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Money laundering

Compiled by Madhavan Venkatachary, Partner – Audit Assurance

We have so often heard the word “money laundering” and assume that it relates to something that does not concern us. This is far from the truth. Money laundering is a sinister practice that impacts all of us in some way or another. Launderers are continuously looking for new routes and ways in which to launder their funds. Economies with growing or developing financial centres, but inadequate controls, are particularly vulnerable as countries with established financial centre implement comprehensive anti-money laundering regimes. Launderers that tend to move their networks to countries and financial systems with weak or ineffective countermeasures exploit differences between national anti-money laundering systems.

According to the Directorate on Corruption and Economic Crime (DCEC) of Botswana, some might urge that developing economies cannot afford to be too selective about the source of the capital they attract. But postponing action against such crime is dangerous. The more it is deferred, the more entrenched organized crime can become. As with the damaged integrity of an individual financial institution, there is a dampening effect on foreign direct investment when a country’s

commercial and financial sectors are perceived to be subject to the control and influence of organized crime.

So what exactly is money laundering?

Money laundering is the process by which large amounts of illegally obtained money (from drug trafficking, terrorist activity or other serious crimes) is given the appearance of having been originated from a legitimate source. In other words, dirty money is “washed” and “cleaned” so as to give it an appearance of being legitimate. It is not wrong to say tax evasion also contributes to money laundering.

The term money laundering was mainly associated with mafia in the past, when these groups had several legitimate businesses which would be financed by money obtained through extortion and drug related activities. Over the years, this practice has become a global threat in ways more than one can imagine. Terrorism and several illegal acts are often financed by money laundered, and we all know how these activities affect us.

How is money laundered?

Money laundering usually has three elements or stages– placement, layering and integration.

1. **Placement**, the stage at which criminally derived funds are introduced in the financial system.
2. **Layering**, a crucial stage of the process in which the property is ‘washed’ and its ownership and source is disguised.
3. **Integration**, the final stage at which the laundered property is re-introduced into the legitimate economy.

This three staged definition of money laundering is highly simplistic. The reality is that the so called stages often overlap and in some instances, for example in cases of financial crimes, there is no requirement for the proceeds of crime to be ‘placed’.

The placement stage represents the initial entry of the “dirty” cash or proceeds of crime into the financial system. Generally, this stage serves two purposes:

- a) it relieves the criminal off holding and guarding large amounts of bulky cash; and
- b) it places the money into the legitimate financial system.

It is during the **placement stage** that money launderers are the most vulnerable to being caught. This is due to the fact that placing large amounts of money (cash) into the legitimate financial system may raise suspicions of officials.

After placement comes the **layering stage**. The layering stage is the most complex and many a times requires international movement of the funds. The primary purpose of this stage is to separate the illicit money from its source. This is done by sophisticated layering of financial transactions that obscure the audit trail and sever the link with the original crime. For example, during this stage money launderers may begin by moving funds electronically from one country to another,

then dividing them into investments placed in advanced financial options or overseas markets. To elude detection, the launderers constantly move the funds by exploiting loopholes or discrepancies in legislation and taking advantage of delays in judicial or police cooperation.

The final stage of the money laundering process is termed the **integration stage**. It is at this stage that money is returned to the criminal from what seem to be legitimate sources. Having been placed initially as cash and layered through a number of financial transactions, the criminal proceeds are now fully integrated into the financial system and can be used for any purpose.

Example of money laundering

A drug dealer deposits large volumes of cash, though individually small, into a bank in Country A that he has an account with. None of the transactions are large enough to raise any suspicion about the source (Placement). He then transfers volumes of cash to several accounts in various countries which have secrecy laws (Countries

B). He disguises these transactions as having been legitimately earned by having several shelf companies in these countries (Layering). All these companies are in fact held by a parent company incorporated in Country A. From the accounts in Countries B, the launderer transfers money back into a legitimate account in Country A, classifying the inflow as returns on investment (Integration).

Note: This example is simplified for ease of understanding, but in reality expert money launderers use several complicated techniques in the layering process.

Money laundering in Botswana and mechanisms to combat it

It is no secret that banks and financial institutions are the most affected in the money laundering process. Many regulators and government authorities all around the world understand the impact that money laundering could have on their economy, thus stringent measures are put in place to combat the issue.

In Botswana, Bank of Botswana has formulated legislations surrounding money laundering in Banks. The BANKING (ANTI-MONEY LAUNDERING) REGULATIONS, 2003 contains detailed regulations that a bank in Botswana has to follow to combat money laundering. The most common mechanisms are:

- obtaining proper identification documents of account holders and following appropriate “know your customer” guidelines,
- verifying source of income when transactions appear suspicious, i.e depositing excessive amounts of cash that is not in line with your normal banking pattern,
- verifying end use of funds when loans/ advances are granted under certain circumstances.

