ICADE BUSINESS SCHOOL

THE FIGHT AGAINST MONEY LAUNDERING IN NORTH AMERICA

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THE FIGHT AGAINST MONEY LAUNDERING IN NORTH AMERICA

Abstract

The process of converting illicitly acquired funds into apparently legal benefits, is known ad money laundering. Even doe the first evidences of money laundering can be tracked to Chinese merchants two centuries ago, the term was coined around the 1920's when Chicago gangsters used a laundromat business to inject their earnings from gambling and illegal alcohol dealing. There are traditionally three steps involved in money laundering, which are placement, layering, and integration; each of those steps may have different modalities and involvement with different kinds of assets of businesses. Placement can be achieved by injecting funds to a business, layering by moving around the money on different countries and bank accounts, and integration by redeeming an insurance policy. Currently the variety of methods and modalities of money laundering is vast, and depending the country and financial framework one method can be more appealing to criminals than another. Canada, México and the United States of America share an enormous economic, financial, political and commercial relationship, and three countries together represent the world's biggest GDP. These countries share also problems of criminality and money laundering; however, their particular situation requires tailored regulations to fight interrelated problems that are highly relevant to each country. The three legislations are compliant with the Financial Actions Task Force, but have a different focus and difficulties to implement regulations and prosecute offenders.

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1 INTRODUCTION

According to the Cornell University Law School, money laundering refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money (Cornell University Law School, s.f.). The whole process of money laundering contains constant money transfers in order to create confusion and conceal the real source of the money.

Even doe formal corporations and financial institutions have had anti-money laundering schemes and controls for several decades, currently the complexity of money laundering methods and the increasing regulations imposed by many countries requires a wider understanding of the problem, and investment on infrastructure and professionals to deal with compliance. Governments now require companies to have more robust anti-money laundering programs, and companies are working to integrate risk based anti-money laundering compliance controls.

Latin American countries have been specially affected by money laundering due to the high rate of criminal activity and drug trafficking since the 1970's. Since those years in Mexico, "dirty" money flows through the economy, and in some way everyone consumes products or services that have the "mark of criminality" printed on it, this mark can be directly or indirectly associated to money laundering or as a tribute to regional drug lords. The United States of America, consider money laundering as one of the biggest concerns for homeland security, and it is one of the most important activities that finances terrorist groups. For that reason, the US Department of Treasury has created the National Money Laundering Risk Assessment (NMLRA) in order to address the threats that this activity generates for their homeland and financial system (US Department of Treasury, 2015). The NMLRA compiles information from several US federal agencies such as the DEA, IRS, FBI or DOJ, in pursuance of analyzing more than five thousand money laundering cases, and to identify the risks, threats, vulnerabilities and consequences. In order to fight money laundering, the Mexican government proclaimed a decree to identify and prevent operations of illegitimate source, in order to protect the financial system and the Mexican economy. The decree, specifies the kind of commercial and financial activities that are considered vulnerable and need to be reported. Depending on the activity, the persons involved on a commercial or financial transaction considered vulnerable, are obliged to document information and notify the correspondent regulatory agency (Secretaria de Hacienda y Credito Publico, 2014). In 2001, the Canadian Government proclaimed the Proceeds of Crime Money Laundering (PCMLA), to later extend its functions as Proceeds of Crime Money Laundering and Terrorist Financing Act (PCMLTFA). In a similar way as the United States of America, Canadian Authorities consider both money laundering to have a strong relation in financing terrorist activities. Some of the specific measures that the PCMLTFA has implemented to detect money laundering include, to establish record keeping and client identification requirements for financial services providers and any other entity that involved in activities that are susceptible to being used for money laundering. In order to respond to the menace posed by organized crime, law enforcement officials are provided with all the information they need to prosecute money laundering while ensuring to protect the privacy of the person's private information. Canada is committed to participate in the fight against transnational crime and money laundering in particular (Fiancial Transactions and Reports Analysis Centre of Canada, 2015).

North American Countries, consider money laundering to be a shared concern and one that needs to be addressed together, both money laundering norms need to be harmonic and financial information needs to be shared between the three nations. However, there are many concerns about the efficacy of the

regulation, and some criticize them to provoke an over reporting that is ultimately affecting the people's right to privacy. The objective of this investigation is to study the current problem of money laundering in general, and analyze the laws and Actions that the American, Canadian and Mexican governments have taken to fight money laundering, to the extent of identifying important differences and potential risks.

When talking about money laundering it is important to mark out that there are two main economic activates that share many aspects and methods, but in their essence are very different. Those economy activities are the ones related to the informal economy and on the other side those from the illegal economy. For the purpose of this paper, the main focus will be on the illegal economy side of money laundering.

2 MONEY LAUNDERING: HISTORY AND DEFINITION.

The first evidences of Money laundering can be traced back more than 2000 years ago, this practice was common when Chinese merchants cleaned their profits from illegal activities (Purkey, 2010). The first modern cases of money laundering happened in the United States before the alcoholic beverages prohibition. In the 1920's, a group of Chicago gangsters involved on the alcohol trafficking, prostitution and other illegal activities, purchased a laundromat business. Every day, gangster reunited their profits at the laundromat to justify them with the laundromat business. Other relevant precedents on money laundering apparently happened during World War II, when Nazis sent stolen gold and art from occupied countries to Switzerland. The gold was melted and sold along with the art pieces to obtain legal money (Institute of the World Jewish Congress, 1996). By the 1980's, the US government detected an important capital flight of funds derived from the business of marihuana and cocaine. The banks that facilitated those transactions were mostly in Miami and the funds were being transferred to accounts in banks from Panama, Bahamas and Switzerland. Later on laundered money returned to the United States with the objective to purchase real estate mostly in the city of New York.

As priory mentioned, the term money laundering was first used around the 1920's before the alcohol prohibition period in the United States, and this is when the technique as we know it was created. Every country and agencies define money laundering slightly differently, the world bank defines is as follows "The conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, 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 offense or offenses to evade the legal consequences of his actions" (World Bank, 2003). The Cornell law university provides us with the following definitions "Money laundering refers to a financial transaction scheme that aims to conceal the identity, source, and destination of illicitly-obtained money" (Cornell University Law School, s.f.). According to The International Compliance association, Money laundering ins the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceed appear to have derived from a legitimate source (International Compliance Association , s.f.).

The start and reason of money laundering is dirty money. There are two basic ways in which money gets dirty. The first one is tax evasion, in which people make money in a legal manner but they fail on partially or entirely reporting profits to the government. The second one involves practices that are considered illegal, such as bribery, illegal prostitution or drug trafficking. No matter which is the reason or goal, money laundering is damaging because it allows criminal activity to thrive, and dirty money absorbs no portion of the tax burden. Well-organized and effective money laundering makes tax evasion and criminal activity more attractive.

The tragic bombing of the World Trade Center in New York on September 11, 2001 triggered a global push to associate money laundering with the financing of terrorism. Those attacks urged ratification of existing laws that regulate punishments against terrorism and combats the money laundering activities. Over the last decades, the need to internationalize the combat against money laundering has increased since national regulations are no longer adequate (AKIC, 2011). Lots of international organizations are now dealing with money laundering to encourage international cooperation such as the International Chamber of Commerce, the Basel Committee and the Interpol.

3 MAIN MOTIVATIONS INVOLVED IN MONEY LAUNDERING

As previously mentioned, there are fundamental difference between the proceeds of money that can potentially be laundered. We can divide the Underground Economy in two main groups.

Informal Economy, in which takes part economic activities that are fundamentally legal but fail to be declared to the public authorities (OECD, 2011). Some of the activities that may be part of the informal economy are: The Informal workers, which are engaged outside of the countries legislation, and their earnings are not declared to the fiscal authorities. The Informal Auto employment, which are workers that operate on their own but their activities are not declared to the fiscal authorities, usually prefer to be paid directly and in cash in order to avoid paying taxes. And finally the Informal entrepreneurship production, which is an economic sector that contains companies that can be partially or completely informal, in which a part or the totality of their earnings or workers are missing from their books information (Ven, 2014).

The second economic group involved in money laundering is the illegal production, which contains those productive activities that generate goods and services that are forbidden by the law or that are unlawful when carried out by unauthorized procedures (Ven, 2014). Depending on the country some activities can be illegal or not, like prostitution or the growth and commercialization of marihuana.

A general definition for informal economy, also known as black, hidden, parallel, shadow or underground economy is defined as a set of economic activities that take place outside of the private and public sector. A huge amount of the economic activity takes place as informal economy. Approximately 18 percent of the gross domestic product in developed economies, 38 percent on transitioning countries and around 41 percent in developing countries (Schneider, 2002).

Informal economy includes the unreported income from production of legal goods and services. It is complicated to have a precise definition or understanding of what is actually an informal economic activity since its variables are constantly changing. Informal economy on a country is dictated by the tax policy and sanctions from the authorities, since taxes and policies are constantly changing so does the informal economy definitions.

