special-purpose Frontier Agency denotes an agency assuming control of all activities in respect of the combating of financial crimes. It represents the entry point for Whole-of-Government efforts to fight financial crime. It also represents the type of organisational modality for a Whole-of-Government approach to combating financial crime. Its initiation may be superseded by a White Paper announcing a policy for combating financial crime in an integrated Whole-of-Government fashion, and its establishment and mandate enabled by legislation. In this model, the proposed agency is established outside normal departmental structures to deal with combating financial crime and with the intention to symbolise its Whole-of-Government status.

### **(2) and (7) Political oversight and accountability**

Considering that identifying the breadth of stakeholder interests that must be publicly addressed through the creation of the frontier agency it is conceivable that the agency would be accountable to the Department of the National Treasury. It is also possible that the frontier agency would be established under a single executive and accounting authority, as in the case of the BMA (Africa, 2016:16). These provisions effectively give the head of the agency the same powers and obligations as the director-general of a department. It may also place the agency head in a similar relationship to the responsible minister or ministers.

The Department of the National Treasury of the RSA (hereafter referred to as the National Treasury) is responsible for the implementation of the so-called modified twin peaks model, where various agencies are given the responsibility to fulfil essential policy objectives to ensure (*National Treasury ...*, 2012:4):

- financial stability;
- consumer protection and market conduct;
- access to financial services;
- combating of financial crime.

The FSB and FIC report to the Minister of Finance (*National Treasury ...*, 2012:38), whereas concerning the PFMA, the Commissioner of the SARS is

accountable to the Minister of Finance. It is conceivable that the Special-purpose Frontier Agency may report to the National Treasury for political oversight and financial accountability. Such a placement is, of course, subject to a political and policy decision, based on the department that is most suitably positioned to coordinate the efforts and mandate of the special-purpose frontier agency.

### **(3) and (8) JCPS cluster national departments**

Considering the role and function of the JCPS ministerial cluster, it will probably be an influential contributor to the establishment of a frontier agency to combat financial crime. The JCPS Ministerial Cluster is conceivably the best suited to coordinate the contributions by the respective departments, agencies and stakeholders in developing a policy framework and White Paper for implementing a special-purpose frontier agency to combat financial crime and assume responsibility for the drafting of an enabling legal framework.

The national departments in the cluster are vital ministries in the efforts to fight crime and ensure the safety of communities. It is, therefore, conceivable that they are included in the stakeholder relationship with the agency and with a view to sharing information, crime intelligence and operational knowledge. It is also possible that they may be able to report financial crimes to the agency for consideration, evaluation and further investigation. The cluster may be involved in the coordination between the various government departments on formulating policy and determining the Government's national-level response to financial crime to formulate an integrated approach.

### **(4) and (9) Key investigative agencies**

The key investigative agencies are responsible for the criminal investigation of criminal conduct that is categorised as financial crime. In the context of a special-purpose frontier agency, it is from these bodies that the bulk of investigative resources, knowledge and skills will be drawn for secondment or transfer to investigate financial crime. The key investigative agencies will also be responsible for referring cases that fall within the case criteria to the office for criminal investigation and analysis of information. With regard to matters related to or incidental to financial crime, the key investigative agencies will be

responsible for providing information, evidence and crime intelligence to the agency by means of the secure legal gateways. It is possible that the entire investigative capacity of some of the key investigative agencies could be incorporated into the frontier agency.

#### **(5) and (10) Essential regulators**

The key investigative agencies are responsible for the oversight and regulation of the financial and banking sector, and in conjunction with the FIC are also responsible for the gathering, analysis and dissemination of financial intelligence in a coordinated manner. In the context of a special-purpose frontier agency, it will be possible to draw intelligence officers, analysts and investigators for secondment or transfer to the agency. The essential regulators during the execution of their respective mandates will also be responsible for referring cases that fall within the case criteria to the agency for criminal investigation and analysis of information. Concerning matters related to or incidental to financial crime, the key investigative agencies will be responsible for the provisioning of information, evidence and crime intelligence to the agency by means of the established legal gateways.

#### **(6) and (11) Community, business, financial institutions, NGOs and Commerce and Industry**

Community, Business, Financial Institutions, NGOs and Commerce and Industry represent society and the bulk of potential victims and targets of financial crimes. It is this category of people/institutions who are entitled to protection from the state, to prevent them from falling victim to financial crimes. They are entitled to the effective investigation and prosecution of the crimes when they do fall victim. They are also assigned certain legal obligations to comply with various statutes, such as compliance with the tax laws and the reporting obligations imposed on them, depending on their legal status. Organisations such as NGOs and industry can also share information with the frontier agency and engage in partnerships to bolster efforts by the State to combat financial crime effectively. The industries, business, financial service providers and institutions that provide financial services and products to society are monitored and regulated by the essential regulating agencies (9). They are required to conduct proper due diligence on

behalf of their customers and maintain customer and transaction information in records that are accessible by supervisory agencies and investigative authorities (*National Treasury ...*, 2012:73).

### **5.12.2 Conceptual procedural process**

The operational, procedural steps will almost invariably follow a generic approach. The precise steps are a matter for practical consideration, and can be formulated by studying similar agencies such as the FIOD and international best practices that have been developed throughout the operationalisation of the agency. It goes without saying that whatever operational steps are followed, such action will be guided by law, such as the Criminal Procedure Act. Conceptually it is envisaged that the agency will receive complaints or reports on financial crime, or information regarding suspicious activities that relate to the possible commissioning of financial crime, from internal as well as external sources. Internal referrals may be received from the main regulating agencies (5 in Figure 5.4) and the main investigative agencies and its components, such as the crime intelligence service (4 in Figure 5.4). Information, complaints or reports regarding financial crime may also be received from external sources such as the community, financial institutions, commerce and industry (6 in Figure 5.4) and foreign jurisdictions.

It is envisioned that an integral part of the staff component for the agency will consist of independent, full-time prosecutors seconded to the agency from the NPA, who will always be engaged on a strategic and operational level. It is envisioned that the agency will consult with the prosecutors about the use of capacity, nature and extent of investigative activities and approach to an investigation. For example, searches and suspect interviews do not happen if the prosecutors have not been consulted, and use of investigative powers has not been authorised by the appropriate legal supervising authority in accordance with the applicable legal framework. A broad, high-level conceptualisation of the operational steps of how the agency depicted in Figure 5.4 (paragraph 5.12) could function is described below for illustrative purposes:

### **Step 1: Investigation assessment**

After the initial report or information is brought to the attention of the agency, as contemplated above, the available information is processed. It is only logical that with limits to capacity, in accordance with the agency's legal mandate, not all reports or cases will be eligible for investigation by the agency. It is assumed that not all allegations and reports received would warrant or be suitable for investigation. There will be limits to capacity to consider, and in accordance with the agency's legal mandate, not all reports or cases will be eligible for investigation

Investigators are a precious (and expensive) resource in the investigation process and should be used as effectively and efficiently as possible. The initial assessment of the information should establish which cases should be allocated to a follow-up investigation, or what course of action should be followed. Case screening is a management tool that facilitates the decision-making process. It is envisaged that cases for possible investigation will be selected, based on a predetermined gauge. After an initial assessment of the report or complaint to determine whether it is eligible for further investigation, a preliminary investigation or inquiry is envisaged to decide on an investigative focus and approach.

To assist in the initial investigation, as much as possible information relevant to the investigation and suspected offence should be collected on as broad a scale as possible, by the relevant agencies represented in the agency. The gathering of information pertaining to the crime and possible suspects should form the crux of a preliminary investigation report. If determined that it is a matter of urgency to take immediate enforcement action, the assistance of the SAPS detective service or DPCI can be utilised to intervene with appropriate actions.

### **Step 2: The Investigation proposal**

The preliminary investigation report can serve as the basis for a consultative process between a representative from the NPA, a seconded prosecutor, and the internal partners represented in the agency. The purpose of the consultative process is to consider, among other things, the financial and social impact of a prosecution. In consultation with the NPA, a decision is taken whether to pursue

a criminal investigation or not. If decided to pursue a criminal investigation, the scope and course should or can be captured in a proposal for investigation. Ultimately, depending on the complexity and sophistication of the offence, a project plan or a criminal investigation plan should be developed. In some instances, the desired enforcement or prosecution outcome may be more efficient if there is one large, comprehensive investigation, and in other cases, some smaller investigations are deemed to be more effective.

Some matters may be disposed of more efficiently by the relevant statutory agency by means of administrative enforcement such as through the levying of administrative penalties or fines. For example, the behaviour of a first-time offender in respect of tax evasion of income not linked to the proceeds of illegal activities can be more efficiently remedied through the imposition of an administrative penalty. Resources can then focus on the more severe cases, where other measures may be considered to make the impact on the combating of financial crime more effective.

### **Step 3: Capacity estimation**

Inevitably, the ability and resourcing of the agency will be subject to limitations. It is, therefore, conceivable that for every contemplated investigation, the investigation proposal sets out an estimate of the resources and capacity required. It is furthermore envisaged that an annual assessment is conducted of the various focus areas based, among other things, on crime patterns, behavioural patterns, risk evaluation and target groups that should be pursued for the greatest impact. The strategic agreement reached between the stakeholders can be captured in an MOU or other form of communication between the various parties.

### **Step 4: Investigation approach, methods and resources**

Before discussing different investigative approaches and the use of powers to obtain information, one should remember that investigators function within a legal framework. Depending on whether there will be separate enabling legislation or whether existing legislation is amended to permit the formation of a special-purpose front-line agency, the enabling legislation determines the legal

framework within which investigators work. The powers to obtain information, the judicial oversight for obtaining authority to exercise the powers, and the monitoring mechanisms have to be established in a legal framework. During this step, the investigative procedures and approaches that should be applied in combination with the powers to be used are selected and considered. This may include methods such as enquiries, searches, electronic interception and monitoring, among other things. These coercive methods will be applied only if the necessary authority has been obtained and other less intrusive methods have been considered.

#### **Step 5: Acceptance of the investigation proposal**

It is envisaged that the investigations undertaken by the agency should be approved by a person responsible for the decision-making process. This person may be a retired judicial officer or prosecutor with the responsibility for approving investigations, based on the investigation proposal. The research proposal represents a detailed overview of the information-gathering activities, investigation approach, time frames, and capacity requirements. The responsible officer determines whether the proposed investigation would potentially yield sufficient evidence that may result in a prosecution. If all the facts have been weighed carefully and the investigation is approved, the follow-up investigation can commence.

#### **Step 6: The investigation**

It is conceivable that an investigation team may be assembled that consists of agency members selected according to their skills, speciality and knowledge. The team performs the actual follow-up investigation aimed at the objectives usually associated with a criminal investigation and the results are systematically recorded for use in possible criminal proceedings.

It is envisaged that throughout the investigation process, a management structure is applied that clearly demonstrates the lines of accountability and responsibility. This is not necessarily based on seniority of officials but on their roles of responsibility. During the investigation, the focus remains on proving the alleged or suspected offences. Investigation methods and techniques are applied in



accordance with the objective and may include methods to obtain the required evidence that may provide the basis for a successful prosecution. Throughout the investigation, there may be regular consultations with the prosecutor to discuss the progress and evidence, and other matters in relation to the investigation.

### **Step 7: Prosecutions**

When the investigation is complete in the manner contemplated above, it is envisaged that the case will be presented to a prosecutor to decide on prosecution or otherwise. If a decision is taken to institute criminal proceedings, the process of apprehending the suspects, or alternative processes that have to be followed procedurally to arraign the suspects before a court, are determined in consultation with the prosecutor.

The above discussion concludes the proposition by the researcher of an organisational and operational structure within the national legal and institutional framework for a special-purpose frontier agency to combat financial crime in accordance with a Whole-of-Government approach. This proposition provides a viable conceptual model for consideration by the authorities to empower them to combat financial crime more effectively.

## **5.13 SUMMARY**

In this chapter, the reader is introduced to Whole-of-Government as a public management approach where there is a need for government departments and various agencies to work across mandates to achieve a common goal and an integrated response to a specific problem. In this chapter, the public management concept of Whole-of-Government as an approach to combat financial crime more effectively was examined. The examination focused on what the concept Whole-of-Government entails and how its application can improve cooperation between various agencies and integrate efforts to solve complex problems such as financial crimes and the fragmented efforts to combat such crime. Having determined what it entails and what the rationale is that underpins Whole-of-Government, a discussion is presented on the different formats of Whole-of-Government. The various organisational modalities available for operationalising

Whole-of-Government are identified, and the applications for which they are best suited are analysed. Examples of combating crime and financial crime internationally and, where possible, nationally, are presented. Some of the organisational structures identified for Whole-of-Government are not totally unfamiliar concepts, as they were already identified in Chapter 4 to be enablers for cooperation.

Although several organisational modalities are presented, there is one modality that is singled out in this chapter for likely operationalisation, namely the special-purpose frontier agency. Internationally, the example submitted by the FIOD of the Netherlands focuses on financial crime, and the respective agencies involved in combating financial crime are more or less similar to agencies in South Africa. In South Africa, the special-purpose frontier agency as a form of operationalising Whole-of-Government or an adaptation thereof seems to have found favour for resolving the fragmented and uncoordinated approach across all spheres of Government in order to protect the country's international borders. In seeking a solution to the problem, policy discussions resulted in the acceptance of a Bill that will ultimately lead to the establishment of a BMA. The establishment of the BMA demonstrates that where there is a wicked problem, Whole-of-Government approaches can be implemented as a solution if there is a political will, as evidenced by the relevant policy and stated by the lawmakers.

In this chapter, a conceptual model for combating financial crime is put forward. It is broadly based on the special-purpose frontier agency organisational modality, using as a framework the international example provided by the FIOD, and the domestic example set out in the establishment of the BMA. It is submitted that the conceptual framework could serve to demonstrate the available prospects for implementing a Whole-of-Government approach to combat financial crime more effectively. This may provide an opportunity for further in-depth exploration and set in motion the development of a policy framework for the establishment of a special-purpose frontier agency or alternative organisational modality for Whole-of-Government combating of financial crime.

The findings of this research are presented and discussed in the final chapter, Chapter 6. The findings are followed by recommendations. Conclusions reflecting on the outcome of the study will be submitted to complete the study.

## 5.14 TABLES AND FIGURES REFERRED TO IN CHAPTER 5

**Table 5.1: Frequency table indicating participants' focus on the meaning of "integrated methodology and multidisciplinary approach"**

Question 5.1: In your own words, explain what an integrated methodology and multidisciplinary approach mean to you.		
Participants' themes or focus	Quantification of this theme	Frequency of this theme (%)
Bringing together different skills sets and expertise	5	50
Deciding/identifying critical role-players such as investigators and agencies to work together for the best possible outcome/common objective	2	20
It is a holistic approach	2	20
Resources across agencies working together with a common objective/purpose	2	20
The involvement and use of various capabilities and legal mandates of different government agencies	2	20
Working together to devise a strategy	1	10
Avoid duplication of functions to recover assets	1	10
Make use of both administrative and criminal enforcement efforts	1	10
Secondment of another government official to SAPS	1	10
Officials from other agencies will act as <i>de facto</i> SAPS officials	1	10
Officials from other agencies will conduct investigations on SAPS' behalf	1	10
SAPS will act as the coordinating agency	1	10
Incorporating the mandates of the different agencies into one overarching agency	1	10
Combine powers and information	1	10
Involves the cooperation of all government departments and institutions	1	10
The outcome of the investigation takes precedence over departmental considerations	1	10
Following a uniform approach	1	10
Utilising the best methods offered by different disciplines	1	10
Never been properly implemented or utilised	1	10
Investigators and prosecutors work together in PGI	1	10
Prosecutors and investigators share the same caseload	1	10
Prioritise cases	1	10
Identify 'quick wins'	1	10
One team consisting of all expertise	1	10
All agencies part of one team	1	10
Less red tape	1	10
More effectively gather evidence	1	10
Standardisation of methods across different stakeholders to enable sharing of information	1	10

(Source: Feedback from participants)

**Table 5.3: Frequency table indicating participants' focus on awareness of the Whole-of-Government approach about effective combating of financial crime**

Question 5.2: Are you aware of an approach referred to as a Whole-of-Government approach, that aims for actions to more effectively combat financial crime?"		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Heard of it	4	40
Yes	4	40
No	2	20
Catchphrase/buzzword	2	20
Phrase being lobbied about	1	10
Have not seen the effect of it	1	10
No noticeable difference	1	10
Whole of Government and Society Approach to deal with challenges	1	10
Set out in the Policy Framework for the government-wide monitoring and evaluation systems: 2007	1	10
Improving government performance: our approach 2009	1	10
Given effect through the NDP	1	10
First heard the term used in the context of a holistic approach	1	10

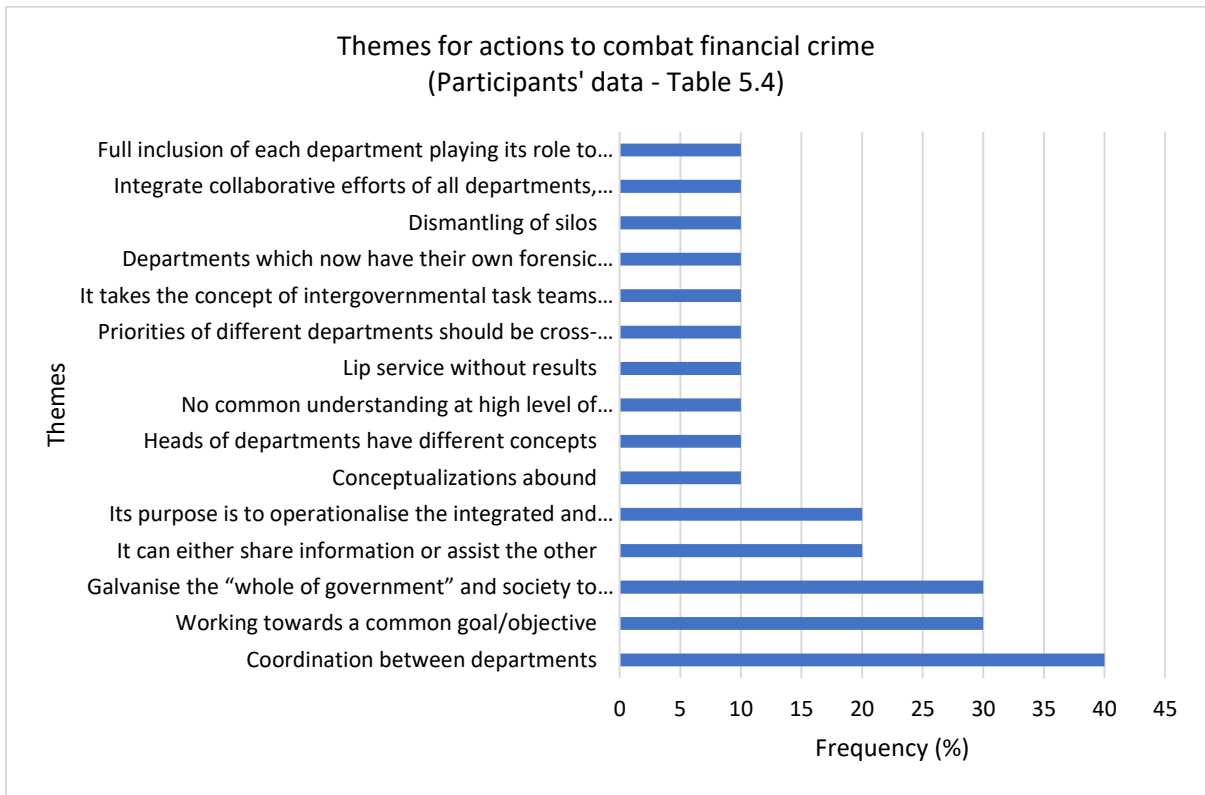
(Source: Feedback from participants)

**Table 5.4: Frequency table indicating participants' focus on their understanding of the Whole-of-Government approach in relation to actions to combat financial crime effectively**

Question 5.3: What is your understanding of the Whole-of-Government approach in relation to the actions to combat financial crime effectively?		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Coordination between departments	4	40
Working towards a common goal/objective	3	30
Galvanise the whole of government and society to target crime as a collective concern and responsibility	3	30
It can either share information or assist the other	2	20
Its purpose is to operationalise the integrated and multi-disciplinary approach (Sect 17F of South African Police Service Act)	2	20
Conceptualisations abound	1	10
Heads of departments have different concepts	1	10
No common understanding at high level of government departments	1	10
Lip service without results	1	10
Priorities of different departments should be cross-matrixed	1	10
It takes the concept of intergovernmental task teams further	1	10
Departments which now have their own forensic investigation capacity must be included	1	10
Dismantling of silos	1	10
Integrate collaborative efforts of all departments, agencies and society	1	10
Full inclusion of each department playing its role to achieve an objective set by Government	1	10

(Source: Feedback from participants)

**Figure 5.1: Participants' frequency of themes regarding their understanding of the Whole-of-Government approach in relation to the actions to combat financial crime**



(Source: Data from Table 4.1)

