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The Policing of Money Laundering: The Role of Dubai Police

Being a Thesis Submitted for the Degree of

Doctor of Philosophy

In the University of Northumbria at Newcastle

By

Juma Alrahoomi

June 2011

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Dedications

*To my parents, wife Sara, and my children Ayesha, Shamma, Khalifa and Ahmad who
always wished and prayed for the successful completion of my PhD study*

Abstract

This thesis examines trends and issues in the policing of money laundering in Dubai focusing on the role of Dubai Police in money laundering control. It acknowledges that money laundering is a global phenomenon and Dubai is not an exception. It explores the existing governmental initiatives aimed at addressing money laundering and the financing of terrorism. Whilst the unit of analysis in this thesis is the Emirate of Dubai, the thesis also considered the impact of regional (GCC) and international legislations and regulations (UN and FATF) on the policing of money laundering in Dubai. It is argued in this thesis that the major problem with policing of money laundering in Dubai is the lack of accountability of the AMLSCU that plays a leading role in the fight against money laundering. In addition, the information sharing amongst various government agencies and financial institutions is extremely poor. Where information pertaining to money laundering cases is shared, they are inconsistent and haphazard. Consequently, the government is facing problems to effectively combat money laundering in the Emirate. Other factors identified as major impediments are the lack of national database of money laundering cases which can be shared amongst the Police, the Customs Authority and the AMLSCU of Central Bank of UAE. The thesis also argues that poor training and lack of multi-agency/interagency working is making the work of Dubai police difficult. Finally, it is argued that an a formal, integrated and intelligence-led information sharing model such as the UK National Intelligence Model (that draws on the importance of multi-agency working, information sharing and accountability) can serve as a more effective approach to the policing of money laundering in Dubai.

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I am also extremely grateful to my parents, who gave me countless support, and strength to conduct this research. Without their encouragement, it would have been impossible to complete this thesis. Also, special thanks to my father and mother-in-law for their support and encouragement.

This acknowledgement would be incomplete without a mention of my dear wife Sara, who demonstrated and provided immense understanding, encouragement as well as great sacrifice during the duration of this research. To my beloved children, Ayesha, Shamma, Khalifa and Ahmad- thank you for your understanding. I pray that you all will always stay strong, healthy and strive to maximise your potentials in all your undertakings in the years to come.

Juma Alrahoomi

DECLARATION

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

Name:

Singnature:

Date:

Abbreviations

AMLR 2000	Anti-Money Laundering Regulations 2000
AMLSCU	Anti-Money Laundering and Suspicious Cases Unit
A OCD	Anti-Organized Crime Department
CML 2002	Criminalization of Money Laundering 2002
CTO 2004	Combating Terrorism Offences 2004
FATF	Financial Action Task Force
FSA	Financial Service Authority
GCC	Gulf Cooperation Council
ILP	Intelligence Led Policing
MENAFATF	Middle East and North Africa Financial Action Task Force
NAMLC	National Anti-Money Laundering Committee
NCIS	National Criminal Intelligence Service
NIM	National Intelligence Model
SOCA	Serious Organized Crime Agency
TOC	Transnational Organized Crime
UAE	United Arab Emirates

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Introduction

The problem of controlling money laundering is a significant issue confronting many nation states. The various attempts to address money laundering are often discombobulated by continuous changes in nature of the crime. This thesis presents a critical evaluation of the trends and issues in the policing of money laundering in Dubai. It examines the ways in which the law enforcement agencies and other governmental agencies in Dubai are tackling the problem of money laundering and the financing of terrorism. The study of the control of money laundering in Dubai is significant due to the position of Dubai in the United Arab Emirates (UAE) as well as its position as an international financial centre. This thesis examines the following:

- a) The nature and extent of trans-national organised crime and money laundering in Dubai;
- b) The political, legal and inter-agency structures in Dubai and the UAE for the control of money laundering. Specifically, the thesis examines the roles that the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) of the UAE Central Bank and the Anti-Organized Crime Department (AOCD) of the Dubai Police play in this set-up; the legal set-up in place for the sharing of intelligence between these two key agencies and the nature of the partnership that exists between other agencies involved in money laundering control in Dubai.
- c) The strength and weaknesses of the AOCD of the Dubai Police in terms of investigating money laundering cases and, in the light of the findings of the study, what changes are necessary in order to have a more effective system of money laundering control in Dubai.

Organized crime is considered as one of the most dangerous crimes, not only in terms of the harm it causes to individuals and governments, but to society as a whole. It has also been acknowledged that organised crime is the most difficult crime to control and this is largely due to its sophistication and transnational nature. Money laundering is a unique form of organised crime because it thrives on other forms of organised crime such as drug trafficking, prostitution and human trafficking. Unlike other forms of organised crime, it can be disguised perfectly through legitimate business activities such as the running of luxury restaurants, jewellers and casinos to mention but a few. Indeed, its practice often opens doors for administrative, political and financial corruption, and increases the chances of other criminal activities such as bribery, profit making from public jobs, forgery and counterfeiting. Consequently, it damages the economy of affected countries and lead to social and political decline. Hence, the efforts to research organized crime in order to provide a better understanding of the phenomenon, including a critical analysis of current means of preventing or controlling the crime, cannot be overestimated.

The federal government of the UAE is very serious about tackling organized crime and money laundering in the Emirates. This is clear, not only in terms of the full support given by the government to international legal and law enforcement arrangements to combat these crimes, but also in the passing of its own laws criminalising money laundering and many other sorts of financial crimes including the financing of terrorism.

However, the enactment of law, on its own, does not provide effective enforcement unless those who are required to enforce the law work together as equal partners in the law enforcement process. The money laundering laws in the UAE grant exclusive powers to the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) of the UAE Central Bank. This enables this unit to decide which transactions are possibly cases of money laundering

and to monitor the process of the investigation and the prosecution of suspected cases. Nevertheless, the police and the other government agencies involved in money laundering control cannot question the decision of AMLSCU when the Unit decides not to declare a particular transaction as suspicious. In addition, the Dubai police do not have the power to compel AMLSCU to release intelligence/information on suspected cases when AMLSCU has decided not to do so. Thus, it appears that the existing structure is not transparent enough and this raises questions of accountability.

What is the basis of the present structure of money laundering control in Dubai? What are the implications for those who work within the system, namely the police and AMLSCU officials? What are the perceptions of these officials about the system within which they operate? How do the views of these officials point us in the direction for change? These are the key questions that this thesis addresses.

The need for change is imperative if Dubai is to be more effective in controlling money laundering. While the country can boast several successes in terms of sensational cases of arrests of money launderers, it is the position of this thesis that more could be done if there was a formal structure in place for the sharing of intelligence between the police and AMLSCU, as well as other government agencies involved in the control of money laundering, in order for them to work together as equal actors in a partnership arrangement backed by law.

The use of intelligence is of strategic importance in crime control. Experience in other jurisdictions has led to the realisation of the fact that it is problematic when, in a law enforcement context involving multiple agencies, one agency monopolises the intelligence without disclosing it to the others. A multi-agency or inter-agency approach to crime control requires that agencies work as equal partners and should be willing to share

information/intelligence in order to have a better and more realistic approach to the control of the crime in question. This is particularly true of drugs enforcement. This thesis will explore the practicalities of this happening with regard to the policing and control of money laundering in Dubai and will consider whether a model of intelligence-led policing approach is feasible in the UAE. The thesis rests on the theoretical view that the police have a legitimate mandate to enforce the law, and therefore should be at the centre of any law enforcement arrangements to control crime.

This research is significant as it looks at alternative approaches to the policing of money laundering in Dubai. The study will help the government and policy makers in Dubai to identify areas for improvement in the existing laws and regulations aimed at combating money laundering in the country.

My personal reasons and motivation for conducting this research

There were many reasons that motivated me to conduct my PhD study on the policing of money laundering in Dubai. As a serving police officer in the Dubai Police, I am familiar with the nature and extent of major crimes facing Dubai. Dubai is a multi-cultural society where people from different parts of the world engage in business and employment. Most of the crimes committed in Dubai are economic in nature. The financial system of Dubai is often blamed for being a conduit in terms of facilitating and supporting the process of money laundering. The tragic incident of September 11, 2001 on the twin towers in the USA brought Dubai into the international limelight in the debate about money laundering and the financing of terrorism. The financial institutions of the UAE, especially in Dubai, came under extreme pressure from the international community due to the allegations that its financial system was

being used by Al-Qaeda to finance its terrorist activities worldwide. The hijackers were alleged to have used banks in Dubai to transfer money to the USA. In fact, in 1998, Al-Qaeda used the Dubai Islamic Bank to transfer funds in order to finance the bombing of the US embassies in Kenya and Tanzania (Winer, 2002). In this respect, the Government of the UAE have been under immense international pressure to improve upon and tighten its financial regulatory systems against money launderers, especially those who intend to launder money in order to finance the cause of international terrorism. Although, the phenomenon of money laundering is not unique to Dubai but is a global issue, the said incident brought disrepute to the economy of the Emirates and to Emirati society. Therefore, I decided to research money laundering in Dubai in the hope of coming up with recommendations that would enable the government of Dubai to improve its existing anti-money laundering control mechanisms.

Since the said incident, I started to read literature about the problem of money laundering in general and in Dubai in particular. Being a police officer, I was interested in the role that the Dubai Police is playing in the process of controlling money laundering in the Emirates. It was depressing to know that the Dubai Police has a very limited role in the investigation of money laundering cases in the Emirates. In most developed part of the world, the police play an active role in the fight against money laundering, whereas in Dubai, the situation is completely the opposite, with the UAE Central Bank in control of the legal process.

Before commencing on this research, I conducted a literature search to find out if any research had been conducted on money laundering in Dubai and the UAE. It was found that a number of studies have been conducted in this respect. However, the focus of these studies has been mainly on the legal regulation of money laundering in the Emirates; the rules and regulations and the infrastructure established for the control of money laundering in the

country. Accordingly, most of the studies were generally descriptive and limited in their focus. None of these studies focused on the role of the Dubai Police in combating money laundering in the Emirates, or how the money laundering legal structures operate in practice. The acknowledgement of the lack of research on the role of the Dubai Police in controlling money laundering was the main reason why the Dubai government accepted my application to conduct my doctoral research into this topic. As far I know, this is the first study that focuses on the role of the police in controlling money laundering in Dubai.

Structure of the thesis

This thesis starts with an introductory chapter that explains the reason for conducting this study. It also describes the story of how and why I choose the research topic. This chapter also highlights the significance of the study, along with its limitations.

Chapter One entitled *Organized Crime: The Problem of Definition* provides the theoretical review of the concept of ‘organized crime’. This chapter highlights some of the major debates about the meaning of the concept and identified the fact that there is no consensus about the definition of organized crime. The history of organized crime is traced back to the USA from where the concept emerged. The chapter then highlights the early understandings of organized crime which, for most of the Twentieth Century, has been racially defined. The chapter shows how the nature and extent of organized crime has been transformed globally, especially during the last few decades. Since the end of World War II, organized criminals have benefited from the fruits of globalization and have now expanded their operations to different parts of the world. In this respect, the chapter shows how advancements in technology have facilitated organized criminals to expand the scope of their

actions globally. Thus, the chapter also discusses the move from organized crime to transnational organized crime.

Chapter Two discusses the phenomenon of money laundering in detail. The chapter starts by defining the meaning and purpose of money laundering. It explains some of the main reasons for the continued existence of money laundering. How money laundering is affected/promoted and/or facilitated by global politics is also discussed in this chapter. The chapter then focuses on the money laundering problem in the UAE generally, and in Dubai in particular. In this regard, the chapter discusses the ‘Hawala’ - a traditional remittance system which is also one of the oldest forms of informal banking commonly practiced in Eastern and Middle-Eastern countries. In recent years, the Hawala has come under pressure, accused of being a form of money laundering. Finally, the chapter describes how, in recent years, money laundering has been linked to the financing of international terrorism.

Chapter Three focuses on the international legal and administrative arrangements in place to control money laundering, both globally and regionally, and the impact on Dubai. This chapter is divided into two sections. Section one presents the international efforts undertaken to combat money laundering at the global level. It includes UN initiatives such as the Basle Committee on Banking Regulations (1988), the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention on Transnational Organized Crime (2000). The forty recommendations devised by the Financial Action Task Force (FATF) are also included in this chapter. The second section of the chapter highlights some of the regional efforts made for the eradication of money laundering. This section highlights the initiatives undertaken by the European Union and the GCC for the eradication of money laundering at regional level. These include the European Union’s Council of Europe Convention on Laundering, Search, Seizure and Confiscation from the

Proceeds of Crime (1990). Similarly, the Arab countries have also taken steps to eradicate money laundering in the region. These measures include the Arabic Convention on Countering Terrorism (1998), the Guiding Arabic Draft Law on Countering Money Laundering (Amended in August 2002) and the establishment of the Middle East and North Africa Financial Action Task Force (MENAFATF) in 2004

Chapter Four explains the research methodology adopted for conducting this study. It highlights how the study area was accessed, the type of data collection tools used, and the types of people interviewed. The chapter presents a detailed picture of the way fieldwork was conducted, the theoretical foundations of the research methodology adopted, the rationale for choosing the research approach, the ethical issues considered, and the limitations of the study.

Chapter Five entitled *The Legal, Political and Inter-Agency Arrangements for the Policing of Money Laundering in Dubai* is a critical assessment of the legislative and administrative arrangements in existence in Dubai for combating money laundering. It presents a historical account of the development of anti-money laundering laws in the country. In addition, it explains the key features of the three main pieces of legislation, namely the Anti-Money Laundering Regulations 2000, the Criminalization of Money Laundering 2002 and the Combating Terrorism Offences 2004. It also explains the legal roles and responsibilities of the different public agencies tasked with controlling money laundering in the Emirates, namely the National Anti-Money Laundering Committee (NAMLC), the Financial Institutions, the Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) of the UAE Central Bank and the Anti-Organized Crime Department of the Dubai Police. The chapter concludes with a discussion of some of the key problems facing the anti-money laundering control system in Dubai. Thus, the chapter sets the scene for the analysis of the empirical data in the following chapters.

Chapter Six presents the analysis of the empirical data collected during the fieldwork for this research. This chapter is based on the views of the 10 bank managers, 15 officials of AMLSCU, and 15 police officers from the Anti-Organized Crime Department of Dubai Police interviewed during the fieldwork. The chapter discusses respondents' views with regard to key issues about how the anti-money laundering system works in practice. Specifically, the chapter highlights the views and opinions of police officers about the investigation of money laundering cases and the problems they are facing in this regard. Finally, the chapter discusses some of the main problems that all the parties claimed they were facing with regard to the sharing of information on suspected money laundering cases.

Chapter Seven provides explanations in terms of the fact that the strategy for combating money laundering in Dubai is old fashioned and reactive in nature. In most developed countries of the world, the policing of organized crime and money laundering is done in a proactive manner. In this respect, the law enforcement agencies collaborate in sharing and analysing intelligence/information so that they can take concerted action with regard to the control of this crime. This chapter, therefore, describes some known approaches to intelligence sharing in law enforcement such as Intelligence-Led Policing (ILP) and the British National Intelligence Model (NIM). Unfortunately, such collaboration does not exist among the law enforcement agencies in Dubai. This is considered a major and significant flaw. Suggestions are made as to how Dubai could adopt a more proactive approach to money laundering control with the police at the centre of a structured intelligence-led approach to the control of money laundering in Dubai.

Chapter Eight draws on the research findings and argues that the Dubai government must change its strategy by enforcing a change in the existing laws that will facilitate a more collaborative approach on the part of the different agencies responsible for addressing the

problem of money laundering. In addition, it also highlights the fact that important lessons should be learned from the experiences of other countries, especially the developed countries, in respect of their efforts in tackling money laundering, and that new initiatives should be introduced in the Emirates to effectively control money laundering. The chapter ends with recommendations to the Dubai government on how the current system could be improved, including legal changes necessary to allow for civil confiscation of proceeds derived from organized crime and for a mechanism to be put into place to ensure the accountability of AMLSCU and the sharing of intelligence between the Unit and the AOCD of the Dubai Police.

The Government of Dubai is committed to controlling money laundering on its soil. In this respect, it has introduced anti-money laundering laws and put administrative mechanisms in place aimed at ensuring that culprits/suspects are apprehended and prosecuted. However, the fight against money laundering control in the country is far from over.

Limitations of the study

The United Arab Emirates consists of seven states and the problem of money laundering is common to all of them. However, keeping in view the time restrictions and the financial constraints, this study is limited to the administrative jurisdiction of the Dubai Police Force. It would require more time and additional resources to be able to extend the scope of the study to the other six states of the United Arab Emirates. More importantly is the fact that every state in the United Arab Emirates has different rules and regulations and institutional arrangements for dealing with the problem of money laundering. Therefore it would be very difficult to extend the scope of the study to the other six Emirates as it would create practical problems and there is danger of losing the scope of the study.

Political Map of the United Arab Emirates, showing Dubai.



Chapter One

Organized and Transnational Crime: A Review of the Literature

1.0 Introduction

‘Organized’ crime is increasingly becoming one of the world’s greatest problems. This chapter addresses some of the ambiguities surrounding the definition of organised crime. It examines some of the major debates associated with defining the term ‘organized crime’. In addition, a brief history of organized crime is provided through a review of the development of ‘organised crime’ in the United States of America (USA) where it is generally believed that the concept of organized crime developed. This discussion includes some of the early debates on organized crime that are based on ethnicity. Finally, the global nature of the crime is discussed; how, since the end of the Second World War, and with the advancement of globalization and the globalization of the world economy, ‘organized’ criminal groups have taken full advantage of global technological and scientific innovations such as the Internet to expand their operations internationally. The advancement of technology and globalization have greatly facilitated the illegal operations of organized criminal groups across international borders, boosted their effectiveness and made it easier for them to continue to expand their activities undetected. The result is the increase in the types of criminal activities that ‘organized’ criminals now engage in.

Organized crime activities involve mainly the provision of illegal goods and services. The making of, and trafficking in, narcotics (illicit drugs), child pornography, sophisticated credit card fraud, kidnapping for profit, extortion, illegal toxic waste dumping, tax and VAT evasion, intellectual property theft (for example, video and audio piracy and product counterfeiting), human trafficking and prostitution are some of the criminal activities now

believed to be commonly engaged in by ‘organized’ criminals (see Levi, 2007:777). The organized criminal exploits and capitalises on ordinary peoples’ needs for illegal or proscribed goods and services (Caiden, 1985). A common denominator is the pursuit of financial gain and, in some cases, political power, where organised crime proceeds are used to support political causes, for example, through the financing of terrorism. Thus, this chapter sets the background to a fuller discussion of money laundering, a form of crime often associated with organized crime, in later chapters.

1.1. Definition of Organised Crime

The term ‘organized’ crime is often used in two different senses. First, in terms of the criminal activity itself, and second in terms of the organizational aspect of the crime (see Woodiwiss, 2000). Most definitions focus on the organizational aspect rather than on the criminal act itself. Sometimes, the definition includes the means of commission of the crime. According to Maltz (1976:342) these include ‘...violence, theft, corruption, economic power, deception, victim collusion or participation’; or ‘...threat of violence’ (cited in Levi, 2002:880). Thus, historically, the term has been used synonymously with, or to refer to, mafia-like criminals, gangsters, the mob and the like. This view has significantly affected the perception of organized crime for a very long time.

However, the perception that ‘organized’ crimes are gang-like, has been challenged by contemporary writers on organized crime. For example, according to Cressey (1969:319), ‘...an organized crime is any crime committed by a person occupying, in an established division of labour, a position designed for the commission of crime, providing that such division of labour also includes at least one position for a corrupter, one position for a

corruptee, and one position for an enforcer’. According to Maltz (1976:342), ‘...an organized crime is a crime committed by two or more offenders who are or intend to remain associated for the purpose of committing crimes’. A common denominator of ‘organised’ crime is the desire to make profits. According to Cressey (op.cit: 72) the main aim of organised criminals is to “maximise profits by performing illegal services and providing legally forbidden products demanded by the broader society within which it lives”

Official definitions of ‘organized’ crime have also focused on the ‘organizational’ aspect of the crime. In 1998, the European Union proposed a definition of organised crime in order to consolidate policy on the subject, and to make it a criminal offence to participate in a criminal organisation in the member states of the European Union. According to Article 1 of Joint Action of Justice and Home Affairs (JHA) Council of the EU:

A criminal organisation shall mean a lasting, structured association of two or more persons, acting in concert with a view to committing crimes or other offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such crimes or offences are an end in themselves or a means of obtaining material benefits and, if necessary, of improperly influencing the operation of public authorities (European Union, 1998: cited in Wright, 2006).

In Britain, the National Criminal Intelligence Service (NCIS) - the main government UK agency concerned with the gathering of information on organised crime – defined organised criminals as:

Those involved on a continuing basis, normally working with others, in committing crimes for substantial profit or gain, for which a person aged 12 or over on first conviction could expect to be imprisoned for three or more years. (NCIS UK Threat Assessment Report, Para 1.1 cited in Lea, 2005)

Describing the form of the criminal organisation, the NCIS has this to say:

The term 'organised crime group' is often used when referring to the activities of serious and organised criminals and in some instances it best describes the way those concerned have organised and see themselves. However, the terms can also be misleading. While there are certainly some organised crime groups that resemble the traditional British 'firm' or Italian mafia, with permanent members each with a distinct role, a hierarchy in which there are clear chains of command and communication, there are other groups that are, in practice, loose networks. The members of those networks coalesce around more prominent criminal(s) to undertake particular criminal ventures of varying complexity, structure and length. In the latter instance, the criminals may not think of themselves as being members of any group, and individuals may be involved with a number of sub-groups within the network, and therefore be involved in a number of separate criminal ventures at any one time (NCIS UK Threat Assessment Report, 2005. Para. 2.7 cited in Lea, 2005)

Article 2 of the United Nations Convention against Transnational Organised Crime, which serves as a reference point for all EU countries, also offers a similar definition with emphasis on the structural phenomenon of organised crime. The Convention proposed these operational definitions:

An Organised Criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain directly or indirectly, a financial or other material benefit;

- (a) 'Serious crime' shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or more serious penalty;
- (b) 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence or does not need to have formally defined roles for its

members, continuity of its membership or a developed structure (United Nations, 2004)

Furthermore, the International Police Information Exchange Agency defines an organized criminal group as:

Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption (Interpol Conference, 1998, cited in Lea, 2005)

However, in spite of its ever-expanding boundaries, and the fact that it is a serious foreign policy matter, there is still no universal agreement on the definition of ‘organized’ crime and the approach that should be taken to control it. According to Levi (2007) the tension is between:

- (a) ‘those who want legislation to cover a wide set of circumstances to avoid the risk that any major criminal might ‘get away with it, and
- (b) those who want the law to be quite tightly drawn to avoid the overreach of powers, which might otherwise criminalise groups who are only a modest threat’ (Levi, 2007:780).

There seems to be a universal agreement, however, that organized crime is constituted by both ‘full- time’ and ‘part-time’ criminals, many of whom may have multiple partners, and that the term ‘organized’ crime denotes not just a set of criminal actors but also a set of criminal activities (Cohen, 1977).

Organized crime is a complex phenomenon because ‘...organized crime groups operate in complex economic markets and are impacted by the legal system, politics and the community environment where they do business’ (Mallory, 2007:33). There are many factors which undermine the efforts to combat organized criminal activities. These include corruption of state officials, weak financial structures, lack of effective security and surveillance at airports and international borders, and ineffective law enforcement, all of which have allowed organized criminal groups to continue their illegal activities unchecked. As a result, these organized crime groups make fortunes and gain power and influence in many countries. Some are known to have even influenced state laws regulating the control of organized crime (Mallory, 2007).

The success of organised criminals lies in their ability to mimic or operate within legitimate businesses. According to Mallory (2007:2), organized criminals have incorporated into their operations many of the successful principles or features of legitimate business organizations. These include:

- a unit of command: a superior to whom one is directly responsible
- the principle of definition: clearly defined authority and responsibility
- the span of control: a limited number of people controlled by a supervisor
- the principle of objective: defining the purpose of the organization or what business is being undertaken (e.g. drugs, murder for hire, extortion, gambling, etc.)
- insulation and need-to-know principles: personnel have contact only with their immediate boss and peers
- pyramidal structure: orders flow down the hierarchical chart and important decisions are made at the top

- principle of specialization: members of organized crime are experts in a single job function
- rules: omerta¹ (vow of silence, never talking to the police) and the process of becoming a member of an organized crime group (Mallory, 2007:2)

Organized criminal groups have also acquired the capability of adapting to the changing markets and new technology and, as a result, they have increased their level of sophistication and their ability to continue their criminal activities (Mallory, 2007). Globally, the number of what are often termed ‘safe havens’, where organized crime groups are protected by either lack of state control or official corruption, are growing (Johnson, 2001). In recent years, there has been an increasing tendency for alliances between organized criminal groups around the world, not only for their survival, but also for the continuity and expansion of their illegal activities. It is important to mention that global politics has played an important role in the continuity and expansion of organized criminal activities around the world. One of the well documented examples in this regard is the CIA’s assistance and support for anti-communist groups or movements during the Cold War. As a consequence, the international drug trade was not only tolerated, but even supported by America, provided that such criminal groups were deemed to be assisting in the ‘War on Communism’ (Levi, 2002:886). Levi further argued that this tolerance and support is expected to occur in the context of ‘War on Terrorism’ post-11 September 2001 (see Levi, 2002:886).

1.2 Organized Crime: Its History and Development

Organized crime has a long history. However, most observers locate its origin in the distinctly American style of organized crime that was a phenomenon of the late Nineteenth

¹ Omerta refers to rules which organized criminal groups keep to be able to maintain their enterprise structure. This ‘code of silence’ is associated with La Cosa Nostra (the American Mafia) (see Mallory, 2007:34)

and early Twentieth Centuries. This model of organized crime is best known through the activities of the Corleone family, the central characters in the Hollywood blockbuster film *The Godfather*, and more recently in the television portrayal of the New Jersey based racketeering in *The Sopranos* (Rawlinson, 2005; Newburn, 2007). Rawlinson (2005) argued that these characters bear little resemblance to the phenomenon of organized crime that we know today. However, the stereotypical picture of organized crime as Mafia-like continued to dominate popular and criminological discussions of organized crime during the Twentieth Century.

Very few would dispute that it was the introduction of the famous Volstead Act of 1919, commonly known as the Prohibition Act, which provided the impetus for the emergence of organized criminal activity in America. As a consequence of the enactment of the 1919 Act, a black market for alcohol was created. According to Newburn (2007), the existence of urban areas in America has always created a demand for the illegal supply of alcohol, gambling and prostitution. He added that this demand for any illegal activity has always been met in different ways. The illicit trade in alcohol that had previously been run by small scale operators was quickly transformed, after the Prohibition Act was passed, into an organized and sophisticated market dominated by Italian immigrants. It was a lucrative industry that ensured the generation of considerable illegal income for the Italian racketeers. Thus, during the Prohibition years, the balance of power in the American underworld shifted, placing the immigrant Italians at the centre of organized criminal activities in the country (Catanzaro, 1992; Rawlinson, 2005).

In the 1920s and 1930s, efforts to understand organized crime were constrained by what Woodiwiss (2000) referred to as limited knowledge and the widely held assumption shared

by middle class Americans that organized crime was a problem mainly confined to city slums. The first official effort in America to define organized crime and elaborate on its nature and extent was that of the Wickersham Commission (1929-31). The Commission looked at the different aspects of the problem and concluded that Organized Crime was an unfortunate and unavoidable part of the nation's political, economic, social and legal structure rather than a threat to these structures. The Commission added that politicians, public officials, professionals and other representatives of the 'respectable' classes were clearly part of the problem of organized crime, not passive victims, and that organized crime was not simply the " ...tools of distinct gangster-dominated entities' (see Woodiwiss, 2000:4). Accordingly, the Commission called for a comprehensive and nationwide inquiry into the problem of organized crime.

Since the 1960s, the debate about the meaning, nature and effects of organized crime gained momentum in America, partly due to the assassination of President John F. Kennedy in 1963 and the assassination of his brother Robert F. Kennedy in 1968. Robert F. Kennedy was the US Attorney-General who had successfully prosecuted a large number of mafia gang members in the mid-1960s (Lyman and Potter, 2004). Organized crime became increasingly recognized as a threat to the smooth functioning of government, associated with the corruption of police officers, able to infiltrate legitimate businesses, and responsible for the decay and integrity of the free American society. In 1967, the US President's Commission on Law Enforcement and the Administration of Justice had defined 'organized crime' as:

A society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits (see Woodiwiss, 2003:16)

Donald Cressey, a prominent criminologist headed the 1967 Commission. He argued that the core of organized crime in the United States consisted of twenty four groups operating criminal cartels in large cities across the nation. Their membership was said to be exclusively Italian and gambling was the main source of revenue followed by loan sharking and the distribution of narcotics. The Commission maintained that quite a number of the criminals engaged in organized crime were also involved in legitimate businesses and labour union activities (Woodiwiss, 2000).

1.3. Early Understanding of Organized Crime: Ethnic-Based Conspiracy Theories

Cressey's definition of organized crime in terms of 'criminal cartels' led to the emergence of ethnic-based conspiracy theories of organized crime. The role that ethnicity played in shaping American organized crime has long been at the centre of a heated debate among criminologists. It was generally believed that it was the 'aliens', that is, the foreigners, – people outside the mainstream American society – who were responsible for organized criminal activities in the USA. Commonly known as the 'Alien Conspiracy Theory', this theory assigns primary significance to the role played by Italian Americans and particularly immigrants from Sicily in organized criminal activities in the USA. It was widely believed that '...members of the Sicilian Mafia transplanted their criminal culture when they migrated to the United States' (Mallory, 2007:34). This theory rests upon two fundamental assumptions; first, that organized crime in the USA involved an 'alien other' (Italian immigrants from Sicily) and, second, that the organizations they operated were characterized by a 'formal, hierarchical structure' (Newburn, 2007:407). According to Hughes and Langan (2001:262) the basic idea was that of an alien, implanted conspiracy (of Sicilian origin)

which was centrally organised and also dominated organised crime, both nationally and internationally.

The centrality of the conspiracy led to the assumption of monolithic, impenetrable, culturally hermetic groups of criminals. As far back as the early 1950s, the Kefauver Committee had defined organized crime as an ethnically-based phenomenon comprising of ‘hierarchical, monolithic structures’ (Rawlinson, 2005:291). Thus, the problem of organized crime in America was oversimplified, limited to the apparently predominantly Italian ‘Mafias’. The televised confession of a small-time gangster, Joseph Valacchi, in 1963, further provided material for the mafia theory. Valacchi apparently spoke of structured crime families, the ‘La Cosa Nostra (Our Thing)’, run by an organization known as the ‘Commission’ (Rawlinson, 2005:294). The mafia theory continued to influence the crime control strategies in America for decades. According to Hughes and Langan (2001:262) ‘... historically, the concept of organised crime as an alien, dangerous and unified entity was as vital to the law enforcement community in the USA as the idea of communism as an alien, dangerous and united entity was for the intelligence and foreign policy making community’. Therefore idea gained momentum and eventually dominated not only American but also international perceptions of organized crime.

As mentioned earlier, it was this conspiracy (mafia) theory that was the focus of criminological study of organized crimes in the Twentieth Century (Block, 1994). The theory was first endorsed by Donald Cressey in the report of the US President’s Commission on Law Enforcement and the Administration of Justice in 1967, and in his book *Theft of a Nation* published in 1969. In the former, he narrated that:

Organized crime in America was dominated by a tightly-knit network of 'Mafia Families', and that these groupings had a largely formal, hierarchical structure (see Newburn, 2007:411)

The ethnic theory is also supported by Mallory (2007) who argued that many organized criminal groups are coordinated around ethnic groups. More recently, ethnic based conspiracy theories have been used to explain the formation and activities of the 'Russian Mafia' in the USA which apparently became intensified after the fall of the Soviet Union. In fact, there is a sizeable body of literature which identifies organized crime with the different forms of gangsterism associated with particular ethnic groups like the Japanese *Yakuza* and the Chinese *Triads* (Newburn, 2007).

However, another perspective on ethnicity and organized crime exists which argues that organized crime is not the exclusive domain of any one ethnic group, but is part of a much broader process of 'ethnic succession' in organized criminality. This thesis associates organized crime activities with marginal ethnic groups in society for whom upward social mobility by legitimate means is blocked, and for whom organized crime provides an alternative but illegal channel to attaining wealth, power and prestige (see Merton, 1968). According to Bell (1960), organized crime then functions as a '...queer ladder for social mobility' (Bell, 1960:115). In support of the claim that organized crime is not dominated by any one ethnic group, Ianni and Ianni (1972) referred to the process whereby minority ethnic groups enter into organized criminal activities and eventually leave after gaining upward social mobility. Referring to the USA, Ianni and Ianni (1972) described this process thus:

The Irish came first, and early Irish gangsters started to climb the ladder. As they came to control the machinery of the large cities, the Irish won wealth, power and respectability ... in organized crime, the Irish were succeeded by Jews ... the Jews quickly moved on the ladder into the world of business,

and more legitimate means of economic and social mobility. The Italians came last and did not get a leg up on the rungs of crime until the late Thirties (Ianni and Ianni, 1972:49 cited in Newburn, 2007:413).

The process did not stop with the Italians but has continued as the organized crime scene became dominated by other ethnic groups such as Cubans, Colombians, Mexicans and so on (Newborn, 2007). Mallory (2007) summed up the arguments in this perspective thus:

Every new immigrant population in the United States encounters blocked opportunities and obstacles in achieving respect, power, and wealth. In response, many resort to organized crime activity to achieve their dreams or goals. This theory helps explain the ever-changing face of organized crime in America; with each new wave of immigrants, new organized crime groups emerge to present a challenge for law enforcement (see Mallory, 2007:34)

However, the ethnic based theories were soon discredited on various fronts by writers who emphasised the reasons behind the participation in organized crime rather than the ethnicity of the criminals themselves. It was believed that the ethnic-based theories were a myth rather than a historical and sociological reality (see Hughes and Langan, 2001). Woodiwiss (2000) argued that the evidence does not seem to support the claim made through the alien conspiracy theory. Woodiwiss (2000) used the American drugs trade as an example of an organized crime business that has never been monopolized by any one ethnic group but features many thousands of decentralized distribution and smuggling networks of people from different ethnic groups operating simultaneously. According to Rawlinson (2005), “It is not ethnic origin or nationality which determines criminality” (Rawlinson, 2005:291).

In other words, organized crime provides an alternative way of acquiring wealth, power and influence for those who are willing to take the risks. Being marginalised or poor

is no longer the motivation for participating in organized crime. However, as Albin (1997) puts it:

Rather than blame themselves for their desire to use drugs in the 1960s, Americans found it easier and more exciting to blame those foreigners from Sicily who brought the Mafia to America and addicted a drug-virgin country (Albin, 1997:69)

For Albin, organised crime is a loose-knit system of patrons' clients or networks of relationships, rather than a manifestation of a rigidly organised, bureaucratic one as opined by Cressey (1969). According to Albin:

Rather than being a criminal secret society, a criminal syndicate consists of a system of loosely structured relationships functioning primarily because each participant is interested in furthering his own welfare (Albin, 1971:288)

So, Albin questions the notion of rationality in Cressey's work and notes that the pattern of these networks is similar to that of social exchange networks in communities with a dynamic operational system, rather than a single formal structure. The loose networks identified by Albin carry out a variety of activities to increase and maintain their power and wealth. In such networks, criminal entrepreneurs exchange information with their 'clients' in order to obtain their support. The 'clients' include members of gangs, local and national politicians, government officials, and people engaged in legitimate business activity. The origin of the power of these networks lies in their flexibility and in the abilities of their operatives; and contacts between them may dissolve or they may reform over time (Albin, 1971). Albin agrees with Cressey that Mafia style criminal groups have family like structures, but he strongly resists Cressey's claim that the relationship between syndicate members could only be described in terms of a hierarchy. Criminal syndicates are not

necessarily bureaucratic in character, and the people involved in the network may not directly be part of a core criminal organisation (see also Wright, 2006).

Ianni and Ianni (1972) also question the rationality model offered by Cressey. They found that the activities of organisations like the Mafia do not reflect any particular institution, organisation or rationality as proposed by Cressey. Instead, Ianni and Ianni argued that the Mafia and the Camorra should be viewed as traditional social systems rather than as formal organisations. As they put it:

The Mafia, however, are not really formal organisations... they are not rationally designed and consciously constructed; they are responsive to culture and are patterned by tradition. They are not hierarchies of organisational positions, which can be diagrammed and then changed by recasting the organisational chart; they are patterns of relationship among individuals, which have the force of kinship, and so they can only be changed by drastic often fatal action (Ianni and Ianni, 1972:153).

In a nutshell, research studies conducted in the United States and elsewhere have discredited the ethnic-based conspiracy theories of organized crime. Evidence from these studies suggests that organized crime is essentially the ‘...coalitions between business people, politicians, and crime groups in organizing and tolerating crime against the public interest’ (Levi, 2007:778).

1.4. Characteristics of Organized Crime

It is the perceived characteristics of organized crime that makes it a unique topic of study for criminologists. Different scholars and organizations have enlisted a number of characteristics in the process of explaining organized criminal activities. Some of these are

described below. Abadinsky (1994) identified eight characteristics of organized crime, highlighting the importance of power, profit and perpetuity. These characteristics are described as follows:

- (a) *Nonideological*: the primary motivating force is profit. Sometimes the organized criminal group may adopt a worldview or political agenda, but these are supportive of, and secondary to, the goal of making money;
- (b) *Hierarchical*: Most organized criminal groups are organized in a pyramid structure with a few elites at the top and many operatives at the bottom. In between, the organisation is supported by mid-level gangsters who handle supply and security;
- (c) *Having a limited or exclusive membership*: This is essential as the group must maintain secrecy and ensure the loyalty of its members;
- (d) *Perpetuating itself*: Most organized crime groups have a recruitment process and policy; new members are often recruited as operatives;
- (e) *Willingness to use illegal violence and bribery*: For most organized crime groups, the use of violence is a meaningful resource and corruption and deceit an essential part of the business;
- (f) *Having a specialized division of labour*: Organized criminal groups can be thought of as task forces with members combining different talents and experiences essential to the realisation of the organizational goals;
- (g) *Monopolistic*: The primary goal is maximising profits by controlling the market;
- (h) *Having explicit rules and regulations*: Most organized criminal groups have codes of honour that members are expected to adhere to (See Abadinsky, 1994:6).

Similarly, Maltz (1994) sets out eight distinguishing features and characteristics of organized criminal groups. The features include: the use of violence, corruption, sophistication, continuity in operations, discipline, effective structures, the use of legitimate multiple enterprises, and the use of rituals for bonding members together. Maltz further emphasises that involvement in multiple enterprises is characteristic of most organized criminal groups; that all have, of necessity, some structure, although no particular structure characterises all groups; that most, if not all, are engaged in legitimate businesses as well as in criminal enterprises, but this characteristic may not be essential; and that although sophistication, discipline, ideology and bonding may be characteristic of some organized criminal groups, they are neither necessary nor typical (see Maltz, 1994:31)

Furthermore, in 2001, the European Commission and Europol proposed a list of characteristics of organized crime in the context of the 1998 definition mentioned above, grouping them into ‘mandatory’ and ‘optional’ characteristics (Levi, 2002; Wright, 2006). The four mandatory characteristics are:

- (1) Collaboration of more than two people;
- (2) Extending over a prolonged or indefinite period (referring to stability and potential durability);
- (3) Committing serious criminal offences, punishable by imprisonment for at least four years or more serious penalty, and
- (4) the central goal is profit and/or power (see Levi, 2002:882).

The optional characteristics may include a combination of the following:

- (1) Specialized division of labour among participants;
- (2) Exercising measures of discipline and control;
- (3) Employing violence or other means of intimidation;
- (4) Employing a commercial or business-like structure;
- (5) Participating in money-laundering;
- (6) Operating across national borders; and
- (7) Exerting influence over legitimate social institutions (government, justice and the economy) (see Levi, 2002:882)

1.5. Globalisation, Global Markets and Transnational Organized Crime

The discussion in Section 1.3. identified that the dominant myth about and stereotype of, the organised criminal in the second half of the Twentieth Century, was based on the notion of an alien criminal conspiracy associated with tightly knit secret societies (see Hughes and Langan, 2001). The revisiting of the old alien conspiracy and moral panics induced by globalisation through the notion of “new mafia” have led to some questioning. As Hobbs (1997, cited in Hughes and Langan, 2001:265) noted “...recent influential populist commentaries on and media reporting of, the threat of globalisation have also been associated with the claim that there is now a ‘transnational organised crime’ conspiracy, often linked to the so-called new ‘Mafias’ of post-communist societies and other ‘alien’ networks such as the Chinese Triads, Jamaican Yardies and Yakusi alongside the ‘old’ Italian-American Mafia.

Nevertheless, it can be noted that the multi-dimensional nature of globalisation has altered the dynamics of nation states and organised crime in the last quarter of the Twentieth Century.

According to Findlay (1999), globalization has created a new and favourable environment for the growth and expansion of organized crime, representing a shift and contemporary transition in the way crime occurs in the Twenty-First Century. The structural alterations experienced by the market place, such as key technological innovations in the field of electronic communications, ‘...have enabled those of villainous intent to launch offensives upon information, or money... that are comparable to the way the shotgun and thermic lance enabled and enhanced the practice of previous generations of thieves and robber’ (Hobbs, 1995:8).

Therefore, it can be said that organised crime has become a salient feature of the modernisation process. Current global economies shape new patterns of transnational criminal activity (Ruggiero, 2009). It is important to stress that most organized criminal activities are not constrained by geographical boundaries. Although the ‘base’ of operations may reside in a particular country, most organized criminal activities are increasingly transnational. Transnational organised crime (TOC) is one of the most serious problems facing the world today. It is considered as one of the most serious threats to state security, the rule of law and public welfare (Viano, 1999). According to Woodiwiss (2003), since the end of the Cold War, transnational organized crime has presented an increasing global security threat, especially to the Western world. According to Raine and Cilluffo (1994: ix);

Worldwide alliances are being forged in every criminal field from money laundering and currency counterfeiting to trafficking in drugs and nuclear materials. Global organized crime is the world’s fastest growing business, with profits estimated at \$1 trillion (cited in Woodiwiss, 2003:20)

Article 3(2) of the UN clearly states that an offence is transnational in nature if;

- a) it is committed in more than one state;
- b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- d) it is committed in one State but has substantial effects in another State (see United Nations, 2004 for details)

There is no single universal definition of transnational organized crime. According to Rawlinson (2005:296), the term is often used to refer to 'crimes without frontiers'. It is usually used to refer to all criminal activities whose inception and effects (direct or indirect) involve more than one country. In an attempt to define transnational crime Ruggiero (2009:118-119) identified the following typology:

Table 1.1: Definition of Transnational Crime

Joint Ventures	between members of organised crime, politicians and financial operators are necessary for money laundering operations to be successful: in such cases the official economy offers a service to criminal syndicates
Entrepreneurs and Politicians	are prime actors in the illegitimate transfer of money abroad. ‘Hot money, which is almost automatically associated with laundering of criminal proceeds, in reality includes money earned, legitimately or otherwise, by official actors’
Large and Small Companies	employ unregistered immigrants. These workers are normally smuggled into developing countries by a variety of groups and actors. The companies employing such workers enjoy the smuggling services offered to them by these groups and actors
Corporations	operating in developing countries have often been charged with using quasi-slave, or forced, labour. In some cases they have been accused of human rights abuses in countries where trade unionism is criminalised and opposition groups violently repressed
Corporations	have been found guilty of selling goods to criminal organisations, which then on-sell them untaxed (e.g. tobacco products, clothes). In such cases they become partners of criminal groups, sharing with them the sums involved in the fiscal fraud.
Drug Trafficking	Large international drug trafficking is often carried out by, or with the complicity of, import-export firms operating in the official domain. Concealing drugs with legitimate goods is a well developed practice, particularly in cocaine trafficking.
Illegal arms	A variety of organisations are involved. International criminal groups may form business partnerships with producers and the political lobbies supporting them

According to Ruggiero (2009), transnational organised crime should not be exclusively identified with the illegal activities of notorious large crime syndicates. Rather, transnational crime may well transcend activities and mingle with entrepreneurial and at times, governmental deviance. Thus to Ruggiero (2009), transnational organised crime is a partnership between illegitimate and legitimate actors. The notion of ‘partnership’ implies that organised criminal groups both teach and learn from their counterparts in the economic arena, by investing illicit proceeds in the official economy. For example they learn the

techniques and the rationalisations adopted by white collar and corporate offenders, thus being, in a sense, corrupted by the economy rather than corrupting it (Ruggiero, 2009).

The growing problem of transnational organized crime is often associated with two major developments in the international arena - the spread of globalisation after the end of the Cold War on the one hand, and the advancement in science and technology on the other (Newburn, 2007). For instance Findlay (1999) notes:

The globalisation of capital money to the electronic transfer of credit, of transactions of wealth from the exchange of property to info-technology, and the seemingly limitless expanse of immediate and instantaneous global markets, have enabled the transformation of crime beyond people, place, and even identifiable victims. Crime is now as much a feature of the emergent globalised culture as is every other aspect of its consumerism (Findlay, 1999: 2).

Similarly, Barak (2001) argues that the expansion in the means of communication and transportation and computer networks has turned the world into a global village which has consequently provided excessive opportunities for capitalist and criminal expansion – the exchange of both licit and illicit goods and services. For example, the revolution in transportation has helped in the mass movement of goods and people across the world, whereas the revolution in the internet has allowed the development of global service infrastructure, such as banking and financial services (Aguilar-Millan *et al.*, 2008). According to Adamoli *et al.* (1998):

Market globalization and the subsequent abolishing of borders, together with the advantages offered by technological innovations have created opportunities for new profits for existing and emerging criminal groups which have adapted themselves to the new needs of the market (Adamoli *et al.*, 1998:9)

The internationalisation of trading and labour, as well as the growing coordination of tasks performed by groups and individuals worldwide, has also contributed to the growth of transnational crime. Thus the process of globalization is not limited to financial issues alone, but includes all aspects of life such as social, cultural and political features, etc. that has transcended national borders. Globalization is fuelled by improvements in the means of communication and the movement of capital which has resulted in the shrinking of space and the shortening of time (Harvey, 2005). According to Karofi and Mwanza (2006), globalization has increased the speed of communication, the internationalisation of trade and labour and has led to a process of the amalgamation of cultures. Today, we live in a globalized society where the movement of capital, information, people and goods is extremely fast all over the world (Aas, 2007). As a result, organized criminals have found a favourable environment in which they take full advantage of new means of communication and technology. Therefore, organized crime can be considered as the defining feature of the globalized society and culture (Findlay 1999). For example, global connectivity through the internet has provided the opportunity for criminal groups worldwide to share and coordinate their criminal activities and to continue their activities locally as well as on the global level.

