

UNIVERSITY OF THE WESTERN CAPE



FACULTY OF LAW

**AN ASSESSMENT OF ANTI-MONEY LAUNDERING MECHANISMS FOR POLITICALLY
EXPOSED PERSONS IN MAURITIUS**



Research Paper Submitted in Partial Fulfilment of the Requirements for an LLM in

Transnational Criminal Justice And Crime Prevention:

An International and African Perspective

Mungar Divya Luxmi Devi

Student Number: 3691371

Supervisor: Professor Lovell Fernandez

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DECLARATION

I, **Mungar Divya Luxmi Devi**, declare that ***An Assessment of Anti-money Laundering Mechanisms for Politically Exposed Persons in Mauritius*** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Signature:.....

Date: 2017-03-24



Supervisor: Prof Lovell Fernandez

Signature:.....

Date: 2017-03-24

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DEDICATION

To late Mrs Kumaree Seetal

You hugged me like a mother, listened to me like a friend and kept my secrets like a sister;
you will forever remain in our hearts *phouphou*.



LIST OF ABBREVIATIONS AND ACRONYMS

AML	Anti-money Laundering
AML/CFT	Anti-money Laundering and Combating the Financing of Terrorism
AU	African Union
CCID	Central Crime Investigation Division
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CoE	Council of Europe
DDA	Dangerous Drugs Act
DNFBPs	Designated Non-Financial Businesses and Professions
DPEP	Domestic Politically Exposed Person
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FIAMLA	Financial Intelligence and Anti-Money Laundering Act
FIU	Financial Intelligence Unit

FPEP	Foreign Politically Exposed Person
FSC	Financial Services Commission
FSRB	FATF-Style Regional Body
ICAC	Independent Commission against Corruption
IFF	Illicit Financial Flows
IMF	International Monetary Fund
JMLSG	Joint Money Laundering Steering Group
KYC	Know-Your-Customer
MLRO	Money Laundering Reporting Officer
OFC	Offshore Financial Centre
PEP	Politically Exposed Person
POCA	Prevention of Corruption Act
RBA	Risk-Based Assessment
SRB	Self-Regulatory Body
StAR	Stolen Asset Recovery Initiative
STR	Suspicious Transaction Report
UNCAC	United Nations Convention against Corruption



UNODC

United Nations Office on Drugs and Crime



KEY WORDS

Compliance

Due Diligence

FATF 40 Recommendations

Mauritius

Money Laundering

Politically Exposed Persons



CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Money laundering is a practice 'as old as money itself'.¹ In 1931, after the conviction of Al Capone for tax evasion, there was a noticeable trend in the use various methods to camouflage assets deriving from crimes.² Indeed, the practice of money laundering became not only more prevalent, but also more detectable.³ However, the term "money laundering" was used for the first time in connection with the Watergate Scandal in the United States, when the Republican Party channelled money obtained illegally via Mexican banks to fund its election campaign. In 1986, the US Congress adopted the Money Laundering Control Act to criminalise money laundering.⁴ The US recognised that, having an international character, money laundering could not be combated with domestic laws and controls alone, and that, being the only country implementing strict regulations, the US had placed itself in an economically disadvantageous position.⁵ Therefore, the US brought the issue of money laundering to the attention of the international community. Given the then prevailing

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- 1 Muller WH 'Anti-Money Laundering- A Short History' in Muller WH, Kalin CH, Goldsworth JG *Anti-Money Laundering: International Law and Practice* (2007) 3.
 - 2 Zwick M *Banking Secrecy and Money Laundering* (2003) 36.
 - 3 Financial intelligence allowed authorities and financial institutions to observe acts and attempts at laundering. See Zwick (2013) 36.
 - 4 Madinger (2016) 24.
 - 5 Mugarura N *The Global Anti-Money Laundering Regulatory Landscape in Less Developed Countries* (eds) (2016) 14.

international concern about the growing trade in illicit narcotic drugs, states started to become increasingly aware of the need to combat money laundering.⁶

In simple terms, money laundering means turning dirty money into clean money to outwit the authorities and enjoy the proceeds of crimes.⁷ Criminals conceal the illicit source of proceeds of crimes to avoid investigation and prosecution.

Money laundering is kick-started by the commission of predicate offences such as bribery, grand corruption, human trafficking, drug dealing, trafficking in human organs and tax evasion, amongst others.⁸ Whereas some countries identify in their laws specific offences as predicate offences of money laundering, others make all crimes predicate offences.

Successful laundering enables criminals to reap huge profits from their criminal activities.⁹ It also boosts illicit financial flows (IFFs).¹⁰ The fact of the matter is that money laundering has severe adverse effects on financial markets and creates economic distortion.¹¹ It results in reputational damage to countries and their financial institutions (FIs).¹² Consequently, the global economy is hindered, development impeded, and the well-being of society affected.



6 Pieth M & Aiolfi GA *Comparative Guide to Anti-Money* (2004) xvii.

7 Zwick (2003) 36.

8 Madinger J *Money Laundering: A Guide For Criminal Investigators* (2011) 13.

9 Reuter P 'How Much Money Is Laundered?' in Reuter P *Chasing Dirty Money: The Fight Against Money Laundering* (2004) 35.

10 Illicit financial flows are defined as "money illegally earned, transferred or used." OECD *Illicit Financial Flows from Developing Countries: Measuring OECD Responses* (2014).

11 Trillions of dollars are lost to criminals because of IFFs. See *Global Financial Integrity Illicit Financial Flows: The Most Damaging Economic Condition Facing the Developing World* (2015) 134. The African continent, for example, loses more than USD 50 billion every year in IFFs. See *The Guardian* 'Africa Losing Billions from Fraud and Tax Avoidance' 2 February 2015.

12 McDowell J & Novis G 'The Consequences of Money Laundering and Financial Crime' *Economic Perspectives An Electronic Journal of the U.S. Department of State* 6 (2001) 6-8.

Therefore, it is critically important to combat money laundering.¹³ In fact, the enactment and implementation of anti-money laundering (AML) legislation by countries have become a matter of priority over the past two decades.¹⁴ Following the tragic events of the 9/11 attacks in the US, the Financial Action Task Force (FATF), which is the international body that sets AML standards with which countries are expected to comply, added another nine extra Recommendations aimed at combating the financing of terrorism (CFT).¹⁵ With time, countries have developed their AML/CFT regime.

The AML/CFT regime is comprised of two distinct but complementary laws, namely, the preventive laws and the enforcement laws.¹⁶ The preventive body of laws are meant to regulate the procedures that need to be implemented as prophylactic measures to prevent the crime of money laundering. The body of laws that regulate the enforcement aspect is aimed at punishing the crime of money laundering.



1.2 Statement of the Problem

Notwithstanding the extensive AML/CFT measures that exist at both international and domestic level, money laundering and IFFs continue to occur.¹⁷

13 McDowell (2001) 8.

14 Global Financial Integrity (2015) 138.

15 Remarks of Jennifer Shasky Calvery, Director Financial Crimes Enforcement Network, ACAMS AML and Financial Crimes Conference, Hollywood Florida, 12 April 2016.

16 See generally Reuter P 'Anti-Money Laundering Regime' in Reuter P *Chasing Dirty Money: The Fight against Money Laundering* (2004) 44-49. See also Goredema C 'Measuring Money Laundering in Southern Africa' 14 (2005) *African Security Review* 29.

17 Reuter (2004) 23-24.

Essentially, money laundering is a vicious circle, as the more the money that is laundered the more opportunity criminals have of investing their ill-gotten gains in more profit-generating crimes. The enablers of money laundering are, amongst others, service providers¹⁸ and professionals.¹⁹ The booming offshore financing centres (OFCs) operate in a thick shroud of secrecy and allow investors to conduct business in jurisdictions with less restrictive laws and lighter tax burdens.²⁰ In fact, offshore bank accounts hold an estimated USD 21 trillion,²¹ and the number of complex structures, including shell companies and offshore banking corporations spread across several countries, is difficult to establish.²² More notably, people may invest their money with the help of intermediaries, designated non-financial businesses and professionals (DNFBPs). Not surprisingly, money laundering is considered to be main conduct responsible for the abuse of the global financial system.²³ Thus, services provided by OFCs and DNFBPs are at high risk of being abused by money launderers.

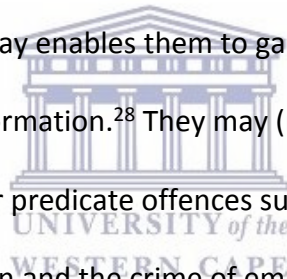


The 2016 Panama Papers Leak revealed secretive financial information on 140 current and former politicians and public officials, including their relatives and close friends, who used

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- 18 According to the Thabo Mbeki Foundation, the bulk of illicit money is channelled through service providers in international tax havens. AfricaRenewal Online *Illicit Financial Flows from Africa: Track It, Stop It, Get It* (2013).
- 19 Reuter (2004) 35-37. Lawyers and accountants have been named the gatekeepers and facilitators of money laundering and fall under the category of designated non-financial businesses and professionals. See generally FATF Money Laundering and Terrorist Financing: Vulnerabilities of Legal Professionals (2013) 24-27.
- 20 Komisar L 'Funny Money: Enron and Al Qaida Share Offshore Banking Tactics' *Metroactive News & Issues* (2002).
- 21 Frederick E 'Allen Super Rich Hide \$21 Trillion Offshore, Study Says' *Forbes* 23 July 2012.
- 22 Rettig CP 'The Panama Papers and Lessons Learned from Years of Offshore Leaks' (2016) *Journal of Tax Practice & Procedure* 30.
- 23 Reuter (2004) 171.

the services provided by OFCs and the help of DNFBPs to allegedly hide assets worth billions.²⁴ These people fall under the general definition of politically exposed persons (PEPs), who, because of their status as, for example, public officials or heads of state, or because of their associations with the latter, are at high risk of engaging in illegal activities.²⁵

In fact, bribery and corruption are those predicate offences of money laundering which involve PEPs and abundant amounts of money and large scale operations. These crimes cause severe harm to developing countries and are primarily, but not exclusively, prevalent in poor countries.²⁶ High-ranking public officials are thus capable of abusing their influential positions to commit economic crimes and to conceal their ill-gotten wealth in the global financial system.²⁷ Additionally, the political power wielded by PEPs or their ability to reach out to others who have political sway enables them to gain access to public funds or to benefit unlawfully from insider information.²⁸ They may (mis)use financial vehicles to launder money 'earned' from other predicate offences such as unfair allocation of contracts, dissemination of insider information and the crime of embezzlement. Not surprisingly, the FATF considers them as a special category of customers and advocates that FIs and DNFBPs adopt a risk-based approach (RBA) in conducting customer due diligence (CDD), and enhanced due diligence (EDD) measures before entering into business transactions with



24 Rettig (2016) 29.

25 Hopton D *Money Laundering: A Concise Guide for All Business* (2006) 93.

26 Reuter (2004) 41-42.

27 Mugurara (2016) 151.

28 Patel H and Thakkar *BS Money Laundering Among Globalised World in Globalisation: Approaches to Diversity* (2012) 169.

them.²⁹ Therefore, FIs and DNFBPs are required to submit also suspicious transaction reports (STRs) to Financial Intelligence Units (FIUs) where they suspect that transactions are irregular and might constitute acts of money laundering.³⁰ The FATF recommends also that FIs and DNFBPs become fully acquainted with their clients and that they apply ongoing the Know-Your-Client (KYC) procedures when dealing with their customers.³¹ In fact, a 2012 survey found that identifying whether a potential client is a PEP or not is the main factor considered by FIs during the risk assessment of client relationships.³²

A holistic approach has been used on a multilateral level to fight money laundering and its predicate offences, and to identify and closely monitor offshore, as well as domestic holdings and transactions by PEPs. However, many cases involving criminal and unethical conduct of PEPs have been found and many more are believed to be occurring secretly.

1.3 Significance of the Study



In addition, to the previously mentioned economic and social costs of money laundering, criminal conduct on the part of PEPs victimises the whole population as this kind of unlawfully obtained wealth usually derives from state funds, meaning tax payers' money.³³ The delinquent behaviour of PEPs reduces also public confidence in the government and it erodes public trust in state departments while also affecting negatively the quality of public

29 Recommendations 1, 10, 12, 20 and 22 of the FATF.

30 Recommendations of 10, 12, 20 and 22 of the FATF.

31 Recommendations 10 and 12 of the FATF.

32 KPMG *Africa Anti-Money Laundering Survey 2012* (2013).

33 Hopton (2006) 93.

services. Moreover, a failure of institutions to deter, detect, and sanction attempts and acts of money laundering, especially the ones involving PEPs, may lead to reputational damage of its FIs and OFC, and to sanctions being imposed at the behest of international regulatory bodies. Non-compliance with AML standards may further endanger the economic stability of a country, erode public confidence in the banking system, and promote an informal economy and unregulated banking system. This necessarily affects the well-being of society and the economic development and sustainable growth of countries. More importantly, non-compliance leads also to the increased commission of economic crimes resulting from the abuse of office.³⁴

Mauritius is a popular tax haven that has entered into many double tax agreements with other countries.³⁵ The country is becoming the Indian Ocean's financial hub.³⁶ Strategically located between Africa and Asia, it is the gateway to Africa and to the African economy. Thus, the services provided by its OFC risk being exploited for money laundering purposes. The country's economy relies on foreign direct investments and on the performance of its FIs. Moreover, as it is, numerous cases of money laundering related to Mauritius have been detected; this state of affairs has tarnished the country's reputation. What is more, the country has to deal with cases of internal money laundering, incoming money laundering, and outgoing money laundering by PEPs.³⁷

34 Ogbodo UK & Mieseigha EG 'The Economic Implications of Money Laundering in Nigeria International' 3 (2013) *Journal of Academic Research in Accounting, Finance and Management Sciences* 173-177.

35 Mauritius has concluded 43 tax treaties and is party to a series of treaties under negotiation. See Mauritius Revenue Authority 'Double Taxation Agreements'.

