

LEGAL FRAMEWORK ON COMBATING MONEY LAUNDERING IN SRI LANKA: AN ANALYTICAL STUDY ON DOMESTIC AND INTERNATIONAL INSTRUMENTS

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History of Money Laundering

Crime is an act which is prohibited by state through laws and deserves punishment and control. 'Crime' takes diverse forms and labels which sometimes arrive in novel forms and state has to intervene immediately to combat them for the best interest of the humankind.

'Money Laundering' also synonym by 'dirty money', 'Criminal Money', 'Illegal Money' is a novel form of crime identified by the human society, which has gained both national and international attention as a series of independent crimes.

*"Money laundering is a process by which unlawfully acquired proceeds are made to appear to have been derived from a legitimate source."*¹

Money laundering is the process of releasing the money obtained from illegal activities to the normal money transaction systems to make them legal money. Any financial transaction where the money is

gained by illegal activity is considered as laundered. The remittance system can be considered as the oldest money laundering mechanism as it moves the value from one place to another without the use of physical currency notes. This was used by the drug dealers in early Europe countries to convert their money legal.

"Money laundering has devastating social consequences and is a threat to national security because money laundering provides the fuel for drug dealers, terrorists, arms dealers and other criminals to operate and expand their criminal enterprises. In doing so, criminals manipulate financial systems in the United States and abroad. Unchecked, money laundering can erode the integrity of a nation's financial institutions. Due to the high integration of capital markets, money laundering can also negatively affect national and global interest rates as launderers reinvest funds where their schemes are less likely to be detected rather than where rates of return are higher because of sound economic principles. Organized financial crime is

¹ United Nations Office on Drugs and Crime. (2018).

*assuming an increasingly significant role that threatens the safety and security of peoples, states and democratic institutions. Moreover, our ability to conduct foreign policy and to promote our economic security and prosperity is hindered by these threats to our democratic and free-market partners”.*²

‘Globalization’ paved the way for the criminals to use money laundering as a way of benefitting from crimes, by providing a legitimate appearance to the money derived from their criminal activities. Drug dealers, Terrorist Funding, Organized Crimes were well nourished by money laundering over decades.

Sri Lanka, as an island in the middle of the Indian Ocean also became victimized through this money laundering by way of the migrant workers receiving their money through remittance, immigrant workers sending money to their families, NGO funding, Nigerian migrants and through many business transactions.

The Three Stages of Money Laundering

The First stage is the ‘Placement of Proceedings of Criminal Activities, through cash deposits, or cash transportation to other countries. The Second Stage is the

² US Department of State, Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy (1997)

‘Layering of funds through wire transfers, split and merge through bank deposits, cash deposits to other accounts’. Finally as the Third Stage is Integration of funds through purchasing luxury goods such as gems, jewelry or properties, investment in businesses.

High Profile Money Laundering Cases

In 1998, Russian criminals laundered an estimated USD 89.1 billion through shell banks in Nauru. They were able to do this because Nauru reportedly allowed its banks to function without verifying the identities of its customers or questioning where deposited money came from³. Consequently, Nauru is included in the Financial Action Task Force’s (FATF) blacklist of countries, occupying a high risk for international financial transactions.

In 2012, Standard Chartered Bank in the United Kingdom was accused by New York's Department of Financial Services (DFS), for helping the Iranian government to circumvent US money laundering regulations to the tune of an estimated USD 191.8 billion over 10 years.⁴

President Ferdinand Marcos channeled a purported fortune of USD 10 billion into

³ Hitt, J. (2000). The Billion-Dollar Shack. [Online] New York Times. Available at <https://www.nytimes.com/2000/12/10/magazine/the-billion-dollar-shack.html> [Accessed 20 Sep 2019].

⁴ Whitehead, H. (2016). Top 5 Money Laundering Cases in the Last 30 Years. [Online] ICP. Available at: <https://www.int-comp.com/ict/top-5-money-laundering-cases-of-the-last-30-years/> [Accessed 20 Sep 2019].

various offshore bank accounts, foundations and valuable assets making it difficult to be identified and located. To date, approximately only USD 4 billion has been accounted for.⁵

Legal Framework in Sri Lanka

In order to overcome this problem, Sri Lanka enacted several significant Acts.

‘Prevention of Money Laundering Act No. 5 of 2006’, through which the state seeks to prohibit money laundering and provide the necessary measures to combat and prevent it. This Act will apply to, a) a person who commits an offence whilst being resident in Sri Lanka, b) an institution which is being used for the offence, and c) an act which constitutes an offence which is committed in Sri Lanka.

Also ‘a person is guilty of the offence of Money Laundering if he has engaged directly or indirectly in any transaction relating to any property which is derived or realized, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity’.

The offence also applies to situations where a person receives, possesses, conceals, disposes of or brings into Sri Lanka, transfers out of Sri Lanka or invests in Sri Lanka any property which is derived or

realized, directly or indirectly from any lawful activity or from the proceeds of any unlawful activity.

The important facts to consider here is the ‘knowledge’ of the person and the proceeds must be derived or realized from any ‘unlawful activity’. It must be proved that the person knew or had reason to believe that such property was derived or realized, directly or indirectly from any lawful activity or from the proceeds of any unlawful activity.

A person found guilty of Money Laundering shall be liable to a fine not less than the value of the property in respect of which the offence is committed, and not more than the three times the value of the property in respect of which the offence is committed or to rigorous imprisonment for a period not less than five years and not exceeding twenty years or to both such fine and imprisonment. The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture.

