

**A LEGAL ANALYSIS ON MONEY LAUNDERING IN THE FOOTBALL
INDUSTRIES OF THE UNITED STATES OF AMERICA, ENGLAND AND
MALAYSIA**

GURU DHILLON (93321)

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MALAYSIA**

GURU DHILLON (93321)

A Thesis Submitted to the Ghazali Shafie Graduate School of Government
in fulfillment of the requirements for the Doctor of Philosophy
Universiti Utara Malaysia

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ABSTRAK

Kajian ini merupakan satu analisis undang-undang terhadap aktiviti pengubahan wang haram dalam industri bola sepak Amerika Syarikat, England dan Malaysia. Isu-isu kontroversi yang timbul ialah pertama, maklumat terkini mengenai tahap aktiviti pengubahan wang haram dalam industri bola sepak yang disasarkan tidak dapat dikenalpasti. Kedua, tiada peruntukan spesifik dalam undang-undang pengubahan wang haram atau peraturan-peraturan bola sepak untuk meregulasikan pengubahan wang haram dalam industri bola sepak yang disasarkan. Ketiga, penguatkuasaan pengubahan wang haram dalam industri bola sepak yang disasarkan amat menghampakan dari aspek pendakwaan kes yang amat kurang. Kajian ini telah memeriksa tahap kelaziman pengubahan wang haram dan telah menentukan keberkesanan undang-undang dan peraturan-peraturan bolasepak semasa serta mekanisme penguatkuasaan dalam negara-negara industri bola sepak yang disasarkan. Tipologi pengubahan wang haram serta kajian kes dari kelab-kelab bolasepak telah dikemukakan dan dianalisis. Semua Konvensyen, Perjanjian, Undang-Undang Pengubahan Wang Haram, Peraturan-Peraturan Bolasepak yang berkaitan serta *Financial Action Task Force (FATF) 40 + 9 Recommendations* dan *FATF 2012 Recommendations* telah dikaji dengan teliti. Di samping itu, laporan dari pelbagai organisasi yang berkaitan telah diselidik dan kesimpulan yang sesuai telah dikemukakan. Temubual dengan pakar-pakar pengubahan wang haram juga telah dilakukan untuk meneguhkan penemuan am kajian ini. Kajian ini mendapati bahawa pengubahan wang haram dalam industri bola sepak yang disasarkan adalah pada tahap lazim, sementara Undang-undang Pengubahan Wang Haram dan Peraturan-Peraturan Bolasepak serta badan penguatkuasaan adalah tidak berkesan untuk meregulasikan aktiviti pengubahan wang haram dalam industri bolasepak yang disasarkan. Pelbagai reformasi seharusnya dilaksanakan oleh Amerika Syarikat, England dan Malaysia untuk membendung gejala pengubahan wang haram dalam industri bolasepak yang disasarkan. Adalah disyorkan untuk menerima pakai Kod Cricket Anti-Rasuah India, menerima pakai peruntukan yang tertentu dalam Undang-undang Pengubahan Wang Haram Argentina yang meregulasikan industri bolasepak Argentina serta menerima pakai cadangan untuk meneguhkan mekanisme penguatkuasaan dalam perjudian atas talian. Semua persoalan kajian telah berjaya dijawab dan objektif kajian yang ditetapkan pada permulaan kajian ini telah dicapai.

Kata kunci: Industri Bola Sepak Amerika Syarikat, England dan Malaysia, Kelaziman, Mekanisme Penguatkuasaan, Peraturan-Peraturan Bolasepak, Undang-Undang Pengubahan Wang Haram.

ABSTRACT

This study is a legal analysis on money laundering activities in the football industries of the United States of America, England and Malaysia. Firstly, the problems that surfaced were that there is no up to date information on the current levels of money laundering instances in the targeted football industries. Secondly, there are no specific provisions in the general Anti-Money Laundering Laws and Football Regulations governing money laundering in the targeted football industries. Thirdly, the enforcement mechanisms regulating the football industry appear ineffective as the targeted football industries have been somewhat spared from any money laundering prosecutions. This study examined the prevalence of money laundering, determined the effectiveness of the general Anti-Money Laundering Laws and Football Regulations and the accompanying enforcement mechanisms in the targeted football industries. Money laundering typologies and case studies from Football Clubs were highlighted and analyzed. All relevant Conventions, Treaties, Anti-Money Laundering Laws, Football Regulations, the Financial Action Task Force (FATF) 40 +9 Recommendations and the latest FATF 2012 Recommendations have been thoroughly examined. Relevant reports by various organizations were inspected and apt conclusions were highlighted. Interviews with money laundering experts were also conducted to supplement the general findings. It was found that money laundering is prevalent in the targeted football industries, the general Anti-Money Laundering Laws and Football Regulations as well as the enforcement mechanisms are ineffective in regulating money laundering activities in the targeted football industries. It has been recommended that various types of reforms be implemented by the authorities of the United States of America, England and Malaysia to curtail money laundering activities in their respective football industries. Such recommendations include the adoption of the Indian Cricket Anti-Corruption Code, adopting certain provisions from The Argentina Money Laundering Regulations regulating the football industry of Argentina and to strengthen enforcement mechanisms on online betting. All the Research Questions were successfully answered and all the objectives set at the beginning of the research have been met.

Keywords: Anti-Money Laundering Laws, Enforcement Mechanisms, Football Regulations, Football Industries, Prevalence.

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DEDICATION

TO MY FATHER, MOTHER, BROTHER AND DEAREST FAMILY,
WITHOUT YOU, THIS WORLD WILL BE A DESERT,
WITH YOU, ITS AN ETERNAL RAINBOW OF HOPE
WITH ALL MY LOVE

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LIST OF ABBREVIATIONS

ACA	Anti-Corruption Act 1997
ACSU	Anti-Corruption and Security Unit
ADAA	Anti-Drug Abuse Act 1988 (ADAA)
AFA	Argentina Football Association
AFC	Asian Football Confederation
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Act 2001
AMLATFA	Anti-Money Laundering and Anti-Terrorism Financing Act
APG	Asia/Pacific Group on Money Laundering
AusTRAC	Australian Transaction Reports and Analysis Centre
AWAMLA	Annunzio-Wylie Anti-Money Laundering Act 1992
BCCI	Board of Control for Cricket in India
BNM	Bank Negara Malaysia
BSA	Bank Secrecy Act
BSAAG	Bank Secrecy Act Advisory Group
CAF	Confédération Africaine de Football
CDD	Customer Due Diligence
CDB	Control and Disciplinary Body
CFATF	Caribbean Financial Action Task Force
CFCB	Club Financial Control Body
CFT	Counter Financial of Terrorism
CIES	International Centre for Sports Studies
CJA93	Criminal Justice Act 1993

LIST OF ABBREVIATIONS (continued)

COE	Centre of Excellence
CONCACAF	Confederation of North, Central American and Caribbean Association Football
CONMEBOL	Confederación Sudamericana de Fútbol
CTR	Currency Transaction Report
DDA	Dangerous Drugs Act 1988
DTA	Drug Trafficking Act 1994
EAG	Eurasian Group
EGM	Extraordinary General Meeting
ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
EU	European Union
FA	Football Association of England
FAFFP	FA Financial Fair Play Regulations
FAM	Football Association of Malaysia
FATF	Financial Action Task Force
FDS	Fraud Detection System
FIFA	Federation Internationale De Football Association
FinCEN	Financial Crimes Enforcement Network
FININT	Foundation for Research in Financial Intelligence
FIU	Financial Intelligence Unit
GAFI	Grouped'action financière
GAFISUD	Financial Action Task Force on Money Laundering in South America
GFI	Global Financial Integrity
HDFC	Housing Development Finance Corporation

LIST OF ABBREVIATIONS (continued)

HMRC	Her Majesty's Revenue and Custom of UK
HSBC	Hong Kong and Shanghai Banking Corporation
ICICI	Industrial Credit and Investment Corporation of India
ILO	International Labour Organization
IMF	International Monetary Fund
Interpol	International Criminal Police Organization
IRS	Internal Revenue Service
LIC	Life Insurance Corporation
MENAFATF	Middle East and North Africa Financial Action Task Force
ML	Money Laundering
MLAT	Mutual Legal Assistance Treaty
MLS	Major League Soccer
MONEYVAL	Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism
NCIS	National Criminal Intelligence Service
OFC	Oceania Football Confederation
PEPs	Political Exposed Persons
POCA	Proceeds of Crime Act 2002
SARs	Suspicious Authority Reports
SME	Small and Medium Enterprises
SOCA	Serious Dangerous Crime and Police Act 2005
STR	Suspicious Transaction Report

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

Money laundering (ML) as a crime only attracted interest in the 1980s, essentially, within a drug trafficking context.¹ It was from an increasing awareness of the huge profits generated from this criminal activity and a concern at the massive drug abuse problem in western society which created the impetus for governments to act against the drug dealers creating legislation that would deprive them of illicit gains.²

In the past, the term "ML" was applied only to financial transactions related to organized crime.³ Today its definition is often expended by government regulators to encompass any financial transaction which generates assets or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting.⁴

As a result, the illegal activity of ML is now recognized as potentially by individuals, small and large business, corrupt officials, members of organized crime (such as drug dealers or the Mafia) or of cults and even corrupt States or intelligence agencies, through a complex network of shell companies based in offshore tax havens.⁵ The increasing complexity of financial crime, the recognized value of so-called Financial

¹ Australia Institute of Criminology (AIC), *Report of the Anti-money laundering and counter-terrorism financing across the globe: A comparative study of regulatory action* (Canberra, 2011), 23.