Some of the biggest issues coming from informal economy are: People working on the informal sector lack of social protection or insurance, they are very vulnerable and an adverse situation on their employment can't be mitigated by the usual unemployment or welfare programs that a country may have (Andrews, 2011). Usually, the production on the informal economy tends to be inefficient, since it avoids growth in order to stay hidden from the tax authorities. Informal companies sometime do not comply with intellectual property rights, which affects directly to the owner of those rights and their value on the overall market. Due to the informality of these companies, it becomes very difficult to get finance from banks. In order to get funds in some cases informal companies reach financing through informal conduits and in some cases derived from illegal activities (Andrews, 2011). Informal economy uses services that the governments provide to the tax payers, such as roads, security, water pipes, subsidizations and other. For that reason, when there is a high volume of informal economy, the taxes for the formal economy may be higher. With a high volume of informal economy, it becomes more challenging to invest in public infrastructure which implies on a lower growth on the economy (Andrews, 2011). Noncompliance with taxing policies, erodes the integrity of public institutions. This can limit the society's ability to address the collective needs, resulting on loss of social trust and certainty of doing business formally (Andrews, 2011).

Accounting informal economy is a challenging endeavor and the accuracy of the data is usually not very convincing. By having inaccurate economic statistical information, the government's accuracy to do social or economic policy decisions can be affected (Andrews, 2011).

It is important to point out that in some cases informal economy can act as a pressure reliever for economies on crisis, providing jobs and creating products that otherwise would have never existed. If government's economic policies don't provide a consistent, competent and accurate framework, informal businesses the informal sector will fill the blanks that formal businesses are not able to fill.

For the purpose of this paper, if not priory specified we will address money laundering from the illegal production economy perspective.

Money coming out of crime is essentially worthless, it is difficult to retain, drags a lot of attention and in most countries it useless to buy assets like real estate.

Some of the reason why people incur in Money Laundering are: To hide the wealth that criminals have illegally accumulated to avoid its seizure by authorities. To avoid legal prosecution and so criminals can distance themselves from their illegal funds. Evade taxes that would have been imposed on earnings from the profits. Increasing profits by reinvesting the illegal profits into businesses. Provide legitimacy by building up with the laundering funds to eventually transform the whole business into the formal economy. (Australian Government, 2008)

Huge amounts of money are generated every year from illegal activities like drug trafficking, tax evasion, arms trafficking, people smuggling, government corruption and others. This money is usually in form of cash, and in order to make it useful, it needs to be inserted into the financial system. While making the money more usable, by inserting it on the financial system, it also puts a distance to the criminal activities and itself.

Recently, financing terrorism has been included as a main motivation for money laundering, even doe it has important differences to pint out. Since the terrorist attacks of the World Trade Center on September 2001, the term money laundering has specially been related by the United States to terrorism financing. The United Nations has promoted various international treaties to fight terrorism and it's financing. Even before 2001, the United Nations presented the International Convention for the Suppression of the Financing of Terrorism, which provides that any person commits an offense within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willingly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out: An act which constitutes an offence within the scope of and as defined in one of the treaties listed in its annex; Or any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act (United Nations , 1999).

An important issue that derives from the UN convention, is that not all countries that have approved it agree on what constitutes terrorism. The definition of terrorism is not universally accepted due to significant political, religious and national implications that differ from one country to another (World Bank, 2003). The FATF, which is recognized as the international standard for the effort to combat the financing of terrorism, does not clearly define the term of financing terrorism in its recommendations.

4 DIFFERENT METHODS OF MONEY LAUNDERING

The most basic approach to money laundering provides us a three step process to legitimize funds, firstly there is the "Placement" which focuses on distributing illicit bulk currency (traditionally), Secondly we have the "Layering" step that consists in moving the illicit funds from various banks and various locations, attempting to hide the chain when the funds entered the banking system, and finally comes the "integration" step, which consists in the eventual return of the illicit funds now laundered into the legitimate economy. (Purkey, 2010)

Not all Money laundering transactions are necessarily involved on those three steps, however the three step classification can be a useful way of understanding a more complex process.

As a difference from other criminal activities, money laundering is involved in a wide range of participants and forms, it can involve mayor financial institutions like HSBC which was responsible of laundering billions of dollars from Latin American Drug Cartels (Bloomberg, 2013), or small non-financial companies that can smuggle bulk money from a country to another. Money laundering not necessarily require international transactions; some are purely national like most of the ones related to informal economy. However, an important number of cases involve transaction of funds across different countries, since governments have power over their own border, they also have power over the information that flows from it, though the importance of accords and general international cooperation to share information. Some of the most common money laundering methods are:

4.1 CASH SMUGGLING

Probably the oldest method of money laundering, however is hasn't lost any importance. Bulk quantities of money are transported through borders hidden in cargo (United States Drug Enforcement administration, s.f.). Smugglers have been known to acquire shipping companies in order to store money inside exporting products. The United States and Mexico border is the busiest cash smuggling part of the world, and in order to combat cash smuggling United States, Mexico and Canada have partnered to increase the supervision of the export-import value chain through programs such as BASC (Business Alliance for Secure Commerce), CTPAT (Customs Trade Partnership Against Terrorism) or NECC (Nuevo Esquema de Empresas Certificadas). In recent years, the smuggling of bulk currency has become a preferred method for drug trafficking organizations and other criminal enterprises to move illicit proceeds across the United States (U.S. Immigration and Customs Enforcement, s.f.).

4.2 GAMBLING VENUES

Casino Chips are easy to buy with cash, and after a period in time which may or may not have involved gambling on it, the chips can be traded for a check from the casino. It is difficult to check if the amount of the check was indeed a profit from gambling or just a transaction from Cash to Chips to Checks. Some casinos may be willing to get involved in money laundering by declaring nonexistent losses to their fiscal authorities.

Lotteries and Horse Racing winning tickets can be bought for a premium, allowing the winner to collect a fully taxable check that can inserted on the financial system. One of the most famous cases of money laundering through lottery, is the Case of Boston Gangster James Bulger who in 1991 allegedly paid $2 million USD cash for a winning lottery ticket worth $14.3 million USD. According to the US Federal authorities, the original $2 million originated from extortion and illegal gambling profits (Murphy, 2011).

4.3 INSURANCE POLICIES

Using insurance policies premiums to launder money have lately increased in popularity. The method consists in purchasing an insurance policy in which the policy amount is paid upfront rather than in installments, once the policy has been purchased the customer immediately redeems it by paying the required penalties, and in exchange the customer receives a clean check from the insurance company (Truman, 2004). Since insurance policies are commonly commercialized by intermediary companies, the insurance company itself often has no direct contact with the beneficiary.

4.4 SECURITIES

There are several securities transactions that can be used to launder money. Normally the use of securities as money laundering method, is often used during the layering and integration phases, meaning that the money has already been inserted into the financial system. The money launderer, acquires securities with illicit funds, and the income from selling the securities can be taxed and used as legitimate profit.

4.5 SMURFING

On the year 1970, the US congress passed a law that required certain financial transactions to be reported by filing a report for the government. One of the financial transactions that needed to be reported, were cash deposits over $10,000 USD (N.Welling, 1989). The process of Smurfing also known as structuring, involves breaking down cash deposits into smaller amounts in order to be below the $10,000 USD limit.

The method used to finance terrorism is essentially equal to the one of money laundering. However, the funds used for terrorism can come from illegal or informal activities and legitimate businesses. The goal of the whole process is to hide the source of the original funds so it remains undetected and available for further activities.

As mentioned before, funds for terrorism financing can come from legitimate sources, and such sources can be found as cash, donations, gifts, charitable foundations and others. For those and other reasons, terrorist financing requires special considerations and laws.

The process of money laundering and financing of terrorism

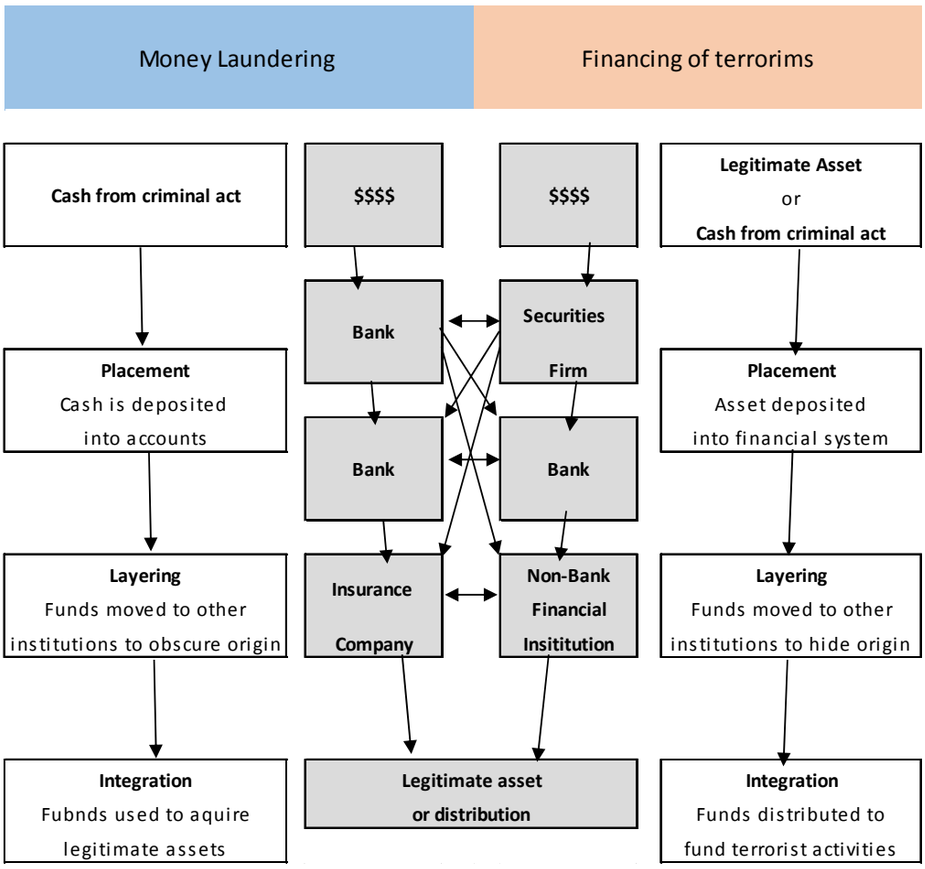

Table Recreated from (World Bank, 2003)

Money laundering and occur in any country in the world. Countries that have a more complex financial system, with inefficient or corrupt anti-money laundering agencies. Thanks to complexity on the system, money is harder to track and when combined with international transactions on countries with lax anti-money laundering laws and low disclosure of financial information, it becomes even harder.

