Part II
Anti-Money Laundering Regime: Analyzing the Creation of International Standards that Internationalize and Criminalize the Acts of Money Laundering

As has been discussed in Part I, it is obvious that the acts of money laundering have evolved and accelerated to a more globalized scope. In response to it, the anti-money laundering regime (hereinafter: the AML regime) has also developed from a domestic to an international level. This development was supported by the establishment of international instruments, such as conventions, agreements, or 'international standards' which are manifested into the framework of the AML regime. This framework develops towards the internationalization and criminalization of the acts of money laundering. By using an analytical approach, Part II of this study explores the process of internationalization *(chapter 3)* and criminalization *(chapter 4)* of money laundering activities, the potential problems that will appear, and the key issues surrounding these developments.

Chapter 3
The Creation of International Standards that Internationalize the Acts of Money Laundering

3.1. Introduction

Due to the cross-border character of money laundering practices, the AML regime has developed toward internationalization. Two international instruments that promoted and supported the internationalization of the AML regime are the Vienna Convention on Drug Trafficking and the Basle Committee on Banking Regulation. The internationalization of the regime was treated in the scope of preventive measures that are manifested into 'international standards'. These standards then serve as guidance for countries and private entities in preventing and detecting money laundering. This chapter focuses on the process of internationalization and the extent to which the 'international standards' concerned can prevent and detect money laundering practices.

3.2. Defining Internationalization

'Internationalization'[1] has often been understood synonymously with other existing concepts such as 'globalization'[2] and 'international standards'.[3] Internationalization occurs when public or private conducts their cooperative activities beyond national borders. In the context of money laundering, 'internationalization' refers to the effort to raise the issue of money laundering into an international level. The significance for the internationalization of the anti-money laundering is to response the transnational character of money laundering practices. One critical aspect of the internationalization is the setting norms and international standards in preventing and countering the acts of money laundering. A further effort is to promote cooperation among countries in conducting investigation, prosecution and judicial proceeding of money-laundering crime. The interdependence and interrelationship among countries in preventing and combating money laundering indicate the need for states to cooperate each other.

The rationale behind the internationalization of the AML regime is a critical question in this context. An essential reason for expanding the issue of money laundering to an international level is because this type of crime creates transnational threats in nature and multidimensional problems in practice.[4] The

---

[1]The prefix 'inter' of 'internationalization' comes from a Latin word which originally means 'between, mutual'. Futao Huang, Internationalization of Higher Education: Discussion about Its Definitions, see http://www.gcn-osaka.jp/project/finalreport/1/1-2e.pdf.

[2]'Globalization' refers to a set of process leading to the integration of economic, cultural, political, and social systems across geographical boundaries. In more concrete, 'globalization' is described as continuous increase of cross-border financial, economic, and social activities. Or it refers to the process of growing interdependency among events, people, and governments around the world. *See* http://www.hsewebdepot.org/imstool/GEMI.nsf/ WEBDocs/Glossary? *See* also Wolfgang H. Reinike and Jan Martin Witte, "Challenges to International legal System; Interdependency, Globalization, and Sovereignty: The Role of Non-binding International Legal Accords", in Dinah Shelton (Ed), *Commitment and Compliance: The Role of Non-binding Norm in the International Legal System*, (New York: Oxford University Press, 2000), p.75; Herbert V. Morais, "Globalization and Sovereignty: The Quest for International Standards: Global Governance vs. Sovereignty", 50 Kansas Law Review, 2002, p.781; Kenneth W. Abbott & Duncan Snidal, "International 'Standards' and International Governance, 8 J. Eur. Pub. Pol'y, 2001, p.345. The similar meaning and using interchangeable between 'globalization' and 'internationalization' also proposed by Heba Shams. See Heba Shams, *Legal Globalization: Money Laundering Law and Other Cases*, International Financial Law Series, 2004, p.p.10, 62, 63, 64, 65, 100.

[3]'Standard' is understood to be a 'guide for behavior and for judging behavior'. 'International standards' is intended to connote some universally, or at least generally accepted, canons of behavior for states, corporations and individuals in the conduct of business and financial affairs. See Herbert V. Morais (2002), *Ibid. See* also Kenneth W. Abbott & Duncan Snidal (2001), *Ibid*, p.345.

[4]Heba Shams (2004), *Supra* note 2, p.23.

former is the case because the crime is committed across the boundaries of multiple jurisdictions.[5] In the process of money laundering, criminals move illicit funds through several accounts and/or financial institutions worldwide in an attempt to distance the funds from their illegal sources. Multi-dimensional problems are those where the crime of money laundering is dynamic in which the money can flow to various financial institutions in a domestic area as well as abroad.[6]

A central objective in managing the control of money laundering internationally is to make the same vision, mission, and strategy among countries. Another objective is to facilitate international cooperation in preventing and combating this type of crime. For instance, if one country considers money laundering as a crime but another country does not, it is not easy to hold cooperation. The same condition also applies where the two countries do not have the same predicate offence(s) underlying the crime of money laundering. As such, countries that carry out cooperation, such as extradition or mutual legal assistance, have to meet the principle of *dual criminality* in which the offence is a crime in both requesting and requested countries. Despite these differences, bringing money laundering under international control is an essential one.

3.3. International Instruments Promoting the Internationalization of Anti-Money Laundering Regime

Initial efforts in the internationalization of the AML regime have been marked by the establishment of several international instruments. These instruments include the Vienna Convention on Drug Trafficking and the Basle Committee on Banking Regulations. The former refers to the internationalization of the penal aspect of money laundering, while the latter addresses the internationalization of the principle of financial regulations against the use of financial institutions for money laundering purposes. In the broadest sense, Gilmore emphasized that these two international instruments have 'a twin tract solution of the problem of money laundering'.[7] According to him, anti-money laundering calls for the strengthening of the criminal law through invoking penal means, whilst also require a general acceptance from the financial system in performing an effective and preventive role.[8] This means that these two

---

[5] *Ibid.*

[6] *Ibid.*

[7] William C. Gilmore, "Money Laundering: The International Aspect", in David Hume Institute, *Money Laundering*, Papers on Public Policy, Vol.1, No.2, Edinburg University Press, 1993, p.2.

[8] *Ibid.*

international instruments function to counter money laundering by strengthening criminal law and by having financial systems play an active role in preventing such transactions. It is not an exaggeration, therefore, that these instruments are regarded as one of the most significant factors in the internationalization of the AML regime for preventing and fighting money laundering practices.

3.3.1. The 1988 United Nations Vienna Convention

Citing from Baldwin and Munro, Gilmore describes that the United Nations Vienna Convention[9] established a basis for placing international controls and setting the standard for international efforts on money laundering.[10] As the internationalization of the penal aspect of money laundering, the Vienna Convention obliged each participating state to criminalize the laundering of drugs proceeds.[11] The Convention has a binding authority to which each state party is bound. It means that participating states are obliged to comply with obligations created by the Convention because of international law principle of *pacta sunt servanda*.[12]

The Convention creates an AML framework on a wide range of issues such as definition of money laundering, enforcement mechanism, and international cooperation. The Convention laid a foundation for promoting cooperation in relation to the confiscation of criminal proceeds, extradition, mutual legal assistance, and transfer of proceedings.[13] Even though its scope is limited to drugs-related crimes as predicate offences, the Convention plays a significant role in raising the issue of money laundering into an international level. Subsequently, the Convention has served as the basis for intergovernmental initiatives (such as the FATF) and other international agreements (such as the Strasbourg Convention of 1990, the Convention against Terrorist Financing of 1999, the Palermo Convention of 2000, and the Convention against Corruption of 2003). As such, it is reasonable if Morgan

---

[9]The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, entered into force 11 November 1990.