36 AfricaMoney 'The Mauritius International Financial Centre: A Credible Transparent and Cooperative Financial Hub'.

37 These cases are discussed in more detail in Chapter Three.

It bears noting that, although the financing of terrorism is closely related to money laundering, this study will not deal issues of terrorism, as the bulk of the literature on PEPs shows that they are associated more with the laundering of money for personal enrichment.³⁸

1.4 Objectives of the Study

This research paper will delve into how some PEPs take advantage of their public office or their association with public officials to commit economic crimes such as money laundering. It will explore further the two pillars of the AML regime: the prevention pillar and the enforcement pillar while highlighting the measures recommended by the FATF and those instituted by FIs to minimise the money laundering risks posed by PEPs. After sketching the existing Mauritian AML measures, this study will investigate to what extent these measures, constituting the two AML pillars, are in fact being implemented in relation to PEPs in Mauritius.



1.5 Methodology

This paper is a pure desktop study which is based on primary sources such as conventions, international instruments, and parliamentary debates. It is informed also by various secondary sources such as books, journals, and electronic sources.

1.6 Chapter Outline

This paper is divided into four chapters. This chapter has introduced the topic and sketched the consequences of money laundering.

38 Hopton (2006) 3.

Chapter Two gives an overview of what money laundering is, how the act of laundering is executed, and which techniques are used to commit the crime. It explains also the concept of PEP and the ambiguities surrounding it. Finally, it explores the twin AML pillars discussed above and how they relate to PEPs.

Chapter Three gives an overview of Mauritius and its financial system. It explains the money laundering risks the country faces, with a special focus on those pertaining to PEPs.

Moreover, it explores the legal and regulatory measures in so far as they apply to PEPs and evaluates them against the template of international standards.

Chapter Four concludes the study and formulates recommendations that are meant especially for Mauritius.



CHAPTER TWO

KEY CONCEPTS

2.1 Key Concepts of Money Laundering and Politically Exposed Persons

2.1.1 Concept of Money Laundering

Around four thousand years ago, merchants in China used to hide their earnings, move them, and re-invest them in businesses within provinces and outside China to prevent rulers from taking a share of the money.¹ This is the basic concept of money laundering and it evidences how old this practice is. However, as mentioned earlier, the term 'money laundering' came into use much later.² Some writers claim that the latter dates back to the 1920s when gangsters such as Al Capone in Chicago in the US opened laundromats as fronts to disguise the criminal origin of their wealth.³ Others state that the term appeared in print for the first time during the 1973 Watergate Scandal⁴ when the British newspaper, *The Guardian*, used it to describe the manner in which the Republican Party in the US used Mexican banks to channel campaign funds back to the US.⁵ Even though scholars cannot

1 Madinger (2011) 4. See also Sullivan K *Anti-Money Laundering In A Nutshell: Awareness and Compliance for Financial Personnel and Business Managers* (2015) 1.

2 Madinger (2011) 11.

3 Unger B Implementing Money Laundering in Masciandaro D, Takats E & Unger B *Black Finance: The Economics of Money Laundering* (2007) 103.

4 Richards JR *Transnational Criminal Organisations, Cybercrime, and Money Laundering: A Handbook for Law Enforcement Officers, Auditors, and Financial Investigators* (1998) 43. See also Mugarura (2016) 135.

5 Mugarura (2016) 135.

ascertain the exact origins of the term, 'money laundering' has become the common appellation for the act of disguising criminal property.⁶

2.1.1.1 Money Laundering from the Technical Perspective

Money laundering is a sophisticated term for a fundamentally simple concept.⁷ Money laundering is described variously in literature, the simplest definition being turning dirty money into clean money.⁸ Money laundering is described also as a process through which the illegal source of assets can be concealed and legitimised.⁹

A common feature in all definitions is the movement of illicit assets into the financial system. More precisely, there are three fundamental elements used in the technical definition of money laundering: the illicit wealth generated by criminal activities; the aim of the process, which is to legitimise the illicit wealth to avoid prosecution and confiscation of criminal proceeds; and finally, the different mechanisms of doing so, which include placement, layering and integration.

Therefore, the basic act of money laundering consists of hiding, moving and investing ill-gotten assets for the purpose of concealment. Indeed, the ultimate aim of launderers is to legitimise the funds and use them again.

6 Ogbodo & Mieseigha (2013) 170.

7 Schott PA Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism (2006) 1.

8 Zwick (2003) 36.

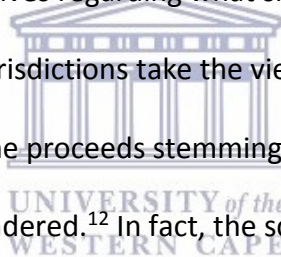
9 Ogbodo & Mieseigha (2013) 171.

2.1.1.2 Money Laundering from the Legal Perspective

Conventions, agreements, laws and regulations use different elements to construct the legal definition and the crime of money laundering. Firstly, the subject of money laundering differs across jurisdictions. While some of them consider only financial revenues as the subject of money laundering, others apply a broader approach and take different kinds of assets into consideration.¹⁰

Secondly, some national legal frameworks consider the purpose of money laundering to be that of concealment of the illegal source of proceeds. Yet, other countries, like Switzerland, consider its purpose to be that of avoiding criminal investigation and prosecution.¹¹

Finally, there are different perspectives regarding what should be considered as the source of proceeds. Undoubtedly, some jurisdictions take the view that the source must constitute a serious crime; others recognise the proceeds stemming from any illegal activity as a possible source of what can be laundered.¹² In fact, the scope of predicate offences of money laundering varies. Some countries adopt the 'all crimes' approach; others list the predicate crimes; yet others adopt the threshold approach. The FATF leaves it to the discretion of countries to choose which approach to adopt.¹³ The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (the Vienna



10 For instance, on the one hand, the Austrian Penal Code uses the term 'parts of wealth' while the Swiss Penal Code uses 'assets' to describe the subject. The Institute of Criminology Research and Public Policy Series (1996), on the other hand, describes it as 'proceeds'. Yet, the term 'property' is used by the United Nations Law Model for Money Laundering (2003). See Unger (2007) 112-114.

11 Unger (2007) 114.

12 Ogbodo & Mieseigha (2013) 171.

13 Recommendation 3 of the FATF. See also FATF Interpretive Note to Recommendation 3 (Money Laundering Offence) (2012) 34-35.

Convention)¹⁴ limits the scope of predicate offences to those that are drug-related.¹⁵ Other international and regional instruments call for an extended scope, which considers all serious offences under national laws.¹⁶ However, seen in relation to the type of punishment a crime attracts, the notion of 'serious' is relative. For example, in Switzerland, a serious crime is one for which a sentence of more than one year may be imposed.¹⁷ In other countries, a serious crime might be classified as one for which a mandatory minimum prison sentence, which could be years, is prescribed.

To sum up here, there is no universal definition of money laundering. Although, the acts constituting the crime are fundamentally the same, the working definition and the degree of criminalisation is not uniform. These differences create some ambiguity when it comes to transnational investigation of money laundering cases, prosecution and modes of assets recovery.¹⁸



2.1.1.3 Dimensions of Money Laundering

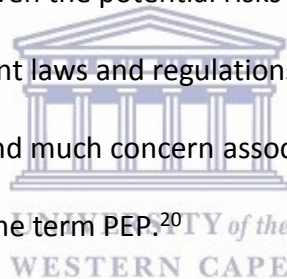
The literature distinguishes between various forms of money laundering, namely:

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- 14 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature in December 1988 and entered into force in November 1990.
 - 15 Article 3(1)(c) of the Vienna Convention.
 - 16 These instruments include: (a) the Recommendations of the Financial Action Task Force; (b) the 2005 United Nations Convention against Corruption; (c) the 2001 United Nations Convention against Transnational Organised Crime; (d) the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; and (e) the European Community Directives 1991, 2001, and 2005 91/308/EEC on the Prevention of the Use of Financial Institution for the Purpose of Money Laundering.
 - 17 Unger (2007) 117.
 - 18 For example, conflicts occur when country A seeks to recover assets laundered in country B whose law does not provide for the predicate offence in respect which country A seeks to recover the laundered assets. See Unger (2007) 104.

- (i) Internal money laundering, by which is meant that the predicate offence and the conduct of laundering are committed in the same country;
- (ii) Incoming money laundering, which is understood to mean that the predicate offence is committed outside a country, but where the proceeds of the crime are thereafter introduced into the country;
- (iii) Outgoing money laundering, by which is comprehended that the predicate offence is committed in a country and the proceeds of the crime are laundered in a foreign country.

2.1.2 Concept of Politically Exposed Persons

FIs treat PEPs as 'special' clients, given the potential risks associated with them.¹⁹ However, a review and analysis of the different laws and regulations across jurisdictions shows that, despite the wide use of the term and much concern associated with it, there is no universally accepted definition of the term PEP.²⁰



In June 2003, the FATF issued mandatory requirements pertaining to foreign PEPs, their family members and close associates, but encouraged member states to extend these to domestic PEPs.²¹ The updated FATF Recommendations on PEPs has a broader approach.²² It uses the same definition as Article 52 of the United Nations Convention against Corruption

19 FATF Guidance Paper: Politically Exposed Persons (Recommendations 12 and 22) (2013) 3.

20 Patel & Thakkar (2012) 169.

21 FATF Guidance Paper (2013) 3.

22 Recommendation 12 of the FATF. See FATF Guidance Paper (2013) 4-5.

(UNCAC) and includes both domestic PEPs (DPEPs) and PEPs of international organisations.²³

The FATF defines PEPs as:

‘individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.’²⁴

The FATF Interpretive Note to Recommendation 12 recommends that countries extend the definition of PEPs to ‘persons with prominent public functions’, including heads of state, senior politicians, senior government, judicial or military officials, and senior executives of state-owned corporations and important political party officials.²⁵ The FATF states that business relationships with family members or close friends of PEPs involve similar risks for FIs as those by PEPs themselves.²⁶ However, it bears highlighting that this definition is not intended to cover middle-ranked or junior public individuals.²⁷

Moreover, on the one hand, some standard setters attempt to define PEPs with reference to a list of positions they occupy and, on the other hand, others are more flexible and allow



23 UNCAC was adopted in 2003 and entered into force in 2005. It is the major international anti-corruption instrument setting the minimum anti-corruption standard for countries to follow and improve upon. With the aim of effectively fighting corruption in general and its inchoate offences in particular, UNCAC provides for prevention, criminalisation, international co-operation and asset recovery measures.

24 FATF Guidance Paper (2013) 4-5.

25 Whether a person is a domestic or a foreign PEP depends on which country has entrusted the person with the prominent public function. The country of domicile of a person or his nationality does not determine the type of PEP, but these factors have to be considered when determining the level of risk associated with PEP. It has to be highlighted that, in most cases, foreign PEPs (FPEPs) are higher-risk clients than DPEPs. Additionally, it should be noted that a DPEP is subject to the requirements of FPEPs if the person is also a FPEP by virtue of another prominent public function exercised in another country. See FATF Guidance Paper (2013) 4, 5 and 19.

26 Gordon (2011) 4-5. Recommendation 12 of the FATF. FATF Guidance Paper (2013) 4, 12-14.

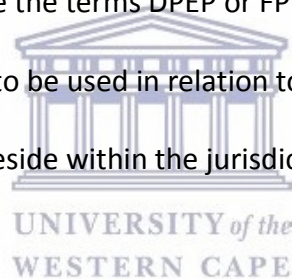
27 FATF (2013) 5.

a wider interpretation of the term.²⁸ For example, some definitions focus mostly on FPEPs or on DPEPs, while others include family members, close associates and high-ranked PEPs, thereby excluding other family relatives, friends, lower-ranked PEPs and middle-ranked PEPs.²⁹

The definition of PEP set out in the Third European Union Money Laundering Directive (Third EU Directive) is similar to the one by the 2006 Joint Money Laundering Steering Group (JMLSG).³⁰ This definition states that PEPs are:

‘natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.’³¹

The Third EU Directive does not use the terms DPEP or FPEP specifically, but it states the specific procedures and measures to be used in relation to PEPs residing outside the jurisdiction and those who might reside within the jurisdiction but have public functions overseas.



The Wolfsberg Global Anti-money Laundering Guidelines for Private Banking of 2012 define PEPs as:

‘individuals holding or, as appropriate, having held, senior, prominent, or important public positions with substantial authority over policy, operations or the use or allocation of government-owned resources, such as senior government

28 Oji RO ‘Implications of Politically Exposed Persons Participation in 2015 Elections in Nigeria Mediterranean’ *Journal of Social Science* 5 (2014) 209.

29 Oji (2014) 208.

30 Choo KR ‘Politically Exposed Persons (PEPs): Risks and Mitigation’ *Journal of Money Laundering Control* 11 (2008) 372.

31 Article 3 of the Third EU Directive 2005/60/EC on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing.

officials, senior executives of government corporations, senior politicians, important political party officials, etc., as well as their close family and close associates. PEPs from different jurisdictions may be subject to different levels of diligence.³²

The Wolfsberg Guidelines highlight that a financial institution should not disregard a client's former position or associations and that these factors are relevant when deciding whether the person is a PEP or not.³³ The guidelines emphasise also the importance of identifying and distinguishing between DPEPs and FPEPs.³⁴

Furthermore, some standards setters have extended the definition of a PEP to add other categories of persons.³⁵ These include high-ranking officials of international and supranational organisations such as the UN, or the World Bank, members of ruling royal families with governance responsibilities, and members of central banks, public associations, religious groups and public enterprises, as well as senior members of the diplomatic corps, political parties and armed forces.³⁶ Nonetheless, the guidelines state that some of these PEPs may be excluded during risk-based due diligence procedures.³⁷



32 Wolfsberg Global Anti-Money Laundering Guidelines for Private Banking (2012) 5.

33 See generally Wolfsberg Global Anti-Money Laundering Guidelines for Private Banking (2012).

34 Whether a person is a DPEP or a FPEP depends on which country has entrusted the person with the prominent public function. The country of domicile of a person or his nationality does not determine the type of PEP, but these factors have to be considered when determining the level of risk associated with a PEP. It has to be highlighted that, in most cases, FPEPs are higher-risk clients than DPEPs. Additionally, it should be noted that a DPEP is subject to the requirements of FPEPs if the person is also a foreign PEP through another prominent public function in another country. Recommendation 12. FATF Guidance Paper (2013) 4, 5 and 19.

