

The Scale and Impacts of Money Laundering

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Abbreviations

ACFE	Association of Certified Fraud Examiners
AFP	Australian Federal Police
AML	Anti-Money Laundering
ARBIFT	Arab Bank for Investment and Foreign Trade
AUSTRAC	Australian Transaction Reports and Analysis Centre
BFI	Special Financial Office (in Dutch: Bijzondere Financiële Instelling) also called SPE or SPV
BIS	Bank of International Settlements
BSA	Bank Secrecy Act
CBS	Dutch Central Bureau of Statistics (in Dutch: Centraal Bureau voor Statistiek)
CEO	Chief Executive Officer
CFATF	Caribbean Financial Action Task Force
CFE	Certified Fraud Examiner
CFT	Countering Financing of Terrorism
CIA	Central Intelligence Agency
CPB	Dutch Central Planning Bureau (in Dutch: Centraal Plan Bureau)
DNB	Dutch National Bank
DYMIC	Dynamic Multiple Indicators Multiple Causes
EC	European Commission
ECJ	European Court of Justice
EG	Egmont Group member
ESD	EU's Saving Tax Directive
EU	European Union
FATF	Financial Action Task Force
FD	Financial Deposits
FDI	Foreign Direct Investment
FIOD-ECD	Dutch Fiscal Intelligence and Investigation Unit and the Economic Control Service (in Dutch: Fiscale Inlichtingen en Opsporingsdienst en de Economische Controle Dienst)
FIU	Financial Intelligence Unit
FSF	Financial Stability Forum
FTR Act	Financial Transaction Report Act
GAO	Government Accountability Office

GDP	Gross Domestic Product
GWK	Border Currency Change Office (in Dutch: Grens Wissel Kantoor)
IBC	International Business Companies
IMF	International Monetary Fund
IRS	Internal Revenue Service
MOT	Dutch FIU (in Dutch: Melding Ongebruikelijke Transacties)
NCC	Dutch Central Catalogue (in Dutch: Nederlandse Centrale Catalogus)
NCCTs	Non-Cooperative Countries and Territories
NVB	Dutch Bank Association (in Dutch: Nederlandse Vereniging van Banken)
ODA	Official Development Aid
OECD	Organization of Economic Cooperation and Development
OFAC	Office of Foreign Act
OFC	Offshore Financial Centre
SIOD	Dutch Social Intelligence and Investigation Unit (in Dutch: Sociale Inlichtingen en Opsporingsdienst)
SIRCA	Securities Industry Research Centre of Asia Pacific
SPE	Special Purpose Entity
SPV	Special Purpose Vehicle
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TFP	Total Factor Productivity
TNI	Trans National Institute
UAE	United Arab Emirates
UN	United Nations
UNDCP	United Nations Drugs Control Program
UNODC	United Nations Office on Drugs and Crime
VAT	Value Added Tax
WODC	Dutch Scientific Research and Documentation Centre (in Dutch: Wetenschappelijk Onderzoek en Documentatie Centrum)
Wtt	Law on Control of Trust Offices (in Dutch: Wet op Toezicht Trustkantoren)
WVV	By the Judge estimated proceeds of a crime (in Dutch: Wederrechtelijk Verkregen Voordeel)

Foreword and Acknowledgements

This book is the outcome of a project on 'The Amount and the Effects of Money Laundering' for the Dutch Ministry of Finance, completed in February 2006 by the Utrecht School of Economics, with the support of scholars of the Australian National University in Canberra. The project participants came from five countries and four disciplines and included in alphabetic order Madalina Busuioc, Joras Ferwerda, Wouter de Kruijf, Greg Rawlings, Melissa Siegel, Brigitte Unger and Kristen Wokke. They have all participated in the project with great enthusiasm, diligence and energy. We thank Madalina Busuioc from Romania, for her knowledge of law and wonderful writing style; Joras Ferwerda from the Netherlands, who dealt with the 44,000 entries of the 220 by 220 matrices and who would not give up until he had found an answer to his research question; Wouter de Kruijf from the Netherlands, who kept control over the research output and organized everything so that the different parts of the book fitted together; Melissa Siegel, a social scientist from the US, who pioneered in unpacking the Walker model for money laundering and who had to collect, organize and deal with a huge amount of new data; Kristen Wokke, a Dutch student who wrote his bachelors thesis on the organization of money laundering policies. Greg Rawlings, an anthropologist from the Australian National University, was the consultant of this project. I, Brigitte Unger, an economist from Austria and the Utrecht School of Economics, was the project leader. Marissa van der Valk and Andrea Naylor gave administrative support. Joost Simons and his wife corrected some of the English. Titia Kloos, Willemien Vreekamp and Frans van Eck did the lay out. I thank this young and sparkling project research team, without whose preceding work, help, and support this book would not have been possible.

