

Money Laundering and Financial Crimes in Dubai: A Critical Study of Strategies
and Future Direction of Control

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Abstract

Preventing money laundering is a major international problem. Several attempts, from the national to the international level, have been made to address and prevent money laundering. These are often frustrated by the dynamic nature of the crime itself. However, regardless of its reach and dynamism in illegal or legal transactions, which are often intertwined, individual nations need to address the issue of money laundering to signify to an international audience and legitimate commercial interests their intent to tackle money laundering and thus illustrate that public and private state run organisations in the financial and law enforcement sectors are honest and professional, and that their country is a 'place to do business'. This thesis, therefore, presents an evaluation of the strategies and future directions of money laundering in Dubai, as it is a 'new', dynamic place in which to conduct business and the financial centre of the Middle East. It examines the various ways in which legislation and law enforcement in Dubai are struggling with and tackling the issues and problems of money laundering in the face of organised crime and terrorism. In this thesis, the concepts of money laundering and financial crimes in Dubai, with a special focus on strategies as well as future direction of control, are explored in some depth. This work has established that Dubai has a substantial anti-money laundering framework; however, it suffers from some weaknesses. These weaknesses are caused by the poor relationship between anti-money laundering units, the Anti-Organised Crime Department of the Dubai police, the financial sector and the Central Bank of Dubai. This situation is particularly evident when it comes to sharing information on those suspected of money laundering in Dubai. The 'lack of a relationship' is illustrated by primary research, as is the fact that other nations have (i.e. the UK) developed a more intelligence-led approach and partnerships in their quest to prevent money laundering where possible in their jurisdiction. This thesis highlights the progress that is needed in Dubai and the UAE to prevent money laundering, and as such is an original contribution to knowledge in an under-researched field in the Middle East.

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Abbreviations

AML	Anti-Money Laundering
AMLSCU	Anti-Money Laundering and Suspicious Cases Unit
AOCD	Anti-Organised Crime Department
APG	Asia Pacific Group on Money Laundering
ARA	Assets Recovery Agency
CFATF	Caribbean Financial Action Task Force
CTR	Currency Transaction Reports
DFSA	Dubai Financial Services Authority
DIFC	Dubai International Financial Centre
FATF	Financial Action Task Force
FTZs	Financial Free Zones
FIU	Financial Intelligence Unit
FTZs	Free Trade Zones
ICT	Information and Communication Technology
IDB	Inter-American Development Bank
ILP	Intelligence Led Policing
IMF	International Monetary Fund
KYC	Know your Client
MENAFATF	Middle East and North Africa Financial Action Task Force
MLRO	Money Laundering Reporting Officer
NAMLC	National Anti-Money Laundering Committee

NIM	National Intelligence Model
OGBS	Offshore Group of Banking Supervisors
PEP	Political Expose Persons
PoCA	Proceeds of Crime Act
SOCA	Serious Organised Crime Agency
SRA	Solicitors Regulation Authority
STRs	Suspicious Transaction Reports
NAMLC	The National Anti-Money Laundering Committee
UNODCCP	The United Nations Office for Drug Control and Crime Prevention
UAECB	UAE Central Bank
UAEG	UAE Government
WCO	World Customs Organisation

Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work

Name:

Signature :

Date:

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Chapter One

1.1. Introduction

The United Arab Emirates (UAE) is a country located in the Middle East surrounded by oil producing nations, civil war, and political instability¹. The UAE is also a major oil producing nation, particularly in the emirate of Abu Dhabi, with Dubai is the only major financial centre located in the Persian Gulf. Its economic development, political stability, and business environment has attracted an influx of people and international capital since the discovery of oil in 1966 and independence in 1971. However, due to its geographical location and ‘liberal’ business laws and trade ‘relationships’ with other Gulf States, east Africa, and south Asia, and its expanding trade with Balkan states, the UAE has the potential to be a major conduit for money laundering². Furthermore, due to its close proximity to Afghanistan, where most of the world's opium is produced, the UAE is vulnerable to organised crime and terrorism and the narcotics trade. All of these criminal elements are attracted to the UAE liberal business environment³ as a place to launder illegal funds.

Furthermore, the UAE has an advanced maritime shipping infrastructure, which includes approximately 15 commercial seaports that support international and local trade. The seaports in the UAE handle millions of vessels and shipping annually, which have potentially made it a hub for money laundering for organised crime and terrorism. There are also extensive international air connections within the UAE: approximately 66 airlines (at present) offer passenger services between Dubai, Europe and another 150 international destinations; all of these official ‘ports of entry’ rather than illegal entry make Dubai vulnerable to money laundering.

1 Eugene Rogan, *The Arabs: A History* (Basic Books 2011)

2 Henry G. Overman, Stephen Redding and Anthony Venables, *The economic geography of trade, production and income: a survey of empirics* (Blackwell Publishing 2003)

3 Olivier J. Blanchard, *The crisis: basic mechanisms and appropriate policies* (International Monetary Fund 2009)

Moreover, Dubai is still primarily a cash-based economy making it challenging for banks and financial institutions to prevent money laundering. It has been indicated that criminal organisations, terrorist groups, money launderers and those involved in trafficking illegal substances/narcotics and people make use of Dubai's liberal financial system with the UAE a key centre for Hawala networks that are closely linked to Pakistan and India⁴.

These geographical and concomitant policing 'issues' have been known in the UAE for some time, but following the September 11 attacks in the United States and amid revelations that money had been laundered via the UAE to help fund the attack, the UAE imposed a freeze on the known funds of organisations with links to terrorism, including Al-Barakat, which was then based in Dubai. Indeed, the United States State Department has directly linked trade based money laundering to the drug trade in Afghanistan, and the terrorist entities Hezbollah and Al-Qaeda.⁵

Since 2001, the UAE, at Federal and emirate-level has put in place a comprehensive system to prevent and reduce money laundering. Two acts serve as the foundation for anti-money laundering (AML) in the UAE; these are the Anti-Money Laundering Law (2002) and Counter Terrorism Law (2004). Therefore, since 2002 onwards the UAE has developed procedures, processes and laws to combat money laundering in the UAE (IMF, 2009). There has, however, been little or no assessment of these laws, procedures and processes effectiveness in preventing and reducing money laundering in the UAE. Assessments which have occurred were conducted by the International Monetary Fund (IMF) and Financial Action Task Force (FATF) and are not

4 Ali Alkaabi and others, 'Money Laundering and FATF Compliance by the International Community', *What Kind of Information Society? Governance, Virtuality, Surveillance, Sustainability, Resilience* (Springer 2010) 86

5 Delston, R.S. and Walls, S.C. "Terrorism Finance: Strengthening Our Security: A New International Standard on Trade Based Money Laundering is Needed Now" *Case Western Reserve Journal of International Law* 2012 44 Case W. Res. J. Int'l L. 737

current past 2008. However, these same assessments are performed more often for OECD countries such as the UK.

It is these issues that this thesis primarily addresses. This research is designed as a review of the current practices and strategies employed in the UAE to combat money laundering. As Levi noted (1996:3), however, finding an effective regulatory regime for the financial world is problematic. 'The trick of regulation is to minimise the illegitimate exploitation without wrecking economic dynamism'⁶. This is applicable to the UAE, Dubai and internationally.

Although the UAE has recognised, and is currently responding to, the continued challenges that are posed by increasingly well-resourced and organised international criminal networks⁷, the rate at which its anti-money laundering (AML) systems, and processes are followed remains a challenge both at the strategic and implementation levels. During the past decade, the UAE has gradually been joining other nations in becoming a member of task forces and collaborations to reduce the presence of international criminal activities, such as illegal transference of funds, gems, or precious metals, or illegal movement of monies to support terrorism activities.

Due to the relative autonomy of individual emirates within the UAE, established as Free Trade Zones (FTZs) and Financial Free Zones (FFZs) according to UAE federal law in emirates, there are different approaches to AML enforcement. Furthermore, the approach to preventing money laundering in the UAE reflects the official approach often associated with the USA, which is that globalisation has permitted the accumulation of immeasurable sums of illegal money originating

⁶ Alfredo Schulte-Bockholt, *The politics of organized crime and the organized crime of politics: a study in criminal power* (Lexington Books 2006)

⁷ T. Wing Lo. 'Beyond social capital: triad organized crime in Hong Kong and China' (2010) 50(5) Br J Criminol 851;ibid

in illegal international markets⁸, and that such wealth is now so vast that moving a fraction of it may pose a systemic danger for the strongly interconnected international financial system⁹. In this view illegal income is seen as somehow different to legitimate income and ‘performs’ in a different way when placed into the officially recognised financial sector (i.e., it forces the official financial system to alter prices, interest and exchange rates, and leads to unfair competition¹⁰ in legitimate international financial markets. None of these conjectures is, however, been empirically corroborated. But these conjectures are what Dubai has based its system of prevention on. This research suggests that most of the quantitative and qualitative assumptions on the money laundering are partly, if not, mostly in need of preventing money laundering in Dubai and elsewhere¹¹.

Regardless, the UAE established a National Anti-Money Laundering Committee (NAMLC) in 2002 responsible for coordinating anti-money laundering policy across and within the different emirates. It is chaired by the governor of the Central Bank, with representatives from the Ministries of Interior, Justice, Finance, and Economy; the National Customs Board; the Secretary General of the Municipalities; the Federation of the Chambers of Commerce; and five major banks and money exchange houses; these latter members, however, are allowed access as

8 Financial Action Task Force. (2010) Years of the FATF Recommendations.1990-2010 ;United Nations. Scientific Committee on the Effects of Atomic Radiation, *Sources, Effects and Risks of Ionizing Radiation: United Nations Scientific Committee on the Effects of Atomic Radiation: 1988 Report to the General Assembly, with Annexes* (UN 1988)

9 Vito Tanzi. '*Money laundering and the international financial system*. No. 96/55. International Monetary Fund,' (1996) Money laundering and the international financial system

10 Armando Fernández Steinko. 'Financial channels of money laundering in Spain' (2012) 52(5) Br J Criminol 908;ibid

11 Michael Levi and Peter Reuter. 'Money laundering' (2006) 34(1) Crime and Justice 289;Peter Reuter and Edwin M. Truman. 'Chasing dirty money' (2004) Institute for International Economics, Washington, DC ;Armando Fernández Steinko, 'Financial channels of money laundering in Spain' , vol 52 (CCJS 2012) 908

observers and only when policy is discussed¹². The penalty for breaking NAMLC regulations ranges from fines to imprisonment on officers, employees and managers of financial institutions, as elsewhere in the world, that fall short of reporting suspected money laundering. However, the NAMLC is able to offer immunity from criminal prosecution, civil or administrative action if correct procedures were followed. In practice it appears that a combination of these is used depending on the case, the victim and those involved (i.e. they are far less tolerant if crime has affected a UAE citizen).

Furthermore, the establishment of the AMLSCU in the UAE was aimed at investigating fraud and associated suspicious transactions. Established by the Anti-Money Laundering Act 2002 and designed to enhance the actions of the UAE Central Bank, which aims at supporting international attempts to combat money laundering as well as the financing of terrorism, it is considered as the Financial Intelligence Unit (FIU) of the Central Bank and is charged with examining and coordinating the release of information to law enforcement and judicial bodies – this expected coordination, however, is yet to be completely successful, and suffers from lack of procedural and legislative support (see research chapter 6), which is found in literature and assessments, and is a key part of this research.

The AMLSCU further exchanges information with the international FIU and since December 2000, the Central Bank has referred 108 cases to international FIUs. From December 2000 to December 2005, the AMLSCU has received and investigated 3031 suspicious transactions reports (STRs) and from December 2004 to December 2005 alone, the AMLSCU received and investigated 772 STRs. No freeze orders were issued in 2005 based on STR submissions, but from December 2000 to December 2005, the Central Bank has issued 27 freeze orders based on AMLSCU and law enforcement investigations. Twelve of these cases are in progress with prosecution planned for money laundering offences and confiscation of all illegal proceeds.

¹² Belaisha Bin Belaisha and Graham Brooks. 'Money laundering in Dubai: Strategies and future directions' (2014) 17(3) Journal of Money Laundering Control 8

Since 2000, the Central Bank has also frozen (US dollars) \$1,348,381 in 17 different financial accounts¹³.

However, the problem of preventing money laundering in the UAE is compounded by cash-based sectors. Gold and diamonds, especially in the markets of Dubai, are extremely vulnerable to money laundering. Aware of this problem, the UAE has participated in the Kimberley Process Certification Scheme for Rough Diamonds (KPCS) since November 2002. The certification process is under the control of the Dubai Metals and Commodities Center (DMCC), a quasi-governmental organisation that employs four individuals full-time to administer the programme to an estimated 50-diamond traders operating in Dubai.

The UAE has also become sensitive to organisations claiming charitable status as well, with fears that these are fronts for terrorist organisation/cells. It therefore changed the law that all licensed charities interested in transferring funds overseas must do so via one of three umbrella organisations: the Red Crescent Authority, the Zayed Charitable Foundation, or the Muhammad Bin Rashid Charitable Trust. These three quasi-governmental bodies are in a position to ensure that overseas financial transfers are sent to a legitimate body/person by a recognised party. As an additional step, a list of recognised acceptable recipients for UAE charitable assistance is compiled by the state. It is understandable that such a change occurred to protect the integrity of the UAE but also this protects and is supported by Islamic laws.

The concept of money laundering is also known and established in Islamic law. It is well-established in Islamic law that money derived from illegal activities and converted into legitimate businesses is morally unethical and also illegal. There are many Quranic verses prohibiting such illicit activities; in Surat An-Nisa' for instance there is a verse that translates: "O you, who have believed, do not eat (up) your riches among you untruthfully, except there is

¹³ ibid

commerce by your mutual consent”. O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.¹⁴

Furthermore, the Free Trade Zones (FTZs) and Financial Free Zones (FFZs) in the UAE also compound the problem of AML. With 17 FTZ already in operation and plans to establish eleven more (in 2013), the potential for money laundering is high. Every emirate except Abu Dhabi has at least one functioning FTZ and these zones are monitored at emirate levels, as opposed to federal-level. However, there are over a hundred multinationals located in these FTZs, with thousands of individual trading organisations. The FTZs permit 100 percent foreign ownership, no import duties, full repatriation of capital and profits, no taxation, and easily obtainable licenses. Those located in the FTZ are treated as offshore or outside the UAE for legal purposes. However, UAE law prohibits the establishments of a shell company and/or trusts, and does not permit non-residents to open bank accounts in the UAE¹⁵.

In September 2004, the UAE established its first financial free zone (FFZ), known as the Dubai International Financial Center (DIFC). The FFZs are exempt from some UAE federal civil and commercial laws. They are still, however, subject to the Anti-Money Laundering and Counter Terrorism Laws at the federal level, due to their significance to the UAE internationally. The DIFC established an independent regulatory body - the Dubai Financial Services Authority (DFSA), which reports to the office of Dubai Crown Prince and an independent Commercial

14 Verses 29 and 30. There is another verse (188) in Quran which says “And eat not up your property among yourselves in vanity, nor seek by it to gain the hearing of judges that you may knowingly devour a portion of the property for others wrongfully”. There are also many provisions in the Sunna that contain the conception of money laundering. Thus, for instance, Prophet Mohammed prohibits any activity funded by money derived from Souht (unlawful trade or ill-gotten property). He says “Any activity built from Souht, will be cast into fire.” For more detail, see Samah Al Agha. 'Money laundering from Islamic perspective' (2007) 10(4)ibid406.

15 Belaisha Bin Belaisha and Graham Brooks, 'Money laundering in Dubai: Strategies and future directions' , vol 17 (Emerald Group Publishing Limited 2014) 8

Court. The DFSA is the only authority responsible for licensing firms providing financial services in the DIFC.

The DFSA has licensed 21 financial institutions and 13 ancillary services within the DIFC. The DFSA's rules prohibit offshore casinos or Internet gaming sites in the UAE, and require all firms to send STR to the AMLSCU (along with a copy to the DFSA). Although firms operating in the DIFC are subject to AML laws, the DFSA issued its own AML regulations and supervisory regime, creating some ambiguity as to the authority of the Central Bank and AMLSCU within the DIFC.

In 2010, in the UAE, the political will to tackle money laundering perhaps came of age. It has reached unacceptable levels at home but was also conscience and aware of the international concern regarding the ongoing struggle to prevent terrorism and organisations/cells access to funds. During a press conference with Lieutenant General of the time, Dhahi Khalfan Tamim, Al Suwaidi, it was stressed that the Central Bank of the UAE was committed to addressing money laundering and terrorism. He further added that the UAE Central Bank had signed approximately 25 international certificates, which confirmed its commitment to AML practice with 40 international agreements relating to the exchange of relevant information on money laundering and suspicious cases involving organised crime and terrorism. Finally, he stated that the UAE has, to-date, received and supported a number of investigation panels from the USA since the year 2001, and also hosted visits from the United Kingdom, Germany, Pakistan, and an additional 600 delegations regarding the development of anti-money laundering (AML) strategies and practices and associated issues tackling international organised crime and the funding of terrorism.¹⁶

¹⁶ Jerry Hart. 'Criminal infiltration of financial institutions: a penetration test case study' (2010) 13(1)ibid55-65.

It is in this complex and international political context that this research project was conducted. It was impossible to review and research into every aspect of money laundering and its regulation in the UAE without the research developing into a descriptive account of AML rather than a piece of research that has made some policy and practice recommendations in the conclusion (see chapter eight). A decision was made at the initial stage of the research that a combination of law enforcement, the Central Bank and private financial sectors, primarily with a focus on AML in the financial sector was a sufficient broad enough approach to assess AML practice in the UAE. Now with an international reputation to defend as an industry of the utmost integrity and probity poor AML practice has the potential to become a magnet for individuals and organised crime to launder money in Dubai and discredit its reputation as a safe-haven, as a place to live and conduct business.

1.2. Problem Statement

The problem of preventing and/or reducing money laundering is a major international issue. Previous and current attempts that have been made to address money laundering are usually frustrated by the dynamism of the crime itself. This thesis, therefore, presents an examination and evaluation of the present strategies and possible future directions of preventing and/or reducing money laundering in Dubai.

Aware of the international dimensions of money laundering, this research still primarily focusses on Dubai, and assesses the ways in which national and international legislation, and law enforcement and AML units are tackling, and struggling with the issues and problems of money laundering. The study of how to prevent and reduce money laundering in Dubai is critical to the nation's strategic position in the UAE and its position as an important international financial centre and as such this research is of practical as well as academic relevance.

1.3. Research Aim

The primary aim of this research is therefore to

- Evaluate the impact of national and international legislation and establishment of a law enforcement AML unit in preventing/reducing money laundering in Dubai.

1.4. The Objectives of this Research

- Assess the present legal strategies in preventing and/or reducing money laundering in Dubai in order to establish a base and identify amendments needed
- Examine current policing strategies in preventing and/or reducing money laundering in Dubai to establish where amendments are required
- Assess the possible future directions in preventing and/or reducing money laundering in Dubai as identified by interviewees
- Expose the limits to international AML practice to establish whether UAE/Dubai needs to alter some of its current practices
- To establish whether there is a need for a political and cultural shift in attitude to prevent and/or reducing money laundering in Dubai

1.5. Contribution and importance of the study

This study was based on a critical review of the current legislation and development of AML strategies in Dubai. The value of this research study is that it is completely original; no previous research – academic or official – has attempted to assess the impact of current legislation and development of AML strategies in Dubai. In addition interviews with key personnel in the financial sector and law enforcement highlight the need for changes to the present strategic approach in preventing/reducing money laundering in Dubai. Therefore, this thesis is of academic and practical policy importance as it seeks solutions for reducing and preventing the

spread of money laundering, and suggests a new strategic approach to AML and investigative procedures for the police in preventing/reducing potential avenues for money laundering.

The focus of this research is primarily on Dubai and considers the impact of international legislation and conventions (i.e., Forty Recommendations issued by the Financial Action Task Force (FATF) on money laundering) and the compatibility of such practice on the 'Dubai experience' of money laundering in its cultural and present political context. In one sense then this research is a snapshot of the contemporary situation in Dubai; it, however, has resonance for the future as strategic approaches now have consequences for future practice.

As money laundering has become a global threat¹⁷, to the integrity and stability of financial institutions and security the International Monetary Fund (IMF) estimated the size of money laundering worldwide to be between \$600 billion and \$1.5 trillion (US dollars), equivalent to 2-5% of the world's gross domestic product that includes individual, organisational and state victims. Bartlett noted "money laundering has a more direct negative effect on economic growth by diverting resources to less productive activity, and by facilitating domestic corruption and crime, which in turn depress economic growth"¹⁸; however, this view is open to contestation, and reviewed in this thesis where appropriate (see chapter two).

Money laundering has the potential to impair the development of financial institutions, particularly when there is a correlation between money laundering and fraudulent professional employees or where money is laundered and risks the insurance of financial security of the institution. Institutional fraud and corruption, therefore, becomes an obstacle to trust¹⁹, which is

17 Mr Ilias Bantekas and Susan Nash, *International Criminal Law 3/E* (Routledge Cavendish 2007) 247-248

18 Richard W. Barrett. 'Confronting tax havens, the offshore phenomenon, and money laundering' (1997) 23 Int'l Tax J. 12-42.

19 Graham Brooks, Azeem Aleem and Mark Button, *Fraud, corruption and sport* (Palgrave Macmillan 2013)

a key element of any transaction. Morris-Cotterill has suggested that “money laundering generally harms society by oiling the wheels of financial crime, and financial crime affects everyone we all experience higher costs of living than we would if financial crimes – including money laundering – were prevented²⁰”. This corruption is further compounded by criminal organisations, and provides organised criminal groups, arms dealers and others with the opportunity to develop criminal enterprises. Without effective safeguards or preventive measures, money laundering can strike at the integrity of a country's financial institutions. The removal of billions from legitimate economic enterprise each year and placed into the ‘black market’ of organised crime constitutes a real threat to the financial health of a country and affects the stability of the global marketplace²¹. It is for these many reasons that this research was conducted, and which Dubai is vulnerable too.

1.6. The Structure of the Thesis

This thesis is divided into a total of eight chapters. This chapter – chapter one – explains and sets out the aim, objectives, the problem statement, and outline of following chapters.

In chapter two a review of relevant literature, concepts and legal terminology often used to explain money laundering is discussed. In this chapter the stages and methods of laundering - placement, layering and integration – and explanatory value of how money is laundered is considered. In addition the often impenetrable, vague legal documentation is reviewed highlighting the national and international confusion on how to prevent money laundering. Reference is made to the system of AML strategies and laws in the United Kingdom in particular as the UAE and Dubai have drawn on the laws and systems already established in this country. The ‘copying’ or ‘aping’ of legislation, however, is no indication that both systems will be equally successful in preventing money laundering. In fact, a recurring theme in this thesis is that there is a substantial gap between policy and actual practice in AML in Dubai.

²⁰ Nigel Morris-Cotterill, *How not to be a Money Launderer* (Silkscreen 1996) Morris-Cotterill “How Not to Be a Money Launderer”, 2nd edition, Brentwood: Silkscreen Publications, 1999.

²¹ Olivier J. Blanchard, 'The crisis: basic mechanisms and appropriate policies' (International Monetary Fund 2009)

In chapter three, the focus is on the political context in which AML legislation has developed in the UAE and assesses the legislation presently available to prevent money laundering. The debate focuses on the political and legal structure and reputational risk of poor AML practice in Dubai. Finally, the literature that offers potential theoretical frameworks helps to build an understanding as to why such corrupt acts as money laundering are committed and explains why Dubai is currently viewed as a financial sector in need of review. In addition, the FATF 2008 Assessment, from MENAFATF, was included as it was delivered from the research conducted in early 2007. Recommendations are noted, and some consideration is given to the fact that some of the key elements, such as legislation, have changed since this assessment was completed.

In chapter four the focus is specifically on specific AML measures and the importance of developing strategies in preventing money laundering in Dubai. Furthermore, these strategic developments are reviewed with powers of law enforcement units and the ‘policing’ of the private financial sector considered. This chapter further highlights that a lack of communication between law enforcement bodies and the private sector needs to be addressed if AML strategies and practice is to prevent money laundering. Data and information on suspected individuals and organisations is the basis on which to build case, and as such a clear system of communication and combination of civil and criminal sanctions are needed.

In chapter five a detailed explanation of the research methods used and the advantages and disadvantages of these in this thesis are discussed. These methodological issues are secondary data analysis, i.e. official crime statistics, analysis of legal documentation, negotiated access, sampling framework, designing an interview schedule, content analysis of interviews and ethical issues and my role as a practitioner researcher/research practitioner. As with all research, regardless of the methods employed there are advantages and disadvantages to the approaches used. Securing access to those working in law enforcement was straightforward; access to those in the international financial sector and Central Bank, however, was problematic. A personal contact helped negotiated access to those in these financial sectors. This is a delicate matter and the process is based on the assumption that a ‘bond’ or ‘link’ exists between the initial sample

and point of contact and that others in the same social population, and allows a series of referrals to be made within a circle of acquaintances (Berg, 1988; Broadhead and Rist, 1976, Brooks, 2012). This research is therefore part targeted sample and part snowball sample. Both are limited but a snowball sample was needed to access those 'hard to reach' research subjects such as 'elites'²² and it was thought appropriate to approach a personal contact to 'sound out' the possibility of interviewing people in the financial sector. While it is beneficial to have a personal contact as a 'gatekeeper' it can influence the direction and sample of the research in a number of ways; they can limit access and conditions of entry in a social community, limit access to people and data and restrict the scope of analysis, or use bias in selection of the individuals for participation²³. These issues are discussed in depth in this chapter.

In chapter six, the results of the research are analysed. These are presented as two distinct set of results but are interconnected. Firstly, the raw, background data obtained from the interviews is presented highlighting the male dominated sphere of business, even in the private sector and lack of AML knowledge from senior executives; secondly content analysis of the interviews are analysed. The results highlight that there is a lack of coordination between the Central Bank, the private financial sector and law enforcement, and as such AML practice is dis-jointed, and that law enforcements bodies need skilled practitioners with a background in AML practice and/or education on how best to prevent this complex crime. There are possible vested interests that need to be overcome as Dubai progresses towards providing an AML strategy that is respected around the world.

In chapter seven, The thesis focus on methodology of determining recommendations for a country require that assessors be familiar with the country's current conditions, including but not limited to the assessments completed by the country, current socio-economic and cultural considerations, cash-based society, likelihood of money laundering and terrorism financing, and

22 Rowland Atkinson and John Flint. 'Accessing hidden and hard-to-reach populations: Snowball research strategies' (2001) 33(1) Social research update 1

23 Alan Bryman, *Research methods and organization studies*, vol 20 (Routledge 2003)

the importance of the financial sector in that specific area²⁴. In addition, assessors should analyse the effectiveness of the strategies in place within the country, identifying how the effectiveness could be improved upon. These recommendations also include a review of the UAE and Dubai, based on the FATF 40 + 9 recommendations and in comparison with the UK results from 2014. This quasi-assessment acknowledges the most current legislation that was added to the UAE, and notes some of the research that indicates that while the improvements have been added in documentation, and the increase in public awareness campaigns, there have been many issues left unresolved in implementation.

In chapter eight, the conclusion, information is drawn from the previous chapters and the findings of the research. The conclusion includes recommendations for new AML counter-measures in the UAE and Dubai in particular. Money laundering is international in its reach and highly organised and profitable. However, if Dubai is unable to implement sound AML procedures and strategies and police its financial sectors its reputation as a ‘safe’ ‘secure’ environment to conduct commerce will be affected. This chapter is dedicated to recommendations as to how law enforcement and the financial sector in Dubai can counteract money laundering; staying on its present course of action – a signatory to limited conventions and lack of expertise in law enforcement - damages investment in national infrastructure and international acquisitions, and as such changes in its present strategic course of action is required. Finally, in Chapter 7, the models of recommendation include the intelligence led policing (ILP), problem – orientated policing (POP), and community – orientated policing (COP), were evaluated alongside of the National Intelligence Model (NIM).

The focus of this research was to answer the research objectives by gathering information from a number of resources, including literature, primary research, and database assessments provided by third parties. Developing an assessment of the current conditions of Dubai could not be conducted without evaluating that of the UAE, due to the fact that federal regulations do assist in

²⁴ Ibid

the management of Dubai, even though the status of Dubai permits it the freedom to manage much of the affairs of the financial hub on an independent level. The UAE, to become compliant with FATF Recommendations, has instituted a number of laws and changes over the past decade, all intended on creating a stable environment for continued financial growth that will improve the success of all cities and continue to invite organizations on an international level to join their economy. However, not all changes are implemented as effectively as could be done, and these issues are noted throughout this research, and concluded with the recommendations on implementing models that will increase the success of the regulatory environments and the law enforcement organizations.

1.7. Method approach

As with all research a mixed method approach is considered more productive than a single method for the collection of data.²⁵ Original in its aim and execution, however, this research countenanced several obstacles. These ranged from lack of research material on AML laws and regulations in the UAE, limited secondary data, access to the financial sector, and the politically sensitive nature of discussing past and present cases of money laundering in the UAE and role of the AMLSCU and Anti Organised Crime Department (AOCD) and that empirical research is completely foreign to the UAE and is to some extent outside the scope of their cultural traditions.

1.8. Grounded Theory

Grounded theory is a method of investigation of a topic that reviews a broad perspective of the subject and evaluates theories in order to determine a single theory that is relevant for the subject matter ²⁶. The use of the grounded theory includes evaluation of literature and the use of instruments such as questionnaires and interviews to determine human perspective of the topic. This research utilizes the interview method of grounded theory, by questioning individuals regarding money laundering, who are in a position to understand these problems, specifically in Dubai. The grounded theory is a research method in ethnography, which has some criticisms, as it is not perceived by all researchers as involving inductive reasoning and does not have an

²⁵ Ray Pawson and Nicholas Tilley, *Realistic evaluation* (SAGE Publications Limited 1997)

²⁶ O'Reilly, 2009 & Haig, 2007

emphasize on theory validation²⁷. However, in cases where limited information or previous research is available on a subject or topic, or where there is limited evidence regarding theories, grounded theory can be used to fill the gap in research and give further research a resource for evaluating the topics and subjects further.

Research methods have made some progress in the UAE, particularly in the university sector where access to larger research is demonstrated by countries such as the UK, USA. However, other research has not been as widely sought or made available in the typical resources that are available to the general public or other academic areas. Currently, some extended research is available for access to people in officially high ranking positions in the UAE and are accessible to only a few. Access is secured via a personal contact or family member, and while this is a mark of research around the world, privacy and family life are highly valued in the UAE and personal contacts are significantly important, in developing significantly large or sensitive research topics.

This research employed a combination of methods. These were

- Secondary data analysis, i.e. official crime statistics
- Analysis of legal documentation
- Negotiated access
- Sampling framework
- Designing an interview schedule
- Content analysis of interviews
- Limitations of the research

²⁷ Haig, 2007, p. 535

- Ethical considerations

1.9. Problem Statement

The problem addressed in this research is a better understanding of money laundering in Dubai, specifically from the views of individuals in law enforcement and AML units. In addition, this research is designed to create an understanding of the available research in regards to international and national legislation regarding money laundering, and the shortage of information available through literature for this specific area.

1.10. The Objectives of this Research

As established in Chapter 1, the objectives of this research included the following:

- Assess the present legal strategies in preventing and/or reducing money laundering in Dubai in order to establish a base and identify amendments needed
- Examine current policing strategies in preventing and/or reducing money laundering in Dubai to establish where amendments are required
- Assess the possible future directions in preventing and/or reducing money laundering in Dubai as identified by interviewees
- Expose the limits to international AML practice to establish whether UAE/Dubai needs to alter some of its current practices
- To establish whether there is a need for a political and cultural shift in attitude to prevent and/or reducing money laundering in Dubai

1.11. Practitioner Researcher or Research Practitioner

For the sake of clarity each section of the research process is explained, justified and considered below. While presented in a sequential order there was a need to sometimes return to and reflect on a source of information (i.e., changing sources of AML countermeasures in Dubai and the

United Kingdom. However, in the following chapter the literature gathered is compared to the results gained from this part of the study.

All legal and social scientific research also has a political dimension. Although this research is not directly political it has attracted interest from law enforcement bodies in the UAE. This is understandable as money laundering is a crime. However, all aspects of this research involve the analysis of power and practice (Hughes, 2000), and in-turn have the potential to engender conflicts between and within organisations. This research also uncovered (see chapter six) some unwelcome truths, particularly about working relationships between the private financial sector and law enforcement sometimes. No research therefore takes place in a social, political or moral vacuum. A second meaning of the word ‘political’, however, is far more restricted. It can refer to state power and institutional power, which are part of the legal system and enforcement of laws.

This research is a combination of critical challenges to the present approach to preventing money laundering in Dubai but also lending credibility to prevailing institutional practices and recent developments in the UAE (see chapter four). No research can simply lend credibility to institutional practices without leaving itself open to supporting established ideological assumptions. This research, as the results highlight, suggest that much needs to be done to tackle the threat of money laundering in the UAE beyond the present laws and practices in law enforcement and the private sector.

The research, therefore, is an attempt to understand the present position of the UAE in preventing money laundering by drawing on the most major, relevant official studies and reports on money laundering, and other financial ‘crimes’ where relevant. In addition academic research with clear policy implications was consulted to add conceptual depth to this analysis. Furthermore, current and archival respected ‘media’ sources have also been employed as background material where other reliable data is unavailable in order to form the most complete picture possible.

Chapter Two

Stages, laws and concepts of money laundering

2.1. Introduction

A systematic literature review of laws/legislation, concepts and theoretical explanations of money laundering identified definitions and prevalence of money laundering. However, identifying the exact means of money laundering, or the specific purposes of money laundering is more complicated. Money laundering can occur as related to drugs, terrorism²⁸, abuse of arbitration²⁹, tax fraud³⁰, and other reasons both legal and illegal³¹. In addition, literature was available in both Arabic and English, which resulted in difficulty in acquiring sources that could be deciphered without assistance. Rather than approach the matter in a random and uncoordinated fashion, it was decided that a systematic approach was most appropriate as it allowed literature to be compared, based on the information collected and analysed for information over a specific period. This provided different historical, social and cultural backgrounds to be evaluated in the review. Due to the complex and expansive nature of the research, a process of mapping the key issues provided order and identified the needs of further research.

Following the identification of the definition and scope of money laundering, the first step included searching for key terms such as AML, terrorism, organised crime in international and national official documentation. Much of the official documentation is from international bodies

28 'Money Laundering and Financing Terrorism (at EU level). (English)', (2009).

29 A. McDougall. 'International Arbitration and Money Laundering'(2005)' 20 American University International Law Review 1021-1054

30 Andreozzi,P., Salzman,L. and Hibschweiler,M. 'False Tax Returns, Mail Fraud, and Money Laundering' (2011) 42(2)112-119

31 David A. Chaikin. 'Money laundering: an investigatory perspective' (Criminal Law Forum Springer, 1991) 467

such as the FATF and the United Kingdom. In addition, legislation and regulation was found in sites such as the Central Bank and DFSA, which provided guidance regarding current legislation for the country. Influences on money laundering regulation are a result of combined efforts of the members of international bodies working with numerous countries, including the UK, USA, and China, where results of criminal activities can include sanctions on governments³².

Theoretical concepts were evaluated using the literature to determine aspects of motivation and cultural relationships with money laundering. This combination offered both the legal and practical approach with that of a theoretical explanation of AML strategies and techniques. This information resulted in recurring themes and issues regarding AML development that was consistent in the UAE and elsewhere. Following this method, a cross-examination of key information that was relevant to this research was conducted, which produced a number of resources evaluated to identify the larger influences of money laundering on people, governments, and organisations.

The different types of literature resulted in a concept-centric review, which enabled evaluation of concepts to create a review of money laundering perceptions internationally. The concept – centric approach helped produce tables of data and key issues that established a method of recording major insights and key relevant points on AML practice in national and international jurisdictions. As illustrated by Webster and Watson (2002), tables should not resemble a lists of articles; instead they need to add value by categorising key concepts regarding key themes that collect information on concepts examined, level of analysis, gaps in the literature, theoretical

³² Kern Alexander. 'The need for efficient international financial regulation and the role of a global supervisor' (2001) 5(1) Journal of Money Laundering Control 52

understanding of subject matter, and/or lack of empirical research available³³. This process helped make sense of the accumulated knowledge and enhanced understanding of the key findings and relationships in the relevant literature.

In addition, and part of the learning process, reflection of criticism in some of the articles was also required. The reason for this is as Daft (1985) suggested that an extremely negative approach to published literature needs careful consideration; previous work is always vulnerable and criticism without foundation is of little value. Therefore, those articles that explain how AML prevention has developed and make worthwhile and achievable recommendations were considered as a significant contribution to the literature. It was further considered that knowledge is accumulated slowly in a piecemeal fashion and that all authors are sometimes 'forced' to make a compromise in research³⁴.

This review identified critical gaps in knowledge regarding AML in Dubai, which is not available, and is identified as a gap in the literature. Legislation, laws, conventions, and official documentation in Dubai all illustrated that procedures and process were understood and what was required to have a comprehensive AML strategy. This chapter identifies the definitions, applications of legislation, and representation of AML strategy that involves law enforcement and the private sector, regarding money laundering, both internationally and in Dubai, as available in literature currently. While there are literally hundreds of articles regarding AML/CFT and countries such as those UK and other European countries, as well as the U.S.A, only limited data can be obtained regarding the Middle East, including that of the UAE. In 2012,

33 William H. DeLone and Ephraim R. McLean. 'Information systems success: the quest for the dependent variable' (1992) 3(1) Information systems research 60; Daryl J. Bem. 'Writing a Review Article for Psychological Bulletin' (1995) 118(2) Psychol Bull 172-177; Maryam Alavi and Dorothy E. Leidner. 'Review: Knowledge management and knowledge management systems: Conceptual foundations and research issues' (2001) MIS quarterly 107.

34 Kenneth P. Burnham and David R. Anderson, Model selection and multimodel inference: a practical information-theoretic approach (Springer 2002).

it was noted that increased regulation should be included in the UAE³⁵; however, little literature or evidence was provided to support these statements. Additionally, literature regarding UAE financial markets are typically limited to publications by financial institutes and agencies, rather than by researchers, government officials, or AML/CFT regulatory bodies.

In this chapter, there is a review of AML strategies and practices in Dubai. This is dealt with in chronological rather order rather than level of importance as laws, strategies and law enforcement bodies were established to counter the problem organisational money laundering, and criminal and illegal funds associated with terrorism. A recurring theme in this chapter, and the thesis, is that laws are passed, law enforcement bodies established, political pronouncements made and yet the reality and actual practice of preventing money laundering is completely different. This 'gap' between laws and practice is not experienced in Dubai alone, it is a problem for civil regulation and/or criminal enforcement around the world, and where possible this is stressed regarding the United Kingdom, which has an established financial centre in London for integrity and probity. This is to indicate that no matter how established mistakes, errors, neglect, and criminal acts are still discovered in some of the most rigorous, regulated environments in the world.

This chapter first highlights the AML Regulations of 2000 in the UAE and expectations placed on those working in the financial sector(s) in Dubai. This is followed by a review of the Money Laundering Law 2002 and its effectiveness in preventing money laundering. The next section considers the role of the Central Bank and its part in the prevention of money laundering followed by an examination of the NAMLC and its roles. Once these have been established a critical appraisal of the impediments to developing a comprehensive system of regulation and AML practice is considered with a view of Dubai that it is moving in the right direction, albeit slowly, in preventing money laundering in its jurisdiction.

35 'Money laundering risks in the UAE', 2012, International Financial Law Review, vol. 31, no. 9, p. 60.

It was decided after careful consideration to use a systematic literature review of laws/legislation, concepts and theoretical explanations of money laundering. However, identifying the literature is not always as straightforward as it seems. Reviewing literature in Arabic and English is problematic. Rather than approach the matter in a random and uncoordinated fashion, it was decided that a systematic approach was most appropriate as comparing literature on one specific topic is a difficult task; however, to collect and analyse information, even over a brief period of time, from two different historical, social and cultural backgrounds is even more difficult. Due to the complex and expansive nature of the research a process of mapping the key issues was considered appropriate.

Therefore, an initial step was a search for key terms such as AML, terrorism, organised crime in international and national official documentation. Much of the official documentation is from international bodies such as the FATF and the United Kingdom. The reason for this is that much of the legal documentation in the UAE is based on that of the United Kingdom. This is perhaps understandable, as the Middle East and the United Kingdom have an 'historical relationship'³⁶ and links to the now diminished British Empire.

Furthermore, theoretical concepts as explanations for money laundering and corruption were sought in academic literature. This combination offered both the legal and practical approach with that of a theoretical explanation of AML strategies and techniques. From this sifting of information recurring themes and issues regarding AML developed that was consistent in the UAE and elsewhere. Once the original sifting on information was complete, however, a cross-examination of key information that was relevant to this research was conducted (see chapter 5), which produced detailed and relevant information specific to this research.

36 EUGENE L. ROGAN. 'The Emergence of the Middle East into the' (2013) *International Relations of the Middle East* 37

This review was designed to identify critical gaps in knowledge regarding AML in Dubai rather than a gap in the literature. Legislation, laws, conventions, and official documentation in Dubai all illustrated that procedures and process were understood and what was required to have a comprehensive AML strategy. However, this research highlights that the actual practice of AML was somewhat different to the established official documentation. It established that the examination of past research set a chart for future research and recommendations (see conclusion: chapter seven) and that much still needs to be done to progress towards a wide-ranging, inclusive AML strategy that involves law enforcement and the private sector.

Furthermore, current and archival respected 'media' sources have also been employed, where relevant, as background material where other reliable data is unavailable in order to form the most complete picture possible (i.e., cases of money laundering in the news as well as official statistics). The volume of literature is assessed throughout this thesis rather than in one chapter; however, in this chapter the focus is on how to prevent money laundering; the limited explanatory value of the stages and methods of laundering - placement, layering and integration – and the often impenetrable, vague legal documentation and national and international expectations on best practice and strategic advice on AML practice. Each problem is dealt with in turn but should be read as overlapping and blurring the edges of understanding of AML.

2.2. What is money laundering? Techniques and stages

The techniques and stages of money laundering might seem straightforward but are problematic. Described as the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so as to appear from legitimate source³⁷ is a starting point in the

³⁷ Peter Alldridge, "Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime," Oxford-Portland Oregon, 2003, p. 2. Monica Bond, "Money Laundering," Accountants Digest September 1994, Volume 324, p. 6. Angela Leong, "Chasing Dirty Money: Domestic and

discussion rather than accepted truth. This is because legitimate funds can be concealed in some jurisdictions to avoid taxation. The focus on this research, however, is on the use of illegal funds. Money laundering then is “to render it almost impossible for evidence to be obtained, which allows a court to establish the derivation of the money”.³⁸ Dirty money, as it is often called, is put through a cycle of transactions³⁹ to disguise the unlawful or originally lawful nature of funds but both with the same aim of hiding it from law enforcement or revenue and taxation depending on the jurisdiction.

Numerous methods exist for money laundering processes, including the use of technology, which is a growing problem for money laundering legislation and investigation. In the case of technology use, money laundering can occur through online purchases or online currencies. An individual may purchase an online service, using their individual funds, but no service or product is involved in the actual sale. The individual selling the service receives the money and nothing is due in return, but the money has illegally changed hands as a means to move either illegal money or to move money for an illegal reason⁴⁰.

Additionally, the growing ability to use money in many currencies to purchase virtual currencies is a great concern for the future of money laundering incidents, such as in the case of Bitcoins or Linden Dollars, which may have no traditional value but can be used for money laundering purposes. Digital transactions are considered to occur in the case of “online casinos, virtual

International Measures Against Money Laundering”, *Journal of Money Laundering Control*, Volume 10 Number 2 2007, p. 140.

38 Rider, B.A.K. “Fei Chien Laundries: the pursuit of flying money” (Part 1), *Journal of International Planning*, Volume 1, p. 77.

39 Angela Veng Mei Leong. 'Chasing dirty money: domestic and international measures against money laundering' (2007) 10(2) *Journal of Money Laundering Control* 140.

40 Ramage, S 2012, 'Information technology facilitating money laundering', *Information & Communications Technology Law*, vol. 21, no. 3, pp. 269-282.

words (such as Second Life); massively multiplayer online role-playing games, abbreviated to MMORPG, (such as World of War craft); and the use of digital precious metals (such as e-gold ltd)”⁴¹. Each of these forms of money transfer are not illegal until they are used in illegal ways, which increase the pressure on governments to maintain up-to-date legislation regarding the terminology of money laundering and the provide law enforcement with the tools necessary to uncover the money laundering activities in different types of laundering situations, including in their digital form and growing with the increase of technology.

There are three key stages – placement, layering and integration – however, these stages do not always follow a sequential process as much depends on source of original funds, location of laundering and ‘assistance’ from financial sectors employees. Regardless of the stages though, the process is similar; funds are placed into a bank or non-bank financial institution⁴² this will involve depositing or converting a substantial amounts of cash that would be considered unusually large by normal commercial standards⁴³ and should raise a ‘red flag’. Other methods, however, might include purchases of traveller’s cheques or foreign currency and the purchase of insurance policies⁴⁴. The process of placement can also be carried out through currency smuggling by the physical illegal movement of currency and monetary instruments out of one jurisdiction into another. In addition, the “mainstream financial world” has increased the “diversification of money laundering methods or typologies so anything that has value is

41 Stokes, R 2012, 'Virtual money laundering: the case of Bitcoin and the Linden dollar', Information & Communications Technology Law, vol. 21, no. 3, pp. 221-236.

42 W. Gilmore, “Dirty Money,” Council of Europe Press, 1995, p. 37. See also Money Laundering Regulation 2007; Andrew Haynes, p. 319.

43 Alastair N. Brown, “Money Laundering in Scotland: The Law,” Paper on Public Policy: Volume 1 No 2, Edinburgh University Press, 1993, p. 50.

44 Monica Bond, “Money Laundering” Accountants Digest September 1994, Volume 324, p. 8.

susceptible to money launders and any mechanism, technology or indeed profession, which facilitates the transfer of value is equally vulnerable”⁴⁵.

However, although complex, it is at this stage that Brown argued that money laundering is most vulnerable, because it is at this stage that an explanation for the funds will be thinnest, unsupported by the body of circumstantial evidence to lend it credibility if illegal. If money laundering can be detected at the stage of placement, there will be an opportunity to secure the confiscation of the benefit which the offender(s) has derived from the crime⁴⁶. It was further suggested that the effort to combat money laundering should primarily focus on this placement stage, as it is the most vulnerable to detection⁴⁷ and emphasized increased importance of institutions ‘knowing their customers’⁴⁸ (see chapter six for customer relations in Dubai). This is common practice now but ‘criminals’ at this stage of placement might employ strategies to avoid detection⁴⁹ such as the use of ‘front’ businesses such as bars, restaurants, or casinos that do business in cash and/or the use of ‘smurfing’ techniques by opening and placing many deposits in institutions with small amount of cash to avoid raising suspicion.

45 Stokes (2012), p. 221.

46 Alastair N. Brown, *Proceeds of crime: money laundering, confiscation and Foreiture* (W. Green/Sweet & Maxwell 1996)p. 8

47 Drage, J., “Countering Money Laundering: The Response of the Financial Sector,” Hume Paper on Public Policy: Volume 1 No 2, Edinburgh University Press, 1993, p. 61.

48 W. William C. Gilmore, *Dirty money: The evolution of money laundering counter-measures* (Council of Europe 2005) Gilmore, “Dirty Money” The Evolution of Money Laundering Countermeasures. Council of Europe Publishing, 1999, p. 31; This subject will be discussed in more detail in Chapter Two.

49 Peter Lilley argued that “it is getting more and more difficult to identify suspicious activity because criminals are becoming increasingly clever in the ways that they wash their dirty money. However, there are some basic steps that form part of any anti-money laundering regime. Companies must be aware of two essential anti-money laundering procedures: they must put in place Know Your Customer Checks and procedures; and they must actively look for a Red Flag that signifies money laundering, such as unusual transactions, large cash payments and movements of funds that have no real logic.” Peter Lilley “Dirty Dealing - The Untold Truth About Global Money Laundering, International Crime and Terrorism,” 2007 Kogan Page, London and Philadelphia, p. XIV.

The purpose of this stage of layering is to separate the illicit proceeds from their criminal source by creating complex layers of financial transactions so as to disguise the audit trail and to make it more difficult for law enforcement to detect money laundering. At this stage, layers of transactions can be inserted between the sources of the funds⁵⁰ by electronic bank transfer (wire transfer) to avoid the inclusion of real names in records⁵¹. In recent years concern has been expressed about the abuse of electronic funds or wire transfers and Savona and De Feo have pointed out that “wire transfers are probably the most important layering method available”⁵². Speed, distance, minimal audit trail, and increased anonymity amid the enormous daily volume of electronic fund transfers are all major benefits.”⁵³ Further methods used might include the importing or exporting of non-existent products, the use of casinos and the purchase and resale of fixed assets or real estate.

50 Monica Bond, “Money Laundering,” Accountants Digest September 1994, Volume 324, p. 8.

51 Other methods of moving the proceeds of crime are Cash Conversion, Credit Cards, Foreign Bank Accounts, Trust and Safe Deposit Facilities. For more details, see Anthony Kennedy, “Dead Fish across the Trail: Illustration of Money Laundering Methods,” Journal of Money Laundering Control, Volume 8 Number 4 2005, p. 305.

52 William C. Gilmore, *Dirty money: the evolution of international measures to counter money laundering and the financing of terrorism* (Council of Europe 2011)

53 Savona and De Feo, “Money Trails: International Money Laundering Trends and Prevention/Control Policies.” Paper presented at 1994 Conference p. 84. Following the events of 9/11, the Financial Action Task Force drafted eight special Recommendations on Terrorist Financing to complement its 40 Recommendations on Money Laundering. Recommendation Seven, which was concerned with “Wire Transfers,” stated clearly that “Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on fund transfers and related messages that are sent, and the information should remain with transfer or related message through the payment chain. Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

The third stage – integration - makes the proceeds of the crime appear to be legitimate funds in the financial system. This is the stage where the money is said to be ‘laundered’ back to the economy⁵⁴. The various sources of criminal money are brought together and used to purchase an existing company or investments, which are, to all appearances, perfectly normal⁵⁵. This may occur under the auspices of a company domiciled in a set jurisdiction, which conducts business with offshore shell companies used in the layering process, or via returns on investments in those companies. It may also take the form of loans with highly favourable or negligible terms of repayment, real estate investments, or other transactions, which will be unremarkable once a plausible legal commercial and business identity has been established. The same, however, can be said for hiding legitimate funds from taxation.

While offshore financial centres provide many potential avenues to avoid disclosing the origin of assets, and take advantage of international business or the services of offshore banks⁵⁶ there is a gradual recognition by the international community that a clear distinction exists between well-regulated and under-regulated offshore centres and that not all offshore centres offer services that can be easily exploited.⁵⁷ These stages, however, can occur anywhere in the world but there is concern (see results chapter six) in the UAE and Dubai about the use of Hawala⁵⁸ system and potential for laundering illegal funds and the vulnerability of the whole financial sector in Dubai.

54 Drage, J., “Countering Money Laundering”, Bank of England Quarterly Bulletin, November 1992, pp. 418- 420.

55 Monica Bond, “Money Laundering.” Accountants Digest, September 1994, Volume 324, p. 8.

56 A number of high-profile scandals in companies from the 1990s highlight the risk from offshore operations, including the Meridian International Bank case and the Bank of Credit and Commerce International case that led to the seizure of more than US\$12 billion and a tightening up of regulations by the supervisory authorities. See Alexa Rosdol. 'Are OFCs leading the fight against money laundering?' (2007) 10(3) Journal of Money Laundering Control 337

57 Jack A. Blum and others. 'Financial Havens, Banking Secrecy And Money Laundering, United Nations Office for Drug Control and Crime Prevention' (1998) Global Programme against Money-laundering p. 9.

58 Hawala is an alternative or parallel remittance system. It exists and operates outside of, or parallel to, 'traditional' banking or financial channels. It was developed in India, before the introduction of western banking practices, and is

These conceptual stages are useful as a framework to discuss money laundering. However, there are limited and primarily a descriptive account of what might happens with illegal funds. Such a conceptual framework is useful, but hardly reflects the legislation needed to prevent money laundering. It is these 'laws' and conventions that are assessed in the next section of this chapter.

2.3. Legal definitions and international conventions

Money laundering is considered an “old business” with limited need for regulation, until the relationship between money laundering and terrorism was solidified⁵⁹. The process of money laundering is the concealment of money from existence, either due to illegal acquisition, avoiding taxes, illegal movement, or any reason where the goal is to conceal, move, or distribute money that is outside the legal regulation of the regulatory environments of the individuals associated with or located within the region(s)⁶⁰. As of 2011, money laundering was estimated as including more than 1.5 trillion USD of illegal activities internationally⁶¹.

currently a major remittance system used around the world. It is but one of several such systems; another well known example is the 'chop', 'chit' or 'flying money' system indigenous to China, and also used around the world. These systems are often referred to as 'underground banking'; this term is not always correct, as they often operate in the open with complete legitimacy, and these services are often heavily and effectively advertised. The components of Hawala that distinguish it from other remittance systems are trust and the extensive use of connections such as family relationships or regional affiliations. Unlike traditional banking or even the 'chop' system, Hawala makes minimal (often no) use of any sort of negotiable instrument. Transfers of money take place based on communications between members of a network of hawaladars, or Hawala dealers.

