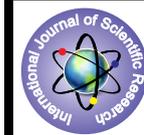


Anti-Money Laundering in India: Issues and Perspectives



Commerce

KEYWORDS :

Rakesh Chutia

Assistant, State Bank of India, Margheita-786181, Dist.-Tinsukia, Assam

ABSTRACT

The long-ignored problem of money laundering in India – using financial transactions to conceal the identity, source, and destination of money – is not only linked to organised crime but also to tax evasion or false accounting. Money laundering is now recognised as a widespread problem practiced by individuals, businesses, officials and governments all over the world. Taking into consideration the gravity of the issue this paper tries to highlight the Anti-money laundering (AML) regulatory regime in India and the issues to be tackled towards ensuring an effective AML environment.

Introduction:

Money Laundering is a global phenomenon being employed by launderers worldwide to conceal criminal activities associated with it such as drugs/ arms/ human trafficking, terrorism and extortion, smuggling, financial frauds, corruption etc. The estimated amount of money laundered globally in one year is 2-5 percent of the global GDP or USD 800 billion. The most common ways to launder money are through the use of financial institutions (e.g. insurance companies, banks, etc.) or by setting up businesses and shell companies that serve as a front for receiving the illicit funds. With the increasing integration of the world's financial system, improvement in technology, free movement of capital etc., money launderers are now able to quickly move their criminally derived cash proceeds and gains between national jurisdictions, complicating the task of tracing and confiscating these assets. Combating Money-Laundering has therefore now become a key concern for countries all over the world as it can have a range of severe macroeconomic consequences in the form of unpredictable changes in money demand, prudential risks to the soundness of banking systems, contamination of legal financial transactions and increased volatility of international capital flows and exchange rates due to unanticipated cross-border assets transfers and can even pose a threat to economic and political stability of a country. With its growing financial strength, India is vulnerable to money laundering activities. An amount 13 times larger than the country's foreign debt - USD 1500 billion has been alleged to have been laundered by Indians in Swiss banks. Money Laundering poses a serious threat to our country due to the possibility of such funds being used for terrorist financing, apart from the revenue loss to the government.

Basics of Money laundering:

Money Laundering is the process of conversion of money obtained by illicit means, so as to make it appear to originate from a legitimate source. There are three distinct steps involved in the process of money laundering:

- (i) Placement: It is placing dirty money into the financial system to move funds away from the criminals.
- (ii) Layering: It is moving dirty money through different components of the financial system to obscure its original source.
- (iii) Integration: It is mixing with clean money and deploying it in the legitimate business and economic activities and reaching back to the criminals as clean money.

The risk of money laundering is now being perceived as a major focus by governments all over the world, international bodies and especially the financial services industry and they have undertaken efforts to deter, prevent, and apprehend money launderers and also to detect transactions involving dirty money. It is in the context of these efforts to curb the menace of money laundering the term Anti-money laundering has evolved mainly used in the financial and legal industries to describe the legal controls that require financial institutions and other regulated entities to prevent, detect and report money laundering activities. Anti-money laundering (AML) guidelines came into prominence globally as a result of the formation of the Financial Action Task Force (FATF) and the promulgation of an international framework of anti-money laundering standards.

Anti-money laundering (ALM) environment in India:

The Financial Intelligence Unit - India (FIU-India), set up on November 18, 2004 is the nodal agency in India for managing the AML ecosystem and it reports directly to the Economic Intelligence Council (EIC) headed by Finance Minister. The FIU-IND has three major roles:

- Receives financial information pursuant to country's anti-money laundering laws;
- Analyzes and processes such information;
- Disseminates the information to appropriate national and international authorities, to support anti-money laundering efforts.

The FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence and enforcement agencies in their efforts against money laundering and other related crimes. The FIU-IND does not have a regulatory role. Its prime responsibility is to gather and share financial intelligence in close cooperation with the regulatory authorities such as the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI) and the Insurance Regulatory and Development Authority (IRDA). Its role is to process and analyse financial information received by it and then disseminate the actionable intelligence in appropriate cases to relevant enforcement agencies.

While the Prevention of Money Laundering Act (PMLA) 2002, forms the core framework for combating money laundering in the country. PMLA 2002 came into force with effect from July 1, 2005. This Act is an endorsement of various international conventions to which India is a party and it seeks to declare laundering of monies carried through serious crimes a criminal offence. The Act also lists modalities of disclosure by financial institutions regarding reportable transactions, confiscation of the proceeds of crime, declaring money laundering as an extraditable offence and promoting international cooperation in investigation of money laundering. It imposes an obligation on banking companies, financial institutions and intermediaries to verify the identity of clients maintain records and furnish information to FIU-IND. It empowers the Director, FIU-IND to impose fine on any banking company, financial institution or intermediary for failure to comply with the obligations of maintenance of records, furnishing information and verifying the identity of clients. The amount of fine may vary from ten thousand rupees to one lakh rupees for each failure.

As per the provisions of the Act, every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules under the PMLA. Such transactions include:

- All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
- All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions; and
- All suspicious transactions whether or not made in cash.

