A COMPARATIVE ANALYSIS TO EVALUATE THE EFFECTIVENESS OF THE LEGAL FRAMEWORK FOR ANTI-MONEY LAUNDERING IN MAURITIUS

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Abstract - *The fight against money laundering has been a central issue for governments worldwide, with initiatives aimed at preventing the flow of dirty money. The value of money laundering is estimated to range from 2% to 5% of the global gross domestic product, thus, creating a compelling and urgent need to combat money laundering operations at both national and international levels.*

To effectively combat this issue, this paper seeks to analyse the various aspects of the Anti-Money Laundering (AML) Laws in Mauritius. It aims to identify the loopholes in the system and recommends ways to improve AML regulations in the country. The study uses the doctrinal methodology to analyse the laws and regulations of Mauritius on money laundering and terrorism financing.

Additionally, the article uses a comparative approach to analyse the efficiency of the Mauritian AML Laws by comparing and contrasting the laws and regulations of Mauritius with those of the United Kingdom (UK). This will help the study identify areas where the country can improve its regulatory and legal framework to prevent money laundering and terrorism financing.

Keywords: *Money Laundering, AML/CFT, FIAMLA, POCA, POTA, SOCPA, VAITOS Act, SAMLA, ATCSA 2001, TA 2006*

INTRODUCTION

Money laundering is a criminal activity in which funds are concealed from the authorities. According to Muller et al. (2007), money laundering is an age-old practice. The International Monetary Fund (IMF) defines money laundering as the process of hiding criminal organizations' assets from the public (IMF, 2021). The practice of financial laundering was first carried out by Chinese merchants in China around 2000 years ago. Meyer Lansky was convicted of money laundering through a Swiss bank and was regarded as the 'father of money laundering' (Paxton, 2015). The Bank Secrecy Act of 1970 was the first federal regulation enacted in the US to counter money laundering (Michael & Tracey, 2015). The Vienna Convention on Combating Illicit Traffic in Narcotic Drugs and Psychotropic Substances was established in 1988 to combat the illicit trade in drugs (Gordon, 1999).

Reuter and Truman (2004) state that the Anti-Money Laundering regime comprises two laws: preventive and enforcement. The former is used to carry out preventive measures, while the latter is aimed at punishing those involved in the crime. Despite numerous anti-money laundering legislations being enacted, these regulations were not being enforced effectively. Globalization has led to the rapid emergence and evolution of global financial systems and has turned them into a haven for money launderers (Friedman, 1999). According to Raymond Kelly, the head of the US Customs Service, money laundering became a major problem during the United States' war on drugs (Naylor, 2003).

Pol (2020) conducted a study that revealed that implementing effective anti-money laundering strategies can help prevent money laundering activities. The study also concluded that the fight against money laundering is ineffective because the majority of the laundered money is still used by criminals. The Financial Intelligence Anti-Money Laundering Act 2002 (FIAMLA) was enacted in Mauritius to combat money laundering and other related financial crimes (Abongo v The State, 2009). However, despite the existence of the FIAMLA, money laundering still remains a concern for the authorities and the public, affecting the political and economic environment in the country (Jaunky, 2017). The National Risk Assessment (NRA) identified that the country is at risk of experiencing an increase in vulnerability rate and potential risk of experiencing money laundering and terrorism financing (Cusack et al., 2020). In addition, in 2020, the Financial Action Task force (FATF) placed the country on its grey list, which means that it is one of the jurisdictions that are regularly monitored for insufficient progress in addressing anti-money laundering and counter-terrorist financing deficiencies (Lazic, 2022).

Money laundering is defined as a criminal activity that involves disguising the funds or financial transactions used by criminals or terrorists for their illegal activities (US Treasury Department, n.d.). This activity can be carried out through various forms of illicit activities such as drug trafficking, trading, and smuggling (Unger & Linde, 2013).