² *Ibid.*, 3.

³ MVD International Crime & Fraud, "Money Laundering," MVD International, <http://mvdinternational.com/crime-a-fraud/money-laundering> (accessed June 1, 2013).

⁴ *Ibid.*

⁵ Empire Pacific Investigative Service (EPIS), "Money Laundering," EPIS Global Investigative Solutions, http://www.epis.us/money_laundering.html (accessed July 29, 2013).

Intelligence (FININT) in combating transnational crime and terrorism and the speculated impact of capital extracted from the legitimate economy, has led to an increased prominence of ML in political, social and economic legal debate.⁶

Although there are many regulations in place stemming from the Financial Action Task Force (FATF) Recommendations, it is the intention of the researcher to analyse, in this thesis, to determine the level of ML in the football industries of US, England and Malaysia, the appropriateness of the current laws/regulations and the effectiveness of its enforcement mechanisms.

1.2 Problem Statement

The first problem is that the prevalence of ML activities in the football industries of the United States of America, England and Malaysia has not been determined. Although there are suggestions from certain quarters that the level of ML activities in the targeted football countries could be high, they remain only as mere assertions. An example of such assertion is when, Mr Sepp Blatter, the current President of *Federation Internationale De Football Association* (FIFA) himself publicly admitted at a FIFA conference and is quoted as follows,

“.....Anecdotal evidence tells us that it [money-laundering] is probably quite a massive problem. We know of transfers of imaginary players by third parties and other groups using football in order to wash it and turn dirty money into legitimate funds.”⁷

⁶ Anti-Money Laundering Audit and Compliance (AMLAC), “The 16th Annual Anti-Money Laundering Audit and Compliance Forum,” Institute for International Research, <http://www.iirusa.com/AMLAC2006/2688.xml> (accessed August 27, 2013).

⁷ Paul Kelso, “Fifa’s new transfer system will cut through ‘jungle,’” Telegraph, <http://www.telegraph.co.uk/sport/football/7301303/Fifas-new-transfer-system-will-cut-through->

However, there are clear examples on why ML activities may be prevalent in the targeted football industries. In the US, for example, Los Angeles Galaxy Soccer Club commonly known as LA Galaxy, is owned by US tycoon Philip Anschutz.⁸ In 2002, his telecommunication company, Qwest Inc. was investigated by the Securities and Exchange Commission and the Justice Department for suspicious accounting records.⁹ Anschutz was also involved in corruption charges under the Political Exposed Persons (PEPs).¹⁰ As such, Anschutz has been implicated in a number of predicate offences and ML scandals.¹¹

In addition, in England, Chelsea Football Club, who won the Champion's league in the 2011/2012 season and is a regular Champions League contender are owned by Roman Abramovich. It has been reported that Abramovich has been involved in corrupting Politically Exposed Persons (PEP's) by paying billions of dollars for political favours and protection fees to get his hands on the former Soviet Union's mineral wealth.¹² A person of this stature has a wealth of monies accounted for and yet he can be allowed to own a football club in England.

jungle.html (accessed August 4, 2013).

⁸ LA Galaxy Complete Champion League, "Concacaf Champions League History," LA Galaxy Soccer Club, <http://www.lagalaxy.com/ccl/ccl-history> (accessed May 30, 2013).

⁹ U.S. Securities and Exchange Commission Press Releases, "SEC Charges Qwest Communications International Inc. with Multi-Faceted Accounting and Financial Reporting Fraud," U.S. Securities and Exchange Commission, <http://www.sec.gov/news/press/2004-148.htm> (accessed May 29, 2013).

¹⁰ Ibid.

¹¹ U.S. Securities and Exchange Commission v. Qwest Communications International Inc., 450 F.3d 1185 (D. Colo. 2004).

¹² Dominic Kennedy, "Roman Abramovich admits paying out billions on political favours," Red Ice Creations, <http://www.redicecreations.com/article.php?id=4292> (accessed June 16, 2013).

Moving on, in Malaysia, the situation is less intense as the stakes of its football league are not as high as compared to the football leagues of the US and England, nevertheless predicate offences related to ML like corruption and bribery are very common. In Perlis, nine football players from Perlis FA admitted having contact with a bookmaker who offered them over RM100,000 each if they lost to a weak team.¹³ Only 1 player was charged and the remaining 8 players were found not guilty by MACC officials because of the lack of evidence.¹⁴ The examples above demonstrate that ML activities or predicate offenses related to ML are taking place in the football industries of the United States of America, England and Malaysia but the actual level of ML activities has not been determined.

Secondly, the current AML laws and Football Regulations may not be effective in governing ML activities in the football industries of US, England or Malaysia. The current AML laws and the Football Regulations do not appear to have any specific ML provisions governing ML in the targeted football countries.

In the US, general AML Acts include The Bank Secrecy Act 1970 (BSA), The Patriot Act 2001 (USA PATRIOT Act), The Money Laundering Control Act 1986 (MLCA), The Anti-Drug Abuse Act 1988 (ADAA), The Annunzio-Wylie Anti-Money Laundering Act 1992 (AWAMLA), The Money Laundering Suppression Act of 1994 (MLSA), The Money Laundering and Financial Crimes Strategy Act 1998 (MLFCS) and The Intelligence Reform & Terrorism Prevention Act of 2004. The

¹³ Adib Povera, "Entire team under probe," New Straits Times, <http://www.nst.com.my/latest/entire-team-under-probe-1.36095> (accessed June 18, 2013).

¹⁴ Ibid.

US Football Regulations include The USSF Statute, The Laws of the Game, The Code of Ethics and The Regulation on Players' Agent. All of the general AML Acts and Football Regulations stated above do not appear to have any specific ML provisions regulating ML activities in the football industry of US.

In England, general AML Acts include The Proceeds of Crime Act 2002 (POCA), The Money Laundering Regulations 2007 (MLRs), The Drug Trafficking Act 1994 (DTA) and The Criminal Justice Act 1993 (CJA93). The England Football Regulations include The FA Statute, The Laws of the Game, The FA Handbook and The FA Betting Rules. The researcher would like to state that even these general AML Acts and the Football Regulations do not appear to have any specific ML provisions regulating ML activities in the football industry of England.

Moving on, in Malaysia, general AML Acts include The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA), The Anti-Corruption Act 1997 (ACA) and The Malaysian Anti-Corruption Commission Act 2009 (MACCA). The Malaysia Football Regulations include The Sports Development Act 1997, The FAM Statute and The Disciplinary Code. Once again, the researcher reiterates that these general AML Acts and the Football Regulations do not appear to have any specific ML provisions regulating ML activities in the football industry of Malaysia.

The third and final controversial problem is that current enforcement Bodies that are regulating the United States of America, England and Malaysia could also be

ineffective in bringing Money Launderer's to justice.¹⁵ This is demonstrated by the way the FIFA Enforcement body handles execution of cases. For example, in the alleged corruption case of former FIFA President¹⁶ who was at the time residing in the US, there was a two-chamber Ethics Committee of FIFA which acted as the enforcement authority in this case cooperated with the FIFA Investigatory Chamber and confirmed that Havelange and others did accept bribes from International Sports Limited (ISL) but no action was taken.¹⁷

Even in England, enforcement authorities find it exceedingly difficult to prosecute cases that are related to ML. An example can be seen In *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)*¹⁸ where the HM Revenue & Customs charged Harry Redknapp and Others with tax evasion. However, prosecution of the trial failed to address the matter beyond reasonable doubt. Therefore, he was acquitted.¹⁹

Mohamed bin Hammam, the previous President of AFC, headquartered in Kuala Lumpur, Malaysia was accused by a whistleblower who reported to FIFA, that he

¹⁵ Bureau of International Narcotics and Law Enforcement Affairs, "2013 International Narcotics Control Strategy Report (INCSR)--Volume II: Money Laundering and Financial Crimes Country Database--Montenegro through Suriname," U.S. Department of State, <http://www.state.gov/j/inl/rls/nrcrpt/2013/database/211183.htm> (accessed September 1, 2013).

