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Challenges Posed by International Investment As Illustrated by Citizenship by Investment Programmes

Introduction

1. It is with pleasure that I have accepted an invitation to speak on the topic, Challenges posed by International Investment especially to such an esteemed audience made up of Board members and senior management. I feel quite privileged to be associated with such an eminent group of experts in the field of anti-money laundering and combatting terrorist financing. Since this conference is mainly targeting Board members and senior management, I thought it fitting to start the presentation by indicating that

Background

2. The Board of Directors of a financial institution is ultimately responsible for the implementation and effectiveness of its AML/CFT policies, procedures and controls. Directors can be held personally liable unless they can demonstrate they have taken all reasonable steps to train staff to a requisite level of competence. FATF Recommendation 35 states “Sanctions should be applicable not only to financial institutions and DNFBPs, but also to their directors and senior management.”
3. In the financial sector, we are all grounded in the AML/CFT requirements for banks, which were the institutions that received the initial focus of the FATF and its 40 Recommendations. However, as one moves away from this prototype into different realms of financial venture, things begin to look different. Suddenly, the accustomed concerns for dealing with banking business may begin to disappear or morph into other different or unfamiliar concerns that may, in some respects, become dramatically different. This can certainly be the case when dealing with matters of international investment.
4. However, what needs to be firmly borne in mind is that **the fundamentals do not change**. Instead, what changes may be the techniques one needs to employ to implement them. So, one cannot get away from the fact that even investment institutions or vehicles are required to have written policies and procedures, designate a money laundering compliance officer, train staff, conduct standard and enhanced due diligence, keep records, monitor accounts, report suspicious activities, and have periodic independent audits that check the effectiveness of the AML/CFT system.
5. International investment comes in different forms: investment in real estate, in the hotel and tourist industry, in shares and stocks, in startups in various industries like manufacturing, agriculture etc. The overarching question, it seems to me, is what are their vulnerabilities to money laundering and terrorist financing, and how does one apply adequate and effective safeguards to mitigate the risks. It is important to identify the relevant novel and unfamiliar AML/CFT factors or issues that need to be taken into consideration with a particular investment

vehicle and then determine what is needed to address them. There are too many ways of investing for me to touch on, in these brief minutes, so I will illustrate by using one particular new and emerging means of attracting foreign investment: Economic Citizenship, and extrapolate from that.

6. As the rise of global markets overwhelmed the sustainability of small local producers and industries, and the situation was exacerbated with the recent global financial crisis which dried up liquidity and investment, governments everywhere looked to find new and innovative ways to attract direct foreign investment. One such solution increasingly adopted in the Caribbean and elsewhere is the option of economic citizenship. This is a means for raising investment for development, by meeting the increasing demand for international travel and mobility from persons from the new emerging national economies, and from countries that may face sanctions or which for various reasons have visa restrictions or otherwise have significant difficulties in obtaining visas.
7. Economic citizenship programmes can now be found in Portugal, Malta, Cyprus, and variations in Canada, the UK and the United States.
8. In August 2013 Antigua and Barbuda established a Citizenship by Investment Program, under which, non-nationals can obtain citizenship if they make certain investments that benefit the country and satisfy a number of conditions.
9. However, such programmes bring new and unfamiliar risks and challenges that need to be anticipated, planned for and mitigated with respect to the dangers of money laundering and terrorist financing.

Challenges

10. Economic citizenship programmes with their large investment component and significant fees, are clearly vulnerable to having someone park significant quantities of criminal proceeds in the form of investment funds in a country and its financial system, to eventually be utilised to facilitate prohibited activities such as drug trafficking, arms trafficking, financing of terrorism as well as enjoying an underserved good life. The dividends of such an investment would also be tainted.
11. The influx of investment funds from new and non-traditional sources tests the existing local financial structures and their AML/CFT controls. Local financial institutions may be unfamiliar with programme requirements or assume, wrongly, that their international responsibilities and statutory obligations are the responsibility of the Programme or are even waived.
12. The hard reality is that the money invested in such a program cannot or rather must not escape the rigors of scrutiny set by the FATF 40 Recommendations. As mentioned, the standard considerations remain in place.

