

Money Laundering

An Overview

Palitha D. Goonesekera*

Chief Law Officer, People's Bank

According to a recent estimate, worldwide money laundering activities amounts to approximately US \$ 1 Trillion a year. These illicit funds, one they get "cleaned", allows criminals to finance their criminal activities. It distorts economic decision-making, aggravates social ills and threatens the integrity of financial institutions. Today, money launderers have success to the speed and ease of modern electronic finance.

This paper is mainly written for the benefit of the Bankers who should become aware of these dangers of money laundering which is fast increasing in dimension.

WHAT IS MONEY LAUNDERING ?

Money Laundering is the process by which the existence, source or application of illegal income is sought to be concealed by those engaged in illegal activity. It is the process by which the launderer disguises the illegitimate nature of his income and makes it appear legitimate. In other words it refers to any transaction or series of transactions or other arrangements which seek to disguise the source of proceeds of illegal activities and the consequential conversion of such proceeds to a form that makes it appear to have originals from a legitimate source. Banks and other financial institutions may unwittingly be used as intermediaries for the transfer, deposit or investment of illegal money.

ACTIVITIES THAT CONSTITUTE MONEY LAUNDERING

Specified unlawful activities that result in illegal income are :

- ◇ Drug Trafficking
- ◇ Tax Evasion
- ◇ Illegal Gambling
- ◇ Embezzlement
- ◇ Racketeering
- ◇ Illegal Prostitution
- ◇ Mail & Telephone /Fax Fraud
- ◇ Terrorism
- ◇ Illegal Arms dealing
- ◇ Corrupt Public Officials
- ◇ Credit Card Swindling
- ◇ Black mailing

WHY BANKS & FINANCIAL INSTITUTIONS USED FOR MONEY LAUNDERING?

Bank and other Financial Institutions are used by the criminals to convert cash into forms that are easier to handle, to carry out transactions that are easier to hide its criminal origin and finally to move funds even across borders in an apparently legal way.

The integrity of the banking and financial services depends heavily on the perception that it functions within a framework of high legal, professional and ethical standards. Therefore, if funds from criminal activities can be easily processed through a particular Financial Institution, it could give a negative impact on customers, other Financial Institutions and the Regulatory Bodies.

HIGH RISK INDUSTRIES

The nature of the business of a customer can be used as a yardstick to classify an account as "High Risk". For Example -

- ◇ Non-Bank Financial Institutions (Money changers or Money Transmitters)
- ◇ Travel Agencies
- ◇ Casinos
- ◇ Art & Antique Dealers
- ◇ Brokers /Dealers
- ◇ Real Estate Agencies
- ◇ Import/Export Trading Houses
- ◇ Jewel/Gem/ Precious Metal Traders
- ◇ Off-shore subsidiaries of Corporations and banks

- ◇ Car/Boat/Plane Dealerships
- ◇ Leather goods stores
- ◇ Used Trucks/Auto Parts manufacturers

HIGH RISK PRODUCTS

Another yardstick is the kind of product the customer requests. "High risk" products are those products which allow customer to readily convert cash into a monetary instrument and/or any product/service which allows a customer to readily move value from one jurisdiction to another.

- Eg. - Funds Transfers
Controlled Payment Drafts
Global Foreign cheques Clearing Services
Travelers Cheques

Three Stages of Money Laundering

Money laundering generally involves a series of multiple transaction used to disguise the source of financial assets so that the assets may be used without embarrassing or exposing the launderers who are seeking to use them.

Stage 1- Placement

The money launderer introduces his/her illegal profits into the financial system, by breaking up large amounts of cash into smaller sums and deposit directly into Bank accounts or by purchasing monetary instruments such as money orders, cheques and drafts.

Stage 2 - Layering (clearing)

The next stage is clearing stage where the illegal proceeds are moved between many accounts through layers of complex financial transaction thus creating a web of transactions so that they are separated from their illegal origin.

- Eg- False letters of credits
Asset Backed Transactions
Payments for goods and service on false invoices.

Stage 3 - Integration or re-circulation

Finally the proceeds are brought back to or re-enter the legitimate financial system. At this stage the launderer provides a legitimate explanation of his/her wealth and choose to invest in : Real Estate, Stocks and Bonds, Mutual Funds, Art Work, Capital construction projects.