¹⁶ Fédération Internationale de Football Association, *Statement of the Chairman of the FIFA Adjudicatory Chamber, Hans-Joachim Eckert, on the examination of the ISL case* (Zurich, 2013) , 3.

¹⁷ Ibid.

¹⁸ *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)* 172 JP 388 (Q.B. 2008).

¹⁹ *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)*, 389.

had bribed 40 voters, with an amount of USD \$40,000 each in the FIFA 2011 presidential election.²⁰ Although he was banned from any activities related to football by the FIFA Ethics Committee,²¹ The Court of Arbitration for Sport (CAS) annulled the ban.²² The examples above demonstrate the ineffectiveness of enforcement mechanisms in the football industries of the United States of America, England and Malaysia, as per the researcher's assertions.

1.3 Research Questions

There are three Research Questions of this study.

- i) What is the prevalence of ML in the football industries of the United States of America, England and Malaysia?
- ii) Are the current AML Acts and Football Regulations effective in governing ML in the football industries of the United States of America, England and Malaysia?
- iii) Are the current Enforcement Mechanisms are effective in bringing Money Launderers to justice in the football industries of the United States of America, England and Malaysia?

²⁰ David Conn, "Mohamed bin Hammam has lifetime Fifa ban annulled by court," theguardian, <http://www.guardian.co.uk/football/2012/jul/19/mohamed-bin-hammam-fifa-ban> (accessed June 4, 2013).

²¹ Ibid.

²² Ibid.

1.4 Research Objectives

The general objective of this study is to provide an analysis on ML in the football industries of US, England and Malaysia.

The specific objectives are as follows:

- i) To determine the prevalence of ML in the football industries of the United States of America, England and Malaysia.
- ii) To determine the effectiveness of current general AML Acts and Football Regulations that regulate ML in the football industries of the United States of America, England and Malaysia.
- iii) To determine the effectiveness of current Enforcement Mechanisms that bring Money Launderer's to justice in the football industries of the United States of America, England and Malaysia.
- iv) To suggest reforms on AML Acts and Football Regulations in the football industries of the United States of America, England and Malaysia.

1.5 Significance of Study

The significance of this study is to provide latest information in relation to ML to all parties that help protect, control and supervise the United States of America, England and Malaysia. This research was done with an aim to determine the prevalence of ML, to study the inadequacies of the laws/regulations and enforcement mechanisms, to provide the necessary findings and subsequently to provide reforms with suggestions and recommendations which in turn will be of immense significance and benefit to the United States of America, England and Malaysia. A research of this magnitude will also contribute to the existing knowledge in the area.

This research could also be a great use of information to practitioners, academics, policymakers and students. Further, it could be a guide for legislators intending to address the current inadequacies in this area. Most importantly, FIFA, The Confederation of North, Central American and Caribbean Association Football (CONCACAF), The *Union of European Football Associations (UEFA)*, The Asian Football Confederation (AFC), The United States Soccer Federation (USSF) , The Football Association of England (FA), The Football Association of Malaysia, (FAM), the FATF as well as ML enforcement authorities will all benefit from reading this study.

1.6 Research Methodology

The research methodology for this study will include Section 1.6.1 to Section 1.6.5 below.

1.6.1 Research Design

The theoretical framework of this research was based on a doctrinal approach i.e library based research and supplemented by expert interviews (Structured Interviews). The reason why the researcher opted for library based research/doctrinal research is because the Research Questions for this study can be answered and the Research Objectives for this study can be achieved by using this approach.

For the expert interviews, the initial interview questions were created by the researcher himself based on the Research Questions and Research Objectives that were posed in this study. The researcher then conducted a pilot study on the feasibility of the initial interview questions. A CEO of a very reputable government agency and three academicians were given the initial set of questions and the approved research proposal for this study to which they then provided the necessary feedback for improvement. The researcher then made the necessary amendments suggested from the pilot study respondents and then sent out the finalized questions to the three expert respondents.

The expert respondents that were selected have all been involved in the governance and regulation of ML activities for a very long time. The researcher selected Mikhail Reider-Gordon who practices as a senior anti- ML consultant in US, John Hardy QC who practices as a senior barrister in law from Gray's Inn's of Courts in London and The Head of the ML Unit from 1 of the enforcement agencies in Malaysia, who had stated expressly the desire for anonymity due to the prohibition under the Official Secrets Act of Malaysia.

The researcher chose these 3 experts because all of them had more than 20 years' experience in the regulation of ML activities in their respective countries. The researcher had informally approached some experts from the football industries, but these persons stated that they had absolutely no knowledge on ML activities in the football industry, hence the researcher decided not to interview them as it would not have helped in answering the researcher's research questions in this study.

The researcher chose the three countries which are the United States of America, England and Malaysia for the purpose of this study because these countries are part of three different confederations namely CONCACAF, UEFA and AFC respectively. The justification behind this is that there are 6 confederations worldwide and choosing 3 confederations would provide a fair analysis in answering the research questions of this study effectively. Another reason is that these confederations provide all their General AML Acts and Football Regulations in English, hence there was an ease of reference when compiling the data and analysing them, since the requirement for this study is to do it in the English language.

1.6.2 Research Scope

The scope of this study focussed on the legal analysis of ML in the football industries of the US, England & Malaysia with parameters set concentrating on ML prevalence, General Anti-Money Laundering Laws and Football Regulations and Enforcement.

1.6.3 Types of Data

The primary data for this study was taken from statutes, regulations, expert interviews, select cases, The FATF documents and reports, International Treaties, International Conventions, General AML Laws and Football Statutes and Regulations.

The secondary data for this study was taken from textbooks, articles from journals, law reviews, sources from the Internet and press reports.

1.6.4 Data Collection

The researcher had employed two methods in the collection of primary and secondary data.

Firstly, the researcher used the Library method that included The General AML Laws/Regulations, Select cases and the FATF GAFI report. In addition, the researcher also collected data from textbooks, articles, legal reviews, data from the websites of the FATF, Enforcement Agencies as well as from Legal Courts of the targeted countries as well as data from FIFA, CONCACAF, UEFA, AFC, USSF, FA England, FAM Malaysia.

Secondly, the researcher used the Interview method that included a Pilot study and subsequently designed a structured interview whereby three respondents that were ML experts were interviewed and data was collected.

1.6.5 Data Analysis

The researcher selected the Analytical Method since the study is purely on the analysis on the levels of ML Prevalence and determining the effectiveness of General AML Laws and Football Regulations and ML Enforcement mechanisms. This method usually handles legal research by identifying the relevant rules and principles, by examining cases, statutes etc.²³ It also analyses and explain such rules and principles by breaking down the rules and identifying their constituent elements, identifying the relationship between the elements; and identifying the relationship between these rules and principles in the relevant legal disciplines.²⁴

The nature of this study required analysis of Reports, Case studies, AML laws and Football Regulations. Hence, the Analytical Method was the most suitable method of analysing the data collected i.e because it revolves around determining ML Prevalence, the effectiveness of the AML Laws and Football Regulations and the effectiveness of Enforcement mechanisms. Last but not least, the researcher states that Research Questions 1, 2 and 3 were answered and all the Research Objectives for the study were achieved by using the Analytical Method.

1.7 Limitation of Study

This research is of a pioneer status. As such, the limitation is that there is not a wealth of readily made information lying around from previous literary work on this specific area which is ML in the football industry, but the researcher has persisted

²³ Anwarul Yaqin, *Legal Research and Writing* (Selangor: Malayan Law Journal Sdn Bhd, 2007), 16.

²⁴ Harold H. Kassarian, "Content Analysis in Consumer Research," *Journal of Consumer Research* 4, no. 1 (June 1977): 18.

with the existing AML Laws and Football Regulations and feedback gained from expert interviews in order to overcome this limitation.

1.8 Chapterization

The study is divided into seven Chapters. Chapter One is the introduction that presents the problem statements, the Research Questions and objectives, the methodology and the limitation of the study. Chapter Two provides the initial literature review of the study. Chapter Three scrutinizes the FATF Report on football with an emphasis on typologies. This Chapter then provides an analysis of two football clubs from each of the selected countries.