The First Schedule to these regulations contains examples of suspicious activities. Banks must maintain all records on transactions, both domestic and international, for at least five (5) years. These regulations also require banks to report suspicious transactions and to designate an employee at management level as a ‘Money Laundering Reporting Officer’ (MLRO).

The MLRO serves as a contact between financial institutions, the Central Bank and the Directorate on Corruption and Economic Crime (DCEC).

In addition to Bank of Botswana, other regulatory bodies have also issued or are in the process of issuing regulations on money laundering. In fact, every business establishment, big or small may soon have to consider some form of mechanisms to combat money laundering. At the least, having “Know your Customers” policies will safeguard their interests.



Corporate governance - step up the gear

Compiled by Aparna Vijay, Associate Director – Corporate Services

After more than two decades of evolving governance guidance worldwide, many of us may be wondering if there is anything left to improve. Grant Thornton's 2013 research shows that the response to this thought must be an emphatic "Yes!". Economic, commercial and regulatory environments continue to change, and governance practice and guidance must keep pace.

Some common areas of challenges found during a research conducted on the FTSE 350 companies in UK which could be applicable in the Botswana scenario are:

1. Insufficient independent directors on the Board
2. Failure to meet remuneration committee membership criteria
3. Combination of the roles of Chairman and Chief Executive
4. Failure to identify each non-executive director considered to be independent
5. Poor explanations for non-compliance
6. Unacceptable standards of integrated reporting

Good corporate governance supports effective decision making which is based on:

- A well balanced accountability framework that is based on clear communication and organisation wide understanding of roles and responsibilities;
- Robust performance, financial risk and information management systems;
- High standards of conduct.

Good governance in organisations, based on openness, clarity and honest accountability enhances public trust and civic engagement.

Organisations with good corporate governance have the capacity to maintain high-quality services and to deliver improvement. Poor governance arrangements, on the other hand, set the framework within which organisational systems and processes fail to detect or anticipate serious service and financial failures.

Both the private and public sectors in Botswana exert significant influence on the way in which companies are run. This underscores the necessity for their constructive engagement towards

promoting efficiency and probity in the way companies are managed, i.e.: with the aim of creating leadership that is accountable, responsible and transparent in the exercise of power over the companies which they manage.

Guidelines: The Botswana Companies Act

The Botswana Companies Act also provides guidelines to all companies on various aspects of governance through the provisions in various Sections of the Act. Some of these are highlighted in Section 130 with regard the duties of directors:

- a) To exercise their powers in accordance with the Act and company's constitution.
- b) To obtain the authorisation of a general meeting before doing any act or entering into any transaction for which the authorisation or consent of a general meeting is required by the Act or by the company's constitution.
- c) To exercise their powers honestly.
- d) To exercise the degree of care, diligence and skill.

- e) Not to agree to the company incurring any obligation unless the directors believe at that time, on reasonable grounds that the company will be able to perform the obligation when it is required to do so.
- f) To account to the company for any monetary gain, except remuneration, pension provisions and compensation for loss of office in respect of their directorship of any company.
- g) Not to make use of or disclose any confidential information.
- h) Not to compete with the company or become a director or officer of a competing company, unless otherwise as permitted.
- i) Not to use any asset of the company for any illegal purpose.
- j) To transfer forthwith to the company all cash or assets acquired on its behalf.
- k) To attend meetings of the directors of the company with reasonable regularity, unless prevented from doing so by illness or other reasonable excuse.
- l) To keep proper accounting records as required under sections 189 & 190.

The Act also provides various stipulations on the following:

- a) Accounting records to be maintained by a company
- b) Appointment of auditors
- c) Duties and powers of auditors

The wave of new guidance on regulation has kept governance at the top of companies' agendas, causing them to pause and reflect on their practices. We find that almost all listed companies and parastatals have statements with regard Corporate Governance in their Annual Reports.

A few pointers to more effective corporate governance statements:

- describe the role and structure of the board
- give an overview of the work of the board and its committees during the year
- highlight key areas of discussion and decision by the board during the year
- indicate issues that have an impact on strategy or strategic risk

- describe the assurance received by management on the operation of the company
- demonstrate how the board works to further the interests of shareholders

Guidelines: The Botswana Stock Exchange (BSE)

The Botswana Stock Exchange (BSE) has prescribed the Code of Best Practice on Corporate Governance for companies listed on the stock exchange.