CONSEQUENCES OF MONEY LAUNDERING

Money Laundering is necessitated by the requirement of the drug and arms traffickers, black-mailers, terrorists, credit card swindlers etc., to disguise the origin of their criminal or "dirty" money

* I would greatly appreciate the assistance given to me by Miss Manuja Narangoda, Mrs. Kumari Lawrance and Mrs. Chandima Perera, Law Officers of the Peoples' Bank in preparation of this paper.

so that they can avoid detection and the consequent risk of prosecution when they use it. Therefore, the problem of money laundering has been in existence, in one form or another, for hundreds of years. Some of the important factors that have made its serious problems are :-

- (a) Rapid economic globalization
- (b) Relaxation of capital control
- (c) Emergence of new economies
- (d) Sale of state owned enterprises
- (e) Development of new financial instruments and technology.

Anti money laundering efforts, which are designed to prevent or limit the ability of criminals to use their ill-gotten gains, are both critical and effective components of anti-crime programmes.

Money Laundering has potentially devastating economic, security and social consequences. It provides the fuel for the drug dealers, terrorists, illegal arm dealers, corrupt public officers and others to operate and expand their criminal enterprises. Modern financial systems, in addition to facilitating legitimate commerce also allow the wrongdoers to transfer millions of dollars instantly using advanced technology. Money is laundered through currency exchange houses, stock brokerage houses, Gold Dealers, Casinos, Auto Mobile Dealers, Insurance Companies and Trading Companies. Private Banking facilities, Offshore Banking, "Shell" Co-operations, Free Trade Zones, Wire Systems and trade financing, can make illegal activities. In doing so, the money launderers can manipulate not only the financial system in the country where they are resident but also those in other countries where they have their dealings.

Exposure of Emerging Markets

Money laundering is a problem not only to the world's major financial markets and off shore centres but also to emerging markets. Any country integrated into the international financial system runs the risk of becoming a vulnerable target for money laundering activity. Increased efforts by the authorities of the major established financial markets and offshore financial centres to arrest this activity encourages the money launderers to shift their activities to emerging markets. There is evidence of increasing cross-border cash shipments to markets having relaxed arrangements for detecting, recording and arresting cash placements in their financial system.

Undermining the legitimate Private Sector

Money launderers often use "front" companies which mixes the proceeds of illicit activity with legitimate funds in order to mask the ill gotten gains. In some cases these "front" companies,

having access to large sum of illicit funds allows them to subsidize their products and services below market rate and are able to offer products at prices below the cost of production of legitimate manufacturers.

Often this makes it difficult for legitimate businesses to compete against these companies thus creating a situation of private sector business being pushed out by criminal organizations thereby resulting in a negative macro-economic effect. Often, the management principles of these criminal enterprises are not consistent with traditional free market principles of legitimate business.

Undermining the integrity of financial markets

Money Laundering has an effect of undermining the integrity of financial markets. If large sums of laundered money are deposited at financial institutions and disappear suddenly, without notice through various modes of transfers of funds, it can result in liquidity problems and runs on deposits of such institution. Financial crisis at BCCI in 1990s and collapse of Barings Bank in 1995 are examples.

Loss of control of economic policy

A former Managing Director of the International Monetary Fund, Mr. Michel Camdessus has estimated that the magnitude of money laundering in the world is between 2% and 5% of the world gross domestic product or approximately six hundred thousand million US Dollars. In some emerging money markets, these illicit proceeds can dwarf Government budgets resulting in a loss of control of economic policy of such Governments. Money laundering can also effect currencies and interest rates adversely as launders prefer to reinvest funds where their schemes are less likely to be detected rather than where rates of return are higher. In short, money laundering may result in inexplicable change in money demand and increased volatility of international capital flows, interest and exchange rates, thus making it different to achieve the desired sound economic policies.

Effect on Economy, Revenue and Privatization efforts

Money laundering causes economic distortion, instability and loss of Government Tax revenue. Money launderers generally, are not interested in profit making from their investment. They are more concerned in protecting their proceeds. For example they may finance entire industries such as construction and hotels not because of actual demand but because of short term interest of the launderers. When these industries do not suit them, they abandon them causing a collapse of these industrial sector in the country and also great damage to the economy. It also can be used to outbid legitimate

buyers of state owned enterprises when they are on sale consequent to introduction of economic reform though privatization by certain Governments. This privatization initiative, though economically beneficial at times, can serve as a vehicle to launder ill-gotten funds. It was revealed that in the past, large industries, Holiday resorts, Banks etc., have been purchased by these criminals in order to hide and launder their illicit proceeds.