Phases of Money Laundering

Money laundering has three phases, which include placement, layering, and integration (Gilmour, 2020). Placement involves transferring the dirty money to offshore accounts and washing it to make it appear as though it came from legitimate sources (Teichmann, 2018). Examples of placement methods include invoice fraud and smurfing (Madinger, 2012). Layering, the second stage, involves using multiple accounts in different countries to hide the origins of the dirty money (Madinger & Kinnison, 2011).

Examples of Layering and Integration in Money Laundering

Layering:

Legislation: Criminals may take advantage of legal loopholes in different jurisdictions to transfer money electronically (Unger & Linde, 2013).

Stocks: One common method of layering is through the stock market or other opaque financial institutions (Masciandaro, 1998).

Real estate: Criminals may invest in real estate or shell companies to layer their illicit funds (Gilmour, 2020).

Integration:

Investments: Criminals may integrate their illicit funds into the legal economy by purchasing expensive assets such as real estate and artworks (Qureshi, 2017).

Fake invoices: Overinflating the value of an invoice is a common method for criminals to integrate their dirty money into the economy (Teichmann, 2018).

Causes of Money Laundering

Money laundering can have various causes, including the presence of foreign entities, transnational organizations, weak legal regulations, bribery and corruption, and the rise of e-commerce and cryptocurrencies. Criminals are more likely to rely on bitcoin due to its anonymous nature. The lack of effective law enforcement bodies and the absence of automated mechanisms to track the source of money also contribute to the existence of money laundering. Other factors that can cause money laundering include drug trafficking, human trafficking, and gambling. For instance, drug dealers can disguise their criminal activities by using the money they obtained through illegal means to establish a legitimate business.

Money launderers can hide their funds in foreign bank accounts or invest their illegal assets through frequent foreign exchange transactions or the establishment of a portfolio of securities (Kannan, 2016; Schneider & Barone, 2019; Vitvitskiy et al., 2021; Lester & Roth, 2007; Young, 2013; Jeffries, 2013; Beare, 2012; Fanusie, 2019; Fletcher et al., 2020; Beebeejaun & Dulloo, 2022; Levy, 2015; Finel-Honigman & Sotelino, 2015; Raweh et al., 2018).

The Impact of Money Laundering

Money laundering is a criminal activity with serious socioeconomic effects that can negatively impact a nation's economy and raise various social costs (Masciandaro, 2004; Hendriyetty & Grewal, 2017). Money laundering can reduce government control over the economy and increase the risk that economic policies will not be successful, which can affect different currencies and economies due to globalization (McDowell, 2001). Money laundering can also damage the private sector, causing the country to lose billions of dollars and leading to the destruction of small and medium-sized businesses (Stucke, 2013). Money laundering can also negatively affect the reputation of financial institutions and the nation's economy, leading to a loss of confidence in the market, which can reduce investors' interest in the local stock market and result in declining economic opportunities for the country (Nugraha, 2013; McDowell, 2001).

Money laundering can also cause social and political instability, particularly in economically developing countries, by reducing the country's revenue and social sphere financing and encouraging others to commit crimes (Vitvitskiy, et al., 2021). Additionally, money laundering can lead to tax evasion, which directly affects the country's tax revenue and forces the government to collect more taxes from other taxpayers (McDowell, 2001). Money laundering is often facilitated through banks and financial institutions, which can capture state assets and encourage state actors to become involved in money laundering activities (Stack, 2015). Certain countries with lower regulatory standards, such as tax havens, can attract more dirty money, and may provide services that are related to money laundering (Dharmapala, et al., 2009).

Anti- Money Laundering Regime Around the World

The United Nations (UN) is a crucial component in the global effort to combat money laundering. It supports a broad range of activities, including the establishment of effective financial institutions and the implementation of the Financial Action Task Force (FATF) recommendations, through various conventions it has established. These conventions include the 1988 Vienna Convention, the 2002 International Convention for the Suppression of the Financing of Terrorism, the 2003 United Nations Convention against Transnational Organized Crime, and the 2005 United Nations Convention against Corruption (Kema, 2014).