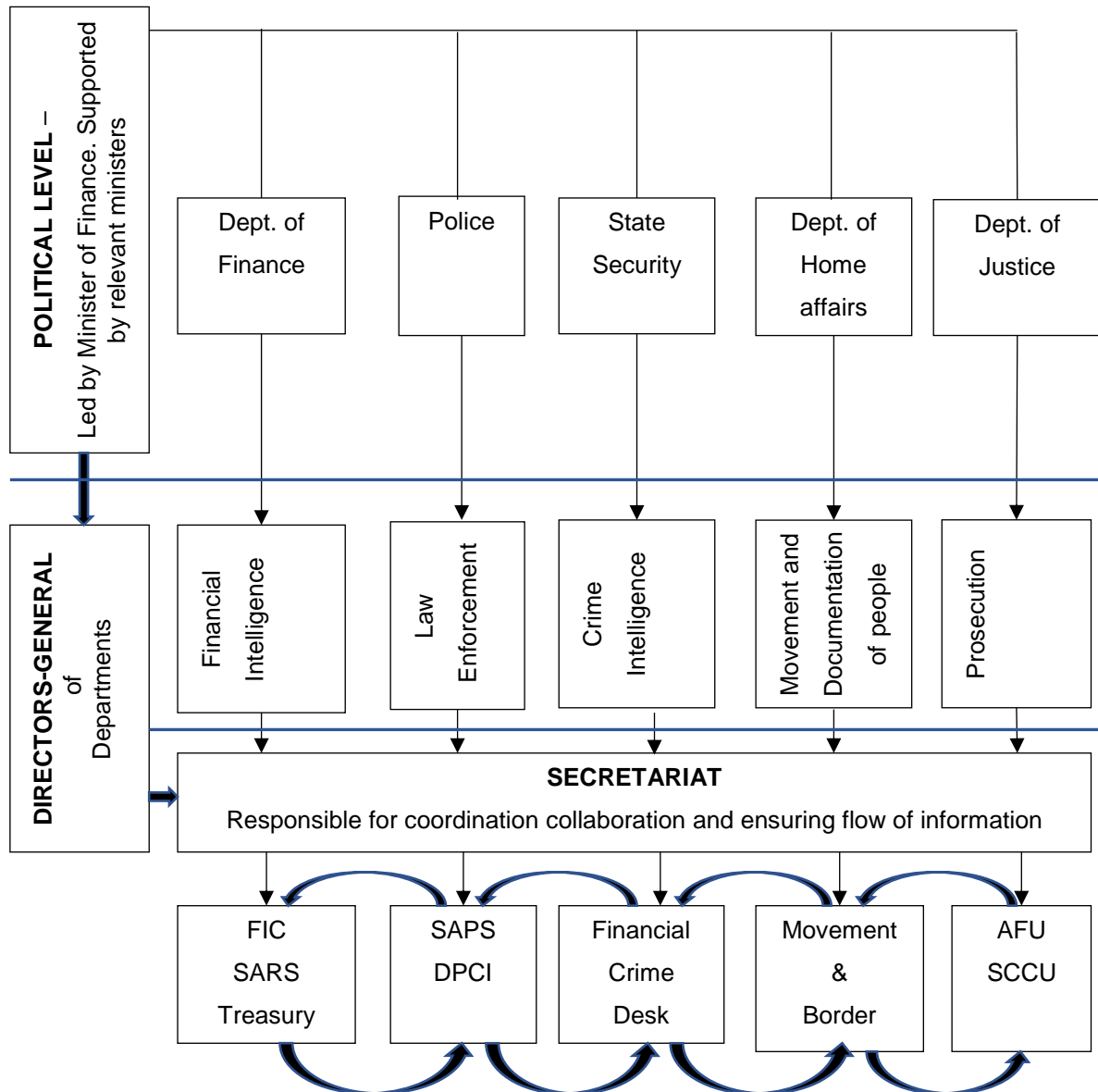
**Figure 5.2: High-level Depiction of FIOD structure for interdepartmental and inter-agency cooperation**



(Source: *FIOD Aansprekend Opsporen ...*, 2014:10 & 11)



**Figure 5.3: Participants' view of the application of a Whole-of-Government approach**



Participant's explanatory notes (Interview with Participant P010, 2017):

1. The structure should be guided by a Memorandum of Understanding or Terms of Reference granting them operation space, authorisation to share information, methods to collaborate, coordinate, implement and execute.
2. Coordinated feedback through Directors-General.
3. Future planning on addressing all challenges identified in addressing financial crimes and any other issue on financial crime in executing the Whole-of-Government approach.

(Source: Participant P010, 2017)

**Table 5.5: Frequency table indicating participants' focus on understanding what it means for different agencies to work together, across agency boundaries to combat financial crime, following a Whole-of-Government approach**

Question 5.4: According to your understanding, describe what it means for different agencies to work together, across agency boundaries, with the aim of combating financial crime through inter-agency coordination, cooperation and collaboration, following a Whole-of-Government approach		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
Agencies working across organisational boundaries to share information	2	20
Working towards a common goal/objective	2	20
To work together holistically	2	20
Each department should execute its own mandate as effectively as possible	1	10
Key issues and concerted decision-making are dealt with	1	10
The powers of different agencies are consolidated	1	10
Use different disciplines residing in agencies	1	10
They supplement each other	1	10
Integrating government's response to a specific issue	1	10
Creation of an organisational structure to host representatives of different agencies	1	10
Representatives should be able to access systems and information held by other agencies	1	10
Reliant on quick retrieval and integration into combined product	1	10
Private sector should participate	1	10
Awareness among agencies of each other's mandate	1	10
It is the only feasible approach to effectively combat financial crime	1	10
Combating serious crime and corruption is a continuous and dynamic process and as it develops, legislation and policies must be reviewed and strengthened	1	10
National Security Strategy elevates countering corruption and serious crime to a national security priority, compelling government to adopt a Whole-of-Government approach	1	10
Developing a collective approach across government to combat crimes targeting the financial systems and proceeds of crime	1	10
Collective planning and governance ensuring an outcome-based planning framework for government departments and government clusters	1	10
Collective development of crime-fighting practises and capabilities aligned to FATF approaches	1	10
The lead agency coordinates sharing of information through a shared portal	1	10
Concurrence of all the ministers of the different departments involved in combating financial crime	1	10
It is important to establish if it is a permanent structure or once-off to deal with a specific event	1	10

(Source: Feedback from participants)

**Table 5.6: Frequency table indicating participants' views on whether Whole-of-Government in the SA context presents a viable option to ensure inter-agency coordination, cooperation and collaboration to combat financial crime more effectively**

Question 5.5: Do you think that a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively?"		
Participants' theme	Quantification of this theme	Frequency of this theme (%)
Yes	10	100
The only sustainable/viable approach	2	20
They must first have a common understanding of the meaning of financial crime	1	10
Requires enabling legislation to work	1	10
Essential for economic and financial stability	1	10
Combating of financial crime is not an exclusive focus or functional mandate of a single agency	1	10
Development of new single agencies to address financial crime is a costly endeavour	1	10
The mandate of the DPCI is representative of operationalising such an approach.	1	10
Implementation depends heavily on collective governance, strategic and operational leadership	1	10
We just need the right people to drive the process	1	10
Should be administered by the Minister of Finance through the FIC	1	10

(Source: Feedback from participants)

**Table 5.7: Frequency table indicating participants' views on how a Whole-of-Government approach should be applied to ensure effective inter-agency coordination, cooperation and collaboration**

Question 5.6: How, in your opinion, should a Whole-of-Government approach be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively		
Participants' themes	Quantification of this theme	Frequency of this theme (%)
It is about defining outcomes	2	20
It is about prioritising	1	10
It is about setting the parameters	1	10
Staying within the parameters	1	10
Share powers	1	10
Policy implementation must be outcomes based	1	10
Integration of efforts to achieve outcomes	1	10
Optimisation of state resources	1	10
Linking to policy outcomes between different agencies	1	10
Enables government to address complex policy challenges	1	10
Use of knowledge and skills within different agencies	1	10
Focus on preventative measures	1	10
Tackling issues from a systemic perspective before it becomes embedded.	1	10
A shared vision in support across all agencies is required for implementation	1	10
Recognising and managing interdependencies across all levels of implementation.	1	10
Independent organisational structure	1	10
A working space can be created in a virtual organisational structure if too expensive.	1	10
Requires a high level of commitment	1	10
Explore what is the best way of working together	1	10
Developed a mandate for a multidisciplinary approach	1	10
All organs of state must cooperate on matters of mutual interest	1	10
Cooperation is not the sole prerogative of the DPCI	1	10
Sharing of information should be regulated by enabling legislation	1	10
Regular communication between heads of agencies	1	10
Regular communication within agencies	1	10
Ensure that inter-agency relations are in place	1	10
Inculcate a culture of working together	1	10
Teams made up of members of the main agencies must be merged into one investigation and prosecution unit	1	10
Must consist of permanent members from key agencies	1	10
As and when required accommodate ad hoc involvement	1	10
Can be modelled on the previous Office for Serious Economic Offences conducting own prosecutions	1	10
The combatting of financial crime should be a collective strategy to combat serious crime.	1	10
The financial crime strategy should be articulated through policy and strategy frameworks	1	10
The operationalisation of strategic and policy frameworks should be done by aligning	1	10
Development of a financial crime intelligence framework	1	10
Development of a financial crime operational	1	10
Must be managed at different tiers from the political level at the to the operational level	1	10

(Source: Feedback from participants)

## CHAPTER 6: FINDINGS AND RECOMMENDATIONS

### 6.1 INTRODUCTION

In this chapter, the findings and recommendations of this study are addressed. The aims of the study and research questions central to this research undertaking, as formulated in Chapter 1 (paragraphs 1.4 and 1.6) and dealt with in this study, are reaffirmed. This is followed by a discussion of the primary and secondary findings of the research questions in dealing with the research aim, and subsequently the presentation of recommendations emerging from the findings.

The methodology of this study is explained in Chapter 1, paragraph 1.14. An analysis of the literature was undertaken to discover useful information and gain insight into issues under investigation referred to in the research problem and objectives of the research.

This was followed by conducting interviews with the participants in order to understand the meaning provided and attributes assigned to the problems and objectives being researched. In Chapters 2, 3, 4 and 5, a review was conducted of the relevant literature, both international and national, to gain an understanding of the research rationale and related international views that explain, clarify or provide insight into the concepts and problems under investigation, as well as the current situation of combating financial crime in South Africa. The South African legislation was explored to explain the current legal framework that forms the underpinnings so as to address the research problem. Cooperation, sharing of information and organisational structures or architecture to enable authorities to work across boundaries was explored by determining how other agencies implement models to address the issue. Definitions and characteristics that exist in the identification of financial crime were determined. The exploration of previous research, literature, document study and interviews were used as a guide to develop new conceptual models and to describe and explain the future application of the findings derived from this research.

## 6.2 AIMS OF THE RESEARCH

This study seeks to evaluate the prospect of a Whole-of-Government approach by Government to enable integration of efforts, inter-agency cooperation, collaboration and sharing of information between the key investigative agencies responsible for combating financial crime that can be implemented as a model on which to base this effort.

The purpose of this research is firstly to analyse the category of crime known as financial crime, the emergence of various forms of it, and how it is carried out in practice. The research is also meant to result in a better understanding of the use of the terminology related to the crime, and for it to be used efficiently and accurately during communication, based on a systematic classification system. Secondly, the research aims to understand what is meant by the concept combating of crime and what its different components are so that those who use the term will apply it correctly in the context of combating financial crime. Thirdly, the organisational arrangement to combat financial crime and the accompanying problems is analysed to enable cooperation and coordination of action between the respective agencies and in the context of possible solutions to achieve more effective combating. Lastly, the researcher analyses the concept Whole-of-Government in order to understand what it entails and how it can be used in the context of available organisational models to assist efforts to combat financial crime more effectively. In doing so, the researcher identifies a conceptual model for integrating the functions, knowledge and skills of the various agencies to combat financial crime more effectively in accordance with a Whole-of-Government approach.

The specific research objectives of this study, to address the research aim indicated above, were divided into the following seven categories for exploration, explanation, determination and identification:

- a. To explore and describe the concept, nature, and characteristics of financial crime.

- b. To explain how financial crime can be practically and systematically categorised (codified), using a descriptor of the type of unlawful conduct as a reference.
- c. To explore and describe the application of the terms combating or to combat crime within the South African institutional, legislative, policy and strategic framework.
- d. To determine the key investigative agencies and institutional arrangements for combating financial crime.
- e. To explore what are the legal, institutional or organisational models for ensuring inter-agency cooperation and integration of efforts for combating financial crime, considering the legal framework, which provides for legislative mandates and sharing of information.
- f. Determine what the concept Whole-of-Government entails and how it can be applied or adapted for implementation by the Government to serve as a model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime.
- g. To identify and explain models for implementing a Whole-of-Government approach that is able to support the Government in implementing a strategy or policy framework, using all its key agencies to combat financial crime more effectively.

This study presents an original contribution to the phenomenon of combating financial crime more effectively, using as an organisational approach the Whole-of-Government models presented herein that consequently contribute to and influence local, regional and international knowledge and practices.

### **6.3 RESEARCH QUESTIONS**

In order to (i) specify what will be investigated by doing this research, to (ii) provide direction and structure to the study, to (iii) better understand the rationale behind the study that will enable the researcher to contribute to the resolution of the research problem and the associated issues under investigation, as well as to (iv) achieve the research objectives, purpose and aims that are identified in the

study, the researcher formulated the following research questions in the study and provided answers to them:

- a. What do the concept, nature and characteristics of financial crime entail?
- b. How can financial crime be categorised systematically (codified) in practical terms, using as a reference a descriptor of unlawful conduct?
- c. What does combating or to combat crime entail within the South African legislative, policy and strategic framework?
- d. Which are the key investigative agencies responsible for combating financial crime?
- e. What institutional models for ensuring inter-agency cooperation and integration of efforts for combating financial crime are available, considering the legal framework that provides for legislative mandates and sharing of information?
- f. What does the concept Whole-of-Government entail and how can it be applied or adapted for implementation by the Government to serve as a model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime?
- g. Are models for implementing a Whole-of-Government approach available to support Government in implementing an organisational system, using all its key agencies, and integrating efforts to combat financial crime more effectively?

## **6.4 FINDINGS**

The results of this research study are found on information that was obtained from international and domestic sources, as well as from the participants interviewed, and are reported on below to answer the specific research questions in this study.

### **6.4.1 The concept, nature, characteristics and examples of financial crime**

Research in Chapter 2 was essentially undertaken in two parts to answer two research questions. The first question relates to what the concept, nature and characteristics of financial crime entail. The second part was undertaken to



respond to the research question of how financial crime can be categorised systematically (codified) in practical terms, using as a reference a descriptor of unlawful conduct, with the intention of developing a model for a catalogue to classify financial crime. The information obtained from the literature and responses from interviews answered this question, and provided the information for the development of a conceptual catalogue to classify financial crime.

#### **6.4.1.1    *The concept financial crime***

One of the preliminary steps for Government, government agencies, agency officials and practitioners to combat financial crime is to understand the meaning and scope of financial crime and to know what type of unlawful acts and conduct constitutes crime that resorts under the category of financial crime. The literature reflects that in the context of developing strategies, actions or policies to deal with financial crime, policy-makers and heads of investigative agencies should have a shared understanding of what it is they must combat. The literature further indicates that there is confusion among researchers and practitioners when communicating about examples of financial crime.

The literature reveals that from an international perspective, there is no generally accepted definition of financial crime. Depending on the jurisdiction and the context, the term financial crime expresses different concepts. In many jurisdictions, there is a lack of a precise definition of the term financial crime but in practice there are numerous definitions. The term financial crime is often used in common phrasing and is thus one of which we assume we know its meaning. Where definitions are found, they are less precise than for instance the definitions encountered for fraud, money laundering and terrorist financing.

The researcher turned his focus to the data provided by the participants to establish how they viewed the understanding of the concept financial crime. An analysis of the responses received from the participants revealed that 50% of the participants believed there is a common understanding of the meaning of financial crime. Of the participants, 50% were of the view that there is no common

understanding of the meaning of financial crime and, 20% believed that most people have a general idea of the meaning of financial crime.

#### **6.4.1.2 Nature and characteristics of financial crime**

The literature indicates that the term financial crime is not in general use in South Africa. South African law enforcement agencies normally use the terms commercial crime and economic crime. In practice, the term financial crime is more suitable when referring to offences such as serious fraud, insider trading, money laundering and terrorist financing. However, financial crime is part of the commercial crime family, as they share the same general characteristics, and when the term financial crime is used it should be narrowed down to activities that pertain to the financial markets or investment business, and those adversely impacting on or prejudicing or harming the financial systems of a country. In official communications, the terms economic crime and commercial crime are sometimes used interchangeably and analogously. From the variety of themes presented in the literature and the data obtained from the participants, it is almost impossible to formulate a conclusive, absolute conceptualisation of the nature and characteristics of financial crime from an international as well as a South African perspective. The literature and the data provided by the participants, however, provide valuable guidance for narrowing down the characteristics to a practical guide for categorising and identifying financial crime.

The literature further describes the nature and characteristics of financial crime to entail the following:

- Makes use of deception/fraud (frequency of 42%)
- Results in financial loss (frequency of 29%)
- Crime against property (frequency of 29%)
- Involves unlawful conversion of property (frequency of 14%)
- Personal use and benefit (frequency of 14%)
- Profit-driven (frequency of 14%)
- Breaches trust (frequency of 14%)
- Conceals/hides true nature of activities (frequency of 14%)
- For illegal gain (frequency of 14%)

- Intentional (frequency of 14%)
- Opportunity-driven (frequency of 14%)
- Conversion of profits into cash (frequency of 14%)
- Mechanical process (frequency of 14%)
- Committed by persons with a certain level of standing in business (frequency of 14%)
- Economic crime is perpetrated by white-collar criminals (frequency of 14%)

The following are themes that highlight the characteristics of financial crime presented in the responses from the participants:

- Acquiring a direct or indirect financial/monetary advantage/gain/benefit (frequency of 60 %)
- Direct or indirect financial/monetary loss for victim (frequency of 50%)
- Makes use of fraud/misrepresentation (frequency of 30%)
- Involves sophisticated methods (frequency of 20%)
- Involves various methods (frequency of 20%)
- Non-violent (frequency of 10%)
- The proceeds invariably are laundered (frequency of 10 %)
- Motivated by greed (frequency of 10 %)
- Usually involves documents (frequency of 10%)
- Usually involves technology (cyber technology) (frequency of 10 %)
- Can be either organised or transactional crime (frequency of 10%)
- When organised, has the same characteristics as organised crime (frequency of 10%)
- It bridges conventional borders and jurisdictions (frequency of 10%)
- State responses battle to keep up with technology in financial systems (frequency of 10%)
- The focus of financial crime is in the criminal economy and business systems (frequency of 10%)
- It represents crimes related to illicit economy (frequency of 10%)
- It is directed at illegally obtaining property (frequency of 10%)
- Focuses on money (frequency of 10%)

Some of the themes identified in the data provided by the participants regarding the identifiable **characteristics** of financial crime overlap with some of the topics related to the **definitions** of financial crime they provided. The topics presented by the participants when describing the characteristics of financial crime broadly match those characteristics described in the respective definitions and are summarised as follows, where the first frequency is representative of the definition and the second representative of the features submitted by the participants:

- Non-violent (10% - 10%)
- Acquires a direct or indirect financial/monetary advantage/gain/benefit (60% - 60%)
- Direct or indirect financial/monetary loss for victim (50% - 50%)
- It is crime aimed at the financial systems of a country (10% - 10%)
- The focus of financial crime is in the criminal economy and business systems (10% - 10%)
- Makes use of fraud/misrepresentation (10% - 30%)
- The proceeds invariably are laundered (10% - 10%)

The convergence of the relatively consistent frequencies presented by the participants in response to two separate questions provides a practical guide for identifying the characteristics of financial crime from a South African perspective. The feedback from participants is broadly consistent with the characteristics presented in the literature and provides a comprehensive version of the characteristics of financial crime. The themes presented by the participants that are widely consistent with those presented in the literature are summarised as follows, where the first frequency as a percentage represents input from the participants and the latter the literature:

- Makes use of fraud/misrepresentation (30% - 42%)
- Direct or indirect financial/monetary loss for victim (50% - 29%)
- Acquires a direct or indirect financial/monetary advantage/gain/benefit (60% - 14%)
- It is directed at illegally obtaining property (10% - 14%)

- Focus on money (10% - 14%)

The above-mentioned intersecting characteristics presented by the participants provide additional guidance for identifying and refining the features of financial crime from a South African practitioner's perspective. It may also be useful as a departure point for defining financial crime for use in the South African context.

The data presented by the participants showed that there is a 30% frequency of the view that in South Africa the term financial crime is associated with the term commercial crime. There is a 10% frequency of the theme presented by the participants that financial crime and commercial crime are used interchangeably. The emerging themes are consistent with the narrative that emerges from the literature with regard to the use of the terms financial crime and commercial crime in South Africa, where participants regard financial crime as the following:

- Representative of that category of commercial crime from which a financial benefit is derived
- Representative of that category of commercial crime aimed at the financial sector or systems
- Being part of the commercial crime family

The Financial Sector Regulation Bill, reinforces the finding that statutory financial crimes predominantly refer to crimes that threaten the:

- financial stability;
- safety and soundness of financial institutions;
- financial customers;
- efficiency and integrity of the financial system.