Chapter Four provides a complete analysis on the effectiveness of current football regulations and relevant AML regulations in governing ML activities in the United States of America, England and Malaysia. Chapter Five deals with a study on the effectiveness of the current enforcement mechanisms in governing ML in the United States of America, England and Malaysia. Chapter Six provides feedback from AML experts, the researchers suggested reforms and concludes with three recommended models whilst Chapter Seven ties up the study with a conclusion.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

In this chapter the researcher firstly provided the definition of operational terminologies for this study. The researcher then reviewed literature on the brief history of ML, followed by literature on the legal definition of ML in the United States of America, England and Malaysia,. Subsequent to the above, the researcher then provided literature to show how ML occurs generally. Following which, the researcher then provided literature describing the traditional and modern methods of ML thereafter describing the common occurrences of ML and then providing literature explaining the legal means of combating ML.

After providing literature reviews for ML, the researcher then reviewed literature concerning the brief history of football followed by literature on the football industry being a magnet that attracts lot of money. In addition, the researcher reviewed literature on the vital components that form the football industry and how particular instances of ML or predicate offences related to ML are happening amongst the vital components of the football industry. The researcher then reviewed literature concerning regulatory authorities that regulate the football industry. Finally, the researcher reviewed the FATF GAFI Report on Football 2009 that identified ML happenings in the football industry.

The researcher states that although the literature that was reviewed encompassed different themes, such themes are interconnected for the purpose of this study as they allow the reader to have a deeper understanding on ML and football respectively, the legalities circumventing ML and football respectively and the suggested nexus between ML and the football industries.

2.2 Definition of Operational Terminologies

The researcher's definition of the operational terminologies is as follows:

- A) Analysis** - The act of analysing something-(Cambridge Advanced Learner's Dictionary)
- B) Money Laundering** - The crime of moving money that has been obtained illegally through banks and other businesses to make it seem as if the money has been obtained legally- (Cambridge Advanced Learner's Dictionary)
- C) Football Industries** - It is a market in which people, activities, business, and organizations involved in producing, facilitating, promoting, or organizing any activity, experience, or business enterprise focused on football. It is the market in which the businesses are products offered to its buyers are sports related and may be goods, services, people, places, or ideas- (Researcher's Definition)

The researcher would like to state that the definitions provided above have been adopted by the researcher throughout the study.

2.3 History of Money Laundering

The history of ML can be traced back from the Chinese merchants who practiced ML activities to gain profits through illegal activities.²⁵ Such illegal activities occurred in Europe as well during the medieval times where financiers created ingenious methods to evade the Roman Catholic Church's disapproval of usury (lending money at interest).²⁶ However, such practice was not known as "ML" until the 1920s, shortly before the prohibition era in the United States.²⁷

2.4 The Legal Definition of 'Money Laundering':

2.4.1 The Main ML Acts in the targeted countries

The legal definition of ML has been extracted from the main ML Acts namely The Patriot Act 2001 from the US, The Proceeds of Crime Act 2002 (POCA) from England, and the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA).²⁸ The relevant sections within the main Acts in the targeted football countries are listed in the subsequent sub-sections.

2.4.1.1 US – The Patriot Act 2001 (s 315)

S 315 states that ML Crimes are any crime of violence; bribery of a public official; theft, embezzlement, or misappropriation of public funds; certain smuggling or export control violations; and, offenses for which the U.S. would be obliged to

²⁵ Ignacio R. Bunye, "Laundering History," Speaking Out, http://speakingout.ph/speakingout_archives/speakingout2012/feb2712.php (accessed August 22, 2013).

²⁶ Hannah Purkey, "The Art of Money Laundering," *Florida Journal of International Law* 22, no. c (2010): 3, <http://www.lexisnexis.com.proxyvlib.mmu.edu.my/my/academic/> (accessed May 12, 2013).

²⁷ Ibid.

²⁸ *USA Patriot Act of 2001*, Public Law 107-56, 107th Cong., 1st sess. (October 26, 2001), 2.; *Proceeds of Crime Act, 2002*, c. 29.; *Anti-Money Laundering and Anti-Terrorism Financing Act, 2001*.

extradite alleged offenders.²⁹ Also added would be certain offenses under the U.S. criminal code relating to customs, importation of fire arms, firearms trafficking, computer fraud and abuse, and felony violations of the Foreign Agents Registration Act.³⁰

2.4.1.2 England – Proceeds of Crime Act 2002 (ss. 340(11), 327, 328 and 329)

Ss 340(11)³¹ states that ML is an act which—

- (a) constitutes an offence under section 327, 328 or 329,
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

S 327 explains that an ML offence is committed when a person conceals criminal property;³² disguises criminal property;³³ converts criminal property;³⁴ transfers criminal property;³⁵ removes criminal property from England and Wales or from

²⁹ *USA Patriot Act*, § 315.

³⁰ *Ibid.*

³¹ *Proceeds of Crime Act, 2002*, sec. 340 (11).

³² *Ibid.*, sec. 327 (1) (a).

³³ *Ibid.*, sec. 327 (1) (b).

³⁴ *Ibid.*, sec. 327 (1) (c).

³⁵ *Ibid.*, sec. 327 (1) (d).

Scotland or from Northern Ireland.³⁶ S 328 states that a person commits an ML offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.³⁷

S 329 further states that a person commits an ML offence if he acquires criminal property;³⁸ uses criminal property;³⁹ has possession of criminal property.⁴⁰ S 340 (3) states that property is criminal property if it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or part and whether directly or indirectly),⁴¹ and the alleged offender knows or suspects that it constitutes or represents such a benefit.⁴²

2.4.1.3 Malaysia – Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) (s 3)

S 3 states that ML means the act of a person who engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;⁴³ acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity;⁴⁴ or conceals, disguises or impedes the establishment of the true nature, origin, location, movement,

³⁶ Proceeds of Crime Act, 2002, sec. 327(1) (e).

³⁷ Ibid., sec. 328.

³⁸ Ibid., sec. 329 (1) (a).

³⁹ Ibid., sec. 329 (1) (b).

⁴⁰ Ibid., sec. 329 (1) (c).

⁴¹ Ibid., sec. 340 (3) (d).

⁴² Ibid., sec. 340 (3) (e).

⁴³ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001, sec. 3 (a).

⁴⁴ Ibid., sec. 3 (b).

disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity,⁴⁵

where —

(aa) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or

(bb) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity....⁴⁶

In a nutshell, ML is clearly defined in the main statutes in the targeted nations of US, England and Malaysia.⁴⁷ ML encompasses any proceeds, monies or assets derived from any illegal Act or omission to Act and such proceeds may be forfeited.⁴⁸

2.5 Methods of ML (Traditional and Modern)

ML is usually conducted in three steps. Firstly, placement is the primary point of entry for money originating from criminal proceeds.⁴⁹ Secondly, the layering, which is related to the formation of complicated systems of transactions that intend to obstruct the connection between the primary entry point and the end of the

⁴⁵ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001, sec. 3 (c).

⁴⁶ Ibid., sec. 3 (bb).

⁴⁷ *USA Patriot Act*; Proceeds of Crime Act, 2002.; Anti-Money Laundering and Anti-Terrorism Financing Act, 2001.

⁴⁸ *USA Patriot Act*; Proceeds of Crime Act, 2002.; Anti-Money Laundering and Anti-Terrorism Financing Act, 2001.

⁴⁹ Bala Shanmugam and Haemala Thanasegaran, "Combating money laundering in Malaysia," *Journal of Money Laundering Control* 11, no. 4 (2008): 331–332, http://www.emeraldinsight.com/journals.htm/journals.htm?articleid=1752271&show=html&WT_mc_id=alsoread& (accessed May 16, 2012).

laundering cycle, and the final step is the integration which is linked to the return of the illegitimate monies to the legitimate economy for withdrawal at a later date.⁵⁰

2.5.1 Traditional Methods

There are a wide variety of traditional ML methods.⁵¹ Merchandise laundering has been among the oldest method where precious earth material such as gold and gems are bought and sold at the border of the geographical area.⁵² Another method of merchandise laundering is by the way of barter trade trading system where it could be offered in exchange for “legalising” money.⁵³

The underground banking system is another method of ML traditionally used.⁵⁴ In China, the Chinese invented the simplest form of activity called as “*fei chien*” where the dirty money is deposited in a gold shop in Guangzhou where the owner will have it over stamped dollar notes with a mark at the side.⁵⁵ It was then presented to the moneychanger in the Chinatown of London or anywhere in the world where the owner will provide him with the cash of the amount transacted in Guangzhou.⁵⁶

⁵⁰ Shanmugam and Thanasegaran, “Combating money laundering,” 333.