59 D. Ross, 'Money Laundering. Encyclopedia of White-Collar & Corporate Crime. SAGE Publications, Inc.' (2005) 543-546

60 Sabrina Adamoli and others, *Organised crime around the world* (Heuni Helsinki 1998);D. Ross, 'Money Laundering. Encyclopedia of White-Collar & Corporate Crime. SAGE Publications, Inc.' (2005) 543-546

61 Charles Robert Davidson, 'Drugs and Money Laundering. Encyclopedia of Drug Policy. SAGE Publications, Inc.' (2011) 253-255

Uses of money laundering are most often associated with drugs and terrorism⁶². This recognition of money laundering as this association has created a number of types of legislation internationally, including the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988, which established the first convention recognizing money gained from drug trafficking as an autonomous crime⁶³. In addition, the Financial Action Task Force (FATF) established the “Forty Recommendations” that were designed to encourage and promote serious consequences and reporting of suspicious activity that could reduce and control the money laundering that occurred within the countries⁶⁴.

2.4. Definition of Hawala

Hawala is associated with money laundering, in that it does not conform to the legal regulations of money transfer and movement. However, Hawala is also used to transfer money where individuals cannot send money to family and friends in countries, due to a lack of “Western-style banking”⁶⁵. The definition of Hawala is an informal money system that does not transfer actual funds between countries, requires minimal paperwork, includes no guarantees, and is rarely documented⁶⁶. In addition, the use of Hawala is noted as occurring with tax evasion, financial crimes, drug and terrorist activities⁶⁷. Another term used for Hawala is informal funds transfer systems (IFTSs), and is considered representing both opportunities for individuals and risks to

62 Sabrina Adamoli and others, 'Organised crime around the world' (Heuni Helsinki 1998)

63 ibid

64 Charles Robert Davidson, 'Drugs and Money Laundering. Encyclopedia of Drug Policy. SAGE Publications, Inc.' (2011) 253-255

65 M. Brooks, 'Financial Crimes Enforcement Network. Encyclopedia of Law Enforcement. SAGE Publications, Inc.', vol 2 (2004) 679-680

66 ibid

67 ibid

financial institutions⁶⁸. Joyce (2005) identified the purposes of Hawala as lending “itself to other purposes, including all types of capital flight, tax avoidance, the circumvention of exchange controls, the avoidance of customs duties by over –and under invoicing, smuggling, trafficking in human beings, and the financing of terrorism”⁶⁹.

Hawala is an alternative or parallel remittance system⁷⁰. It exists and operates outside of, or parallel to, 'traditional' banking or financial channels. This form of money transfer has historical importance and has existed prior to the introduction of western banking practices, and is currently a major remittance system used around the world⁷¹. It is one of several forms of “shadow banking systems”⁷², other examples include terms such as 'chop', 'chit' or 'flying money' system indigenous to China, and also used around the world. These systems are also referred to as 'underground banking'; this term is not always correct, as they are not exclusively for illegal operations and often operate in the open with complete legitimacy, and these services are often heavily and effectively advertised⁷³. The components of Hawala that distinguish it from other remittance systems are trust and the extensive use of connections such as family relationships or regional affiliations⁷⁴. Unlike traditional banking or even the 'chop' system, Hawala makes minimal (often no) use of any sort of negotiable instrument. Transfers of money takes place

68 ELIZABETH Joyce. 'Expanding the international regime on money laundering in response to transnational organized crime, terrorism, and corruption' (2005) Handbook of transnational crime and justice 79-98

69 *ibid*

70 Dulce Redin, Reyes Calderón and Ignacio Ferrero. (2012) Cultural Financial Traditions and Universal Ethics: the Case of Hawala

71 Edwina A. Thompson. 'Introduction to the Concept and Origins of Hawala, An' (2008) 10 J.Hist.Int'l L. 83

72 Nicholas Borst. (2013) Shadow Deposits as a Source of Financial Instability: Lessons from the American Experience for China

73 Rob McCusker, *Underground banking: legitimate remittance network or money laundering system?* (Australian Institute of Criminology; 2005)

74 Edwina A. Thompson, 'Introduction to the Concept and Origins of Hawala, An' , vol 10 (HeinOnline 2008) 83

based on communications between members of a network of Hawaladars, or Hawala dealers⁷⁵. Hawala is both the most difficult to control of international money transfer, due to the lack of record keeping, and the most concern for money laundering at an international level.

2.5. International Conventions

International efforts to combat money laundering started with the United Nations (UN) Vienna Convention in December 1988 and the Council of European (CoE) Convention in 1990. The 1988 Vienna Convention introduced an obligation and expectation to criminalise the laundering of profits from the illegal market in narcotics and initiated measures to expand international cooperation to tackle this issue. There was no recognition at this time by the UN that the illegal transportation of people, and other serious crimes, was considered a threat to international order and vulnerable to money laundering. Furthermore, the term “money laundering” was not used in the 1988 Vienna Convention Article 3. Article 6 of the Vienna Convention identified the constituent elements of money laundering which form the basis of all subsequent legislation and defines money laundering as:

“a) the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;

c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

⁷⁵ Ibid

d) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article. Since this convention, international joint action to combat money laundering has increased substantially.”⁷⁶

A wide range and impressive array of global groups, such as the World Bank⁷⁷, Offshore Group of Banking Supervisors (OGBS), the Basel Committee on Banking Supervision, Interpol, the World Customs Organisation (WCO), the Caribbean Financial Action Task Force (CFATF), the Financial Action Task Force (FATF), the Inter-American Development Bank (IDB), the United Nations Office for Drug Control and Crime Prevention (UNODCCP), the Council of Europe, the Asia Pacific Group on Money Laundering (APG), the European Commission, the Egmont Group of Financial Intelligence Units and the Organisation of American States Inter-American Drug Control Commission (OAS-CICAD) act as part of the FATF effort⁷⁸ and are concerned in different ways with harmonising developing rules and principles governing money laundering. These ‘bodies’ work together and exchange useful facts and data that help with money laundering and asset confiscation, estimating the value of local threats, offering advice on particular plans of action and executive modifications, and supporting the development of skills and logistical assistance. To combat money laundering the ‘bodies’ are aware that both governmental and administrative communication of thought, political and non-political participants, are needed to prevent the threat of money laundering⁷⁹ around the world. These ‘bodies’ are described below as a chronological order of laws, conventions included for assessment.

76 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. <http://conventions.coe.int/Treaty/en/Treaties/html/141.htm>

77 Pierre-Laurent Chatain. 'World Bank's Role in the Fight against Money Laundering and Terrorist Financing, The' (2004) 6 Int'l LFD Int'l 190

78 FATF Members and Observers. <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/>

79 Joseph M. Myers. (2005) International Strategies to Combat Money Laundering , p. 4.

In 1990, the Council of Europe (CoE) chose and followed the Strasbourg Convention, namely the “Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime”⁸⁰, which briefly describes the procedures needed to reduce the incidence of money laundering. The CoE founded a Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures. The Select Committee progresses statistical information for the CoE and joint assessments producing statistical information and sporadic field visits following the example set by FATF. Action often takes the form of advice on developing AML strategies to those associated with the CoE. This information is then presented in a yearly review of its acts and advice to the European Committee and Crime Problems (CDPC)⁸¹.

The approach is limited; it is based on advice rather than a legal requirements, and is far more complex as new nations have joined the CoE. The Eastern European nations of the Select Committee are confronted with difficulties, dishonesty, the removal of individual and corporate investment capital, income, and organised crime, as they move from a system-based state ownership of capital to one in which private property and the production and distribution of products and services take place through the mechanism of free markets⁸².

In the same year as the CoE convention (1990), the Financial Action Task Force (FATF) recommended extending the scope of the offence of money laundering to include any other crimes for which there is a link to narcotics, or to all serious offences. The recommendation was adopted by The Council of European Convention 1990⁸³, which expanded the definition of

⁸⁰ Ibid

⁸¹ Ibid p. 7.

⁸² Hans G. Nilsson. 'The Council of Europe Laundering Convention: A recent example of a developing international criminal law' (Criminal Law Forum Springer, 1991) 419

⁸³ For more details see, Tom Sherman, “International Efforts to Combat Money Laundering: The Role of the Financial Action Task Force”, Hume Paper on Public Policy: Volume 1 No 2, Edinburgh University Press, 1993,

money laundering beyond its traditional association with the production and transportation of illegal narcotics to include all ‘relevant’ crimes, with the first European Union (EU) Directive on this matter in 1991,⁸⁴ the second in 2001, and third in 2005⁸⁵.

Article 5.2 of The Model Legislation on Money Laundering and Financing of Terrorism (2005) is the outcome of a joint effort of the United Nations Office on Drugs and Crime (UNODC) and the International Monetary Fund (IMF). This defines money laundering “as the process by which a person conceals or disguises the identity or origin of illegally obtained proceeds so that they appear to have originated from legitimate sources”⁸⁶. In addition, the model of legislation includes explanation of how money laundering “undermines international efforts to establish free and competitive markets and hampers the development of national economies”⁸⁷. Further recommending that states establish strict control and regulation to prevent further and future damage as well as increasing the success of preventing terrorism and drug trafficking.

Furthermore, the United Nations Office on Drugs and Crime (UNODC), established in 1997, stated that although money laundering has only recently become a priority for law enforcement, both domestically and internationally. The actual term ‘money-laundering’ has a long history, but only recent acknowledgment that international cooperation was necessary for success, including international adaptation of legislation in all countries around the world. The process of disguising the origins of money has always existed in some form, ‘as there has been a need,

p.13. See also Alastair N. Brown, “Proceeds of Crime-Money Laundering, Confiscation & Forfeiture,” W. Green / Sweet & Maxwell, Edinburgh, 1996, p. 6.

84 Doug Hopton, Money Laundering: A Concise Guide for All Business (Gower Publishing, Ltd. 2009) p. 25.

85 Ibid

86 ‘Model legislation on money laundering and financing of terrorism’, United Nations Office on Drugs and Crimes, International Monetary Fund, p. 1, retrieved from <https://www.imf.org/external/np/leg/amlcft/eng/pdf/amlm05.pdf>

87 Ibid

whether for political, commercial, or legal reasons.’⁸⁸ The UNODC has compared money laundering to that of banning usury by the Catholic Church in the medieval era, with the merchants and moneylenders of that time developing the same practices used in money laundering today, of hiding and moving the money to disguise its provenance⁸⁹. The UNODC also compares the financial havens of today with the havens⁹⁰, which welcomed the pirates who preyed on European commercial ships in the Atlantic in the early seventeenth century, and who spent their illegal ‘bounty’ abroad⁹¹.

The UNODC has noted, despite the historical precedent of money laundering, it is only recently described as a specific crime outside of the focus by law enforcement on the underlying activities such as terrorism and the narcotics trade⁹². The UNODC initiated a three-year systematic investigation and global programme to prevent money laundering and support attempt to coordinate international ‘harmonious’ interaction of AML strategies and practice. The fundamental principles of practice of the programme were to increase joint action, including a range of organisations, raise public awareness of the threat of money laundering and where possible educate ‘people’ on the best ways to prevent money laundering. This approach was designed to achieve an international concern for money laundering with a universal practice of inquiry and investigation. It further hoped to provide states with important data for developing effective AML plans⁹³. From these initial efforts, money laundering is now viewed as a stand-

88 United Nations Office on Drugs and Crime International Money Laundering Networks <<http://www.imolin.org/imolin/finhaeng.html>> Accessed 16/02/2013

89 Ibid

90 Jack A. Blum and others, 'Financial Havens, Banking Secrecy And Money Laundering, United Nations Office for Drug Control and Crime Prevention' (1998); Quoting Ingo Walter, *Secret Money: The World of International Financial Secrecy* (G. Allen & Unwin 1985) p. 2.

91 Ibid

92 Ibid

93 Joseph M. Myers. (2005) *International Strategies to Combat Money Laundering* p. 5

alone crime with specific criminal punishments and forfeiture⁹⁴. The overall trend is towards the criminalisation of money laundering, found in a number of jurisdictions, but for various reasons, some areas have been slow to apply these measures. In a globalised marketplace, cooperation between all nations is necessary if the aim of eradicating money laundering is ever to be achieved.

However, there are problems with trust between nations, with a difference in the implementation of money laundering regulations between wealthy developed democratic and developing nations. Mascierando observed, that areas that enable money laundering tend to be ‘relatively poor, small jurisdictions that...offer many profitable opportunities for organised crime’, with the infrastructure of such a society unlikely to be threatened by money laundering⁹⁵. In attempts to hide the source(s) of illegal funds a lack of transparency and vulnerability in domestic financial institutions and systems⁹⁶ is attractive to those seeking to launder illegal funds. The ultimate result of this is the creation of an economy to which organised crime/terrorism is drawn, with the potential discouragement of foreign investment⁹⁷ and the distortion of a nation’s financial stability, which undermines a country’s welfare system and distracts resources from legitimate economic projects. Furthermore, in an increasingly globalised world, the interconnection of national financial systems and international trade means that the failure of some nations to implement AML regulations risks the extension of these negative economic effects into regions, which employ AML practice. In addition, this addresses the integral role money laundering plays

94 Ibid

95 Donato Masciandaro, *Global financial crime: Terrorism, money laundering, and off shore centres* (Ashgate Publishing, Ltd. 2004) 24.

96 Ibid

97 Mohsin Habib and Leon Zurawicki. 'Corruption and foreign direct investment' (2002) *J Int Bus Stud* 291; Beata K. Smarzynska and Shang-Jin Wei. 'Corruption and composition of foreign direct investment: Firm-level evidence' (2000) (No. w7969) National bureau of economic research; Alvaro Cuervo-Cazurra. 'Who cares about corruption?' (2006) 37(6) *J Int Bus Stud* 807; Edward Fokuoh Ampratwum. 'The fight against corruption and its implications for development in developing and transition economies' (2008) 11(1) *Journal of Money Laundering Control* 76.

in the financing of terrorism, and the fact that it can threaten the stability of a country's financial sector and the external stability and the global financial framework of the region⁹⁸.

To the IMF, money laundering is a global crime with grave economic consequences, which has increased in success due to the growing complexity of financial systems and the methods used by organised crime/terrorism to obfuscate the sources of their money, and supported by the prevalence of financial crime, growing embezzlement, insider trading, bribery and computer fraud⁹⁹. On 29th September 2003 and 14th December 2005, the UN Convention against Transnational Organised Crime and the UN Convention against Corruption respectively came into force to further support the need to address international conditions or crime and terrorism¹⁰⁰. Both instruments widened the scope of money laundering offences by stating that it should not only apply to the proceeds of illicit narcotics trade but also cover the proceeds of all serious crimes. Both conventions urged states to create a comprehensive domestic supervisory and regulatory regime for banks and non-bank financial institutions, including natural and legal persons, as well as any entities particularly susceptible to being involved in a money laundering schemes. Under these conventions, members are required to establish national laws including the following criminal offences: (1) Participation in an organised criminal group (2) Corruption (3) Obstruction of justice and (4) Money Laundering¹⁰¹.

The security and rigour of a financial system is its main defence to prevent money laundering. Financial systems include not only its central and other banks, but also a range of financial products, pensions and funds, as well as the markets. As the IMF has noted, these institutions not

98 International Monetary Fund (IMF) The IMF: The Fight Against Money Laundering and the Financing of Terrorism <<http://www.imf.org/external/np/exr/facts/aml.htm>> Accessed 17/1/2013.

99 Ibid

100 United Nations Office on Drugs and Crimes. 'United Nations Convention against Transnational Organized Crime and the Protocols Thereto', retrieved from <http://www.unodc.org/unodc/treaties/CTOC/>

101 Ibid

only provide services for their users, but also carry out monetary policy, fund investments, and support economic growth¹⁰². According to the IMF and researchers such as Mojsoska, Nikolovska, and Vitanova (2012), vulnerabilities in a national financial framework can lead to economic downturns and create huge fiscal costs, ultimately rendering the country economically unstable¹⁰³ ¹⁰⁴. Financial instability is rarely limited to one region, and the interconnectivity of the world's financial services makes financial institutions that are resilient to financial crime an economic necessity. This means, for AML to be effective that there needs to be a 'culture of trust' and cooperation between nations. The reality is such that a 'culture of trust' and cooperation is often missing and the effectiveness of corporation is only as effective as the AML legislation in each individual country¹⁰⁵. The FATF¹⁰⁶, observed that the laundering of illegal funds results in seeking new ways to creatively disguise them, take advantage of the jurisdictional differences between legislation and lack of national political willingness to prevent money laundering, identifying the vulnerabilities in systems and exploiting them. Growing economies with developing financial centres are attractive and vulnerable to those seeking to launder illegal proceeds¹⁰⁷.

102 International Monetary Fund Financial System Soundness January 19 2013
<<http://www.imf.org/external/np/exr/facts/banking.htm>> Accessed 15/2/2013.

103 Ibid

104 Mojsoska, S, Nikolovska, D, & Vitanova, G 2012, 'Money Laundering On Financial Markets', International Scientific Conference on Security & Euroatlantic Perspectives of the Balkans Police Science & Police Profession, vol. 2, pp. 477-485.

105 Xu Tang. 'The Effectiveness of China's Anti-Money Laundering Policies' (2010) China Economist, Forthcoming

106 History of the FATF. http://www.fatf-gafi.org/document/63/0,3343,en_32250379_32236836_34432255_1_1_1_1,00.html. Last accessed 30 May 2010.

107 Financial Action Task Force. (2008) Mutual Evaluation Report–Anti-Money Laundering and Combating the Financing of Terrorism: United Arab Emirates.

The FATF asserts that professional investigations can discover illegal funds and ensure its forfeiture and can decrease criminal enterprise, by granting investigative powers to state law enforcement bodies enabling them to trace, seize, and confiscate criminal assets. Costs and responsibilities of managing these activities are not noted or supported by the FATF, and while the FATF does rate countries¹⁰⁸ regarding legislation and contributions to preventing the occurrences of money laundering and other crimes, the success is country specific¹⁰⁹. However, the FATF notes that the use of AML task forces and other FIUs (Financial Investigative Units) can increase the success of preventing money laundering, by providing the country with responsible units trained to recognize the abnormalities in money transactions or movement of goods (precious stones and metals) and investigative measures to uncover the truth of the sources to provide international support for money laundering.

FATF suggests that countries can and will exchange information, depending on circumstances, national laws, and political willingness, which can be used to determine the outcome of international cases of money laundering. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, during the OAS/CICAD debate on joint action in preventing the manufacture and distribution of narcotics, is one major example of this¹¹⁰. In addition, it is the intention of FATF is to encourage the growth of FATF-fashioned regional groups that are already part of FATF or in establishing new organisations to fill gaps in regions with need. The Organisation of American States Drug Control Council (OAS-CICAD)¹¹¹, the CFATF¹¹², the Council of Europe¹¹³, and The Asia Pacific Group on Money

108 Joras Ferwerda. 'The economics of crime and money laundering: does anti-money laundering policy reduce crime?' (2009) 5(2) Review of Law & Economics 903

109 FATF Countries, retrieved from <http://www.fatf-gafi.org/countries/>

110 Ibid

111 The Organization of American States Drug Control Council, retrieved from <http://www.oas.org/en/default.asp>

112 Caribbean Financial Action Task Force (CFATF), retrieved from <http://www.fatf-gafi.org/pages/caribbeanfinancialactiontaskforcecfatf.html>

Laundering (APG)¹¹⁴ are further examples of this increased interest in AML, supplying the means of regional guidance and helping associated states to plan and implement AML taking into consideration their regional circumstances and distinguishing characteristics. Legislation is designed by each individual government; however, the intention is that FAFT and other international standards will provide governments with guidance in these areas. To assist governments, the FATF uses recommendations and assessments that provide clear guidelines for future activities, programmes, or issues that need addressed for each individual country.

The FAFT insists that multilateral programmes are crucial, and have created a 'black list' of nations that refuse to cooperate with FATF standards¹¹⁵. If these standards are not met, other member states consider whether to license national banks that apply for licenses to work in or with FATF member states. Furthermore, national banks are also unable to gain access to a market unless it has money laundering compliance programme in place¹¹⁶, and a national AML policy. This is considered a necessity, although as it has been observed, banking regulation ought to be insulated from state politics¹¹⁷. In practice, the necessity of state efforts in preventing money laundering within their borders has shown that this is not always possible, if at all¹¹⁸.

113 Council of Europe, retrieved from <http://www.coe.int/en/>

114 The Asia Pacific Group on Money Laundering, retrieved from <http://www.apgml.org/>

115 'Improving Global AML/CFT Compliance: on-going process - 27 June 2014', FAFT, retrieved from <http://www.fatf-gafi.org/topics/key/fatf-compliance-june-2014.html>

116 Braithwaite and Drahos, *Global Business Regulation* (2000), Ch. 8, pp. 138-141.

117 Ibid

118 Gordon, RK 2011, 'Losing the war against dirty money: rethinking global standards on preventing money laundering and terrorism financing', *Duke Journal of Comparative & International Law*, vol. 21, no. 3, pp. 503-565.

As part of the FATF methods for identifying the strengths and weaknesses of the country, in regards to the AML/CFT regulations, assessments are completed. While the FATF publishes these assessments upon completion, they are not conducted yearly, and assessors develop the assessments through interactions with the various government and law enforcement bodies that implement the legislation and regulations. However, in countries where limited access is presented to assessors, or in situations where documentation and statistics are not available, assessors must develop the assessment without this knowledge, and this can negatively influence the scores achieved. In countries such as the UAE, statistical evidence of implementation is less available than in larger countries, due to either newness of the legislation and regulation or in part due to the limited database infrastructures to support clarity in the implementation. Additionally, countries can have problems implementing legislation when there is little collaboration between government agencies or where authority to implement laws has not been clarified.

As Braithwaite and Drahos have observed, while international banking standards were for some time set mainly by the financial industry, the recognition of the link between money laundering and criminal practices such as the narcotics trade made this problem a political issue (see chapter for political view in UAE/Dubai), with states setting increasingly demanding legislation for the financial sector¹¹⁹. This is illustrated by the Basel Committee, which sets international banking standards. Developed by the Committee on Banking Supervision, Basel III was intended to strengthen the regulation, supervision, and risk management of the international banking sector¹²⁰. As the Bank for International Settlement states, ‘the mission of the Bank for International Settlements (BIS) is to serve central banks in their pursuit of monetary and

119 Ibid

120 Bank for International Settlements International Regulatory Framework for Banks (Basel III) <<http://www.bis.org/bcbs/basel3.htm>> Accessed 1/2/2013.

financial stability, to foster international cooperation in those areas and to act as a bank for central banks.’¹²¹

Shehu (2012) considered financial inclusion as an important aspect for consideration of countries, in that banks, governments, and citizens benefit from the ability to guarantee financial transactions, along with the safety and support of these transactions by inclusion in international financial security. Compliance with these standards were identified as including:

- “AML/CFT measures should be tailored to the domestic environment and the domestic risks of money laundering and financing of terrorism (ML/CF).
- AML/CFT controls should be appropriate to the prevailing or potential risks.
- AML/CFT obligations should be matched to the capacity of both public and private institutions.
- Where institutional capacity is lacking, a plan should be developed to improve capacity and phase in AML/CFT obligations as institutional capacity increases.
- Law enforcement should be reserved as primary responsibility of the state, and law enforcement responsibility should not be unnecessarily shifted to private institutions”.¹²²

The compilation of Basel documents are described as soft law, which contain ‘neither explicit remedies not binding enforcement mechanisms’¹²³, still achieves the result of international coordination of law as states absorb the reforms into their domestic legislation. One of the benefits of this ‘soft law’ is that it allows a speed and flexibility for dealing with complex emerging issues such as money laundering. The FATF has further instructed states on best

¹²¹ Bank for International Settlements, About < <http://www.bis.org/about/index.htm> > Accessed 1/2/2013

¹²² Abdullahi Y. Shehu. 'Promoting financial inclusion for effective anti-money laundering and counter financing of terrorism (AML/CFT)' (2012) 57(3) Crime, law and social change 305-323

¹²³ Braithwaite and Drahos, Global Business Regulation (2000) 137.

practice in preventing money laundering, which includes information gathering, the mutual monitoring by state controlled organisations and ‘naming and shaming’ sanctions, with financial institutions expected to ensure customer due diligence, and the reporting of suspicious transactions; sanctions are advised for states that are not compliant with these raft measures¹²⁴. These are substantial expectations for any developing nation with a financial sector such as Dubai to achieve.

The Proceeds of Crime Act (POCA) (2002) redefined money laundering and money laundering offences, and created new mechanisms for investigating and recovering the proceeds of crime,¹²⁵ and revised and consolidated the requirements for those reporting and/or suspicion of money laundering.¹²⁶ Furthermore, POCA (2002) abolished the previous distinction between the proceeds of the narcotics trade and the proceeds of serious crime¹²⁷ and extended the definition of money laundering to cover all crimes. This change was no doubt in response to the piecemeal development of international obligations concerning the narcotics trade and money laundering¹²⁸. Use of POCA and its continued revision has enabled the UK to establish higher

¹²⁴ Ibid

¹²⁵ The Act effectively repealed all previous anti-money laundering legislation and consolidates it into part 7 of this Act. The only exception is the money laundering provisions which relate to the financing of terrorism. These remain part of the Terrorism Act 2000 as amended by Anti-Terrorism, Crime and Security Act 2001. *Supra* p. 20.

¹²⁶ The Money Laundering Regulations 2007 stated that those in the regulated sector are required to report knowledge or suspicion (or where they have reasonable grounds for knowing or suspecting) that a person is engaged in money laundering, i.e. has committed a criminal offence and has benefited from the proceeds of that crime. These reports should be made in accordance with agreed internal procedures, firstly to the MLNO, who must decide whether or not to pass the report on to the Serious Organised Crime Agency. This point will be discussed in more detail in Chapter Two.

¹²⁷ Under the pre-Proceeds of Crime Act 2002, there were separate offences for drug money laundering under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. For more detail, see Taby Graham et al. “Money Laundering” Butterworth Lexis Nexis 2003, p. 10.

¹²⁸ Compare the United Nations Vienna Convention 1988 with The Financial Action Task Force (FATF) 1990.

ratings with the FATF Recommendations than many countries; however, improvements are still required based on the most recent assessment of the UK.

2.6. Section 340 (11) of the POCA (2002) defined money laundering

thus as an act which:

- (a) constitutes an offence under Sections 327, 328 or 329 of Part 7, (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.¹²⁹

POCA (2002) further created three principal money laundering offences as well as four related offences, with a defence to each of the three principal money laundering offences and related offences. These are briefly reviewed below due to their relevance to the UAE's AML development.

The three principle money laundering offences in Part 7 of the POCA (2002)¹³⁰ in Sections 327-329¹³¹ are where a:

¹²⁹ <http://www.chba.org.uk/for-members/library/all-london-seminars/2011-seminars/anti-money-laundering-annex-proceeds-of-crime-act.pdf>

¹³⁰ The Proceeds of Crime Act 2002 came into force on 24 February 2003. For more details, see Andrew Haynes. 'Money laundering: from failure to absurdity' (2008) 11(4) Journal of Money Laundering Control 303

¹³¹ The General structure under Sections 327-329 of the Proceeds of Crime Act 2002 is derived from the provisions of the United Nation Vienna Convention 1988 and the First EU Money Laundering Directive of 1991, though Section 328, like Section 93 A of the Criminal Justice Act 1988, its predecessor, goes considerably further than is required under either Article 3 (1) (b) of the Vienna Convention 1988 or Article 1 of the Directive.

a person commits an offence of money laundering if he a) ¹³²conceals, disguises, converts, transfers or removes (from the United Kingdom) criminal property¹³³ b) enters into or becomes concerned in an arrangement¹³⁴ which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person or¹³⁵ c) acquires, uses or has possession of criminal property.¹³⁶ In the three principal offences of money laundering contained in Sections 327-329 to be established, the Proceeds of Crime Act 2002 requires that the property involved in a money laundering offence must be a criminal property and it must be obtained through criminal conduct.

However, the notion of criminal property is open to contestation. The two conditions to be met in order to prove that the property in a money laundering offence is criminal property, namely, “(1) it constitutes benefit from criminal conduct or that it represents such a benefit (in whole or part and whether directly or indirectly), and (2) the alleged offender knows or suspects that it constitutes or represents such a benefit.¹³⁷

¹³² Concealing or disguising criminal property is defined in Section 327 (3) of the Proceeds of Crime Act 2002 as concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it. This covers an extremely wide range of potential activities including mixing criminal funds with legitimate cash flows. See, Toby Graham, *Butterworths international guide to money laundering: law and practice* (London: Tottel Publishing 2002)

¹³³ Section 327

¹³⁴ N. Ryder and A. Baker. 'An Appropriate Response to P v. P? Bowman v. Fels [2005] EWCA (Civ) 226' (2005) 39(3) LAW TEACHER 388

¹³⁵ Section 328

¹³⁶ Section 329. For more details, see Doug Hopton, “Money Laundering - A Concise Guide for All Business”, Gower Publishing Limited, 2005, p. 42.

¹³⁷ Section 340 (3) of the Proceeds of Crime Act 2002

The first condition is wide ranging and is a factual condition concerning the property of origin. In *R v Causey*¹³⁸, the Court of Appeal “observed that the expression ‘directly or indirectly’ must include property which comes the defendant’s way and/or is available to him to be dealt with because he is in receipt elsewhere in his estate of property traceable to criminal conduct.” The second condition, however, is a subjective one concerning the mental state of a person at the time he deals with the property. It should be noted that, because criminal property is widely defined by the POCA (2002), there is no distinction between the proceeds of the defendant's own crimes and of crimes committed by others.¹³⁹ It should also be noted that the property, which may comprise the benefit from criminal conduct, is all property and it is widely defined by the POCA (2002) to include money, all forms of property or real estate, and other intangible or incorporeal property, and property obtained by a person if he obtains an interest in it.¹⁴⁰

In order to secure a conviction then, under Part 7 of the POCA (2002), it is only necessary to evidence that the laundered property was generated as a result of criminal conduct, and that the alleged offender knows or suspects that this is the case¹⁴¹. It should be noted, however, that it is immaterial who carried out the conduct, benefited from it and/or whether the conduct occurred prior to the passing of POCA (2002), as long as the laundering act took place post commencement.¹⁴²¹⁴³.

138 [1999] EWCA Civ.233

139 Section 340 (4) of the Proceeds of Crime Act 2002

140 Section 340 (9) and (10) of the Proceeds of Crime Act 2002

141 Section 340 (3) (b) of the Proceeds of Crime Act 2002. See Taby Graham et al. p. 36.

142 Section 340 (4) of the Proceeds of Crime Act 2002. See Doug Hopton, p. 42.

143 See Paul Marshall “Risk and legal uncertainty under the Proceeds of Crime Act 2002 - the result of legislative oversight” 2005, p. 4.

However, Hopton argued that the definition of criminal conduct in Section 340(1) of the POCA (2002) is liable to cause practical problems because under this definition criminal conduct includes any activity abroad that would be an offence if it was carried out in the UK, regardless of whether it is an offence in the country where it is actually carried out. It is also of some concern whether this definition of criminal conduct will cover all the criminal offences. Section 413(1) of the POCA (2002) refers to “any offence”. It has been argued that the term “any offence” is wide ranging and would include summary offences¹⁴⁴ As a result criminal conduct under the POCA (2002) includes minor criminal offences as well as serious ones. Moreover, the Proceeds of Crime Act 2002 has no de minimis provision and so covers all benefits or profit, no matter how small and no matter how minor the crime.

As was mentioned above, the offender has to "know or suspect" that the criminal property represents a benefit from criminal conduct by concealing, disguising, converting, transferring¹⁴⁵ or removing property which was a benefit from criminal conduct. It is further contested that

¹⁴⁴ See Doug Hopton, p. 42. See also Taby, p. 37. It should be noted that the problem has been, at least partially, overcome by an amendment made to Section 102 of The Serious Organised Crime and Police Act 2005 in which this Act added another defence to Sections 327-329 when Section 129 stated that: “(a) nor does a person commit an offence under subsection (1) if (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and (b) the relevant criminal conduct (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and (ii) is not of a description prescribed by an order made by the Secretary of State.”

¹⁴⁵ Under Section 327(1) (d) of the Proceeds of Crime Act 2002, which relates to the transfer of criminal property, a bank or other deposit-taking body would need to make a disclosure to, and obtain consent from, NCIS before any transfer of funds of a client who was suspected of money laundering. This creates difficulties in relation to what are known as lifestyle payments of standing orders, gas bills, mortgages, etc. Problems also arise where the client tries to get cash from, or deposit money in, his account. A delay in carrying out each such transaction while the bank sought consent to proceed with the transaction from the authorities might also alert the client to what was going on. Section 103 of the Serious Organised Crime and Police Act 2005 amended Section 327(1) (d) of the Proceeds of Crime Act 2002 and allows known deposit-taking bodies to continue to operate accounts without the need to seek consent in each case. It is important to note, however, that the reference to threshold amounts is not the introduction of a de minimis level in respect of money laundering offences or reporting requirements.

under Section 328(1), a person commits an offence if he enters or becomes concerned in an arrangement¹⁴⁶ which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person regardless of the severity of the criminal relationship. It has been argued that the concept of ‘entering into an arrangement’ is a wide concept and may be understood as being not unlike the legal concept of conspiracy.¹⁴⁷ There must, in some sense, be a meeting of minds between two or more persons¹⁴⁸. However, there is no definition of ‘entering into an arrangement’ in POCA (2002) for the purpose of money laundering. The Court of Appeal held in *Bowman V Fels*¹⁴⁹ that “Section 328 of the POC (2002) does not extend to the involvement of a barrister in the ordinary conduct of litigation or its consensual resolution”. Thus, Section 328 does not cover or affect the ordinary conduct of litigation by legal professionals, including any step taken in litigation from the issue of proceedings and securing of injunctive relief or freezing order up to its final disposal by judgment.¹⁵⁰ However, for court proceedings to be initiated it is not necessary to link proceeds or property to a specific predicate offence, nor to prove who committed the predicate offence,

146 See, *Bowman V Fels* [2005] EWCA Civ.226

147 *Mulcahy V R* (1868) L R 3 HL 306

148 *Re. British Basic Slags Ltd’s Agreement* [1963]2 All ER 807,819. In explaining the term ‘entering into an arrangement,’ Diplock LJ observed that “all that is required to constitute an arrangement is that the parties to it shall have communicated with one another in some way and that as a result of communication each has intentionally aroused in the other an expectation that he will act in a certain way

149 [2005] EWCA Civ.226

150 In the light of the decision in *Bowman v Fels* a barrister will only fall within the ambit of section 328 if he is not involved in the ordinary conduct of litigation but in the extraordinary conduct of litigation. Although the Court of Appeal nowhere sets out what it has in mind by the extraordinary conduct of litigation, the Bar Council submissions had put forward an example of bogus or sham litigation, where the barrister instructed came to suspect that there was no genuine dispute between the parties, but a dispute connected as a cover for the transfer of ill gotten gains; and this seems to be reflected in other passages of judgment. Clearly such cases will be extremely rare. When they do arise, the barrister must consider carefully whether an authorised disclosure should be made, so as to avoid committing a section 328 offence,

which generated the proceeds¹⁵¹. All offences under POCA (2002), however, can carry a maximum of 14 year's imprisonment and/or a fine and liability to a confiscation or civil recovery order.

The four statutory defences to the three principal money laundering offences mentioned above contained in Sections 327-329 are that (1) A person does not commit a money laundering offence under Sections 327-329 if they have made a protected disclosure under section 338 of the POCA (2002)¹⁵² to the Serious Organised Crime Agency (now National Crime Agency) and has been given appropriate consent to continue to act¹⁵³; (2) he has intended to make such a disclosure but had a reasonable excuse for not doing so; or¹⁵⁴ (3) the act he did was done in carrying out a function he had relating to the enforcement of the provision of POCA (2002) or of any other enactment relating to criminal conduct or benefit from criminal conduct¹⁵⁵. (4) He acquired or used or had possession of the criminal property for adequate consideration.¹⁵⁶The

¹⁵¹ Sections 340 (4) and 340 (5) of the Proceeds of Crime Act 2000

¹⁵² Andrew Haynes. 'Money laundering: from failure to absurdity' (2008) 11(4) Journal of Money Laundering Control 303

¹⁵³ Sections 327 (2) (a), 328 (2) (a) and 329 (2) (a)

¹⁵⁴ Sections 327 (2) (b), 328 (2) (b) and 329 (b) (a)

¹⁵⁵ Sections 327 (2) (c), 328 (2) (c) and 329 (2) (c)

¹⁵⁶ Additionally, a person does not commit an offence under this section if he acquired, used or had possession of the property for "adequate consideration." The defence replicates that available under the offences in S.93 B of the Criminal Justice Act 1988. It is available to cover those cases where the funds or property have been acquired by a purchase for a proper market price or similar exchange and to cater for any injustice which might otherwise arise: for example, in the case of tradesmen who are paid for ordinary consumable goods and services in money that comes from crime.

This defence will also apply where professional advisors (such as solicitors or accountants) receive money for or on account of costs (whether from the client or from another person on the client's behalf). This defence would not be available to a professional where the value of the work carried out or intended to be carried out on behalf of the client was significantly less than the money received for or on account of costs. If a person pays proper consideration but it can be shown that he knows or suspects that such payment may help another to carry out

Serious Organised Crime and Police Act 2005 added another defence to Sections 327-329 when Section 102 provides a defence to these offences where the person: (1) knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a country or territory outside the United Kingdom and (2) where the criminal conduct was not unlawful under the criminal law applying in that country or territory at the time it occurred¹⁵⁷.

The Proceeds of Crime Act 2002 created a disclosure regime, which makes it an offence not to disclose knowledge or suspicion of money laundering, but also permits persons to be given consent in certain circumstances to carry out activities, which would otherwise constitute money laundering offences. Thus, in addition to the three principal money laundering offences contained in Sections 327-329, the Proceeds of Crime Act 2002 set out in Sections 330-332¹⁵⁸ related offences of failing to report where a person has knowledge, suspicion or reasonable grounds for knowledge or suspicion that money laundering is taking place, and for tipping off a person that a disclosure has been made to the National Criminal Intelligence Service¹⁵⁹.

criminal conduct he is not treated as having paid proper consideration to Section 328 (3) (c) of the Proceeds Crime Act 2002. Section 329 (2) (c) Under Sections 327 (2c), 328 (2c) and 329 (2c) a deposit taking body that converts or transfers criminal property does not commit an offence provided it does the act concerned in operating an account which it maintains and the value of the criminal property concerned does not exceed the threshold amount.

¹⁵⁷ Section 129 of The Serious Organised Crime and Police Act 2005 stated that: “(a) nor does a person commit an offence under subsection (1) if (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and (b) the relevant criminal conduct (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and (ii) is not of a description prescribed by an order made by the Secretary of State.”

¹⁵⁸ It should be noted that the failure to disclose provisions in Sections 330-332 of the Proceeds of Crime Act 2002 apply where the information on which the knowledge or suspicion is based came to a person on or after 24 February 2003, or where a person in the regulated sector has reasonable grounds for knowledge or suspicion on or after that. If the information came to a person before 24 February 2003, the old law applies.

¹⁵⁹ This organisation is the UK's Financial Intelligence Unit with responsibility for collecting and disseminating information relating to money laundering and related activities within the UK

Under Section 330 of the Proceeds of Crime Act 2002 it is an offence for a person who knows or suspects or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering not to report the act to the appropriate authority. However, the offence only relates to individuals, such as accountants who are acting in the course of business in the regulated sector.¹⁶⁰ Thus, persons working in the regulated sector are liable if they fail to report where they had knowledge or suspicion or reasonable grounds for knowledge or suspicion that another is engaged in money laundering. It should be said that all disclosures must be made either to an officer nominated by their employer to receive and process such reports or to the National Criminal Intelligence Service¹⁶¹.

Sections 331-332 of the Proceeds of Crime Act 2002 stated that a nominated officer who receives either a disclosure in relation to one of the principal money laundering offences, or a voluntary disclosure, which causes him to know or suspect that money laundering is taking place, will have committed an offence if that information is not disclosed and reported to the National Criminal Intelligence Service as soon as practicable after the information is received. The report that he has received should have stated the identity of the suspected person, the location of the laundered property or he believes (or it is reasonable to expect him to believe) that the information will assist in identifying the person or location of the laundered property¹⁶².

The offence which relates to 'tipping off' is contained in Section 333 of the Proceeds of Crime Act 2002. This section outlined how it is an offence to make a disclosure likely to prejudice a money laundering investigation already being undertaken, or which is undertaken by law

¹⁶⁰ What constitutes the regulated sector is set out in Part 1 of Schedule 9 of the Act. This point will be discussed in more detail in Chapter Two.

¹⁶¹ The disclosure should consist of the person's identity, the whereabouts of the laundered property concerned and any information or other matter on which this knowledge is based which came to him in the course of his business. (see Section 330 (5) of the Proceeds of Crime Act 2002)

¹⁶² Section 332 (3) of the Proceeds of Crime Act 2002

enforcement authorities¹⁶³. It therefore covers the situation where an accountant informs a client that a report has been submitted to The National Criminal Intelligence Service.¹⁶⁴ It is also an offence under this Section to disclose to a third person that a suspicious activity report has been made by any person to the police, HM Revenue and Customs, SOCA (now NCA) or a nominated officer, if that disclosure might prejudice any investigation that might be carried out as a result of the suspicious activity report. It should be noted that the Money Laundering Regulation 2007 made changes to Section 333 of the POCA (2002). The effect of the changes was to state that the offence of tipping off now only applies to those in a regulated sector, essentially those regulated wholly or partly under Financial Service Authority (FSA) regime¹⁶⁵.

¹⁶³ Section 333 (1) of the Proceeds of Crime Act 2002. It should be noted that Money Laundering Regulations required that Businesses in the regulated sector must appoint a money laundering reporting officer. The money laundering reporting officer's role is to act as a filter and decide whether to disclose details of matters raised by employees to the National Criminal Intelligence Service. The money laundering reporting officer's decisions must stand up to scrutiny. The money laundering reporting officer and employees alike must be fully conversant with the 'Know Your Customer' procedures.

See *Squirrel Ltd v National Westminster Bank PLC and HM Customs*.

¹⁶⁴ Section 342 of the Proceeds of Crime Act 2002 also applies if a person knows or suspects that an appropriate officer is acting (or proposing to act) in connection with a confiscation investigation, a civil recovery investigation or a money laundering investigation which is being or is about to be conducted. Under this section a person commits an offence if (a) he makes a disclosure which is likely to prejudice the investigation, or (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation. The defences contained in this Section are similar to those in Section 333.

¹⁶⁵ Section 333 of The Proceeds of Crime Act 2002 is amended by Schedule 2 of Money Laundering Regulation 2007 which implemented Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. The regulations give effect to Chapter 3 of the Directive. Schedule 2 of the regulations makes amendments to the Proceeds of Crime Act 2002. New section 21D contains a new offence of tipping off and new sections 21E to 21G set out the exceptions from Article 28. Paragraphs 3 and 4 of Schedule 2 to the regulations give effect to Article 28 in the Proceeds of Crime Act 2002. The existing offence of tipping off in section 333 of that Act is repealed by paragraph 3. Paragraph 4 inserts a new section 333A into the Proceeds of Crime Act 2002 to create a new offence of tipping off to cover the regulated sector. New sections 333B to 333D give effect to the exceptions in

However, there is a lack of clarity in that no definition has been provided by the POCA (2002) to determine what ‘knowledge is for the purpose of money laundering offences’. The Court of Appeal in *Bank of Credit and Commerce International [Overseas] Ltd V Akindele*¹⁶⁶ has recognised that there are conflicting authorities in this area, and as Hopton suggested that the word ‘knowledge’ in the POCA (2002) means actual knowledge and that “to have actual knowledge of money laundering will in practice be a very rare occurrence. It would also be difficult for the prosecution to prove that someone had actual knowledge of money laundering and had failed to report it”.¹⁶⁷ Furthermore, POCA (2002) also does not define ‘suspicion’. However, in *Shaaban Bin Hussien V Chong Fook Kam*¹⁶⁸ the Privy Council have said that ‘suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking’. The expression ‘reasonable grounds’ is also not defined in POCA (2002) but the Court will apply the objective test to prove the fact or the circumstances for each case.¹⁶⁹

A further defence is that no offence is committed under Section 330 if a defendant did not receive the specified training¹⁷⁰ and did not actually know or suspect that money laundering was taking place (even though there may have been reasonable grounds for knowledge or

Article 28 Directive. The regulated sector is defined in Schedule 9 to the Proceeds of Crime Act 2002 (as amended by the Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 (S.I. No 2007/3287)). Article 21 of the Directive requires Member States to establish a Financial Intelligence Unit (“FIU”). The Serious Organised Crime Agency is the United Kingdom’s FIU.

¹⁶⁶ [2001] Ch 437, [2000] 4 All ER 22, CA

¹⁶⁷ At p. 55. See also *Westminster City Council V Croyalgrange Ltd* (1986) 83 Cr App Rep 155, 164. See *Warner V Metropolitan Police Comr* 1969] 2 AC 256, 259 in which the Court suggested that knowledge includes willfully shutting one’s eyes to the truth.

¹⁶⁸ [1970] AC 942, 948; see also, *Corporate Affairs Comr V Guardian Investments Pty Ltd* [1984] VR 1019.

¹⁶⁹ See *Doug Hopton*, p. 56; *Toby et al.*, p. 39

¹⁷⁰ Under the Money Laundering Regulations 2007 employers may be prosecuted if they fail to train staff.

suspicion).¹⁷¹ There is a further defence to the offence under Section 330 where the person concerned has a reasonable excuse for not making the required disclosure or where he is a professional adviser and if he knows the relevant information it is because of information coming into his hands in privileged circumstances.¹⁷² POCA (2002) made it clear that an offence is not committed under Section 331 that if a person has a ‘reasonable excuse’¹⁷³ for not making the required disclosure.¹⁷⁴ It is unclear; however, what is considered a ‘reasonable excuse’.

Part 7 of the Proceeds of Crime Act 2002 also dealt with the issue of consent, and with protected and authorised disclosures. The consent provisions apply to cases in which suspicious transactions reports are made in advance of the transaction taking place, and consent to proceed is sought. It is an offence for a nominated officer to consent to a transaction going ahead unless he does not know or suspect that the transaction relates to money laundering¹⁷⁵. If he is suspicious he must pass the suspicion on to the National Criminal Intelligence Service for a

¹⁷¹ Section 330 (7) of the Proceeds of Crime Act 2002. There is also provision for industry guidance, approved by the Treasury, to be taken into account in any court proceedings, both in relation to this offence and the offence relating to failure to report by nominated officers in the regulated sector. Nominated officers in the regulated sector and other nominated officers must pass on the suspicions which are passed to them in their role as nominated officer. These suspicions must be passed directly to the National Criminal Intelligence Service in the prescribed form and manner. The information need only be reported on to the National Criminal Intelligence Service if the nominated officer agrees that there are reasonable grounds for suspicion. If there is no actual knowledge or suspicion that money laundering is taking place, or if there are no reasonable grounds, then the nominated officer does not commit an offence by not making a report to the National Criminal Intelligence Service.

¹⁷² Section 330 (6) of the Proceeds of Crime Act 2002

¹⁷³ Section 332 (6) of the Proceeds of Crime Act 2002. The term “reasonable excuse” is not defined by the Proceeds of Crime Act 2002. There is also no judicial guidance or advice on what might constitute a reasonable excuse.

¹⁷⁴ The Proceeds of Crime Act 2002 also made it clear that an offence is not committed under this section if he knows, or believes on reasonable grounds, that the money laundering is occurring outside the UK, and the money laundering is not unlawful under the criminal law in the country outside the UK. See Section 331 (6)

¹⁷⁵ R V Central Criminal Court, Ex Prate Francis & Francis (1988) 3 WLR 1018.

consent decision¹⁷⁶. It seems quite clear that the 'consent' provisions in sections 327-329 and section 335 of the Proceeds of Crime Act 2002 have two purposes: they offer law enforcement an opportunity to gather intelligence or intervene in advance of potentially suspicious activity taking place; and they allow individuals and institutions who make reports seeking to consent to proceed with a 'prohibited act' the opportunity to avoid liability in relation to the principal money laundering offences in POCA (2002).

Furthermore, POCA (2002) provided a disclosure which satisfies the condition that it came into a person's profession in the course of his trade, profession, business or employment, that it caused him to know or suspect that a person is engaged in money laundering, and that it made to the constable, a Customs officer or a money laundering officer as appropriate does not breach any restriction on the disclosure of information.¹⁷⁷ Finally, POCA (2002) makes it clear that a disclosure should be made before acting. However, no offence is committed if the act is still taking place without it being known that laundering was taking place and the disclosure was made as soon as practical after the person first knows or suspects that laundering is taking place.¹⁷⁸

However, it is perhaps terrorism that caused the utmost international political concern and thus it is hardly surprising that The Terrorism Act 2000 in the United Kingdom created a series of criminal offences regarding money laundering and terrorism. The Terrorism Act therefore criminalised not only the participation in terrorism but also the provision of monetary support¹⁷⁹.

¹⁷⁶ Section 336 (5) of the Proceeds of Crime Act 2002

¹⁷⁷ Section 337 of the Proceeds of Crime Act 2002

¹⁷⁸ Section 339 of the Proceeds of Crime Act 2002

¹⁷⁹ Section 14 of the Terrorism Act 2000 defines terrorist property as follows: (1) In this Act "terrorist property" means- (a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation), (b) proceeds of the commission of acts of terrorism, and (c) proceeds of acts carried out for the purposes of terrorism. (2) In subsection (1)-(a) a reference to proceeds of an act includes a reference to

The Terrorism Act 2000 set up four criminal offences in Sections 15-18¹⁸⁰. These are: (1) Receiving funds¹⁸¹ (2) Possessing funds¹⁸² (3) Funding Arrangements and (4) Money Laundering. A person commits an offence if he enters into, or becomes concerned in, an arrangement facilitating the retention or control of terrorist property by, or on behalf of, another person including... by concealment, by removal from the jurisdiction, and by transfer to nominees.¹⁸³

any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and (b) the reference to an organisation's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation. For more details, See Clive Walker "Briefing on the Terrorism act 2000; Terrorism and Political Violence, 2000, p. 1.

180 Section 19 of the Terrorism Act 2000 applies to persons and businesses outside the regulated sector, whereas Section 21 A of the Terrorism Act 2000 applies only to the regulated sector.

181 Section 15 of the Terrorist Act 2000 stated (1) A person commits an offence if he (a) invites another to provide money or other property, and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism. (2) A person commits an offence if he (a) receives money or other property, and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism. (3) A person commits an offence if he (a) provides money or other property, and (b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. (4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.

182 Section 16 of the Terrorist Act 2000 stated (1) A person commits an offence if he uses money or other property for the purposes of terrorism. (2) A person commits an offence if he (a) possesses money or other property, and (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

183 The financing of terrorism can be described as the process by which a person tries to collect or provide funds with the intention that they should be used to carry out a terrorist act by a terrorist or a terrorist organisation as defined in the International Convention for the Suppression of the Financing of Terrorism as well as in any one of the treaties listed in the annex to that Convention. Like money launderers, those who finance terrorism misuse the financial system. In order to achieve their objectives, they have to obtain and channel funds in an apparently legitimate way. However, while the money involved in the money laundering process always stems from a crime and is therefore always "dirty", funds channeled to terrorist groups or individuals may originate from crime and/or from legitimate sources. Terrorism may therefore be supported by either "dirty" and/or "clean" funds. Regardless of

In the Terrorism Act 2000 “terrorist property means (a) money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation), (b) proceeds of the commission of acts of terrorism, and (c) proceeds of acts carried out for the purposes of terrorism. (2) In subsection (1) (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and (b) the reference to an organisation’s resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organisation.”¹⁸⁴

Of more relevance to this research, the specific offences of money laundering and funding arrangements are seen as laundering offences¹⁸⁵. However, as far as the money laundering offence and funding arrangement offence are concerned, the Terrorism Act 2000 made it clear that a person does not commit an offence if he disclose his suspicion or belief to an authorised officer after he becomes involved in an arrangement or transaction that concerns terrorist money and he provides the information on which his suspicion or belief is based. The Terrorism Act 2000 requires that a person must make the disclosure as soon as reasonably practical¹⁸⁶.

the origin of the funds, terrorists or terrorist organisations use the financial system in a similar way to criminal organisations in order to obscure both the source and the destination of their funds. See The International Convention for the Suppression of the Financing of Terrorism 2002 which requires Member States to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities.

¹⁸⁴ Section 14 of the Terrorism Act 2000

¹⁸⁵ Section 17 of the Terrorist Act 2000 stated a person commits an offence if (a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and (b) he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

¹⁸⁶ The Anti-Terrorism Crime and Security Act 2001 extends the provisions for the seizure and detention of cash on suspicion that it was to be used for terrorist purposes or was part of the resources of a proscribed organisation to anywhere in the UK (Section 1) and contains a power to order forfeiture of seized cash on the civil standard of proof

It appears that there is no significant difference between the requirements of money laundering in the POCA (2002) and the requirements of money laundering in the Terrorism Act 2002. There is, however, one difference relating to criminal conduct. It has been seen that Section 340(2) the POCA (2002) defined criminal conduct as “a conduct which: a) constitutes an offence in any part of the United Kingdom, or b) would constitute an offence in any part of the United Kingdom if it occurred there.” The Serious Organised Crime and Police Act 2005 amended¹⁸⁷ this Section of the POCA (2002) to the effect that the offences of money laundering have to be offences in the United Kingdom and abroad; however, no such amendments were made to the Terrorism Act 2000, which means that offences are not to be the same in the United Kingdom and abroad. It has also been said that one of the principal differences between ‘ordinary’ money laundering and money laundering for terrorism is that the latter often involves small amounts of cash, frequently coming from non-criminal sources.¹⁸⁸ I would concur with Toby on this point as “ordinary” money laundering usually involves large amounts of money and are therefore usually easier to detect under the regulation, where the smaller amounts involved where supporting Terrorism are much more difficult to detect and can therefore slip through the net.

of the balance of probabilities. It facilitates the disclosure of information between government bodies (Sections 17-20), imposing more stringent demands on those in the regulated sector to report suspicions that funds are destined for terrorism (Sections 3 and Schedule II, Part III), and provides the police with powers both to force financial institutions to monitor accounts and to obtain financial information.