Antigua and Barbuda's Programme

13. Given the significant risks and challenges involved, a Citizenship by Investment Program needs to be firmly established in legislation to ensure that essential standards are present *ab initio*, and not open to interpretation, management discretion or political interference.
 - In Antigua and Barbuda, the legal framework includes:— (a) a **Citizenship by Investment UNIT**, the authority for the management and delivery of the program,

which is a new standalone agency, self-funded by processing fees. The Unit is required to be staffed by persons of integrity who cannot be public officers, a CEO who is to continually monitor the program to ensure that its independence and integrity is maintained, and that it is managed in accordance with international best practices. (b) **Citizenship by Investment AGENTS** – these are persons, often attorneys, who are licensed and ordinarily resident in the country. A key safeguard is that the licence may be revoked if the ability, resources, experience or integrity of the Agent falls below the standard that might be reasonably expected; the non-payment of annual fees; or the licensing regulations have not been complied with.

14. **Generally, it is critically important to identify unusual AML/CFT factors in the area of investment with which you are concerned.** As such, the CIP Unit has the mandate to deliver the programme and to fully comply with the anti-money laundering/prevention of terrorism laws and regulations in the jurisdiction. That includes performing or causing to be performed due diligence on every applicant and dependent.
15. The Compliance Unit is responsible for conducting due diligence and enhanced due diligence via a risk based approach. This is a very demanding task, where one of the first questions asked about an applicant is often: “Who is this unknown from half way around the world.” The first element in managing this risk is to be addressed through rigorous application of standards. Applicants are required to provide **verifiable** documentation for their identity, occupation, place of residence, and criminal and civil background.
16. But the first practical realization was that techniques for thorough and credible professional due diligence at this level was not possessed by the CIP Unit, and therefore, the requirement had to be addressed by outsourcing the task to established recognized international professional entities such as the firms of Grand Thornton, IPSA, Bishops, BDO International, Thompson Reuters and others. This immediately gave a level of comfort in the competence of the due diligence in the eyes of the international community. Nonetheless challenges remain.
17. The usually mundane task of verification of identity can become a whole new challenge as the verification of applicants from unfamiliar parts of the world with unfamiliar legal and record keeping systems creates unaccustomed and at times difficult demands. The challenges of vetting applicants who are Politically Exposed Persons, who may in fact have influence in relation to the source of information one is seeking to consult for verification, must be considered. In some states where the third party checkers work as officers of the state, the usual verification checks by private due diligence companies will not unearth anything that the government does not want unearthed, or which will prevent approval of a particular CIP application. It is the Unit’s job to try to identify the possibility of such a thing taking place, and to consider workarounds, if any? A solution is to develop or acquire the know-how to determine, when unfamiliar documentation is reliable. It is likely to require substantial knowledge of the country concerned and its idiosyncrasies and cultural norms.