[10]William C. Gilmore (1993), *Supra* note 7, p.3-5.

[11]*Ibid.*

[12]The Vienna Convention on the Law of Treaty 1969, Article 36. Cited in Norman Mugarura, "The institutional framework against money laundering and its underlying predicate crimes", Journal of Financial Regulation and Compliance, Vol. 19 No. 2, 2011, p.177.

[13]The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, Article 5, 6, and 7.

pointed out that the Vienna Convention is 'a uniform international effort' in combating money laundering criminality.[14]

In response to the global character of drugs-trafficking and money laundering, the Vienna Convention further requires that each participating State is entitled to mutual legal assistance in the investigation, prosecution, and judicial proceedings.[15] More specifically, such mutual legal assistance is to include the gathering of evidence, testimony, searches, and seizures.[16] Mutual legal assistance in this context is divisible into three broad categories: firstly, investigative assistance to identify and trace property and to obtain documents; secondly, provisional measures to freeze or seize property located in the territory of the requested party; and thirdly, enforcement of another country's confiscation orders. For mutual legal assistance to be carried out smoothly, article 7(5) obliges parties not to decline it on the ground of bank secrecy. Finally, for the participating States that are not bound by a treaty of mutual legal assistance, they can use the Convention as a legal basis for conducting confiscation, extradition, and mutual legal assistance.[17] However, it is also advised in the Convention that the parties conclude bilateral and multilateral treaties to carry out confiscation, extradition, and mutual legal assistance in all aspect of investigations, prosecutions, and judicial proceedings.[18]

3.3.2. The Basle Committee on Banking Supervision

In the mean time, the Basle Committee,[19] which deals with the regulation of the financial system, is not a binding arrangement. The main aim of the Basle Committee is to improve banking supervision and strengthen standards in member and non-member countries. The Committee issued guidelines of the international preventative regulation of financial institutions concerning money laundering. Its function is to encourage banks to adopt some measures in order to ensure that the banks are not used for the deposit and/or transfer of criminal proceeds.[20] It also introduced a general rule to encourage ethical standards of

---

[14]Matthew Morgan, "Money Laundering: The American Law and its Global Influence", L. & Bus. Rev. Am. 24, 1996, p.7.

[15]The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, Article 7(1)

[16]*Ibid.,* Article 7(2)

[17]*Ibid.,* Article 5(4)(f); Article 6(3); and Article 7(7)

[18]*Ibid.,* Article 5(4)(g); Article 6(11); and Article 7(20)

[19]The Basle Comittee on Banking Supervision consists of representatives from the Central Bank Governors and Supervisory Authorities of the G-10 group of industrialized counbtries.

[20]The Statement declares its purpose to be: ...to outline some basic policies and procedures that banks' management should ensure are in place within their institutions with a view to assisting in

professional conducts among banks and other financial institutions to put in place effective procedures for ensuring the following matters: that all persons involved in banking systems are properly identified, that dubious transactions are prevented, and that there is full cooperation with law enforcement agencies.[21]

In the context of the internationalization of the AML regime, the Basle Committee has a role in preventing banks and other financial institutions globally from being used for money laundering purposes. The 'know your customer' principle of the Basle Committee is considered an effective way in preventing and detecting money laundering practices. The implementation of this principle was developed by the forty- recommendations of the FATF. Two main features of the Basle Committee's approach to the problem of money laundering are the 'Statement of Principles' for the prevention of criminal use of banking systems for the purpose of money-laundering[22] and the 'Minimum Standards' for the supervision of international banking groups to emphasize the need for more consolidated supervision'[23].

The Statement of Principles is the first international agreement that introduced the term 'money laundering' to an international level. The Statement is intended to prevent financial institutions from associating with criminal activities, and thus, to maintain the integrity of the banking system.[24] The Statement constitutes guidelines and ethical standards of professional conducts of banks and other financial institutions in conducting their business.[25] What should be done by financial institutions is to create an identity of their customers and close any accounts that are thought of being used for money laundering purposes.[26] Furthermore, banks and other financial institutions should keep records of financial information and provide training for their staff in order to assist these goals.[27]

The Minimum Standards, meanwhile, were formed in response to the rapid growth of international banking activities. The purpose of these is to

---

the suppression of money laundering through the banking system, national and international. The Statement thus sets out to reinforce existing best practices among banks and, specifically, to encourage vigilance against criminal use of the payments system, implementation by banks of effective preventive, safeguards, and cooperation with law enforcement agencies. *See* William C. Gilmore (1993), *Supra* note 7, p.2.

[21]See Preamble, 6th recital.

[22]It is issued on December 1988; hereinafter the Statement of Principles.

[23]It is issued in 1992; hereinafter the Minimum Standards

[24]Statement of Principles for the Prevention of Criminal Use of Banking Systems for the Purpose of Money Laundering, Preamble 3.

[25]*Ibid.*

[26]*Ibid.*

[27]*Ibid.*

ensure that all banks and other financial institutions are supervised by a single authority.[28] The single authority has all the information necessary to exercise that supervision effectively, particularly to avoid situations of consolidation.[29] The Minimum Standards are set as a guideline for the host country's banking regulators to access and obtain information from international banks.[30] Under these standards, if the host country determines that an international bank fails to meet the standards, then the host country's regulator may impose sanctions.[31]

3.4. The Preventive Measures of International Standards in the Framework of Anti-Money Laundering Regime

As indicated earlier, it has been argued that the internationalization of the AML regime has been manifested into international standards which functions as preventive measures. This section will analyze the main scope of international standards that involve customer identification, record-keeping, and the reporting of suspicious transactions. As the main scope of the international standards is a preventive approach, to begin with, it is important to elaborate theoretically how this approach works in preventing and controlling the acts of money laundering.

3.4.1. Theoretical Context of Preventive Measures

Preventive measures are intended to avoid the crime before it happens. People assume that preventive measures are relatively easier, cheaper, and less risky

[28]Basle Committee Report on Minimum Standards for the Supervision of International Banking Groups and their Cross-border Establishment, Reprinted in International Economic Law Documents, I.E.L. II-1 (1992).

[29]*Ibid.*

[30]*Ibid.*

[31]*Ibid*. *See also* Basle Committee on Banking Supervision: Report on Minimum Standards for Supervision on International banking (1992). The Minimum Standards were summarized by the Basle Committee in its own terms as follows: (1) All international banking groups and international banks should be supervised by a home country authority that capable to perform consolidated supervision; (2) The creation of a cross-border banking establishment should receive the prior consent of both the host country supervisory authority and the bank's authority, and, if different, banking group's home country supervisory; (3) Supervisory authorities should posses the right to gather information from the cross-border banking establishments of the banks or banking group for which they are the home country supervisor; (4) If a host country authority determines that any one of the foregoing minimum standards is not met to its satisfaction, that authority could impose restrictive measures necessary to satisfy its prudential concerns consistent with these minimum standards, including the prohibition of the creation of banking establishments.

when compared to repressive measures.[32] In the context of money laundering, preventive measures get more attention because they play a significant role in reducing this type of crime. The Basle Committee on Banking Supervision, for example, is the first international initiative to establish preventive measures that can be applied to avoid the use of banking systems for money laundering purposes. These efforts are further elaborated on by the Financial Action Task Force (FATF) with its forty recommendations.