#### **6.4.1.3 Definition of financial crime**

The literature study shows that no internationally accepted definition of financial crime exists and that in practice there are numerous definitions of financial crime. Where these are encountered, they are not as precise as the definitions provided for specific crimes. From the variety of themes presented in the literature and the data obtained from the participants it is almost impossible to arrive at a certain,

absolute definition of financial crime from an international as well as a South African perspective.

The researcher carefully analysed the definitions of financial crime presented in the literature to assist him with defining financial crime. From these definitions, he was able to formulate the following integrated definition for financial crime:

Financial crime refers to a variety of non-violent, profit-driven, unlawful conduct that targets financial systems, financial institutions, or property belonging to another, in order to gain access or control thereof, or to convert property for one's own personal use or benefit, that generally results in a financial loss. It may involve the use of deception, breaches of trust, concealment of the truth, and often includes criminal offences such as fraud, theft, corruption, money laundering and tax evasion.

By integrating the main themes emerging from the answers provided by the participants regarding their definition of financial crime, the researcher formulated the following definition:

Financial crime is any unlawful, non-violent conduct that is financially prejudicial to another or society, often making use of fraud and dishonesty aimed at financial systems, business and individuals, with the intent to obtain a financial benefit, or for self-enrichment to which the perpetrator is not legally entitled or for the purpose or use by a criminal business enterprise system.

The conceptual definition formulated above is in broad terms vaguely similar to the definition formulated from the themes presented in the literature. The reference to "intent" and "unlawful" in the definition may be a conscious reference to the definitional elements of "intent" and "unlawfulness" in common-law crimes,

and more specifically fraud, as there is also a requirement for the causal element of “prejudice” to others.

The Financial Sector Regulation Bill, provides a statutory definition of financial crime. An interpretation of this definition reveals that it is not necessarily inclusive of all the statutory offences that could be included in a general definition of financial crime, and that it caters for new offences created in the Bill. For example, tax evasion, which predominantly features as an example of a financial crime, is excluded from the definition. The latter is therefore not inclusive of all the crimes that can be categorised as financial crime but inclusive of the crimes that relate to the objects contained in the Financial Sector Regulation Bill.

#### **6.4.1.4 Examples of financial crime**

The concept financial crime covers a broad range of offences. In the literature, the various authors provide several examples of offences classified as financial crime. Many of the examples quoted as a crime, or constituting a financial crime, merely constitute a description of a type of unlawful conduct and do not describe a crime in accordance with the convention of our laws. An example of such a description of that kind of conduct is “computer-related crime”. This description is so wide that it can refer to any crime where a computer was used, such as during the commissioning of the offence, or to convey a misrepresentation, or submit a fraudulent document. The mere fact that a computer was used during the commissioning of a crime by the perpetrator or an accomplice is insufficient to classify the conduct as a financial crime. From the variety of themes presented in the literature and the data obtained from the participants, it is almost impossible to arrive at an absolute, conclusive list of financial crime from an international as well as a South African perspective. The literature and the data provided by the participants provide valuable guidance to narrow down the crimes and unlawful conduct to a useful list for providing examples of financial crime.

The literature was analysed for examples of crimes categorised as financial crime and revealed the examples referred to in Table 6.1 (paragraph 6.7). The examples of financial crime from the literature as shown in Table 6.1 (paragraph

6.7) indicate that they do not necessarily correspond to the information provided in the literature and the feedback from the participants regarding the nature, characteristics or definitions of financial crime. The examples of financial crime in the literature confirm the view held in the literature that different countries have different legal characterisations and classifications for specific (unlawful) acts or conduct.

The participants provided examples of financial crime, differentiating between those offences classified as common-law offences and those of statutory origin, according to their understanding of the conventions of South African law. The examples listed in Table 6.2 (paragraph 6.7) show that some of the examples of statutory financial crimes are not classified as a contravention of a statute in terms of the strict conventions of South African law, for example “identity theft”. This is an instance where financial crime is described in accordance with the nature of the conduct, rather than as the strict conventions of a statutory provision under the law. There is also confusion in the differentiation between the conventions of statutory and common-law offences when financial crime is described, making a case for classification according to a description of the type of conduct.

Examples of financial crime in the literature are presented irrespective of whether they constitute a common-law offence or statutory crime in terms of the differentiation in South African law. There is a requirement to categorise financial crime in accordance with its descriptors of the type of conduct and not only according to the strict classification applicable to the conventions of the law, i.e. common law and statutory law. Such a classification will offer a more realistic and practical reflection than a classification based solely on the conventions of law. For example, tax fraud, which is a manifestation of the common-law crime of fraud, involves the same type of unlawful conduct described under the statutory offence of tax evasion in section 235 of the Tax Administration Act to accrue criminal liability. Most people will, however, interchangeably refer to tax fraud or tax evasion, notwithstanding the fact that the first example constitutes a common-law offence and the latter a statutory offence. A description of the conduct, for all practical purposes, also describes the offence. A convergence of the themes from



the literature and those from the participants could align better if based on a descriptor only.

#### **6.4.2 Categorisation of financial crime**

As can be seen from the use of the term financial crime and other umbrella terms such as economic crime, commercial crime and white-collar crime as indicated in the literature, it is apparent that jurists are not the only group who have developed their own classification of crimes in accordance with the interests that the various laws protect. Researchers, practitioners and authorities have also developed their own classification of financial crimes in accordance with the characteristics, manifestations and type of conduct inherent to the crime.

An analysis of the literature reveals that provision is not made for a category of crime referred to as Financial Crime, thus leading to the failure by Government to accomplish clear policy development and planning with regard to financial crime *per se*. The literature provided a model for categorising or classifying financial crime systematically and methodically, in accordance with descriptors of the types of acts or conduct, identifiable or associated with crimes/offences in terms of South Africa's laws. Crimes or offences as defined in law are typically associated with actions or behavioural and contextual characteristics that are universally considered to be an offence. This aspect is also recognisable in respect of financial crimes, as encountered in the literature. According to the model encountered in the literature, based on this premise as proposed by the UNODC, an Events-based approach of crime classification avoids issues created by legal complexities, resulting in a simplified, applicable classification.

The researcher applied an adapted version of the Events-based approach to categorising financial crime, based on the data received from the participants and a review of the literature. The modified version of the Events-based approach to categorising financial crime, as developed by the researcher, is presented as a contribution to develop a new practice.

### **6.4.3 Combating crime**

Research in Chapter 3 was essentially undertaken in two parts in order to answer two research questions. The first question relates to what the concept combating or to combat crime entails in the South African legislative, policy and strategic framework, and then more explicitly regarding combating financial crime. The second question relates to identifying the key investigative agencies responsible for combating financial crime.

#### **6.4.3.1 Conceptualising combating of crime**

The literature shows that there is confusion about what the term combating or to combat crime entails. The use of and distinction between combating of crime and crime prevention creates confusion. The term combating is sometimes used when the term prevention of crime is intended and vice versa.

The literature explains that the concept combating of crime is more than prevention alone, and that it should be construed to include activities such as crime prevention and policing. This means that crime combating could be regarded as an umbrella term for all kinds of legal activities aimed at fighting crime, whether it is to prevent, reduce, control, deter, or solve crime, and may also include policing activities such as law enforcement, the maintenance of public order and visible policing. The terms crime combating, and crime fighting can be used interchangeably, and a phrase such as tackling crime has a similar meaning.

The literature indicates that combating of crime is an overarching term or concept, inclusive of the terms prevention, investigation, detection, and intelligence. The data obtained from the participants present the following as components of combating crime:

- It includes investigation measures (40% frequency of themes)
- It includes prevention of crime measures (30% frequency of themes)
- It includes detection of crime (20% frequency of terms)
- Encapsulating concept of various actions (20% frequency of themes)

- Synonymous with the concept of fighting crime (20% frequency of themes)
- Includes proactive and reactive measures (10% frequency of themes)
- It is the whole package (10% frequency of themes)

a. Prevention of crime

The literature indicates that the terms combating of crime and crime prevention is used incongruously. The term crime prevention means different things to different people. It is therefore essential to distinguish that the concept prevention of crime is a separate concept that forms part of the broader concept of crime combating. The feedback from the participants regarding their understanding of the meaning of financial crime returned a broad variety of non-recurring themes confirming the view put forward in the literature that defining crime prevention will always be problematic.

b. Investigation of crime

The literature reveals that investigation of crime is an effective technique to prevent crime. Also, the literature confirms that effective criminal investigation deters criminals, preventing them from committing crime. An analysis of the themes stated by the participants provides the following broad description of criminal investigation: "Criminal investigation concerns the obtaining, collection and gathering of evidence for court purposes including for use in criminal proceedings".

c. Detection of crime

The literature shows that crime detection is one of the activities associated with the combating of crime, and that prevention, investigation and detection of crime are the central part of the police mandate that forms part of a totality of efforts to combat crime. From the definitions for crime detection provided in the literature, it was possible to formulate the following integrated definition of detection of crime in accordance with the literature:

Crime detection is a pro- or reactive process during which a crime or a probable crime is detected or uncovered by the police or law enforcement after receiving a complaint or an indication of the commissioning of an offence or probable offence requiring verification, investigation or identification of the perpetrator for arrest and prosecution.

The data received from the participants shows that detection of crime is:

- processes that have been put in place to detect crime (40% frequency of themes)
- a proactive process (20% frequency of themes)
- uncovering or discovering crime (10% frequency of themes)
- the identification of a suspect (10% frequency of themes)
- a reactive response to crime (10% frequency of themes)

d. Crime intelligence

The literature indicates that if crime intelligence is correctly applied in policing, enormous successes in crime prevention and combating can be achieved. The essence of effectively combating crime is reliant, among other factors, on the availability of reliable and accurate information about crime in the form of crime intelligence. Crime intelligence is a component essential to combating crime.

The data presented by the participants widely intersect with the themes emerging from the definitions and discussion regarding crime intelligence presented in the literature:

- Collecting information about criminal activity (70% frequency of themes)
- Identification, analysis, processing and dissemination of information (30% frequency)
- Analysing information (20% frequency of themes)
- Information to avert crime (20% frequency of themes)
- Information to advance criminal investigation (20% frequency of themes)

- Ensures effective policing can take place (10% frequency of themes)
- Assists with the gathering of information to investigate crime (10% frequency of themes)

A wide variety of themes (28) emerged from the answers by the participants in their response to the request to define the term crime intelligence, with a low frequency of recurring themes present in the replies. The reason why the researcher interprets the great diversity coupled with the low frequencies is that among the participants or the agencies they represent:

- there is an underutilisation of crime intelligence during the combating of financial crime;
- there is an under-appreciation of the value of crime intelligence during the combating of financial crime;
- there is a lack of capacity to develop and analyse intelligence regarding financial crime;
- there is an under-appreciation of the value of financial intelligence centres during combating of financial crime;
- there is insufficient cooperation and sharing of intelligence between agencies responsible for combating financial crime.

#### **6.4.3.2 The legislative framework to combat crime**

A study of the literature and legislation indicates that the broad legal framework to combat financial crime is in the first instance derived from section 205(3) of the Constitution of the RSA, which makes provision for the objects of the police service that includes “[t]o prevent, combat and investigate crime” (my emphasis). At the next level, section 17B of the South African Police Service Act provides that in the establishment of the DPCI, recognition should be given to the need to establish a directorate in the police service to *inter alia* “[p]revent, combat and investigate national priority offences, in particular, serious organised crime, serious commercial crime and serious corruption.” (my emphasis).

### **6.4.3.3 Policy framework for combating crime**

A study of the literature revealed that the policy framework set out by Government to combat crime is encapsulated in various initiatives produced by Government to set forth its agenda, strategies priorities and plans in relation to combating of crime. The documents published by Government are:

- National Crime Combating Strategy (NCCS)
- National Crime Prevention Strategy (NCPS)
- The 2017 White Paper on Safety and Security
- The 2017 White Paper on Policing
- The South African Police Service Strategic Plan

By using the literature study, the researcher found that the various plans, strategies and programmes are very impressive in appearance. However, the actual realisation of these appears to be wanting, as the real perceptions reflected in the literature seem to suggest otherwise.

#### **a. National Crime Combating Strategy (NCCS)**

The literature indicated that this strategy has run its course and is no longer functional.

#### **b. National Crime Prevention Strategy (NCPS)**

The literature shows that the NCPS is a strategy document prepared by an Interdepartmental Strategy Team comprising the Departments of Correctional Services, Defence, Intelligence, Justice, Safety and Security, and Welfare. The Cabinet initiated and approved the NCPS in March 1995. The literature further explains that the NCPS refers to a long-term interdepartmental strategy at a national level, involving various government departments and civil society, that contains a mixture of both policy and strategy. The NCPS has lost momentum and has become latent as a strategy.

#### **c. White Paper on Safety and Security**

Utilizing the literature study, the researcher established that there is a White Paper on Safety and Security, published by the Civilian Secretariat for the Police

Service in 2016. The objectives of the White Paper are, among other things, to provide an overarching policy for safety and the prevention of crime and violence.

d. White Paper on Policing

By means of the literature study, the researcher established that there is a White Paper on Policing. The Paper provides insight into the principles and approaches that will probably form the foundation with regard to the combating of crime generally (South Africa, 2016) and guide the role, approaches and responsibility of Government and, more explicitly, the SAPS as the leading agency with regard to the combating of crime generally (South Africa, 2016).

e. South African Police Service Strategic Plan

Using the literature study, the researcher established that the SAPS annually publishes a strategic plan that is a continuation of the written police plans, in another form, and that covers a new period.

#### **6.4.3.4 Legislative mandates for combating crime**

A study of the legislation produced the relevant statutes that provide government agencies with the legal mandate to combat crime. The researcher determined that in accordance with the 1996 Constitution and the South African Police Service Act, the SAPS is mandated to combat all crime in general in South Africa.

#### **6.4.3.5 Non-statutory institutional framework**

The literature shows that when Government sets its priorities, policy coordination and implementation of the respective departments, it views them in terms of the “clusters” that have been formed via the IMCs such as:

- National Crime Prevention Centre
- Justice, Crime Prevention and Security Cluster

a. National Crime Prevention Centre

The literature indicates that the NCPC was established to achieve the objectives of the NCPS, which functions as a component of visible policing within the SAPS,

the latter being the lead agency for the implementation of the NCPS. The NCPS was never fully implemented due to inherent limitations.

b. Justice, Crime Prevention and Security Cluster

The literature discloses that the JCPS guides crime prevention efforts in South Africa and is composed of national and provincial departments responsible for security, law enforcement and crime prevention.

#### **6.4.4 Combating financial crime**

It can be argued that in the context of combating financial crime, the interchangeable use of the terms financial crime, white-collar crime, economic crime and commercial crime is irrelevant. The reason that is put forward to advance this statement is that in the event of literature and official documents referring to combating financial crimes by using terms such as financial crime, white-collar crime, economic crime and commercial crime, they will inadvertently include crimes and types of conduct that resort under the category of offences referred to as financial crimes. In some instances, however, reference might be made to the combating and prevention of specific crimes, such as money laundering, terrorist financing, and corruption, which clearly fall in the category of offences and conduct called financial crime. In such cases, it can be readily inferred, unless indicated otherwise, that the measures are unique and distinctive of the type or category of conduct or offence.

##### **6.4.4.1 Prevention of financial crime**

The literature overview shows that the traditional methods of controlling financial crime, consisting predominantly of investigation and prosecution, have failed. The literature further explains that the challenges posed by financial crime should be seen from a holistic perspective, which should involve prevention by creating a hostile environment for perpetrators. To this end, Government, business and individuals must combine their resources to eliminate financial crime at its source.

In the South African context, the literature shows that the White Paper on Policing does not refer to financial crime or the combating thereof in explicit terms. It does,



however, refer to commercial crime, which is a term that, as research indicates, may sometimes include financial crime in the South African context. The literature furthermore shows that Government is conscious of the prevalence and increase in sophistication of financial crimes such as cybercrime, and the adverse economic impact that these crimes have on the economy of the country.

The literature confirms that it is the function of the DPCI, “to identify, counter and deal with selected organised and transnational crime, corruption and serious national priority crimes based on sound analysis of criminal threats, patterns and trends, intelligence forecasting and information-sharing” (White Paper on Policing, 2016a:32). Although the White Paper deals with the functions of the DPCI, there is a curious absence of a specific reference to serious commercial crime, although section 17B of the South African Police Service Act specifically refers to it.

#### **6.4.4.2 Investigation of financial crime**

The literature indicates that the investigation of financial crime requires a multi-disciplinary approach that includes accounting, auditing, legal, fiscal and banking expertise. The symbiotic relationship between corruption and money laundering requires strategies to deal with financial crimes such as money laundering and corruption in a systematic and integrated fashion. The literature shows that the (new) National Anti-Corruption Strategy Discussion Document unfortunately deals with only one aspect of financial crime in isolation, namely corruption, as opposed to dealing with it holistically, considering its symbiotic relationship with other financial crimes.

#### **6.4.4.3 Detection of financial crime**

The literature states that financial crime is detected via controls, by accident, whistle-blowing, auditors and well-constructed programmes of detection, but that the detection of financial crime is difficult because it is not as visible as common crime. The literature further shows that sharing information can be a valuable tool for the detection of financial crimes.

#### **6.4.4.4 Financial crime intelligence**

The literature review shows that intelligence-based techniques to investigate fraud and economic crime are increasingly becoming the norm and providing a basis for many different aspects of an investigation, as well as playing a prominent role during tracing of the proceeds of economic crime and corruption. The literature furthermore states that during the investigation of offences that have as an objective the acquisition of financial gains, such as corruption, or involving the movement of money, the most valuable source available to investigators is financial intelligence.

#### **6.4.4.5 Legal framework for combating financial crime**

The literature indicates that since the early 1990s, South Africa has adopted and implemented new laws and initiatives, thus establishing a comprehensive framework to deal with financial crime.

##### **a. The South African Police Service Act**

The literature states that the legal mandate of the SAPS is the prevention, combating and investigation of national priority offences, in particular serious organised crime, serious commercial crime and serious corruption. The South African Police Service Act does not define serious commercial crime and serious corruption.

##### **b. Prevention and Combating of Corrupt Activities Act**

The literature informs us that the common-law crime of bribery, which was committed in respect of or by officials of the state, was abolished in 1992. Bribery of persons who were not state officials was an offence under the Prevention of Corruption Act. The Corruption Act passed in 1992, repealed both the common-law crime of bribery and the previous Prevention of Corruption Act, and created a new offence called corruption, which incorporates both the common-law crime of bribery and the offences created by the repealed Prevention of Corruption Act. The situation is now dealt with by the Prevention and Combating of Corrupt Activities Act, which is South Africa's first comprehensive anti-corruption legislation.

c. Prevention of Organised Crime Act

The literature indicates that the Prevention and Combating of Corrupt Activities Act was legislated with the intent and aspirations to, among other aspects, provide for the strengthening of measures to prevent, combat and provide for investigative measures in respect of corruption and related corrupt activities. The literature further shows that there are links between corrupt activities and other forms of crime (organised crime) and that regional and international cooperation is essential to prevent and control the corruption and related corrupt activities and economic crime, including money laundering. It requires a comprehensive, integrated and multidisciplinary approach to prevent and combat corruption and related corrupt activities efficiently and effectively. The Prevention of Organised Crime Act was amended by the Protection of Constitutional Democracy against Terrorist and Related Activities Act to provide measures to prevent and combat the financing of terrorist and related activities.

d. Financial Intelligence Centre Act

The literature states that the Financial Intelligence Centre Act supplements the mainly criminal legislation, creating the administrative framework for money-laundering control in South Africa. The Financial Intelligence Centre Act established the Financial Intelligence Centre and a Counter-money-laundering Advisory Council to combat money-laundering activities and the financing of terrorist and related activities.

e. Protection of Constitutional Democracy against Terrorist and Related Activities Act

The literature review indicates that both criminal and terrorist activities have the need to disguise the source and the application of funds obtained from illicit activities. Disguising these funds amounts to money laundering. Terrorists use money laundering to fund the necessary tools to support the spread of terror. The literature further explains that The Protection of Constitutional Democracy against Terrorist and Related Activities Act is a legislative effort aimed at combating money laundering and terrorist financing.

f. Acts administered by SARS

The literature review shows that SARS administers the following two Acts that provide its legal mandate to conduct criminal investigations related to tax evasion:

- The Tax Administration Act
- The Customs Control Act

At the time of finalising this report, the Customs Control Act had not yet been implemented, with the date of implementation to be announced. When it is implemented, the Customs Control Act will become effective and the current Customs and Excise Act will be renamed the Excise Control Act and will be applicable in excise matters.

#### **6.4.5 Government's efforts to combat financial crime**

The literature shows that the views expressed in the news media, journal articles and statements by politicians, heads of agencies and practitioners provide valuable insight into the current state of Government's efforts to combat financial crime. The participants in this research survey share their knowledge, experiences and perceptions of Government's efforts to combat financial crime.

The literature provides a view of the current state of efforts to combat economic crime and describes it as follows:

- South African organisations reported the highest rate of economic crime in the world over the last two years
- Economic crime is at a pandemic level in South Africa
- South Africans exhibit a significantly low level of confidence in local law enforcement agencies
- 70% of organisations believe that investigative agencies are inadequately resourced and trained to investigate and fight economic crime
- The prevalence of misappropriation is the most prevalent form of economic crime, followed by procurement fraud, and bribery and corruption

The literature also reports that research has indicated that the top seven most reported types of economic crime in South Africa show higher reported levels than the global average, except for cybercrime, which is on par with the global figure for this crime. The literature further shows that South Africa has sufficiently robust and comprehensive laws to address financial crime. However, the weaknesses lie in the institutional structures that are required to implement these laws, as well as in law enforcement, which is hampered by a lack of expertise, resources and coordination.