According to Hughes and Langan (2001), just as with legitimate industry in recent years, the organised crime industry has also seen a growth in the casualization and deskilling of its labour force, reflecting pressures from new competitors in illegal enterprises across the world. Based on his research in Europe, Ruggiero (1996 cited in Hughes and Langan, 2001: 265) has noted the particularly striking growth in the hierarchical structure of illegal drugs production and distribution. He notes that as a result of this organisational development, there is evidence of a deskilling of much criminal activity at the bottom of the hierarchy. At this level are street level 'pushers'/ addicts or mules/carriers of narcotics across borders, who are

expendable labourers serving the market, whilst at the top there is a drive towards more structured and professional operations. What this points to is the dissipation of traditional criminal communities, what Hobbs and Dunningham (1998, Hughes and Langan, 2001: 267) regarded as indigenous renditions of global markets, or what has been termed 'global organised crime'. Although Hobbs (1997 Hughes and Langan, 2001:267) insist that most criminal enterprises are still local phenomena grounded in specific historical practices and relationships, new forms of multinational partnerships involving illegal enterprises have been identified worldwide.

Aguilar-Millan *et al.* (2008) argued that organized crime no longer operate through tight hierarchal kin structures as was the case until the beginning of the Twentieth Century. Today a large number of loosely connected organised crime networks operate together. Consequently, organized crime has been globalized to the extent that an event in one nation can have serious implications for other nation states. Therefore organised crime has become a prominent feature of globalized society and should be accepted as a key aspect of globalisation.

The expansion of globalization has created an increase in criminal networks and a rise in illicit trade such as fraudulent and unfair trade practices in commerce, the laundering of profits gained from the illegal drugs and arms trade, smuggling of illegal immigrants across borders, the dumping of toxic waste, the acts of terrorism and the conduct of multinational companies in moving technology and capital for the sake of exploiting cheap labour (Barak, 2001; Winders and Sandler, 2006). The operation of these criminal activities is facilitated by organized criminal networks that operate at the local, regional and international levels. The trend is fuelled by globalization which has led to the creation of innovative new crimes against individuals, property and nation states, and has changed our understanding of culture

and its significance as a context within which crime is constructed and played out (Travis, 1998). Similarly globalization has opened up opportunities for greater exploitation of mankind by both legitimate and illegitimate enterprises, as well as the expansion of global criminal networks and local criminal networks around the world who are able to operate using forces of globalization such as technology, transportation etc. According to Karofi and Mwanzi (2006):

Globalization has evolved; money launders have been able to conduct their trade with greater ease, sophistication and profitability... new financial instruments and trading opportunities have been created and the liquidity of financial market has improved, it has also allowed money laundering systems to be set up and shut down with great ease (Karofi and Mwanzi, 2006:7)

As the global market develops and starts to become more and more competitive, the increasing demand for goods and services opened up new frontiers for different criminal activities such as human trafficking, piracy, money laundering, drugs sale, arms sales, etc. Furthermore, the opening of new opportunities leads to the emergence of different types of crimes in different societies (Reiner, 2007). The changes in political economy has affected crime rates and patterns because it has created new ways and opportunities for new types of crime to occur and may also remove old ones. Aas (2007:122) has pointed out that globalization is seen as a breeding ground for 'global anomie' because it has created new needs and desires, and has opened up ways for fulfilling them through both legitimate as well as illegitimate means. In addition, the spread of global capitalism was not only accompanied by the criminal activities of organized crime groups (such as mafias), it also helped respectable members of society to make huge profits through corruption and evading taxes. The global capital market economy has allowed respectable wealthy professionals to exploit the loopholes in the laws and evade the payment of huge amounts of tax (Wilson, 2009). The

opportunities for criminal activities has arisen because the capitalist market economy is not concerned with ‘...who is or who is not a criminal but only who does or does not fulfil their contracts, for without this that market cannot function’ (Wilson, 2009:99). Chambliss (2003) argued that crime in a society is the product of the economic and political system that is in operation.

1.6 Globalization and the Problem of Controlling Organised Crime

It is strongly believed that the introduction of a global capitalist market economy has weakened the law enforcement apparatus across state jurisdictions and has created conditions favourable for continuing criminal markets, allowing criminal networks to gain abnormal profits from their criminal activities. According to Ruggiero (2009), criminal businesses, particularly transnational crime, responds to this new normative corollary by establishing networks that by-pass national regulation. Wilson (2009) has argued that this relationship between crime and global capitalism and the governance of crime is problematic because ‘... those who make super profits from transnational organised criminal activity may launder it through legitimate business, while otherwise perfectly respectable business people may, on occasion, may dint of temptation or pressure of circumstance, step outside the law’ (Wilson, 2009:100). Wilson (2009) has suggested that we need to be very careful in discussing the relationship between transnational crime and capitalism in the era of rapid globalization. The increasing growth and expansion of globalization is providing opportunities for local, regional and international underground economies to infiltrate into the global financial system.

The process of globalization is increasingly transforming the structure of the state and its power, the economic system and our basic institutions such as the police, for example.

Findlay (2008) argued that globalization has weakened nation states and, as a result, they are more susceptible to becoming victims of transnational organized crime. One of the main reasons for the weakness of state control is the massive flow of products and the networks built up, thereby disrupting the state concerned control system. Karofi and Kwanza (2006:6) have rightly said that globalization has had a great impact ‘...internationally and nationally on economics, politics, security and society’. As a consequence, this has tremendous effects on policing problems in terms of controlling organized crime. The fact is that organized crime is not only localised but is also transnational in nature. Therefore, it requires a local solution along with globalized measures in order to prevent and control crime both at the local as well as the transnational level. Today, no single county can effectively control organized crime due to the fact that the very nature of the problem is changed, thus requiring a global, organized and collaborative strategy for its control. One of the most effective crime control strategies is formulating partnership between nation states for sharing information and for effectively controlling the operation of organized crime networks. Aas (2007) has argued that, because organized crime has crossed the borders of nation states, therefore, our approach to policing crime should also transcend national boundaries.

Transnational organized crime has been made much easier by the existence of weak governments, insecure borders and ineffective law enforcement institutions in certain parts of the world, for example, in the developing countries of the ‘Third World’ and the transitional countries of Eastern Europe and the Middle East, all of which have enabled transnational organized criminals to operate across borders with impunity. In many such countries, limited economic alternatives makes them vulnerable to the offers of organized criminals. For example in countries like Afghanistan, where the law enforcement agencies are weak and the citizens are poor, farmers have found the cultivation of poppies a lucrative livelihood which,

in turn, has boosted international organized criminal trafficking in heroin (see Asad and Harris, 2003). Similarly, many unemployed youths from developing countries seeking work in developed countries have fallen victim to human traffickers. Similarly, refugees from war-torn or poor countries seeking asylum in Europe have been known to have been forced to work for organized criminals in order to make ends meet; for example, working as prostitutes or as drugs couriers (see Rawlinson, 2005; Goodey, 2005). Many experts also believe that terrorist organizations are funding themselves by operating with transnational organized criminals who are involved in transnational organized crimes.

Despite the fact that transnational organized criminals operate internationally, the actual implementation of their activities is at the local level. Hobbs (1998) argued that, whereas organized crime activities involve international collaboration and operations, it is 'local at all points'. All the aspects of organized crime such as the execution of the crime, the demand for goods and services, the victims, and the beneficiaries, all occur at local level and not in an international space. As Rawlinson (2005) puts it, these activities occur at a series of '...local points, albeit using virtual means' (Rawlinson, 2005:296). By the 21st century, the nature of organised crime has evolved from a tight knit organisation (Mafia-type) to a looser network of criminal activities that are no longer hierarchical in structure but more diffuse.

1.7 Conclusion

This chapter examines some of the literature on organized crime, especially the work of those who have attempted to define this type of crime. It is clear from the above that organized crime is a concept that is frequently used, but difficult to define. According to, Maltz (1976:338), this is because '...organized crime means different things to different people'. Similarly, Schelling (1984:180) argues that the term 'organized crime' does not automatically

mean that the 'the crime is organised'. Therefore there is little consensus regarding its meaning. Levi (2002, p879) argued that the concept is 'hydra-headed', a contested terrain and that due to definitional problem of organized crime, it is hard to estimate the exact intensity or 'scale of the problem'.. According to Wright (2006:3) '...some definitions are highly emotive, expressing the attitudes of their authors in language that makes clear deep feeling about the subject; whilst some definitions are legal or political'. Others (for example, criminological definitions) are conceptual and theoretical in nature. For criminologists, 'organized' crime is, unlike other types of offences such as homicide or robbery, a conceptual rather than a legal category. The issue of definition is an important one since how we define organized crime has very important implications for how we attempt to explain it and for the steps we take as a society to prevent or control it. despite the 'definitional problems' and 'competing accounts' of its nature and extent, from the above there is some agreement on the goals of organized crime which are to obtain profit and to gain political or economic power. As a result, organized crime continues to attract attention from policy makers, law enforcement agencies, the media and criminologists alike.

In addition, there is still much controversy over how organised crime is structured. While it could be argued that most crimes are 'organized' in the sense that they are pre-planned, it is the sophistication of the structure and operations (usually in networks) that distinguishes 'organized crime' from other types of crimes. This chapter has presented some of the common features or characteristics of organized criminal networks

It has also been shown in this chapter that the study of organized crime began in the United States where, for decades, it was seen as synonymous with the criminal activities of immigrants in the late Nineteenth Century and the early Twentieth Century. Initially, the

debates were heavily dominated by reference to mafia-type criminal activities on the part of Italian immigrants in the USA. This type of understanding led to the development of an ethnic-based conspiracy theory of organized crime that dominated both academic and official debates on organized crime for decades. However, the ethnic theory of organized crime soon came under attack as it became clear that the Italians did not dominate the American organized crime scene, but were part of a network of organized criminals from different backgrounds who operated different criminal syndicates. Thus, more recent debates on organized crime have focused on the diverse aspects of the crime as a business. Organized criminals operate through a network of individuals and institutions, both legitimate and illegitimate. Most organized criminals operate through a network of corrupt people including police officers, politicians and those in legitimate business.

Organized crime has also 'benefited' from the phenomenon of globalisation that took off after the end of the Second World War. Organized criminal groups have expanded their activities internationally and have been able to exploit inequalities and injustices globally in order to amass wealth. Globalisation has given organized criminal groups the opportunities to form global alliances for their survival and for the expansion of their illegal activities. Globalization and the advancement of technology has made the job of money laundering a lot easier whereby criminals now launder illegal proceeds by using sophisticated technologies used in the financial sector. Globalisation has led to the expansion of organised crime globally. The consequence is that the policing or control of organized crime has become more difficult. These are the issues that this thesis hopes to address in the context of Dubai. In the next chapter, the theme of organized criminality is further pursued in the analysis of the nature and extent of money laundering.

Chapter Two

The Concept of Money Laundering

2.0 Introduction

This chapter builds on the issues discussed in Chapter One by examining the concept of money laundering as a unique type of organised crime. The chapter examines how the growth and the expansion of global trade have opened up new avenues for criminal groups to launder money earned through criminal activities. In addition, the chapter focuses on the means by which money is laundered, the social, economic and political reasons why it has been difficult to control money laundering globally, the process of money laundering itself, the nature of the problem in Dubai, and the link between money laundering and the financing of international terrorism. This chapter examines the Hawala remittance system in Dubai which is alleged to have been used as a means of money laundering and the financing of terrorist activities.

Money laundering has become a global phenomenon, with organised criminal groups at the centre of this activity. There is clearly no sign that money laundering is decreasing in spite of the numerous international efforts to counter the problem through the passing of multilateral treaties, regional agreements and the establishment of cross-national law enforcement arrangements (see Chapter Three). The belief that international terrorist groups are increasingly using money laundering techniques learned from organised criminals to launder money used to finance their terrorist activities suggests that the problem of money laundering is, in fact, increasing, and in a constant state of flux.

2.1 Defining money laundering

However, whilst money laundering is not a new phenomenon, it was not defined as a specific crime until 1986 (Daley, 2000). The term money laundering was first used in the United States to label the Mafia's blending of illegal income with legitimate business revenue (Daley, 2000).² It is said that 'money laundering' entered popular usage during the Watergate scandal in America during the mid-1970s (Bauer and Ullmann, 2000).

Buchanan defined money laundering as '...a financial crime that often involves a series of transactions and numerous financial institutions across many [international] financial jurisdictions' (Buchanan, 2004:115). According to Al-Mrasheed (1999), the crime of money laundering is not committed unless and until other serious crimes have been committed, such as theft or extortion or drug trafficking, which has generated money that needs to be laundered. In addition, Al-Mrasheed identified two important reasons why money laundering is different from other kinds of criminal acts: first, money laundering does not involve any direct victim in society and second, there is no tangible or physical violence directed at individuals compared with other kinds of crimes such as theft, or crimes that involve threats and violence directed against individuals.

Different definitions of money laundering have been offered by academics, national and international organisations as well as crime control agencies. Sherman (1993:13) defined money laundering as '...the process of converting or cleansing property knowing that such property is derived from serious crime, for the purpose of disguising its origin'. To Savona (1997:3) laundering is '...an activity aimed at concealing the unlawful source of sums of

² It has been said that the term money laundering originated in a scam by Al Capone in Chicago in the 1920s in which he set up a Chinese laundry through which he passed the profits of criminal activities in order to disguise its origin (Lea, 2005).

money'. Daley (2000:175) considers money laundering as the '...process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate'.

As discussed in Section 1.5. of Chapter One, the globalization of world economy has had a tremendous effect on organised crime in general, and consequently that of money laundering in particular, as monies to be laundered have increased and the methods of laundering have become more sophisticated. The advancement in science and technology, massive privatization, the removal of exchange controls and the globalization of financial markets have changed the character, form and the techniques of money laundering. For instance, in 1998, the International Monetary Fund estimated that illicit funds (including laundered monies) worldwide amounted to between \$800 billion and \$2 trillion - 2 to 5 per cent of the world's GDP (Fabre, 2009). In addition, Johnson (2002) argued that since the terrorist attack of September 11, 2001, money laundering is no longer seen as the laundering of criminal proceeds, but a means by which terrorists hide their revenue-generating processes and gain access to their funds. As such, the criminal purpose is included in the definition, in addition to the criminal origin of the money. In this regard, Johnson defined money laundering as '... moving funds through financial institutions or accounts to disguise its origin and /or purpose' (Johnson, 2002:10).

In order to address the phenomenon of money laundering, various international organisations have come up with different definitions. For example the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, on 19th December 1988 in Vienna (the Vienna Convention) adopted the following definition of money laundering:

- a) the conversion or transfer of property, knowing that such property [is derived from a drug offence] for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- b) the concealment or disguise of the true nature, source, location, disposition, movements, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph (a) of this paragraph or from an act of participation in such offence or offences (UN, 1988, Article 3.b).

This definition came at a time when a great deal of global attention was being given to the money earned through illicit drug business and the need for international cooperation to fight the drug cartels. Nevertheless, Rider (2003) considered the definition as narrow in the sense that it associates the money laundering activities purely with the money earned from drug trafficking, and ignores the wider use of money laundering generally.

In March, 1990, the European Committee Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime adopted a broader definition of money laundering which involved money earned through all kinds of organized criminal activities as well as drug trafficking. It defined money laundering as:

- a) The conversion or transfer of property, knowing that such property is proceeds [derived from a serious crime], for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; and,

- b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is proceeds [derived from organized crime] (Council of Europe, 1990, Article 6)

The same year (1990), the Financial Action Task Force (FATF) – which was created in 1989 by the G7 countries to combat money laundering – defined the concept as:

Conversion or transfer of property, known to be of criminal origin, for the purpose of concealing or disguising that origin, or of helping criminals to escape the legal consequences of their actions; the concealment or disguise of the true nature, location, movement, or ownership of property known to have been gained through crime; and the acquisition, possession, or use of property, in full knowledge of its derivation from criminal activity (cited in Alexander, 2001:233).

In 2000, the United Nations Convention against Transnational Organized Crime expanded the definition of money laundering and started to include the proceeds of all serious crimes such as participation in organized criminal groups and corruption (see UN, 2004). What the different definitions stated above highlight is the rather somewhat expanding and contentious nature of money laundering. Drawing on the various definitions, the section below will attempt to address the main purposes of money laundering.

2.2 The Purpose of Laundering Dirty Money

According to Hinterseer (2002:12) the money generated from illegal acts is often termed as ‘dirty money’ that needs to be laundered. Such money is often earned from illegal activities such as gambling, prostitution, narcotics, etc (Clarke and Tigue, 1975). One of the main purposes of money laundering is to obscure the link between the criminals and their crime, as huge sums of money generated from organized crimes such as drug trafficking could be strong evidence for convicting the criminals involved. Thus, in order to be able to

conceal the profits gained from the crime, criminals often invest dirty money in legitimate businesses (Arrastina, 1986).

The second purpose of money laundering is to invest the money earned through illegal activities in the market place. In recent decades, there has been a strong tendency on the part of organized criminals, especially drug traffickers, to gain power and respect in society. In order to achieve their goal, they have to launder the proceeds as well as erase their connection with underworld crooks, the business and financial world (Taher, 2001). Therefore, it is necessary for criminals to take a great deal of care in introducing themselves into the marketplace and participating in legal enterprises. In this way, they not only mingle their dirty money in the circle of legitimate business, but also gain prestige and high position in the social and political world. Ultimately, it ensures that their criminal conduct is more covert than ever.

Finally, criminals seek to launder the proceeds gained from organized crime in order to make it difficult for the law enforcement agencies to prove that certain funds are the product of criminal acts. For example, US laws allows for the proceeds traceable to certain criminal activities being forfeited to the government. However, if the proceeds cannot be traced, the government can neither carry its burden of proof nor locate the funds in order to confiscate them (Arrastina, 1986).

2.3 Why Money Laundering Occurs

The first and foremost reason why money laundering occurs is the vast amount of money it involves and which is generated in such operations. The same money is re-channelled into a more useable form by means of investment and the development of legitimate businesses,

including the purchase of property of various kinds. Today, money laundering has become a global issue. Hobbs (1998: 407) argued that the destruction of national boundaries, and in particular the redundancy of Cold War narratives, have resulted in an enormous growth in concern regarding transnational organised crime. For instance, in 1995, the US Congress Office of Technology estimated that money generated annually by organised crime and other profit-motivated crime in the USA was around \$300 billion (Lyman and Potter, 1997: cited in Wright, 2006:69). Indeed, money laundering has been classified as the third largest business in the world after foreign exchange and oil, with annual revenues ranging from \$500 billion to \$1 trillion (Wright, 2006). Similarly, the UN Development Report for 1999 estimates it at \$1.5 trillion per year, equivalent to 17% of the Gross Domestic Product (GDP) of the United States (cited in Lea, 2005). The National Criminal Intelligence Service, UK notes that £25 billion a year is being laundered (Lea, 2005). The amount of money laundered both within the United States and internationally is staggering. Estimates are that global money laundering activities yield upwards of \$500 billion annually.

Although money laundering has gone on for years, Daley (2000) argued that it has been utilised to conceal cash income from a variety of criminal activities such as bank, securities, trade and insurance fraud, prostitution, illegal gambling, extortion, arms smuggling and terrorism. During the 1990s, the largest portion of illegally generated profits which found its way into legitimate streams of commerce, came from drug trafficking. Drug traffickers move an estimated \$100-\$300 billion dollars annually through the Western banking system (Daley, 2000:176). Recent statistics from the United Nations reveal that organised and unorganised crime together generate annual sales in the order of 3 per cent of the world's GDP - about \$1 trillion - half of which comes from the sale of drugs, which have boomed over the last decade, stimulated by an abundant supply and diversification into synthetic narcotics. Other

profits from crime are drawn from multi-service activities such as the control of illegal and illicit gambling establishments, the arms trade, human smuggling, trafficking in body organs, car theft, prostitution and racketeering (Fabre, 2009:91). Accordingly, these profit boost demand for money laundering, which favours offshore markets because of their secrecy and immunity from illegal activity (see Fabre, 2009). In response to the demand for money laundering services, tax havens and offshore markets have developed into international hubs for three kinds of 'illegal legality': (1) the 'white' economy of banks, investors and fund managers; (2) the 'grey' economy of tax evasion and corruption; and (3) the profits that organised crime seeks to recycle (Fabre, 2009). It is important to highlight that the boundaries between these three domains are nebulous, since it is usually impossible to distinguish between tax evasion and profits from crime, because the recycling techniques are identical (Fabre, 2009)

The second reason why money laundering occurs is that the growth in the globalisation of communications and commerce has made the job of organized criminals a lot easier (Daley, 2000; Rider, 2004; Wright, 2006). Those improvements have permitted an enormous growth in international trade and modern banking (McDonald, 2001). According to Fabre (2009), globalisation has been accompanied, not only by the growth of grey markets, but by that of a black economy as well. There is no doubt that criminal organisations have taken full advantage of developments in technology and, in particular, communications technology. With this development money laundering continues to stay one step ahead of anti-money laundering laws. The emergence of cyber banking and smart cards has made detecting money launderers even more difficult (Daley, 2000). This has led to a new term - that of cyber laundering. Cyber laundering means the crime of money laundering through the use of electronic cash, the internet and smart or stored value cards, which provide several means by

which the technologically advanced launderer may bypass many of the reporting requirements and other systems in place for detecting their activities. Internet and cyber banking methods are particularly threatening as there are currently no regulations that govern the establishment or operation of cyber banks, making transactions nearly untraceable. Thus, the advent of cellular telephones with the capacity to reach around the world, the development of electronic systems that facilitate and accelerate transactions, the ever increasing significance of the Internet, and the different transactions in the realm of cyberspace, all serve to exacerbate the profound problem of money laundering. As Rider (2004) notes:

Development in technology, communications, travel and the liberalisation of movement, whether of persons, things or wealth, have all combined to give the criminal enterprise of today the same ability as any other business to move from one jurisdiction to another, or involve two or more different jurisdictions in a single act. In addition to these factors, which criminals have exploited no less imaginatively than legitimate businessmen, there is another and perhaps crucial consideration. This is the profitability of smuggling and, in particular, the illicit trade in drugs, psychotropic substances and other narcotics. The enterprise of smuggling is a natural and predictable consequence of the imposition of restrictions or other costs on the supply of a commodity for which there is a greater market (Rider, 2004:64-5)

Thirdly, the lack of effective financial regulation in some countries has led to the creation of safe havens for money laundering (Daley, 2000). According to Johnson (2001)

Countries without anti-money laundering legislation offer the launderer the opportunity to operate through either the financial or the non-financial sector. Such countries exert an almost gravitational pull on dirty money, only to send it on its way into the global financial system without a hint of the grubby stat in which it arrived (Johnson, 2001:16)

In this regard, the bank secrecy laws in many European countries such as Switzerland, Luxembourg and Liechtenstein, have attracted money launderers and persuaded them to smuggle dirty money to such areas (Rider, 2003).

Finally, money launderers take advantage of the loopholes in the rules and regulations governing money laundering activities. Due to strong anti-money laundering legislation in many countries, especially in the western countries, there has been great tendency to smuggle currency offshore to those jurisdictions with extensive banking secrecy laws and fiscal laws that ignore money laundering, or to less well-regulated to totally unregulated jurisdictions (Rider, 2003). For example, during the 1990s, huge amounts of black money was transported to Russia due to the crackdown against the Mafia and drug traffickers in Italy, Latin America and other European countries, and was invested in the property business. However, the same dubious money was moved back from Russia into Western countries including Britain, France, Belgium and the Netherlands through offshore banks and was invested in the real estate business in these countries. In this way, criminals evaded the law enforcement authorities in all these countries (Rider, 2003).

2.4. The Processes of Money Laundering

The process of money laundering involves a range of different techniques from relatively simple to highly complex, with the sole purpose of concealing and covering the source and ownership of the money generated from illegal activities. The money laundering process involves simple acts and techniques when the launderer wishes to control his laundering activities. Self-laundering is usually done by those criminals who are in the beginning of their criminal careers, when they cannot trust others to launder money for them. Other methods include storing cash at home, purchasing properties or opening fraudulent

companies (Bell, 2002). Dirty money can also be laundered by more sophisticated methods whereby organized criminal gangs hire the services of professional lawyers, accountants or financial advisers to launder their money. These people, through their expertise in financial and corporate matters, create a network of corporate and other entities in jurisdictions with limited transparency (Rider, 1999).

Experts working in the field of money laundering have described the process of money laundering in a stylized way. There are a variety of ways to launder dirty money. However, the stylized model represents an effort to structure the process of money laundering and provides each step with a logical explanation. The process of money laundering includes three - placement, layering and integration (Schott, 2006; Bosworth-Davies and Saltmarsh, 1994; Lilley, 2006). The following section explains how each step of the money laundering function operates.

1. Placement

The process of money laundering begins with the placement of the criminal proceeds into the legitimate financial system. Cash from the criminal proceeds are broken down into multiple smaller deposits and placed in several different financial institutions (Savona and De Feo, 1997; Thompson, 2004; Lea, 2005). Criminal profits can also be mingled with the deposits of a legitimate business and represented as income from that business (Richards, 1999). According to Bauer and Ullmann (2000), during the placement stage

The form of the funds must be converted to hide their illicit origins. For example, the proceeds of the illegal drug trade are mostly small denomination bills, bulkier and heavier than the drugs themselves. Converting these bills to larger denominations, cashier's checks, or other negotiable monetary instruments is often accomplished using cash-intensive businesses (like restaurants, hotels, vending machine companies, casinos, and car washes) as fronts (Bauer and Ullmann, 2000:1).

The criminal economy is largely composed of cash. There are three reasons for that. First, according to the FATF Report (2001; para 39, 16), ‘...cash remains the major if not the primary form in which illegal funds are generated today’. Drug trafficking, for example, produces large amounts of cash which is needed for business expenses such as the purchase of drugs, payment for couriers, bribing corrupt officials, etc. (Bosworth-Davies and Saltmarsh, 1994). Secondly, it is not only easy to hide cash generated from organized criminal activities from the tax authorities, but also it helps to obscure the criminal source of the income. Finally, cash transactions provide anonymity for the criminals since they don’t want to leave a paper trail of cheques or credit card payments through financial institutions (Bell, 2003).

Carroll (2008) stated that cash earned from criminal proceedings are first smuggled to offshore destinations free from money laundering safeguards in the banking system, in order to facilitate easy placement. This offers a lot of practical advantages as it often places the funds beyond the legal reach of the authorities in the jurisdiction where the profit-generating activity occurred. Even if the relevant laws are capable of application on an extra-territorial basis, and very few are, involving another jurisdiction places significant practical barriers in the path of investigators when it comes to obtaining and securing evidence admissible in court. Certain jurisdictions are willing to offer banking and other facilities on the basis that secrecy will be assured. There are countries that have been prepared to facilitate the receipt of money, no matter what its source is.

Once the money has been taken offshore, it can then enter into the Conventional banking system, either directly, or more likely, indirectly. Obviously, the more discreet this

process is the better for the launderer. Hence, the attraction of ensuring effective non-cooperation with foreign agencies. Once the money has entered the Conventional banking system it can move through the usual channels. The launderer's objective will be to create a web of transactions, often involving a multitude of parties, with various legal statuses in as many different jurisdictions as possible, through which the money will be washed on a wave of spurious or misleading transactions (Rider, 2004). To sum up, the placement process involves money being transferred into a more flexible and legitimate form, and deposited in financial institutions (Daley, 2000). Anti-money laundering statutes that require banks to report questionable transactions, increases the likelihood of detection. Thus, because of the existence of such reporting requirements, launderers will often route the cash through a front operation in order to provide a legitimate explanation for the money. Another option at the placement stage is to transform the cash into cashier's checks, money orders or traveller's checks, which are much easier to smuggle and which may be deposited in financial institutions without staggering reporting requirements (Daley, 2000).

Due to strict anti-money laundering measures which mainly focus on the banking system, terrorist organizations use couriers to finance their activities. In this regard, it is reported that Osama Bin Laden transferred \$7,558 by courier to pay the bomb maker for the bombing attack on the Australian Embassy in Jakarta on 9th September, 2004 (Lilley, 2006:134). In addition, the United Nations Analytical Support and Sanctions Monitoring Team dealing with Al-Qaeda and the Taliban, came to the same conclusion in its second report in December 2004 when it stated:

There is little doubt that Al-Qaeda makes use of cash couriers for the purposes of financing its activities and supporting its operations (see Lilley, 2006:134-5)

Placement is the hardest and weakest step in the money laundering process because of the difficulties of covering up the huge amount of money that criminal proceeds generate (Richards, 1999). The main purpose of the money launderer at this stage is to remove or shift the cash as far as possible from its place of origin in order to avoid suspicion and attracting the attention of law enforcement authorities. Carroll (2008) argued that the placement stage is tough because of the increasing cooperation between the financial institutions and the law enforcement authorities, where the former are obliged to report any deposit or withdrawal beyond a certain currency level to the latter.

2. *Layering*

A series of financial transactions are carried out in the layering stage in order to distance the criminal proceeds from its original source, and to conceal or disguise the source of the ownership of the funds (Savona and Feo, 1997; Bosworth-Davies and Saltmarsh, 1994). Once the launderer has managed to enter criminal proceeds into the Conventional banking sector, it is easy to transfer that money electronically anywhere in the world. The main purpose, as has been explained before, is to obscure the link between the criminal proceeds and its origins. This is done so through setting up a complex trail and making use of bank secrecy laws to make it difficult for the law enforcement agencies to trace the money involved (Carroll, 2008; Bauer and Ullmann, 2000).

Layering involves the creation of false documents, the conversion of cash into monetary instruments and the conversion of tangible assets obtained by means of cash purchases (Wright, 2006). In this case the money launderer manipulates the illegal money as though it was derived from a legitimate source. This is done in order to avoid a trial and is done

basically by electronic processes. According to Daley (2000), the layering phase is the transfer of the funds through several different accounts. This is often accomplished by wire-transfer through offshore accounts in the Cayman Islands, Panama and the Bahamas. Daley (2000) noted that law enforcement efforts to combat laundering are hindered by the following:

1. The bank secrecy laws of various offshore havens;
2. Technological innovations; and
3. The globalization of the banking system (Daley, 2000:178).

Thus, it becomes extremely difficult to trace these processes when money launderers and the beneficiaries are anonymous.

3. Integration

In this stage, the criminal proceeds are integrated into the legitimate financial system and the criminal economic activity thus appears to be legal. According to Bauer and Ullmann (2000)

The integration stage is the big payoff for the criminal ... and he moves the funds into mainstream economic activities – typically business investments, real estate, or luxury goods purchases (Bauer and Ullmann, 2000: 1).

Integration is the final stage and involves the integration of funds into the legitimate economy. What had once been bounties of illegally gained currency now appear as legitimate species of money such as letters of credit, bonds, securities and prime bank notes (Daley,

2000). The original supplier of the money finally gets the change to get their hands on their ill-gotten gains (Thompson, 2004). The launderer makes the money available earned from the criminal activities with its occupational and geographical origins hidden from view. Robinson (1996) refers to this as the 'spin dry' part of the laundry cycle: repatriating the money in the form of clean, often taxable, income. The launderer hands over the 'cleaned' cash, invests in other assets or continues to invest in additional illegal activities on behalf of the client (Thompson, 2004). Offshore banking plays an important role in the integration stage. According to Lea (2005) offshore refers to banks which act as private banks to wealthy non-resident clients, offering low or non-existent tax rates to depositors, and ensuring complete confidentiality with regard to records. This includes a refusal to divulge details of bank accounts held by customers to investigators from other countries, and where there is a general absence of regulation and inspection of activities conducted internationally on the part of the country in which the bank is based. A case in point are Swiss banks.

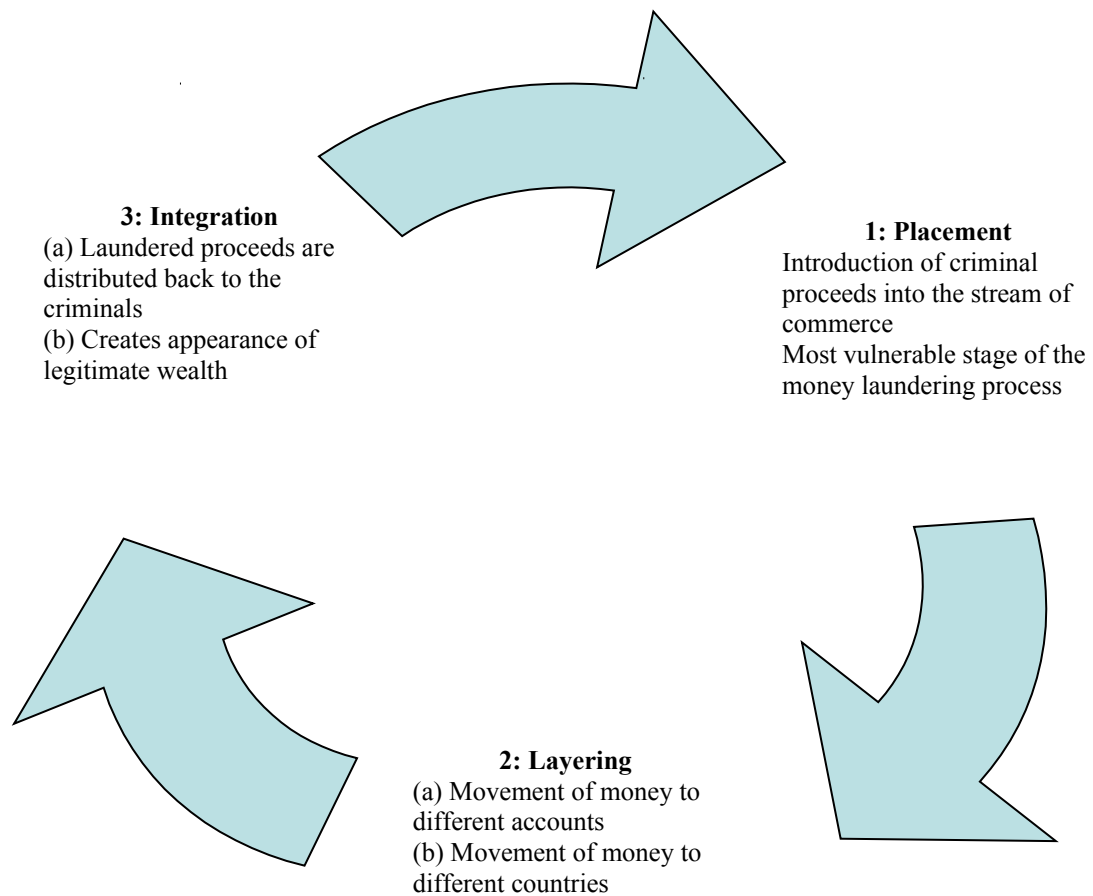
One of the integration techniques used by money launderers is to own their own shell banks in offshore tax havens. Such banks can easily be purchased in Caribbean offshore islands (Bosworth-Davies and Saltmarsh, 1994). In addition, there are financial institutions which are engaged in facilitating the work of money launderers. One such financial institution was the Bank of Credit and Commerce International. According to Morgenthau (1991);

BCCI was operated as a corrupt, criminal organization throughout its entire nineteen year history. It systematically falsified records. It knowingly allowed itself to be used to launder the illegal income of drug sellers and other criminals and it paid bribes and kickbacks to other public officials (cited in Bosworth-Davies and Saltmarsh, 1994:102).

BCCI was chartered in Luxembourg in 1972 and, at the time of its enforced demise, it was operating 430 branches in 73 countries throughout the world. BCCI was an unregulated bank whose headquarters was in London (Bosworth-Davies and Saltmarsh, 1994).

To sum up, the *modus operandi* of money laundering ranges from relatively unsophisticated efforts, to extremely high-tech schemes employing global businesses and multi-national banks. One of the most popular strategies involves the smuggling of the illicit money out of the country. Another strategy is the exchange of currency for gambling chips, traveller's checks, or money orders, which can then be mailed out of the country (Daley, 2000). The highly complex money laundering transactions and operations involve banks, multiple front companies, real estate purchases, and non-bank financial institutions such as currency exchanges. Professional facilitators such as lawyers, accountants and financial advisors apply their talents to assist the process. Given the numerous complex and difficult-to-trace methods by which illicitly acquire cash can be turned into legitimate funds through the use of international transfers, the scale of the money laundering problem becomes obvious (Daley, 2000: 179).

Diagram 2.1: Processes of Money Laundering



2.5 The Politics of Money Laundering

There is a general consensus that money laundering is a global phenomenon that needs to be addressed. However, despite numerous treaties, Convention, statutes and other forms of regulatory programmes and mechanisms to combat money laundering, the number of illicit funds being laundered does not seem to be decreasing. According to Hinterseer (2002), money laundering has witnessed a sustained rapid growth over the years, and has become increasingly complex and difficult to combat. So far, the international community has failed to combat money laundering effectively because of the ‘...conflicting and competing interests and agendas’ of the nation states that make it difficult to develop a ‘...

rational, coherent and comprehensive strategy' to control money laundering (Hinterseer, 2002:39).

Experts working in the area of the prevention of money laundering have given a number of reasons which are hindering the efforts to combat the money laundering phenomenon. Hinterseer (2002) studied the phenomenon of money laundering from a historical perspective and argued that governments at times deliberately ignore, overlook or even participate in money laundering activities in order to pursue their national interests. One example in this regard is the debt crisis during the 1980s which was the by-product of the policies of the developed countries and which threatened the foundations of the world economy. During the 1980s, capital flight was one of the major problems facing Central and South American countries which led to economic and political instability in these countries. Consequently, investors were moving their investments and assets to the more stable economies of the developed world. During the debt crisis, Hinterseer (2002) argued that money laundering performed one if not two functions;

In countries where money borrowed through the international capital markets was embezzled, money laundering helped to ensure that these embezzled proceeds were safely hidden. In countries where individuals sought to move their assets offshore, but adverse government regulations, like foreign exchange controls, were encountered, money laundering helped to circumvent these obstacles (Hinterseer, 2002:41)

Secondly, there are occasions when government agencies tended to '...turn a blind eye to criminal conduct that they are aware of' which consequently encouraged money laundering activities (Rider 2004:69). The case of Iraq under Saddam Hussain during the 1980s and the 1990s showed how certain governments allowed trade restrictions to be avoided, and how they overlooked or ignored money laundering activities where such activity

were deemed to further the national interest. Due to war, both Iran and Iraq were faced with various trade restrictions enforced by the United Nations. Rider (2004:66) stated that Saddam Hussain ‘...employed all the techniques of the money launderer’ during the UN trade embargo against Iraq. The war between the two countries created a new demand for the sale of weapons with enormous potential profits. Both Iran and Iraq had significant oil reserves which were generating considerable revenues. However, neither country had a domestic arms industry. Hinterseer (2002) argued that officially many governments were neutral with regard to the war between Iran and Iraq and were complying with the trade embargo imposed by the UN. However, at an unofficial level, many governments continued their trade relations, especially with regard to the supply of weapons to one or both countries. According to Hinterseer (2002);

Unofficially, many governments were willing to provide Iraq with economic, military, and other support and consequently these governments overlooked the commercial activities of companies and individuals that concealed their ongoing relations with the country (Hinterseer, 2002:51)

From the above example, it is clear that governments sometimes deliberately allow money laundering activities to take place, because such activities may help that government to avoid both its international and domestic legal obligations. Hinterseer (2002) stated that

The ability to camouflage trade meant that economic relations could be promoted with Iraq and other foreign and trade policy objectives with respect to the Middle East could be advanced despite the existence of trade restrictions (Hinterseer, 2002:60)

Thirdly, the government officials may themselves engage in the process of money laundering in order to hide money that they have embezzled from their country’s treasury. This is a common practice in regimes where ‘...bribery, extortion, and corruption come to characterise

the government' (Hinterseer, 2002:61). For instance, money laundering played a significant role in the financial crises of nation-states after the Cold War (Fabre, 2009). According to Fabre (2009), the experience in Russia was recorded in abundant detail through a scandal closely tied to political backstabbing, suggesting that there are intricate links between capital flight, embezzlement, racketeering, pillaging of public assets, corruption and organised crime. Significant profits derived from organised crime and corruption were deposited in Swiss banks and re-invested in Russia to finance a growing national debt (Fabre, 2009).

According to Fabre (2009:92)

“Corruption and criminal activities played a major part in creating public debt and diverting funds to speculative overseas financial markets: the Russian Central Bank estimated, for example, the \$74 billion was transferred from Russian banks to offshore accounts in 1998, the year of the devaluation. A predatory, kleptocratic and in the end, mafia-style pattern of abuse created substantial demand for money laundering on international capital markets, including the demand for Russian Treasury bonds and thus was important in the Russian financial crisis of 1998”

Fourthly, the processes involved in money laundering may be used for activities that are not criminal. There is a vital need for 'secret money' (Rider, 2004:66), not only in the criminal world of organized crime, but also to service and facilitate intelligence and security networks. Such money needs to go through the financial system secretly, although they are not abusive in nature. According to Rider (2004);

There are needs for 'unaccountable funds' in many situations, and the processes involved in laundering money can be, and are, efficiently employed to create hidden reserves or secret money and are then utilised to service and transmit the funds in accordance with the requirements of those who desire them (Rider, 2004:66)

The activities of the Bank of Credit and Commerce International (BCCI) only serves to prove the variety of uses that the money laundering process may serve. BCCI acted for

Manuel Noriega and the Medellin drugs cartel, but also had accounts for the Central Intelligence Agency and facilitated the Iran-Contra deal (Bosworth-Davies and Saltmarsh, 1994:22). However, the need for secrecy is not chronic; it may be an obvious point, but nevertheless, one that has to be made, that the need for secrecy, and the amount of secrecy, will be dictated by factors such as the activity concerned and the amount of profit to be made.

Fifthly, the bank secrecy laws started in Europe many years ago in places such as Switzerland, Luxembourg and Liechtenstein. However, the high financial profits associated with these laws inspired other countries to offer the same services. Consequently, it exacerbated the problem of money laundering. For example, Panama depends on the operation of the canal and the expenditure of the US military base. However, the revenue from its banking system is of vital importance. Some governments have formulated their economic policies in such a way as to provide a safe base for money laundering activities. For example, in order to attract foreign money through government issued bonds in 1992, the authorities in Pakistan clearly stated that ‘...no questions would be asked about the source of the funds, with no identity to be disclosed’ (Time, 30-3-1992).

Finally, the drug business has played an important role in the ongoing conflict in Afghanistan. Asad and Harris (2003) considered money laundering to be at the core of narco-politics in the Afghanistan war. During the Afghan-Soviet war, the US supported the resistance groups with the help of finance and the supply of weapons. However, such help was provided secretly through the government of Pakistan. It is widely acknowledged that the CIA controlled the drug business during the Afghan-Soviet war, and the money earned from drug trafficking was used to finance resistance groups with regard to the Soviet forces (Asad and Harris, 2003). Similarly, in the mid-1990s in Afghanistan, the Taliban and Al-Qaeda had

full control over the drug business and drug revenue was one of the major forms of economic support for the regime (Lilley, 2006).

However, in some countries, the laws regulating the control of money laundering are very strict because citizens are mandated to explain their wealth if they are in possession of wealth beyond their salaries. For example, in Hong Kong, a public servant has a legal obligation to explain if he is in possession of wealth in excess of his salary. Similarly in Britain, under the UK Proceeds of Crime Act 1995, the prosecution may apply to the court on a second conviction for a serious offence within a period of six years, to consider that any property in the possession of the defendant that has been acquired during the previous six years, and the source of which he cannot properly explain, be presumed to be the proceeds of his criminal lifestyle (Rider, 2003:353). In addition, the UK Proceeds of Crime Act 2002 enables, even without prior conviction, the Assets Recovery Agency (ARA) to initiate civil proceedings, ‘civil recovery’, through the High Court, against any person that it thinks holds proceeds of unlawful conduct in the form of ‘recoverable property’.

Therefore, due to the strict enforcement of anti-money laundering laws in many countries, money launderers have devised more complex and sophisticated techniques to obscure the connection between the criminals and their crimes. The money laundered is often kept in bank accounts and is moved in and out of the country in question in order to protect the criminals from law enforcement agencies. On the one hand it reduces the legal consequences that the criminal might encounter and, on the other, it enables the launderers to continue with their criminal activities.

2.6 Money Laundering and Financial Crimes in Dubai

As explained in Sections 2.3 and 2.4 of this chapter, the smuggling of cash is one of the common techniques used by money launderers to launder their criminal proceeds in different parts of the world, and the case of UAE is not an exception. Due to the existence of strict reporting requirement in many parts of the world, criminals smuggle cash to those areas with fewer anti-money laundering regulations and where strict bank secrecy laws are not in place. Richards (1999) has explained how criminals smuggle the proceeds of the drugs business from the USA into the Mexico and bring them back to the USA by using fake documents. According to Richards (1999)

A launderer smuggles cash from the US to Mexico without declaring the money on a CMIR report. He then turns around and comes back into the US, declaring the funds at US Customs as legitimate revenue, backed up by invoices, receipts, etc., derived from phony business dealings in Mexico. Customs then issues the proper forms, allowing the smuggler to deposit that cash in any US bank without raising suspicion. Once, the cash is in the account, it could then be wire-transferred anywhere, since there are no reporting requirements for wire transfers (Richards, 1999: 50)

The detection of money laundering cases is no doubt difficult because money launderers use different techniques to wash their dirty money and place it in the legitimate financial system. The government officials of the UAE consistently deny the existence of any money laundering operation inside the country. However, at the same time they have acknowledged the presence of an external threat with respect to the abuse of its financial system by organized criminals. This external threat usually comes from neighbouring countries such as Afghanistan, Iraq, Pakistan, the former Soviet republics, etc. For example, after the collapse of the Soviet Union, Russian money laundering affected many countries of the world. Winer and Williams (2003: 117) considered the ‘...Russian’s money laundering problem a global

one, affecting countries literally all over the world' including the UAE and Dubai. Farah and Braun (2007) explained how Russians come to the UAE and brought organized crime with them.