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While the research report for the ministry focused on the Netherlands solely, this book tries to incorporate a comparative perspective, by also bringing in money laundering cases from Australia and other countries. Australia is interesting because it is of about the same economic size as the Netherlands. It has a very special location because it is surrounded by a ring of islands of unrest, crime and money laundering, and therefore is an attractive transit country for launderers. Nauru, Vanuatu, Solomon Islands are some of these islands, just to name a few.

The findings of this project received widespread attention in the Dutch media. I am grateful to the Dutch journalists, whose expertise and professionalism allowed a serious public debate. I hope that this book will contribute to enhance the debate between different academic disciplines.

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1. Introduction¹

1.1. MONEY LAUNDERING, RISK MANAGEMENT AND BANK SECRECY

ABN AMRO is one of the world's largest banks. Incorporated in the Netherlands with its headquarters in Amsterdam, it has some 3000 branches and subsidiaries spread over 60 countries. It is valued at some US\$830 billion. In December 2005 the US Federal Reserve Board, the New York Banking Department and the Illinois Department of Financial and Professional Regulation fined ABN AMRO, US\$80 million for violating state and federal Anti Money Laundering (AML) rules and regulations (US Federal Reserve et al. 2005). US authorities, in conjunction with the Central Bank of the Netherlands, found that ABN AMRO lacked adequate risk management procedures and legal review methods; lacked effective systems of corporate governance and audit; transferred and cleared funds and issued letters of credit that contravened US laws; failed to adequately report suspicious activities; did not follow-up on negative findings from internal audits; failed to investigate enquiries referred to its New York branch and overstated its due diligence procedures when dealing with 'high-risk' correspondent banking customers (De Nederlandsche Bank NV, US Federal Reserve Board, State of Illinois and the New York Banking Department 2005, pp. 2–4). Dutch and US authorities found that ABN AMRO had engaged in 'unsafe and unsound practices' contravening the laws of both countries (De Nederlandsche Bank NV, US Federal Reserve Board, State of Illinois and the New York Banking Department 2005, p. 5).

In levying its US\$80 million fine, US authorities found ABN AMRO to be in contravention of three out of the four AML compliance criteria. For example, in failing to maintain an adequate system of internal controls the bank also failed to integrate publicly available data regarding 'shell companies' into its automated monitoring systems. Between August 2002 and September 2003 the North American Regional Clearing Centre processed 20,000 wire transfers totaling US\$3.2 billion for shell companies (which can be Special Purpose Entities [SPEs]) providing corporate vehicles for clients from Russia and the former Soviet Union.² These shell companies incorporated in the US, not some exotic offshore 'tax haven' jurisdiction, could be used to conceal the beneficial identity of their shareholders, including criminals disguised as 'investors'

seeking to launder funds (US Department of the Treasury Financial Crimes Enforcement Network 2005, p. 5). US regulators observed that:

The New York Branch of ABN AMRO failed to adequately evaluate this readily available information and implement sufficient transaction monitoring systems and controls for shell company activity. Instead, and only upon strong urging from regulators, the New York Branch of ABN AMRO commenced an analysis of the activity in August 2003 – one year after many of the transactions occurred (US Department of the Treasury Financial Crimes Enforcement Network 2005, p. 5).