5 EFFECTS FOR THE ECONOMY AND FINANCIAL SYSTEM

Money laundering can be harmful for a country's economic sector and financial system, and to the general stability of its banking system (Banks, 2003). An economy that has a thriving money laundering economy, often affects clean businesses due to their incapacity to compete against companies which goal is to launder money instead of profitability. On the banking sector, the decrease of profitable clean businesses translates into loosing high quality borrowers and subsequently an increase of risk on their loan portfolio. Due to the unreliability and instability of bank deposits incoming from money laundering, those fund can't be considered as a stable source of funding for banks.

Since on the layering step of money laundering, funds are quickly and massively transferred through borders and financial institutions, a massive withdrawal of money can result on liquidity problems for banks. The Liquidity Coverage Ratio issued by the Basel Committees on the Basel III accords, requires that a Bank should keep high quality liquid assets for a 30-day liquidity stress scenario (Bank For international Settlements, 2013). Cash being the most liquid asset that a Bank can possess, the risk of an unexpected massive withdrawal affects the ability of banking and supervisors to fairly calculate the amount of liquidity assets required for the bank.

As mentioned before, money launders use front companies that have a legitimate business but are being sponsored with illegal or illegitimate funds. By being sponsored, front companies can offer products and services at prices below market. Consequently, legitimate companies find it difficult to compete on a market full of money laundering companies. The role of money launderers on the economy can reach such an importance, that they can control entire sectors or industries on a country and to artificially

modify the prices of assets and commodity prices. (US Department of State, 2001). Michael Camdessus, the former managing director of the international Monetary Fund, has estimated that the magnitude of money laundering is between 2 and 5 percent of the world GDP (US Department of State, 2001). In general, money laundering produces unexpected and inexplicable changes the economy, affecting directly the investments, currency demands, commodity trading, interest rates and others.

Due to its informal or illegal nature, money laundering is a secretive activity and it does not disclose information for statistical analysis. There is no documentation about the size of the money laundering operations nor the amount of their profits. Since the activities are global, an estimate is more challenging to generate. As priory mentioned, the international monetary fund's rough estimates suggest that money laundering contributes with around 2 to 5 percent of the world's gross domestic product, and the United Nations Office of Drugs and Crime estimates that on 2011 around $1.6 trillion USD or 2.7 per cent of global Gross Domestic Product was derived from Money Laundering activities (United Nations Office of Drugs and Crime , 2011).

The estimates generated by INEGI (for its acronym in Spanish, National Institute of Statistics and Geography) suggest that the illegal activities potentially subject to money laundering between 1993 and 2008 contributed with 1.6 percent of Mexico's GDP. The obligation from the Mexican Financial Institutions to report operations presumably connected to money laundering, transfers from the Government to the financial institutions the first judgement of the legality of a transaction. Due to those obligations and probably driven monetary utility or risk criteria and not necessarily of illegality, between 2004 and 2008 apparently reported legal operations with suspicion of being involve in money laundering, with the goal of protecting themselves of potential noncompliance of their reporting obligations and transferring judgment to the UIF (for its acronym in Spanish, Financial Intelligence Unit) (Pedrosa, 2013). The obligation of reporting suspicious operations and the transfer of judgment about the legality of each operation, cause high costs for every transaction from the financial institutions.

The US Department of Treasury estimates that around $300 billion (around 1.7% of the US GDP) are generated annually in illicit proceeds, being fraud and drug trafficking offenses most of those proceeds (US Department of Treasury, 2015). Those $300 billion USD can potentially reach the financial system through money launder, however those estimates don't take into account the profits incoming from the informal economy. The size and sophistication of the US financial system accommodates the financial needs form industries globally. The huge amount of transactions, diversity of products and services offered by financial institutions to companies and individuals all over the world, creates an environment were legal and illegal funds converge.

The Royal Canadian Mounted Police (RCMP), estimated in 2009 that between 5 to 15 million CAD were laundered (Statistics Canada, 2009). In 2009, Canadian police services substantiated 525 incidents of money laundering, accounting for less than 1% of all police-reported Criminal Code incidents.

According to the Office of Auditor General of Canada, since money laundering and the illegal activities related to it are kept hidden, it becomes difficult to determinate how widespread of it and the effects it has. Various studies have reached the conclusion that there are no reliable estimates about the size of money laundering in Canada or the impact it has in the country and the world. As a result, the estimates used in Canada and internationally need to be considered with a certain degree of skepticism. However, there is a general consensus that the Canadian government should pay attention to money laundering and terrorism financing (Statistics Canada, 2009).

6 North American Historic framework and Regulations Against Money Laundering

6.1 Financial Action Task Force on Money Laundering (FATF)

Founded in 1989, The Financial Action Task Force is an intergovernmental organization that develops international policies to combat money laundering, and after the terrorist attacks to the World Trade Center in September 2001 its purpose expanded to also combat the finance of terrorism (Fiancial Action Task Force on Money Laundering, 2016).

The series of recommendations from the FATF, are now recognized as international standards. Recommendations were last revised in 2012, to make sure they remain relevant and up to date. The FATF monitors its members on the application of necessary measures, and reviews the current money laundering and terrorism financing techniques and measures (Fiancial Action Task Force on Money Laundering, 2016).

Mexico, The United States of America and Canada, are members of the FATF and have successfully complied with the recommendations issued by it. The FATF's Financial Intelligence Unit (FININT), allows international cooperation in disclosing information in order to investigate and prosecute criminals (Financial Action Task Force on Moeny Laundering, 2016).

Yearly, the FATF publishes the list of Non-Cooperative Countries or Territories, also known as the OECD Blacklist. On 2016, the list includes Iran and the Democratic People's Republic of Korea. The FATF Blacklist, has put pressured non-compliant countries, and are normally on international financial pressure (Financial Action Task Force on Money Laundering , 2016).

6.2 Money laundering historic framework in Mexico

Delinquent groups and money laundering in Latin America became representative during the 80's and 90's with the creation of drug cartels from Colombia, Mexico, Bolivia and Peru. The importance of those groups derives from the large amounts of profits from the production, transportation and distribution of drugs from these countries to the United States. During the 80's the Colombian case became the most important due to its economic, social and political aspects in which cartels and the "guerrilla" were involved. The Mexican cartels controlled most of the distribution routes to the United States, and also provided distribution on Mexico.

According to the Stratford Security Consultancy, every year between 19 and 39 billion USD are laundered in Mexico, and most of the money comes from drug traffic (Antonio, 2013). Most of law enforcement investigators agree, that one of the best advice in a criminal investigation is to follow the money, and the Mexican government is following that idea.

On October the 17th 2012, the New Mexican anti money laundering law started to operate, and its goal is not only to attack the profits incoming from the organized crime, but also from illicit practices from public functionaries and private business (Secretaria de Hacienda y Credito Publico, 2014).

Similar to other countries, there are various mechanisms for laundering money in Mexico, and not all of those are related with drug traffic, extortion or kidnap. The PGR (for its acronym in Spanish, General justice and law enforcement agency), has detected money laundering through prepaid cellphone cards, currency exchange, restaurants, casino gambling, jewelry, art pieces, and many others (Antonio, 2013). Currently, many ex governors and other ex-politics are being prosecuted due to using tax money for their own profit, which in México is also considered money laundering (Antonio, 2013). The most current cases in Mexico are the ones of Elba Esther Gordillo the ex educator's union leader and Andrés Granier the ex-governor of Tabasco. Both are currently detained and y judicial process.

6.3 Federal Law for the Prevention and Identification of Operations and Resources from Illicit origin

On the 17 of July 2013 came into force the "Federal Law for the Prevention and Identification of Operations from Illicit Origin", popularly known as the "Ant-Money Laundering Law". Aligned with the FATF objectives, this new legislation provides a new framework to contribute on the development of a healthy economy, which is transparent, and attractive for local and international investment. The main objectives of the new legislation are to prevent and detect acts or operations involved with funds with illicit origin and those intended to finance terrorism, and to put in place an identification and report regime for acts or operations involved in vulnerable activities.