⁵¹ Australian Institute of Criminology, *Money Laundering Methodologies and International and Regional Counter-Measure*, by Rick McDonnell, (Sydney, 1998), 2.

⁵² *Ibid.*, 8.

⁵³ Anthony Kennedy, “Dead fish across the trail illustrations of money laundering methods,” *Journal of Money Laundering Control* 8, no. 4 (2005): 305,

<http://www.emeraldinsight.com/journals.htm?articleid=1533941&> (accessed March 22, 2012).

⁵⁴ Bertil Lintner and Vladivostok, “Organized Crime Spreading Tentacles,” Asia Pacific Media Service, http://www.asiapacificms.com/articles/russia_chinese_crime/ (accessed May 30, 2013).

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

In India and Pakistan⁵⁷, the method of traditional ML is quite alike to the Chinese “*fei chien*” but is more commonly referred to as the *Hawala* method where illegal monies could be laundered from one place to another, for example between India and Malaysia in a matter of hours or minutes even by a phone call.⁵⁸

2.5.2 Modern Methods

According to an agency in Financial Transactions and Reports Analysis Centre of Canada (FINTRAC),⁵⁹ ML is more modernly categorised into three main areas; Group based, Financial based and Country based. Group based activities are agendas by certain organisation or groups such as mafia or organised crime groups to launder monies.⁶⁰ Financial based activities are carried out by transferring money from different sources via banking institutions that includes the offshore banking industry as well as creditor companies.⁶¹ Country based activities are activities of ML being carried out in certain countries which have deficiencies in the mechanism of curbing ML.⁶²

⁵⁷ Andrew Schouten, *Unlicensed Money Transmitting Businesses and Mens Rea under the USA PATRIOT Act*, in the University of the Pacific Publication, 1101, http://www.mcgeorge.edu/Documents/Publications/07_Schouten_MasterMLR39.pdf (accessed May 22, 2012).

⁵⁸ Dr Bala Shanmugam, “Hawala and Money Laundering: A Malaysian Perspective,” *Journal of Money Laundering Control* 8, no. 1 (2004): 37, <http://www.emeraldinsight.com/journals.htm?articleid=1533917> (accessed November 22, 2013).

⁵⁹ FINTRAC, “Financial Transactions and Reports Analysis Centre of Canada,” Financial Transactions and Reports Analysis Centre of Canada, <http://www.fintrac-canafe.gc.ca/intro-eng.asp> (accessed August 22, 2013).

⁶⁰ *Ibid.*

⁶¹ Shanmugam, “Hawala and Money Laundering,” 38.

⁶² *Ibid.*

In a nutshell, there are many methods and the researcher would like to quote Gerald Moebius who is a representative from the United Nations Office of Drug and Crime (UNODC) that specialises in ML offences:

“...there are so many ML systems existing that it's difficult to note all of them, but all of them have common features and practically they mean only the endless variations of the same theme...”⁶³

2.6 Occurrences of Money Laundering

2.6.1 Underground Remittance Systems

2.6.1.1 Hawala Remittance System

‘Hawala’ is defined as money that is being transferred without actual money movement and is considered as a substitute or corresponding remittance system.⁶⁴ It functions inside or outside of the ‘traditional’ banking or financial networks.⁶⁵ It has been practised in India long before the existence of western banking practices.⁶⁶ It is more often than not, operating with complete legitimacy, and its services are advertised heavily and effectively.⁶⁷ Hawala can be differentiated from other remittance systems, in that it a system of transferring money on trust and extensive use of affiliations.⁶⁸ Money is transferred by communications between members of a network called hawaladars or hawala dealers.⁶⁹

⁶³ UNDOC, “UNODC and Money-Laundering Countering the Financing of Terrorism,” United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/money-laundering/index.html?ref=menuaside> (accessed June 19, 2012).

⁶⁴ Financial Crimes Enforcement Network and International Police Organization, *The Hawala Alternative Remittance System and its Role in Money Laundering*, by Patrick M. Jost, (Vienna, 2011), 5.

⁶⁵ Ibid.

⁶⁶ United Nations, *Informal Money Transfer Systems : Opportunities and Challenges for Development Finance*, (New York, 2002), 5.

⁶⁷ Financial Crimes Enforcement Network, *The Hawala Alternative*, 8.

⁶⁸ United Nations, *Informal Money*, 7.

⁶⁹ Financial Crimes Enforcement Network, *The Hawala Alternative*, 6.

The Hawala system works in complex processes of transactions as discuss in the figure as follows:

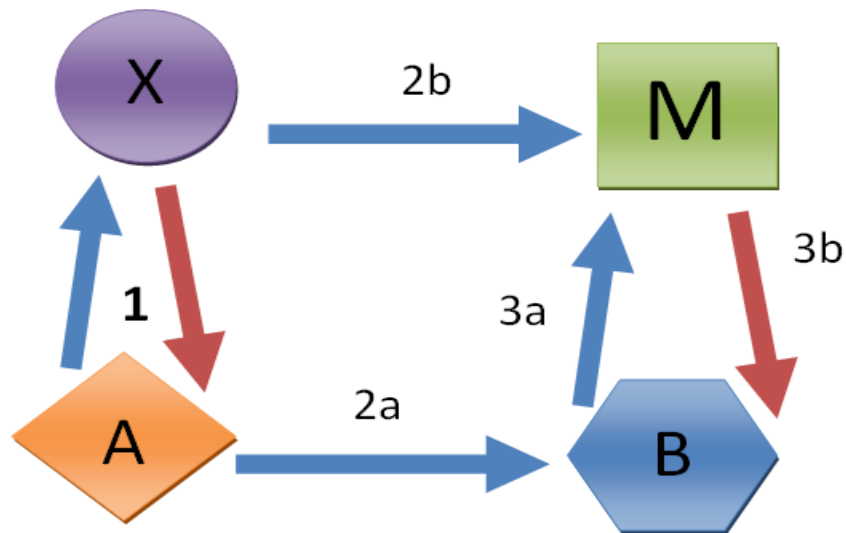


Figure 2.1. The Hawala Alternative Remittance System.

Source: Jost and Sandhu, FinCEN and Interpol.

The figure above shows how Hawala works:

A customer, A (left-hand side) approaches a hawala broker (X) in one city and gives a sum of money (red arrow) that is to be transferred to a receiver, B (right-hand side) in other place, usually foreign city. Along with the money, he normally stipulates a password or keywords to facilitate the transfer of money (blue arrow).⁷⁰

The hawala broker X calls up another hawala broker M in the receiver's city, and

⁷⁰ Ibid., 5-8.

notifies M about the agreed password or keywords, or provides other disposition instructions of the money (2b) (Blue arrow). Then, the intended recipient (B), who also has been informed by A of the password or keywords (2a), now approaches M and conveys to him the approved password or keywords (3a).⁷¹ If the password or keywords is correct, then M discharges the transferred amount to B (3b), usually deduct a small commission. X now basically has to paid M as M had fulfilled his duty to transfer money to B; thus M has to trust X's promise to settle the debt later.⁷²

2.6.1.2 Fei Ch'ien Remittance System

Fei Ch'ien means “flying money or coin” system that evolved during the latter half of T'ang Dynasty.⁷³ It was established due to the expansion of commodity trade within China.⁷⁴ As the Chinese had migrated to many parts of the world, the family system was split but however held by strong bond through a continued flow of remittances from the expatriate unit in support of their family in China.⁷⁵ The expatriate families with stores such as gold shops dominated the business of money transferring from abroad to China.⁷⁶ These *Fei Ch'ien* operations were then expanded to cover the whole country and branches were opened in cities where families had business interests and issued drafts which are presently being referred to as traveller's checks.⁷⁷

⁷¹ Financial Crimes Enforcement Network, *The Hawala Alternative*, 5-8.

⁷² Ibid.

⁷³ Ibid., 3.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ United Nations, “Informal Money Transfer Systems,” 3.

⁷⁷ Ibid.

However, with the emigration of Chinese in the nineteenth century, the *Fei Ch'ien* system became internationalised and this “within-the-family” system of remittance process spread to almost anyone who was willing to use the system and many of the users would use this system to hide their income from the heavy tax burdens imposed by certain governments on the Chinese.⁷⁸

2.6.2 Banking System

The banking system is often plagued with ML scams and schemes.⁷⁹ According to Greg Baldwin, a ML specialist, the concept of ML were once easily recognisable which involve delivering hordes of cash in cardboard boxes, paper shopping bags.⁸⁰ Baldwin provides a classic example of traditional ML: where about USD \$242 million cash was placed into one Miami Bank for only 8 months and the cash was brought to bank in the bearing boxes and bags.⁸¹ In England, the London-based bank, The Hong Kong and Shanghai Banking Corporation (HSBC) was being fined about USD \$ 2 billion due to failing to control the criminals who abused its banking system by ML activities.⁸²

In the latest report by Washington-based Global Financial Integrity (GFI), Malaysia was been ranked as the champion in illegal outflows of funds amounting to USD

⁷⁸ United Nations, “Informal Money Transfer Systems,” 3.