The Financial Crimes Enforcement Network also reported that ABN AMRO's New York branch failed to provide an adequate number of personnel to manage compliance with the US Bank Secrecy Act (BSA)³ and the staff that did work in this area received insufficient training. Staff 'in critical positions' appeared to 'have a lack of knowledge on the detection and reporting of suspicious transactions – a deficiency especially serious considering the substantial risk of facilitating money laundering that confronted the New York Branch of ABN AMRO' (US Department of the Treasury Financial Crimes Enforcement Network 2005, p. 6).

1.2. WIRING IRAN, SANCTION BUSTING WITH LIBYA

This volume seeks to estimate national (with case studies of the Netherlands and Australia) and global volumes of money laundering. Flows of laundered funds have definitive economic effects, particularly on growth and costs of crime. However, estimates of both the amounts and effects of money laundering need to be situated within their legal and regulatory contexts. What is money laundering in one country is not necessarily the same offence in another state. This has an impact on what and how money laundering is measured and how the amounts and effects are calculated. If anything shows more clearly the problems of defining money laundering and providing an accurate global base-line for measuring the amounts and effects of laundered funds, it was ABN AMRO's dealings with Iran and Libya. Half of the US\$80 million fine levied against the bank was authorised by the Office of Foreign Assets Control (OFAC), part of the Department of the Treasury. OFAC regulates and prohibits specified transactions between the US and Iran and Libya (US Federal Reserve et al. 2005). The US Libyan Sanctions Regulations gave force to United Nations (UN) resolutions imposing economics measures against Libya in response to past involvement with international terrorism. All countries agreed to these sanctions and therefore any violation of them could give rise to allegations of money laundering that would be valid across borders. The Iranian Transactions Regulations however, by which Washington imposes sanctions unilaterally on

Iran, are specific to the US. No other major trading nation imposes such measures against Iran. Therefore, a US company dealing surreptitiously with Iran and without approval of the OFAC could be charged with money laundering. Any non-US company in a third country however, is perfectly free to trade with state-owned and private Iranian firms. Because domestic laws govern these transactions as it applies in specific third countries, and not US laws, there are no money laundering charges to be answered. In other words, what constitutes money laundering under US law may not constitute money laundering anywhere else.

ABN AMRO is defined as a foreign bank in the US, including its New York and Chicago Branches. Despite this, OFAC regulations covering Iran and Libya apply to ABN AMRO regardless of whether of not transactions are routed through the US or a third country if they involve US individuals and/or corporate entities. These regulations effectively blur the boundaries between the US and third countries. Up until August 2004 ABN AMRO's New York branch processed wire transfers remitted by Bank Meli Iran. It also honored Bank Meli's letters of credit. These transactions were sub-contracted out to ABN AMRO's third-country branches, which then obscured any reference to Bank Meli (US Federal Reserve et al. 2005, p. 5).

ABN AMRO's Chicago and New York branches were simultaneously dealing with a Libyan state chartered bank registered in the United Arab Emirates, the Arab Bank for Investment and Foreign Trade (ARBIFT). US authorities observed that

'Prior to August 1, 2004, the Chicago Branch of ABN AMRO cleared US dollars checks for ARBIFT. The cleared checks were submitted by one of ABN AMRO's overseas branches, which had arranged for ARBIFT to not endorse or stamp the checks' (US Federal Reserve et al. 2005, p. 6).

These dealings with Iran and Libya were found to violate US regulations, specifically transactions that have cloaking features that can be used to avoid or evade the specific compliance requirement when engaged in commercial or financial ventures with these two countries. In addition to the US\$ 40 million fine (out of the total of US\$ 80 million) levied against ABN AMRO for these specific infringements of the Iranian Transactions Regulations and the Libyan Sanctions Regulations, the OFAC ordered the bank to undertake independent audits. These were deemed necessary to review operations and transactions in ABN AMRO's Dubai (UAE) and Chennai (India) branches to determine the extent of US commercial relations with Iran and India. Presumably, charge information could then be used to launch investigations into specific instances of money laundering.

What is important here, is that such commercial arrangements between US individuals and firms and Iran would only constitute a money laundering offence