The method used in these legal instruments is crime prevention approach. Crime prevention can be defined as an effort to reduce criminal activity by providing strategies and policies for avoiding such crimes.[33] The theory of crime prevention has evolved over time following the development of the crime itself. In the 1960s, there existed two categories of crime prevention, namely, the conservative approach and the liberal approach.[34] The first approach proposed increasing penalties on criminals to reduce crimes, and the second one proposed a social program aimed primarily at reducing crimes by reducing poverty.[35] In the 1980s, there was a new perspective on crime prevention which was also divided into two categories: social crime prevention and situational crime prevention.[36] Social crime prevention set out to change the social conditions that influenced the number of offences in certain communities.[37] It could be done by providing a wide variety of jobs, training, or by increasing society's awareness regarding the quality of life.[38] On the other hand, situational crime prevention is designed to prevent the occurrence of a crime by increasing the risks, increasing the efforts, and reducing the rewards.[39]

Another perspective of crime prevention was introduced by M. Tonry and D.P. Farrington.[40] They propose four major prevention strategies which

---

32Irma Arriagada and Lorena Godoy, "Prevention or Repression? The false dilemma of citizen security, Cepal Review 70, 2000, p.122

33Ronald V. Clarke, "Situational Crime Prevention", Crime and Justice, Vol.19, 1995, p.92.

34Robert White, "Situating Crime Prevention: Models, Methods, and Political Perspective", In Ross Homel, editor, *The Politics and Practice of Situational Crime Prevention*, Crime Prevention Studies, Vol.5, Criminal Justice Press, Monsey, New York, U.S.A., 1996, p.100-104.

35*Ibid.*

36*Ibid. See* also Adam Bouloukos, Graham Farrel, and Gloria Laylock, "Transnational Organized Crime in Europe and North America: Towards a Framework for Prevention", in: K. Aromaa, S. Leppa, S. Nevala and N. Ollus. (Eds.) Crime and Criminal Justice in Europe and North America 1995-1997. HEUNI Report Series #40. Helsinki, Finland: United Nations HEUNI, 2003, p.184-185.

37*Ibid.*

38*Ibid.*

39*Ibid.*

40M. Tonry and D..P. Farrington, "Strategic Approaches to Crime Prevention", Crime and Justice, Vol.19, 1995, p.p.2-3 involve law enforcement, developmental prevention, community prevention, and situational prevention.[41] Through law enforcement, interventions are designed to enact and enforce criminal law as general prevention that directly or indirectly affects recidivists or potential offenders in the hopes that these crimes do not reoccur. Developmental prevention uses interventions to prevent individuals from carrying out potential crimes. Community prevention uses interventions to change the social conditions that might influence potential offenders so that they do not commit a crime. Finally, situational prevention uses interventions to prevent the occurrence of crimes by increasing the risk and opportunities, and reducing the reward.

Another way of classifying crime prevention is presented by Brantingham and Faust.[42] They divide crime prevention into three categories: primary, secondary, and tertiary. The primary crime prevention method focuses on social and situational prevention, or stopping the crime before it occurs. The secondary crime prevention method focuses on captivating with those that poses a risk of offending. Finally, the tertiary crime prevention method deals with known offenders in the criminal justice system. Among those methods, situational prevention seems the most appropriate, relevant, and accord well with the analysis of preventive measures against money laundering. Clarke in his study argues that the concept of situational prevention was successfully implemented in a wide variety of crimes.[43] According to him, the purpose of situational prevention is to discourage crimes by increasing the risks and difficulty in conducting such crimes.[44] To prevent a crime by means of the situational prevention approach, Clarke established twelve techniques that are based on three mechanisms: increase the efforts, increase the risks, and reduce the rewards.[45] With regard to money laundering, Cornish and Clarke revised the afore-mentioned techniques of situational prevention and extended them to 25 techniques with two additional basic mechanisms, namely, to reduce provocation and to remove excuses.[46]

The first heading, *increase the efforts*, is a method designed to make it more difficult for offenders to carry out money laundering.[47] In this point, as money laundering regulations become more effective, they make the crime

---

[41] *Ibid.*

[42] Gloria Laycock and N. Tilley, "Implementing Crime Prevention", Crime and Justice, Vol.19, 1995, p.536.

[43] Ronald V. Clarke (1995), *Supra* note 33, p.92.

[44] *Ibid*, p.91.

[45] *Ibid*, p.91

[46] Gloria Laycock, "New Challenges for Law Enforcement", European Journal on Criminal Policy and Research, Vol.10, 2004, p.44.

[47] *Ibid.*

more expensive.[48] Target hardening, controlling the access to facilities, deflecting offenders, and controlling facilitators are some techniques used in preventing this form of crime.[49] Anti-money laundering policies, which are implemented in various sectors, could hinder or reduce the occurrence of money laundering practices. Issuing the Statement of Principles, for example, is aimed to avoid the misuse of financial institutions for money laundering purposes. Furthermore, improving facilities[50] for detecting money laundering can also make it more difficult to commit the crime. This in turn, could obstruct the occurrence of money laundering practices.

The second heading, *increase the risks*, is designated to increase the risk of offenders being caught.[51] Some techniques used in this method include 'extending guardianship, natural surveillance, reducing anonymity, utilizing a place manager, and formal surveillance'.[52] The implementation of due diligence - to identify and verify the identity of customers - aims to hinder anonymity and to examine the possible relationship of financial transactions with money laundering. Improving the skill of employees in conducting ongoing due diligence might increase the risk for offenders of being caught. Establishing a paper trail and keeping records of financial information may help reconstruct financial transactions, aiding law enforcement authorities in investigating and prosecuting money launderers. Another technique is strengthening formal surveillance in order to detect and monitor the threat to potential offenders such as politically exposed persons, cross-border correspondent banking, and new or developing technologies that might favor anonymity.

The third heading, *reduce the reward*, is aimed at denying the criminal the possibility to enjoy the benefits of ill-gotten gain.[53] It consists of 'concealing targets, removing targets, identifying property, disrupting the market, and denying benefit'.[54] Forfeiture and confiscation of the proceeds of

---

[48]'The costs of money laundering will, therefore, depend on the effectiveness of anti-money laundering regulation: the more effective the latter is, the more expensive it will be for criminal agents to undertake the activity of money laundering. And if we assume anti-money laundering regulation to have a significant impact on the cost of carrying out a criminal activity, then an effective system of rules will in fact reduce the ability of criminal agents to launder their illegal liquidity'. *See* Jackie Harvey, "Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost and Benefit Study", Journal of Money Laundering Control, Vol.7, No.4, 2004, p.335.

[49]Ronald V. Clarke (1995), *Supra* note 33, p.109.

[50]Such facilities involve controlling the access to financial providers, the development of internal policies, procedures and controls, and an audit function to test the system,

[51]Ronald V. Clarke (1995), *Supra* note 33, p.109.