Data obtained from the participants in respect of the question whether they think financial crime is effectively combated in South Africa, and for which they were requested to substantiate their answers, showed that all the participants were of the opinion that financial crime was not effectively combated in South Africa. The reasons provided in the motivations given by the participants supporting this view are presented in Table 6.3 (paragraph 6.7) in descending order of frequency of themes as listed by the participants.

Table 6.3 (paragraph 6.7) indicates that, based on the data, the main reasons why the participants believe that financial crime is not combated effectively are as follows:

- Mandates and functions are not collectively coordinated (50% frequency)
- Weak and unstructured public sector inter-agency cooperation (40% frequency)

The reasons offered by the participants relate to:

- agencies having different mandates that are not aligned;
- fragmented cooperation between the various agencies.

#### **6.4.5.1 Policy framework and strategic direction**

The literature emphasises that there is a requirement for improving the implementation of strategies in law enforcement and policing, explaining that failure to carry out strategies could cause lost opportunities, duplication of efforts,

incompatibility of organisational structures, and a waste of resources. The literature further informs that implementation of the strategies determines the measure of success of strategies in line with their objectives.

The literature furthermore maintains that operationally there is no clear Government policy that spells out what its approach is to combat financial crime, because there is no centre of government operating in a guiding role to create structure in accordance with set expectations, set a common agenda, ensure overall accountability, or to coordinate the efforts of investigative agencies during the combating of financial crime. Investigative agencies function in agreement with a multitude of strategic plans that do not demonstrate the harmonisation of approaches to combat financial crime effectively. Many of these schemes never become operational.

Responses from the participants regarding their views on how policies and strategies for combating financial crime or the lack thereof impact on coordination, cooperation and a collaborative effort to combat financial crime effectively, resulted in the participants providing a variety of answers, of which the following carried the most weight:

- Uncoordinated efforts lead to an activity-based approach that deviates from Government's outcomes-based approach (20% frequency).
- Lack of implementation leads to failure (20% frequency).

#### **6.4.5.2 *Cooperation, collaboration and information sharing among agencies***

An overview of the literature revealed that investigative agencies should not fall into the trap of adopting silo approaches and accommodating territorial battles, and that they must coordinate and communicate, domestically and internationally, in respect of financial crime and abuses.

The literature further revealed that Government's view is that "there is a visibly growing synergy in the fight against corruption among the law enforcement agencies, which include the Special Investigation Unit, the Anti-Corruption Task

Team, the Asset Forfeiture Unit and the Hawks” (Hartley, 2014), calling this synergy between departments a “new approach”. Unfortunately, it is not clear from the literature how this “new approach” differs from the previous approaches and how it is being implemented. The literature further reveals examples of situations where cooperation between agencies has failed, and where it has been successful.

Data obtained from the participants regarding whether they think there is effective inter-agency coordination, cooperation, collaboration, and sharing among government agencies when combating financial crime, led to a variety of answers:

- 90% of the participants stated that they do not believe that there is effective inter-agency coordination. The most prominent reason provided was that sharing of information was restricted by legislation (30% frequency).
- 90% of the participants stated that they do not believe that there is effective inter-agency cooperation. The most prominent reason provided was that agencies pursue their objectives and performance goals (30% frequency).
- 80% of the participants stated that they do not believe that there is effective inter-agency collaboration.
- 80% of the participants stated that they do not believe that there is effective sharing of information between agencies.

The recurring data obtained from the participants in response to all the questions regarding cooperation, coordination, collaboration and exchange of information resulted in the following themes:

- Mandates not coordinated
- The intelligence agencies focus on particular incidents and not on the protection of all financial systems
- No dedicated structure
- Focus on own objectives

- Weak public sector and private sector cooperation

#### **6.4.5.3 Constraints**

An overview of the literature shows that cooperation, collaboration and information-sharing may be inhibited by constraints or barriers preventing agencies responsible for combating financial crime from obtaining the full benefit from the spread of knowledge and skills. This may limit the prospect of effective inter-agency cooperation. The constraints or barriers mainly fall into three broad groups, namely legal, operational and political.

##### **a. Legal Constraints**

The literature explains that legal impediments may include specific restrictions and prohibitions that are applied to prevent one agency from obtaining access to relevant information from another. There are several legislative provisions contained in a vast array of statutes that cater for various procedures that constitute the legal framework for cooperation and information sharing between the various agencies. These legal provisions may, however, prove to be obstructive to interagency cooperation and sharing of information.

In response to being asked whether they were aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime, 60% of the participants answered that they were aware of legal constraints. They offered a variety of reasons for their beliefs.

##### **b. Operational Constraints**

The literature indicates that operational constraints may include complex or lengthy procedures hampering any agency in its efforts to obtain information from another, lack of awareness of the availability of information from another agency, or other mechanisms for cooperation, or a lack of specialist knowledge. Officials may not be aware of the correct procedures to request information, the circumstances under which information can be requested and ought to be provided, and under which legislative provision it must be requested. The



literature further states that MOUs between agencies may not be sufficiently inculcated among the members, or may be incorrectly interpreted. Considering the nature of financial crime and the challenges it poses to investigation, there is a requirement for cooperation and the coordination of efforts.

In response to being asked whether they were aware of any operational constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime, 90% of the participants answered that they were aware of operational constraints, and provided a variety of reasons for their beliefs.

c. Political Constraints

The literature showed that political constraints include a lack of political support for agencies to adopt new approaches to combating financial crime, or to make the changes required to reduce the level of legal and operational constraints. During a crime summit, a political analyst warned that law enforcement agencies should not engage in political battles to the detriment of good law-enforcement work.

In response to being asked whether they were aware of any political constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime, 60% of the participants answered that they were aware of operational constraints, and provided a variety of reasons for their beliefs.

#### **6.4.6 Inter-agency cooperation**

The literature states that, given the complexity and multifaceted nature of financial crime, combating the crime in all its facets cannot be undertaken by a single agency acting in isolation, irrespective of how competent the agency and its officers may be. It is also stated that significant gaps in law enforcement and coordination are a source of concern. The literature further shows that there is a requirement to explore and develop practical ways to enhance cooperation and coordination during combating of financial crime to ensure that the relevant

government agencies responsible for combating financial crime interact with each other at policy as well as operational level. Interaction may be in the form of exchanging information, cooperation in investigations that cut across different agencies, and sharing of staff who can share expertise. The literature further explains that sharing of information between the main agencies is a fundamental requirement and a prerequisite for inter-agency cooperation.

#### **6.4.6.1 Key agencies**

A study of the literature produced an account of the activities involved when the fight against financial crime is spread across various institutions and involves officials attached to revenue authorities, customs administrations, FIUs, law enforcement agencies, specialised investigation agencies and prosecuting authorities. The complexity of financial crime investigations requires the support of the relevant bodies that might have a part to play in solving a case, even if it is at a marginal level, hence the importance of identifying the key agencies. An understanding of the respective roles of the key agencies is critical in order to appreciate inter-agency cooperation at an international as well as a domestic level. From the overview of the literature research conducted in respect of the national legislation, literature and feedback from the participants, it is apparent that South Africa does not have a dedicated agency or authority with the sole legal mandate to combat and prevent financial crime exclusively.

When participants were asked to identify the key agencies and investigative authorities responsible for combating financial crime in South Africa, the data received revealed that the listing of the most prominent government agencies, in descending order, is as follows:

- The Financial Intelligence Centre, with a frequency of 100%
- SAPS, DPCI, Crime Intelligence Unit, with a frequency of 100%
- SARS, with a frequency of 100%
- The AFU, with a frequency of 100%
- SARB, with a frequency of 70%
- NPA, with a frequency of 60%
- FSB, with a frequency of 50%

- SIU, With a frequency of 50%

Figure 6.1 (paragraph 6.7) shows the identification and institutional arrangement of key agencies to combat financial crime in South Africa according to the literature and information received from the participants.

a. The Tax Administration

An overview of the literature indicates that tax administrations are responsible for the collection of revenue on behalf of a Government, that employs large numbers of trained specialists and investigators with experience in auditing and analysing financial data and investigating suspicious or irregular transactions. They typically play a central role in preventing, detecting and investigating tax crime.

The literature explains that internationally there are four models for a tax authority's role and ability to participate in the combating of financial crime, and to obtain information from other authorities relevant to an investigation. The models are the following:

- The tax administration directs and conducts investigations
- The tax administration conducts investigations as directed to by a prosecutor
- A specialist tax agency outside the tax authority conducts investigations
- The police or prosecutors conduct investigations

The literature asserts that the South African Revenue Service (SARS) was established in terms of the South African Revenue Service Act, as an autonomous agency responsible for administering the South African tax system and Customs Service. The literature further informs us that within the SARS organisational structure, a specific division exists that has as its aim the combating of tax evasion and customs offences, as well as assistance to general law enforcement agencies in efforts to combat crime, i.e. from a financial and customs perspective.

The participants who identified SARS as a key agency in the combating of financial crime were asked to explain the responsibility of SARS in regard to this matter. The data presented by the participants provided the following information:

- Conduct criminal investigations in respect of tax (frequency of 80%)
- Enforcement of tax laws/legislation (frequency of 30%)
- Investigate tax fraud (frequency of 20%)
- Investigate tax-related corruption (frequency of 10%)
- Focus on tax crimes (frequency of 10%)

b. Customs Authority

The literature states that customs organisations are a key agency in preventing; detecting and investigating financial crime, and that they have sophisticated systems for monitoring the movement of people, goods and funds across national borders. They may be established as agencies separate from that of the tax authority, or in some countries they form part of a joint tax administration, such as in South Africa. Also, the Customs Division of SARS has a role in administering laws that are not necessarily related to tax and customs but are essential to protect the South African economy.

c. The Police and other Specialist Enforcement Agencies

The literature indicates that in some countries, the capacity to investigate crime is institutionalised within the police, or it may be established in separate agencies outside the police as specialist units responsible for the investigation of financial crime, or specific types of financial crimes.

i. The South African Police Service

The literature informs us that the SAPS is a separate state organ resorting under the control of the Minister of Police, and having the principal statutory duty to combat and prevent crime in general, which by default includes financial crime, irrespective of whether it has been stated explicitly as such.

The participants who identified SAPS as a key agency in the combating of financial crime were asked to explain the responsibility of SAPS in that regard. The data presented by the participants disclosed the following information:

- Investigate crime (frequency of 50%)
- Investigate commercial crimes (frequency of 50%)
- Investigate fraud, theft, racketeering, money laundering, bribery, corruption (frequency of 30%)
- Combat crime (frequency of 20%)
- Crime prevention (frequency of 20%)

ii. The Directorate for Priority Crime Investigation

The literature shows that the SAPS has established specialist units for combating financial crimes. These units are situated within the DPCI, which has been named “The Hawks”. The DPCI is an independent directorate within the SAPS in terms of Section 17C of the South African Police Service Act. In terms of Section 17B and 17D of the South African Police Service Act, the DPCI is statutorily responsible for the combating, prevention and investigation of national priority crimes such as serious organised crime, serious commercial crime and serious corruption which, in the opinion of the Head of the Directorate, have to be addressed by the Directorate, subject to any policy guidelines issued by the Ministerial Committee.

The literature further shows that the DPCI is responsible for administering the reporting obligation imposed by section 34 of the Prevention and Combating of Corrupt Activities Act. Feedback from a participant regarding the structure of the DPCI indicates that within the DPCI there are sub-units responsible for the investigation of certain aspects and different types of financial crimes, focusing on three primary areas:

- Serious Organised Crime Investigations
- Serious Corruption Investigations
- Priority Crime Specialised Investigations

- Priority Crimes Management Centre
- Serious Commercial Crime Investigations
  - Specialised Technical Investigations
    - Cybercrime
    - Digital Forensic Lab
  - Proceeds of Crime/Financial Investigations
    - Money Laundering
    - Asset Forfeiture
    - Investigation Support
  - Forensic Investigation and Specialised Research

The literature further reports that a senior spokesman of the DPCI commented as follows: “We [the Hawks] would like to remind the SACP [South African Communist Party] that the Hawks has one mandate, which is to combat, prevent and investigate all serious corruption and serious commercial crime.” The participants who identified the DPCI as a key agency in the combating of financial crime were asked to explain the responsibility of the DPCI regarding the combating of financial crime. The data presented by the participants disclosed the following information:

- Crime investigation (frequency of 50%)
- Prevent national priority crimes (frequency of 20%)
- Combat national priority crimes (frequency of 20%)
- Investigate priority crimes (frequency of 20%)
- Investigate organised financial crime (frequency of 10%)
- Functions overlap with those of SAPS (frequency of 10%)
- Investigate large and complex commercial crimes (frequency of 10%)
- Investigate large and complex frauds involving listed companies (frequency of 10%)
- Investigate priority commercial crime (frequency of 10%)
- Conduct financial investigations (frequency of 10%)
- Asset recovery investigations (frequency of 10%)
- Investigate financial aspects of crime (frequency of 10%)

- Must implement a multi-disciplinary approach (frequency of 10%)

d. Financial intelligence units

An overview of the literature shows that FIUs play a critical role in the financial investigation process. An FIU is a central, national agency responsible for receiving (and, as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information concerning suspected proceeds of crime or, as required by national legislation or regulation, to counter money laundering.

The literature further lists the core functions of an FIU as follows:

- Centralised repository of reported information
- Analytical function
- Domestic information sharing
- International information sharing.

i. The Financial Intelligence Centre

A review of the literature indicates that the FIC is the South African version of an FIU, and its functions are to:

- identify the proceeds of crime;
- combat money laundering and the financing of terrorism;
- share relevant information with law enforcement authorities, SARS and state security agencies.

The literature states that the work of the FIC includes sharing the products of its analysis with a range of competent authorities, including law enforcement agencies, intelligence services, SARS and supervisory bodies. The information shared by the FIC assists these authorities with discharging their responsibilities by, for example, enabling them to conduct investigations, prosecutions, and the confiscation of assets based on the leads supplied by the FIC.

The participants who identified the FIC as a key agency in the combating of financial crime were asked to explain the responsibility of the FIC in that regard. The data presented by the participants disclosed the following information:

- Making available information to other investigation agencies (frequency of 33%)
- Gathering information (frequency of 22%)
- Exchanging information with external agencies (frequency of 22%)
- Developing financial intelligence (frequency of 22%)
- Combating money-laundering activities (frequency of 22%)
- Identifying proceeds of unlawful activities (frequency of 22%)
- Combating the financing of terrorism (frequency of 22%)
- Processing, analysing, and interpreting information disclosed to it (frequency of 22%)
- Protecting the integrity and stability of financial systems (frequency of 11%)
- Coordinating the exchange of information (frequency of 11%)
- Administrating the AML measures (frequency of 11%)
- Exchanging information with FIUs in other countries (frequency of 11%)
- Informing, advising, and cooperating with investigative authorities, supervisory bodies, the SARS and the intelligence services (frequency of 11%)
- Monitoring and giving guidance to accountable institutions, supervisory bodies, and other persons regarding the performance of their duties and compliance with the provisions of FICA (frequency of 11%)
- Retaining all information received pursuant to compliance with the provisions of FICA (frequency of 11%)
- Identifying money laundering (frequency of 11%)
- Identifying terrorist financing (frequency of 11%)
- Gathering of intelligence (frequency of 11%)
- Reporting and investigating in terms of the FICA (frequency of 11%)



- Supporting investigators (frequency of 11%)
- Dealing with SARs received from financial institutions (frequency of 11%)
- Dealing with the cash threshold reports fed from the financial institutions (frequency of 11%)
- Detecting whether crime has been committed (frequency of 11%)

e. The prosecuting authority

The literature shows that the prosecuting authority is the government agency responsible for representing the State in criminal matters before a criminal court of law.

i. The National Prosecuting Authority

An overview of the literature reveals that South Africa has a single National Prosecution Authority with the power to institute criminal proceedings on behalf of the State, to carry out any necessary functions incidental to instituting criminal proceedings, and to discontinue criminal proceedings. The literature further reveals that the NPA comprises seven core business units, of which the following relate to the prosecution, possible prosecution or combating of financial crimes:

- Asset Forfeiture Unit
- Specialised Commercial Crime Unit

The participants who identified the NPA as a key agency in the combating of financial crime were asked to explain the responsibility of the NPA regarding combating of financial crime. The data presented by the participants disclosed the following information:

- Criminal prosecution (frequency of 40%)
- Prosecution of financial crimes (SCCU) (frequency of 33%)
- Instituting criminal proceedings on behalf of the State (frequency of 16%)
- Power to discontinue proceedings (frequency of 16%)

## ii. Specialised Commercial Crime Unit of the NPA

An overview of the literature explains that the Specialised Commercial Crime Court Unit (SCCCU) of the NPA SCCU was established to improve the investigation, prosecution and adjudication of commercial crime, and was the result of a partnership between the SAPS, the NPA, the Department of Justice, and Constitutional Development and Business against Crime.

The literature furthermore describes the advantages of the model utilised by the SCCU as being that:

- investigations, being the joint responsibility of investigators and prosecutors, are generally better managed and more speedily completed;
- prosecutors are better prepared when their cases eventually come to trial;
- all role-players, magistrates included, understand and appreciate the legal and factual issues at stake in these cases because of their increased expertise and experience.

## iii. Asset Forfeiture Unit

The literature overview indicates that the AFU exists in the office of the National Director of Public Prosecutions. Its focus is on the implementation of Chapters 5 and 6 of the Prevention of Organised Crime Act concerning the seizure of criminal assets.

## f. Financial regulators

The literature discloses that financial regulators, including central banks, are responsible for maintaining confidence in the financial system by ensuring the competence of financial service providers. In addition, financial regulators achieve governance through regulation and supervision.

i. The South African Reserve Bank

The literature shows that the SARB falls under the control of the Ministry of Finance, and the Bank Supervision Department is a component within the SARB resorting under the supervision of the Governor of the SARB.

ii. The Financial Services Board

The literature reflects that the FSB is an independent regulatory institution established by statute to oversee and govern the South African non-banking financial services industry, including securities firms, participation bond schemes, portfolio management, insurance companies, pension funds, and mutual funds falling under the control of the Ministry of Finance.

#### **6.4.6.2 Information sharing as prerequisite for cooperation**

The literature informs us that a necessary prerequisite for effective inter-agency cooperation is the sharing of information, because it is only then that there can be collaboration, which is premised on a clear line of sight among agencies. Timeous exchange of information is crucial to the success of many investigations. Effective sharing of information among investigators and organisations can be hampered by technical, workflow and legal constraints. Establishing operational arrangements to share information may lead to the development of relationships between agencies and key personnel in those agencies that may enhance other forms of inter-agency cooperation.

The data received from the participants showed that they have their own diverse and separate views about the benefits of sharing information and the steps that can be taken to enhance sharing. The data received from the participants further indicated that each of the participants has his own diverse and separate views about the steps that can be taken to improve sharing between agencies. Each of the benefits as viewed by the participants has its own merits and underscores the importance of taking steps to improve the exchange of information between agencies in the combating of financial crime.

A participant who requested to remain anonymous elaborated on measures to improve the sharing of information, stating that “[i]t should be contextualised by understanding its purpose as each area has different needs for information”.

#### **6.4.6.3 Legal gateways**

The literature study shows that for information to be shared, legal gateways must exist between the relevant agencies. Enhanced forms of cooperation can be put in place to obtain the maximum benefit from legal gateways for sharing information that may exist between agencies. The disclosure and sharing of information between agencies must be legally authorised and executed in accordance with the prescribed legal prescripts and procedures for its use in order to be legitimate and admissible in court proceedings. Agencies are restricted with regard to what information they can share with other agencies. The disclosure or sharing of information between different agencies may take on various forms.

The literature further reveals that in the South African context, the release of information by one agency to another may be legally authorised, subject to certain requirements and preconditions having been met, and then only for the purposes for which its use is intended and permitted. The literature also indicates that there are four different categories of legal gateways generally in existence. These are:

- direct access to information contained in agency records or databases;
- a legal obligation to provide information spontaneously (sometimes expressed as a reporting obligation);
- an ability, but not an obligation, to provide information spontaneously;
- an obligation or ability to provide information only on request.