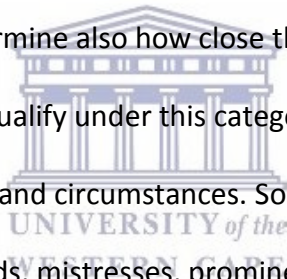
35 Recommendation 12 of the FATF. FATF Guidance Paper (2013) 3, 4, 8, 19, and 23.

36 Wolfsberg Frequently Asked Questions on Politically Exposed Persons (2008) 2-5.

37 Wolfsberg (2008) 2-5.

2.1.2.1 Family Members and Close Associates

The FATF recommends that the requirements in relation to PEPs should be applied also to their family members who are related to a PEP either directly through consanguinity, or through marriage or similar civil forms of partnership, and to close associates, who are individuals closely connected to a PEP, either socially or professionally.³⁸ However, the FATF does not define clearly the terms ‘family members’ or ‘close associates’. In fact, it is difficult to do so, as the scope of these terms depends on the socio-economic and cultural factors of the country of the PEP. For instance, in some cultures the circle of family members is closed and includes, for example, parents, spouses, partners, and children; in others grandparents, grandchildren and cousins could be considered family members.³⁹ Moreover, the social, economic and cultural factors determine also how close the relationships of close associates are. Additionally, the people who qualify under this categorisation are not ‘fixed’ or permanent; they change with time and circumstances. Some examples of close associates include known girlfriends, boyfriends, mistresses, prominent members of the same political party or organisation as the PEP; and business partners or associates, especially those who share beneficial ownership of legal entities with the PEP, or who have joint membership on a company board of directors.⁴⁰



38 Recommendation 12 of the FATF.

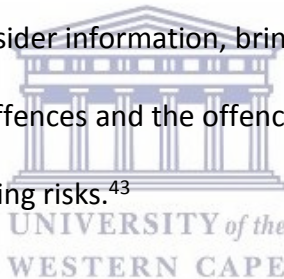
39 FATF Guidance Paper (2013) 12.

40 FATF Guidance Paper (2013) 13.

2.1.2.2 Time Limit of a PEP Status

Apart from the fundamental definition, there are other issues surrounding the categorisation of individuals as PEPs. The duration for which an individual is to be considered as PEP is one such example. There is no agreement as regards the latter point. Time limits are not imposed by either the FATF or UNCAC.⁴¹ The Wolfsberg Guidelines highlight that the former position and associations of potential or existing clients' should not be disregarded and are relevant when deciding whether or not to designate a person as a PEP.⁴²

The risks associated with PEPs emanate mainly from their public function or their current social status and surrounding. However, it is undeniable that PEPs might have lifelong direct or indirect influence or access to insider information, bringing them within the compass of risks of committing the predicate offences and the offence of money laundering. The risks associated with PEPs are thus ongoing risks.⁴³



Categorising potential clients and consistently conducting EDD on PEP clients has serious implications for FIs.⁴⁴ For instance, the former might imply the opportunity cost of not engaging in business with them, while the latter involves the human and time resources used to check clients' files and status, which might affect the relationship between the FI and the client. However, this does not mean that designated PEPs should not benefit from services offered by FIs, nor does it imply that they should be categorised as such forever.

41 Greenberg TS *et al. Politically Exposed Persons: Preventive Measures for the Banking Sector* (2010) 31.

42 Wolfsberg Global Anti-Money Laundering Guidelines for Private Banking (2012) 5.

43 Patel & Thakkar (2012) 169.

44 Recommendation 12 of the FATF.

In fact, the de-categorisation of an individual as a PEP is possible. However, this should not be automatic or linked to only one factor. For example, de-categorisation of a person should not occur as the individual leaves his public function, stops carrying out his mandate as a minister, or gets divorced from a PEP. The risk management system of the FIs should investigate and monitor the status of the client and his source of wealth and income.⁴⁵ The approval of senior management should be sought before the de-categorisation.⁴⁶ These measures are necessary because the wrong de-categorisation of a PEP may result in increased risks for the FIs in the sense that engaging in business with PEPs and lax CDD involve reputational, administrative and criminal sanctions arising from both the national and the international AML/CFT regimes regulating FIs.⁴⁷

2.1.2.3 Identifying Politically Exposed Persons

Compliance and risk analysing officers use many tools to identify PEPs. For example, they take into account local knowledge or intelligence about business development, commercial PEP database providers, asset and income declaration filing lists, information available in the media and the internet, and search engines are used.⁴⁸ Furthermore, public records are used to verify the information provided by clients and cross-check the owners, directors, partners or any other person associated with a company.⁴⁹

45 Recommendation 12 (a), (c), and (d) of the FATF. See Greenberg (2010) 31.

46 Recommendation 12 (b) of the FATF. See Greenberg (2010) 31.

47 Greenberg (2010) 31.

48 See generally FATF Guidance Paper (2013) Part V: Guidance on the Use of Sources of Information for the Determination of PEPs, Their Family Members and Close Associates 13-18.

49 Hopton (2006) 94.

The FATF recommends that FIs should have a risk management system and adequate internal controls, and that their employees should receive ongoing training programmes, *inter alia*, to identify PEPs.⁵⁰ However, FIs face time and other resource constraints. Transactions have to be processed in due time to maintain good client relationship and an effective running of FIs. There might also be a lack of information available on clients, especially in underdeveloped or developing countries where public records might be unavailable, inaccessible or disorganised.⁵¹ FIs may be understaffed or staffs might lack training and facilities, such as the right software, to conduct CDD and EDD to identify high-risk clients.⁵²

Moreover, the FATF recommends that countries provide, in their laws or regulations, for working definitions of a PEP.⁵³ However, the concept of a PEP does not have only technical challenges but is also a politically sensitive issue.⁵⁴ On the one side, there may be a lack of political will to enact specific laws criminalising illegal acts by PEPs; on the other side, FIs may face political pressure to ignore the PEP status of a client or they might face possible retribution for not accepting a PEP as a client.⁵⁵

50 Recommendation 18 of the FATF. FATF Guidance Paper (2013) 14.

51 Patel & Thakkar (2012) 170.

52 FATF Guidance Paper (2013)

53 FATF Guidance Paper (2013) 13.

54 Oji (2014) 208.

55 FATF Guidance Paper (2013) 24.

Some scholars have proposed that there be a global and all-inclusive list of PEPs to facilitate the identification and risk assessment of PEPs.⁵⁶ However, this is unlikely to be successful and might have more negative consequences than good ones.⁵⁷ A list of PEPs will inform criminals and terrorists of who is corruptible and who is not.⁵⁸ For example, middle-ranking public officials might not appear on the list and criminals or terrorists might opt to bribe them and conduct joint operations with them instead of liaising directly with PEPs at higher ranks to avoid detection or being identified by FIs. Additionally, creating an all-inclusive list might turn the identification of PEPs into a checklist procedure, according to which the names of potential or existing clients might be run through the list, and the risk assessment might be based solely on the results produced.⁵⁹

2.2 Mechanisms of Money Laundering in Relation to PEPs

Money laundering is a process that involves different mechanisms.⁶⁰

2.2.1 Proceeds to be Laundered

As with any money laundering scheme, the origins of proceeds to be laundered by PEPs is the foremost element in the process of money laundering. These proceeds come from the predicate offences of money laundering. As mentioned earlier, the scope of these predicate offences vary from jurisdiction to jurisdiction. They include offences such as bribery, grand

56 FATF Report on the Money Laundering Typologies (2003-2004) 22.

57 Choo (2008) 373.

58 Choo (2008) 373.

59 Choo (2008) 373.

60 Richards (1998) 48.

corruption, human trafficking, drugs dealing, trafficking of organs, and tax evasion.⁶¹ PEPs launder mainly proceeds and corruption and embezzlement,⁶² including kickbacks from the awarding of government contracts and bribes paid in exchange for benefits such as obtaining licences, protection against investigations, overlooking of illegal activities, and communication of insider information. Some PEPs obtain proceeds also directly from national funds through embezzlement. They thus boost their well-being to the detriment of the national economy and society.

2.2.2 Stages of Money Laundering

Proceeds of crimes undergo a three-stage process: placement, layering and integration.⁶³

Placement is the first money laundering stage. It consists of moving the proceeds of crimes from their original source. They are placed in less suspicious locations, such as formal or informal institutions, or retail economies, and are converted into a more portable form.⁶⁴

This is a crucial stage as the proceeds are easily traceable by investigators. Hence, this initial introduction of the proceeds into the financial system is risky.⁶⁵

Cash is placed in financial or non-financial institutions. The money to be deposited in banks is split into small amounts which are below the reporting threshold of banks. To avoid drawing the attention of authorities, the money is then deposited either by different people

61 Madinger J *Money Laundering: A Guide For Criminal Investigators* (2011) 13.

62 Reuter (2004) 41.

63 Odeh IA *Anti-Money Laundering and Combating Terrorist Financing for Financial Institutions* (2010) 3.

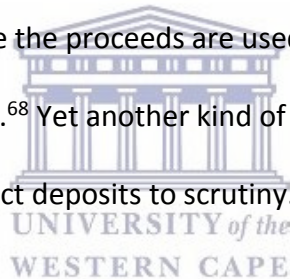
64 Richards (1998) 48.

65 Gottschalk P *Financial Crime Categories in Investigation and Prevention of Financial Crime: Knowledge Management, Intelligence Strategy and Executive Leadership* (2016) 20.

or at different times into a bank account. Also known as smurfing and structuring, this practice came about with the advent of banks' obligation to report suspicious transactions to FIUs.⁶⁶ Essentially, indirect placements are deposits made into the banking system with the help or the use of a third party, a legal or natural person, as a front. For example, front companies can be set up, or money can be shifted to life insurances or financial service providers, or it can be handed to exchange service providers. For instance, a politician will not go to the bank to deposit his illegal cash. He is already under the scrutiny of banks and other FIs, as per Recommendations 12 and 22 of the FATF. He will use an intermediary, a third party to place the money into the financial system.⁶⁷ Payments gained in kind are used for personal enjoyment or in exchange for legitimate campaign financing.

Another kind of placement is where the proceeds are used to buy existing banks or to start-up new banks in offshore countries.⁶⁸ Yet another kind of placement consists of influencing bank employees not to subject direct deposits to scrutiny.⁶⁹

Additionally, PEPs (mis)use OFCs, corporate vehicles and intermediaries to launder their illicit wealth. For example, there are charges pending against Marie Le Pen, leader of the French rightist political party, and her father, Jean-Marie, founder of the same party, for alleged laundering through a shell company for purposes of funding political campaigns.⁷⁰



66 Schneider F & Windischbauer U 'Money laundering: Some Facts' 26 (2008) *European Journal of Law and Economics* 394.

67 FATF Report on the Money Laundering Typologies (2003-2004) 20-21.

68 Schneider & Windischbauer (2008) 395.

69 Schneider & Windischbauer (2008) 395.

70 The Telegraph 'Panama Papers: David Cameron silent on whether family money remains in Caribbean tax shelter' 4 April 2016.

The shell company was set up in the British Virgin Islands. In total, the Le Pens are accused of stashing away wealth worth USD 2.3 million in cash, titles and gold bars in offshore tax havens.⁷¹ The case of Le Pen is a clear example of PEPs using OFCs and corporate vehicles to launder money. Moreover, such active steps taken with the intention of hiding or concealing money constitute the second stage of money laundering.⁷² This stage is also known as stacking.⁷³ The globalised economy, the removal of barriers to the movement of capital, as well as the development of wire transfers and mobile bank transfers have contributed to the ease of laundering at this stage. Transaction intensity and transaction speed are important for launderers and, with the advent of technology, multiple international transfers can be made within seconds.⁷⁴ The trail of money is disguised in such a way that it becomes difficult for investigators to find the source of the money.⁷⁵

Converting assets into different forms is also part of the layering process.⁷⁶ Other financial instruments involved in layering schemes include converting the criminal money into traveller's cheques, bearer stocks, letters of credit, money orders and bank drafts.⁷⁷

As mentioned earlier, corporate vehicles, intermediaries, such as lawyers, and offshore banking operations are the channels used by PEPs to distance themselves from proceeds of

71 International Business Times 'Panama Papers: France's Le Pen Dynasty, Butlers and Gold Ingots Linked To Mossack Fonseca Leak' 5 April 2016.

72 Madsen F *Transnational Organised Crime* (2009) 106.

73 Schneider & Windischbauer (2008) 394.

74 Schneider & Windischbauer (2008) 395.

75 Albrecht W *et al Fraud Examination* (4 ed) (2011) 593.

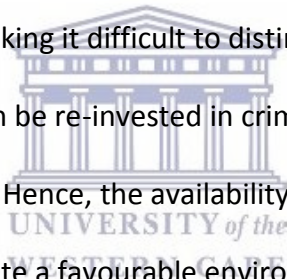
76 Richards (1998) 47.

77 Madinger (2011) 259.

crimes they commit.⁷⁸ Shell companies are used often to facilitate bribery.⁷⁹ These shell companies have no real business activities and are mostly located in tax havens such as the Panama, the Cayman and the British Virgin Islands.⁸⁰

Some of the mechanisms mentioned above allow for anonymity, through which PEPs are able to hide their ownership and control of corporate vehicles.⁸¹ The successful placement and integration result in assets that appear legitimate and which can be injected back into the mainstream economic system. This is known as the integration stage. The assets appear clean and are utilised freely to purchase high-value commodities, or for investment in, for example, real estate.⁸² In order to provide a legal explanation for the assets owned, loan documents, and other contracts are created. Additionally, the laundered money can be mingled with legitimate money, making it difficult to distinguish between the two.