Reputation risk and social costs

Money Laundering can tarnish the reputation and image not only of a financial institution but also of the entire Nation, especially in today's global economy, thereby diminishing the development and the economic growth of that institution or Nation. Once the financial reputation of an industry or a country is damaged its revival not only becomes very onerous but also requires significant government resources to rectify such damage. Furthermore, it increases the cost of the Government consequent to increased law enforcement and health care expenditure (drug addiction). It has a negative socioeconomic effect in that it transfers economic power from the market, Government and citizen to criminals thus having a corrupting effect on all aspects of the society.

Effects of Money Laundering on correspondent Banking

- Some Banks have established correspondent relationship with high risk foreign Banks. These foreign banks may be "shell banks" with no physical presence in any country for conducting of business with their clients: Or

Offshore banking with related license to do business with persons outside licensing jurisdiction; Or

Banks licensed and regulated by jurisdictions with weak anti money laundering controls that invite banking abuses and criminal conduct. Because these banks have limited resources and staff, they use their correspondent banking accounts to conduct their banking operations.

- Some of these high risk foreign banks that are denied their own correspondent accounts at US Banks can obtain the same access to the US financial system by operating correspondent accounts at a foreign bank that already has a US Bank account. Therefore, bankers should address their minds to this money laundering risks associated with "nested" correspondent banking.

International regulations to combat money laundering

> In 1989, the leaders of a group of Seven (Canada, France, Germany, Italy, Japan, UK and USA) convened a Financial Action Task Force (FATF) consisting of 29 members.

Membership includes, the European Commission and Gulf Cooperation Council, Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

The FATF issued in 1990 "The Forty Recommendations" which today has become a comprehensive set of measures to regulate anti money laundering standards. It covers the criminal justice system and law enforcement and sets out principles for action and allow the countries a certain amount of flexibility in implementing these principles to suit their particular circumstances and laws. Many countries have made political commitments to combat money laundering by adopting these recommendations with improvements where necessary.

Some of these recommendations are :-

- a) Criminalizing the laundering of the proceeds of serious crimes,
- b) Enacting measures to seize and confiscate the proceeds of such crime,
- c) It also requires financial institutions to identify all clients and to keep appropriate records and also to report suspicious transactions to the Competent Authority of that country.

What is a suspicious transaction ? It is one that requires a closer examination, in order to confirm that it is legitimate and not a part of a money laundering activity. It may be **unusually** large, complex and have an unusual operational aspect or have no approved economic purpose.

> The FATF introduced a major project in 1999 known as the Non-Cooperative Countries and Territories (NCCT). The first report of this body published in June, 2000, had identified 15 countries with serious money laundering problems. They are, the Bahamas, Cayman Islands, the Cook Islands, Dominica, Israel, Lebanon,

Liechtenstein, Marshall Islands, Nauru, Niue, Panama, the Philippines, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines.

> In February, 2001 the FATF had issued a progress report on these fifteen countries and noted that the Bahamas, Cayman Islands, Cook Islands, Israel, Liechtenstein, Marshall Islands, Panama have enacted remedial legislation to combat money laundering activities.

> At its plenary meeting in June, 2001, the FATF reviewed the progress made by these countries on Anti Money Laundering activities and whilst removing the countries viz. The Bahamas, Cayman Islands, Liechtenstein, Marshall Islands, and Panama from the NCCT List added six more countries to the said list blacklisting them as havens of money laundering activities. These countries are Egypt, Guatemala, Hungary, Indonesia, Myanmar and Nigeria.

These new members which have been included in the list of NCCT were cited for various failings including lack of proper legislation or supervision. The President of the FATF Mr. Joe Maria Rolden had remarked "We see that this initiative has triggered significant improvements in Anti-Money Laundering system throughout the world."

> Efforts by FATF to introduce regional groups and initiatives in Africa and South America have led to the establishment of the Eastern and Southern Africa, Anti Money Laundering Group (ESAAMLG) and the Financial Action Task Force on Money Laundering in South America (GAFISUD). Other prominent regional FATF-style bodies are the Asia/Pacific Group on Money Laundering (APG) the Caribbean Financial Action Task Force (CFATF) and the Council of Europe PCR-EV Committee.