The FATF is a global organization that has links to almost every country in the world. It has issued 40 recommendations since its establishment in 1989 and nine more after the September 11 attacks. A constructivist analysis of the organization's activities shows that most of its recommendations have been adopted by governments through informal procedures. The "blacklisting" method, which is used to identify countries that do not comply with anti-money laundering (AML) recommendations, has been controversial. It has been used by various authorities and financial institutions to encourage reluctant states to adopt the recommendations (Campbell-Verduyn & Goguen, 2017).

There are several major AML regulatory bodies around the world, including the Financial Action Task Force (FATF), the Anti-Money Laundering Directive (AMLD) of the European Union (EU), and the Financial Conduct Authority (FCA) in the United Kingdom (UK). The FATF is an international organization that fights against terrorism and money laundering. It has a list of 97 recommendations that help countries develop effective measures to prevent these types of crimes. The EU has a clear set of regulations and directives aimed at combating money laundering and terrorism financing, based on the standards set by the FATF (Bodescu et al., 2021). The FCA is an independent body responsible for overseeing the UK's financial services industry and fighting money laundering and terrorism financing. Its goal is to protect consumers and promote competition, and it has the power to enforce and introduce rules and regulations to achieve these goals.

In the UK, the primary legal frameworks for countering money laundering and terrorist financing are the Terrorism Act 2000, the Proceeds of Crime Act 2002, and the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017, which are based on FATF guidance. Despite the country's exit from the EU, it remains committed to implementing the 6AMLD regulations. Financial institutions in the

UK are required to carry out risk-based assessments on their customers, including performing due diligence on their customers and establishing ultimate beneficial ownership. They are also required to monitor their customers' activities against sanctions lists and politically exposed persons (PEPs). The FCA oversees the implementation of these regulations and acts as the central authority (Parveen, 2020).

In Mauritius, the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) was passed in 2002, which established the country's financial intelligence unit, the Financial Intelligence Unit (FIU). The act requires authorities to carry out regular monitoring and reporting of suspicious transactions. The Financial Intelligence and Anti-Money Laundering Regulations were enacted in 2003 and require the establishment of a Money Laundering Reporting Officer and the implementation of various measures to prevent terrorist financing and money laundering. In addition to the establishment of a money laundering reporting officer, the authorities in the country also monitor and regulate various financial institutions and entities to prevent terrorist financing and money laundering. These include the Bank of Mauritius, the FIU, the Independent Commission Against Corruption (ICAC), and and the Financial Services Commission (FSC) (Beebeejaun & Dulloo, 2022).

Effectiveness of Anti-Money Laundering Laws

In discussing the effectiveness of Anti-Money Laundering (AML) regulations, scholars have presented varying views on the regulation's impact on illegal activities and its legal basis (Huang, 2015). Huang conducted a study analyzing the United States' AML legislation and evaluated the effectiveness of the Financial Action Task Force's (FATF) assessment of the country's AML laws. The study also examined the types of investigations and suspicious activity reports filed by authorities, revealing that the improper implementation of the country's AML laws negatively affects the economy due to a lack of proper monitoring and framework, leading to an increase in suspicious activity reports filed by banks.

Furthermore, Pol (2018) criticized the effectiveness of the United States' AML laws in light of the recommendations made by the FATF, pointing out various loopholes and gaps in the organization's procedures and calling for a better methodology to ensure achievable outcomes. The author also criticized the preventive measure of setting penalties for criminal assets against money laundering. Trautman (2017) highlighted the need to re-evaluate operating standards and reporting requirements for tax havens following the release of the Panama Papers, which raised concerns about the implementation of various anti-money laundering and banking reforms.

In February 2020, the FATF added Mauritius to its grey list after international scrutiny and investigation by the International Consortium of Investigative Journalists (ICIJ) regarding the leak of over 200,000 documents from law firm Clifford Dill & Pearman. The European Union also blacklisted Mauritius in June 2020 for failing to comply with the provisions of the Anti-Money Laundering and Countering of Terrorism financing regulations. In addition, the UK, which left the EU following Brexit, included the country in its own list of high-risk third countries. However, after an onsite inspection in June 2021, the FATF noted that Mauritius had taken necessary steps to improve its AML framework, resulting in its removal from the organization's grey list in October 2021 and from the EU in February 2022 (Beebeejaun & Dulloo, 2022; Puholoo, 2021).