Moreover, the laundered assets can be re-invested in criminal enterprises, thereby repeating the cycle of criminality.⁸³ Hence, the availability of proceeds and of the laundering mechanisms mentioned above create a favourable environment for PEPs to commit money laundering.⁸⁴



78 FATF Guidance Notes 10.

79 OECD (2001) 21. Gordon (2011) 17.

80 Gordon (2011) 17-18.

81 Gordon (2011) 17.

82 Madsen (2009) 106.

83 Madinger (2011) 5.

84 OECD Behind the Corporate Veil Using Corporate Entities For Illicit Purposes (2001) 21.

2.3 Anti-Money Laundering Pillars in Relation to Politically Exposed Persons

2.3.1 Preventive Pillar of the Anti-Money Laundering Regime

The prevention pillar aims to deter economic criminality. Its key elements are CDD and EDD, record keeping, regulation, supervision, and sanctions.

The FATF recommends that FIs should have enough legal and regulatory measures to deter criminals, especially PEPs, and their associates from misusing FIs.⁸⁵ The required measures to be adopted by FIs include the development of internal control policies, and procedures, record-keeping, relevant ongoing employee training programme, and the setting up of an independent audit function to test the risk management system.⁸⁶

The FATF recommends that FIs should take reasonable measures to know the true identity of a client.⁸⁷ CDD entails an assessment of risks associated with a client and the type business or transaction he wants to undertake.⁸⁸ It aims at limiting criminal access to and the misuse of the FIs. The FATF states that national laws should prescribe how FIs should conduct CDD. It lists also four situations in which CDD should be conducted:

- (i) when a business relationship has to be established,
- (ii) when occasional transactions have to be carried out,
- (iii) when suspicions of money laundering or terrorist financing have arisen, or

85 Recommendation 18 of the FATF. FATF Guidance Paper (2013) 25.

86 FATF Guidance Paper (2013) 25.

87 FATF Recommendations 10 of the FATF.

88 FATF Interpretive Note to Recommendation 10: Customer Due Diligence (2012) 60-68. See generally, Basel Committee on Banking Supervision Customer Due Diligence for Banks (2001).

(iv) when the FI has doubts about the veracity or adequacy of documents communicated by the client.⁸⁹

As CDD does not suffice when dealing with these high-risk clients, and since an individual may become a PEP at any point in time,⁹⁰ EDD should be conducted.⁹¹ EDD consists of the following measures: it requires senior management approval,⁹² in-depth enquiry about the source of wealth and the source of funds,⁹³ and enhanced ongoing monitoring of the business relationship and the PEP status of the existing client.⁹⁴

FIs should be obligated to report all irregularities and suspicious transactions identified, regardless of the amount involved.⁹⁵ Indeed, in cases where suspicion arises with regard to a potential or existing client or his activities, further investigation should be conducted, and if the suspicion is valid the case should be reported to a nominated officer of the institution, who is commonly called the 'money laundering reporting officer (MLRO), or directly to the regulatory body.⁹⁶ An STR must then be sent to the national regulatory or supervisory body.⁹⁷



89 Recommendation 10 of the FATF.

90 FATF Guidance Paper (2013) 7.

91 FATF Guidance Paper (2013) 9, 13, 19, 20 and 22.

92 FATF Guidance Paper (2013) 19-20.

93 FATF Guidance Paper (2013) 20-22.

94 FATF Guidance Paper (2013) 22-23. Recommendation 12 of the FATF.

95 Recommendations 12 and 20 of the FATF. FATF Guidance Paper (2013) 82.

96 Hopton (2006) 101.

97 Recommendations 12 and 20 of the FATF.

Theoretically, these steps are straightforward and the procedure seems plausible. However, practical difficulties may arise. While, some clients may not produce the necessary documents, others may provide documents in a wrong and unacceptable format.⁹⁸ Also, in developing countries, where data is limited or inaccessible, it might be difficult practically for FIs to find information about domestic PEPs.⁹⁹ Moreover, CDD and EDD are time-consuming procedures which not only entail deploying additional staff and setting up compliance department in a company or FI, but can also prove to be a business disadvantage as refusing to engage in business with high-risk clients such as PEPs involves a high opportunity cost. Because it is ongoing, EDD is a recurrent cost.¹⁰⁰

The keeping of documents is another element of the preventive pillar.¹⁰¹ National laws should require FIs to keep all CDD and EDD information, and transaction records for at least five years after the business relationship has ended, or after the date of the transaction.¹⁰² Record keeping allows FIs, as well as regulatory and supervisory bodies, to conduct checks and controls and ensure compliance with the law and regulations.¹⁰³

Furthermore, the FATF calls for the licensing and registration of FIs and their supervision and monitoring.¹⁰⁴ The supervision and monitoring can be conducted by a supervisor or an

98 Hopton (2006) 91.

99 Mugurara (2016) 151.

100 Hopton (2006) 95.

101 Recommendation 11 of the FATF.

102 FATF Guidance Paper (2013) 15.

103 Hopton (2006) 97.

104 Recommendation 26 of the FATF.

appropriate self-regulatory body. The FATF highlights that supervisors should be empowered to compel FIs to produce information showing how they adhere to compliance procedures.¹⁰⁵ They should be empowered also impose sanctions on FIs, as well as their directors and senior officers for non-compliance with AML/CFT measures.¹⁰⁶ These sanctions have to be effective, proportionate and dissuasive, and they can be of criminal, civil or administrative nature.¹⁰⁷

2.3.2 Enforcement Pillar of the Anti-Money Laundering Regime

The Council of Europe was the first regional organisation to focus on money laundering and to push for the criminalisation of acts of money laundering, thereby, shifting the AML approach from a purely preventive one to a punitive one as well. The main aim of AML enforcement measures is to punish offenders who either attempt or succeed in their wrongdoing. This occurs when preventive measures have failed. The enforcement aspect of AML/CFT has four elements:



- (i) the listing of predicate crimes,
- (ii) investigation and prosecution,
- (iii) punishment, and
- (iv) confiscation.¹⁰⁸

105 Recommendation 26 of the FATF.

106 Recommendation 35 of the FATF.

107 See Recommendations 6, 8 to 23, 17, and 35 of the FATF.

108 Reuter (2004) 46.

As mentioned earlier, money laundering springs from the commission of a predicate offence.¹⁰⁹ The Vienna Convention has a restrictive approach to the definition of predicate offences. However, the Palermo Convention promotes an extended range of predicate offences. What is more, unlike the Vienna Convention, UNCAC calls upon states parties to adopt an extended range of predicate offences for money laundering while, at a minimum, recognising the eight crimes for which it provides.¹¹⁰ The Council of Europe Convention joins other international instruments in regard to its scope of predicate offences, and extends them to 'any criminal offence'.¹¹¹ The FATF recommends that countries include the widest range of predicate offences.¹¹² As mentioned earlier,¹¹³ the predicate offence of money laundering committed by PEPs includes mainly the crimes of bribery and corruption. Hence, the FATF also focuses on the responsibilities of law enforcement and investigative authorities, in particular anti-corruption authorities with enforcement powers. They should be empowered to investigate money laundering and terrorist financing offences arising from, or related to, corruption offences under Recommendation 30 of the FATF.¹¹⁴

Since the 1990s, different legal instruments and regulatory frameworks have been developed in relation to money laundering. The FATF recommends that countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo

109 See section 1.1 of Chapter One.

110 Article 23(2)(a)-(b) of UNCAC.

111 Pieth (2004) 14.

112 See generally FATF Interpretive Note to Recommendation 3 (Money Laundering Offence) (2012) 34-35.

113 See section 2.2.2.2 of Chapter Two.

114 See generally FATF Interpretive Note to Recommendation 30: (Responsibilities of Law Enforcement and Investigative Authorities) 100-101.

Convention.¹¹⁵ Essentially, the Vienna Convention was the first international instrument adopted for the regulation of money laundering and the recovery of unlawful assets. But this Convention focused on prohibitions aimed at controlling narcotic drugs trafficking and did not refer to the term money laundering. The Palermo Convention obligates state parties to criminalise the laundering of proceeds of all serious crimes.¹¹⁶ Unlike the Vienna Convention, the Palermo Convention uses the term money laundering.¹¹⁷ Neither the Vienna Convention nor the Palermo Convention specifically mentions PEPs. Nevertheless, the latter incorporates corruption-related crimes. It is submitted that, as an organised crime and as one of the serious crimes, corruption also falls within the ambit of predicate offences under the Palermo Convention. Thus, AML measures within this Convention can be said to be applicable to PEPs. A similar conclusion can be drawn with reference to a provision of the African Union Convention on Preventing and Combating Corruption (AU Convention).¹¹⁸ The latter deals with the proceeds of corruption and criminalises the conversion and transfer of proceeds of corruption or its related offences for the purpose of concealing or disguising their illegal source.¹¹⁹ Finally, as mentioned earlier, UNCAC criminalises also money laundering. In fact, the initial title of Chapter V of the Draft Convention was “Preventing and Combating the Transfer of Funds of Illicit Origin Derived from Acts of Corruption” implying the laundering of funds and returning of such funds.¹²⁰

115 Recommendation 3 of the FATF.

116 Article 5 of the Palermo Convention.

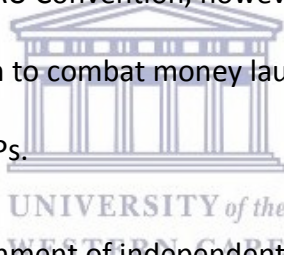
117 Article 6 of the Palermo Convention.

118 The AU Convention was adopted in 2003 and entered into force in 2006.

119 Article 4(1) (h), Article 6, and Article 7 of the AU Convention.

120 *Travaux Préparatoires* UNCAC Chapter V Asset Recovery Notes to the Secretary Para. 2.

Not surprisingly, there is a general misconception that PEPs, especially the head of state who enjoys immunity during his term of office, is immune from prosecution. The FATF highlights that PEPs are not immune. Its Recommendation 12 is applicable to them and they are subject to STRs by FIs.¹²¹ This is not to say that the immunity provision may retard the criminal prosecution and conviction of PEPs. STRs and investigations triggered by them may lead to the identification of other persons without immunity who are involved in criminal activity, and who could be prosecuted immediately, for example, co-conspirators or accomplices). In fact, UNCAC and the AU Convention recognise wide forms of criminal participation in the form of assistance, aiding, abetting and counsel of crimes of money laundering.¹²² Hence, in accordance with domestic law, the inchoate crime of attempt may also result in criminal liability. The AU Convention, however, is silent on STRs, CDD, tipping off, the legal profession's obligation to combat money laundering, and on the special category of launderers, namely, PEPs.



The FATF recommends the establishment of independent FIUs, which is another element of the enforcement pillar. However, it does not specify a particular model that member states should adopt.¹²³ It leaves it to the discretion of the member states to choose which model suits their jurisdiction best. The FIU plays an important role in the investigation of cases of money laundering. It receives STRs and other documents, such as cash transaction reports and wire transfers reports, as required by national legislation.¹²⁴ The FATF encourages FIUs

121 FATF Guidance Paper (2012) 25.

122 Article 4(1) (h) of the AU Convention.

123 Recommendation 29 of the FATF.

124 Recommendation 20 of the FATF.

to use analytical software to carry out in-depth investigations and operational and strategic analyse. While the latter consists of identifying trends and patterns, the former uses information to identify specific persons, assets, criminal networks and associations. The information obtained is disseminated to other state entities to identify threats and vulnerabilities, and to establish policies and goals for the FIU.

In fact, for the effective investigation of cases involving PEPs, FIUs should be completely independent and autonomous and should have discretion and access to privileged information without, for example, encountering barriers of bank secrecy.¹²⁵ Their independence and autonomy allow for the prosecution and punishment of PEPs without political interference. Additionally, sensitive information from FIs and investigations should be secured and confidentiality should be maintained to the greatest extent necessary so as not to notify suspected offenders and to prevent them from layering their assets or fleeing a jurisdiction.



Moreover, countries should provide FIUs with adequate financial, skilled human and advanced technical and technological resources to execute their mandate effectively.

Furthermore, the FATF states that countries should ensure that their national FIU is in line with the policies of the Egmont Group, which set out important guidelines concerning the role and functions of FIUs, and the mechanisms for exchanging information among them.

National FIUs should also apply for membership of the Egmont Group.¹²⁶ Finally, FIUs should

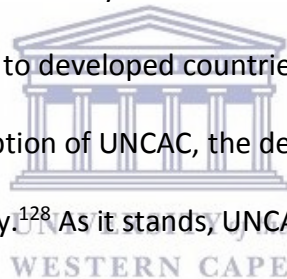
125 The FIU should respond to information requests from competent authorities. In order to fulfil its mandate, FIUs should have the power and discretion to ask and receive additional information for investigation and analysis. Bank secrecy and information obtained by CDD or KYC under Recommendations 10, 11 and 22, as well as information from other sources should be accessible to FIUs under Recommendation 31. See FATF Interpretive Notes (2012).

126 See generally Interpretive Note to Recommendation 29 (Financial Intelligence Units).

be able to communicate and engage independently with other domestic and foreign authorities to exchange information, especially in cases where FPEPs are concerned.

Asset tracing, seizure, confiscation and recovery of proceeds of crime are yet another element of the enforcement.¹²⁷ Competent authorities who are investigating investigate on money laundering cases arising from, or related to, corruption offences under Recommendation 30, should be given sufficient powers to identify, trace, and initiate freezing and seizing of assets.

PEPs who enrich themselves illegally owe a debt to society as their enrichment is detrimental to the public good. Therefore, it is essential that assets obtained illegally should be recovered and given to the victim society. What bears mentioning is that in most cases the money moves from developing to developed countries. With this fact in mind, at the negotiations leading up to the adoption of UNCAC, the developing countries insisted that provision is made for asset recovery.¹²⁸ As it stands, UNCAC stipulates that the stolen or laundered money should be returned to the legitimate owner.¹²⁹ However, such measures should be applied without violating third party interests and must be applied in good faith.¹³⁰ States in which the assets are located may request a court to hand down a final judgment before returning the assets to the true owners.¹³¹ The FATF recommends that



127 StAR 'Tracking Anti-Corruption and Asset Recovery Commitments'. See Ivory R *Corruption, Asset Recovery, and the Protection of Property in Public International Law* (2014) 28. See generally FATF Best Practices on Confiscation (Recommendations 4 and 38) (2012).