> Organizations involved in combating money laundering that have observer status with the FATF include the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the International Monetary Fund (IMF), the Offshore Group of Banking Supervision (OGBS) and the United Nations Office for Drug Control and Crime Prevention (UNODCP). Many of these international Organizations have formulated major anti-money laundering initiatives.

> In 2000 INCSR (International Narcotics Control Strategic Report) after assessing money laundering activities in more than 175 countries classified them into three categories on a priority basis.

(a) Countries/jurisdictions of primary concern

Antigua & Barbuda	Hong Kong	Panama
Australia	Hungary	Paraguay
Austria	India	Philippines
Bahamas	Indonesia	Russia
Brazil	Isle of Man	Singapore
Burma	Israel	Spain
Canada	Italy	St. Kitts and Nevis
Cayman Islands	Japan	St. Vincent
China	Jersey	Switzerland
Colombia	Lebanon	Taiwan
Cyprus	Liechtenstein	Thailand
Dominica	Luxembourg	Turkey
Dominican Republic	Mexico	United Arab Emirates
France	Nauru	United Kingdom
Germany	Netherlands	United States
Greece	Nigeria	Uruguay
Grenada	Pakistan	Venezuela
Guernsey		

Countries/jurisdictions of concern

Albania	El Salvador	Niue
Argentina	Gibraltar	Palau
Aruba	Guatemala	Peru
Bahrain	Haiti	Poland
Barbados	Honduras	Portugal
Belgium	Ireland	Romania
Belize	Jamaica	Samoa
Bolivia	Korea	Seychelles
British Virgin Islands	Korea, North	Slovakia
Bulgaria	Latvia	South Africa
Cambodia	Macau	St. Lucia
Chile	Malaysia	Turks & Caicos
Cook Islands	Marshall Islands	Ukraine
Costa Rica	Monaco	Vanuatu
Czech Republic	Netherlands Antilles	Vietnam
Ecuador	Nicaragua	Yugoslavia
Egypt		

(b) Other countries/jurisdictions monitored

Afghanistan	Iran	Niger
Algeria	Jordan	Norway
Angola	Kazakhstan	Oman
Anguilla	Kenya	Papua New Guinea
Armenia	Kuwait	Qatar
Azerbaijan	Kyrgyzstan	Saudi Arabia
Bangladesh	Laos	Senegal
Belarus	Liberia	Slovenia
Benin	Lithuania	Solomon Islands
Bermuda	Macedonia	<u>Sri Lanka</u>
Bosnia & Herzegovina	Madagascar	Suriname
Botswana	Malawi	Swaziland
Brunei	Maldives	Sweden
Cameroon	Mali	Tajikistan
Cote d'Ivoire	Malta	Tanzania
Croatia	Mauritius	Togo
Cuba	Micronesia FS	Tonga
Denmark	Moldova	Trinidad & Tobago
Eritrea	Mongolia	Tunisia
Estonia	Montserrat	Turkmenistan
Ethiopia	Morocco	Uganda
Fiji	Mozambique	Uzbekistan
Finland	Namibia	Yemen
Georgia	Nepal	Zambia
Ghana	New Zealand	Zimbabwe
Guyana		

Sri Lankan Scenario

The Bureau of International Narcotic and Law Enforcement, USA referring to the level of money laundering in Sri Lanka had made following remarks:

"There is no conclusive evidence that money laundering is occurring on a large scale. The increasing amount of heroin transiting and being sold within the Country, however, world indicate that drug-related money movement takes place, specifically between India and Sri Lanka. The Cabinet has approved new legislation for consideration by Parliament in 1977, which includes anti-money laundering provisions and drug related asset forfeiture. Sri Lanka implemented strict bank secrecy laws earlier in the decade, and even offered numbered bank accounts to attract hard currency. However, transactions related to drug trafficking are excluded from the secrecy protection. Common means of money movement include invoice manipulation and underground banking particularly between India and Sri Lanka. These underground or "hawala" channels are used extensively by businessmen as well as drug traffickers throughout India, Pakistan and the rest of South Asia. Sri Lanka's liberalized foreign exchange and investment policies would seem to make "hawala" schemes attractive only to individuals seeking to launder or hide the origin of money, and not to persons conducting legitimate business transactions".

