

KNOW ABOUT MONEY LAUNDERING

The Central Bank of Lesotho is currently engaged in a consumer education effort. The objective of this initiative is to develop a financially-literate community where Lesotho consumers can make informed decisions about financial products and services, and to avoid scams and swindlers. This exercise is being driven through radio presentations on topical issues, and by publishing a series of newspaper articles.

What is Money Laundering?

A basic definition of money laundering is “concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing such property is derived from an offence or offences.” Simply put, money laundering can be defined as a process where proceeds of a criminal activity are disguised to conceal their origin. By so doing, criminals introduce their dirty money in the financial sector – a factor which enables them to avoid prosecution, conviction and confiscation of their criminal proceeds.

In terms of article 25 of Money Laundering and Proceeds of Crime Act of 2008, a person commits the offence of money laundering;

“1. if the person;

- (a) acquires, possesses or uses property; or
- (b) converts or transfers property with the aim of concealing or disguising the illicit origin of that property or of aiding any person involved in the commission of an offence to evade the legal consequences thereof; or
- (c) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property,

knowing or having reason to believe that such property is derived directly or indirectly from acts or omission –

- (i) in Lesotho which constitute an offence against this part, or another law of Lesotho punishable by imprisonment for not less than 24 months;
- (ii) outside Lesotho which, had they occurred in Lesotho, would have constituted an offence under Lesotho Law, punishable by imprisonment for not less than 24 months.

2. A person who contravenes this Section commits an offence and shall, on conviction, be liable to imprisonment for a period not less than 10 years or a maximum fine of not less than M50 000.00, or both, and in the case of a body corporate, a fine of not less than M500 000.00.”

Forms of Money Laundering

The most common types of criminals who need to launder money are drug traffickers, embezzlers, corrupt politicians and public officials, mobsters, and terrorists. All these are in need of good laundering conduits as they deal mostly in cash, which causes a lot of logistics problems.

Money Laundering Process

Money laundering has three basic steps, vis:

- (i) **Placement:** the launderer inserts dirty money into a legitimate financial institution. This is the riskiest stage of the laundering process as it involves large amounts of cash, which financial institutions are required to report to authorities.
- (ii) **Layering:** it involves sending money through various financial transactions to change its form and make it difficult to follow. Layering may consist of several bank-to-bank transfers, wire transfers between accounts in different names in different countries, making deposits and withdrawals to continually vary the amount of money in the accounts, changing the money's currency, and purchasing high-value items to change the form of money.
- (iii) **Integration:** the money re-enters the mainstream economy in legitimate-looking form. This may involve a final bank transfer with the account of a local business in which a launderer is 'investing' in exchange for a cut of the profits.

The Effects of Money Laundering

For decades, the American Dollar has been the most popular currency for launderers to use. Its popularity is due to its wide acceptance and the volume of worldwide transactions that use the currency. However, the Euro has now also gained a foothold in the laundering industry since its introduction in 2002. It is the main legal tender of more than a dozen countries, meaning it circulates in tremendous volumes and moves regularly across borders without any notice at all.

It is estimated that criminals launder anywhere between US Dollar 500 Million and US Dollar 1 trillion worldwide every year. The global effect is staggering in social, economic, and security terms.

On the socio-cultural front; successfully laundering money means that criminal activity actually pays off. This success encourages criminals to continue their illicit schemes because they get to spend the profit with no repercussions. This means more drugs on the streets, more drug-related crime, law-enforcement resources stretched beyond their

means, and a general loss of morale on the part of legitimate business people who do not break the law and do not make nearly the profits that the criminals do.

The economic effects are even broader; developing countries often bear the brunt of modern money laundering because the governments are still in the process of establishing regulations for their financial sector institutions. This makes them a prime target. In the 1990s, numerous banks in the developing world ended up with huge, widely rumoured deposits of dirty money. Bank patrons proceeded to withdraw their own clean money for fear of losing it if the banks came under investigation and were faced with possible closure. The banks collapsed as a result. Other issues facing the world economies include errors in economic policy resulting from artificially inflated financial sectors. Massive influxes of dirty cash into particular areas of the economy that are desirable to money launderers create false demand, and officials act on this new demand by adjusting economic policy. When the laundering process reaches a certain point or if law enforcement officials start to show interest, all of that money will suddenly disappear without any predictable economic cause and that financial sector falls apart.