Due to the globalization and the modern financial practices in the world, there is a need to regulate the operations from people and legal entities, in order to detect those people, businesses, practices and transactions involved with illicit funds. In the Mexican law, there are several laws and regulations that try to eradicate this kind of practices on people and legal entities, however the particularity of this new regulation is its due diligence when trying to identify and prevent activities involved in money laundering, and it places businesses and people as co-responsible in regulation.

The Federal Law for the Prevention and Identification of Operations and Resources from Illicit Origin, commonly known and anti-money laundering law has as its goal to protect the Mexican financial system and the national economy.

The new law specifically and clearly defines which economic activities are considered as vulnerable in terms of money laundering, and shows the general population that businesses or general economic activities can be subject to have contact with funds from illicit origin. The new legislation produced some doubts and anxiety for the Mexican population, and for that reason a general rule book was issued in august 2013, providing a clear guide about in which cases, activities, methods of payment or amounts, it is compulsory to keep record of a transaction and when it is compulsory to notify the authorities.

The activities considered vulnerable as vulnerable directly affect the following industries or businesses: Contracting services, casinos and gambling venues, accounting firms, real estate firms, general stores, department stores, legal firms, private security businesses, custom agencies, security transfer companies, jewelry, art galleries, armoring companies and others.

The following information is referenced on the Federal law for the prevention and identification of operations and resources from illicit origin (Secretaria de Hacienda y Credito Publico, 2014)

6.3.1 Measures to protect the Mexican Financial system

The new juridical dispositions, pretend to identify, prevent and report those illicit fund operations and practices through a threshold of notifications and reports determined as obligations for business owners. With an interinstitutional coordination to prosecute and investigate delinquent acts involved in illicit funds, the financial structures of criminal organizations, and to prevent the use of those resources to finance themselves.

The priory mentioned threshold defines which activities and amounts would a person need to keep a record of a transaction, or will have to compulsorily notify the authorities about such operation. The identification threshold, contains activities and transactions that are compulsory of notification just for the fact of its existence, and there is a second group of activities that conditionally of the amount involved on a transaction or operation in comparison to fixed pre-established amounts provided by the regulation, will also be subject of identification. The notification threshold, contains those activities on which's those involved are subject to notify the Taxing authorities (Secretariat of Finance and Public Credit), when those activities reach the amount levels established by the law.

6.3.2 Secretariat of Finance and Public Credit and the Attorneys General Office

The Mexican Secretariat of Finance and Public Credit (SHCP) was established on 1821 (Secretaria de Hacienda Y Credito Publico, 2015), and takes part on the Federal cabinet organigram. The SHCP is the secretariat in charge of applying the new legislation and creating the general regulations. Some of the faculties from the secretariat are: It receives the notification of vulnerable operations and transactions;

The secretariat is the empowered agency so request documentation to people and businesses in order to provide it to the specialized unit of Financial Analysis; The secretariat is in its faculty to coordinate with national and international supervisory authorities and law enforcement agencies in order to identify operations involved in money laundering. The Secretariat of Finance and Public Credit is required to present its impeachments to the Public Ministry and the Attorneys General Office when identifying operations that could institute a financial delinquent activity (Secretaria de Hacienda y Credito Publico, 2014).

The Attorneys General Office (PGR), through the Specialized Unit of financial Analysis, is in its faculty to use investigation measures to prosecute money laundering, and it can request to the Secretariat of Finance and Public Credit, information and documentation involved in money laundering.

6.3.3 Reporting and identification obligations

Individuals and companies that are involved in transactions considered as vulnerable have the following obligations: To Identify their customers or partners, to identify the activity involved in the transactions with RFC (for its acronym in Spanish, federal taxpayer registration), To disclose any information about the relationship with the beneficiary, to preserve, protect, and prevent destruction of information, as well as the one identifying the customer (reference annex 9.1).

6.3.4 Criticism to the Mexican regulation

The Federal Law for the Prevention and Identification of Operations and Resources of Illicit Origin, has received lots of criticism, according to come investigators and academics the new regulation is excessively costly, confusing and complex, and it does not take into account many activities that present money laundering opportunities.

According to Edgardo Buscaglia (President of the Citizen Action Institute, and University of Columbia investigator), the current regulation is incomplete and it lacks to comply with several recommendations from the FATF, and coincidently after the promulgation of the law, there has been an important expansion of the criminal organizations (Cardoso, 2012). According to Buscaglia, the mechanism of prosecuting money laundering misses to penalize around 80 percent of the cases since it is complicated and costly to probe de delinquency of the act. It only proves efficient on the most obvious cases of money laundering, however most of cases are very complex and would need the application of a much more responsive regulation (Cardoso, 2012).

One the general concerns about the Federal Law for the Prevention and Identification of Operations and Resources of Illicit Origin, is that it might represent a risk of personal security. In order to achieve the objectives of the law, it requires that consumers of certain assets and services identify themselves with a copy of their official identification, which will be in disposition of the business that offers such products, which presents a risk to the consumer due that most businesses in Mexico do not correctly protect the personal data of their customers (Palacios, 2013). For instances, if a person acquires a vehicle that exceeds the amount considered on the notification thresholds (reference annex 9.1), the auto dealership company is obliged to request the customer's identification, and if the operation exceeds the notification threshold), it will also be obliged to request personal information about its address, the way the customer acquired its resources, the information of its activity or occupation based on the Federal Contribution Registry (RFC), and in some cases even the annual tax declaration, and if the beneficiary of such service of product is different of the buyer, identification of such person will also be requested (Palacios, 2013).

Even if it is important that Mexico works to improve its fight against money laundering, it seems ingenious to expect that money launders will honestly respond to the inquiries from private business, nor this business might have the authority or resources to properly asses if the information provided is real. For this reason, in some cases the regulation may affect honest citizens which will put the integrity in risk by providing their personal data, on a country where identity theft and extortion is not properly prosecuted (Amigón, 2015)

6.3.5 Comments about the Mexican regulation

The Mexican regulation has been criticized of transferring the responsibility of taking money laundering measures to the business owners and general population. However, in my opinion what it does is to force

people and businesses that had traditionally been used as tools for money laundering and in many cases have had tremendous benefits form it, to implement controls like identifying their customers, report suspicious operation and keep information available for the authorities. Such obligations that are now compulsory for the whole population, were already applicable for financial institutions. Because of the fear of not complying with the regulations, many companies instead of investing in anti-money laundering compliance infrastructure, prefer to spend their funds on legal resources in order to keep operating without the required transparency.

One of the problems presented with the new regulation, is that in Mexico the banking penetration rate is still low and many people use cash for all of their transactions. This in some could cause anxiety when using because of the fear of being prosecuted. This law will affect the traditional custom to purchase jewelry or vehicles with cash. The Mexican authorities should use or their capabilities to track the illicit funds flowing through the financial system. It is fair to say that a lot of money being laundered in the country, does not come from the cited vulnerable activities. The Mexican regulation lacks a more transnational approach in terms of offshore bank accounts, and international money transfers.

Unfortunately, after almost four years if implementing the new anti-money laundering legislations, not only there are no clear results on the combat against organized crime, nor the Mexican judicial agencies can presume to have had substantial results, even doe we don't have reliable information on the amount of money laundered in México, there are no important signs that suggest the problem is being diminished. There is something that is clearly failing on the law, nevertheless it is vital to protect the Mexican financial system from the organized crime, and comply with the international obligations the country has contracted. Probably, the people in charge haven't been able to execute the law and may need a process of restructuration on a model based of risk assessment.

In relation with the risk that the regulation presents to the personal integrity of the Mexican population, it is probably fair to consider that it is a risk that the society must take in order to comply with the FATF recommendation, and this way fight money laundering and directly affect the financing of organized crime, on a similar way in which Spain was able to track ETA's resources through tracking their extortion activities (EL MUNDO). However, the Mexican authorities have not been proven to properly guarantee that Mexicans would not be victims of the incorrect use of their personal information.

6.4 MONEY LAUNDERING HISTORIC FRAMEWORK IN THE UNITED STATES OF AMERICA

In the 1920's decade a criminal group known as "La Cosa Nostra" starts operating in the city of Chicago. Initially founded in Sicily, this organization penetrates the United States through the massive colonization of European immigrants, Italian in particular. The strength of "La Cosa Nostra" raised above other criminal organizations such as "La Camorra Napolitana" and "La Sacra Corona Unita" and settled its dominium (Jaffe, 2007). Eventually "La Cosa Nostra", thanks to its rigid internal organization and bilateral management between United States and Sicily, the criminal organization expanded to other states like New York and Nevada. By the 1960's the US criminal groups had their most profitable operations in fraud, alcohol and drugs (Jaffe, 2007). By the middle of the 20th century, other criminal groups operated in US territory, like the Chinese Triads in the area of California.