[52]*Ibid.*

[53]*Ibid.*

[54]*Ibid.*

crime are two kinds of methods that aim to reduce or even remove the profit of money laundering criminality. The FATF encourages governments to confiscate laundered property or instruments used in conducting money laundering or predicate offence.[55]. In this regard, the FATF recommendations and the UN Vienna Convention indicate a wide variety of measures which involve identifying, tracing, and evaluating property that is subject to confiscation, freezing, or seizing.

On one hand, analyzing money laundering with a situational prevention approach is acknowledged to potentially reduce this type of crime. However, on the other hand, because of the implementation of these preventive measures, criminals shift their attention to other contexts, which is called 'displacement'.[56] In this regard, the FATF in its report on Money Laundering Typology pointed out that research has shown the methods in which criminal conducts the crimes change to others when governments attempt to take action.[57]

According to Clarke, displacement is the efforts to prevent a crime in one context may affect the increase of the crime in another context.[58] He classified displacement into five categories: geographical displacement – the attempt to commit the crime elsewhere; temporal displacement – the attempt to commit the crime on a different point in time; tactical displacement – the attempt to change the modus operandi; target displacement – the attempt to choose different targets or victims; and activity-related crime displacement – the attempt to turn the criminal's attention to some completely different form of crime.

With regard to money laundering, *geographical displacement* may occur when the criminal launders money from one country to another. This could happen if the offenders shift their attention from countries that have strengthened money-laundering legislations to other countries which have lack of money laundering laws. It could also happen if the offenders shift their attention to financial institutions located in offshore countries which have not or less regulated money laundering in their legal and regulatory system.

---

[55]Financial Action Task Force on Money Laundering, Recommendation 38.

[56]'It is theoretically possible to have displacement greater than 100%, if crime prevention in the target area result an increase in crime in nearby area greater than the reduction of crime in the target area. Displacement can also less than 100%, if the increase in crime in the nearby area is less than the reduction of crime in the target area'. *See* John Ech, "The Threat of Crime Displacement", Problem Solving Quarterly, Vol.6, No.3, 1993.

[57]*See* Financial Action Task Forced on Money Laundering, FATF Typology 2005-2006, p.1. In this report, the FATF pointed out that while FATF members have introduced preventive measures covering the banking sector, money launderers have been increasingly using more diverse routes, both in terms of geographical areas targeted and techniques used.

[58]R.V. Clark, "Situational Crime Prevention: Its Theoretical Basis and Practical Scope", 4 Journal of Crime and Justice, 1983, p.227.

In the *target or victim displacement*, the objective of money laundering always changes from one kind of target or victim to another. Formerly, the offenders may use financial institutions as vehicles for conducting money laundering. Accordingly, anti-laundering measures establish a regime for countering the crime in this sector. Over time, because of the integrity of financial institution, it became more difficult to carry out money laundering in this sector. This led offenders to try other sectors such as front companies, alternative remittance systems and non-financial institutions that still have loopholes when it concerns anti-money laundering regulations. Furthermore, after the regime focused on this target, the offenders sought other targets as a vehicle for carrying out money laundering, such as professionals which involve lawyers, notaries, accountants, and other professional agencies.

In the *tactical or modus operandi displacement*, the criminal carries out money laundering through various methods, from simple to the complex and professional ones. In the first case, money laundering may be carried out by placing illicit funds into a financial institution and then layering and integrating the money into a legitimate business. Over time, the method has become more complex because of electronic money which facilitates cyber-laundering through unregulated financial entities that cause the application of anti-money laundering ineffective. Furthermore, the trend has come to laundering methods through professionals such as lawyers, notaries, and accountants that assist criminals and design schemes for money laundering criminality. Some of these professionals may be directly involved in carrying out specific types of financial transactions on behalf of their clients. They can also abuse their legal status by providing money-laundering services to criminals who want to conceal their illicit funds.

Finally, there is the *activity-related crime displacement* in which the attempt is to turn the criminal's attention to some completely different form of crime. In this case, the offender switches attention from one type of crime to a completely different one. For instance, criminals may choose to do so if there is a reduced risk of apprehension in another money laundering crime.

Based on the above elaboration of preventive measures, the question remains whether the situational approach of preventive measures can be used as a tool to prevent any crime effectively; or whether it merely leads to other contexts such as place, target, or tactic. Some scholars and policy makers acknowledged the theory of situational prevention can still be used to analyze the preventive aspect in reducing a crime effectively, including money laundering criminality.[59] According to them, displacement is simply a side effect of reducing crimes.[60] It means that situational approach in prevention measures could affect to reduce the quantity as well as quality of a crime.

[59]John Ech (1993), *Supra* note 56; Clarke (1983, 1995), *Supra* note 33 and 58.

[60]Clarke (1983), *Supra* note 58, p.227.

3.4.2. Preventing Money Laundering through International Standards

As elaborated in the previous section, the regulatory framework of preventive measures in countering money laundering takes place in the scope of private sectors. How private sectors implement their preventive measures are the main question that will be elaborated in this section. Here in this context, private sectors have important roles in preventing from money laundering practices. As subject to the preventive measures, private sectors have evolved by following the changing dynamics of money laundering methods and typologies. Firstly, banks have to prevent financial systems from money-laundering purposes. Over time, the duties extended to non-banking financial institutions such as money changers, the insurance companies, security sectors, casinos, and travel agencies. Furthermore, non-financial businesses and professions such as lawyers, notaries, accountants, and other legal professionals are also subject to preventive measures.

The FATF recommendations particularly article 5 through 13 and 21 and 22 regulate the responsibilitition of preventive measures on private sectors. These are designed to create a five-part requirement: establish and maintain customer identity: create and maintain an up-to-date customer profile; monitor transactions to see if they fit with the customer profile of transactions that are legitimate; if not, examine further any such transaction to see if it might represent the proceeds of crime or financing of terrorism; and if so, report the transaction to the Financial Intelligence Unit, along with a description of why the financial institution believes that the transaction is suspicious.[61]

The duties that the private sectors have are requiring clients to show identification before conducting business relationship, avoiding engaging in financial transactions with certain customer, and reporting to the competent authorities any transaction that might be connected to money laundering or terrorist financing. In addition, the duties involve reporting any transaction above specified amount of cash, creating paper trails of monetary transactions, and enhancing due diligence for transactions with a specified person such as politically exposed person. These duties are aimed at preventing financial institutions from being utilized for money laundering purposes. If the private sectors fail to fulfill these obligations, they become susceptible to administrative, civil and criminal sanctions. The following are the detail duties imposed on the private sectors. These duties involve customer identification, record keeping requirement, and reporting suspicious transaction. These duties function at detecting, monitoring and reporting money laundering practices.

[61]Richard K. Gordon, "Losing War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing", Case Research Paper Series in Legal Studies, Working Paper 2010-20, May 2010, p.10.

3.4.2.1. Customer Identification

The first duty of the private sectors regarding the preventative measures against money laundering is customer identification. Customer identification concerns the up-to-date record keeping of relevant client information by the private sectors.[62] Customer identification, otherwise called as 'Know Your Customer (KYC),'[63] establishes the identity of customers, their activities, and the nature of their business: who is the customer, what is his business, and is or is not the business suspicious in relation to money laundering or terrorist financing. The identification requirements aim to create a background check for all customers. This would allow the private sectors to monitor any past and present transactions for suspicious transactions. This information is necessary to avoid illegally gotten gains and tax obligations.