Russians began flocking to the Emirates soon after the Soviet Union collapsed, first as vacationers, then as consumers and merchants... they'd come off the planes with empty shopping bags. The nouveau riche would buy up TVs, VCRs, every electronic item they could get their hands on. Pretty soon you had the Russian Mafia in place and hundreds of hookers in the streets and hotel rooms (Farah and Braun, 2007:52)

Because money launderers conduct money laundering operations on purpose, they consequently try to avoid making any mistakes that might lead the investigating authority to track them down. For example, the UAE authorities have so far not been able to prosecute four suspects accused of laundering £150 million (\$ 240 million) – one of the UAE's biggest money laundering case in its history. In a well-publicized money laundering case that started in August 2006, four persons and six companies were accused of transferring funds from the UK and the Netherlands into the UAE by using fake documents. They were accused of evading tax by cheating the tax authorities in the UK and in the Netherlands while importing and exporting goods to and from the UAE by using fake documents. However, after more than two years of investigation, the UAE law enforcement authorities have not been able provide adequate evidence in order to prosecute the suspects and the companies involved (see Za'za', 2009). This clearly indicates how difficult it is to investigate a money laundering case and to prosecute those who are involved in it.

There is no doubt that the incidence of financial crimes is increasing in the Gulf region because the UAE in general, and Dubai in particular, are used as a transit place for both legal and illegal goods (Jain, 2003). In addition, most of the Gulf countries, including the UAE, have a cash-based economy where brings huge amounts of cash into the country, and where

carrying cash is a normal phenomenon. Cash is used for all major transactions. As a result, organized criminals are taking full advantage of the cash-based system where criminal proceeds are often used to pay for huge transactions without any movement of money across the country's borders (see Bosworth-Davies and Saltmarsh, 1994). Consequently, the activities of organized criminals manages to evade the attention of the law enforcement agencies in Dubai. For example, in 2006, Frank Gardner reported to the House of Commons Foreign Affairs Committee that:

Dubai particularly is an international conduit for both good and bad things. It was long a centre for smuggling gold into India. It has often been used as a place for money laundering, particularly by Russians who were coming out of the CIS³ states with just wads of cash, and buying up electronics and going back. Nobody ever asked where the money came from (see House of Commons, 2006: Ev 44).

Some bank officials interviewed in this current study identified an important factor that is also contributing towards the import of cash into the UAE and particularly into Dubai. As has been stated earlier in the Introduction, the UAE is made up of seven emirates. However, Dubai and Abu Dhabi are the most developed emirates with modern and effective controls for checking the import of cash by any means. There are five international airports in the UAE in Dubai, Abu Dhabi, Sharjah, Ras Al-Khaimah, and Fujairah. Apart from the Dubai and the Abu Dhabi Airports, there are no effective controls and modern systems for checking the import of cash in the other three Emirati airports. Money launderers are taking advantage of the weakness of the immigration system in these three airports, and once the money is brought into the UAE, it can easily be moved to another emirate. AMLSCU Official No. 14 stated that

³ CIS stands for 'Commonwealth of Independent States'. It is a regional organization whose member countries are the former Soviet republics. It was formed during the breakup of the Soviet Union in 1991.

The main trading centre for money launderers is Dubai because the other five emirates are not fully developed compared to that of Dubai and Abu Dhabi. The least developed emirates are trying to attract more people to use their airports in order to generate more revenue thus leaving enough room for the money launderers to exploit and bring their illegal cash into the UAE (Field Notes, 2009).

In the last few decades, the international political scenario has changed completely, and this has affected the UAE in many ways. The discovery of oil in the Gulf region and the booming economy and infrastructure has attracted manpower from around the world to work for the development of the Gulf countries. Other events in the neighbouring region, such as the end of the Cold War and the break-up of the Soviet Union, the neighbouring conflicts of Iran-Iraq (1979-88), the Iraqi invasion of Kuwait (1990), the first Gulf War of 1991, the event of September 11, 2001, the US-led invasion of Afghanistan in 2001 and of Iraq in 2003, have completely changed the political and security scenario of the region. All these regional and other conflicts have created a big market for drug trafficking and arms smuggling, and organized criminals have had the opportunity to exploit the situation. Practically, it was difficult for the UAE not to be affected by these regional conflicts. Although the UAE did not physically involve itself in any of the regional conflicts, however it was not possible for the Emirates to save itself from the influences of these regional conflicts. One such influence was the infiltration of “black money”, earned through arms smuggling and drug trafficking in the regional countries, into the UAE. This was possible because the UAE has a stable political and sound financial system, and was the most convenient point for organized criminals to launder their criminal proceeds earned from drug trafficking and arms smuggling (Naufal and Vargas-Silva, 2009).

As has been stated in the Introduction, the UAE is one of the important financial centres in the world, with excellent investment opportunities. It is also a tax free zone. As a result, it has attracted people from around the world for the purpose of investment, employment, tourism

and living. It is interesting to note that the population of foreign nationals has already exceeded that of local UAE citizens (Emiratis). According to the World Fact Book published by the CIA, the total estimated population of the UAE is 4,798,491 inhabitants, making it 115th country of the world in terms of population. Furthermore, the estimated population growth rate of the UAE is 3.689% and the net immigration rate to the UAE is 22.98 migrants (s) per 1,000 population, thus making it the top country of the world in both cases. Based upon the 1982 census, the ethnic make-up of the UAE was Emirati 19%, other Arab and Iranian 23%, South Asian 50%, other expatriates (includes Westerners and East Asians) 8%. Less than 20% of the population are UAE citizens (Emirati) (see CIA, 2009). The demographic figures mentioned above clearly reflect that the UAE citizens are a minority group in their own country.

It is a known fact that terrorist organizations have learned the techniques of money laundering from organized criminals, where the criminal proceeds are used to finance terrorist activities around the world (see Lilley, 2006; Schott, 2006; Berry, 2003). The UAE has been accused of being used for laundering the ransom money received by ships hijackers in Somalia. It was reported in one of the leading UK newspapers, *The Independent*, that the UAE financial system has been used by pirates to launder large sums of ransom money. Sengupta and Howden (2009) reported that

Organized piracy syndicates operating in Dubai and other Gulf states are laundering vast sums of money taken in ransom from vessels hijacked off the Horn of Africa (Sengupta and Howden, 2009:NP).

The report further stated that

Around \$80 million (£56 million) has been paid out in the past year alone – far more than has previously been admitted. But while some of this money has ended up in the pirate havens of Somalia, millions have been laundered through bank accounts in the United Arab Emirates and other parts of the Middle East (Sengupta and Howden, 2009:NP).

The report pointed towards the operators of the piracy and stated that

The so-called ‘godfathers’ of the illicit operations, according to investigators, include businessmen from Somalia and the Middle East, as well as other nationalities on the Indian Sub-continent. There have also been reports that some of the money from piracy ransoms has gone to Islamist militants (Sengupta and Howden, 2009:NP)

Al-Mazeina, Deputy Commander General of the Dubai Police, denied the allegation made by the British newspaper regarding the involvement of the UAE in laundering the ransom money of the Somali pirates. Al-Mazeina stated that

Somali pirates’ money is not laundered through Dubai ... the UAE is the only country in the region where money laundering cases are taken to court and sentences issued (Gulf News, 22.4.2009)

However, since September 11, 2001, there has been increasing concern about the link between money laundering and the financing of terrorism worldwide. In this respect, the Government of the UAE was under immense pressure to improve and tightened its regulatory system because its financial system was accused of being used by Al-Qaeda to finance terrorist activities. In 1998, for example, Al-Qaeda used the Dubai Islamic Bank to transfer funds in order to finance the bombing of the US embassies in Kenya and Tanzania (Winer, 2002).

The UAE financial institutions were again in the limelight following the terrorist attacks of 9/11 on America in 2001. It is alleged that the hijackers used branches of international banks such as the Bank of America and Sun Trust to transfer money from the UAE into the USA (Roth et al., 2004). Similarly, some of the hijackers of the September 11, 2001 terrorist attack opened bank accounts in the UAE and transferred the money to its

branches in the USA. Interestingly, the hijackers transferred their money in multiple small transactions in order to avoid suspicion on the part of both the UAE and the US authorities, and they succeeded in this attempt (see Lilley, 2006). The 9/11 Commission also highlighted that the hijackers managed to avoid any suspicions with regard to their transactions because they were small. The report stated that:

Contrary to persistent media reports, no financial institution filed a Suspicious Activity Report (SAR) in connection with any transaction of any of the 19 hijackers before 9/11, although such SARs were filed after 9/11 when their names become public... the hijackers' transactions themselves were not extraordinary or remarkable (Roth et al., 2004: 141).

These kinds of comments had already been made by the Governor of Central Bank of UAE when he criticised both the UAE and the US financial system that failed to report the suspicious transactions which were used to finance the 9/11 terrorist attacks on America. In his lecture delivered at the Zayed Centre for Co-ordination and Follow Up under the title 'UAE Monetary Policy and Economy', Al-Suweidi argued that

Those suspected of the attacks on America made simple remittances through the UAE, nothing that all the remittance were also done through and with the knowledge of the US banking institutions. Therefore, one can say that all these institutions are guilty, but who would have predicted that these people would launch such attacks (see UAE Interact, October 28, 2001; WAM, October 28, 2001)

2.6.1 The *Hawala* Cash Remittance System

In addition, the UAE is the hub of an alternative remittance system known as Hawala. Hawala is an important alternative banking system operating in most parts of the world under different names. It is commonly known as the alternative or parallel remittance system operating outside, or parallel to, the traditional banking system. It is also a term used for 'informal financial networks' (De Goede, 2003:513) also commonly recognized as

‘underground banking systems’ (Gilligan, 2004:24). There are a number of underground banking systems, some of which have very sophisticated structures, whereas others are involved in informal barter. Some of the well known underground banking systems are “the Chinese ‘chit’ or ‘chop’ system, the Pakistan ‘Hundi system’ and the Indian Hawala” (Rider, 2004:81).

It would be impossible to trace the exact origin of the Hawala system. Bosworth-Davies and Saltmarsh (1994) argued that the Hawala system was in practice many hundreds of years ago before the introduction of the Conventional banking system. Most literature on Hawala traces its roots back to the South Asian region, and more specifically, India and Pakistan. De Goede (2003) stated that the Hawala system had been used by traders as a safe money transfer technique when travelling along the Silk Route many centuries before the partition of the Indian Sub-continent. It is an accepted fact that the Hawala system originated in non-Arab Muslim countries. However, many sources suggest that the term ‘Hawala’ has Arabic origins (De Goede, 2003:513; Nawaz, et al., 2002:333). The term ‘Hawala’ means ‘to change or to transfer’ (De Goede, 2003:513). It also refers to ‘...the transfer of property or information via a third party or fiduciary’ (Bosworth-Davies and Saltmarsh, 1994:76).

Today, despite the introduction of strong international financial systems for money exchange, the Hawala system operates for the purpose of money transfer, both domestically and internationally. Buchanan (2004) explains how the Hawala system operates:

A person can deposit cash with a Hawala or Chop money exchanger and in exchange receive a chit, ticket or some sort of marker. Despite a rather innocuous appearance (though they can be impossible to replicate), the markers are actually coded bearer notes. When presented to a money changer in another country, the bearer will receive the same amount of cash, less a commission (usually 5–15 percent of the amount) (Buchanan, 2004:120)

The Hawala system has a number of advantages over the Conventional banking system (Rider, 2004; Buchanan, 2004) due to which many people, especially immigrants from most Asian countries around the world, use Hawala to send money to their homeland. It is considered a quick and cost efficient way of money transfer, often used by low paid workers, especially of South Asian origin. The Hawala system has the advantage of reaching to remote parts of the world that are usually not accessible by the normal banking system. For example, in Pakistan, the US Treasury Department stated that every year, more than ‘\$7 billion flow into the nation through hawala channels’ (Lilley, 2006:147). With respect to Dubai, Vassiliev (2003) claimed that criminal proceeds are constantly flowing into its financial sector, mainly from the former Soviet republics, Afghanistan, Iran, and Pakistan. The Hawala system still plays a very important role in the transfer of criminal proceeds which could amount to be \$20 billion (Vassiliev, 2003). Interpol highlighted a number of advantages of the Hawala system with regard to the customer using it:

- Cost-effectiveness – low overheads means a better exchange rate.
- Efficiency – the transfer takes one or two days at most.
- Reliability – it is so simple that very little can go wrong (as opposed to international transfers made through the banking system!)
- Lack of bureaucracy – if you know or are introduced to a broker, then it is unlikely (as the entire system is based on trust) that he will go through a KYC⁴ check on you.
- Lack of a paper trail – records of individual transactions are thin on the ground.
- Tax evasion – Interpol describe Hawala as offering a ‘scrutiny-free remittance channel’ (see Lilley, 2006:146-7)

⁴ KYC refers to ‘Know Yours Customer’

Until recently, there was very little concern about the practice of the Hawala system as a means for money transfer, despite its widespread use by immigrants from South Asian countries from around the world. Nowadays, it is widely believed that organized criminal groups have used the Hawala system to launder money generated especially from the drug business in the Indian Sub-Continent (Bosworth-Davies and Saltmarsh, 1994). Berry (2003) argued that

As India develops into an important regional financial centre, proceeds from criminal activities such as trafficking arms, gems, narcotics, and migrants increasingly are laundered in the country's financial institutions (Berry, 2003:98)

India is recognized as one of the commonly used places for exporting narcotics to the world and importing gold from the Gulf region via Dubai and '...Hawala allows many deals to be financed and transacted without any money changing hands or crossing frontiers' (Bosworth-Davies and Saltmarsh, 1994:77).

The terrorist attack on the World Trade Centre in September 11, 2001 has brought the Hawala system to the forefront of the news and political debates, especially in America and the West. The Hawala system was strongly criticised by the international media and politicians. Hawala is alleged to have been used by Al-Qaeda and Taliban to launder proceeds earned from drug trafficking and arms smuggling from Pakistan and Afghanistan in order to finance their regime of terror abroad. For example, on October 5, 2001, the *Times* magazine published an Article, 'A banking system built for terrorism', which strongly criticised the Hawala system (Ganguly, 2001). It further stated that

Welcome to the world of hawala, an international underground banking system that allows money to show up in the bank accounts or pockets of men

like hijacker Mohammed Atta, without leaving any paper trail. There are no contracts, bank statements or transaction records, and yet those who use the hawala networks can move thousands of dollars around the world in a matter of hours (Ganguly, 5th October, 2001)

Similarly, in the hearing on Hawala and Underground Terrorist Financing Mechanisms before the US Senate in November 2001, the Chairman, Evan Bayh (2001), said in his statement that

One system which bin Laden and his terrorist cells use to covertly move funds around the world is through ‘hawala’, an ancient, informal and widely unknown system for transferring money (Bayh, 2001)

In February 2002, Douglas Farah reported in the *Washington Post* that

Pakistan and US officials estimate that the Taliban and Al-Qaeda have removed the equivalent of \$10 million from Afghanistan. The money was taken across the Afghan-Pakistan border and was transferred from Pakistan to Dubai using the hawala system (see Lilley, 2006:147)

There are conflicting arguments about the extent to which the Hawala remittance system is used to finance terrorist acts. The Hawala system was criminalized in the war against terror. De Goede (2003:515) stated that ‘...in the press and political discourse, Hawala became stereotyped as taking place in shabby, smoky, dark, and illegal places’. He further argued that:

In the war on terrorist finance, discourses of Hawala have led to the underestimation of the complexity of cutting off terrorist funding, while criminalising remittance networks (De Goede, 2003:515)

The Hawala remittance networks came under attack around the world in the war against terror. The Bush administration for example, closed down a number of Hawala

networks operating in the US in November 2001. Reporting to the House of Commons Foreign Affairs Committee, Gardner (2006) argued that

When I used to be a banker, we were always rather wary of doing business in Dubai because we could not be sure of where the money came from. It is very much a home of Hawala transactions, which are paperless, record-less transactions, all done over the phone (House of Commons, 2006:Ev45)

Gardner (2006) downplayed any terrorist attack on Dubai and argued that

It has surprised a lot of people that Dubai has not yet been hit by a terrorist attack, but Dubai is a huge melting pot. If Al-Qaeda hit Dubai, it would be an own goal' (House of Commons, 2006:62)

The criminalization of the Hawala remittance system and the campaign against it led many Arab countries, including the UAE, to introduce regulations for its monitoring and control. In many other countries, strict conditions were imposed on the Hawala networks and they were bound to record full details of their customers. As a result, the Central Bank of the UAE ,via Notice no. 1815/2001, ordered all Hawala remittance networks to keep complete records of all outgoing and incoming transactions and of their customers. The Central Bank of the UAE also warned of strict punishment if the Hawala networks did not abide by the rules and regulations. In this respect, the Hawala remittance system in the UAE is regulated under the *Abu Dhabi Declaration on Hawala* of 16th May, 2002. The government of the UAE has mandated the registration of all the Hawaldar (Hawala Brokers/Dealers) which was not compulsory before the introduction of the Hawala Declaration in 2002. It is clear from this section that money laundering and other financial crimes are a major problem in Dubai.

2.7 Money Laundering and Financing of Terrorism

As has been discussed earlier, money laundering is a rather complex concept. It is the process by which the ‘...proceeds from a criminal activity are disguised to conceal their illicit origins’ (Schott, 2006: I-1). Money laundering involves the proceeds of criminally derived property rather than the property itself. Similarly, the financing of terrorism is also a simple concept. It is the ‘...financial support, in any form, of terrorism or of those who engage, plan, or engage in terrorism’ (Schott, 2006: I-1). However, a less simple concept to define is terrorism itself, because the term has significant political, religious, and national implications for different countries (Whittaker, 2007). According to Whittaker (2007)

Terrorism is about power: the pursuit of power, the acquisition of power, and the use of power to achieve political change. Terrorism is thus violence – or, equally important, the threat of violence – used and directed in pursuit of, or in service of, a political aim (Whittaker, 2007:5)

There is no acceptable unified definition of the word ‘terrorism’. It remains the subject of continuing debate in international bodies. Even the United Nations has failed to agree on a unified definition of terrorism. In a television interview on 28th October 2002, Sir Jeremy Green Stock – the chairman of the UN Secretary Council’s Committee on Terrorism – reminded the interviewer that it was not the responsibility of the committee to define terrorism. He stated that it is easy to define terrorist acts which should include ‘... indiscriminate use of violence, particularly against civilians, to further a political aim’ (Hailary, 2002, NP). Indeed, there is less clarity about the term terrorism. It is a concept with a lot of ideological and moral connotations, many competing definitions, and thus making it ‘...shrouded it terminological confusion’ (Furedi, 2007; English, 2009). The Oxford English Dictionary defines terrorism as “...a policy intended to strike with terror those against whom it is adopted; a person who uses violence and intimidation in the pursuit of political aims; the fact of terrorizing or condition of being terrorized” (www.askoxford.com). However, official

definitions of terrorism to a large extent paint a different picture. For instance, the Federal Bureau of Investigation (FBI), defines terrorism as '...unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives' (FBI cited in Poole, 2007:131). So also, the US Department of Defense described terrorism as '...the unlawful use of, or threatened use of force, or violence against individuals or property to coerce and intimidate governments or societies, often to achieve political, religious or ideological objectives' (cited in English, 2009:3). The variations between these definitions are significant enough to generate a measure of confusion and potentially unhelpful ambiguity (English, 2009:3; Ahmad 1998; Poole 2007). A critical look at the FBI definition reveals that the word 'unlawful' tends to criminalise acts that have been widely considered terrorist in nature, whereas other acts of protest also tend to intimidate/coerce the government by violence. For example, a violent demonstration or riot, while unlawful, is not considered terrorist in nature. The Terrorism Act 2000 of the UK defines terrorism as '...any action or threat of action against a person or property or electronic system designed to influence government for the purpose of advancing political, religious or ideological cause' (<http://www.opsi.gov.uk/acts>).

Whittaker (2007) reviewed a number of definitions of terrorism by different scholars and institutions and concluded that terrorism is;

- Ineluctably political in aims and motives;
- Violent – or, equally important, threatening violence;
- Designed to have far-reaching psychological repercussions beyond the immediate victim or target;
- Conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia)

or by individuals, or a small collection of individuals, directly influenced, motivated, or inspired by the ideological aims or example of some existent terrorist movement and/or its leaders; and

- Perpetrated by a sub-national group or non-state entity (see Whittaker, 2007:9-10)

Lilley (2006) argued that terrorist organizations have learned quickly from organized criminals groups the art of earning money from criminal activities and laundering them so that it can be used for terrorist goals. The transactional features of money laundering and financing terrorism are quite similar, as both are concerned with ‘concealment and disguise’ (Schott, 2006: I-2). However, it must be remember that money laundering and terrorist financing are two different concepts. Terrorists often use the same techniques as money launderers do, in order to hide the true origin of their money (Kersten, 2002). Money launderers enter their criminal proceeds into legal channels in order to conceal their criminal origins. Similarly, those who finance terrorism, also transfer funds which might be earned through legal or illegal means in such a way as to conceal their true origins and ultimate use (Winders and Sandler, 2006). Money launderers are rewarded by hiding and converting criminal proceeds into more legitimate funds, whereas terrorists are rewarded by concealing the origin of their funds and financing their terrorist activities (Schott, 2006).

Terrorism is a global phenomenon. In the past decade, organized criminal groups and terrorist organizations have become globalized and have diversified their activities. Berry (2003) argued that organized criminals and terrorists are continually searching for those territories which are suitable for their survival and expansion. Transnational criminals and terrorists are looking for countries with characteristics suitable for terrorist activities. These characteristics include:

Official corruption, incomplete or weak legislation, poor enforcement of existing laws, non-transparent financial institutions, unfavourable economic conditions, lack of respect for the rule of law in society, and poorly guarded national borders (Berry, 2003: 1)

Criminal groups have taken advantage of globalization and, in recent years, terrorist groups have proven that their reach is worldwide, as they benefit from some of those conditions that make nations hospitable to organized crime (Berry, 2003).

However, there exists an interface between terrorism and organised crime. Within this interface, terrorists engage in organised criminal activities to support themselves financially. They often operate through network structures, and these structures sometimes intersect and terrorists can hide themselves among transnational criminal organisations. Added to the above, the two groups operate in areas with little governmental controls, weak enforcement of laws, and open borders. In addition, they use similar means to communicate by exploiting modern technology, and they corrupt local officials to achieve their objectives. Above all, both launder their money, often using the same methods and the same operators to move their funds (Lea, 2005).

However, a significant proportion of terrorist funding may not necessarily be derived from specific criminal activity. Donations and contributions from a diverse spectrum of supporters may, to a greater extent, provide a significant proportion of a particular group's funds. While providing property for the purpose of committing serious criminal acts might effectively 'criminalise' the property in question, it is not necessarily of illicit, and thus tainted, origin. It will often be quite clean, in the sense that we use that concept in the context of money laundering control (Rider, 2004).

According to Rider (2004):

Of course, many terrorist organizations are almost indistinguishable from organized crime and, in recent years, there has been a tendency to label terrorists as almost a sub-species of organized crime. Terrorists have stooped to ordinary crime to raise funds and secure their objectives and, of course, most terror networks would have the characteristics of a 'continuing criminal enterprise' (Rider, 2004:67)

Lilley (2006) argued that some of the traditional terrorist organizations like the PLO, the IRA, the KLF, and ETA have already used crime to finance their terrorist activities. More recently, the Al-Qaeda and Taliban regimes jointly exploited the drug trade in Afghanistan to finance the regime and terrorist activities. In addition, terrorist organizations also use a variety of ways to raise funds to finance their operations such as terrorist camps, providing them with living expenses, funds to plan, train and commit terrorist acts. Terrorist fundraising is believed to come from different sources including

Donations, the use of charities and non-profit organizations, front companies, state sponsorship, fraud, smuggling, the narcotics trade, blackmail and protection rackets, corruption, counterfeiting, and other criminal activities (Lilley, 2006:137-8)

The terrorist organizations use a variety of ways to supply funds to the frontline to be able to continue their terrorist activities. Lilley (2006:144) has outlined some of the common methods used for terrorist purposes including

- Traditional money laundering;
- Online payment transfers;
- The use of front companies to create fictional business/trade transactions;
- Diamond trading;
- The purchase of, and trading in, works of arts, antiques or similar commodities;

- Holding funds in cash and then using couriers to transport it;
- Informal exchange mechanisms (Lilley, 2006:144).

The tragic attack on the Twin Towers in America on September 11, 2001 is one of the best examples of money laundering and terrorist financing. The 9/11 Commission Report explained how and from where the money was transferred to the US to finance the terrorist plot.

The 9/11 plot cost Al-Qaeda approximately \$400,000–500,000, of which approximately \$300,000 was deposited into U.S. bank accounts of the 19 hijackers (Roth et al., 2004: 13)

The 9/11 Commission Report provided a fascinating insight into the way money entered into the US to finance the terrorist attack, and how the hijackers were able to remain below the money laundering radar of the US authorities. The 9/11 Commission Report, in its ‘Monograph on Terrorist Financing’, spelled out the problem:

For terrorist financial transactions, the amount of money is often small or consistent with the customer’s profile ... and the transactions seem innocuous. As a consequence, banks generally are unable to separate suspicious from legitimate transactions (see Lilley, 2006:133)

Al Qaeda used three different means to fund their terrorist plot.

1. Wire transfers from overseas to the United States;
2. The physical transport of cash or traveller’s checks into the United States, and;
3. The accessing of funds held in foreign financial institutions by debit or credit cards (Roth et al., 2004:13)

Once the money entered the United States using all the above-mentioned means, the hijackers used the US banking system to store their funds and facilitate their transactions. In terrorist financing, Lilley (2006) argued, a distinct mechanism is being used to finance terrorist activity by money earned through both legitimate and illegitimate sources. Terrorist financing is difficult to identify compared to the general money laundering process.

2.8 Conclusion

The essence of money laundering is not the global transport of money bags in order to fool the police, but the art of falsely legitimating one's income or the acquisition of assets. The money laundering process allows organized criminals and terrorists to both hide its source and to freely spend the profits generated by illegal activities. In order to curtail criminal activity, the law must attack its motives - and the ability to spend ill-gotten gains. With law enforcement agencies making efforts to make it more difficult to remove the ability to spend the money, the incentive associated with this crime is significantly decreased. Undeniably, the biggest motivating factor is the spendable money which is generated. Therefore, lawmakers have focused their efforts at making it more difficult to spend or move the money without detection. By removing the ability to spend the proceeds, the incentive to commit the associated crime is significantly decreased. One of the central questions in the whole laundering issue is the alleged infiltration of crime-money into the healthy fabric of national and international trade and industry, corrupting and eroding the supposed integrity of bankers, builders, jurists or whoever it touches. Estimating the volume of money laundering has been accompanied more by fact creation than by fact finding.

Wechsler (2001) argued that the financial abuses are not of recent origin. They have existed as long as there were finances to be abused. As he puts it:

Financial abuses – money laundering, tax evasion, and rogue banking – have been around for as long as there have been finances to abuse. But globalization is creating new challenges as borders dissolve. New technologies enable tiny, remote countries to make quick money through their under regulated banking systems. Recent multilateral initiatives have started to attack the problem (Wechsler, 2001:42)

According to Wechsler (2001) the incidences of financial abuse have increased tremendously with the expansion of the international financial system. Globalization has changed the nature of the age-old problem and has undermined the old way of dealing with the problem. As highlighted in this chapter, money laundering is a complicated issue. It has often been used by drugs cartels, arms traffickers, terrorists and other criminal groups. These groups often use banks to launder their money so that it appears as the product of legitimate business. Tax evaders also hide their money by structuring complicated transitions, with the sole purpose of hiding their wealth from the tax authorities (Wechsler, 2001).

As Likewise noted in this chapter, the crime of money laundering and its link with terrorism, pose quite a number of problems for the world of the Twenty First Century. Money laundering has been identified as having a grave impact on domestic and international trade, the international banking industry, as well as the rule of law (Wright, 2006). Hence, tackling money laundering is essentially a global problem.

Due to the fact that money laundering occurs outside normal economic activities, it is therefore difficult to estimate exactly the profit that is being generated from this crime on an international scale.

According to Financial Action Task Force,

The International Monetary Fund, for example has stated in 1996 that the aggregate size of money laundering in the world be somewhere between two and five percent of the world's gross domestic product (FATF) PAGE?

The FATF further added that

Using 1996 statistics, these percentages would indicate that money laundering ranged between US Dollar (USD) 590 billion and USD 1.5 trillion. The lower figure is roughly equivalent to the value of the total output of an economy the size of Spain (FATF)

However, FATF has clearly indicated that these are rough estimates, and the organization does not publish any statistics about the intensity of the money laundering problem.

Thus, the need for policy development in order to counter money laundering has become a pressing issue for world economies. More importantly, the need for the law enforcement and surveillance networks in place to tackle money laundering has to be made more effective has now become mandatory. As Lea (2005) noted, money laundering has become the focal point of the fight against organised crime. For instance, the Financial Action Task Force based in Paris, has made recommendations for the development of sound anti-money laundering programmes. The UN and the IMF have also introduced stringent measures to control the crime. In addition, other regional organisations such as the Caribbean Financial Action Task Force (CFATF), the Asia Pacific Group (APG), the Organization of American States (OAS) and the European Union (EU) have all drafted and endorsed strong anti-money laundering measures among its member nations (see, for example, McDonald, 2001; Lea, 2005; Wright, 2006). The following chapter will look at the legislative and regulatory mechanisms that have been put into place by both international organisations and the UAE to combat money laundering.

Chapter Three

National, Regional and International Regulations

3.0 Introduction

In the previous chapter we examined the concept of money laundering and other issues associated with it. It has also been acknowledged that money laundering has become a global phenomenon in recent years due to the impact of globalisation. It has been estimated that over 80 percent of all money laundering schemes have an international dimension (Harjit, 2000). The internationalization of organized crime and money laundering has certainly raised serious challenges to domestic law enforcement authorities and the pressures are much more on them to develop more effective strategies to combat the crime. It has become obvious that national law enforcement agencies can no longer rely on traditional unilateral domestic measures (Gilmore, 1992). The need for more international cooperation has become obvious due to the fact that the mobility of individuals across national borders has significantly increased and, as a result, no country can afford to treat the problem of money laundering merely as a national phenomenon. The global threat of organized crime and money laundering has encouraged the international community to engage in a more concrete and coordinated effort to fight back.

3.1 Controlling Money Laundering

Different approaches have been adopted to tackle money laundering. In some countries, money laundering was controlled through codes of conduct or regulatory measures issued by banking supervisors, rather than through legislative measures. This was the case in Switzerland, where the first reaction towards the alleged misuse of Swiss financial

institutions for money laundering was taken in 1977, with a Code of Conduct signed by the Swiss Banks, the Swiss Union of Banks and the Swiss National Bank (Stessens, 2000). Under the code of conduct, 'Swiss banks were obliged to refrain from carrying out a transaction if it would frustrate the goals of the CDB as, for example, when it was clear that the funds were criminally derived' (Stessens, 2000:101). Initially, the problem of money laundering was considered a domestic issue and therefore all the efforts to combat money laundering were also dealt with domestically (for example, the case of Switzerland cited above). However, the efforts to combat money laundering have taken an international dimension, with the United States taking a lead in this direction.

The scope of these measures now ranges from the international to the domestic level and from the governmental to the private sector. The activities include the enactment of new anti-money laundering laws, the improvement of existing laws, the introduction of specialized financial investigative training, improved relationships between law enforcement agencies and the financial community and, through bilateral and multilateral agreements, nations joining together to eradicate money laundering (Paradise, 1997). The terrorist attack of September 11, 2001 on the Twin Towers was the trigger for US and international community concern to increase counter-terrorism enforcement. Consequently, it led to the application of many of the anti-money laundering due diligence requirements commonly used by financial and non-financial institutions to counter terrorism, and the awareness that the failure to comply with such requirements can result in legal and economic problems and a loss of reputation among other consequences.

This chapter will discuss some of the important efforts undertaken by the international community in controlling money laundering globally. The chapter is divided into two

sections. The first section (3.2.) examines the international initiatives and efforts to combat money laundering such as the provisions of the Basle Committee on Banking Regulations, the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention on Transnational Organized Crime (2000). The section also includes the role of the Financial Action Task Force (FATF) in the development and promotion of national and international policies to combat money laundering. This section also discusses the reasons for the creation of the international police force - Interpol - and its role in the fight against money laundering. The second section (3.3.) covers the regional efforts that have been introduced in order to combat the money laundering problem. In this section, the focus is on the efforts of the European Union and the Arab countries, especially the GCC countries, in their fight against money laundering.

3.2. International Initiatives

3.2.1. The Basle Committee on Banking Regulations and Supervisory Practices

Heavy foreign currency losses due to the closure of Franklin National in the United States and the collapse of Bankhaus Herstatt in Germany have paved the way for the establishment of the Basel Committee (McCann, 2006:231). The Basel Committee on Banking Regulations and Supervisory Practices was formed in 1974 by the Group of Ten (G-10) industrialized nations. The basic purpose of its creation was to supervise banks in order to stop the money laundering process through banks (Tarullo, 2008). The membership of the Committee, until October 2005, comprised of representatives from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the UK and the USA (Hopton, 2006). The Committee adopted a unanimous declaration of principles for banks and other financial institutions in order to ensure that they will not be used by

criminals to launder their dirty money, especially money derived from drug trafficking. The Basel Committee is considered the first international effort to address the problem of money laundering globally (Savona, 1999).

The possibility of the exploitation of financial institutions by criminals has been one of great concern to banking authorities, supervisors and management, from the point of view of the impact on their reputations and fears that it could undermine the public's confidence in banks. Due to the vulnerability of the financial sector to misuse by criminals, the Basel Committee on Banking Regulations and Supervisory Practices issued their Statement of Principles which is also known as 'The Basel Principles' in December 1988 (Hopton, 2006:8). The Basel statement of principles urges the banks to adopt a number of procedures and basic policies in order to protect and reduce the misuse of the financial system in the form of money laundering (Gilmore, 1992). These principles focused on a number of key areas including:

- Customer identification
- Compliance with legislation
- Conformity with high ethical standards and local laws and regulations
- Full cooperation with national law enforcement authorities to the extent permitted without breaching customer confidentiality;
- Record-keeping and systems; and
- Staff training (Hopton, 2006:8-9)

Although, the principles of customer identification have been adopted by many countries, in some countries the approach was felt to be either very poor or even non-existent. The Basel Committee acknowledged that everyone should adopt a minimum set of standards and

that these proposals would become the standard for supervisors to establish their national practices, and for banks to design their own programmes (Gilmore, 1992). The Basel Principles were generally endorsed by banks and other financial supervisors worldwide that started to cover proceeds from all criminal activities, not only those resulting from drug trafficking (Hopton, 2006).

In 2004 the Bank of International Settlements (BIS) based in Basel, Switzerland revised the 1988 Principles and announced a new set of guidelines on banking regulation (Tarullo, 2008). This is referred to as Basel II. The main focus of Basel II was to align banks' regulatory capital more closely with risks. Glantz and Mun (2008) stated that

Progress in measuring and managing risk and the opportunities risk provides is important because Basel II implementation is a large-scale undertaking, making considerable demands on banks and regulators alike and requiring appropriate rethinking of risk analysis globally (Glantz & Mun, 2008:1)

The Basel Committee works under the auspices of the Bank for International Settlements and its Secretariat is located in Basel, Switzerland. The Basel Committee has no legal force or formal supervisory authority; however, it exerts substantial influence on banks and other financial institutions. It set standards for banking regulations and supervision globally. The principles of the Basel Committee have also been approved by the Offshore Group of Banking Supervisors which comprises of 19 major financial centres (Paradise, 1997).

The Basel Committee meets three or four times every year. The main purpose of such meetings is to formulate and improve the supervisory standards and practices of the banks. There are approximately twenty five task forces and working groups of the Basel Committee that meet regularly (McCann, 2006). The main objectives of such meetings are

To strengthen international cooperation, improve the overall quality of banking supervisor worldwide, and to ensure that no foreign banking establishment escapes supervision (McCann, 2006:231)

The UAE is one of the countries that complies with the principles initiated by the Basel Committee in 1988 and has required all of its financial institutions to implement Basel II through the Central Bank of the UAE. The Basel Committee provided seminar sessions to both local and foreign banks in the UAE with regard to implementing Basel II, and continues to work with the banks to arrive at a decision on the way forward for the implementation of Basel II.

3.2.2. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)

This Convention is also known as the ‘Vienna Convention’. The Convention was held from 25th November to 20th December 1988. It was attended by 106 countries and adopted a detailed treaty text consisting of ‘thirty four Articles and one annex’ (see Gilmore, 1999:50). The basic purpose of the Convention was to increase global cooperation and encourage countries to formulate effective legislative and administrative measures to counter the huge profit generated by drug trafficking. The Vienna Convention is considered as the first international attempt to criminalize the money generated by drug trafficking (Hopton, 2006).

According to Gilmore (1999);

In addition to the major consumer nations of North America and Western Europe, it has attracted the support of key transit states in central and Eastern Europe, the Caribbean and the Central America. Of even greater significance a growing number of the world’s major drug producers have accepted its obligations. These include among others, Afghanistan, Bolivia, Colombia, India, Iran, Lebanon, Mexico, Morocco, Myanmar, Nepal, and Pakistan (Gilmore, 1999:51)

The scope of the Vienna Convention was limited to drug-related money laundering activities. However, the Convention encouraged all countries to extend the scope of their anti-money laundering measures from drug-related money to the proceeds generated by all serious crimes (Savona and Feo, 1997; Hopton, 2006). The main features of the Convention include;

- To criminalise drug trafficking and associated money laundering.
- To enact measures for the confiscation of the proceeds of drug trafficking.
- To enact measures to permit international assistance.
- To empower courts to order bank, financial or commercial records to be made available to the enforcement agencies, notwithstanding any bank secrecy laws (Hopton, 2006:7).

The Vienna Convention was widely received by the member states and is now widely regarded as ‘...constituting the essential foundation of the international legal regime ... in the anti-drug and anti-money laundering’ (see Gilmore, 1999:51)

The Convention mandated the signatory states to criminalize all activities concerning drug trafficking, including the production, cultivation, management and financing of trafficking operations (see Article 3.1. of 1988 UN Convention). The Convention also required member states to criminalize money generated as a result of drug trafficking in order to counter money laundering (see Article 3.1.b of 1988 UN Convention). The confiscation of the proceeds derived from drug trafficking has been dealt with under Article 5 of the 1988 UN Convention. The main objective of this Article is to disrupt the financial capability of drug dealers and the money that is being laundered. The Convention also required member states to establish measures both at the domestic level and at the international level, in order to enable the competent authority to ‘...identify, trace, and freeze or seize ... and confiscate’

the proceeds derived from drug trafficking and drugs-related money laundering (see Article 5.2 of 1988 UN Convention).

Article 7 the Convention put more emphasize on the importance of mutual legal assistance among the member states in order to combat drug trafficking and money laundering. It asked member states for ‘...the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings’ in respect of drug trafficking and its related offences (see Article 7.1 of 1988 UN Convention). This Article encourages member states to sign bilateral or multilateral treaties for the control of drug trafficking globally.

The 1988 Convention also tried to deal with bank secrecy laws or customer confidentiality that existed in some countries and which creates hurdles to counter drug trafficking as well as money laundering. Article 5.3 says that

Each party shall empower its courts or other competent authorities to order the bank, financial or commercial records be made available or be seized. A party shall not decline to act under the provision of this paragraph on the ground of bank secrecy (Article 5.3 of 1988 UN Convention)

Bank secrecy laws or customer confidentiality exists in some countries, and criminals are taking full advantage of such a situation to launder money derived from illegal activities (see Chapter 5 on the UAE Central Bank’s AMLSCU). The 1988 Convention actually wanted to restrict money launderers who take advantage of such measures, and such laws also create hurdles for bilateral or multilateral cooperation to counter money laundering. According to Gilmore (1992);

Existing bank secrecy law is being used in many instances to obstruct cooperation and the provision of information needed for the investigation of allegations of drug-related offences (Gilmore, 1992:69).

In the fight against money laundering, the 1988 UN Convention was one of the great achievements of the international community. However, it is important to note that the fight against money launderers is not an easy task. International treaties like this have no doubt produced encouraging results, but money launderers constantly change their tactics and take full advantage of the fragmented legal arrangements in different countries which they continue to exploit. The FATF in 1990 reported that

Many of the current difficulties in international cooperation in drug money laundering cases are directly or indirectly linked with a strict application of bank secrecy rules, with the fact that, in many countries, money laundering is not today an offence, and with insufficiencies in multilateral cooperation and mutual legal assistance (see Gilmore, 1999:63-4)

There is no doubt that the 1988 UN Convention was an important and successful initiative in the fight against drug trafficking and money laundering. It has contributed a lot to future efforts in relation to anti-drug trafficking and anti-money laundering measures. The most important and influential aspect of this Convention was the criminalization of the proceeds derived from drug trafficking, and also of money laundering (Savona and Feo, 1997). As has been explained earlier, the Vienna Convention formed the basis for much of the subsequent legislation. However, it has now effectively been overtaken by the Palermo Convention (Hopton, 2006).

3.2.3. The Financial Action Task Force and its Forty Recommendations

The Financial Action Task Force, commonly known as FATF, is an independent international body which was created by the G-7 countries at the Economic Summit of Industrialized Countries in Paris in 1989. The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is

therefore a 'policy-making body' that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas (www.fatf-gafi.org). The basic aim of establishing such an organization was to develop an international approach towards controlling money laundering globally (Savona and Feo, 1997). FATF is a policy making body that attempts to generate and influence the necessary political will with regard to introducing national legislative and regulatory reforms for the eradication of the money laundering problem. The FATF is recognized as '...the international standard setter for anti-money laundering efforts' (Vaithlingam & Nair, 2007:354). The FATF has clearly stated in its mission statement that

The FATF is an inter-governmental policy-making body whose purpose is to establish international standards, and develop and promote policies, both at national and international levels, to combat money laundering (ML) and terrorist financing (TF) (see FATA, 2009)

Although, the FATF is located within the OECD, however it is not formally a part of any other international organization. As the Head of the Financial Affairs Division of the OECD remarked, '...it is not a permanent international organization nor a body managing a legally-binding convention' (see Gilmore, 1999:82). It is considered as an *ad hoc* grouping of governments and others with the sole purpose of establishing comprehensive anti-money laundering strategies based upon international cooperation. One of the important contributions of the FATF towards combating the money laundering phenomenon is the package of forty recommended countermeasures that was first elaborated in the February 1990 Report (Gilmore, 1999).

The 1990 FATF Report is broadly grouped into three categories i.e. 'criminal law, banking law and international cooperation' (Savona and Feo, 1997:39). As far as the penal measures are concerned, the Report recommended nations to criminalize money laundering.

With regards to banking laws, the Report recommended the elimination of anonymous accounts, the identification of hidden beneficial owners and record keeping. Furthermore, the report also recommended the need for:

Increased attention to suspicious transactions, authority to report such transactions with full protection for the reporting person and institution, non-disclosure of such report to customers, and formalized anti-money laundering programs fixing responsibility for compliance with the recommendations. Additional recommendations deal with the heightened security for transactions involving countries which did not comply with the recommendations, consideration of monitoring significant cross-border transactions and domestic cash flows, as well as encouragement of modern systems of money management rather than cash intensive practices (Savona and Feo, 1997:39)

Until 1998, the membership of the FATF was limited to 26 principal industrialised countries. However, it was soon realized that the effectiveness of international anti-money laundering efforts could only be achieved through the increased involvement of strategically important countries which can play their role in the fight against money laundering. According to Alexander (2007), by February 2005 the membership of the FATF was made up of 31 countries and two international organizations i.e. the European Union and the Gulf Cooperation Council. Furthermore, there are FATF-style regional anti-money laundering bodies that hold the status of Observer with the FATF. Such bodies include

- Asia/Pacific Group on Money Laundering (APG)
- Caribbean Financial Action Task Force (CFATF)
- Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) (formally PC-R-EV)
- Eurasian Group (EAG)
- Eastern and Southern African Anti-Money Laundering Group (ESAAMLG)

- Financial Action Task Force on Money Laundering in South America (GAFISUD)
- Middle East and North Africa Financial Action Task Force (MENAFATF) (Hopton, 2006:18-19).

Some members of the FATF are also members of these regional organizations. These regional organizations have, among other functions, a specific mission to fight against money laundering activities in their region (Hopton, 2006).

The Forty Recommendations of FATF

The introduction of forty recommendations is no doubt a remarkable aspect of the FATF in 1990. The main objective behind the introduction of such recommendations was to criminalize money laundering and to strengthen law enforcement and detection mechanisms worldwide, with the sole purpose of eliminating money laundering. These forty recommendations provide a minimum standard for countering money laundering activities, both at domestic as well as at international levels. In 1990, the FATF redefined and expanded many of the principles already put forward by the Basle Committee in addressing and targeting the control of the financial aspects of money laundering. In 1996, these recommendations were revised due to the changing circumstances and challenges posed by the introduction of new technological advancements in the financial system, e.g. cyber payments. The 1996 FATF recommendations serve as an international anti-money laundering standard and have been endorsed by more than 130 countries throughout the world (see FATF, 2009).

The forty FATF recommendations are divided as follows:

- Scope of the criminal offence of money laundering (Recommendations 1 & 2)
- Provisional measures and confiscation (Recommendation 3)

Measures to be taken by Financial Institutions and Non-Financial Businesses and Professions to prevent Money Laundering and Terrorist Financing

- Customer due diligence and record-keeping (Recommendations 4 – 12)
- Reporting of suspicious transactions and compliance (Recommendations 13-16)
- Other measures to deter money laundering and terrorist financing (Recommendations 17 – 20)
- Measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations (Recommendations 21 & 22)
- Regulation and supervision (Recommendations 23 – 25)

Institutional and other measures necessary in systems for combating Money Laundering and Terrorist Financing

- Competent authorities, their powers and resources (Recommendations 26 – 32)
- Transparency of legal persons and arrangements (Recommendations 33 & 34)
- International Cooperation (Recommendation 35)
- Mutual legal assistance and extradition (Recommendations 36 – 39)
- Other forms of cooperation (Recommendation 40) (see FATA, 2009 official website for details)

After the terrorist attack in the United States on September 11, 2001, an extraordinary meeting of FATF members was convened in Washington DC, on October 29-30, 2001. In the meeting it was agreed to broaden the mandate of the FATF from not only dealing with the issue of proceeds from criminal conduct but also to cover the financing of terrorism. In this

regard, eight special recommendations were introduced that deal with the financing of terrorism which was increased to nine at the end of 2004. These special recommendations included measures designed to fight terrorist financing and terrorist organizations as well. The nine special recommendations are complementary to the original forty recommendations. They commend FATF member countries to;

1. Take immediate steps to ratify and implement the relevant United Nations instruments
2. Criminalise the financing of terrorism, terrorist acts and terrorist organisation
3. Freeze and confiscate terrorist assets
4. Report suspicious transactions linked to terrorism
5. Provide the widest possible range of assistance to other countries' law enforcement and regulatory authorities for terrorist financing investigations
6. Impose anti-money laundering requirements on alternative remittance systems
7. Strengthen customer identification measures in international and domestic wire transfers
8. Ensure that entities, in particular non-profit organisations, cannot be misused to finance terrorism (Gilmore, 2004:124)
9. Ensure that there is a measure to deal with the transportation of cash and bearer instruments across borders (see also FATF, 2004)

Over the past decade, the recommendations of the FATF have acquired the status of internationally accepted standards in the fight against the control of money laundering. The FATF has achieved this status as a result of its commitment to the implementation of its 40 recommendations within the members' states and also outside it and, with the help of regional bodies such as the Council of Europe, to get tough with laggard countries. The

FATF realized in 1996 that complete reliance on legal measures would not support the effort against money laundering globally. Because, under international law, the 40 FATF recommendations are not legally binding on any country, it started to work against those jurisdictions that had failed to comply with its recommendations, especially countries with strict banking secrecy laws that support money laundering activities (see Gilmore, 2004). In its February 2000 Report, the FATF set out criteria for listing 'Non-Cooperative Countries and Territories (NCCTs)' and the procedure to be adopted to review the progress made by countries and territories. Counter measures can be applied in the event that a country is on the NCCT list. One of the most important consequences would be the application of Recommendation 21 with regard to NCCT list countries, and all FATF countries are required to comply with this recommendation (Hopton, 2006). This recommendation states that

Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should apply appropriate counter-measures (see FATF Recommendation 21, FATF, 2009)

Alexander (2007) stated that appearance on the NCCT list conveys a message to other countries that these jurisdictions lack proper anti-money laundering measures, and warns them to think carefully before engaging in any financial transactions with these countries.