128 King C & Walker C *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (2016).

129 Article 57(2) of UNCAC.

130 Article 55(3)*b* of UNCAC.

131 Article 57(3)*a* of UNCAC.

countries implement measures to identify, trace and evaluate the property that is subject to confiscation.¹³² They should consider also incorporating non-conviction-based confiscations in their domestic law.¹³³ This practice is especially helpful in cases where PEPs are involved as some of them might enjoy domestic immunity from criminal proceedings.¹³⁴ What is more, unlawfully obtained money does not always return to the country where the crime was committed. Money laundering itself, more specifically money laundering by PEPs, involves many jurisdictions. Hence, in order to combat money laundering by PEPs effectively, mutual legal assistance or international co-operation is essential. The Vienna Convention,¹³⁵ the Palermo Convention,¹³⁶ and Council of Europe Convention¹³⁷ encourage transnational co-operation. Moreover, the FATF recommends that countries should take adequate measures to foster international co-operation.¹³⁸

Finally, assets declaration and laws on illicit enrichment contribute to the success of asset recovery.¹³⁹ If assets of PEPs are already declared, any unusually dramatic change in their pool of assets is easily traceable. The illegally obtained money that the PEP is laundering or has already laundered can be returned to the public purse. Hence, in addition to all the

132 Recommendation 4 of the FATF.

133 FATF Best Practices on Confiscation (2012) 6-7.

134 FATF Guidance Paper (2012) 25.

135 Article 7 of the Vienna Convention.

136 Article 7(1)(b) of the Palermo Convention.

137 Pieth (2004) 14.

138 Recommendations 36-40 of the FATF. FATF Best Practices on Confiscation (2012) 3 -5.

139 Arnone M & Borlini LS *Corruption: Economic Analysis and International law* (2014) 510.

previous measures discussed above, including CDD, EDD, and the RBA, states are required also to obligate PEPs to declare their assets as public officials.¹⁴⁰

2.4 Concluding Remarks

To sum up here, the concepts of money laundering and PEPs have been well explored by literature. Various factors, such as the social and cultural environment, the legal system, and political will, create different approaches to these concepts. Nevertheless, risks arising from PEPs are a scourge to all societies and to the global economy. Different legal instruments and regulatory frameworks have been developed in relation to money laundering. Working definitions have been adopted in harmony with international standards. The AML/CFT regime stipulates specific prevention measures and enforcement measures.



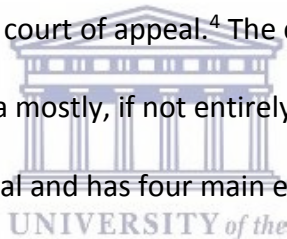
140 Article 52(1) and (5) of UNCAC. FATF Guidance Paper (2013) 11, 16, 17 and 18.

CHAPTER THREE

THE CASE OF MAURITIUS

3.1 Country Facts

Mauritius is a small Sub-Saharan African country of roughly 1.3 million people, located in the Indian Ocean. It gained independence in 1968 and became a Republic in 1992.¹ Colonised by the Dutch, the French and the British successively, Mauritius inherited a hybrid legal system of English common law and French civil law.² The country has abided by the rule of law successfully and the state is run according to the doctrine of separation of powers,³ with the Queen's Privy Council as its highest court of appeal.⁴ The country has a Prime Minister as head of state and a President with a mostly, if not entirely, ceremonial position.⁵ The Mauritian society is multicultural and has four main ethnic groups: the Hindus (50 percent), the general population (32 percent), the Muslims (17 percent), and the Sino-Mauritians (1 percent).⁶



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- 1 Seetah K 'Our Struggle' *Shima: The International Journal of Research into Island Cultures* 4 (2010) 100.
 - 2 Country Watch 2015 Country Review: Mauritius 51.
 - 3 Zafar A 'Mauritius: An Economic Success Story' in Chuhan-Pole P & Angwafo M *Yes Africa Can: Success Stories From A Dynamic Continent* (2011) 91.
 - 4 Country Watch Review (2015) 51.
 - 5 Bunwaree S & Kasenally Political Parties and Democracy in Mauritius (2005) 6-9.
 - 6 World Bank Group Mauritius: Systematic Country Diagnostic Report (2015) 7.

By diversifying its economic activities, Mauritius defied Meade's prediction of economic failure and experienced 'an economic miracle'.⁷ The country derives its income from tourism as well as from the thriving information and communication technology sector.⁸

Interestingly, Mauritius is reliant on its financial institutions to boost its economy. Its gross domestic product (GDP) was worth USD 11.68 billion in 2015 and was expected to increase throughout 2016.⁹ The government offers free health care,¹⁰ free education and free transport for primary to tertiary level students,¹¹ and free transport for people above 60 years.¹²

To sum up here, Mauritius has social, political and economic stability, and a democratic legal and judicial system.¹³

3.2 The Financial Sector



As mentioned above, the financial sector is a major pillar of the Mauritian economy. The liberalisation and market deregulation of the 1990s, double taxation agreements, and investment promotion and protection agreements signed since then, led to the booming of

7 Zafar (2011) 91.

8 Zafar (2011) 92.

9 The World Bank 'Mauritius'.

10 World Bank Group Report (2015) 49-51.

11 World Bank Group Report (2015) 55-58.

12 World Bank Group Report (2015) 83.

13 See generally World Bank Group Report (2015). See also HRDC A Study on Labour Shortage in the Financial Intermediation Sector in Mauritius (2012) 1.

this industry.¹⁴ Moreover, the legal profession was liberalised to facilitate setting up of foreign law firms in the country so that they could provide, in collaboration with accountants and other consultants, professional advice and services to both the domestic and offshore global business community.¹⁵

The OFC is becoming the regional financial centre of Africa.¹⁶ In 2012, the financial sector made up 9 percent of the GDP for the year and employed over 13 400 people (around 3 percent of the total labour force).¹⁷ Currently, the Mauritian OFC represents over half of the Mauritian banks' deposit and loan books.¹⁸ It has attracted more than 32 000 offshore entities, especially those linked to India, South Africa and China.¹⁹

In fact, Mauritius provides global business services, such as investment funds, investment holding, asset management, and other collective investment schemes and vehicles, thereby facilitating the incorporation and management of mutual funds, trusts, private equity vehicles, and other special purpose vehicles.²⁰ There were 21, 606 global business companies registered in Mauritius in 2015.²¹ It bears noting that the corporate vehicles and intermediaries that allow for anonymity and instruments such as bearer shares, nominee



14 As at 2014, Mauritius had signed and ratified 37 double taxation agreements with both developed and emerging economies. See Board of Investment Mauritius International Financial Sector (2014) 18.

15 Board of Investment (2014) 16.

16 World Bank Group Report (2015) 85.

17 See generally HRDC (2013).

18 World Bank Group Report (2015) 85.

19 Country Watch Review (2015) 77.

20 Board of Investment (2014) 10.

21 World Bank Group Report (2015) 86.

shareholders, and nominee directors and corporate directors or trustees are not allowed in the Mauritian financial sector.²²

Statistics from the Financial Services Commission (FSC) show that there has been an increase of 6 percent in the financial performance of financial services sector from 2014 to 2015.²³ The average score of business confidence in Mauritius has increased from an average of 87 in 2015 to 95 for 2016.²⁴ Moreover, Mauritius ranks best in the African region for ease of doing business.²⁵ It also scores well in the Transparency International Corruption Index, occupying rank 49, with number 1 being the least corrupt country and number 167 the most corrupt one.²⁶ Furthermore, the country has ranked first, for nine consecutive years, in the Mo Ibrahim Index of African Governance,²⁷ with a score of 79.9 in 2015, which is almost 70.0 points more than Africa's weakest governance performer at 10.6.²⁸ The OECD evaluates Mauritius as being "largely compliant" with global tax laws.²⁹ The latest FATF evaluation deemed that the country is compliant with five and largely compliant with 18 of the FATF Recommendations. It is partially compliant with three of the six core Recommendations.³⁰ It is worth noting that positive changes have been brought to the

22 KnowYourCountry 'Mauritius'.

23 Financial Services Commission Launch of the Annual Statistical Bulletin (2016) 18-20.

24 TradingEconomics 'Mauritius Business Confidence'.

25 The World Bank 'Doing Business Measuring Business Regulations'.

26 Transparency International 2015 Corruption Perceptions Index (2016).

27 Mo Ibrahim Foundation Report (2016).

28 Mo Ibrahim Foundation Report (2016).

29 AXIS 'OECD Report 2013: Mauritius Largely Compliant'.

30 See generally FATF Mutual Evaluation Report Anti-money Laundering and Combating the Financing of Terrorism (2008).

AML/CFT regime since the last FATF evaluation. New laws, such as the 2015 Good Governance and Integrity Reporting Act, have been enacted and guidelines, such as the 2016 Guidelines on Gifts and Gratifications for Public Officials, have been issued. Mauritius is also in the good books of the Basel Committee on Banking Supervision.³¹ Finally, constant improvement of laws and regulations are made to provide sophisticated and secured financial services and to boost this sector even more.³² It also bears noting that the distinction between the offshore and the onshore was eliminated in 2006.³³ There is thus no distinction between offshore and onshore banking.

To sum up, all the factors above are conducive to making Mauritius and its financial sector the ideal haven for investors and launderers; thereby increasing money laundering risks it faces.



3.2.1 Money Laundering Risks Faced by the Mauritian Financial System

The money laundering risks faced by the Mauritian financial sector cannot be underestimated. The fact that the country has a buzzing economy, which is constantly growing, makes its FIs vulnerable to abuse. For example, the OFC has many small participants, which makes them vulnerable to systematic risks, as they might not have enough resources to invest in efficient risk management systems.

31 See generally Global Finance Mauritius Mauritius Financial Sector Overview Report (2015).

32 IMF Country Report: Mauritius (2016) 4 and 10.

33 Amendments were made to the 2004 Banking Act. Pursuant to that, all banks are governed by a single banking licence under the supervision of the Central Bank. See generally Global Finance Mauritius Report (2015).

Mauritius is cited in the Panama Papers Scandal. On the one hand, these reveal that the Mauritian OFC has been used by a Jersey-based oil firm to avoid paying taxes in Uganda.³⁴ On the other hand, the OFC has been criticised for not being transparent and the names of Mauritians have been linked to suspicious transactions.³⁵ Moreover, the Swiss Leaks Global Tax Evasion Scandal (Swiss Leaks) rank the country 94th in its list, based on the measurement is the amount of money transferred through the banks of countries involved in the global tax evasion affair. Shockingly, the Swiss Leaks also reveal that, from 1980 to 2006, 81 clients transferred up to USD 141 million through 71 client accounts, which are linked to 210 other bank accounts linked to Mauritius. These clients consist of individuals, both nationals and foreigners, and offshore firms.³⁶

These examples evidence cases of ongoing internal, outgoing and incoming money laundering through the Mauritian financial system. Indeed, the country's financial system is used to channel money illicitly in and out and through Mauritius. The major predicate offences of money laundering in Mauritius include drug trafficking, swindling, aggravated larceny, conspiracy, Ponzi schemes and corruption.³⁷

34 BBC 'Panama Papers: How Jersey-Based Oil Firm Avoided Taxes in Uganda' 8 April 2016.

35 Le Mauricien 'Opération Panama Papers: 30 Mauriciens et 97 Sociétés Clients Cites' 10 April 2016.

36 IslandCrisis 'Mauritius Ranked 94th in Swiss Leaks, the International Fiscal Evasion Affair' 11 February 2015.

37 KnowYourCountry Mauritius Risk & Compliance Report 2014 (2014) 6.

3.3 Money Laundering Risks Arising from Politically Exposed Persons

3.3.1 Definition of PEP

PEPs are high-risk customers, who are not neglected by the laws and regulations of Mauritius. As highlighted by the FATF Recommendations and the provisions of the Vienna and Palermo Conventions, PEPs are given particular attention under Mauritian laws and regulations. There are specific regulations and procedures to help FIs identify PEPs and minimise risks associated with engaging in business with them. Surprisingly, the definition of PEP can be found only in the 2005 Bank of Mauritius Guidance Notes on Anti-money Laundering and Combating the Financing of Terrorism for Financial Institutions³⁸ (2005 BoM Guidance Notes) and the 2012 Code on the Prevention of Money Laundering & Terrorist Financing of the Financial Services Commission (2012 FSC Code).³⁹



PEPs are defined as:

‘individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations, important political party officials, their family members and their close associates.’⁴⁰

This definition is close to the one provided by the FATF. Given the social and cultural setting of Mauritius, FIs are encouraged to extend the range of PEPs to include family members.⁴¹

In fact, the definition of family members of PEPs comprises their spouses, any partner

38 2005 BoM Guidance Notes para 6.100-6.107A.

39 Section 5.3.1 of the 2012 FSC Code.

40 2005 BoM Guidance Notes para 6.100.

41 2005 BoM Guidance Notes para 6.100A.

considered by national law as being equivalent to a spouse and their children. However, spouses or partners of children of PEPs and parents of PEPs need also be taken into consideration when determining whether a person is a PEP or not.⁴²

PEPs can be local or foreign.⁴³ The 2005 BoM Guidance Notes provide a list of DPEPs to help FIs with risk management. Accordingly, DPEPs include:

- (i) President/Vice President of Republic of Mauritius
- (ii) All members of the National Assembly and the Speaker
- (iii) Chief Judge and Senior Puisne Judges
- (iv) Director of Public Prosecutions
- (v) Attorney General
- (vi) Commissioner of Police/Prison
- (vii) Leaders and Senior Office Bearers of major Political Parties
- (viii) Members of Rodrigues Regional Assembly
- (ix) Governor/Deputy Governors of the Central Bank
- (x) Chairman and Chief Executive Officers of Parastatal Organisations, Independent Bodies and State-Owned Enterprises
- (xi) Commissioners of Various Government Bodies
- (xii) Advisor/ Counsellor to Heads of States and Ministers
- (xiii) Head of Mauritian Embassies abroad, Consulates and Diplomats
- (xiv) Mayors and President of District Councils
- (xv) Head of National Secret Services.⁴⁴



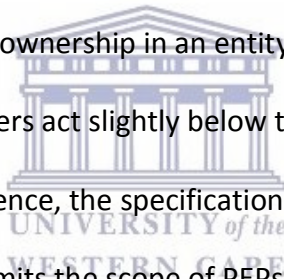
42 2005 BoM Guidance Notes para 6.100A.

