The Effectiveness of the Banks on Laundering Crime in the United Kingdom Anti-Money Laundering Systems

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Abstract

Money laundering has been described as a crime. Money source has been transformed from unlawful source into lawful money which is accomplished by placing money through the financial approaches and transmitted to financial products or bank accounts. Subsequently, it is obvious that the massive range of existing mechanisms might have been exploited by organized criminals to cover their wealth and property without any regard to global borders. Therefore, one of the key elements is banks which are used as the middleman for laundering money through the criminal advocate. It is difficult to launder money from the financial institutions which appears from terrible Anti-Money Laundering rules and some conflict for each rule that provided susceptible ability to the Bank for performed covers the technique of anti-regulation.

This paper will be considered and analyzed on the failure of prevent on money laundering processed, via processing place on financial institutes, especially to Bankers. Additionally, by considering the problem which concern on the bank exposed laundering and understanding the process of money laundering and anti-money laundering process. Moreover, considering the issue of regulation on the effectiveness to recent anti-money laundering in the United Kingdom has been considered in this paper respectively.

Keywords: *Money laundering, Criminal, Anti-Money Laundering*

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Introduction

The problem of money laundering has been increased as in the issue for worldwide financial transparency discussion. Also, terrorism has related with various launderings. Although, the endeavor from many global agencies and various nation has been occurred to discover the measurement of preventing this disaster. In fact, the original laundered money has been found in Russia and it ended up its process by passing via international banking, The ones bank covered such Deutsche bank. Additionally, to excessive profile for UK creditors along with The Hongkong and Shanghai Banking Corporation Limited (HSBC), and Royal bank of Scotland (RBS) (Michaels. 2017). Significantly, the period of time in 2010 – 2012 when money laundering become to be the massive case even HSBC bank, this case has been provided to many countries for rethinking about their Anti-Money Laundering regulation currently, necessarily, the issue of financial institutes, which is still effective for preventing on this scenario. Therefore, the measurement from bank can be used for the situation as mentioned on above to prevent those problems

The Process of Money Laundering

The aim of money laundering firstly is to attempt for covering the unlawful source of such revenues. The first of those characteristics has been aimed at declaring that money laundering holds in criminal phrases because it does no longer consider to the specific unlawful or criminal activity accountable of producing the revenues later laundered. The second consideration is to identify the significant financial feature of money laundering for turning unlawful capital into legal one. In addition, the uncommon financial characteristic of this activity is to convert potential purchasing power, due to it cannot be used directly for consumption, funding or saving, into an effective one. (Masciandaro. 1998: 49)

Obviously, taking all income out of crime is one of the objectives for criminal of money laundering. However, the reason for advent of the offence is that incorrect for individual and corporations to assist criminals for benefits from the proceeding in their criminal activity or to facilitate the fees of such crimes via imparting financial offerings to them. (International Compliance Association. 2018)

Moreover, the recommendation of anti-money laundering has related with the organization, even the characteristic of money laundering to be completed can be categorized with three levels which rely upon the kinds of laundered, however, normally main features in three stages to completed. However, it might be critical to understand that money laundering is single process. The stages of money laundering consist of the: Placement stage, Layering stage, Integration stage. (Reuter & Truman. 2004: 25)

The Placement Stage: basically, the placement stage has been represented when first access of the "dirty" proceeds of crime into the financial system. Basically, this level has been served two purposes: (a) to release the criminal of preservative and defending massive amounts of unwieldly of cash; and (b) to place money on lawful financial system.

The Layering Stage: After placement into the layering stage (structuring). The layering stage is the maximum complex and frequently involves with international motion of the price range. Besides,the initial reason to this stage is to split the illicit money from its source.

The Integration Stage: The final stage of money laundering process is termed of the integration stage. Additionally, the integration stage which money is turned back to criminal session from likely be valid sources. It has been placed originally over several financial moving, the criminal proceeds are finished to integrate into the financial process and can used to various objective.