¹⁸⁷ Section 102 stated that: “(a) nor does a person commit an offence under subsection (1) if (a) he knows, or believes on reasonable grounds, that the relevant criminal conduct occurred in a particular country or territory outside the United Kingdom, and (b) the relevant criminal conduct (i) was not, at the time it occurred, unlawful under the criminal law then applying in that country or territory, and (ii) is not of a description prescribed by an order made by the Secretary of State.”

¹⁸⁸ Toby Graham, Evan Bell and Nicholas Elliott, *Butterworths international guide to money laundering: law and practice* (Butterworth-Heinemann 2003)p.58

2.7. Evaluation of money laundering laws and conventions

Reviewing these international legal pronouncements/conventions it is noted that many are all-encompassing and therefore vague and a suggestion on ‘what should happen’ and yet have no power of enforcement. Left open to national interpretation, if adopted, these ‘laws’ are limited. However, rather than dismiss these approaches completely the law(s) are a needed to prevent and ultimately prosecute, and hopefully convict, those caught laundering illegal proceeds. However, a note of caution is needed as even if laws are adopted there is the potential that it is little more than a paper exercise (see results chapter six) and the problem of definition is irrelevant if claims to prevention are an exercise in political obfuscation.

It appears that the English law(s) regarding money laundering have seen significant changes in recent years. It is understood that the Government made those changes to consolidate, update, expand and reform the criminal law in the United Kingdom with regard to money laundering in order to reduce the incidence of known and potential money laundering. However, it has been seen that the definition of money laundering is very wide and the structure of the English law is complex to the point of impenetrability and is best understood by reference to the full English legislation and regulations relating to money laundering¹⁸⁹. The abolition of the distinction between the proceeds of narcotics trafficking and serious crime¹⁹⁰, however, is useful as it simplifies the law and makes it perhaps easier to understand and apply.

¹⁸⁹ The Proceeds of Crime Act 2002, The Terrorism Act 2000, The Money Laundering Regulations 2007

¹⁹⁰ Under the pre-Proceeds of Crime Act 2002, there were separate offences for drug money laundering under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. For more details see Taby Graham et al. “Money Laundering” Butterworth Lexis Nexis 2003 p.10. The approach of the Proceeds of Crime 2002 is in line with the International obligations and in particular with recommendation 1 which stated that Countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention). Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences,

Undoubtedly, POCA (2002) made significant changes in the law of money laundering, but not to the point of removing all the uncertainties created by previous laws. There are still problems and these uncertainties will continue with all their unwanted effects. For example, most money laundering offences allows a defence of ‘reasonable excuse’.¹⁹¹ However, POCA (2002) gave no definition or guidance on what ‘reasonable excuse’ meant. This uncertainty in POCA (2002) includes the use of wide terms, which need interpretation and explanation i.e., the terms ‘entering into arrangement’¹⁹², ‘knowledge’¹⁹³, ‘suspicion’¹⁹⁴ and ‘reasonable grounds’.¹⁹⁵ This, however, could be levelled at all criminal laws rather than this specific act.¹⁹⁶ Furthermore, definition of “criminal conduct” is also unclear and it is uncertain in what circumstances conduct outside the

or a combination of these approaches. Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year’s imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment. Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences 3. Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically. Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.

191 Section 332 of the Proceeds of Crime Act 2002

192 Section 328

193 Sections 330-332

194 Section 332

195 Section 332

196 *Bowman V Fels* [2005] EWCA Civ.226

United Kingdom is criminal conduct Act 2002 (therefore, it is uncertain as to who has to be reported as suspected of money laundering and which transactions need consent)¹⁹⁷.

It also needs to be emphasized that money-laundering offences are not confined to cases involving money; they can, and do include terrorism, the sexual exploitation of children, fraud, environmental offences and other organised crime”^{198,199}

2.8. Secondary Data

There is limited secondary data available in the UAE and Dubai. Therefore, there must be a note of caution raised about the inferences that is taken from such limited data and the quality of this data (i.e., how it is recorded, why it is recorded). While data was widely available regarding the policies and legislation, particularly that of Dubai rather than the UAE, there was little or no reference to any studies regarding the implementation of AML in countries or statistically reliable information regarding the prevalence of money laundering in Dubai or UAE within the past three years.

This a particular problem of recording data, however, is an international problem; police data’ resemble policing priorities and operational decisions rather than objective crime data. Data is

¹⁹⁷ It should be noted that this problem has been partially overcome by Section 102 of the Serious Organised Crime and Police Act 2005. See Sapra at

¹⁹⁸ Monica Bond, “Money Laundering” Accountants Digest September 1994, Volume 324, p. 7.

¹⁹⁹ It should be noted that a careful judgment will need to be made as to whether it is in the public interest to proceed with the money laundering offence in the event of a plea to the underlying criminality by a defendant who is also indicted for laundering his own proceeds. The prosecutor should take into account whether the laundering activity involves such a significant attempt to conceal ill-gotten gains that a court may consider a consecutive sentence. Prosecutors should not simply proceed with a money laundering charge in this situation to trigger the lifestyle assumptions in respect of convictions for money laundering under S.327 or S.328. To do so, for no other reason, could attract abuse of process arguments.

thus socially constructed measures that reflect official decisions on what is important and needs police attention.

It is suggested from this research, with a lack of secondary data available, that money laundering is not a police priority. This, however, is partially correct. In this research (see chapter six) it was discovered that it was both the limited interest in policing money laundering and the actual ability to of the police to identify cases of money laundering that compounded the problem of limited secondary data; these matters exacerbated the ‘dark figure of crime’ in Dubai.

However, what data was available helped examine the main patterns of money laundering – either under or over-representation in the UAE. This in turn provided some potential questions for interviews (see chapter six) with key personnel in the AMLSCU, AOCD and Central Bank, to evaluate to what extent the prevention of money laundering is considered a problem in need of police attention in the UAE. This included an examination of whether the current system – the role of the Central Bank, the AMLSCU and AOCD – are ‘fit for purpose’ in the age of international trade and commerce.

The problem encountered in this research, however, is that most of the secondary data was either withheld for security reasons, i.e. on-going cases, or for private considerations, i.e. protecting the integrity of own company, which is understandable or – and this was the most common theme – there is little available data on money laundering in the UAE due to the problem of inconsistent recording practices - in both financial services and police enforcement – reaching the prosecution stage and finally conviction. At each stage a case can be filtered out and dealt with in another way i.e. it is a case of money laundering but discounted as such to protect financial services/banks, it is dealt with in-house by financial institution and customer(s) involved, it is downgraded as a ‘mistake’ and or error. The police act in similar ways if they see that the chance of conviction is slim and so another indictment is brought, and/or the case is dismissed due to lack of evidence.

The problem of recording national crime data, however, is not one specific to the UAE; it is an international problem. The problem of recording money laundering, however, is compounded by the very nature of the crime itself, which is based on deception. Rich, powerful, individuals are able to launder funds within the financial sector, but only with the help of professionals such as accountants, lawyers etc. Furthermore, it is suggested that the majority of money laundered, is not placed into the legal financial system but instead kept in shell accounts in tax havens, or invested back into purchasing narcotics, arms, etc. depending on the focus of the organised criminal enterprise.

Even working with international laws and conventions money laundering is left open to interpretation by key individuals in the financial sector and law enforcement. How money laundering is viewed is thus down to individual/organisational discretion. This is further compounded if trying to assess the level of crime – regardless of the act – within and across jurisdictions. This is amply highlighted in Brooks et al (2013) regarding corruption, of which money laundering is associated.

What data was obtained was nonetheless still helpful, but it is suggested that recording practices need some attention before we can tackle the problem of money laundering from a policy-type approach to disseminate practice within and across the different sectors in the UAE that deal with AML.

The limitations of criminal justice data, however, are not a problem specific to Dubai. It is a problem for all jurisdictions and thus open to criticism²⁰⁰. The difficulties associated with ‘criminal justice’ research are well documented; there is a lack of objective data regarding

200 Gill McIvor and Peter Raynor, *Developments in social work with offenders*, vol 48 (Jessica Kingsley Pub 2007)

reported and recorded criminal offences²⁰¹ self-report and victimisation surveys are problematic²⁰² and acts of fraud and corruption are difficult to detect²⁰³.

Regardless of this problem, some understanding of the level of money laundering – even if an estimate – is important since. This is so we can learn what the key indicators that are involved in money laundering and design AML prevention to reduce its incidence²⁰⁴. Measurement is therefore critical when combating money laundering, providing some benchmark of progress against its extent, and identifying what effective factors reduce its rate of incidence. Measurements can also help test theoretical explanations for its occurrence, as well as providing the necessary confidence to business investment.

There are two types of measures relevant to this research: objective and subjective measures. Objective measures are quantifiable and based on datasets which are verifiable. Examples of these objective indicators are the number of (i) official complaints to police (ii) or convictions²⁰⁵. However, as mentioned earlier such measurement is more likely to be a reflection and indication of the availability of resources and a reflection of the attitudes towards the vigilance of the money laundering. For example, in a highly corrupt nation there is perhaps minimal law enforcement, and therefore, ‘officially’ little money laundering. Alternatively, in a nation where there is a low tolerance threshold of individual and institutional money laundering, which is evident in the number of convictions might suggest that money laundering/corruption is rife. As

201 Steven Box, 'Power, Crime and Mystification' (1983); Martin Bulmer, *Sociological research methods* (Transaction Publishers 1984); Victor Jupp, 'Methods of Criminological Research (1989)' London and New York: Routledge

202 Clive Coleman and Jenny Moynihan, *Understanding crime data: Haunted by the dark figure*, vol 120 (Open University Press Buckingham 1996)

203 Gary Slapper and Steve Tombs, *Corporate crime* (Longman 1999)

204 Paul Collier. 'How to reduce corruption' (2000) 12(2) *African Development Review* 191

205 Erlend Berg. 'How Should Corruption be Measured' (2001) London School of Economics and Political Science

a result of this, measurements of official data are largely discredited and alternatives considered, particularly for crimes such as money laundering, i.e. the Corruption Perception Index (CPI), published by Transparency International (TI), the World Bank, i.e. the World Governance Indicators (WGI) and the Business Environment and Enterprise Survey (BEEPS)²⁰⁶.

Even though all of the above limited, aggregate indicators are more useful than simple national crime data because of their sophistication and extensive use, as they claim to be both more reliable and accurate²⁰⁷. However, comparing aggregated data is also problematic as information is combined from multiple sources and measures of 'corruption'.²⁰⁸ Nonetheless, it has been well documented how difficult it is to measure money laundering because of its secretive nature, as with most financial crime. The approach to gathering different types of data from various sources, however, makes it highly desirable and credible, when a reasonable degree of corroboration and verification achieved²⁰⁹. Yet again, however, all data sets - police enforcement, convictions etc. in the Dubai were limited with little information on level of or types of crime committed. As such it was suggested (see more in chapter...) that all recording practices, regardless of the crime, needed attention and data sets developed to prevent/reduce the incidents of crime.

With little official data available it was decided to extend the search for data on money laundering in Dubai. Drawing on available subjective measurements such as surveys that gauged participants' perception or experience money laundering/crime was considered. However, there

²⁰⁶ Graham Brooks, Azeem Aleem and Mark Button, 'Fraud, corruption and sport' (Palgrave Macmillan 2013)

²⁰⁷ Lambsdorff, J. G., (2006). Causes and consequences of corruption: what do we know from a cross-section of countries? In: S. Rose-Ackerman (Ed.), *International Handbook on the Economics of Corruption* (pp. 3–51). Edward Elgar: Cheltenham

²⁰⁸ Anja Rohwer. 'Measuring Corruption: A comparison between the transparency international's corruption perceptions index and the world bank's worldwide governance indicators' (2009) 7(3) CESifo DICE Report 42

²⁰⁹ *ibid*

were no publicly available surveys on crime in Dubai. Surveys of perceptions can capture the reality of situations, particularly if they are carefully designed and developed, the fact remains they remain perceptual data, lacking objectivity, and results from such surveys might not reflect the actual or anywhere near the level of money laundering in the UAE and elsewhere²¹⁰. It would, however, have been useful to obtain some indication of the problem of money laundering in Dubai.

From this research it would appear that there is limited information available on crime with little on money laundering in Dubai. There was also some disquiet regarding the effectiveness of AML measures from the police in this research. Due to their multi-dimensional character, and hidden nature of money laundering it is also difficult to discover and then secure a conviction. In the UAE some efforts have been undertaken to prevent and reduce the incidence of money laundering (i.e. the establishment of the AMLSCU); there is, however, little official data, as yet, that illustrates that this is happening. This research is a contribution to this 'gap in knowledge' in highlighting the paucity of data that needs to be addressed in the UAE.

A lack of official data is not a problem that is specific to the UAE. It is a worldwide problem. Objective 'criminal' data is difficult to obtain, either on a national or international level and perception surveys are imperfect for measuring actual levels of crime because of subjectivity²¹¹. This research is therefore part of a snap shot of the present situation in Dubai on preventing and reducing money laundering and extending practical and theoretical understanding or of AML practice for the future.

²¹⁰ Maurseth Botolf. 'Governance Indicators: A guided Tour' (2010)

²¹¹ Graham Brooks, Azeem Aleem and Mark Button, 'Fraud, corruption and sport' (Palgrave Macmillan 2013)

2.9. Analysis of legal documentation

As part of this research, national and international legal documents, statutes, conventions and regulations on money laundering in Dubai and the United Kingdom were analysed. The primary analysis, however, was of the AML countermeasures in preventing money laundering. The official UAE and Dubai response to money laundering was mixed. As is highlighted in chapter...and following section, those in the financial sector, officials of the AMLSCU and Dubai police officers working in the AOCD held different views on who was primarily responsible for preventing money laundering. This illustrated that any interpretation to legislation/laws is contested and no amount of analysis leads to one uncontested definition of what the law is 'saying' and what it can 'mean'.

Before analysing any documentation, however, a classification of documentation was required. The sources were placed into two sources – primary and secondary. In this research primary documentation rather than interviews which produced primary data were considered materials that have a direct relationship with the people interviewed. In this sense courts cases, minutes, contracts, strategic reports. These provided, when accessible, an account of the situation. However, these were not simply accepted as 'working practice'. Many of the documents accessed were only available at the interview, and as such limited analysis was completed.

A further distinction in documentary analysis was between public documentation and private documentation. Public documents were seen as actuarial cases, political and judicial records, and press articles and news content. There was, however, limited documentation available regarding money laundering in these documents. Private documents are self-explanatory and personal communication within a company and colleague were not sought. These documents were seen as unobtainable and the research was far more concerned with identifiable practice in the public domain. Finally there is a distinction to be made between unsolicited and solicited documents in research. The unsolicited documents were produced with the research in mind such as diary of interviews while the solicited documents are those requested – due to the research, however, these documents were rarely asked for, and if so mostly declined. There is also much room for ambiguity in personal documentation and interpretation. This interpretation, however, can lead to

distortion of information and as such it was decided that the energy would mainly focus on accessible, official documentation.

International laws and conventions, some of which the UAE and United Kingdom have signed to tackle money laundering, leave less room for interpretation and are more of a ‘statement of intent’ to prevent money laundering, i.e. Financial Action Task Force (FATF) recommendations. However, the differences between global ‘best practices’ and the Dubai’s response highlighted the need for improvements in a far more systematic, coordinated way.

A note of caution needs to be raised here, however, as the UAE is a young nation. Prior to its recognition and establishment in 1971 it existed as separate and distinct Emirates. These are still evident with regional autonomy, but the UAE as a nation is still developing its laws, drawing on a combination of legal doctrines. This research, therefore, focussed on ‘factual’ information rather than rhetorical pronouncements from judges regarding cases of money laundering. Those cases which were of use have been referred to in this thesis and hopefully illustrate the international problem of preventing and convicting those engaged in money laundering regarding of the jurisdiction.

2.10. Conclusion

This chapter has provided definitions for money laundering and Hawala, and included the importance of money laundering at an international level. The implications of money laundering are considered as to the relationship with criminal activities that influence the safety and success of countries and organisations around the world. In addition, this chapter illustrated that stages of money laundering is limited as it is a descriptive account of ‘what might happen’ rather than ‘what does happen’. The stages can, and are circumvented and/or by-passed depending on individuals/organisation and willingness of jurisdictions to implement and enforce AML laws. In addition the wealth of legal definitions, laws, conventions etc. make a complex problem worse with its attempt at passing legislation that is all-encompassing and yet so vague. UK and UAE legislation is not largely different, with the exception in its completeness, as identified by

recommendations in the FATF, regarding the need for UAE legislation to be more thorough. In this way, the identification of UK legislation improves on the knowledge base required for improvement in legislation for the UAE. Additionally, legislation difficulties are further compounded by constant additions rather than amendments to existing laws and the focus on proceeds of crime and terrorism at the expense of powerful international commercial organisations and/or individuals that might also commit money laundering. In the following chapter we focus on the political context in which AML legislation has developed in the UAE and consider that perhaps drawing on the development of legislation in United Kingdom was only partly of some use, as the political and social context is substantially different.

Chapter Three

Political context of AML in UAE and Dubai

3.1. Introduction

In the UAE money laundering was often, and still is, primarily associated with fraud in the financial sector rather than linked to organised crime. This has led to a failure to recognise the value of financial intelligence as an effort to combat transnational crime and terrorism as well as the impact of capital on the political, legal and economic sector within the UAE²¹². Lack of comprehensive AML practice, however, or appropriate mechanisms for combating the emerging financing of terrorism has led to significant vulnerability in the international financial system rather than the UAE alone. This is not a defence of the system currently in the UAE but terrorism is an international problem that needs international cooperation rather than an exchange of information between two nations.

However, when the UAE ratified both the Vienna and Palermo regulations and implemented UNSCRs links to the prevention and reduction of the financing of terrorism its compliance was highly thought of by the International Monetary Fund.²¹³ Furthermore, the development of twenty five articles on federal law criminalised money laundering in 2002 ²¹⁴and subsequent research has indicated that the UAE was one of the earliest nations to adopt AML provisions in money laundering, particularly within its Federal Law No. 3. This was based on the promulgation of the Penal Code of 1987, which was prepared for the 1988 Vienna Convention.

212 Jerry Hart, 'Criminal infiltration of financial institutions: a penetration test case study' , vol 13 (Emerald Group Publishing Limited 2010) 55, pp. 55-65.

213 RE Bell. 'Discretion and decision making in money laundering prosecutions' (2001) 5*ibid*42, pp. 42-51.

214 Marcel Pheijffer. 'Financial investigations and criminal money' (1998) 2*ibid*33

In addition, FATF further emphasised that the UAE had then created an inclusive anti-money laundering system²¹⁵; however, the success of the systems in UAE are questioned due to the results of the assessments conducted up until 2008. However, UAE laws and regulations at the federal level have been changing since 2001, growing to become more compliant with FATF regulations and designed to establish conformed regulation throughout the country. Where some of the challenges have not been met, have been more recently in application rather than in legislation.

Much has changed since original conventions and regulations were signed and although the UAE has recognised, and is currently responding to, the continued challenges that are posed by increasingly well-resourced and organised international crime networks, the rate at which its systems and processes are developed, and the policing and enforcement of such networks are unable to keep pace with the criminal exploitation of financial sectors. Furthermore, the exponential development remains a challenge both at the strategic and implementation levels.²¹⁶ This was recognised as early as 1998 with the establishment of the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU). Now considered the Financial Intelligence Unit of the UAE It investigates known frauds, money laundering and suspicious transactions ²¹⁷ and assists the actions of the UAE Central Bank (UAECB) in preventing money laundering. Furthermore, the FIU supports international attempts to combat money-laundering as well as the financing of terrorism, the fulfilment of the United Nations Security Council Resolution No. 1373 of 2001, and the International Monetary Fund (IMF) Executive Board Decision referenced No. 144-(52/51).

²¹⁵ Presentation of enhanced Anti-Money Laundering Policies: Temple, P. 1998. Best explains the essential elements of the prevention of money laundering. Securities Institute Ltd, www.securitiesinstitute.org.uk.

²¹⁶ Guy Stessens, *Money laundering: a new international law enforcement model*, vol 15 (Cambridge University Press 2000)

²¹⁷ Jackie Johnson. 'An analysis of the obligations of gambling entities under the FATF's 2003 anti-money laundering recommendations' (2006) 9(1) *Journal of Money Laundering Control* 7, pp. 7-18.

Swift measures were undertaken by the United Arab Emirates Central Bank (UAECB) to explore and freeze those accounts that belonged to individuals or organisations considered to have links to terrorism once established. The AMLSCU also joined the prestigious membership of the Egmont Group in 2002.²¹⁸ The UAE then is a signatory to many international conventions, and has met the standards required to join recognised international bodies, and established its own law enforcement units and regulations to prevent and combat money laundering, financial crimes and terrorism ²¹⁹. This is seen with unequivocally supporting the international schemes to prevent money-laundering with a particular focus on those that finance terrorism, and the UAECB establishing a comprehensive system of anti-money laundering laws and regulations, and creation of the Financial Investigative Unite (FIU)²²⁰.

However, it remains to be seen whether the UAE views money laundering as seriously as its political profile suggests and undertaking all the measures it can to combat money laundering or has a paper commitment rather than practical commitment to preventing money laundering in the UAE. This may be a result of failure to maintain evidence of success or statistical evaluations of money laundering efforts for review by the FATF and other international organisations. This chapter is an attempt to address these issues with a brief review of the political system in the UAE; this is then followed by a brief explanation of the legal system in the UAE and Dubai.

²¹⁸ As identified by Johnson, Jackie, 2006. In his analysis of the obligations of gambling entities under the FATF's 2003 anti-money laundering recommendations, *Journal of Money Laundering Control*. Vol. 9, No. 1, pp. 7-18.

²¹⁹ Marcel Pheijffer, 'Financial investigations and criminal money' , vol 2 (MCB UP Ltd 1998) 33

²²⁰ The new global law implementation models are presented in Guy Stessens, 2000, *Money Laundering: A New International Law Enforcement Model*, CSICL, Cambridge

²²⁰ For more detailed understanding: Tom Sherman, on the global Efforts to be applied in Combating Money Laundering: The Role of the Financial Action Task Force (FATF), derived from a Hume Paper on Public Policy: Volume 1 No 2, Edinburgh University Press, 1993, p. 13; and Alastair N. Brown, on the Proceeds of Crime-Money Laundering, *Acts of Confiscation & Forfeiture*, W. Green / Sweet & Maxwell, Edinburgh, 1996, p. 6.

There is then a discussion on the international reputation of the UAE and Dubai and its conformity to FATF, IMF recommendations and AML strategies and practice. Finally, AML practice in Dubai is placed into a theoretical framework(s) that helps explain its current approach to money laundering.

3.2. The political system in UAE: An absolute monarchy

The UAE is a politically federalised structure consisting of seven emirates, with Abu Dhabi the capital. There is a President, his deputy, the Supreme Council, the cabinet, the Federal National Council, and an independent judiciary with a federal supreme court.²²¹ The traditional tribal system of governing where 'royal' families ruled was the basis for the establishment of the UAE in 1971 and continues to this day, with little open political appetite for change. Hereditary dynastic family rule therefore has local jurisdictional control of state apparatus but also at the level of national representation. Therefore, members of the ruling families occupy the most important positions in the political and legal systems of administration.²²²

The Supreme Council then consists of the 'royal' rulers of the seven emirates representing an emirate but often a powerful family. Although each state - Abu Dhabi, Dubai, Ajman, Fujairah, Ras al Khaimah, Sharjah and Umm al Qaiwain - maintains a large degree of independence, the UAE is governed by the Supreme Council of Rulers who appoints the prime minister and the cabinet.²²³ The Supreme Council has both legislative and executive powers and thus wields substantial influence at the local and national level. It ratifies federal laws and decrees, plans policy, approves the nomination of the prime minister and accepts his resignation. It also can elect a president and vice-president to serve for a renewable five-year term in office. The

²²¹ Rebecca L. Torstrick and Elizabeth Faier, *Culture and Customs of the Arab Gulf States* (Abc-clio 2009)

²²² Mohammed Omran Taryam. (2011) Development of the Federal National Council in UAE.

²²³ Jasim Al-Ali. 'Emiratisation: drawing UAE nationals into their surging economy' (2008) 28(9/10) *International Journal of Sociology and Social Policy* 365

Supreme Council re-elected President H.H. Sheikh Khalifa bin Zayed Al Nahyan for another five-year term in November 2009 and will only stand down from his post upon the recommendation of the president.²²⁴ It needs to be noted, however, that the power or influence that each emirate holds is not equal. Those with the utmost wealth (mostly based on oil revenue) and respected family history hold-sway over national policy such as AML strategies and ‘direct’ the outcome of this result.

The cabinet also consists of ministers drawn mainly from ‘royal’ families of the emirates.²²⁵ The political and social system in the UAE thus continues to retain some of its traditional values at formal and informal levels with little political change since 1971. The sheikhs perform dual and sometimes conflicting roles - they are expected to be both ‘modern’ and protect the cultural heritage of the UAE.²²⁶ A close examination of the workings of the federal and local political system, both separately and combined, underlines the UAE’s unique (in the Middle East) amalgamation of the traditional and modern political systems that has produced national stability and laid the foundation for economic development. At present, the federal system includes the Supreme Council, the Council of Ministers (Cabinet), a parliamentary body in the form of the Federal National Council (FNC) and the Federal Supreme Court, which is representative of an independent judiciary.²²⁷

224 Christopher M. Davidson, *The United Arab Emirates: A Study in Survival* (Lynne Rienner Publishers Boulder, CO 2005)

225 Jasim Al-Ali, 'Emiratisation: drawing UAE nationals into their surging economy' , vol 28 (Emerald Group Publishing Limited 2008) 365

226 Christopher M. Davidson, 'The United Arab Emirates: A Study in Survival' (Lynne Rienner Publishers Boulder, CO 2005)

227 Ahmed Mustafa Elhussein Mansour. 'The impact of privatization on the United Arab Emirates (UAE) federal public sector' (2008) 9(2) *International Public Management Review* 66

The Council of Ministers, described in the Constitution as the executive authority for the Federation, is headed by a prime minister, chosen by the president in consultation with the Supreme Council.²²⁸ The prime minister, currently also the vice-president, then proposes the cabinet, which requires the president's ratification. In line with the UAE's rapid socio-economic developments, major steps have been taken, both at the federal and local levels, to reform the political system in the UAE in order to make it more responsive to the needs of its citizens, which are primarily Arabs,²²⁹ with most of the population on some type of residency permit. Emiratis are also traditionally conservative, but the UAE is one of the most liberal regimes in the Gulf, with other cultures and faiths tolerated; this is especially the case in Dubai. However, politically the UAE remains authoritarian with an absolute monarchy. It was the only country in the region not to have elected bodies until 2006, when it convened a half-elected federal assembly, which, however, was restricted to a consultative role²³⁰ regarding political and thus economic decisions.

3.2.1. The legal system in Dubai

Dubai's legal system is founded on the principles of profane law and is strongly influenced by Egyptian law and Islamic law, with Islamic and Sharia law the principle source of orientation in UAE law. Egyptian law, however, tends to be used for general principles of law and subsidiary legislation. This is the case in Dubai and other emirates. Due to the flow of international and regional business, Dubai and the UAE has developed and modified its system of laws. Dubai has its own specific internal legal codes, which were created to serve business and civil proceedings such as corporate law, intellectual property, labour law and business and marine laws. Many of these laws, however, enacted by the Ruler of Dubai are more administrative in nature than legal codes.

²²⁸Al-Muhairi, Butti Sultan Butti Ali. 'The Development of the UAE Legal System and Unification with the Judicial System' (1996) Arab Law Quarterly 116

²²⁹ibid.

²³⁰Mohammed Omran Taryam, (Middlesex University 2011)

For the last decade, there has been an influx of international and commercial enterprises, primarily in Dubai. However, this is increasingly happening elsewhere in the UAE as well, as the ‘commercial model’ employed in Dubai has resonated with emirates lacking in oil. This has resulted in the expansion of federal legislation and codes of AML laws, as an example. Furthermore, there are certain federal laws once applicable in Dubai that are now relevant to all emirates; these are company law, civil procedures, maritime law, financial sector, immigration, and employment law.²³¹ In this way, Dubai is leading change through the implementation of regulation and standards that can increase success when applied to other emirates as well. In addition, the court system has recently begun implementing the arbitration method of handling disputes, as a result of the increase in the financial area, where this method is internationally used.

While the Money Laundering Act 2002 and Terrorism Act 2004 are relevant to the whole of the UAE, the political context is of some importance as laws are increasingly national rather than at emirate level as the UAE has developed into a nation with a clear identity and concept of nation state. This is due to the need of the emirates to have a global presence and be held accountable to organisations such as the IMF and the FATF, where policies must be wholly unified in the region to meet objectives and remain compliant for international trade, banking, and cooperation. The political and legal system are important elements that binds a nation and it is therefore worthwhile to review the system of ‘making laws’ in the UAE without which there would be no AML strategy or practice or policing of the financial and commercial sector(s) and FTZ.

3.2.2. The Legislature: The Supreme Council

In the UAE, the Federal Supreme Council is the constitutional and legislative body that decides policy and legal matters. The Federal Supreme Council performs many responsibilities such as formulating policy on matters of immigration, criminal justice, labour and state investment to

²³¹ Mohammed Ahmed bin Fahad (ed), *Economic Development of the Emirate of Dubai: A study of Dubai's developmental experience* (Dubai Police Academy, the Center for Research and Studies 2012)

name a few; endorsing federal laws prior to their issuance, including the annual budget of the federation and the closing accounts; sanctioning the decrees on matters that, by virtue of the provisions of the constitution, are subject to the ratification and approval of the Federal Supreme Council; ratification of treaties and international conventions such as those relevant to money laundering and FATF; approving the appointment of the prime minister of the federation, accepting his resignation, and requesting him to resign upon the suggestion of the President of the Federation; approving the appointment of the president and the judges of the Supreme Federal Court, accepting their resignations, and dismissing them in the cases specified by the constitution.²³²

Such power is in the hands of a few key individuals and family members. To illustrate this hold on power the Federal Supreme Council lays down its own regulations, including its procedure for the conduct of business and the method of voting on its resolutions. Furthermore, the deliberations of the Council remain secret. Resolutions of the Federal Supreme Council on substantive matters are made by a majority of five of its members provided that such majority includes the vote of the emirates of Abu Dhabi and Dubai. The minority shall abide by the opinion of the aforesaid majority. However, resolutions of the council on procedural matters shall be issued by a majority vote. Such matters are defined in the by-laws of the council. The Federal Supreme Council holds its sessions in the capital of the federation (Abu Dhabi); however, they can be held in any other place agreed on beforehand²³³. This legislative body has a secretariat consisting of a number of officials to help it in performing its duties and functions that the Federal cabinet and Federal National Council must follow.

²³² Al-Muhairi, Butti Sultan Butti Ali, 'The Development of the UAE Legal System and Unification with the Judicial System' (JSTOR 1996) 116

²³³ Jim Grant, Fatema Shabbir Golawala and Donelda S. McKechnie. 'The United Arab Emirates: The twenty-first century beckons' (2007) 49(4) Thunderbird International Business Review 507

The Federal National Council is the policy advisory board of the UAE established since 1971 under the Provisional Constitution of the UAE. ²³⁴ It consists of 40 members with eight from Abu Dhabi, Dubai, and six for Sharjah and Ras Al Khaimah, and four for Ajman and Umm Al Quwain and Fujairah. In addition to this there are a further twenty are elected members of the National Council; these representatives are elected or nominated by Electoral College which consists of emirate representatives. It is also a member of the Inter-Parliamentary Union (IPU), and the Arab Inter-Parliamentary Union (APU).²³⁵

In the past 34 years, however, there has only been 13 legislative seasons. This limited discussion on matters of economic development, security, and crime has undoubtedly had an impact on developing a consistent and strategic AML approach. During the time that laws are drafted and/or amendments to existing laws put forward this is sent to the holding the committees of the House of Representatives of the National Council and then once approved to the Cabinet for consideration and then approved and ratified.²³⁶ Most of these draft recommendations and amendments have been adopted and incorporated into UAE laws. Once passed, rather than before, it is claimed that the National Council undertakes its own research and collects information on the impact of its 'laws' on social and political issues. This information, however, is hard to obtain, and as such what information is released is no doubt been politically sanitised.

234 Frauke Heard-Bey. 'chapter 6 The United Arab Emirates: A Quarter Century of Federation' (1999) *The Middle East Dilemma: The Politics and Economics of Arab Integration* 128

235 Julie M. Simmons. 'The United Arab Emirates' (2002) Ann L.Griffiths (Ed.), *The Handbook of Federal Countries*

236 Ibrahim Al Abed, *United Arab Emirates 2007* (Trident Press Ltd 2007)

3.2.3. The role of the attorney

There is no formal civic defence system in existence in the UAE, and only the judge is entrusted with the responsibility for conservation of the interests of individuals that are not represented by counsel.²³⁷ Consequently, if an individual is faced with allegations of money laundering, there should be consultation with an experienced criminal defence lawyer as soon as possible. If the accused is considered a flight risk or the evidence is so overwhelming the Attorney General is then required to decide within twenty-four hours whether to accuse, release, or permit further limited detention, up to forty eight hours before making a decision. Numbers of people, however, receive prompt trials²³⁸ particular if linked to organised crime/terrorism or are of a political nature. This is due in part to the federal regulations regarding AML/CFT, and the FATF recommendations.

Money laundering cases are sometimes placed into different courts depending on whether it is considered a criminal or civil matter. How such a decision(s) is made is unclear, perhaps to the current system in the UAE. For example, a case of money laundering could be examined either by the Sharia courts that are administered by separate emirates or by a federal civil court. Regardless of the court rights of due process in money laundering cases are accorded under mutual coordination of the two systems, with defendants warranted legal counsel.

In reference to the Criminal Procedures Code approved in 1992, the accused has his or her own right to defence counsel, in particular in cases concerning potential sentence of death or life imprisonment. These cases often involve national security of the country or its moral offences²³⁹

237 D. Larry Crumbley, Lester E. Heitger and G. Stevenson Smith, *Forensic and investigative accounting* (Cch Incorporated 2005)

238 Bob Blunden, *The Money Launderers: How They Do It, and How to Catch Them at It* (Management Books 2000 2001)

239 Jeffrey Robinson, *The sink: terror, crime and dirty money in the offshore world* (Constable & Company Limited 2003)

and are closed to the public. Furthermore, in UAE, there are no separate courts dealing with national security, and military courts only deal with military personnel through a system based on the Western military legal principles.

3.3. The Judiciary

The Federal judiciary in the UAE is considered independent from state control and/or influence. This was originally established in the by the UAE Constitution. However, due to the political structure mentioned above and the influence of powerful individuals and families placement of key ‘friends’ in state run apparatuses is a possibility. There is, however, no research on this matter and it is one that is in need of some attention. The judiciary in the UAE, however, consists of two Tribunals, the Courts of First Instance and the Federal Supreme Courts. The Federal Supreme Court has the President of the UAE and 5 judges, who are appointed by the governors of the Federal Supreme Council²⁴⁰. All judges shall be considered members of the President of the Supreme Court independent from the legislative and executive power. In theory at least, this offers judges the power to impose law and order in the UAE, and once approved in post the constitution prevents judges removed or forced out of office.

There are, however, slight differences within some of the emirates regarding court structure (i.e., in Dubai and Ras Al Khaimah). In Dubai the court system consists of the Court of First Instance, the Court of Appeal and the Court of Cassation.²⁴¹ Dubai has this retained its own self-governing courts (and judges), which are not part of the federal judicial influence of the UAE. Dubai Courts will follow corporate or civil law federal law, as well as the laws and decrees enacted by the

240 Charles J. Glasser. 'The United Arab Emirates (UAE)' (2013) International Libel and Privacy Handbook: A Global Reference for Journalists, Publishers, Webmasters, and Lawyers, Third Edition 513

241 Julie M. Simmons, 'The United Arab Emirates' (2002)

Ruler of Dubai, where federal law is absent or silent.²⁴² In each of these courts all issues that fall within the Emirate of Dubai is divided into the Civilian Division, Criminal Division and Division of Islamic law.²⁴³ The civil and criminal court systems are similar to that of the United Kingdom and deal with similar issues. The court of Islamic Affairs handles family matters of marriage, divorce and inheritance. Furthermore, this court is that which decides on matters of 'respect' in Dubai, and as such non-Muslims are bound by this court and its 'standards' while living in Dubai. There are other 'minor' courts, specialising in disputes arising between employers and workers and property ownership.

There is no jury system in Dubai. Matters come before one or more judges, depending on the specialisation of knowledge required; and unlike in some western jurisdictions, there is no system of precedent in Dubai or the UAE. However, judgments of several upper courts are published, not because they are binding on lower courts, but in order to deliver useful evidence of future judicial understanding and practice. It should also be well known that the Dubai courts conduct themselves in Arabic and so legal representation not only requires legal advocates who are properly licensed to appear before the courts, but also requires that they are conversant in Arabic.

3.4. The international political view of AML prevention in Dubai

Due to the increased national and international concern regarding money laundering, the UAE took a keen interest in prohibiting all actions that resulted in money laundering, including, where possible, the Hawala system²⁴⁴. Putting in place firm measures to prevent money laundering and dubious transactions the UAE claimed it was unequivocally committed to preventing money

²⁴² Charles J. Glasser, 'The United Arab Emirates (UAE)' (Wiley Online Library 2013) 513

²⁴³ Richard Price. 'United Arab Emirates (UAE)' (1996) 3 YB Islamic & Middle EL 280

²⁴⁴ Jerry Hart, 'Criminal infiltration of financial institutions: a penetration test case study' , vol 13 (Emerald Group Publishing Limited 2010) 55, pp. 55-65.

laundering, and particularly that which lead to terrorism²⁴⁵. This has lent the UAE some international political credibility and credit since such measures were employed to prevent terrorism. The UAE has further conducted a number of meetings, conferences as well as seminars in strengthening its efforts to 'upgrade' its approach to combat money-laundering.²⁴⁶ The UAE's approach therefore is one that the international community would welcome not only to control financial crime, but also to prevent funds for terrorism and organised crime in concert with the international code of conduct²⁴⁷. In addition, addressing the Hawala system was an important aspect of international concern, and the UAE has begun requiring that Hawala be both licensed and consistent with the reporting requirements of financial institutions, particularly in the area of suspected criminal activity or money laundering.

However, although a number of eminent financial institutions have offices in Dubai, it still maintains a rather dubious reputation as a place that is "not so much awash with vast oil wealth but built on a toxic tide of illicit cash: a place where Russian mafia and cartels clean their dirty cash and al-Qaida finances terror atrocities."²⁴⁸ Intelligence from the US supports this; the US State Department 2013 Narcotic Control Strategy Report noted that the UAE is the main transportation and trading hub for the Persian Gulf States, East Africa, and East Asia.²⁴⁹ The constant flow of people, products and money to the region leaves it vulnerable to laundering,

245 Satish M. Kini, 'Recent anti-money laundering enforcement actions: lessons to be learned at others' expense' (2006) 7(3) *Journal of Investment Compliance* 38

246 Kern Alexander, 'The need for efficient international financial regulation and the role of a global supervisor' , vol 5 (MCB UP Ltd 2001) 52, pp. 52-65.

247 Satish M. Kini, 'Recent anti-money laundering enforcement actions: lessons to be learned at others' expense' , vol 7 (Emerald Group Publishing Limited 2006) 38

248 Mathiason, N. Dubai's dark side targeted by international finance *The Observer*, Sunday 24 January 2010 <<http://www.theguardian.com/business/2010/jan/24/dubai-crime-money-laundering-terrorism>> Accessed 17/2/2013

249 United States Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes March 2013 p12<http://www.state.gov/documents/organization/204280.pdf> Accessed 17/2/2013

particularly due to its position as an international banking and trading centre and the vast number of expatriates who amount up to 85% of the total population of Dubai, and who send money back to their places of origin.²⁵⁰ Public perception in Dubai is that mostly non-UAE ethnic organised crime organisations are guilty of money laundering. This view, however, is not one particular to the UAE, as at times volatile anti-immigration sentiment, combined with support for nationalist political views, is an international matter with examples in the EU and elsewhere. Financial fraud is one of the key international economic issues with sluggish economic growth and/or stagnation in the EU and elsewhere. With the movement of people, and potential criminal threats, the EU has increased its efforts to prevent money laundering²⁵¹.

Similar to Dubai then, laws are passed; however, it is the political will to recognise and then tackle all white collar crime ²⁵² which is needed. In particular Dubai has a number of vulnerabilities, and one of these is its role as a port, which makes customs and the checking on the influx and outflow of visitors difficult. Organized crime is not recognized as a challenge for the UAE, or for Dubai; however, measurements of this type of activity are limited and literature regarding crime organisations in these areas are non-existent. The UAE's proximity to conflict zones in West Africa also adds to its vulnerability, due in part to the political instability and drug trafficking of these areas. In addition to the traditional, informal money-transfer network, which is at risk, is also that of *Hawala*, which remains unreformed,²⁵³ with the most notable money lenders from Somalia, who have established clearing houses, which are not registered with the

²⁵⁰ Ibid.

²⁵¹ Ernesto U. Savona. 'Mafia money-laundering versus Italian legislation' (1993) 1(3) European Journal on Criminal Policy and Research 31

²⁵² Steven Box. 'Power, Crime and Mystification' (1983) London: Tavistock ;James Gobert and Maurice Punch, 'Because They Can', *International handbook of white-collar and corporate crime* (Springer 2007) 98;Steve Tombs and Dave Whyte. 'Unmasking the Crimes of the Powerful' (2003) 11(3) Critical Criminology 217

²⁵³ Mathiason, N. Dubai's dark side targeted by international finance The Observer, Sunday 24 January 2010 <<http://www.theguardian.com/business/2010/jan/24/dubai-crime-money-laundering-terrorism>> Accessed 17/02/2013

UAE.²⁵⁴ Regulation has become a strong concern regarding Hawala, and the UAE has been working diligently to develop this through requirements of registration and reporting.

Furthermore, a senior member of the Dubai Centre of Commerce has openly admitted that it is well known that Dubai is a centre for the laundering of cash from the trade in Afghan heroin.²⁵⁵ US intelligence supports this, noting that a significant portions of money laundering and terrorist financing in the UAE is directly related to the proceeds of heroin production from South West Asia, and drug traffickers from Afghanistan are attracted to the vulnerabilities of the UAE.²⁵⁶ Some of the difficulties in addressing these problems is the ease of entrance into parts of the UAE, specifically for Dubai, due to the need for access by numerous businesses.

The UAE's offshore financial centre is in Dubai, and there are thirty eight free trade zones, with organisations, which are located in the zones considered as legally offshore.²⁵⁷ While offshore havens may be viewed with suspicion, characterised by tax evasion, anonymity, and lack of transparency and inability to trace assets, it is suggested that as a 'safe route' for laundered money, they play a 'drain actor' position which acts as a 'security shield' for developing nations.²⁵⁸ Indeed, although the UAE government has implemented some AML legislation, it may have no real intention of eradicating it, as 'the place is built on it...it's a commercial port.

²⁵⁴ United States Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes March 2013 p12<http://www.state.gov/documents/organization/204280.pdf> Accessed 17/2/2013

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ United States Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes March 2013 p12<http://www.state.gov/documents/organization/204280.pdf> Accessed 17/02/2013

²⁵⁸ Loredana, M. "An overview of the European tax havens" Centre for European Studies (CES) Working Papers 2013, Vol. 5 Issue 1, p41

There's a free trade zone. That's what made its livelihood.'²⁵⁹ The difficulty is creating control without imposing unnecessary controls on the success of businesses, which are necessary for the country to be successful. Dubai, as a financial hub, must manage this balance between control and organisational freedom carefully to prevent extensive harm to the economy.

Following a report in 1998, FATF and Middle East and North African Task Force has analysed a number of vulnerabilities in the UAE and Dubai, which makes it attractive place to launder funds²⁶⁰ The last Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism was produced in 2008 by the FATF, and it pinpointed a number of weaknesses within Dubai's financial system. The report stated that the enforcement of cash declarations is weak, and there are significant areas of concern to the 'cash movements and inward wire transfers' with a complete lack of recognition by the authorities as to the extent to which overseas criminals utilise these financial services.²⁶¹ There is also a much lower submission of Suspicious Transaction Reports (STR) than there ought to be in a region where so much wealth is banked.²⁶² This is the same difficulty with managing Hawala, but also denotes a concern that legislation is not enforced or enforceable.

In line with 35-40 FATF recommendations, the UAE conformed to only 17 of the recommendations although the United Kingdom, on which it draws so much of the legislation, conformed to 29 of the recommendations). It is expected that the UAE will comply with these

²⁵⁹ Mathiason, N. Dubai's dark side targeted by international finance The Observer, Sunday 24 January 2010 <<http://www.theguardian.com/business/2010/jan/24/dubai-crime-money-laundering-terrorism>> Accessed 17/2/2013

²⁶⁰ Financial Action Task Force Middle East and North African Task Force Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism 9 April 2008 <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf>

²⁶¹ Ibid. (21)

²⁶² Ibid. (78)

recommendations according to FATF and address issues outstanding²⁶³. However, no timeline is forthcoming for these recommendations to be reached. In addition, further assessment has not been completed, and while a quasi-assessment is conducted here (see chapter seven), official assessment would provide the UAE with new goals and assist in recognizing how improvements could be made for the success of AML in the future.

Furthermore, the UAE has failed to completely conform to the nine special core special recommendations by FATF; these entail STR reporting. Moreover, the UAE has only partially conformed with the key recommendations such as implementing the 1999 UN International Convention on the suppressing the funding of terrorism and imposing effective laws for confiscation and freezing funds used for terrorism²⁶⁴. While MENA FATF has been created to assist the countries of the Middle East and North Africa in becoming more compliant and successful in meeting the requirements of FATF recommendations, formal assessments on the UAE have not been completed since 2008.

The political and practical implications for non-compliance with FATF recommendations is that the UAE will lose its credibility as a safe haven to deposit legal funds in and at the same time potentially attracting criminal/terrorism organisations/cells to channel funds via UAE financial sector. Therefore, it is necessary for UAE to put in place necessary measures with an aim of addressing these deficiencies and put more effort in ensuring that AML is implemented effectively in accordance with FATF recommendations. Furthermore, a country that is non-compliant with FATF recommendations has negative impacts on the credibility of the nation but

263 Ali Alkaabi and others, 'Money Laundering and FATF Compliance by the International Community' , *What Kind of Information Society? Governance, Virtuality, Surveillance, Sustainability, Resilience* (Springer 2010) 86; Paul Allan Schott, *Reference guide to anti-money laundering and combating the financing of terrorism* (World Bank Publications 2006)

264 Sabrina Fiona Preller. 'Comparing AML legislation of the UK, Switzerland and Germany' (2008) 11(3) *Journal of Money Laundering Control* 234

also its relationship to conduct business with financial sectors and nations elsewhere in the world.²⁶⁵

Moreover, there are particular practical implications for non-compliance; with the aim of protecting interests and minimising financial and reputational risks, compliant nations and financial sectors (i.e., in the United Kingdom) are likely to impose demanding assurances and/or fines, if caught breaching regulations, before dealing with those that are non-compliant and discouraging trade and relationships with various international organisations such as International Monetary Fund (IMF) and the World Bank ²⁶⁶. For example, the Financial Services Authority in the United Kingdom fined Habib Bank AG Zurich for its failure to establish and maintain adequate anti- money-laundering controls.²⁶⁷ Despite this recent prosecution there is a suspicion that this will not change practice in Dubai, as the fine of £525,000 of Habib Bank of £525,000 by the FSA²⁶⁸ is a pitiful amount, hardly indicating the serious of the breach. IN saying tis, however, Richard Brooks, a former tax inspector responsible for corporate tax avoidance has described London as ‘the global capital of money laundering,’ and asserts that UK banks are awash with dirty money.²⁶⁹ Indeed, Britain’s largest bank, HSBC, was recently denounced by

265 Samah Al Agha. 'Money laundering from Islamic perspective' (2007) 10(4)ibid406

266 R. Barry Johnston and Ian Carrington. 'Protecting the financial system from abuse: Challenges to banks in implementing AML/CFT standards' (2006) 9(1)ibid48-114

267 Press Release, FSA, FSA Fines Habib Bank AG Zurich £525,000 and Money Laundering Reporting Officer £17,500 for Anti-Money Laundering Control Failings (May 15, 2012) <<http://www.fsa.gov.uk/library/communication/pr/2012/055.shtml>> Accessed 17/02/2013

268 Press Release, FSA, FSA Fines Habib Bank AG Zurich £525,000 and Money Laundering Reporting Officer £17,500 for Anti-Money Laundering Control Failings (May 15, 2012), <<http://www.fsa.gov.uk/library/communication/pr/2012/055.shtml>> Accessed 17/02/2012

269 Costello, T. “London is the ‘global capital of money-laundering’” The Bureau of Investigative Journalism August 9, 2012<<http://www.thebureauinvestigates.com/2012/08/09/london-is-the-global-capital-of-money-laundering/>> Accessed 17/02/2012

the US Senate Committee for its key role in the facilitation of money laundering operations for Mexican drug cartels²⁷⁰ with Coutts and Co., the wealth division of the Royal Bank of Scotland, handed the UK's largest ever fine for its failure to conduct due diligence on mainly foreign clients who were politically sensitive and engaged in corruption.²⁷¹ The IMF emphasised that money laundering and terrorism undermine the integrity and stability of the financial institutions and discourages foreign investments ²⁷² and can cause the distortion of the international capital flows; in addition, in 2009, the *G20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets* claimed that nations needed to implement measures that provide protection to the international financial system to avoid the risk of involvement in illicit financial transactions and systems. This, however, is only one part of the problem, as those nations that fail to conform to recommendations are unable to provide international law enforcement with essential information such as customer identification, records on transactions and tracing the origins of transacted funds²⁷³.

In order to improve upon FATF compliance by countries in the Middle East and North Africa, whose compliance ratings are substantially lower than most of the world, according the Basel AML Index, a separate FATF named the MENAFATF was formed. MENAFATF includes 18 countries in this region, including the UAE, where the goal is to increase the compliance and implementation of the 40 recommendations of the FATF to increase AML success in these

270 BBC money laundering report: Key findings 11 December 2012

<<http://www.bbc.co.uk/news/business-18880269>> Accessed 17/02/2012

271 Letter from Fin. Serv. Auth. [FSA], to Coutts & Company, ¶ 1, at 1 (Mar. 23, 2012) <[http://](http://www.fsa.gov.uk/static/pubs/final/coutts-mar12.pdf)

www.fsa.gov.uk/static/pubs/final/coutts-mar12.pdf> Accessed 17/02/2013

272 Alvaro Cuervo-Cazurra. 'Who cares about corruption?' (2006) 37(6) J Int Bus Stud 807

273 Samah Al Agha, 'Money laundering from Islamic perspective' , vol 10 (Emerald Group Publishing Limited 2007) 406

areas²⁷⁴. In addition, the separation of this division improves upon the ability of the countries to work together in more areas where overlapping occurs in the illegal activities that are problematic for control, specifically in the case of drugs or terrorism, where illegal transference of money may occur over borders²⁷⁵. Also where the ability to validate information has traditionally been challenging due to a lack of standardization or accountable departments for review of papers declared to represent legality in different situations, such as money or goods transfers and transportation.

The primary objectives of MENAFATF include:

- Adoption and implementation of the:
 - 40 recommendations as identified by the FATF for AML,
 - Special Recommendations of the FATF against terrorism financing,
- To cooperate effectively between the member countries to meet the compliance standards and improve the MENA region through international cooperation and increased compliance with international standards,
- To establish relationships that identify and reduce the presence of the money laundering and terrorism financing within the MENA region.
- Build effective and productive relationships in the region, which do not disrupt or disvalue the cultural values, legal systems, or constitutional frameworks of the other member countries²⁷⁶.

In addition, MENAFATF has observers that assist the processes and development of these countries in meeting their goals and objectives, which include the Arab Monetary Fund, FATF,

²⁷⁴ Middle East and North Africa Financial Action Task Force (MENAFATF). Retrieved from <http://www.fatf-gafi.org/pages/menafatf.html>

²⁷⁵ Gordon, (2011).

²⁷⁶ MENAFATF Ibid

International Monetary Fund, United Nations, World Bank, and other organisations or countries from around the world. The improvement of compliance is an economic need of all of these countries, including for Dubai.

A problem for nations currently having a poor AML reputation, which demonstrates a failure to meet the FATF compliance, or to maintain the arrangements of the MENAFATF, is the withdrawal of foreign investment. Cuervo-Cazurra (2006) illustrated that corruption results not only in a reduction in FDI, but also in a change in the composition of country of origin of FDI²⁷⁷. Research on the relationship between host-country corruption and FDI has found a negative relationship²⁷⁸. However, not all studies have produced these results²⁷⁹. In fact, Henisz (2000) discovered that for US firms, corruption tends not to affect investments, and in some cases it increases, the probability of investing in the foreign country. Even with high levels of corruption, such as China or Nigeria, organisations are willing to invest.²⁸⁰ It is therefore clear that not all investors are concerned about where, with whom and when to invest. Although money laundering issues might have a negative impact on FDI because of the additional uncertainty and costs, due to corrupt practices, the cost can vary depending on the country of origin of the FDI. Not all investors, however, are equal. The sensitivity of FDI in a state that is seen as corrupt is likely to vary, with the country of origin of the FDI.

