

# Anti-Money Laundering

## Anti-Money Laundering, Combating Financing of Terrorism & Other Financial Offences

### Introduction

- Definition of Money Laundering
  - Stages of Money Laundering
  - Business Areas Prone To Money Laundering
  - US Patriot Act
  - Financial Action Task Force
  - OECD Guidelines for Multinational Enterprises
  - AML in Belgium
  - Prevention of Money Laundering Act
  - Diamond Industry Strategies to Combat Money Laundering
  - Responsibilities & Accountabilities
  - Internal Controls, Policies and Procedures
- It may be noted here that the kimberley process monitors the product and not the flow of funds. Hence, in order to complement the same, AML legislation is required.
- The diamond industry has been designated as deemed financial institution in AML legislations thus making all the provisions of AML applicable to banks or financial institutions applicable to them.
- When we shout that the AML legislations are very difficult or impossible, we should first consider that the banks follow the same guidelines, or may be even stricter guidelines even to open savings accounts while we are dealing in very high value precious substance. Hence, no one will hear our argument that AML is impossible to follow.

### SO?

We don't have an option to adhere to AML or not. It is not for BPP alone that we are required to follow the AML legislations. It is for our survival. Just as we have trained ourselves to live with income tax, we have to do the same with AML. AML will be essential if we want to transact business with the US or the EU or anywhere else. So.....

## DEFINITION OF MONEY LAUNDERING

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities.

If undertaken successfully, it also allows them to maintain control over those proceeds and ultimately, to provide a legitimate cover for their source of funds.

Their 'dirty' funds come to appear 'clean'.

## STAGES OF MONEY LAUNDERING

There is no one method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g. a car or jewellery) to passing money through a complex international web of legitimate businesses and 'shell' companies (i.e. those companies that primarily exist only as named legal entities without any trading or business activities). Some examples of ways of money laundering are :

### 1. Placement

The physical disposal of the initial proceeds derived from illegal activity.

### 2. Layering

Separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. Such transactions are often channeled via shell companies or companies with nominee shareholders and/or nominee directors.

### 3. Integration

The provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundered proceeds back into the economy in such a way that they re-enter the financial system appearing as normal business funds.

## BUSINESS AREAS PRONE TO MONEY LAUNDERING

- Banking
- Underground Banking
- Futures
- Finance Houses
- Financial Transmitters
- Casinos
- Antique Dealers/ Jeweller' s/Designer
- Goods Suppliers

## US PATRIOT ACT

*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act.*

Post 9/11, on 26th October 2001 to further counter money laundering and terrorism US enacted USA PATRIOT ACT.

It set the groundwork for public-private cooperation with the financial institutions shut off the flow of funds to terrorists.

The more important sections of the Act are :  
Section 352: Anti-Money Laundering Program  
Section 326: Customer Identification Program  
Section 314: Information Sharing & Safe Harbor

## OBJECTIVES & FEATURES OF PATRIOT ACT

PATRIOT Act is a law to provide significant tools to detect, investigate and prosecute money laundering. It authorizes the forfeiture of assets related to terrorism. It :-

1. Requiring wide range of financial institutions to establish anti-money laundering programs.
2. Denying “shell banks” access to the US financial system.
3. Developing a SAR reporting system for securities brokers/dealers.
4. Facilitating greater cooperation amongst enforcement agencies, private sector and financial institutions on money laundering and terrorist financing activities.

## PATRIOT ACT Section 352 – Regulatory Requirements

- Policies/Procedures/Controls
  - => Reasonably designed to prevent money laundering or terrorist financing
  - => Achieve and monitor compliance
- “Independent” Compliance Testing
- AML Officer
- Training for Appropriate Persons
- Procedural elements:
  - => Written policy
  - => Approved by Board or equivalent
  - => Available to FinCEN, regulator on request

## MAIN PROVISIONS OF THE US PATRIOT ACT

- Reporting to Internal Revenue Services and filing of Suspicious Activities Report when transactions in cash exceed \$ 10,000.
- Due Diligence requirements to combat foreign money laundering.
- Permits nation and worldwide execution of warrants in terrorism cases.
- Eases Government access to confidential information.
- Confiscation of all the property of any individual or entity that participates in any act of domestic or international terrorism.
- Confiscation of any property derived from or used to facilitate domestic or international terrorism.