The Bank Problems Which Concerned to be Exposed for Laundering Regulation

Some bank place has become to be massive criminal prosecutions for ensuing in revocation of banking charters might also negatively influence the countrywide, and possibly the worldwide, financial system. The U.S. attorney general, other prosecutors are consequently left with ethical dilemma for this circumstance: by making certain justice via prosecution or forego criminal proceedings to defend the financial system and society at huge (About Business Crime Solution. 2018).

When the source of money has been flowed into the system, the bank will do his duties to investigate about those money. Also, this absence of recording of consumer's activities and background might detect via internal and external inspecting practices, consequently, the audit committee ought to have as a minimum which has been confidential to exercise. (Hardouin. 2017: 531). Other approaches absence of threat evaluation compliance which meant that efficiently Bank staff had whole disrespect for the criminal risks which the Bank became being uncovered through permitting criminal transactions. those several maintained their accounts even contravened their own internal regulations on investment arms dealers (Hardouin. 2017: 531).

According to the case of HSBC bank, the US anti-money laundering regulation has been published, while there are several cases for unsuccessful in the process when bank attempt to prevent the problem from money laundering. This problem is not happened only US founding, in contrast it was also appeared in several banks which have incurred in UK followers as:

1. Deutsche Bank, during the period of time between January 2012 and December 2015, when it has been used by unidentified customers for transferring around $10 billion, of unknown origin, from Russia to offshore bank accounts which has highly suggested of financial crime. This FCA case has been found the essential core term on their failing such as performed inadequate customer due to diligence, failed to ensure Know Your Customer (KYC) obligations, had inadequate anti-money laundering IT system. As the outcome, it has been fined with the amount of £163,076,224 (Financial Conduct Authority. 2014).

2. Standard Bank PLC (Standard Bank) during the period of time December 2007 and July 2011, according to they carried out adequately due to diligence (EDD) measures before establishing business relationships with corporate customers which had connections with treatment of politically exposed persons (PEPs) and conducting the appropriate level of ongoing monitor for existed business relationships by keeping customer due diligence up to date. That became to combat seriously for money laundering, which is important to compliance with anti-money laundering requirements. As the outcome , it has been fined with the amount of £7.6 m. (Financial Conduct Authority. 2014).

The Effectiveness and Compliance of Bank to Anti-money Laundering

Money laundering still be in the question for the bank like what is the essential for its process and why money laundering has become to be the crime processing, Nevertheless, one of the fundamental effects of money laundering is transferring of finances from one country to another places where referred to as illicit financial flows. This transferring of money from one jurisdiction to other places are frequently disguised as actual commercial enterprise transaction to keep away from detection. Money laundering that involves banks which can be described as any act or attempting those ambitions to apply any bank transaction for covering any earned money from unlawful approach through the bankers, customers or another people (Olaim & Rahman. 2016: 70). Consequently, using banks are one of the common place methods for performing the act of money laundering. Moreover, when we look to the minor details for laundering transaction, most of laundering methodologies have been used through the bank which being as intermediary equipment to launder their money (Reuter & Truman. 2004: 58).

The maximum apparent nexus between the criminal and financial nation-states might persons within the Banks themselves. Bank might consider as principle and primary element to inspire foreign money movement in a country under distinctive regulation (Reuter & Truman. 2004: 34).

Amongst of the research which has been described to KYC guidelines for banks, SAR, and another regulatory consisting of Customer Due Diligence (CDD) and Client ID (CID), which has been requested for stopping money laundering. Consequently, all research has suggested relative to regulations of KYC SAR CDD, which banks need to implement together for satisfactory effective cycle to anti-money laundering crime. This paper, consciousness on the UK regulation, that necessities particularly anti-money laundering to Bank at the Money Laundering regulations 2007 and Money Laundering regulations 2017.