The identification requirements become more complex in two cases. The first is when the customer is acting on behalf of another. In this case, financial institutions are required to establish the identity of the person on whose behalf the transaction is taking place.[64] The second case has to do with the legal entities. In this case, financial institutions are required to confirm the legal existence of the entity and understand its structure. They must particularly make sure that the corporate vehicle is not used to shield a natural person who desires to act with anonymity.[65]

The identification requirements which are obligatory for private sectors to examine, involve customer identification and customer due diligence. Customer identification is the identity of a customer who wants to establish a business relation with a financial institution.[66] For the individual, the type of identity information requested to establish customer identity involves at least a name, address, date of birth, and identification number.[67] For persons other than the individual, additional information required include the principal place of business, local office, or other physical location.[68] There are two main

---

[62]Financial Action Task Force on Money Laundering, Annual Report 1995-1996.

[63]'All regulated firms in the industry and carrying out 'relevant financial business' are required to take reasonable steps to obtain evidence of the identity of new customers – referred to as KYC. KYC serves to help firms to manage effectively their money laundering risk, by reducing the likelihood that they will take on a money launderer as a new customer and increasingly the likelihood that they will detect the use of their products and services for money laundering'. *See* Jeckie Harvey, *Supra* note 48, p.337.

[64]Recommendation 11 of the FAFT (2003)

[65]Recommendation 10 and 11 of the FATF (2003)

[66]Bank for International Settlements, "Basel Comittee on Banking Supervison: Customer Due Dilligence for Banks", October 2001, p.9.

[67]*Ibid.*

[68] *Ibid.*

objectives for establishing the identification requirement. One objective is to prove that the customer is the same person as the name in which the account is under. This is useful for preventing fictitious names and anonymous accounts. The second objective is to obtain documented proof of the customer identity. This is useful for constructing a paper trail in order to facilitate any investigations and prosecutions pertaining to money laundering cases.

In dealing with customer due diligence, the private sectors have the obligation to verify a customer's financial activities and the sources of funds. Identifying and verifying customers' financial activities allow for a consistency check with the expected customer's profile. This is done to see whether any of the business activity is linked to money laundering or terrorist financing. Identifying and ferrying the source of the funds is done to prevent illicit funds from entering the financial system. An interesting question is, when does the financial institution have an obligation to carry out customer due diligence. According to recommendation 5 of the FATF (2003), there are four situations in which customer due diligence should be carried out. These situations are when establishing business relations, when carrying out occasional transactions, when there is a suspicion of money-laundering or terrorist financing, and when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Each private sector is obliged to carry out Customer Due Diligence as mentioned above. However, in the level of implementation, it is left to the conditions in the individual countries. The conditions of financial institutions are different in all countries, so the FATF leaves countries free to implement them based on their rules. However, the main categories from the FATF recommendations that should be considered are risk-based approach. This approach is categorized as high and low risk categories. For the first, any country is asked to perform an 'enhanced due diligence', whereas for the second, countries may decide that financial institutions can apply 'reduced or simplified measures'. This leaves another question, what should be done if a financial institution does not meet the requirements of the above paragraphs of the FATF recommendations. Regarding this issue, three alternatives that may choose are: a financial institution may refuse to open an account, terminate an ongoing contract, or create a suspicious transaction report for the Financial Intelligence Unit (FIU).

Other situations in which a financial institution should increase its due diligence are if they carry out transactions with any Politically Exposed Person (PEP),[69] cross-border correspondent banking,[70] and new or developing

[69]Recommendation 6 of the FATF (2003). Politically Exposed Persons are 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 and important political party officials. *See* Customer Due Diligence for Bank 2001.

technologies.[71] To deal with a customer categorized as PEP, an appropriate risk management system should be in place in the financial institution in order to enable PEP. For this purpose, senior management must establish a business relationship with the PEP in order to measure the source of wealth and conduct an enhanced monitor. In relation to cross-border correspondent banking, the FATF recommends that financial institutions gather sufficient information about the customer's institutions, businesses, reputation of its institutions, and the quality of its supervisors. Finally, in spite of technologies, financial institutions must adopt policies and procedures that handle and monitor wired transactions.

In sum, in applying the international standards, the policy of the banking system follows a risk-based approach. Risk-based approach, according to the FATF, '… identifying and categorizing money laundering risks and establishing reasonable controls [i.e. risk-based] based on risks identified….'.[72] In conducting customer due diligence, for example, there are three categories of high-risk approach needing additional attention by the banking system: high-risk products, high-risk customers, and high-risk geographic locations.**[73]** High-risk products of the banking system which need to enhance due diligence, among others, are wire transfers, private banking relationships, and electronic banking. High-risk customers involve non-bank financial institutions, non-governmental organizations, cash-intensive businesses, and offshore corporations. High-risk geographic locations include jurisdictions identified as non-cooperative countries and primary money laundering concerns.

3.4.2.2. Record-keeping Requirement

As indicated earlier, the identification of customers is an essential part of the anti-money laundering system. Identifying clients[74] and their financial transactions[75] are obligations that impose on business and private sectors

---

[70]Recommendation 7 of the FATF (2003)

[71]Recommendation 8 of the FATF (2003)

[72]Financial Action Task Force on Money Laundering, "Guidance on the Risk-based approach to Combating Money laundering and Terrorist Financing: High Level Principles and Procedures 1-2, available at http://www.fatf-gafi.org/dataoecd/43/46/38960576.pdf. Cited in Richard K. Gordon (2010), *Supra* note 61, p.14.

[73]Office of the Comptroller of the Currency, "Money Laundering: A Banker's Guide to Avoiding Problems", December 2002, p.13.

[74]Copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files, and business correspondence.

[75]Among others are the nature, amount and currency of transaction, the date on which the transaction was conducted, the parties to the transaction, and a description of transaction.

particularly on banks, non-bank financial institutions, and professionals.[76] The following obligation is keeping these records in storage for at least five years after the transaction has been completed.[77] These documents should be stored in a register number in order to be able to retrieve the identity of clients and of their transactions without undue delay. Such records include the amount and types of currency that could be traced. In addition, these documents should be available for facilitating investigation and prosecution of money laundering cases.

By means of a formal request, law enforcement agencies and judicial authorities may access the stored data for facilitating investigation and rendering evidence in money laundering cases. Furthermore, record keeping enables financial institutions to provide a summary of deterrence and detection procedures of money laundering cases. Because the records keeping of these documents are obligatory for banks and non-bank financial institutions, a violation of this obligation will have legal consequences. In some countries, a failure to maintain an adequate record keeping system is an offence punishable by a fine.[78]

3.4.2.3. Suspicious Transactions Reporting

Transaction reporting is one of the essential elements of the anti-money laundering regime needed to detect financial transactions that can reasonably be suspected to money laundering or terrorist financing. The question that remains in this context is what is 'suspicion'? Black's Law Dictionary defines it as 'the imagination or apprehension of the existence of something wrong based only on slight or no evidence, without definitive proof.'[79] From this perspective, the terms 'suspicious' or 'suspicion' refers to the preliminary

[76]'Imposing a new duties on business and private entities involves supply detailed information about their customers to the government, and report voluminous information to regulating agencies. No one may conduct financial transactions with those who we know or strongly suspect illegally obtain funds or who are attempting to avoid tax obligations'. *See* Pamela H. Bucy, "The Fight against Money Laundering: A New Jurisprudential Direction", Alabama Law Review, Vol.44, 1993, p.481.