## FINANCIAL ACTION TASK FORCE (FATF)

- The FATF is an inter-governmental body which sets standards, and develops and promotes policies to combat money laundering and terrorist financing. It currently has 33 members: 31 countries and governments and two international organizations.
- The FATF Forty and Eight Special Recommendations have been recognised by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism.
- These recommendations provide a basic framework for anti-money laundering efforts and are designed to be of universal application.
- The revised Forty Recommendations now apply not only to money laundering but also to terrorist financing, and when combined with the Eight Special Recommendations on Terrorist Financing provide an enhanced, comprehensive and consistent framework of measures for combating money laundering and terrorist financing.
- The Recommendations set minimum standards for action for countries to implement the detail according to their particular circumstances and constitutional frameworks. The Recommendations cover all the measures that national systems should have in place within their criminal justice and regulatory systems; the preventive measures to be taken by financial institutions and certain other businesses and professions; and international co-operation.

# FATF-40 RECOMMENDATIONS FRAMEWORK

## A. Legal Systems

- *Scope of the criminal offence of money laundering*
- *Provisional measures and confiscation*

## B. Measures to be taken by financial institutions & non-financial businesses and professions to prevent money laundering and terrorist financing

- *Customer due diligence and record-keeping*
- *Reporting of suspicious transactions and compliance*
- *Other measures to deter money laundering and terrorist financing*
- *Measures to be taken with respect to countries that do not or insufficiently comply with the FATF*
- *Regulation and supervision*

## C. Institutional and other measures necessary in systems for combating money laundering and terrorist financing

- *Competent authorities, their powers and resources*
- *Transparency of legal persons and arrangements*

## D. International Co-operation

- *Mutual legal assistance and extradition*
- *Other forms of co-operation*

## **FATF-40 RELEVANT TO DIAMOND INDUSTRY**

- India is not member of FATF, but covered under member jurisdiction of Asia Pacific Region.
- The FATF applies to dealers in precious stones incl. diamonds
- Out of the 40 recommendations, only 10 have operational ramifications on the diamond industry.
- FATF-40 is applicable when a dealer enters into any transaction of sale/purchase of diamonds or jewelry in cash for an amount equivalent to the threshold limit, which is currently Euro 15,000. This threshold limit is per transaction and this includes situations where the transaction is carried out in single operation or in several operations that appear to be linked.

## **OECD GUIDELINES FOR MULTINATIONAL ENT.**

The OECD Guidelines for Multinational Enterprises (MNEs) were adopted in 1976 by the OECD Governments. The Guidelines address private parties, *i.e.* enterprises and not the Governments themselves. They do not have the character of binding international law, but are a voluntary code of conduct.

The Guidelines cover the range of Multinational Enterprise activities. Specific chapters deal with: general policies, information disclosure, competition, financing, taxation, employment and industrial relations, environment and science and technology.

## **AML IN BELGIUM**

- Diamond traders classified as financial institution for the purpose of the AML.
- A general prohibition that bars cash payments in Belgium for all transactions of Euro 15,000 and more. Henceforth, it is prohibited to make or receive cash payments on all sales or purchase of diamonds in the amount of Euro 15,000 and more.
- Diamond industry to be fully compliant by 24 January 2005.
- Reporting to Belgium Financial Intelligence Processing Unit.
- KYC: The identification process for all existing clients must be finalised by February 2, 2005 at the least.
- A violation of provision does not lead to the cancellation of the transaction or the payment, but is subject to a fine of a maximum of 10% of the value of the transaction with a ceiling of Euro 12,50,000.

## **PREVENTION OF MONEY LAUNDERING ACT 2002**

The Prevention of Money Laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in money-laundering, and for matters connected therewith or incidental thereto.

The PMLA had become necessary to implement the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1999 which called upon the Member States to adopt national anti money-laundering legislation and programme.