⁷⁹ Purkey, “The Art of Money Laundering,” 6.

⁸⁰ Bunye, “Laundering History.”

⁸¹ Ibid.

⁸² Devlin Barrett and Evan Perez, “HSBC to Pay Record U.S. Penalty U.K. - Based Bank Expected to Admit Money-Laundering Lapses as Part of \$1.9 Billion Agreement,” *The Wall Street Journal*, <http://online.wsj.com/article/SB10001424127887324478304578171650887467568.html#articleTabs%3Darticle> (accessed August 2, 2013).

\$291 billion due to prevalent corruption activities.⁸³ In the said report, it was pointed out that the top 10 FIU's in the world (Malaysia is ranked 5th) as the main regulatory and enforcement authority had not lived up to expectations in their duties to combat corruption and curb ML.⁸⁴ In the case of Malaysia, the report also stated that this could also be a result of significant governance issues affecting both the public and private sectors.⁸⁵ In 2012, HSBC's Global Head of Compliance, David Bagley resigned in the event of admitting the bank had assisted the Sabah Chief Minister, Musa Aman, in a suspicious stunning transaction of the timber corruption proceeds which amounted to USD \$ 38 trillion.⁸⁶

2.6.2.1 Smurfing in Banks

Smurfing money is a method of splitting great amount of monies into many small transactions to escape detection. Smurfing falls under the third stage process of ML, which is structuring.⁸⁷

For example, in England, for transactions above GBP 10,000, there is a requirement to fill a Currency Transaction Report (CTR).⁸⁸ What the money launderer does is he

⁸³ Global Financial Integrity, *Illicit Financial Flows From Developing Countries: 2001-2010*, prepared by Dev Kar and Sarah Freitas, (Washington, DC, 2012), 16.

⁸⁴ Marc Santora, William K. Rashbaum, and Nicole Perlroth, "Liberty Reserve Operators Accused of Money Laundering," *New York Times*, <http://www.nytimes.com/2013/05/29/nyregion/liberty-reserve-operators-accused-of-money-laundering.html?pagewanted=all> (accessed July 26, 2013).

⁸⁵ *Ibid.*

⁸⁶ Sarawak Report 2012, "HSBC's Money-Laundering Scandal – Time To Probe The Musa Connection!," *Sarawak Report*, <http://www.sarawakreport.org/2012/07/hsbcs-money-laundering-scandal-time-to-probe-the-musa-connection/> (accessed June 3, 2013).

⁸⁷ FINTRAC Typologies and Trends Reports – July 2010, "Money Laundering and Terrorist Financing (ML/TF) Typologies and Trends for Canadian Money Services Businesses (MSBs)," *Financial Transactions and Reports Analysis Centre of Canada*, <http://www.fintrac-canafe.gc.ca/publications/typologies/2010-07-eng.asp> (accessed August 30, 2013).

⁸⁸ U.K. Serious Organised Crime Agency, *Suspicious Activity Reports Regime Annual Report 2010*

will break up the money into the sum below 10,000 and deposit it into different accounts with different account holders as ‘runners’ so as to avoid any unwanted attention and avoid detection.⁸⁹

In the landmark US Case⁹⁰, in order to show that a person is guilty of structuring to avoid having a bank file a Currency Transaction Report (CTR) with the IRS, the government must prove three elements: (1) the defendant (or a claimant in a civil forfeiture case) must have engaged in acts of structuring; (2) he must have done so with knowledge that the financial institution involved was legally obligated to report currency transactions — deposits or withdrawals — in excess of \$10,000 to the government; and (3) he must have acted with the intent to evade this reporting requirement.⁹¹

2.6.3 Small and Medium Enterprises (SMEs)

Various methods can be used in SMEs to launder illegal proceeds as it is less suspicious.⁹² For instance, a large deposit is placed for a custom order which is cancelled later, although a small fine is imposed, the launderer will still get back the balance in clean dollars.⁹³ Launderers who practice this method will normally bribe staff to facilitate the transaction.⁹⁴

(London, 2011), 4.

⁸⁹ U.K. Serious Organised Crime Agency, *Suspicious Activity*, 23.

⁹⁰ United States v. MacPherson, 664 F.2d 69, 70 (5th Cir. 1981).

⁹¹ United States v. MacPherson, 71.

⁹² Julia Layton, “How Money Laundering Works,” HowStuffWork, <http://www.howstuffworks.com/money-laundering2.htm> (accessed May 30, 2013).

⁹³ Ibid.

⁹⁴ Ibid.

Also, online auction sites are utilised by launderers to legitimize cash.⁹⁵ They list some items in a deal and then made overpayments that exclude competitive bids, and the seller of the products accepts the overpayment through PayPal.⁹⁶ The deceptive transaction launders the money through a legitimate source and the two crooks divided the take in some pre-arranged fashion.⁹⁷

Another occurrence of laundering money through SME's is via businesses that usually generate huge sums of cash on a daily basis.⁹⁸ These might include, amongst others, marketing businesses, car wash services, pubs and bars, taxis, restaurants, eateries, currency exchanges, art galleries and Laundries.⁹⁹ These kinds of businesses do not require complicated paperwork and it makes the deception much simpler to execute.¹⁰⁰

These businesses known as "front companies" are legitimate in that they provide services that they have been registered to do but the main purpose is to clean the illegal proceeds.¹⁰¹ It works in two methods; the launderer mixes his dirty proceeds with the clean revenues gained by the company or the launderer can just disguise his illicit profits in the legitimate bank accounts of the company and expect the relevant authorities will not notice the suspicious difference between the bank balance and the

⁹⁵ Layton, "How Money Laundering Works."

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Abhishek Dadoo, "Money Laundering," Globalpolitician, <http://www.globalpolitician.com/print.asp?id=4153> (accessed June 22, 2013).

¹⁰⁰ Ibid.

¹⁰¹ Layton, "How Money Laundering Works."

financial statements of the company.¹⁰²

2.6.3.1 Phantom Businesses

Another occurrence of ML is in Phantom businesses. These include amongst others, unnamed shell companies, firms, clinics, eateries etc.¹⁰³ These businesses often act as a tool for laundering illegal proceeds.¹⁰⁴ The US Department of Justice on their official website have just announced that a man was found guilty of running a phantom business trying to defraud Medicare for the amount of USD 13 Million.¹⁰⁵ He had claimed from medicare the costs for medical equipment but actually had no clients nor was any equipment actually bought.¹⁰⁶

In April 2013, the British Prime Minister, David Cameron had called on the European Union and G8 to abolish phantom firms through proposing major reforms by “breaking through the walls of corporate secrecy” which enables tax evasion, ML, and corruption.¹⁰⁷ Global Financial Integrity (GFI) Director Raymond Baker, a long time authority on financial crime added that, the anonymous shell companies are the most common practice for laundering of criminal proceeds, corruption, and tax dodging, and some of these phantom companies even promoted prostitution and the

¹⁰² Layton, “How Money Laundering Works.”

¹⁰³ United States Department of Justice News, “Philadelphia Money Launderer Pleads Guilty in Connection with Brooklyn Medicare Fraud Scheme,” United States Department of Justice, <http://www.justice.gov/opa/pr/2013/July/13-crm-837.html> (accessed August 22, 2013).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Clark Gascoigne, “David Cameron Calls for Abolishing Phantom Firms in Major Transparency Victory,” Global Financial Integrity, <http://www.gfintegrity.org/content/view/610/70/> (accessed August 18, 2013).

financing of terrorism.¹⁰⁸

Besides, GFI studies estimate that anonymous shell companies and tax havens secrecy facilitate the illegal outflow of roughly \$1 trillion from developing countries every year, exacerbating poverty and instability.¹⁰⁹ In addition to the overwhelming effect on global development, the organization's rigorous economic research team led by Dr. Dev Kar, a former senior economist who worked for the IMF concluded that tax haven secrecy and anonymous shell companies drained \$261 billion from Greece and it had led to the European debt crisis, jeopardizing the future of the Euro.¹¹⁰

2.6.4 Financial Investments

Investments are generally divided into two categories, financial which include amongst others, Stocks, Shares, Unit trusts etc.¹¹¹ Secondly, investing into assets which include amongst others the most common of all, the purchase of properties.¹¹²

In laundering of monies through the investment sector, like in the stock market, the 'investor' will continuously deposit money into certain stocks usually with illegal proceeds ranging between USD \$ 7000-8000.¹¹³ The cash may be deposited into the launderer's family members or relatives' account and then the deposits will be

¹⁰⁸ Gascoigne, "David Cameron Calls For ."

