Anti-Money Laundering: Why policy makers and business leaders need to work together more effectively

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Money laundering can be concisely described as the process of concealing the proceeds of crime. This has, and continues to be a global financial vice. Accurately measuring the dollar or shilling extent of money laundering is extremely difficult due to the secret nature of the transactions involved.

Previous attempts to do this include an IMF assessment in 1998 that suggested that money laundering was equal to 2-5% of global GDP.

Since the intensification of the war against terror by the international community, and in the wake of the September 2001 terrorist attacks on the United States, as well as the passage of the PATRIOT Act by that country, a coordinated intergovernmental effort has been underway to mitigate money laundering.

This has been seen most visibly through a reinvigorated Financial Action Task Force (FATF).The FATF is an intergovernmental policy-making body established in 1989 and charged with setting standards and promoting effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing, the global drug trade and other related threats to the integrity of the international financial system.

With the enactment and operationalisation of the Proceeds of Crime and Money Laundering Act 2009, Kenya, in conformance with the above international trend, sought to strengthen her anti-money laundering (AML) legal and enforcement regime. The Act brought about two developments which were very welcome in the effort to curb anti-money laundering in the country.

One of the developments was the establishment of the Financial Reporting Centre (FRC) whose principal role is to assist in the identification of laundered funds. It does this partly by acting as a collation point for various institutions to report suspicious transactions before conveying this information to the appropriate law enforcement, intelligence and/ or regulatory authorities locally and/or internationally for further action.

Kenya's FRC, known as a Financial Intelligence Unit (FIU) in AML parlance, is one of the most critical institutions that the FATF requires countries worldwide to set up and operationalise. It is Kenya's connection point to the global AML architecture.

Second development was the clarification on which institutions have primary responsibility to report suspicious transactions to the FRC. Hitherto, in the minds of most, only financial institutions bore this responsibility. Now, however, casinos, realtors, jewelry sellers and various regulatory bodies such as the Central Bank of Kenya, the Capital Markets Authority as well as the Insurance Regulatory Authority,

amongst others, have been identified explicitly in law as Reporting Institutions (RIs). This has been a welcome step in widening the opportunity to net additional suspicious transactions that could amount to money laundering.

Like other kinds of fraud however, money laundering remains a dynamic challenge, despite the best efforts of individual countries and the international community. As a result, there are several AML related challenges that require a multi-stakeholder approach to mitigate. One of the challenges is - unregulated emerging technology which poses real money laundering risks. Use of relatively new payment methods such as mobile money, online banking and purchasing platforms such as paypal is rapidly increasing with the continued global digitization trend. On these platforms, it is still permissible to execute a wide range of online transactions anonymously. The dearth of stringent controls to regulate these platforms is worrying.

The lack of awareness amongst non-financial institutions of the risks money laundering poses to their business is also of concern. Like financial institutions, they need to accurately identify their clients and their operations, verify the information they provide and to report suspicious transactions to their local FIU.

Even amongst financial institutions which presumably are aware of the risks posed by money laundering and of their obligations as RIs, a clear incentive problem exists. Why report suspicious transactions when there are (substantial) fees to be earned from money laundering? Clearly, the extent to which the various AML laws are enforced and most importantly, the level/ amount of sanctions applied to institutions found to have laundered funds will be telling.

While many countries have set up FIUs such as Kenya, many of these remain understaffed, underfunded and lacking in specialist AML skills. Deeper co-operation with both the private sector and development partners where these skills may exist to a greater degree will be important in fully operationalising FIUs across the world such as the FRC here in Kenya.

Another challenge is the fact that corruption and money laundering are intrinsically linked, as both are generally committed to obtain or hide financial gain. An unfortunate coincidence is that many of the countries with the highest perceived levels of corruption also have the lowest capacity to build effective AML structures.

As businesses go global by satisfying the needs that unite cultures, money launders find additional opportunities to exploit legal and knowledge gaps between different jurisdictions. To deter them, policy makers and business leaders must collaborate more effectively to create a control environment that effectively combats money laundering without stifling the ability of businesses to grow, create wealth and promote financial inclusion.