## **SALIENT FEATURES OF THE PREVENTION OF MONEY LAUNDERING (AMENDMENT) BILL 2005**

- Enforcement of the provisions of the Act entrusted to the Directorate of Enforcement (ED) in the Ministry of Finance
- Only some of the offence punishable under the act shall be cognizable
- Police officers to investigate into the cases only upon authorization of the ED or any other officer authorized by the central government
- Strict conditions of bail in case the person is accused of an offence punishable with 3 years or more of imprisonment

## **PREVENTION OF MONEY LAUNDERING ACT**

Offence of Money Laundering means whosoever directly or indirectly;

- ✎ attempts to indulge; or
- ✎ knowingly assists; or
- ✎ knowingly is a party; or
- ✎ is actually involved,

in any process or activity connected with the proceeds of crime and projecting.

## **PREVENTION OF MONEY LAUNDERING ACT 2002**

### Punishment under PMLA, 2002

Punishment of minimum 3 years rigorous imprisonment, which may extend to 07 years, along with fine upto Rs. 5 lacs.

### Scheduled Offences Covered

It prescribes punishment for money laundering activity concerning only the offences as mentioned in its Schedule.

## DIAMOND INDUSTRY-STRATEGIES TO COMBAT MONEY LAUNDERING

The US Government is increasingly stressing the link between diamonds and terrorists. They are pointing to the easy concealment and transportability of this high value product, and are highlighting the vulnerability of the industry to penetration by criminal or terrorist elements.

A landscape is rising on the Diamond industry's horizon, imposing:

- Complex due diligence processes on clients, suppliers, and other stakeholders.
- Mandatory reporting of unusual or suspicious transactions.
- Transaction evidence record keeping well beyond standard accounting norms.
- Limitation on the use of Cash.
- Introduction of corporate anti-money laundering and anti-terrorist financing compliance programme.
- Adherence to international convention on corporate ethics and good governance.
- 
- Extensive training and screening programs for employees.
- 
- Development of internal auditing procedures to ensure effectiveness of programs.

## Internal Controls, Policies and Procedures

### Identification Procedures

Know Your Client (KYC) : The objective of KYC is to prevent Group from being used, intentionally or unintentionally, by criminal elements for money laundering activities.

The 'know your client' process is vital for the prevention of money laundering and underpins all other activities.

If a client has established business relationships under a false identity, he/she may be doing so for the purpose of defrauding the firm itself, or merely to ensure that he/she cannot be traced or linked to the proceeds of the crime that the firm is being used to launder. A false name, address or date of birth will usually mean that the law enforcement agencies cannot trace the client if he/she is needed for interview in connection with an investigation.

Where a partner, a trusted member of staff, a respected client of long standing or another reliable source introduces a new client, a firm may take the view that no further verification of identity should be required so long as the introducer confirms in writing the identity of the prospective client. But firm should not overlook the need for normal client acceptance procedures.

It is for each firm to decide what document(s) a prospective client should be required to produce as evidence of identity. Where possible a copy of such document(s) should be taken and retained. Where this is not possible, the relevant details should be recorded on the prospective client's file.

It is for firms themselves to discharge their obligation to verify identity. The few occasions when it is reasonable to rely on others to undertake the procedures or to confirm identity include:

Where the client is introduced by one of the firm's overseas branch offices or associated firms. But the firm should obtain the introducer's written confirmation that it has verified the client's identity

The verification requirements are the same, whatever the means by which the firm intends to provide its services to the client. Thus, the requirements are no less where all advice is to be given by post, by telephone or even through the Internet.

If relevant financial business is involved, the identification procedures must be followed whenever a business relationship is to be established. Once identification procedures have been satisfactorily completed, then as long as records are maintained with the client, no further evidence is needed when subsequent transactions are undertaken.

When a client agreement is entered into, or terms of business letter delivered, this in itself will not automatically trigger the requirement to verify. However, it is advisable to complete identification procedures at that stage.

## Recognition of suspicious transactions

Where there is an established client, a suspicious transaction will often be one which is inconsistent with that client's known, legitimate business or personal activities. Therefore, the first key to recognition is to know enough about the client and the client's business to recognize that a transaction or series of transactions, is unusual. Such transactions may arise at any stage and frequently occur within an established relationship rather than at the outset.

## Reporting of suspicious transactions

All firms have a clear obligation to ensure:

- (i) that each relevant partner and member of staff knows to which person he or she should report suspicions; and
- (ii) that there is a clear reporting chain under which those suspicions will be passed without delay to the C.O.

Once a partner or employee has reported his/her suspicions to the C.O., he/she has fully satisfied the statutory obligation.

- End -