277 Alvaro Cuervo-Cazurra, 'Who cares about corruption?' , vol 37 (Nature Publishing Group 2006) 807

278 Mohsin Habib and Leon Zurawicki. 'Corruption and foreign direct investment' (2002) *ibid*291; Paolo Mauro. 'Corruption and growth' (1995) 110(3) *The quarterly journal of economics* 681; Beata K. Smarzynska and Shang-Jin Wei. (2000) *Corruption and composition of foreign direct investment: Firm-level evidence*

279 David Wheeler and Ashoka Mody. 'International investment location decisions: The case of US firms' (1992) 33(1) *J Int Econ* 57

280 Witold J. Henisz. 'The institutional environment for multinational investment' (2000) 16(2) *Journal of Law, Economics, and Organization* 334

Those nations such as the United Kingdom that have implemented laws to prevent corruption such as acts of bribery are expected to increase the cost of engaging in bribery abroad for investors/organisations. During the time that the US passed the FCPA in 1977 in an effort to clean up the image of US firms and use of bribery it was not explicit in not penalizing ‘grease payments’, or payments to foreign officials to expedite processes that would otherwise occur without a bribe. Furthermore, it is not clear that the FCPA has been effective in stopping US organisations investing in corrupt states. Hines (1995) provided evidence for a deterrence effect from US firms²⁸¹ while Wei (2000a) found no such evidence²⁸². As Cuervo-Cazura (2006) noted, there are two possible explanations for these conflicting results; one is that US organisations had an incentive to bypass the FCPA to avoid losing competitiveness in the allocation of contracts abroad and that the US was not forceful in prosecuting bribery abroad, especially in ‘friendly’ but corrupt nations²⁸³.

Legislation, conventions, national and international laws, however, will not prevent investment in corrupt states, in particular from those that are seen as corrupt. Organisations that ‘do business’ in corrupt environments, where the payment of bribes is a normal way of ‘doing business’ continues to invest in search of profits and launder illegal funds without fear of repercussions. Therefore, FDI from states with high corruption may not only be undeterred by corruption, but may even be attracted by it and launder personal and states funds.

This notion builds on the incremental internationalisation process or Uppsala model²⁸⁴. This model explains the selection of states in which to invest based on the concept of ‘psychic

281 *ibid*

282 Shang-Jin Wei. 'How taxing is corruption on international investors?' (2000) 82(1) *Rev Econ Stat* 1

283 Alvaro Cuervo-Cazurra, 'Who cares about corruption?' , vol 37 (Nature Publishing Group 2006) 807

284 Jan Johanson and Jan-Erik Vahlne. 'The internationalization process of the firm-a model of knowledge development and increasing foreign market commitments' (1977) *ibid*23

distance' between the home and host²⁸⁵. Psychic distance is the difference between states in terms of language, culture, education, business practices, industrial development, and regulations, all of which may limit the transfer of information. This distance reduces the ability of the firm, and particularly of its managers, to understand foreign information. As a result, the firm first expands into those geographical/socially close to the host country in terms of psychic distance, and only later enters those that are more distant. Furthermore, as illustrated by Cuervo-Cazura, 2006 there is little evidence to suggest that the majority of FDI of OECD nations, which represent the world's highest income is invested in OECD nations, meanwhile the majority of FDI from low-income nations is invested in low-income nations. FDI then is not straightforward; money laundering, therefore, has an unequal impact depending on a range of circumstances²⁸⁶.

Success in preventing money laundering is based on five themes, namely building a legal framework, and building a financial system regulatory or financial management, intelligence and ability to implement the legal provisions, and lawsuits, and raising the parliamentary proceedings. The FATF for its part, after the September 11, 2001, suggested nine recommendations for preventing the financing of terrorism, the most important of which is a comprehensive legal framework regulating efforts to prevent money laundering and the establishment of the institutional framework.

The factors affecting this compliance, however, presuppose the existence of advanced technology and 'sound' structure of governance of the financial sectors and appropriate infrastructure established²⁸⁷ to 'police', monitor and punish, if needed, those that breach codes of conduct and break laws. Corporate governance is a creation of western states which depends on

²⁸⁵ Jan Johanson and Finn Wiedersheim-Paul. 'The internationalization of the firm: four Swedish cases' (1999) BUCKLEY, Peter J.; GUAURI, Pervez N. The internationalization of the firm. Oxford: ITP

²⁸⁶ Alvaro Cuervo-Cazurra, 'Who cares about corruption?' , vol 37 (Nature Publishing Group 2006) 807

²⁸⁷ Nina Crimm. 'The Moral Hazard of Anti-Terrorism Financing Measures: A Potential to Compromise Civil Societies and National Interests' (2008) 43 Wake Forest Law Review 08

‘modern’ existence of developed procedures and policies, ethical standards, audit capacity and capability and appropriate resources. Developing states, such as Dubai, do not have the historical antecedents that many in the west do (i.e., United Kingdom) and as such are still at the stage of developing and progressing towards the required level of supervision expected of the financial sector in western states²⁸⁸.

The FATF report also criticised the low number of staff allocated to the AML unit of the UAE Central Bank, with confusion between what is an ‘unusual’ and what is a ‘suspicious’ transaction, in addition to which there is ‘no indication of whether institutions are expected to apply a subjective or objective test to suspicion.’²⁸⁹ This is a criticism of the UAE’s inadequate legal framework for banks to identify and deal with money laundering, suggesting that there is a lack of emphasis on due diligence checks for bank customers (see chapter six), with the same criticism levelled at lawyers and accountants required to carry out due diligence checks on their customers.²⁹⁰

The regulations concerning tipping off in the UAE are also worrying as not only are the provisions rather narrow, but it would appear that financial institutions are able to notify customers of their suspicions, thereby warning them of any potential investigations²⁹¹. Other problems with the AML legal framework in the UAE include variation of standards concerning the real identification of owners and beneficiaries of companies²⁹², as well as record keeping

288 Samah Al Agha, 'Money laundering from Islamic perspective' , vol 10 (Emerald Group Publishing Limited 2007) 406;R. Barry Johnston and Ian Carrington, 'Protecting the financial system from abuse: Challenges to banks in implementing AML/CFT standards' , vol 9 (Emerald Group Publishing Limited 2006) 48-114

289 Ibid. (10)

290 Ibid.(12)

291 (Ibid. 112)

292 Ibid. (121)

provisions of the securities and insurance sectors, which are subject to even less demanding regulation and oversight than the banking sector.²⁹³

3.5. Money laundering as an act of corruption: Placing AML in Dubai into a theoretical framework

It has been suggested that corruption can have a positive impact on investment in states that have excessive regulation²⁹⁴. More commonly it is claimed that corruption is an inefficient allocation of resources²⁹⁵. These two approaches are referred to as the “grease the wheels” advocated by Leff²⁹⁶ and the ‘sand in wheels’ hypothesis supported by Myrdal²⁹⁷. These are reviewed below, and while they focus predominantly on corruption, money laundering is seen as a corrupt act, and as such they are useful frameworks, on which to analyse this type of corruption.

3.5.1. ‘Grease the wheels’

This approach suggests that an inefficient bureaucracy is a major impediment to economic activity and that some ‘speed’ or ‘grease’ money is needed to help circumvent the problem. Lui (1985) offered a formal illustration of this and showed that acts of corruption may be an efficient way of reducing the time, cost of queues or bureaucratic blockages and thereby improving

²⁹³ Ibid. (10)

²⁹⁴ P. Samuel. 'Huntington (1968)' (1989) Political order in changing societies 146

²⁹⁵ Simeon Djankov and others. 'The new comparative economics' (2003) 31(4) Journal of comparative economics 595

²⁹⁶ Nathaniel H. Leff. 'Economic development through bureaucratic corruption' (1964) 8(3) Am Behav Sci 8;P. Samuel, 'Huntington (1968)' (1989) 146; Rachel Ehrenfeld, *Evil Money: The Inside Story of Money Laundering and Corruption in Government Bank and Business* (SP Books 1994)

²⁹⁷ Paolo Mauro. 'Corruption and the composition of government expenditure' (1998) 69(2) Journal of Public economics 263; Susan Rose-Ackerman. 'The political economy of corruption' (1997) 31 Corruption and the global economy

economic efficiency²⁹⁸. Indeed, this approach suggests that corruption is beneficial in states where other aspects of governance are defective, but is damaging elsewhere; it is not suggesting that corruption and/or laundering the proceeds crime will increase economic development everywhere. Therefore, the observation is that such an act is a potential stimulus of economic performance in those states whose institutional frameworks are ineffective²⁹⁹.

There are different ways, however, in which it is thought such acts can increase bureaucratic inefficiency. First, bureaucratic inefficiency that can be compensated for through the range of corrupt acts is slowness. Leys (1965) stressed that bribes might offer bureaucrats an incentive to quickly process the establishment of new firms in an otherwise sluggish administration³⁰⁰. Lui (1985) later adopted the same approach and showed in a formal model that this could efficiently reduce time spent queuing for 'services'³⁰¹. In addition Bailey (1966) claimed that all corruption has the potential to amend a bureaucracy by improving the quality of its civil servants i.e., if wages are low but perks are available, it may attract able civil servants who would otherwise have opted for another line of business³⁰². Even more so Leff (1964) and Bailey (1966) argued that such acts might simply be a hedge against bad public policies³⁰³. The civil servants in

298 Francis T. Lui. 'An equilibrium queuing model of bribery' (1985) *The journal of political economy* 760

299 John Louis Lucaites and Celeste Michelle Condit. 'Re-constructing narrative theory: A functional perspective' (1985) 35(4) *J Commun* 90

300 Colin Leys. 'What is the Problem about Corruption?' (1965) 3(02) *The Journal of Modern African Studies* 215; Colin Leys. 'What is the problem about corruption' (2002) 3 *Political corruption: Concepts and contexts* 59

301 Francis T. Lui, 'An equilibrium queuing model of bribery' (JSTOR 1985) 760

302 Pierre-Guillaume Méon and Khalid Sekkat. 'Does corruption grease or sand the wheels of growth?' (2005) 122(1-2) *Public Choice* 69

303 David H. Bayley. 'The effects of corruption in a developing nation' (1966) *The Western Political Quarterly* 719; Arnold J. Heidenheimer. 'Perspectives on the Perception of Corruption' (1989) *Political corruption: A handbook* 149; Nathaniel H. Leff, 'Economic development through bureaucratic corruption' , vol 8 (Sage Publications 1964) 8

Dubai, however, are UAE citizens and handsomely paid. In this sense then the slowness of bureaucratic procedures (if considered slow), are not a possible consideration in the UAE.

Furthermore, Ehrlich and Lui (1999) argue that autocratic regimes, which are able to steer the administration in a centralised way, and maximise their rents but will also internalise the deadweight loss associated with corruption³⁰⁴. These regimes therefore have incentives to avoid impairing the productivity of the private sector due to personal aggrandizement. Such incentives, however, do not exist in more decentralized regimes, where no bureaucrat views the harmful effect of bribes on productivity. If this is the case then, it is possible to suggest that corrupt acts, provides an incentive to implement better procedures in autocratic regimes but not in democratic regimes. If 'all matters are equal', it is therefore beneficial in states that are less democratic (see earlier on for outline of UAE/Dubai political system).

Olson (1993) similarly put forward the view that a corrupt autocrat may have an incentive to implement policies conducive to growth and development and in fact seize assets for further personal profit and then launder them³⁰⁵. Moreover, it has also been reasoned that laundered funds may in some circumstances improve the quality of investments. As Leff (1964) pointed out if corruption is a means of tax evasion, it can reduce the revenue of public taxes and, provided that sufficient investment avenues are available elsewhere, improve the overall efficiency of investment³⁰⁶.

304 Isaac Ehrlich and Francis T. Lui. 'Bureaucratic corruption and endogenous economic growth' (1999) 107(S6) *Journal of Political Economy* S270

305 Mancur Olson Jr, Naveen Sarna and Anand V. Swamy. 'Governance and growth: A simple hypothesis explaining cross-country differences in productivity growth' (2000) 102(3-4) *Public Choice* 341

306 Pierre-Guillaume Méon and Khalid Sekkat, 'Does corruption grease or sand the wheels of growth?' , vol 122 (Springer 2005) 69

This notion of efficiency has been extended to offering bribes (Bailey, 1966) and referred to as a similar exercise to a competitive auction³⁰⁷. Beck and Maher (1986) and Lien (1986) subsequently showed that corruption replicates the outcome of a competitive auction aimed at assigning a state procurement contract because the ranking of bribes replicates the ranking of firms by efficiency. All the above views share the presumption that corruption may contribute positively to productivity if a country is endowed with set factors because it compensates for the consequences of a defective institutional framework, such as an inefficient administration, a weak rule of law, or political violence. Corruption, however, also has its drawbacks³⁰⁸.

3.5.2. 'Sand in the wheels'

The 'sand the wheels' hypothesis emphasizes that some of the costs of corruption may appear or be magnified precisely in a weak institutional context. For instance, the claim that corrupt acts speed up an otherwise sluggish bureaucracy is flawed. Myrdal (1968) claims that corrupt civil servants may cause delays for other reasons than a bribe³⁰⁹. However, Kurer (1993) suggests that corrupt officials have an incentive to create distortions in the economy to preserve their illegal source of income, which can be laundered nationally or internationally, depending on circumstances (i.e., civil war.). They stress, however, that nothing is gained from corruption at the aggregate level, and the person to secure a contract with bribery is not necessarily the most efficient. However, the bribe will still need to be laundered in some way or another³¹⁰. In auctions where the profitability of a license is uncertain, the winning bid may simply reflect the more optimistic rather than corrupt. As Rose-Ackerman (1997) illustrated the person paying the highest bribe may simply be the one most willing to compromise on the quality of the goods they will produce if getting the license. Under these circumstances, corruption will simply reduce

307 *ibid*

308 Da-Hsiang Donald Lien. 'Corruption and allocation efficiency' (1990) 33(1) *J Dev Econ* 153

309 Gunnar Myrdal. 'Asian drama, an inquiry into the poverty of nations.' (1968) *Asian drama, an inquiry into the poverty of nations*.

310 Oskar Kurer. 'Clientelism, corruption, and the allocation of resources' (1993) 77(2) *Public Choice* 259

rather than improve efficiency³¹¹. The contention that corrupt acts may raise the quality of investment is therefore questionable. Mauro (1998) observes that corrupt acts results in a diversion of public spending toward less efficient allocations. Corruption, therefore, results in public investment in unproductive sectors, which is unlikely to improve efficiency or result in faster economic growth, but can hide laundered funds if necessary³¹².

It is also doubtful that corrupt acts serve as a hedge in a politically uncertain environment. Money laundering is not a simple transaction. Furthermore, increased uncertainty due to corruption may affect the rest of economy. For example, corruption is associated with a shadow economy and since transactions in the shadow economy are by definition unregulated, they are therefore subject to even more uncertainty than official transactions, but most of all we could also add that corruption also impacts on economic performance by weakening the rest of the institutional framework³¹³. Since corruption and capital account restrictions are mutually reinforcing corruption it would lead to a more hostile regulatory framework, which would in turn further encourage corruption and more laundered funds.

Consequently, as Bardhan (1997) points out, the inherent uncertainty of corruption may simply make the claimed economic efficiency in 'greasing the wheels' of commerce described above ineffective. Such an environment might provide an incentive to invest in universal capital, as opposed to specific capital, which can easily be reallocated but is also less productive. As a

311 Susan Rose-Ackerman, 'The political economy of corruption' , vol 31 (Institute for International Economics Washington, DC 1997)

312 Paolo Mauro, 'Corruption and the composition of government expenditure' , vol 69 (Elsevier 1998) 263

313 Axel Dreher and Lars-HR Siemers. 'The nexus between corruption and capital account restrictions' (2009) 140(1-2) Public Choice 245

result, corruption may worsen the impact of political violence or a weak rule of law on the quality of investment instead of reducing it³¹⁴.

The ‘grease the wheels’ approach is also unpopular with international organisations like the IMF or the OECD that view corruption as a major hindrance to worldwide economic development. As a result, international initiatives such as *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (OECD, 1999) and *UN Convention Against Corruption* (UN, 2003) that pursue a strand of empirical literature aimed at quantifying the consequences of corruption, pioneered by Mauro (1995)³¹⁵ who observed a significant negative relationship between corruption and investment. These results were later confirmed by Wei (2000)³¹⁶ and Lambsdorff (2003)³¹⁷.

Both the ‘grease the wheels’ and the ‘sand the wheels’ approaches are useful on an abstract level³¹⁸. The two approaches, however, predict that an increase in corruption will reduce efficacy in an otherwise efficient institutional context. They differ, however, in the expected impact of corrupt acts have in a deficient institutional context; the ‘grease the wheels’ approach predicts that corruption may raise efficiency, while ‘the sand the wheels’ approach predicts that an increase in corruption will reduce efficiency, even in a deficient institutional context. This institutional context is important as inadequate and ineffective organisational response to money laundering regardless of numerous laws has the potential to encourage money laundering in a national and international context.

314 Pierre-Guillaume Méon and Khalid Sekkat, 'Does corruption grease or sand the wheels of growth?' , vol 122 (Springer 2005) 69

315 Paolo Mauro, 'Corruption and growth' , vol 110 (Oxford University Press 1995) 681

316 Shang-Jin Wei and Andrei Shleifer. 'Local corruption and global capital flows' (2000) (2) Brookings Papers on Economic Activity 303

317 Johann Graf Lambsdorff. 'How corruption affects productivity' (2003) 56(4) *Kyklos* 457

318 Pierre-Guillaume Méon and Laurent Weill. 'Is corruption an efficient grease?' (2010) 38(3) *World Dev* 244

3.6. FATF Recommendations UAE

International regulations of AML standards are established by the FATF and implemented based on recommendations, which are evaluated by the FATF and form recommendations for countries. In the case of the UAE, the most recent assessment available is the 2008 assessment, made available by the MENAFATF³¹⁹.

This includes the 40 + 9 recommendations, which were also recently used by OECD FATF assessments and the factors include:

1. Money laundering offense
2. Money laundering offense – mental element and corporate liability
3. Confiscation and provisional measures
4. Secrecy laws consistent with the recommendations
5. Customer due diligence
6. Politically exposed persons
7. Correspondent banking
8. New technologies & non face-to-face business
9. Third parties and introducers
10. Record-Keeping
11. Unusual transactions
12. DNFBP – R.5, 6, 8 – 11
13. Suspicious transaction reporting
14. Protection & no tipping-off
15. Internal controls, compliance, & audit
16. DNFBP – R.13 – 15 & 21

319 Available at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf>

17. Sanctions
18. Shell banks
19. Other forms of reporting
20. Other NFBP & secure transaction techniques
21. Special attention for higher risk countries
22. Foreign branches & subsidiaries
23. Regulation, supervision & monitoring
24. DNFBP – regulation, supervision and monitoring
25. Guidelines & feedback
26. The Financial Intelligence Unit
27. Law enforcement authorities
28. Powers of competent authorities
29. Supervisors
30. Resources, integrity and training
31. National co-operation
32. Statistics
33. Legal persons – beneficial owners
34. Legal arrangements – beneficial owners
35. Conventions
36. Mutual legal assistance (MLA)
37. Dual criminality
38. MLA on confiscation and freezing
39. Extradition

40. Other forms of co-operation³²⁰
41. Implement UN instruments
42. Criminalize terrorist financing
43. Freeze and confiscate terrorist assets
44. Suspicious transaction reporting
45. International co-operation
46. AML/CFT requirements for money/value transfer services
47. Wire transfer rules
48. Non-profit organisations
49. Cross-border declaration & disclosure ³²¹

During this assessment, many of the current laws were not in effect; however, a quasi-assessment is completed in Chapter 7 of this study, to address these changes. According to the 2008 assessment, UAE was found to be noncompliant in 11 areas, partially compliant in 18 areas, largely compliant in 15 areas, and only five areas were found to be compliant³²².

The assessment was developed using materials gathered from February 28 to March 15, 2007, and does not reflect legislation and regulation implemented after this time. In addition, the materials gathered for the assessment were not able to be supported by the statistics that can be gathered from some other countries, due to the lack of availability or the lack completeness in

320 FATF International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations. (2012). Retrieved from http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

321 End of year gift to readers: OECD FATF country ratings as an excel file. Retrieved from <https://financialsecrecymediamonitor.wordpress.com/2013/12/30/end-of-year-gift-to-readers-oecd-fatf-country-ratings-as-an-excel-file/>

322 Mutual Evaluation Report, MENAFATF, p. 151 – 158.

their delivery to the assessors. In the report, the assessors noted that overall the UAE enjoys very low crime rates as compared to most of the rest of the world, but that challenges of maintaining control of growing financial markets requires that a focus be placed on meeting the needs of that market to prevent the crime that often is included in this type of growth. Notable is other literature, which identifies that money laundering is very likely to occur when financial crimes enforcement is not strictly maintained or supported by legislation³²³ or when the international growth of the country is beyond the ability of the enforcement agencies to monitor and enables errors to go uncontrolled³²⁴.

Recommendations and comments were developed for all of the areas identified by the assessors. The ratings included credit to Dubai, for advanced approaches to managing AML/CFT regulations and developing specific methods for addressing these concerns in the growing financial market; however, the assessors also noted that legislation improvements were necessary for continued success and growth in these areas. In addition, much of the current legislation during the assessment was not specific in addressing issues such as punishment for crimes, clear definition of the crimes, and methods that enable people to safely report that suspicious activities have occurred. Some changes have occurred since this assessment, in regards to the legislation and regulations, both in the UAE and in Dubai, to improve on the wording of these laws and add new legislation and regulation as recommended.

In addition, implementation was a concern that the assessors noted, such as implementation of the legal restrictions or in prosecutions, while assessors noted that much of the area experienced very low crime levels, it was also noted in research that an informal economy is in existence, which does not include only Hawala. In the case of the informal economy, it is noted that the UAE does have difficulty with employment equality, which has increased the social factors that

³²³ Brooks, 2004

³²⁴ Mojsoska, Nikolovaska, & Vitanova, 2012.

encourage both formal and informal domestic and care work, but also informal sex work³²⁵. In addition, research in 2009 noted that the United Nations Office on Drugs and Crime (UNODC) was concerned with the growing alcohol and drug problems in the Middle East, including suggesting that the rise in substance abuse in the Arabian Gulf region was unsupported by successful models of treatment³²⁶. In the case of the UAE, it is perceived the rapid growth in this area can likely be tribute to the rapid growth of the financial market and increased number of both foreign visitors and non-nationals entering the country for work. Due to the growth in human trafficking in both the UAE and in Dubai³²⁷, it is likely that more work must be done to implement a stronger law enforcement agency in many areas of the country, including financial and other criminal activity areas.

Criminalization of AML/CFT offences was present in the 2008 assessment, and identifies that the legislation needed more work at this time. While research suggests that the largest risks of terrorism is directly related to the maritime activities, particularly because of its size³²⁸. However, this particular risk is not identified in the assessment, though it is noted that there needs to be more support for customs, due to the lack of power the customs authority had regarding investigative measures³²⁹. While the UAE has implemented a variety of different offices to manage the requirements of the legislation regarding AML/CFT, some of the difficulty that is identified is the standardization regarding investigation powers, implementation between emirates, and that these agencies are still newly formed. This assessment was conducted during

325 Mahdavi, P 2013, 'Gender, labour and the law: the nexus of domestic work, human trafficking and the informal economy in the United Arab Emirates', *Global Networks*, vol. 13, no. 4, pp. 425-440.

326 Tabboub-Schulte, S, Yousif Ali, A, & Khafaji, T 2009, 'Treating Substance Dependency in the UAE: A Case Study', *Journal of Muslim Mental Health*, vol. 4, no. 1, pp. 67-75.

327 Kelly, BC 2012, 'Gridlock: Labor, migration, and human trafficking in Dubai', *Global Public Health*, vol. 7, no. 5, pp. 554-555.

328 'The Terrorist Threat to the Maritime Security of the UAE', 2010, *Emirates Lecture Series*, no. 85, pp. 1-49.

329 Mutual Evaluation Report, p. 45.

the first years of much of these implementations, which suggests that some changes have occurred since this time.

Law enforcement was noted as having limited access to the investigative information and tools necessary in aiding the FIU to accomplish goals. In addition, the assessment noted that public awareness campaigns, as well as outreach programs, were limited and would improve upon the ability of both law enforcement and FIUs to be successful in gaining information regarding current suspicious activities. In addition, access to suspicious transactions reports appeared to be limited, which restricts the ability to acquire information during investigations in other criminal areas that may be related to these types of offences, or in addressing concerns reported. The assessors recommended that a database be implemented for improving this type of access.

In the case of other investigative measures, it was found that there were authoritative powers to obtain information using “investigative techniques including telecommunications interception, listening devices, controlled deliveries, physical and electronic surveillance, and the use of undercover officers”³³⁰. However, the ability to obtain this required that at least verbal permission be obtained, and statistics of its use were limited and did not demonstrate the expected use that might be found for a financial hub of the size located in UAE. These problems were similar throughout the documentation from the assessment, as statistical evidence of implementation was either largely missing or incomplete, and in cases where the evidence existed, it did not demonstrate the expected number that are typical for a country operating with the size financial market established in the UAE.

The primary considerations of the assessment is in addressing the areas requiring the most change, which were identified as the noncompliant areas, including customer due diligence, politically exposed persons, correspondent banking, DNFBP areas, suspicious transaction

³³⁰ Ibid p. 47.

reporting, AML/CFT requirements for money/value transfer services, wire transfer rules, and cash border declaration and disclosure. These aspects are not widely studied in other research, and legislation has been adapted since this time to bring it more into compliance with the requirements. However, other considerations still exist, in that areas of guidance and harmonization have not necessarily been completely implemented and represent areas of deficiency, which are identified as resulting in a failure to meet the full compliance necessary for the best scores in these areas.

Customer due diligence issues identified required that the UAE focus on adapting legislation that better embeds the requirements of the FATF into the documentation, and that these documents include full detailed provisions that identify all the necessary elements. In addition, the provisions regarding politically exposed persons and correspondent banking relationships were limited, and required additional attention to be brought into compliance. Finally, the recommendations insisted that it was necessary to build standardization between emirates, increase the ability to investigate these areas, provide regulation for institutions as well as DNFBPs, and to create communications that provide awareness to the population using financial services or conducting financial activity within the country.

The recommendations also noted that areas of improvement required included the reporting, strategic management of areas such as cross border transportation of cash, provisions for risk assessments, definition of authority roles, and requirements of institutions to have formal procedures. Other considerations were that increases and clarification was required in the supervisory and oversight systems for competent authorities, in the areas of duties, powers, roles, and functions. Finally, the recommendations suggested that improvement be made the processes and systems in place, as well as legislation, which enable the UAE to work cooperatively with other countries in addressing or investigation AML/CFT issues.

3.7. Conclusion

This chapter has illustrated that the UAE is in need of updating its AML approach. The political and legal system, which is closely intertwined, regardless of the appearance of independence might be a contributory factor to the slowness with which AML strategy has developed. While much progress has occurred since 2000, in UAE legislation and regulation, the application of FATF recommendations has not met the standards expected. These factors may be due to the need to remain effective in attracting organisations or may be due to the inability to apply the missing elements effectively throughout the country, possibly as a lack of uniformity between emirates. However, regardless of the factors, the reputational risk is significant. International investments which contribute to the economic development of the UAE might seek financial centres elsewhere in the world. In turn, a limited AML strategy might be attractive to many criminal organisations which seek to launder illegal funds. This ‘defect in the system’ and/or practice can undermined confidence in the country, and it is difficult for the state to reform its system without incurring political, social, financial and reputational costs to correct this imbalance.³³¹In addition, there is some explanatory value in attempting to place money laundering into theoretical frameworks where a discussion of corruption and vested interests illustrated that money laundering is seen as a benefit and also a brake on economic development and success. Finally, the FATF Assessment from the MENAFATF, in 2008, was included to demonstrate the current views of the AML/CFT regulation and implementation within the country. In the following chapter we focus on the political context in which AML legislation has developed in the UAE.

331 Rachel Ehrenfeld, 'Evil Money: The Inside Story of Money Laundering and Corruption in Government Bank and Business' (SP Books 1994)

Chapter Four

Methodological approach and limitations

4.1. Negotiating access

It is customary for discussions of research to consider the relationships between different phases of the research project. These are presented in terms of the research design, which, it is argued should precede all social research³³²; the reality is different. Rather than view social research as a linear model, social research is often more complex requiring some reflection on the part of the researcher at different stages of the project. In this case this research project is no different.

Gaining access is an essential phase in the research process; it is prerequisite, a precondition for the research to be conducted. It further influences the reliability and validity of the data obtained. The numerous points of contact – gatekeeper, respondents and supervisor(s) – affect the collection of data and subsequent perspective on money laundering in the UAE is portrayed. Finally, the negotiated activities - access, content of interview schedule - that are part of the research process influence the ways in which those that are involved define the parameters of the project and role of the researcher. The key issues involved then in this section are initial contacts, gatekeeper(s), ethical issues, and development of the research project and potential obstacles. These are all considered below.

In keeping with social research this project is about more than ‘a question of neat procedures’³³³ but a social process of interaction between the researcher and respondents, which influence this outcome of this research. This is compounded by working in the UAE that has no historical

³³² Robert G. Burgess. 'Conversations with a purpose: the ethnographic interview in educational research' (1988)
1(1) Studies in qualitative methodology 137

³³³ *ibid*

social science research methods practice of its own to draw on. The project is this defined and redefined while keeping the core element of the research project mind. Nowhere is this negotiation of research more apparent than in trying to secure access – directly or via a gatekeeper - to people to interview. This is further compounded when working in the UAE in an environment where key, important people in the financial sector and law enforcement are not use to having requests made to them for an interview for a research project, and particularly one as sensitive as money laundering in the UAE. Research is thus not merely the translation from one set of techniques from one social situation to another, and this is highlighted in this original piece of research in the UAE.

A note of caution or perhaps context is needed here, though. As a serving police officer in the UAE, it is inescapable that this research is a combination of personal experiences and objective social research. It is often viewed that the literature review is the starting point of all research; this, however, overlooks the relationship between the researcher's personal experience and social setting and aim of the research. This 'relationship' also has bearing on access to key individuals and organisations in research, which this project reflects. This project has a set aim, and it also is exploratory in nature, which is illustrated by the lack of antecedents of social research in the UAE and Dubai. None of this is too dismiss the importance of research preparation and design, it is to be aware that the framework in which the research is place is flexible, keeping the core aim and objectives in mind, while maintaining discipline rather than rigid inflexible approach to research.

It was at this stage of securing access to some of the respondents that flexibility was first required. With three different 'sectors' to access – private financial sector, Central Bank, and law enforcement - the same approach was originally used. This encountered a few issues such as lack of response, refusal to engage in the research, requests for interview schedule to be seen beforehand, willingness to be interview but citing lack of time due to workload to assist in the research. Therefore, out of the 56 people originally approached 30 were finally interviewed. This is disappointing but also the reality of social science research.

On reflection it was perhaps a mistake to assume that as a police officer I would secure access with ease and particularly when requesting an interview on money laundering practices in the UAE. However, in defence of this project, 30 interviews is a breaking new ground in the UAE. The majority of the respondents that declined to be interviewed were from the private sector (21) citing the reasons above, with 2 from Central Bank and 2 from law enforcement; the latter two sectors, however, made it clear that work commitments prevented them from participation in the project.

While some from the private sector were willing to be interviewed, there was a problem in securing access to people in the Central Bank. As a recently established body it was perhaps protective of its position and reputation in the UAE. Furthermore, it was made clear in all originally emails sent that I was a Dubai police Captain, which could have raised some concern that this research was an investigation by the police even though it was made clear in the contact that I was an individual working alone. This protection of institutional remit is something often found in the UAE, as governmental bodies, until recently, have been concerned about 'empire-building' rather than working together. This, as the research illustrates, was also a problem regarding money laundering in the UAE.

This research required the negotiating of access and this was fundamental to the research process. Additionally, it enabled the research to consider the relationships people have within and between organisations and sections of them. This was particularly apparent in the Central Bank (see below). Access to such an organisation involved negotiation and renegotiating via a gatekeeper.

The personal contact that helped with the negotiated access worked in the police and has contacts within the financial sector. Access to such people and their social networks and set of contacts³³⁴ is a delicate matter. This process is based on the assumption that a 'bond' or 'link' exists between the initial sample and point of contact and that others in the same social population,

334 Steven K. Thompson. 'Adaptive sampling in behavioral surveys' (1997) 167 The validity of self-reported drug use: improving the accuracy of survey estimates. NIDA research monograph 296

allow a series of referrals to be made within a circle of acquaintances³³⁵. Furthermore, in this case one of the researchers was from a similar social and cultural background to those interviewed; this helped secure access under which this research was conducted but also raised some methodological and ethical issues³³⁶. Although a snowball sample is to some extent limited, it is, however, often used for those ‘hard to reach’ research subjects such as ‘elites’³³⁷ and it was thought appropriate to approach a personal contact to ‘sound out’ the possibility of interviewing people employed in the Central Bank, if they were, and thought that other ‘colleagues’ in this sector were willing to respond to questions on matters of money laundering in Dubai.

The problem of access is, however, does not end ‘once through the door’³³⁸. It was, and is an on-going process of negotiating and re-negotiating. Defined as an individual in an organisation who has the power to permit or withhold access. However, there are often multiple entry points into a social setting or institution and as with this research the gatekeeper had access to one institution – the Central Bank – and this was itself limited to a few ex-colleagues. The powerful can resist research and as such access is either highly procedurised or personalised. A procedurised approach is official access laid down and explicitly stated in detailed documentation³³⁹. This was not needed in this research. As a serving police Captain, access was established on a personalised basis with superiors prior to research. This personalised approach allowed access to a range of organisations, with the gatekeeper used to secure access to one institution.

335 Sven Berg. 'Snowball sampling' (1988) 8 Encyclopedia of statistical sciences 528; Robert S. Broadhead and Ray C. Rist. 'Gatekeepers and the social control of social research' (1976) Soc Probl 325

336 Khalid Farooq and Graham Brooks. 'Arab fraud and corruption professionals' views in the Arabian Gulf' (2013) 20(3) Journal of Financial Crime 338

337 Rowland Atkinson and John Flint. 'Accessing hidden and hard-to-reach populations: Snowball research strategies' (2001) 33(1) Social research update 1

338 Gordon Hughes. 'Understanding the politics of criminological research' (2000) Doing criminological research 234

339 Raymond M. Lee, *Doing research on sensitive topics* (Sage 1993)

In some research it is possible that there is an imbalance between the researcher and gatekeeper³⁴⁰. This did not happen in this research. However, the research was viewed as potentially threatening by some in the financial private sector, law enforcement and Central Bank, as it exposed the need for current practice to consider changes to better prevent money laundering the UAE. There was at the start of the research what has been refer to as the ‘politics of distrust’³⁴¹ and concern about this research but these were dealt with swiftly once the interviews started an news of my project was communicated to others in the relevant sectors. This was illustrated by many people that I interviewed that informed me I came recommended by colleagues I previously interviewed.

However, access was eventually secured but, as with the private financial sector, the research was delayed as ‘talks’ were underway as to when and whom I should have contact with. This restriction affected the research but without access there would be no interviews. In addition (see Results chapter) some of those interviewed, regardless of organisation, were defensive i.e. limited answers. Therefore, this research encountered a problem of initial access – people to interview – and access to information – people willing to talk and answer questions in the interview schedule.

Although it is recommended that access should not merely be negotiated with those in the highest positions³⁴² to avoid any misunderstandings, but the UAE is a hierarchical and honorific society. As such access was negotiated with those in a position of power and authority representing either a sector i.e. law enforcement or head of company. This was inescapable as conducting research in the UAE required the need to be flexible and slightly different to that of ‘western’ research.

340 Gordon Hughes, 'Understanding the politics of criminological research' (Sage 2000) 234

341 Raymond M. Lee, 'Doing research on sensitive topics' (Sage 1993)

342 Robert G. Burgess, 'Conversations with a purpose: the ethnographic interview in educational research' , vol 1 (1988) 137

Field notes were kept from the start of this research but increased as the research project progressed. These notes consisted of personal reflections, impressions, and unexpected problem(s). The main purpose of keeping these notes was reflection on the progress of the research and what, if anything could be done to resolve a problem. This is mentioned here as the problem of access was the first obstacle encountered. It is at this stage that notes were made and returned to that helped negotiate the rest of the research.

4.2. Sampling framework

Deciding on when, where, what and whom to interview is a crucial part of any research. The research takes place in a social situation in which all researchers participate and record the responses of those interviewed. Therefore the research needs to be defined and a narrow focus of work decided on so as to obtain the clearest possible answers/data to the aim of the research. However, as what illustrated many years ago ‘people do not have the responsibility of analysing and categorising their social and cultural experience and therefore cannot sort their own behaviour or responses to questions into neat packages for placement into...an analytical framework’³⁴³.

The selection of locations of interviews, time and data obtained is problematic for all research. These decisions affect the choices made on sections of the population under study and as such include and exclude people to be interviewed. These sets of problems therefore had bearing on the types of sampling employed for this research. Defending the types of sampling in this research there a few key points that need highlighting; it is impossible to interview all people in the financial sector in Dubai. It is possible to interview all relevant people employed in the AMLSCU, AOCD and Central Bank, if willing, but a sample of key individuals was thought

343 Raoul Naroll, Ronald Cohen and Rauol Naroll, *A handbook of method in cultural anthropology* (Columbia University Press New York 1973)

more appropriate from the financial sector and thus more of these interviews were sought. In addition people that had experience of working in Dubai and elsewhere and possessed international knowledge of anti-money laundering techniques and strategies were considered useful to interview due to international context of this research. Therefore, websites and profiles of key individuals were undertaken before a request for an interview was made, which is a type of targeted sampling (see below), but due to the earlier interviews were I was 'tested' some interviews were forthcoming due to recommendations rather than direct request for an interview. Furthermore, time constraints, as will all research, prevented the research from going beyond a fixed time period.

However, before sampling approach is chosen to access individuals to interview the selection of research locations of 'sites' needed to be established. This is an important step in the research process. Research can focus on one site/location i.e. in a hospital and focus on the interaction and rhythm of 'social life' in a specific institution. However, multiple sites offer a range of views on the same subject and reliability and validity if results are similar. Social views are thus linked by physical location where people occupy the same social space i.e. in a building and/or office but also connected because same people participate in different locations³⁴⁴. In addition to this the development of technology has broken these physical barriers and this interconnectedness is part of modern life.

The selection of research site was more complex than it appears. For this research four criteria were considered in the selection of a research site. These were simplicity – will the research site(s) allow for the development of studying simple situations to far more complex ones i.e. those interviewed awareness of current practice regarding anti-money laundering practice to discussion on future developments and predictions of AML practice and direction in the UAE. The second criterion was accessibility - the degree of access available to interview people. The third was an attempt to be unobtrusive as possible, hopefully encouraging people to speak openly

344 Lynda Baker. 'Observation: A complex research method' (2006) 55(1) Library Trends 171

in the interviews. This was not always the case, but increased as my name and approach secured favour with those in the sectors I accessed. The fourth criterion was participation – that is to keep in contact with key individuals and inform them of my progress and also return to interview them if necessary and/or possible. No interviews were conducted a second time; however, points of clarification were sometimes sought at a later stage in the research process where feedback on the progress of the project was discussed.

As a form of non-probability sampling two approaches were used here; one was judgement sampling and the other snowball sampling. As has been explained above judgements were made on whom to interview in the private financial sector due to the numbers of people employed in Dubai in this industry. The criteria used was based on status, position in company, role(s) which is relevant to anti-money laundering, previous experience and knowledge of working in UAE and elsewhere. These distinct ‘qualifications’ are available on company websites. Age was not considered so important in this sector, as people are vastly experienced at a young age – one person interviewed was 28. Gender was an issue; Because of the few women work in the positions in Dubai in the banking sector and the enforcement authority who specializes in anti money laundering or suspicion. There was failed to respond to a request for an interview. There would be little chance of claiming that is represented views to be similar to what was obtained through interviews.

Snowball sampling was used as an indirect approach – see above – gaining access to interviews based on recommendation rather than direct approach, and direct snowball sampling via gatekeeper and personnel in the Central Bank. While only a few interviews were secured employing this method they were still invaluable for the research. Aware that this method is open to criticism regarding limited representation of sector under study and also reliability i.e. is this case hand-picked people representing the gatekeepers’ views or narrow predetermined responses presenting a fixed organisational view rather than that of the person interviewed.

4.3. Designing the interview schedule

A semi-structured interview schedule was designed with six sections³⁴⁵. Letters were sent to key personnel in the financial sector and law enforcement in Dubai. There was little response to the original letters requesting an interview with Central Bank of Dubai personnel; however, the following emails were sent via a personal contact to secure access to potential interviewees. The methods used were, therefore, a combination of survey, interview schedule and a snowball sample ³⁴⁶ and directly negotiated access.

The interview consisted of six sections. These were

- Factors Encouraging Money Laundering in the UAE
- The 'Know Your Customer' Policy
- Arrests
- The Investigation of Cases
- Cooperation and Information Sharing
- The Hawala System

There is a tradition in social research where interviews are seen as 'conversations with a purpose'³⁴⁷. Such an approach can produce rich detailed data that is used alongside other methods. In this research it was felt appropriate to use a semi-structured interview schedule. This, if dealt with correctly, can elicit useful data, as the interviewee sees the interviewer as a

345 see appendix

346 Jennifer Mason. 'Qualitative research' (1996)

347 Robert G. Burgess, 'Conversations with a purpose: the ethnographic interview in educational research' , vol 1 (1988) 137

potential confident that has understanding and sympathy for the role(s) they have. There were some signs of this in the research as interviews with financial service sector employees became increasingly detailed as I became known in the social circle' of the financial sector. This further elicited attitudes to current practice, and expectations, both realistic and unrealistic; it was considered realistic and appropriate to know details about your customer(s) as well as possible, but due to the instability of the surrounding geographical nations and cultural closeness some felt that knowing a customer(s) and requesting personal information without causing offence was unrealistic.

In addition, unstructured interviews were dismissed as they were considered time-consuming and might possibly last several hours depending on respondent and can be difficult to control, and to participate in, as the lack of predetermined interview questions provides little guidance on what to talk about. This can therefore lead to substantial unwanted data that needs sifting and processing. Instead semi-structured interviews consist of several key questions that help to define the parameters of the research and topics to be explored, but also allows the potential to depart from research in order to pursue an idea or response in more detail that is still of relevance to the research project as a whole.

Furthermore, surveys were also dismissed as they were considered too limited for this research. As a social practice involving individuals and organisations, money laundering, which falls under the umbrella of corruption is inherently difficult to measure³⁴⁸. However, in recent years, several organisations have developed a Corruption Perception Index (CPI) for the purpose of qualitatively assessing the pervasiveness of corruption around the world. At one level these CPI are acknowledged as an important development in raising public awareness of corruption and promoting reform, particularly Transparency International. However, these approaches are also criticised for a lack of methodological rigour showing one side of the corruption equation, e.g.,

348 Mitchell A. Seligson. 'The measurement and impact of corruption victimization: Survey evidence from Latin America' (2006) 34(2) World Dev 381

those that receive a payment or gift, while ignoring those offering the bribe, often from the private sector³⁴⁹. These CPI surveys, however, are also limited as their selection process e.g., which country is included in a CPI survey, often reinforces stereotypical perceptions of corrupt regions of the world, and as such reflects the confusion and inadequacy and current corruption discourse³⁵⁰. A CPI then is not a reflection of a 'real' geography of corruption, and therefore their measurements are problematic.

A review of the literature on corruption reveals that a variety of theoretical frameworks have been used to analyse the incidence of, and recorded growth in, corrupt practices in recent years. Some approaches, which have dominated corruption studies, in the socio-political and economic literature is; capital accumulation as a theoretical lens³⁵¹ state and class theory ³⁵², a policy choice and public choice approach³⁵³. Furthermore, some have relied on 'modernisation and political development³⁵⁴, a cultural perspective³⁵⁵, the concept of globalisation ³⁵⁶ and a

349 Olatunde Julius Otusanya. 'Corruption as an obstacle to development in developing countries: a review of literature' (2011) 14(4) *Journal of Money Laundering Control* 387

350 John Christensen. 'The looting continues: tax havens and corruption' (2011) 7(2) *critical perspectives on international business* 177

ak³⁵¹ Mushtaq Khan. 'Corruption and governance in early capitalism: World Bank strategies and their limitations' (2002) ;Morris Szeftel. 'Misunderstanding African politics: Corruption & the governance agenda' (1998) 25(76) *Rev Afr Polit Econ* 221

352 J. Patrick Dobel. 'The corruption of a state' (1978) *The American Political Science Review* 958

353 John Mukum Mbaku. 'Bureaucratic Corruption in Africa: The Futility of Cleanups' (1996) 16 *Cato J.* 99-118

354 Jens Chr Andvig. 'Corruption and fast change' (2006) 34(2) *World Dev* 328

355 Christopher J. Anderson and Yuliya V. Tverdova. 'Corruption, political allegiances, and attitudes toward government in contemporary democracies' (2003) 47(1) *Am J Polit Sci* 91

356 Owolabi M. Bakre. 'Looting by the ruling elite, multinational corporations and the accountants: the genesis of indebtedness, poverty and underdevelopment in Nigeria' (University of Essex Tax Workshop, Essex Business School, University of Essex, UK, July 2008)

'governmentality' framework³⁵⁷. However, perhaps a common theme in these different approaches is that without the use of intermediaries and professionals such as bankers, accountants, and lawyers etc. the flow of corrupt funds is impossible³⁵⁸.

Prior to this requesting access, however, a pilot study was conducted. The interview schedule was sent to two people to review independently; both were personal contacts. One worked in the financial sector and one was a current police officer. The information provided by these individuals was invaluable. Neither was informed that the schedule was reviewed by another person as I wanted a complete independent review and combine suggestions on how to improve the interview schedule. In particular where both made the same comments it was obvious change was needed. For example, clear sections were needed to help people follow the research interview if access was denied and the interview schedule had to be posted and later returned; some of the questions needed rephrasing as they were too vague and ambiguous even if asked by the researcher in an interview and both reviewers thought my original interview schedule was too long and needed to be narrowed down before commencing the research. However, to achieve this detailed knowledge of the subject matter and preparation before the interview was needed.

The purpose of the interviews was to explore the views, experiences, beliefs and/or motivations of individuals on specific matters of money laundering in the UAE and the best way forward to prevent and/or reduce its incidence. Interviews provide a deep understanding of social issues under research rather than questionnaires, which were considered inappropriate in trying to access material to understand current practice and views on money laundering in Dubai and the UAE. A semi structured interview was therefore considered most appropriate as little was, and still is known about the study of money laundering in the UAE.

³⁵⁷ Jeff Everett, Dean Neu and Abu Shiraz Rahaman. 'Accounting and the global fight against corruption' (2007) 32(6) *Accounting, Organizations and Society* 513

³⁵⁸ Olatunde Julius Otusanya, 'Corruption as an obstacle to development in developing countries: a review of literature', vol 14 (Emerald Group Publishing Limited 2011) 387

It was made clear before the interviews that only some of the questions could be answered even after this review, as others were of a 'sensitive nature' and the respondents were unable or unwilling to respond to them within and across the different sectors. For example, five of those working in the financial sector declined to answer '*are you willing to share all available information with the AMLSCU to prevent money laundering in Dubai?*' This is perhaps due to a number of facts; exposing powerful and rich corrupt clients that might place funds elsewhere, aware that a positive response to this question is false, interviewed by a police captain with knowledge of money laundering etc. The police, however, were also unwilling to fully answer some questions, particularly on the investigation of cases. A common response to '*How many cases have the AMLSCU (or ACOD) dealt with?*' was to decline to answer or respond with '*many cases are in progress*' and therefore unable to offer a figure.

Even though individual anonymity³⁵⁹ was assured before any interviews were undertaken some respondents were un-cooperative. Suffice to state though, that anonymity is a common practice in assuring access to potential respondents in research and particularly regarding issues of police security in Dubai and confidentiality in the private financial sector. Furthermore, it was made clear that no company was to be identified either. This was disappointing, but without such assurances no interviews would have taken place.

Consequently, none of the interviews were recorded as requested by the interviewees in the sample, with some of them producing notes acquired during the interview. Due to the nature of the work of the people interviewed and the commercial interests involved this was also understandable. Therefore, even with a partial semi-structured interview schedule, it was difficult to pay full attention to the interview and some of the more subtle elements of the interviews were

359 Judith Bell, *Doing your research project* (Open University Press 2010)

inevitably lost. Rather than assume ‘understanding’ from the notes, some of them were returned to the relevant company for clarification.

Furthermore, due to my knowledge of national and international money laundering laws, regulations and conventions I became aware in the early interviews conducted that some people interviewed ‘tested’ my promise of anonymity and confidentiality by passing on information that was innocuous and sometimes inaccurate. The later interviews, across all organisations were therefore far more extensive, as I passed this ‘test’ by maintaining an ethical position and keeping individual names and company names out of the final research. The inaccurate information was obviously, and blatantly inaccurate i.e. claims regarding well-known cases that were incorrect. This was not an error(s) or misunderstanding as those interviewed were in positions of power and authority, knowledgeable and experienced, and most of all in some of the early interviews the respondents contradicted what they said. This was not down to subtle questioning more a ‘test’ of my reaction. I politely informed any of those interviewed that perhaps they were mistaken regarding a case(s) to which they readily agreed. These early interviews were thus a test of my integrity and own knowledge regarding money laundering in the UAE.

There is a perception in the private sector that many UAE citizens are only employed in positions such as a police inspector or working in the Central Bank due to family links and personal contacts. There is some truth in this, as there is anywhere in the world, but it is often overstated, as individuals need knowledge and skills to fulfil the tasks set. I was therefore aware that in the early interviews that I needed to establish my own credibility to continue the research. Without highlighting my own knowledge there was a chance the research would cease to continue, as I would have no credibility, particularly within the private sector.

A rudimentary indexing system was developed for the interviews; a page with three columns that contained the date of interview, the person coded as a letter, and brief summary of interview with observations all written in Arabic. Therefore, when it came time to produce the results, a review

of these notes offered a starting point of what I had discovered in the research. This approach helped extract common themes quickly and as such due to the methodological issues encountered it was decided that recurring themes would be presented under the six sections of the interview schedule that illustrated common issues that all those interviewed mentioned, rather than isolated issues of personal concern specific to the individual interviewed.

Many in the financial sector in Dubai know or know of one another as they sometimes ‘do business’ together. All of those in law enforcement knew one another, which was inescapable. This small sample was far more suitable than interviewing police officers that had no knowledge of money laundering rules, regulations and/or cases.

Although these methods of sampling might not be representative of all of those people who work in some anti-money laundering capacity, it was considered a ‘representative’ account by those interviewed of how those involved in protecting the integrity of a commercial enterprise and that of Dubai as a city of commerce and a financial centre of trade from risk of fraud and money laundering and criminal threats.

The value of this research is that it addresses these and other issues surrounding money laundering. It sought solutions to prevent, reduce and deter money laundering in the UAE. Moreover, it sought to discover new ways to combat money laundering and procedures, which would help reduce the incidents of such a crime and protect the integrity of the financial sector in Dubai and integrity of the UAE as a place in which to invest and engage in international commerce.

The UAE has developed rapidly and as such its international legal system and controls are in the process of adjusting to international commerce. Even though laws were passed years ago when the UAE sought and secured independence, the financial system increased its financial controls regarding money laundering, putting pressure on the financial sector to implement and tighten controls on the transfer of funds within and across jurisdictions to comply with international laws

and conventions the UAE had signed. This process of updating laws and controls is ongoing and in this sense the UAE and Dubai in particular, is no different to London or New York.

During the interviews three themes in particular emerged. These were:

- the use of experience in making decisions regarding money laundering, which was thought invaluable;
- letting evidence determine the direction the ‘case’ went in employing the use of technology to ‘mine’ information i.e., the analysis of data transactions on an account(s) and track and trace patterns of customers’ behaviour,
- the willingness of the banks, police and organised crime unit to use the full panoply of sanctions available to them to deal with illegal criminal acts.

These recurring themes discovered in this research and ‘views from the inside’ of those employed in some AML capacity, however, are similar to previous research (...), and as such are illustrative of the international problem of developing AML measures. Therefore, while the following issues are presented independently they are interconnected; they are connected in the UAE and also part of the international financial sector.

4.4. Content analysis of interviews

Content analysis is a widely used qualitative research technique and was thought appropriate for this research. It offered the chance to quantify the number of times key words were mentioned in the interviews i.e., organised crime and corruption and/or a collection of words in a sentence i.e., lack of professionalism, lack of communication. It further offered the chance to then qualify the use of key terms and place them into a recurring theme(s) from the interviews.

However, rather than a single method approach, content analysis has three distinct approaches: conventional, directed, or summative. All are used to interpret meaning from the content of text data but possess major differences. The primary difference is the design and application of the coding schemes and origins of codes. In conventional content analysis, coding is derived from

the data, and a directed approach starts with a theory or relevant research results as direction for initial codes. However, while useful a summative content analysis – the counting and comparison of key words or content, followed by the interpretation of the underlying context, was considered most appropriate. Typically, a study using a summative approach to qualitative content analysis starts with identifying and quantifying key words or content in text with the purpose of understanding the contextual use of the words or content. In this thesis, the focus was on discovering underlying meanings of the words or the content³⁶⁰ of the prevention of money laundering in Dubai.

Summative content analysis then offers more a word count of key terms; it examines language for the purpose of classifying substantial amounts of text into a number of themes that represent similar meanings and/or understanding of problem³⁶¹. These themes can represent either explicit communication or inferred communication and thus the aim of content analysis is “to provide knowledge and understanding of the phenomenon under study”³⁶². In this thesis then, content analysis is defined as a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes.