3.2.4. The UN Convention on Transnational Organized Crime (2000)

The United Nations Convention on Transnational Organized Crime was adopted at the millennium meeting in November, 2000. In December, 2000, it was opened for signature at a high level conference held in Palermo, Italy. It is significant in the sense that it was the first legally binding UN instrument against organized and serious crime. A total of 184 countries signed the Treaty and it entered into force on 29th September, 2003 (see Hopton, 2006). The Convention required the signatory states to establish, within their domestic laws, the following distinct criminal offences:

- Participation in an organized criminal group
- Money laundering
- Corruption
- Obstruction of justice (Hopton, 2006:8)

Furthermore, the Convention asked the member states to commit to the following:

- Criminalizing offences committed by organised crime groups, including corruption and corporate or company offences;
- Cracking-down on money laundering and the proceeds of crime;
- Speeding up and widening the reach of extradition;
- Protecting witnesses testifying against criminal groups;
- Tightening cooperation to seek out and prosecute suspects;
- Boosting the prevention of organized crime at national and international levels; and
- Developing a series of protocols containing measures to combat specific acts of international organized crime (See Wright, 2006: 193)

The Convention stressed the need for mutual cooperation among member states on matters such as ‘...extradition, mutual legal assistance, transfer of proceedings and joint investigations’ (Hopton, 2006:8). It also required the extension of technical assistance to developing countries in order to take necessary measures in dealing with the problem of organized crime. Some of the main features of the Convention are discussed in the following section.

The scope of the Convention is set out in Article 3 which states that the Convention is applied to the ‘...prevention, investigation and prosecution’ of offences, including money laundering, corruption and other serious crimes as has been defined under Article 2 of the Convention. Article 2 of the Convention clearly states that that application of the Convention is related to offences that involve ‘an organized criminal group’ and are ‘transnational in nature’.

The Convention under Article 2 provided a broader definition of an ‘organized crime group’ which was lacking due to the absence of a universally agree definition (see Chapter 1). Article 3.2 clearly excluded domestic offences from its scope and focused on offences that have a transnational dimension in one way or another. The 2000 UN Convention also provided many detailed provisions for mutual international cooperation against transnational organized crime. Gilmore (2004) argued that most of the internal structure of the 2000 UN Convention has been inspired by the 1988 UN Convention. However, the 2000 UN Convention presented some new features such as the protection of witnesses and victims (Articles 24 & 25 of 2000 UN Convention). The close link between organized crime and corruption has been dealt under Article 8 & 9 of 2000 UN Convention. It required all member states to criminalize the laundering of the proceeds derived from crime. This Article covers

all aspects of money laundering i.e. money derived from crime including conversion, transfer, concealment or disguise, acquisition, possession, etc. (Article 6 of 2000 UN Convention).

One of the important aspects of the Convention is the provision of measures in order to prevent money laundering (See Article 7 of 2000 UN Convention). These measures were introduced with the sole purpose of attacking the financial aspect of the organized criminal. In order to deter money laundering, the Article asked for all the signatories to introduce comprehensive domestic regulatory and supervisory systems for banks and other financial institutions that are vulnerable in terms of being used for the purpose of money laundering. In this respect, more focus was put on measures such as ‘...customer identification, record-keeping, and the reporting of suspicious transactions’ (See Article 7.1.a of 2000 UN Convention). Under Article 7.1.b, member states were required to introduce a ‘Financial Intelligence Unit’ and to monitor the movement of cases across national borders (Article 7.2 of 2000 UN Convention). The member states were encouraged to sign treaties for the purpose of controlling money laundering activities (See Article 7.3 of 2000 UN Convention). Finally, Article 14 explains the method to be used in dealing with the confiscation of the proceeds or crime or property.

It is important to mention that the UN Convention of Transnational Organized Crime 2000 is a significant achievement and development that shows the commitment of the international community to combating money laundering. It also explains the link between organized crime and money laundering. A convention like this provides the best norms of international cooperation in relation to eliminating money laundering activities globally (see Stessens, 2000).

3.2.5 The Role of Interpol in Money Laundering Control

Interpol is the international police organization. Its creation came after ongoing struggle on the part of police institutions from many countries to forge an international police force. As a result, an International Criminal Police Commission was established at the International Police Congress in Vienna in 1923. After World War II, the same organization was renamed as the International Criminal Police Organization in 1956, abbreviated as the ICPO – Interpol (Deflem, 2002). The General Secretariat of Interpol is located in Lyon, France. It has seven regional offices. Each member state maintains a National Central Bureau (NCB) which is comprised of well-trained law enforcement officers (Madinger, 2006).

Article 2 of the Constitution of Interpol states its aims as follows:

- To ensure and promote the widest possible mutual assistance between all criminal police authorities within the limits of the laws existing in the different countries and in the spirit of the ‘Universal Declaration of Human Rights’, and
- To establish and develop all institutions likely to contribute effectively to the prevention and suppression of ordinary crime crimes (see Fooner, 1989:35)

Interpol facilitates cross-border police cooperation in respect of crime and criminals. It works closely with those organizations, authorities and services that work in the prevention of international organized crime (Interpol, 2009; Hurst, 2007). Interpol has four core functions:

- Secure global police communication services,
- Operational data services and databases for police
- Operational police support services, and
- Police training and development (for details see Interpol, 2009)

Interpol provides efficient means of communication across borders between police forces. It also assists in intelligence gathering and provides access to vital police data in a safe and secure environment (Andreas & Nadelmann, 2006; Hurst, 2007). Interpol keeps a wide range of databases and information. Such information includes,

Name and photographs of known criminals, wanted persons, fingerprints, DNA profiles, stolen or lost travel documents, stolen motor vehicles, child sex abuse images and stolen works of arts (Interpol, 2009)

Interpol not only maintains important databases and information, but also disseminates such information among member states through its system of international notices. As has been stated earlier, member states coordinate their activities with Interpol through their National Central Bureau (NCB). The NCB is the place where a member country places a request for assistance if required, in other jurisdictions (Madinger, 2006). In respect of a wanted person involved in a serious crime of a heinous nature, Interpol issues what is commonly known as a ‘Red Notice – an international request for the provisional arrest of an individual’ (Interpol, 2009).

Interpol has prioritized six crime areas that include ‘...corruption, drugs and organized crime, financial and high-tech crime, fugitives, public safety and terrorism, and trafficking in human beings’ (see Interpol, 2009). To be able to work against its six priority crime areas, Interpol has established a Command and Control Centre that operates 24 hours. This is basically a crisis management centre. Its role is to assist and coordinate with any member state with the constant exchange of information if any serious incident occurs (Interpol, 2009).

Interpol also work in the capacity building activities of its member states in respect of dealing with serious crime of a global nature. In this respect, it provides training facilities to the national police forces of various countries and also ‘...offers on-demand advice, guidance

and support in building dedicated crime-fighting components' (Interpol, 2009). Such training ranges from sharing knowledge, skill and information, to ensuring best practices and the establishment of global standards for combating serious international organized crime (Interpol, 2009).

Madinger (2006) argued that Interpol has taken a tough stance and is at the forefront of the fight against money laundering. It has promoted cooperation and assistance among its member states in respect of investigating money laundering cases. It provides technical assistance to countries in their fight against money laundering. In this fight, the General Assembly of Interpol adopted the Model Legislation on Money Laundering and Forfeiture of Assets in August 1985, which was originally drafted by Interpol's Caribbean and Latin American working group (see Zagaris, 1995). The legislation calls for the freezing of assets prior to the filing of criminal charges if it is suspected that they are the proceeds of crime. It also provides for the forfeiture of such property to the government if they are found to be the proceeds of crime. Through its extensive lobbying campaign, Interpol has asked its members to formulate their domestic anti-money laundering legislations and to help in conducting international financial investigations and the seizure of criminal assets (Zagaris, 1995). Interpol constantly adopt a number of resolutions on combating international money laundering and forfeiting the proceeds of crime. It has continued its efforts to forge consensus among its member states and, with the help of other international organizations, to cooperate in the fight against money laundering (Savona and Feo, 1997).

3.3. Regional Efforts to Combat Money Laundering

Money laundering and terrorist financing is no doubt an international phenomenon and no individual country can effectively deal with these problems alone. The international community has understood this fact and, as a result, along with international initiatives,

several regional initiatives have also been adopted by different countries in order to tackle the problem of money laundering and terrorist financing. This section will focus on the efforts by the European Union and the Arab states, particularly in the Gulf region, in fighting against money laundering and the financing of terrorism.

3.3.1. The European Union

3.3.1.1 The Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds of Crime, 1990

As stated and explained earlier, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was the first international effort to fight the threat to global financial stability caused by the laundering of huge profits generated by drug trafficking. After the Vienna Convention came into force on 11th November 1990, the Council of Europe organized their own convention of a similar nature. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was a planned effort by the Council of Europe to combat money laundering. It is also known as the Strasbourg Convention (Vettori, 2006). Unlike the Vienna Convention, the Strasbourg Convention was not limited to drug trafficking (Leong, 2007; Mitsilegas, 2003). The 1990 Convention included all types of criminal offences and the offence of money laundering was extended to include money derived from all serious crimes (Gilmore, 1995). This was one of the important steps in the fight against money laundering. It was realized in the Convention that criminal groups commit a variety of crimes to make money; therefore, it required a wider strategy to control the proceeds from organized crime.

The Strasbourg Convention came into force on 1st September 1993. It was signed and ratified by all fifteen European Union Member States of that time (Mitsilegas, 2003). One of

the important features of this Convention was its stress on the confiscation of the proceeds of crime. It was clearly indicated in the Preamble to the Convention that:

Confiscation to be one of the modern and effective methods for use on an international scale to combat serious crime, differs from the Vienna Convention as regards the predicate offences, which are no longer restricted to drug-related offences but include any type of crime (Vettori, 2006:4).

Chapter 2 of the Strasbourg Convention set out measures to be introduced at the domestic level to combat money laundering. In this regard, it was stated in Article 3 that each party must adopt measures to enable the tracing, seizure and confiscation of the proceeds from crime. Article 4 required states to introduce measures to empower the competent authority in this regard. Vettori (2006) stated that

Particular emphasis is placed on the adoption of those measures necessary to empower the competent authorities in order that bank, financial or commercial records be made available in confiscation proceedings, as well as to enable the use of special investigative techniques (such as interception of telecommunications, access to computer systems, etc. (facilitating the identification of the ill-gotten gains) (Vettori, 2006:4)

Articles 7 – 10 set out measures for increased cooperation and assistance among the Council of Europe member states. Gilmore (1995) stated that the main purpose of the Convention was to facilitate among member states an increased cooperation with respect to search, seizure and confiscation of the proceeds of crime that generate huge profits. Vettori (2006) argued that the Strasbourg Convention was the first regional effort to allow for the seizure and confiscation of the proceeds from crime, as this measure had not been in place prior to that time. Therefore, in the Palermo Convention 2000, the United Nations introduced measures that called for the seizure and confiscation of the proceeds of crime. It was realized that the deprivation of the financial basis of organized criminals was an important step with respect to combating money laundering and promoting international cooperation (Savona, 1999).

3.3.1.2. The EU Directives on Money Laundering Control

As we know, the European Union is moving towards integration and harmonization of its currencies, financial markets and laws and regulations. Therefore, it was consider important to introduce measures to protect the European market from misuse by organized criminals for the purpose of money laundering. In this regard, the European Union issued three directives on the Prevention of the Use of the Financial System for the Purpose of Money Laundering. The first directive was issued in June 1991, and it asked the member states to amend their domestic laws in order to prevent their domestic financial systems from being misused by criminals for the purpose of money laundering (Leong, 2007). The 1991 Directive imposed a number of obligations on credit and financial institutions to prevent money laundering such as customer identification (See Article 3 of 1991 EU Directive), maintaining records (Article 4 of 1991 EU Directive) and due diligence (Article 5 of 1991 EU Directive). It also asked for cooperation with competent authorities and a requirement to set up appropriate training and internal reporting procedures with regard to suspicious transactions. The application of the Directive is on all banks and financial institutions whether they are based in the EC or whether they are EC branches of corporations based on their countries (Fisher, 2002). The 1991 Directive required member states to implement necessary legislations such that:

- Money laundering was prohibited;
- Customer identification was verified and records kept;
- Suspicious transactions were monitored and checked;
- Institutions should cooperate with the authorities by reporting suspicions and supplying relevant information;
- Suspects were not ‘tipped off’ that they were being investigated;

- Anyone reporting a suspicion was to be protected from actions related to a breach of confidence;
- Institutions should implement and maintain adequate internal controls and employee training (Hopton, 2006:26)

The limitations of the first EU Directive were discussed and a second EU Directive was issued in December 2001. This is known as the Second Money Laundering Directive (Leong, 2007:57). According to Hopton (2006), the Second EU Directive was based upon two major proposals.

First, to extend the requirements from drug trafficking to encompass all serious crime including tax evasion together with an extension of the reporting requirements. The second, and more controversial, proposal was to bring within the terms of the Directive a number of non-financial-sector businesses (Hopton, 2006:26)

As a result, the scope of the Second EU Directive was extended to cover accountants and auditors, real estate agents, dealers in high value goods, casinos and legal professionals when assisting clients in respect of property formation matters. It broadened the criminal activity definition to cover all organized crime and illegal activities affecting the financial interests of the community, instead of only drug-related activities. Finally, it also provided references to cooperation on fraud and corruption between the community and the money laundering regulation enforcement agencies in member states (Fisher, 2002).

In order to strengthen the European Union anti-money laundering and counter-terrorist financing measures, a Third EU Directives was issued in June 2005. It consolidated and updated the first and second EU Directives. Efforts were made to ensure that the new rules were in line with the Financial Action Task Force's revised Forty Recommendations of June 2003 (Leong, 2007). The main features of the Directive are as follows:

First, the new requirements of credit and financial institutions to impose customer due diligence and record-keeping requirements, and communicate relevant policies and procedures, to their non-EU branches and majority owned subsidiaries. Secondly, the prohibition on credit institutions maintaining correspondent relationships with shell banks and imposition of certain mandatory due diligence requirements on cross-frontier correspondent banking relationships with respondent institutions from third countries. And thirdly, provisions enabling certain disclosures to be made without contravening the tipping off prohibition including disclosures to competent authorities and for law enforcement purposes, and in some cases disclosures between institutions within an EU group or network, and to other EU financial institutions engaged on the same transaction (Smith, 2005: No Page)

Leong (2007a and b) stated that the European Commission reviewed the existing money laundering directives and it was decided to include the financing of terrorism in the Third Directive. As a result, the scope of the Third Directive was extended and started to include the financing of terrorism as a criminal offence on a par with money laundering.

3.3.1.3. The Europol

Europol is the European Police Organization that deals with criminal intelligence. It is located in The Hague, Netherlands and was established in 1992 (Hanser & Sandifer, 2008). The basic aim of its creation is ‘...the improvement of the effectiveness and cooperation of relevant competent authorities within member states of the European Union in preventing and combating serious forms of organized international crime’ (Leong, 2007b:82). Europol deals with the following criminal activities:

Illicit drug trafficking, illicit immigration networks, terrorism, forgery of money (counterfeiting of the Euro) and other means of payment, trafficking in human beings (including child pornography), illicit vehicle trafficking, and money laundering (Europol, 2009: No Page).

According to Leong (2007), Europol regularly maintains databases of intelligence on serious organized crime and exchanges such information with member states whenever is needed. It also provides technical support for investigations in criminal analysis. Hanser &

Sandifer (2008) stated that Europol do not have any executive authority or power, and that its main job is to share information among member states on organized crime. The entire organization comprises of '500 persons' (Hanser & Sandifer, 2008:417). Europol works with a number of law enforcement agencies on a daily basis. Europol cooperates with a number of countries outside the European Union on the exchange of information regarding international criminal activities.

3.3.2 The Efforts of Arabic Countries in Controlling Money Laundering

Organized crimes such as money laundering, terrorism, drug trafficking, human trafficking are some of the important problems that the Arab world is facing today. It has been argued that the Arab world provides a fertile ground for organized criminals (Purdy, 2005). Prior to the September 11, 2001 attack, the Arab countries were engaged in efforts to combat money laundering and the financing of terrorism. However, since 2001, Arab countries have accelerated their efforts and have been able to introduce legislation that deals with money laundering and terrorist financing. The following section explains some of the efforts of the Arab states in controlling money laundering in general. However, this section will focus on the effort of the Gulf Cooperation Council (the GCC) with regard to money laundering control in the Gulf region.

3.3.2.1 Arabic Convention on Counter Terrorism 1998⁵

The Arabic Convention on Counter Terrorism, which entered into force on 7th May 1999, was the result of the Interior and Justice Ministers' meeting on 22nd April 1998 in which 22 Arab States which were part of the League of Arab States, signed an agreement to fight terrorism. This Convention is considered to be not only a significant achievement for

⁵ This is the translated name of the Convention from Arabic into English. It is not official and is used in this thesis only. This is the nearest translation to 'Al E'tefakeyah Al Arabiah Le Mokafahat Al Erhab'

the Arab States in the fight against terrorism, but is also perhaps the first serious step in combating and criminalizing money laundering by Arabic Countries (Fo'aad, 2004). Among other aspects that the Convention dealt with to counter terrorism was Article 19 of this Convention, which deals with the seizure of assets and proceeds derived from the offences. Accordingly, if it is decided to extradite persons, any contracting state is required to seize and hand over to the requesting state, the property used or derived from, or related to, the terrorist offence, whether this property is in the offender's possession or in the possession of a third party (Article 19.a). And when any property is related to a terrorist offence, it shall be submitted to the requesting states, even in situations where the extradited person has not been handed over because he is absent, or has died, or for any other reason (Article 19.b). This shall all be without prejudice to the rights of any contracting state or of bona fide third parties with regard to the property in question (Article 19.c).

3.3.2.2 The Guiding Arabic Draft Law on Countering Money Laundering (amended on August 2002)⁶

The (amended) model, guiding Arabic draft law on Fighting Money Laundering, appeared in nineteen articles in the Progress and Recommendation Report of the Sixteenth Conference of the Heads of Arab Drug Fighting Organizations in Tunis (July 10-11th 2002). The previous draft law was introduced during the fourteenth Arab Summit (2000) but faced a lot of criticism. Although the model guiding laws are not binding, they represent an important guiding source for the nations concerned when enacting or amending their laws. Despite the summing up of the 19 amended draft law articles compared with its previous 40 articles, the amended draft law managed to rectify many issues and to avoid the criticisms the previous draft had faced. On the other hand, some Arab countries had already issued and drawn up articles concerning fighting money laundering, while the minority were still proceeding.

⁶ This translation of the name of this Convention from Arabic to English is not the official translation, and it is the nearest translation to the 'Mashroo'a Al Arabei Al Namothagee Al Estershadee Le Mokafahat Ghasel Al Amwa'al'.

3.3.2.3 The establishment of the Middle East and North Africa Financial Action Task Force (MENAFATF) in 2004

On the 30th November 2004, the Arab countries decided to establish a Financial Action Task Force Style Regional Body (FSRB) for the Middle East and North Africa (MENA). The body, known as the Middle East and North Africa Financial Action Task Force (hereafter MENAFATF) was established at an opening Ministerial Meeting held in Manama, Bahrain. The MENAFATF is comprised of 14 Arab countries including the members of the GCC. These countries are Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates and Yemen, and the headquarters is in the Kingdom of Bahrain. The new organization will join other FATF – Styled Regional Bodies (FSRBs) which already exist in several regions of the world, as an important mechanism of the global network aimed at the implementation of effective anti-money laundering/counter-terrorist financing (AML/CTF) systems. (See Ministry of Finance, Bahrain, 2004)

The MENAFATF has agreed on the following objectives and will work together to achieve them:

- To build effective arrangements throughout the region to combat effectively money laundering and terrorist financing in accordance with the particular cultural values, constitutional framework and legal systems in the member countries;
- To adopt and implement the 40 Recommendations of the FATF against money laundering;
- To adopt and implement the Special Recommendations of the FATF against terrorist financing;

- To implement the relevant UN treaties and agreements and United Nations Security Council Resolutions dealing with countering money laundering and terrorist financing;
- To co-operate to raise compliance with these standards and measures within the MENA Region, and to work with other international organizations to raise compliance worldwide; and
- To work together to identify money laundering and terrorist financing issues of a regional nature, to share experiences of these problems, and to develop regional solutions for dealing with them (Ministry of Finance, Bahrain, 2004).

The first plenary meeting of the MENAFATF was held in Beirut in March 2005, and the member countries serve as President and Vice-President starting in Arabic alphabetical order. The decision to create the MENAFATF was applauded by Mr. Jean-Louis Fort, President of the Paris based FATF, who attended the meeting together with representatives of France, the United Kingdom, the United States of America, and Cooperation Council for the Arab States of the Gulf (FCC), the International Monetary Fund, the World Bank, the United Nations and the Egmont Group, who were all chosen to sit as Observers to the MENAFATF. Finally, the MENAFATF enjoy the status of an observer with FATF observer status (Ministry of Finance, Bahrain, 2004).

3.3.2.4 The Gulf Cooperation Council (GCC) and its Anti-Money Laundering Measures

The Gulf Cooperation Council, commonly known as the GCC, was created on 4th February 1981. Its members consist of six countries including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United States of Emirates. GCC is a regional organization of the Gulf States and it deals with a variety of political, economic, social and regional issues. The GCC came into existence not only because of the geographical proximity of the Gulf Arab states,

but because of the similarity of their culture, language, religion, laws and regulations, social and economic conditions.

The basic objectives of the GCC are:

1. To affect co-ordination, integration, and interconnection between member states in all fields in order to achieve unity among them.
2. To deepen and strengthen relations, links and areas of co-operation now prevailing among their people in various fields.
3. To formulate similar regulations in various fields including the following
 - Economic and financial affairs
 - Commerce, customs and communications
 - Education and culture
 - Social and health affairs
 - Information and tourism
 - Legislative and administrative affairs
4. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources, to establish scientific research, to establish joint ventures and encourage co-operation by the private sector for the good of their people (see GCC, 2009; FATF.GAFI, 2009).

The GCC member states have always co-operated with international treaties in respect of money laundering control. For this reason, none of the member state of the GCC has ever been blacklisted as a Non-Cooperative State in respect of combating money laundering by the FATF. However, the FATF has expressed concern about the lack of progress in certain areas in respect of combating money laundering in its 1998-99 Annual Report. In order to improve the anti-money laundering legislation in the Gulf region, the FATF worked closely with GCC

member states in order to improve the anti-money laundering measures in their respective jurisdictions. The FATF reached an agreement with the GCC in 1997 on how to carry out an evaluation of the anti-money laundering measures taken by the GCC member states. In this regard, it was agreed that the GCC member states will complete a self-assessment questionnaire and will return it to the FATF, along with copies of the relevant laws and regulation about money laundering control (see FATF, Annual Report, 1998-99). Initially, only three member states of the GCC responded to the self-assessment questionnaire - Bahrain, Qatar and the United Arab Emirates - while the others responded a few years later. Furthermore, the FATF also worked closely with the GCC on how to implement its forty Recommendations for the control of money laundering in the region (see FATF Annual Report, 1998-99).

3.3.2.5 The GCC Response to International Money Laundering Control Measures

Due to the development of anti-money laundering measures in the US and in most European Countries, money launderers started to look for better places with fewer restrictions in order to launder money derived from criminal activities. The Gulf region with its important strategic position between the east and the west, and its increased involvement in the international financial market, attracted launderers to clean their dirty money through the GCC member states. The advancement in information technology, the internet, and banking systems has opened ways, not only for legitimate businesses, but has also eased the job of criminals attempting to launder dirty money. The GCC states provide one of the important international business market place. With their increased involvement in the global financial system, the member of the GCC also started to launch and develop their anti-money laundering measures in order to stop the flow of black money into their financial system.

In their efforts to combat money laundering, the GCC member states have ratified most of the international agreements that target the reduction of the money laundering phenomenon. For example, the GCC has ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on the 19th December 1988 which calls for the criminalization of the proceeds of drugs crimes and others. The GCC member states have already criminalized money laundering through their domestic legislation.

On the financial sector side, the GCC has examined subsequent international efforts to combat money laundering. In this regard, the GCC has adopted the principles issued by the Basle Committee on Banking Regulation and Supervisory Practices issued in December 1988. The GCC member states are committed to the responsible supervision of their banking system in order to prevent criminals from using their banking system for the purpose of money laundering. Furthermore, the GCC states have also participated in many conferences organized by the United Nations to fight organized crime including drug trafficking, weapons smuggling, counter terrorism, currency counterfeiting, etc.

As has been stated earlier, the GCC is a member of the FATF and has played an important role in the control of money laundering in the Gulf region. None of the GCC member states is on the list of 'Non-Cooperative Countries and Territories' in respect of money laundering control. In their fight against money laundering, the GCC member states established a Financial Action Task Force Styled Regional Body (FSRB) for the Middle East and North Africa (MENA) on 30th November 2004, which is also known as the Middle East and North Africa Financial Action Task Force (MENAFATF). There are 18 member states of the MENAFATF that meet frequently. This is a voluntary and cooperative body whose objective it is to raise compliance of its member states to international standards and to work

together against money laundering and terrorist financing issues (see official website of MENAFATF, 2009).

Also the GCC has ratified the recommendations of the Arabic Convention to Combat the Illicit Traffic in Narcotic Drugs in 1994 held in Tunisia (Ahmad, 2002) which deal with the criminalizing of money laundering activities through its articles as, for example, criminalizing the transfer or the movement of money in the knowledge that it is derived from any of these crimes, or participating in an effort to conceal, or disguise, the illicit origin of these moneys or to attempt to avoid the legal consequences of these activities.

3.3.2.6 The GCC Response to Regional Money Laundering Control Measures

At the regional level, the GCC countries have intensified their efforts to strengthen mutual cooperation in order to combat drug trafficking and organized crime, and the laundering of money generated by these illegal activities. They have realized the importance of the negative effects of the money laundering phenomenon that threatens the entire financial system of the Gulf region. In a press report in 2002, the Governor of the Central Bank of UAE, Sultan Al Suwaidi, announced the commitment of the GCC countries to the fight against money laundering. In his statement in Manama, Al Suwaidi stated that:

Fighting money laundering must start from the source countries which export such dirty money. GCC countries, although they do not have sources of such money, have the law and regulations required for fighting such operations and putting an end to them. They are also continuously updating such laws (see UAE Interact, 2009)

Al Suwaidi further stressed the importance of international cooperation and argued that ‘...there are missing links in such cooperation’ in the fight against money laundering’ (UAE Interact, 2009; UAE Interact, 2003).

The Gulf States’ Interior Ministers had already agreed at their meeting on 25th October 2000 to the establishment of a common strategic security system that would increase regional security for its member states. Furthermore, it was also agreed in the meeting, that the Gulf states would cooperate with one another to combat the flood of immigrant, drugs, money laundering and other organized crime that were posing a threat to the Gulf community. Furthermore, the Interior Ministers have ratified a unified strategy between the members of GCC to counter the radicals associated with terrorism. This was announced in the statement of the meeting that was held in Manama, Bahrain, on 30th October 2001. In this statement they emphasized a strategy that would consolidate the collaboration and the exchange of information and greater harmonization in the field of action against terrorists and radicals, and the consolidation of effort in this area. Also, the participants at this meeting recognized an identical instruction for all members of the GCC to counter money laundering, emphasizing the importance of coordinating with the international effort in this field.

The GCC has organized a number of joint seminars with the EU in the field of money laundering control and combating terrorist financing. In this regard, the first GCC-EU joint seminar was organized in November 2003 for the purpose of developing a continuing dialogue among member states in both organizations in their efforts against money laundering and terrorist financing. Similarly, the Central Bank of the UAE also arranged a GCC-EU joint seminar on 5-6th March 2005. In this seminar, the participants exchanged views about the laws and regulations regarding the combat of terrorism and financing

terrorism, and reviewed the laws and regulations implemented in the participating countries and shared information and experiences.

Although, the GCC effort to counter money laundering between its member states has intensified in the last few years, it was clear that this endeavour was not a new objective for the GCC countries. In fact, it started with the foundation of the Council at the commencement of the Eighties, when the Security Unit subsidiary of the GCC examined the exchange of information between member states, especially information relating to big, suspicious transactions or deals carried out in any Gulf state or Arabic country near the Gulf. Furthermore, the mutual attempt of the Gulf States to endeavour to find some form of restriction on foreign immigrants which constitutes one source of money laundering operations, and the move towards a Gulf single currency will no doubt stimulate and push the member states to secure banks and the financial institutions against any attempted money laundering operation which could affect any currency cooperation between the countries.

3.4 Conclusion

The unprecedented actions that have been taken by the international community during the last two decades were initiated to combat the significant threat posed by drug trafficking and the proceeds of drugs-related activities. However, it was extended from drug trafficking to other forms of serious crime in order to undermine the economic power of the drug traffickers, organized criminals and other criminal groups. Some of the important steps that were taken by the international community to combat money laundering included the Basle Committee on Banking Regulations and Supervisory Practices, the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in December 1988, the UN Convention on Transnational Organised Crime 2000, and the creation of the Financial Action Task Force (FATF) in July 1989 as a freestanding specialist body which could

concentrate exclusively on the international fight against money laundering. Furthermore, the creation of Interpol as an international police force also shows the commitment of the international community to their fight against transnational organized crime, including money laundering.

The most important aspect of the FATF was indeed the issue of the remarkable forty recommendations in 1990. The main thrust of these recommendations was to criminalise money laundering and to strengthen enforcement and detection mechanisms. These forty recommendations were revised in 1996 and in 2003. The new versions have extended the scope of the applications of the forty recommendations such as the criminalisation of laundering the proceeds of all serious crimes, broadened the scope of the anti-money laundering role of banks to non-bank financial institutions and professionals such as lawyers and notaries; and toughened the reporting requirements and also strengthened international cooperation.

The initiatives undertaken by the international community through various Conventions for the eradication of money laundering at a global level have facilitated the development of domestic laws and regulations in many parts of the world. The event of September 11, 2001 accelerated the development and effectiveness of the international anti-money laundering regime globally through various mechanisms such as the threat of sanctions through international bodies like the FATF and its members against non-complying states or non-cooperative jurisdictions. There was a huge moral and political pressure from the international community for the strict enforcement of anti-money laundering mechanisms, such that it was hard for any country to resist compliance with these international standards.

Along with the global effort, there are also many regional bodies that are fighting against money laundering. In this chapter, we have examined the regional efforts made by the European Union and the GCC in combating money laundering. The European Union has undertaken substantial efforts against money laundering control such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation from the Proceeds of Crime 1990, the EU Directives on Money Laundering Control and the creation of a European police force – Europol – that is responsible for the fight against organized crime. Finally, the GCC has played an important role in the Gulf region with regard to the control of organized crime in general, and money laundering in particular.

To what extent the measures taken by the international community, regional bodies and national states have solved the problem of organized crime and money laundering is not known. It is extremely difficult to estimate exactly how much money is being laundering every year. There are estimated figures available that clearly show the scale and intensity of money laundering problems, and the difficulties in controlling it. However, it is important to remember that the constant removal of the economic base of organized criminals will convey a general message to all that crime does not pay. This might help to deter people from future crimes. In this regard, Sproat (2007:176) was right to argue that ‘...the logic suggest that, a comprehensive, effective and routine application of financial investigation and asset removal would prevent, or at least, disrupt criminals from attempting to run their enterprises from behind bars or after they are released’. It will also encourage law enforcement officers to continue to work against organized criminals when they see these criminals behind bars and not benefiting from their criminal activities. Overall, it will have a positive social and economic impact on society, and it will also build public confidence in the criminal justice system.

Chapters 1-3 have raise the important issues that form a background to this study namely:

- That defining organised crime has been problematic and the nature and extent of organised crimes and money laundering are unknown because of the global nature of these crimes and the sophisticated methods employed by those who engage in them.
- That the international, regional and local measures that have been put in place to control money laundering are sound in theory but there is yet no study of how they operate in practice in individual countries.

This thesis examines how the Dubai government is tackling the money laundering problem in the country focusing on how effective the measure put in place are in combating the problem. The research questions (listed on page 1) show that the focus of the research is on the role that the Dubai currently play and should play in the process.

The next chapter will look at the research methodology and research techniques used in addressing the research question.

Chapter Four

The Research Methodology

4.0 Introduction

This chapter will discuss how the research for this thesis was conducted, focusing on the research method, the data collection techniques and the strategies used. It will also consider the rationale behind the choice of methods and approaches taken. The choice of a particular research method entails a host of assumptions concerning the nature, type and quality of knowledge that can be obtained. For instance, the nature of the relationship between theory and research, in particular whether theory guides research (the deductive approach) or whether theory is an outcome of research (the inductive approach); epistemological issues - the question of whether or not a natural science model of the research process is suitable for the study of the social world; and ontological issues - the question whether the social world is regarded as something external to social actors or as something that people are in the process of fashioning (see Bryman, 2004).

4.1. The Nature of Theory and Research

It is imperative to highlight the fact that social research does not exist in a vacuum or in a bubble. It is not hermetically sealed off from the social sciences and the various intellectual allegiances as some practitioners hold (Bryman, 2004). In order to address this rather contentious and imperative question, Bryman (2004) identified two key issues that are of particular relevance. First, methods of social research are closely tied to different visions of how social reality should be studied. By so doing, it is clear that methods are not neutral, but are intrinsically linked with the ways in which social scientists envision the connection between different viewpoints about the nature of social reality, and how it should be

examined. Second, there is the question of how research methods and practice connect with the wider social scientific enterprise. What the second assumption demonstrates is that research is invariably undertaken in relation to something - the something may be a burning social problem, or more usually a theoretical exploration

The questions that arise from the two assumptions above are (1) is research entirely dictated by theoretical concerns? If that is the case, (2) what sort of theory is one talking about? and (3) is data collected to test or to build theories? In order to address these questions it is pertinent to examine 'what type of theory' or positions of theory we are concerned with, and how that relates to this research. Whilst there are different definitions of theory, Bryman (2004) argued that it is indeed an explanation of observed regularities. In social science we have what Merton (1967) referred to as middle range and grand theory, with the latter operating at a more abstract and general level (Bryman, 2004). However, Merton (1967) argues that grand theories are of limited use in connection with social research. Instead, middle-range theories are '...intermediate to general theories of social systems which are too remote from particular classes of social behaviour, organisation and change to account for what is observed and to those detailed orderly descriptions of particular that are not generalised at all' (Merton, 1967:39).

The argument that Merton (1967) puts forward is that middle range theories are much more likely to be the focus of empirical enquiry. Unlike grand theories, middle range theories operate in a limited domain, whether it is juvenile delinquency, racial prejudice or educational attainment (Bryman, 2004). According to Bryman (2004), middle range theories vary in their range of application. For example, labelling theory represents middle range theory in the sociology of deviance. Its exponents sought to understand deviance in terms of

the causes and effects of societal reaction to deviation, and it was held to be applicable to a variety of different forms of deviance, including crime and mental illness. By contrast, Cloward and Ohlin's (1960) differential association theory was formulated specifically in connection with juvenile delinquency and, in subsequent years, this tended to be its focus (cited in Bryman, 2004:6). Thus, middle range theories fall somewhere between grand theories and empirical findings, and they represent attempts to understand and explain limited aspects of social life and reality.

What the discussions above demonstrate is that both middle range and grand theories have not been able to resolve or clarify what theory is, and this is due to the fact that the term theory is frequently used in a manner which means little more than the background literature in an area of social enquiry (Bryman, 2004). However, the position of the researcher here is to demonstrate that the research sets out to answer questions posed by theoretical considerations around policing. In this sense, the theoretical approach that guided this research is deductive theory. It is clear from the discussions in Chapters 1 and 2 that organised crime, and particularly money laundering, is an international problem and that an increasing number of the world's security services and police forces, together with the United Nations, are involved in its policing, prevention and control. It will, obviously, be impossible to research how the world's police forces are policing money laundering, but an understanding of the role of the police in controlling the crime can be obtained from the study of how a particular police force deals with the problem. This study is about how the Dubai Police tackle money laundering.

Deductive theory is principally used in sociology or social science to guide empirical inquiry (Merton, 1967). This approach adopted the following structure: (1) theory (2) hypotheses (3)

data collection (4) findings (5) hypotheses confirmed or rejected and (6) revision of theory. This brings into force the idea of research questions. Empirical research is driven by research questions. According to Miles and Huberman (1994:55) developing research questions is a valuable defence against the confusion and overload that is possible in the early stages of research. Essentially, research questions are central, whether they are pre-specified or whether they unfold during the project. According to Punch (2005), research questions do five main things (1) they organise the project, and give it direction and coherence (2) they delimit the project, showing its boundaries (3) they keep the researcher focused during the project (4) they provide a framework for writing up the project and (5) they point to the data that will be needed.

The overarching aim of this study is to examine and evaluate the nature and extent of the money laundering problem in the UAE. It analyses and explores the efforts made by the Dubai government to address the problems of money laundering. Drawing on both regional and international conventions to which the Dubai government is a signatory, the research explores the issues around partnership working, intelligence sharing and effective policing. Therefore, on the one hand, the thesis sets out to understand how the UAE government regulates its financial sector by imposing anti-money laundering legislations upon financial and non-financial institutions, and by criminalizing the money laundering activities. On the other hand, the thesis explores international cooperation between the UAE government and other jurisdictions, with the sole purpose of knowing the procedure for identifying, tracing and freezing illegal money. In this context, it will examine how effective the existing rules and regulations and state mechanism of the UAE government are in order to combat money laundering problems, and whether reforms are needed to the existing laws. The research aims are complemented by the following questions:

1. What are the limitations of existing rule, mechanisms and regulations in relation to money laundering in the UAE?
2. What are the implications of regional and international conventions on money laundering in the UAE?
3. What are the links between money laundering and terrorism?
4. What role does the Dubai Police play in the control of money laundering, and how effective is it in this role.

4.2 The Rationale for Choosing a Case Study Approach

The research approach taken for this study is a case study approach. In this section, I argue that the case study method is a viable method for my research, despite the misunderstanding and stereotyping of the method as a weak offshoot of the social sciences. Yin (2003) argues that the case study method has advantages over other research designs in the following circumstances: when ‘how?’ and ‘why?’ questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context (Yin, 2003:1). The case study method also helps to retain the holistic and meaningful characteristics of real-life situations such as the individual life cycle, organisational and managerial processes, neighbourhood change, international relations and the maturation of industries (ibid:2), while at the same time recognising its complexities and contexts. The dictionary of sociological terms defines a case study as:

A method of studying social phenomena through the thorough analysis of an individual case. The case may be a person, a group, an episode, a process a community, a society, or any other unit of social life. All data relevant to the case are gathered, and all available data are organised in terms of the case. The case study method gives a unitary character to the data being studied by interrelating a variety of facts to a single case. It also provides an opportunity for the intensive analysis of many specific details that are often overlooked with other methods. (Theodorson and Theodorson, 1969, cited in Punch, 2005:145)

Punch (2005) identifies four main characteristics of case studies from the definition provided by Theodorson and Theodorson (1969). First, the case is a 'bounded system'; second, the case is a case of something; third, there is an explicit attempt to preserve the wholeness, unity and integrity of the case; and fourth, multiple sources of data and multiple data are likely to be used, typically in a naturalistic setting (ibid: 145).

Yin (2003:13-14) defined a case study as an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between the phenomenon and the context are not clearly evident. His definition was further elaborated in a second set of conditions. The case study enquiry copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result relies on multiple sources of evidence, with the data needing to converge in a triangulating fashion, and as another result (Yin, 2003: 14); and benefits from the prior development of theoretical propositions to guide data collection and analysis (Yin, 2003: 14).

This at once distinguishes case study research not only from experimental and quasi-experimental designs, which aim to divorce the phenomenon under study from its context, but also from historical research, which does not study contemporary events, and surveys, which attempt to limit the number of variables under investigation (Bergen and While, 2000). Miles and Huberman (1994) view a case study as a phenomenon of some sort occurring in a bounded context. Thus, the 'case' may be an individual, or a role, or a small group, or an organisation, or a community, or a nation. It could also be a decision, or a policy, or a process, or an incident or event of some sort, and there are other possibilities as well. Stake (1988) argues that a case study is a '...study of a bounded system, emphasising the

unity and wholeness of that system, but confining the attention to those aspects that are relevant to the research problem at the time' (Ibid: 258).

The main reason for using the case study method is due to the distinctive place that the method occupies in evaluation research. This research involves the evaluation of approaches to the policing of money laundering in Dubai. In addition, the case study approach can provide an in-depth understanding of the problematic, and is quite useful for testing theories. According to Yin (2003), the single case can be used to determine whether a theory's propositions are correct, or whether some alternative set of explanations might be more relevant. A single case study can also make a significant contribution to knowledge and theory building (Ibid: 40). The case study approach can help to capture the unique circumstances and conditions of an everyday or commonplace situation, and allows for the development of a holistic "thick description" (Geertz, 1973), which encourages the understanding of how participants interpret their experiences and what is happening to them in the study area.

However, despite the advantages of the case study research approach, a series of methodological issues have been raised in terms of its desirability as a research strategy. Hammersley, Gomm and Foster (2000) identified four main problems associated with the case study approach:

The first issue, and perhaps the greatest concern about the case study method, relates to the question of *generalizability*, that is, the notion that findings from a specific case study cannot be generalised to a wider population. This has been counteracted by other arguments such as by those who argue that the aims of case study research should be to capture cases in their

uniqueness, rather than to use them as a basis for wider generalisation or theoretical inference of some kind. Some have argued that what is involved is a kind of inference or generalisation that is quite different in character from statistical analysis, being ‘logical’, or ‘theoretical’ or ‘analytical’ in character (Yin, 2003). Others suggest that there are ways in which case studies can be used to make what are, in effect, the same kinds of generalizations as those which survey research produces. Still others argue that case studies need not make any claims about the generalisability of their findings, that what is crucial is the use others make of it; that they feed into processes of ‘naturalistic generalization’ or facilitate the ‘transfer’ of findings from one setting to another on the basis of fit (Cronbach, 1975; Guba and Lincoln, 1989, 1984; Donmoyer, 2000; Lincoln and Guba, 2000; Stake, 1994); and that ‘...the only generalisation is; there is no generalisation’ (Lincoln and Guba, 2000). In this situation Stake (1994) suggested that, by contrast with naturalistic generalization, abstract propositional generalizations of the kind aimed at by conventional social science can be harmful in practical terms: false laws distract attention from direct experience and may lead people to oversimplify matters. Flyvbjerg (2006:228) took an extreme position by contending that one can generalise on the basis of a single or multiple case studies, and that the case may be central to scientific development via generalization as a supplement or alternative to other methods. Flyvbjerg (2006) also noted that the case study method is ideal for generalizing, using the type of test that Karl Popper (1959) called “falsification”. Falsification is one of the most rigorous tests to which a scientific proposition can be subjected: if just one observation does not fit with the proposition, it is considered not valid generally, and must therefore be either revised or rejected. Popper used the now famous example “all swans are white” and proposed that just one observation of a single black swan would falsify this proposition and, in this way, would have general significance and would stimulate further investigations and theory building. Therefore, the case study method is well suited for identifying “black swans”

because of its in-depth approach: what appears to be “white” often turns out, on closer examination, to be “black” (Flyvbjerg, 2006). However, the purpose of this research is not to generalise but to conceptualise.

The second issue relates to the extent to which the case study method is able to identify causal processes. The author contends that it is possible, particularly with the use of a single case study method, to identify processes in a way that is not feasible in survey research, because case studies are studied in depth and over time, rather than at a single point. It is also often argued that, by contrast with experiments, case study research can investigate causal processes ‘in the real world’ rather than in artificially created settings. Other formulations of this argument emphasise that outcomes can always be reached by multiple pathways, so that narrative accounts of events in particular cases are essential if we are to understand those outcomes (Hammersley, Gomm and Foster, 2000).

The third concern relates to what Hammersley, Gomm and Foster (2000) referred to as ‘the nature of theory’. This issue relates to whether theory developed from the case study can be utilised to explain processes beyond the confines of the initial case. However, all research methods are subject to this limitation (Yin, 2003). According to Hammersley, Gomm and Foster (2000), while many case study researchers emphasise the role of theory, they differ in their views about the nature of the theoretical perspectives required. For some it must be a theory which makes sense of the case as a bounded system. Here, the emphasis is on cases as unique configurations that can only be understood as wholes. For others, the task of theory is more to locate and explain what goes on within a case in terms of its wider societal context.

The fourth and final concern relates to the authenticity and authority of case study research. As Devine and Heath (1999) argue, researchers who regard case studies as reflecting an 'objective truth' are perilously close to suggesting that there is only one form of 'social reality'. But, they also cite Bryman (1988), who argues that it is in the spirit of the case study method to accept that contradictory results may occur (Bryman 1988 cited in Devine and Heath, 1999). However, the problems identified above can be avoided if the limitations of any particular research method are taken into consideration throughout the research process.