According to this Act, the basic offence aims at any ‘property’ which has been defined to include currency or asset of any kind whether movable, immovable, tangible or intangible, whether situated in Sri Lanka or elsewhere. This also encompasses legal documents or instruments in any form whatsoever including electronic or digital form,

⁵ Fintechnews Singapore (2018). Asia’s Most Wanted Top Ten AML Cases. [Online]. Available at: <http://fintechnews.sg/16105/fintech/asia-wanted-top-ten-aml-cases/> [Accessed 20 Sep 2019].

evidencing title to or interest in such assets which covers hiding of money, assets, and documents of title in digital and electronic form which are the latest trends in global money laundering.

Any ‘unlawful activity’ is used in a wider sense which can be used to cover the offences under The Poisons, Opium and Dangerous Drugs Ordinance, Any law or regulation for the time being in force relating to the prevention and suppression of terrorism, The Bribery Act, The Firearms Ordinance the Explosives Ordinance or the Offensive Weapons Act No.18 of 1966, The Foreign Exchange Act, An offence under section 83(C) of the Banking Act No.30 of 1988, Any law for the time being in force relating to transnational organized crime, Any law for the time being in force relating to cyber-crime, Any law for the time being in force relating to offences against children, Any written law for the time being in force relating to offences connected with the trafficking or smuggling of person, The Customs Ordinance and any Regulation, The Excise Ordinance and any Regulation, The Payment Devices Frauds Act, The National Environmental Act No.47 of 1980 and any Regulation, An offence under any other written law for the time being in force which is punishable by death or with imprisonment for a term five years or more.

‘The Financial Transaction Reporting Act No. 6 of 2006’ has been established the

Financial Intelligence Unit (FIU), which is an independent institution within the Central Bank of Sri Lanka, and acting as the National Agency to collect information relating to suspicious financial transactions. This Act facilitates the prevention, detection, investigation and prosecution of the offence of money laundering.

The “Financial Institutions Customer due Diligence Rules, No. 01 of 2016 and “Guidelines on Money Laundering and Terrorist Financing Risk Management for Financial Institutions No.1 of 2018” are the rules made by the (FIU).

Through these guidelines, all financial institutions are required to maintain records of transactions and of correspondence relating to transactions for a period of six years from the date of transaction and also to report any transaction exceeding Sri Lankan Rupees 1,000,000 to the FIU. Then the Central Bank will be notified by the Director of the FIU.

‘Convention on the Suppression of Terrorist Financing Act NO.41 of 2011’ is enacted to give effect to Sri Lanka’s Obligations under the International Convention for the Suppression of Terrorist Financing adopted by the United Nations General Assembly.

Article 2.1 of ‘The United Nations International Convention for Suppression of

Terrorist Financing’ defines Terrorist Financing as

“Any person commits an offence within the meaning of the Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

- (a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex;*
- (b) or (b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”.*

Annex: 1. ‘Convention for the Suppression of Unlawful Seizure of Aircraft’, done at The Hague on 16th December 1970. 2. ‘Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation’, done at Montreal on 23rd September 1971. 3. ‘Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents’, adopted by the General Assembly of the United Nations

on 14th December 1973. 4. ‘International Convention against the Taking of Hostages’, adopted by the General Assembly of the United Nations on 17th December 1979. 5. ‘Convention on the Physical Protection of Nuclear Material’, adopted at Vienna on 3rd March 1980. 6. ‘Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation’, done at Montreal on 24th February 1988. 7. ‘Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation’, done at Rome on 10th March 1988. 8. ‘Protocol for the suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf’, done at Rome on 10th March 1988. 9. ‘International Convention for the Suppression of Terrorist Bombings’, adopted by the General Assembly of the United Nations on 15th December 1997.

Under the ‘Convention on the Suppression of Terrorist Financing Act no.41 of 2011’, the provision or collection of funds for use in terrorist activity with the knowledge or belief that such funds that could be used for financing a terrorist activity is an offence.

Impact on Society

Money laundering is a criminal activity which allows criminals to benefit from their crimes and transform the money they

gained from illegal activities into legal. Many people will be victimized through this process without any knowledge of such victimization.

Privileged relationships such as Lawyer-Client, Accountant-Client, and Bank-Client were the source of income can be concealed will be affected through money laundering.

Money laundering can potentially shift the economic power to criminal organizations distorting the economic state of county. Large number of terrorist Organizations can be funded through money laundering and country would never know about the terrorist organization until a large scale massacre occurs.

Financial Institutions are used frequently and the illegal money will become legal money instantly at large scale.

There are many cases pending in the Magistrate Courts of Sri Lanka where Nigerian people have used Sri Lankans and their bank accounts for money laundering. In this way, many innocent people become victimized for money laundering.

Be Aware and know your customer

Accountants and auditors, real estate agents, notaries, lawyers, dealers in high value goods, transporters of funds and casinos, credit institutions, financial institutions, dealers in high-value goods, such as precious stones or metals, or works

of art, auctioneers has to be aware on money laundering specially when they participate, assist, plan, execute transactions for their client concerning the,

(i) buying and selling of real property or business entities (ii) managing of client money, securities or other assets (iii) opening or management of bank, savings or securities accounts (iv) organization of contributions necessary for the creation, operation or management of companies, (v) creation, operation or management of trusts, companies or similar structures, (b) or by acting on behalf of and for their client in any financial or real estate transaction, whenever payment is made in cash.

Conclusion

Even though, Sri Lanka is a member of various regional and international mechanisms fighting money laundering, we still lack regulations relating to NGO funding, trusts, and charities which receive large amounts of money anonymously. Continuous assessment and supervision of transactions and techniques of money laundering is therefore a must.