43 2005 BoM Guidance Notes para 6.100.

44 2005 BoM Guidance Notes Appendix H.

The risks associated with FPEPs differ according to the particular countries they are associated with. The risks also differ with the type of business they want to conduct. Many foreign investors invest in or through Mauritius; hence, the BoM Guidance Notes calls FIs to pay particular attention to FPEPs.⁴⁵

As mentioned above, PEPs are at high risk of abusing their public office through the receipt of bribes, embezzlement, and the dissemination of insider information, amongst others. They may also use entities they own for their own illicit enrichment;⁴⁶ hence, the scope of PEPs under Mauritian regulations goes further to include entities related to PEPs. Entities that are 20 percent or more owned or controlled by DPEPs fall under this category. These entities expose FIs to equal reputational and/or legal risks as PEPs themselves. However, the threshold of 20 percent or more of ownership in an entity has the same effect as thresholds for cash transactions have; launderers act slightly below thresholds and do not get caught through due diligence measures. Hence, the specification of 20 percent or more ownership in the 2005 BoM Guidance Notes limits the scope of PEPs.



3.3.2 Family Members and Close Associates

Interestingly, the FATF Mutual Evaluation Report criticised Mauritius for not defining PEPs in line with the FATF Recommendations.⁴⁷ The latter recommends that countries provide for working definitions of both the scope of family members and close associates.⁴⁸ Domestic

45 2005 BoM Guidance Notes paras 6.100 and 6.101.

46 2005 BoM Guidance Notes para 6.100.

47 FATF Mutual Evaluation Report (2008) 9-10.

48 FATF Guidance Paper (2013) 13.

provisions focused only on entities related to PEPs, which could be associated with the definition of close associates under the FATF. However, the FATF recommends that the category of close associates include people who are socially or professionally connected to a PEP. Some examples include known girlfriends, boyfriends, mistresses, prominent members of the same political party or organisation as the PEP and business partners or associates, especially, those who share beneficial ownership of legal entities with the PEP, or who have joint membership on a company board of directors.⁴⁹ The definition of a PEP at the time of the FATF Mutual Evaluation fell short of these criteria. The current definition of PEPs includes close associates. However, it does not specify what kind of associates, which means that FIs have the discretion of identifying close associates of high-ranked public officials and categorising them as PEPs.



It bears noting that the Mauritian AML/CFT framework does not include, in its definition of a PEP, members of religious groups, senior members of political parties and members of the Central Bank or of a royal family. The unregulated activities of and financing of religious groups and of political parties create an environment for money laundering, especially by PEPs, who openly support and who are, in turn, openly supported by major religious groups. It is a reminder that, given the socio-cultural demography of the country, religious groups have much power in the community and often benefit from unexplained and unjustified privileges.

49 FATF Guidance Paper (2013) 13.

3.3.3 Time Limit of PEP Status

The 2005 BoM Guidance Notes provide for a time limit for the categorisation of PEPs who are entrusted with prominent public functions. PEPs stop being characterised as such one year after they leave office.⁵⁰ The FATF and the Vienna and Palermo Conventions do not impose time limits for the categorisation of PEPs. What is more, the Wolfsberg Guidelines recommend that former positions and associations of potential or existing clients should not be disregarded.⁵¹ The provision of the 2005 BoM Guidance Notes goes against the spirit of these international instruments. Nevertheless, the Bank of Mauritius (Central Bank) specifies that the de-categorisation of PEPs is made after careful consideration by FIs and the approval of their senior management.⁵²

3.3.4 Examples of the Misuse of the Mauritian Financial Sector by Politically Exposed Persons



Many cases involving PEPs have been associated with the Mauritian financial system. An example of internal money laundering is the case of the former Prime Minister and former leader of the main political party of Mauritius, Dr Navin Chandra Ramgoolam. In 2015, a scandal involving him created public outrage in Mauritius. Some 220 million rupees (approximately USD 6.4 million) and secret bank documents proving the existence of offshore bank accounts were discovered in safes and suitcases at his residence during a

50 2005 BoM Guidance Notes para 6.107A.

51 Wolfsberg Global Anti-Money Laundering Guidelines for Private Banking (2012) 5.

52 2005 BoM Guidance Notes para 6.103.

police search. Most of the money seized was in foreign currency.⁵³ This DPEP has had 12 provisional charges pending against him, including charges of using his public office for gratification, money laundering and conspiracy to commit money laundering.⁵⁴

What is more, Dr Ramgoolam's name appears among those Mauritians linked to the Swiss Leaks and he has been accused of fiscal evasion.⁵⁵

Ms Nandanee Soornack, a Mauritian businesswoman, is a close friend and known mistress of Dr Ramgoolam.⁵⁶ When the latter was holding office as prime minister, Ms Soornack acquired portions of land and 'des boutiques hors taxé' at the airport of Mauritius. Her growing business and rising career as a businesswoman caused another national uproar.⁵⁷

Investigations led to provisional charges of complicity to commit money laundering in the cases involving Dr. Ramgoolam and two former deputy commissioners of police being preferred against her.⁵⁸



Another recent example is that of Rundheersing Bheenick, Governor of the Bank of Mauritius and a close associate of Dr Ramgoolam. Members of the Central Crime Investigation Division (CCID) raided his residence in 2015. They found confidential and

53 Indo-Asian News Service 'Britain Urged to Probe Former Mauritius Prime Minister Navin Ramgoolam' 5 October 2016.

54 LeDefiMedia Group 'Preliminary Charges Dropped Against Navin Ramgoolam' 15 July 2016. Affaire Le DefiMedia Group 'Navin Ramgoolam: Les Charges dans L'affaire Dufry Rayées' 5 December 2016.

55 IslandCrisis 'Mauritius Ranked 94th in Swiss Leaks, the International Fiscal Evasion Affair' 11 February 2015.

56 Lexpress.mu 'Relations Ramgoolam-Soornack: Les Photos Parlent...' 17 August 2014.

57 Le DefiMedia Group 'Démêlés avec la Justice: Une Seule Accusation Provisoire Demeure Contre Navin Ramgoolam' 06 Décembre 2016.

58 Le DefiMedia Group 'En Cour Correctionnelle de Port-Louis: Les Mandats D'arrêt Contre Nandanee Soornack Prolongés' 12 Octobre 2016.

controversial bank documents, and foreign currency worth approximately USD one million. Mr. Bheenick was taken into custody. There were charges of money laundering, larceny in receipt of wages and possession of property by means of a crime, amongst others, pending against him.⁵⁹ His position as a high-ranking official of the Central Bank makes him a PEP.

Yet another example is the case of the Mauritius Commercial Bank and Pierre-Guy Noël, who was accused of plotting with the former bank chief manager, Robert Lesage, to launder 365 million rupees (approximately USD 10 million). This matter was linked to 881.6 million rupees (approximately USD 25 million) that had been embezzled from the National Pensions Fund.⁶⁰

An example of money laundering through the Mauritian OFC is the matter of AgustaWestland. This matter is the biggest corruption scandal after the Bofors Scandal in 1986 that involved bribes of USD 40 million given to high-ranking Indian officials and politicians by a Swedish group engaged in the production of weapons of war.

AgustaWestland is a multinational company, based in Italy. It specialises in the production of civil and military helicopters. This company has allegedly bribed high-ranking officials for India to obtain a manufacturing contract for helicopters to be used as transport of Indian VVIPs. The proceeds of these bribes have been allegedly channelled through the Mauritian global business structure, more specifically, through the company, ML Administrators Ltd

59 MauritiusMag 'The Ex Prime Minister & Now The Ex Governor Of The Bank Of Mauritius_Arrested! Is The World Taking Note?' 22 February 2015.

60 Lexpress.mu 'Pierre-Guy Noël Comes Back at the Head of the MCB' 12 July 2005.

(MLAL).⁶¹ The file of this matter has been handed over to the FIU for further investigation.⁶²

It is worth noting that the company's MLRO has been linked also to money laundering cases revealed by the Panama Papers. More interestingly, Mr Fakeermahamod is a political activist and is close to the present Prime Minister and to his son, who is the Minister of Finance and leader of the ruling political party. Moreover, Mr Fakeermahamod's name had been suggested for the district council elections.⁶³

This case evidences the negligence and unethical behaviour of directors of FIs on behalf a director of FIs and MLRO, who have the duty to report suspicious transactions to the FIU or any other relevant authority, and not to allow such transactions to be carried out. This example shows also how a lack of CDD and EDD can lead to the flow of illicit money through the Mauritian OFC. The FSC has ordered sanctions against MLAL, demonstrating how the FSC can impose sanctions against companies for non-compliance with regulations and guidelines. Moreover, this example raises questions as to the appointment of directors and employees of FIs, and to the training of employees, and the company's internal control and risk management system of these FIs.

Another PEP linked to the Panama Papers is Mr Subhas Chandra Lallah, a politician and ex-parliamentarian. He is on the list of Master Clients of Mossack Fonseca as the Director of the

61 Le DefiMedia Group 'Corruption Alléguée: Le Dossier Agustawestland Soumis à la FIU' 30 May 2016.

62 Le DefiMedia Group 30 May 2016.

63 Lexpress.mu 'Affaire AgustaWestland : La FSC Réclame la Révocation de Shakil Fakeermahamod' 27 May 2016.

Glasgow Global Fund Ltd PCC – Cell Epsilon, Glasgow Global Fund Ltd PCC – Cell Asian Growth, Platinul Assets Pte. Ltd, Automative Ventures Ltd, and Xenon Capital Pte Ltd.⁶⁴

Yet another example is that of a former Supreme Court judge, Ronald Kwo Sung Yuen, who has also been mentioned in the Panama Papers.⁶⁵

Mauritius has laws and regulations that define and regulate PEPs and specify the measures FIs should take with regards to them. However, cases examples mentioned above evidence how PEPs illicitly channel money in, out and through the Mauritian financial system; thereby raising questions about the effectiveness of the AML/CFT regime.

3.4 Implementation of the Anti-Money Laundering Pillars in relation to Politically Exposed Persons in Mauritius



The 2005 BoM Guidance Notes and the 2012 FSC Code explain the procedures for CDD and EDD and highlight the importance of a risk management system.⁶⁶ They call for the setting up of internal controls, the appointment of an MLRO, and highlight the role of management and supervisors and the importance of internal auditing in ensuring that these measures are implemented effectively. When these preventive measures fail, enforcement laws come into play. They criminalise the offence of money laundering and provide for investigative and prosecution authorities. Law enforcement helps to trace, seize, confiscate and recover

64 Le Mauricien 10 April 2016.

65 Le Mauricien 10 April 2016.

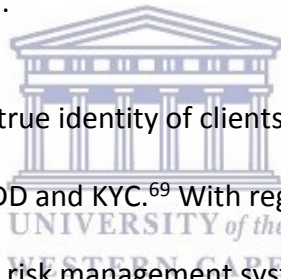
66 See generally Chapter 3: Internal Controls and Money Laundering Reporting Officer of the 2012 FSC Code. See also 2005 BoM Guidance Notes paras 6.104 and 6.118 - 6.120.

proceeds of crime. A set of laws, regulations and guidelines provide the framework for the AML enforcement pillar.

3.4.1 The Preventive Pillar of the Anti-Money Laundering Regime

Section 14 of Financial Intelligence and Anti-Money Laundering Act of 2002 (2002 FIAMLA) provides for the reporting obligations of banks, cash dealers and members of relevant professions or occupations, and other FIs, whenever they come across a suspicious transaction. Reporting should be done as soon as practicable, but within 15 working days. These suspicious transaction reports should be sent to the FIU.⁶⁷ In 2014, the FIU received 173 suspicious transaction reports.⁶⁸ This number has increased in proportion to the development of the financial sector.

FIs have to establish and verify the true identity of clients and their sources of income and wealth, hence the importance of CDD and KYC.⁶⁹ With regards to PEPs or potential PEP clients, FIs are required to use their risk management system and EDD to determine what kind of business relationship, if any is to be established.⁷⁰ Different factors, such as the source of wealth, the job status, and the country from which the person is or where an entity is established, should be considered when deciding whether or not and what kind of relationship is established with a potential client.⁷¹ Databases as well as other sources of



67 See generally the FIU's Suspicious Transaction Report: Guidance Note 3 (2014). See also Chapter 8 of the 2005 BoM Guidance Notes. See further Chapter 6 of the 2012 FSC Code.

68 FIU Annual Report (2014) 8.

69 2005 BoM Guidance Notes paras 6.24 and 6.27.

70 2005 BoM Guidance Notes para 6.104.

71 2005 BoM Guidance Notes para 6.106.

information, such as the Transparency International Corruption Perceptions Index, and government PEP-lists, should be used.⁷² The 2005 BoM Guidance Notes also advise FIs to use international group networks, such as the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) and the FATF black list, to obtain information for conducting CDD and EDD.⁷³

Moreover, since corporate vehicles, such as trusts and offshore companies, allow PEPs to juggle with assets in, out and through multiple jurisdictions,⁷⁴ the 2005 BoM Guidance Notes call for scrutiny of these complex structures.⁷⁵ For example, the establishment of trusts is regulated by the 2001 Trusts Act. Interestingly, the establishment of shell companies is prohibited and the provision of any correspondent services to businesses involving shell financial institutions is also prohibited.⁷⁶ Nevertheless, the South African telecom giant MTN allegedly made unauthorised payments of USD 120 000 to its Dubai branch and this money was consequently laundered and transferred to a Mauritian shell company account with only a post letter box as company address and no activities or employees.⁷⁷

Additionally, since most suspicious transaction reports come from the real estate sector, the gambling business and law firms, there is a need to prohibit malpractices within these

72 2005 BoM Guidance Notes paras 6.105 and 6.107.

73 2005 BoM Guidance Notes para 6.105.

74 OECD (2001) 21-29.

75 2005 BoM Guidance Notes para 6.107.

76 2005 BoM Guidance Notes para 6.94.