Despite these concerns, the case study method is considered the most appropriate research strategy for this study. The decision to undertake a case study approach was based on the aims and objectives of this research endeavour. The reasons for preferring the case study approach over others such as a survey, was mainly because the study is concerned with those institutions and people i.e. police officers and bank officials, who have been involved in tackling the money laundering problem in the UAE. In addition, the nature of the problem under study requires uncovering in-depth information which could reflect all possible dimensions of the problem. Therefore, it would be difficult to obtain such information by using other research methods. The case study method is said to be a microscopic study which looks at the phenomenon at a very close range (Hakim, 1989). Its investigations are considered to be more intensive and in-depth compared with surveys. In addition, one of the main characteristic of the case study method is its flexibility in terms of utilizing different data collection methods such as in-depth interviews, questionnaires, observations and statistical techniques (Punch, 2005).

4.3 Data Collection Strategies

A mixed method data collection approach was used in this study. These methods ranged from highly structured to unstructured in-depth techniques, including analysing official documents. In the social sciences, most researchers use the multi-method approach for gathering data from the field. This process is called *triangulation* (Jupp, 2001). It is believed that by adopting diverse methods of data collection, this will counterbalance any bias associated with an individual research method and will consequently produce more reliable and accurate information (King, 2000). In this study, the following research techniques were employed in order to collect data.

- (a) Policy and documentary analysis
- (b) Semi-structured interviews with key actors
- (c) Observations

4.3.1 Policy and Documentary Analysis

Documentary information is relevant and plays an important role in any data collection process, particularly in case study research. A range of policy and operational documents will be collected from police forces for analysis. Official documents are often factual because they provide ideas and queries that cannot be pursued by other research methods such as interviews and questionnaires. In other words, documentary analysis can guide the researcher in terms of what to look for, or to confirm using other research methods.

Documentary data can also be used to corroborate and augment evidence obtained from other sources such as interviews. Vice versa, the information obtained from other methods such as the interviews could provide insight into the existence of and the need to locate, additional

documents. Furthermore, inferences can be drawn from documents. However, Yin (2003: 87) warned that inferences should be treated only as clues worthy of further investigation rather than as definitive findings, because the inferences could later turn out to be false leads (ibid: 87). Most importantly, as police work is often guided by documents, the value of documentary analysis to this research cannot be underestimated. Where the documents are recordings of events that had taken place, I will not assume that the documents provide accurate, comprehensive and unbiased records of events. It is important as a researcher using documents to pay particular attention to the selection of documents in order to avoid bias.

Although researchers have been critical of the potential over-reliance on documents in case study research, this is probably because the casual investigator may mistakenly assume that all documents contain the unmitigated truth (see Yin, 2003). Considering the nature of this research (police research) official documents are very important because they provide a 'rich vein for analysis' (Hammersley and Atkinson, 1995: 173). Again, the strength of the documentary data are that they are stable and can be repeatedly reviewed, while the collection process is unobtrusive as the documents are not created as a result of the research but are exact in the sense that they are published and in the public domain. Documents will also prove useful in terms of policy review and analysis, which is an important aspect of this research.

Official documents were used both at the initial stage and were also consulted throughout the research study. Official documents were used to identify the rules and regulations imposed on banks, and on financial and non-financial institutions to regulate their financial matters. The official documents used were drawn from the following:

- Anti-Money Laundering and Suspicious Cases Unit (AMLSCU) of the Central Bank of the UAE

- Anti-Organised Crime Department (AOCD) of the Dubai Police Force
- Financial Action Task Force (FATF)
- United Nations Office for Drugs and Crime
- International Monetary Fund
- International Money Laundering Information Network

4.3.2 Semi-Structured Interviews and the Interview Process

Much has been written about what constitutes an interview as well as the different types of interviews such as structured, semi-structured and unstructured interviews (Kahn and Cannell, 1957; Patton, 1990; Silverman, 2000, 2004a, 2004b; Bryne 2004; Bryman, 2004). Kahn and Cannell (1957) define interviews as a purposeful discussion between two or more people. Patton (1990) distinguishes three main types of interview: the formal conversational interview, the general interview guided approach and the standardised open-ended interview. Merriam (1998a & 1998b) distinguished different types of interviews using a continuum ranging from highly structured, standardized, questionnaire-type interviews at one end, to the unstructured, exploratory types of interview at the opposite end. The different terms used to qualify interviews tend to be used loosely, and sometimes interchangeably, which can be confusing.

Interviews are an essential source of case study evidence because most case studies are about human affairs. Well informed respondents can provide important insights into a situation (Yin, 2003: 93). They can also provide shortcuts to the prior history of the situation, helping the researcher to identify other relevant sources of evidence (Ibid: 93)

The researcher believes that the semi-structured interview is the most appropriate method to use in order to achieve the aims and objectives of this research. Semi-structured interviews are attractive because of the opportunity they provide to probe deeply, uncover new clues,

open new dimensions of a problem and secure accurate, inclusive accounts based on personal experience (Palmer 1928 in Burgess 1982:107). The information generated through semi-structured interviews will provide rich, in-depth material that gives the researcher a fuller understanding of the police and other key actors' perspectives on the topic under investigation (Arksey, 2004). The advantage of the semi-structured interview also lies in the open-ended nature of questions which allow for additional information and discussion between the interviewee and the interviewer. The interviewees should be given enough opportunity to expand on their answers and explore an issue fully. The questions should be worded in an open-ended way, in order to encourage the interviewees to express their opinions, as well as to have the opportunity to elaborate on their views and their perceptions of issues associated with the research. This builds trust and encourages rapport.

The semi-structured interview is comprised of exploratory questions framed around the study's research questions. Thus, the interviews in this research focused on issues such as the laws, regulations, strategies and procedures; the nature of cooperation with other institutions; definitions of money laundering (personal vs. official); the nature and extent (scope) of the problem; the successes or failures of the different measures to combat money laundering, and the links to other forms of organised crime and terrorism. The interview questions were divided into the following sections.

Section – I: Experience and training in money laundering

Section – II: Criminalisation of money laundering

Section – III: Combating money laundering

Section IV: Anti-money laundering treaties: regional and international

Section V: Know your customer policy (Bank Managers only)

Section – VI: Supervision and Monitoring of Banks (Central Bank officials only)

Section – VII: Detection and Prosecution of Money Laundering Cases (Dubai Police officers only)

Section – VIII: Money laundering case load (Dubai Police officers only)

Section – XI: Coordination between the Central Bank and the Dubai Police

Section – X: Effectiveness of anti-money laundering measures

The interviews as part of the data collection process were conducted on a face-to-face basis, tape recorded and lasted for half an hour. The use of audio tape was to counteract problems associated with an interview, which are the ability of the researcher to listen carefully and the researchers' bias in the interpretation of the data. The use of tape recordings also aided the listening process and gave an opportunity for an unbiased record of the conversation. According to Easterby-Smith et al. (2003), good audio recordings are essential for accurate transcripts and they also enable the researcher to listen again to the interview so that he/she may hear again points that may have been missed during the interview, as a means of ensuring the reliability and validity of the research. All the interviewees were advised of the tenor of the issues to be addressed in advance, or just prior to the interview. The researcher provided an information sheet detailing the aims of the research, and the structure of the interviews. However the interview questions were piloted. The following section gives the details of the piloting process.

4.3.3. Pilot Study

Piloting or pre-testing the research instrument is an important and necessary component of social science research. Although pilots are uncommon in case studies, it was considered necessary in this case because of the sensitivity of the research topic. It was essential to test whether it would be feasible to carry out the survey and how to deal with potential problems. The pilot study involved administering the questionnaire to a sample population similar to that which will ultimately be interviewed on a full scale basis (see Burns, 2000). Piloting the research instrument was also essential in order to reveal any confusion that may exist in the

questionnaire. Pilots are also used to check the order of the questions including the need to avoid the repetition of questions and checking the length of the questionnaire as well (see Punch, 2005).

Thus, after the approval the final draft of the questionnaire and with the permission of the research supervisor, the questionnaire was pre-tested. To this end, four individuals in the form of officials of the UAE Central Bank, the Dubai Police and managers of commercial banks were interviewed. The pilot study was completed in December 2008.

The pilot study went smoothly as all of the respondents cooperated to the extent that they were able. All of the interviews in the pilot study were conducted via telephone and were also recorded with the prior permission of the respondents. Personally, I enjoyed interviewing them and also was able to obtain valuable information from them which would be helpful as part of my analysis.

The overall response of the respondents was very encouraging. I was told by many respondents that it was the first time that they had been interviewed with regard to such an important issue concerning the UAE. They knew about government policies in terms of controlling the money laundering problem, but it was their first experience of discussing such an important matter with a PhD student. They promised me any type of cooperation in view the importance of the problem under consideration.

However, there were some important points which were raised by the respondents:

1. During the course of the pilot study, I found that some respondents were not comfortable during the interview process. Although I explained to every respondent at the start of interview the purpose of the study and the confidentiality of their responses, , on some occasions I felt that they were not comfortable answering my questions. Their unease was with regard to those questions which were related to providing statistics about money laundering cases. The two respondents from the Central Bank refused to respond to all such questions. They suggested that it would be necessary to obtain prior permission from their Head Office before they would be able to give me any data about money laundering cases.
2. All the respondents required an official letter from my research supervisor should I have to contact them in future to collect any type of information related to money laundering. According to them, the letter should explain the nature of the study and also my student status. Any such request for an interview should come through the proper channels, i.e. via the head of the institute which would make it easier for the respondents to openly express their views about the problem being studied.
3. One of the big demands from all the respondents from all three categories was to be interviewed face-to-face instead of by telephone. In their opinion, they could express themselves more openly when interviewed face-to-face than being interviewed via the telephone. Consequently, all respondents were interviewed on a face-to-face basis as part of the actual data collection process.
4. The timing of the interview was not an issue. Generally, all interviews were completed within half an hour. In addition, no respondent complained about the time taken to complete the interviews.

As I mentioned earlier, the interview process went well and I had no major problem in interviewing my respondents for the pilot study. There were certain issues in identifying and processing the money laundering cases. For example, the identification of a money laundering case is the job of the Central Bank staff. They are also responsible for investigating the suspected cases. The Dubai police has a very limited role in the whole process. They will arrest the accused person only when they have obtained sufficient evidence from the Central Bank staff. As far as the cooperation between the Central Bank and the Dubai police is concerned, generally it is good, but there is a lot of politics involved. If, for example, the Dubai police found a suspected money launderer, they cannot process the case without the due cooperation of the Central Bank staff as the Dubai police need evidence against the accused person which only the Central Bank can provide. The officials of the Central Bank, on the other hand, do not cooperate properly because they consider it as an example of their own inefficiency if the Dubai police are allowed to initiate a suspected money laundering case. For this reason, the Dubai police have no option but to always look to the Central Bank to take the initiative against a suspected money launderer. The study reveals that there is a possibility of departmental jealousy between the Central Bank and the Dubai Police

4.3.4 Observation

Observation is one of the most widely used methods in qualitative research. Personal observation is a vital tool in the sense that the researcher comes to know about many other issues which have not been communicated verbally. Along with using the main tool of data collection, it is important to record observations because it helps facilitate the analysis of the

data (Flick, 1998). The advantages of using observation includes that fact that it takes place in the real world, provides a detailed rounded picture of a social phenomenon, the data collected are deemed to be reliable, to have high validity, and to be very rich (Matthews and Ross, 2010). Bearing in mind the importance of observation in qualitative research, I took notes during the course of the data collection. In this regard, a research diary was used to record all the relevant observations. It is important to note that it was non-participant observation. The observation took place in the Dubai Police money laundering department and the Central Bank of the UAE.

4.4 Sampling

Sampling is an important step in social science research which often varies according to the nature of the study. In this study, a non-probability sampling method was employed in terms of the selection of the respondents. The main reason for using a non-probability sampling approach is not statistical, but comes from the purposeful selection of respondents that can provide in-depth and rich information on the issues related to the study. Some of the interviewees for this research were selected by purposive sampling on the basis of having specific characteristics and qualities relevant to the study. As Neuman (2000) stated, purposive sampling is often used when working with very small samples such as in case study research. Similarly, Matthews and Ross (2010) highlighted the fact that purposive sampling is generally associated with small, in-depth studies with research designs that are based on the gathering of qualitative data and are focused on the exploration and interpretation of experiences and perceptions and that this includes case studies, cross-sectional studies, ethnographic and grounded theory designs. Thus, with purposive sampling, there is no attempt to create a sample that is statistically representative of a population. Rather, people or cases are chosen ‘with purpose’ to enable the researcher to explore the

research questions or develop a theory (Matthews and Ross, 2010). Cases are selected on the basis of characteristics or experiences that are directly related to the researcher's area of interest, and this allows the researcher to study the area in depth (see Matthews and Ross 2010). The samples were drawn from bank officials and those of other agencies who are responsible for money laundering control as discussed below.

4.5. The Research Participants

This study involves the collection of data from three different types of respondents. These include Bank Managers, officials of the Anti-Organized Crime Department (AOCD) of the Dubai Police and of the Anti-Money Laundering and Suspected Cases Unit (AMLSCU) of the Central Bank of the UAE. In this regard, ten bank managers and fifteen officials from each of the Dubai Police Force and the Central Bank of the UAE were interviewed. The Dubai Police Force has a special branch entitled the 'Anti-Organized Crime Department' which deals with all kinds of organized crimes including the problem of money laundering. In this research, fifteen officials from the Anti-Organized Crime Department were interviewed. These officials are those who are actively engaged in fighting the money laundering problem in Dubai. Similarly, the Central Bank of the UAE has a special branch which tries to trace and eradicate the money laundering problem. This branch is entitled the 'Anti-Money Laundering and Suspicious Cases Unit'. In this research, fifteen officials were interviewed from this department who were specialists in dealing with combating the money laundering problem. The selection of respondents was based on the simple fact that these are the people who could provide the information that would answer the researcher's research questions. The success of the money laundering control process in Dubai will depend not only on what legal and regulatory provisions exist but how they are used and, more importantly, how those who are entrusted with the tasks see their roles vis-à-vis the others.

4.6. Research Ethics

The Economic and Social Research Council (2009) defines research ethics as the moral principles guiding research, from its inception through to the completion and publication of results and beyond (cited in Matthews and Ross 2010:71). Every research study poses some ethical issues and it is important to know and understand them. These issues are usually related to the promise of anonymity and confidentiality with regard to the respondents, their identities, and the need for informed consent (Noaks and Wincup, 2004). The basis of informed consent is making sure that people who are going to take part in the research understand what they are consenting to participate in (Matthews and Ross 2010). In this research, an effort was made to keep the identity of all the respondents secret. The researcher did not use the names, designation, places of work and/or any other information which could reveal the identity of the respondents. The respondents were informed about the secrecy of their identity before an interview request was made to them. This in turn helped to create an open and favourable environment for the interview which was conducive to gathering reliable and accurate information.

4.7 Access to the Study Area

Gaining access to the study area is always a crucial issue in social research. Access to the field area is usually gained after identifying the ‘gatekeepers’ who, according to Burgess (1984:48), are those individuals who have the ‘...power to grant or withhold access to people or situations for the purpose of research’. Access to the field area was gained by using different formal and informal means. As a serving police officer in the Dubai Police, access to the police was not difficult and only requires a formal application to the Head of the Dubai

police force. This made access to the police even easier. The researcher is convinced that there were no reactive effects as the officers saw the positive side of the research and the value for themselves as law enforcers dealing with money laundering. Access to the banks was also eased by a letter from the relevant authorities. Neither the banks nor the police saw the research as a ‘police-led’ research. It was made clear to all respondents that the researcher is a doctorate student and the aims and objectives of the research were also made clear to all of them.

4.8 Conclusion

This chapter highlights how the study was designed and the means by which data was collected. The study was carried out in Dubai where police officers from the Dubai Police Force alongside other key actors and stakeholders who were actively engaged in combating money laundering in the banks were interviewed. Using different research methods, efforts were made to obtain a comprehensive picture of the phenomenon under consideration and to answer the research questions. The subsequent chapters are based on information and data obtained during the field work and the issues that arose from them.

Chapter Five

The Legal, Political and Inter-Agency Arrangements for the Policing of Money Laundering in Dubai

5.0 Introduction

In Chapters Two and Three, I discussed the international legal and other statutory arrangements for policing trans-national organised crime generally, and money laundering in particular. Whilst the two chapters explained the position of Dubai and the UAE in these arrangements, this chapter discusses the political and legal arrangements in place in Dubai for the policing of money laundering.

As I mentioned in Chapter Two, Dubai is a signatory to all United Nations directives on tackling organised crime, money laundering as well as counter-terrorism. In addition, since 2000, the United Arab Emirates, through its various relevant authorities, has issued and implemented laws, regulations and procedures which are in line with the requirements and recommendations of the Financial Action Task Force (FATF) in order to raise awareness about risks posed by money laundering and the financing of terrorism (Gulf News, October 17, 2009). In this regard, it could be said that the Central Bank of the UAE has made considerable efforts to tighten its monetary regulations in order to prevent the infiltration of illegal and terrorist money into the region's financial system.

This chapter provides a review of the laws and other regulations relating to the prevention and control of money laundering in the UAE, based on an analysis of the existing literature and the official documents obtained during the fieldwork for this study. The chapter analyses both the internal and external factors that have served as a conduit for the promulgation of money laundering laws in the region. For example, the terrorist attack on the USA on September 11th 2001 was a significant external factor with regard to the need to pay particular attention to the criminalisation of the funding of terrorism through money

laundering. In addition, the chapter examines the organisational arrangements in place for the policing of money laundering in the UAE and Dubai, the main components of which are the National Anti-Money Laundering Committee (NAMLC), the Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU) located in the UAE Central Bank, and the Anti-Organized Crime Department (AOCD) of the Dubai Police. The roles and responsibilities of each of these bodies in the policing of money laundering crime cases are explained. The chapter looks at how these bodies are expected to operate in practice and the powers that each has in the policing of money laundering cases. Finally, this chapter discusses some of the problems that critics argue are hindering the fight against money laundering and terrorist financing in the UAE.

5.1. UAE Legislative Measures to Combat Money Laundering and the Financing of Terrorism

As already mentioned in Chapters Two and Three, the United Arab Emirates is among the world states that have made attempts to regulate its financial sectors and criminalise money laundering and the financing of terrorism. Since the Vienna Convention in 1988, the Government of the UAE has taken steps that have made it difficult for organized criminals to abuse its financial system. The region has taken legal steps to keep illicit proceeds away from its financial sector by enacting laws and imposing regulations on banks and other financial institutions on what actions to take in a situation in which a customer is suspected of money laundering.

The first anti-money laundering law in the UAE was the Federal Law No. 3 of 1987 that allowed the State to punish those who acquire or conceal property derived from crime. Article 407 of 1987 law states that:

Whoever acquires or conceals property derived from crime, with full awareness of that, without necessarily being involved in its commitment, shall be subject to the penalty assigned for that crime, from which he knows the property has emanated (see article 407 of 1987 Law)

This law was followed by a number of Central Bank circulars; for example, Central Bank Circular No. 14 (1993) which introduced strict requirements on customer identification for persons opening new accounts. The Circular also introduced new requirements for accounts that are opened on behalf of charitable organizations in the UAE. In addition, Central Bank Circular No. 163 (1998) ordered all banking staff to monitor and report all dubious or suspicious transactions with respect to the deposit of cash or third party cheques when there are no associated commercial activities (see UAE Interact, 2002a; 2002b)

Efforts to keep ‘dirty money’ out of the UAE’s financial institutions have continued unabated. In 2000, the Anti-Money Laundering Regulation (AMLR, 2000) was passed. This directive was followed in 2002 by the Federal Anti-Money laundering Law No. 4 Regarding the Criminalisation of Money Laundering - also known as the Criminalisation of Money laundering Law, 2002 (CML, 2002) and the Federal law No. 1 of 2004 on Combating Terrorism Offences (CTO, 2004). These legal documents show the commitment of the UAE Government in taking concrete steps to ensure that its financial system may not be used to launder the proceeds of crime. In addition, the aims of these regulations were to meet the international requirements for more transparency in the financial sector (see the FAFT recommendations in Chapter 3), prevent the infiltration of illegal and terrorist money into the financial sector, and enhance the cooperation between the financial sector and law enforcement agencies. The IMF has commended the UAE for taking such steps in order to combat money laundering and the financing of terrorism (See IMF Staff Report, 2004:46).

In the following section, the discussion is focused on the main features of the above-mentioned regulation and laws (AMLR, 2000, CML, 2002 and CTO 2004) which constitute the legislative framework in the UAE against money laundering and terrorist financing.

5.1.1 The Anti-Money Laundering Regulation 2000

The Anti-Money Laundering Regulation 2000 was introduced on 14th November 2000 via circular No. 24/2000. The same circular was amended later on 3rd June and 4th November 2001 via notice No. 1045/2001 and notice No. 2371/2001. The 2000 Regulations obliged all financial institutions to take measures to identify money laundering cases and to report all suspected money laundering cases to the Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU). Gradually, the 2000 Regulations were expanded to include not only financial institutions but also insurance companies, financial markets/stockbrokers, accountants and auditors. Thus, the 2000 Regulations meets the international standards introduced through the forty recommendations of the FATF and other international conventions and directives on money laundering (see Chapter 3).

Similar provisions are contained in Britain's Money Laundering Regulations of 1993/1994, reviewed in 2003.¹ The British Money Laundering Regulations of 2003 extended the statutory obligations of financial institutions to cover '...financial services, money transfer agents, auditors, external accountants and tax advisors, real estate agents, notaries and other

¹ The UK Money-Laundering Regulations 1993 required all banks, building societies, credit institutions, authorised investment businesses (including solicitors and accountants conducting investment business), life insurance businesses, and other undertakings carrying out financial activities listed in the annex to the Banking Co-ordination (Second Council Directive) Regulations 1992, to establish and maintain policies, procedures, and training programmes to guard against their businesses being used for the purpose of money-laundering, irrespective of whether or not money-laundering has actually taken place. Failure to comply with the requirements of the Regulations is punishable by up to two years imprisonment, a fine, or both. This provision guided against what might be called "the culture of ignorance" whereby institutions could deny "guilty knowledge". Institutions may be caught for failing to have proper systems in place. (See Gold and Levi, 1994). The 1993 Money Laundering Regulations were published in order to ensure compliance with European Directives on money laundering.

legal professionals acting in any financial or real estate transactions, dealers of high value goods (when payment in cash of up to €15,000 is made) and casinos' (Leong, 2007a:143).

The UAE Anti-Money Laundering Regulation contained five main procedures that financial institutions have to comply with in the fight against money laundering:

- i. Verify Clients' Identity - the 'Know Your Customer' procedure
- ii. Report all unusual/suspicious transactions
- iii. Train staff
- iv. Maintain records and keep files
- v. Apply the 'Tipping-off' procedure

The British Money Laundering Regulations of 2003 (sections 3 – 7) also contained similar provisions.²

In the following sub-sections, the above-mentioned five procedures are discussed in detail.

² For example, nominated officers have to be allocated (MLRs, 2003, s.7), the principle of Know Your Customer (KYC) must be introduced (MLRs, 2003, s.4), records must be maintained (MLRs, 2003, s.6) and staff need to be trained (MLRs, 2003, s.3.1.c.ii). Failing to put these provisions into place may result in a criminal conviction and a maximum penalty of two years imprisonment and/or a fine (MLRs, 2003, s.3.2.a). As HM Treasury put it in their regulatory impact assessment of the Money Laundering Regulations 2003:

The aim of these measures is to deter criminals from using UK businesses as conduits to launder their proceeds; and so to change the economics of crime by increasing both the costs and the risks of laundering. Criminals will be forced to use new, more circuitous routes to hide the origins of assets; reducing the profits available from crime, and the amounts available to invest in ongoing criminal activities (see HM Treasury, section 48, 2003:10).

Indeed, at the end of July 2006 the Home Office Minister, Vernon Coaker, claimed:

In the last three years alone we have seized nearly £250 million from criminals. So instead of benefiting from their criminal acts, these people have seen their cash being used for frontline policing, improving our financial investigation capacity and providing funding for local policing (Sproat, 2007:177)

i) ***Verifying Clients' Identity: The 'Know Your Customer' Procedure***

The verification of a client, or what is commonly known as the 'Know Your Customer' requirement, is one of the fundamental principles of the international anti-money laundering measures that were enforced in the early 1990s (see Chapter 3).

For example, recommendation No. 5 of FATF states that

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names ... Financial institutions should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers (see Recommendation No. 5 of FATF)

In the UAE, this requirement is contained in article 3 of the AMLR, 2000 that requires all banks to ensure customer identification and verification before allowing them to open a new bank account. The type of documentation needed at the time of the opening of a new account varies depending on whether the bank account is being opened by an individual, a cooperative society, or a charitable, social or professional society. For example, the bank will need necessary documents relating to an individual account such as the full name of the account holder, the current address, the work place, and a copy of the individual's passport. In the case of an account being opened for corporations and for charitable, social or professional societies, the banks will need the original certificate issued by the Ministry of Labour and Social Affairs for these organisations. Article 4 of the AMLR 2000 strictly prohibits opening accounts with 'assumed name or names'.³

However, obtaining customer information and its verification is not a simple and easy task. It requires a lot of time and resources to obtain information and verify documents,

³ In the UK, the 1993 Money Laundering Regulations also requires financial institutions to follow a Know Your Customer (KYC) approach to record keeping (see Leong, 2007a).

especially with respect to overseas investors (see Bosworth-Davies, 1998; see Chapter 6). Furthermore, there are problems with regard to customer care (Ashe and Reid, 2000), invasion into customers' privacy, and confidentiality issues (Byrne, 2000).

ii) ***Reporting unusual/suspicious transactions***

Globally, there are two styles of reporting obligations that are imposed on financial institutions. The first reporting style is known as the 'threshold-based reporting style' which is commonly known as the 'American reporting style', whereas the second is the 'suspicious-based reporting style' which is commonly operated in most European countries (Hopton, 1999). On the one hand, the threshold-based reporting style obliges all financial institutions to report each deposit, withdrawal, transfer or exchange that involves an amount above an already specified threshold. In the USA, for example, this threshold is fixed at \$10,000 (Madinger, 2006:83). On the other hand, the suspicious-based reporting style requires financial institutions to report those transactions which appear to be connected with money laundering operation. Both types of reporting style have their own advantages and disadvantages with regard to the policing and control of money laundering.

The UAE follows both styles of reporting. Articles 5.1 and 5.2 of AMLR 2000 require banks and moneychangers to fill appropriate forms if the amount of cash for transfer/drafts exceeds the maximum threshold fixed under the law. In this regard, money changers are required to fill form No. CB9/2000/1 if the amount of cash for transfer/drafts exceeds AED 2000 (\$500) or equivalent in other currencies, and the banks will fill form No. CB9/2000/2 if the amount of cash for transfer/drafts exceeds AED 40,000 or equivalent in other currencies.

With regard to suspicious-based reporting, the AMLR 2000 requires all financial institutions to establish procedures in order to ensure the reporting of unusual or suspicious transactions. Article 16 of AMLR 2000 states that

All banks, moneychangers and other financial institutions, as well as their Board members, managers and employees are obliged, personally, to report any unusual transaction aiming at money laundering (see Article 16 of AMLR, 2000).

However, where a case is classified as one of suspicious, unusual or dubious transaction, article 6 of AMLR 2000 exempts the threshold requirements, and asks for the identification of the customer. This provision is aimed to check ‘smurfing’ – the act of breaking down large transaction into small multiple transactions so as to avoid the reporting requirement mandated by law (see Madinger, 2006; Lilley, 2006). An example could be a case where a launderer conducts multiple transactions of less than the AED 40,000 threshold in order to skip the reporting requirement.

As mentioned above, the AMLR 2000 requires all financial institutions, banks, money changers, insurance companies, financial markets/stockbrokers, accountants and auditors, to report all suspected money laundering cases to the Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU). Previously, the UAE Central Bank circular notice 163/98 (op.cit.) instructed all banks to keep check on medium and large cash deposits, and to inform the UAE Central Bank of any suspicious or dubious transactions. However, there was no strict requirement on the banks to comply. The Anti-Money Laundering Regulation in 2000 now makes the reporting of suspicious transactions to the Central Bank AMLSCU compulsory. In this regard, the AMLSCU has constructed a standard format for the reporting of suspicious transactions which can either be sent by airmail or electronically. The Central Bank of the UAE is connected electronically with all banks and other financial institutions, and this has made the reporting system a lot easier (D’Souza, 2005). In addition, to be able to establish proper and effective contact with the AMLSCU with respect to reporting suspicious cases of money laundering, article 16.3 of AMLR 2000 requires all banks, moneychangers and other financial institutions to fulfil two important requirements. First, to appoint a ‘Compliance

Officer' who shall be responsible for working as a bridge between the concerned financial institution and the AMLSCU, and second, to establish an effective internal control system for the implementation of anti-money laundering procedures.

The AMLSCU is empowered to receive information on all suspected money laundering transactions from the financial institutions in the form of Suspicious Transaction Reports (STRs) and to assess them for further action (see below for details). A Suspicious Transaction Report (STR) usually includes information such as the name and full address of the customer, passport details of the suspected client, a copy of the account opening form, bank statements showing last cash deposit, and the reasons for suspicion (D'Souza, 2005).⁴

Article 20 of AMLR, 2000 clearly stated that the reporting regulation is not meant to turn financial institutions into a crime or detective agency, where they spend considerable time and resources investigating their customers' affairs. However, it is also important that financial institutions do not wilfully turn a blind eye to the suspicious activities of their customers. Article 20 of AMLR 2000 states that

While the Central Bank is aware that banks, moneychangers and other financial institutions are not police detectives, the 'timing' factor remains crucial if the concerned financial institution is able to retrieve the relevant information, which reflects positively on the reputation of the concerned financial institution (see Article 20 of AMLR, 2000)

In other words, the AMLR 2000 emphasises the importance of the cooperation of the financial sector in the fight against money laundering.

A crucial issue, however, is the fact that different Transaction Reports are required for the two types of reporting systems. For threshold-based reporting, the financial institution

⁴ In the UK, banks and other financial institutions etc. are expected to report suspicious money laundering activities in a Serious Activity Report (SAR), more so since the enactment of the Proceeds of Crime Act, 2002, which criminalised non-reporting of suspicious cases (See Preller, 2008).

completes a Currency Transaction Report (CTR) while for a suspicious-based reporting, the financial institution completes a Suspicious Transaction Report (STR). However, the financial institution is not required to send a Currency Transaction Report (CTR) prepared on a threshold transaction to the AMLSCU. For example, where an account holder wishes to pay cash to a bank for a transfer or draft and the value of the transaction reaches AED 2,000, or to a moneychanger for a transaction up to the threshold of AED 40,000, the financial institution is required to prepare a CTR but is not required to pass it on to the AMLSCU for further investigation, unless the transaction is deemed suspicious, in which case an STR will be prepared instead of a CTR.

Indeed, it is imperative to stress that by allowing financial institutions to fill and keep CTRs without any obligation to inform the AMLSCU, this raises suspicion on the extent that financial institutions are sincere in deciding whether a transaction above the maximum threshold limit is normal or suspicious. Also, the AMLSCU and law enforcement agencies have no access to CTRs. This means that a lot of important and valuable data is inaccessible to those who are responsible for money laundering control, and there is no accountability on the part of the financial institutions with respect to particular financial transactions that could be money laundering cases. If financial institutions are obliged to send CTRs to the AMLSCU, it will make the financial institutions more accountable, and more valuable data will be accessible to the regulating authority and law enforcement agencies for the assessment of possible cases of money laundering.

In contrast, when a breach of currency declaration requirement is detected by the Custom Authority, consultation with the AMLSCU is not required. Such cases are regarded as straight-forward cases. It is the duty and responsibility of the Public Prosecutor's Office to take such cases to court and the violators will be punished for currency violation offences according to the law (see article 18 of CML, 2002). However, where the breach of currency

declaration is considered by the Customs Authority to be a case of suspected money laundering, the case would be passed on to the Public Prosecutor to commence an investigation into the allegations. But before any investigation is conducted, the Public Prosecutor must first seek authorisation from the AMLSCU. Thereafter, the case will be passed on to the police for full investigation. A case will not be investigated unless it is declared as a suspected case of money laundering by the AMLSCU (see below; Figure A). What this clearly shows is another double standard in the system. Financial institutions do not have to declare cases where customers have imported money over the threshold, but the Customs Authority has to by law. However, presumably, where the excess currency importation is not through a banking transaction, it is more likely to be regarded as a deliberate and criminal attempt to violate the currency regulations law, not necessarily a case of money laundering. It is only where the case is deemed to be one of suspected money laundering, that it will be passed on to the Public Prosecutor as described above.

Gold and Levi (1994) have argued that the suspicious-based transaction reporting system is more beneficial than other systems in the sense that it is more focused on controlling money laundering operations. Money launders can avoid detection by making a series of transactions below the threshold, whereas a suspicious transaction system would look at the overall financial activities of the suspected person or organisation and institute an investigation accordingly. The use of a dual system of reporting in the UAE is confusing. It allows for an ineffective policing of money laundering cases, as many potential money launderers may escape prosecution when their cases are considered to be a 'currency transaction' case, rather than a suspicious transaction.

iii) ***Staff Training***

The training of staff members is one of the important components of an anti-money laundering monitoring programme. The staff members within financial institutions that deals with handling cash, record keeping and reporting, need appropriate training with respect to money laundering issues. In this respect, article 17 of the AMLR, 2000 requires the Compliance Officers in banks, financial institutions and money changing organisations to:

Provide training to staff responsible for receiving cash or overseeing accounts and their reports, on all matters pertaining to money laundering. The training should be in line with the responsibilities undertaken by the employees who should always exercise utmost prudence (see Article 17 of AMLR, 2000).

The AMLR (2000) also requires the Central Bank to assist financial institutions in organizing staff training programmes and compels all financial institutions to send the relevant staff members on such training programmes. The basic purpose of the training programme is to ensure that employees who handle the financial business of these institutions are aware of money laundering issues, money laundering laws and the appropriate procedure for reporting in the event of any suspicious money laundering transactions (see Ashe and Reid, 2000).

In this respect, the Central Bank of the UAE has, from time to time, organized a number of seminars and workshops on anti-money laundering measures. In 2002, the Bank organized five anti-money laundering workshops/seminars which were attended by employees of the banks, financial institutions and moneychangers. In 2003, the Bank organized a further nine anti-money laundering workshops/seminars in collaboration with the FBI and the Emirates Institution for Banking and Financial Studies. The workshops/seminars were attended by employees of the AMLSCU, the National Anti-Money Laundering Committee, the representatives of several banks, officials from the Dubai Police and the Police Academy. In addition, it is on record that thirty-two workshops and seminars have been carried out with

the assistance of banking officials from the USA, Germany and the UK. Furthermore, officials from the Central Bank of the UAE have participated in 15 seminars/workshops organized by the Emirates Institution for Banking and Financial Studies (see Sho'aib, 2004).

iv) ***Maintaining records and file keeping***

Article 18 of the AMLR, 2000 requires all banks and financial institutions to maintain proper record of their customers' information and of each transaction. It also requires the financial institutions to maintain appropriate filing systems so that information required by law enforcement agencies and the Central Bank could be produced whenever needed. This Article is in line with FATF recommendation No. 12 that puts particular emphasis on maintaining records and keeping proper file systems for at least five years so that they can be consulted in any future cases of suspicious transactions/money laundering or the financing of terrorism.

Article 19 of AMLR, 2000 stipulates the types of information needed to be kept in financial institutions' filing and recording system. These include a copy of the passport of the customer concerned, or a trade license if the transaction is carried out by an institution, the volume of funds moving in and out (that is, the turn-over in the account), the source(s) of the funds, the form or nature of the transactions (for example, cash or cheques), the identity of the customer making the transactions, the destination of the funds and the way the account is being operated by the account holder. As per FAFT recommendation No. 12 (op.cit.), all financial institutions are required to keep the above-mentioned information for up to five years following the closure of an account (article 21 of AMLR, 2000). Under article 22 of AMLR 2000, the above record keeping and filing system is applicable not only to financial institutions operating within the UAE, but also their branches overseas.

v) ***The Tipping-Off Procedure***

Collecting information with regard to a suspicious transaction and reporting it in the appropriate manner to the AMLSCU is a difficult and time consuming job. More difficult, perhaps, is the task of further investigating the case and acquiring sufficient additional information to make the decision as to whether or not the case deserves judicial proceeding. The designated body with this enormous responsibility is the AMLSCU. In this process, the AMLSCU has to engage with other government departments in the UAE and with financial institutions both in the UAE and overseas, in order to collect the information necessary to confirm whether or not the person being investigated has indeed engaged in or is engaging in money laundering activity. The evidence collected must be strong if the person or organisation is to be prosecuted for a money laundering offence or offences.

Thus, maximum care is needed at this stage not to attract the attention of the person under suspicion which could affect and undermine the investigation process. Article 16.4 of AMLR, 2000, therefore, strictly prohibits the designated body (the financial institution or moneychanger) and their employees, including the compliance officer, from informing the customer whose transaction is under scrutiny, either before or after making a suspicious transaction report (STR) to the AMLSCU. In other words, a key requirement is that all suspicious cases must be dealt with in secrecy during the period of interaction between the financial institution concerned and the AMLSCU over a suspected case of money laundering.

Another important defect in the AMLR 2000 is the lack of a proper sanction against financial institutions in the event that they fail to report a suspicious transaction. Article 16.6 of AMLR, 2000 simply states that in the event that a financial institution fails to report a suspicious transaction to the AMLSCU, it will be punished according to the prevailing laws and regulations. The Regulation does not specify what the punishment should be imposed on a financial institution that has failed to report suspicious cases. This is unlike the situation in

Britain, where the MLR (2003) clearly stipulates a maximum penalty of two years imprisonment and/or a fine on banks for failing to report a suspected money laundering case (MLRs, 2003, s.3.2.a).

Due to the lack of clarity with regard to the punishment for a breach of its regulations, the AMLR 2000 has been referred to as a '*regulation without teeth*'. However, the AMLR 2000 is also often regarded as a preface to the more comprehensive anti-money laundering law that was enacted in 2002 namely the Federal law No. 4 (2002) 'Regarding the Criminalizing of Money Laundering' (CML, 2002). The 2002 anti-money laundering law clearly states the penalty that financial institutions could face if found guilty of breaching the law with respect to non-compliance with anti-money laundering measures (see Articles 15 – 19 of this law). The next section describes this law, which, in effect, is the main anti-money laundering law in the UAE.

5.1.2 The Criminalization of Money Laundering Law, 2002 (CML, 2002)

The Federal Law No. 4 of 2002 'Regarding the Criminalization of Money Laundering' (CML, 2002) was enacted on 23rd January 2002. Two years later, on the 28th July 2004, the UAE government introduced its first anti-terrorism law, namely Federal Law No. 1 of 2004 Combating Terrorism Offences (CTO, 2004). The main aim of these two pieces of legislation was to criminalise money laundering generally, and terrorist financing in particular, by establishing anti-money laundering and terrorist financing deterrence frameworks and procedures to be imposed on both the financial and non-financial sectors. The introduction of both pieces of legislation was a response to the international obligations and treaties that were signed by the UAE with respect to combating money laundering and terrorist financing (see Chapter 3). The key components of the CML 2002 are discussed in the following paragraphs.

i) Scope of the Law

The jurisdiction of CML 2002 covers all individuals and financial institutions, as well as all other commercial and economic establishments (see articles 2 and 3 of CML, 2002). The law defines ‘financial institutions’ as ‘...any bank, finance company, money exchange house, financial or monetary intermediary or any other establishment licensed by the Central Bank, whether publicly or privately owned’ (article 1 of CML, 2002). Commercial and economic establishments are defined as ‘...establishments licensed and regulated by agencies other than the Central Bank, such as insurance companies, stock exchange and others’ (see article 1 of CML 2002).

ii) ***Definition of Money Laundering***

Article 1 of CML 2002 defines money laundering as:

Any act involving transfer, conversion, or deposit of property or concealment or disguise of the true nature of that property, which were derived from any of the offences stated in clause 2 of article 2 herein (Article 1 of CML 2002).

iii) ***Conduct Amounting to the Offence of Money Laundering***

Article 2 (clause 1) of the 2002 law says that a person shall be punished for money laundering if found guilty of the following offences:

- a. The conversion, transfer or deposit of proceeds, with intent to conceal or disguise the illicit origin of such proceeds
- b. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of proceeds.
- c. The acquisition, possession or use of such proceeds (article 2.1 of CML, 2002)

In other words, the offences covered under this article include depositing and transferring the proceeds of crime, the exchange of criminal proceeds with another currency or traveller cheques, and the establishment of trusts or companies to hide criminal proceeds. Article 2 also covers any person acquiring, possessing or using a property knowing that part of the property or the whole of it has been derived from criminal activity. The key element in this law is that any person or financial institution will be guilty of money laundering offences if they possess or knowingly acquire the proceeds of a crime.

Anti-money laundering laws in many countries do not differentiate between those who launder the proceeds of their own crime, or launder the proceeds of another person's crime. For example, in Ireland, the Money Laundering Law of 1994 criminalised the laundering of proceeds from one's own crime as well as from, or on behalf of, another person or organisation (see Handoll, 2007). Laundering the proceeds of one's own crime is commonly known as *primary money laundering* where the executor of the crime and the laundering of the proceeds that are generated as a result of the crime, is the same person. Laundering of proceeds from a crime that has been committed by another person or on behalf of another person is called *secondary money laundering* (see Ashe and Reid, 2000). The CML, 2002 criminalises primary money laundering but is silent about secondary money laundering.

iv) ***List of Crimes Covered under Money Laundering Offences***

The CML 2002 law provides a list of offences, the proceeds from which would automatically be regarded as money laundering. The list included serious crimes often engaged in by organised criminals. This provision is in agreement with recommendation No. 1 of FATF which extended the scope of the offence of money laundering to all serious organized crimes. Thus, Clause 2 of Article 2 of the CML 2002 criminalised all kinds of proceeds derived from the following crimes:

1. Sale of narcotics and psychotropic substances
2. Kidnapping, piracy and terrorism,
3. Offences committed in violation of environmental laws,
4. Illicit dealing in fire-arms and ammunition,
5. Bribery, embezzlement, and damage to public property,
6. Fraud, breach of trust and related offences,
7. Any other related offences referred to in international conventions to which the State is a party (Article 2, Clause 2, CML, 2002)

The designated body (that is, a bank, financial institution and any of the commercial organisations listed in the law) is required to report to the AMLSCU all cases where, in their own opinion, a customer is involved in money laundering and the proceeds are believed to have been derived from the offences listed above.

As stated above (Chapter 2) there is no income tax in the UAE. This creates a problem for the designated bodies (for example, banks) as to whether the huge lumps of money being deposited is money laundering from crimes, or a deliberate effort by wealthy persons to deposit their money in the UAE in order to avoid tax in their home country. This situation creates a dilemma for the designated bodies as to what to report as a suspicious transaction, and also for the AMLSCU when it comes to the investigation of such cases.

v) ***Penalties for Individuals, Financial and Commercial Institutions found guilty of money laundering***

Article 13 of the CML 2002 sets out penalties for individuals found guilty of money laundering. Article 14 sets out penalties for institutions found guilty of involvement in money

laundering activities. Both individuals and financial institutions are covered by articles 1 and 2 of the CML law. Financial institutions (and presumably all commercial organisations and moneychangers) are criminally liable if found to have used their names or accounts for any of the money laundering activities mentioned under article 1 and 2 of the CML, 2002. The punishment for any person found guilty of money laundering is a prison sentence of not more than seven years or a fine not exceeding AED 300,000, and not less than AED 30,000. In addition, the law also provides for the confiscation of the proceeds of crime or the equivalent if, for example, such proceeds have been converted wholly or partially into some lawful properties (Article 13 of CML, 2002).⁵ The punishment for a financial institution found guilty of money laundering is a fine of not more than AED 1,000,000 and not less than AED 300,000, in addition to the confiscation of any proceeds or the equivalent, if such proceeds have been converted wholly or partially into some lawful properties (see article 14 of CML, 2002).

vi) ***Other Offences***

(a) ***Failure to disclose a case of money laundering***

It is an offence under the CML, 2002 to knowingly fail to disclose the suspicious criminal activities of anyone, if these activities fall under those defined in article 2.2 above. In other words, a person is guilty of an offence if, first, he knows that another person is involved in money laundering; second, such information comes to his attention during the course of his trade, profession, business or employment, and finally if he fails to disclose this information to the appropriate authorities. In this context, article 15 of CML 2002 states that the Chairman, directors, managers and employees of financial or commercial institutions will be guilty of an offence if they failed to report all suspicious activities to the AMLSCU as

⁵ Similar provisions could be found in Part III of the UK Criminal Justice Act, 1993

required under article 7 of the CML 2002. The punishment for this offence is a prison sentence or a fine of not less than AED 10,000 and not more than AED 100,000 or both (Article 7 of CML, 2002).⁶

(b) *Failure to disclose the importing of money into the UAE*

The smuggling of cash is one of the old methods that is currently being used by money launderers due to its obvious advantages. Criminals smuggle cash directly or indirectly and deposit it in conventional banks in those areas with fewer restrictions with respect to money laundering control. It avoids any paperwork and there is no danger of attracting the attention of the law enforcement agencies (see Chapter 2; see also Bell, 2003).

With respect to the UAE, there is no restriction on bringing large amounts of cash into the country due to the fact that the UAE, like all the other countries in the region, has a largely cash-based economy, where most of business dealings and purchases are made by using cash instead of credit cards or cheques. The UAE government has, however, introduced measures in order to keep check on the cash that is moving into the country. Article 6 of the CML, 2002 required the UAE Central Bank to fix a maximum threshold limit of cash that can be brought into the Emirates without any need of declaration. Under this article, the UAE Central Bank has fixed the maximum threshold limit for cash that could be brought into the country without the need of declaration at AED 40,000⁷ or equivalent in other currencies. This provision

⁶ Similar provisions could be found in s. 29- 31 of the UK Criminal Justice Act, 1993. The Criminal Justice Act 1993 makes it a crime for financial institutions to fail to report matters that they “know or suspect” constitutes drugs money-laundering. This provision is updated by the Proceeds of Crime Act, 2002. The 2002 Act puts a legal obligation on commercial and banking institutions to report any suspicious transaction to the anti-money laundering authorities i.e. the National Criminal Intelligence Service (later replaced by the Serious Organized Crime Agency: SOCA) if they suspect that a client might be engaged in money laundering activities (Sproat, 2007) Sections 330- 332 of the PoCA 2002 criminalizes failure to report suspicious money laundering activity on the part of the regulated sector. Failure to comply with the requirement of reporting the suspicious transaction means a compliance officer in the regulated sector has failed to do his duty to the State and could, on indictment, lead to 5 years imprisonment or a fine or both (Sproat, 2007)

⁷ See Regulation: Declaration When Importing Cash Money into the UAE, dated 26th January 2002 for further details.

legalised Articles 5.1 and 5.2 of AMLR 2000 on threshold amounts. Article 6 also requires the Central Bank of the UAE to establish procedures to be taken if more cash is brought into the UAE through any other means such as being brought through airports, seaports, border crossing or being sent by post.