While the 6 sections of the semi-structured interview schedule were decided beforehand, based on previous research and the literature review there was still room for those interviewed to express themselves beyond set interview parameters. In the 30 interviews conducted the frequency of specific key words were counted, with source or speaker identified. Recurring key

360 Earl Babbie, *The practice of social research* (Cengage Learning 2012); Marci Catanzaro. 'Using qualitative analytical techniques' (1988) *Nursing research: Theory and practice* 437; Janice M. Morse and Peggy Anne Field. 'Qualitative research methods for health professionals' (1995)

361 Robert P. Weber. 'Basic content analysis, quantitative applications in the social sciences' (1990) 19 Sage Publications, Inc, Beverly Hills, CA 24

362 Barbara Downe-Wamboldt. 'Content analysis: method, applications, and issues' (1992) 13(3) *Health Care Women Int* 313

words were identified by systematically reviewing each interview. From this method key themes emerged from the research that reoccurred in the financial private sector, the Central Bank and law enforcement. However, rather than rely on one reading of the interview they were reviewed three times; the first review identified key recurring words, the second, key themes, and the third themes were those that cut across the different sectors under review.

Such an approach has its advantages as it is unobtrusive and nonreactive way to study the phenomenon of interest³⁶³. It helped provided basic insights into how words are used, and common themes. The success of content analysis, however, depends primarily on the coding of data placing a quantity of data into key themes. Once completed relationships, if any, are discovered and recurring themes are identified. Although content analysis was useful for this research, the lack of a firm definition and procedures potentially limits the application of content analysis³⁶⁴. It has the potential to produce false positives i.e., items of interest might be missed, and that such analysis is open and shapeless as notions of the subject under study change. It is hoped, however, that by reviewing the interviews three times that such mistakes are at a minimum.

4.5. The limitations to research

With all research there are limits to what it can achieve. This research is no different, and therefore the following sections are a reflection on what the limits of this research are, and so that other academics that wish to continue to research into money laundering and contribute to this debate can review and amend depending on the research, particularly in Dubai due to the paucity of research in the UAE n criminal justice issues.

363 Earl Babbie, 'The practice of social research' (Cengage Learning 2012)

364 Renata Tesch, *Qualitative analysis: Analysis types and software tools* (Falmer Press, London 1990)

4.6. Problems faced in interviews

Due to the nature of the research and people interviewed there were a few issues with the method chosen. Gaining access to respondents and making the necessary arrangement(s) to visit premises, in confirming and keeping appointments and securing the necessary permission³⁶⁵ was a problem in this research. In addition the problem with the interviews once access, was secured was that so many of the respondents were busy and had limited time available with many important cases is pending. The interviews were, however, valuable, and it was important to interview a section of people involved in AML in Dubai rather than from one agency.

The final, and perhaps most contentious part of the interviews, particularly with the police, was interview bias. As a serving police captain in Dubai there were dangers of bias in how the data was solicited, recorded, or interpreted. Therefore a check list of potential biasness was developed prior to the interviews. These were, in brief (see chapter seven for full discussion).

Stereotyping, particularly those employed in the financial sector and personal view and previous experience of the sometimes obstructive relationship between the police and financial sector; inconsistency in questioning, which was a problem when interviewing high ranking senior police officers as 'respect' and honour are expected to be shown to elder and people in 'important positions' in UAE culture; this was compounded by potential snap judgements or 'first impression errors' (either positive or negative), giving more credence to information from a respondent already known in some capacity rather than his responses, knowledge, skills, or answers; this was a problem that needed addressing and constant review as potential negative views, particularly of some of the more reluctant respondents in the financial sector and limited information on AML obtained.

³⁶⁵ Colin Robson, 'Real world research: A resource for social scientists and practitioners-researchers' (1993) Blackwell Publishers Ltd., Oxford

Furthermore, there were aspects of this research that were considered highly important by myself (i.e., sharing information), which needed careful management so as not to overshadow other worthwhile parts of this research such as lack of knowledge and skills on part of the police in preventing money laundering. It is felt that this halo effect was dealt with as the results (see chapter six) illustrate positive and negative views of the financial sector and policing of money laundering.

Finally, there was always a danger of the ‘contrast effect’ i.e., strong respondents followed by less qualified, knowledgeable ones. To prevent this happening interviews were arranged, where possible, approximately one a week and all respondents were numbered rather than named and the interviews were analysed at a later date rather than immediately to avoid this potential affect. The issue of non-verbal communication was also considered; unintended or intended physical postures, movements, facial expressions can lead to different responses. In Arabic culture eye contact is expected, however, deference to people of higher ranking and social status is also part of the culture. Therefore, adjustment was needed depending on interviewee (this is discussed further in chapter six).

Therefore, as part of this research, once each interview was completed and a period of reflection on how the interview was conducted. As a police officer some respondents might have produced ‘guarded responses’ and as such limited information was discovered. This, however, is a problem for all research as demographics and personal conduct affect the outcome from access, interview to final data obtained.

There was also the question of accessing documentation. Legal statutes, conventions, national laws were easily accessible. However, internal documentation of organisations in the private sector was far more difficult, if not impossible to secure. For example, access to a clear, documented, strategic approach to preventing money laundering in the UAE was unobtainable. This is understandable regarding issues of company and client confidentiality but evidence that all organisations in the financial sector had a clear strategic approach or even considered money

laundering a serious issue in the UAE was limited. Instead, I had to rely on the interviews for verbal rather than documentary evidence that the private sector was doing all it could to prevent money laundering in the UAE.

4.7. Ethical considerations

There are some important key principles in social research: voluntary participation, no harm to participants, anonymity and confidentiality, avoiding the deception of subjects, analysis and reporting of final information/data, and political considerations, which has been illustrated above. All of these issues were considered and reflected upon in this research project.

In the course of any research the researcher(s) are presenting the project but also themselves. In these circumstances, the question arises as to what should and/or will be discussed. All those interviewed were informed that, if requested, access to this research is possible with perhaps the exception of some sensitive data obtain in an interview, which has been deleted from the research notes. In this situation then the role(s) of the researcher and the content needed to be explained. However, as the research developed and the role(s) modified accordingly, so the account that is provided by the research is subject to change. This research, thankfully, did not alter that much. Questions were omitted from interview schedule as requested. However, in some interviews people were willing to talk about matters that were previously decided as too sensitive. Respondents would stray from the questions set and while the information received was highly informative and interesting a decision was made that this was data beyond the parameters of the research that had been negotiated.

Due to its very sensitive nature and dealing with powerful and high-ranking individuals in respected sectors in the UAE, five precautionary steps were taken. These were:

- Be mindful of any harm which could result from the research

- Determine who/what institution might be harmed and in what way if acting inappropriately
- Assess the possible risks and examine safety measures already in place to see if more could be done to protect respondents identification
- Keep a detailed record of all results, and
- Re-evaluate the process, assessment of project and debrief all subjects involved if requested.

In this research all the ethical considerations were followed. Apart from wishing to produce an ethical and thoughtful and useful piece of work, conducting oneself in a professional and ethical manner, no research should ruin the 'field of opportunity' for potential research by behaving in an unethical manner.

Furthermore, this research is the work of an individual, it has been made clear that this work is of interest to key individuals outside of Dubai. These contacts were direct and from high ranking officials in the UAE. Therefore, while this research has no sponsorship it has become of interest to those in governmental circles. This became obvious while conducting the research, which added pressure with requests for the final report to be disseminated policy makers in the UAE. Rather than inform those that were still to be interviewed it was decided that such information should be kept quiet. The reason for this is that a substantial number of interviews had been recorded. It was impossible to inform all of those previously interviewed that this research had now aroused interest. It would have potentially altered the feedback from interview yet conducted as such information might alter quality of interviews with people concerned about influence on research outcomes and publication of all data previously obtained.

Moreover, ethical issues arise concerning the impact of this study; this is considered at different levels such as the research results and impact on those interviewed and those working as practitioners and AML, the contribution this research make to existing knowledge on the subject,

and implications or those tasked with developing policy. As with all research reflection was required on both the content of the study and the way in which is presented and written. The language of research can sometimes be impenetrable, with the key points and messages lost in jargon but a decision was taken early on to attempt to produce an accessible ‘document’ and reach a wide as possible audience and thus this research is of a far more practical rather than theoretical nature.

4.8. Practitioner Researcher or Research Practitioner

As indicated in this research, the author is a professional police officer and thus access to some of his fellow police officers was straightforward. Access to those in the financial sector was a little more difficult, but accomplished. This project, however, has benefits for the police and financial sector. Firstly, personal and professional development and increasing the knowledge base of the author. Secondly, and more importantly, the knowledge created by this research and the changes needed to combat money laundering in the UAE. From this perspective, the researcher can be said to be a practitioner researcher in accordance with³⁶⁶ the definition that ‘the practitioner is someone who holds down a job in some particular area and at the same time is involved in systematic enquiry which is of relevance. However, since the researcher was temporarily suspended from police duties, it could be said that it was more of a researcher practitioner’s role. Either way, the research is invaluable and a contribution towards developing a ‘better’ policy and ultimately practice in preventing and prosecuting those that engage in money laundering in the UAE and elsewhere.

Aware that this research produced some ethical issues, it did not place anybody in a position of danger nor compromise. No covert methods were required to access information but it was clear that some of those in the financial sector were concerned about my role as a member of the UAE police force. In this context my practitioners’ role was detrimental to the research. Even though it was made clear I was primarily researching this subject for personal reasons rather than

366 ibid

organisational ones. Therefore, such research might be encouraged in the future, drawing on the strength and knowledge of practitioners, it is a balancing act where one has to be both open and objective.

4.9. Conclusion

As with all research there are advantages and disadvantages to the methods used; this thesis is no different. It is hope, however, that this chapter defends the methods chosen and has explained and highlighted the limitations of these methods as well. These methods and the execution of them, however, have affected the results, in both a positive and negative way. It is to these that we now turn.

Chapter Five

Results and Interview Analysis

5.1. Introduction

This chapter includes the background data on the respondents as a starting point of analysis. This background data is the demographic profile of years employed in international financial sector, years employed in Dubai financial sector, age ranges of respondents, positions held in financial sector and in law enforcement bodies, ranks of those employed in specific AML bodies, and direct responsibility for compliance in company are presented. In the next and major part of this chapter, the interviews conducted with the respondents are analysed in some depth. Respondents were limited to a total of 30 of the 56 respondents selected, where the largest difficulties in achieving larger sampling of the population included the private nature of the culture along with the time available for the research and the access to a larger population. Data on interviewees

The total number of people interviewed in this research project was thirty out of a possible fifty-six people approached; of these seventeen were from the financial private sector, three from the Central Bank, six from the AMLSCU and four from AOCD. The majority of the respondents that declined to be interviewed were from the private sector twenty-one citing the reasons above, with two from Central Bank and three from law enforcement; the latter two sectors, however, made it clear that work commitments prevented them from participation in the project

Interviews

During the interviews, three themes in particular emerged. These were the use of experience in making decisions regarding money laundering, which was thought invaluable; letting evidence determine the direction the 'case' went in employing the use of technology to 'mine' information i.e., the analysis of data transactions on an account(s) and track and trace patterns of customers' behaviour, and the willingness of the banks, police and organised crime unit to use the full panoply of sanctions available to them to deal with illegal criminal acts. These recurring themes

discovered in this research are considered ‘views from the inside’ of those employed in some AML capacity and considered to be experienced with knowledge of money laundering issues in their specific positions, and sometimes past experiences.

5.2. Data on interviewees

The total number of people interviewed in this research project was thirty out of a possible fifty-six people approached. The individuals who completed the interview process included seventeen from the financial private sector, three from the Central Bank, six from the AMLSCU and four from AOCD. The majority of the respondents that declined to be interviewed were from the private sector twenty-one, citing the reasons of privacy as the largest reason for objecting to complete the interview process. However, two from Central Bank and three from law enforcement declined participation as work commitments prevented them from participation in the project.

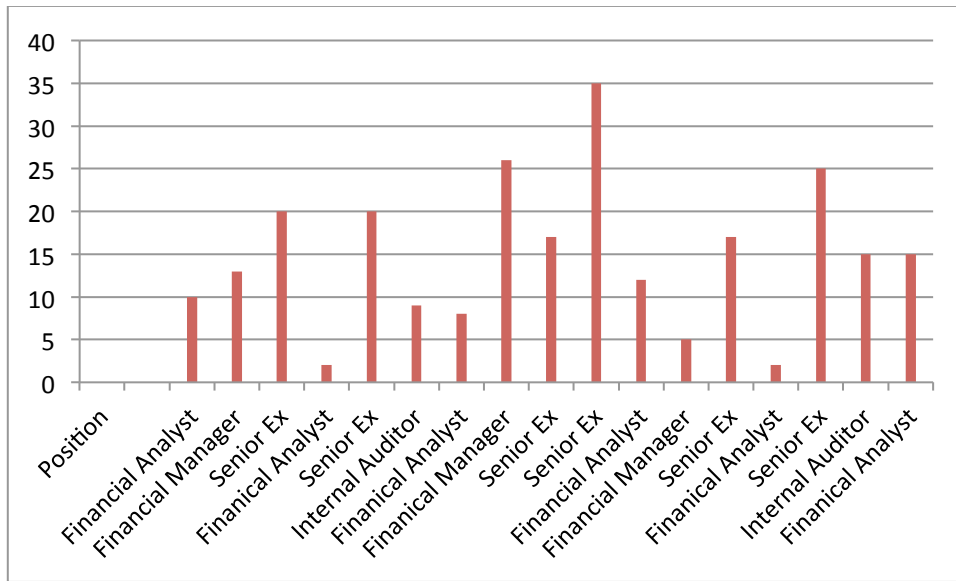
To secure data on key individuals in the UAE is a difficult task. The cultural differences in this region and jurisdiction reduces access, which is a major issue regardless of the position of the person. Privacy and family life are of paramount importance to the Arab culture, and as such, this view of life is extended to those residing in the UAE employed in the financial sector. The problem of access has already been raised in the previous chapter (see chapter five) and such limited access has without doubt had some impact on the results. In addition, this type of sampling is referred to as a convenience sampling due to limited time to conduct this type of research and the access to larger sampling populations of respondents by the researcher.

The ‘raw’ data is presented below in graphical/tabulated form with analysis of such data below. The first table presented considers the years of service spent in the financial sector of those interviewed in their career.

5.3. The Raw data

The ‘raw’ data is presented below in graphical/tabulated form with analysis of such data below. The first table presented considers the years of service spent in the financial sector of those interviewed in their career.

Table 1: Position and Years in Financial Sector

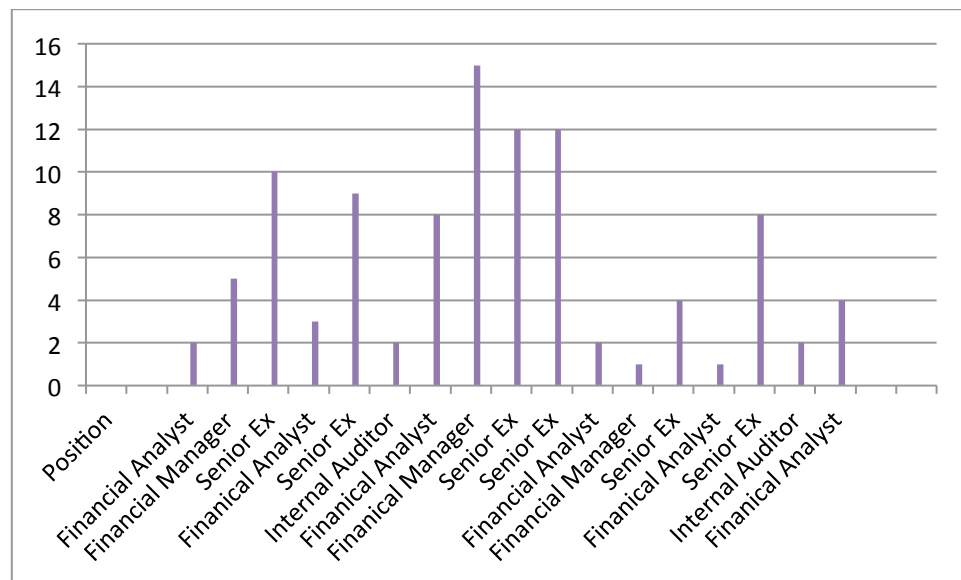


As part of all interviews, some background information on those involved in the financial sector and police enforcement was sought (i.e., age, gender, length of service). This reason for this was to see if experience, position in company and years of service was linked to knowledge of AML measures. In Table 1 above, there is a breakdown of current position of employees interviewed and total years of service in the financial sector. Those with the longest period of service in the financial sector were reflected in those in the highest current position with senior executives and financial managers with the longest period of service in the financial sector. This was the total of year service in the financial sector in home country and in Dubai (see Table 2 below for length of service in Dubai only).

However, what was noticeable from the interviews was that of the seventeen interviewed thirteen had some AML qualification. Those three without an AML qualification were senior executives. Whilst those interviewed had a range of positions – financial analyst, financial manager, internal auditor, and senior executive – the financial analyst had the most knowledge and understanding of AML prevention. It was also noticeable that those with the longest service, the senior

executives, were also the least knowledgeable regarding AML prevention. It appears from the interviews that AML prevention was not considered as important an issue in the early parts of their careers as it is currently, due to working in the financial sector. Respondents generally stated that it was something that ‘passed them by’ or ‘briefly touched on’ some years ago during a long career.

Table 2: Position and Length of Service in Dubai Financial Sector



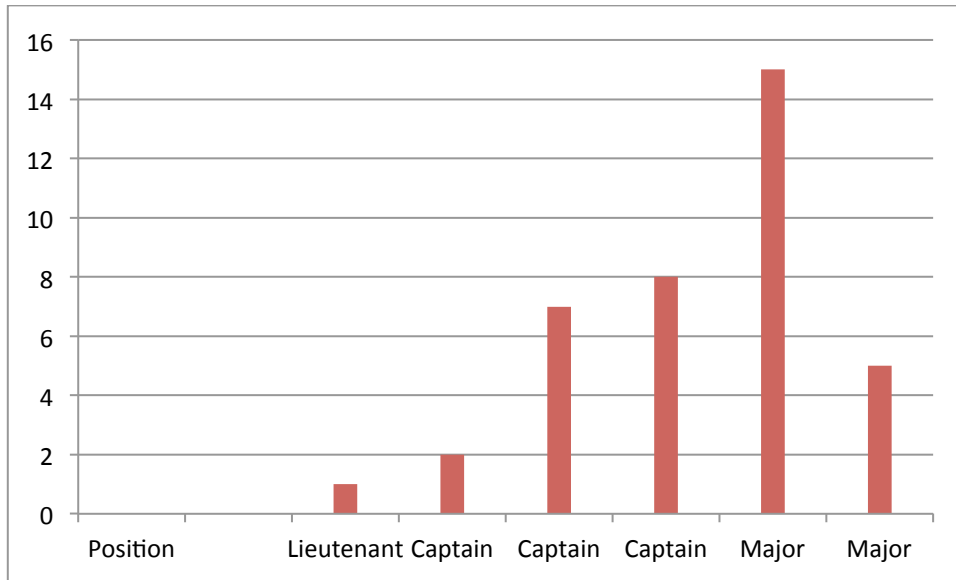
In Table 2 above information was requested from the respondents on how long they had worked in Dubai in the financial sector. The reason for this was to assess if there was a perceptual difference in working practice regarding AML to other jurisdictions they had worked. All those that worked in Dubai were previously employed in the financial sector in ‘western’ jurisdictions (i.e., Australia, USA, United Kingdom) where money laundering is considered a serious matter and prosecution sought where possible. Even though a signatory too many international conventions and recommendations such as FAFT, Dubai is a completely different cultural context in which to work. Therefore, information was sought on the perceived seriousness the financial sector took regarding AML practice money laundering in Dubai. The results were mixed with senior executives ‘stating there is no difference anywhere in the world ‘to financial analysts claiming ‘AML measures are secondary to making money, regardless of financial risk’. There was clear view of practice in Dubai; this could be down to the limited number of people interviewed, interview bias (people not wanting to offend police captain from Dubai), that

practice is erratic and uncoordinated depending on company and key individuals with responsibility for AML, or that there is no major problem regarding AML practice in Dubai.

These was one key result from these interviews; those with the longest service in Dubai tended to claim that there was no difference in practice to anywhere in the world. It is impossible to draw any clear conclusion from this result but is possible to suggest that those with a long service history in Dubai are far more sensitive to criticism of practice in Dubai to those 'newly' arrived and prepared to speak openly about shortcomings in expected practice.

The same background information was also requested from law enforcement officers interviewed. In the following Table 3 there is the position/ranks of officers interviewed and length of service in years in AMLSCU. Before I embark on any detailed analysis of the data obtained in this research some explanation of the structure of the police in Dubai is useful. All police officers, regardless of rank are male. All attend the police college and are taught 'Dubai' law. The police ranking system in Dubai is based more on a military system (i.e. cadet, lieutenant, captain, major etc.) than civil system. This system therefore reflects the primary role of the police in Dubai, as one of maintaining order. Furthermore, due to its geographical location this militarised organisation of the police is a potential supplement or secondary 'force' in the event of social upheaval. The officers are either transferred into the AMLSCU or can request a transfer. This information was made apparent in one of the interviews. It was assumed, and is on reflection an error of judgement, that all officers were transferred unless a logistical reason was forwarded by the individual in question. The reason these circumstances were not considered is that as a serving police captain promotions tend to be automatic and transfers decided by heads of the services.

Table 3: Position and Years in AMLSCU



The age range of the respondents interviewed for both the police and those employed in the AMLSCU was from 29-60. Age was considered a useful indicator of experience and opportunity for personal career advancement but also to acquire specialised knowledge in a particular field of policing i.e. AML. There were no expectations from the research that the more experienced the more ‘expertise’ in a particular specialism the officers might have as personal contacts and family connections help determine career paths in Dubai, and that there is no specific police instruction regarding AML practice. This, however, is similar to other jurisdiction such as the United Kingdom where police officers has no specialist knowledge of AML.

What was revealing is that while none of those employed by the police had any formal AML training neither had those seconded to, or applied to work for the AMLSCU unit in any capacity i.e., courses abroad, international conferences on AML strategies and practices. From all of the interviewees employed by ‘policing bodies’ none had specific knowledge of AML prevention and analysis. Instead they relied on familiar police methods and approaches to crime, personal contacts in the financial sector to assist in cases and formal links to the financial sector. This situation is far from ideal. This situation, however, was one that the police recognised as unacceptable and sought specialised training in AML techniques after transfer. This ‘lack of knowledge’, however, is not something that the police in Dubai experience; it is often a universal experience of police officers around the world.

This request for specific ‘instruction’ on AML techniques however, was a recurring theme in interviews with those employed in the AMLSCU and AOCD. This is understandable, as reference was made to the threat of organised crime and money laundering and its effect on the Dubai economy and reputation as a financial sector. Previous research has illustrated, however, that money launderers do not always use the legal banking system. If they do it has been established that they purchase fiscally opaque products, meant to secure future medical coverage and personal pension plans. Only a marginal portion of the financial assets is assigned to speculative financial risk³⁶⁷ in the legal system with laundered money used elsewhere (i.e., gold market) ³⁶⁸.

This research - due to lack of secondary data and evidence of money laundering - did not confirm nor deny that this situation was also happening in Dubai. It did, however, highlight that the diverse financial sectors and poorly regulated markets (i.e. in gold) were attractive to organised crime and corrupt individuals to launder illegal funds.

In the next section the qualitative data obtained from the interviews is analyzed. These interviews were informative and revealing and highlight the need for AML to be updated and law enforcement officers provided with continuous development regarding AML practice. This is illustrated by the many comments made by officers regarding their own needs to fulfil the role(s) expected of them. Many were passionate about this as they considered money laundering a threat to Dubai’s stability and attraction as a safe place to conduct business. This is also an integrity issue, and as one respondent indicated: ‘Yes... there are people who want stability in the United Arab Emirates and the transfer of their property... It is difficult to determine the source of the funds sometimes due to the instability of the country from which they came and

367 Michael Levi and Petrus C. van Duyne, *Drugs and Money: Managing the Drug Trade and Crime Money in Europe* (Routledge 2005)

368 Armando Fernández Steinko. 'Financial channels of money laundering in Spain' (2012) 52(5) Br J Criminol 908

lack of proof of the source of the funds'. This problem, yet again, is not one peculiar to the UAE - it is one that plagues the international financial system³⁶⁹.

Interviews: 'Views from the inside'

During the interviews, three themes in particular emerged. These were the use of experience in making decisions regarding money laundering, which was thought invaluable; letting evidence determine the direction the 'case' went in employing the use of technology to 'mine' information, e.g. the analysis of data transactions on an account(s) and track and trace patterns of customers' behaviour, and the willingness of the banks, police and organised crime unit to use the full panoply of sanctions available to them to deal with illegal criminal acts. Therefore, while the following issues are presented independently they are interconnected; they are connected in the UAE and are also part of the international financial sector.

5.4. Factors Encouraging Money Laundering in the UAE

The problem with money laundering in the UAE, as expressed by our respondents, is that it is seen as more of an external cause by others – individuals and nations -rather than an internal issue. The factors presently contributing to this is the political instability of the region. While the UAE has remained calm and settled other neighbouring nations have experienced unrest and turmoil. In this context those with legal and/or illegal funds seek a route to transfer money to a stable, and close-by, country that is easy to reach and travel to without the need for a visa.

As one senior executive in the financial sector said 'you know any cross-border transactions incoming and outgoing with Afghanistan, Iraq, some African states and others would raise suspicion. It is very hard for us to decide on the legality of these funds. It is impossible to say if

³⁶⁹ Ross, D. (2005). Money laundering. In L. Salinger, (Ed.), Encyclopedia of white-collar & corporate crime. (pp. 543-546). Thousand Oaks, CA: SAGE Publications, Inc. & Adamoli, S. (2002). Money laundering. In D. Levinson (Ed.), Encyclopedia of crime and punishment. (pp. 1073-1077). Thousand Oaks, CA: SAGE Publications, Inc.

there is no money laundering from other places, which do not have any internal conflicts or what you called them: developed states'. He further went on to say, and contradict himself, 'we don't have any organised crime here in the UAE. However, the UAE, being one of the important financial centres, has always been on the list of these organised criminals in order to launder their money'.

There appeared to be a consensus of opinion in the financial sector and AMLSCU officials, however, that 'black money' enters the UAE as a result of two main organised criminal activities: illicit drugs and arms smuggling. It was reluctantly admitted by the police in particular that due to its geographical location and diverse population that '*there are chances that these criminals bring their illegal money to the UAE to launder it through our banking or Hawala system*'.

Preventing money laundering is also an integrity issue, and as one respondent indicated: 'Yes...It is difficult to determine the source of the funds sometimes due to the instability of the country from which they came and lack of proof of the source of the funds'. This problem, yet again, is not one peculiar to the UAE; it is one that plagues the international financial system³⁷⁰.

5.5. The 'Know Your Customer' Policy

All those interviewed were keen to point out that there is no 'hard and fast rule' in spotting money laundering. Each case has to be approached based on the existing evidence available. After all, even if a case of money laundering, it will be unclear at what stage in the process it would be. Therefore, those interviewed were cautious about identifying an account early on as one that had used laundered funds and proceeded with caution. Once a customer has established a 'pattern' it is easier to track a customer's behaviour. Evidence then is both the knowledge and data on

³⁷⁰ Peter Alldridge. 'Money laundering and globalization' (2008) 35(4) Journal of law and society 437; Michael Levi and Peter Reuter. 'Money laundering' (2006) 34(1) Crime and Justice 289

customers' interests and the ability to review account information and unusual activity, identified as frequent small transactions, inaccurate information, and numerous accounts³⁷¹.

This 'real time' assessment of transactions, if used correctly, helps expose some potential frauds. This communication of 'evidence,' however, is also a problem. Due to the established approaches to preventing money laundering substantial information is passed on and processed. Information is coming from computerised notification, personal contacts and external sources etc. The Know Your Customer regime has thus evolved into a set of precautionary measures involving reassessment of client accounts based on a gathering of information for differing sources of credibility³⁷².

One respondent described the process of 'knowing your customer' by explaining that 'from our new clients, we ask them to produce a copy of their passport, a driving license, their employment status and the company for which they work, and any other documents that show their name, date of birth, nationality [and so on]. To what extent these documents are real or forged, we don't know, especially in the case of non-UAE documents'.

It was clearly the case amongst many in the financial sector that procedures were followed more as a 'defensible decision'³⁷³ or 'defendable compliance'³⁷⁴. One respondent interviewed simply

³⁷¹ Longfellow (2006).

³⁷² MARK W. Fraser, A. Rosen and EK Proctor. 'Intervention research in social work: A basis for evidence-based practice and practice guidelines' (2003) *Developing practice guidelines for social work intervention: Issues, methods, and research agenda* 17; Petter Langseth. 'Measuring corruption' (2006) *Measuring Corruption*, Burlington: Ashgate Publishing Company 7

³⁷³ Hazel Kemshall. 'Risk assessment and management: An overview' (2007) *Handbook for Practice Learning in Social Work and Social Care: Knowledge and Theory*. London: Jessica Kingsley 153

³⁷⁴ Richard V. Ericson. 'Ten uncertainties of risk-management approaches to security' (2006) 48(3) *Canadian Journal of Criminology and Criminal Justice/La Revue canadienne de criminologie et de justice pénale* 345

said *'we play by the rules of the game'. I can understand if someone lower down {meaning below executive level} passed everything on as a way to protect his self'. He won't want to be blamed if some piece of information that he did not pass on is found out to be important in a case later on.*

Furthermore, a different respondent in the financial sector suggested that *'some bank managers argue that the competition amongst banks to attract customers has meant that the verification of a client's documents is sometimes not as thorough as it should be...and we can't know the intention of the person who wishes to open a bank account. It could be an ordinary person'. Some financial managers accepted that the system is not totally free of corruption, in spite of the provisions put in place to ensure that transactions are properly recorded.*

Two key important issues further developed from this part of the interview schedule. Due to the vast wealth of some of the people that used the financial sector in Dubai it was suggested that some transactions were briefly reviewed. This *'light-touch'* approach, however, is something that can be levelled at the financial sector elsewhere i.e., Nat West Bank in United Kingdom and lead to money laundering. In addition there was some concern from the police in particular about Political Exposed Persons (PEP). As one respondent said *'we know there are some people that bank here that are involved in illegal activity but some of the banks don't seem to mind.'* This view echo's Gill's and Taylor's (2004) where *'Know Your Customer'* rules can have negative implications and alienate established customers.

There are conflicting views then between those representing law enforcement bodies and those in the financial sector; the financial sector tended to play down the level of corruption while law enforcement bodies were aware of some corruption but limited in what could be done without the necessary evidence.

Furthermore, requests for information on customers, particularly from policing bodies encountered obstacles. This is not clear if the financial sector was obstructive or disorganised or both in some cases. However, the financial sector was aware of the role that it had to play in

identifying potential money laundering, but the procedure for identifying high-risk accounts is an ongoing process, applied to new and existing customers. Any transaction that is not compatible with the economic status of the customer is considered suspicious and is reported by financial institutions to the Central Bank for further investigation. However, there was no indication that the amount of money was a key element in the decision regarding a transaction as suspicious. One respondent made it clear by saying that *'a suspicious transaction has nothing to do with its amount. I know the common sense approach lead us to believe that any big transaction could be suspicious, which is wrong. The criminals are very clever and they know that bank officials will monitor any big transaction'*.

5.6. The Investigation of Cases and Arrests

The financial sector respondents felt that they were part of the solution rather than the problem and willingly worked with the criminal justice system, if required. They were keen to also emphasise that it is not in the interests of the financial sector to be party to money laundering. Therefore, the respondents were vociferous in defence of the financial sector, which would be expected, but produced a sound, logical case, that if they had a vested interest, if at all, it was to see banks as honest and trustworthy to attract customers.

It was also suggested that the police needed to do more regarding the 'policing' of money laundering. This was particularly the case when provided with overwhelming information from the banks that suspicious activity had occurred regarding an event. Often it was felt that some type of investigation would be useful, but as was pointed out by one police respondent the 'banks' did not always seem keen to expose corruption in their business and so were vocally supportive but official obstructive. This is similar to other business sectors that discover internal frauds³⁷⁵.

³⁷⁵ Lawrence A. Cunningham. 'The Appeal and Limits of Internal Controls To Fight Fraud, Terrorism, Other Ills'(2004)' 29 Journal of Corporation Law 267;Khalid Farooq and Graham Brooks, 'Arab fraud and corruption

Furthermore, everyone interviewed agreed on the necessity of contributing to the struggle to prevent money laundering, organised crime and terrorism, however, opinion differed on the 'small-scale' misappropriation of funds with no clear view from either law enforcement or the financial sector. In addition views diverged on the emphasis of punishment and persuasion as part of a regulatory regime³⁷⁶. Law enforcement preferred unsurprisingly punishment to deter future acts while those in the financial sector suggested a more light-touch approach to wayward acts and actors. As illustrated elsewhere, getting the right balance is weighed down with practical problems ³⁷⁷.

Developing a sound case of money laundering, however, is difficult, particularly if a successful arrest is to be made and subsequent conviction. One police officer explained '*first gather information and then continue to build the criminal case based upon your initial investigation. Our job is to start looking for the mistakes they have made to find foolproof evidence; it is not an easy job, honestly*'. The police officers interviewed found it more convenient to focus on the criminal element of the crime, in other words, to ascertain that the suspect has indeed committed the crime. The majority of police officers said that the financial aspect of the money laundering was of less concern to them than the criminality of the act itself.

Thus, while accepting the relevance of effective laws to prevent money laundering, many of the officers said that this should be complemented by a better system of criminal investigation in which police officers are trained in, and able to use, more sophisticated methods of criminal and financial investigation. Some of the police officers also mentioned, as a very important hindrance

professionals' views in the Arabian Gulf', vol 20 (Emerald Group Publishing Limited 2013) 338; Michael Levi. 'Taking the Profit out of Crime: the UK Experience' (1997) 5 Eur.J.Crime Crim.L.& Crim.Just. 228

³⁷⁶ John Braithwaite and Peter Drahos, *Global business regulation* (Cambridge University Press 2000)

³⁷⁷ John Braithwaite. 'Beyond positivism: Learning from contextual integrated strategies' (1993) 30(4) J Res Crime Delinquency 383; John Braithwaite. 'Large business and the compliance model' (2003) V. Braithwaite 177

to an effective money laundering investigation, the fact that the Dubai Police do not have access to all financial data and information. As suggested, *‘if the Dubai Police is given direct access to the database of STRs and CTRs, it will improve our efforts in fighting organised crime... and money laundering in particular’*. However, many of the respondents said that the transfer of cases from the AMLSCU to the Attorney General and the Public Prosecutor and then onto the police takes far too long for a case to reach its conclusion.

Furthermore, even when knowingly victimised, individuals and organisations fail to report money laundering and other acts. An individual may feel embarrassed and fail to report the crime; an organisation might investigate in-house and decide that it would be best to resolve the matter internally, even though a crime has been committed, to protect its public reputation, rather than open a ‘Pandora’s box’ and expose the level and depth of corruption in their company³⁷⁸.

The police respondents recognised, however, that some institutions had considered the problem of money laundering and were trying to ‘do something’ about it. These organisations, however, appeared to have had little success, and acted ‘after the event’ rather than prevent it, which is necessary to protect the integrity of business. The problem, however, appears to be one of integrity within some financial institutions as one part of the tripartite structure – legal framework, private financial sector and police - needed to work together to help prevent/reduce money laundering.

When asked ‘do you find it easy to discover money laundering, and arrest suspects’, an AMLSCU representative suggested that there is *‘a general consensus of opinion amongst the bank managers and the AMLSCU officials that money laundering is not an easy crime to detect. Criminals use different tactics in order to hide the true origin of black money’*.

³⁷⁸ Michael Levi. 'Money laundering and its regulation' (2002) 582(1) Ann Am Acad Pol Soc Sci 181

However, the respondents from all sectors interviewed were aware that the UAE is committed to sharing financial information with its overseas partners in order to strengthen mutual cooperation to prevent money laundering and the financing of terrorism. The AMLSCU were particularly aware though, that criminal elements were taking full advantage of the cash-based economy in the UAE to launder money in the region. One respondent made it perfectly clear when they said *'If, for example, a person suddenly becomes rich without having any proper business or employment, there is no mechanism in place to ascertain the source of that person's money'*. It was further believed that criminals are also taking advantage of the weak immigration control systems increasing the problem of policing a growing illegal population and cash payments and transfers via the Hawala system³⁷⁹.

Pursued on the matter of how they would arrest someone investigated for money laundering, the police generally agreed on the complex nature of this process. All agreed that money laundering is a different and unique type of crime; it varies from one case to another depending upon the nature of the case. In some cases one respondent said, *'we arrest people on the spot, whereas in other cases we have to search homes, offices [and so on]. In some cases, we do not even manage to arrest the accused person for years.* All the officers agreed that, *'generally, cases referred to them via the Customs Authority are easier to handle than cases that have come via the AMLSCU'*, as suspects in former cases could be arrested immediately at the port of entry.

The only available information, however from the Dubai police released by the Director of Investigation was from 2002, with 16 cases associated with money laundering reported to relevant authorities. Nonetheless, some of the cases are still pending as they require detailed investigation years after they were discovered.

³⁷⁹ Michael Levi and Peter Reuter. 'Money laundering' (2006) 34(1) Crime and Justice 289

5.7. Cooperation and Information Sharing

It was also suggested by those working for police institutions that the financial sector needed to do more regarding the ‘policing’ of money laundering, such as increased monitoring of financial activity through the use of money tracking requirements of organisations, such as invoicing as these sources can indicate where money laundering may occur³⁸⁰. This was particularly the case when provided with overwhelming information from the Anti-Money Laundering Suspicion Cases Unit (AMLSCU) that suspicious activity regarding transactions had occurred regarding an event.

The role of the AMLSCU was made clear from one respondent: ‘we receive suspicious cases and we study the situation and if there is any inquiry, we notify the bank. And if it is proved that the transaction is illegitimate, we notify prosecutors and police and establish procedures to prove evidence to the court’.

This sharing of information and communication is a necessary part of the system of preventing money laundering. All of the respondents interviewed agreed that without ‘sound’ information and clear channels of communication the UAE leaves itself open to money laundering, particularly from some of its neighbouring cash-based nations and those with a reputation for corruption. A few of the respondents named specific states and some even specific regions of a country as problematic. However, no evidence was forthcoming to substantiate these claims, and as such, it was decided keep such information anonymous rather than speculate on the personal judgement of a few respondents.

This communication, however, is a dual exchange of information. For example, one respondent from the AMLSCU made it clear how important the financial sector is in preventing money

³⁸⁰ Ramage, S 2012, 'Information technology facilitating money laundering', *Information & Communications Technology Law*, vol. 21, no. 3, pp. 269-282.

laundering. It is not a role the *'police and law enforcement' bodies can achieve unless cooperation is forthcoming*'. As one officer said *'we receive information from the banks because they are the backbone of all business in the state... we also receive suspicious cases from exchange houses, and from public or private enterprises...receiving reports from all financial, commercial and economic development in the state'*.

However, one respondent from AMLSCU said that *'all...operating in the country, whether commercial or industrial...if suspect suspicious transactions must notify the Central Bank of suspicious cases...but they tend to receive information from the private sector once an issue is exposed and gets publicity'*.

These competing views were typical of the interviews where personal experience and contacts made a difference on the question of communication and information sharing. It appears that a system of communication needs to move beyond its informal system of information sharing to one of a more formal and standardise system. There was no concern about the use of technology and the spread of what is referred as to *'soft security'*, *'dataveillance'* or *'surveillance in either sector'*³⁸¹, however. This is perhaps because the informal system is part of the cultural context of Dubai. It was made clear, however, that *'this system is not available to everyone'*. There appears to be two present systems running parallel depending on customer; the formal or informal.

One Dubai police officer made his views clear when claiming that *'it is not easy to find evidence in a money laundering case because criminals have thought about the way of hiding money from us. So we need to access to bank records or any financial information but there is too much trouble in the investigation to obtain and swap records'*. Most tellingly *'he added you cannot*

381 Michael Levi and David S. Wall. 'Technologies, Security, and Privacy in the Post-9/11 European Information Society' (2004) 31(2) Journal of law and society 194

fight money laundering effectively by introducing laws alone. You need effective implementation of the law’.

Furthermore, an AMLSCU official said, ‘the facts that the police are not trained in the investigation of financial data do not have expertise in understanding banking records. However, they {the banks} would never welcome the police coming to them and asking for their clients’ records. It does not give a good impression of the bank’.

The majority of the interviews ended on a positive note, however, with many saying such as “it is my responsibility to share information or SARs if relevant”. And the other saying “Money laundering as a crime could possibility be used against us (as a country)”. Some of them say that “I believe sharing of information would help our department and solve and combat money laundering. But we need to give each department chance to do fulfil their objectives in the way that helps investigation to bring the cases to justice”.

5.8. Hawala system

There is concern in political circles in the UAE that the Hawala system is abused to transfer funds. Since Hawala is considered to be an undocumented and non-transparent system with a high resilience to law enforcement and regulation, controlling and applying mechanisms to prevent money laundering, criminal exploitation and potential terrorism is difficult. This view of the Hawala system was supported by many in the private financial sector that felt that ‘*it was a threat to the stability of the proper system (meaning legal system), and desperately needed regulation*’ and ‘*Hawala’s lack of transparency allows it to function as it wishes*’. Perhaps aware of these views the UAE is making progress through highlighting its vulnerability to Hawala, and its business reputation with a public campaign. The result of this campaign, however, are yet, if ever to be assessed.

It further was felt that to ‘police’ the Hawala system that experience and some knowledge of money laundering was important. This, as above, was a view held predominantly by those in the private sector. *As one respondent claimed ‘the police seem to find it difficult to police us let*

alone the Hawala system', he further went on to suggest that *'the private sector could help train the police, if they wanted it'*. The respondent, however, was unsure how this would be accepted and developed.

Experience was a common theme in the private sector, with many claiming that those who are vastly experienced in other businesses that deal with money laundering, fraud and matters of company integrity; it was merely expressed as a point of view that some experience of money laundering was useful. The detection of money laundering, however, is perhaps compounded by the Hawala system. Money transfer, however, is not the only way to launder money, but it is one of the other 'tools' that organised criminal elements use. It is here that those employ in law enforcement illustrated some concern that *'the system is old; it has been around for years...we can't simply change it'*. There was also some 'defence' of Hawala *'we can't simply change just because some western powers are complaining; this is an international problem...but this system has worked for years, why change now?* As mentioned above the Hawala system is not a problem for the UAE; it is one for the whole international financial sector and law enforcement bodies.

When questioned that the Hawala system is a legal loophole used by criminals and terrorism to commit money laundering and terrorism, the response from an AMLSCU Official was, *'I am surprised that after 9/11, everybody was talking about the illegality of Hawala, but nobody demanded punishing those (legal) banks that were used by the hijackers for money transfers'*. However, on the other hand, others thought that the link that was made between Hawala and 9/11 had *'alerted the government to the need to pay more attention to the monitoring of Hawala'*. This is perhaps a step in the right direction but to what extent the Hawala system is resistant to attention and ultimately regulation is for future research.

Seen as 'different' to other types of crime those tasked with protecting the integrity of a legitimate company were fully aware of the negative view held if a breach of security occurred. It was made apparent in the interviews in the financial sector that if a *'business was to be used as*

a conduit for money laundering they could be seen as incompetent, lacking a 'proper' AML strategy instead as a victim of crime'. It is, however, perhaps misleading to view the 'respected' parts of the financial sector in highly regulated sectors in this way. They, rather than many other businesses, spend their time investing the funds they have; they, however, are also vulnerable to individuals and organised criminal elements that wish to launder money and use the legitimate banking sector as a conduit to 'clean' illegal funds (See case of HSBC earlier). However, it was apparent from the interviews that the unregulated Hawala system was seen as damaging to the financial sector as a whole. Those tightly regulated and licensed felt that they were often categorised and portrayed as the same as those based in 'questionable jurisdictions' and the Hawala system.

However, much of what was said in the interviews was speculation, as there is no complete estimate of the number of individuals who are UAE-based Hawala brokers.³⁸²As an attempt to combat money laundering, the UAE has conducted a number of meetings, seminars and conferences to strengthen its efforts in this consideration. A committee was established to visit specific states in 2007 so as to strengthen and implement AML measures. Little progress, however, has been made since these visits regarding the regulation of the Hawala system.

The Central Bank, however, is currently supervising 61 Hawala brokers in the same way as other financial institutions in an attempt to enhance the reputation of this system. The brokers are required to present sheets that contain the names and addresses of both transferors and beneficiaries to the Central Bank. This also includes the completion of the suspicious transaction reports. The new attention given to Hawala is encouraging a number of people to make use of the regulated exchange houses within the UAE. Attractiveness of Hawala is said to include "low cost, speed, anonymity, and versatility", perceived as a threat to global banking industry and

382 Temple, P. 1998. Provided the most essential Elements applied in the Prevention of Money Laundering. Securities Institute Ltd, www.securitiesinstitute.org.uk.

financial security³⁸³. Legitimacy of the Hawala system is critical to achieving global financial structure in UAE Banking³⁸⁴. This is a step in the right direction and the UAE Government (UAEG) has acknowledged the need to regulate “near-cash” markets as well such as the Gold Souk ³⁸⁵ in an attempt to prevent money laundering.

Furthermore, an international supervision committee in charge of the standards for banking regulation and supervision in the UAE, for instance, in Bahrain has recently embarked on implementing AML strategies. This appears a move in the right direction but with money laundering is estimated to be 5% of worldwide GDP or worth more than US\$1 trillion per annum as presented by the International Monetary Fund (IMF) and Interpol, this ‘relationship’ is still limited in what it can achieve. The data from the IMF and Interpol was based on monitoring customer transactions for potential racketeering and illegal asset movement³⁸⁶ and as such is no doubt an underestimate of the percentage of funds illegally transferred around the world.

While the federal laws on AML are equally applicable to the domestic sector and within the DIFC, the obligation for issuing or implementing regulations and overseeing compliance rests upon the relevant regulatory authorities. For instance, the domestic sector involves the Central Bank to control banks, money changers and other related finance sectors, the Emirates Securities as well as Commodities Authority or securities brokers and with the support of the Ministry of Economy. However, a single regulator known as the Dubai Financial Services Authority (DFSA) is in control of all the financial service providers within the DIFC. This is due to the current

383 Dulce Redin, Reyes Calderón and Ignacio Ferrero, (School of Economics and Business Administration, University of Navarra 2012)

384 Fadil M. Bayyari. 'Hawala: The Key Obstacle To Establishing A United Arab Emirates Bank Branch In The US' (2012) 129(7) Banking Law Journal 595

385 Marcel Pheijffer, 'Financial investigations and criminal money' , vol 2 (MCB UP Ltd 1998) 33

386 G. Stessens, *Money laundering: a new international law enforcement model*, vol 15 (Cambridge University Press 2000)

variance of specified obligations that are imposed on various parts of the financial sector within the UAE. The procedures used in AML require the entire practices to produce, maintain AML policies and the related procedures that could be reviewed on a regular basis as part of the practice undertaken in the anti-money monitoring process. Such procedures include a money laundering reporting officer (MLRO).³⁸⁷ The MLRO is responsible for executing AML strategies and must be a senior person from within the business and having the ability to portray sufficient authority to make independent decisions on the roles undertaken in AML strategies and implementation³⁸⁸.

These changes, however, make little impact of the Hawala system. This is an area in need of detailed research, particularly its regulation, but it will undoubtedly be hard to secure access and interview willing participants.

5.9. Key Issues: Building Strategies for the Future

As with all research there are limitations to what it achieves. This research is no different. Firstly, interviews are sometimes time consuming as they require careful preparation, such as making the necessary arrangement(s) to visit premises and confirming and keeping appointments and securing the necessary permission (Robson, 1993). Secondly, the main problem encountered in the interviews was that so many of the respondents were busy and had limited time available. This was because many important cases are pending and as such time was limited. The interviews were, however, valuable, and it was important to interview a broad section of people involved in preventing money laundering in Dubai rather than from one agency. The final and perhaps most contentious part of the interviews was interview bias with one of our team a Captain in the Dubai Police. This, however, is a problem for all research which can affect the outcome from access, interview to final data obtained. Though this is a problem, this research

³⁸⁷ Marcel Pheijffer, 'Financial investigations and criminal money' , vol 2 (MCB UP Ltd 1998) 33.

³⁸⁸ RE Bell, 'Discretion and decision making in money laundering prosecutions' , vol 5 (MCB UP Ltd 2001) 42-51.

would not have been possible without one member of the team from a similar cultural background in a position to access the respondents.

There was also the problem of analysis and examination of secondary data such as official crime statistics and cases of money laundering in the UAE, which was limited. This in turn affected the basis for interviews with key personnel in the AMLSCU, AOCD and Central Bank, in order to evaluate to what extent the prevention of money laundering is to be enhanced in the UAE. This included examining whether the current system is 'fit for purpose' in the age of international trade and commerce.

However, the rate/percentage of money laundered is difficult if not impossible to assess. As illustrated by the percentage of money coming from the proceeds of wholesale illegal narcotics trade that actually gets laundered is a multiple of the sum that has been confiscated, and the value of that multiple depends on how efficiently anti-laundering regime confiscates illegal money (Steinko, 2012).

Furthermore, money launderers do not always use the legal banking system. If they do it has been established that they purchase fiscally opaque products, meant to secure future medical coverage and personal pension plans. Only a marginal portion of the financial assets is assigned to speculative financial risk³⁸⁹ in the legal system with laundered money used elsewhere illustrated (i.e., gold market). This research, similar to other research confirmed that money launderers and productive legal financial sector sometimes have very little in common and that launderers prefer to place money in a shell company with no activity to those that are formally capable of developing a regular productive business activity³⁹⁰. The problem of competition in

389 Michael Levi and Petrus C. van Duyne, 'Drugs and Money: Managing the Drug Trade and Crime Money in Europe' (Routledge 2005)

390 Armando Fernández Steinko. 'Financial channels of money laundering in Spain' (2012) 52(5) Br J Criminol 908

legal banking sector was also a concern raised by a few police officers: *‘in the search for more money, profits, these banks will not always do what is necessary and tell us what is happening with some accounts.*

The problem encountered in this research is that most of the secondary data was either withheld for security reasons i.e. ongoing cases or private considerations i.e. protecting integrity of own company, which is understandable or, and this was the most common theme, there is little available data on money laundering in the UAE, which needs to be addressed. What data was obtained was nonetheless still helpful but it is suggested that recording practices need some attention before we can tackle the problem of money laundering from a policy-type-approach to disseminate practice within and across different sectors in the UAE that deal with money laundering. Data, and particularly criminal justice data is, however, open to criticism³⁹¹ and acts of fraud and corruption are difficult to detect ³⁹².

Regardless of this problem, however, some understanding of the level of money laundering – even if an estimate - in a certain domain is important. From this research it would appear that to varying extents and in various ways money laundering could be, but was rarely assessed (both directly and indirectly) for its prevalence at particular moments, as well as over periods of time. It is still doubtful, however, as to what extent assessments reflect the level of money laundering. There is also similar disquiet regarding the effectiveness of anti-money laundering measures due to its multi-dimensional character. In the UAE efforts have been undertaken to prevent and reduce money laundering. There is, however, little official data, as yet, that illustrates that this is happening. This research is a contribution to this ‘gap in knowledge’ in highlighting the paucity of data that needs to be addressed in the UAE.

391 Steven Box, *Recession, crime and punishment* (Macmillan Education Hong Kong/London 1987);Victor Jupp, 'Methods of Criminological Research (1989)' ()

392 Gary Slapper and Steve Tombs, *Corporate crime* (Longman 1999)

However, a lack of official data is not a problem that is specific to the UAE, it is a worldwide problem. Objective ‘criminal’ data is difficult to obtain, either on a national or international level. One of the problems of drawing on secondary data then is trying to gather international comparison of money laundering with initiatives that do not take into account the variations that exist in the world of international finance³⁹³. In saying this we hope that this original research is step in the right direction in producing some background to present strategies in preventing money laundering in Dubai.

Furthermore, it was discovered that in Dubai, new forms of exchange found elsewhere in Europe, USA etc. instituting a joint form of surveillance - the financial sector and law enforcement - is hardly developed in Dubai. It was as one respondent said ‘*work in progress*’. Elsewhere the hybridization of money laundering with public and private sector connections (i.e., police work in financial sector) is also absent in Dubai. Here there is a clear demarcation of roles. However, communication between sectors is on more of an informal, familial basis than official, and personal, familial contacts keep the flow of information going. A respondent did, however, raise the issue that the internationalisation of the financial sector is ‘*leading to a stage where informal and personal contacts were becoming less important as people from outside {other cultures} were increasingly employed*’.

A telling final difference we discovered is that the homogenisation of procedures such as training, network exchange and the use of information technology were not always so obvious. These procedures were in place but perhaps because of the cultural context and personal, familial networks that are part of ‘Dubai life’ had not reached the stage of homogenisation highlighted in previous research³⁹⁴. This, however, is something that is changing.

393 Philip L. Reichel, *Comparative criminal justice systems: A topical approach* (Prentice Hall Upper Saddle River, NJ 2002)

394 Gilles Favarel-Garrigues, Thierry Godefroy and Pierre Lascoumes. 'Sentinels in the Banking Industry Private Actors and the Fight against Money Laundering in France' (2008) 48(1) Br J Criminol 1

This thesis then is a snapshot of current strategies to tackle money laundering in Dubai. Many issues were highlighted with some – sharing information and professional communication – perhaps in need of immediate attention. However, we are aware that legislative and cultural changes are slow regardless of the jurisdiction. There is also a fear that the cultural context and ‘*way we do it here*’ is lost due to globalisation; as a few of our respondents in the police and financial sector in reference to anti-money laundering practices said ‘*we work in the same industry but different environment*’, ‘*you can’t expect everyone around the world to be the same*’ and the more vociferous ‘*the international community (meaning western interests) is not always right*’ and ‘*at times, it is if we are some backward state in need of help*’. Since money laundering is an international problem working relationships with other jurisdictions is necessary if this crime is to be prevented in anyway.