#### **6.4.6.4 Analysis of legal gateways**

The literature shows that a combination of categories for sharing information is applied in South Africa, depending on the legal provisions. An analysis of the various legal provisions indicates that there are distinct provisions for information and records held by:

- The South African Revenue Service

- The Customs Division of the South African Revenue Service
- The South African Police Service
- The Directorate for Priority Crimes Investigation
- The National Prosecuting Authority
- The Financial Intelligence Centre

In this research, the researcher contributes by providing a summary regarding the disclosure of information between agencies, first according to categories for sharing information and then about the agency holding the information in accordance with the prescript of the legal provisions as indicated in the statutes and literature.

a. Information held by SARS

A summary of an analysis of the literature in tabular format, showing the availability of legal gateways to other agencies to obtain information held by SARS, is provided in Table 6.4 below:

**Table 6.4: Availability of legal gateways to obtain information held by SARS**

Categories of gateway in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY SARS				
	SAPS	DPCI	NPA	FIC	CUSTOMS
Direct access to records and databases	No	No	No	No	Yes
Reporting obligation	No	Yes	No	Yes	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.4 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information held by SARS.

b. Information held by the Customs Division of SARS

A summary of an analysis of the literature in tabular format, indicating the availability of legal gateways to other agencies to obtain information held by the Customs Division of SARS, is provided in Table 6.5 below:

**Table 6.5: Availability of legal gateways to obtain information held by Customs Division of SARS**

Categories of gateways in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY CUSTOMS				
	SAPS	DPCI	NPA	FIC	SARS
Direct access to records and databases	No	No	No	No	Yes
Reporting obligation	No	Yes	No	Yes	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.5 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information held by the Customs Division of SARS.

c. Information held by SAPS

A summary of an analysis of the literature in tabular format, indicating the availability of legal gateways to other agencies to obtain information held by the SAPS, is provided in Table 6.6 below:

**Table 6.6: Availability of legal gateways to obtain information held by SAPS**

Categories of gateways in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY SAPS				
	DPCI	NPA	FIC	SARS	CUSTOMS
Direct access to records and databases	Yes	No	No	No	No
Reporting obligation	Yes	No	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.6 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information held by SAPS.

d. Information held by the DPCI

A summary of an analysis of the literature in tabular format, indicating the availability of legal gateways to other agencies to obtain information held by the DPCI, is provided in Table 6.7 below:

**Table 6.7: Availability of legal gateways to obtain information held by the DPCI**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE DPCI				
	SAPS	NPA	FIC	SARS	CUSTOMS
Direct access to records and databases	Yes	No	No	No	No
Reporting obligation	Yes	No	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.7 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information held by the DPCI.

e. Information held by the NPA

A summary of an analysis of the literature in tabular format, indicating the availability of legal gateways to other agencies to obtain information held by the NPA, is provided in Table 6.8 below:

**Table 6.8: Availability of legal gateways to obtain information held by the NPA**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE NPA				
	SAPS	DPCI	FIC	SARS	CUSTOMS
Direct access to records and databases	No	No	No	No	No
Reporting obligation	No	Yes	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.8 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information held by the NPA.

f. Information held by the FIC

A summary of an analysis of the literature in tabular format, indicating the availability of legal gateways to other agencies to obtain information held by the FIC, is provided in Table 6.9 below:

**Table 6.9: Availability of legal gateways to obtain information held by the FIC**

Categories of cooperation in relation to information sharing	AVAILABILITY OF LEGAL GATEWAYS TO OBTAIN INFORMATION HELD BY THE FIC				
	SAPS	DPCI	FIC	SARS	CUSTOMS
Direct access to records and databases	No	No	No	No	No
Reporting obligation	No	Yes	No	No	No
Spontaneous sharing of information	Yes	Yes	Yes	Yes	Yes
Sharing information on request	Yes	Yes	Yes	Yes	Yes

(Source: Analysis of the literature)

Table 6.9 above illustrates the categories of information sharing and the availability of legal gateways to other agencies to obtain information accordingly held by the FIC.

**6.4.6.5 Models for Inter-agency cooperation**

The literature study indicates that there is a resolve by countries to advance and develop operational models that make the most efficient use of the legal gateways that exist for the sharing of information. The study recommends the following mechanisms that can be employed to promote an effective exchange of information and inter-agency cooperation:

- a. Establishing exchange of information systems whereby all incorporated investigative agencies would be aware of previous or ongoing investigations made on the same persons and legal entities to avoid duplication; conducting conflict resolution discussions, and promoting cross-fertilisation.
- b. Establishing policies and procedures that promote the sharing of information/intelligence within intra-agency and inter-agency cooperative frameworks; such policies and procedures should promote the strategic exchange of the necessary information.
- c. Establishing a process whereby intra-agency or inter-agency disputes are resolved in the best interest of the investigation.



- d. Competent authorities should consider setting up written agreements such as MOUs or similar agreements to formalise these processes.

The participants provided data that enabled the formulation of the following benefits of sharing information, as well as cooperation and collaboration:

- The same information is viewed from different perspectives
- It creates various propositions for prosecution
- It clarifies mandates among the respective agencies
- Data held by the various agencies can be compared
- More cost-effective

The literature further indicates that several countries have developed operational models for enhancing the exchange of information and cooperation. These operational models should be viewed as part of a strategy, requiring agencies to cohesively move forward in the same direction towards a common goal.

The data obtained from participants indicate that the respective agencies responsible for combating financial crime are institutionally arranged as follows:

- The various agencies conduct financial crime investigations
- SAPS/DPCI is the leading agency to conduct financial crime investigations
- The various agencies pursue different aspects of financial crimes
- Agencies operate in silos

Also, the response from the participants indicates that the agencies responsible for combating financial crime can also be arranged in accordance with their operational capabilities, which are summarised in Figure 6.2 (paragraph 6.7). The literature shows that in practice, subject to legislative constraints, there is no real limit to the possible ways according to which it is possible to arrange agencies organisationally in order to work together. The literature further indicates that there are several operational models for agencies to make structural arrangements to enable them to work together. The operational models have been identified as consisting of four main structures, namely:

- Joint investigation teams
- Inter-agency centres of intelligence
- Secondment and co-location of personnel
- Other models

The feedback from the participants reflected on the following models that can be applied, or provided examples of such models to improve sharing of information, cooperation and collaboration between agencies:

- The Netherlands Tax and Customs administration Criminal Investigations Department (FIOD) (frequency of 10%)
- ACTT (frequency of 10%)
- Secondment of personnel between agencies (frequency of 10%)
- Joint investigation teams (frequency of 10%)
- Serious Organised Crime Agency UK (SOCA) (frequency of 10%)
- Task teams (frequency of 10%)
- Task forces (frequency of 10%)

a. Joint investigation teams

The literature indicates that financial crimes are complex and sophisticated, and that several are interconnected. Various agencies are involved in the investigation of crimes that interconnect. The literature further indicates that joint investigation teams enable agencies to cooperate, allowing them to share information directly and coordinate investigations, making the best use of various technical skills and legal powers.

b. Inter-agency centres of intelligence

The literature indicates that centres for intelligence are organised in a variety of ways and for different purposes. They are established to coordinate sharing of information and, in some cases, application of practical skills between agencies. Inter-agency centres of information can also focus on operational information or strategic information, and perform analysis of information obtained directly or from other agencies, under legal gateways for information sharing, or by means

of its information-gathering power, where it exists. Inter-agency centres of intelligence offer the following benefits:

- Cost-effective way of obtaining intelligence and conducting analysis
- Each agency gains access to a broader range of experts than what it would generally employ
- Experience is gained in the legal and practical aspects of information sharing, which can be used to improve the effectiveness of legal gateways.

An international example of an inter-agency centre of intelligence is the Australian Crime Intelligence Commission (ACIC). Data received from the participants indicate that the NICOC may be representative of a domestic example of an inter-agency centre of intelligence.

c. Secondment of personnel between agencies

The review of the literature shows that secondments and the co-location of agency officers are used to improve co-working between agencies. It enhances the effectiveness of other forms of inter-agency cooperation, with officials working closer to one another. The literature further indicates that section 17F(2) of the South African Police Service Act makes provision for the secondment of personnel from any other government department or institution to the DPCI.

d. Multi-agency task forces

The literature indicates that where agencies have different information-gathering and -sharing powers, multi-agency task forces have proved to be an effective model for cross-agency collaboration. The literature indicates that the Australian Project Wickenby is a notable example of an effective task force that combined expertise and resources from various agencies working together collaboratively to achieve common goals. The literature further indicates that the ACTT is a South African example of a joint investigation team, comprising specialists from different agencies.

e. Other models

The literature shows that there are also other models of which some are quite innovative, often supplementing other models with regard to sharing information or enhanced cooperation, which may include shared databases, intelligence briefs, inter-agency training sessions and joint committees. The literature further indicates that in South Africa there is the MAWG, which seeks to improve compliance and identify systems solutions to failures within the financial and procurement system.

The feedback from the participants in the study indicates the following formal information-sharing models and mechanisms between government agencies and commerce that are focused on improving the exchange of information, coordination and collaboration in terms of their mandates, as depicted in Figure 6.3 (paragraph 6.7).

#### **6.4.7 Whole-of-Government**

The literature tells us that the system to combat financial crime in South Africa is institutionalised into sector-based, single-purpose agencies with vertical responsibilities for combating certain aspects of financial crime at various stages. The respective agencies operate in isolation. They work in organisational silos, and their efforts have become fragmented, with the result that cooperation and coordination suffer, which renders their efforts ineffective. Agencies carry out their efforts in parallel and focus on their piece of the puzzle. The data received from participants also indicate that agencies operate in silos.

##### **6.4.7.1 Perspectives on silo formation**

The literature shows that governments are organised into vertical silos representing single-purpose agencies, this being one of the shortcomings of the current system of multiple single-purpose agencies responsible for combating financial crime. The reference to silos is used by participants and in the literature to describe a form of organisational arrangement of the main government agencies, cited as a reason why the current system is failing to combat financial crime effectively.

The literature further explains that the concept is based on the traditional view, and the systematic way in which organisations are structured. Organisations therefore appear as a feature of differentiation and specialisation, which lead to reinforcing a tendency common to many bureaucracies, namely that of devoting more energy to the protection of turf than to serving the public.

The data received from the participants in this study also referred to the protection of turf as an inhibiting factor to effective cooperation. The lack of coordination leads to irregularities, which may include duplication of processes and data, conflicts in activities, inconsistency, and duplication of work.

#### **6.4.7.2 *The importance of integration***

The literature states that the term integration is often referred to in relation to Whole-of-Government. The literature tells us that integration is driven by the process of acquiring resources from various agencies. The resources consist of varied disciplines working alongside each other at several levels to ensure that their mandates and roles reinforce each other in improving the impact of activities. The literature further explains that integration implies forming a single multidisciplinary and multi-departmental team to take on a task, and that integration requires cooperation at the operational level, coordination at a mid-level and alignment of strategic objectives at a senior level.

#### **6.4.7.3 *An integrated methodology***

A study of the literature indicates that Section 17B(b)(i) of the South African Police Service Act stipulates that in the establishment of the DPCI, it should be recognised and considered that the DPCI must implement, where appropriate, a multidisciplinary approach and an integrated methodology involving the cooperation of all relevant government departments and institutions.

The data received from the participants explained the meaning of an “integrated methodology and multidisciplinary approach” as having a broad range of meanings, with the most prominent presented being the following:

- Bringing together different skills sets and expertise (frequency of 50%)
- Identifying critical role–players, with investigators and agencies working together for the best possible outcome/common objective (frequency of 20%)
- It is a holistic approach (frequency of 20%)
- Resources across agencies working together with a common objective/purpose (frequency of 20%)
- The involvement and use of various capabilities and legal mandates of different government agencies (frequency of 20%)

#### **6.4.7.4 Contextualising Whole-of-Government**

An overview of the literature reveals that Whole-of-Government has its origins in a public management approach that moves away from structural devolution, disaggregation, and single-purpose organisations. It is based on an argument presented in the literature that the horizontal challenge has become greater than the vertical because the number of sectoral pillars or silos that have been created appears to obstruct solutions to horizontal problems, bringing about greater fragmentation and complexity.

#### **6.4.7.5 Conceptualising Whole-of-Government**

From the definitions provided in the literature, conceptualising the term Whole-of-Government, the researcher was able to formulate the following practical definition to demonstrate Whole-of-Government’s applicability as an enabler to foster cooperation in order to combat financial crime more effectively:

Whole-of-Government, in the context of combating financial crime, denotes key agencies working across portfolio boundaries to achieve a shared goal and an integrated response to barriers that prevent effective cooperation, collaboration, sharing of information and resources. Approaches may be formal or informal, focusing on policies and operational agreements to combat financial crime, and on development and implementation of organisational

structures to carry out Whole-of-Government work in efforts to combat financial crime.

The data received from the participants indicate that Whole-of-Government is not a universally understood concept and that it is viewed as a buzzword being lobbied about, or that it is being used as a catchphrase that does not find application in the field. From a practical perspective, cooperation between all government departments plays a role in combating financial crime, and in the sharing of resources to a single body (single-agency performing more than one purpose) responsible for combating financial crime. The participant's response focuses on the investigation and prosecution of financial crime.

#### **6.4.7.6 Operationalising Whole-of-Government**

The literature indicates that in order to implement a Whole-of-Government approach, a shared understanding of what it means to work in a Whole-of-Government manner is essential, and requires a mentality among officials to willingly work together to achieve common outcomes of a social nature, as opposed to serving the specific interest of individual agencies. The literature further explains that this may involve some changes in structures and legislation, but most importantly, it requires a change in organisational culture and individual expectations. Horizontal coordination and integration are implanted in the process of policy design and implementation. The day-to-day realities of trying to work across boundaries are the real challenge of Whole-of-Government work, translating to what the researcher likens to a close fellowship between the respective agencies. The literature suggests that when a decision must be made as to whether a Whole-of-Government approach is an appropriate response, every situation should be evaluated on a case-by-case basis.

The data produced by the participants regarding what it means to implement a Whole-of-Government approach to combat financial crime more effectively focused on the following themes:

- Coordination between departments (40% frequency of theme)

- The Whole-of-Government and society to target crime as a collective concern and responsibility (30% frequency of theme)
- Working towards a common goal/objective (30% frequency of theme)

All the participants in this study agreed that a Whole-of-Government approach in the South African context is a viable approach to ensure inter-agency coordination, cooperation and collaboration in efforts to combat financial crime more effectively. One of the participants expressed his/her opinion as follows:

The Whole-of-Government approach is currently the only viable approach to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively.

#### **6.4.7.7 *Practical underpinning of Whole-of-Government***

The literature shows that implementing a Whole-of-Government approach can be justified by the need to:

- eliminate silos;
- prevent departments working in isolation from each other;
- achieve a seamless (integrated) government approach;
- avoid having various cross-cutting policies undermining each other;
- optimise the impact of Government by using all the resources at the disposal of the State in an integrated way to deliver specific outcome;
- reduce costs and inefficiencies.

According to the data received from the participants about what it means for various agencies to work together, across agency boundaries, with the aim of combating financial crime through inter-agency coordination, cooperation and collaboration, following a Whole-of-Government approach, the following exposition is provided:

The fight against serious crime and corruption is a continuous and dynamic process, and as new



manifestations are revealed, gaps in the existing approach, strategies, interventions and application of existing legislation and policies are identified for review and strengthening. In the majority of Government's recent policy deliberations, and its strategic policy documents, we [Government] acknowledge the significant challenges posed by crime and corruption and how it undermines good governance, state authority and service delivery.

These challenges and its [their] root causes have been clearly articulated in the National Planning Commission's Diagnostic Report in 2011 and in the 20-Year Review. The NSS approved by Cabinet in December 2013 elevates countering corruption and serious crime to a national security priority. This compels the Government and various agencies to work together and adopt a "Whole-of-Government" approach towards executing their mandate through a multi-disciplinary approach.

This approach places new demands for executive and operational capabilities and structures in collaboration with other stakeholders such as the NICOC for addressing national priority offences.

Such an approach would be dependent on the following key factors:

- The development of a collective approach across [throughout] Government to target the financial systems and benefits of crime.
- The joint planning and governance to embed such an approach in an outcome-based planning framework for Government, government clusters and the

departments through its [their] strategic and operational plans and budget submissions.

- The collective development of new crime-fighting practices and capabilities in line with the FATF.

#### **6.4.7.8 *Benefits of Whole-of-Government***

The literature states that the benefits of Whole-of-Government are as follows:

- **The ability to:**
  - Integrate resources
  - Confront problems early
  - Share information timeously.
  - Allow governments to act preventively and pre-emptively, thus mitigating cost and severity of issues / “wicked” problems
- **It increases or improves:**
  - Efficiency
  - Information sharing
  - Working environment
  - Competitiveness
  - Accountability
  - Policy coherence, and
- **Decreases or reduces:**
  - Costs
  - Waste
  - Duplication of work
  - Conflicting policies
  - Time needed to complete a task

#### **6.4.7.9 *Organisational structures for Whole-of-Government***

An overview of the literature indicates that different governments have mixed approaches on how to manage Whole-of-Government responses consistent with their philosophies and approaches to public sector management, cognisant that there is no “one size fits all” approach. There are several organisational options available to deliver outcomes across organisational boundaries successfully that

would match the task. Agencies could recommend which best practices to follow, depending on the mechanism selected to perform the Whole-of-Government work.

The literature furthermore explains that Whole-of-Government work could be aimed at:

- an organisational level, for example interdepartmental, national or local level;
- particular social groups such as disabled persons and the youth;
- a specific policy issue, for instance, the Information and Communication Technologies Policy for South Africa;
- a specific geographical area such as the regeneration of a city centre;
- a mode of service delivery such as a one-stop system for social grants and services.

The literature offers several possible organisational structures that could be used for Whole-of-Government work, namely:

- Task forces
- Interdepartmental partnerships, forming joint teams
- Cross-departmental partnerships, forming agency arrangements
- Special-purpose agencies, forming frontier agencies

#### a. Interdepartmental Committees

The literature states that in the South African context, the corresponding term for an Interdepartmental Committee is likely to be an Inter-Ministerial Committee. IMCs form part of the establishment of a new system of governance to enhance efficiency and effectiveness to serve a particular purpose that is deemed to require the dedicated attention of a certain team of ministers responsible for streamlining and coordinating the work of Government for faster and better results. Their mandates are limited to the matter that they are established to execute. The concept is not an unfamiliar concept in the South African context and has found application in the ACIMC to coordinate and oversee the work of

state organs aimed at fighting and combating the scourge of corruption in public and private sectors.

b. Task Force/Task Team

A study of the literature indicates that a modality for organising structures for Whole-of-Government work that has become popular in recent years is task forces, aimed at addressing specific issues and whose lifespan is limited by their nature, task forces bring the capacity to do fresh and original work and have proved to be very effective at solving difficult problems and developing complexly integrated packages. They enable highly-skilled agency officials to put their departmental interests behind them and join expert and creative outsiders to focus on developing outcomes backed by comprehensive analysis. The concept is not unfamiliar in the South African context and has found application in the form of the ACTT, under the auspices of the DPCI, to better coordinate Government's efforts to deal with issues of corruption and fraud.

c. Interdepartmental Joint Teams

The literature indicates that joint teams represent a new and relatively uncommon form of interdepartmental cooperation. Joint teams differ from task forces because they are mixed structures that do not stand on their own. A joint team does not represent a separate unit reporting to and through one head who has the final say. Joint teams consist of employees from two or more departments working together in a common management structure while continuing to be subject to the management control of the relevant head of their original agency. The concept is not unfamiliar in the South African context, where joint task teams are required in cases of complex issues, such as an intricate criminal investigation where a high level of cooperation is required, and clear governance arrangements exist.

d. Cross-departmental Agency Arrangements

A study of the literature shows that another form of organisational adaptability of Whole-of-Government structures is for an existing government department or agency to deliver services on behalf of one or more others. The concept is not unfamiliar in the South African context where, for instance, the Customs Division

of the SARS constitutes a good domestic example of one agency delivering services on behalf of others.

e. Special-purpose Frontier Agencies

Special-purpose agencies or frontier agencies are created outside of the normal departmental structures symbolising their Whole-of-Government status. Creation of these agencies is facilitated by amendments to existing legislation and the introduction of new laws. An agency is created outside of normal departmental structures to deal with issues that are important. The concept is not unfamiliar in the South African context, and it has found application in, for example, the Border Management Authority, established by the Border Management Authority Act.

**6.4.7.10 Organising a structure for Whole-of-Government work**

The literature indicates that there is no single favoured blueprint for organising a structure for Whole-of-Government work. The findings regarding the various organisational options should help when considering what the most suitable organisational structure is for Whole-of-Government. It will depend on the requirements of the relevant agencies and the desired outcomes. With regard to the complexities of financial crime, the symbiotic nature, and the many key agencies with different mandates involved at various stages, plus the notion that there is no “one size fits all” approach, Government policymakers or heads of agencies should consider which of the organisational structures are best suited for Whole-of-Government work.

The literature informs us that the establishment of a Border Management Authority provides an example of a blueprint for further exploration on what a prospective model for a front-line agency to combat financial crime may look like if further pursued and developed. It is against the backdrop of having explored various organisational arrangements examined in this chapter that the researcher proposes that a special-purpose frontier agency must provide a model for a long-term Whole-of-Government solution to combat serious financial crime. However, any of the other organisational modalities for Whole-of-Government, work

depending on the specific requirements, could have been explored, using the guidelines provided for direction.

During the interview, the participants were asked the question how, in their opinion, a Whole-of-Government approach should be applied (organised) to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. A participant, requesting to remain anonymous, provided the following detailed exposition to the researcher regarding the question posed (interview with P009: 2017):

A multidisciplinary unit consisting of representatives of all the different government units involved in combating and investigating financial crime, co-located and working in teams where each prosecutor and investigating officer (primary responsible persons) and each other individual assigned to the team take collective responsibility for the cases assigned to them. The ideal would be to limit the cases dealt with by these teams to those cases that has [sic.] the most potential to bear fruits, save or make money for the State [AFU] and would have the biggest effect of discouraging financial crime.

The participant added the following thoughts (Interview with Participant 009: 2017):

Such a unit could function very similar to the previous OSEO [Office for Serious Economic Offences] – before it became the Scorpions [The Directorate of Special Operations]. However, they will prosecute their own cases and not refer them to any Director of Public Prosecutions offices.