On a local level; money laundering has a bearing on taxation and small business competition. Laundered money is usually untaxed, meaning that the rest of the people ultimately have to make up the loss in tax revenue. Furthermore, legitimate small businesses cannot compete with money laundering-front businesses that can afford to sell a product cheaply because their primary purpose is to clean money, not turn profit.

Money laundering is commonly related to two main industries, namely, drug trafficking, and terrorism. The effect of successfully cleaning drug money is clear: more drugs, more crime, and more violence. As for terrorism, most people who financially support terrorist organizations send the money in roundabout ways to maintain anonymity.

Combating Money Laundering

On the domestic front, efforts are being taken in Lesotho to combat money laundering. In this regard, money laundering and financing of terrorism have been criminalized through enactment of anti-money laundering and combating of terrorism legislations.

In 2000, the Financial Institutions (Anti-Money Laundering) Guidelines were prescribed. These Guidelines were meant to:

- (a) require financial institutions to establish and maintain specific policies and procedures to guard against the use of the financial system for the purpose of money laundering;
- (b) enable financial institutions to recognize suspicious transactions and to provide an audit trail of transactions with customers who come under investigation; and
- (c) require financial institutions to submit reports and to disclose information on large cash transactions and suspicious transactions.

It is a requirement, under these Guidelines, for financial institutions to develop programmes against money laundering. These programmes should include, but not limited to internal controls, policies and procedures; customers identification procedures; record keeping; recognition and reporting of suspicious transactions and education and training of their employees. Furthermore, if financial institutions fail to observe these Guidelines, then the Central Bank of Lesotho, as Commissioner of Financial Institutions, may pursue any remedial measures at its disposal, including imposition of a penalty on the financial institution in question.

In 2007, the Financial Institutions (Know Your Customer) Guidelines were also drawn. The objectives of these Guidelines were to:

- (d) outline basic procedures that the financial institution shall ensure are in place within their institutions with a view to assisting in suppression of unwanted vices through the banking system, nationally and internationally;
- (e) prevent the financial institutions from being used, intentionally or unintentionally, by criminal elements for money laundering activities; and
- (f) enable financial institutions to know or understand their customers and their financial dealings, in order to manage their risks prudently.

The promulgation of the Money Laundering and Proceeds of Crime Act of 2008 has also added the necessary impetus in the fight against money laundering. This legislation aims to, amongst others, criminalise money laundering, establish an Anti-Money Laundering Authority and a Financial Intelligence Unit; to enable the unlawful proceeds of all serious crimes to be identified, traced, frozen, seized and eventually confiscated; and to require accountable institutions to take prudential measures to help combat money laundering.

Internationally, Lesotho is a member of various bodies which seek to fight money laundering. It is further a signatory to various Conventions relevant to Anti-Money Laundering. Significantly, Lesotho and South-Africa have fostered sound bilateral relations which have consolidated and developed a special relationship. There is a Joint Bilateral Commission of Cooperation (JBCC) which was signed in 2001, to, among others, guide in enhancing good governance, security and stability.

Lesotho is further, a member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). In realising the growing problem of money laundering, the Organisation for Economic Development (OECD) at its Economic Summit by the Heads of State of the G-7 nations in 1989, founded the Financial Action Task Force (FAFT). Its mandate was, amongst others, to "...assess the results of cooperation already undertaken in order to prevent the utilization of the banking system and financial institutions for the purpose of money laundering and to consider additional preventative measures...including the adaptation of the legal and regulatory systems, so as to enhance multilateral judicial assistance.

Since the founding of the FATF, regional organisations have been founded, referred to as the FATF-Styled Regional Bodies (FSRBs). They are under the supervision and guidance of the FATF in fighting money laundering and financing of terrorism. ESAAMLG is one such FSRB. In the meetings of ESAAMLG, it transpired that member countries were not moving at a desirable pace in adopting and implementing their Anti-Money Laundering/Combating Financing of Terrorism - AML/CFT regimes. As one of the recommendations of the FATF in AML/CFT, all countries are to criminalise money laundering and financing of terrorism. It became important therefore, that member countries draw their respective strategies for fighting money laundering and terrorism financing. Member countries are expected to report on the progress made from the same.