5.10. Conclusion

In this chapter themes emerged that indicated that AML practice in Dubai is in need of some attention. This is particularly the case for those tasked with the supervision and regulation of the financial sectors, and other markets (i.e. gold market). This is compounded by the lack of skills and knowledge of law enforcement in dealing with cases of money laundering. This is not a criticism of law enforcement bodies; it is a result of this research that police officers illustrated professional reflection and requested increased resources and information and education on how best to prevent this crime.

Furthermore, the lack of communication was a concern, primarily from law enforcement that considered the ‘sometimes’ limited response for information from the private sectors as indifference, studied obstruction and/or in-house incompetence. Regardless of the potential reason a clear channel of communication about possible cases, suspicious behaviour and access to client accounts needs to be addressed. However, rather than be seen as part of the problem, those working for the financial sector interviewed felt they were part of the solution in

preventing money laundering and saw their role as one of exposing illegal acts, and preventing frauds. This perception, however, did not chime with law enforcements views nor the actual practice discovered in this research.

There was also concern that there are matters beyond the control of law enforcement bodies and the financial sectors. Discussing the issue of new regulation or laws into financial system, one respondent said *'new regulation might help in preventing money laundering but some sectors are beyond our (the police) and their (financial sector) control. For example: if you are going to rent an apartment you will be surprised when the real estate or the owner will ask you to pay them in cash instead of a cheque. This is beyond our control.'* To state the obvious, it is impossible to trace funds that the police and financial sectors have no record of. This is a major problem in Dubai, where cash rather than credit is highly valued and sought by legitimate businesses let alone organised crime.

This chapter has offered a snapshot of current practice in Dubai and it offered anonymous employees in different sectors a chance to express their views. These views are not necessarily representative of all employees or across the sectors, but they offer a snap shot of views on the issues that count from those working 'on the inside' regarding the prevention of money laundering in Dubai and the UAE.

Chapter Six

AML strategies in Dubai

6.1. Introduction

In this chapter there is a review of AML strategies and practices in Dubai. This is dealt with in chronological rather order, rather than level of importance as laws, strategies and law enforcement bodies were established to counter the problem organisational money laundering, and criminal and illegal funds associated with terrorism. A recurring theme in this chapter, and the thesis, is that laws are passed, law enforcement bodies established, political pronouncements made and yet the reality and actual practice of preventing money laundering is completely different. This ‘gap’ between laws and practice is not experienced in Dubai alone, it is a problem for civil regulation and/or criminal enforcement around the world, and where possible this is stressed regarding the United Kingdom, which has an established financial centre in London for integrity and probity. This is to indicate that no matter how established mistakes, errors, neglect and criminal acts are still discovered in some of the most rigorous, regulated environments in the world.

This chapter first highlights the AML Regulations of 2000 in the UAE and expectations placed on those working in the financial sector(s) in Dubai. This is followed by a review of the Money Laundering Law 2002 and its effectiveness in preventing money laundering. The next section considers the role of the Central Bank and its part in the prevention of money laundering followed by an examination of the NAMLC and its roles. Once these have been established a critical appraisal of the impediments to developing a comprehensive system of regulation and AML practice is considered with a view of Dubai that it is moving in the right direction, albeit slowly, in preventing money laundering in its jurisdiction.

6.2. Anti-Money Laundering Regulation of 2000

In response to the increasing international concern regarding money laundering within the Middle East, the UAE financial sector embarked on a re-evaluation of their AML strategies as well as procedures to ensure that they were compliant with the laws and regulations of the Central Bank of the UAE. In line with Article 17 of the Central Bank Circular Number 24/2000, the UAEs Central Bank compliance officer was, and still is, expected to monitor and evaluate financial transactions carried out by financial sector employees in charge of processing and managing accounts.³⁹⁵ It is questionable, however, to what extent the Central Bank wants to prevent money laundering. With only one officer (at the time of this research) for an expanding financial sector the monitoring of transactions is limited. Those in the financial sector will no doubt be aware of this, and therefore perhaps behave in a manner that is unethical. There was no evidence in this research to suggest this, but with minimal supervision it is possible that some employees might ‘cut corners’ with expected procedures³⁹⁶. This is not to suggest that all employees will be unethical in transferring funds but a system of surveillance beyond one person is needed to properly monitor and deter those that might be tempted to ‘break the rules’ and circumvent money laundering regulations (see chapter six). Furthermore, regulatory documents as well as laws make it clear that training is essential for employees of the Central Bank to help prevent money laundering. It, however, does not include instructions on what the training ought to cover or how it should be implemented.

The main objective of the Money Laundering Regulations is that they are undertaken and the appropriate and proportionate measures that can deter, disrupt and detect money laundering are implemented. Therefore, all AML regulations apply to those working in the financial sector(s) such as practising accountants, consultants and advisors. Based on the Money Laundering

³⁹⁵ In the year 2000, the Central Bank of the United Arab Emirates established the National Anti-Money Laundering Committee, which currently has overall responsibility for ensuring that coordination of anti-money laundering policies is well implemented within the country.

³⁹⁶ However, cultural aspects, such as in Islamic law, may have an influence in this area, but includes a large base of social research that is not added to this study.

Regulations of 2007 that was explicitly enshrined in the United Kingdom legislation, and on which the UAE has drawn (see chapter two), the concept of a risk-based approach to the issues of AML is paramount. Businesses are required to establish adequate and appropriate policies as well as procedures associated with risk assessment and management as a way of preventing money laundering and terrorism by undertaking due diligence assessments³⁹⁷ on new and existing customers. This sadly is not always the case regardless of the jurisdiction (see previous chapter and examples of the HSBC and Mexican cartels).

Furthermore, the recording of the processes involved have to be documented or displayed within a written policy and the design and implementation of the necessary controls aimed at managing and mitigating such risks and the recording of their operations has to be taken into consideration. Both individual practitioners and businesses must assess risks associated with money laundering on various financial products and services, types of clients, their jurisdictions of origins, investment, how they conduct their businesses, funding and sectors. During this risk assessment process, the practitioners and businesses must apply a clear risk categorisation of low, normal and high. This approach is considered to be valid and, as a result of its rationale, it becomes capable of reducing complexity, but with a retained element of discretion as well as flexibility, especially in cases where the risk ratings can either be raised or lowered through appropriate management as a way of responding to a specific or exceptional circumstance. A risk-based approach to customer(s) due diligence will categorise situations which, by their nature, can reflect a risk of activity potentially associated with money laundering or terrorism.³⁹⁸

397 William C. Gilmore, *Dirty money: the evolution of international measures to counter money laundering and the financing of terrorism* (Council of Europe 2011)

Gilmore, William C. 1999. *Dirty Money: The evolution of money laundering Counter-measures*. Council of Europe Press, Strasbourg, 2nd ed.

398 William C. Gilmore. 'Dirty Money: The evolution of money laundering counter-measures. Rev. and expanded' (2000)

AML process and policies, however, can be integrated into the existing risk management systems or placed separately and outside business practices. The policies and procedures of AML are considered to be important to businesses, if they are contributing to the mitigation of risks of financial fraud. Practices should therefore involve the application of a risk-based approach in order to allow efforts to be concentrated on the higher risk.³⁹⁹ The UAE, therefore, considers AML measures as not only the attempts to control the acts of financial crime, but also a means of depriving criminals of the power that enables them to achieve their objectives. They are thus considered as important steps for completing as well as modernising AML legislation.

However, due to a review of the current practices by the National Committee, in 2000 the Central Bank issued Circular 24/2000, which strengthened and expanded AML requirements for the financial sector. This circular covers all the banks, money exchanges and finance institutions operating within the UAE. It expects procedures to be followed regarding the identification of both natural and the juridical persons, and request and photocopy necessary documents for identification, and rules on the type of customer records which ought to be maintained in the files at the processing institution. This expectation, however, is often more in hope than reality, as the results (see chapter six) shows, even now many years after its implementation.

However, other conditions of Circular 24/2000 seem to be followed as it was clear from the research that customer records were maintained with further periodical updates provided for the Central Bank, if requested.⁴⁰⁰ These regulations are in need of updating once more with the development and expansion of the financial sector in Dubai. Most of all, though, and this is a recurring theme in this chapter, the monitoring of the financial system is in need of review; a

³⁹⁹ Bell, R. E. 2002. An Introductory Who's who for Money Laundering Investigators," *Journal of Money Laundering Control*. Vol. 5, No. 4: pp. 287-295.

⁴⁰⁰ James R. Richards, *Transnational criminal organizations, cybercrime, and money laundering: a handbook for law enforcement officers, auditors, and financial investigators* (CRC 1999)

policy document, regulation(s), and laws are of little use if there are limited resources (i.e., people) to monitor transactions. This is also relevant to the Money Laundering Law of 2002.

6.3. Criminalisation of Money Laundering Law of 2002

The UAE and Dubai in particular has taken a lead in the Middle East in the criminalisation of money laundering under Federal Law No. 4 in specific relation to the financial liberated zones. Based on Article 3(1) of the Federal Law 8/2004 AML laws are applicable to all the operations of a company, regardless of its business – financial, insurance - in these liberated zones. However, in practice many type of FFZ exist in Dubai (i.e. Dubai Gold) and operate in one of the free zones in the Dubai Multi-Commodities Centre,⁴⁰¹ and as such the practical implication of AML laws is that each of the free zones establishes its distinctive rules and procedures in the implementation of the law. This is an unnecessary complex system, and as such, contributes to potential money laundering. Money laundering was criminalised and implemented under Article 2 of the Anti-Money Laundering law, which affirms:

“in cases where an individual intentionally becomes involved in the commitment or assistance in the transaction of property obtained from such offences that are stated in Article 2, he or she will be considered as the perpetrator of a money laundering offence.⁴⁰²

⁴⁰¹ In particular focusing on the First EU Money Laundering Directive 91/308 and its legislative requirements and domestic public policies, Anti-Money Laundering measures have been considered highly important in the UAE.

⁴⁰¹ The origin of money laundering offences was contained within the Drug Trafficking Offences Act of 1986, and was later on incorporated into the Drug Trafficking Act 1994. However, initially such offences were confined to the laundering of those proceeds involved in drug trafficking criminal acts. The government later on concluded that application of such law becomes difficult or appears impractical when it comes to distinguishing drugs from the non-drugs proceeds as well as introducing some new offences into the country's Criminal Justice Act of 1988 that was superseded under the leadership of the Criminal Justice Act 1993, which was considered to be applicable to the proceeds of any inducible non-drug offences.

⁴⁰² Similar focus can be confirmed from Law No. 4/2002. For more detailed explanation refer to Kalid Al-Mhery, 'Money Laundering within the United Arab Emirates,' Dar Al-Kreer, Dubai 2002.

The transfer or deposit of proceeds with the intention to conceal the illicit origin of it, the ability to conceal its true nature, location, movement rights, source as well as the acquisition, possession and use of proceeds of property play a significant part in the laundering of illegal funds.⁴⁰³

However, property obtained from the proceeds of crime in Dubai will not always seek a conviction. The public prosecutors' team is required to prove all the elements of any predicate offence that reaches a criminal standard. This as elsewhere is a high threshold, and as such the level of evidence needed to secure a conviction is sometimes difficult to reach. In Dubai, however, the office of public prosecutor will, and can, provide evidence of a convicted predicate offence either from an assertion - obtained from any defendant within the UAE - or from an international country⁴⁰⁴ willing to supply the relevant evidence and documentation. This approach is one familiar with criminal justice systems in democratic nations where a conviction is only possible based on evidence and a conviction is sought on the offences that is easiest to prove rather than the gamut of possible offences.

This criminalisation of money laundering also involves all forms of money laundering (i.e. electronic transfer), and is related to Cyber Crimes Law No. 2 of 2006. Such laws are often used in cases where their sources are either concealed or associated with criminal proceeds and enforces money laundering in compliance with the Vienna and Palermo regulations under the

403 Riccardo Sansonetti. 'Switzerland: Legislation to Combat Money Laundering' (1998) 2(1) Journal of Money Laundering Control 82

404 In Article 2 of Anti-Money Laundering Act 2002 defined money laundering as: an act where an individual intentionally commits acts related to property derived from the offences stated within the item 2 of in the article, such an individual person is considered a perpetrator of money-laundering offences such as in the conversion or transferences of money laundering proceeds, aimed at concealing or disguising any illicit origin of these proceeds, the true nature of the act, source, origin, disposition movement, rights in relation to or the ownership of proceeds and the acquisition as well as possession or the use of those proceeds.⁴⁰⁴

key Anti-Money Laundering/CFT ordinances. Furthermore, the criminalisation of terrorism is achieved through the Federal Law reference No. 1 of 2004 terrorism offences (CFT Law) and the Cyber Crimes Law.⁴⁰⁵

However, as mentioned earlier laws are of little use unless implemented effectively (i.e. there is a system of surveillance and punishment if laws are broken) with a system of prevention and resources and personnel to monitor and enforce illegal transfer of funds. However, the FATF notes the importance of beginning with a legal framework and establishing accountable parties for the management and growth of the AML regulations and implementation. Until this is fully recognised, the criminalisation of money laundering, will have limited impact on those that seek to launder money in Dubai. This is perhaps why Dubai developed an Anti-Money Laundering and Suspicious Case Unit (AMLSCU) as early as 2002.

6.4. Role of the AMLSCU- Central Bank of the UAE

Established in 2002, the UAE's financial intelligence unit (FIU) is commonly referred to as the AMLSCU.⁴⁰⁶ It has made progress in some sectors (see below) in preventing money laundering but is in need of review (see chapter six) and as stated earlier needs to recruit professional personnel. The establishment of AMLSCU was primarily concerned with investigating fraud and associated suspicious transactions. It was originally created to support international attempts to combat money laundering as well as the financing of terrorism, the fulfilment of the United Nations Security Council Resolution referenced No. 1373 of 2001, and the International Monetary Fund (IMF) Executive Board Decision referenced No. 144-(52/51).⁴⁰⁷ In 2008 the

⁴⁰⁵ Maria E. de Boyrie, Simon J. Pak* and John S. Zdanowicz. 'The impact of Switzerland's money laundering law on capital flows through abnormal pricing in international trade' (2005) 15(4) *Appl Financ Econ* 217

⁴⁰⁶ William Witherell. 'International approaches to combating financial abuse and promoting stable financial markets' (2002) 5(4) *Journal of Money Laundering Control* 257. 257-262.

⁴⁰⁷ Maria E. de Boyrie, Simon J. Pak* and John S. Zdanowicz, 'The impact of Switzerland's money laundering law on capital flows through abnormal pricing in international trade' , vol 15 (Taylor & Francis 2005) 217

IMF acknowledged that the AMLSCU has been involved in substantial outreach programmes and events with parts of the Dubai financial sector, but needed to step up its programme(s) of involvement with other financial sectors, such as securities and commodities. This is still considered an issue in the current climate and one that is in need of attention.

Legislation is required to clarify the powers and responsibilities of FIU, and increase the resources needed to prevent money laundering. For example, at present, it lacks resources to analyse the majority of the STRs that are sent in from the financial sectors and as such many STRs are submitted but not acted on. This is an issue in need of immediate attention. Some STRs will be submitted as the financial sector passes on information no matter how vague and insignificant to simply protect itself if a transaction is later discovered to be illegal. This is understandable but leads to a system that is unable to cope and therefore due to the lack of personnel illegal transaction might be discovered but at too late a date or missed as to few people process the volume of work.

Even with a fully-fledged Banking Supervision System as well as an examination section, which is responsible for off-site supervision, and on-site examination of all financial institutions, which are licensed by the UAE Central Bank a lack of resources undoubtedly affect the AMLSCU to function, as it should. However, it is also empowered to issue or enable freeze orders on such funds obtained anywhere within the financial system of the UAE and to audit accounts that are considered to enable terrorism, placing obligations on the financial institutions to monitor and report all the suspicious transactions. Yet again, to successfully prevent and/or reduce illegal practice(s) in Dubai a sufficient number of professional personnel are required. Working in partnership with the regulatory supervision team(s) therefore requires financial institutions to execute full responsibility to ensure that the UAE financial system remains clean and protected

from criminal abuses and terrorism⁴⁰⁸ but such expectations appear to be more about hope in that the financial sectors will do as required rather than monitored under a strict and demanding system of supervision.

However, this is only one problem; due to the partition of roles, the Central Bank supervises banks and exchange bureaus as well⁴⁰⁹. The Emirates Securities and Commodities Authority (ESCA) supervises securities brokers; and the country's Ministry of Economy has to deal with the insurance sector. In addition, all the financial sectors within the UAE are divided between institutions that operate within its domestic market and those that are licensed to run businesses in the International Financial Centre (DIFC) of Dubai, an area identified as a free zone. As a result, the Dubai Financial Services Authority (DFSA) is considered as the main supervisory power of all the financial institutions that operate in the Dubai International Financial Centre, regardless of core business.

Furthermore, UAE AML measures issued by the Central Bank are commonly applicable to financial sectors that are under its supervision only, which are mostly in Dubai. Circulars issued by the Central Bank, requiring the identification of customers and the provision of STR commitments, however, apply to this sector. Although suspicious activity is initially recorded and then reported from a financial institution, the UAECB is only capable of freezing the suspect's funds, making appropriate inquiries as well as coordinating with law enforcement⁴¹⁰ depending on the sector. Due to this rather complex system of supervision it is hardly Dubai decided to establish a National Anti-Money Laundering Committee with an overarching and strategic approach to preventing money laundering in Dubai.

⁴⁰⁸ Triffin J. Roule and Jeremy Kinsell. 'Legislative and bureaucratic impediments to suspicious transaction reporting regimes' (2003) 6(2) *Journal of Money Laundering Control* 151.151 – 156.

⁴⁰⁹ RE Bell. 'An introductory who's who for money laundering investigators' (2002) 5(4) *ibid* 287-295.

⁴¹⁰ Satish M. Kini, 'Recent anti-money laundering enforcement actions: lessons to be learned at others' expense' , vol 7 (Emerald Group Publishing Limited 2006) 38

6.5. The National Anti-Money Laundering Committee (NAMLC)

The National Anti-Money Laundering Committee (NAMLC) was established by the Ministry of Finance and Industry to develop a clear strategic AML approach, regardless of the sector. This committee is established under the chairmanship of the Governor of the UAE Central Bank and comprises of various representatives from the judicial as well as ministerial authorities who are responsible for the co-ordination and implementation of anti-money laundering policies within the UAE.⁴¹¹In cases where money laundering offences have occurred outside the UAE, it has entered into treaties, and provided that the identified act is considered as a criminal offence the state can, upon verification of an order, regulate the detection, freezing or temporary attachment of property or proceeds used in a money laundering offence. The penalty attributed to an act of money laundering is seven or more years of imprisonment with an alternative fine of about AED 300,000, depending on the act and cooperation of the person(s) involved. These ‘punishments’ – prison and/or a fine –can also be imposed on officers, employees and management of the financial institutions that fall short of reporting suspected money laundering.

However, the NAMLC has the power to offer immunity from criminal prosecution, civil or administrative action to the financial institutions, directors as well as employees, if following set rules but were still unable to prevent money laundering. As a result of protecting the integrity of the organisation under investigation, the NAMLC can, however, reprimand any individual that fails to report a suspicious transaction, or imprison, depending on degree of culpability, for no more than one year, or a fine not exceeding AED 50,000, or both. This range of possible sanctions should act as a deterrent (see chapter six) but often in practice seems to have little impact on those it aims to deter.

As the overarching body, the NAMLC enables an exchange of information among the various authorities and associated financial institutions representing the UAE in regional and

⁴¹¹Angela Itzikowitz. 'South Africa: Prevention and control of money laundering' (1998) 2(1) Journal of Money Laundering Control 74

international forums. However, it is still the responsibility of all banks that are operating within the UAE to ensure that each of their employees is well trained in AML matters and act according to established rules and regulations. For effective and efficient implementation of this policy, however, the Central Bank of the UAE is obliged to guide banks on methods of training in order to prevent money laundering, though it is the full responsibility of the bank to put this into practice as well as monitor the training⁴¹² of current and newly employed personnel.

To compound matters even further the UAE Insurance Authority, is expected to supervise the whole of the insurance sector, mostly located in Dubai. The problem here is that the financial sector is not run on a 'silo system'. Banks have interests across the range of financial services. However, the UAE Insurance Authority passes all legislation relevant to its sector, and those in the free trade zones. Under this Insurance Authority then AML procedures are subject to conform to the Insurance Authority rules and regulations and inspection when requested.⁴¹³ Penalties for the non-compliance are a fine of AED 5,000 to AED 1 million or imprisonment depending yet again on the circumstances of the transgression.⁴¹⁴

Proposals in the Counter Terrorism Law 2004 provided the availability of detailed measures for the confiscation of property obtained via money laundering⁴¹⁵. The UAE Federal Law reference

412 Mark Pieth. 'Prevention of Money Laundering: A Comparative Analysis' (1998) 6 Eur.J.Crime Crim.L.& Crim.Just. 159 p. 159.

413 William Witherell, 'International approaches to combating financial abuse and promoting stable financial markets' , vol 5 (MCB UP Ltd 2002) 257, pp. 257-262.

414 Shaap, C. D. 1998. Money Laundering: A Public Prosecutor View Point. Journal of Money Laundering Control, Vol.1, No.3, January.

415 Section 15 of the Terrorist Act 2000 states that a person commits an offence only if he or she invites another to give money or any other property with the intention that such object should be used, or be considered as a reasonable cause in suspecting that it can potentially be used for terrorism activities. Furthermore, an individual commits an offence in case he or she receives money or any other property and intends that such object must be used, or possess a reasonable cause in suspecting that it can be used, for financing terrorism. Additionally, a person

number 1 of 2004 also enacted a number of offences referring to personal involvement with or in terrorism (stated in articles 3-7, 9-20 and 22-23). In addition it covered the publication of material as propaganda⁴¹⁶. Furthermore, the establishment of the National Committee as an attempt to combat terrorism as stated in articles 36-37, was focused on expressing political intent as well as a reflection of the UAEs ability to withstand the nature of terrorism and potential threats⁴¹⁷.

Although it appears to be much less of an issue within the UAE than in several other local nations, the Dubai put into practice laws in order to prevent illegal funds passing into the hands of political and/or criminal organisations. This is illustrated by the increased cooperation by the Dubai/UAE with other states, particularly after the attacks on September 11, 2001. Furthermore, the then new legal framework allowed for the seizure and holding of cash on suspicion it is intended to be used for terrorism or is considered as part of the sources of a proscribed organisation (this is similar to the anti-crime and Terrorism Act 2001 in the United Kingdom).⁴¹⁸

is considered to have committed an offence if he or she provides money or any other property and knows very well that it has reasonable cause to be suspected of having been used purposely for terrorist acts. Lastly, in the section a reference to any provision of money or some other properties is considered as being given, lent or made available, whether or not for any consideration.

⁴¹⁶ More reference: the Proceeds of Crime Act 2002 and the Terrorism Act 2000, The Money Laundering Regulations 2007.

⁴¹⁶ Previous to the Proceeds of Crime Act 2002 there existed separate offences associated with drug money laundering

⁴¹⁷ Jeffrey Robinson, 'The sink: terror, crime and dirty money in the offshore world' (Constable & Company Limited 2003)

⁴¹⁸ The extension of Anti-Terrorism Crime and Security Act 2001 provides room for the seizure as well as detention of any cash on suspicion it is intended to be used for terrorist activities or is considered as part of the sources of a proscribed organisation to any place within the UK (Section 1). It also contains all the power to order any forfeiture of the seized cash based on the civil consideration of proof of balanced probabilities. Further, it enhances the disclosure of stored information between the government bodies (Sections 17-20), imposes extra stringent demands on such individuals or organisations within the regulated sector in order to report suspicions that

The UAE has further extended its full support and cooperation to both the UN and US in their attempts to track down the accounts of terrorists. Under the UNSCR 1267/1390, the UAE has presently frozen accounts of organisations and individuals identified with amounts that are approximately equal to \$3 million (US dollars). Additionally, money laundering cases that have involved non-emirate nationals have been submitted to courts, and although some cases have ended in convictions, this is not always the case.

6.6. Impediments to effective AML practice in the UAE

Most of the preventive measures needed to prevent money laundering in the UAE are lacking according to the 2008 report presented by the IMF. The report indicated that, "the legal framework for the financial sector preventive measures within the domestic sector...provided a basic grounding' but this framework predates the amendments of the FATF Recommendations made in 2003, which have currently imposed subsequent detailed requirements. In addition, the IMF report make it clear that, even though there are a variety of administrative measures put in place to strengthen AML regime by the UAECB, the country requires a more solid, robust approach to its legal and regulatory framework in addressing these issues.⁴¹⁹

While the rules and regulations applied to financial institutions that are operating within the Dubai International Financial Centre (DIFC) tends to resemble the FATF regulations it is the implementation of them and the supervision and surveillance of these institutions that is in need of attention. This is a common theme in this research; most of the necessary rules, regulations and supervisory bodies are in place but it is the lack of enforcement that is a key issue. Based on the UAEs STR regime, the IMF assessment was, in particular to money laundering, that it lacks clarity and as such the quality of the STR is questionable. It is possible the minimum levels of conformity for the UAE, as agreed on by the IMF, are for the Designated Non-Financial

such funds are destined for terrorist acts (Section 3 and Schedule II, Part III), and enables the police to have more powers both to ensure that financial institutions monitor their accounts and obtain updated financial information.

⁴¹⁹ William Witherell, 'International approaches to combating financial abuse and promoting stable financial markets' , vol 5 (MCB UP Ltd 2002) 257, pp. 257-262.

Business and Professions (DNFBP) sector.⁴²⁰ Despite the assertions made by the UAE authorities that most of the DNFBPs are subject to the AML laws, no separate laws have been specifically put in place to address such businesses. There are, however, a number of provisions for DNFBPs within the Dubai International Financial Centre as the financial free zone i.e., the 2010 US report identifies several sectors within the UAE, such as the diamond industry, the real estate sector as well as the Hawala system, that are considered to be susceptible to money laundering and terrorism.⁴²¹

It is here that - the Hawala system – that is of international concern. The system was originally used to avoid robbery and this developed to cover India and parts of Asian. It is thought that it is frequently used by those working in Dubai from a poor country as a way to transfer funds based on kinship. Hawala offices are unofficial because these offices are not registered or licensed with the Central Bank. These Hawala offices are known as ‘hidden banks’ or ‘underground banking system’ where there is no record of the client, source of income, papers to document the amount of the transfer. In addition there is no doubt that there are some factors seductive that encourage the use of Hawala; there are, for example economic factors, social and cultural, including: (1) little or no cost transfer fees compared with other bank transfers, (2) speed in the transfer of funds is usually from one day to two days; (3) it is based on the element of trust between the Hawaladar and the existing conversion, such as kinship; (4) it is a convenient and simple way to shorten a lot of banking procedures complicated to some extent and the lack of documents and papers required; (5) in addition to the above, it is the preferred method of migrant labourers, especially when there are no banks in the cities inhabited by their parents/beneficiaries of the transfer.

⁴²⁰Richards, J. R., 1999. *Transnational Criminal Organizations, Cybercrime, and Money Laundering: A Handbook for Law Enforcement Officers, Auditors, and Financial Investigators*, CRC Press, Boca Raton, FL.

⁴²¹ Marcel Pheijffer, 'Financial investigations and criminal money' , vol 2 (MCB UP Ltd 1998) 33

In order to meet the requirements of the UAECB, the financial sector – mostly banks - should take firm and reliable measures to safeguard their funds and those of their customers. However, without effective supervision, up-to-date training of personnel and implementing certified Anti-Money Laundering programmes it appears that little progress will be made. This then, is a problem that is one for all involved in AML strategies in Dubai Extensive suggestions are made in the final chapter on how to prevent money laundering in the UAE, but worth mentioning here is that if the financial sector fails to adhere to legislation the relevant authority in Dubai should refuse the company permission to trade in the UAE. A coherent, strategic approach is thus required, which needs to draw the Hawala system under its supervision.

This is reflected in the IMF and US DoS presenting a cautionary statement that “a national, organised, and strategic approach to measures of AML/CFT is urgently required.⁴²² Supporting and encouraging several intercontinental and bilateral treaties, signed by the UAE in reference to AML is a step in the right direction but a more national approach is fundamental to success. As a result of the relative autonomy of individual emirates within the UAE, there are a lot of divergent approaches to AML enforcement even within Dubai itself and the different financial sectors and FTZ.

In summary, the 2008 IMF report provides the ideal source for the several shortcomings within the UAE/Dubai’s AML system, indicating that, although most of the authorities have sought to address some of the money laundering issues, reforms should be undertaken so as to bring the country in line with FATF requirements. A high level state committee has recently endorsed the implementation of a national plan of AML actions that will, it is hoped, eliminate deficiencies within the rules and regulations in the UAE attempts to prevent money laundering. It is, however, a plan in progress, and will not be completed before this research is finished.

⁴²² Riccardo Sansonetti, 'Switzerland: Legislation to Combat Money Laundering' , vol 2 (MCB UP Ltd 1998) 82

Under the proposed plan, amendments are considered by working team of relevant bodies to enhance its implementation as well as to coordinate with the relevant executive authorities. It is a further creation, as the development of 'bodies' see above in this chapter, to tackle money laundering are nothing new. It appears to be more of an attempt to update legislative and bureaucratic systems, particularly in relation to STR, to identify and indict members of organised crime and terrorist cells/organisations as well as detecting money laundering trends such as abuse of telephones card sales and the money order transmitters established some year earlier.⁴²³

However, a comparative analysis of AML efforts in more than 20 jurisdictions indicates that the application of SARs is regularly hindered by both legislative and bureaucratic deficiencies. Furthermore, and not particular to the UAE, is the absence of a suitable Financial Intelligence Unit (FIU) to effectively oversee both the collection and investigation of SARs and the failure to share the collected information with international regulators and train the staff of FIUs properly. In most cases, the FIUs lack the necessary computer systems that can enable effective information exchange, while a number of jurisdictions put time and other limits on FIU investigation of the increased numbers of SARs that are produced by the banks and other institutions.⁴²⁴

The problem of money laundering is further compounded in Dubai by having no condition for the establishment of trusts or related arrangements under UAE federal law, and as a result foreign trusts are not yet recognised within the country. However, uniquely trust law has been introduced within the DIFC, which results in the creation of express trusts. Therefore, such arrangements ought to be administered by trust service providers under the authorisation of the DFSA, which are subject to record-keeping requirements. This, however, appear to be an

⁴²³ Jeffrey Robinson, 'The sink: terror, crime and dirty money in the offshore world' (Constable & Company Limited 2003)

⁴²⁴ Richard Alexander. 'EU: The EC Money Laundering Directive' (1998) 2(1) Journal of Money Laundering Control 68 Alexander, Richard. 1998. EU: The EC Money Laundering Directive. Journal of Money Laundering Control. Institute of Advanced Legal Studies. Volume Two, Number One, Summer.

expectation rather than reality (see results chapter six) as Dubai has a ‘light touch’ approach to monitoring the financial sector.

There have and are a number of proposals made in Dubai regarding money laundering, as illustrated. However, one sector that has been neglected by all the laws, conventions and political pronouncements is the transportation of cash and expected legal declarations⁴²⁵, and the smuggling of cash and/or gold to Dubai. A substantial amount of money laundering is trade based, and this needs to be tackled; this includes the Hawala system of cash transactions, which until recently were often downplayed as a potential conduit of money laundering. Although Dubai and the UAE have a legislative framework for money laundering, it needs to be significantly expanded upon to include all sectors beyond the obvious ‘regulated’ known financial sector. A policy on the forfeiture of assets and punishment for laundering should also be devised, with greater cooperation between the relevant law enforcement bodies and the government at both the federal and the emirate state level, with more intense prosecution. It would be advisable for the list of offenses to be expanded, with the possible criminalisation of acts which are not currently classed as criminal in the UAE. Furthermore, the AMLSCU is likely to require more funding and supervision, particularly to counter the use of the Hawala system.⁴²⁶ Whether this will be done, however, depends upon the will of those in a position of power to make it so.

While aware that it is difficult to prevent money laundering and provide customers with a service the two are not insurmountable. It is recommended that the following preventive measures, are needed to mitigate these risks:

1. A company must establish and maintain effective internal policies, procedures, and controls to prevent opportunities for money laundering. A money laundering compliance programme

425 United States Department of State Bureau for International Narcotics and Law Enforcement Affairs International Narcotics Control Strategy Report Volume II Money Laundering and Financial Crimes March 2013 p.205

<<http://www.state.gov/documents/organization/204280.pdf>> Accessed 17/02/2012

426 Ibid. p.206

should be defined by senior management and/or the board of directors which must consider local/emirate regulations prior to adopting a compliance programme.

2. A company must appoint a compliance officer. When a company appoints a compliance officer, it is imperative to verify that the qualifications of that person meet the local requirements. The compliance officer should be responsible for the day-to-day compliance of the business with the AML laws, and for ensuring the compliance programme is updated as needed. The compliance officer should be responsible for overseeing a company's ongoing education and training programme. The compliance officer should also be responsible for maintaining records and reporting suspicious cases to the relevant authority.
3. It is important to obtain details of customers in order to verify their identities, including full name and address, passport or identity card (for individuals) and trade. Such information must be periodically and regularly updated. The more a company knows about its customers, the better can money laundering abuses be prevented.
4. A company must adopt policies and procedures for the identification and reporting of suspicious activity. A company must review UAE regulations for what it considered to be a suspicious transaction as well as the allowable time delays to report such activity.
5. A company must establish an ongoing employee-training programme for all employees. Effective training should present real-life money laundering examples, preferably cases that have occurred in the company, including how the pattern of activity was first detected and its ultimate impact on the company.
6. A company must conduct an independent audit of its AML compliance programme to ensure its adequacy. Such an audit should be conducted periodically based on the risks faced by the company and the requirements of the UAE regulations.⁴²⁷

⁴²⁷ Eleni Tsingou. 'Global Governance and Transnational Financial Crime Opportunitites and Tensions in the Global Anti-Money Laundering Regime' (2009)

The culture of compliance is considered the key in the effective prevention of money laundering and to raise awareness in the community. This is vital as the compliance and commitment in the attempts to reduce the incidence of money laundering in Dubai is one of the greatest policing challenges that it presently faces. However, it is the duty of the financial sector and to ensure that it is familiar with the laws and regulations in Dubai, and if unaware take the advice of legal specialists in case of difficulty in understanding money laundering legislation.

6.7. Going in the right direction: policing money laundering in Dubai

The UAE Central Bank has signed a memorandum with the Dubai police on the training and sharing of information pertaining to money laundering. The memorandum was signed in 2010 with the aim to ensure exchange(s) of information between the UAE Central Bank and the Dubai police. The two reached an agreement to put in place an electronic link for the purpose of exchanging security information about suspicious cases and transaction reports. The Dubai police headquarters and Central Bank thus have the role of notifying one another of suspected and known cases of money laundering.⁴²⁸ This electronic connectivity system, above and beyond a simple computer network, is also applied in financial sector institutions with the same aims as law enforcement and the Central Bank. It is a little too early to claim if this system has been a failure or success as of yet; two reasons are put forward. One the system was launched a few years ago and needs time for all to become familiar with the system, particularly if personnel leave and new people are recruited, and two, (see chapter 6 result chapter) there is little available data to make an assessment as to its effectiveness.

The development of this system is primarily due to the influx of labour from neighbouring states such as India, Pakistan and Bangladesh. With many people now working in the UAE, but Dubai in particular there is concern about the use of the Hawala system as a conduit to launder illegal funds. However, a note of caution is needed here. The Hawala system is long established in the

⁴²⁸ Mohammed Al Sadafy. 'UAE Central Bank and Dubai Police sign MoU' *Emirates* 24/7 (Accessed on December 2010 December 2010)

UAE but it is not a problem that only those in the Middle East countenance. Immigrants – legal and illegal - in the United Kingdom use a number of channels to send money back home or around the world to family members, relatives, and/or for illegal reasons. Some of the channels include: Money-Gram, Western Union, international banks and the Hawala system as all used. This is little known at this moment in time but the Hawala system is also operating in the United Kingdom. As an informal way to transfer funds it is more challenging to trace the origins of the funds making it a preferable system for those wishing to launder money. It is important to note that no actual money crosses borders and no records available to audit, a loophole that make it useful for those laundering illegal proceeds. It is challenging for the United Kingdom law enforcement bodies to obtain data on the total amount of money transferred using the Hawala system, and as such is little different to the problem encounter by law enforcement in the UAE and Dubai. This then, is an international rather than Middle Eastern problem. As indicated by the World Bank the remittance outflow increased approximately 4% annually in the United Kingdom, approximating to about GBP 2,352 million in the year 2009. The World Bank further indicated that developing nations all over the world obtained a high percentage of remittance from the UK in the year 2010. However, the value of remittance outflows makes up approximately only 0.2% of the UK GDP. The percentage for Dubai is unknown⁴²⁹.

Aware of this problem the UAE and the UK cooperate, where possible, with each other to overcome this phenomenon. This is, however, early days in such a development. With immigration from south East Asia and immigrants sending money via one of the above systems, it is necessary that laws, conventions and systemic cooperation is established to prevent money laundering. This development is, however, in progress, even though a panel from the IMF came to make a study on the Hawala System within the region some years ago. Even though full cooperation and support was forthcoming in the UAE for this study highlighting its collaboration with the UN as well as US, particularly with reference to tracking the accounts of

429 HM Treasury. 'The plan for growth' (2011) The Stationary Office, London, UK. See http://cdn.hm-treasury.gov.uk/2011budget_growth.pdf (accessed 29/09/2011)

terrorists and the individuals who enable them to continue to engage in such activities⁴³⁰ the actual 'real' progress made on this issue is difficult to assess due to the complex 'systems' or regulating the diverse financial sector in Dubai.⁴³¹

6.8. Conclusion

In this chapter it was illustrated that there is a difference in policy and political pronouncements (see chapter five) and actual practice. This, however, is not unusual in any line of work; it is serious, though, because of the financial consequences for business and nations but more so as illegal funds are used for organised crime and terrorism. This chapter focus mostly on Dubai but highlighted its links with the UK, which were established in chapter two. There are a number of differences between AML legislation in Dubai and the UK, and neither are free from the threat of organised crime and terrorism.

However, Dubai is vulnerable to money laundering for a variety of reasons; for its geographical location, for its use as a port, its proximity to Africa, and its offshore status. Its lack of stringent, comprehensive, integrated legislation also makes its financial institutions susceptible and vulnerable to criminal enterprises. This has been recognised in the UAE and Dubai; there are international suspicions that in some ways Dubai thrives on this enterprise that exists just outside the limits of the law, yet there is evidence too, that the UK's role as a global financial centre has also resulted in its use as a conduit for money laundering by criminals seeking to wash their money of its illegitimate origins. Even a sufficiently regulated system then has its faults. There faults, however, are similar to those of Dubai; laws and systems are in place, it is the regulation that is inadequate, and as such organised criminal elements and terrorism is able to infiltrate international financial systems, in any jurisdiction.

⁴³⁰Elizabeth Montano. 'Wealth Hidden, Tax Evaded: Strategies for Revelation' (2002) 5(4) *Journal of Money Laundering Control* 263-265.

⁴³¹Magliveras, Konstantinos D., 2002. Revision to the European Community's Anti-Money Laundering Instrument: Critical Analysis, *International Enforcement Law Reporter*, Vol. 18 Issue 5, pp. 181-185.

Chapter Seven

FATF Recommendations Quasi-Assessment of UAE

7.1. Introduction

This chapter includes basic data on the requirements of the methodology for determining the recommendations for a country which should be familiar with the current situation and on the phenomenon of money laundering in the country , and express this as a starting point to see the current situation of the United Arab Emirates , through the analysis of the data by comparing them with the United Kingdom . It was chosen as the United Kingdom for the existence of some similarity in the background data of the demographic character and the similarity of images economic system in the international financial sector in Dubai.

Countries are rated on the implementation and success of implementation of AML regulations and standards that reduce money laundering and improve the ability of countries to effectively cooperate and reduce the ability of illegal activities, particularly in regards to money exchanges and uses, from occurring internationally. A specific methodology was created by the FATF, to ensure that assessments of countries were standardized and established key indicators that allow for the assessments to be effective in delivering recommendations⁴³².

The methodology of determining recommendations for a country require that assessors be familiar with the country's current conditions, including but not limited to the assessments completed by the country, current socio-economic and cultural considerations, cash-based society, likelihood of money laundering and terrorism financing, and the importance of the

⁴³² FATF Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CTF Systems. (2013). Retrieved from <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%202013.pdf>

financial sector in that specific area⁴³³. In addition, assessors should analyse the effectiveness of the strategies in place within the country, identifying how the effectiveness could be improved upon. Assessments consider the 40 + 9, most recently used in assessments of the OECD countries in the 2014 assessment, identified below. Recommendations established from these outcomes should include identification of high-level objectives, intermediate outcomes, and immediate outcomes.

As comparison, the most current statistics for the UK were obtained for the current 40 + 9. In the OECD FATF ratings, the United Kingdom was found to be compliant in the areas of 1 – 4, 8, 10, 13 – 14, 19 – 20, 25, 27 – 28, 31, 35, and 37 – 45. Largely compliant, for the UK, was noted for 15 – 17, 23, 26, 29 – 30, 32, 36, 46, 48, and 49. In addition, the UK was found to be partially complaint in the areas of 5, 9, 11 – 12, 18, 21, 24, 33, 34, and 47. The only areas noted as noncompliant included 6, 7, and 22.

According to the International Monetary Fund in 2008⁴³⁴, UAE basic legal framework was established and consisted of the requirements for preventing money laundering and terrorist financing; however, the laws did not provide sufficient powers to the FIU and did not include the full “range of predicate offences”⁴³⁵ that could occur or may occur in the region. In addition, the second finding of the IMF included that preventive measures established in legal framework for the financial sector did not include the most current FATF recommendations and noted that the central bank was establishing strong frameworks to bring the country into compliance, but these were not supportive by legislation. This was particularly noted that Dubai was currently operating most closely to the FATF standards and regulations, as compared to the rest of UAE.

433 Ibid

434 ‘United Arab Emirates: Detailed Assessment Report on Anti-Money Laundering and Combatting the Financing of Terrorism. International Monetary Fund’, (2008), retrieved from <http://www.imf.org/external/pubs/ft/scr/2008/cr08305.pdf>

435 Ibid p. 8

These findings were consistent with the current research, which suggested that while legislation was created and in place for use by the regulatory forces of Dubai, their implementation and the understanding of legislation was lacking. Respondents in the study did not find that communication was supportive of the needs of strong regulatory environments; however, the respondents also noted that the needs of Dubai were different from the needs of other countries, such as Western countries. This is in part due to the difference in how the government operates, the culture of the area, and the location being perceived as “convenient” for criminal activities and money laundering.

In the third key finding of the report, the IMF noted that the “suspicious transactions reporting system” did not demonstrate the expected number of reports for a “financial market of the size and nature of that within the UAE” and suggested that clarity regarding reporting transactions may improve on the compliance of this aspect of the regulation⁴³⁶. Additionally, UAE was commended on activities in addressing Hawala dealers and developing the voluntary system requiring these dealers to register and report financial transactions, as well as report suspicious activities. Finally, the IMF suggested that the AML legislation of UAE did not address all of the DNFBP sectors and that customer due diligence was largely missing or improperly addressed. However, in this same instance, Dubai was recognized for drafting these measures and working to achieve these goals individually.

However, respondents to the primary research suggested that the existence of cash-based transactions creates difficulty in managing the requirements of money laundering regulation. Particularly noted was the difficulty in determining where the money came from, or legitimizing the funds without actual documentation due to limited tracking done by Hawala dealers and the difficulty in obtaining verification from other countries. This additionally suggests that while the FATF strongly promotes communication between countries, the lack of standardization in communication creates conflicts in regards to obtaining these types of information on an

⁴³⁶ Ibid p. 8

international level. MENAFATF is strictly focused on reducing this problem in the primary areas of concern for the UAE, which includes North Africa.

While overall, the IMF credited both Dubai and the UAE in legislation and regulation work as of the date of the report, it was noted that communication and awareness was lacking in many of the areas. In addition, the preventive measures suggested for the financial institutions and non-financial businesses and professions were numerous, and consisted of consistent recommendations for increased awareness, coordination between strategic goals and objectives, improved legislation, communication between organisations within the country and international bodies, clarity in requirements of reporting, and further adherence to FATF standards and regulations⁴³⁷. Finally, the IMF cited that difficulty occurred in making assessments due to a lack of available or “meaningful” statistics, which prevented the ability of the assessment to determine the effectiveness of the AML/CFT measures used by the UAE⁴³⁸.

This finding of the IMF and FATF is consistent with the findings from the primary research, in that communication was difficult and did not always support the needs of the FIUs along with the needs of the organisations expected to implement the legislation into their organisation. Respondents, including law enforcement, stressed that communication and access to information was largely restricted or difficult to obtain. These factors are important to the success of meeting FATF recommendations in the future.

The Dubai Financial Services Authority has since established a number of communications, regulations, and a DFSA Rulebook, which is designed as an anti-money laundering module⁴³⁹. This documentation refers back to the guiding federal laws of UAE, including the definition of

⁴³⁷ Ibid

⁴³⁸ Ibid p. 11

⁴³⁹ Retrieved from http://dfsa.complinet.com/net_file_store/new_rulebooks/d/f/DFSA1547_4489_VER7.pdf

money laundering and includes additional regulation for Authorised Firm and Money Laundering Reporting Officer (MLRO) of the firms in Dubai. All of the applicable individuals are required to comply with the UAE federal laws, create methods for recognizing customers and transactions that represent illegal activities, develop policies within organisations and firms, establish duties and obligations of the MLRO, methods for recognizing criminal elements within the firm, and understand the risks of criminal liability. In addition, this document stresses the importance of these activities and reports by making responsibility for management of these situations immediate.

While new regulations are in place, there was no consensus from respondents in this research that demonstrated that improvements were as effective as they could be in regards to communication and data access. These types of improvements may involve the implementation of either increased training or improved databases, but must also involve improved communication channels and cooperation between different levels of criminal investigation. This is addressed in the models review as a potential solution for improvement in these areas.

In the requirements of the DFSA, the AML regulations include the requirement that all authorized firms must comply with the regulations of customer information, as presented in FATF requirements of “Know Your Customer”, and conduct due diligence in business relationships. This includes in scrutiny of transactions and reporting when information is insufficient or lacking of required documentation for the customer. The requirements include the change of ownership and exceptions where the AML regulations may not apply. In addition, these requirements include that authorized firms must not be involved in relationships with shell banks, keep anonymous accounts, allow accounts to be formed under false names, or controlled by individuals whose names are not on the accounts.

The DFSA has regulations for the majority of the requirements of the FATF recommendations; however, statistical evidence of their effectiveness is not widely available. In addition, respondents to the primary research developed found that not all respondents were in complete

understanding of the compliance requirements of these documents, or able to meet the needs required due to the difficulties in obtaining the proper information required by these regulations. The recommendations set forth in this document are substantial, and are reasonably enforceable, in the case where organisations are concerned; however, in law enforcement, Dubai may be restricted in meeting the needs of these requirements.

In an examination of AML systems of UAE, UK, Australia, and the USA, cultural considerations were evaluated for the compliance and communication of the FATF recommendations⁴⁴⁰. This work argues that the compliance difficulties of the UAE are both cultural and economic related, which influences the success rate of implementation of these recommendations. According to the 2007 FATF compliance assessment, the UAE was compliant with only two of the legal system requirements of the current assessment recommendations. Lack of complete compliance was found in the criminalization of money laundering, which did not indicate serious offences, specifically those of corruption and drug trafficking⁴⁴¹. While the recent documentation of the DFSA has established the customer due diligence requirements and suspicious transaction reporting, these are current since the FATF recommendations, as UAE was found to be lacking in compliance in this area at that time. While the UK was found to be largely compliant in these areas, in 2007, and more so today, these are in contrast to the UAE, where it is likely that the results of these preventative measures may be even less successful due to the lack of substantial statistical evidence to support compliance by the UAE in this area. The lack of FIU reporting is noted as a non-compliance factor, and demonstrates a problem that has not been successfully resolved in regards to FATF recommendations for the UAE. In addition, the UAE was found, in

440 Alkaabi, A, Mohay, G, McCullagh, A, & Chantler, N, (2010), 'Money Laundering and FATF compliance by the international community', IFIP Advances in Information and Communication Technology, Brisbane, Australia. Retrieved from <http://eprints.qut.edu.au/37846/2/37846.pdf>

441 Ibid

2007, to be least compliant and effective in the areas of international cooperation, there was no legal requirements of these activities to support compliance with the FATF standards⁴⁴².

In the research regarding cultural aspects of compliance, Hawala is a significant factor influencing FATF compliance success for the UAE, due to the lack of documentation that is typical of this type of financial transaction. This is harsh contrast to the difficulties facing many Western countries, which typically are relative to the degree of privacy and anonymity that the culture requires for independence or democracy. Such as in Australia, UK, or USA, where individuals prefer that some degree of privacy be maintained to establish individuality and this practice interferes with the ability to gather customer data and store this information for further evaluation. As the Hawala system consists of this same privacy, through lack of documentation, it is reasonable to suggest that the measures required to overcome the challenges of Hawala lack of conformity will involve similar difficulties in the UAE as lack of privacy and additional accountability for the funds is required.

UAE regulations are supported by Islamic laws, which do not encourage illegal activities or transference of monies. In this way, the culture itself is supportive of the FATF regulations; however, this does not prevent the illegal activities and must be supported by legislation in order to be in compliance with the FATF⁴⁴³. Illegal activities, according to Islamic laws include the proceeds of gambling and bank interest, and additional strictly prohibits the use of illegal money for charities⁴⁴⁴. In addition, while the FATF requires that charities are monitored for the transference of illegal funds, there are complications in the UAE legislation to manage this requirement, as Islamic law requires that Muslims contribute to charities, and charities are recognized as high value to citizens of the UAE⁴⁴⁵. However, the UAE has required that all

442 Ibid

443 Ibid.

444 Ibid

445 Ibid

charities wishing to contribute funds to charities outside of the UAE only do so through state run charities that are strictly monitored, in order to comply with the regulations of the FATF.

The importance of charities and the inability to monitor them as effectively in the UAE as FATF standards might otherwise require, was not noted in the primary research developed for this study. While this appears to be an obvious consideration, it may be related to the lack of knowledge or documentation of this particular aspect or risk of AML, and may become more important as other factors of FATF compliance become resolved. Additionally, the UAE has worked diligently since the 2007 assessment to increase compliance, including through legislation and development of federal organisations to improve upon compliance with the legislation. These improvements have not been assessed since their implementation. However, based on this information, a generalized assessment was created for the FATF assessment evaluation in this study. The following table was developed to rate the current UAE FATF compliance, using the literature and access as available to evaluate the UAE legislation, with a focus on Dubai and the additional compliance requirements of the DFSA. This data was included with the ratings of the UK for comparison.

The key for the following table includes:

*= lacks sufficient new information for rating, 0 = noncompliant, 1 = partially compliant, 2 = largely compliant, 3 = compliant, NC = noncompliant, PC = partially compliant, LC = largely compliant, and C = compliant.

Table 4: FATF Recommendations - UAE and UK

FATF Recommendation	UAE (2008)	UAE (quasi)	UK (2014)
1. Money laundering offense	PC	3	3
2. Money laundering offense – mental element and corporate liability	LC	*	3
3. Confiscation and provisional measures	LC	*	3

4. Secrecy laws consistent with then recommendations	LC	2	3
5. Customer due diligence	NC	2	1
6. Politically exposed persons	NC	2	0
7. Correspondent banking	NC	2	0
8. New technologies & non face-to-face business	LC	2	3
9. Third parties and introducers	LC	2	1
10. Record-Keeping	LC	2	3
11. Unusual transactions	LC	2	1
12. DNFBP – R.5, 6, 8 – 11	NC	2	1
13. Suspicious transaction reporting	NC	1	3
14. Protection & no tipping-off	PC	2	3
15. Internal controls, compliance, & audit	PC	1	2
16. DNFBP – R.13 – 15 & 21	NC	2	2
17. Sanctions	PC	2	2
18. Shell banks	PC	2	1
19. Other forms of reporting	C	3	3
20. Other NFBP & secure transaction techniques	PC	1	3
21. Special attention for higher risk countries	PC	2	1
22. Foreign branches & subsidiaries	LC	2	0
23. Regulation, supervision & monitoring	PC	2	2
24. DNFBP – regulation, supervision and monitoring	NC	2	1
25. Guidelines & feedback	PC	*	3

26. The Financial Intelligence Unit	PC	2	2
27. Law enforcement authorities	C	3	3
28. Powers of competent authorities	C	3	3
29. Supervisors	PC	2	2
30. Resources, integrity and training	PC	2	2
31. National co-operation	LC	3	3
32. Statistics	PC	1	2
33. Legal persons – beneficial owners	PC	2	1
34. Legal arrangements – beneficial owners	C	3	1
35. Conventions	C	3	3
36. Mutual legal assistance (MLA)	LC	2	2
37. Dual criminality	LC	3	3
38. MLA on confiscation and freezing	PC	2	3
39. Extradition	LC	2	3
40. Other forms of co-operation	PC	2	3
41. Implement UN instruments	PC	*	3
42. Criminalize terrorist financing	LC	3	3
43. Freeze and confiscate terrorist assets	PC	2	3
44. Suspicious transaction reporting	NC	2	3
45. International co-operation	LC	2	3
46. AML/CFT requirements for money/value transfer services	NC	2	2
47. Wire transfer rules	NC	2	1

48. Non-profit organisations	LC	2	2
49. Cross-border declaration & disclosure	NC	1	2

The UAE ratings are based on both Dubai and UAE legislation and regulations, as currently published and available to the public, which demonstrates communication and increases awareness of these requirements. While the UK rating is current as of 2014, UAE ratings assessments are not available after the data found for 2008. No statistics were available from UAE resources, such as government websites, regarding percentage of cases found to involve money laundering or prevalence of compliance issues in local organisations. Measurements of statistical evidence would be needed to confirm compliance, specifically in the areas of non-profit organisations, confiscation, freezing, and other areas. The use of statistics allows comparison to other countries and may identify if any areas are perceived to be unusually low, such as was identified in the 2007 assessment. In addition, some information available for this assessment was only available in Arabic, which did not assist in the evaluation due to the inability for professional translation, which is required for this type of documentation.