[77]In fact, some countries required record keeping more than 5 years, such as Australia: 7 years, Germany: 6 years, Hong Kong: 6 years for banks, Italy: 10 years, Portugal: 10 years for transactions, and Spain: 6 years. See Financial Action Task Force, Evaluation of Measures Taken By FATF Members Dealing With Customer Identification. *See* http://www.oecd.org/fatf

[78]In several countries such as Ireland and Singapore, failure to maintain adequate record-keeping system is an offence. *See* Financial Action Task Force, Evaluation of Measures Taken By FATF Members Dealing with Customer Identification, http://www.oecd.org/fatf/evaluati2.htm.

[79]Bryan A Garner, Ed. In Chief, Black's Law Dictionary, Seventh Edition, West Group, ST Paul, Minnesota, 1999, p.1460.

assumptions that need to be analyzed for further measures. In the context of money laundering, a suspicion is a conclusion to which the reporting institution arrives after the consideration of all relevant factors. Suspicious activities may involve transactions that make no economic or commercial sense. Another indication is that transactions have too large account inconsistence with the balance of a customer's account.

Another question is whether to report a suspicious of a crime is the responsibility of individual or collective morality. From a historical perspective, the duty to report a crime has existed in the United States of America since 1822.[80] In one case, Justice Marshall wrote for the Supreme Court that 'It may be the duty of a citizen to accuse every offender and to proclaim every offence which comes to his knowledge; but the law which could punish him in every case, for not performing this duty is too harsh for man'.[81] In this decision, Justice Marshall would like to say that, on one hand, it is an obligation for everyone to report a crime known to them, but on the other, there is no sanction if they do not fulfill this obligation.

In contrast to the strong rhetoric of Justice Marshall, in 1980 the Supreme Court stated that 'the concealment of a crime has been condemned throughout our history… [G]ross indifference to the duty to report known criminal behavior remains a badge of responsible citizenship'.[82] Where it concerns money laundering, the regime of anti-money laundering imposes new duties or responsibilities to the private sectors. Hart considers these duties as *'new minimum conditions of responsibility'* of private citizens.[83] Within this context, it could be said that there is a new moral and legal responsibility imposed on private citizens to report information on customers to the government.[84] Private Citizens who fail to meet these minimum conditions of responsibility face the consequences and condemnation inherent in a criminal conviction.[85] In the context of the American legal system, a bank may become aware of suspicious activities if it has a reason to believe that a transaction may potentially victimize the financial institution, comes from an unlawful source, is used to evade the authorities, or lacks information that justifies the transaction. In this context, any bank is required to report a transaction

[80]Matthew R. Hall, "An Emergence Duty to Report Criminal Conduct: Bank, Money Laundering, and Suspicious Transaction Report", Kentucky Law Journal, Volume 84, 1995-96, p.664.

[81]Matthew R. Hall, *Ibid.*

[82]Matthew R. Hall, *Ibid*, in the case of Roberts and United States.

[83]Pamela H. Bucy (1993), *Supra* note 76, p.856.

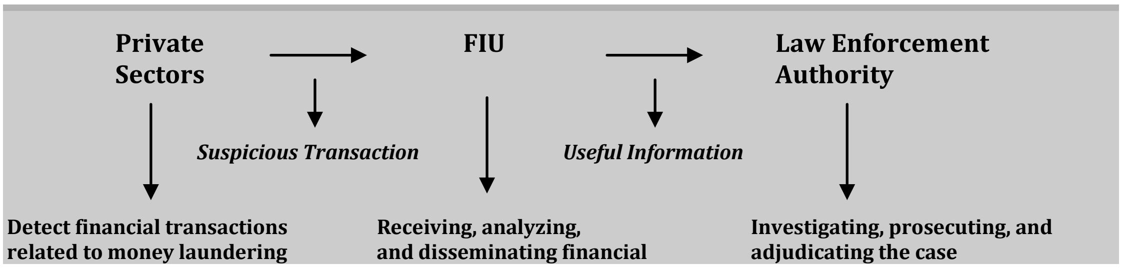
[84]'Imposing new duties on private citizens and thereby recruiting these citizens to aid law enforcement is an appropriate, wise, and effective strategy. The criminal law is one of society's most effective in imposing the duties'. *See* Pamela H. Bucy (1993), *Supra* note 76, p.861.

[85]Pamela H. Bucy (1993), *Supra* note 76, p.856.

conducted or attempted to be conducted, through the bank if the bank knows, suspects, or has reason to suspect that:

a. the bank was an actual or potential victim of a criminal violation;
b. the transaction involved funds derived from illegal activities or was intended or was conducted in order to hide or disguise funds or assets derived from illegal activities as part of a plan to violate or evade any federal law or regulations or to avoid any transaction reporting requirement under federal law;
c. the transaction was designed to evade any regulations promulgated under the BSA; or
d. the transaction had no business or apparent lawful purpose or was not the sort in which the particular customer would normally be expected to engage and the bank knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction'.[86]

The reporting requirements aim at getting useful financial information concerning suspicious transaction related to money laundering from the private sectors and utilizing the information for real investigations. In reporting suspicious transactions, the private sector's task is to detect whether or not any financial transactions related to money laundering or terrorist financing. If the private sector suspects a financial transaction stemming from criminal proceeds, it reports the case to the Financial Intelligence Unit (FIU). The task of the FIU is to analyze the report. Furthermore, if there is an indication of a crime being involved, the FIU forwards it to law enforcement authorities for further investigation and prosecution. Another task of the FIU is to disseminate useful information to the private sectors, law enforcement authorities both in domestic and foreign countries, and the FIU's counterparts all over the world. To the private sector, the information is useful for providing feedback regarding the latest developments in money laundering techniques in the hope that reporting mechanism can develop efficiently. To the law enforcement authorities, the information is useful for carrying out further investigation and prosecution. To the counterparts of the FIU, the information is useful as guidance or additional information for a country needing to investigate money-laundering cases. By way of illustration, the following figure visualizes the mechanism of the suspicious transaction reporting system.



[86]Robert S. Pasley, "Recent Developments in Bank Secrecy Act Enforcement", North Carolina Banking Institute, Vol.9, 2005, pp.62-3.

transactions

Suspicious Transaction Reporting System
Source: The Author

The system of suspicious transaction has developed from non-reporting, voluntary reporting, to mandatory reporting. Initially, there was no need to report suspicious transactions to the competent authorities. The first international instrument regarding this matter is the Basle Committee on Banking Supervision issued in 1988.[87] If banks know or have reasonable grounds to suspect that there is a suspicious transaction, this instrument stipulates the banks to deny assistance, sever relations with the customer, or close/freeze any relevant account.[88] As such, until in the 1980s, there was no obligation to report suspicious transactions to the competent authorities.