Comparative analysis between the Anti-Money Laundering Framework of Mauritius and UK.

The Mauritian Anti-Money Laundering and Counter-Terrorist Financing Act, known as the FIAMLA, establishes the Financial Intelligence Unit (FIU) responsible for preventing and monitoring money laundering and terrorist financing activities. The FIAMLA Regulations were issued in 2018 to enhance customer due diligence procedures and reporting suspicious transactions (Beebeejaun & Dulloo, 2022).

The Act criminalizes dealing with the proceeds of crime, and a reporting person must register with the FIU, maintain records of measures taken to counter money laundering, and report suspicious transactions within five days. A person may be prosecuted for conspiracy to commit money laundering and accepting cash payments exceeding MUR 500,000. The penalty for money laundering is a fine of up to MUR 10 million or imprisonment for up to 20 years. The FIAMLA requires customer due diligence (CDD) reviews, particularly in high-risk business relationships and transactions involving politically exposed persons (PEP). The information collected through CDD measures must be maintained for seven years, and the Financial Services Commission and the Bank of Mauritius must monitor and enforce compliance with CDD measures.

Section 10(1) of the Financial Intelligence and Anti-Money Laundering Act (FIAMLA) outlines the functions and responsibilities of the Financial Intelligence Unit (FIU) in Mauritius. According to this section, the FIU is responsible for collecting, requesting, analyzing, and disseminating information related to suspected proceeds of crime and money laundering offences, as well as financing of terrorism activities to supervisory authorities and investigators to prevent money laundering (Uppiah, 2018).

Furthermore, Section 10(2)(b) of the FIAMLA grants the FIU the power to provide guidelines on anti-money laundering measures to professionals and representatives of specific occupations. Section 2(f) of the Act also empowers the FIU to exchange information with similar agencies internationally. However, the FIU is not authorized to investigate suspicious transactions, but is limited to collecting, analyzing, and disseminating information to appropriate authorities, as specified in Section 10(1) of the Act.

Under the Prevention of Corruption Act 2002 (POCA), the Independent Commission Against Corruption (ICAC) of Mauritius is responsible for investigating cases related to money laundering. However, a report published in 2018 highlighted several deficiencies in the country's supervisory and investigatory agencies (Report, 2018). The report revealed that these agencies conducted only limited inquiries, which primarily focused on drug trafficking and corruption. The ICAC, which is specifically tasked with investigating matters related to terrorism financing and money laundering, conducted only 718 money laundering investigations, compared to 2,781 corruption investigations (Cusack et al., 2020).

The Virtual Assets and Initial Token Offering Services Act 2021 (VAITOS Act) became effective in February 2022, signifying Mauritius' entry into the Virtual Assets industry in accordance with FATF's Recommendation 15. The main objective of the VAITOS Act is to regulate Virtual Asset Service Providers (VASPs) and the activities related to Initial Token Offerings (ITOs) conducted from or within Mauritius. The oversight of VASPs and ITOs falls under the jurisdiction of the Financial Services Commission, which is authorized to issue licenses, provide guidance, and monitor compliance (PWC, 2022).

Case Laws of Money Laundering in Mauritius

Limitation of payment in cash

- The accused was prosecuted for money laundering by the ICAC for violating sections 5 (1) and 8 of FIAMLA. He made a payment in cash amounting to Rs.750,000 to buy a flat in Wolmar. Thus, on December 11, 2009, he was ordered to pay a fine of Rs.100,000 (ICAC v Anwarhussein Ramjaun – C/N 1326, 2009).