In addition, the FATF and MENAFATF provide information regarding the international standards and regulations of AML requirements. The MENAFATF provides a 2008, version of Designated Non-Financial Businesses and Professions (DNFBPs) in Relation to AML/CFT, which identifies the risks to each group, the related FATF recommendation, international requirements, and definition of recommendations⁴⁴⁶. The goal of this section is to recognize the changes that have occurred since the 2008 assessment, and to determine values for each of these sections, based on current knowledge of legislation and literature in these areas. However, the most difficult aspect of this assessment is that no assessor permission was granted and access to records from the country are limited or unavailable. The following sections are identified in the

⁴⁴⁶ Retrieved from http://www.menafatf.org/images/UploadFiles/DNFBPs_in_relation_to_AMLCFT.pdf

table above and defined based on the standards, with an assessment value assigned based on the criteria identified.

Money Laundering Offense

Money laundering offense has been criminalized in the UAE laws, and currently the offence is identified as carrying serious penalties. However, unlike the definition and legislation of the UK, the UAE does not cover all of the possible conditions or circumstances where money laundering can occur. The UAE does provide for the different requirements using FIUs and the AMLSCU to identify when registration and reporting should occur. Based on the requirements that were found in the 2008 assessment, the UAE is considered compliant in this recommendation, as recent legislation includes punishment of money laundering crimes that specify that terrorism funding is also a crime. In addition, the Central Bank requires mandatory registration of Hawala dealers, as of 2012.

Money Laundering Offense – Mental Element and Corporate Liability

Money laundering offense – mental element and corporate liability are identified to some degree in both the UAE legislation and in DFSA Codebook. In addition, the Central Bank provides firms with the information needed to remain compliant with the regulations that are necessary for preventing money laundering. These have no measurements for review on their success in maintaining compliance from the organisations located in the UAE. According to the 2008 assessment, there was limited implementation of the requirements in this area. This evaluation does not have sufficient evidence to make further determination in this area due to the necessity to identify corporate liability and statistics regarding compliance.

Confiscation and Provisional Measures

Confiscation and provisional measures are identified in the UAE and DFSA regulations, and further identified in the documentation from the Central Bank. According to the FATF, countries should provide authorities with the ability to “freeze or seize and confiscate” property, proceeds, and instrumentalities intended for money laundering, “without prejudice” and without criminal

conviction, where necessary⁴⁴⁷. However, statistical evidence of these are less available and are not consistent with the clarity and transparency found in the UK. During the 2008 assessment, assessors noted that there was no evidence to support the effectiveness of these laws in the UAE, at this time the research does not identify any change and this area could not be measured. This area was not assigned a measurement and is assumed to require full FATF Recommendations assessment for completion.

Secrecy Laws Consistent with the Recommendations

Secrecy laws consistent with the recommendations are not readily identifiable in the documentation of regulation and legislation of the UAE; however, some reference is made to these aspects. The FATF requires that countries implement laws that prevent financial institutions from using secrecy laws to inhibit the investigation or uncovering of illegal activities, particularly money laundering. This factor is not readily available to evaluate through statistical evidence, and the primary research suggests that secrecy may be a problem, due to the reluctance of respondents to commit to the current conditions and the cultural values of privacy that restrict sharing of information that may be perceived as negative to outsiders. According to the 2008 assessment, this area was lacking in compliance, due to the “lack of clear statutory gateways through which the regulatory authorities may exchange confidential information with domestic authorities and foreign counterparts”⁴⁴⁸. According to the DFSA Codebook, 3.4.12 (2), Authorized firms “must verify if there are secrecy or data protection legislation that would restrict access without delay to such data by the Authorized Firm, the DFSA or the law enforcement agencies of the UAE”⁴⁴⁹. In addition, the UAE considered the 2008 recommendations and later changes to the FATF Recommendations, which occurred in 2012,

⁴⁴⁷ Ibid p. 12.

⁴⁴⁸ Mutual Evaluation Report, p. 151.

⁴⁴⁹ DFSA Codebook, p. 13.

when developing draft law amends in April of 2014, noted here in the conclusion of the FATF Recommendations⁴⁵⁰.

Customer Due Diligence

Customer due diligence is well documented in the DFSA and Central Bank, and is supported by federal legislation to some degree. This particular element is similar to the others in that access to statistical data is not available and the respondents in the primary research identified the success of customer due diligence as lacking due to the inability to obtain information from other countries, agencies, or firms, in regards to the needs of this requirement. The FATF requires that due diligence occur by restricting the financial institutions from “keeping anonymous accounts or accounts in obviously fictitious names”⁴⁵¹. In addition, countries should have required policies for investigating and reporting suspicious activities, and these are defined by the Central Bank and DFSA and are in compliance in legislation for the country. Based on the 2008 assessment, UAE was not in compliance with this requirement, specifically noting that no legislation was supporting these needs and risks were beyond expected thresholds for this area. However, changes to these needs were made following this assessment, which include the DFSA Codebook changes to include all of the “Know Your Customer” requirements, and these same aspects were identified as current requirements of the Central Bank. While no statistical evidence of the success was noted, this was considered to be in compliance at the current recognition of legislation and support required by the DFSA and Central Bank. This resulted in the score of largely compliant, because legislation exists, but some consideration must be given to the primary research, which suggests access is difficult.

450 Al Hamrani, K, & Omar Khattab, ‘UAE Enhances Battle Against Money Laundering and the Financing of Terrorism’, May 2014, Retrieved from <http://www.tamimi.com/en/magazine/law-update/section-8/may-7/uae-enhances-battle-against-money-laundering-and-the-financing-of-terrorism.html>

451 Ibid p. 14.

Politically Exposed Persons

Politically exposed persons (PEP) is difficult to address in any country, and in the UAE this is no different. The laws and regulations regarding this particular aspect are not different from the initial assessment conducted in 2008 and could use improvement; which found that the UAE was not compliant with the requirements of this area. According to the FATF, PEP should be addressed using risk management systems designed to determine if the customer is a politically exposed person and regulations for approval of establishing business relationships with individuals appearing to fit within this definition. In addition, the FATF notes that financial institutions should increase investigative processes for the determination of funds for the PEP individual as well as increase monitoring of the continued relationship during the duration of the relationship with the individual. This area is noted as largely complaint, in that legislation exists to support the FATF recommendations, but no evidence to the amount of success is available to the research.

Correspondent Banking

Correspondent banking is addressed by the UAE, Dubai, and the Central Bank. This also does not have statistical evidence but is perceived to be in the control of the regulations that support anti-money laundering initiatives. FATF requirements for this item include that cross-border correspondent banking, in the case of both financial institutions and “other similar relationships”⁴⁵² be subject to AML/CFT controls, senior management approval, transparency by each institution involved, include detailed information regarding the arrangement and the institutions, and that the appropriate customer due diligence measures be completed by both institutions. In the 2008 assessment, correspondent banking was found to be not in compliance with the FATF Recommendations in domestic banking; however, since that time the DFSA Codebook has added these in all areas regarding Authorized firms, and defined the same requirements of the FATF recommendations. In addition, the CBUAE, created a Correspondence

⁴⁵² Ibid p. 16.

Banking Division, designed to assess risks and reduce the number of risks occurring with correspondent banking⁴⁵³.

New Technologies & Non Face-To-Face Business

New technologies & non face-to-face business includes money or value transfer services, new technologies, wire transfers, and all other transactions, including Hawala, that may typically not include the required documentation or traditional regulation and legislation of traditional money transactions. The FATF rates these as higher risk, due to the inability to properly document these transactions and the ease at which money laundering may occur through these options. Legislation of UAE and Dubai are limited in addressing these particular aspects, though changes have occurred in 2014, and Hawala dealers are regulated and required to report, though primarily on a voluntary basis. This area is a large risk to the UAE because it has a large population of internet users and these figures are growing rapidly. While Hawala may be currently receiving requirements for documentation and legitimization, this form of transactions is still a continued risk within the country. While the 2008 assessment found this area to be largely compliant, the primary research suggests that this area needs improvement. Legislation is found to be compliant, but implementation requires additional improvement, therefore the rating has been given as largely compliant.

Third Parties and Introducers

Third parties and introducers the Central Bank and the DFSA Codebook address the reliance on their parties elements in the FATF recommendations; however, the ability to ensure that these elements are complete are not available. The UAE should more clearly define the legislation and regulation in these areas in order to create conformity throughout the emirates, as the use of third parties for customer due diligence may not only increase risk of money laundering but also of

453 'Organization & Development', Central Bank of the U.A.E., Updated on 29, December 2014, retrieved from http://www.centralbank.ae/en/index.php?option=com_content&view=article&id=147&Itemid=109

security for individuals. The “internal controls and foreign branches and subsidiaries” requirements are not clear in the current the regulations and require that more work is done to develop clear requirements of financial institutions, which will reduce confusion in the development of these specific aspects. According to the 2008 assessment, the UAE was found to be largely compliant. Third parties are addressed in much of the DFSA Codebook and the Central Bank documentation, which enabled the rating to remain at largely complaint, and takes into account that this requires additional evaluation at the agency level to ensure that compliance occurs outside of documentation.

Record-Keeping

Record-Keeping is a necessary aspect of money laundering prevention, due to the ability of this aspect to assist in investigations that will uncover criminal activities. The FATF requires that financial institutions “be required to maintain, for at least five years, all necessary records on transactions, both domestic and international”⁴⁵⁴, which will increase the ease of compliance in the case of investigation and prevent the firm from interrupting legal processes. The UAE requires that all financial institutions are licensed and conform to these requirements, as noted in the Central Bank and in DFSA. However, this was noted in the primary research as an area that was complicated due to the lack of information or access to the required information. In the 2008 assessment, the UAE was found to be largely compliant, and based on regulation and legislation, this is true; however, due to the primary research indicating a lack of access or knowledge to access this type of information, largely complaint was retained for this assessment.

Unusual Transactions

Unusual transactions are found to be aspects of record-keeping, risk management, complex relationships or transactions, large transactions, or patterns of transactions. These measurements are more difficult to assess without statistical values, and the respondents to the primary research

454 Ibid p. 15

noted that communication and documentation were the most difficult aspects in adhering to the requirements of AML. In this way, it does not appear that the UAE is strictly in compliance with this recommendation, though the Central Bank and DFSA have noted these items as a requirement of all firms. However, the 2008 assessment found this to be largely compliant, and due to this, the same rating has been applied in this assessment.

DNFBP – R.5, 6, 8 – 11

DNFBP – R.5, 6, 8 – 11 include the actions of designated non-financial businesses and professions in regards to the same recommendations for financial institutions but not requiring the same degree of regulation. In the UAE, casinos and proceeds from gambling are not legal in any manner. However, the ability to use professionals, including accountants, lawyers, real estate agents, and other professionals as resources for money laundering are a risk that the UAE is challenged in regulating. According to the 2008 assessment, these were noted in legislation and regulation, but not to the degree of which is considered in complete compliance. However, the DIFC has since developed communications identifying these problems and requiring that DNFBPs identify the regulations of the DFSA, and in accordance with the UAE legislation and DFSA Codebook, include fines for DNFBPs failing to comply with regulations⁴⁵⁵.

Suspicious Transaction Reporting

Suspicious transaction reporting is a requirement of the FATF in that any financial institution or DNFBP is required to report any suspect of funds or individuals that may be associated with criminal activity or terrorist financing. This requirement is also found in the UAE, DFSA, and the Central Bank. However, this is another area where statistics are not available and the primary research indicated that additional work must be done to increase the success of this particular

455 'Regulation DNFBPs operating in or from the DIFC', DFSA, (2013), Retrieved from <http://www.dfsa.ae/Documents/Leaflets%202013/DNFBP%20Leaflet%2020%20October%202013.pdf>

aspect of AML. This area was found to be non-compliant in the 2008 assessment, and while much of the suspicious transaction reporting has been modified and updated, the area of “attempted transactions” has not been addressed in the DFSA Codebook, where the only adherence directly is describing attempts to money launder, and identifying customers and transactions where if either occur there must be a report. In addition, reporting appeared to be extremely low, as compared to the size of the financial market being supported. In this way, this area has been changed to partially compliant, but may be largely compliant in that no data currently exists as to the effectiveness in this area, and the legal documentations fails to address attempts to money launder clearly.

Protection & No Tipping-Off

Protection and tipping-off are addressed by the UAE and Dubai as well. In this case, the FATF recommends that countries focus on creating protection for institutions, employees, and individuals in situations where reporting may cause undue harm to the individual or the firm, and that reporting of suspicious activities are protected if they are reported immediately to the proper authorities for further investigation. The ability to report these activities enables the increase access to the information by the FIUs and increases safety for individuals that may have become inadvertently connected to criminal activity. One goal is that information obtained will be transferred promptly to the authorities, even if this information occurs after the incident of money laundering. While no statistical evidence is available regarding this in the UAE, the support of these processes is noted and does require additional attention due to the primary research regarding the need of improved communication and access to documentation. In the 2008 assessment, this area was identified as partially compliant. The DFSA notes that this area is covered in Article 16, Law No. 4, which states that any person who informs a person that their individual transactions are under investigation or being evaluated for possible suspicious activities, is committing a crime which is punishable by fine or imprisonment. In addition, the DFSA notes that in such cases where an Authorized Firm is uncertain regarding their obligations of ‘Know Your Customer’ (KYC) and these requirements, should file a Suspicious Transaction Report and inform employees of the sensitivity of the matter and issues when considering the

KYC processes⁴⁵⁶. This area is considered to be largely compliant, due to the regulations supporting this, but no statistics are found to demonstrate its effectiveness.

Internal Controls, Compliance, & Audit

Internal controls, compliance, and audit include the controls of foreign branches and subsidiaries but most not exclude the application of documentation in internal financial institutions. While legislation regarding these needs are limited, some of the provisions have not been implemented since the 2008 assessment. As it was rated with partially compliant in the 2008 assessment, this same assessment was applied here, noting that this area may be largely compliant due to the changes instituted by the Central Bank and the DFSA Codebook, which requires that Authorized Firms complete additional requirements than those that were found to be applied in the 2008 assessment. However, no statistical evidence of compliance and auditing have been demonstrated in areas that were available for the research.

DNFBP – R.13 – 15 & 21

DNFBP – R.13 – 15 & 21 is similar in consideration as the previous DNFBP requirements and must be considered more significantly by the legislation of the UAE and the requirements listed by both the DFSA and the Central Bank. While DNFBPs are required to be registered and typically licensed in particular areas or professions, the accountability in this area is limited due to the lack of statistics identifying the percentage of these and their adherence to the requirements of the AML regulations. This area was considered to be not in compliance in the 2008 assessment; however, many of these requirements are now in place in both the UAE and in the DFSA Codebook. There are no statistical values that demonstrate how many of these organizations are currently compliant with the new regulations, and no evidence of how the country is currently monitoring compliance with these requirements. In this way, it was listed as

⁴⁵⁶ DFSA Codebook, p. 17 – 18.

largely compliant in this assessment, acknowledging that the regulations are in effect but that currently more work needs to be completed to demonstrate effectiveness or compliance.

Sanctions

Sanctions are in place in the UAE, DFSA, and Central Bank, which are designed to increase compliance with the AML regulations. While statistical data was not available in this area either, the 2008 assessment found that compliance in legislation was mostly sufficient and recently the UAE increased the punishment for involvement in money laundering and its related criminal offenses to include the death sentence. In this way, it is perceived that the UAE is in compliance with this recommendation. However, similar to the other items listed in the recommendations, there are no statistical values to associate the effectiveness of this area, and the rating in this assessment is given to largely compliant in acknowledgement of the changes in requirements but lacking of evidence of effectiveness.

Shell Banks

Shell banks are prohibited for financial institutions to create or develop relationships with, according the recommendations of the FATF. According to the 2008 assessment of the UAE, there were no laws prohibiting this activity; however, the DFSA specifically states that shell banks are not permitted, according to Rule 3.4.14. “An authorised Firm must not:” “establish a correspondent banking relationship with a Shell Bank;” “establish or keep anonymous accounts or accounts in false names; or” “maintain a nominee account which is held in the name of one Person but controlled by or held for the benefit of another Person whose identity has not been disclosed to the Authorised Firm”⁴⁵⁷. This area was considered partially compliant in the 2008 assessment, and was changed to largely compliant as a result of changes in legislation and requirements outlined in the DFSA Codebook and Central Bank.

457 DFSA Codebook, p. 15, retrieved from

http://dfsa.complanet.com/net_file_store/new_rulebooks/d/f/DFSA1547_4489_VER7.pdf

Other Forms of Reporting

Other forms of reporting are not specified by the FATF but encouraged for countries to adapt measures of reporting that best suit their individual needs for complying with the regulations and recommendations of the FATF standards. In the 2008 assessment of the UAE, it was found that reporting was not clearly defined by the UAE or the Central Bank; however, since this time those reporting requirements have been increased. While this area is now mostly compliant, the primary research suggests that more work could be done to improve in this area. This area remained at compliant, due to the rating applied in the 2008 assessment.

Other NFBP & Secure Transaction Techniques

Other NFBP and secure transaction techniques are covered by UAE legislation; however, the access to statistics regarding these measures are not available for review. In addition, the completeness of these regulations and legislation require additional work to be thorough and complete in assisting in meeting AML requirements of the FATF recommendations and has not changed largely since the 2008 assessment. Much of the difficulty in this area is a direct relationship with the cash-based aspects of the society. While legislation continues to improve, this area was not moved from the 2008 assessment due to the lack of attention it is paid in the regulations and legislation that is associated with these areas. However, the 2014 changes to legislation may influence this and increase the rating.

Special Attention for Higher Risk Countries

Special attention for higher risk countries is more complicated for the legislation and regulation of AML because of the difficulty in assessing the changes that occur between nations and the lack of standardization of regulations. According to the 2008 assessment, the UAE was rated only partially compliant with this requirement; however, recent changes to the regulations of the Central Bank and the DFSA have placed stricter requirements on financial institutions to obtain documentation and maintain records regarding higher risk relationships and sources of questionable funds, where reporting takes place for all suspicious activities. In this way, the rating

established here is the largely compliant rating; however, a lack of statistics to support the effectiveness of the requirements prevents further assessment.

Foreign Branches & Subsidiaries

Foreign branches and subsidiaries is noted as including the need for all subsidiaries and branches to adhere to the same standards of AML/CFT as the main office, and that the failure of the branches or subsidiaries to be able to implement these standards and regulations, or the failure of the branch to successfully implement these requirements must notify the central bank. These requirements also do not have statistical evidence available. In addition, Dubai does not address subsidiaries or foreign branches. However, the DFSA does recommend that firms do not exclusively rely on the Codebook but also refer to the “the consolidated list of financial sanctions in the European Union Office, HM Treasury (United Kingdom) lists, and the Office of Foreign Assets Control (OFAC) of the United States Department of Treasury”⁴⁵⁸. The 2008 assessment noted this area as largely compliant, and this rating is applied again, though fully compliant would require that further assessment of effectiveness be evaluated.

Regulation, Supervision & Monitoring

Regulation, supervision and monitoring specifically address the need of FIUs, Financial Institutions, and AMLSCU to establish regulation, ensure compliance, access necessary information to remain compliant and monitor for non-compliance or illegal activities. The 2008 assessment rated this area as partially compliant, focusing on the aspects of voluntary registration processes for hawala dealers, no board member requirements, lack of AML/CFT inspections in the securities sector, and the lack of supervision in the insurance sector. However, since this time some legislation has been developed in these areas, and improved regulation has been published in both the Central Bank and the DFSA Codebook. Additionally, hawala dealers are now required to register and comply with all reporting and STR as other financial institutes, where

⁴⁵⁸ Ibid p. 19.

failure to comply results in sanctions⁴⁵⁹. No current statistics were available regarding compliance, and the application in the area of the board members and managing directors was not clearly defined, which resulted in a score of largely compliant.

DNFBP – Regulation, Supervision and Monitoring

DNFBP – regulation, supervision and monitoring is similar to the above item, and includes strictly DNFBPs. The licensing of DNFBPs occurs at the emirate levels in the UAE, and compliance is monitored at the levels of emirate and the federal level; however, regulation is not always similar or including the same scope between different emirates. The measurement of this success in the 2008 assessment found that, in regards to DNFBPs, there were no provisions for DNFBPs; however, some changes have occurred in these areas since that time. Due to the increase in legislation and regulation, the score for this area was identified as largely compliant, only because no supporting data could be obtained to verify compliance nor are there statistics regarding the numbers of DNFBPs and standardization between emirates.

Guidelines & Feedback

Guidelines and feedback are referred to as the enforceable means of the country and include the instructions, documentation, mechanisms, and sanctions for non-compliance. These factors were found to only be partially compliant in the 2008 assessment, and based on the primary research regarding knowledge and communication, it is likely that this is a challenge area for the UAE. This research was not able to make a complete assessment in this area due to lack of literature; however, the primary research did not support the enforceable aspects that would be expected based on the legislation and regulation implemented. No score is given in this area.

⁴⁵⁹ 'All Money Laundering and Financial Crimes Countries/Jurisdictions: United Arab Emirates', 2014, International Narcotics Control Strategy Report, pp. 439-441.

The Financial Intelligence Unit

The Financial Intelligence Unit is defined as the investigative department of the AML/CFT regulation that a country must implement to be successful in the recommendations of the FATF. The 2008 recommendations included amendment to the AML law to increase national FIU use and access for gathering information and conducting investigations, improve the power of the FIUs, confidentiality clause to protect employees of the FIU and information held by the FIU, training and development, databases with access to the FIU, law enforcement involvement in FIUs, and public awareness campaigns⁴⁶⁰. These have been an objective in Dubai; however, the success has only been in the increased legislation and regulation in regards to the FIU. No documentation exists to support the success of the FIU in the country, and the research conducted in the primary research suggests that difficulties still exist in this area. Largely compliant was selected to acknowledge the newest regulations and legislation.

Law Enforcement Authorities

Law enforcement authorities were one of the focal points of the primary research, and the law enforcement agency of Dubai was largely dissatisfied with the ability to control or investigate money laundering in their areas. These were a direct result of failure in communication and access to the appropriate information. However, respondents did note that the FIUs preferred to take experienced law enforcement officers as additional employees for their units. This type of collaborative effort is not the intention of the law enforcement recommendation of the FATF, which suggests that law enforcement agencies should have the ability to investigate money laundering and terrorist financing through the “framework of national AML/CFT policies”⁴⁶¹.

460 ‘Mutual Evaluation Report. Anti-Money Laundering and Combating the Financing of Terrorism, United Arab Emirates’, MENAFATF, 9 April 2008, p. 159, retrieved from

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf>

461 ‘International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation, FATF Recommendations’, FATF, February 2012, Retrieved from

http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf

During the 2008 assessment, this area was rated as compliant, and while the issue of effectiveness is a concern, the rating was not downgraded due to the legal framework in place for this area.

Powers of Competent Authorities

Powers of competent authorities is another area that is essential to the success of the AML/CFT policies in that it enables the investigation of suspicious activities and gathering of necessary information or evidence for prosecution or for confiscation of the suspected property or money, where these are found to be the result of criminal activity – money laundering or terrorism funding. In the case of the UAE, authority in this area exists at the federal and the emirate levels, including the authority granted to the Federal Customs Authority (FCA), public prosecutor's office, federal attorney-general, and is not consistent in responsibility between emirates. This is a concern that was noted in the 2008 assessment, which remains a concern due to the inability to develop strict standardization between emirates in the UAE. While it is likely that the success of these types of authority would be benefit from existing on the emirate level, it is likely that the UAE would benefit from increasing the requirements of the emirates to adhere to these requirements and to establish a federal unit specifically designed to work with emirates in complying with these specific recommendations. The rating of compliant was not changed.

Supervisors

Supervisors are necessary in managing the information that is required to establish the existence of money laundering offences or to manage the risks associated with transactions that are considered to be “high risk” as in occurring under that definition. Supervisors must have the same protection as the FIU, in order to ensure that the supervisor is able to perform their duties successfully. The UAE, DFSA, and the Central Bank have established regulation regarding the requirements of firms to have AML/CFT supervisors to evaluate the adherence to standards, regulations, and legislation by the firm. Included in the recommendations is that firms establish clear training programs and standards for their organisation, which will guide supervisors when they are responsible for difficult decisions or monitoring suspicious activities. This area had a

partially compliant rating in the 2008 assessment, which was upgraded to largely compliant due to regulation and legislation; however, it cannot be supported at the compliant level due to the lack of evidence to support effectiveness.

Resources, Integrity and Training

Resources, integrity and training are viewed as key needs of successfully implementing FATF recommendations and providing the ability for firms and agencies to adhere to the legislation of AML/CFT created by the country. According to the findings of the 2008 assessment, the Abu Dhabi Police established a “specialist economic crime unit”, and initiated training from resources of the “GCC, the US and British Commonwealth countries” in order to improve upon the ability to investigate criminal activities particularly related to financial crimes⁴⁶². However, the primary research indicated that the Dubai police force did not have the training necessary for many of the needs identified in the financial crimes area, specifically in knowing how to access or obtain the necessary information during an investigation. However, in Dubai, it was noted that specialty forces did receive training, and that specific officers were given the training required to do these investigations, and they may not have been included in the population studied. In the 2008 assessment this area was noted as partially compliant, and this same rating was given, based on the results of the primary research.

National Co-Operation

National co-operation and coordination is important to success of AML/CFT regulation because money laundering does not strictly occur in a single area but typically occurs over a number of areas. As stated by the FATF recommendations, all countries should have national policies that address the risks and requirements of AML/CFT, which are reviewed regularly for improvement of enhancement to remain current and effective in their goals. In addition, the UAE was noted in the 2008 assessment to have established a National Anti-Money Laundering Committee, which

⁴⁶² Ibid p. 46.

includes membership of the “foreign ministry, the ministries of interior, justice, finance and industry, economy and commerce, agencies concerned with issuing trade and industrial licenses, the central bank and the UAE Customs Board (disbanded and the functions are now performed by the Federal Customs Authority – FCA)”⁴⁶³. The objectives of this area was to develop relationships and cooperation, which through MENAFATF, and training collaborations with countries such as the UK, have been developed. If these areas are completely effective is beyond the scope of this research; however, based on the necessary elements and attempts, the rating was improved to compliant, which is also supportive of recent reports regarding the UAE.

Statistics

Statistics of the UAE were mostly not available in the 2008 assessment, nor available in the research gathered from this study. The FATF suggests that all countries should use statistics to measure the “effectiveness and efficiency of their AML/CFT systems” and that these statistics should be made available to the assessments and authorities for measuring their individual success and areas in need of improvement⁴⁶⁴. However, it is important to note that the Central Bank agreed to working on a method for developing statistics for assessment of wire transfers and would make this type of information available to the FIU. In addition, the Dubai Police were able to provide assessors in the 2008 report with statistics and documentation on 224 cases investigated regarding money laundering, which demonstrated that the majority of money laundering incidents investigated occurred from areas outside of the UAE/Dubai. The recommendation for the UAE is increased resources for the FIUs and authorities to use in investigations and monitoring the success of the activities of these agencies. As no new statistics were available to this research the rating was not changed.

⁴⁶³ Mutual Evaluation Report, p. 130.

⁴⁶⁴ FATF Recommendations, p. 26.

Legal Persons – Beneficial Owners

Legal persons – beneficial owners are the responsibility of record-keeping and transparency efforts of firms in managing customer bases and information. The ability to prevent money laundering requires that the necessary documentation always exist where money or assets are found to present opportunities for illegal and criminal activities to occur. FATF recommendations include that all relevant information be complete, adequate, and available in a timely and accurate manner to authorities in the case of investigation. In addition, all firms and professionals are required to report suspicious information or documentation to the FIU or other AML authorities. While the compliance of this issue is mostly covered in the UAE, some difficulty remains with standardization between emirates. However, the DFSA has established clear requirements in all of these areas of need and these requirements are located in the DFSA Codebook. In addition, the Central Bank has worked to improve upon these regulations, which has resulted in a change to largely compliant based on this improvement.

Legal Arrangements – Beneficial Owners

Legal arrangements – beneficial owners is similar to the above, where it is required that the beneficial owners and other legal arrangements are documented and identified. Similar to the above, these regulations and recommendations are considered in the DFSA and further work should be done to standardize these aspects in all of the emirates. This rating was found to be compliant in the 2008 assessment, and additional regulation and legislation supports this issue, and the rating was applied again as compliant in this area.

Conventions

Conventions are necessary for remaining up-to-date on the necessary policies on AML/CFT regulations and associated needs such as cybercrime or international policy changes that can directly influence the country. In the case of the UAE, remaining current with the policy of other countries has not been the primary objective; however, pressure from the international organisations the UAE currently belongs to, and in order to increase the viability of the country,

the UAE has taken notice of ongoing legal changes in the international organisations and other countries. The 2008 assessment recognized the ongoing changes to the legal regulations of the UAE in response to the conventions described by the FATF, and notes that the largest recommendation is the dissemination of this information to businesses and individuals. Since the time of this assessment, information has become more widely available, including in English and in Arabic, for use by the businesses or businesses wishing to do business in the country. In addition, many emirates have begun publishing to their citizens the relevant changes that occur in the legislation. Overall, this particular aspect of the FATF recommendations is considered to be compliant and remained so in this research.

Mutual Legal Assistance (MLA)

Mutual legal assistance (MLA) was rated in the 2008 assessment as demonstrating limited compliance with this aspect, though different areas have worked to improve upon this section of the FATF recommendations, there is still work that must be done to improve upon this area. The proposals for different models, including the intelligence-led policing and the National Intelligence model are specifically identified for increasing the communication and the success of cooperation between agencies, both nationally and internationally. This improvement would benefit the UAE by establishing clear channels for communication, access to databases, authority and levels of responsibility, and to create opportunities for the agencies to identify gaps in the investigative processes and in the sharing of information. Due to the needs of improvement, which was also identified in the primary research, this area was not changed from the 2008 assessment.

Dual Criminality

Dual criminality is covered by the FATF recommendations is recognized as a requirement of mutual legal assistance. In the case of international mutual legal assistance it is determined that this includes that terminology must be developed to provide countries the ability to ensure that investigative techniques promote cooperation. In the case of the 2008 assessment, it was found that Article 7(4) “of the judicial cooperation law effectively dispenses with the need for dual

criminality in extradition and mutual legal assistance matters”⁴⁶⁵. This is only contradicted by the ability of the UAE to refuse on the basis of lack of dual criminality, but typically does not result from the offense having no offense in the UAE or being in an different denomination or other related issues. Due to changes in the laws and improvement of the UAE in cooperation, this rating was changed to compliant during this quasi-assessment.

MLA on Confiscation and Freezing

MLA on confiscation and freezing is related to the legislation of a country to “take expeditious action” when another country requests the identification, freezing, seizure, and confiscation of property laundered or the proceeds from money laundering in offences or in the case of terrorist financing⁴⁶⁶. This includes that all instrumentalities be considered where they are in direct relationship to the incident or perceived to have been a result of the crime. In the case of the UAE, the 2008 assessment found that Article 21 supported this recommendation but did not “cover all of the predicate offenses outlined in the FATF Recommendations”⁴⁶⁷. As changes have occurred in the legislation in this area, it was changed to largely compliant, where the primary difficulty is in statistics supporting the effectiveness of the implementations.

Extradition

Extradition is also evaluated by the FATF Recommendations and is considered the ensuring that the country will not provide safe haven to money launderers and that requests for extradition will be managed without obstruction and in a timely manner. This aspect of the recommendations was found to be in need of standardization and requiring that the UAE develop target dates for training and enforcement of this legislation. While this information was not developed in the primary research for this study, it was noted that this was projected as being part of the goals of

⁴⁶⁵ Mutual Evaluation Report, p. 141.

⁴⁶⁶ FATF Recommendations, p. 28.

⁴⁶⁷ Mutual Evaluation Report, p. 141.

the UAE generally, and no reports were found to contradict the success of this implementation. This area has been largely effective based on the 2008 assessment, and this same rating was applied in this assessment due in part to the statistics being unavailable to support the effectiveness of this legislation in the UAE.

Other Forms of Co-Operation

Other forms of co-operation are defined as competence in authorities to “rapidly, constructively and effectively provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing”⁴⁶⁸, where the country can act both instantly and after request in a lawful manner demonstrating cooperation. In the 2008, assessment, the NAMLC was noted as being established in accordance with Article 9 of the AML Law, and in Article 10, addresses the requirement that the NAMLC will work cooperatively with other countries in addressing the needs of investigation and requests for extradition or other money laundering requests. However, the assessment was unable to determine the full extent of this application and the research here was not conclusive or providing any evidence to the effectiveness of this particular role of the NAMLC. While the 2008 assessment found the area to be partially compliant, a report in 2014 noted that record exchange mechanisms are in place⁴⁶⁹, and that the UAE works with other governments and jurisdictions, suggesting that the improvements in regulations and legislation are assisting in this area, which demonstrates that this area has become largely compliant.

Implement UN Instruments

Implement UN instruments is an important aspect of the ability of the country to act upon information regarding AML/CFT regulations. This particular item was found to be in partial

⁴⁶⁸ FATF Recommendations, p. 29.

⁴⁶⁹ 'All Money Laundering and Financial Crimes Countries/Jurisdictions: United Arab Emirates', 2014, International Narcotics Control Strategy Report, pp. 439-441.

compliance, according to the 2008 assessment of the UAE. Since that time, the changes in the UAE have increased the policies and procedures recommended by the UN and other AML/CFT requirements internationally, therefore, this area is considered be improving. This area was beyond the scope of this research to assess fully.

Criminalize Terrorist Financing

Criminalize terrorist financing is the legal regulations that specifically address the financing of terrorist activities, making them criminal activities punishable as such. While the 2008 assessment did not find this to be completely in compliance with the requirements, recent legislation has brought the UAE into compliance by clearly identifying any form of terrorism or actions that enable and fund terrorism are criminal acts that are punishable, including by death sentence. While the 2008 assessment determined that legislation was only largely compliant, the UAE has since implemented changes to these laws that demonstrate a much more specific identification in regards to these requirements,

Freeze and Confiscate Terrorist Assets

Freeze and confiscate terrorist assets is considered part of the money laundering and confiscation recommendations that specifically require that countries adopt measures that were identified in the Vienna Convention as necessary legislative measures, where the responsible authorities have the power to “freeze or seize and confiscate the following without prejudicing the rights of bona fide third parties: (a) property laundered, (b) proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences, (c) property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or (d) property of corresponding value”⁴⁷⁰. In the 2008 assessment, the UAE was found to be in partial compliance with this measure. With the exception of uncovering the information regarding these assets, the respondents in the primary study supported that

⁴⁷⁰ FATF Recommendations, p. 12.

confiscation would occur in the case of criminal activities. In addition, since the 2008 assessment, the UAE has worked to use legislation to close this gap, and is found to be mostly compliant where the primary needs are in dissemination of the information and standardization between emirates.

Suspicious Transaction Reporting

Suspicious transaction reporting has also been previously identified in the research, and was found to be a struggle for the primary research, which both complained of difficulty in accessing databases or achieving communication goals, but also noted that the majority of transaction reporting was successfully reported as suspicious where applicable and could easily be referred to the related investigative authorities. While the 2008 assessment identified this aspect as non-compliant, the more recent requirements of the Central Bank, UAE legislation, and DFSA Codebook, suggest that this area is likely to be at least partially compliant and in need of increased training programs to improve upon the implementation of the regulations and legislation designed to address this gap.

International Co-Operation

International co-operation suffered a limited compliance rating in the 2008 assessment largely due to the lack of statistical evidence available to the assessors to determine the rate of compliance in this area. In addition, lack of statistical evidence is still a problem in determining what success or improvements have occurred in this area. While the results of the primary research indicate that cooperation is generally not as strong as would be expected for success in AML/CFT regulation, it is likely that the compliance issues are primarily in application rather than in legality. In this way, the recommendation remains that the UAE must institute better record keeping and databases that can be used to create statistical evidence of the country's success in achieving the goals set forth by the FATF Recommendations.

AML/CFT Requirements for Money/Value Transfer Services

AML/CFT requirements for money/value transfer services was rated as non-compliant in the 2008 assessment, reasons were cited as the “voluntary system of registration for Hawala dealers”, “no formal, legally enforceable obligations imposed on Hawaladars”, “no legal powers to oversee the activities of Hawaladars to ensure compliance with standards of CDD, record-keeping, etc.”, “potential scope for abuse through use of registration certificate to access formal financial system”, and “limitations on standards applied to remitters in the formal sector as reflected in analysis of relevant Recommendations covering the financial sector”⁴⁷¹. This is a challenge for all areas with Hawala dealers as the cultural aspects of this type of financial activity is not actively or easily monitored and controlled. In addition, it is not an aspect of Western banking systems, which causes more concern for the lack of monitoring that occurs with this type of money transfer. Finally, the MENAFATF is working closely with the countries to determine how to better manage Hawala without causing unnecessary disruption for money transfer that is legitimate with Hawala dealers. While this area is still not resolved in the case of the UAE, the country has worked with the MENAFATF, and continues to involve the local Hawala dealers in by creating requirements and regulations that will decrease the risks of this type of money transfer for abuse by money launderers or terrorist financing.

Wire Transfer Rules

Wire transfer rules are focus of the Central Bank since the 2008 assessment of the UAE. This focus was designed to have a complete database to increase awareness and accountability of funds obtained in this manner. This is in compliance with the requirements of the FATF Recommendations in that the assessment found that domestic banks did not currently have rules regarding originator information, incoming transfers lack of information, or sanctions in regards to failure to comply with the requirements of this information. The DFSA addresses this issue by stating that the payment information must remain with the “payment instruction through the

⁴⁷¹ Mutual Evaluation Report, p. 157-158.

payment chain”, specifically in regards to the originator but also in regards to the recipient⁴⁷². In addition, the Central Bank has also begun require this same information to be maintained in case of need or for further investigation in the case of AML/CFT needs.

Non-Profit Organisations

Non-profit organisations (NPO) are a complicated aspect for most countries, due to the international transfer of money with many of these types of organisations. According to the 2008 assessment, the application of FATF Recommendations in this area was lacking compliance in many areas; however, the changes in legislation regarding NPOs has changed, and while there are some changes that must still occur, the UAE does not permit NPOs to send money international except through three approved government controlled entities: the Red Crescent Authority, the Zayed Charitable Foundation, and the Muhammad Bin Rashid Charitable Trust.

Cross-Border Declaration & Disclosure

Cross-border declaration & disclosure was found by the 2008 assessment to be not in compliance with the FATF Recommendations. The specific items cited included “inconsistent enforcement of reporting system”, “no system for the reporting the transportation of bearer negotiable instruments, either inbound or outbound”, “no system for the reporting of outbound cross-border transportation of cash”, and “no sanctions or restraint powers for failure to disclose/declare or false disclosure/declaration of bearer negotiable instruments”⁴⁷³. The requirements that are currently in-place in the UAE have not met the requirements of the FATF Recommendations in full.

7.2. Summary

While the FATF Recommendations results demonstrate improvement of the UAE in meeting the AML/CFT regulations, there are still many areas that need improvement in the legislation and

⁴⁷² DFSA Codebook, p. 21

⁴⁷³ Mutual Evaluation Report, p. 158.

implementation of regulation. The UK has challenges in areas that are different from the UAE, such as politically exposed persons and correspondent banking, which the 2013 findings state that the UK is not compliant in these areas. In addition, the UK received only a score, which denotes partial compliance with customer due diligence, third parties and introducers, and other areas that may need addressed in the near future. While overall the UK scores higher than the UAE in most areas, the areas that need addressed are important for both countries and should be considered in the coming year to improve upon the success of AML/CFT initiatives. In addition, the UAE is evolving and changing rapidly, for example, in an assessment conducted in June of 2014, based on the FATF Recommendations, a report was developed that demonstrated that numerous implementations had already begun taking place; however, again, there was limited statistical evidence regarding success⁴⁷⁴.

⁴⁷⁴ 'All Money Laundering and Financial Crimes Countries/Jurisdictions: United Arab Emirates', 2014, International Narcotics Control Strategy Report, pp. 439-441.

Chapter Eight

Conclusion and Recommendations

8.1. Introduction

The aims of this research were to analyse the current regulatory structure of AML in Dubai. It further sought to identify best practice to prevent money laundering, and to look at the potential practices which could be implemented in Dubai to strengthen the AML legislative framework. Though there was some criticism in the previous chapter highlighting key issues, this brief final chapter focuses more on contemporary recommendations that need immediate attention.

However, a brief review of each chapter would be useful here. Chapter one explained and set out the aim, objectives, the problem statement, but mostly highlighted the complex nature of AML in Dubai with the development of FTZs and different bodies ‘regulating’ different financial sectors.

In chapter two the literature relevant to this thesis, concepts and legal terminology were discussed. It noted the explanatory limitations of stages of money laundering, and highlighted the often impenetrable, vague legal documentation on AML, and mostly that the UAE and Dubai have drawn on the laws and systems by ‘copying’ or ‘aping’ of legislation, (mostly United Kingdom laws) and that is perhaps inappropriate for its own experience of money laundering.

In chapter three the focus was on the political context in which AML legislation has developed in the UAE and assessed the legislation presently available to prevent money laundering. The debate focused on the political and legal structure and reputational risk of poor AML practice in UAE. It suggested that the UAE and Dubai was in the position of reputational risk unless it developed comprehensive AML practices instead of relying on a signatory of legal international conventions.

In chapter four the focus was specifically on specific AML measures and the importance of developing strategies in preventing money laundering in Dubai. This chapter highlighted that a lack of communication between law enforcement bodies and the private sector needs to be addressed if AML strategies and practice is to prevent money laundering. Data and information on suspected individuals and organisations is the basis on which to build case, and as such a clear system of communication and combination of civil and criminal sanctions are needed.

In chapter five an explanation of the research methods used and the advantages and disadvantages of these in this thesis was discussed. As with all research, regardless of the methods employed, there are advantages and disadvantages to the approaches used. Securing access to those working in law enforcement was straightforward; access to those in the international financial sector and Central Bank, however, was problematic.

In chapter six the results of the research were analysed. The background data obtained from the interviews highlighted the male dominated sphere of business, even in the private sector and lack of AML knowledge from senior executives and law enforcement bodies in Dubai. The interviews further highlight the lack of coordination between the Central Bank, the private financial sector and law enforcement, and as such AML practice is dis-jointed, and that law enforcements bodies need skilled practitioners with a background in AML practice and/or education on how best to prevent this complex crime.

8.2. Summary of Findings

Dubai is significant in the Middle East due to its location, economic development, political stability, growth of business and centralization in the financial world to the areas of both legitimate business and organized crime⁴⁷⁵. The challenges of reducing money laundering in Dubai are directly related to the surrounding area, which includes the surrounding political instability and criminal elements, and the aspects of the financial environment in Dubai, which is still focused on largely cash transactions, noted for the larger difficulty in controlling or monitoring⁴⁷⁶. In addition, Dubai, as a financial centre with extensive access to all individual through legal points of entry into the city, has the challenge of meeting the requirements of money laundering international regulations, without the power for banks and financial institutions to effectively track transactions in their cash-based economy. These challenges are further compounded by a very strong Hawala system in Dubai, and most of the Middle East, which is perceived to be directly related to criminal activities, from drug and human trafficking to terrorism activities⁴⁷⁷.

Anti-money laundering (AML) systems are valued for the ability to reduce criminal activities internationally and locally⁴⁷⁸. The UAE, along with most countries in the world, have worked to develop legislation and regulation that prevents these activities from occurring in their countries. In the case of the Dubai, themes were found in the interviews that demonstrated a need for policy to include more technology to enable enforcement of anti-money laundering initiatives; training and access to data transactions that occur through banks and financial institutes; and increased authority to act in applying sanctions in cases where illegal activities are occurring. In addition,

475 Eugene Rogan, *The Arabs: A History* (Basic Books 2011)

476 Henry G. Overman, Stephen Redding and Anthony Venables, *The economic geography of trade, production and income: a survey of empirics* (Blackwell Publishing 2003).

477 Brooks, M. (2004).

478 Sabrina Adamoli and others, 'Organised crime around the world' (Heuni Helsinki 1998); Charles Robert Davidson, 'Drugs and Money Laundering. Encyclopedia of Drug Policy. SAGE Publications, Inc.' (2011) 253-255

the respondents noted that AML policies did not always result in the ability of police to act in an AML capacity.

During the research, it was evident that longer terms in their profession typically indicated more belief that the system worked, or that the system worked sufficiently as compared to other countries internationally; however, the UAE is not considered to be completely compliant or successfully based on FATF ratings. Respondents to this study also found that the policies in place needed further support and required additional training and authority to properly address the issues challenging UAE regulations and compliance.

As part of the FATF end-of-year activities within their research, developed OECD FATF ratings by country for 40 indicators, these indicators evaluated a number of countries, including the UK ranked, which was found to be compliant in 24 areas and noncompliant in the areas of only politically exposed persons, correspondent banking, and foreign branches and subsidiaries⁴⁷⁹. This country rating does not include the UAE; however, the Basel AML Index of country risk rating also identifies the differences between the UAE and the UK. The Basel AML Index, comprised of the results of adherence to AML/CTF standards, rates the UK at 4.75 and the UAE at 6.33⁴⁸⁰. However, UAE data regarding compliance with FATF indicators may be outdated, as no published resources are found since the 2008 publication by MENAFATF, the Mutual Evaluation Report, which utilized data from 2007 in its assessment⁴⁸¹.

479 End of year gift to readers: OECD FATF country ratings as an excel file. Retrieved from <https://financialsecrecymediawatch.wordpress.com/2013/12/30/end-of-year-gift-to-readers-oecd-fatf-country-ratings-as-an-excel-file/>

480 The Basel AML Index retrieved from <http://index.baselgovernance.org/index/Index.html#ranking>

481 Retrieved from <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf>

The UAE has been a member of MENAFATF since 2002, and is expected in 2014 to contribute to the program through workshops on assessors training and on FATF and MENAFATF currently revised recommendations and assessment methodologies⁴⁸². The first workshops are expected to include information on “various functions levels of employees working in the regulatory area over the financial and banking sector and other professions or in the implementation of law rules or in financial investigation”⁴⁸³. The second workshops are expected to include “various functional levels: LEAs (Law Enforcement Agencies), FIUs (Financial Intelligence Units), legal, financial/regulatory decision makers and those who take part in the changes of AML/CFT regulations”⁴⁸⁴. However, this study indicates that these challenges are still in need within Dubai itself, such as indicated in the interviews with law enforcement, which suggested that access to information and knowledge to manage information for AML policies were limited.

In addition, respondents found it difficult to assess the movement of money through Dubai, due to the issues of determining legitimacy based on the current ease of movement through the region. The importance of Dubai as a financial centre places additional challenges on regulation, as the increase in difficulty to conduct business could disrupt the current success of Dubai overall. Respondents admitted that the ability of AML to occur is directly related to the ease of access and difficulty in monitoring if the money will be laundered through the banking or Hawala systems currently in place in Dubai. Some of the difficulty occurring is a direct result of political instability or lack of banking controls in the host countries of the individuals, and these are not measures that can be easily addressed by the UAE, but may be addressed through further activities with the MENAFATF.

482 Middle East & North Africa Financial Action Task Force Ninth Annual Report 2013. p. 30. Retrieved from <http://www.menafatf.org/images/UploadFiles/MF.14.P19.02.E..%28V0.2%29.pdf>

483 Ibid p. 30

484 Ibid

Money laundering is an international problem focused on by a number of international organisations designed to develop regulations and standards that countries can implement to reduce the presence of the problem in their individual country. However, the difficulties of implementing these policies is the inconsistency of the financial systems, both within the UAE and in nearby countries. This was particularly present in the results that were found in opinions regarding the AML structures and in the intent of financial organisations to create consistency between countries, including in the FATF regulations and standards, which have the direct intent of creating regulations that prevent complications of financial transaction legitimacy resulting from differences in the systems. Respondents in the study largely perceived the difficulties facing Dubai as a being the direct result of outside influences and sources of incoming money.

The UAE has developed policies and procedures for money transaction requirements and oversight of these transactions, including laws and procedures that have been developing and expanding since 2002, particularly as the involvement of the UAE in FATF has grown⁴⁸⁵. In an assessment by the IMF, the UAE was recognized for the creation of legal framework for addressing AML and reducing terrorist financing. However, the IMF found that the design was in need of improvement, specifically in that the laws did not include the full range of offences that may be identified as money laundering predictors and that the UAE FIU was not sufficiently staffed to support the ability to “operate as an autonomous unit” that would not be restricted to “relying on the resources of the Central Bank’s Supervision Department” or “other regulatory agencies”⁴⁸⁶. This sentiment was supported by respondents, in that nearly all respondents felt that uncovering money strictly required a large amount of research overwhelming amounts of information, which were only reasonable when the AMLSCU referred cases to be investigated or where obvious criminal activity occurred by the individual that was suspect. Based on the results,

485 Demonstrated in United Arab Emirates Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, International Monetary Fund Legal Department, (2008). Retrieved from <http://www.imf.org/external/pubs/ft/scr/2008/cr08305.pdf>

486 Ibid. p. 8

the recommendation from the IMF is still applicable to the current circumstances influencing Dubai as of 2013.

Problems of cash-based transactions, such as occur in the Hawala system or occur with sale and purchase of gold and diamonds, are higher risk for Dubai, and consequently more difficult to manage in money laundering prevention. The processes utilized by the UAE to reduce these risks to the AML initiatives include the KPCS, which is instituted at the federal level as State Cabinet 120/11, 2003 and is the “Union Law No (13) of 2004” and is designed to supervise the import, export, and movement of rough diamonds⁴⁸⁷. However, in the 2011 Annual Report from Kimberley Process there were four specific incidences that had occurred, which demonstrated clear understanding of the requirements of the regulations and while infringements were reported, the recommendations for UAE were not attached for review. This supported the complaints from respondents to the study, which included the difficulty in managing information from multiple countries, particularly in the case where standardization was not found or where compliance with AML was lacking.

Another consideration for the management of AML, in the UAE, was the focus on charitable organisations, which may become directly responsible for the funding of terrorist organisations and drug trafficking by enabling the movement of money between countries. While many charities are legal entities with legal activities, Levitt (2011) noted that charities are “attractive covers for illicit acts” and money laundering activities have occurred through charities for many years due to the ease of moving or hiding money in the organisations⁴⁸⁸. Since 2001, numerous countries have implemented stronger control over charities, including Saudi Arabia, where control was strictly enforced following the discovery of charities funding terrorism within Saudi

487 U.A.E. Kimberley Process 2011 Annual Report. Retrieved from <http://www.kimberleyprocess.com/en/uae-annual-report-2011>

488 Levitt, M 2010, 'Tightened Security', *Chronicle of Philanthropy*, vol. 22, no. 14, p. 6.

Arabia⁴⁸⁹. Furthermore, the UAE issued a cautionary Notice to all people of the UAE, in Arabic, advising UAE residents of the risks associated with donations and to be wary of who donations are given. The message included that not only the residents should be wary, but also that they understand that lack of caution could result in legal questioning due to the law stating that it is illegal for residents to complete “transactions with unknown parties abroad”⁴⁹⁰. Respondents in this study did not specify charitable organisations as part of the problem. However, it is important to note that respondents did feel that it was most difficult to know if money laundering were occurring from individuals recognized as being part of developed states around the world, versus those of undeveloped states. This perception causes difficulty of legitimacy of transactions, including for residents with no experience regarding the legality or international implications of money transference.

Respondents of AMLSCU in Dubai noted that responsiveness to money laundering only occurs when suspicious cases are referred to them, where they will then begin to evaluate the incident to determine if it is legitimate business or personal activity or if it denotes further investigation due to its appearance as an illegal activity. Following discovery that the transaction may be money laundering, the AMLSCU notifies the bank, prosecutors, and police to develop further inquiry and begin seeking evidence regarding the case.

While much of the most recent content has focused on UAE, rather than exclusively Dubai, it is important to reiterate that Dubai is a Financial Free Zone. According the UAE constitution, Article 121, Dubai is able to “have exclusive legislative jurisdiction” in many areas, including those of courts, labour relations, banks, insurance, and more, where these controls enable the

489 Prados, AB, & Blanchard, CM 2005, 'Saudi Arabia: Terrorist Financing Issues: RL32499', Congressional Research Service: Report, pp. 1-26.

490 Laws, Regulations, and procedures Implemented in the United Arab Emirates for Anti-Money Laundering and Combatting Terrorism Financing. (2005). Retrieved from <http://www.centralbank.ae/en/pdf/amlscu/RegulationSummary-2005.pdf>

emirate to establish the rules of their individual area, with the exception of criminal law, as noted by Federal Law no. 8, of 2004⁴⁹¹. In 2007, the UAE constitution was updated to include that all Financial Free Zones would be required to comply with all federal laws of money laundering and anti-terrorism, and all federal laws generally where they do not include civil or commercial federal laws⁴⁹². In addition, all Financial Free Zones were also required to comply with licensing of financial institutions, development of standards, and required that all Financial Free Zones are both familiar with and compliant with the treaties and agreements of the state (UAE)⁴⁹³.