01. The Sri Lankan Authorities are now becoming increasingly concerned about all the possibilities of usage of our financial services system for money laundering activities in the absence of specific legislation. **The Draft Legislation prepared on money laundering is annexed hereto.** According to this draft the Central Bank would be the supervisory authority. Any person who obtains information or has reason to believe, in the course of his business or employment that the property of any other person has been derived from any illegal activities is obliged to inform the supervisory authority of such knowledge.

02. The financial activities defined in the schedule of the said draft are given below:

- ▲ Lending (including personal credits, lending on the mortgage of movable or immovable property, factoring with or without recourse, financial or commercial transactions including forfeiting).
- ▲ Finance leasing
- ▲ Provision of Venture risk capital
- ▲ Money transmission services
- ▲ Issuing and administering means of payment (e.g. credit cards, travelers cheques and banker's draft)
- ▲ Guarantees and commitments
- ▲ Trading for own account or account of customers in -
 - Money marked Instruments (cheques, bills, certificates of deposits etc.)
 - foreign exchange
 - financial futures and options

- exchange and interest rate instruments; and
- transferable instrument

- ▲ Underwriting share issues and the participation in such issues
- ▲ Money brokering
- ▲ Stock brokering
- ▲ Investment business
- ▲ Deposit taking
- ▲ Insurance business transactions
- ▲ Buying and selling immovable property
- ▲ Bullion Dealings
- ▲ Casinos and other gambling and betting services
- ▲ Financial intermediaries.

03. Under the draft Act, any person (a) who knowing or having reasons to believe that any property has been directly or indirectly derived from unlawful activity or (b) engages in any transaction in relation to such property or (c) receives, possesses, brings into Sri Lanka or transfers out of Sri Lanka any such property, commits the offence of money laundering.

Therefore, it is seen that the offence of money laundering would apply to those persons who commit the offence of money laundering and acquire property using such proceeds and to third parties who deal with such property knowing or having reason to believe that such property is derived from unlawful activity. Thus in practical terms the proposed law casts a very heavy burden on the prosecution who has to establish the predicate offence as well as to prove that the subsequent transaction is connected to the predicate offence. In the case of the Bribery Act, there is a rebuttable presumption that all unaccounted assets are deemed to be acquired by unlawful activity. Such provisions would ease the burden placed on the prosecution.

In the draft legislation such provisions is absent and therefore, it would be no exaggeration to say that no practical purpose would be achieved by this law, unless this presumption is brought into the statute.

04. However, some salutary features of this draft legislation are :-

- ▲ The obligation cast on person who know or have reasons to believe that any property has been acquired through the proceeds of unlawful activity, to pass on that information to the supervisory authority.
- ▲ Vesting on the Supervisory Authority (Central Bank) with number of statu-

tory powers to enable them effectively to monitor the offence of money laundering which includes calling for information documents etc., from any financial institution and to examine and inspect any records maintained in such financial institutions.

- ▲ Provision enabling the Supervisory Authority to obtain an order from the Magistrate to compel any person involving in money laundering to produce any document in his possession for purpose of investigation.
- ▲ Provision enabling the Supervisory Authority to issue an order to freeze the account, property or investment prohibiting any further transaction.
- ▲ Provision to confiscate all properties belonging to any person convicted by a Court of Law for any offence of money laundering.
- ▲ The proposed Act also expressly recognizes money laundering as an extraditable offence.

Protective measures to be taken by Banks against money laundering

01. (a) To design internal control policies and procedures which would enable to identify/detect potential illegal or damaging transactions and to reject them to prevent fraud and money laundering activities.

(b) To designate a Senior Executive Officer as Money Laundering Compliance Officer who would report to the Regulator (Central Bank) if there are any reasonable grounds to believe that the property involved in any transaction is derived directly or indirectly from any unlawful activity which in view of the compliance officer could lead if unchecked, to money laundering activity.

(c) To monitor periodically the records of financial transactions conducted by the high risk industries who are customers of such institutions.

(d) To comply with the instructions of the Central Bank and to permit any authorized officer of the Central Bank to examine any account or document pertaining to any suspicious transactions.

(e) Assist the Central Bank by producing any record of suspicious transaction for examination purpose.