During the interview, the participants were asked the question as to how, in their opinion, a Whole-of-Government approach should be applied (organised) to

ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively. A participant, requesting to remain anonymous, provided a schematic drawing of how he/she saw the implementation of a Whole-of-Government approach to combat financial crime. Figure 6.4 (paragraph 6.7) represents a graphic depiction of a structure for combating financial crime according to a Whole-of-Government approach, incorporating organisational and institutional components from a participant's viewpoint. It epitomises organising different agencies to conduct Whole-of-Government work according to a special-purpose agency. Due to the participant's handwriting being identifiable on the draft schematic drawing presented to the researcher, the researcher converted it into graphics as presented in figure 6.4 (interview with Participant P010:2017).

The participant's view is based on a three-tier level of responsibility, with one department, namely the Department of the Treasury, taking the overall political responsibility and the other departments sharing functional responsibilities for combating financial crime via the agencies reporting to the various political heads. The coordination of these functions should be undertaken by a secretariat consisting of the relevant directors-general of the relevant departments. The above-mentioned concept corresponds to features of the FIOD model shown in Figure 5.2 (paragraph 5.14), where in this case the secretariat can be seen to fulfil the coordinating and operational function of the FIOD.

An overview of the literature shows that there are several models available for organising key investigative agencies responsible for combating financial crime to make a Whole-of-Government approach work. The literature further indicates that many of the organisational models have already found application in the South African context and in the realm of combating financial crime. Many of the organisational structures proposed for organising Whole-of-Government work also facilitate cooperation and sharing of information between various agencies in the combating of financial crime.

#### **6.4.7.11 A conceptual Front-line agency model**

The proposal for a conceptual model takes some of its leads from the public management principles related to Whole-of-Government examined in this research, the expositions from the participants and, in a broad sense, the arrangement of the FIOD and the example provided for in the development and establishment of a single special-purpose frontier border management authority. In the Netherlands, just as in South Africa, the responsibility for combating financial crime is distributed among various agencies. Similarly, the responsibility for managing the security and safety of South Africa's borders is also spread among several agencies.

Based on the discussion and examples in the literature of an organisational structure for a frontier agency to facilitate a "Whole-of-Government" approach, the researcher developed a conceptual model for an agency to combat financial crime. The example of a special- (single-) purpose frontier agency with the objective of combating serious financial crime is depicted in Figures 5.4 (paragraph 5.12) and 6.4 (paragraph 6.7), representing the contribution of the researcher. It contains elements of Whole-of-Government organising, operations and institutions, in accordance with Figures 4.2 (paragraph 4.8), 4.3 paragraph 4.8), 5.2 (paragraph 5.14), and 5.3 (paragraph 5.14), as supported by accompanying literature and data from the participants.

### **6.5 RECOMMENDATIONS**

Based on the findings made in this study, the following recommendations are proposed:

#### **6.5.1 The concept, nature, characteristics and examples of financial crime**

To overcome the problem of the loose and ill-considered use of the term financial crime in official communications, it is recommended that communicators do the following:

- Familiarise themselves with the meaning and scope of the phrase financial crime



- Familiarise themselves with the type of unlawful conduct that falls within the category of financial crime
- Quote the proper examples of crimes and behavioural conduct this research has shown to fall within the classification of financial crime when officially communicating about financial crime
- Avoid the interchangeable and analogous use of the terms commercial crime, economic crime, white-collar crime and financial crime when officially communicating about financial crime
- To prevent the risk of diverse understandings of the meaning of the term financial crime when developing strategies, actions or policies that deal with financial crime, developers must ensure that they know what it is that they must combat. It is recommended that developers familiarise themselves with the meaning of the term financial crime as explained in this report
- It is recommended that the following definition derived from this research could aid in understanding the concept financial crime in general from a South African perspective:

Financial crime is understood to be a subspecies of the category of offences generally referred to as economic crime or commercial crime that specifically targets and abuses the financial sector, systems and institutions, or property belonging to another, in order to gain access or control thereof, or to convert it for one's own personal use or benefit, that generally results in a financial loss and is non-violent and profit-driven. It may involve fraudulent activity, deception, breaches of trust, concealment of the truth, often including crimes such as fraud, theft, corruption, money-laundering and tax evasion.

- It is recommended that the following characteristics of financial crime be considered for correctly identifying or classifying financial crime:
  - Makes use of fraud/misrepresentation
  - Direct or indirect financial/monetary loss for victim

- Attains a direct or indirect financial/monetary advantage/gain/benefit
- It is aimed at illegally obtaining property
- Focuses on money
- Non-violent
- It is a crime aimed at the financial systems of a country
- The focus is on the criminal economy and business systems
- Makes use of fraud/misrepresentation
- The proceeds are invariably concealed/laundered
- The following offences, as a rule, can be included when providing examples of financial crime:
  - Money laundering
  - Corruption
  - Terrorist financing
  - Tax evasion
  - An offence in terms of the Financial Sector Regulation Act (when implemented)
  - An offence in terms of the definition of financial crime, as defined in section 1 of the Financial Sector Regulation Act (when implemented)
  - Unlawful conduct in accordance with a combination of the characteristics, aims and definition of financial crime, as outlined in this document

### **6.5.2 The systematic categorisation of financial crime**

To overcome the omission in the National Crime Statistics of not making provision for a category of offences referred to as financial crime, the following recommendations are made:

- The national crime statistics must include a separate category of financial crime to provide reliable information in order to guide policy development and planning in the criminal justice system.

- Reliable financial crime information, together with the parallel evolution of an effective communications strategy based on such information, can properly guide public opinion in the fight against financial crime.

A meaningful, systematic method of classification of financial crimes in accordance with universal behavioural descriptors, irrespective of whether they are sourced from the common law or from the statutes (events-based system of classification), is proposed to overcome the problem of confusion caused by different definitions and concepts to categorise financial crime that are often based on strict legal definitions and categorisations of crime. To enhance uniformity and international compatibility when referring to financial crime and to assist public officials and other users to tailor their responses to combat financial crime for the development of policies and strategies in relation thereto it is suggested that the proposed events-based system of classification be used.

### **6.5.3 Combating of crime**

To avoid terminological confusion regarding the use of the terms crime combating and crime prevention it is recommended that the terms be treated as two separate concepts, where it is understood that the term prevention of crime is always part of the broader concept of crime prevention, while the phrase combating of crime can never be part of crime prevention, and combating of crime is an umbrella term for all kinds of activities designed to combat crime.

To aid in conceptualising the concept of crime combating and associated activities it is recommended that the term combating of crime be understood to include the following:

- Crime prevention
- Investigation of crime
- Crime detection
- Crime intelligence

To keep abreast of the criminal landscape, it is recommended that the conceptual definition of investigation of crime be extended to include asset forfeiture,

intelligence gathering, disruption of criminal networks and taxing the proceeds of crime, as objectives of the criminal investigation process.

To combat crime effectively and achieve the most cost-effective deployment of resources during prevention and proactive investigations, it is recommended that during the combating of crime:

- crime intelligence be optimally utilised;
- awareness be created regarding the value of crime intelligence;
- capacity be developed to analyse crime intelligence;
- the role and function of the FIC with regard to financial intelligence during the investigation of financial crime be fully appreciated and employed;
- the cooperation between the respective agencies be improved to include sharing and development of crime intelligence.

#### **6.5.4 Combating of financial crime**

To combat financial crime effectively in view of the symbiotic relationship between financial crimes in general, corruption, money laundering, interconnectivity with tax evasion and financing of other illegal activities such as terrorism, it is recommended that government policies, strategies, plans, White Papers, legislation and other efforts consider a holistic view of financial crime and to not differentiate between specific financial crimes, for example only corruption.

As regards the problem of corruption and money laundering co-occurring and the presence of one tending to create and reciprocally reinforce the frequency of the other, it is recommended that these crimes should be investigated in a systematic and integrated fashion.

Realising that reactive resources will not match the sheer volume and frequency of financial crime, it is recommended that a hostile environment be created for perpetrators of financial crime by means of more effective crime-combating efforts, and that efforts be combined to include Government, business and society as a whole.

To overcome the perception that there is no concerted effort by the Government to accomplish a multidisciplinary and integrated synergy across agency boundaries during the combating of financial crime, it is recommended that public institutions and forums such as the JCPS, MAWG and ACTT do the following:

- Be more transparent in revealing what their activities entail with regard to improving cooperation between agencies and the integration of resources during the combating of financial crime
- Publish successes and achievements, giving insight regarding the level of cooperation and roles of other agencies in achieving successes
- Explain what their objectives are in relation to combating financial crime and how they aim to achieve results
- As opposed to advocating ideas, strategies or plans resulting in rhetoric, take active steps to implement such activities and make them known publicly
- Communicate the high-level decisions taken and strategies developed to the practitioners on the ground

#### **6.5.5 Sharing of information**

To overcome and ease the process of complex or lengthy procedures for an agency to obtain information from another through the secure legal gateways, it is recommended that one piece of legislation provide the legal basis or authority for sharing information between the key agencies to combat financial crime and to use in criminal proceedings.

To overcome the lack of awareness of the availability of information from another agency or other mechanisms for cooperation it is recommended that training interventions should include a module regarding the existence of legal gateways as indicated in this research, the correct procedure to request information, the circumstances under which information can be requested, and under which legislative provision it must take place.

Where MOUs have not been entered into between respective agencies to provide for operational agreements on how to obtain information from another agency or to ascertain other mechanisms for cooperation, or there is a lack of specialist knowledge that reduces the effectiveness of gateways to information that may exist, it is recommended that signing such MOUs should be considered.

Where MOUs have been signed between agencies to facilitate and ease operational procedures to obtain information from one another, it is recommended that the provisions of the MOUs be sufficiently inculcated upon members of agencies to correctly interpret those provisions.

#### **6.5.6 Inter-agency cooperation**

Given the complexity of financial crime investigations and multi-faceted nature of financial crime, it is recommended that the combating of financial crime in all its facets not be undertaken by a single agency acting in isolation.

To ensure that the full benefits of inter-agency cooperation are achieved, it is recommended that the institutional framework (key agencies) be considered when strategies for inter-agency cooperation are developed. It is recommended that the sharing of information be considered as a prerequisite for effective inter-agency cooperation during the combating of financial crime.

It is also recommended that the exchange of information among agencies during the combating of financial crime should be contextualised by understanding its purpose, as each area or category has different information requirements:

- The management of financial crime risks relating to information sharing by and within those areas affected by financial crime, should be examined/understood for the purpose of reducing vulnerability, risk exposure, or potential harm that could be associated with the maturing of such risk. Government finances, the economic sector and industry, and civil society are three key nodal points where financial crime poses economic risks over the short, medium and longer terms.

- The financial crime threats in their various forms posing a direct threat to national security, the well-being, development and upliftment of the South African people, the stability of the Republic, the constitutional order and state institutions, and the sustainable growth and development of the South African economy should be determined.
- The creation of formal working relationships between Government and industry to enable an effective, coordinated and integrated strategic approach towards the prevention, combating and investigation of serious crimes, including financial crime. The formal arrangements can be facilitated by the SAPS as the Government partner. Such formal arrangements aim to secure an undertaking by both parties to work towards long-term strategic and coordinated mechanisms between the Government and industry to combat financial crime.

It is recommended that to enhance inter-agency cooperation, operational models have to be developed that make the most efficient use of the legal gateways that exist for the sharing of information. It is recommended that the following mechanisms be employed to promote an efficient exchange of information and inter-agency cooperation, and to avoid duplication:

- Establish exchange of information systems where the incorporated investigative agencies are consistently aware of previous and ongoing investigations regarding the same persons or legal entities.
- Establish policies and procedures that promote the strategic sharing of the necessary information within the intra-agency and inter-agency institutional framework.
- Establish processes to resolve inter-agency disputes.

#### **6.5.7 Whole-of-Government**

To understand the driving force behind advocating a Whole-of-Government approach it is recommended that the formation of silos and the risks they present related to single-purpose agencies being assigned the responsibility for combating financial crime be inculcated upon practitioners.

To understand the benefits and operationalisation of a Whole-of-Government approach, it is recommended that the meaning of the concept integration be impressed upon practitioners as a prerequisite for undertaking Whole-of-Government work. To successfully operationalise Whole of Government work it is recommended that the sense of the concept be inculcated upon practitioners before operationalising Whole-of-Government work.

It is recommended that a Whole-of-Government approach be considered for implementation where, during the combating of financial crime, a requirement has been identified to:

- eliminate silos;
- prevent departments from working in isolation from each other;
- achieve a seamless (integrated) Government approach;
- avoid having various cross-cutting policies undermining each other;
- optimise the impact of Government by using all the resources at the disposal of the State in an integrated way to deliver specific outcomes;
- reduce costs and inefficiencies.

It is recommended to ensure that the Whole-of-Government approach is viable, to result in inter-agency cooperation and collaboration to combat financial crime more effectively, by using one or more of the following organisational models:

- Task forces
- Interdepartmental partnerships forming joint teams
- Cross-departmental partnerships forming agency arrangements
- Special-purpose agencies forming frontier agencies

#### **6.5.8 Models for organising Whole-of-Government work**

##### **a. Task Force/Task Team**

It is recommended that a task force or task team, as an organisational model for Whole-of-Government work to combat financial crime, be considered where there is a requirement to address a specific issue and time is of the essence. This will enable highly skilled officials to put their departmental interests aside and focus on developing positive outcomes.



b. Interdepartmental Joint Teams

It is recommended that interdepartmental joint teams, as an organisational model for Whole-of-Government work to combat financial crime, be considered so that officials from two or more agencies work together to deliver shared outcomes in a mixed functional organisation where successes can more readily be achieved jointly than separately. The officials will continue to be subject to the management control of the relevant heads of their respective agencies.

c. Cross-departmental Agency Arrangements

It is recommended that interdepartmental joint teams, as an organisational model for Whole-of-Government work to combat financial crime, be considered, when one agency can perform a duty or task on behalf of another agency in cases where seamless delivery is required, or the other agency is better equipped and staffed with a better skill set.

d. Special-purpose Frontier Agency

To optimise the legal framework, capacity and skill set to combat financial crime it is recommended that the current institutional and organisational frameworks be harnessed under the strategic and operational control of a special-purpose frontier agency, as referred to in paragraph 5.11 of this research report.

It is recommended that a special-purpose frontier agency as an organisational model to combat financial crime be considered where a Whole-of-Government approach to a contentious and complex issue is created outside of the normal departmental structures, where expertise, impartial advice and programme administration are required.

It is further recommended that the conceptual frontier model developed in accordance with the information received from the participants and the literature and elaborated on in paragraph 5.11 of this research report be considered as a viable baseline model for implementation by the authorities in South Africa to combat financial crime more effectively.

## 6.6 CONCLUSION

It has been almost seven years since a delegation of high-ranking South African public officials returned from a Tax and Crime Conference held in Oslo, Norway where, among other things, it was concluded that “developing countries can also benefit from the Whole-of-Government approach and, in particular, significant improvements could be achieved through early detection, effective investigation, prosecution and recovery of assets through the use of appropriate tools.” However, based on data obtained in this research, it has been found that efforts to combat financial crime effectively still suffer from a lack of integration, inter-agency cooperation, collaboration and sharing of information covering tax, law enforcement, anti-money laundering agencies and others, as appropriate.

This study was conducted with the aim of evaluating the prospect of Government using a Whole-of-Government approach to enable integration of efforts, inter-agency cooperation, collaboration, and sharing of information between the key investigative agencies responsible for combating financial crime. These efforts can be implemented as a model to combat financial crime more effectively. In this research project, the researcher conducted a study of the literature, both international and national, to gain an understanding of the problem being researched. The researcher established the meaning of financial crime as viewed from an international as well as national perspective and determined how it could be categorised systematically. He reviewed the relevant legislation that informs the South African legal framework to combat general crime and financial crime, providing the authority and legal mandate to key agencies, establishing the institutional and policy frameworks, and allowing for cooperation and sharing of information. The researcher further conducted a study of the literature to determine what working in accordance with a Whole-of-Government approach entailed, and whether it could be implemented to correspond to available models that exist internationally. The researcher had to establish the prospect of implementing a Whole-of-Government approach against the background of the domestic legal, institutional and organisational frameworks, and the possibility of the existence of constraints weakening such prospects.

Using a qualitative research approach in this study permitted the collection, integration and presentation of data from a variety of sources that followed after studying the participants in their real-world settings and studying the text in documents (document study – p. 51) that provided detailed insight into the phenomenon of financial crime and efforts to combat it effectively. Obtaining data from more than one source added the methodological benefit of the ability to triangulate between the different sources to establish convergence and intersection of lines of enquiry or themes.

Data were obtained from participants who are officials attached to the key investigative authorities responsible for the investigation and prosecution of financial crime in accordance with a purposive sample where the participants were identified by the respective heads of the departments as knowledgeable and experienced enough to be interviewed. Although there are other agencies involved in the combating of financial crime, the interviews were focused on the agencies mandated to conduct criminal investigation, gather intelligence and prosecute financial crime, often seeking cooperation and sharing of information.

The research aim was accomplished by responding to the following research questions:

- a. What do the concept, nature and characteristics of financial crime entail?
- b. How can financial crime be categorised systematically (codified) in practical terms, using as a reference a descriptor of unlawful conduct?
- c. What does combating or to combat crime entail within the South African legislative, policy and strategic framework?
- d. Which are the key investigative agencies responsible for combating financial crime?
- e. What institutional models for ensuring inter-agency cooperation and integration of efforts for combating financial crime are available, considering the legal framework providing for legislative mandates and sharing of information?
- f. What does the concept Whole-of-Government entail and how can it be applied or adapted for implementation by the Government to serve as a

model framework to ensure effective multi-agency cooperation and integration of efforts to combat financial crime?

- g. Are models for implementing a Whole-of-Government approach available to support Government in carrying out an organisational system, using all its key agencies and integrating its efforts to combat financial crime more effectively?

Even in today's terms, the inconsistent and careless use of the term financial crime creates confusion for policymakers, practitioners and officials tasked with combating financial crime. This confusion is exacerbated by the interchangeable use of the terms financial crime, commercial crime and economic crime when the intention is to refer to financial crime or vice versa. The conceptualisation, nature and characteristics of financial crime identified during this study contribute to an understanding of the phenomenon of financial crime from a South African perspective. The theoretical findings assisted in developing practical applications. The significance of a model to systematically and methodically categorise or classify financial crime is that such a method of categorisation avoids issues created by legal complexities, resulting in a simplified, applicable classification. Such a model can be used to set up a register or guide to financial crime that can be updated as new instances of unlawful conduct are identified throughout the development of the changing criminal landscape.

The discovery in this research of what the concept to combat crime or combating of crime and, more explicitly, financial crime entails, provides a lens through which the landscape of all efforts, i.e.:

- prevention
- detection
- intelligence
- investigation
- prosecution; to combat financial crime, can be viewed panoramically (360 degrees) to include sight of:
  - The legal framework
  - The policy framework

- The institutional framework
- The organisational framework.

The realisation achieved through this research of the complex, symbiotic and interconnectedness between financial crimes dictates that there should be a unified integration of all efforts and existing frameworks that culminates in the development of a theory of a Whole-of-Government approach to combat financial crime effectively. Based on the information obtained in this research, it is determined that inter-agency cooperation and sharing of information between agencies responsible for combating financial crime are an antecedent for Whole-of-Government work and as such presents several institutional models for cooperation that could overlap with those presented as models for Whole-of-Government work.

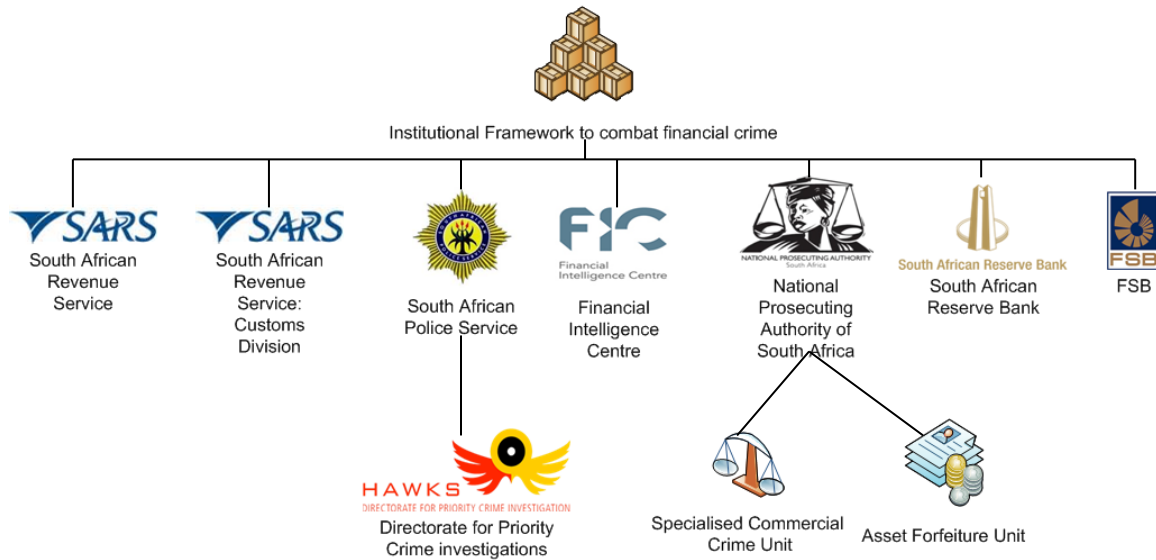
The understanding of the concept Whole-of-Government gained through this study as an approach to public management assisted with the development of a model with the potential to organise the available agencies to do the work of combating financial crime. It is proposed that using a Whole-of-Government approach is a worthwhile approach for Government to consider in order to combat financial crime more effectively.