77 The Premium Times 'Nigerian Senate Hears MTN Allegedly Laundered 12 Billion' 22 September 2016.

sectors. Hence, guidelines have been issued to regulate them and minimise the risks that they face. Some of the guidelines issued are:

- Guidelines for Accountants, Auditors and Member Firms
- Guidelines for Agent in Land and/or Building or Estate Agency /Land Promoter and Property Developer
- Guidelines for Dealer under the Jewellery Act
- Guidelines for Gambling Business
- Guidelines for Law Firms (Law firm, foreign law firm, joint law venture, foreign lawyer)
- Guidelines for Law Practitioners (Barristers, Attorneys, Notaries)

Furthermore, the regulatory measures highlight the importance of ongoing EDD and record-keeping.⁷⁸ Although PEPs are de-categorised one year after they leave office, all documentation about their EDD and transactions should be kept.⁷⁹ This helps in the periodic review of PEP clients under the RBA, which is recommended to be conducted every year.

Section 33 of the 2004 Banking Act prescribes record keeping for a period of at least 7 years after the completion of transactions.⁸⁰ Record keeping helps in audits and investigations by the regulatory bodies.⁸¹ It allows also for the identification of any unusual features, such as

78 Chapters 4, 6, and 7 of the 2005 BoM Guidance Notes. See also Chapters 6 and 8 of the 2012 FSC Code.

79 2005 BoM Guidance Notes para 6.107A.

80 See also 2005 BoM Guidance Notes para 7.01.

81 See generally Chapter 7: Record-Keeping of the 2005 BoM Guidance Notes.

demands for secrecy, the use of complex instruments that break audit trails, and regular transactions involving large sums or sums just below a typical reporting threshold.⁸²

Supervision is another key element of the AML prevention pillar. The principal supervisory authorities of the financial sector include the BoM and the FSC. On the one hand, the BoM exercises supervision over banks, foreign exchange dealers and money-changers by issuing AML/CFT guidelines. On the other hand, the FSC regulates the non-banking financial services sector that includes management companies, investment businesses and insurance entities. The FSC also issues guidelines and codes.⁸³

Gambling, which is a common practice in the country and which can be used to launder money, is also regulated. The Gambling Regulatory Authority regulates practices such as the betting on horse races, football matches, and other interactive gambling practices.⁸⁴

Other regulators for DNFBPs include the Bar Council for barristers, the Mauritius Law Society Council for attorneys, the Attorney-General for law firms, foreign law firms, joint law ventures, and foreign lawyers, and the Mauritius Institute of Professional Accountants for Professional Accountants and member firm.⁸⁵

82 2005 BoM Guidance Notes paras 6.104, 6.114 and 7.02.

83 See section 18(1) of the 2002 FIAMLA.

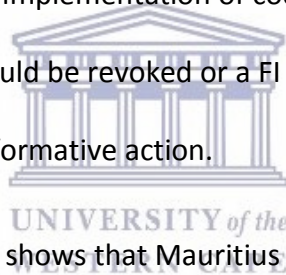
84 FIU Annual Report (2014) 14.

85 FIU Annual Report (2014) 15.

The above mentioned regulators have an important role to play in ensuring that internal controls and procedures and the activities of FIs and DNFBPs comply with laws, rules, regulations and guidelines available. Section 3(2) of the 2002 FIAMLA provides that:

‘a bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonable necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence shall commit an offence.’

Indeed, sanctions may apply in the form of administrative, legal or financial action taken by the regulators in the event of non-compliance with obligations to report, to keep records and to disclose information requested.⁸⁶ Non-compliance could also be through negligence, omission, or a serious defect in the implementation of codes and guidelines. For example, the banking license of a licensee could be revoked or a FI could be fined for non-compliance and required to take immediate reformative action.



To sum up here, the above analysis shows that Mauritius has, to a great extent, implemented the key elements of the AML preventive pillar and the FATF Recommendations. Nevertheless, the examples mentioned above demonstrate that, despite the AML/CFT regime, money laundering, especially by PEPs, continues.

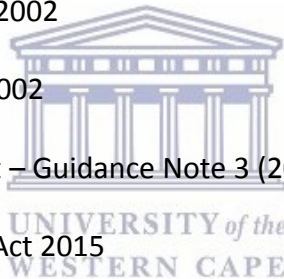
3.4.2 The Enforcement Pillar of the Anti-Money Laundering Regime

The AML/CFT regime consists, *inter alia*, of the following:

- (i) Bank of Mauritius Act 2004

⁸⁶ See sections 14, 18 and 19 of the 2002 FIAMLA.

- (ii) Bank Of Mauritius Guidance Notes on Anti-Money Laundering and Combating the Financing of Terrorism for Financial Institutions 2005
- (iii) Code on the Prevention of Money Laundering & Terrorist Financing of the Financial Services Commission 2012
- (iv) Companies Act 2001 (Corporate and Business Registration Department)
- (v) Dangerous Drug Act 2000
- (vi) Financial Intelligence and Anti-Money Laundering Act 2002
- (vii) Financial Services Act 2007
- (viii) Good Governance and Integrity Reporting Act 2015
- (ix) Mutual Assistance in Criminal and Related Matters Act 2003
- (x) Prevention of Corruption Act 2002
- (xi) Prevention of Terrorism Act 2002
- (xii) Suspicious Transaction Report – Guidance Note 3 (2014)
- (xiii) The Insurance (Amendment) Act 2015
- (xiv) Trusts Act 2001



Mauritius made its first efforts to criminalise money laundering with the enactment of the Dangerous Drugs Act (2000 DDA) in 1995. The latter criminalises the laundering of the proceeds of drug-related offences. In 2000, the Economic Crime and Anti-Money Laundering Act was enacted but was subsequently replaced by the 2002 FIAMLA. In 2001, the country followed the international trend and ratified the Vienna Convention on 19 February. It ratified also the Palermo Convention on 21 April 2003. Moreover, the International Convention for the Suppression of Financing of Terrorism was ratified on 14 December 2004

and came into effect in its entirety through the Convention for the Suppression of the Financing of Terrorism Act of 2003.

Section 3 of the 2002 FIAMLA criminalises money laundering and the conspiracy to commit such crime. It provides that:

‘(1) Any person who:

(a) engages in a transaction that involves property which is, in whole or in part, or directly or indirectly represents, the proceeds of any crime; or

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from, or brings into Mauritius any property which is, in whole or in part directly or indirectly represents, the proceeds of any crime;

(c) where he suspects or has reasonable grounds for suspecting that the property is derived or realised, in whole or in part, directly or indirectly from any crime, shall commit an offence.’

The 2002 FIAMLA adopts a threshold approach to predicate offences and all serious crimes.⁸⁷ The 2000 DDA adopts a list approach; hence, crimes related to the illicit trafficking in narcotic drugs and psychotropic substances are categorised as predicate offences.⁸⁸

Section 2 of the 2002 FIAMLA describes assets that can be laundered as:

‘property of any kind, nature or description, whether movable or immovable, tangible or intangible.’

The property can be laundered in whole or in part or directly or indirectly. Hence, the 2002 FIAMLA complies with the provisions of the Vienna Convention, the Palermo Convention,

87 See generally FATF Mutual Evaluation Report (2008) 34-36.

88 See drug dealing offences under sections 30, 33, 35, 36, and 38 of the 2000 DDA.

and the FATF Recommendations as far as the scope of properties to be laundered is concerned.⁸⁹

Moreover, the punishment for the crime of money laundering or conspiring to commit same is provided for by section 8 of the 2002 FIAMLA. The punishment consists of a fine of up to two million rupees (approximately USD 28 500) and imprisonment not exceeding 10 years.

In fact, investigation is an important element of the enforcement pillar. The FIU is one of the primary authorities with investigative powers for cases of money laundering. Part III of the 2002 FIAMLA provides, *inter alia*, for the establishment of the FIU, the functions of the FIU, the setting up of its board, and the nomination of its director, and sets down the latter's duties.⁹⁰ Section 14(1A) of the 2002 FIAMLA compels the FIU to provide feedback in writing on reports received from banks, FIs or members of the relevant profession or occupation or from a relevant authority.⁹¹ Section 13 of the 2002 FIAMLA empowers the Director of the FIU to ask for additional information in case of reasonable suspicion of a potential money laundering or financing of terrorism offence rising from STRs received. Commercial banks, duly licensed by the Bank of Mauritius send suspicious transaction reports to the FIU through the goAML web platform, which is an integrated IT application implemented with the support of the government and the United Nations Office on Drugs and Crime



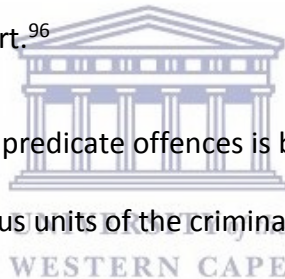
89 See section 2 of the 2002 FIAMLA providing further examples that limit the scope of the proceeds of crime.

90 Sections 9-13 of the 2002 FIAMLA.

91 See also Part V: Provision and Exchange of Information in Relation to Money Laundering and Financial Intelligence Information of the 2002 FIAMLA.

(UNODC).⁹² Other stakeholders are also expected to be connected to this system, mainly for exchange of information.⁹³

The Independent Commission against Corruption (ICAC) is the other primary authority with investigative powers for cases of money laundering.⁹⁴ Section 29 (c) of the Prevention of Corruption Act 2002 (2002 POCA) provides that the Director of the Corruption Investigation Division is responsible for any investigation relating to money laundering referred by the FIU to Commission. Moreover, during the course of a police enquiry, the commissioner of police may intervene and may, notwithstanding the 2002 FIAMLA, refer the case to ICAC, or forthwith notify the FIU.⁹⁵ ICAC also has prosecutorial powers but can prosecute in money laundering cases only with the consent of the Director of Public Prosecutions and when the latter has instituted the case in court.⁹⁶



Not surprisingly, since the scope of predicate offences is broad, and the enforcement of the AML/CFT regime requires the various units of the criminal justice system to work together, the 2002 FIAMLA gives powers of investigation to other authorities, such as the Commissioner of Police, the Director of Customs and the Mauritius Revenue Authority.⁹⁷ For example, the FIU has to work closely with the Anti-Drugs and Smuggling Unit of the police force, as drug offences are one of the main predicate offences of money laundering in

92 FIU Annual Report (2014) 7.

93 FIU Annual Report (2014) 6.

94 Investigation of money laundering cases is one of the functions of ICAC. Section 20(1)o of the 2012 POCA.

95 Section 45(2)a and c and (3) of the 2012 POCA.

96 Section 82 of the 2012 POCA.

97 FIU Annual Report (2014) 7.

Mauritius. The Customs and Excise Department can investigate customs declarations, commercial invoices, bills of lading and modes of payment, and provide the relevant information and documents to the FIU or the Commissioner of Police for further investigation. The FIU has the duty to provide also information to other investigatory authorities, for example, when that information is relevant to the functions of supervisory activities or when the supervisory authority requests particular information.⁹⁸ Nevertheless, the FIU is the only body in Mauritius that may seek information from overseas FIUs.⁹⁹ It received 66 requests for information exchange from overseas FIUs in 2013 and 44 in 2014, whereas 199 requests for information exchange were sent to overseas FIUs in 2013 and 189 in 2014.¹⁰⁰

Information exchange with authorities overseas also takes place on the basis of MOUs signed with them, the mutual assistance relationship and reciprocity established, or the membership of the Egmont Group.¹⁰¹ Section 20 of the 2002 FIAMLA empowers the FIU to exchange information in relation to money laundering and financial intelligence with foreign FIUs or comparable bodies. Thus, the Mauritian framework adheres to the provisions for collaboration within domestic institutions and the fostering of transnational co-operation in terms of the Vienna and Palermo Conventions and collaboration in line with the Council of Europe Convention, and the FATF Recommendations 36-40.

98 Section 21 of the 2002 FIAMLA.

99 Section 20 of the 2002 FIAMLA.

100 FIU Annual Report (2014) 13.

101 FIU Annual Report (2014) 13.

The Mauritian investigation authorities are known for being free and independent from political influence, especially in the African region.¹⁰² For example, investigations have been conducted against high-ranking public officials, such as the Vice Prime Minister and Minister of Finance Mr Pravin Kumar Jugnauth, the former Prime Minister, Dr Ramgoolam, and Mr Bheenick, former Governor of the Central Bank, amongst others. Interestingly, much criticism has been levelled against the way investigations are carried out. For example, a former Assistant Commissioner of Police and former Officer in Charge of the Central Criminal Investigations Division was convicted for the offence of bribery by public official. He had accepted free accommodation, food and beverages in a reputed hotel while investigating crimes that had been allegedly committed in the same hotel.¹⁰³

Moreover, recent cases of money laundering involving PEPs have been dismissed in courts because of lack of evidence and due to investigations that were not conducted properly. For example, the Director of Public Prosecutions dropped 11 of 12 charges against Dr Ramgoolam for 'manque de preuves' (lack of evidence).¹⁰⁴ Another example is the case of the Mauritius Commercial Bank and Mr Pierre-Guy Noël. The court could not proceed with the trial because of flawed investigatory procedures by ICAC. This ruling was to the detriment the National Pensions Fund and the Mauritius Commercial Bank case linked to it, in which 881.6 million rupees (approximately USD 25 million) were embezzled. Thereafter,

102 See generally Mujuzi JD 'Strengthening Democracy through Investigating, Prosecuting And Punishing Corruption In Mauritius' *East African Journal of Peace & Human Rights* 21 (2015) 324.

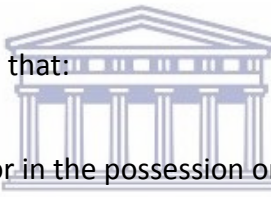
103 Independent Commission against Corruption v. Suneechara Oozageer 2006 INT 190.

104 Lexpress.mu 'Raj Pentiah: «Une à Une, Les Charges Contre Ramgoolam Disparaissent Par Manque de Preuves»' 27 November 2016.

the board of directors reinstated Mr. Noël as the head of the Central Bank.¹⁰⁵ Also, high-ranking public officials, especially the members of the former government and its financiers, have been at the centre of investigations and prosecutions of corruption and money laundering cases. Hence, there have been strong criticisms of institutions being involved in political vendettas.¹⁰⁶ Furthermore, until 2013, only 13 of the 18 cases prosecuted ended with a conviction.¹⁰⁷

Confiscation is another important element of the enforcement pillar. Confiscation of laundered assets can be either conviction-based or non-conviction based. The legal basis of confiscation of tainted assets can be found in the 2002 FIAMLA, 2000 DDA and the 2002 POCA.