- (f) To maintain records of financial transactions of the institution for period of five (5) years.
02. It is of prime importance for any Bank to recognize and report transactions that are of suspicious nature. Under the Draft Legislation, it is the duty of any person who has a knowledge of any offence of money laundering to report to the supervisory authority.
03. Any single event or a series of activities over a period of time which causes an observer to query the validity could be termed a suspicious transaction. In other words any activity or transaction which to the eye of the Bank officer appears to be unlawful or out of context in the circumstance, within which it is observed can be treated as a suspicious transaction. Some of the questions that should be considered by the Officer might be :-
- ▲ Is the size of the transaction consistent with the normal activities of the customer ?
 - ▲ Is the transaction rational in the context of the customer's business or personal activities?
 - ▲ Has the pattern of transactions conducted by the customer changed?
 - ▲ Where the transaction is international in nature, does the customer have any obvious reason for conducting business with the other country involved ?
04. All Financial Sector businesses have a clear obligation to ensure -
- ▲ That each relevant employee knows to which person he or she should report suspicions ; and
 - ▲ That there is a clear reporting chain under which those suspicious acts will be passed without delay to the Reporting Officer.
- Once an employee has reported his/her suspicion to the "appropriate person", or a higher authority, he has fully satisfied the statutory obligations and is no more responsible.
05. Reporting lines should be as short as possible with the minimum number of people between the person with the suspicion and the authority.
- (a) The speed, confidentiality and accessibility to the authority is important.
- (b) A Bank may choose to require such unusual or suspicious transactions be drawn initially to the attention of banks supervisory management to ensure that there are no known facts that will negate the suspicion before further reporting.
05. All reports should be documented and procedures listed in appropriate manual and job description.
06. All suspicious transactions reported to the authority should be documented. In urgent cases, this may follow an initial discussion by telephone. All the reports should include the full details of the customer and as full statement as possible of the information giving rise to the suspicion.
- WARNING SIGNALS**
- A customer who is reluctant to provide complete information regarding the purpose of the business, prior banking relationship, officers or directors, or its location.
 - A business that refuses to provide information that is required normally to qualify customers for credit or other banking services.
 - The customer's background is inconsistent with business activities.
 - Financial statements are not prepared by an accountant although the business or corporation is large.
 - A business that is reluctant to reveal details about its activities or provide financial statements, or whose financial statements are noticeably different from those of similar business.
 - A customer who is unwilling to provide personal background information when opening an account or purchasing monetary instruments above a specified period.
 - A potential customer who is reluctant or refuses to furnish reference, or the references cannot be verified or contacted.
 - A customer who has no record of past or present employment but makes frequent large transactions.
 - Corporate accounts where deposits or withdrawals are primarily in cash rather than cheques.
 - An account that sends and receives wire transfers without an apparent business reason of when inconsistent with the customer's business or history.
 - An account that receives many small incoming wire transfers or makes deposits using cheques and money orders, and almost immediately wire transfers all such deposits excepts for a token amount to another city or country when such activity is not consistent with the customers business or history.
 - A customer who maintains an inordinately large number of accounts for the type of business he is purportedly conducting and/or uses an inordinately large number of fund transfers between or amongst these accounts.
 - A large volume of cashiers cheques, foreign money orders, and/or wire transfers is deposited to an account where the nature of the account holders business would not appear to justify that activity.
 - Unusual cash purchase of foreign money orders, drafts and cheques.
 - Frequent exchanges of small value currency notes for large ones and vice versa.
 - A non customer or a customer receives incoming wire transfers for large amounts with instructions from the Bank to "pay upon proper identification"
 - A customer who deposits into his bank account a substantial amount of Traveler's cheques in large denominations and in sequential order.
 - When the client uses the account for a short period of time
 - Frequent cash transaction involving sums just under specific cash reporting limit (smurfing)
 - Guarantees for security, of loans made by unknown third parties particularly in foreign jurisdiction.
 - Use of offshore account in circumstances where the clients' commercial or financial needs do not justify such service.
 - Over depositing of high value assets in client account as margin for relatively straightforward commercial or legal services.
 - Unnecessary use of intermediaries for the purpose of routing money through third party accounts.