During its sitting in Maseru, Lesotho in 2009, ESAAMLG identified a list of activities that would be implemented to enable it to further consolidate itself as an effective anti-money laundering body. Its Strategic Plan focuses on realising ESAAMLG's vision of developing a strong and dynamic institution that is committed to the eradication of money laundering and terrorist financing in the Eastern and Southern-African Region. This is further in support of its mission of consolidating and sustaining the combined efforts to combat money laundering and terrorist financing in the region through effective implementation of AML/CFT standards in ESAAMLG member countries. This Strategic Plan (April 2009 – March 2012) has nine objectives, being:

- development and review of implementation of national AML/CFT Strategies;
- sustaining the evaluation and monitoring of ESAAMLG member compliance with the international standards against money laundering and terrorist financing;
- undertake research and analysis exercises to better understand money laundering and terrorist financing risks and vulnerabilities in the region and effectively contribute to regional and international AML/CFT policy formulation;
- expansion of ESAAMLG membership;
- strengthening regional cooperation among member countries;
- strengthening ESAAMLG cooperation and participation in AML/CFT awareness environment;
- consolidating regional AML/CFT capacity building, training and awareness raising programme;
- sustaining the provision of AML/CFT advisory services to member countries;
- consolidating the sustainability and efficiency of the Secretariat.

Blacklisting

In 2000, FATF issued a list of “Non-Cooperative Countries or Territories - NCCTs”, which are commonly known as the FATF Blacklist. This was a list of jurisdictions that, for one reason or another, FATF members believed were uncooperative with other jurisdictions in international efforts against money laundering, including terrorist

financing. This lack of cooperation manifested itself as an unwillingness or inability to provide foreign law enforcement officials with information relating to bank accounts and other financial transactions relating to persons, or companies suspected in instances of money laundering.

The effect of the FATF Blacklist has proven to be important in international efforts against money laundering. While it carries no formal sanction, in reality, a jurisdiction placed on the Blacklist often finds itself under intense financial pressure. As a result, most countries now require their banks to report certain suspicious financial activities to the appropriate financial regulators and law enforcement authorities. Most larger countries with significant financial centres consider transactions coming from or transferring to a jurisdiction on the FATF Blacklist to be a suspicious activity, which automatically triggers closer regulatory scrutiny. Because of this, many major financial institutions will not conduct business with counterparts based in NCCTs. Since many of the countries that FATF originally listed as NCCTs have major financial industries, such de facto boycotts could have a significant effect on a country's economy. Since the Blacklisting, many countries have changed their laws and instituted other changes to convince FATF members to remove them from the Blacklist.

Conclusion

No individual country has the power to stop money laundering – if one country is hostile to laundering, criminals simply look elsewhere for a place to clean their money. Global cooperation is therefore essential. While increased worldwide efforts are making a small dent in the money laundering industry, the problem is huge, and requires continued urgent attention. It is thus important to seek increased global awareness and cooperation to curb the success of money laundering industry.

Lesotho, in particular, has already taken steps in the right direction towards laundering control. It would thus be prudent to put those measures into implementation. As a developing country, Lesotho may need to pay special attention to the informal sector, and strengthen regulations in other sectors, which remain highly likely to be abused by launderers as channels through which they put their money into the legitimate financial system.

Lesotho, as a member of the SADC is also a signatory to the Finance and Investment Protocol (FIP). This Protocol serves as a slate for Member States to create common financial systems, and conducive investment environment that facilitate for ease of flows of investments into the region.

The Protocol seeks, in the main, to “ensure that any changes to financial and investment policies in one State Party do not necessitate undesirable adjustments in other State Parties.” This objective can only be realized through regional integration, cooperation and coordination, to achieve sustainable economic development and growth and eradication of poverty by, amongst others, “cooperating with regard to anti-money laundering issues amongst State Parties...” The vision is clear, and what remains is its

implementation. It is thus wise that continued efforts should be made in respect of consolidation of expertise and other resources, to address money laundering as it is manifested in our economy. Most importantly, the public should be made aware of this phenomenon.

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