As mentioned before, the first modern money laundering operations happened during the 1920's in the United States. However, the first important efforts to safeguard the financial system from the abuse of financial crime, came in 1970 with the Bank Secrecy Act. The Banks Secrecy Act was designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions, some of its main points are (United States Department of Treasury, Financial Crimes Enforcement Network, s.f.):the establishment of requirements for recordkeeping and reporting by private individuals, banks and other financial institutions, and the requirement of banks to report cash transactions over $10,000, and properly identifying persons conducting transactions; in order to maintain a paper trail by keeping appropriate records of financial transaction

Over the years mainly due to the drug trafficking money laundering in the United States, stricter and more complex regulations were created. The second regulation came in 1986 as the Money Laundering Control Act, which established money laundering as a Federal crime. In 1998, a big anti money laundering reform

came with the Money Laundering and Financial Crimes Strategy Act, which created the HIFCA task force (High Intensity Money Laundering and Related Financial Crime Area) to concentrated the federal, state and local enforcement efforts in the zones and sector were money laundering was prevalent. Yet, the most important reform came in 2001 in big part as a consequence of the September 2001 New York terrorist attacks.

The US Patriot Act for the first time stablished a close relationship between money laundering and terrorism. This new legislation, permitted a large set of tools for law enforcement to combat financial crimes and terrorism finance (One Hundred Seventh Congress of The United States of America, 2001). Some of the main points of the legislation are: to enhanced surveillance procedures, with the authority to intercept oral, wire and electronic authority relating terrorism; The prohibition to financial institutions from engaging in business with foreign shell banks; Increased civil and criminal penalties for money laundering; And the requirement to financial institutions to have due diligence policies and procedures.

6.5 PATRIOT ACT AND BANK SECRECY ACT

The USA Patriot Act was signed by US ex-president George W. Bush on October the 26th 2001, its full name is “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001”. Some parts of the Patriot Act expired on 2015 but were restored on with the USA Freedom Act until 2019. The patriot act was accepted less than two months after the World Trade Center attacks and the Anthrax bioterrorist attack.

Most of the titles on the Patriot Act are about homeland security, terrorism criminal law, border security, however together with the Bank Secrecy Act the current anti money laundering regulations were implemented through it.

The following information is referenced with the ‘‘Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001” (One Hundred Seventh Congress of The United States of America, 2001) and the “Bank Secrecy Act (91st United States Congress, 1970)

6.5.1 Bank Secrecy act

“The Financial Recordkeeping and Reporting of Currency and Foreign Transaction Act” also known as “Bank Secrecy act”, was firstly introduced in 1970 and its objective is to request financial institutions to keep records of certain financial operations and transaction with their customers. Those records, provide a way to track financial operations involved in crimes, money laundering and tax evasion (91st United States Congress, 1970). The original goal of the Ban secrecy act, was to provide information to support criminal investigations, and more recently the same regulation is used to aid in the investigation of terrorism financing and drug trafficking. The bank secrecy act is divided on two titles, the first one provides authority to the US Department of Treasury to demand and regulate the record keeping of financial institutions, the second one provide a regulatory framework that dictates the requirement of reporting certain international financial operations and transactions that exceed a value of $10,000 USD.

According to the Bank Secrecy regulation, American financial institutions are obliged to record and keep a CTR (Currency Transaction Report), for any physical currency transaction or the sum of transactions with the same beneficiary like deposits, currency exchange, payments, when exceeding $10,000 USD. Certain persons or entities may be exempt of record keeping due to the amount of transaction they incur and the paperwork burden it represents, firstly we have the Local and Federal government, government agencies, Banks, and the stock exchange market (NASDAQ); secondly we have entities that the exemption may or may not be granted depending on their operation, for instances companies that do regular withdrawals for payroll reasons. Some legal entities such as gambling venues, pawn shops, auction houses are not eligible for exemption.

The suspicious activity reports, are obligatory reports that certain entities like gambling venues, mutual funds, financial institutions and insurance companies are required to complete when an operation has apparently been done with the purpose of hiding its proceedings. The first line of staff of the entity, is in charge to identify such transactions and pass it along to their reporting specialist which will contact the Financial Crimes Enforcement Network. The suspicious activity report must be filled, when an institution

suspects of federal crime violation regardless the amount, when on a $5,000 USD transaction there is suspicion that a customer used an alias, when there is a slight suspicion even without substantial basis, that an operation exceeding $25,000 USD represents a Federal violation, when there has been a computer hack or intrusion to procure, steal or change information that might affect the institution's funds (91st United States Congress, 1970).

In terms of money laundering, the Bank Secrecy Act presents a series of red flags to financial institutions in order to identify such activities and file a currency transaction report or suspicious activity report. Even doe, the presented red flags are not conclusive evidence of money laundering, they present a common indicator for suspicion. The reluctance to complete a transaction, or abruptly canceling it after being asked to provide personal information or being informed of the requirement to file a report may suggest the existence of a potential illicit activity involved. The operations that are not consistent with the customer's usual activity, business or income level. A usual red flag of money laundering is the constant non reportable transactions (bellow the recordkeeping threshold) of third parties in multiple bank branches, into the same account or beneficiary (commonly known as smurfing). The repeated transaction of even dollars' amount. When an non account holder conducts transactions to redeem monetary instruments, without a clear reason, it may rise a suspicion of illegal activities.

Some other red flags that involve inside cash management on banks are: When there is a sudden change on the cash supply of a branch, or a progressive increase on cash transactions without a similar increase on non-cash transactions. Those branches that have a considerable larger request of large denomination bills than similar branches, and those that suddenly stop providing large denomination bills.

Safe deposit boxes can also present evidence of money laundering or illicit fund transactions, for instances if a customer has unusually frequent visits its safe deposit box. If the owning customer of the safe box does not reside in the common are in which the bank branch operates. When a customer makes a cash deposit just after having access to the safe box, or accessing the safe box just after doing a cash withdrawal. If a customer holds multiple safe boxes, it represents a red flag of illicit activities.

Bank employee's actions and behaviors may also represent a red flag of money laundering, and possibly their involvement in an illicit activity: Constant questions or discussions about recordkeeping thresholds, or the way of avoiding reporting obligations. Extravagant way of life or not apparently consequent of the income level of an employee, may arise suspicion of an illicit income. When employees are reluctant to take vacation time, or are unwilling to lose control of internal procedure. The most important red flag involving bank employees, is the constant submit of incomplete or incorrect currency transaction reports.

6.5.2 The Patriot Act

The general concern felt by the American population after the World Trade Center and anthrax terrorist attacks of 2001, the government quickly reacted to write a new legislation in order to improve homeland security and in general strengthen the controls of foreign financial activities in the country. The main objective of the Patriot Act was to improve controls of foreign activities and provide new tools for low enforcement in order to attack terrorist organization. The main focus of the pact is broadly explained in its long title "An Act to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes" (One Hundred Seventh Congress of The United States of America, 2001).

Title III of the Patriot Act "International Money Laundering Abatement and Antiterrorist Financing Act of 2011", was created with the intention of detecting, prosecuting and preventing money laundering activities and the finance of terrorism. This new legislation improves the provided anti money laundering framework from the Bank Secrecy Act and makes special emphasis in the terrorism financing subject. As a complement to the Bank Secrecy Act, the new legislation strengthens banking rules specially those involving foreign financial institutions and international transactions, it also expands the reporting and recordkeeping obligations of banks, the communication between law enforcement with banking institutions, and lastly increases the penalties of smuggling and counterfeiting currency.

Some of the consideration considered for the creation of the Patriot Act are: According to the Monetary Fund, money laundering activities represent between 2 and 3 percent of the world's gross domestic product. The deficiency in financial transparency, in which money laundering operates provides also a potential risk for terrorism financing. Some jurisdictions that offer offshore banking designed to provide anonymity to their customers, have lax financial restrictions and provide the perfect environment for money launderers. The United States of America is committed to comply with the recommendations

presented by the Basel Committee on Banking Regulation and the Financial Actionl Task Force (One Hundred Seventh Congress of The United States of America, 2001).

One of the principle points of the legislation is to prohibit shell banks, which are those banking institutions that doesn't have a physical presence in the United States of America, excepting those that are hosted by a bank that has a physical activity in the country. The main concern about shell banks, is that due to there almost anonymous nature and no physical address, it becomes complicated to regulate. The legislation prohibits domestic banks and brokers to have correspondent accounts for shell banks, and make sure that correspondent accounts in general are not being used to indirectly engage on a financial operation with shell banks. Foreign banks with correspondent bank accounts are now subject of subpoena from the secretary of Treasury or the Attorney General Office, and the domestic banks with correspondent accounts shall maintain records to identify the accounts representative.

In order to improve the suspicious activity reports required by the Bank Secrecy Act, the Patriot Act expands the protection from liability while reporting suspicious activities, notification to legal entities or individuals about filing a luscious activity report is strictly prohibited, excepting those necessary to fulfill the report.

The Patriot Act, requires all financial institutions to have anti-money laundering programs and controls on their operations. Employees must be properly train about money laundering prevention and the filling of the correspondent reports, and the financial institution is obligated to have an independent auditing department to asses and control anti-money laundering policies (One Hundred Seventh Congress of The United States of America, 2001).

6.5.3 Criticism to the American regulation

On the last decade, there have been massive penalties for American banks not because of money laundering activities, but basically they haven't meet the subjective opinion of regulators on what an anti-money laundering program should be. The ideal vision of a regulators anti-money laundering program, is most probably more effective that what the financial institutions have, however it is unclear if the programs benefit would outweigh the cost it represents (Saperstein, 2015).