Section 8(2) of the FIAMLA provides that:



‘Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the Court may, in addition to any penalty imposed, order that the property be forfeited.’

Section 45(1) of the 2000 DDA states that when a person is charged provisionally or formally for drug offences under its Section 30 or money laundering offences under its Section 39:

‘the Court shall order that the person charged shall not dispose of any of his assets or make any withdrawals from any account or deposit at any bank or financial institution until:

(a) he shall have been acquitted of that offence;

105 Lexpress.mu ‘Pierre-Guy Noël Comes Back at the Head of the MCB’ 12 July 2005.

106 KnowYourCountry ‘Mauritius’.

107 KnowYourCountry ‘Mauritius’.

(b) if convicted of the offence, the Supreme Court shall have made or refused to make an order under subsection (10);¹⁰⁸ or

(c) the Court shall have, on good cause shown, revoked or modified its order under this subsection.'

Section 82(4) of the 2002 POCA stipulates that:

'Where a person is convicted of an offence under this Act or Part II of the Financial Intelligence and Anti-Money Laundering Act 2002, the Court may, in addition to any penalty imposed, order the forfeiture of the property the subject-matter of the offence.'

The onus of proof, which is normally on the State, is on the convicted person. The reversed burden of proof implies that the convicted person should establish that his or her possessions are not the proceeds of crime. Until the FATF evaluation report, no assets had been successfully confiscated.



Moreover, the 2011 Asset Recovery Act enables the state to recover assets that are proceeds or instrumentalities of crime. It can be conviction-based or non-conviction-based recovery, that is, it applies to cases where a person has been convicted of an offence and also to those cases where there has been no prosecution but it can be proved on a balance of probabilities that the property represents proceeds of an unlawful activity.¹⁰⁹ The 2011 Asset Recovery Act has retrospective application and relates to proceeds obtained from unlawful activities committed not earlier than 10 years before the commencement of the

108 Section 45(10) of the 2000 DDA provides: Where the Supreme Court finds that the possessions of the convicted person or of any member of his family or any part thereof are the proceeds of unlawful dealing in dangerous drugs by the convicted person, the Supreme Court shall order the forfeiture of those possessions.

109 See generally Part III – Conviction-Based Asset Recovery and Part IV – Civil Asset Recovery of the 2011 Asset Recovery Act.

Act.¹¹⁰ The offences include drug offences, all offences against the Mauritian laws that are punishable with a maximum term of imprisonment of not less than 12 months, and any offence committed in a foreign state which, if committed in Mauritius, would have constituted an offence under domestic law.¹¹¹

The recently enacted 2015 Good Governance and Integrity Reporting Act is an example of active steps taken by the government to indirectly combat money laundering by PEPs. This piece of legislation criminalises illicit enrichment, especially by public officials, and thus helps in the combat against money laundering and financing of terrorism.

Finally, for the authorities to enforce AML/CFT measures, co-operation, information exchange, and assistance between institutions and regulatory authorities are indispensable.

The Mauritian AML/CFT framework ensures collaboration between its institutions. Part V of the FIAMLA contains measures for the provision and exchange of information in relation to money laundering and financial intelligence information. Part IV establishes a committee, named the National Committee for Anti-Money Laundering and Combating the Financing of Terrorism. It consists of representatives of the Director of Public Prosecutions, the Attorney General, the Registrar of Associations, directors of the FIU and representatives of the Mauritius Revenue Authority, the Commissioner of Police, and other persons deemed to have special knowledge of or experience in AML/CFT matters.



110 Section 2 of the 2011 Asset Recovery Act.

111 Section 2 of the 2011 Asset Recovery Act.

3.5 Concluding Remarks

This chapter has given an overview of Mauritius and its financial system. It has established the money laundering risks the country faces. It has also explained the definition of a PEP, and how PEPs (mis)use the Mauritian financial system to launder proceeds of crime. Examples of known cases have been given. Finally, the implementation of the AML/CFT pillars, and the legal and regulatory measures in Mauritius, in so far as they apply to PEPs, have been examined and evaluated against the template of international standards.



CHAPTER FOUR

CONCLUSIONS AND RECOMMENDATIONS

4.1 Introduction

Money laundering has a negative impact on society, the reputation and development of countries and, ultimately, on the global economy. Money laundering by PEPs is a widespread international concern. PEPs divert government funds into their own pockets. They also enrich themselves with the proceeds of corruption.

Since money laundering techniques keep on changing, the AML/CFT pillars are in constant evolution too. However, the amount of IFFs in the global economy and scandals, like the Panama Papers Scandal and Wiki Leaks reflect the scourge of money laundering, particularly by PEPs. What is more, money laundering occurs mostly in stable jurisdictions and tax havens like Mauritius and it affects developing countries more negatively than developed countries.

This research paper has explored the preventive and the enforcement pillars while highlighting the measures recommended by the FATF and those instituted by FIs to minimise the money laundering risks posed by PEPs. This paper has studied also the extent to which the AML/CFT pillars are being implemented in relation to PEPs in Mauritius.

4.2 General Conclusions

Generally, it can be concluded that:

- International instruments such as the FATF Recommendations, the Basel Principles, UNCAC, the AU Convention, the Vienna Convention and the Palermo Convention provide for a robust international AML/CFT regime. In fact, since the 1990s, preventive measures have been designed, to deter launderers and detect attempts to launder money, whereas enforcement measures have been designed for the criminalisation, investigation, prosecution, and punishment of money laundering and the financing of terrorism. Enforcement consists also in seizing, freezing, confiscating and recovering the proceeds of the predicate crimes committed. However, in practice, implementation is lax, especially in relation to PEPs. This is reflected in the extent to which the phenomenon of IFFs and the number of PEP-related money laundering scandals manifest in practice.
- The concepts of money laundering and the PEP are ambiguous. An analysis of the AML/CFT legal international frameworks and the literature surveyed shows that there is no universal definition of the concepts of money laundering and the PEP, and consequently, there has been an uneven criminalisation of PEP conduct in the various jurisdictions. These differences are reflected in the provisions of both the preventive and enforcement laws, thus affecting deterrence, transnational investigation, and co-operation in dealing with money laundering cases involving PEPs.
- The FATF Recommendations, which are soft laws enforced through mutual evaluation reports and peer pressure, provide for extensive AML/CFT measures, especially in regard to PEPs. The FATF provides guidance and support also for countries in need, and black lists non-compliant countries;

- The extended definition of PEPs, as set out in the Wolfsberg Principles and which requires members of religious groups, political parties and royal families, and those employed by supranational organisations and central banks to be categorised as PEPs, is not a popular requirement or recommendation among other international standard setters, such as the FATF.
- CDD and EDD are practised as a mere regulatory obligation and employees tend to apply these measures by going through a checklist. What is more, the top management personnel of some financial services providers take high risks to achieve their targeted growth and profit margin, and accept PEPs as clients. These PEPs seize the opportunity and use of financial intermediaries and corporate vehicles hide their identity.

4.3. Specific Conclusions



More specifically, this paper concludes that:

- The Mauritian laws and regulatory framework provide extensively for the combating of the crime of money laundering. It is unfortunate that money laundering by PEPs is not criminalised under the 2002 FIAMLA.
- There has been significant progress in the Mauritian AML/CFT legal regulation since the last FATF mutual evaluation report. Guidelines issued by the Central Bank and regulations and codes published by supervisory and regulatory bodies have been on the increase in Mauritius.
- Novel AML/CFT preventive and law enforcement measures, for example, the 2011 Asset Recovery Act, the 2015 Good Governance and Integrity Reporting Act and the

BoM Guideline on Corporate Governance have been implemented to re-enforce the Mauritian AML/CFT regime and to create a safer and more secure financial sector.

- The supervisory and regulatory bodies are well structured and have powers enshrined in the law. They work in collaboration with other law enforcement authorities which are also empowered to investigate and are required by law to pool their resources in anti-money laundering cases. The essential co-operation and assistance to fight money laundering is ensured also by the National Committee for Anti-Money Laundering and Combating the Financing of Terrorism, which has a set structure and a specific mandate.
- Mauritius co-operates with other FIUs and relevant authorities in matters of money laundering and related offences. In fact, the country is a signatory to the Vienna Convention and the Palermo Convention, and is a member of international anti-money laundering bodies such as the Egmont Group, the Wolfsberg Group of Banks and the Basel Committee. Importantly, even though it is not a member of the FATF, Mauritius subscribes to the standards set by the FATF and it has also provisions which ensure transnational co-operation in AML/CFT cases.
- Mauritius has a regulated financial sector which, in spite of the existing AML/CFT structure, still is vulnerable to being exploited by money launderers. This is borne out by the cases described above.
- Mauritius has no law regulating money value transfer operators. This is a serious deficit, as it undermines other AML/CFT initiatives.
- The time limit prescribed for the de-categorisation of PEPs is one year after they leave office. This short time span puts the Mauritian financial sector at risk of being

misused by PEPs, quite apart from the fact that it runs counter to the spirit of FATF standards.

- Despite having guidelines and codes regulating secretive corporate vehicles and financial intermediaries, these are implemented only in a casual manner which, of course, defeats the purpose for which they were issued.
- With a mandate to create more employment, increase foreign direct investment, and achieve economic growth, the Mauritian government has devised a new scheme allowing foreigners who invest in high-value real estate in Mauritius to obtain permanent residence. This magnanimous overture increases the risks of misuse of the financial sector and encourages criminals to launder their money in and through Mauritius.
- The definition of a PEP in the Mauritian AML/CFT framework lacks scope as it does not include members of religious groups, senior members of political parties and members of the Central Bank or of a royal family. The unregulated activities and financing of religious groups and of political parties create an environment for money laundering, especially by PEPs who openly support and who are, in turn, openly supported by major religious groups. Given the socio-cultural demography of the country, religious groups wield much power in communities and often benefit from unexplained and unjustified privileges.
- The definition of PEPs does not devote equal attention to DPEPs, FPEPs, and FPEPs of international organisations.
- Small companies in the offshore industry lack the resources to allocate to their internal AML/CFT policies and measures. What is more, unlike banks licensed by the BoM, other financial services providers are not required, but only encouraged, by



regulators to have the goAML software and to submit suspicious transaction reports to the FIU through the web.

- There is a lack of expertise and efficiency in both law enforcement and the judiciary when it comes to dealing with money laundering cases. Furthermore, there is a great discrepancy between the number of suspicious transactions reported and the investigations initiated, let alone the number of prosecutions instituted and the incidence of convictions.
- Investigations on economic crimes involving Mauritian DPEPs are motivated not so much by the will to eradicate crime as the desire to carry out personal vendettas. Indeed, after the past two elections, investigations were carried out against PEPs associated with the losing party, and incriminating information was propagated which implicated certain politicians, resulting in party members joining the rival party.



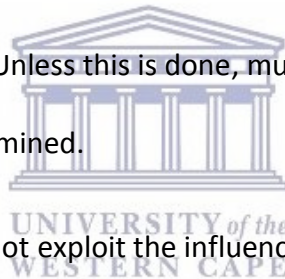
4.4 Recommendations

1. The concepts of a PEP and money laundering need to be defined more evenly by the different international instruments and in different jurisdictions. In Mauritius, the definition of a PEPs should be extended to include senior members of religious groups and FPEPs of international organisations.
2. Amendments to the FIAMLA 2002 need to criminalise money laundering and impose stiffer penalties, especially with regard to PEPs holding public office.
3. There needs to be increased transparency in the screening of cases to be investigated by law enforcement authorities and cases to be prosecuted by the DPP.

4. Public awareness on the harmful effects of money laundering on the economy needs to be stepped up considerably. At present, there is little evidence of this happening. Moreover, financial services providers need to acquaint their employees more thoroughly with the ploys used by money launderers. Training and upskilling of employees therefore need to constitute one of the main pillars of effective AML/CFT policies.

5. Financial service providers need to be assisted by the FIU and law enforcement authorities in making more effective use of the goAML web platform to detect and report suspicious transactions.

6. It does not suffice merely to have laws governing corporate vehicles, financial intermediary, and investment facilities. What is needed is a rigorous, practical implementation of the provisions. Unless this is done, much of the efforts devoted to AML/CFT will continue to be undermined.



7. In order to ensure that PEPs do not exploit the influence they still exert after vacating office, it is necessary that the categorisation of a PEP cover should be extended to more than one year after the PEP has ceased to hold public office.

8. Criminal justice researchers in Mauritius need to devote greater attention to studying why a discrepancy exists between the incidence of suspicious transactions reported and the incidence of investigations and prosecutions initiated. Empirical studies on this phenomenon would shed light on where and why hiccups in the system occur. Pinpointing the weak linkages in the chain would help the criminal justice authorities to locate the causes of the disproportionality between reporting, investigation, prosecution and

conviction of money launderers. This insight would lead to effective improvements in the AML/CFT legal regime.

9. Informal banking systems and money value transfer operators need to be regulated as a matter of urgency, for no one knows to what extent this sector of the economy is presently being exploited for money laundering purposes.

10. The present state of affairs, according to which economic crimes such as money laundering and corruption are dealt with by the ordinary criminal courts, does not help to focus and to capacitate prosecutors and judges to deal with economic crimes of this nature.

There is therefore a need to create a specialised division of the high court to deal with economic crimes. Such an initiative will reinforce the effort to deal more aggressively with the scourge of money laundering.



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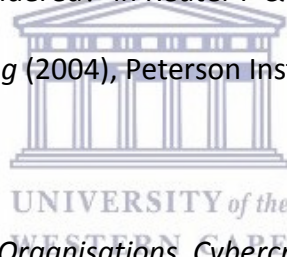
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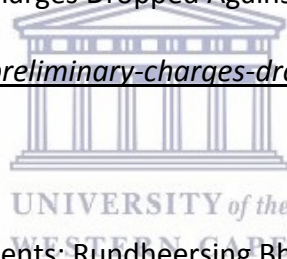
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