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ United States Department of the Treasury, *Money Laundering in the Securities and Capital Markets Case Studies*, prepared by Susan L. Berger, (Washington, DC, 2011), 2.

¹¹² Ibid.

¹¹³ Ibid., 3.

withdrawn by cheques.¹¹⁴

An elaborate investment fraud and ML example is this: According to the US Department of Justice, from July 2004 to March 2008, two United Kingdom citizens, Paul R. Gunter, 64, and Simon Andrew Odoni, 56 and others engaged in a sophisticated investment fraud and ML scheme where valueless stock in hijacked dormant, publicly-traded companies in the US was sold to victim-investors, primarily in the England.¹¹⁵

The scheme was facilitated using boiler room telemarketers, mostly in Spain, who employed high pressure and misleading sales techniques. Gunter's bank accounts in the Middle District of Florida had received more than USD \$127 million from the victim-investors.¹¹⁶ The conspirators swindled victim-investors about USD \$10 million via a FOREX money exchange scheme, which also operated the boiler rooms in Spain.¹¹⁷

As a result, both Gunter and Odoni were charged of three counts for intend to commit mail fraud, wire fraud, and ML, as well as nineteen counts of mail and wire fraud, and fourteen counts of ML. Gunter and Odoni were sentenced to a maximum penalty of 20 years and up to 10 years on each of the ML offences.¹¹⁸

¹¹⁴ United States Department of the Treasury, *Money Laundering*, 4.

¹¹⁵ United States Department of Justice Press Releases, "Two Men Found Guilty In International Investment Fraud And Money Laundering Scheme," United States Department of Justice, http://www.justice.gov/usao/flm/press/2013/apr/20130419_Gunter.html (accessed May 22, 2013).

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

2.6.5 Property Investments

Real estate investment is often an effective and simple way to launder money.¹¹⁹

This is due to the fact that property values can appreciate very fast and it is impossible to determine the exact value of the property as it is highly speculative.¹²⁰

Further, property transactions are ‘as is where is’ basis i.e. as long as the purchaser is agreeable to pay the amount being asked, it is unlikely any of the authorities will interfere especially if the whole transaction is concluded on a cash basis.¹²¹

Organised criminals will purchase the property at higher prices, they do not mind this, with their illegal proceeds and then subsequently resell the property at lower than market value prices in order to “clean” their dirty monies.¹²²

2.6.6 Gambling Activities in Legally Recognised Businesses

2.6.6.1 Casino

ML may also happen in gambling activities, for example, through casinos and betting. Elizabeth Montano, former Chief Executive Officer of AUSTRAC expressed at a conference for gambling:

“Moral judgements aside, our society has determined that certain types of gambling are legitimate and legal activities. We have decided that gambling is an activity that our society should not deny its participants. But we also want to ensure that gambling isn’t used in other activities which our society is not so keen on, like the easy disposal of the proceeds of crime through that activity known as ML”¹²³

¹¹⁹ Financial Crimes Enforcement Network, *Money Laundering in the Commercial Real Estate Industry*, (Washington, DC, 2006), 3.

¹²⁰ *Ibid.*, 5.

¹²¹ *Ibid.*, 7-8.

¹²² Global Agenda Council on Organized Crime, *Organized Crime Enablers* (Geneva, 2012), 18.

¹²³ Australian Transaction Reports and Analysis Centre, *Gambling, Money Laundering and the Proceeds of Crime : A Trifecta ?* (Melbourne, 1998), 2.

According to the Philippines Drug Enforcement Agency (PDEA)¹²⁴, illegal monies from drug transactions are being laundered through casinos by buying chips.¹²⁵ An undated report was obtained from Manila Times where the PDEA reported that the traffickers are more comfortable in laundering the money through casinos because chips are safer to handle than crisp bills.¹²⁶

In Malaysia, The Genting Highlands casino offers account facilities to the client and some “professional money-launderers” put large amount of laundered monies and then subsequently abuse these facilities by withdrawing up to 1 million in cash and then converting them into chips.¹²⁷ They proceed to gamble for a short time and then demand that the balance of their chips be converted into cheques.¹²⁸ Subsequently, they put those clean amounts into their normal accounts. The red flag is only raised at the casino counters when the cash amount exceeds RM 50,000 so ML in the Genting Casino is still a very attractive option.¹²⁹

2.6.6.2 Sports Online Betting

Sports betting is done manually at betting centres, via the phone and the internet. Cockfighting, a popular sport in the Philippines attracts betting and so does the Muay

¹²⁴ PDEA, “Facts About Dangerous Drugs,” Philippines Drug Enforcement Agency (PDEA), <http://www.pdea.gov.ph/drug-trends.html> (accessed July 7, 2013).

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ S Rutra, “Money laundering through casinos,” Free Malaysia Today News, <https://www.freemalaysiatoday.com/category/nation/2012/09/13/money-laundering-through-casinos/> (accessed July 23, 2012).

¹²⁸ Ibid.

¹²⁹ Ibid.

Thai Events in Thailand. Basically, any sport in the world may attract betting.¹³⁰ The researcher in his own article contends that manual betting that is done through a legal betting agent may be regulated but the problem begins when monies are laundered through online betting sites on the internet.¹³¹ For, instance, Football and horse racing betting emerged into the Malaysian gaming market since the 90s and although such sport betting via the internet is illegal in Malaysia, many Malaysians are betting through this method.¹³²

In March 2011, Jean-Francois Vilotte, President of French Regulatory authority for online games (ARJEL), stated that corruption and sports betting are synonymous in that for one to win on the bets suggested there must be an linkage to corruption in ensuring the wager is a winning one.¹³³ This creates serious doubts to the integrity and honesty of the competitions involved.¹³⁴

Sports betting provides a ML opportunity for criminal organisations.¹³⁵ Noel Pons, a specialist in criminal organisations and fraud emphasized that the concentration of numerous of ML and fraud resources in a single irrepressible geographic region tolerates criminals to launder money, but more predominantly to enhance the

¹³⁰ Guru Dhillon, Robert Jeyakumar, Munawir Ridzwan, Ng Yih Miin., "Online Betting - Legislation & Regulation - The Way Forward," *Current Law Journal* 1, no. ix (2012): 2.

¹³¹ *Ibid.*, 15-16.

¹³² *Ibid.*, 5.

¹³³ SportAccord, *Sports betting and corruption - How to preserve the integrity of sport*, prepared by Pascal Boniface, Sarah Lacarriere, Pim Verschuuren, Alexandre Tuailon, Pr. David Forrest, Me Jean-Michel Icard, Jean-Pierre Meyer, Dr. Xuehong Wang, (Lausanne, 2011), 7.

¹³⁴ *Ibid.*

¹³⁵ Noël Pons, "Economie criminelle : vieilles ficelles et ruses insolites," *Pouvoirs*, <http://www.revue-pouvoirs.fr/Economie-criminelle-vieilles.html> (accessed May 4, 2012).

productivity of criminal corruption.¹³⁶ The growth of interests that the criminal fraternity has become extensively involved with betting online is due to the fact betting sites are mostly situated offshore and there is insufficient governance by the regulatory authorities have thus allowed them to be immune.¹³⁷

2.7 Combating ML Activities from a Legal Perspective

2.7.1 International Initiatives in Eradicating the ML Epidemic

The Vienna Convention (1990) and The Palermo Convention (2000) were the first few Conventions of the United Nations advocating restricting ML activities.¹³⁸ These were the creation of the FATF, which established in 1989 as the main body responsible in producing Recommendations and Guidelines in the ML area.¹³⁹ Therefore, in examining the different jurisdictions' anti-ML policy, it is important to take note the conventions and the treaties that the jurisdictions have signed as those will definitely give a great impact in the development of those ML laws.¹⁴⁰

2.7.2 The Financial Action Task Force (FATF)

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body established in Paris in 1989 by the G-7 Summit.¹⁴¹ The objectives of the FATF are to set global standards and promote effective

¹³⁶ Pons, "Economie criminelle. "

¹³⁷ Ibid.

¹³⁸ Dhillon, Jeyakumar, Ridzwan, Miin., "Online Betting," 2.

¹³⁹ Ibid.

¹⁴⁰ Ibid., 9.