- The two accused were charged under the provisions of the FIAMLA for Limitation of Payment in Cash. They had admitted that they made a cash payment of Rs 600,000 to a seller for the purchase of a car. The court held both the accused culpable and they were sentenced to be conditionally discharged. They were also ordered to perform good behavior for a year. Failure in doing so would made them entitled to one month of imprisonment. The Director of Public Prosecutions (DPP) and the ICAC challenged the judgment. They argued that the conditional discharge issued to the respondents was not in line with the provisions of the FIAMLA and should be set aside. The Supreme Court of Mauritius then quashed the sentence and directed the court to hold another hearing regarding the sentence. On February 13, 2015, the two accused were liable to pay a fine of Rs.1,000 each (ICAC v R.K. Sumputh and Anor CN No: 116/13, 2015).

Bribery

- The accused was prosecuted under the Prevention of Corruption Act 2002 for violating sections 10(4) of the Act. He also contravened section 83 of the Act. He took a bribe amounting to Rs 3,000 by making the person believe that he could get a driving licence without having to submit a test. The court found him guilty on November 18, 2009. He was sentenced to twelve months of imprisonment (ICAC v Georges Ferdinand – C/N 1081, 2008).

- The ICAC brought the case against the accused after it carried out an investigation regarding the alleged corruption in the employment division of the Ministry of Training and Skills Development. According to the investigation, the accused, while he was acting as the chief employment officer, solicited money from a person for his services in securing a favorable report for a foreign national who was looking to renew his work permit. The Court ruled on July 14, 2009 and allowed the accused to have the benefit of doubt due to various inconsistencies in the evidence brought forward by the prosecution (Police v Asokumar Veeriah - CN 41, 2007).

Proceeds from Crime

- The accused came before the Court under four counts for the offence of money laundering. He was accused of withdrawing money from another account and depositing it in his own account. He was working as a cashier at the Lallmatie branch of the Mauritius Commercial Bank (MCB). At count 1, he was charged with having in his bank account Rs 20,000. At count 2, he was charged with having in his bank account Rs 14,000, which he believed were criminal proceeds. At count 3 and count 4, he deposited Rs 29,000 and Rs 5,000, respectively, in the same account. On November 12, 2009, the court held him to be guilty at all counts and he had to pay a fine amounting to Rs 30,000 (count1), 25,000 (count 2), 40,000 (count 3), and Rs 35,000 (count 4) (ICAC v Jean Eric Gerard Bonne – C/N 878, 2009).

- The Accused was charged with 27 counts for Money Laundering. These offences were committed in breach of sections 3 (1), 6 (3), and 8 of the FIAMLA. She pleaded not guilty and was assisted by her lawyer. According to information from 2005 to 2008, the accused possessed property which, in part, represented criminal proceeds. She was also aware that the property was derived from a crime, and she had been withdrawing money from her bank account and her minor children's accounts. The court held that the offence of money laundering was proved (ICAC v Nazima Ruhomally C/N 1295, 2015).

Recent Reforms on Anti-Money Laundering Laws in Mauritius

Following the FATF's recommendations, authorities in Mauritius have taken steps to bring the country's AML laws in compliance with the FATF standards. The 2021 Finance (Miscellaneous Provisions) Act amended the FIAMLA to create a uniform AML-CFT framework, which included changes to the definitions of banks, financial institutions, and the Registrar of Companies. The updated definition of reported persons under the Securities Act of 2005 includes licensed entities, financial institutions qualified as trustees under the Mauritius Trusts Act 2001, and those authorized to conduct business activities in the country under the Mauritius Private Pensions Act 2012.

The Companies Act 2001 was also amended by the 2021 Finance (Miscellaneous Provisions) Act to include new definitions of suspicious transactions and the Financial Intelligence Unit (FIU), as well as the requirement for all company service providers to report suspicious transactions to the FIU within five working days. Previously, only licensed companies were bound by this provision. Additionally, any company service provider can now provide information on beneficial ownership of clients upon request by a competent authority.

To raise awareness of the risks associated with terrorism financing and money laundering, Section 267 (6) was added to the Companies Act to allow the Registrar of Companies to conduct sensitizing campaigns for the donor community and limited by guarantee companies. Moreover, Section 267 (7) was enacted to allow the Registrar to share information about these entities with international and domestic financial institutions and authorities involved in the fight against money laundering and terrorist financing. These measures aim to consolidate AML compliance in Mauritius.