Some salient features of the BSE Code of Best Practice on Corporate Governance are highlighted below:

1. The board

- The company should be headed by an effective board.
- The Board should meet regularly - at least once in every quarter of a financial year.
- The Board should have a formal schedule for decision making.

2. Chairman and CEO

- The post of Chairman and Chief Executive Officer should not vest in one person.
- The Chairman of the Board should preferably be an independent non executive director.

3. Board balance

- It is preferable to have a balance of executive and non-executive directors such that no individual or group can dominate decision making.
- Non- executive directors should comprise not less than one third of the Board and should be independent of management and free from any business or other relationship.

4. Appointments to the board

- There should be a formal and transparent procedure for the appointment of new directors to the board.
- A nomination committee should be established to make recommendations to the board on all new board appointments.

- The nomination committee, or in its absence the board as a whole, should annually assess board composition to ascertain whether the combined knowledge and experience of the board matches the strategic demands of the company.

5. Appraisal of board performance

- The Board should periodically (annually) appraise their own performance in order to ensure that prime board responsibilities are satisfactorily discharged.

6. Appraisal of CEO

- The Board should periodically, at least on an annual basis, assess the performance of the Chief Executive Officer.

7. Director remuneration procedure

- Companies should establish a formal and transparent procedure for development of policies on executive remuneration, and for fixing the remuneration packages of individual directors.

8. Remuneration committee

- To avoid potential conflicts of interest, the board of directors should set up remuneration committees of independent non-executive directors that are required to make recommendations to the board.
- Remuneration committees should consist exclusively of non-executive directors who are independent of management.

9. Financial reporting

- The board should present a balanced and understandable assessment of the company's position and prospects.

10. Internal control

- The board should maintain a sound system of internal control to safeguard shareholders' investment and the company's assets.
- The directors should, at least annually, conduct a review of the effectiveness of the group's system of internal controls and should report to shareholders that they have done so.

11. Audit committee and auditors

- The board should establish formal and transparent arrangements for considering how they should apply the financial, reporting and internal control principles, and for maintaining an appropriate relationship with the company's auditors.
- The board should establish an audit committee of at least three directors, all non-executive, with written terms of reference which deal clearly with its authority and duties.

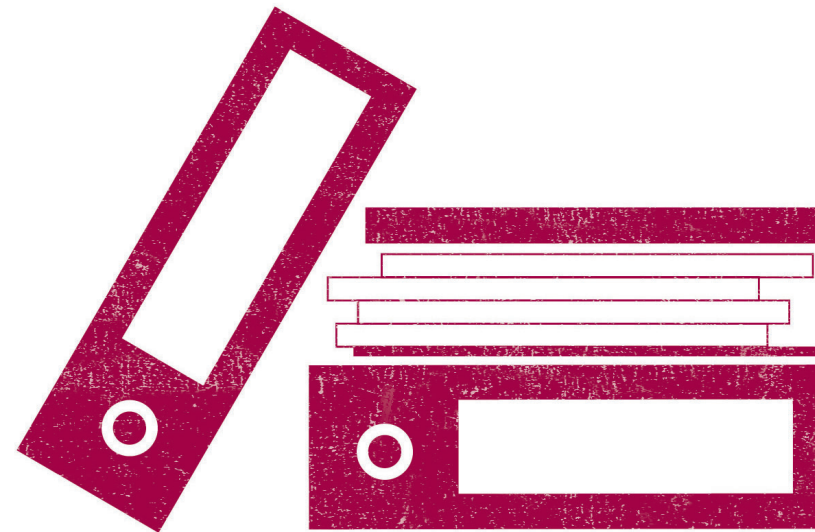
Directors should disclose in the Company's Annual Report, the extent to which the company has adhered to the Code of Best Practice on Corporate Governance, and give reasons where there has been no compliance with the Code.

The Botswana Stock Exchange listing requirements is in the process of being amended and some of the major changes in the proposed amendment of the code of governance are:

1. More detailed responsibility on Board of Directors. The new code also specifies the various powers of the directors.

2. Specific reference to internal audit
3. More detailed reporting requirements for companies
4. New chapter on governance of risk
5. New chapter on information technology and information security
6. New chapter on stakeholder relationships
7. Code will be on "apply or explain" basis

In conclusion, Corporate governance is crucial for the sustenance of any corporate entity in modern day and key to getting investor confidence. Just like democracy in any country, corporate governance is the system of getting a board of directors, subcommittees, management and all the structures that matter in the corporate entity in place to safeguard the business, especially in the absence of the owner.