Dubai has the ability to more strictly regulate transactions, but must at least comply with the regulations and requirements of UAE, which works to remain compliant with international standards as developed by organisations such as the AMF and MENAFATF. In regards to the ability to develop regulations and standards, Dubai, established “The Law of the Dubai International Financial Centre, No. (9) for the year 2004”, which created the bodies of Dubai International Financial Centre Authority (DIFCA), Dubai Financial Services Authority (DFSA), and Dubai International Financial Centre Judicial Authority⁴⁹⁴. One example of additional legislature at the Dubai level is the 2014 implementation of the Netting Law, which is based on the close-out netting in case of insolvency, as developed by the model law of the International Swaps and Derivatives Association (ISDA)⁴⁹⁵. This particular law is not currently a UAE law. In addition, Dubai has established General Regulation and Anti-Money Laundering Provisions in

491 As demonstrated and found in the documents available from the Dubai Financial Services Authority. Retrieved from <http://www.dfsa.ae/Pages/LegalFramework/LegalFramework.aspx>

492 Cabinet Resolution No. 28 of 2007. Retrieved from <http://www.dfsa.ae/Documents/Cabinet%20Resolution%20No%2028%20of%202007.pdf>

493 Ibid

494 Retrieved from : <http://www.dfsa.ae/Documents/Legal%20framework/Dubai%20Law%20no%209%20English%20and%20Arabic.pdf>

495 As noted in DIFC Posts Consultation Papers for Public Comment on DIFC Netting Law, (2014). Retrieved from <http://www.difc.ae/news/difc-posts-consultation-papers-public-comment-difc-netting-law>

Part 4, of Regulatory Law⁴⁹⁶. Dubai laws are defaulted to the UAE laws, and the UK and UAE laws in the following section.

8.2. Similarities & Differences between UK and UAE Regulations

Dubai laws are defaulted to the UAE regulations of Anti-Money Laundering policies and regulations, in that the law specifically states that no part of the law “affects the operation of” “Federal Law No. 4 of 2002”, “Federal Law No. 1 of 2004”, “the Penal Code of the United Arab Emirates”, or “any other Federal Law that is applicable in the DIFC in relation to money laundering”⁴⁹⁷. Furthermore, the obligations of this law state that all persons are required to comply with “any provision of Federal Law relating to money laundering”, and “any duty requirement, prohibition, obligation or responsibility”⁴⁹⁸. In addition, “where the DFSA detects conduct which it suspects may relate to money laundering, it shall advise the relevant authority exercising powers and performing functions under Federal Law No. 4 of 2002 without undue delay” and these obligations finish with “a person who is subject to Rules made pursuant to Article 72 shall conduct customer due diligence in the circumstances prescribed by the Rules”⁴⁹⁹. Due to these legal requirements of Dubai, the remainder of this section will focus on current UAE, DFSA, and UK AML regulations and legislation, to determine the success of these on Dubai money laundering policy. Furthermore, publications throughout 2014 have demonstrated increased work to meet the FATF Recommendations and demonstrate complete compliance with these assessment results, which improves on the success of the UAE overall. Dubai has been focusing on meeting these challenges in each year of changes or assessments from the FATF, and while some of the changes are led by Dubai, federal changes are the most necessary for meeting the needs of the UAE, because it results in standardization and stronger compliance ratings.

496 DFSA Laws, Retrieved from http://dfsa.complinet.com/en/display/display.html?rbid=1547&element_id=7445

497 Regulatory Law DIFC Law No.1 of 2004, p. 44, Retrieved from http://dfsa.complinet.com/net_file_store/new_rulebooks/d/f/DFSA1547_7446_VER170.pdf

498 Ibid

499 Ibid

There are a number of similarities and differences between the legal regulations and standards for AML control and FATF compliance between the UK and UAE. While the primary focus here is to determine the legislation differences, it is important to note the government agencies also consistent with the management of criminal activities and investigations, which will be included. Finally, the ability of the UAE to operate effectively in the same manner of as the UK is not the goal of this section, as it is not reasonable to suggest that one entity should behave as another entity. The goal of this work is to demonstrate key working elements of the legislation and methodology that may benefit Dubai and the UAE in achieving their individual goals for compliance and improved FATF rating and assessments in the future. In addition, the UAE represents a unique and different culture from the UK, which was not measured in this work, and denotes differences to management of internal affairs that require individual considerations during the design of legal environments for its citizens.

UK AML regulations are documented on the legislation government site of the United Kingdoms⁵⁰⁰. In addition, UK regulations are published by The Law Society and other government bodies in order to provide citizens with guidelines to the implications and implementations created by these laws. DFSA AML regulations are documented at the DFSA website, where authorized firms can view current laws, and changes, to the regulations, which are also published using the government publications for Dubai⁵⁰¹. UAE AML regulations are documented at the Central Bank website, and are updated as needed for organisations and public view in the UAE⁵⁰². The laws most responsible for meeting the needs of AML regulation are Regulation No. 24/2000, Federal Law No. 4 of 2002, Federal Law No. 1 of 2004, and Federal Law No 2 of 2006⁵⁰³.

⁵⁰⁰ Located at <http://www.legislation.gov.uk/ukxi/2007/2157/contents/made>

⁵⁰¹ Located at http://dfsa.complinet.com/net_file_store/new_rulebooks/d/f/DFSA1547_4489_VER7.pdf

⁵⁰² Located at <http://www.centralbank.ae/en/pdf/amlsu/RegulationSummary-2005.pdf>

⁵⁰³ Retrieved from http://www.anti-moneylaundering.org/middleeast/United_Arab_Emirates.aspx

In these laws, for the UAE, the definition of money laundering is consistent with that of the FATF requirements and is not as thorough as the documentation defining Money Laundering found in the UK legislation, which is specifically well defined in Part 7, Money Laundering, 2002, c. 20, Proceeds of Crime Act 2002⁵⁰⁴. Dubai does not further define money laundering, and in the DFSA rulebook, the definition is referred back to the UAE federal definition of money laundering. However, the UAE does criminalize the act of money laundering.

Viewing of the legislation in effect in the UAE and the DFSA Codebook demonstrates that many of the required laws are in place; however, they are not as completely or wholly defined in the same manner as the UK, particularly in addressing obscure aspects, measurements of behaviour, or defining the consequences of actions. While it is true that the UAE and UK do not share a commonality in the court systems or the punishment of criminals, the understanding of what happens when the crimes occur, and at what degree, could be further incentive for individuals to assist the law enforcement by providing information that may not be deemed valuable if the crime is not perceived to have dire consequences.

Another consideration is the design of managing the activities that occur regarding money laundering. In the case of the UK and the UAE, specialized departments for FIUs and AML teams have been created and given authority to act in the capacity of reducing and investigating money laundering within the country. However, the UK has also empowered other taskforces and agencies with the powers to investigate money laundering in the case of criminal networks, drug trafficking, and terrorism (as well as others). The teams that have access are not limited to agency, but instead limited to need or by sensitivity of the information. For example, UK law enforcement has access to databases of criminals and their prior activities, including that of money laundering, which enables the unit to quickly identify new criminal elements in their

⁵⁰⁴ Retrieved from <http://www.legislation.gov.uk/ukpga/2002/29/part/7>

specific area. In addition, the UK utilizes Serious Organised Crime Agency (SOCA); police services from England, Wales, Northern Ireland, and Scotland; Her Majesty's Revenue and Customs (HMRC); and the Scottish Crime and Drug Enforcement Agency (SCDEA). All of these agencies are able to work with each other when inside the country and with international organisations, such as the European Union's law enforcement agency (Europol).

The UAE, and Dubai included, have been working to reduce the instances of drug transportation in the UAE, and many illegal substances have been found within the country. In order to combat drugs, which carry a very serious sentence in the UAE, the authorities have enlisted the assistance of the UN and USA, and currently provide funding for the UN Office of Drug and Crime (UNODC) to operate a semi-regional office within the country. However, due to the lower prevalence of drug use by UAE citizens this type of organisation had not been a focal point of government until international pressure increased this interest; however, the UAE does utilize anti-narcotics teams to address other issues within the country.

The UAE works diligently to demonstrate growth in achieving the goals of a responsible country and improving world ratings, partly in the fact that this improves the ability to gain funding for the country and provides the country with a more appealing safety and legal framework for inviting business to grow, and partly in response of growing pressures from international agencies for all countries to dedicate themselves to eliminating risks to citizens through the reduction of trafficking in illegal substances or people, and the reduction of funding to terrorist groups. According to news reported in August of 2014, the UAE further "toughened anti-terrorism laws"⁵⁰⁵ by implementing clear legislation that planning, attempting, or assisting in acts of terrorism are punishable by "death sentence, life imprisonment, and fines up to 100

505 'UAE toughens anti-terrorism laws', AFP, Abu Dhabi, Al Arabiya News. 21 August 2014, Retrieved from <http://english.alarabiya.net/en/News/2014/08/21/UAE-toughen-anti-terrorism-laws-.html>

million dirhams”⁵⁰⁶ if found guilty. The list of crimes considered in this offense includes that of hostages, financing of terrorism, money laundering, and human trafficking.

While the UAE does not have strong, well-developed, independent departments or structures established for managing crimes, such as terrorism and drug enforcement, the government does utilize these functions and involves itself in close contact with international agencies and US agencies to achieve goals that assist in building relationships with other countries worldwide. The ability to provide international organisations with access to the criminal networks using the UAE as a trade or stock area, are more quickly found when international evidence and support is granted to the UAE, due to the lack of these products or items being transferred within the state itself.

Another process that the UK is considering using to improve upon accountability of organisations is implementation of a U.S.A. model that allows organisations to settle fraud investigations through the payment of fines, which reduces the incidents and may encourage organisations to seek out crimes within the firm prior to the point where criminal investigation must occur⁵⁰⁷. For example, an organisation noticing that reporting errors have occurred as a direct result of a single employee acting fraudulently, but demonstrates a failure on the part of the organisation to maintain the appropriate controls, could reduce the number of criminal charges to the individual directly responsible and pay only the fine that this type of activity has occurred rather than to be directly responsible for the actions of the individual. This may prevent organisations from protecting the members of the organisation that are most likely to engage in criminal activities. This type of incentive has not been used before in the UK; however, the

⁵⁰⁶ Ibid

⁵⁰⁷ Coyle, M 2013, 'Financial Crime in the UK', Risk Management (00355593), vol. 60, no. 5, p. 14.

country will be considering using this with the oversight of the Serious Fraud Office (SFO) and the Crown Prosecution Service, in order to promote “self-cleansing”⁵⁰⁸ by organisations.

Finally, Dubai defaults primarily to the UAE laws, which are substantially different in clarity and thoroughness as compared to the UK. While Dubai creating regulations and standards in the Codebook, and these do clarify more requirements that are similar to that of the UK legislation, continued work on clarity and improvement is necessary to create clear legislation that is beyond reproach and able to be followed by law enforcement agencies. In addition, the implementation of stronger departmental cooperation and increased government agencies could substantially work to improve success in meeting the needs of uncovering criminal networks that may be directly responsible for the money laundering that creates problems for the UAE, specifically when the money laundering is in support of illegal activities that threaten populations.

This section identified a number of key elements in the success of UAE to achieve FATF recommendations and goals. These elements are also essential in achieving stronger international recognition, and improving the interest in organisations to develop within the country. While development may not be a singular reason for increased money laundering regulation, the ability of the country to trade, obtain funding, and work cooperatively with other countries is dependent on the ability of the country to be consistent with the needs of all countries, in preventing and reducing the prevalence of crime networks and the illegal activities that occur within those networks.

8.3. Recommendations

Unlike many countries around the world, the Dubai method of combatting money laundering is reactive in nature, occurring after the problem has occurred and does not consider proactive methods of addressing this problem. In addition, law enforcement agencies and AML organisations within Dubai do not have a collaborative environment, which is a requirement of the FATF, and necessary for success in reducing these types of criminal activities. As identified previously, the missing aspects of Dubai success can be found in UK implementations such as The Law Society and the Solicitors Regulation Authority (SRA). The recommendations to assist

⁵⁰⁸ Ibid

Dubai include the following items, which are considered based on the previous chapters of primary research and the literature review, with strong focus on the aspects of UK. UK, as mentioned above, has been largely successful in achieving AML goals. These recommendations conclude with specific models to guide implementation that will support the goals of Dubai and the UAE, which includes the Intelligence Led Policing (ILP), problem-orientated, and community policing models. Finally, the National Intelligence Model (NIM) is considered as a recommendation due to its successful use in the UK.

A number of key issues arise from this research; these are presented in a separated way below but are all interconnected. The general needs of the system are recognized below, and include the primary recognized areas of difficulty facing the UAE. Many of the government bodies in the UAE are identified as separate and completely able to establish laws and regulations, so long as these laws and regulations are in accordance with federal requirements, particularly in regards to areas of AML; however, the differences between these areas, FTZs and FFZs, are create difficulties in clarifying regulation, addressing the Political Expose Persons (PEP) requirements, recovery of assets, communication and cooperation, and the creation and utilization of a national database.

(1) Simplify the national UAE legal system

The UAE legal system would benefit from federal legislation that clearly defines money laundering, requirements of reporting, establishes governmental agencies, and determines strict punishments for the different types of offences that may occur. While the ability of the emirates to develop their own laws is significant in maintaining separation and independence between the emirates, the inability to establish the strict federal laws that protect UAE does not benefit any of the emirates.

The contradiction in the AML laws between international jurisdictions is in need of review. Money is laundered in jurisdictions where regulation is weak and/or ineffective. The complex and ineffectiveness of AML laws in Dubai, however, needs to be address. The development of Free

Trade Zones (FTZs) and Financial Free Zones (FFZs) in the UAE compounds the problem of AML. With 17 FTZ already in operation and plans to establish eleven more (in 2013), the potential for money laundering is high. Every emirate except Abu Dhabi has at least one functioning FTZ and these zones are monitored at emirate, as opposed to federal-level. However, there are over a hundred multinationals located in these FTZs, with thousands of individual trading organisations. The FTZs permit 100 percent foreign ownership, no import duties, full repatriation of capital and profits, no taxation, and easily obtainable licenses. Those located in the FTZ are treated as offshore or outside the UAE for legal purposes and the law prohibits the establishments of a shell company and/or trusts, and does not permit non-residents to open bank accounts in the UAE⁵⁰⁹. The financial free zones (FFZ) are under the control of the Dubai International Financial Center (DIFC) and exempt UAE federal civil and commercial laws. They are still, however, subject to the Anti-Money Laundering and Counter Terrorism Laws. The DIFC established an independent regulatory body - the Dubai Financial Services Authority (DFSA), which reports to the office of Dubai Crown Prince and an independent Commercial Court. The DFSA, however, is the only authority responsible for licensing firms providing financial services in the DIFC. The DFSA has licensed 21 financial institutions and 13 ancillary services within the DIFC. The DFSA's rules prohibit offshore casinos or Internet gaming sites in the UAE, and require all firms to send STR to the AMLSCU (along with a copy to the DFSA). Although firms operating in the DIFC are subject to AML laws, the DFSA issued its own AML regulations and supervisory regime, creating some ambiguity as to the authority of the Central Bank and AMLSCU within the DIFC. One regulatory body is needed regardless of the sector to supervise AML strategy and development of practice.

(2) Expand AML Rules to include Political Expose Persons (PEP) in Dubai

⁵⁰⁹ Belaisha Bin Belaisha and Graham Brooks, 'Money laundering in Dubai: Strategies and future directions' , vol 17 (Emerald Group Publishing Limited 2014) 8

Whilst the UAE has moved towards challenging PEPs it needs to expose them as well. Challenging PEPs is commendable but exposure holds a two-fold advantage for Dubai; it will increase its international reputation as a safe haven for business and highlight that it has a comprehensive system of regulation in place to deter money laundering. Located in a geographical region surrounded by oil producing nations, civil war, and political instability⁵¹⁰, and expanding trade with Balkan states, the UAE has the potential to be a major conduit for money laundering⁵¹¹. Furthermore, due to its close proximity to Afghanistan, where most of the world's opium is produced, the UAE is vulnerable to organised crime and terrorism and the narcotics trade. All of these criminal elements are attracted to the UAE liberal business environment as a place to launder illegal funds⁵¹². In many of these locations there are PEP, and 'relationships' with such people are a reputational risk. It has been indicated that criminal organisations, terrorist cells, money launderers and those involved in trafficking illegal substances/narcotics and people make use of Dubai's liberal financial system with the UAE a key centre for Hawala networks that are closely linked to Pakistan and India⁵¹³. In this context Dubai needed to be completely transparent with those its financial sector does business with.

(3) Recovering Assets

The United Kingdom Proceeds of Crime Act 2002 enables, even without prior conviction, the Assets Recovery Agency (ARA) to initiate civil proceedings, 'civil recovery', through the High Court, against any person that it thinks holds proceeds of unlawful conduct in the form of

510 EUGENE L. ROGAN, 'The Emergence of the Middle East into the' (Oxford University Press 2013) 37

511 Henry G. Overman, Stephen Redding and Anthony Venables, 'The economic geography of trade, production and income: a survey of empirics' (Blackwell Publishing 2003)

512 Olivier J. Blanchard, 'The crisis: basic mechanisms and appropriate policies' (International Monetary Fund 2009)

513 Ali Alkaabi and others, 'Money Laundering and FATF Compliance by the International Community' , *What Kind of Information Society? Governance, Virtuality, Surveillance, Sustainability, Resilience* (Springer 2010) 86

'recoverable property'. This is absent from UAE law and in need of attention. There is a clause in AML legislation, which can only be found in unusual circumstances, but the absence of civil confiscation or forfeiture legislation is important in preventing money laundering. Such specific legislation will increase the power and reach of money laundering measures, which has been discovered in many developed jurisdictions (see United Kingdom above) as it aims to address the phenomenon of organised crime and terrorism through the elimination of revenue and confiscation⁵¹⁴. With detailed and specific civil legislation property can be confiscated if obtained via criminal/terrorist activity based on a lower burden of proof. Therefore, if proven property based on the civil standard (the probability), rather than the criminal standard (beyond reasonable doubt) can prevent illegal acts by the elimination of needed revenue.

However, the civil recovery or forfeiture should be confined to very strict circumstances, and through the court only, which will examine the circumstances, and base its judgement on the available evidence. Furthermore, it is recommended that the UAE consider establishing a freestanding body to investigate and initiate a civil proceeding to recover any suspected proceeds, like the UK Assets Recovery Agency (ARA), which was established under the PCA 2002.

(4) Clear Channels of Communication

One of the main obstacles that have undermined the effort in preventing money laundering in the UAE is the absence of direct communication between the banks, financial institutions and the

⁵¹⁴ JD Agarwal and Aman Agarwal. 'Money Laundering: New Forms of Crime Victimization (Current Trends and Modus Operandi)' (2006) 20(4) Finance India 1257; Clive Coleman and Jenny Moynihan, 'Understanding crime data: Haunted by the dark figure' , vol 120 (Open University Press Buckingham 1996); Michael Levi and Peter Reuter, 'Money laundering' , vol 34 (JSTOR 2006) 289; William Witherell. 'Combating financial crime through international standards and cooperation' (FRAUD2004: The Fifth IFex International Fraud & Financial Crime Convention, November 2004) 1

professionals and investigative body. Law enforcement bodies in the UAE are still unable to take information directly from the financial sector concerning any accounts. Therefore, it is highly recommended to have one law enforcement body that is invested with such power which can disseminate information needed to expedite a case(s).

(5) Establish a National Database of STR

The establishment of a national database to collect STR, Currency Transaction Reports (CTR), and international transactions (especially the Hawala) are needed. Further resources, primarily trained personnel are needed to sift and file STR/CTR. Such information is a basis on which to build a case/profile of the financial sectors passing of information but also on PEP and 'wayward' customers. The information could be a good point from which to deter crimes, especially money laundering, by monitoring these reports, such data could be useful for combating the financing of terrorism and crime and internal acquisitive crimes.

In addition to these needs, specific implementations of UAE regulation should focus on Intelligence Led Policing (ILP), Problem-Orientated Policing (POP), and Community Policing models (COP), which are recognized as models that increase the success of managing crimes in

various areas, particularly those wishing to decrease the incidents of crime and is recognized as “The Best of Three Worlds”⁵¹⁵.

8.4. Intelligence Led Policing (ILP)

Intelligence Led Policing is defined by Ratcliffe (2008) as “a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both strategic management and effective enforcement strategies that target prolific and serious offenders”⁵¹⁶. This model is found to consist of four specific aspects: “information availability”, “actionable information”, “swiftness of reaction”, and “feedback and learning”⁵¹⁷. Implementation of ILP is intended to improve upon the success of the police force by creating a focus on information that improves proactive rather than reactive approaches to law enforcement at all levels of the government, and this particularly model was the focus of the British National Intelligence Model (NIM).

Use of the ILP model is designed to focus on the fact that information occurs quickly and degrades in validity over time, specifically information designed to provide police with evidence of current events or evidence of upcoming events. In this way, the IPL model can be described as a “rigorous treatment of information and the rapidity of its dissemination”, which is essential to the ability of law enforcement to proactively engage in control of criminal forces and

515 Versteegh, P, Van Der Plas, T, & Nieuwstraten, H 2013, 'The Best of Three Worlds: more effective policing by a problem-oriented approach of hot crimes, hot spots, hot shots, and hot groups', *Police Practice & Research*, vol. 14, no. 1, pp. 66-81.

516 Ratcliffe, J. H. 'Intelligence-led policing'. (2008). Cullompton, England; Willan. p. 89.

517 Viaene, S, De Hertogh, S, Lutin, L, Maandag, A, Den Hengst, S, & Doeleman, R 2009, 'Intelligence-led policing at the Amsterdam-Amstelland Police Department: operationalized business intelligence with an enterprise ambition', *Intelligent Systems in Accounting, Finance & Management*, vol. 16, no. 4, pp. 281.

activities⁵¹⁸. Benefits of this model are the ability for police to establish policies, acquire databases for developing decision-making tools, and increase the ability of law enforcement to grow with changes in their areas of operation.

Reforming police power does not require that the country necessarily change the roles of the police. However, due to the large population of expatriates in the UAE, contributing to more than 80% of the population in 2010⁵¹⁹, the method for policing the country may require different considerations in the past, particularly in considering that non-nationals may not have the same cultural values or similar legal systems in their home countries. However, the security risk published in 2011, noted that the highly Muslim populations were not “attractive” targets for criminal groups, and that the groups identified as “attractive” were European or Western populations, who are well guarded in the country⁵²⁰. In 2013, the Muslim Brotherhood threatened to destabilize all of the Middle East, in an attempt that was perceived as exploitation of the UAE, and which resulted in disruptions in the emirates⁵²¹. These changes in the UAE require that consideration be given to the current policies and roles of police officers, such as by model implementation.

The Ratcliffe model of ILP consists of the continuous cycle of environment, decision-maker, intelligence, which is acted upon by influence, interpretation, and impact, as demonstrated in figure 1. This expanded model of the ILP includes the continuous cycle of information, required to be successful in achieving goals, such as communication with informed populations for identifying criminal activities, and the identification of organisations – such as security – in providing information for investigation or assisting with investigations.

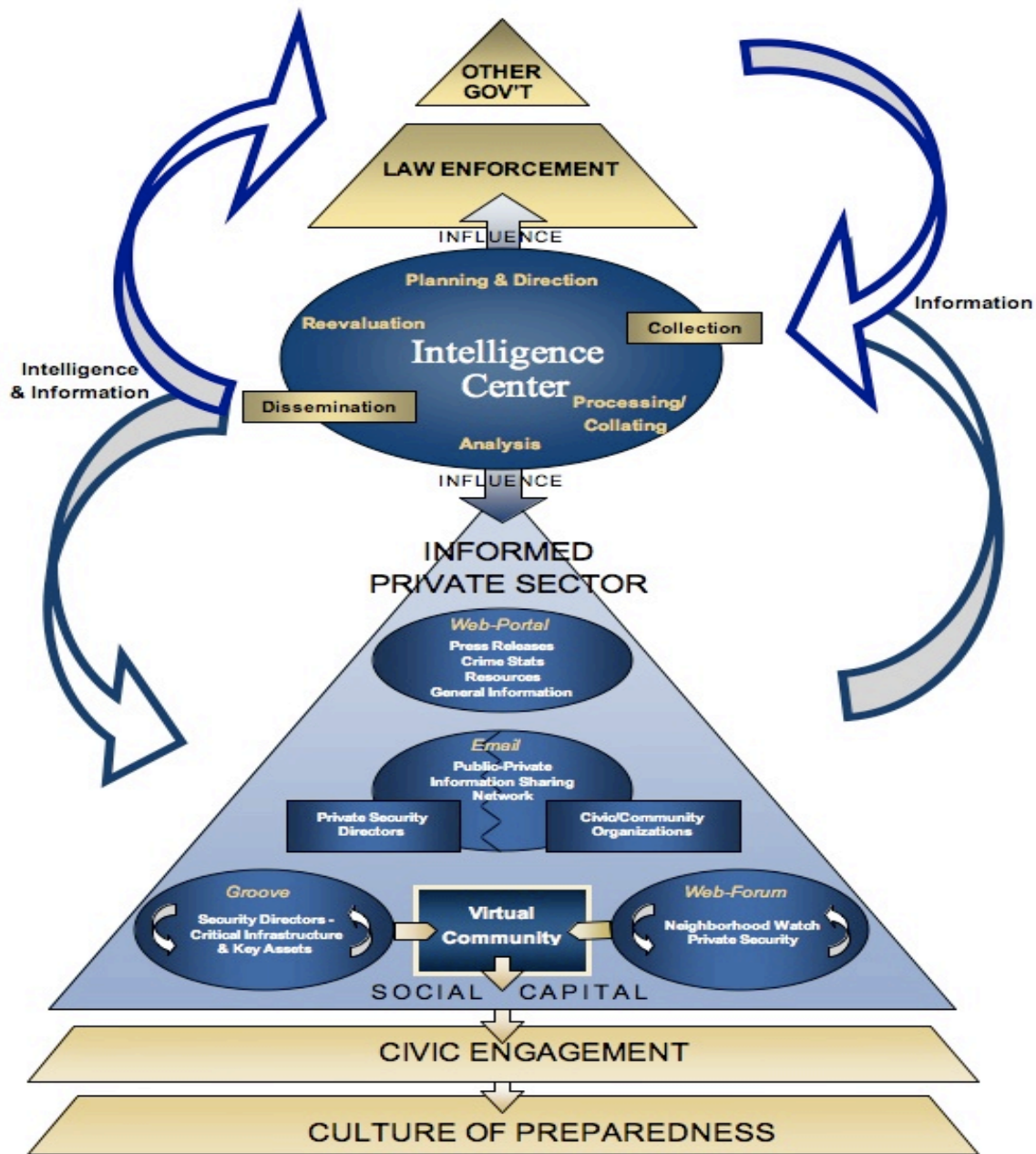
⁵¹⁸ Morelato, M, Beavis, A, Tahtouh, M, Ribaux, O, Kirkbride, P, & Roux, C 2013, 'The use of forensic case data in intelligence-led policing: The example of drug profiling', *Forensic Science International*, vol. 226, no. 1-3, pp. 1-9.

⁵¹⁹ 'Security Risk Analysis', 2011, UAE Defence & Security Report, no. 4, pp. 41-45.

⁵²⁰ Ibid

⁵²¹ 'UAE official: Muslim Brotherhood is targeting Gulf after Egypt defeat', 2013, *Geo-Strategy Direct*, p. 16.

Figure 2: A VP3-Enhanced Intelligence-Led Policing Model



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522 Simeone, Mathew, 'Integrating virtual public-private partnerships into local law enforcement for enhanced Intelligence-Led Policing'. Proceedings of the 2008 Center for Homeland Defense and Security Annual Conference. Retrieved from <http://www.hsaj.org/?special:fullarticle=supplement.2.8>

Dubai laws require that citizens provide information of any knowledge of illegal activities within the region or that they may become familiar with in other regions that may involve business activities or money laundering conditions. However, clear engagement with ILP has not been developed in either Dubai or UAE, where these requirements include more than just the development of additional organisations within the areas. While Dubai cannot create laws that conflict with the UAE federal laws regarding AML, Dubai can increase the ILP aspects of the legal system within the emirate, particularly by designing and implementing levels of law enforcement, with strong communication channels.

Respondents in this research identified lack of information as a key element in failures in Dubai. This could be improved upon through the use of ILP methods, including those of technology implementation (as previously mentioned) and the use of community and problem-solving programs. In addition, Dubai and all of UAE would benefit from a strong culture of compliance and promoting these through the channels of communications to citizens. The UK has focused on how intelligence strategies improve upon safety to UK cities and citizens. In this way, the ILP represents opportunities for increased access to intelligence regarding illegal activities, by presenting citizens an opportunity to assist in the collection of evidence and reducing the criminal activities in their localities.

Implementation of this model of policing includes a focus on effective methods of policing, which include the use of technology and information gathering. Some of these implementations, such as in the UK and in other Western countries, has included increased cameras in public places, thermal imagers, camera trailers⁵²³, crime mapping, computer networking, and partnerships with communities. Crime mapping is essential to the success of law enforcement because it brings awareness of crime levels to the community and permits access to all authorities regarding statistics and current needs in different areas⁵²⁴. While the different

523 'Surveillance on the Strip', 2014, *Law Enforcement Technology*, vol. 41, no. 6, pp. 26-27.

524 Savvas, A 2008, 'Londoners get crime mapping website', *Computer Weekly*, p. 21.

emirates of the UAE do use different police forces, it is a benefit to the country to have knowledge regarding different community needs, particularly in addressing new risks to the police, such as the case of terrorism cells, drug trafficking, or unusual crime patterns. The ILP implementation would address concerns, such as identified in literature, requiring that law enforcement, as well as customs officials, have a more proactive approach to crime, especially in the areas of money laundering and terrorism financing⁵²⁵. This requires that the UAE officials apply “greater scrutiny” to activities, including those of trade in gold and precious gems, and the transactions of hawala dealers⁵²⁶. However, the additional need is that law enforcement have the capacity to achieve these goals through both technology and models that improve upon communication in order to work prior to the recommendations or referrals from other agencies.

8.5. Problem-Orientated Policing (POP)

As part of the three working policies recommended for addressing difficult crime situations, problem-orientated policing is a focus that includes a number of specific methods for pro-active or reactive methods. Successful use of the problem-orientated policing requires that the approach be based on “in-depth problem analysis in which the role played by the offenders, victims, and environmental factors in creating the problem is examined”⁵²⁷.

It is suggested that POP must focus on sociological aspects of organised crime, specifically in involving the community, which is an aspect of community engagement or community policing⁵²⁸. As a focus on organised crime, the definition includes “conspiracy of two or more

⁵²⁵ 'All Money Laundering and Financial Crimes Countries/Jurisdictions: United Arab Emirates', 2014, International Narcotics Control Strategy Report, pp. 439-441.

⁵²⁶ Ibid

⁵²⁷ Versteegh, P, Van Der Plas, T, & Nieuwstraten, H (2013), p. 67.

⁵²⁸ Clark, M 2005, 'Organised crime: redefined for social policy', International Journal of Police Science & Management, vol. 7, no. 2, pp. 96-109.

persons, an engagement in illegal activities or the infiltration of legitimate business by illegitimate means; formed for the acquisition of profit; corruption of government officials; risk averse methodologies; [and] constructed on a self-perpetuating basis”⁵²⁹.

Respondents in this research demonstrated the reactive methods for identifying criminal activities, which is common practice for many countries without a focus on ILP or POP. Reactive behaviours do not promote strong problem-solving techniques, due to the fact that they occur after the crime and have no measures for preventing the crimes from occurring or reducing the access to criminals to the areas with current difficulties in addressing criminal activities in their localities. The UK implemented methods of POP in the NIM, which is a combined method consisting of levels of law enforcement, including at the community level. These introduce the need to be proactive and problem-solving in increasing safety to citizens and visitors.

8.6. Community Orientated Policing (COP)

The community policing, also referred to as neighbourhood policing, model is specifically focused on “visibility”, “accessibility”, and ‘familiarity’ of policing services available to the community, where cooperation exists between law enforcement agencies, communities, and partner agencies⁵³⁰. A focus is placed on removing the aspect of reactive policing and to create opportunities to reduce criminal activities and improve safety in the neighbourhoods, through use of investigative qualities and knowledge-sharing practices. Community focused policing is perceived as effective when the safety management of the population involves the gathering of information regarding specific local problems and needs, where residents in those areas are directly or partly involved with the priorities developed for their individual localities⁵³¹. This

⁵²⁹ Ibid. p. 99.

⁵³⁰ Bullock, K 2013, 'Community, intelligence-led policing and crime control', *Policing & Society*, vol. 23, no. 2, pp. 125-144.

⁵³¹ Versteegh, P, Van Der Plas, T, & Nieuwstraten, H 2013

type of policing is effective when implemented with the ILP and the POP, due to the ability of it to enhance the success of both methods, and is recognized as an aspect of law enforcement that may embrace locality culture to increase success at all levels within the design.

The fact that communities provide a source

8.7. National Intelligence Model (NIM)

Finally, the National Intelligence Model would be beneficial to Dubai, due to the fact that it implements “core business” policing⁵³², including “managing crime”, “managing criminals”, “managing localised disorder”, “managing enforcement and community issues” and “reducing opportunities for crime”⁵³³. NIM was developed by Britain to standardise the policing practices and address the needs of police to accomplish goals, meet proactive policing needs through intelligence gathering and the use of informants, create disruption in criminal networks, and to establish and use the technological advances available for investigation of crimes and gathering evidence⁵³⁴. The NIM is most successful when implemented with specific groups designed to manage the different levels of crime or criminal activities, including at the local, regional, and national levels, because this improves upon the ability of the organisations to focus on the tasks most important to their individual departments rather than a wide-range of criminal activities.

532 Maguire, M, & John, T 2006, 'Intelligence Led Policing, Managerialism and Community Engagement: Competing Priorities and the Role of the National Intelligence Model in the UK', *Policing & Society*, vol. 16, no. 1, pp. 67-85.

533 Flood, B, 'Strategic elements of the National Intelligence Model', in 'Strategic Thinking in Criminal Intelligence', Ratcliffe, J. The Federation Press, Leichardt.

534 Maguire & John, 2006.

NIM is currently utilized around the world by police forces, including the UK, parts of Europe and the USA⁵³⁵. It is recognized as increasing the success of police in becoming aware of criminal networks, and works on identifying the criminal elements for further investigation, using technology and communication as the focus of reaching the criminals and of gathering necessary evidence to support the removal of these elements from the society. Four primary intelligence focuses are used in the NIM, “strategic assessments – long-term planning, strategies and policies;” “tactical assessments – short-term and operational planning;” “target profiles – profiles of offenders;” and “problem profiles – profiles of series of offences or offenders”⁵³⁶.

This model includes three different levels, local area policing, force or regional issues, and national or international threats⁵³⁷. However, all three levels can work together to accomplish goals and establish order that effectively reduces crime. According to Maguire and John (2006), the “driver of business at each level is the Tasking and Coordinating Group (TCG)” which includes the heads of departments, with a focus on allocating resources and managing necessary communications and creating efficiency between the groups⁵³⁸. TCG is specifically designed to address current needs, problems or threats, and planned responses to those threats. In addition, the four intelligence focuses of the NIM are also addressed by focusing on strategic assessments created approximately every six months, and focusing on priorities of internal and external bodies, which must meet specific goals for each assessment. These targets improve upon the ability of the model to adapt to changes in the needs of the area, as well as focus on growing or additional threats through proactive methods.

⁵³⁵ Seidler, P, & Adderley, R 2013, 'Criminal network analysis inside law enforcement agencies: a data-mining system approach under the National Intelligence Model', *International Journal of Police Science & Management*, vol. 15, no. 4, pp. 323-337.

⁵³⁶ Kleiven, ME 2007, 'Where's the intelligence in the National Intelligence Model?', *International Journal of Police Science & Management*, vol. 9, no. 3, pp. 259.

⁵³⁷ Maquire & John, (2006).

⁵³⁸ Ibid. p. 72.

The intelligence products used in the NIM utilize “nine analytical techniques” including “results analysis, crime pattern analysis, market profile, demographic/social trend analysis, criminal business profiles, network analysis, risk analysis, target profile analysis, [and] operational intelligence assessment⁵³⁹.

Disadvantages and criticism of the NIM include implementation without a lack of perceivable “intelligence culture”, as identified by John and Maquire (2004), and the focus on evidence rather than other forms of intelligence – such as the knowledge base, a lack of a complete definition for intelligence, and failure to define the evaluation of risk assessment processes and to create processes and policies for police decision making⁵⁴⁰. In addition, it is considered a disadvantage the amount of information collected from the community and the ease at which decisions are made with missing or “confined” data, which is can “hinder the police from identifying new criminal threats”⁵⁴¹. Other problems is the validity of information gathered from sources such as the community, which may be acting on fears that such events or circumstances will or have occurred, or by unreliable individuals that may distract the investigation through the falsification of evidences⁵⁴². Finally, implementation of the NIM, in the UK, was done prior to the proper training of the requirements and policy changes, which created confusion and lack of compliance upon the implementation of the new model, and reduced the ability of the police to function within the parameters of the model⁵⁴³.

⁵³⁹ Ibid. p. 73.

⁵⁴⁰ Kleiven, (2007), p. 260.

⁵⁴¹ Ibid.

⁵⁴² Keane, N, & Kleiven, ME 2009, 'Risky Intelligence', International Journal of Police Science & Management, vol. 11, no. 3, pp. 324-333.

⁵⁴³ Ibid.

The ability of law enforcement agencies to conduct investigations requires that information be gathered, and while these agencies can investigate crimes in a reactive manner, success of proactive methods can reduce the instances in which crimes occur. Investigation of criminal activities includes the use of information from different areas where criminal activity may occur, including information from communities, organisations, and governments, both nationally and internationally. While the intelligence led policing model appears to already utilize problem-solving and community engagement, literature exists on both models in addition to the ILP, as intricate models, that are not consistently applied the ILP model during use by law enforcement agencies. In addition, the availability of information may be limited to law enforcement in different areas, particularly when there is a failure to comply with regulations or a failure to remain consistent in data storage. The UK has strict data storage requirements, and while both the UAE federal laws and Dubai (DFSA) regulations require that data be maintained regarding the regulatory requirements of AML, availability of this data or awareness of how to obtain this information may not be available to law enforcement agencies in Dubai as completely as they are to the law enforcement agencies of the UK.

Another consideration of these models is the cultural and socio-economic factors that differ between the UK and Dubai. The UK and Dubai share in financial responsibility and have placed strategic policies into effect to prevent money laundering occurring from outside entry into each country; however, the ability to determine intricate details of transactions may be more effective in the UK where substantial training programs are established for customs officials, designed to prevent failures in monitoring the movement of money as well as precious gems and metals. These aspects are not completely evaluated in the primary or secondary research, as access to training programs is difficult to obtain and may change with changes in legislation or in application of employee use of these programs.

As the ILP model is reliant on information to be successful, it is extremely important that regulations and legal environments of the area be complete and clear in the requirements of organisations and individuals. Law enforcement agencies are challenged by incomplete definitions of illegal activities, in that deriving evidence requires that the evidence is of the crime

in question, obtained legally according to that specific legislation requirements, and admissible in the courts established. Currently, the UAE, Dubai, and the UK have worked diligently to clarify the legality of the different types of transactions and to define what money laundering or terrorism financing entails; however, the UAE does not specifically address definitions in the access provided in the Central Bank website. Dubai does stress that all occurrences that do not represent clear legal or transparent transactions must be investigated, but do not address specific indications of all activities that may be designated as illegal. In the case of the UK, and the work being established in Dubai, authoritative departments are required to establish training programs and define the legal aspects of AML for law enforcement agencies and financial institutions. In addition, the UK, UAE, and Dubai have established FIUs to further designate responsibility of these aspects of investigation.

While punishment may be determined by individuals unrelated to the investigative processes, punishment should also be clear, to assist in deterring individuals from taking actions that are deemed illegal. Dubai and UAE has designed clear regulations; however, the information regarding punishment for these crimes or the taking part in illegal activities that could promote money laundering, are less clear. While the UK has many clearly documented requirements of AML failures, including fines and penalties, where the legislation supports these penalties, as stated in Part 6, 48, “Any charge or penalty imposed on a person by a supervisory authority under regulation 35(1) or 42(1) is a debt due from that person to the authority and is recoverable accordingly”⁵⁴⁴.

544 Retrieved from <http://www.legislation.gov.uk/uksi/2007/2157/regulation/48/made>

8.8. Results of Research Objectives

Five research objectives were identified to guide the research and these are evaluated to demonstrate the findings of those objectives. The objectives defined were established to give structure to the research and guidance in the information gathered. Each of the five objectives are listed below with their results.

The first objective of the research was to assess the present legal strategies in preventing and/or reducing money laundering in Dubai in order to establish a base and identify amendments needed. According to the current legislation, UAE is working to establish federal guidelines and laws that will reduce the ability for criminal networks to use the UAE as a source of money laundering and other criminal activities. These laws are implemented throughout the country, but suffer from reduced success in implementation, as demonstrated by the Dubai primary research and the FATF assessments. The ability for the UAE to be successful begins with legal requirements of organisations and individuals, as they enter the country in customs or when money is transferred to individuals within the country.

Dubai has taken a strong approach to managing the issues related to the AML requirements for the UAE and has dedicated specific organisations to the purpose of creating an undesirable and difficult environment in Dubai for money laundering purposes. In addition, the Dubai government has worked to impose regulation on both the financial and the non-financial business industry within the area, which includes the requirement of personnel dedicated to monitoring for unusual activities and legislation that requires reporting and tipping off measures by organisations and individuals.

The FATF and the IMF have credited Dubai for many of the initiatives and legislation in place regarding AML; however, it is also noted that failures or improper measures have restricted the assessment. These include failures in customs and failures in documentation of incidents that can enable the FATF to measure the success of the Dubai activities. While the Dubai requirements and regulation is more suiting to the FATF recommendations, there is more work required for

Dubai to be completely successful in meeting the goals and achieving a reduction of money laundering. This is not impossible, the foundation is developed in most of the legislation, which continues to be improved with the FATF Recommendations and risk assessments for the country. However, the most effective implementation will require that the government focus on implementing models of law enforcement that will improve upon the implementation of the goals.

Examine the current policing strategies in preventing and/or reducing money laundering in Dubai to establish where amendments are required was the second objective. Currently, Dubai must begin to focus on creating better policing strategies, such as utilizing the intelligence-led policing model or the National Intelligence Model, which will improve upon the ability of authorities to access information and reduce the prevalence of money laundering throughout the area. However, this is also true of UAE overall, where increased government agencies, databases, and policing will improve upon the ability of the country to achieve the goals of compliance with FATF standards and improve upon relations and communication with international agencies and other countries.

It is perceived that the primary concerns of money laundering in the UAE are a direct result of the aspects of financial hub that are noted, specifically in Dubai, where international activities occur due to the need to conduct business in the city. While the customs department has greatly improved over the past decade, the ability to monitor and control organisational funds is more limited and has had more difficulty in achieving these same successes. In this way, Dubai and the UAE are more successfully committed to reducing the amount of illegal or undocumented goods into the city, but less successful in managing the necessary precautions for laundering purposes.

However, the UAE and Dubai would benefit from review and implementation of the policies, legislation, and models used by the UK. The UK has strong compliance ratings with the FATF, and use of these items could improve the ratings of the UAE overall. While Dubai is not rated individually of the UAE, the actions of Dubai are credited during the assessment process when

they are demonstrated to be more compliant than that of the rest of the UAE. In this way, improved models and legislation could occur at the Dubai level to set examples for other emirates in the UAE or to demonstrate how these changes could be successful at the federal level. Additionally, Dubai has developed clear communications for organizations and DNFBPs, to improve upon understanding of both federal and Dubai specific regulations regarding anti-money laundering legislation and regulations, which improves upon the ability of both to achieve the goals identified by the FATF.

In the third objective, it was determined that an assessment of possible future directions in preventing and/or reducing money laundering in Dubai would be conducted using interviews and the recommendations from respondents. This area was evaluated using the literature, FATF Recommendations, and responses from the primary research, which demonstrated that improvements are necessary for the continued success of Dubai and in remaining viable internationally in the future. As AML/CFT regulations continue to be an important element of international activities, the further support in the areas of reducing money laundering will become critical in all countries, including in the UAE. However, while the interviews found that the communication, training, and access to databases were the most problematic, overall respondents did not feel that there was any increase in the criminal elements, and literature suggests that the improvements that have occurred have been mostly positive in reducing the risks of money laundering and terrorism financing.

The fourth objective was to expose the limits to international AML practice to establish whether UAE/Dubai needs to alter some of its current practices. An FATF Recommendations Assessment was developed to determine how the AML regulations were currently implemented in the UAE and Dubai. The FATF Recommendations demonstrated that improvement has occurred the legislation and regulations that were required, as compared to the 2008 assessment published for UAE. Specifically improvements were found to exist in the areas of criminalization of money laundering offences, clarification of requirements for both Authorized Firms and DNFBPs, and all areas found to be noncompliant. However, similar to the 2008 assessment, the challenge was to discover how effective these implementations of legislation had been, as there were no

statistics regarding these areas available in either literature or in regards to publications from the DFSA or Central Bank. In addition, based on the primary research, some of the changes did not appear to have been successful when considering application by the respondents. These areas that needed improvement were found to be in communication and collaboration between law enforcement and other agencies, and the lack of usable databases to access necessary information.

Finally, the last objective was to establish whether there is a need for a political and cultural shift in attitude to prevent and/or reduce money laundering in Dubai. This area was most difficult to assess using the research gathered. While a shift from cash-based to cash-less society would clearly eliminate issues found with documentation and remove the difficulties associated with regulating Hawala, the political goals of the area do appear to focus on creating federal regulations that will assist in bring UAE into compliance with the goals of international organizations in creating solid foundations for reducing money laundering and terrorism financing around the world. However, difficulties remain in areas of inter-agency communications, and while these require that a cultural shift occur within the agencies to improve upon these relationships, it does not have a direct relationship with the culture of organizations and individuals. In addition, political issues that have a negative influence on the success are the lack of standardization between emirates, where Dubai may focus on meeting the requirements of the FATF Recommendations, other emirates, particularly in areas where the new FTZs are being developed, may not have managed the same amount of regulations and may be dependent on federal laws and federal agencies to assist in managing these aspects. In this way, it is most likely that the success will come from the increased focus on empowering federal agencies to be available to emirates in need, and increasing overall communication between the agencies, such as through the development of the models identified in this research.

8.9. Conclusion

This thesis started off by explaining the context in which money laundering takes place in Dubai. It highlighted that since 2001, the UAE, at Federal and emirate-level has put in place a comprehensive system to prevent and reduce money laundering with two acts that serve as the foundation for anti-money laundering (AML) in the UAE; these are the Anti-Money Laundering Law (2002) and Counter Terrorism Law (2004). There was little or no assessment, until now, of these acts, laws, procedures and processes effectiveness in preventing and reducing money laundering in the UAE. What was discovered was a system that is in need of attention on a number of levels. However, the research also demonstrated that Dubai was found to be working diligently to meet the needs of FATF regulation, in addition to the federal laws of UAE. These increases in legislation are widely available to the public, both in English and in Arabic and demonstrate a commitment to both ethical practices and legal regulation.

The past few decades have resulted in many changes worldwide, in regards to how money laundering is addressed, and this includes changes to FATF recommendations and assessment processes. These changes contribute to the success of AML objectives, particularly in that the goal is to establish legislation and international cooperation in resolving these issues; however, enforcement of the legislation is more complicated. Dubai and the UAE as a whole would benefit from the use of a model, such as NIM or ILP, in order to create more successful communication channels and establish the necessary needs in all areas for technology for data gathering. In addition, due to the increase in technology worldwide, the use of technology should be more widely used in the UAE to determine the compliance of individuals and organisations.

The FATF Recommendations of 2008 have been being implemented in the UAE, and while improvement has occurred based on the results of the literature review and in regards to legislation, there are still many areas in which the UAE must improve to become compliant with all the recommendations found in need. In the primary research, it was identified that the most difficult aspects of this compliance were both in cooperation and in communication, which would be greatly improved by the application of the ILP model or the NIM. These models enable the law enforcement agencies to work together productively and build databases of information

that will increase the effectiveness of investigations. In addition, the use of training programmes and increased cross-training could benefit law enforcement and increase compliance with mutual legal assistance, both nationally and internationally. However, one of the greatest difficulties the UAE faces in regards to compliance is the differences in control, such as the implementation of laws at the federal and the emirate level. Dubai has developed strong regulations to address the needs of the AML/CFT regulations and works to increase these due to the active financial hub status it maintains, which includes international recognition. Improvement benefits Dubai and the UAE on an international level and adds credibility to the financial institutions within the country.

In addition to investigating the UAE and Dubai in regards to FATF recommendations, the work was designed to compare the UAE and the UK, with a focus on the success of Dubai in compliments from the FATF for legislation requirements meeting the FATF standards. These exceptions that are demonstrated by Dubai are substantial, as Dubai is a financial hub within this region and represents many opportunities for legal activities. However, Dubai works to establish clear requirements of organisations and individuals, monitors transactions, and requires that individuals involved in suspicious activity report these activities to the authorities. While there were no current statistics on the number of reports received over the past few years, the legal regulation is very important to the success of the country as a whole, and increase the ability for the country to remain competitive with the rest of the world. Risks of money laundering can decrease outside interest in investing or supporting organisations within the country.

The key elements have been addressed above but further issues that require analysis were raised in this thesis but not part of its remit. One of these issues is deterrence. There is little or no deterrence in Dubai. This is due to a number of factors; a poor regulatory regime, lack of law enforcements resources, lack of skilled personnel in law enforcement, poor channels of communication (see above) diverse financial sectors (i.e., gold market with close links to India and Pakistan, the Hawala system, which is in need of doctoral research on its own, and the 'black economy' that exist everywhere but more so in cash-based nations).

To design and implement a comprehensive system is an incremental and slow process. It is suggested here that Dubai has achieved many key steps; it has passed laws to counter the threat of money laundering which was needed; it has put in place a regulatory regime, which needs developing. In this thesis it became evident that the AML strategy and practice in the UAE and Dubai in particular was limited, but was supported by legislation designed to improve the success within the country and within Dubai specifically by the DFSA Codebook. Signing international conventions, passing national laws, establishing a regulatory regime are all to be commended but as noted at the start of this thesis by Levi 1996:3) finding an effective regulatory regime for the financial world is problematic. 'The trick of regulation is to minimise the illegitimate exploitation without wrecking economic dynamism'.

Finally, the UAE and Dubai specifically would benefit from an updated FATF assessment that works with the government and regulatory bodies to determine the success of current implementations. Following the 2007 FATF assessment, the UAE made many changes to legislation and worked to close gaps in the legislation and regulation established by the FATF for AML management. These successes were a direct result of the recommendations, and evaluating the effectiveness of these changes would enable the country to determine how further to continue to grow compliance, and to support the needs of people in the country, including those using the Hawala system. As the culture is strongly supportive of charities and a cash-based system, it is likely that some changes to the money laundering risks of the UAE will require time to be successful in creating change and embracing new concepts of documentation and customer inquiries. However, the newest designs have much potential for the success in the UAE, if they were further supported by models such as the intelligence led policing and supported by POP and COP.

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Appendix

Appendix A. My own publication

Belaisha Bin Belaisha, Graham Brooks, (2014) "Money laundering in Dubai: strategies and future directions", Journal of Money Laundering Control, Vol.17 Iss: 3, pp.343 -354”

<http://www.emeraldinsight.com/doi/full/10.1108/JMLC-10-2013-0038>

Appendix B. UAE Federal Law

UAE Federal Law Regarding the Criminalization of Money Laundering No. 4 of 2002

<http://www.dfsa.ae/Documents/Legal%20framework/Federal%20Law%20No%204%202002%20English.pdf>

Appendix C. UAE Federal Law

UAE Federal Law Regarding the Criminalization of Terrorism No. 1 of 2004

<http://www.centralbank.ae/en/pdf/amlsu/Decree-Federal-Law-No.1-2004.pdf>

Appendix D. UK Regulation

UK Money Laundering Regulations 2007

http://www.legislation.gov.uk/uksi/2007/2157/pdfs/uksi_20072157_en.pdf

Appendix E. International Monetary Fund Report 2008

International Monetary Fund Report on Anti-Money Laundering and Combating the Financing of Terrorism 2008

<http://www.imf.org/external/pubs/ft/scr/2008/cr08305.pdf>

Appendix F. United Arab Emirates: Report 2008

Anti-Money Laundering and Combating the Financing of Terrorism

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UAE%20full.pdf>

Appendix G. Prompt interviews

1. Prompt interviews AMLSCU
2. Prompt interviews Banker
3. Prompt interviews Police

- **Prompt interviews AMLSCU**

First of all tell me about you job in this organization?

How this organization works to fight Money Laundering?

From where do you get authority to do your work?

there is any fear of these crises?

What is your organization role in the face of money laundering?

What are the bodies that you receive from them suspicious cases?

Is there any law and regulation guideline to receive the suspicious cases of companies operating in the country?

What is suspicion report mean to AMLSCU?

What is a transaction would you say is it suspicious?

Do you have constantly monitored all medium and large scale to and for transactions?

What you say about Hawala and it's used in money laundering?

Do you think transaction amount will be enough to identify suspicious transaction?

Do you think Hawala regularized enough?

What do you thing about current law of anti money laundering?

- **Prompt interviews Banker**

First of all tell me about your job in this organization?

How does this organization work to fight Money Laundering?

What do you say about Hawala and its use in money laundering?

Do you think Hawala is regularized enough?

Do you think Hawala has a loophole that has been used by criminals to do Money Laundering and terrorism?

Do you find Hawala easy to discover?

Do you think that Dubai can fight money laundering?

What is the procedure on going with Know Your customer?

Where do you send suspicion report?

Do you face any problem with them?

Do you have any issues regarding share information?

Do we need to have new regulation or law into financial system?

- **Prompt interviews Police**

First of all tell me about you job in this organization?

How this organization works to fight Money Laundering?

From where do you get authority to do your work?

What is your organization role in the face of money laundering?

What are the bodies that you receive from them suspicious cases?

How do you go about arresting someone who is to be investigated for money laundering?

How do you start investigation?

Do you face any distribution in your investigation?

Do you have any issues regarding share information?

There is any cooperation overseas to fight money laundering?

Factors that you believe that Encouraging Money Laundering in the UAE?

Do we need to have new regulation or law into financial?