Anti-Money Laundering Framework of UK

The UK's measures against money laundering are outlined in the Proceeds of Crime Act 2002 (POCA), which was revised by the Serious Organised Crime and Police Act 2005 (SOCPA), the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), the Terrorism Act 2000 (TA 2000), which was amended by the Anti-Terrorism, Crime and Security Act 2001 (ATCSA 2001) and the Terrorism Act 2006 (TA 2006) (Edmonds, 2018). Additionally, the Sanctions and

Anti-Money Laundering Act 2018 (SAMLA) aims to facilitate the UK's departure from the EU by enabling the country to maintain current regulations and comply with international standards and FATF recommendations. Furthermore, it allows the UK to create its own sanctions framework (Anderson, 2022).

Money Laundering Offences

According to Treasury (2007), Part 7 of the POCA 2002 outlines the offences and requirements related to money laundering, which is considered to be one of the most effective tools to combat money laundering. The Act defines three main offences related to money laundering. Firstly, under Section 327 of the Act, an offence of money laundering occurs if someone conceals, disguises, converts, transfers, or removes criminal property from England and Wales, Scotland, or Northern Ireland. Secondly, under Section 328 of the Act, an offence of money laundering occurs if someone enters into or becomes involved in an arrangement that they know or suspect facilitates the acquisition, retention, use, or control of criminal property by or on behalf of someone else. Thirdly, under Section 329 of the Act, an offence of money laundering occurs if someone acquires, uses, or possesses criminal property without adequate consideration given for it. In addition, there are other offences related to money laundering that only apply to the regulated sector covered by the MLR 2017. These include the disclosure of information and suspicion of money laundering under Section 330 of the POCA 2002 and the 'tipoff' offence under Section 333 of the POCA 2002. If convicted of money laundering offences under Sections 327-329 of the Act, a maximum penalty of 14 years imprisonment and/or an unlimited fine can be imposed under Section 334(1) of the Act.

Reporting of Suspicious Transaction

A report of suspicious activity entails notifying the National Crime Agency about a suspected criminal act that is known or believed to have occurred. This disclosure can be made in accordance with either Part 7 of the POCA 2002 or Part 3 of the Terrorism Act 2000. In the case of R v DA Silva (2006), Longmore LJ stipulated that a person's suspicion must be based on more than a vague feeling of unease, but need not necessarily be firmly grounded on specific facts or reasonable grounds. Conversely, in R v Sail (Abdullah) (2006), Lord Hope asserted that a person's suspicion should not be solely subjective, but must also be based on objective grounds. If an entity in either a regulated or non-regulated sector fails to report suspicious activity upon learning of a suspected instance of money laundering, they may be found guilty of committing an offense under Section 330 and Sections 337 or 338 of POCA. In June 2021, the Crown Prosecution Service (CPS) published guidance on how to prosecute cases under Section 330, which permits prosecutors to pursue money laundering cases even if they are unable to demonstrate sufficient evidence to support a conviction.

Customer Due Diligence

The MLR 2007 provides the framework for implementing risk-based policies and procedures in the UK, as stated by Ryder (2012). This framework includes establishing policies and procedures for customer due diligence, record-keeping, internal control, and compliance management, as per Regulation 20 (1) of MLR 2007. According to Regulation 7 (3), due diligence must be carried out on a risk-sensitive basis to minimize the risk of money laundering and terrorist financing. This requires identifying potential customers and beneficial owners, as well as gathering information about the business's intended purpose. Although the CDD process is not subject to a risk-based approach, due diligence should still be carried out on a risk-sensitive basis, meaning potential customers must be identified, verified, and monitored in every case.

Under MLR 2017, a risk-based approach is allowed in the CDD process. This includes determining the intensity of due diligence required and the measures a company should implement to monitor its customers. According to Regulation 27 of MLR 2017, financial institutions must carry out CDD measures when establishing a business relationship, conducting transactions of 15,000 euros or more, or when transactions are suspected of terrorist financing or money laundering. Additionally, Regulation 33 (1) states that enhanced due diligence measures should be applied to transactions and business relationships involving politically exposed persons (PEPs), persons with a high risk of being involved in terrorist financing or money laundering, or those established in high-risk third countries or with known connections to PEP associates. The MLR 2017 also mandates maintaining records of all transactions and business relationships, including those that have ended, and providing supporting evidence for these records for five years, after which the data must be discarded unless explicit consent to retain it is obtained.