Any person who wishes to bring more cash above the maximum threshold needs to fill a declaration form at the point of entry into the country. Failing to do so is a criminal offence under article 6 of the CML, 2002 and is punishable by a fine of not less than AED 2,000 and not more than AED 10,000 (Article 18 of CML, 2002).

(c) Tipping Off is a criminal offence

It is criminal offence under Article 16 of CML 2002 to notify the person whose transaction is under suspicion of possible involvement in a money laundering activity. The article stated that this is strictly prohibited, and under no circumstances should the person whose case is either reported to the AMLSCU as being suspicious, or is under investigation by the police, be informed. The violation of this provision is punishable by a prison sentence of not more than one year or a fine of not less than AED 5,000 and not more than AED 50,000 or both. This provision is applicable specifically to those who deal with suspicious money laundering cases such as employees of the financial institution, staff of the AMLSCU and Dubai Police personnel.

However, the law can also be applied to any person who informs the person whose case is either reported to the AMLSCU or is being investigated by the police for suspicion of being involved in a money laundering activity. Such a person could be a lawyer who, for example,

obtained such information during his visit to a police station and later passed it on to the person or persons concerned. The prevention of disclosure of information to the person being investigated in terms of a suspected case of money laundering is considered crucial to the investigation process.⁸

(d) The offence of giving false notification

It is an offence under Article 17 of CML 2002 to give false notification against any person or financial institution for alleged involvement in money laundering. It is a criminal offence to supply false information that is baseless against any person or financial institution with the purpose of causing damage, defamation or obtaining any sort of commercial interest or gain. However, the law does not specify the minimum or maximum punishment that could be imposed on a person for such a false notification. This provision is a safeguard to both individuals and financial institutions, to protect them from any sort of potential damage that could be caused as a result of providing false information in bad faith to the authorities. Considerable time, efforts and resources are spent, both domestically and overseas, to verify accusations made when a money laundering case is reported, in order to prepare a strong and sound case for prosecution. The provision of a safeguard against false notification in money laundering cases helps to prevent the wasting of time and resources on baseless money laundering reports, or allegations against any individual or financial institution.

vii) International Cooperation with Respect to Money Laundering Cases

Chapter four of CML 2002 concerns international cooperation with regard to assisting other countries in money laundering cases. In this regard, Article 21 states that:

⁸ Similar provisions on ‘tipping off’ could be found in s. 32 of the UK Criminal Justice Act, 1993, updated in Section 333 of the Proceeds of Crime Act, 2002. ‘Tipping off’ is punishable under the 2002 law by a five-year prison sentence and/or a fine.

The competent judicial authority [in the UAE] may, as per request of a judicial authority in another country to which the State [UAE] is bound by an approved treaty and provided the act is established as a criminal offence in the State, or on condition of reciprocity, order the pursuit, freezing or provincial attachment of Property of Proceeds derived from or Instrumentalities used in a Money Laundering offence

Article 22 of the same law also states that:

Any ruling or judicial order providing for the confiscation of property, proceeds or instrumentalities relating to money laundering offences issued by a court or a competent judicial authority in a country to which the State [the UAE] is bound by ratified treaty may be recognised

Because the Government of the UAE is a signatory to all UN conventions and has signed other regional treaties with respect to combating money laundering and terrorist financing, it has a good track record of cooperation with other countries in this respect. The AMLSCU and the AOCD have helped in many overseas requests with regard to the collection of information and the investigation of money laundering cases. It is important to mention that any overseas requests for help and cooperation come through the Department of International Cooperation in the Ministry of Justice, Islamic Affairs and Auqaf. This department usually receives overseas requests through the Ministry of Foreign Affairs. The Department of International Cooperation would then pass such a request to the concerned competent authority in the UAE. These include the Attorney-General's Office and the AOCD (the police). After completion of the investigation, the final report is sent back to the country concerned through the Department of International Cooperation (see Figure 2).

5.1.3 The Combating Terrorism Offences Law, 2004

The events of September 11, 2001 attracted the attention of the world to the global problem of terrorism, and this accelerated the efforts to combat the financing of terrorism. In this respect, many international initiatives were introduced to criminalise the financing of terrorism, and much emphasis was put on international cooperation to fight such a crime. For example, FATF issued nine special recommendations as the minimum standard to be adopted by the signatory nation-states with respect to the global fight against terrorism and the financing of terrorism. The Federal Law No. 1 of 2004 on Combating Terrorism Offences is an attempt by the UAE to meet the international norm in this regard.

‘Terrorism’ is broadly defined in Article 2 of the CTO law as:

Every act or omission [where] the offender commits himself to execute a criminal design, individually or collectively, with the intention to cause terror between people or terrify them (see Article 2 of the CTO, 2004)

An act or omission also comes under Article 2 of the CTO if it causes a breach of public order or endangers the safety and security of society, or injures persons or exposes their lives, liberty or security to danger, including the lives, liberty and security of “...Kings, Heads of States and Governments, Ministers, and members of their families or any representative or official of a State or an international organization of an intergovernmental character and members of their families forming part of their household entitled by international law to protection or causes damage to the environment or any public or private utilities or domain, occupying, seizing the same or exposing any of the country’s natural resources to danger.” (see Article 2 of the CTO, 2004).

Along with criminalising terrorist acts, this law also criminalises the financing of terrorism. It is an offence under Article 12 of the law for anyone to be involved in collecting and/or inviting others to collect or provide funds with the intention that they will be used

directly or indirectly for the purpose of terrorism. Furthermore, it also an offence under this law for anyone to be in possession of funds that will ultimately be used for acts of terrorism. The key element of this law is the knowledge that the funds will be used directly or indirectly for the purpose of financing terrorist activities. In addition, Article 12 of the CTO 2004 states that whosoever gains, provides, collects, carries or transfers properties, directly or indirectly, with the intention of using them, or knows they are going to be used, in whole or in part, to finance acts of terrorism, shall be punished. The prescribed punishment for all those who are found guilty of involvement in terrorism (including the financing of terrorism) is imprisonment for life, in addition to the confiscation of any property or equivalent if that property is transferred or substituted in whole or in parts with other property gained through legal means.

The CTO 2004 criminalises not only the direct or indirect financing of terrorism but also the laundering of money on behalf of terrorists. It is an offence under Article 13 of the CTO 2004 for anyone to carry, transfer or deposit funds on behalf of other persons, and to conceal or disguise the purpose of this transfer when that purpose is to use the funds to finance terrorist activities. Anyone found guilty of this crime is punishable by a life sentence, along with the confiscation of any property related to the terrorist offences.

CTO 2004 covers all kinds of terrorist financing, whether such funds are derived from legal sources such as charities and donations, or illegal ones such as drug trafficking and arms smuggling.⁹

⁹ The UK also has terrorism-related money laundering legislation. Funds that are acquired through legal or illegal means, but are being used for the purpose of terrorism, are criminalised in the UK. The Terrorism Act of 2000 defines four main offences that may have an impact on the financial sector. They include fund-raising (section 15), use and possession of funds (section 16), funding arrangements (section 17) and money laundering (section 18). According to the Act, a person commits an offence if:

- a) He invites another to provide money or other property; or
- b) He receives money or other property; or
- c) He provides money or other property; or
- d) He uses or possesses money or other property for the purposes of terrorism (see Leong, 2007b:49)

Terrorist organizations use different techniques in order to conceal the original source of their funds. For this purpose, they open legal businesses or create shell banks in order to conceal the true source of their funds. Article 25 of CTO 2004 clearly stated that any representative, manager or employee of a financial institution or any business organisation found guilty of contributing to, or facilitating, any terrorist activities by using or allowing their names or accounts to be used to launder money that has been used or is to be used to finance terrorism, shall be punishable by a fine of not less than AED 100,000 and not more than AED 500,000. In addition, the premises used for the illegal activity shall be closed and the property confiscated (see article 25 of CTO 2004).

Because of the nature of the offences related to terrorism, the CTO 2004 puts more emphasis on the issue of *tipping off*. All competent authorities are required to keep all kinds of information they have about a suspected client confidential. Under Article 38 of CTO 2004, it is an offence to disclose information relating to any person or organisation suspected of being involved in acts of terrorism or the financing of terrorism. Any person who is found to be involved in disclosing information to a suspected terrorist or others concerned shall be punished by a prison sentence of not more than five years (see article 38 of CTO, 2004).

5.2 Money Laundering Control Mechanism in UAE

The structure in place for the policing and control of money laundering in Dubai is a combination of political, financial and law enforcement institutions. The three main bodies within this control mechanism are:

According to Leong (2007b), the overall purpose of the Terrorism Act 2000 (amended in 2001, 2005 2006) is:

To cut off terrorist funding, to facilitate sharing of information between law enforcement agencies and public authorities, to increase investigative powers and to provide for new offences in relation to the duty to disclose information or suspicion of terrorist financing (Leong, 2007b:49)

- (a) The National Anti-Money Laundering Committee (NAMLC) which has responsibility for formulating government policies on combating money laundering in the country;
- (b) The Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU) located in the Central Bank of the UAE. The AMLSCU has the primary role of assessing all suspicious money laundering cases sent to it by financial institutions, and, on the basis of its assessment, decides which case should be put forward for further investigation.
- (c) The Anti-Organized Crime Department of Dubai Police is responsible for the full criminal investigation of all suspected cases of money laundering, including the collection of further evidence to support a prosecution.

For the enforcement of anti-money laundering legislation, the CML 2002 gives to these institutions different powers with regard to the identification and investigation of suspected money laundering cases in the UAE. There are other legal authorities involved in the decision-making process, namely the Attorney-General and the Public Prosecutor whose roles are restricted to the decision to prosecute (see Section 5.4 below). In the following subsections, the functions of these three main bodies are discussed in detail.

5.2.1 The National Anti-Money Laundering Committee (NAMLC)

Due to the increasing concern about transnational organized crime and money laundering, the Government of the UAE has taken important steps to ensure that its financial system may not be abused by organized criminals (see Al-Abed *et al.*, 2005). In this respect, a National Anti-Money Laundering Committee was established in July 2000. The Committee is the national policy-making body with the responsibility of formulating and shaping policies and strategies to combat money laundering, both domestically and globally (WAM, 2005).

The Committee was set up under the chairmanship of the Governor of the Central Bank of the UAE and it consists of representatives of the following:

1. The Central Bank
2. The Ministry of the Interior
3. The Ministry of Justice, Islamic Affairs and Awqaf
4. The Ministry of Finance and Industry
5. The Ministry of Economy and Commerce
6. Agencies concerned with issuing trade and industrial licenses
7. The UAE Customs Board (see article 9 of CML, 2002)

In addition, representatives of the five largest national banks and three main moneychangers are included in the Committee with the status of Observer.

The roles and responsibilities of the Committee outlined under Article 10 of the CML, 2002 are as follows:

- To propose anti-money laundering rules and procedures in the State
- To facilitate the exchange of information and coordination between agencies represented therein
- To represent the State in international anti-money laundering forums
- To propose organisational regulations regarding the workings of the Committee
[and]
- Any other matters referred to it by competent authorities in the country (see article 10 of CML, 2002).

5.2.2 The Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU), Central Bank of the UAE

Money laundering is a global issue and different countries have established their own legal frameworks in order to fight this problem. Many jurisdictions have established a centralised authority with the responsibility of receiving suspicious reports from financial institutions, analysing them and disseminating them to the relevant law enforcement agencies for further investigation and prosecution. Such an entity is commonly known as the 'Financial Intelligence Unit' (FIU). This agency plays the role of a bridge between the financial sector and the crime investigating bodies within a state. The need for the establishment of FIUs was stressed by FATF in its forty recommendations for combating money laundering. For example, FATF Recommendation No. 26 (2003) stated:

Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs

To be able to improve international cooperation with respect to fighting money laundering and the financing of terrorism, the FIUs from 116 countries formed a group called the 'Egmont Group' (The Egmont Group, 2009a, 2009b; Leong, 2007b). The Egmont Group was formed in 1995 with the purpose of promoting international cooperation and especially the exchange of information between FIUs globally (The Egmont Group, 2009a; Mitsilegas, 1999). The initiative was taken by the FIUs of Belgium and the United States of America. The name of the group was derived from Egmont Palace in Brussels where the first meeting of these FIUs took place (Stessens, 2000). The members of the Egmont Group meet regularly in order to discuss the problems of international cooperation and assistance with respect to

combating money laundering and the financing of terrorism at the international level (Schott, 2006; Enders and Sandler, 2006). The Egmont Group defined an FIU in the following words:

A Financial Intelligence Unit (FIU) is a central, national agency responsible for receiving (and, as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information [] concerning suspected proceeds of crime and potential financing of terrorism [] required by national legislation or regulation, in order to counter money laundering and terrorism financing (see The Egmont Group, 2009a)

The UAE is a member of the Egmont Group.

FIUs can be classified into four groups depending upon their nature and the type of administration they are controlled by. There are Financial Intelligence Units that are established within and run by a police force, the judiciary or an administrative authority. Some FIUs have also adopted a hybrid model of all of the above three (The Egmont Group, 2009b). Thus, the structure of the FIUs in the 116 member countries of the Egmont Group can be classified into these four models:

1. *The Administrative Model:* This is the most common type of FIU which exist in 76 of the member countries. In this model, the FIU is attached to a regulatory body such as the Central Bank or Ministry of Finance; or it operates as an independent administrative authority. The administrative model is in operation in countries like the UK, the UAE, Spain, Japan, India, France, Canada and Australia. In the UK, for example, the FIU is an independent administrative authority namely the UK Financial Services Authority.
2. *The Judicial or Prosecutorial Model:* There are only six members of the Egmont Group whose FIUs are affiliated with a judicial authority or a prosecutor's office. These are Argentina, Cyprus, Denmark, Latvia, Switzerland and Thailand.

3. *The Law Enforcement Model*: This is the second biggest group of FIUs comprising of 27 member states where the Unit is attached to a general or specialised police agency. In countries such as Austria, Estonia, Finland, Germany, Hong Kong, Iceland, New Zealand and Sweden, the FIU is attached to the police.
4. *The Hybrid Model*: There are currently nine members where the FIUs comprise a combination of the three above-mentioned models. These countries include Georgia, Greece, Netherlands, Norway and Romania. (For a complete list of the FIU models see The Egmont Group, 2009b: 11-12; Masciandaro, 2005:361-364; Masciandaro, 2007: 67-73).

According to Stessens (2000), three basic functions can be attributed to any type of FIU as per the definition given by the Egmont Group. The first function is the 'repository function'. The FIU is the centralised place where all information pertaining to money laundering issues are received and stored. The second function is the 'analysis function'. The FIU is responsible for the analysis of the information it receives from financial institutions with regard to suspicious money laundering cases. At this stage, the FIU usually provides additional assessment and information to the case and arrives at a decision as to whether or not the suspected case deserves further investigation. The last function of the FIU is the 'clearing house function'. The FIU is responsible for the facilitation, dissemination and exchange of information with other competent authorities on suspicious financial transactions. At this stage, the FIU may exchange information with domestic regulatory authorities, the judiciary or with overseas financial intelligence units (see Stessens, 2000:184).

It is important to mention that an FIU does not possess powers of investigation. The Unit simply receives and assesses suspected money laundering case notes (STRs) sent to it,

and then forwards its reports to the appropriate law enforcement or investigating bodies to commence a full investigation.

Among the four different models of FIUs explained above, the UAE has adopted the administrative model for dealing with suspicious money laundering cases in the country. The Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU) is the Financial Intelligence Unit (FIU) of the UAE located within the Central Bank of the UAE. The Unit began operations in July 1999 as per recommendation number 26 of the International Financial Action Task Force (FAFT) (see also, UAE Interact, 2002a). The AMLSCU became a full member of the Egmont Group on May 5th, 2002. The Unit also played a leading role in establishing the FATF-Styled Regional Body – The Middle East and North Africa Financial Action Task Force (MENAFATF) – responsible for the fight against money laundering and the financing of terrorism in the Gulf region (see Chapter 3; see also D’Souza, 2005).

Initially, this unit started its activities with six staff members. However, since the terrorist attacks on the USA on September 11th 2001, the role and responsibilities of the AMLSCU have increased enormously and the numbers of its staff have been doubled. At the time of this study, the AMLSCU comprises of six sections, each with a special duty with respect to the management and analysis of money laundering cases referred to the Unit. These sections include: (a) the STRs and Suspicious Cases Analysis Section (b) the Follow-up Section (c) the STRs and Suspicious Cases Record Keeping Section (d) the International Section (e) the Legal Section, and (f) the Administrative Support Section.

As indicated above, the Unit receives all Suspicious Transaction Reports (STRs) prepared by financial institutions (banks), money changers, commercial institutions and other economic, financial and non-financial institutions with regard to suspected cases of money laundering on the part of their customers and clients, and then assesses/analyses these reports

for further action. The Unit has the power of access to all the information pertaining to money laundering kept by all financial institutions working within the UAE. The AMLSCU determines the format in which suspicious transaction reports should be written and the proper way that the reports should be communicated to the Unit. The Unit can also access information on money laundering kept in financial institutions abroad, through the National Anti-Money Laundering Committee.

The successful reporting of suspicious transactions to the AMLSCU depends upon the trust and cooperation of the financial sector, that is, the banks, moneychangers and other financial institutions. This is a very crucial component of the process. The regulatory body responsible for the issuing of licenses to financial institutions and their supervision is required by the CML 2002 to setup appropriate mechanisms to ensure that financial institutions are complying with anti-money laundering rules and regulation. In particular, the regulatory body is required to ensure that the financial institutions put appropriate structures and systems into place for the reporting of suspicious cases to the AMLSCU (see article 11 of CML, 2002).

Article 20 of the CML 2002 gives legal protection to financial institutions, their directors, employees and authorised representatives against any criminal charges, civil or administrative litigation brought against them by their clients for disclosing their personal details and information to the AMLSCU or the law enforcement authorities without their consent, even when it turns out that the information given was wrong, unless the information given to the AMLSCU was found to have been given in bad faith. This provision is in compliance with Recommendation No. 14 of FATF which states that:

Financial institutions, their directors, officers and employees should be protected by legal provisions from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any

legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred (see article 14 of FATF)

Once the AMLSCU is of the opinion that a transaction is suspicious and needs further investigation, it shall make the STRs accessible to the law enforcement agencies in order to assist them in their criminal investigation against the accused. Law enforcement authorities (including the Police) do not have direct access to STRs and bank accounts. They rely on the financial information on the accused as supplied to them by the AMLSCU

The information related to suspicious money laundering cases could also be communicated or exchanged with other countries at their request in accordance with international conventions and treaties to which the UAE is a signatory, where such is needed for the purpose of fighting money laundering globally (see article 7 of CML, 2002).

5.2.3 The Anti-Organized Crime Department (AOCD) of the Dubai Police

The role of law enforcement agencies in the control of crime cannot be underestimated. In recognition of the need to protect the economy of the Emirates from organised criminals and money launderers, the UAE established, in 2000, an Economic Crimes Department within its Police Force. This department was established as a branch of the General Department of Criminal Investigation (the CID). In 2005, the Economic Crime Department was renamed the ‘Anti-Organised Crime Department (AOCD)’. The AOCD is responsible for investigating all cases of organised crime, including money laundering cases, in the Emirates.

However, it is important to mention that Dubai is the only Emirate amongst the seven Emirates making up the UAE that has its own independent police authority, the Dubai Police.

Dubai also has its own independent prosecution authority and courts, managed and controlled by the Government of Dubai, not the Federal Government of the UAE. In the other six emirates, the police authority is controlled by the Federal Government of the UAE.

The Dubai Police's Anti-Organised Crime Department has within it a specialised unit called the 'Money Laundering Section'. This section is responsible for the investigation of money laundering cases referred to it by the Public Prosecutor or from overseas (see below).

5.3. The Processing and Investigation of Money Laundering Cases: Roles and Responsibilities

As indicated above, the starting point of the investigation of a money laundering case is the identification of a suspicious transaction. As was also explained above, the fact that a transaction is above the stipulated legal threshold does not automatically make it a suspicious transaction. Financial institutions are not under any obligation to report all transactions above the threshold unless, in addition, it is deemed to be of a suspicious nature. Financial institutions are under obligation to declare all suspicious transactions in an STR. While all currency transactions above the threshold requires the completion of a CTR, such reports may not be sent off for further investigation.

Different government authorities or departments are involved in the processing, investigation and prosecution of suspected money laundering cases in the UAE and Dubai. In this section, I will discuss the role and responsibility that each and every one of these government authorities perform in the policing and control of money laundering cases.

The discussion starts with the role of the AMLSCU, the establishment within the Central Bank that receives STRs from financial institutions and takes the initial step of deciding whether or not a suspicious case is worth further investigation. If the Unit decides

that a suspected person is not involved in money laundering, the case will not go any further. Otherwise, the STR is forwarded to the Attorney-General who is the person legally empowered to order a criminal investigation into the alleged offences against the suspected individual or financial institution. The Attorney-General then passes the STRs and other relevant documents to the Public Prosecutor whose role it is to initiate the investigation into the alleged offence, under the authority of the Attorney-General. The Public Prosecutor may reject an AMLSCU decision to accuse someone of money laundering. However, the AMLSCU is empowered to override this decision. Where this is the case, the Public Prosecutor will have no option but to forward the case to the AOED for full criminal investigation.

The AOCD branch of the police has the important job of investigating all suspected money laundering cases referred to it by the Public Prosecutor's office. As mentioned above, the Dubai Police has established its own Money Laundering section within its AOCD to deal with money laundering cases only. If, after the investigation is complete, the police decide to press charges against the accused, the case is concluded and forwarded to the Attorney-General who must consult with the AMLSCU before any final decision on prosecution is made. If, after consultation, it is agreed that the accused has a case to answer and the evidence is strong enough, the case will be passed over to the Public Prosecutor to initiate criminal proceeding in the courts.

The main focus of this thesis is the role of the Dubai Police vis-à-vis the other government establishments, especially the AMLSCU, with regard to the policing and control of money laundering. What is the nature of the relationship between the police and the AMLSCU? How much access do the police have to information kept by the AMLSCU on suspected money laundering cases? Should the police be able to demand access to the AMLSCU files if access is denied by the latter? Are there any defects in the current system?

If so, how should all the legal and political authorities work together to ensure effective money laundering control?

Details of the roles of these government authorities are discussed below:

5.3.1 The Role of the AMLSCU, Central Bank of UAE

The Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU) of the Central Bank plays an important role in money laundering cases in the UAE. The responsibility for starting an investigating into a suspicious money laundering transaction lies with the Unit (Articles 7 and 8 of CML, 2002). All suspected cases of money laundering must go through the AMLSCU before any decision could be made as to whether a judicial proceeding should be initiated against an accused person or not. Specifically, the roles and functions of the AMLSCU are as follows:

- The AMLSCU is the only competent authority with the power to communicate with financial institutions and banks with respect to a suspected money laundering case. If any other government authority, including the police, requires any information from financial institutions pertaining to the investigation of a money laundering case, they are not legally allowed to contact the concerned financial institution directly. They will have to communicate their demands through the AMLSCU/the Central Bank of the UAE. For example, if the police authority needs information about the bank account of a suspected money launderer, it has to complete a special form explaining to the AMLSCU the nature of the information needed and the reasons why such information is needed. In the UAE, law enforcement authorities have no direct access

to individuals' bank accounts. Only the AMLSCU has that access. The AMLSCU has the power to obtain details of any private or commercial bank account in the UAE.

- The AMLSCU is technically the storehouse where all the information related to suspicious transactions are received and kept. On the receipt of an STR from a financial institution, the AMLSCU makes the initial decision as to whether an accused person ought to be subject to further investigation. Under Article 4 of CML 2002, the AMLSCU has the power to freeze a suspicious account for up to seven days, pending investigation into the alleged offence. The purpose of freezing a suspected account is to prevent the accused person from dispersing his funds during the course of the unit's investigation (see Lovett and Barwick, 2007).
- To be able to facilitate the investigation process against the accused person, the AMLSCU can order a financial institution to provide all kinds of information that the institution keeps with respect to the accused account holder.
- If, after analyzing an STR, the AMLSCU is convinced that the suspected funds or transactions have been derived from legal sources, it will request the Public Prosecutor to lift the freeze order on the suspected customer's bank account.
- However, when the AMLSCU is not satisfied from the documents provided that the funds in question are not the proceeds of crime, and the suspected customer, upon request by the AMLSCU, has refused or failed to produce additional documents to counteract the accusation, the Unit will immediately send a report to the Public Prosecutor with a request to extend the freezing order beyond the seven day limit.
- The AMLSCU will continue to collect further documents and information during the extended freeze period. Such information could be either from local sources or from

overseas FIUs. If after the completion of the analysis of the information gathered, the AMLSCU is of the opinion that the account under investigation is a case of suspected laundering of money derived from crime; the Unit will send its final report to the Public Prosecutor who would then initiate the necessary legal action against the accused person. The AMLSCU report to the Public Prosecutor often contains the information obtained from the financial institutions and the results of the Unit's own analysis of these documents, as well as other information obtained locally or internationally. This report does not include statements from the accused individual or party.

- Whereas the AMLSCU is responsible for building up the case against suspected money launderers, it has no power to accuse the suspect of any crime; neither does the Unit have the power of criminal investigation. Hence the requirement to pass the matter over to the Attorney-General in order to initiate further investigation. However, only the AMLSCU can decide which case goes forward for further investigation or ought to be discontinued; and the decision of the Unit on this is final. In other words, the decision as to whether an STR is suspicious or not lies exclusively with the AMLSCU. No other government authority is included in this decision. Furthermore, there is no mechanism in place to challenge the decision of the AMLSCU if the unit decides, for example, not to pursue a criminal investigation against a suspected STR.
- It is important to mention that the FIUs in overseas countries constantly share a variety of information on money laundering with the UAE (the AMLSCU), in addition to making requests for cooperation through the relevant Ministries. The information that FIUs provide to one another constitute intelligence sharing with respect to important issues such as the legality of transactions or accounts and other issues that are not necessarily related to a specific crime or trial. In addition, the information shared

between FIUs is directly between the FIUs themselves, without any mediation by, or reference, to any Ministry or through the diplomatic conduit.

5.3.2 The Role of the Attorney General

The involvement of the Attorney General in money laundering cases is justified on the ground that any accusation of money laundering against an individual or an institution is a serious matter that needs special legal attention. Specifically, the role of the Attorney General involves the following:

- Under Article 5(1) of the CML 2002 the Attorney General has the exclusive powers to order the criminal investigation of all cases of suspected money laundering received from the AMLSCU.
- Under Article 5(2) of CML 2002, the Attorney General also has the power to issue a freezing order on the bank accounts or property of a person suspected of money laundering if the account or property is suspected to have been derived from the proceeds of crime. However, this power can only be executed through the Central Bank (the AMLSCU) and with the knowledge (but not the approval) of the concerned bank or other financial institution. The freezing order usually continues until the case is fully investigated, or lifted if the suspected account or assets is not proven to have been derived from crime.
- It is also the duty of the Attorney General to inform the AMLSCU of the results of the police investigation into all money laundering cases before the final decision to prosecute is made.

- Any request for assistance from other countries also has to go through the Attorney General before the case is passed on to the Police.

5.3.3 The Role of the Public Prosecutor

The Public Prosecutor:

- Examines the STRs from the AMLSCU forwarded to it by the Attorney-General and makes the final decision on whether the case should be passed on to the police for full investigation. If so, the Public Prosecutor is then required to instruct the Anti-Organised Crime Department of the Police (AOCD) to commence a full investigation against the named accused individual or organisation.
- The Public Prosecution Officer is also permitted under Article 4 of the CML 2002 to order the seizure of properties or the proceeds of crime of the suspected money launderer whilst investigation into their alleged crime or crimes is on-going. If the Public Prosecutor is of the opinion that there is not enough information/evidence in the AMLSCU report to warrant full criminal investigation, he could issue a release order to the suspected money launderer. However, this decision could be overridden by the AMLSCU. Once the AMLSCU has recommended in its final report the need to take legal action against the accused person, the freezing order will continue and the case will be sent to the police for further investigation, in spite of any objections from the Public Prosecutor.
- During full investigation into the alleged crime, the police act under the direction of the Public Prosecutor. The Public Prosecutor can order or authorise the use of specific investigative actions such as the deployment of special investigative techniques.

- Finally, cases of money laundering from other sources (for example, the Customs Authority) could be reported directly to the Public Prosecutor's office. This would happen where an individual has failed to declare to the Customs Authority the currency that he or she was carrying when entering into the UAE. A Custom Authority report would be made only when the amount of cash in question exceeds the maximum threshold limit of AED 40,000 or equivalent in other currencies, and the individual had failed or refused to complete a currency declaration form as required by law. In this regard, there are two actions possible: on the one hand, where the case is deemed to be one of deliberate violation of the currency regulations, the suspect will be prosecuted in court. On the other hand, where the case is seen as one of suspected money laundering, Article 8.2 of the CML 2002 requires the Public Prosecutor to first consult with the AMLSCU before taking any necessary action (for example, to pass the case over to the police for full investigation).

5.3.4 The Role of the AOCD of the Dubai Police

The AOCD was created exclusively to deal with organised crimes and other financial crimes such as fraud and embezzlement. In the UAE, the AOCD is the only government authority that is empowered to investigate suspected money laundering cases. As mentioned above, the Dubai Police, unlike in the rest of the UAE, has a Money Laundering Section within its AOCD that deals specifically with money laundering cases. Specifically, the role of the police includes:

- The collection of evidence from various sources, to support a charge against the accused. Sources that are often used by the Dubai Police include undercover sources, such as informants who have firsthand knowledge of the suspect's organised crime and money laundering activities; ordinary citizens; government agencies such as the

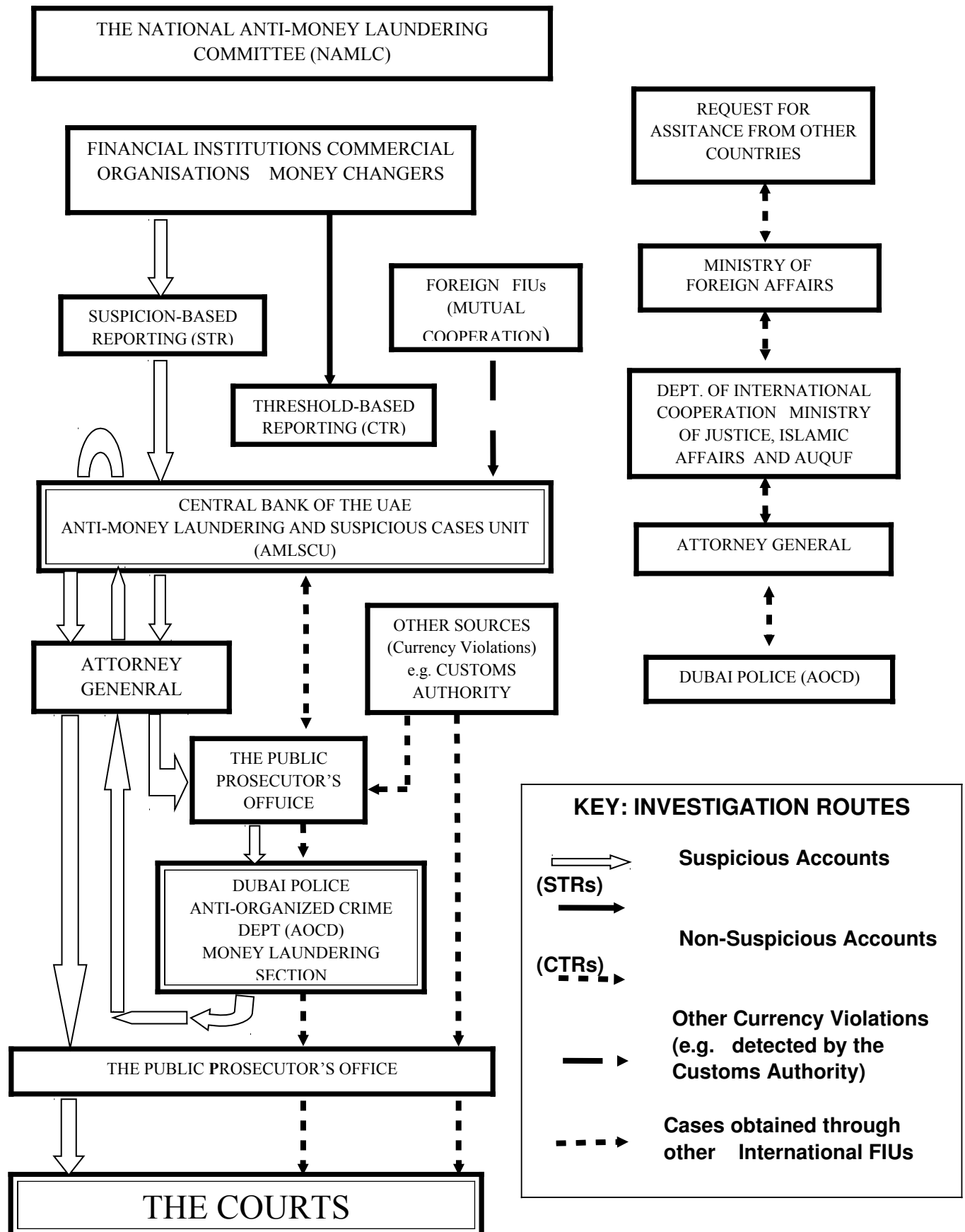
Customs Authority, overseas FIUs and financial institutions, where necessary and other investigative techniques suggested by the Public Prosecutor.

- The Dubai Police would also investigate suspected money laundering cases referred to it by the Customs Authority via the Public Prosecutor or an overseas FIU via the Attorney-General/Department of International Cooperation. The investigation into any case of suspected money laundering will start only when the AOCD receives an order from the Attorney General/Public Prosecutor to investigate the case. All investigations are subject, as mentioned above, to the approval and authorisation of the AMLSCU
- Once the go-ahead is given by the Attorney-General for criminal investigation to commence, and authorisation is given by the Public Prosecutor, the police will collect evidence in accordance with the law, having due regard to the rights of the suspect. The police investigation may include the taking of statements of the suspected offenders as well as statements from other key informants such as witnesses and employees. The investigation procedure has to be thorough and, as such, it could include searching the accused persons' property, collecting forensic evidence and acquiring other important documentary evidence.
- Once the police have completed their investigation, they are required to send their report along with their recommendation to the Attorney General to initiate criminal proceedings against the accused. Where the recommendation supports a charge, the Attorney General, before any decision is made to prosecute, will send the file to the AMLSCU for approval. Unless approval is obtained from the AMLSCU, a case may not be prosecuted in court.
- Following the consultation with and approval of the AMLSCU, the Attorney General will require both the AMLSCU and the AOCD to meet to discuss the case and come

up with a definite charge before the case is passed on to the Public Prosecutor to initiate criminal proceedings in the court. It is only after a unified single report from the AMLSCU and the AOCD to prosecute the suspected money launderer has been received, will there be a prosecution in court.

The Dubai Police AOCD is not only responsible for the investigation of domestic money laundering cases. It also assists in the investigation of money laundering cases on behalf of other countries. As mentioned above, such requests are made through the Ministry of Foreign Affairs and the Department of International Cooperation in the Ministry of Justice, Islamic Affairs and Auqaf. The overseas requests are first assessed in the abovementioned Ministry in order to ascertain its relevance under the international and regional conventions and treaties to which the UAE is a signatory. The said department will then forward the request to the Attorney General in Dubai from where the case is sent to the Dubai Police for investigation. As Alldridge (2003) stated, such requests for cooperation in criminal matters may come in a broad range of activities that include obtaining witness statements, collecting documentary evidences, locating and identifying the suspected individuals, requests for search and seizure of funds and property, transfer of prisoners to assist in criminal investigation and the confiscation of the proceeds of crime.

Diagram 5.1: Processes of Money Laundering Investigation



5.4 Facts and Figures: Money Laundering and Control in the UAE

Money laundering cases are very sensitive cases and therefore, in the UAE, information about known and convicted money laundering cases are often kept secret and confidential. The attitude of not sharing information related to money laundering crimes was more prevalent in the AMLSCU than in the Dubai Police's AOCD. As a result, it is impossible to get accurate and comprehensive statistics about the numbers of money laundering cases found and tried in Dubai. However, FATF was able, in its 2008 Annual Report, to publish some basic statistics on the number of money laundering cases investigated, and the number of STRs sent to the AMLSCU. The information was collected mostly from the Dubai Police. They were presented in the FATF report as follows:

From January 2000 to February 2007, the Dubai Police had investigated 224 cases involving money laundering, of which 91 arose from financial crimes, nine from drug-related offenses, and 124 from money laundering as an act in itself. Reflecting the fact that Dubai is an international financial centre and confirming local and overseas intelligence that foreigners attempt to launder money through Dubai, it was noted by the Dubai Police that, of the 224 cases investigated, 122 originated from countries other than the UAE, the highest being the United Kingdom with 43 cases, the United States with 13 and India with 10. In all, 30 separate countries were listed as being the origin of money laundering offenses investigated by the Dubai Police with European nations being [] 20 of those [countries]. The Dubai Police commenced 102 cases themselves in the same timeframe (see FATF, 2008:49-50).

Table 5.1: Number of STRs Filed by Financial Institution (2004 – 2006)

Institution	2004	2005	2006
Banks	252	250	475
Moneychangers and other financial institutions	38	49	73
Dubai International Financial Center (DIFC) institutions	-	2	8
Total	290	301	556

(Source: FATF, 2008:82)

5.5 Impediments to Effective Money Laundering Control Mechanism

The Government of the UAE has provided sufficient legislative basis for the AMLSCU in the Central Bank and the law enforcement authorities to fight money laundering effectively. However, there are still many problems that hinder the overall progress with respect to combating money laundering in the country. Some of the problems that have been highlighted by critics of the UAE system are discussed in this section.

a) The Exclusive Focus on International/Cross-Border Money Laundering Control and the lack of attention to the domestic problem of Financial Crimes that could also be money laundering.

The numbers of money laundering cases that have been investigated by the Dubai Police are very few; more than half of them were overseas request cases where the Dubai Police responded to overseas wishes to assist in the investigation of money laundering cases. Very few of the cases dealt with by the police were internal cases, where the identification, tracing and investigation of the money laundering occurred locally (see FATF, 2008). This observation can be verified through the comparison between the number of internal and external money laundering cases that have been investigated by the Dubai Police between 2004 and 2006 (see FATF, 2008, op.cit.)

There is no doubt that the Government of UAE has been successful, to some extent, in protecting its borders from cash smuggling and its financial system from the infiltration of illegal proceeds derived from organized crime that has been committed outside the country. Through the anti-money laundering laws and regulations, the financial and legal authorities have been able to detect, pursue and freeze suspicious transactions and funds that come from other countries into the UAE. However, critics have argued that the authorities have placed

far too much emphasis on pursuing money laundering cases from abroad at the expense of fighting the internal money laundering phenomenon that exists within the country.

Although there is a common belief that organized crime is not a matter of concern for the law enforcement authorities in the UAE, there is evidence that there are official concerns in the country about the apparent yearly growth in the incidence of financial crimes. According to Taylor (2000), financial crimes in the UAE rose by 24.4 per cent, from a figure of 16,175 in 1997 to 20,123 offences in 1998:

The [figures] showed crimes of fraud topping the list in 1998, the latest year for which full figures are available, with 12,806 reported cases, representing 63.64 per cent of the total number of financial crimes. Dud cheque transactions accounted for the majority of fraud cases, with a 25.5 per cent increase in reported cases over 1997. Nearly 40 per cent of financial crimes were registered in the emirate of Dubai. Sharjah accounted for a further 32.15 per cent, while only 12.72 per cent were registered in Abu Dhabi (see Taylor, 2000)

The UAE has become an easy target for financial crime, especially fraud. Criminals are using different tactics and are taking advantage of ineffective legislation and legal loopholes within the system to perpetrate different types of fraudulent transactions and crime. One prominent example was the case of an African man nicknamed 'Baba' whose real name was Foutanga Dit Babani Sissoko. Baba had allegedly used black magic to perpetuate an extensive fraud. It was reported in the daily newspaper *The Gulf News*, of May 18th 2001, that:

Baba ... allegedly used magic to persuade a senior manager of the Dubai Islamic Bank to wire about Dh 1billion to his bank accounts in New York, Miami, Geneva and the Isle of Man in 183 telex transfers between August 1995 and January 1998 (Smalley, 2001)

DeFede (1999) reported that Sissoko used the financial systems of both the UAE and the USA to launder this money in the USA, whereby \$150 million was transferred to the United States through Citibank in the UAE, but the authorities in both the UAE and the USA had turned a blind eye to such a huge transaction. It was reported in the *Miami New Times* on April 8, 1999 that ‘Citibank, through its officers, management, agents and employees knowingly participated in the conspiracy to steal funds from the Dubai Islamic Bank’ (see DeFede, 1999).

Just one year after the Sissoko case, another high profile fraud case hit the UAE economy that amounted to nearly \$360 million. This involved Madhav Patel, an Indian businessman. Patel took huge sums of money as loans from different banks in the UAE. Taylor (2000) reported that:

Patel, who fled the UAE with outstanding debts, had an unblemished relationship with banks for over 15 years. He then managed to glean nearly \$237 million in loans plus an unspecified amount in letters of credit and guarantees from 14 banks, and flee (Taylor, 2000).

Patel laundered all these millions of money into banks in the UK whilst he managed to escape from the country. These two cases were clear cases of money laundering in that substantial amounts of money, obtained by criminal (fraudulent) means (see Article 2.2. of CML, 2002), were deposited in banks outside the country (the UAE) in which these crimes were committed.

Critics argue that the Sissoko and Patel cases are not the first fraud cases and will not be the last unless the UAE pays as much attention to the laundering of money obtained by criminal means inside the UAE. The implications for the UAE, in terms of the adverse effects

that this could have on the UAE economy, the banking sector, trade and the tourism industry, cannot be underestimated.

Unfortunately, the UAE's current legislation on money laundering is not extended to the exporting of cash out of the country. There are no regulations to scrutinize transactions sent abroad via the UAE financial institutions, as there are on transactions sent from overseas. The authorities in the UAE appear to be more interested in closely monitoring cash and funds that enter into the country than the cash and funds that are taken out of the country. Critics argue that the reason for this is simply because the anti-money laundering laws in the UAE developed as a response to international pressure rather than as a reaction to a perceived domestic problem.

International cooperation with respect to the policing and control of money laundering is no doubt important. It portrays the positive image of the UAE and its financial system, and improves the country's reputation internationally, which in turn is conducive to further investment in the country. There are a number of countries that do not cooperate as completely as the UAE authorities do with international authorities in combating transnational money laundering. For example, Fisher (2001) argued in relation to the UK that the authorities in that country do not always respond swiftly to overseas' requests with respect to international money laundering cases and that, as a result, the country's financial system is more vulnerable to being abused by money launderers. However, the authorities in the UAE should keep a proper balance between international cooperation in controlling cross-border money laundering and controlling the country's internal money laundering problem.

b) The lack of Accountability of the AMLSCU and Financial Institutions

The above discussion (Section 5.5) clearly shows the dominant role that the AMLSCU plays in the policing and control of money laundering cases in Dubai. The AMLSCU verifies the authenticity of STRs, decides which cases merit further criminal investigation and, after investigation, makes the final decision on which case should be prosecuted in court. This shows that the AMLSCU is the most important authority in the decision-making process. For instance, if an STR is deemed not to be suspicious under the accountancy assessment rules of the AMLSCU but, at the same time, the police authority might have undercover information that the same individual is involved in money laundering, these STRs will go unreported and the suspected person will not be investigated. Although Article 7 of the CML 2002 clearly stated that ‘...the said Unit [the AMLSCU] shall make the information available to law enforcement agencies to facilitate their investigations’, it doesn’t give the police the exclusive right to inspect an STR or to ask the AMLSCU for an STR where the decision of the AMLSCU is not to subject the suspect to further investigation. The AMLSCU is not accountable to anyone with regard to how the Unit chooses to assess and process STRs.

The Attorney-General/Public Prosecutor cannot initiate any criminal proceedings against a suspected money launderer without first presenting the results of the police investigation into the case to the AMLSCU for approval. If the AMLSCU arrives at a different conclusion to that of the police investigation, for instance, that the evidence collected does not support the charge against the accused, the suspected money laundering case will not be taken to court for trial. In all money laundering cases, the recommendations of the AMLSCU always take priority over that of the Dubai Police.

The point being made is that the Dubai Police has the important and tedious job of investigating money laundering crimes, collecting evidence and building up a case, but their role is minimal compared to the overwhelming and uncontrollable position of the AMLSCU.

There is no channel of communication between the AMLSCU and the AOCD. The Police cannot ask for any further information or help from the AMLSCU other than that which is provided in the Unit's reports on the STRs. The AMLSCU and the AOCD can meet only when the Attorney General requires them to meet in order to produce a single mutual report about a suspected money laundering case (see above). These departments do not share information regarding money laundering cases on a regular basis.

Furthermore, with regard to CTRs, financial institutions are not questionable or accountable for decisions taken not to regard a CTR as being suspicious, and therefore deciding not to send it to the AMLSCU as an STR. There is no legal duty on financial institutions to substantiate their decision when they have decided that a transaction above the threshold limit is normal, and not suspicious.

c) The Absence of a National Database on STRs and CTRs

Currently, there is no national database of CTRs and STRs in the UAE. This is unlike countries like Australia where a national database of CTRs and STRs is maintained and made readily available to the law enforcement agencies at any time (see Table 3 below).