Failure to comply with the 2007 regulations may result in criminal penalties of up to two years' imprisonment and unlimited fines. The Civil penalties may also be imposed as an alternative to criminal penalties. If the bank is guilty of an offence under the regulations and the offence is held to have been committed with the consent or connivance of an officer of the bank or is held to be attributable to any neglect on that officer's part, the officer as well as the bank is at fault of an offence and subject to possible fines and/or imprisonment.

However, in 2017 Regulations which has been replaced by 2007 Regulations, that is previously the main legislation supplementing to Proceeds of Crime Act 2002 (POCA) in relation to money laundering. Initially, 2017 Regulations largely apply to the same entities and individuals, and the same regulation as 2007, but improving on some processes to clearly anti-crime system and more penalties who failure on the processes (The Law Society. 2020).

1. The process customer due to diligence. This guidance was approved by HM Treasury (2017). Banks have been required to carry out CDD measures for understanding who is their customer and, where it should applicable, the customer's beneficial owner is to verify that they are who they claim to be. CDD also encompasses a requirement to understand the purpose and intend for nature of the business relationship; this includes the information of taking risk-sensitive measurement to understand where the customer's funds and wealth come from. Banks must obtain sufficient CDD information to develop a comprehensive profile of the customer and, where applicable, the beneficial owner, and to understand the risks associated with the business relationship. Where money-laundering risk associated with the business relationship is increased, including where the customer is a PEP, banks must carry out additional, enhanced due diligence (EDD).

The 2007 Regulations permitted which entities to apply simplified customer due diligence ("SDD") automatically when dealing with certain customers and products. SDD may involve a less extensive undertaking of the same measures required by CDD.

For distinction, 2017 Regulations has been emphasized a risk-based approach and provide that regulated entities which may only conduct SDD, in case they have to assess that business relationship or transaction presents a low degree of money laundering risk. For reaching that conclusion, the regulated entity must consider numerous factors relating to customer risk, product, service, transaction, or delivery channel risk, and geographical risk. CDD is required in any situation where you suspect money laundering or terrorism financing. This is regardless of whether the transaction involves a high value payment. You should also consider the raising a SAR in these circumstances.

2. The process on Know-Your-Customer policies (KYC) under PEP. KYC is the process when companies verify the identity and financial conditions of customers before doing business with them. This policy has been applied for both prospective and existing business relations, with a focus on establishing the salient facts from the very outset (Renner. 2012).

In the UK, KYC rules fall under jurisdiction of the FCA, specifically through 2007 money laundering Regulations. These regulations comply bank to ensure that they have internal control and communication procedures “appropriate for the purposes of forestalling and preventing money laundering”. Relationships with customers are subject to anti-money laundering, which requires banks for making Suspicious Activity Reports (SAR) in the event of a customer was perceived be engaged with money laundering activities. FCA offers guidance need to KYC comply, such as What the nature of the expected activity, Where the money be used to, The source of wealth or income (Hemmant. 2020).

The UK has been combining to the processes Politically Exposed Persons (PEPs) under Regulation 2017. It has been focused on term of describing a person who entrusted with a prominent public function, or an individual who is closely related to such a person. The terms PEP is often used interchangeably.

Banks need to effectively screen new applicants and existing customers against restricted entities, negative lists, and high-risk parties to identify high risk customers in line with evolving industry regulations and best practices. Included, Customer information capture, Risk rating, Investigation, etc. (Bae Systems. 2020).

3. The Procedure of Crime Act (POCA) 2002. Under the POCA 2002, provided a defense against money laundering (Danti-money laundering), which can be able requested wherein a reporter has suspicion that belongings intend to deal in some criminal, and handle risk committing to the principal money laundering offences. This objective, if a bank or officer of the bank observed guilty to the offence of actual money laundering under POCA or the Terrorism Act 2000, the maximum penalty is 14

years' imprisonment and/or limitless fine. The maximum penalty for offences falling under either act for failure to disclose understanding or suspicion of money laundering, is 5 years' imprisonment, an unlimited fine or both.