New IFRS – effective dates

Standard	Title of Standard or Interpretation	Effective for accounting periods beginning on or after	31 Mar 2013 year end	30 Jun 2013 year end	30 Sep 2013 year end	31 Dec 2013 year end	31 Mar 2014 year end
IFRS 7	Disclosures – Transfers of Financial Assets (Amendments to IFRS 7)	1 July 2011	effective for the first time	effective for the first time	effective for the first time	already in mandatory effect	already in mandatory effect
IFRS 1	Severe Hyperinflation and Removal of Fixed Dates for First-time Adopters (Amendments to IFRS 1)	1 July 2011					
IAS 12	Deferred Tax: Recovery of Underlying Assets (Amendments to IAS 12)	1 January 2012	not yet effective	not yet effective	not yet effective	effective for the first time	effective for the first time
IAS 1	Presentation of Items of Other Comprehensive Income (Amendments to IAS 1)	1 July 2012					
IAS 19	Employee Benefits (Revised 2011)	1 January 2013					
IFRS Practice Statement	Management Commentary: A framework for presentation	no effective date as non-mandatory guidance					
IAS 27	Separate Financial Statements (Revised 2011) ¹	1 January 2013					
IAS 28	Investments in Associates and Joint Ventures (Revised 2011) ¹	1 January 2013					
IFRS 1	Government Loans (Amendments to IFRS 1)	1 January 2013					
IFRS 7	Disclosures – Offsetting Financial Assets and Financial Liabilities (Amendments to IFRS 7) ²	1 January 2013					
IFRS 10	Consolidated Financial Statements ¹	1 January 2013					
IFRS 11	Joint Arrangements ¹	1 January 2013					
IFRS 12	Disclosure of Interests in Other Entities ¹	1 January 2013					
IFRSs 10, 11 & 12	Transition Guidance (Amendments to IFRS 10, IFRS 11 and IFRS 12) ¹	1 January 2013					
IFRS 13	Fair Value Measurement	1 January 2013					
IFRIC 20	Stripping Costs in the Production Phase of a Surface Mine	1 January 2013					
Various	Annual Improvements to IFRSs 2009–2011 Cycle	1 January 2013					
IAS 32	Offsetting Financial Assets and Financial Liabilities (Amendments to IAS 32) ²	1 January 2014					
IFRS 10, 12 & IAS 27	Investment Entities (Amendments to IFRS 10, IFRS 12 and IAS 27) ¹	1 January 2014					
IFRIC 21	Levies	1 January 2014					
IAS 36	Recoverable Amount Disclosures for Non-Financial Assets (Amendments to IAS 36)	1 January 2014					
IAS 39	Novation of Derivatives and Continuation of Hedge Accounting (Amendments to IAS 39)	1 January 2014					
IAS 19	Defined Benefit Plans: Employee Contributions (Amendments to IAS 19)	1 July 2014					
IFRS 9	Financial Instruments	to be determined					

¹ these changes (the ‘consolidation package’ and subsequent amendments to the transition requirements and for investment entities) are inter-related and entities are advised to assess their impact collectively

² the changes to IAS and IFRS 7 dealing with offsetting are inter-related

The colour coding gives an indication of when the changes covered in the publication become effective in relation to the specific financial reporting year ends set out in the table.

Key:

- Change already in mandatory effect
- Change effective for the first time
- Change not yet effective



Amendments to tax assessments

The Botswana Unified Revenue Service (BURS) has issued changes on self-assessment tax payers.

The changes and guidelines are as under:

Acknowledgement on filing of income tax returns

- An **“Acknowledgment of Assessment”** will be issued on filing of tax return with BURS, this supersedes the previous form called acknowledgement of receipt of return.
- BURS will no longer issue assessment as previously done, the information disclosed on the tax return submitted will be accepted by BURS as true and correct.
- BURS will on a random basis execute audits on the company’s tax affairs and issue fresh assessments if there are findings on their audits. Other grounds for BURS to issue an assessment is when a company fails to submit a tax return or where the Commissioner General is not satisfied that the tax return filed by the company is true and correct.

Filing of tax returns and tax payments:

- For corporate tax returns with tax dues, payment or proof of payment should be enclosed upon submission of the tax return. BURS will not accept the return in the absence of payment or proof thereof; the tax payer is advised to make an appropriate payment plan with BURS to ensure compliance.

Withholding Tax Alert

- The submission of annual withholding tax return is due on 25th September 2014.
- The last day to pay withholding tax due for the month of September is 15th September 2014.
- BURS will impose penalties and interest for late filling of returns and payment of withholding tax. Non compliance could result in delay of obtaining a tax clearance certificate.



Grant Thornton Botswana at a glance

Facts	#
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Total staff complement	130

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