Table 5.2 Reports Received at AUSTRAC Since 2000

Reports	2000-2001	2001-2002	2002-2003	2003-2004
STRs	7,247	7,809	8,054	11,484
CTRs	1,681,024	1,850,804	1,979,446	2,056,617
Cross-Border Cash	26,858	29,538	28,274	25,579
International Wire Transfers	6,107,534	7,057,084	7,493,765	8,685,843
Total Reports	7,822,663	8,945,235	9,509,539	10,779,523
Database Searches	686,817	791,255	873,815	1,225,388
Investigation	715	1,892	1,544	1,743
Taxation Revenue	AU\$72m	AU\$33m	AU\$99m	AU\$72m

Source: AUSTRAC data, June 2004 cited in Jensen (2005:237)

The creation of a national database for STRs, CTRs and other international financial transactions (without thresholds), and making this database accessible to the Police, the Customs Authority and the security departments, would no doubt be of great value with regard to the policing and control of money laundering in the country. With no database available, it is difficult to monitor the activities of potential or actual money launderers; to know, for example, whether an offender currently under investigation has been under suspicion in the past, but has not been prosecuted, or whether there was a CTR record of the suspect's previous transactions that was held by the financial institutions but not declared as a suspicious account. Having a database would be a valuable asset in the identification of persistent violators and an important starting point in the collection of evidence for prosecution. In addition, it would give an indication of the nature and extent of the problem and would alert the authorities to the necessary steps that need to be taken in order to protect

the national economy from these criminals. It would also aid the fight against terrorist financing and other suspicious financial transactions both inside and outside the country.

d) Lack of Training and Experience in partnership working

Although, the Government of the UAE has had anti-money laundering laws in place since 2002, the control mechanism used to counter money laundering crimes is still largely underdeveloped. It is doubtful whether the training that officers of the Dubai Police have had on the policing and control of money laundering is adequate to deal with the changing nature of money laundering crimes globally. Although, as stated above, the Central Bank of the UAE has organized a number of workshops/seminars related to countering money laundering in the country, such programmes have often been used for publicity purposes rather than for focusing exclusively on training the officials of the authorities in such a way as to be able to deal more effectively with money laundering. Although Article 17 of AMLR 2000 identified training as a key issue in the policing of money laundering, there is no clear strategy in Dubai on the training of police officers, prosecutors and judges with regard to money laundering crimes. Most money laundering training programmes are concerned with theoretical issues instead of the practical and procedural issues on how to detect and investigate money laundering cases.

Moreover, all those involved in money laundering control are not trained together. Thus, there is no opportunity for all those concerned to exchange their views and develop a better understanding of how their roles are related. There is no experience of partnership working. Each authority sees their role vis-à-vis the others in terms of the legal provisions defining that role, not as partners working to achieve the same goals and objectives. This issue is discussed further in Chapter Six.

e) The Absence of Civil Confiscation Legislation

An important deficiency in the UAE money laundering legislation is the absence of a civil law on confiscation or forfeiture of property derived from the proceeds of money laundering. Civil forfeiture is increasingly being recognised by many countries as a relatively effective control strategy designed to tackle the phenomenon of organised crime and terrorist financing. In a civil proceeding, the burden of proof will be on the owner of the property to prove that the property is not the proceeds of crime, and/or will not be used in criminal activities such as terrorism. Therefore, the forfeiture or recovery of any suspicious property will be based on civil standards (the probability), rather than the criminal standards (beyond reasonable doubt) that the said property is the proceeds of crime and/or is being used for criminal activities.

5.6 Conclusion.

In this chapter, the following issues have been identified

1. The UAE, like most countries, has initiated tough legal steps to criminalise money laundering and the financing of terrorism, although these efforts came as a result of international pressure to combat money laundering and to fight terrorism globally. The harsh penalties introduced in both the CML 2002 and CTO 2004 for those who are either involved in money laundering and/or terrorist financing, reveals the government's intention to ensure that organised criminals and terrorists do not find the UAE to be a safe haven, and to ensure the safety of the UAE financial system from abuse by organised criminals and money launderers.

2. The UAE money laundering laws criminalise all attempts to launder the proceeds of crimes committed abroad, in the UAE. The laws places responsibility on the financial institutions to report any suspicious transaction activities to the AMLSCU, failure to do so being punishable by law. The laws also require all those who bring cash into the UAE to disclose the amount of such cash at the time of entry to the UAE if it is above the threshold fixed by the Central Bank of the UAE. However, it is argued that the introduction of a civil law on confiscation might be a more effective means of deterring money launderers who plan to invest their criminal proceeds in properties in the UAE.
3. The UAE/Dubai operates two systems of reporting where a transaction is larger than the threshold allowed by law: a threshold reporting system (CTR) and a suspicious reporting system (STR). A transaction above the threshold may not necessarily be regarded as a suspicious transaction. The initial decision as to whether a transaction beyond the threshold is suspicious, lies with the financial institutions in which the deposit was made. Where a financial institution chooses not to regard a transaction beyond the threshold as being suspicious, it cannot be questioned by the AMLSCU or by the law enforcement agencies. The AMLSCU or the police have no access to CTRs kept in banks or other financial or commercial institutions. This means that some possible cases of money laundering escape investigation and possible prosecution. In contrast, where persons attempts to smuggle cash into the UAE via the various ports of entry, they are subject to quick and immediate prosecution for currency violation. Such cases are not regarded as money laundering unless the Customs Authorities have reasons to suspect that they are.
4. All cases of suspected money laundering must be ratified by the AMLSCU before any further investigation or prosecution can take place. This could take place at any stage

in the investigation of the offence. The AMLSCU may choose to close a case even when police evidence shows that the suspect may have a case to answer.

5. The AMLSCU is not accountable to anyone for decisions taken at the initial stage of inquiry into a money laundering case. The Unit is required by law to share information received from financial intuitions with the law enforcement agencies, but the latter do not have the power to request such information, or have direct access to it. This means that not all cases of suspected money laundering are subject to investigation. Similarly, financial institutions may not be questioned over decisions taken not to regard a CTR as an STR. Furthermore, there are no national databases with regard to CTRs and STRs issued by financial institutions. This makes it difficult to know the true nature and extent of the problem of money laundering in the country.
6. The Dubai police play an important role in fighting money laundering through the AOCD. The money laundering investigations carried out by the Dubai Police have been mainly on behalf of overseas' requests to assist in the criminal investigation of cases. The police also deal with other money laundering cases. For example, cases referred to it by the AMLSCU through the Public Prosecutor in the form of STRs received from financial institutions with regard to suspected money laundering activities of clients, or cases referred to it by the Customs Authorities via the Public Prosecutor's office, where a person crossing the borders into the UAE has failed to declare currencies in their possession that are above the legally permitted threshold. However, the role of the Police is minimal in terms of the legal mechanisms in place for controlling money laundering in Dubai. The Police may have control over the process of further investigation into a particular offence, but the final decision on prosecution is influenced by a non-judicial authority, the AMLSCU.

7. The CML 2002 criminalises primary money laundering but is silent on secondary money laundering. More important is the fact that the law regulates the laundering of cash and proceeds from overseas' sources, but is silent on domestic money laundering where money obtained in the UAE by fraudulent means, for example, is exported out of the country. Although Article 2.2. of CML 2002 regards proceeds from fraud as money laundering, the law appears to have been interpreted so far in terms of cross-border or international fraud. Dubai's legal, political and economic structures in place for dealing with money laundering are focused exclusively on the international dimension of the crime. The lack of legal regulation of internal or domestic money laundering means that the UAE financial system is still subject to abuse by those who export cash out of the country illegally.
8. There is no established tradition or national experience of partnership-working between the authorities (agencies) involved in money laundering control in Dubai. The current training programme for all involved in money laundering control has not addressed this issue, which is vital if the system is to work effectively.

Chapter Six

The Control of Money Laundering in Practice

6.0 Introduction

In the previous chapter, I examined the legal, political and administrative structures in place in the UAE and Dubai for the policing and control of money laundering, highlighting the role of the Central Bank, financial institutions and the law enforcement agencies, including the police. The chapter explained how the system is expected to work in theory and according to law. This chapter examines the views and opinions of these key actors on how the system operates in practice, the problems they encounter during the course of their daily activities, and how they thought that the system should work in order for it to be more effective in controlling money laundering. The chapter is based on data collected from the questionnaire survey and interviews conducted with banking and law enforcement officers in Dubai. The respondents included 10 bank managers, 15 officials of the AMLSCU and 15 police officers working in the Anti-Organized Crime Department (AOCD) of Dubai Police (see Chapter 4)

The chapter is divided into four sections. Section 6.1 discusses how suspicious cases are identified, based mainly on the responses of AMLSCU Officials and Bank Managers. The section that follows (Section 6.2) examines the views and opinions of police officers on the investigation of money laundering cases and their relationship with the AMLSCU. Section 6.3 discusses the views of all respondents on the nature of the relationship that currently exists between all parties, especially with regard to the sharing of information/intelligence. Section 6.4 provides concluding remarks on the key points identified by the respondents. The chapter sets the scene for a discussion of the possibility of introducing Intelligence-Led Policing (ILP) in Dubai, in chapter 7.

6.1. Identifying Suspicious Cases

Whereas the law defines what constitutes money laundering, it was clear in Chapter 5 that those involved in the initial decision-making process, namely the AMLSCU, financial institutions (banks) and the Customs Authority, have considerable discretion with respect to which cases they would put forward as a suspicious case of money laundering.

Due to the fact that the banks and the AMLSCU make the initial and often the most crucial decision on which bank deposit or transaction is suspicious, and therefore in need of further investigation as a suspected money laundering case, it is important to know the views of these respondents on how they would identify a suspicious case of money laundering. When asked what types of transactions they would most likely report as being suspicious, many of the Bank Managers and the AMLSCU officials said that they would suspect money coming into the country from war-torn countries and countries that are politically unstable, or those with poor security records. Bank Manager No. 2 explained:

You know any cross-border transactions incoming and outgoing with countries such as Afghanistan, Iraq, some African countries and others would raise suspicion. You see, there is mess; there are local groups fighting each other, there is Al-Qaeda, Taliban, NATO [and] the American forces; weak governments with no control over their country [and so on]. In this situation, you never know what is the source of the money that is coming to our bank from such countries. Is the money derived from organized crimes in those countries and do they want to wash it through our banks? Is it genuine money earned through legal means? It is very hard for us to decide on the legality of these funds (Field Notes, 2009)

He continued:

Please do not have the impression that there is no money laundering attempts from other countries which do not have any internal conflicts or what you called them: *developed countries*. I have reported a number of suspicious transactions that involved people from some European countries and the USA as well. [However] it is very easy to communicate and exchange information with countries that are stable and have sound

anti-money laundering systems in place, whereas with non-stable countries, there is always an additional pressure on us (Field Notes, 2009).

The AMLSCU Official No. 9 added:

Different countries have different problems. There are countries such as Mexico and Colombia [] that are famous for drugs and drug dealers. There is black money¹⁰ coming also from Russia and the other former Soviet republics. You know about Russian mafia that are famous for their organized crimes in Russia. They also try to launder their money earned from different organized crimes in Russia [in the UAE]. There are mafias [involved in] human trafficking and prostitution in European countries. We don't have any organized crime here in the UAE. However, the UAE, being one of the important financial centres, has always been on the list of these organized criminals in order to launder their money (Field Notes, 2009).

There appeared to be a consensus of opinion amongst the bank managers and AMLSCU officials that “black money” enters the UAE as a result of two main organised criminal activities: illicit drugs and arms smuggling (Medler, 2005). As Bank Manger No. 4 explained:

Some of the countries in our neighbouring region are well known for drug trafficking and arms smuggling, and criminals try to launder their criminal proceed here in the UAE []. Afghanistan is the main source of drug money in the region. You know that Americans used drug money to help the Mujahedeen to fight against the Soviet Union. Even Al-Qaeda and Taliban used drug money to finance its regime. Now, the warlords have taken full control of the drug business in Afghanistan and the drug money is being laundered through the financial system of the Gulf countries (Field Notes, 2009).

AMLSCU Official No. 2 added:

¹⁰ Black money' is one of the local terms generally used by the banks and law enforcement agencies to define laundered money. Others include: 'dirty money', 'illegal money' and 'crime money'.

You see these regional wars in Iraq and in Afghanistan, and you also see the American and NATO forces, the Al-Qaeda, Taliban. How they are fighting? From where do they bring in the money to buy weapons? Who is supplying the weapons to them? Of course there are criminal groups that are supplying weapons and making money out of it. There are chances that these criminals bring their illegal money to the UAE to launder it through our banking system (Field Notes, 2009)

In addition to the geographical origin of the transaction, respondents were asked what other criteria they would use to identify 'high risk accounts'. Bank Manager No. 7 answered:

Our decision is based upon taking into consideration the standard risk indicators such as the personal background of the client, [] his occupation, and the nature of business activity involved. (Field Notes, 2009)

Bank Manager No. 10 replied that the procedure for identifying high risk accounts is an ongoing process, applied to both new and existing customers:

We constantly monitor all medium and large scale to and fro transactions. Any transaction that is not compatible with the economic status of the customer will be considered suspicious and will be reported to the Central Bank for further investigation (Field Notes, 2009)

The AMLSCU officials thought that large transactions should always be seen as potentially suspicious. As the AMLSCU Official No. 5 explained:

If, for example, a government employee deposits large sum of money into his account while failing to disclose the source of the funds, of course it is suspicious. Where did he get the money, keeping in view his economic status? Similarly, for example, if the transactions in a businessman's accounts are not compatible with that of the information he provided to the bank about his business, everybody will be suspicious of the money in his accounts (Field Notes, 2009).

But there was no indication that the size of the amount was a key element in the decision to regard a transaction as being suspicious. As the AMLSCU Official No. 15 stated:

A suspicious transaction has nothing to do with its amount. I know the common sense approach lead us to believe that any big transaction could be suspicious, which is wrong. The criminals are very clever and they know that any big transaction will be monitored by bank officials. (Field Notes, 2009)

6.1. 1. The *Hawala* System

Questions were also asked about the respondents' views on *hawala* – an informal means of transferring money, used primarily by poor people and generally believed to be a loophole that could be exploited by money launderers (see Chapter 2). Some of respondents thought that there was far too much and perhaps unnecessary criticism of *hawala*. On the one hand, some believed that the perceived link between *hawala*, organised crime and money laundering is exaggerated, mainly by the Western media and the USA. The AMLSCU Official No. 7 belonged to this group. He said:

I am surprised that after 9/11, everybody was talking about the illegality and badness of *hawala*, but nobody demanded punishing those banks that were used by the hijackers for money transfers. I believe that criminal organizations have always used, and will continue to use, any available means of money transfer for laundering their criminal proceeds. Criminals have always misused the banking system and the abuse of *hawala* remittance system is not an unusual case (Field Notes, 2009).

On the other hand, others thought that the link that was made between *hawala* and 9/11 has alerted the government to the need to pay more attention to the monitoring of *hawala*. The AMLSCU Official No. 4 held this view. He said:

One of the positive developments since 9/11 is the regulation of *hawala* which was not under government notice before. It is not only good for the government to keep check on the incoming and outgoing financial transactions through *hawala*; it also good for the *hawala* system as well,

because it will not be misused by the criminals when it comes to laundering illegal funds derived from crime (Field Notes, 2009)

Overall, there was a general consensus of opinion amongst the Bank managers and the AMLSCU officials that money laundering is not an easy crime to detect. According to AMLSCU Officer No. 10:

Criminals use different tactics in order to hide the true origin of black money. The problem with the UAE law is that it puts the burden of proof on the Public Prosecutor, not on the accused party, due to which it is often difficult for the government to produce solid proof in order to punish the money launderers (Field Notes, 2009).

The majority of the respondents recognised that money laundering is a multi-faced crime that has been increasing in spite of several efforts globally to curb it. It is believed that the UAE on its own cannot fight the problem. As the AMLSCU Official No. 14 put it:

Fighting money laundering and the financing of terrorism is the collective responsibility of the world community. No single country can eradicate this problem effectively. Mutual coordination and collective efforts by the international community is the key to success in the effort to contain laundering operations around the world (Field Notes, 2009)

The AMLSCU Official No. 5 added:

[Although] many countries have now established their anti-money laundering mechanism, there are still missing links, and what you call the *weakest link* in international cooperation with respect to money laundering and financing terrorism issues. Unless countries cooperate with each other, the efforts against money laundering and terrorism will be fruitless (Field Notes, 2009)

The respondents acknowledge the role that the UAE has played in the fight against money laundering, through the signing of international treaties and through the criminal investigation of money laundering cases overseas. According to the AMLSCU Official No. 11:

The Government of the UAE is committed to sharing financial information with its overseas partners in order to strengthen mutual cooperation with regard to fighting money laundering and the financing of terrorism (Field Notes, 2009)

In support, the Police, on their part, emphasised the role that the AOCD has played in the international investigation of money laundering cases, especially the work that they have done with Interpol. Police Office No. 3 explained:

The AOCD has helped Interpol in many criminal investigations and will continue to do so. Similarly, Interpol has also helped us in our criminal investigations and has issued *Red Notices* to arrest criminal suspects (Field Notes, 2009)

In particular, the police respondents mentioned examples of recent collaborative efforts with Interpol, including the fact that the UAE has recently joined the Interpol global DNA database. The law enforcement agencies of the UAE now share the fingerprints and DNA profiles of over 70,000 suspects from 50 countries (see Sambidge, 2008).

6.1.2. Factors Encouraging Money Laundering in the UAE

When asked why it is that the UAE is a target for money launderers, many of the respondents said that it is because of the stable political structure and the sound financial system of the country. In addition, some of the AMLSCU officials argued that criminals are taking full advantage of the cash-based economy in the UAE to launder money in the region. AMLSCU Official No. 6 explained:

If, for example, a person suddenly becomes rich without having any proper business or employment, there is no mechanism in place to ascertain the source of that person's money. We do not have income tax in our country and there is no other way to know about the economic aspect of a person. Unless and until the Government has sound grounds for believing that his money is derived from organized crime, nobody can do anything to prosecute him. I know a few people in Dubai who have become rich overnight and nobody has asked them from where they got the money (Field Notes, 2009)

It is believed that criminals are also taking advantage of the weak immigration control systems at three of the five airports in the Emirates to import large sums of money into the region undetected. As the AMLSCU official No. 14 puts it:

The least developed Emirates are trying to attract more people to use their airports in order to generate more revenue, thus leaving enough room for the money launderers to exploit and bring their illegal cash into the UAE (Field Notes, 2009).

6.1.3. The 'Know Your Customer' Policy

Whilst the majority of bank managers and the AMLSCU officials expressed full support for the 'Know Your Customer' Policy, some were critical of the process, arguing that it is very easy nowadays to forge documents. This was found to be particularly problematic in the case of foreign nationals. With the average annual immigrant growth rate in the UAE at 22.98% per 1000 population (see CIA, 2009), this is considered to be a significant problem. As Bank Manager No. 9 stated:

From our new clients, we ask them to produce a copy of their passport, a driving license (if they have one), their employment status and the company for which they work, and any other documents that show their name, date of birth, nationality [and so on]. To what extent these documents are true or forged, we don't know, especially in the case of non-UAE documents (Field Notes, 2009).

The AMLSCU Official No. 8 added:

We know that bank officials face [many] practical problems when it comes to the verification of the documents of overseas nationals. (Field Notes, 2009)

Some bank managers argued that the competition amongst banks to attract customers has meant that the verification of a client's documents is sometimes not as thorough as it should be. According to Bank Manager No. 3:

We have our own limitation with respect to time, money and resources that we can spend in verifying our customers' documents. We verify all the documents that we can, and we assume others to be true as well. You know, we are business organization and we have to do business as well (Field Notes, 2009)

As Lilley (2006) argued, for banks, business often takes priority over everything else. However, there was no indication that bank managers do not take the verification of documents seriously. Most of them realised that the KYC principle/policy is the first and most important line of defence against money laundering. As Lilley (2006) argued '...if a major bank finds it difficult to implement a basic 'Know Your Customer' system, what hope is there?' (Lilley, 2006:189). However, the respondents were aware of the danger in labelling all potential clients as suspects in terms of money laundering. As the AMLSCU Official No. 4 puts it:

You never know the intention of the person who wishes to open a bank account. It could be an ordinary person (Field Notes, 2009)

There was no indication in all the responses from the Bank Managers that the fear of invading the privacy of customers or violating confidentiality was the reason for not carrying out a full verification of the client's documents.

In response to the common saying that “black money can never become white without the support of bank officials”, some bank managers accepted that the system is not totally free of corruption, in spite of the provisions put in place to ensure that transactions are properly recorded (for example, the existence of the post of Compliance Officer). Some of the Bank Managers cited some cases where bank staff had being found guilty of fraud and money laundering.

6.1.4. Reporting Suspicious Transactions

All the bank managers interviewed said that they complied fully with the legal requirement of reporting suspicious transactions to the AMLSCU. As Bank Manager No. 9 puts it:

We have clear orders from the Central Bank to report any suspicious transactions that have occurred in our bank, and we fully comply with the reporting requirements. We constantly keep check on all large deposits, withdrawals and transfers. We do not waste time if there is any suspicious transaction activity in our bank (Field Notes, 2009)

However, the Bank Managers were generally critical of the CTR. Whilst some saw the benefits in the completion of the CTR form where a transaction violates the legal threshold, because “...it keeps a check on every large transaction” (Bank Manager 1, Field Notes xx 2009), others considered it mere paperwork with no value at all. As Bank manger No. 9 put it:

I do not understand the reason why we are forced to comply with the CTR requirement. If a transaction is large but not suspicious, then what are we worried for? The Central Bank doesn’t need CTR from us, neither do the police. I do not understand the logic of the CTR requirement (Field Notes, 2009)

Bank Manager No. 5 was also against the CTR requirement. He had this to say:

The CTR requirement would have made sense if we were required to send it to the Central Bank, the police authority or any other body for monitoring purpose. By keeping CTRs within the banks, the Government has provided a good opportunity for corruption to the banks to hide their customers' transactions from them. (Field Notes, 2009)

In contrast, there was a general support by the AMLSCU officials for the completion of CTRs, even though they did not receive copies from the banks. The AMLSCU Official No. 5 said:

There may seem to be of no obvious benefit of filling in a CTR. It might look just like a paper activity for some bank officials. [But] we cannot deny its importance. Along with stating the amount of cash to be transferred, the CTR also includes information about the person who is sending the money, and the one who is receiving it. This is a vital document for police investigation if [in future] any of these individuals is [later found to be] involved in money laundering or terrorist financing (Field Notes, 2009).

The AMLSCU Official No. 1 supported the above statement. He added:

The CTR requirement is about sharing responsibility. We want to communicate to the banks that they are also as much responsible as we are in fighting the misuse of our financial system. The CTRs are kept within the banks because we trust them. This is their duty towards the State. It is our collective responsibility to eradicate crime-driven money from our financial system (Field Notes, 2009)

Finally, questions were put to all respondents on the link between money laundering and the financing of terrorism, with particular questions asked on what they thought about incidents in which the UAE had been involved, such as the use of banks in the UAE to transfer funds that were believed to have been used by the planners of the 9/11 bombings in the USA in 2001. The respondents generally supported the official line that both the UAE

and the USA must accept joint responsibility, but more so the latter. As AMLSCU Official No. 9 puts it:

Accusing the financial system of the UAE for providing funds for the event of 9/11 would be unfair. Some of the 9/11 hijackers opened normal bank accounts just like an ordinary citizen. They did not commit any crime here in the UAE. How would you know the intention of a person at the time of opening just a bank account? (Field Notes, 2009)

The AMLSCU Official No. 12 added:

Since 9/11, the AMLSCU has helped with a number of criminal investigations with respect to money laundering and terrorist financing. We have helped with many overseas requests for cooperation in money laundering cases from America, Britain, Germany, Pakistan and some other GCC countries (Field Notes, 2009)

6.2. Investigating Money Laundering Cases

As shown in Chapter 5, the investigation of money laundering cases is the sole responsibility of the Anti-Organized Crime Department of the Dubai Police. In this respect, the Dubai Police is expected to engage with and share information (intelligence) with other internal and external departments such as the AMLSCU, the Customs Authority and Interpol. As has also been explained in Chapter 5, the AOCD exists only within the Dubai Police and its jurisdiction covers the Emirate of Dubai only. In the other six Emirates of the UAE, the enforcement and investigation of money laundering crimes is the responsibility of the Economic Crime Department that exists within the General Department of Criminal Investigation. This section describes the views of the police officers working within the Anti-Organized Crime Department of the Dubai Police at the time of this study, and who were actively engaged in the criminal investigation of money laundering cases. Through

excerpts from interviews with the sample of 15 officers, one gets a picture of how money laundering cases are investigated by the Dubai police and, generally, what the response of the criminal justice system of UAE is towards money launderers.

6.2.1. Arrests

In response to the question of how they would go about arresting someone who is to be investigated for money laundering, the police generally agreed on the complex nature of this part of the process. All agreed that money laundering is a different and unique type of crime. Police office No. 4 explained:

There is no single and unique way to initiate [investigation] into a suspected money laundering case. It varies from one case to another depending upon the nature of the case. In some cases, we arrest people on the spot, whereas in other cases we have to search homes, offices [and so on]. In some cases, we do not even manage to arrest the accused person for years. (Field Notes, 2009)

All the officers agreed that, generally, cases referred to them via the Customs Authority are easier to handle than cases that have come via the AMLSCU. As explained by Officer No. 4 above, suspects in the former category could be arrested immediately at the port of entry.

Some officers believe that there is some politics in the arrest of suspected money launderers as persons from certain countries are more likely to be targeted for arrest than others. As Officer No. 15 explained:

People think that dirty money will come from countries with internal problems such as Afghanistan, Iraq and Somalia. However, very few would talk about Europeans and especially of America which is the home of many organized crime groups with numerous money laundering activities going on despite its advanced anti-money laundering rules, regulations and control mechanisms (Field Notes, 2009)

6.2.2. The Investigation of Cases

Ringguth (2002) has argued that people underestimate the real difficulties in prosecuting money laundering cases:

Money laundering is, by its very nature, difficult to prove, for if the money launderers have done their job, the money appears to be clean (Ringguth, 2002. No Page)

Ringguth's views were echoed by the majority of the police respondents. As Officer No. 9 put it:

Money laundering cases are completely different from those of other criminal cases. In ordinary crimes, for example a car crash or a murder, you have a criminal scene and you have witnesses. You go there, collect as much information as you can from the criminal scene and the witnesses. So, you gather information and then you continue to build the criminal case based upon your initial investigation. In money laundering cases it is totally different. You have a criminal scene, documents and people involved, but you cannot see that. You are completely blind. Your job has been made difficult by money launderers because they [criminals] have already used their mind during the laundering process. Our job is to start looking for the mistakes they have made to find fullproof evidence; it is not an easy job, honestly (Field Notes, 2009)

The officers did not think that they are adequately equipped to investigate the financial aspects of a money laundering case. In this regard, they are not unique. Many police forces in the world lack the expertise to investigate financial crimes. According to Ringguth (op.cit.):

Globally, the concept of modern financial investigation, as a routine part of the investigation of major acquisitive crime, is still very much in its infancy. In many countries police investigation is primarily directed towards the investigation of the underlying criminality: drug trafficking or whatever. It is still, globally speaking, I think, comparatively rare for investigators, as a routine part of the investigation of major proceeds-generating offences, to 'follow the money' and establish what happened to the proceeds... but investigating the proceeds can and does often lead to the money launderers –

whether they are the criminals involved in the original offence themselves or others acting on their behalf (Ringguth, 2002: No Page).

The police officers interviewed found it more convenient to focus on the criminal element of the crime; in other words, to ascertain that the suspect has indeed committed the crime. The majority of police officers said that the financial aspect of the money laundering was of less concern to them than the criminality of the act itself. A financial investigation will give some priority to the proceeds of the crime. According to Madinger (2006),

A financial investigation is a blend of the more traditional investigative techniques and those used by auditors for 3000 years. The techniques are actually very similar. Knowing this may not make a financial case any more attractive to the law enforcement officer who has no background in accounting, but there is no getting around the fact that somebody is going to have to prove [] that financial half of the money laundering equation (Madinger, 2006:107)

Thus, whilst accepting the relevance of effective laws in the fight against money laundering, many of the officers said that this should be complemented by a better system of criminal investigation in which police officers are trained in, and able to use, more sophisticated methods of criminal and financial investigation. Some of the police officers also mentioned, as a very important hindrance to an effective money laundering investigation, the fact that the Dubai Police, unlike the FBI, for example, do not have access to all financial data and information. As Police office No. 4 puts it:

If the FBI can access all the financial information in the US directly, why can't we do the same here in the UAE? What is the difference? I believe if the Dubai Police is given direct access to the database of STRs and CTRs, it will improve our efforts in fighting organized crime in general, and money laundering in particular (Field Notes, 2009).

Another very important problem highlighted by the police respondents is the length of time that it takes for a case to travel from one authority to another. Many of the respondents said that the transfer of cases from the AMLSCU to the Attorney-General and the Public Prosecutor and then to the police, takes far too long. ‘Justice delayed is justice denied’. In addition, some officers said that, compared with other crimes, the investigation of money laundering cases is time consuming.

6.3. Inter-Agency Cooperation and Information Sharing

A key issue raised in Chapter 5 is the apparent overwhelming role that the AMLSCU plays in the money laundering control system. The impression that came from the analysis was that the AMLSCU was unchallengeable and unaccountable to any of the other authorities working within the system. The sharing of information or intelligence between law enforcement agencies is a key element in the fight against crime (see Chapter 7). There is evidence that the law allows the AMLSCU to forward STPs to the police and to the other legal authorities involved in the fight against money laundering, but there is no legal provision or evidence of any other types of exchange of information between the law enforcement authorities and the AMLSCU. In fact, as mentioned in Chapter 5, the police have no access to any other financial information held on suspected money launderers by the Central Bank or by the financial institutions. Thus, the picture given in Chapter 5 is that there is limited cooperation in terms of information or intelligence exchange between the banks and the law enforcement authorities during the processing and investigation of alleged money laundering cases.

Leong (2007) argued that the increasing threat from money laundering and terrorist financing means that closer cooperation of the law enforcement agencies domestically and internationally is needed, and this can only be tackled effectively through sharing information, assisting in investigations and ‘out of the box thinking’ (Leong, 2007:211).

Although there is no open blame-game for non-cooperation among the financial and law enforcement authorities, there was some evidence of a “power struggle” in the responses given by the different respondents with regard to their roles vis-à-vis the others. Each group thought that their role was more important than that of the others. This was particularly the case between the AMLSCU and the Police respondents. The AMLSCU officials argued that their role is crucial and more important than that of the Police because they carry out the initial financial assessment without which no case can proceed against an accused person. As the AMLSCU Official No. 9 puts it:

Money laundering cases are financial crimes, [and] we do all the financial inquiry before we send the case to the Public Prosecutor for further investigation by the Dubai Police. The information we provide serves as the foundation of a money laundering case on the basis of which the police authority built and extend their investigation. Therefore, the AMLSCU plays a more important role than any other government institution in money laundering cases (Field Notes. 2009)

All the police respondents disagreed with this view. The majority of them talked about the rather condescending approach that the AMLSCU take towards police officers and their role in the money laundering control system. According to Police Officer No. 8:

THE AMLSCU Officials give us the impression that they are more important players in money laundering cases than us [because] they are the ones who decide which case should go to court and which one should not. They take criminal investigation for granted (Field Notes, 2009).

Police Officer No. 8 added:

I remember one AMLSCU official told me: 'Your job is easy compared to ours. We have to keep continuous check on every transaction of suspected money launderers. You just arrest people on the information we give you. We do the difficult job and you do the easy one' (Field Notes, 2009)

Police Officer No. 5 further added:

I believe that our job is more difficult than that of the others who are involved in money laundering cases. The AMLSCU officials, while staying in their offices, just give orders. If they need any information from banks about a bank account, they order them to provide the information. Our job is not like that. We do not give orders; we receive orders and act on them. We have to communicate with the Public Prosecutor, the AMLSCU, the Customs Authority, and the Court on the one hand and, at the same time, conduct the criminal investigation as well. Collecting intelligence, arresting and interrogating suspects and witnesses; searching for the criminal property or money, searching cell phone records, SMS, forensic record are not easy jobs to do (Field Notes, 2009).

Police Officer No. 1 concluded:

I do not mind if the AMLSCU plays a leading role in money laundering cases. We should change the attitude of 'I am superior to you and my role is more important than yours'. We are all part of the one team that fights against money laundering. Thus, nobody is more important and superior than others (Field Notes, 2009)

The argument above, it seemed, was over what was more important: the financial or the criminal investigation. The police officers did not deny the importance of financial information in money laundering cases, but disagreed with the AMLSCU officials that once the initial financial investigation is done, the rest is easy. For the police, having financial evidence alone does not solve the crime; proper investigation is needed to attain a successful

prosecution. As Police Officer No. 1 argued, criminal investigation is as important as financial investigation; they are just the two sides of the same coin.

More important was the argument over the cooperation between the AMLSCU and the police with regard to the sharing of financial data held on suspected money launderers by the AMLSCU and the banks. The majority of police officers interviewed thought that during an investigation, the police should be able to have access to all financial data without any restrictions. The police officers thought that having direct access to bank records and other financial information held on the suspect by the AMLSCU would improve police efficiency in terms of the investigation. The fact that they do not have direct access to these financial data makes them to see their role as that of a passive actor rather than an active one. As Police Officer No. 12 explained:

We are dependent; dependent on almost every law enforcement agency. Our hands are tied. (Field Notes, 2009)

Police Officer No. 6 talked about the delays in the progress of the investigation into money laundering cases that often occur as a result of the lack of direct access to financial data held by banks and the AMLSCU. He said:

We have our own limitations. We can cover some distance, but not all. There are speed breakers that do not allow us to go fast; you feel frustrated. I do not understand why we have to access the record of a bank account indirectly through the AMLSCU; why can't we take such information directly from the bank? These formalities are there to slow down the investigation process rather than to facilitate it (Field Notes, 2009)

The above view was held by many of the police officers interviewed. According to Police Officer No. 9:

It is extremely difficult to give you a time schedule for any money laundering case. I must say that these are time consuming cases. It takes so much time to

communicate information [between] the law enforcement agencies (Field Notes, 2009).

Police Officer No. 4 added:

You cannot fight money laundering effectively by introducing laws alone. You need effective implementation of the law. You need to empower the investigative agency, give them more powers so that they can conduct the investigation of money laundering cases freely ... If the FBI can access all the financial information in the US directly, why we can't do the same here in the UAE? What is the difference? I believe if the Dubai Police is given direct access to the database of STRs and CTRs, it would improve our efforts in fighting organized crime in general, and money laundering in particular (Field Notes, 2009)

For the majority of police respondents, it is the AMLSCU officials who are unwilling to cooperate with the police. According to Police Officer No. 4, the AMLSCU officials believe that they have “ownership” of financial information and are generally unwilling to share vital financial information with the police. As Police Officer No. 13 puts it:

The AMLSCU is very strict with regard to sharing information in money laundering cases with the AOCD. I do not understand this attitude. We both are government departments and our goal is the same; to tackle money laundering cases. But sometimes, the AMSCLU behave as if the AOCD is under their authority (Field Notes, 2009).

The AMLSCU respondents, on their part, expressed strong resentment when asked if they would share more financial information with the police and/or allow them direct access to financial data in the possession of the Central Bank or financial institutions with regard to money laundering suspects. Some of the AMLSCU respondents were quick to emphasise the fact that the police are not trained in the investigation of financial data. As the AMLSCU Official No. 4 puts it:

Police officers do not have expertise in understanding banking records. Therefore, having access to bank records would not help the police at all. We are here to help the police. (Field Notes, 2009)

The AMLSCU Official No. 3 emphasised the need to maintain secrecy or confidentiality where peoples' personal bank accounts are concerned. According to him:

Most banks would prefer to maintain the secrecy of their clients' information from the law enforcement agencies. They would never welcome police coming to the bank and asking for their clients' records. It does not give a good impression of the bank. On the other hand, if we (the AMLSCU) demand any records, they don't mind giving them to us. Personally, I do not see any problems in the existing system. I believe there is a proper balance of powers between all the law enforcement agencies in money laundering cases (Field Notes, 2009).

The AMLSCU respondents were generally against any legal move to grant the police powers of direct access to the financial records of suspected money launderers that are kept in banks or in possession of the AMLSCU. For the majority of the AMLSCU respondents interviewed, keeping financial information on money launderers away from the police does not contradict the legal requirement that they should share STRs with the Police. The overall attitude of the AMLSCU respondents was that of containing as much information as they can within the unit, and sharing only those pieces of information which the Unit thinks is worth sharing. THE AMLSCU Official No. 2 explained:

You know that money laundering is a crime against the State; therefore, it is my responsibility to keep that information secret. It is my duty not to share the suspicious transaction activities reported to us with any person. (Field Notes, 2009)

However, all the respondents interviewed acknowledged the importance of the sharing of information in money laundering cases. As Police Officer No. 4 stated:

The sharing of information is the key to success in resolving every problem, including that of money laundering as well. Each of us plays our distinct role, but our collective goal is the same – to fight money laundering. I think, instead of judging

ourselves as to whether I am possessing more information about a suspected money launderer than others, we should share each and every piece of information for our collective goal of eradicating the criminal proceeds from our society (Field Notes, 2009).

The need to share information or intelligence is crucial as money laundering, like most organised criminal activities, is becoming increasingly sophisticated and complex. The financial aspects of organised criminal activities are becoming increasingly sophisticated, making it difficult for law enforcement agencies to track them down effectively. As stated in Chapter One, many organised criminals have started to operate as legitimate businesses do. This has meant that structures put in place to control organised crime (including money laundering) must be sophisticated, well integrated and multi-agency (Dini, 1997). The anti-money laundering systems in most ‘developed’ nations adopt the multi-agency approach to dealing with the crime and on the sharing of intelligence, and the use of modern technology that helps to develop a comprehensive understanding of the scale of the problem and establishes appropriate ways of tackling the crime.

The structure in place for dealing with money laundering crimes in the UAE is, in theory, multi-agency. But, in practice, it doesn’t operate as one. The above discussions clearly show that the structure is not integrated; neither is it well coordinated. Instead, the law has created a hierarchy of authority with the AMLSCU at the top of the hierarchy.

These practical problems were outlined in the IMF report on the UAE (IMF, 2008). In this report, the IMF noted that the way and manner that the FIU (the AMLSCU) disseminates information pertaining to STRs to the law enforcement agencies is inadequate. The report concluded:

In the light of legal and resource shortcomings, in addition to a lack of comprehensive statistics, assessors were not able to conclude that the FIU

was effective in its core functions of receiving, analyzing and disseminating STRs (IMF, 2008:174)

Progress can only take place if all the agencies concerned recognise the need to work together more closely and more explicitly in the sharing of information/intelligence and the investigation of cases. Whilst the police were quite critical of the existing arrangements and would like to see a change that would allow more cooperation in the sharing of information, the AMLSCU officials, on their part, felt satisfied with the existing system as it is. In a nutshell, the police officers interviewed were demanding more powers and closer collaboration with the AMLSCU in all money laundering cases; the opening up of direct channels of communication between the two government departments, access to financial database held by the AMLSCU and the power to initiate legal proceedings without the need to consult the AMLSCU. Most of all, there should be mutual trust between the agencies, transparency and accountability.

When asked for suggestions for the future or the way forward, the need to have a structured way of sharing intelligence or information was the most frequently mentioned suggestion made by the police. For example, according to Police Officer No. 3:

Intelligence-led-policing is prioritized in many developed nations in their fight against organized crime. If intelligence obtained through different law enforcement agencies is fully recognized, shared and exploited, it helps in targeting the organized crime more effectively. A successful prosecution and conviction of most organized crimes can easily be achieved through intelligence-led investigations (Field Notes, 2009).

Some police officers suggested the creation of a new independent anti-money laundering agency. As Police Officer No. 14 put it:

I think [] the government should create a new agency like SOCA in the UK. The AMLSCU and the AOCD should be part of such an agency. I hope [this] will improve the anti-money laundering efforts in the UAE (Field Notes, 2009)

6.4. Conclusion

The following contains the main viewpoints expressed by the respondents:

1. The AMLSCU and bank officials are more likely to regard money coming from war torn countries, South America, developing countries, Russia and post-Soviet countries as suspicious compared to funds coming from ‘developed’ countries, even though they realise that the USA and Western European countries also have organised criminals who, in the past, have tried to launder money in the UAE. Invariably, the size of the amount of cash being deposited may not be as important as the geographical source of the money, the personal background of the client and the nature of the business activity involved.
2. Police officers felt that there could be some politics involved in the selection of cases for investigation, whereby suspects from certain countries are targeted for investigation more than others.
3. The AMLSCU and bank managers felt that money laundering is a difficult crime to detect. This is not helped by the cash-based economy in the UAE and the country’s weak immigration control policy which has made the application of the ‘Know Your Customer’ policy quite difficult. Bank managers felt that they sometimes have to balance their own economic interests against the need to do a thorough KYC check. However, there was no indication that bank managers do not take the verification of documents seriously.

4. Police officers also attested to the difficult nature of money laundering cases. On their part, they accepted the fact that they are not adequately equipped to investigate the financial aspects of a money laundering case. But, in this regard, they are not unique. Most police forces all over the world are not adequately equipped to investigate financial crimes.
5. The AMLSCU officials supported the current arrangements on CTRs, but some bank managers thought that it was a waste of time.
6. Police officers are quite critical of existing structure with regard to how cases are moved “up and down” the system, between the agencies. They claim that this often causes unnecessary delays.
7. A key issue for the police is how the different agencies work together and share information on money laundering cases. The police appear to agree with Leong (2007) that, in the light of the increasing threat from money laundering and terrorist financing, there is a need for closer cooperation between the law enforcement agencies domestically and internationally in terms of the sharing of information, and the development of an ‘out of the box thinking’ attitude.
8. The police would prefer to have the right of direct access to financial information held by banks and a legal reform that would break the monopoly of the AMLSCU over financial data. The AMLSCU officials, on their part, are totally against any legal change that would grant the police direct access to financial data held in banks.
9. However, all the respondents interviewed acknowledged the importance of the sharing of information in money laundering cases. As organized criminals are becoming more sophisticated and complex, it was essential for the structures put in place to control organised crime (including money laundering) to be sophisticated, well integrated and multi-agency.

10. The structure in place for dealing with money laundering crimes in the UAE is, in theory, multi-agency. But, in practice, it doesn't operate as one. The discussions so far clearly show that the structure is not integrated, nor is it well coordinated. The law has created a hierarchy of authority with the AMLSCU at the top of the hierarchy, with no provision for oversight. Thus, the current system is neither transparent nor sufficiently accountable.
11. However, all respondent thought that the UAE is doing its best to control money laundering by working with other countries in the fight against organised crime.

Chapter Seven

Managing Intelligence, Partnership Working and the Policing of Money Laundering

7.0 Introduction

In the previous chapters, I have shown that the federal government of the UAE is very serious about tackling organized crime and money laundering in the Emirates. This seriousness derives from the full support given by the government to international legal and law enforcement arrangements to combat these crimes, and the passing of its own laws to criminalise money laundering and all sorts of financial crimes, including the financing of terrorism. However, it was made clear, in Chapter 5, that the law empowers a banking “authority” - the AMLSCU - to dictate which case goes forward for prosecution and to have a say in the decisions to charge and prosecute suspected offenders. The role of the police is minimal in this process.

Comments from the Dubai police officers interviewed (Chapter 6) suggest that the existing arrangement hinders the police’s ability to carry out effective investigation as valuable information about suspects in the possession of the AMLSCU and banks are not available to the police, and the police have no power to command their release. More importantly, it appears that all the agencies involved in the investigation of money laundering crimes in Dubai are not working well together as equal partners in the quest to control the crime. There appears to be no structure or model in place on the sharing of intelligence or partnership working between all the agencies involved, besides the formal legal arrangements prescribed in the CML (2002) (see Chapter 5).

The position of this thesis is that the police should occupy a central position in the fight against money laundering and organised crime, and that the control of money laundering in

Dubai would be more effective if all the agencies and authorities involved work together as equal partners, with equal access to intelligence data that are currently being monopolised by the AMLSCU and the banks. Accordingly, this chapter considers some models of policing arrangements already in existence in the UK that are used in the fight against organised crime and money laundering. The aim is to identify which model could be adopted in Dubai and why.

7.1. Intelligence Led Policing (ILP)

Simply explained, ‘intelligence-led policing’ is a strategic, planned and targeted approach to controlling crime. It is an approach that emphasizes the collection of intelligence which serves as a guide for policing operations (McGarrell, et al., 2007; Mawby, 2003)). The primary concern of ILP is to enhance the delivery of police work. As Tilley (2003) puts it:

Intelligence-led policing is essentially about doing the practical business of policing more smartly, incorporating modern information technology and modern methods. (Tilley, 2003:321)

More important is the fact that ILP, as a crime reduction strategy, requires the police to work in partnership with other law enforcement agencies to tackle law-breaking and to ensure community safety. The main task of ILP involves gathering, building and maintaining comprehensive information about the nature and pattern of crime and criminality through all possible means in a coordinated manner. The basic purpose is to analyse the crime, and to devise inventive strategies in order to tackle the crime effectively. ILP is believed to be an informed and coherent law enforcement response to the problem of tackling crime (Tilley, 2003).

In a nutshell, ILP is an approach to crime reduction whereby resources are moved away from retrospective crime investigations into pre-emptive operations based on analysed intelligence.

Rather than reacting to events as they happen (on a case-by-case basis), intelligence-led policing uses the knowledge already acquired to determine crime trends and patterns, and criminal activities in progress, and uses that body of information to influence the directions the police go in targeting particular individuals, activities, geographical locations and the like.

7.1.1. Criminal Investigation and ILP

Criminal investigation is one of the vital components of police work. The scope of investigation varies, depending upon the nature of the crime. Investigating a local burglary, for example, would be different from investigating a suspected case of terrorism. The criminal investigation functions of the police involve locating, gathering and using information/intelligence for the purpose of bringing offenders to justice. Criminal investigation is also a means to achieving other criminal justice objectives such as improving intelligence gathering, caring for victims, or managing crime risks.

With regard to the United Kingdom, Wortley and Manzerolle (2008) argued that the collection of criminal intelligence by the police is not a modern day phenomenon. It started as far back as the very beginning, when the first batch of modern police officers walked the streets of London in 1829 (see Emsley, 2008). However, for much of its history, Grieve (2004) argued, the police in England and Wales used criminal intelligence in a disorganized and inconsistent manner. Police tactics were investigation-led, carried out mainly to support a criminal case. Intelligence played very little role in the standard model of policing that was mainly reactive. Criminal intelligence was used on a case to case basis for the purpose of gathering enough evidence in order to secure a prosecution. It was never used in a proactive manner to target crime, or potential or actual criminals.