3.1 The Suspicious Activity Report (SAR)

As banks, included other Banks who facilitate the three stages of money laundering and lend an air of respectability to proceed when they eventually reappear, therefore, the financial and related sectors have always positioned driving to combat money laundering. The UK regime – which implements the EU money laundering Directives, FATF international standards and UN anti-terrorist financing measures, comprises three main components as far as banks are concerned.

There is the primary legislation, the Terrorism Act 2000 (TACT) and the Proceeds of Crime Act 2002 (POCA) which has been creates several 'money laundering' regimes and related offences. The relegated sector (All Answers Ltd. 2018) is subject to additional offences to encourage its co-operation in reporting suspicious activities and transactions.

The aims of the SARs be: first, Deter and displace money laundering and predicate offences; second, discover money laundering and predicate offences, perceive the proceeds, and contribute to investigate of those crimes; and third, to assist in disrupting money laundering and different interventions, as prosecution and conviction of offenders. (Butler. 2018)

The Part 7 of POCA created three substantive money laundering offences, concealing (s327 POCA 2002), arrangements (s328 POCA 2002) and acquisition, use and possession (s329 POCA 2002). The three offences are widely in several respects. The three principal money laundering offences must be related to 'criminal property' (s340(3) POCA 2002) which are very broadly defined as any 'benefits' from any criminal conduct in any part of the UK or 'would constitute an offence in a part of the UK if it occurred there'. The meaning of criminal property has been subject of several Court of Appeal decisions (R v Akhtar, 2011), the natural an ordinary meaning of s328(1) arrangement to which it refers one which related to property at the time when the arrangement begins to operate on it (R v Geary, 2010). Criminal property has same meant in respect of all three principal money laundering offences as set out in s340 "It does not embrace property which the accused intends to acquire by criminal conduct... Property is not criminal property because the wrongdoer intends". Consequently, where the court ruled that no offence under s327 made as the property was not criminal at the point of transfer (R v Loizou. 2005). For instance, that it extends to property which was originally legitimate but became criminal only because of carrying out the arrangement is to "stretch the language of the Section beyond its proper limits".

All three of the principal money laundering offences contained defenses certainly. For example, in the case of each of these offences, it is a defense for having made an authorized disclosure to, and obtaining 'appropriate consent' from, the authorities before doing the act which would constitute the offence (s335 and 338) (Edmonds. 2018).

3.2 How to define suspicion on crime?

There might little or no guidance on what constitutes 'suspicion', also the concept remains subjective. Suspicion is a state of mind greater definite than speculation, however, falling short of evidence-based knowledge; an effective feeling of actual apprehension or distrust; a moderate opinion, without sufficient proof. Suspicion is not always an insignificant idle wondering, an indistinct feeling of unease.

Suspicion is not defined legislation. The Court of Appeal (R v Da Silva) defined suspicion of money laundering as a possibility, which is more than fanciful, that other person was engaged in benefit from criminal conduct and that the suspicion formed settle nature. There are not required or anything in amount to evidence of the suspected money laundering. (National Crime Agency. 2018)

Also, defined; degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not, and creation of suspicion requires a lesser factual basis than creation of a belief, it must nonetheless be built upon some foundation. (The British Bankers Association. 2018)

3.3 What are non-compliance to SAR?

The penalties for the principal offences in s327 to 329 are persuasion up to 6 months for the imprisonment and/or fine not beyond the legal maximum, also on indictment 14 years imprisonment or fine or both. For offences under the failure to disclose and tipping off provision s330 to 333, the sentences on summary conviction are the same although the maximum sentence of imprisonment on indictment is five years. (All Answers Ltd. 2019)

As cited above, banks facilitate the three stages of money laundering, as such essential to obtain the co-operation of these institutions who are critical for money laundering to occur all. s330 and 331 of POCA which has been created two offences of failing to make a 'required disclosure as soon as potential' after suspicion of money laundering to had been aroused. The term 'required' qualifies the disclosure to emphasize that the failure to report is a criminal offence.