From the eighties onwards, the system changed from needless to voluntary reporting. The 1990 FATF recommendations are the first international instrument that introduced the reporting system of suspicious transactions. In this regard, recommendation 16 stipulates that financial institutions should be permitted or required to report suspicious transactions to the competent authorities. This means that the system is a voluntary reporting which gives the choice for member countries to implement a mandatory or permissive reporting system in their financial regulation systems. Subsequently, the FATF Recommendations (1996) changed the reporting system from a voluntary to a mandatory reporting.[89] Recommendation 15, for example, specifies that financial institutions should be given the obligation to report any suspicious transaction to the competent authorities. Accordingly, the FATF Recommendations (2003) also hold the obligation to report suspicious transaction as stipulated in recommendation 13. This recommendation obliges financial institutions immediately contact the Financial Intelligence Unit (FIU) when there is a reason to believe that the transactions are related to criminal activity or terrorist financing.

Comparing between the 1996 and the 2003 FATF recommendations, two aspects are noteworthy: firstly, the 2003 FATF Recommendations add terrorist financing besides money laundering as the reason for reporting requirements; and secondly, if in the 1996 FATF Recommendations the report was directed to the 'competent authorities', that is law enforcement agencies,

---

[87] Basel Committee on Banking Regulations and Supervisory Practices December 1988, Statement on Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering, Preambule

[88] *Ibid.*

[89] By the end of 1999, all members except Canada had a mandatory requirement to report suspicious transactions. *See* FATF Report, Review of FATF Anti-Money Laundering Systems and Mutual Evaluation Procedures 1992-1999, paragraph 68, p, 19, 16 February 2001.

the 2003 FATF Recommendations noted that the report should directly be made with the Financial Intelligence Unit (FIU). This means that the 2003 FATF Recommendations requires the existence of the FIU as a transition before it brings the report to law enforcement authorities. It is why the 2003 FATF recommendations asked the member countries to establish an FIU. Three functions of the FIU are receiving, analyzing, and disseminating suspicious transactions.

Regarding the subject to report a suspicious transaction, this also evolves in accordance with the development of trends in and typology of money laundering activities. In the 1990 FATF recommendations, it is 'financial institutions' that are obliged to report suspicious transactions. The term 'financial institution' in this context refers to banks and non-bank financial institutions.[90] Even though there is no further explanation regarding the definition and scope of non-bank financial institutions, recommendation 11 established a working group which has a duty to examine the possibility of establishing non-bank financial institutions and other professionals subject to these recommendations.

The 1996 FATF Recommendations also still refers to banks and non-bank financial institutions that have an obligation to report suspicious transactions.[91] Non-financial institutions in these Recommendations refer to financial activities as a commercial undertaking by businesses or professions where such conducts are not prohibited. For this purpose, the 1996 FATF recommendations list these subjects in the attached annex[92]. However, in the implementation level, it is left to individual countries to consider the types and scope of financial and non-financial institutions which have an obligation to report suspicious transactions.

The 2003 FATF recommendations extend the subjects having to report suspicious transactions not only to banks and non-bank financial institutions but also to businesses and professions. Businesses and professions here refer to casinos; real estate agents; dealers in precious metals and precious stones; lawyers, notaries, other independent legal professionals, and accountants; trust

[90]The Forty FATF Recommendation (1990), recommendation 9 which reads: 'Recommendation 12 to 29 of this paper should apply not only to banks, but also to non-bank financial institutions'.

[91]The Forty FATF Recommendation (1996), recommendation 8.

[92]List of financial activities undertaken by business and professions which are not financial institutions are: (1) acceptance of deposits and other repayable funds from the public; (2) lending; (3) financial leasing; (4) money transmission services; (5) issuing and managing meansof payment; (6) financial guarantees and commitments; (7) trading for account of customers; (8) participation in securities issues and the provision of financial services related such issue; (9) individual and collective portfolio management; (10) safekeeping and administration of cash or liquid securities on behalf of clients; (11) life insurance and other investment related insurance; (12) money changing.

and company service providers.[93] Apart from reporting suspicious transactions, the 2003 FATF recommendations require countries to report international currency transactions above a fixed amount to a national central agency. This report may be used by competent authorities to investigate the case of money laundering and terrorist financing.

Considering these above explanations, there has been a difference in detailing the scope of non-bank financial institutions and non-financial businesses and professions. This is because international instruments also consider the ability of any state in implementing that obligation. The implementation of the obligation obviously relates to the available resources needed, which involve both material and non-material. Based on these explanations, it can be concluded that there has been a development regarding the reporting system of and the subject to report suspicious transactions. The development of these countermeasures seemingly followed on the progress of money laundering activities that developed from simple forms to complex, sophisticated as well as professional ones.

Suspicious transaction reporting systems have two models that involve objective and subjective-based reporting. The objective model is based on the above threshold amount of financial transactions, for example, $10,000.[94] If the reporting institutions receive a transaction above the threshold, they are obliged to report to the competent authorities. The history of this model has its roots in the Bank Secrecy Act of 1970.[95] The subjective model, on the other hand, is based on the suspicion that the transaction is derived from illicit funds.[96] This model has its roots in a series of multilateral initiatives introduced between 1980 and 1992.[97] Great Britain, Switzerland and some other European Countries follow this system.[98]

From the perspective of a financial institution and an FIU, the implementation of the two models has strengths and weaknesses. For financial institutions, the implementation of an objective model incurs a high cost but requires low skills, whereas the implementation of a subjective model incurs a low cost but requires high skills. The objective model is costly because all transactions above the threshold should be reported, which is a burden for the reporting institutions. It requires low skills because there are no or limited

---

[93] The Forty FATF Recommendation (2003), recommendation 12 and 16.

[94] R.K. Nobel and C.E. Columbic (1997-1998), "A New Anti-Crime Framework for the World: Merging the Objective and Subjective Models for Fighting Money Laundering", International Law and Politics, Volume 30, p.107.

[95] *Ibid.*

[96] *Ibid.*

[97] *Ibid.*

[98] *Ibid.*

skills needed to select financial transactions above the threshold. The subjective model is low cost because it is limited to suspected transactions; and high skill, because employees of the reporting entities need additional skills to select which transaction is suspicious. On the other hand, for an FIU, the implementation of the objective model is neither high cost nor high skill whereas the implementation of the subjective model is neither low cost nor low skill. For the objective model, this is so because the FIU needs much more human resources which has specific skills in considering whether the transaction is or is not suspicious. The subjective model is neither low cost nor skill because the financial institutions have been screened by reporting entities before they are sent to the FIU for further analysis.

Considering the advantages as well as disadvantages of the two models, a recent development is that most countries tend to mix these two models. For example, in the United States of America, after issuing the Money Laundering Control Act (MLCA) in 1986, there was an integrated of objective and subjective models. The combination of these two models is considered an ideal one, as argued by Nobel and Columbic that the objective model must put a greater emphasis on subjective evaluations that determine whether a particular transaction is unusual, illegal, or related to money laundering. The subjective model on the other hand must adopt certain reporting standards for currency transactions above a certain amount or of a certain nature.

In term of practice, in February 1985, a grand jury indicted the Bank of Boston for failing to report on valued $1.2 billion in 1163 domestic and foreign currency transactions.[99] Further investigation revealed that the bank had granted an exemption from the reporting requirement to reputed members of notorious Boston organized crime families. A former teller indicated that the bank routinely accepted large amounts of cash in small denominations from members of this family without filing reports with the IRS. The Bank of Boston eventually pled guilty and paid a $500,000 fine for its actions. Another case was Crocker National Bank failing to report 7877 transactions and was fined $2.25 million.[100] The Bank of New England was also found guilty of 31 offences and fined $1.2 million.[101]

---

[99]MarryAnn E. Orr, "The Currency Reporting Laws and the War on Organized Crime" 20 Suffolk University Law Review, 1986, p.1078.