The term ‘intelligence-led policing’ entered into common usage in policing around the early 1990s. References to the origin of the term pointed to the UK as its source. During the late 1980s and early 1990s, the crime rate was increasing in the UK, and there was a need for radical changes in the way the police operated (Gill, 1998). There was increasing concern that traditional authoritarian policing was proving to be inadequate and inappropriate in curbing the increasing levels of crime. It was at that time that new policing initiatives were introduced such as community policing and problem-oriented policing. As far back as 1975, a report entitled the Baumber Report for the Association of Chief Police Officers had recommended increased use of intelligence by the police. For effective policing, the report emphasized that intelligence needs to be understood as more than mere information. As Newburn et al. (2007) put it:

Baumber argued that criminal intelligence, as a modern policing concept, requires that such a piece of information is put together with others and some form of analysis is performed in order to produce a fuller picture (Newburn, Williamson and Wright, 2007:200)(emphasis mine)

Furthermore, the report proposed a definition of ‘intelligence’ in the following manner:

Criminal intelligence can be said to be the end product of a process often complex, sometimes physical, and always intellectual, derived from information that has been collected, analysed and evaluated in order to prevent crime or secure the apprehension of offenders’ (ACPO 1975:para. 32 cited by Newburn, Williamson & Wright 2007:200).

The concept of intelligence-led policing emerged due to the failure of the traditional reactive approach to policing. ILP is a new law enforcement operational strategy that focuses on a proactive approach to tackling crime, characterised by the collection and use of effective intelligence with the aim of targeting criminals. This approach is based on the belief that the general patterns of offending are known to the police. Therefore, instead of waiting for an

incident to happen and then reacting accordingly, ILP puts a lot of emphasis on targeting the criminals before they commit the crimes. According to Tilley (2003)

Intelligence-led policing involves effectively sourcing, assembling and analysing ‘intelligence’ about criminals and their activities better, to disrupt their offending, by targeting enforcement [at] where it can be expected to yield highest dividends (Tilley, 2003:313).

In contrast, reactive policing is where the police react whenever an incident arises. According to Tilley (2003)

Reactive policing is also sometimes referred to as ‘fire brigade’ policing, involving responses to emergencies as they arise but little else. The first is put out, the case is dealt with and then the police withdraw to await the next incident that requires attention. There is nothing strategic about response policing. There are no long-term objectives. There is no purpose beyond coping with the here and now (Tilley, 2003:313)

The old fashion reactive pattern of policing failed to yield effective crime control results, particularly in today’s plural society because, as Tilley (2003) argued:

Dealing with individual offences reactively and trying to solve them one at a time as evidence happens to be available is not an efficient or effective way of allocating police efforts. Instead, the police can and should actively pursue information about criminals and their organization. This is expected simultaneously to lead to improvements in both the detection and prevention of crime (Tilley, 2003:313)

The move to reform policing strategy in Britain came largely from within. The move to ILP is associated with a number of important developments that took place during the early 1990s. One of them was the publication of the Home Office (1993) report *Helping Enquiries:*

Tackling Crime Effectively, commonly known as the Audit Commission Report of 1993. Furthermore, the benefits of adopting and implementing criminal intelligence procedures and processes in mainstream policing functions were systematically highlighted by successive reports by the ACPO (1978, 1986 and 1996).

The Audit Commission Report (1993) emphasized the use of more intelligence. The report examined the mechanism of operational policing and was critical of the way the police were making use of resources. The report emphasized the need for policing strategy to focus on targeting criminals, and not only focusing on crime, because research has showed that a small percentage of recidivists commit a large amount of the crime. In other words, tackling criminals would prove to be more effective and cost efficient than simply focusing on crimes. Thus, the pressure on the police to be more effective and cost-efficient meant that a change in policing tactics was necessary. The report also acknowledged the significance of working in partnership for the purpose of crime prevention. Thus, this report played an important role in the shift in policing paradigms, from reactive to proactive law enforcement approaches. The basic aim of reforming policing was to give the police a greater sense of responsibility and a sense of purpose and direction that would help in their efforts to reduce crime.

Kent and Northumbria Constabularies took the lead amongst UK police forces in implementing ILP. A policing model was designed by the Kent Constabulary that focused on solving the problems of burglary and motor vehicle theft. This model was formulated on the basis of systematically analyzing these offences and took a proactive rather than a reactive response in tackling them. After analyzing the pattern of crime, it was observed that a small number of persistent offenders were responsible for a large number of incidents. In addition, a consistency was observed with respect to victims and target locations (McGarrell, 2007).

Thus, the systematic collection of, and analysis of, intelligence, has since become common policing strategy in the UK, used to inform and direct police activity at both operational and strategic levels, in determining and targeting offenders. The surveillance of suspects, offender interviews, along with expanded use of confidential informants, were some of the main methods employed for gathering intelligence. Thus, intelligence-led policing became synonymous with the increased emergence of crime analysis. According to Oakensen *et al.* (2002), the intelligence-led policing regime includes:

The interpretation of crime and incident data through analysis, and community information on a range of issues, as well as the more commonly used information gleaned from various sources on the activities of known or suspected active criminals (Oakensen *et al.*, 2002:7)

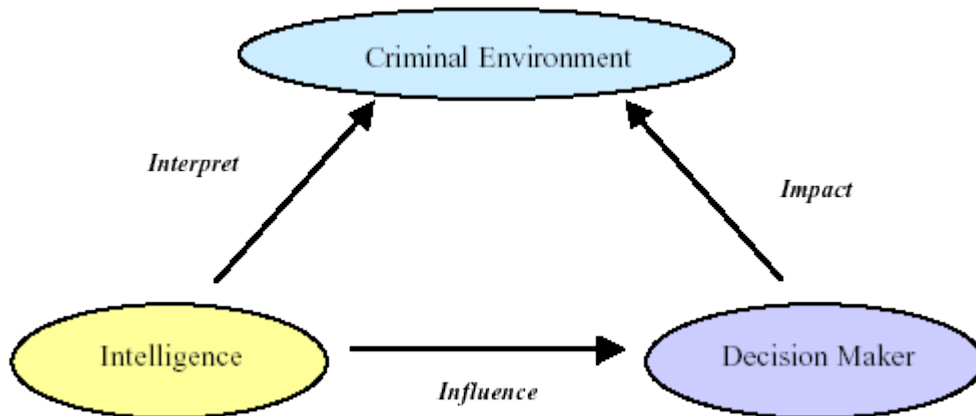
Over the years, intelligence-led policing has developed into a somewhat business-style model with greater emphasis placed on the sharing of information with local partnerships and strategic problem solving. As Ratcliffe (2008) summarises it:

Intelligence-led policing is a business model and managerial philosophy where data analysis and crime intelligence are pivotal to an objective, decision-making framework that facilitates crime and problem reduction, disruption and prevention through both strategic management and effective enforcement strategies that target prolific and serious offenders. (Ratcliffe, 2008: 89 cited by Wortley & Manzerolle 2008: 268)

7.1.2. A Conceptual Model of Intelligence-led policing

Ratcliffe (2003) has provided a conceptual model of how crime reduction can be achieved in an intelligence-led policing environment.

Diagram 7.1. An Intelligence-Led Policing and Crime Reduction Process



Source: Ratcliffe (2003)

This model is also commonly known as the three-I model (interpret, influence, impact). In this model, the arrow that runs from the intelligence to the criminal environment entails that the police department analyses and interprets the criminal environment in order to determine who are the main players, and what are the important as well as the emerging threats associated with them. The second arrow that runs from intelligence to decision makers means that the nature of intelligence determines and influences the kind of decision to be taken with regard to crime control. This model does not specify who should take the decisions or who are the best decision-makers. This is left for the individual analyst to identify for himself (Cope, 2004).

Ratcliffe (2003) argued that the *interpret* and *influence* are the two most important components of the three-I model of *intelligence-led policing*. However, this model is incomplete if the decision made on the basis of intelligence does not have an *impact* on the crime environment. In other words, the reduction in crime can only be possible if decision makers have an *impact* on the criminal environment. For the prevention of crime, it is important that all the components of the three-I model must occur. The criminal intelligence

analysts must be able to *interpret* the *criminal environment* in an effective way; the analysts must be able to use *intelligence* to *influence* decision makers, and the *decision-makers* must be able to make use of available resources in order to effectively exert a positive *impact* on the *criminal environment*.

7.1.3 Problems with Intelligence-Led Policing

Intelligence-led policing is of recent origin and therefore the research community has been less involved in its evaluation than in other forms of policing such as community policing and problem-oriented policing. However, the model faces some basic problems in its implementation. Firstly, it cannot be predicted with absolute certainty how effective ILP is in controlling or tackling crime. Tilley (2003) stated that the officers involved in collecting and analyzing the intelligence are usually particularly busy, thus having no spare time for proactive work.

Secondly, there is the problem of keeping a continuous flow of intelligence, and analysing and preparing it for operational policing. Because the ‘intelligence’ provides the very basis for the ILP approach, the collection of intelligence and making sense of it are the key to effective ILP. For ILP to work effectively, the police leaders/managers must have faith in the intelligence process itself. Finally, lack of training and information can create problems in effective communication between different specialized units. ILP is still in its early stages of evolution and therefore lacks a universally acceptable framework that can be put into action.

7.1.4. Intelligence-Led Policing (ILP) and Organised Crime

The rapid changes at end of the 20th Century such as the end of the Cold War, the breakdown of national boundaries, globalization, the increase in electronic financial transactions and the internet, have all accelerated and facilitated the growth and development of transnational organized crime (Woodiwiss, 2003). Globalization, and the use of improved technology, have opened ways for organized criminals to operate quickly and to extend their scope, thereby making the job of law enforcement a lot more difficult than before (Gill, 1998).

As crime increasingly becomes a global phenomenon, police forces can no longer work alone, but have to work in collaboration with other forces across national boundaries. The police are no longer able to deal effectively with crimes in the traditional way of reactive policing. There is a need to change policing tactics, bearing in mind the changing and challenging circumstances. Thus, ILP has become a global policing phenomenon, adopted in most 'Western' countries as a modern policing approach to combating organised crime. Policing has to be fuelled much more by the collection and systematic analysis of intelligence in the struggle to contain transnational organised crime (Brodeur, 2003).

Collaboration/partnership has also become a key feature of policing. With the increasing move towards globalization, many of the more serious and organized crimes involve criminal activities that are carried out in more than one jurisdiction. Therefore, to be able to effectively control transnational organized crime, law enforcement agencies must seek active partnership with law enforcement agencies across international borders. The basic purpose of establishing such a partnership is to gain credible intelligence on the criminal activities that are under investigation. As a result, the role and use of liaison officers abroad has increased significantly and has played an important role in the collection and

dissemination of intelligence across national boundaries (Newburn, 2007; Williamson & Wright, 2007)

The move towards ILP gained momentum in United States in the post 9/11 environment with the increase in demand for the establishment of global partnerships that could work closely with local agencies in order to expand the future capacity of the law enforcement agencies to tackle crime and terrorism. It is widely believed that the event of 9/11 happened because of intelligence failures and the event could have been prevented if the law enforcement agencies have shared information in time, and had taken a proactive approach rather than waiting for the incident to happen and then responded accordingly (McGarrell et al., 2007).

The arrest of suspected terrorists following the major terrorists incidents in the United States, London and Madrid suggested that intelligence collected from different sources and through inter-agency cooperation was the key to identifying and arresting the culprits, and preventing future attacks (McGarrell et al., 2007).

7.2. The Policing of Money Laundering in the UK

In this section, I shall provide a brief discussion of the policing of money laundering in the UK – a country that has adopted a well structured intelligence-led approach to controlling the crime. As in many advanced and developed countries, money laundering is a major problem for the UK. London, being one of the most important financial centres in the world, has always attracted organized criminals with regard to laundering money generated from criminal activities. O'Donovan (2005) argued that money laundering has, in fact, penetrated into the financial system of the city of London. For example, the Financial

Services Authority (FSA) reported that General Abacha, the former President of Nigeria, laundered his money through UK banks. Similarly, it is reported that between 1996 and 2000, £1.3 billion of money has been laundered through UK banks (see O'Donovan, 2005:125).

In response to the problem, the powers of the UK police and non-police organisations with regard to investigating financial transactions, including money-laundering, have witnessed an extraordinary growth. Since 1983, the UK has moved from a situation in which customer confidentiality was *de facto*, to one in which there is criminal liability for bankers who assist in disposing of what they suspect to be the proceeds of drugs trafficking or terrorism. Bankers can report transactions that they suspect to be the proceeds of fraud or robbery and they are regularly in receipt of (a) instructions from the Director of the Serious Fraud Office to disclose information under s.2 of the UK Criminal Justice Act 1987, and (b) Production Orders made by circuit judges under Schedule 1 of the Police and Criminal Evidence Act 1984 to disclose details of accounts and background papers. The obligations of the banks are two-fold: (a) "Pro-active" obligations - to inform the authorities about customer transactions of which criminal investigators and regulators may be ignorant and (b) "Reactive" obligations - to respond to investigative enquiries about persons who are already "known to" the authorities (Gold and Levi, 1994).

The UK has a history of legislation against money laundering. The anti-money laundering legislation in the country originated as a means of tackling the proceeds of crime generated from engagement in the illegal drug trade (Harvey, 2005). According to Leong (2007a), money laundering offences in the UK originated in drug related offences introduced first in the Drug Trafficking Offences Act of 1986 and later consolidated in the Drug Trafficking Act of 1994. The scope of money laundering offences was later extended from

the proceeds of drug trafficking to include the proceeds of other indictable non-drugs offences through the Criminal Justice Act 2003.

The law and legal regulations in the UK that are relevant to money laundering include the Criminal Justice Act, 1988 (updated by the Criminal Justice Act, 1993), the Money Laundering Regulations of 1993/1994, reviewed in 2003, the Proceeds of Crime Act 2002 ¹¹, the Criminal Justice Act, 2003 and the Policing and Crime Act, 2009. As mentioned in Chapter 5, money laundering as it relates to the financing of terrorism is covered by the UK's Terrorism Act, 2000 and its subsequent 2001, 2005 and 2006 additions. The most recent anti-terrorism law, the Counter-Terrorism Act 2008, also has provisions related to terrorist financing.¹² In addition, there are other relevant guidelines of government and industry advisory bodies approved by the Treasury (see Preller, 2008).

However, despite the fact that there are anti-money laundering regulations in place in the UK, they were not being implemented effectively prior to the September 11, 2001 attacks on the USA. Kochan (2005:254) argued that 'London, like every other jurisdiction, had allowed the implementation of its money laundering controls to lapse prior to the attack on the World Trade Centre on September 11. One money laundering reporting officer (MLRO) is reported to have said that:

¹¹ The Proceeds of Crime Act 2002 repealed all previous anti-money laundering laws and consolidated them into Part 7 of the Act. The Act introduced three main offences namely;

- concealing or transferring criminal property;
- entering into or becoming concerned in money laundering arrangements; and
- acquiring, possession and use of criminal property (see Leong, 2007a:142)

All the three offences carry a maximum of 14 years imprisonment (Leong, 2007a:142). The 2002 Act also introduced the Assets Recovery Agency that became responsible for the confiscation and recovery of the property believed to have been obtained from the proceeds of crimes. It also introduced powers for the police and customs officials to seize cash if such is believed to be crime related.

¹² In February 2010, the Terrorist Asset-Freezing (Temporary Provisions) Act was passed into law by Parliament. This law is also relevant to the control of terrorist financing.

Prior to 2001, no one did a damned thing! People just weren't interested; it was another 'tick in the box' exercise. You had a compliance department, you probably had an old bombed out compliance officer who was the money laundering reporting officer, who had no resources and no respect. The guidance notes were generally geared to the retail sector and badly written. But it didn't really matter, because no one really worried about them. The banks saw no risks to themselves, no one was going to fine them and no one was going to give them any grief. They were never going to get caught by the law (see Kochan, 2005:254)

The exact scale of organized crime and the cost to the UK Treasury is unknown. There are tentative figures available that show that the total losses from organized crime (including money laundering) in the UK are estimated to be around £40 billion a year (Bowling & Ross, 2006:8). The Home Office White Paper, *One Step Ahead, A Strategy to Defeat Organized Crime* (Home Office, 2004) outlined the tentative cost of some of the organized criminal activities in UK thus:

The abuse of Class A drugs, produced by or smuggled into the country by organized criminals, has costs of at least £13 billion a year, at a highly conservative estimate. In 2002-03, it is estimated that around £7 billion in revenue was lost from all forms of indirect tax fraud, much of which was the result of organized fraud activity. Intellectual property theft is said to cost up to £9 billion annually. Organized immigration crime may be responsible for costs of a further £3 billion at least, not including the political and social risk it poses. The scale of fraud against business is also extremely large (Home Office, 2004:8-9).

Each of the above figures indicated huge economic losses to the UK exchequer. The social repercussions are even higher than the economic one. Drug abuse, tax fraud and illegal immigrants all have negative impacts on the community, and are a recipe for anti-social behaviour and insecurity in general.

7.2.1. Gate keepers, the FSA

In reaction, the UK government has enacted more laws (as discussed above) and, in addition, created a number of ‘gatekeepers’ (Sproat, 2007:173) to constantly watch over those who try to launder the proceeds of their crime within the UK financial system. Until 2000, the Bank of England was responsible for banking regulation. However, the failure of the Bank to police the Bank of Credit and Commerce International (BCCI) that was being used by organized criminals to launder their dirty money in the UK, compelled the UK government to look for alternatives. As Kochan (2005) puts it:

The city of London has been beset by financial scandals. The collapse of the Bank of Credit and Commerce International, which funded drugs and terror groups through London, was especially devastating and had a global impact. London reacted by passing laws and shuffling around its institutions. But its massive \$4 trillion financial sector still looks vulnerable to invasion by launderers (Kochan, 2005:253)

The ‘gatekeepers’ are expected to make it more difficult for organized criminals to wash the dirty money generated from criminal activities. An example is the Financial Service Authority (FSA).

The FSA was incorporated on 7th June 1985 under the title of The Securities and Investments Board (SIB). The Securities and Investments Board changed its name to the Financial Services Authority on 28th October 1997 and it now exercises statutory powers given to it by the Financial Services and Markets Act 2000. The FSA took over the job of banking regulation from the Bank of England. In addition to the power to regulate banks, the FSA also has powers to regulate insurance companies, financial advisers, the mortgage

business and general insurance (excluding travel insurance). In effect, the FSA is the umbrella organization that is responsible for the regulation of the entire financial sector in the UK (Kochan, 2005). The FSA is accountable to Treasury Ministers and, through them, to Parliament. It is operationally independent of the Government and is funded entirely by the firms it regulates through fines, fees and compulsory levies.

The Financial Services and Markets Act (2000) imposed five statutory objectives upon the FSA:

- (a) market confidence: maintaining confidence in the financial system;
- (b) public awareness: promoting public understanding of the financial system;
- (c) financial stability: contributing to the UK's financial stability;
- (d) consumer protection: securing the appropriate degree of protection for consumers; and
- (e) reduction of financial crime: reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime

Under (e), the function of the FSA is to ‘...deter criminals and terrorists from trying to use the financial system to perpetrate financial crime and to make it easier to catch and punish those who abuse the financial system’ (Leong, 2007a:144). In this regard, the Financial Service Authority became the supervisory and regulatory authority responsible for issuing rules and regulations to banks and financial institutions in order to combat money laundering. In a nutshell, the main job of the FSA is to monitor compliance by banks and other financial institutions with regard to their obligations in relation to money laundering control. Under the FSA rules, all the banks and financial institutions are expected to have introduced effective systems for detecting and combating money laundering in all its forms. The FSA has also the authority to impose disciplinary actions on individuals or financial institutions if found guilty

of breaching or not fulfilling their anti-money laundering responsibilities. In this regard, the regulatory rules made by the FSA are similar to those made by the MLR, 2000.

In recent years, the FSA has imposed huge fines on certain banks for non-compliance with its rules. For example, ‘...on January 15th 2004, the FSA fined the Bank of Scotland £1.25 million for failing to record the identity of more than half of its customers, and had imposed fines totalling some £4.8 million for similar breaches by other banks in 2003’ (O’Donovan, 2005: 124-5).¹³

7.2.2 The Serious Organized Crime Agency (SOCA)

Furthermore, the UK has modernized and re-structured its policing system in order to deal with organised crime, including money laundering. There has been a merging of the functions of security agencies, the police and HM Revenue and Customs in the fight against organised crime and terrorism, including money laundering.

Due to the changing trends with respect to organized crime and terrorism, a need was felt in the UK to bring about considerable changes to the existing police force system. In this regard, there was a call for the establishment of a ‘British FBI’ (Sheptycki, 2007:51). This call had the support of then New Labour government of Tony Blair. Consequently, in 2004, the government announced its plan to create ‘an FBI-style national force’ (Sheptycki, 2007:51). There was to be a merging of five pre-existing policing and law enforcement

¹³ On June 16th, 2010, the UK Chancellor of the Exchequer, George Osborne, announced plans to abolish the FSA by 2012 and separate its responsibilities between three new agencies, including the Bank of England, with the Bank of England regaining most of its powers. The three new agencies would be: a Prudential Regulatory Authority created as a subsidiary of the central bank, a Financial Policy Committee also set up at the bank and a Consumer Protection and Markets Agency. In addition, the Chancellor planned to scrap the existing tripartite system of regulation in which the central bank, the FSA and the Treasury shared responsibilities, and placed most of the onus back on the Bank of England

agencies namely the National Crime Squad [NCS], the National Criminal Intelligence Service [NCIS]¹⁴, the National Hi-Tech Crime Unit (NHTCU), the investigative and intelligence sections of HM Revenue & Customs on serious drug trafficking, and the Immigration Service's units with responsibilities for organized immigration crime. The merging of these policing and law enforcement bodies led to the establishment of a new policing organisation called the Serious and Organized Crime Agency, commonly known as the SOCA (see Leong, 2007b). Sheptycki (2007) argued that the trend of transforming the police force was not limited to the UK only, but also existed in the developed countries of North America and Europe in response to the increasing transnational organized crime problem. Today, there are a number of law enforcement and security organizations whose mandate transcends national borders such as the UK's Serious and Organised Crime Agency (SOCA), the Department of Homeland Security (USA), the Australian Crime Commission (ACC) and the Criminal Intelligence Service of Canada (CISC).

SOCA is a non-departmental public body and national law enforcement agency. The Agency was created by the Serious Organized Crime and Police Act 2005 and it formally came into being on 1 April 2006. The functions of the Agency are set out in the Serious Organized Crime and Police Act of 2005. According to the Act, the functions of SOCA in relation to serious organized crime are:

- Preventing and detecting serious organized crime, and
- Contributing to the reduction of such crime in other ways and to the mitigation of its consequences (SOCAP¹⁵ Act 2005, section 2(1)).

¹⁴ Excluding the organized vehicle crime functions of the service which later became part of the Association of Chief Police Officers Vehicle Crime Intelligence Service – AVCIS founded in 2006

¹⁵ Serious Organized Crime and Police Act 2005

And in relation to other crimes, not just serious organized crime, SOCA functions include

- Gathering, storing, analysing and disseminating information relevant to (a) the prevention, detection, investigation or prosecution of offences; or (b) the reduction of crime in other ways or the other ways or the mitigation of its consequences (SOCAP Act 2005, section 3.1)

SOCA is divided into four directorates that specialized in particular aspects of work;

- Intelligence which gathers and assesses information, and uses it to produce the best understanding of organized crime. The directorate ensures that all activity is knowledge-led (that is, intelligence-led) and directed towards agreed priorities, and that SOCA builds strong working relationships with other agencies, including other law enforcement partners;
- enforcement, which provides a flexible operational response to threats, building high quality criminal cases against key targets and organized crime groups;
- Intervention, which aims to make life harder for serious organized criminals, with a particular focus on attacking criminal assets and working with the private sector. Intervention also houses the international arm of SOCA; and
- Corporate services, which supports, facilitates and develops SOCA's capabilities. The staff of SOCA will operate from almost fifty sites in the UK, as well as overseas (SOCA Annual Plan 2006/7:8-9).

SOCA was initially established with the staff strength of 4,200 and has taken over the responsibilities of the four pre-existing agencies that were merged when SOCA was formed. The officials of the SOCA were taken from both the police and the former British MI5.

SOCA is a classic example of a multi-agency policing structure set up specifically to tackle transnational organised crime. The introduction of SOCA indicates ‘...a hybrid agency working as a policing body but specializing in covert and intelligence-gathering activity’ (Newburn and Reiner, 2007:939).

7.2.3. The British National Intelligence Model

The British National Intelligence Model (NIM) is a recent effort by the UK government to promote effective intelligence led-policing on a national basis, and to standardise intelligence-related structures, processes and practices across all police services in England and Wales. Thus, the National Intelligence Model (NIM) is often mentioned whenever the concept of intelligence-led policing is discussed in the UK.

The NIM is a model of policing that ensures information is fully researched, developed and analysed to provide intelligence which enables senior managers to be able to provide effective strategic direction, and to make tactical resourcing decisions about operational policing and managing risk (Flood, 2007; Mike and Tim, 2006). In this regard it is a business approach to policing, the aim being to rationalise and systematise the ways in which the police service handles information/intelligence and makes key decisions about the deployment of resources. The goal is integrated intelligence in which all forces and law enforcement agencies play a part in the creation of a general ‘intelligence culture’.

Devised by the National Criminal Intelligence Service (NCIS) and adopted by the Association of Chief Police Officers (ACPO) in 2000, the NIM is at the centre of the Police Reform Agenda in the UK.

The NIM is about taking an intelligence-led, problem solving approach to crime and disorder. Essentially, the model professionalises the intelligence discipline by facilitating the identification of priorities and the allocation of resources:

NIM identifies patterns of crime and enables a more fundamental approach to problem solving in which resources can be tasked efficiently against an accurate understanding of crime and incident problems (ACPO, 2005:12)

The NIM emphasises three key factors: Priorities, Resources and Results

- Priorities – the development and analysis of information/intelligence to enable a deeper understanding of crime and non-crime issues and the identification of Priorities (i.e., existing problem areas or emerging trends)
- Resources – effective decision-making guided by the identified Priorities. Finite resources and information gathering activities are coordinated and tasked to those areas which pose the most significant threat to the public, the community, etc.
- Results –the outcome of each tasked activity is evaluated and fed back into the system, which continually develops existing intelligence, increases the Force's ability to tackle identified problem areas, and facilitates the assessment of the Force's priorities (Ref)

The structure and standardisation inherent in the NIM enables the smooth flow of information throughout the system, necessary for effective policing at three levels:

Level 1 – Local Issues – usually the crimes, criminals and other problems affecting a basic command unit or small force area. The scope of the crimes will be wide, ranging from low value thefts to great seriousness such as murder. The handling of the volume of crime will be a particular issue at this level.

Level 2 – Cross Border Issues – usually the actions of a criminal or other specific problems affecting more than one basic command unit. Problems may affect a group of basic command units, neighbouring forces or a group of forces. Issues will be capable of resolution by the Forces, perhaps with support from the National Crime Squad, HM Customs and Excise, the National Criminal Intelligence Service or other national resources. Key issues will be the identification of common problems, the exchange of appropriate data, and the provision of resources for the common good

Level 3 – Serious and Organized Crime – usually operating on a national and international scale, requiring identification by proactive means and response, primarily through targeting operations by dedicated units and a preventive response on a national basis (NCIS, 2000:8).

A key element of the NIM is the promotion of partnership working or a cooperative approach to policing, which requires the participation of other agencies and bodies working in partnership with the police in the overall task of law enforcement and community safety. As ACPO (2005) puts it:

NIM promotes a cooperative approach to policing and many of the solutions to problems will require the participation of other agencies and bodies. It is further strengthened when used in conjunction with other partner agencies. [An] appropriate use of intelligence, risk management, the allocation of resources (including finance and technology), engagement with partner agencies and a review of tactics are all systems driven by NIM. It reduces barriers to effectiveness by producing standardized processes and language and creates a cooperative working environment. (ACPO, 2005:12)

In a nutshell, the National Intelligence Model (NIM) is the product of the adoption of an intelligence-led model of policing nationally in the UK, with specific roles, responsibilities and procedures specified within an intelligence-led policing environment. The NIM provides a framework for effective policing to ensure that existing resources and procedures within the

Force are at their optimum level to achieve the best possible results. However, for the NIM to work effectively, capabilities must be built which enable information to be gathered, recorded, evaluated, disseminated, retained and disclosed as necessary, from a range of available information sources.

7.2.4 The Need for Dubai to Adopt an Intelligence-Led Approach

It is imperative to note that the model adopted by a police force can have a considerable impact on the extent to which it achieves success in terms of tackling crime. The different models of policing identified above can have a considerable impact on the effectiveness of the force in tackling money laundering. For instance, the ILP requires that the police have access to all forms of intelligence. The ‘partnership’ requirement of ILP implies that intelligence is shared freely and equally between all partners. If one partner restricts the flow of intelligence to the others, this could have adverse implications for the investigative process. These are some of the problems that have been identified in this thesis.

Policing in Dubai, especially in relation to the policing of money laundering, is not adequately intelligence-led. The use of intelligence is haphazard and inconsistent, and therefore could not be regarded as constituting an intelligence-led policing approach. For instance, Dubai still adopts a reactive approach to the policing of money laundering (see Tilley’s definition) as incidents are dealt with on a case-by-case basis. There is no evidence of crime analysis or analyses of patterns of operation that informs future action. A National Intelligence – Sharing Model based, perhaps, on the British NIM, would be beneficial to the Dubai police in the sense that it would establish an effective information-sharing structure that encourages partnership working between all agencies. The existing barriers between the

agencies will be broken. However, there will be the need to educate all agencies about the value of a structured intelligence-sharing approach and legal changes might be required to formalise the new system. In addition, the police will require training to be able to handle financial data. The result will be that manpower and resources will be utilised to maximum effect. There will be accountability and transparency and the policing of money laundering would be more effective.

7.3. Conclusion

The partnership approach to crime prevention emphasises the importance of sharing information and responsibilities amongst the different agencies responsible for crime control. The idea of partnership and multi-agency working is embedded within some of the different policing models that have emerged in the Twentieth and Twenty First Centuries. For instance, the ILP model puts particular emphasis on the process of collecting intelligence through different means and acting accordingly. When compared to the reactive approach of the crime prevention model which focuses on gathering information after the criminal act has been committed, the ILP approach emphasises the need for gathering information prior to the commission of crime – a proactive approach.

One of the key arguments in favour of the partnership approach and ILP is that the terrorists attacks of 9/11, 7/7 and Madrid could have been avoided if there has been proper coordination, sharing of information and a proactive approach on the part of law enforcement agencies both inside and outside nation states. Although ILP offers some practical solution to crime problems, some critics have identified loopholes or shortcomings associated with the models such as problems with regard to the process of collecting intelligence by different means, institutional responses in analysing such intelligence, problems of coordination among institutions, institutional politics, etc.

This thesis has been able to highlight the fact that institutional responses to tackling syndicate crimes and other forms of crime in Dubai is reactive. There are instances when the police react after the commission of a crime. It has been established that there is strong evidence of the presence of organized crime in Dubai. Quite apart from the fact that Dubai is usually used as a transit point for not only shipping illegal goods to many other parts of the world, organised criminal gangs use Dubai as a base for supervising and monitoring their illegal activities in other countries. Similarly, the criminal proceeds are washed within the financial sector of the UAE in general, and in Dubai in particular.

The need for the integration of the ILP model can be deduced from the fact that the Central Bank of the UAE enjoys particular power and authority and controls money laundering cases, thereby preventing other agencies from participating in the process of detection. It is important to note that developed countries have adopted the partnership approach and ILP in the policing of organized crime in general, and money laundering in particular. However, this initiative is yet to gain ground or take a hold in Dubai. For instance, as has been identified in this chapter and the previous ones (Chapters 5 and 6), the sharing of information among law enforcement agencies in Dubai pertaining to money laundering is minimal. This is largely due to a lack of coordination between the Central Bank and the Dubai police. Also there are institutional politics as to which organisation is more important than others, or who knows better than others. There is also the problem of continuous government denial of money laundering in Dubai. For example, the Central Bank of the UAE denies the existence of any money laundering in the country. Other problems include the Central Bank of UAE's approach to not sharing STRs and CTRs with the Dubai Police, the lack of a national database of money laundering cases, the lack of annual reports and statistics on money laundering, the fact that money laundering laws exist, but their implementation is not effective, and government hesitancy with regard to introducing effective confiscation

legislation. These are some of the main problems that affect the policing of money laundering in Dubai. Therefore the government needs to adopt a proactive approach to controlling money laundering wherein all the partners in crime control should have a stake, coupled also with the modification its anti-money laundering laws and regulations. This could be achieved in the adoption of a National Intelligence Model.

Chapter Eight

Conclusions and Recommendations

This thesis sets out to evaluate the policing of money laundering in Dubai by exploring the country's anti-money laundering control mechanism. We have included a critical analysis of the laws and regulations and the duties and responsibilities of the law enforcement and financial agencies that perform different tasks within the existing structure. Although, the federal government of the UAE has joined the international community in its fight against money laundering by criminalizing money laundering and the financing of terrorism and has ratified all the international and regional treaties concerned with the control of organised crime and money laundering, there are still many problems that hinder the progress of the Emirates in their efforts to meet their international obligations with regard to the control of money laundering.

The events of September 11th, 2001 are often said to be the main impetus that triggered the need for introducing anti-money laundering and terrorist financing rules and regulations in the UAE. In this respect, money laundering and the financing of terrorism were criminalised in 2002 and 2004 respectively. Since then, the Anti-Money Laundering and Suspicious Cases Unit (the AMLSCU) has been playing the leading role in the fight against money laundering in Dubai. Other departments include the Dubai Police, the Custom Authorities, the Public Prosecutor, the Attorney General and the Courts.

This research has been able to establish that the role of the Dubai Police in the anti-money laundering set-up has been tokenistic. The key decisions are taken by the AMLSCU. Also, this research has shown that the relationship between the AMLSCU and the Anti-Organized Crime Department (AOCD) of the Dubai Police is not one of equal partners in the

fight against money laundering. This was shown to be particularly the case with regard to the sharing of intelligence/information about suspected money launderers generally in possession of the AMLSCU. In contrast, the UK and other developed countries have adopted an intelligence-led and partnership approach in their efforts to control money laundering in their countries.

Partnership, according to Ekblom (2004), is an institutional arrangement that enhances the ability to tackle problems by the division of labour. The agents of partnership may come with competing or conflicting interests. However, they all work together for the solution of a particular problem, without losing their particular identity. It is important to mention that the concept of partnership is always directed towards a specific goal – usually the prevention of crime. This approach seeks to identify a specific criminal problem and to coordinate the partnership's activities in order to tackle that problem. Responsibilities are acknowledged and shared among the partners with regard to the achievement of crime control, and mutual support and solidarity is always encouraged among the partners in this respect (Ekblom, 2004).

Unfortunately, the approach taken towards organised crime control in Dubai is totally devoid of partnership. The CML 2002 simply sets out a hierarchy of authorities, with the AMLSCU literally at the top. There is no provision in law with regard to how the agencies should work together other than which agency has what authority and what the functions of the agencies are within the legal process.

This thesis has shown that this approach to money laundering control in Dubai has created an atmosphere of mistrust between officials of the AMLSCU and the AOCD of the Dubai Police, in which accusations of a lack of transparency and accountability are made by police officers. The police officers interviewed felt that their investigation of suspected

money laundering crimes was being hindered by the AMLSCU's often unreasonable, but legal, control over sensitive financial information which the Unit has the power not to disclose to the other agencies if they so wish. In contrast, disclosure is a key feature of the British Criminal Justice System (see Criminal Justice Act, 2003). All agencies and professionals involved in the prosecution or defence of a criminal charge, must disclose or share information with each other, if it is considered vital for the prosecution or the defence. Information or data (financial or otherwise) linked to the commission of an offence, do not come under the heading of "sensitive personal data" for the purpose of the Data Protection Act, 1998 (British Data Protection Act, 1998, s. 2).

The Dubai situation has created rivalry and jealousy between the officials of the AMLSCU and the police officers in the AOCD. The responses of the interviewees from both agencies show that there are two sides to a story. The AMLSCU officials are right in arguing that AOCD officials are not trained in the analysis of complicated financial data (this is not to say that the AMLSCU officials themselves are!). OACD officers are also right in arguing that the failure of the AMLSCU to disclose vital financial information and the lack of power by the police to call for such information could be a serious hindrance to successful investigation of money laundering cases. Whilst this raises issues about police training, it does not delimit the fact that the police should have access to all data for a successful money laundering investigation to take place.

In the USA, for example, the FBI has been given extensive powers to access any financial information from financial institutions which they need for a criminal investigation. Such powers are strictly barred with regard to the Dubai Police. The Dubai Police have no right of entry into any financial institution in order to access financial information or data directly; it has to request permission via the AMLSCU in order to obtain such information. It

is the position of this thesis that the ‘wait and see’ approach has seriously hindered the progress of the Dubai Police in tackling money laundering cases effectively.

With respect to the investigation of money laundering cases in Dubai, the police are seated at the back, waiting to get orders from the Attorney General, the AMLSCU and the Public Prosecutor’s Office before they can take action. In this situation where police authority is pushed behind the scene, one cannot expect the Dubai Police to produce significant results with respect to tackling money laundering cases. The Dubai Police would only be able to demonstrate progress in tackling money laundering cases effectively, when it is given due power and authority that would enable the force to have unrestricted access to information that would help them in their investigation process.

The limitations of the Dubai Police does not pertain to their restrictive role alone; there are other inter-departmental problems that also affect the investigation of money laundering cases in Dubai. For example, there are no legal provisions that allow the two main pillars of the anti-money laundering control mechanism in Dubai – the AMLSCU and the Dubai Police – to have direct contact with each other. To discuss any money laundering issues, the AMLSCU and/or the Dubai Police need the permission of the Attorney General.

It is a theoretically feasible argument that the effective control of any crime cannot take place without the acquisition, analysis and dissemination of intelligence. In this process, there should be transparency and mechanisms in place for accountability; otherwise, the system is vulnerable to corruption and manipulation. Within the current structure, there is no way of finding out whether the AMLSCU has been fair and sincere in its analysis of STRs and their decision to put a case forward for investigation or not. Giving the police direct access to all STRs and CTRs (where it is considered necessary) would greatly enhance the

Dubai Police's efforts in the investigation and policing of money laundering cases in the country.

The main arguments of this thesis are:

Dubai has the potential to have effective money laundering control system, having complied with international and regional directives on money laundering control.

But, the thrusting of power to make decisions in money laundering cases exclusively into the hands of a non-independent FIU (the UAE Central Bank) and the marginalization of the police in the access to vital financial data held by the banks, have led to accusations that the current system is not entirely transparent or sufficiently accountable.

This thesis's position is that effective control of any crime can only occur where the police work as equal partners with other agencies in a formal arrangement for controlling crime that is accountable and transparent. Isolating the police, especially with regard to access to vital information or intelligence, can only lead to ineffective policing. It is therefore suggested that an intelligence-led information-sharing model, if established, would make a significant difference in the control of money laundering in Dubai.

Suggestions for Change and Recommendations

1. There is no national database for keeping details of Currency Transactions Reports (CTRs) and Suspicious Transaction Reports (STRs). CTRs are maintained and kept within the financial institutions concerned (e.g. banks) and shared with the AMLSCU only when requested. STRs are also kept by the AMLSCU and not shared with other organisations such as the Dubai Police. It is therefore recommended that there should be a

national database for CTRs and STRs and that such information should be readily available to the Dubai Police so as to assist them in their investigation of suspected money laundering cases.

2. The AMLSCU has the dominant role in deciding which cases should go to court and which should not. There is no mechanism in place to ensure that THE AMLSCU is held accountable for their actions. It is therefore recommended that measures should be taken to make sure that the AMLSCU should be held accountable for their decisions regarding putting a case forward for investigation, as well as their decisions on the disclosure of information to the police. This accountability should be formalised in law.
3. The procedure whereby the Dubai Police cannot access any information from financial institutions directly, but have to go through the AMLSCU, is one that needs to be reviewed. In practice, the Dubai Police have to comply with a long bureaucratic procedure imposed by the AMLSCU before access is granted. The fact that direct access to the financial institutions is strictly prohibited for the Dubai Police is problematic. This situation delays the investigations of the Dubai Police, thus giving more time for the money launderers to accelerate their money laundering activities. It is therefore recommended that such barriers be removed and that the Dubai Police should be given the power and the authority in law to access any information from financial institutions when needed for investigation purposes.
4. The lack of know-how with regard to the financial aspect of the crime used by the interviewed AMLSCU officials to justify not allowing police officers access to financial data, as noted above, raises important questions about police training. It is therefore recommended that the government should initiate training programmes for police officers on the handling of the financial aspects of money laundering. Such training is needed

because of the changing nature of money laundering techniques such as laundering through the internet.

5. Because the AMLSCU and the AOCD are the two main pillars of the anti-money laundering regime in Dubai, it is imperative that they meet regularly in order to discuss various issues pertaining to investigating money laundering cases. The requirement that permission ought to be obtained from the Attorney General before any meeting can take place, should be removed. The AMLSCU and the AOCD should meet whenever necessary, not only when the Attorney General asks them to meet.
6. Because money laundering and financing terrorism is a global issue, those working in the investigation of money laundering cases require full knowledge of the problem, not only at the local and regional levels, but on a global scale as well. Law enforcement officials can effectively deal with money laundering cases only when they have a full understanding of the scale, intensity and impact of the problem on the economy and on society. Therefore, it is recommended that the government should introduce and provide full academic courses dealing with money laundering and terrorist financing to all the police officers, judges and prosecutors. Such courses should be offered in all the three police academies in Abu Dhabi, Dubai and Sharjah, and the two judicial institutions in Abu Dhabi and Dubai
7. The anti-money laundering regulations of 2002 have provided strict legislation to scrutinize the legality of any proceeds entering into the Emirates. This legislation however ignores the scrutiny of the legality of currency leaving the UAE, which could result from domestic crime. Article 6 of the 2002 law does not require a declaration with regard to a threshold relating to cash carried by passengers leaving the UAE through any border points, in contrast to the declaration requirement imposed on passengers entering the country. Therefore, it is recommended that the threshold currency declaration should

be implemented with regard to passengers both entering and leaving the UAE, in order to fight domestic crime as effectively as international crime.

8. The absence of an income tax system for both individuals and corporations in the UAE could, no doubt, increase the difficulties of the investigative powers when it comes to investigating domestic money laundering crimes, especially in an economy based hugely on cash dealings, since any cash spending by criminals is not likely to attract much attention. Conversely, to the situation that exists in non-cash based economies, a criminal will think twice about how to safely infiltrate criminal proceeds into the financial system.

In UAE, it is extremely difficult to keep a proper record of the economic aspect of every citizen in a cash-based economy and in the absence of any income tax system. In developed countries, for example, it is easy to track down the financial aspect of every citizen due to the availability of the relevant data, whereas such information is not available in the UAE. This situation benefits the money launderers who can easily make huge profits from organized crime and can hide the criminal proceeds easily without raising the suspicion of the law enforcement authorities. It is therefore recommended that a system be introduced by which the UAE government should know where an individual obtained his money, and whether or not the money is the proceeds of crime.

9. The anti-money laundering legislation and mechanisms in the UAE are still in their infancy and need to be reformed and updated. So far, none of the 2002 and 2004 legislation has been upgraded. There are many loopholes in the anti-money laundering law of 2002, and the government needs to discuss it and make necessary changes in order to help the law enforcement authorities to effectively deal with money laundering cases.
10. The main deficiency in the UAE money laundering legislation is the absence of any civil confiscation or forfeiture legislation. The civil forfeiture, which is increasingly being

implemented in many developed countries, has been found to be a new and particularly effective way of controlling organized money laundering and terrorist financing by targeting the proceeds of crime. It is believed that organized crime and money laundering can be effectively controlled if the UAE government changes its crime control strategy, and introduces new legislation that will facilitate the confiscation of the criminal proceeds derived from organized crime through civil confiscation. At the time of the publication of this thesis (2010) the UAE does not have any legal provision with regard to forfeiture or confiscation based on the civil standard of proof as does the USA and the UK. The only legal provision in the UAE with respect to the civil confiscation of criminal proceeds relates only to drug trafficking, whereby under article 56 of the Federal Law No. 14 of 1995, the court can order the confiscation of the means of transport used in the commission of drug trafficking. Where a person is convicted by a criminal court for a drug trafficking or prostitution offence, for example, the prosecutor is unable to forfeit or confiscate the individual's funds unless the prosecutor is able to show beyond reasonable doubt that the funds are illegal and have been derived from the same crime that the court has convicted the offender of. It is recommended that a new civil law be introduced that would enable the competent authorities in the UAE to forfeit any cash or property under the civil standard of proof, based on probabilities. This new legislation will enable the legal authorities to forfeit or recover any property, as soon as it shows probability that the property is either a proceed of money laundering, or is likely to be used in money laundering activities. The burden will shift to the owner to prove the opposite. The inability of the authorities to confiscate the illegal assets of suspected money launderers under civil law is a serious omission in the fight against organized crime and money laundering in the UAE. The confiscation of property alleged to be the proceeds of criminal activity is given protection under the Vienna Convention, in the Palermo

Conventions and under Recommendation No. 3 of the FATF. The civil confiscation of property alleged to be the proceeds of crime is already in place in the UK, under the UK Proceeds of Crime Act 2002. This UK law is model legislation that the UAE legislators could emulate.

11. A very important side issue that is not covered in this thesis is public awareness. The Dubai government should make serious efforts to educate the public about the negative aspects of money laundering. This is an important tool in the fight against the spread of money laundering. Raising public awareness of the dangers of organised crime and money laundering will deter many from using their bank accounts for money laundering. The government should introduce mass awareness programmes for the public in general, and for the business community in particular, which could be done with the help of electronic and print media, posters, and newspapers.
12. As has been stated many times before, money laundering is one of the main issues facing Dubai today. Although the government has introduced anti-money laundering rules and regulations and has also created the infrastructure to deal with money laundering cases, much more is needed in order to tackle the problem of money laundering in Dubai. In this respect, it is recommended that a research centre be established that should focus on studying different categories of organised crime in Dubai. The centre should conduct various studies on money laundering and should publish reports regularly, along with its recommendations for the improvement of the anti-money laundering mechanism in Dubai. This Centre would also be responsible for providing up-to-date information about the anti-money laundering efforts being undertaken globally as a means of providing examples of good practice and lessons that the Dubai government could learn from.

13. The government should establish financial awards for those who inform the police about known or suspected money laundering operations, in order to encourage the public and bank staff to notify the police with such information/intelligence

In a nutshell, there is strong political will on the part of the UAE authorities to achieve the highest degree of integrity in its financial sector. This can be seen by the introduction of laws criminalizing money laundering and the financing of terrorism. In addition, the government of the UAE is a signatory of all UN resolutions against money laundering and the financing of terrorism, and is also a signatory of other regional treaties. The UAE has cooperated with other countries in disseminating information and investigating cases of money laundering. However, I must admit that the efforts against money laundering in the UAE are still in their infancy, and much more needs to be done in order to control the crime. I am hopeful that this study will play its part in shaping anti-money laundering efforts in the UAE in the years to come.

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