Some of the most important fines that regulators have imposed to financial institutions have not been based in actual money laundering activities, and such is the case of Banamex USA. The bank's activity in the borderline zone of the USA dates from the 1800's, and it is currently in the process of closing its operations (Banamex USA, 2016) after being fined $140 million USD in 2015 (DEPARTMENTOF BUSINESS OVERSIGHT, 2015). According to the official press release from the California Department of Business Oversight, Banamex USA had weaknesses on their anti-money laundering program, however no actual money laundering activities were ever found. Similarly, to Banamex USA, Standard Chartered Bank was in 2014 imposed a fine of $300 million USD due to an apparent weakness on their anti-money laundering system in their New York Branch (NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, 2014). The reality is that is it impossible for a bank to cover all potential risks that they may have, nor is financially possible to do so, the former Under Secretary of the Treasury for Terrorism and Financial intelligence David S. Cohen stated that "We recognize that it is not possible or practical for a financial institution to detect and report every single potentially illicit transaction that flows through the institution" (US Department of Treasury).

Banks are currently spending massive amounts of money to comply with the regulators subjective opinions, and in some cases are found liable of incurring in illicit activities. HSBC compliance program costs for 2014 increased to $800 million USD, after signing in 2012 a deferred prosecution agreement for admitting to have processed proceedings from drug trafficking (Arnold, 2014). However, not only HSBC has increased its compliance spending, and its creating a more risk adverse personality in banks, which at the end affect the services they provide to customers.

6.5.4 Comments about the American regulation

The Patriot Act was passed quickly and by a landslide in both the Congress and the Senate, it happened during a time of a homeland security crisis and the social and political atmosphere was claiming for a strong reaction from the US Government. Some of the concerns about the Patriot Act, were that it provided a lot of power to law enforcement to almost indiscriminately bend or brake civil rights, like tapping telephones, mail and financial records, with the use of a National Security Letter for national

security concerns. The incorrect use of surveillance from the NSA (National Security Agency), was exposed by Edward Snowden a former CIA employee that in 2013 disclosed classified documents about specific actions to surveille people without a legitimate National Security reason (Soltani, 2013).

The title III of the Patriot Act (International Money Laundering Abatement and antiterrorism financing act), follows the same trend of the whole act. First, at the very beginning of the title it institutes a direct relationship between money laundering and terrorism; Second, the main focus of the regulation is to have information about international transactions, foreign banks in USA, and US Banks with international representation. Title III has very little commentaries about domestic business operations or methods of payment, apparently the biggest concern are illicit funds coming from abroad and not much about money being laundered locally and probably in smaller amounts. The regulation does not represent a clear effort to attack common money laundering methods, “smurfing” in particular.

Money laundering, and the financial transparency defects on which money launderers depend, are directly involved into the financing of global terrorism and the provision of funds for terrorist attacks. Money launderers poison legitimate financial mechanisms and banking connections by using them as a protection for the movement of criminal earnings and the financing of crime and terrorism, and because of that reason it a liability to the safety of United States citizens and weakens the integrity of United States financial institutions and of the global financial and trading systems in which economic development and growth depend. Certain jurisdictions outside of the United States that offer offshore banking and other related financial facilities designed to provide anonymity, combined with a weak financial supervision and lax enforcement regimes, provide essential tools and conditions to disguise ownership and movement of criminal funds. Transactions involved in such offshore jurisdictions make it difficult for law enforcers and regulators to track the trail of money earned by criminals, organized international criminal groups and terrorist organizations.

In terms of reporting suspicious activities or filing CTR’s or SAR’s, the most obvious problem comes from the vulnerability that the first line involved on identifying suspicious transactions may represent. Bank branches personnel may not be trained properly, or even their level of income may stimulate them to incur in an illicit activity. The red flags provided by the US Secrecy Act, if not correctly interpreted may also represent a front line vulnerability, or quite the contrary as an excessive level of reporting.

6.6 Money laundering historic framework in Canada

According to the Royal Canadian Mounted Police, deposit institutions, the insurance industry, motor vehicles, and real estate are the four most frequent destinations for the proceeds of crime in Canada. Real Estate has many characteristics that make it attractive for criminal proceeds. Offenders use homes were they can live and work, being often used for the cultivation of marijuana and production of synthetic drugs.

In 1989, money laundering became a criminal offence in Canada, and the Office of the Superintendent of Financial Institutions first issuance of guidelines and best practices in respect of combatting money laundering happened in 1990. By 1991 the Royal Canadian Mounted Police established the Integrated Proceeds of Crime units and the federal government introduced an anti-money laundering legislation. Incremental changes have been made to that legislation in response to an increases in organized crime, the rise of terrorism on a global scale, comments by the Financial Action Task Force on Canada’s anti-money laundering and anti-terrorist financing legislation and changes in international standards in combatting money laundering. Prior to 2000, Canada’s Regime applied only to transactions conducted by financial institutions. Legislation enacted in 1991 required them to keep records of cash transactions of $10,000 or more, to undertake client identification procedures, and to report suspicious transactions directly to law enforcement agencies on a voluntary basis (Irving R. Gerstein, 2013). The law was last amended in 2015, providing a more flexible record keeping.

6.7 Proceeds of Crime, Money Laundering and Terrorist Financing Act

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada’s financial intelligence agency. This new agency, was introduced on the year 2000 in order to analyze, assess and disclose suspected money laundering activities or transactions. Since 2001, through the “Proceeds of

Crime, Money Laundering and Financing Act" FINTRAC's operations were expanded to contain information in cases of terrorism financing.

The following information is referenced with the "Proceeds of Crime (Money Laundering) and Terrorist Financing Act" (Canadian Minister of Justice , 2016).

The main objectives of the Proceed of Crime, Money Laundering and Terrorist Financing Act are: To Implement measures to detect and prevent money laundering and terrorist financing activities and facilitate the investigation and prosecution of money laundering offences, which's include establishing record keeping policies for financial institutions. The law considers compulsory the reporting of suspicious financial transactions and of international transactions of currency and monetary instruments (Canadian Minister of Justice , 2016). FINTRAC requires financial institutes, to have an independent department to asses and control the compliance of money laundering and terrorism financing policies.

The Financial Transactions and Reports Analysis Centre of Canada is committed to be an active participant in the fight transnational crimes, with a particular emphasis in Money laundering and terrorism financing offenses. While doing so, the Canadian capability to protect its financial system is considerably improved, and mitigates risk that illicit funds might flow through the economy.

FINTRAC requires certain persons and entities to report the activities and the suspicious transactions they might encounter. Life insurance companies, financial institutions, securities brokers and dealers, real estate agents, gambling venues, accounting firms, and other activities and industries that are potential vehicles from money laundering. Those transactions in which there are reasonable grounds to suspect that are involved in money laundering activities should be reported to FINTRAC.

To determine how reasonable grounds of suspicion are. FINTRAC provides us a series of activities and situations that might be involved in money laundering. Attempted transactions, meaning those activities in which a customer clearly started the process of the financial transaction, but abruptly cancel or refuses to complete it or the financial transaction doesn't go through due to administrative or compliance reasons. For instances, a suspicious activity will be the refusal of a customer to provide identification when attempting to deposit or withdraw money, also when a real state customer bids for a property with a large deposit but afterwards refuses to provide their identification, in general when a customer refuses to identify himself while trying to conduct a large financial transaction must be considered as suspicious. The FINTRAC grounds of suspicious, mentions that if it is known that a transaction is involved property that is controlled by a terrorist organization must be not completed and reported.

The context in were a financial transaction is attempted, is the principle factor in determining the probability of being involved in money laundering. This context is different depending on the financial institution and the person or entity performing the transaction, and the transaction must be evaluated on its transparency and the level of concordance of it against the normal practices or business related to the person or entity. Some indicators that should be considered are: The customer tries to engage on a personal relationship with the staff, insists that the transaction is urgent and should be completed quickly, the provided telephone number is disconnected, seems anxious or nervous, is being accompanied or watched while doing the transaction, makes inquiries about recordkeeping policies, conducts frequent cash transactions, deposited bills are extremely filthy or deteriorating, the transaction is involved with a country that has strong terrorism activities or is an important producer of illicit drugs and many others. The appearance of several of the indicators, should arise more suspicion on the transaction (Canadian Minister of Justice , 2016).

In terms of cash importation and exportation, any person arriving or leaving the Canadian territory must declare its possession of monetary instruments when exceeding $10,000 USD. If a person does have such a quantity in himself or his baggage, shall be reported to the FINTRAC.

6.7.1 Criticism to the Canadian regulation

The wide variety of situations, activities, industries, institutions and people that according to the Proceeds of Crime Money Laundering and Terrorism Financing Act, the confusing regulation and unclear reporting

requirements, has created a wave of over reporting due to anxiety of being compliant. In 2013, a young Canadian Citizen purchased three $100,000 CAN bank drafts and was reported because apparently the amounts did not match the age of the customer, similarly a shopkeeper deposited $570 CAN in different denominations and was reported with no apparent reason. The FINTRAC audit of the same year, found that numerous suspicious transaction reports had no reasonable ground of suspicion of being involved in money laundering or terrorism activities (Behrens, 2015). Anyhow, any Suspicious Transaction Report no matter if it had been confirmed or not as a related to money laundering or terrorism activities, it remains on FINTRAC's database which is available to the Canada Revenue Service, the Royal Canadian Mounted Police and the Canadian Security Intelligence Service. As of a 2015 Canadian survey, 90% of Canadian citizens said they were concerned about privacy, and 73% added that they feel their personal information is less protected (Behrens, 2015).