[100]Bonnie Buchanan, "Money Laundering: A Global Obstacle", Research in International Business and Finance, Vol.18, 2004, p.122.

[101]In 2000, Peter Berlin, a Russian émigré, and his wife, Lucy Edwards, also a Russian émigré, who was a BNY vice president, pleaded guilty in U.S. District Court for the Southern District of New York to conspiracy to commit money laundering and to operate an unlawful banking and money transmitting business, and to aid and abet Russian banks in conducting unlawful and unlicensed banking activities in the United States. Berlin and Edwards teamed in their illegal scheme with two Moscow-based banks that offered to move money for "clients" without regard to the source or ownership of the funds. During the three and half years Edwards and Berlin were

How to identify suspicious transactions is a difficult question to answer. The standard obliges banks and other reporting entities to report suspicious transactions when they know or have reasonable grounds to suspect that any property represents the proceeds of illegal activities, such as money laundering or terrorist financing. From this conception, there is no standard requirement to follow in order to decide whether any transaction is suspicious or not. However, the FAFT recommendations indicate that any transactions such as a complex, unusual large transaction, and an unusual pattern of transaction which have no apparent economic or visible lawful purpose.[102] On the implementation level, every country formulates different indicators to define a suspicion. Some define it as 'factual observation' (Swiss), others as an 'objective criterion' (Australia); or as having '35 indicators' (Luxemburg); or 'guidelines which are not part of the law or regulation and are not binding' (Canada); or 'use more objective of any fact which might be an indication of money laundering' (EU Directive); or 'based on the unusual nature of a transaction' (the Netherlands).[103]

FinCen has a different opinion as to the guidance for completing a suspicious transaction report. In this case, suspicious fund transfers can be observed in three different ways. Firstly, a disparity between the stated business or activity of a customer and the actual fund transfer. Secondly, fund transfers that do not provide an adequate amount of identification information. Thirdly, the use of temporary accounts for storing funds from multiple sources and without a clear business purpose.[104]

Whatever the indicators given to determine whether a financial transaction is suspicious, two major indicators could be used as guidelines:

---

involved in the illegal operation, approximately $7 billion flowed through the BNY accounts they had established to third-party transferees around the world. BNY admitted its anti-money laundering control lapses, entering into a non-prosecution agreement with the U.S. Attorneys' Offices for the Southern and Eastern Districts of New York in November 2005 to resolve two separate criminal investigations. BNY agreed to forfeit $26 million to the United States, and to pay $12 million in restitution to victims of a fraud scheme in the Eastern District case. *See* U.S. Department of Justice 2008, "Overview of the Law Enforcement Strategy to Combat International Organized Crime", April 2008, p.5.

[102]Rrecommendation 11 of the FATF (2003). 'Once such descriptive links are established further analysis can examine whether a transaction between identified persons looks unusual or suspicious. For example, if person A has a criminal record or has made past suspicious transactions, payments to Company B or C could raise suspicion that they constitute criminal proceeds or laundering. This suspicion could be raised further if person A owns or controls company B and company B itself has no known business. If C has a record as a terrorist or terrorist organization, a suspicion might be raised that the payments were to finance terrorism'. *See* Richard K. Gordon, *Supra* note 61, p.38.

[103]Paul Gleason and Glenn Gottselig (Editing), *Financial Intelligence Units: An Overview*, International Monetary Fund and World Bank, 2004.

[104]Matthew R. Hall, *Supra* note 80, p.23.

firstly, transactions with large deposits and withdrawals that do not correspond with a customer's assets and incomes; and secondly, transactions that are made frequently within short periods of time. The reporting entities need to judge whether or not an individual transaction is suspicious by considering all relevant available information. Based on the two indicators, it can give off tell-tale signs. The following are indications of suspicious transactions; the listing is not exhaustive:

General Signs
- Assets withdrawn immediately after they are credited to an account;
- A dormant account suddenly becomes active without any plausible reason;
- The high asset value of a client is not compatible with either the information concerning the client or the relevant business;
- A client provides false or doctored information or refuses to communicate required information to the bank;
- The arrangement of a transaction either insinuates an unlawful purpose is economically illogical or unidentifiable.

Signs regarding cash transactions
- Frequent deposit of cash incompatible with either the information concerning the client or his business;
- Deposit of cash immediately followed by the issuance of checks or transfers towards accounts opened in other banks located in the same country or abroad;
- Frequent cash withdrawal without any obvious connection with the client's business;
- Frequent exchange of notes of high denomination for smaller denominations or against another currency;
- Cashing checks, including traveler's checks, for large amounts;
- Frequent cash transaction for amounts just below the level where identification or reporting by the financial institution is required.

Signs regarding transaction on deposit accounts
- Closing of an account followed by the opening of new accounts in the sama name or by members of the client's family;
- Purchase of stocks and shares with funds that have been transferred from abroad or just after cash deposit on the account;
- Illogical structures (numerous accounts, frequent transfers between accounts).
- Granting of guarantees without any abvious reason;
- Transfer in favor of other banks without any indication of the beneficiary;
- Unexpected repayment, without a convincing explanation, of a delinquent loan;
- Deposit of checks of large amount incompatible with either the information concerning the client of the relevant business. [105]

[105] Paul Allan Schott, "The Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism", 2003, p.VI-20.

3.5. Final Remarks

It is at this point that in responding to the cross-border methods of money laundering, the anti-money laundering regime has developed towards internationalization. The internationalization of the regime has been marked by the establishment of international instruments, such as the Vienna Convention on Drug Trafficking and the Basle Committee on Banking Regulations. The former refers to the internationalization of criminal aspects pertaining to money laundering; while the latter addresses the internationalization of financial regulation principles that prevent the use of financial sectors for money laundering purposes. These principles are then manifested into ‘international standards’ in preventing and detecting money laundering practices. The establishment of international standards is one effort to internationalize anti-money laundering measures. The efforts are needed to manage the problem internationally that cannot be resolved by an individual country.

The creation of international standards in the framework of the AML regime was developed by the Financial Action Task Force on Money Laundering (FATF). These standards are regarded as the most significant factors in the prevention and detection of money laundering practices. The FATF imposes several obligations on banks, non-bank financial institutions, as well as professional agencies to identify their customers, to keep financial information for at least five years, and to report suspicious transactions to the Financial Intelligence Unit (FIU).

Even though ‘international standards’ have been acknowledged as an effective means in the prevention and detection of money laundering practices, this research reveals that there have been shortcomings in implementing these standards. Firstly, the cost for implementing the international standards is very high, while the positive impact on private entities is not direct. Secondly, due to the complete legislations and regulations in the banking system, criminals try to find other fields outside the banking institutions. Such fields include non-bank financial institutions, which comprise of varied methods such as money laundering through insurance companies, security sectors, travel agencies, trade-based transactions, casinos, underground banking system, etc. In the same vein, criminals also expand on the methods that are used for conducting money laundering. Those methods involve money laundering conducted by professionals such as accountant, lawyers, and notaries*****