Crypto-Currency

The UK government acknowledged in 2018 that cryptocurrencies could have a significant impact on the financial services industry, but recognized that the technology was not yet mature enough to reach its full potential. Since then, the market has evolved and stable coins have gained popularity, posing a potential threat to the existing financial system. To maintain its status as a leader in financial technology, the UK is working on developing regulations. Currently, there are few provisions in the UK that govern digital currencies, but the government has established a framework to mitigate associated risks. This framework includes regulations reporting, minimum policy disclosure, and licensing by the Financial Policy Committee (Treasury, 2021).

The Financial Conduct Authority (FCA) as the Regulatory Body

The Financial Conduct Authority (FCA), the UK's financial services regulator, is responsible for supervising firms under Part 1A of the Financial Services and Markets Act 2000 (FSMA). Its aim is to promote competition and protect consumers by creating rules, codes of conduct, and policies, monitoring compliance, and enforcing requirements. The FCA has extensive powers, including imposing requirements on parent undertakings, product intervention, and disciplinary action against certain entities such as clearing houses and investment exchanges. It is also authorized to investigate breaches of the Money Laundering and Terrorist Financing Regulations.

Understanding Anti-Money Laundering Laws is challenging due to their complex nature and the different goals policymakers and scholars have for them. Since money laundering is a global problem, no country has a monopoly over their development and regulation. It is important to study the similarities and differences between various jurisdictions' regulations to improve the efficiency of Anti-Money Laundering Laws. Comparing legal jurisdictions and their unique circumstances, such as Mauritius, can provide valuable insights into improving legal constructions and avoiding blacklisting.

Comparative Analysis: Mauritius and the UK

Primarily, both UK and Mauritius have Customer Due Diligence measures in place (CDD). CDD is a process that involves identifying and ensuring that the customers are being honest with their financial institutions. It is a process that involves collecting and analyzing various data and documentation in order to verify the identity of the customers. This process can help banks and financial institutions make informed decisions when it comes to implementing their risk-based compliance programs. The only difference between these two countries is that the information collected through CDD measures must be maintained and kept by the reporting person for a period of seven years following the end of the client relationship in Mauritius and a period of five years following the end of the client relationship in the UK. If CDD is properly carried out then it prevents financial institutions from being used for illicit activities. However, if the application of this rule is not streamlined, it can negatively affect the operations of financial institutions. For instance, in the UK, there have been an increased in the reporting of suspicious activities over the past years. The increase is mainly due to the reliance on quantity over quality. To avoid prosecution, the employees report suspected activity (Wronka, 2022, p. 31). Thus, the question that arises is that whether it is important to keep records on good client for such a long time. It is worth noting that the aim of financial institutions is to maximize profit and minimize costs and the storing of such data is an additional cost for the financial institution.

Secondly, to ensure that employees are aware of the potential risks associated with money laundering and terrorism financing and the requirements of CDD, both countries include training of employees in their respective regulations – FIAMLA of Mauritius and POCA of UK. The training program for a company can vary depending on the complexity of the business and the size of the organization. There are various types of training that can be used, such as on-the-job trainings, online learning modules, and videos. It is important that the program is regularly evaluated and that records are kept of the effectiveness of the trainings. For instance, in Mauritius, through its various outreach activities, the FIU has been able to provide various educational materials to help financial reporting persons understand their obligations under the Anti-Money Laundering laws. These materials can also help them implement effective measures to prevent the misuse of their business. Furthermore, in UK, the Financial Conduct Authority (FCA) issued a Final Notice for Canara Bank in 2018. It noted the bank's efforts to improve its anti-money laundering (AML) controls and systems. It also noted the steps taken by Standard Chartered Bank to improve its financial crime compliance training. This happened after the enforcement action by the FCA against Canara related to the bank's failure to provide adequate training between 2012 and 2015 (Jones, 2021, pp. 19-20).