As per the regulation, any person travelling in or out of Canada with over $10,000 USD shall be filled a suspicious activity report, so the person's information will be available to the Canadian authorities which may result in discomfort to such person even if not found liable of money laundering or terrorist activities (Canadian Minister of Justice , 2016).

FINTRAC is considering to create a second database in which they could file all those suspicious activity reports that had not been found to have real grounds for suspicion, in order not to disclose them to other authorities.

6.7.2 Comments about the Canadian regulation

Similarly, to the American Patriot Act, the main focus of the Canadian regulation is to keep record of potentially vulnerable financial transactions, however it is more domestic in nature and does not emphasis so much on foreign financial institutions. The Canadian money laundering regulations that were implemented in the year 2000 as a result of the 911 terrorist attacks were immediately expanded the next year to include terrorism financing on it, most probably to be in tune with the American Patriot Act.

Currently, the biggest criticism on the Money laundering regulations is that the Real Estate industry is still vulnerable to Money Laundering. It has been reported that many Real Estate properties are not compliant with the current record keeping and notification requirements, and according to the Canadian press, most realtors don't know or understand their Anti-Money Laundering obligations. Together with Real Estate foreign investments, money laundering is possibly driving the house prices to off market prices, particularly in the states of Ontario and Ottawa (Posadzki, 2016). The Canadian regulation for transactions, similarly to the American one, has created privacy concerns.

7 MONEY LAUNDERING THROUGH CRYPTOCURRENCIES AND VIRTUAL MONEY

7.1 CRYPTOCURRENCIES

A cryptocurrency is a method of constituting virtual "coins" and providing for their secure ownership and transaction using a cryptographic problem (HARWICK, 2016). The cryptography is designed to be easy to verify but very difficult to resolute. Computationally speaking, the processor power needed to decipher a piece of cryptocurrency is much higher than the value that such currency may have. There are various functions used for the purpose of encrypting, the most common is hash target, which is the mathematical algorithm in which maps data into a bit string of a predefined size which is a function rapidly and easy to compute but difficult to invert (Schneier, 2004). Other protocols, present the cryptographic problem by calculating large numbers of prime numbers. In theory, any hard to calculate but easy to verify algorithm can be used as a cryptographic element (HARWICK, 2016).

The action of calculating these algorithms are known as "proof of work", and this is the method in which transactions can be verified to be trustworthy. After verifying a block of transaction, the cryptographic network rewards verifiers with a certain number of cryptographic currency, this process is known as "mining" and is the way in which the supply of cryptographic currency on a network expands. Since the process of calculation becomes more difficult as the network expands, the auto adjustable difficulty ensures that important computing advances does not affect the rate of expansion. Since "mining" requires

electricity, hardware and other costs, and the rewards are constantly more difficult to reach, the benefits tend to equilibrate (HARWICK, 2016).

Bitcoin is the first peer to peer cryptocurrency network that is served by its users without any banking or government agents. Bitcoin is similar to cash due to its anonymity characteristic. Any person who has access to the internet and enough amount of memory on their computer can be a user of Bitcoin. The first step for becoming a user of Bitcoin is to create a "wallet", which is a computer program that generates an anonymous internet address. The transaction of bitcoins for one user to the other is made through their anonymous addresses.

There is a big discussion about crypto currency regulation, which is concentrated on the potential dangers they it may represent. There are indeed several risks, and there is a clear need of a regulation to address this problems, however it is important not to ignore its potential benefits while legitimately using these technologies. For instances, cryptocurrencies have the potential to reduce the cost of international fund transfer, and thanks to its peer to peer nature it avoids intermediaries and reduces the time frame of a transaction.

7.2 Crime and Money Laundering through Cryptocurrencies

Criminals use "internet laundries" as a part of their process for money laundering. These Internet laundries, provide the service of generating massive amounts of cryptocurrency wallets and sends funds to them in a casual order, these process presents a bigger complication when trying to find the traces of funds (DIANA MERGENOVNA SAT, 2016).

One of the most controversial uses of Bitcoin were related to the website "Silk Road" which commercializes weapons, drugs, and other illegal products and services including money laundering. This website used only Bitcoin for their transactions and provided anonymity through a software named TOR. The Silk Road operated as a Bitcoin Bank, were user had to have an account for fulfilling operations, every account could have as much as thousands of Bitcoin addresses attached to it (Joshuah Bearman, 2015). In order to make a purchase the user had to send bitcoins to the address attached to its account on the site, the funds from the user were then transferred within system to the target deposit account before fulfilling the order, then bitcoins of the buyer were transferred from the target deposit account on the Bitcoin address of the seller of "Silk Road". Since it was not possible to know the address of the seller or the buyer, it was nearly impossible to directly make the transaction without compromising anonymity (DIANA MERGENOVNA SAT, 2016).

7.2.1 Tracking difficulties and Red Flags on money laundering through cryptocurrencies

The process of tracking cryptocurrency cash flows becomes difficult due to the following factors:

- Lack of communication between people and virtual currency accounts.
- Software tracking disablers such as mixers, anonymizers or tumblers.
- Possibility for the user to create an unlimited number of accounts.

The following signs can possibly represent indicators of money laundering: Large number of bank accounts owned by a virtual currency administrator, most likely these are used as suspense account to be used for stratification (the second step of the money laundering process). Roundabout of bank transactions between different cryptocurrencies administrators in different countries, these operations can also be suspect to stratification. The cryptocurrency administrator engages in transactions where it doesn't have business or a client base. There is a big volume and frequency of cash transactions to acquire crypto currencies, and those sums are lower than the obligated amount for reporting on its particular country.

7.2.2 Regulation on cryptocurrencies

As of today, cryptocurrency providers are not regulated and the libertarian view in which the currency was created is against any kind of intervention from authorities, however many providers are now interested in understanding a regulatory framework. Many providers have added compliance offices to their organigram in order to professionalize their services, since they believe that the success of a broad commercial use of cryptocurrencies depends on risk management and consumer confidence, and may also diminish the extreme volatility that cryptocurrencies like Bitcoin have.

Even doe cryptocurrencies have not a direct regulation, depending on the country where they operate some regulations may apply. In USA and Canada, cryptocurrency providers are considered as financial services, and are required to apply for a license to operate, which make them responsible to follow certain obligations such as recordkeeping. In some countries cryptocurrencies are being considered to be banned, for instances Russia considers banning cryptocurrencies due to their potential use on money laundering and informal economy. Chinese banks were ordered not to provide services to cryptocurrency businesses and to cancel their accounts (Raymaekers, 2014).

7.3 MONEY LAUNDERING THROUGH ONLINE GAMING VIRTUAL CURRENCIES

The Oxford dictionary, defines online game as a video game which is or can be played over a computer network, especially one enabling two or more players to participate simultaneously from different locations (Oxford dictionaries, 2016). Massive online role playing games also known as MMORPG's provide an easy way for criminals to launder money (Richet, 2013). The process involves in opening numerous online game account through different games and move the money through them. Thanks to interconnection of micro payment through online gaming and services such as PayPal and traditional payment services, laundering funds can move through an increasingly complex environment. This kind of money laundering is known as micro laundering, since it makes it possible to a large amount of funds, through thousands of micro transactions that are hardly suspicious (Richet, 2013). A scenario for money laundering is to use scammed or stolen credit cards to be used as foundation of a PayPal account that will be used to engage into online gaming micro transactions (Richet, 2013).

An apparently popular method to launder money through MMORPG's like Second Life or World of Warcraft, includes the following steps:

- Open an account on a MMORPG
- Purchase its virtual currency, which can be done with a stolen credit card, online, or with cash by purchasing a prepaid card.
- Sell back the virtual currency through the black market community, or to virtual money exchange platform.
- The retrieved funds will be apparently clean and very complicated to trace them back.

It is important to note that game developers are not involved with these money laundering practices, and are in many cases involved in the efforts to stop such practices (Richet, 2013).

There are several web services that provide online gaming money exchange platforms, the virtual currency as most of the world's currencies is traded and its price changes due to offer and demand. Depending on the game and the server used for the gaming interface, currency prices changes. As per the 21 of June 2016, the web service platform http://www.gameusd.com/ under World of Warcraft MMORPG and "Dalvengyr Euro- Alliance" server, shows an exchange rate of 10,000G (World of Warcraft currency) per €1.50.

8 CONCLUSIONS

Money laundering is a Global Issue, and an intergovernmental organization such as the FATF that is supported by the most important economies in the world is very much needed. A positive consequence to have an international regulator is the possibility to share information to locally prosecute money laundering and terrorism financing, and secondly the political authority to disclaim which countries are not being compliant. However, being compliant with the FATF recommendations is not sufficient, every country has its particular vulnerabilities, and problems that run along with money laundering.