Finally, a defense towards money laundering (Danti-money laundering) can requested from the NCA wherein a reporter has a suspicion that property they intend to deal with is in some way criminal, via handling it which they risk for committing one of the important money laundering offences under POCA. A person who does not commit one of these offences if they received 'appropriate consent' from the NCA. The NCA is empowered to provide these criminal defenses in law under s335 of POCA.

For the effective on preventing measure to the bank from money laundering beneath UK regulation. As above mentioned about regulations and from the report of FCA to numerous banks has fined from failure to anti-money laundering which includes Deutsche bank and standard bank plc, that capable to expose the effectiveness to recent the law. However, as topic discuses some of implement and final comply to the law will not too effectively consisting of the decision such HSBC; might outweigh its instant utility. It is not fulfilling its proprietorial obligation to pursue punishment for those who violate the law. That might problem to enforce in the future.

Additionally, for UK regulation to anti-money laundering from the report of Banks' control of financial crime. (Financial Conduct Authority. 2013) This report has been described most of the banks where had inadequate systems and controls over dual-use goods and their anti-money laundering policies and procedures were often weak. Such as very little money laundering guidance on financial crime risks specific to trade finance, failing to update risk assessments and keep regular review to take account of emerging risks, failing to assess transactions for money laundering risk, and failing to investigate potentially suspicious transactions due to commercial pressures.

Another issue has been discussed for my research, for discovering in the past five years, the FCA imposed regulatory fines on just seven banks for money laundering disasters, totaling £263.7 million. Inclusive of Barclays bank in 2015 at £72 million for deliberately breaching money laundering policies with regards transaction concerning PEP. That scenario has shown failed ensuring proper control over the transactions of its customers and will theoretically have complicity in money laundering and did not carry out adequate EDD measures before establishing relationships with certain customers and irresponsibly treated the monitoring of enterprise relationships and CDD. In line with FSA evaluate which occurred in 2011, discovered that some banks have appropriated and affected anti-money laundering controls, but, at the same time especially small banks have insufficient internal controls and measures, not all banks deal 'high-risk customers' or PEPs. (Bysaga. 2018)

Moreover, from analysis of Professor Ryder (The University of the west of England. 2019) who stated that "There have too several vulnerable governments that did not criminalize all forms of money laundering, also it has too many governments restrictions on anti-money laundering measures. Lastly, most of the laws and regulations failing to catch up in new method of launder money" In principally, regulation to anti-money laundering to the bank need complying that use high expresses for compliance costs as seem on The British Bankers Association claims; that their members annually spend £250m each year to comply with the regulations, research has suggested that the anti-money laundering costs in the UK are higher than in other countries' That might make problem to the banks especially on small bank to non-complete all regulation of preventing laundering crime.

Conclusion

The effectiveness to prevent money laundering, as former US Treasury, Larry Summers, said, "To secure the benefits of the globalized financial system, we need to ensure that its credibility and integrity are not undermined by money laundering, harmful tax competition, and poor regulatory standards." (Lawrence. 2018)

Attending to KYC, who understand how they have to make their money is where you may locate money laundering in some place. Understanding, they are beyond transactions and business activities where you will spot suspicious instances. CID is important too in this term, however, deploying anti-money laundering regulations which simply designed to conform with CDD requirements, it misses signs of money laundering.

We must understand the appearance to the customer's source of wealth. If we need to disrupt money laundering, we should understand exactly how they have to be there for this position, and what are their plans. This primary stage which we would like to enhance for the excellent effective.

Last, most significantly, on the scenario of anti-money laundering under both mentioned UK regulation, the legal machines of both mostly covered all processes to anti-money laundering, that provided the regulation has effective on financial system. Nevertheless, considering in practical to bank, it nearly effective, because mostly bank was mentioned about lacking or unable to best comply all processes under anti-money laundering regulation, since using more expressed to provide effective system and to hire professional to consider on system. In my opinion, effectiveness on anti-money laundering should be consider on both ways, regulation and practical.

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