Regulatory Challenges for Non-Financial regulators

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Introduction

The Real Estate Board is mandated to ensure the professional and ethical conduct of real estate professionals with a view to protecting the interest of the public, especially in pre-payment arrangements.

It does this through the training, registering and licencing of Real Estate Professionals, as well as its monitoring and inspection functions.

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Introduction

In recent times, money laundering and the funding of terrorism have attracted worldwide attention. This has led to the introduction of legislation to combat these and other types of crimes.

Real estate transactions have been identified as one of the many ways money can be laundered. The legislation seeks to establish real estate practitioners as 'gate keepers' to reduce the possibility of the industry being used to bring illegal funds into the formal/legitimate system.

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Objectives of AML Regulations

Among the objectives of POCA and similar regimes are to:

- Deprive criminals of their ill-gotten gains;
- Remove criminal proceeds from use in future criminal activities;
- Deter persons from engaging in criminal activities for benefit;
- Satisfy mandatory international requirements.

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Legislative Framework

There are several pieces of legislation that treat with issues of criminality (or some element thereof) directly and indirectly related to the Real Estate industry. These include:

- The Real Estate Dealers and Developers Act regime
- The Proceeds of Crime Act (POCA) regime
- The Terrorism Prevention Act (TPA) regime
- The Financial Investigations Division Act regime
- The United Nations Security Council Resolutions Implementation Act 2013 (UN Act)

Challenges

There are a number of regulatory challenges that non-financial regulators face. These include, but are not limited to:

- **REGULATORY DEFECIENCIES**
- **REGULATORY PUSH-BACK**
- **LACK OF INFORMATION**
- **MONITORING CHALLENGES**
- **EDUCATION/TRAINING CHALLENGES**
- **LEARNING CURVE**
- **SELF-INTEREST**

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Challenges

REGULATORY DEFECIENCIES

Transactions that by-pass or have elements that by-pass the regulatory body. Examples of this in real estate include:

- Real estate transactions often include attorneys who would collect money on behalf of clients or make purchases on behalf of clients. This makes it harder to track, show proof of funds or even establish the legitimate owner in the transactions .

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Regulation Matters ©

Challenges

REGULATORY DEFECIENCIES

There are certain circumstances where the regulatory regime by-passes certain transactions e.g.

1. The law currently allows persons to develop property without any specific AML checks, despite the fact that Developments account for significant amounts of money. Real Estate Developers are also not included in the Designation Order for mandatory reporting for certain professionals.

Challenges

REGULATORY DEFECIENCIES

2. Developers and individuals can also sell their own property. In such cases, he or she will not usually be well-versed in identifying potential risks and red-flags related to money laundering.

Also, they usually do not require or ask for pertinent information to identify same

Challenges

REGULATORY PUSH-BACK

Practitioners in regulated non-financial industries are often adverse to being regulated in ways similar to financial industries. They are prone to seeing this as:

- Intrusive to their and/or their clients' affairs and dealings
- Unnecessary bureaucracy/red-tape
- Waste of time and man-power
- Inconsistent with their core skills and competencies
- Having limited knowledge of the area but being subject to severe repercussions and penalties none-the-less.

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Challenges

REGULATORY PUSH-BACK

Whether real or perceived, real estate practitioners fear reprisals for making the mandated reports to their designated authority, because it is felt that he or she may be implicated as making the report and subject to repercussions, violent or otherwise.

Challenges

LACK OF INFORMATION

Practitioners often complain that compliance by the general public is difficult because of the lack of information available to practitioners compared to banks/financial institutions. For example:

- A bank may be able to identify a red flag from a significant change in lodgement amounts.
- Banking information and other types of information such as credit scores are not readily available to dealers.
- Financial institutions face less challenges as their products (e.g. bank accounts) may be critical in the lives of most.

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Challenges

MONITORING CHALLENGES

Non-financial regulators, which are typically government agencies, will often face resource constraints in the number of personnel available to them to adequately ‘police’ the industry. This often requires not only investigators, but attorneys to assist in providing legal guidance or pursuing civil matters. By way of example, the Real Estate Board has a team of five Inspectors and one Legal Officer.

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Challenges

EDUCATION/TRAINING CHALLENGES

Resource constraints often affect the level of education and training these entities can make available. Training often requires resources for venue, facilitators, print material, etc.

It is equally costly to engage in public education through the media given the high cost of production and placement in the print and more so, electronic media (TV and radio).

Challenges

LEARNING CURVE

Changes to any existing regulatory regime is usually accompanied by some amount of learning curve on the part of the affected parties and may come with resistance, ignorance and misinformation. Adapting to new regimes depending on the complexity of the changes may take months or years.

For example, the Order requiring real estate practitioners to report to the FID under the Terrorism Prevention Act was published late last year and now requires the real estate industry to make additional filings to its designated authority.

Challenges

SELF-INTEREST

Practitioners in any industry may be unwilling to report suspicious transactions as they may see this as detrimental to their own business and its profitability.

- There may be a feeling that adverse reports may lead to an order to halt that or similar transactions, leading to diminished commissions, from that and future transactions.
- There may also be a feeling that given the risk vs. reward, it is in their best interest to proceed, even where a red flag is identified.
- Fear of loosing clients.

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How can these be overcome?

There are at least three ways in which these challenges can be mitigated if not overcame.

Some of these include :

- Public Education/Training
- Legislative Review/Amendments
- Resource Allocation

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Overcome

How can these be overcome?

PUBLIC EDUCATION/TRAINING

- Public education means placing more effort and resources into educating persons in regulated industries about how to protect themselves and their operations, how to file the necessary paperwork and why this is necessary in protecting themselves and their industry.
- It also requires providing information that will encourage the public to be more co-operative in providing the necessary information required by regulators and agents.

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Overcome

How can these be overcome?

LEGISLATIVE REVIEW/AMENDMENTS

Legislation which guides the respective profession must be [constantly] reviewed to identify where gaps exist that:

- might hamper its ability to be effective;
- its penalties are clear and consistent with the current economy;
- it accounts for all, or most operators in that industry.

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Overcome

How can these be overcome?

RESOURCE ALLOCATION

Regulatory agencies need to be adequately staffed and provided with the resources necessary to effectively monitor and regulate their industry.

This will account for not only staffing, but also address the other compliance mitigating factors such as public education and training.

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Overcome

Conclusion

The threat of impropriety and outright criminality exists in a number of professions and transactions is very real.

Being familiar with potential risks, the relevant legislative framework and most importantly exercising due care and diligence in any transactions, is an important role for all practitioners.

It is also important that Jamaica conforms to international standards agreed to with the UN and FATF such that the country is not at risk of being "black listed".

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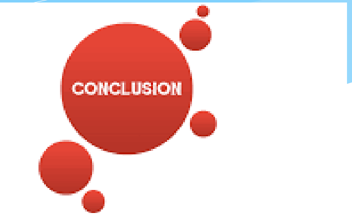

Thankyou

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