"KNOW YOUR CUSTOMER" CONCEPT AND DUE DILIGENCE

Business of Banking unlike other businesses needs basic information about its customers and their type of business. Bankers are under a legal obligation to know their customers and their businesses from the time of entering into a relationship with the customer. In *Lloyds Bank Limited Vs. E B Savory and Company*, Lord Wright said "it is now usual practice of bankers not to open accounts for a customer without obtaining a reference and without inquiry. To failure to do so at the opening of an account might well prevent the banker from establishing the defence in the case of conversion. The Privy Council in *Commissioner of Taxation Vs. English, Scottish and Australian Banking* said "the test of negligence is whether the transactions of paying in any given cheque coupled with the circumstances antecedent and present was so out of the ordinary course that it ought to have aroused doubts in the minds of the Bankers."

It is therefore, one of the main functions of a Banker to know his customer well. The Financial Services Authority in the United Kingdom has issued certain guidelines that may be used in testing the concept of "know your customer". The FSA rules states that relevant bank must take reasonable steps to deploy information it has about the financial circumstances of a customer, and features of the transaction entered into with or for the customer throughout relevant parties of the Bank (know your business information).

The individual identity comprises of the name and all other names used, addresses of which such individual can be located, date of birth and nationality, all subsequent changes of the customer's name, address of which the Bank becomes aware. Therefore, evidence of identification should be obtained :

- > For all parties to an account or a business relationship
- > The ultimate beneficial owner of funds being invested
- > The principal signatories to an account; and
- > All third parties who are permitted to use an account from time to time or provide funds for investment or deposit

For the purpose of evidence in respect of the name of the individual the following documents may be obtained. Further they should be clearly compared with the originals.

- a) Evidence of Name -
 - > Current signed passport
 - > Aliens registration certificate issued by the Government on sight of own country passport

- > National Identity Card
- > Inland Revenue Tax Notification

- b) Evidence of Address -
 - > Making an electoral register search or a credit reference agency.
 - > Requesting the sight of local authority assessment notice (upto three months old)
 - > Requesting sight of tax assessment (valid for the current year)
 - > Electricity Bill
 - > Land Line phone bill
 - > Address checks made using computerized internal or external application database
 - > Bank statement or passbook containing address
 - > A recent original mortgage or tenancy statement from a recognized lender - or a Title Deed.
 - > Police or Grama Seveka Certificate confirming residence.

All Banks should strive to conduct due diligence in order to prevent such Banks being used for criminal purpose. Due diligence enables the Bank to comply with established laws, practices, regulations and , thereby reducing its vulnerability to money laundering activities and also protecting its good name. Therefore, it is of vital importance to a Bank or a Financial Institution to adopt following due diligence procedures to prevent themselves from becoming victims of fraudulent transactions.

- (a) Strict identification and scrutiny procedures at the time a client opens an account. This includes knowing the true identity of a customer including that of the beneficiary,
- (b) the customer's business or his professional activities, his sources of income, wealth and assets, specific sources of money that is the subject matter of the transaction at the Bank.

The Bank should develop monitoring system of the type of transaction in which any customer normally engage. If such customer belongs to a high risk category, then enhanced monitoring is essential.

Monitoring procedure would be the most important aspect in the prevention of money laundering. Internal systems of the Bank must be in position to identify and monitor the transactions that appear to be suspicious. A banker must assess the risk inherent in doing business with the specific type of Account. All transactions that exceed money limitation set for such type of operation should be reviewed. Significant increase in the activity in any account should be monitored.

The Bank also should conduct on going education programmes for the Bank staff in respect of money laundering techniques and their prevention, changes

in applicable laws and regulations and type of transactions that may require investigations. All new employees should be provided with guidelines concerning anti money laundering procedures.

Ann T Vitale, former Managing Director and Deputy General Counsel of the Republic National Bank of New York states that "one of the most important elements of successful anti money laundering programme is the commitment of the senior management, including Chief Executive Officer and the Board of Directors to the development and enforcement of the anti money laundering process."

CONCLUSION

Money Laundering is a serious crime that can happen anywhere, any time and in any manner. It has been the concern of many Governments due to the criminal money, in the hands of terrorist organizations, under world operators, illegal arm dealers, drug traffickers etc., being infiltrated into Financial Institutions of those Governments and being recycled in nefarious activities after being "cleaned".

Therefore, it is our responsibility as Bankers to eliminate it at all costs and safeguard, not only the Financial Institutions but also the economy and the State.

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