South Africa already has a robust legal framework and institutional framework to combat financial crime. The implementation of a successful Whole-of-Government approach will most likely depend on the development of a policy framework and possible legislation to establish a special-purpose frontier agency backed by the political will to implement and make it work.

The researcher is of the view that this study offers an important contribution to the understanding, categorisation and combating of financial crime, as well as the legal and institutional frameworks for cooperation and exchanging information in South Africa. In addition, a conceptual model for implementing a Whole-of-Government approach to combat financial crime more effectively is presented.

## 6.7 TABLES AND FIGURES REFERRED TO IN CHAPTER 6

**Figure 6.1: Institutional arrangement of key agencies to combat financial crime**



(Source: Adaptation of Figure 4.2)

**Table 6.1: Examples of financial crimes in the literature**

Financial crime	Frequency (%)	Financial Crime	Frequency (%)
Money laundering	92	Bankruptcy fraud	8
Insider trading	77	Securities fraud	8
Fraud	46	Serious fraud	8
Embezzlement	46	Insurance fraud	8
Identity fraud	38	Consumer fraud	8
Tax evasion/fraud	38	Bid-rigging	8
Stock manipulation	38	Inflated invoices	8
Bribery and corruption	38	External fraud	8
Cheque fraud	23	Financial statement fraud	8
Terrorist financing	23	Accounting fraud	8
Corporate fraud	15	Theft of cash	8
Advance-fee fraud	15	Inventory theft	8
Financial fraud	15	Misappropriation schemes	8
Mortgage fraud	15	Circumvention of exchange restrictions	8
Cyber attacks	15	Sale of fictitious financial instrument	8
Pyramid scheme	15	Sale of fictitious insurance policies	8
Credit card fraud	13	Computer-related crimes	8
Medical fraud	8	Extortion	8
Point-of-sale fraud	8	Blackmail	8
Healthcare fraud	8	Organised crime	8
Currency fraud	8	Ponzi scheme	8
Basic company fraud	8	Drug mules	8
Subsistence claims	8	Bank account fraud	3
False documentation	8		

(Source: Data captured in Table 2.7)

**Table 6.2: Examples of common-law and statutory financial crimes presented by the participants**

Common-law Crimes		Statutory Offences	
Financial crime	Frequency (%)	Financial Crime	Frequency (%)
Fraud;	90	Tax evasion	90
Theft:	50	Money laundering	70
Tax fraud (evasion)	40	Corruption	60
Forgery	40	Terror financing	30
Cheque fraud	20	Racketeering	30
Plastic fraud	10	Counterfeiting	20
Investor/investment fraud	10	Transfer pricing	10
Ponzi schemes	10	Offences involving fraud	10
Customs fraud	10	Cybercrime	10
Banking fraud	10	Reckless and fraudulent trading	10
Advance-fee fraud	10	Share offer without prospectus	10
Fraud relating to transactions between corporate entities.	10	False prospectus	10
Double discounting of instalment sales agreements	10	Deposit-taking without being registered	10
Manipulation of a computer to commit fraud	10	Exchange-control regulations	10
Fraud related to Internet transactions	10	Under-declaration of customs value	10
Kite-flying	10	Operating an unlicensed medical scheme	10
Mortgage	10	Failure to report money-laundering activity	10
Theft by trustees or liquidators of assets belonging to an estate	10	Identity theft	10
Embezzlement	10	Securities fraud	10
Extortion	10	Contraventions of POCA	10
Cybercrime	10	Contraventions of PRECCA	10
Uttering	10	Contraventions under the Customs and Excise Act	10
Corruption	10	Drug trafficking	10
Counterfeiting	10		

(Source: Feedback from participants)

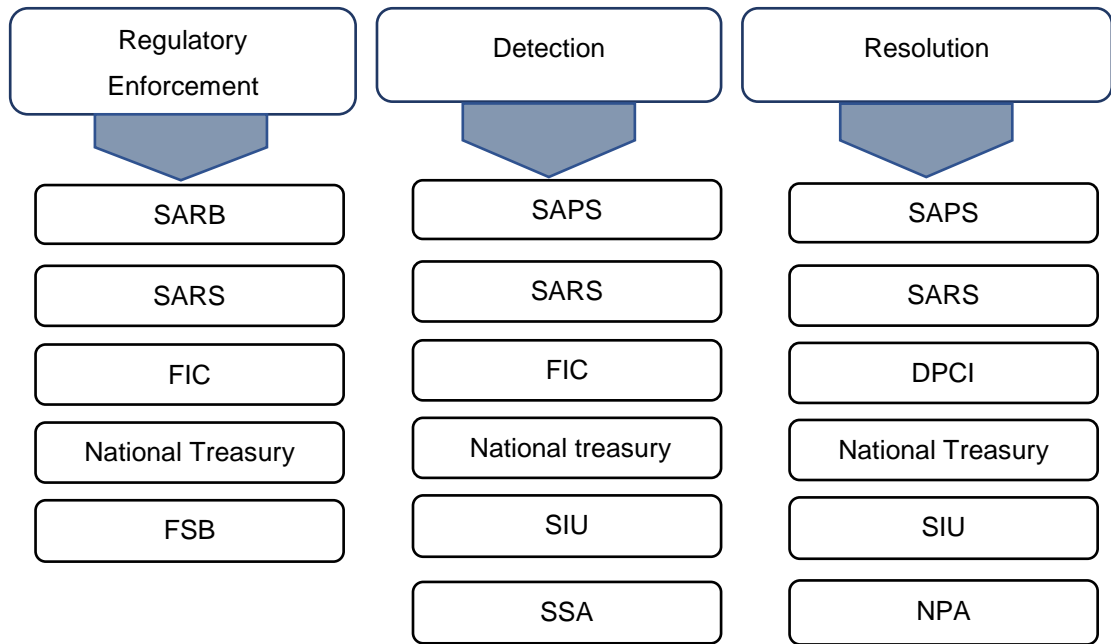


**Table 6.3 Themes presented by participants to explain why they believe that financial crime is not combated effectively in South Africa**

Participants' themes	Frequency (%)	Participants' themes	Frequency (%)
Mandates and functions are not collectively coordinated	50	Intelligence not directed at protecting the financial system.	10
Weak and unstructured public sector inter-agency co-operation	40	No common line of sight between departments	10
They have different views of what financial crime entails	20	Lack of information sharing	10
Fragmented approach	20	Guarding of own turf	10
Lack of skills	20	Regulators do not enforce and monitor offenders	10
Lack of qualifications	10	Regulators do not follow up and monitor indicators of crime	10
Weak and unstructured private sector cooperation	10	Regulators tend to focus on licenced individuals and entities	10
No – Lack of resources	10	Agencies do not act in time, leaving it to others to do the job	10
Lack of knowledge	10	Crime intelligence fails to identify and monitor suspicious individuals	10
Dissonance about who investigates what	10	No - High incidence of financial crime is testament to ineffectiveness	10
Loss of focus	10	Too many perpetrators get off scot-free	10
Different mandates in SAPS' units responsible for investigating financial crime	10	Too much time lapse between commissioning and conviction.	10
Absence of governance structure to direct efforts	10	No - Driving force is greed and therefore difficult to combat	10
Crime intelligence does not direct their efforts	10	There is an absence of a task force concept	10
Too much reliance on external organisations	10	There are legislative bottlenecks when it comes to information	10
Lack of intellect.	10		

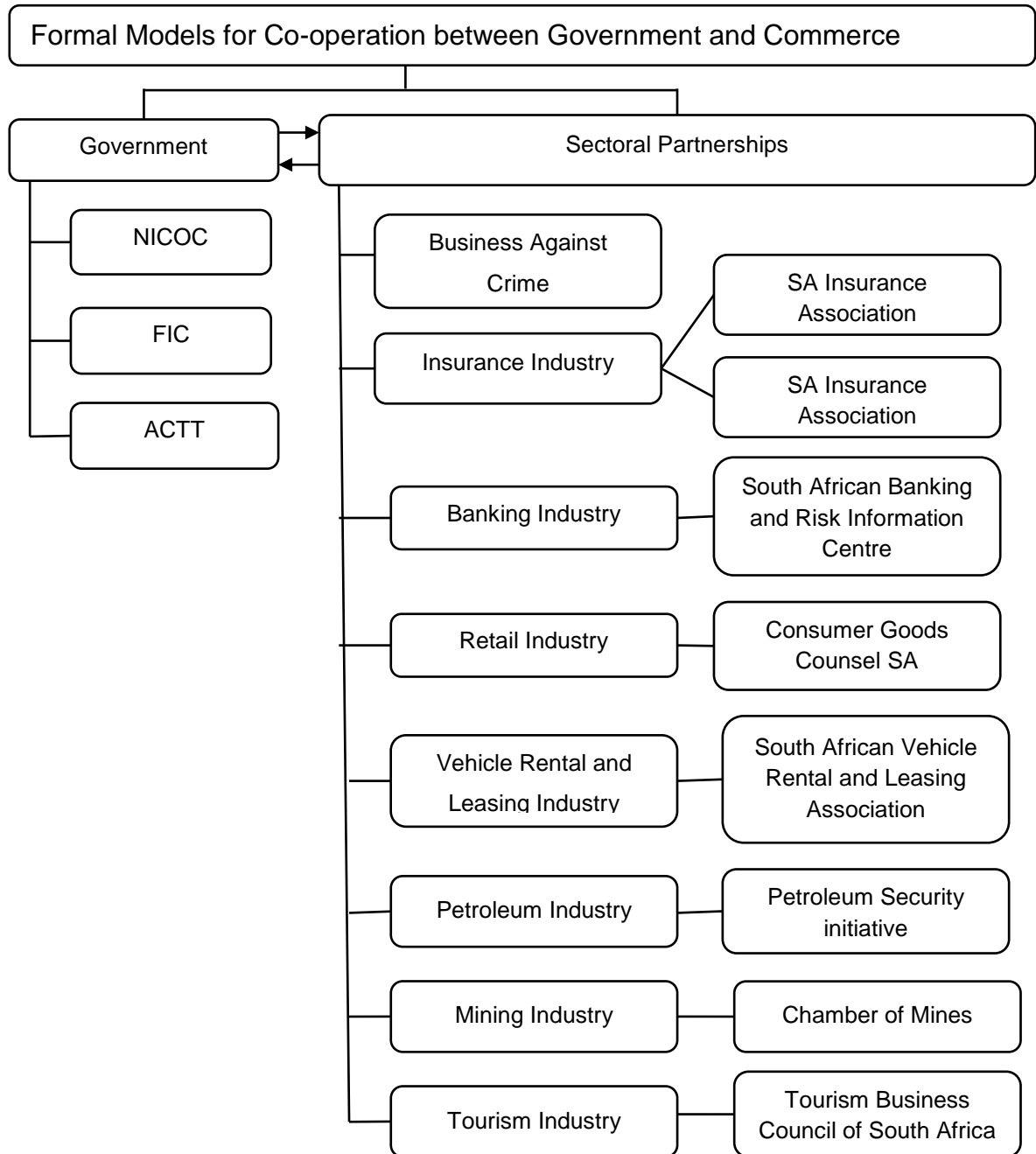
(Source: Data received from participants)

**Figure 6.2: Arrangement of agencies according to operational capability**



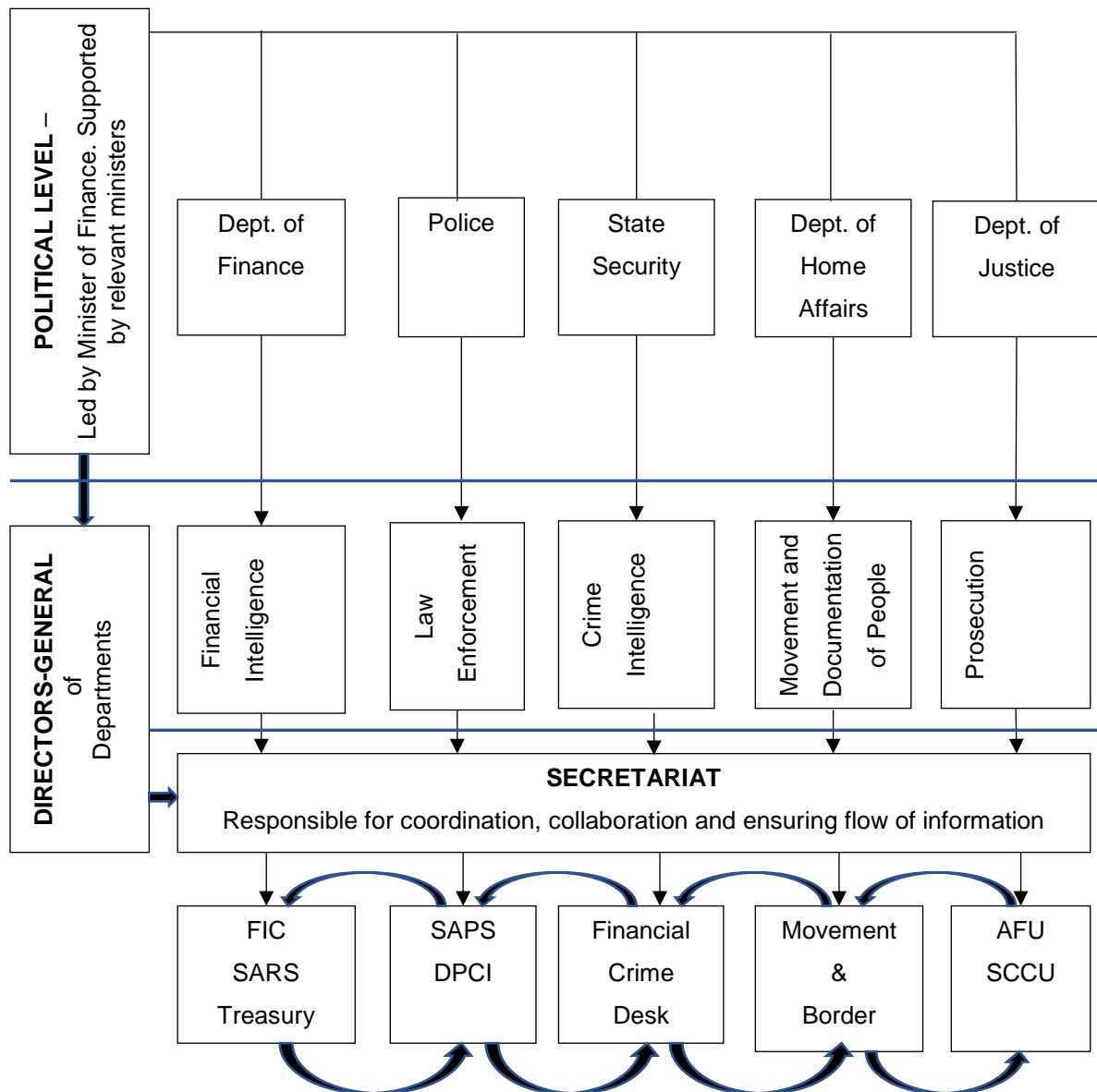
(Source: Adaptation from Figure 4.3)

**Figure 6.3: Formal models and mechanisms focused on improving co-operation between Government and commerce**



(Source: Interpretation of Interview with Participant P1003, 2017)

**Figure 6.4: Participant’s view of the application (organising) of a Whole-of-Government approach**

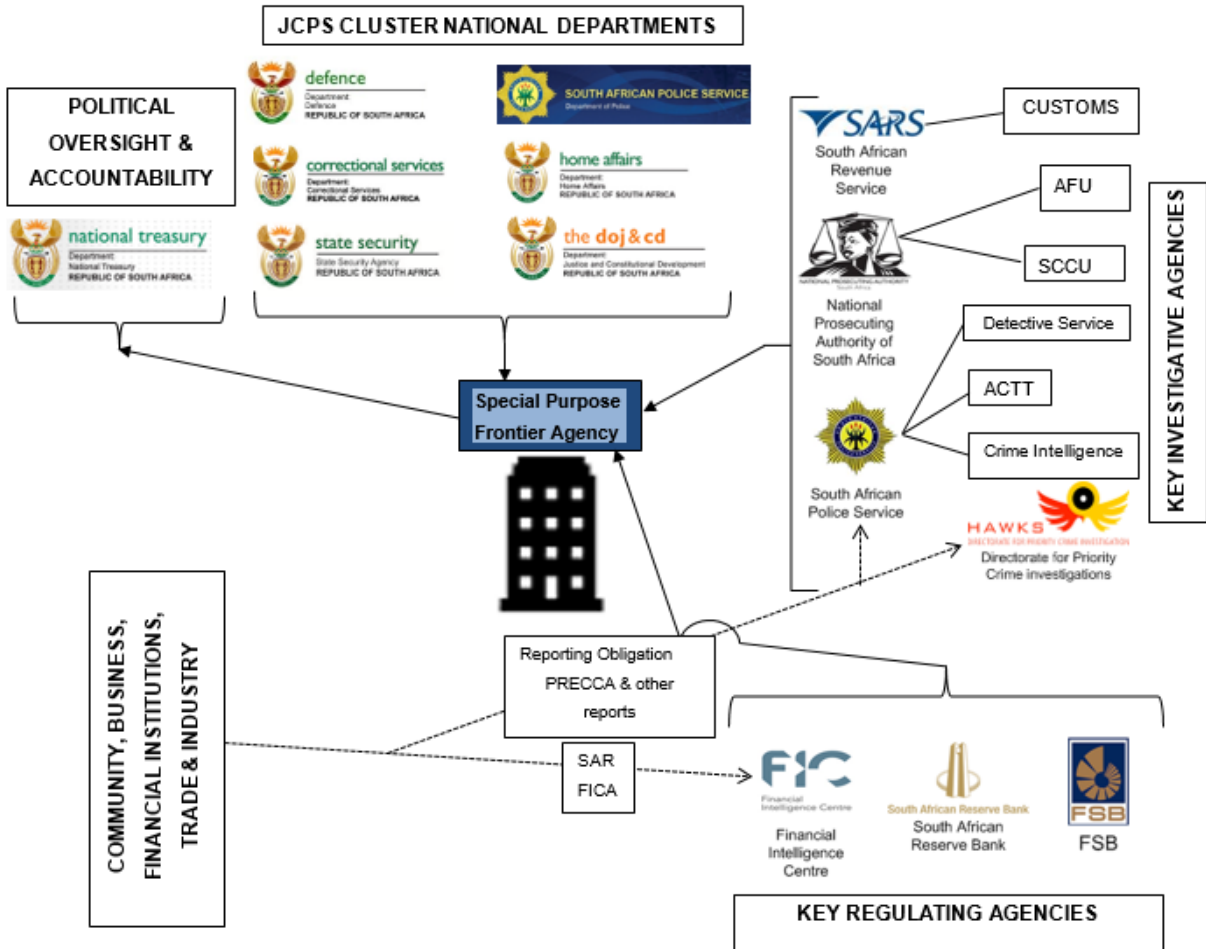


Participant’s explanatory notes (interview with Participant P010:2017):

1. The structure should be guided by an MOU or TOR, granting them operating space, authorisation to share information, methods to collaborate, coordinate, implement and execute.
2. Coordinated feedback via Directors-General.
3. Future planning on addressing all challenges identified in addressing financial crimes and any other issue on financial crime in executing the whole-of-Government approach.

(Source: Interview with Participant P010 on 21 July 2017)

**Figure: 6.5: Conceptual model for a Whole-of-Government special-purpose frontier agency to combat financial crime**



(Source: Conceptual model developed by the researcher)

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Participant Research Code:

<p style="text-align: center;"><b>D Lit et Phil RESEARCH PROJECT</b></p> <p style="text-align: center;"><b>INTERVIEW SCHEDULE FORM:</b></p> <p style="text-align: center;"><b>COMBATING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A WHOLE-OF-GOVERNMENT APPROACH</b></p> <p style="text-align: center;"><b>UNISA</b></p>
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**SECTION A**

**SUMMARY OF THE PROJECT**

*This interview forms part of a two-phased research project, the first phase being an attempt to understand the meaning of financial crime in accordance with systematic categorisation, and the next phase to understand the current state of cooperation and collaboration across agencies responsible for combating financial crime. As part of the second phase, the project evaluates the prospect of the Whole-of-Government approach as a possible model for combating financial crime more effectively.*

*In this research project, the concepts of to combat or the combating of financial crime collectively refer to the concepts of prevention, detection, gathering of crime intelligence, and investigation of financial crime.*

**METHODOLOGY TO OBTAIN INFORMATION**

*This interview schedule forms part of the data collection techniques used by the researcher to obtain answers to address the research questions. The questions in this schedule were prepared in advance and relate to the research questions.*

*During the interview, the researcher will:*

- *Record your answers on paper*
- *Record this interview on a digital audio recording device*

*Afterwards, your interview with the researcher will be transcribed verbatim, and the transcription analysed to interpret the results.*

### **RESEARCH QUESTIONS**

*The research questions that this project aims to address are the following:*

1. *How is financial crime understood among the participants, how is it described in the literature and how can it be categorised, using a systematic approach?*
2. *What is the current structural and operational arrangement among government agencies to combat financial crime, is the arrangement effective, and are there government policies and strategies in place that will guide Government's response to financial crime?*
3. *What models are utilised internationally to ensure effective inter-agency cooperation and collaboration among government agencies during efforts to combat financial crime that can be evaluated for possible implementation in the domestic arena?*
4. *What is the meaning of the concept Whole-of-Government approach, how is it understood, and how can this approach be applied or adapted for implementation by Government as a model framework to ensure effective inter-agency cooperation and collaboration during efforts to combat financial crime effectively?*

### **CONFIDENTIALITY AND ANONYMITY**

*You have been allocated a participant research code. Your identity will be kept strictly confidential. The information you provide will be used to answer the research questions. Only the results of the research will be made available to the University of South Africa (UNISA). Your identity will in no way be detectable from the research results.*

## **SECTION B**

### **1. Biographical Information**

1.1 Where do you work?

1.2 What is your job title?

1.3 What do your duties entail in relation to the combating of financial crime?

1.4 Are you currently working for, or have you previously worked for, a Government investigative authority/agency involved in the combating of financial crime?