18. This leads immediately to the next critical consideration: The need to allocate sufficient time to the due diligence process. It seems dumbfounding and unrealistic, to set up an Economic Citizenship Program, and offer applicants a passport in 48 or 72 hours or similar timespans. Let's be clear, such offerings, I think, will tend to bring a jurisdiction into disrepute, which would be reflected in its new economic citizens being turned back at the ports of the countries they are most desirous of visiting, such as the USA, Canada, the UK, members of the European Union. It should further be noted that such a cloud over an economic citizenship program will tend to be viewed by the outside world as reflective of programmes in the region generally, not just of the particular state that has adopted an imprudent practice. Already, Canada has warned one Commonwealth Caribbean country of the likelihood of imposing visa requirements as a direct result of unsatisfactory due diligence.
19. The Money Laundering (Prevention) Act of Antigua and Barbuda and many similar Acts in the Caribbean, require that all entities classified as financial institutions or that accept third party deposits must put in place a Know-Your-Customer (KYC) program to include ascertaining the nature and **source of funds** of their clients. The CIP Agents are also subject to this requirement. This should result in multiple due diligence checks by all obligated entities: the CIP Unit, the CIP Agent and the financial institutions through which funds are brought into the country. This raises the question of duplication of function. The law makes no exception. Due diligence should be thorough, and carried out by all stated entities. But why should it so extensive? Multiple CDD's act as a cross check and corroboration in a very high risk area. Banks would like to be able to rely on the CIP Unit's due diligence, and CIP Agents would like to do the same. But should they? It is a question of cost effectiveness versus efficiency and soundness. I tend to think that, where there is an opportunity to earn significant fees without any obligation to ascertain the integrity of an investor, it opens the door to maximizing fees and eases the turning of a blind eye in letting anyone in. That is an undesirable mindset.
20. Current challenges to the program include:
- understanding and determining the acceptable level of risk in receiving international investment funds.
 - overcoming the inability or reluctance of local Agents to conduct due diligence and establishing a Know-Your-Investor (KYI) program,
 - identifying source of funds and source of wealth of the applicants,
 - accessing reliable information about an applicant's civil and immigration status with a particular country,
 - ensuring reliable and verifiable information presented by the third party due diligence entities employed by the CIP Unit or by CIP Agents.

Recommendations and Solutions

21. Solutions appropriate for investment generally are as follows:- The national risk assessment promoted by the FATF, is critical to properly determining the risks and vulnerabilities posed by various types of international investment. The results of an NRA will put investment risk into proper perspective, and better guide the private sector in their mitigation efforts.

22. All critical parties in an investment process, such as CIP Agents in Economic Citizenship, may need to establish Know-Your-Investor (KYI) policies and procedures in accordance with the level of risk they are taking on board. A sector specific code of conduct can be a guide to carefully scrutinizing investors who are being solicited.
23. Keep current with AML/CFT requirements, for example: keep application forms updated to ensure that proper and adequate information and documentation is captured on source of funds and wealth.
24. Sharing of information between competent authorities is important: In Economic Citizenship Programmes there is a need to establish links with other immigrant investor programmes both in the region and internationally to ensure that the Unit has the ability to collect information as it relates to an applicant's immigrant status with a particular country. Moreover the countries of the region should collaborate to share data on rejected candidates to broadly protect their reputation and integrity. Likewise, international investment programmes in general would be well advised to arrange for sharing of information with their counterparts in other countries to enable the acquisition of pivotal due diligence information on applicants.
25. The global demand for dependable travel documents is such that the probability is very high that high-risk applicants would make multiple applications of multiple jurisdictions, so this must be addressed. Likewise, in other investment areas, criminals who are unable to place their proceeds in a desirable investment upfront will look for alternate approaches to placement of illicit funds. So a network of informed due diligence agents will be very beneficial to trapping information that might expose such attempts to infiltrate an investment programme.
26. Critical due diligence information should not be uncritically taken at face value. Reliance on third party introducers may be unavoidable. Therefore, periodic evaluation should be conducted of third party due diligence facilitators to assess their ability and the quality of information that they can provide.

In conclusion, we all know that International Investment Programmes have the ability to attract significant foreign capital. The challenge to investment administrators, board members and government regulators is to control and mitigate the risks through carefully implemented AML/CFT systems. Turning a blind eye to fraud and corruption in the light of substantial inflow of funds by conducting substandard due diligence may be the greatest risk and is a path to ultimately bringing your sector, industry or country into disrepute. Perhaps the best safeguard is the competence, integrity and leadership of the Board, Owners and Senior Management of an investment organization, which can foresee and take advantage of the dividends of a good reputation derived from sound practice. I wish to adopt this quote by an anonymous author, who stated ***“Success without Integrity is Failure.”*** Ladies and gentlemen, let's continue to make every effort to attract good, sound investments capable of weathering, as they should, the AML/CFT scrutiny of the persons, and entities with which we will partner. ***Wisdom is knowing the right path to take Integrity is taking it.*** Know and examine your AML/CFT risks and then create the environment for a better future for all of us. Thank you for your patience and thank you for listening. God bless.