Third, both countries have provisions in place for the reporting of suspicious transactions. In Mauritius, the FIU is a central part of the investigation of suspected money laundering and terrorism financing activities involving multiple unlicensed entities. It receives reports about these activities from various financial institutions and other persons. It then compiles these information disclosures into a database that can be used to prosecute and investigate these activities by the Police or ICAC. In contrast to the FCA which enjoys direct law enforcement powers, Mauritius has opted for an administrative model that allows them to act as a buffer between the authorities and the financial sector. It is worth noting that as financial regulators, the Bank of Mauritius (BOM) and FSC are responsible for ensuring that financial institutions are following the rules and regulations related to anti-money laundering and terrorist financing but many banks did not timely report their information to the authorities and there was also lack of legal action (Khushiram, 2013). On the other hand, according to Fulbright (2019), the Financial Conduct Authority (FCA) in the United Kingdom imposed a fine of more than £34 million on Goldman Sachs International in March 2019. The penalty was issued due to the firm's failure to comply with transaction reporting requirements, which was aimed at addressing low compliance in the country.

Last but not least, according to Fulena (2022), Mauritius has taken a step ahead of the UK in regulating crypto-currency by implementing the VAITOS Act which aligns with Recommendation 15 of the FATF. This enactment reflects the adequacy of the law governing virtual assets as Mauritius has successfully been re-rated for Recommendation 15 of the FATF. Conversely, the UK's compliance with the FATF's requirements reveals gaps such as ambiguity in laws pertaining to the transfer of virtual assets, lack of comprehensive assessment of risks associated with the activities of custodial wallet providers, and failure to consider risks related to the virtual asset activities of these providers. The UK is currently investigating legislative changes to apply the travel rule to virtual assets (FATF, 2022).

Recommendations

Fulena (2022) argues that the implementation of Customer Due Diligence (CDD) should be improved to reduce the risk of costly errors. The author suggests amending the provisions of CDD to retain only quality records and reduce unnecessary data storage. Financial institutions are also urged to enhance their training programs for frontline staff members, with a focus on ongoing training to combat money laundering. Additionally, the author suggests that training provided by the Financial Intelligence Unit (FIU) would be more effective than training provided by financial institutions, given the FIU's regulatory oversight. Fulena (2022) emphasizes the importance of regulators and anti-corruption organizations exerting their influence to raise awareness about the complex issue of corruption and money laundering. The author contends that as long as corruption remains in certain countries, money laundering will continue to be a problem.

Regarding Mauritius, the author notes that despite recent legislative reforms and the establishment of financial institutions, enforcement of regulations and proper functioning of financial institutions remain inadequate. As a reform option, Fulena (2022) proposes widening the power of the FIU to investigate suspected money laundering cases and impose corrective and punitive measures against those involved in illegal activities. The author emphasizes the need for the Mauritian government to allocate sufficient resources to the FIU to carry out these additional duties. The author highlights the need for an investigative FIU and suggests that the government review its policy in this regard. Fulena (2022) draws a comparative analysis with the UK and argues that the FIU needs more powers than just being an administrative body to ensure better compliance with reporting provisions and legal pursuit against non-complying institutions.

Conclusion

Money laundering is a global criminal activity that affects countries around the world. Countries have taken various measures to combat this crime, and implementing guidelines set by international standards has been proven effective in preventing money laundering (Bartlett & Holleley, 2019). Recent research indicates that both Mauritius and the UK have made progress in enhancing their Anti-Money Laundering laws to align with international standards. Mauritius has amended its Anti-Money Laundering Laws and enacted the Virtual Asset and Token Offering Act, which has proven effective in today's era of advanced technology (Bartlett & Holleley, 2019). However, recommendations have been made to further improve the country's existing laws, which will depend on the evolving situation related to financial crimes and the required reform option to protect it from money laundering (Bartlett & Holleley, 2019).

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