In the case of the United States of America, the main concern is about Homeland Security and the finance and terrorism, on their particular case money laundering laws kind of simply drive along with those subjects. Still in many cases the regulation is considered lax, and big financial institutions operating in USA have had involvement in money laundering and terrorism financing in the last years. The HSBC scandal from 2012, involved more than 15,000 international transfers that were supposedly involved in Mexican drug lords' money laundering, or financing relations with Saudi Arabian and Bangladesh banks with ties to terrorist organizations (Fontevecchia, 2012). There are several cases of mini or micro money laundering that apparently the US regulations are not too concerned about, my thought is that probably the small cases of money laundering are seen more as a purely fiscal problem. The US regulation concerning cash transactions, instead of providing a clear amount threshold for recordkeeping or reporting, it provides a much larger amount threshold (over $10,000 USD) and the decision of recordkeeping falls into the interpretation of a series of red flags

Mexico, still being compliant with the FATF, has a completely different approach in anti-money laundering laws. This approach is to have a national structure that involves the participation and responsibility of the whole population. In a similar way that terrorism has a close relationship with money laundering in the United States, in Mexico the relationship is with the organized crime and in particular with the military fight the state has against drug lords. As we can observe on the Mexican regulation, the payment, record keeping and notification of armor services is very strict. In my opinion the information resulted from purchasing armor services and products such as Kevlar, is intended for tracking down drug lord's operations more than money laundering. In Canada, even doe the money laundering problem is probably not such a big concern as it is in USA and Mexico, it is clearly affecting the real estate industry. Maybe the main joint concern from Canada in relationship with money laundering, is the economic anomalies that it creates on their market.

Particularly in Mexico due to the wide range of industries and business that the law considers vulnerable, the anti-money regulation costs of implementation are important and the general population is having problems adjusting to it. Also, the amount of corruption in the country still allows illicit funds to flow into businesses, creating a disloyal competition against healthy businesses that struggle financially to keep operating.

Reviewing the traditional methods of money laundering, the Mexican regulation is in paper the one which presents a clearer opposition. For instances, it requires to keep record of people engaging in bets or gambling games for an amount equal or grates to approximately €1,158 EURO, and a formal notification to the authorities when the amount reaches approximately €2,300 Euro, in the United States a suspicious activity report is mandatory only when the amount is higher to approximately €4,558 EURO.

The problem is the inconsistency between very specific laws and regulations, against the corruption that allows businesses not to keep records nor notify the authorities when engaging in vulnerable transactions. Another problematic situation that business in Mexico have to deal with, is the pressure from criminal organizations that require them to launder their money or make payments in order to let them operate, and the consequences of not cooperating can be devastating. In Such was the case of the Casino Royale in the city of Monterrey, were an armed group called "Lo Zetas" burnt the whole gambling venue, killing at least 53 people (VEGA, 2011).

The problem of lax law enforcement and corruption is not only found in Mexico, the Canadian Real Estate industry is apparently flooded with illicit funds, and realtors aren't well trained or informed to keep records of their business transactions, and presumably the authorities haven't properly enforced the law.

The efficacy of the anti-money laundering regulations is still unclear, there is no clear data suggesting that is has diminish, however it has created massive compliance programs which are mostly driven by the fear of not convincing regulators. Also the over reporting which financial institutions have incurred in, puts a red flag in several people and businesses that do not engage in money laundering nor terrorist activities. In some cases, there is an ambiance of presumption of guilt which causes discontent on the population.

Money laundering methods keep evolving, and law enforcement needs to catch up. Today, virtual currencies present a major challenge to track funds. Currencies such as Bitcoin lack of any transparency, creating a Bitcoin wallet has identification requirements cost of deciphering cryptocurrencies is not financially reasonable. The decentralized system of virtual currencies, makes regulation extremely difficult.

The different international approaches to virtual currencies, requires a better guidance and recommendations from international organizations such as the FATF, in order to create an international regulatory framework that specifically considers the different aspects of virtual currencies.

9 ANNEXES

9.1 MEXICAN REPORTING AND RECORDKEEPING THRESHOLDS

The following activities on their specific amount thresholds are subject to either reporting to the authorities or file a record of the transaction (the minimum daily wage in the Federal District is $73.04 MX which is approximately €3.58 EURO) .

- The activities involved in the practice of betting games, contests, gambling or raffles organizes by decentralized agencies, or carried under the Lotteries Act and its regulations. On those cases, the transaction need to identified when under the following terms and amounts: The sale of tickets, tokens or any other receipt or voucher for the practice of gambling, the payment of prices, and any other financial transaction involved in it, whether carried our individually or in series of apparent interlinked transactions with persons, provided that the total valued of the operations is by an amount equal or greater than three hundred twenty five times the minimum wage in the Federal district ($23,738 MXN as per 2016 daily minimum wage). Notice should be subject to Government Agency notification when the total amount is equivalent or exceeds six hundred and forty-five times the minimum wage in the Federal District ($47,110 MXN as per 2016 daily minimum wage).
- Issuance or commercialization of service cards, credit cards, prepaid cards, and all those that constitute storage of monetary value and are not commercialized by financial institutions. Provided that the issuer or dealer of such instruments permits the transfer of funds or is trade is done in an occasional way. In the case of service or credit cards, when the monthly spending accumulated balance is equivalent or exceeds eighty-five times the minimum wage in the federal district ($6,208 MXN as per 2016 daily minimum wage). In the case of prepaid cards when its commercialization is equivalent or exceeds six hundred and forty-five times the minimum wage in the Federal District ($47,110 MXN as per 2016 daily minimum wage). Notice should be subject to Government Agency notification when the accumulated monthly spending balance of a card is equivalent or exceeded on thousand two hundred and eighty-five times the minimum wage in the Federal District ($93,856 MXN as per 2016 daily minimum wage). Ibn the case of prepaid cards, when its commercialization is equivalent or exceeds six hundred and forty-five times the minimum wage in the Federal District ($47,110 MXN as per 2016 daily minimum wage).
- The habitual or professional emission and commercialization of traveler checks, which's are not included on the financial institutions operations. Notice should be subject to the Government agency when the total amount of traveler checks is equivalent or exceeds six hundred and forty-five times the minimum wage in the Federal District ($47,110 MXN as per 2016 daily minimum wage).
- The habitual or professional mutual, warranty, loans and credit operations, constituted by actors other than financial institutions. Notice should be subject to the Government agency when the total amount of traveler checks is equivalent or exceeds one thousand six hundred and five times the minimum wage in the Federal District ($117,229 MXN as per 2016 daily minimum wage).
- The habitual or professional construction contracting services, real estate development or intermediary for property transmission ort constitution of rights on real estate assets. Notice should be subject to the Government agency when the operation is equivalent or exceeds eight thousand and twenty-five times the minimum wage in the Federal District ($586,146 MXN as per 2016 daily minimum wage).
- The habitual or professional commercialization of precious metal, precious rock, watches or jewelry, in which's value is equivalent or exceeds eight hundred and five times the minimum wage in the Federal District ($8,797 MXN as per 2016 daily minimum wage), excepting those transactions in which the Bank of Mexico is an intermediary. Notice should be subject to the Government agency when a cash operation is equivalent or exceeds one thousand six hundred and five times the minimum wage in the Federal District ($117,229 MXN as per 2016 daily minimum wage).

- The habitual or professional commercialization or auction of pieces of art, in which's involves operations which are equivalent or exceed one two thousand four hundred and ten times the minimum wage in the Federal District ($176,026 MXN as per 2016 daily minimum wage). Notice should be subject to the Government agency when a cash operation is equivalent or exceeds four thousand eight hundred and fifteen times the minimum wage in the Federal District ($351,687 MXN as per 2016 daily minimum wage).
- The habitual or professional commercialization of new or used vehicles, being maritime, terrestrial or aerial, with an equivalent or exceeding value of three thousand two hundred and ten times the minimum wage in the Federal District ($234,458 MXN as per 2016 daily minimum wage). Notice should be subject to the Government agency when the amount of the operation is equivalent or exceeds six thousand four hundred and twenty times the minimum wage in the Federal District ($,916 MXN as per 2016 daily minimum wage).
- The habitual or profession service of armoring vehicles and constructions, of a quantity equal or exceeding two thousand four hundred and ten times the minimum wage in the Federal District. Notice should be subject to the Government agency when the amount is equivalent or exceeds four thousand eight hundred and fifteen time the minimum wage in the Federal district.
- The habitual of professional service of custody or physical transfer of money, excepting those cases in which the Bank of Mexico intervenes. Notice should be subject to the Government agency when the total amount is equivalent or exceeds three thousand two hundred and ten time the minimum wage in the Federal district.
- The independent professional services, in which there is no labor mediation with the customer, in those cases in which the following operations are prepared for the customer or done in its representation.
    - The trading of real estate, or the transfer of right on properties.
    - The administration or management of resources, money or any other asset from the customer.
    - The bank account management
    - The organization of capital contributions or any other resource used to constitute, operate and administrate mercantile societies.
    - The constitution, fusion, operation and administration of corporations or corporate vehicles, including mutual funds, and the trading of mercantile societies.

  Notice should be subject to the Government Agency when the service provider does any financial operation related with professional secrecy and defense warranty (Secretaria de Hacienda y Credito Publico, 2014).

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