1.5 If so, which Government investigative authority (ies) / agency (ies)?

1.6 How many years' experience do you have in any or all of the facets of the combating of financial crime?

1.7 Did you receive any training or education in any or all of the facets of the combating of financial crime at a tertiary institution?

1.8 Did you receive any in-service training in any or all of the facets of the combating of financial crime?

## **SECTION C**

### **2. FINANCIAL CRIME**

2.1 Do you think there is a common understanding of the meaning of financial crime? Please substantiate your answer.

2.2 How would you define the term financial crime in your own words?

2.3 What do you think are the identifiable characteristics of financial crime?

2.4 According to your understanding of the meaning of financial crime, what *common-law offences* according to South African law fall within the category of offences referred to as “financial crime”?

2.5 According to your understanding of financial crime, what *statutory offences* fall within the category of offences referred to as “financial crime”?

### **3. COMBATING FINANCIAL CRIME**

3.1 Define the concept “combating of crime” or to combat crime in your own words.

3.2 Define the concept crime prevention in your own words.

3.3 Define the concept investigation of crime in your own words.

3.4 Define the concept crime detection in your own words.

3.5 Define the concept crime intelligence in your own words.

3.6 Do you think that financial crime is effectively combated in South Africa by the agencies responsible for combating financial crime? Please substantiate your answer.

3.7 How do policies and strategies for combating financial crime or the lack thereof impact on coordination, cooperation and a collaborative effort to combat financial crime effectively?

3.8 Are you aware of any government agency or body that is developing or implementing government policies and strategies to ensure inter-agency coordination, cooperation and collaboration to combat financial crime? If so, please provide the details of the agency or body and the policies and strategy it is developing or implementing.

3.9 Do you think that there is effective inter-agency coordination among government agencies in their efforts to combat financial crime? Please substantiate your answer.

3.10 Do you think that there is effective inter-agency cooperation among government agencies during efforts to combat financial crime? Please substantiate your answer.

3.11 Do you think that there is effective collaboration (sharing of resources) among agencies during efforts to combat financial crime? Please substantiate your answer.

3.12 Do you think that the sharing of information among government agencies during efforts to combat financial crime is effective? Please substantiate your answer.

3.13 Are you aware of any constraints of a legal nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer.

3.14 Are you aware of any operational constraints that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer.

3.15 Are you aware of any constraints of a political nature that hamper inter-agency coordination, cooperation and collaboration during efforts to combat financial crime? Please substantiate your answer.

#### 4. **INTER-AGENCY COOPERATION**

4.1 List the government agencies and/or investigative authorities responsible for combating financial crime in South Africa.

4.2 What is the responsibility of each of the government agencies identified in the previous question with regard to combating of financial crime?

4.3 What do you think are the benefits of sharing information among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime? Please substantiate your answer.

4.4 In your opinion, what can be done to improve sharing of information among government agencies in an effort to combat financial crime more effectively?

4.5 What do you think are the benefits of cooperation and collaboration among the revenue service, law enforcement, anti-money-laundering regulators and other government agencies during the combating of financial crime? Please substantiate your answer.

4.6 From your experience and observations, can you describe how the agencies responsible for combating financial crime in South Africa are arranged?

4.7 Are you aware of any available models that can be applied or modified for domestic application to improve sharing of information, coordination, cooperation and collaboration among agencies during efforts to combat financial crime more effectively? If so, please describe what these models entail.

## 5. THE WHOLE-OF-GOVERNMENT APPROACH

5.1 Section 17B of the South African Police Service Act in relation to the establishment and functioning of the Directorate for Priority Crime Investigation refers to an “integrated methodology” and “multidisciplinary approach”. In your own words, explain what an integrated methodology and multidisciplinary approach mean to you?



5.2 Are you aware of an approach referred to as a Whole-of-Government approach that aims for actions to more effectively combat financial crime?

5.3 What is your understanding of the Whole-of-Government approach in relation to the actions to combat financial crime effectively?

5.4 According to your understanding, describe what it means for different agencies to work together, across agency boundaries, with the aim of combating financial crime by means of inter-agency coordination, cooperation and collaboration and following a Whole-of-Government approach.

5.5 Do you think that a Whole-of-Government approach in the South African context is a viable proposition to ensure inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively?

5.6 How, in your opinion, should a Whole-of-Government approach be applied to ensure effective inter-agency coordination, cooperation and collaboration during efforts to combat financial crime more effectively?

*Thank you for your valuable time, participating in the research interview, and for providing the researcher with data to address the research questions relevant to the research project.*

## COLLEGE OF LAW RESEARCH ETHICS REVIEW COMMITTEE

Date: 2015-07-13

Reference: ST 79

Applicant: A E Botha

Dear A E Botha

**DECISION: ETHICS APPROVAL**

Name	A E Botha
Proposal	Combatting financial crime: evaluating the prospect of a Whole Government Approach
Qualification	PhD

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:*

1. *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/res\\_policies/docs/Policy\\_Research%20Ethics\\_rev%20app%20Council\\_22.06.2012.pdf](http://www.unisa.ac.za/cmsys/staff/contents/departments/res_policies/docs/Policy_Research%20Ethics_rev%20app%20Council_22.06.2012.pdf)*

2. *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.*

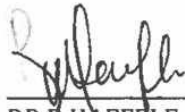
*An amended application could be requested if there are substantial changes from the existing proposal, especially if those changes affect any of the study-related risks for the research participants*

- 3. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study.*

*Note:*

*The reference number (top right corner of this communique) should be clearly indicated on all forms of communication (e.g. Webmail, E-mail messages, letters) with the intended research participants, as well as with the URERC.*

Kind regards



---

DR B HAEBELE  
CHAIR PERSON: RESEARCH ETHICS  
REVIEW COMMITTEE  
COLLEGE OF LAW



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PROF R SONGCA  
EXECUTIVE DEAN:  
COLLEGE OF LAW

## ANNEXURE B



1 CRESSWELL ROAD, SILVERTON, 0127  
PRIVATE BAG X1500, SILVERTON, 0127  
TEL: (012) 846-4315/4331  
FAX: (012) 846-4442  
E-MAIL: [matthewsr@saps.gov.za](mailto:matthewsr@saps.gov.za)  
[letlapetabea@saps.gov.za](mailto:letlapetabea@saps.gov.za)

Mr AE Botha  
P O Box 150  
Cornwall Hill  
0178

Dear Mr Botha

**RE: COMBATTING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A WHOLE GOVERNMENT APPROACH: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION**

1. Your application dated 29 January 2015 refers.
2. Approval has been granted for you to conduct research in Directorate for Priority Crime Investigation with the following conditions:
  - a. The research will be limited to finalised investigations unless agreed otherwise with the below mentioned senior officers.
    - Maj Gen Siyotula : (012) 846 4102
    - Maj Gen Mosipi: (012) 846 4100
  - b. Access to the research report should be restricted to the following individuals:
    - Dr Nick Olivier - Research Supervisor
    - The direct team of moderators for the research
    - The Acting National Head DPCI: Maj Gen Ntlemeza
    - The Component Head Financial and Assets Forfeiture Investigations:  
Maj Gen Siyotula
    - The Component Head Serious Commercial Crime: Maj Gen Mosipi.
3. The final draft will be tested with the Acting National Head: DPCI to confirm whether the research ethics have been adhered to.
4. A copy of your final research document should be submitted to this office for record purposes.

*RM Matthews*

COLONEL

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

**RM MATTHEWS**

Date: 2015/05/13

ANNEXURE C

**From:** Annaloshni Naidoo  
**Sent:** 08 January 2015 02:34 PM  
**To:** Andre E Botha  
**Cc:** Andrew Trainor; [REDACTED]  
**Subject:** RE: CLS Request Form

Dear Andre,

Please find attached Academic Research Agreement that has been approved to be signed by the Researcher.

Kindly mail me a copy once it has been signed by the Researcher and SARS.

Regards,

**Annie Naidoo**  
**Specialist: Corporate Legal Services (Properties & Facilities)**  
**Legal & Policy: Corporate Legal Services**  
South African Revenue Service  
Tel [REDACTED] Fax [REDACTED]  
Mobile: [REDACTED]



Signed by the Researcher on 16 JUN 2015 at PRETORIA

As witnesses:

[Signature]  
[Signature]

[Signature]  
ANDRE EDUAN BOTHA

Signed on 30/1/2015 at Pretoria or and on behalf of SARS

[Signature]

Name: KATISO TABE  
Designation: Acting GE Strategic Planning and Risk.

As witnesses:

[Signature]  
[Signature]

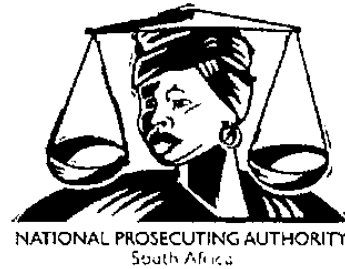
## ANNEXURE D

**From:** Pieter Smit [mailto:Pieter.Smit@fic.gov.za]  
**Sent:** 02 June 2015 10:19 PM  
**To:** Andre E Botha  
**Cc:** [REDACTED]  
**Subject:** RE: Permission to do research\_A E Botha

Dear Andre

My apologies for the delay in responding to you after our discussion. I have been out of the country for the past two weeks and I have not had an opportunity to have a conversation with my colleague, [REDACTED] (copied here), who is in charge of our analysis section. However, I have exchanged a few e-mails with him and he has agreed to put you in contact with a few of the people in his section for you to interview. He has also suggested that you include [REDACTED] in the SAPS DPCI in your interview list. As for the [REDACTED] he suggested a person by the name of [REDACTED]; [REDACTED] can also put you in contact with [REDACTED]. [REDACTED] e-mail address is [REDACTED]@fic.gov.za.

All the best with your research  
Pieter

**Administration****EXTERNAL MEMORANDUM**

Tel: +27 12 845 6000

Victoria & Griffiths  
Mxenge Building  
123 Westlake Avenue  
Weavind Park  
Pretoria

P/Bag X752  
Pretoria  
0001

**TO :** MR. ANDRE E. BOTHA

**FROM :** ADV. SHAUN K. ABRAHAMS  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

**DATE :** 2 FEBRUARY 2017

**SUBJECT :** RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH IN THE NATIONAL PROSECUTING AUTHORITY: SPECIALISED COMMERCIAL CRIMES UNIT (SCCU).

Dear Mr Andre Botha,

Thank you for showing interest in conducting research in the NPA. The purpose of this memorandum is to inform you that your request to conduct research within the National Prosecuting Authority (NPA) has been approved.

Please consider and/or adhere to (whichever is applicable) to the below-mentioned in support of your research:

1. The request is supported by the Specialised Commercial Crimes Unit (SCCU) and it should be noted and understood that information about the research can only be utilized with the NPA's explicit written approval and permission.
2. The research request focuses on "Combating Financial Crime: Evaluating the Prospects of a Whole of Government Approach" and therefore should be in line with the SCCU acts, rules and regulations.
3. Permission to conduct research is only limited to interviews with approximately 5 prosecutors in the SCCU.

Page 1 of 2

**Corporate Service Centres:**

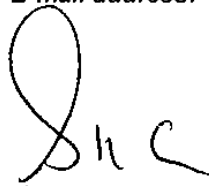
- Finance & Procurement
- Human Resources
- Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

4. Upon completion of the research project, it is suggested that a copy of the report be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of the latter mentioned information.

Your research does not require you to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, because you do not require access to documents in the NPA.

Kindly keep the NPA informed about further developments on this research and please send your response to the Director of Research Management on the following details:

**Name:** Ms Marthi Du Plessis  
**Telephone number:** 012 845 6275  
**E-mail address:** [MDuPlessis@npa.gov.za](mailto:MDuPlessis@npa.gov.za)



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**Adv. S.K. Abrahams**  
**National Director of Public Prosecutions**

**Date:** 9 - 2 - 2017

**RE: APPROVAL OF A REQUEST TO CONDUCT RESEARCH STUDY: ANDRE BOTHA (2017/02/02)**



**INFORMED CONSENT FORM**

**Affiliation:** STUDENT AT UNISA

**Researcher:** MR ANDRÉ EDUAN BOTHA

**Qualifications of Researcher:**

National Diploma, Police Administration (Department of Higher Education, RSA)  
M Tech, Forensic Investigation (UNISA)

**Title of the study:** COMBATING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A “WHOLE-OF-GOVERNMENT” APPROACH.

**Purpose of the Research:**

In conducting this research, the researcher proposes that the aim of this study is to: Evaluate a Whole-of-Government approach as a model framework to combat financial crime more effectively whereby policy, legal arrangements, practices or approaches to combat financial crime can prospectively be arranged or modelled upon.

**Duration of the Study:**

It is projected that the proposed study, including the year for preparation and submission of a research proposal, will take six years.

**Participant’s Role:**

The role of the participant is that of a source of information to provide data through the data collection method of interviews between the researcher and the participants, the latter answering questions formulated in an interview schedule that is aimed at answering the research questions applicable to the proposed study. It is anticipated that the duration of the interview will be approximately three hours, but may end sooner if the interview has run its course, or by request of the researcher or participant, depending on the circumstances.

**Selection of Participants:**

The selection of participants is reliant upon a snowball method of sampling. Participants will be selected according to their involvement in government agencies concerned with the combating of financial crime, based on their perceived specialist knowledge and experience regarding the combating of financial crime. The researcher hopes that the heads or managers of investigative agencies involved with the

combating of financial crime will point the researcher to participants who, as a result of their knowledge, skills and experience regarding financial crime and the combating thereof, are likely to be able to assist the researcher in answering the research questions. The researcher anticipates that the participants will direct the researcher to other candidates who fit the same profile as theirs and who are likely to be able to participate in the interviews.

**Risks and Discomfort:**

It is not foreseen that by participating in this research the participants face any specific risks. The researcher has obtained permission or is in the process of obtaining permission from the heads or delegated officials from investigative agencies to conduct interviews with its members. The research, therefore, will be able to speak as sanctioned participants. The researcher will adhere to secrecy and confidentiality provisions to which the participants may be subject to and will not solicit any such related information from them.

The questions formulated in the interview schedule to provide data in answer to the research questions are not of a personal nature and should not pose a risk of discomfort. During the interviews, the participants may become tired or feel uncomfortable, at which point the participant may request a break or request that the interview be postponed to a later date or terminated, if so desired. The researcher will try to ensure that the participant is comfortable and at ease to mitigate such a risk.

**Adverse Events:**

**Not applicable**

**Protection of Privacy:**

The identity of participants will be kept strictly confidential. Only the researcher knows the personal details of the participant, to whom a research code has been allocated. The personal details of the participant remain confidential and are not disclosed. They are kept separate from the research results by the researcher.

**Benefits to Participant:**

The researcher hopes that by participating in the study, the participants will experience the satisfaction of solving a problem that affects each South African citizen and the economy of South Africa., By contributing their skills, knowledge and experience to the study, they may also be of benefit to their colleagues and future colleagues by enabling them to understand the problems and offering possible solutions. The

participants will assist in providing insight into the problem that may stimulate future research and thus be of even greater benefit in the future. On a personal level, the researcher believes the participants will obtain personal satisfaction once they have discussed the issues emanating from the interview schedule with the researcher, gaining personal insights that were not evident prior to the interview.

**Benefit to Others:**

The researcher is hopeful that the results of the research will assist the government agencies responsible for the combating of financial crime to understand what financial crime means in the domestic context. It is furthermore hoped that the findings of this research will inform their strategies and plans to combat financial crime more effectively.

**Maintaining Confidentiality:**

The participants will be informed that their identity will be kept confidential and will not be made known. The participants will be informed that they will be allocated a research code. The information that they provide will be used to answer the research questions. Only the results of the research will be made available to UNISA. Their identity will not be detectable from the research results.

**Statement regarding Gifts and Compensation / Reimbursements:**

Participation in the research is voluntary and without any compensation, reimbursement, remuneration, reward or inducement, whether prior or during the research or in future.

**Indemnity:**

Not applicable

**Insurance:**

Not applicable

**Additional Information:**

None

**Research-related Inquiries:**

Participants are free to contact the researcher by means of the contact details provided on this form, at a reasonable hour, in connection with the interview particulars if they so wish.

**Voluntary Participation without Prejudice for Non-participation:**

The participant is under no obligation or duress to participate in this research and does so out of his/her own free will, and can withdraw from it at any time prior to or during the interview without any risk of prejudice for non-participation or withdrawal.

**Withdrawal from Research:**

The participants will be informed verbally and in writing, as stated above, that they can voluntarily withdraw from the study at any point.

**Informed Consent ensures Autonomy:**

A signed informed consent form will be obtained from each participant prior to participating in the study.

**Security of Data:**

The data collected digitally during the interview will be stored on an electronic storage device that is protected by a password, and that will be kept separate from the researcher's research work and stored in a safe. The transcripts will be kept separate from the disk in a separate safe. A back-up copy of the electronic data will be kept separate from the original. Also password-protected in a different location for safe storage.

**Feedback on Findings of Research:**

The findings and recommendations of this research study will be communicated to the government agencies whose employees participated in the study.

**Access to Developed Products and Sharing of Benefits derived from Products:**

It is anticipated that the products developed from this research will constitute a framework or strategy that can possibly be developed into a policy document or plan for implementing a "Whole-of-Government" approach to combat financial crime more effectively. It is hoped that investigative authorities may co-opt such a strategy or plan for implementation as a policy or policy framework. The findings regarding such a framework will be published by UNISA once this research has been finalised, and can then be accessed by interested parties.

**Reporting to Ethical Research Committee:**

If required, a report can be made available, if so requested.

**Disclosure of Conflict of Interest:**

I do not believe or foresee that there may be a conflict of interest.

**Benefit to Local Community and Society at large:**

Financial crime affects all South Africans and the country as a whole, not only as direct victims of crime but also on all socio-economic fronts. Money that could have been used for socio-economic or infrastructure development is pillaged through illicit financial flows out of reach of the financial system. More effective methods to combat financial crime will mean a more stable financial system and ensure that funds earmarked for socio-economic and infrastructure development reach the intended recipients. Individuals who make use of the banking sector or investments will have more security, knowing their investments are safe or used for the purpose intended.

**Adverse Impact on the Community:**

The researcher does not anticipate that the research or its findings will have an adverse impact on the community - quite the opposite, as stated above.

**Dissemination of Results:**

As already indicated above, the research results will be communicated, and the research results will be available and may be published by UNISA will be available from the UNISA library resources.

**THANK YOU FOR PARTICIPATING IN THIS RESEARCH STUDY.**

**DECLARATION OF INFORMED CONSENT BY PARTICIPANT:**

I, the undersigned (full first names) .....  
(surname)....., having been made aware of the information provided in this consent form; agree to participate in the research study voluntarily, without compensation, and under ~~any~~ no obligation.

Signed at ..... on this ..... day of ..... 20.....

Signature: ..... (name in print) .....

Mr André Botha

PhD student

UNISA

Tel: 012 [REDACTED]

Mobile: 082 [REDACTED]

e-mail: aebotha@[REDACTED].[REDACTED].[REDACTED]

**UNDERTAKING AND PERSONAL DETAILS OF PARTICIPANT**

**D Lit et Phil Research Project:**

**COMBATING FINANCIAL CRIME: EVALUATING THE PROSPECT OF A  
WHOLE OF GOVERNMENT APPROACH**

**UNISA**

**UNIQUE RESPONDENT RESEARCH CODE:**

(This code is cross-referenced to the interview schedule)

**CONFIDENTIALITY AND ANONYMITY**

*Your identity will be kept strictly confidential. Only the researcher knows the personal details of the respondent to whom a research code has been allocated. The personal details of the respondent remain confidential and are never disclosed. They are kept separate from the research results by the researcher.*

**SECTION A**

**Biographical information**

1. What is your surname?

2. What are your first names?

3. What is your contact telephone number?

4. What is your mobile phone number?

5. What is your e-mail address?

**UNDERTAKING BY PARTICIPANT**

*I, the undersigned ....., voluntary agree to participate in this interview. I understand that I will be allocated a unique research code and that my identity will be kept strictly confidential.*

*Signature of interviewee .....*

*Signed on this ..... day of ..... (month) 201.....at  
..... (place). at \_\_\_\_\_(time)*