The records of all transactions are required to be maintained by every banking company, financial institution and intermediary for a period of ten years from the date of cessation of the transactions with their clients. The provisions of the Act are frequently reviewed and various amendments have been passed from time to time.

Role of Reserve Bank of India:

RBI plays a significant role in AML activities. As the regulator of the banking industry, RBI has issued a series of guidelines to the banks on Know Your Customer (KYC) Standards and Anti Money Laundering (AML) measures, which require banks to put in place a comprehensive policy framework on customer identification procedures, customer profiling based on the risk perception and monitoring of transactions on an ongoing basis. The guidelines issued by the Reserve Bank of India take into account the recommendations made by the Financial Action Task Force (FATF) on AML Standards. These guidelines also incorporate aspects covered in the Basel Committee document on customer due diligence which is a reflection of the International Financial Community's resolve to assist law enforcement authorities in combating money laundering crimes.

Role of Securities Exchange Board of India:

Indian securities market is also prone to money-laundering activities. Intermediaries registered under the SEBI are under reporting obligation of PMLA '02. The main source of money-laundering would be the Participatory Notes Transaction and Overseas Direct Investment Routes. The mechanism of opening up the Indian securities market through PN /ODI route to entities outside India imposes a commensurate onus on the registered intermediaries (FIIs) of maintaining high standards of regulatory compliance, exercise of high due diligence and independent professional judgment and therefore any gaps in measuring up to the onus may be fraught with critical repercussions in the market. SEBI's role is crucial in this regard.

Key issues in India for having an effective AML regime:

Complying with AML legislation is a growing challenge for all financial institutions and other organizations alike in India. There are many a key issues which need to be addressed to implement an effective AML regime in India. Some of the key issues are highlighted as follows:

- Unlike relatively mature regulatory countries, Indian AML regulations are being viewed as a compliance tool by the financial services community rather than as a risk management tool. Hence the objective has been basic compliance rather than using it as a risk management practice.
- Lack of adequate number of skilled and certified AML workforce is also a big operational challenge.
- Unawareness about the grave problem of money-laundering among the common people and dealing staff is also an impediment in having a proper AML regime.

- AML compliance brings a huge financial burden on the financial institution. To keep up with the regulatory environment, sound investments are required in customer due diligence, customer identification and acceptance procedures, monitoring suspicious transactions and related AML processes and procedures.
- Absence of comprehensive enforcement agency to tackle exclusively cases of money-laundering. Separate wings of various law enforcement agencies are dealing with digital crimes, money laundering, economic offences and terrorist crimes. These agencies lack convergence on matters of money-laundering.
- Technical shortcomings in the criminalisation of both money laundering and terrorist financing and in the domestic framework of confiscation and provisional measures.
- Despite all available infrastructures through government bodies, the onus of AML implementation mostly lies with financial institutions. Most institutions see it as a financial and operational burden. Depending on the size and different lines of business for a given financial institution, the scope of a given AML programme can vary significantly. A lack of clarity over compliance and tighter timelines can result in ad hoc implementation of AML processes rather than a long-term, strategic solution.
- Another significant issue is lack of enforcement. AML laws are a necessary but insufficient condition for the establishment of a truly effective AML regime. Despite the laws that criminalise money laundering and empower authorities to confiscate assets, prosecutions and convictions have been few and the rate of confiscation is low.

Conclusion:

India has a long way to go before we can match the efforts of developed countries in the area of AML. The government needs to take more effective action and generate a grassroots-level focus amongst financial institutions. It is difficult to implement control over money laundering activities without support from legislative and executive bodies. However what needs to be done further is increased enforcement and action against the entities violating them. A lack of awareness and a lack of political will are major hindrances to AML implementation. The creation of AML-focused regulatory bodies and a close partnership with global financial institutions to implement the necessary AML programs are necessary take the cause forward.

Financial entities also have to take a more dynamic approach – renewing their focus on ongoing programme enhancement in order to better mitigate old risks, while simultaneously managing new risks and regulatory requirements. Furthermore, a renewed focus is needed to look beyond simple name matching, peer-group analysis, link analysis and data matching. A new approach must be adopted by every individual working in a financial institution. Financial institutions need to identify global practices that also allow for a risk-based approach which take into account variations in risks by customer, product and country specific requirements.

Through seminars, workshops and training programs, RBI, SEBI, IRDA, IBA and FIU IND can collaborate and undertake the mass training of personnel from financial services organizations and investigators.

REFERENCE

1. KPMG, India Anti-Money Laundering Survey (2012), 2. World-Check and BMR Advisors, India AML Survey Report (2009), 3. Shukla, Atul and Bhagat, Bhumiika, (2011) "Anti-Money Laundering- Are Developing Countries Ready for the Challenges Ahead?", 4. Sadakkadulla, J, (2008) "Anti Money Laundering and KYC: Indian Banks' Role", 5. www.rbi.org.in, 6. www.sebi.gov.in, 7. www.pwc.com.