¹⁴¹ Hans-Peter Bauer and Martin Peter, "Global standards for money laundering prevention," *Journal of Financial Crime* 10, no. 1 (2002): 71, <http://www.emeraldinsight.com/journals.htm?articleid=1537241> (accessed April 4, 2013).

implementation of legal, regulatory and operational measures for combating ML, terrorist financing and other related threats to the integrity of the international financial system.¹⁴² The FATF is therefore a “policy-making body” which contributes to national legislative and regulatory reforms in these areas.¹⁴³

The FATF is responsible in examining ML techniques and trends, reviewing the action which had already been taken at a national or international level, and setting out the measures that still needed to be taken to combat ML.¹⁴⁴

FATF consist of 8 associate members¹⁴⁵ as follows:

- I. Asia/Pacific Group on Money Laundering (APG)
- II. Caribbean Financial Action Task Force (CFATF)
- III. Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL)
- IV. Eurasian Group (EAG)
- V. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
- VI. Financial Action Task Force on Money Laundering in South America

¹⁴² Bauer and Peter, “Global standards for money laundering prevention,” 71.

¹⁴³ Jackie Johnson and Desmond Lim, “Money laundering has the Financial Action Task Force made a difference,” *Journal of Financial Crime* 10, no. 1 (2002): 8, <http://www.emeraldinsight.com/journals.htm?articleid=1537236&show=html&> (accessed April 4, 2013).

¹⁴⁴ Abdullahi Y. Shehu, “International initiatives against corruption and money laundering an overview,” *Journal of Financial Crime* 12, no. 3 (2005): 221, <http://www.emeraldinsight.com/journals.htm?articleid=1533902&show=html> (accessed April 4, 2013).

¹⁴⁵ FATF, “Members and Observers - The 36 Members of the Financial Action Task Force (FATF),” Financial Action Task Force, <http://www.fatf-gafi.org/pages/aboutus/membersandobservers/#d.en.3147> (accessed July 22, 2013).

(GAFISUD)

VII. Inter-Governmental Action Group against Money Laundering in West Africa

(GIABA)

VIII. Middle East and North Africa Financial Action Task Force (MENAFATF)

The international response to the underground economy has been coordinated by the FATF, where the original 40 recommendations form the basis of almost all international response to ML activity. A further nine recommendations designed to counteract funding to terrorist organisations, were added on June 30, 2003 due to the September 11-2001 terrorist attacks, to form what is now known as the FATF (40+9) recommendations of Anti-Money Laundering (AML) and counter-terrorism financing.¹⁴⁶

Each of the associate members and the jurisdictions under each associates' member should comply strictly with FATF recommendations. At the time of writing this thesis, a new set of recommendations namely the FATF 2012 recommendations has been released and an analysis of the latest recommendations has been provided in Chapter 3.

¹⁴⁶ Financial Action Task Force, Asia/Pacific Group on Money Laundering, and The World Bank, *FATF Guidance - Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion*, (Paris, 2013), 8.

2.7.3 AML Legislation in US, England and Malaysia

While FATF was set as the governing body to provide recommendations of laws to regulate ML on a global scale, member states are required to implement laws to govern the activity of ML in their respective states.¹⁴⁷ For the purpose of this thesis, the main Acts that aid in the governance of AML for the countries of US, England and Malaysia are analysed in detail in Chapter 4.

2.8 History of Football

In Asia, in 5000-300 before century (B.C), football activity firstly appeared in China where it was played by the Chinese militaries and it was called ‘*Tsu Chu*’ at the time. The first football was made of leather and full of fur.¹⁴⁸ In 1000 B.C., the Japanese had invented their own type of football, ‘*Kemari*’ and it was played by two teams with 2 - 12 players. Subsequently, on or about 600 Anno Domini (A.D.), football playing spread to other countries such as Mexico, North and Central America, Great Britain, Italy, Alaska and Canada.¹⁴⁹ In Europe, football, rugby or soccer is believed to have descended from an ancient Greek game of Harpaston, where it is often referred to as a very rough and brutal game.¹⁵⁰

The modern version of the sport originated from England on or about the twelfth century. Football rules and boundaries only came about in the early 1800’s when 7 schools in England which included Harrow, Winchester and Eton decided to form a

¹⁴⁷ Financial Action Task Force, *FATF Guidance*, 9.

¹⁴⁸ topendsports History, “A Football History - from its origin to now,” topendsports, <http://www.topendsports.com/sport/soccer/history.htm> (accessed May 30, 2013).

¹⁴⁹ Ibid.

¹⁵⁰ Hornet Football History, “A Brief History of the Game,” Hornet Football, <http://www.hornetfootball.org/documents/football-history.htm> (accessed July 6, 2013).

football league of their own.¹⁵¹ The rules and boundaries have continued to evolve and so has the development of its vital components to eventually make it the most popular sport in the world today.¹⁵²

2.9 The Cash Cow Football Industry

The football industry covers a wide area of business activities and involves different area of the economy.¹⁵³ Football clubs generate huge amounts of cash through various avenues.¹⁵⁴ The phenomenal growth of sports is largely due to increase in the broadcasting of sports events and the rise in the fees paid by broadcasters for the corresponding rights.¹⁵⁵

The 1966 World Cup hosted by England became the first sport event that being broadcasted around the world with approximately 400 million viewers.¹⁵⁶ As a result, more money flowed into the football industry because of the increased popularity of the football industry.¹⁵⁷ Statistics continue to show that the World Cup Final event is top drawer in relation to worldwide television audiences and in the 2006 World

¹⁵¹ Hornet Football History, "A Brief History."

¹⁵² Ibid.

¹⁵³ A. T. Kearney, "The Sports Market - Major Trends and Challenges in an Industry Full of Passion," AT Kearney, <http://www.atkearney.com/documents/10192/6f46b880-f8d1-4909-9960-cc605bb1ff34> (accessed August 2, 2013).

¹⁵⁴ Ibid.

¹⁵⁵ Olympic News, "Global TV viewing of Athens 2004 Olympic Games breaks records," Olympic, <http://www.olympic.org/content/news/media-resources/manual-news/1999-2009/2004/10/12/global-tv-viewing-of-athens-2004-olympic-games-breaks-records/> (accessed August 22, 2013).

¹⁵⁶ Duke University Soccer Politics / The Politics of Football, "The Player," Duke University, <http://sites.duke.edu/wcwp/research-projects/mediamarketsfootball-in-contemporary-europe/the-player/> (accessed May 25, 2013).

¹⁵⁷ Ibid.

cup Final between France and Italy, statistical data provides that between 715 million to 1 Billion people watched the event on television.¹⁵⁸

In year of 1992, the English Premier League, one of the finest football leagues in the world was created.¹⁵⁹ It is noteworthy that, the main incentive behind the formation of the premier league was that the FA of England with the participating football clubs was to benefit from the lucrative television deals promised by Sky TV of GBP £191 million for five years of Premier League television rights.¹⁶⁰ In 2007, Sky and Setanta offered another GBP £1.7 billion for five years of such rights.¹⁶¹ As such broadcasting football matches has become a major revenue for the football industry.¹⁶²

The top three clubs in the world that generated the biggest broadcast revenue for the 2011/2012 Season were FC Barcelona of Spain, Real Madrid of Spain and AC Milan of Italy.¹⁶³ All three clubs collected revenues of more than one hundred million Euros in just one football season. Please refer to table 2.1.

¹⁵⁸ Nick Harris, "Why Fifa's claim of one billion TV viewers was a quarter right," The Independent, <http://www.independent.co.uk/sport/football/news-and-comment/why-fifas-claim-of-one-billion-tv-viewers-was-a-quarter-right-438302.html> (accessed June 9, 2013).

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Duke University Soccer Politics / The Politics of Football, "The Money," Duke University, http://sites.duke.edu/wcwp/research-projects/mediamarketsfootball-in-contemporary-europe/the-money/#_ftn14 (accessed May 28, 2013).

¹⁶² Ibid.

¹⁶³ Deloitte, *Captains of industry - Football Money League*, (London, 2013), 3.

Table 2.1. Top 3 broadcast revenue generating clubs for 2011/2012 Season

Rank	Club	Revenue (€m)	Money ranking	League
1	FC Barcelona	178.1	2	
2	Real Madrid	158.7	1	
3	AC Milan	141.1	7	

Source: Data adapted from “Deloitte: Captains of Industry - Football Money League” 2013.

Another major revenue is derived from advertising. Broadcasting and advertising are synonymous with one another. The broadcaster needs the advertiser and vice versa. One of the largest industries that have billions of dollars at stake is the advertising industry of the football events.¹⁶⁴ For the World Cup FIFA 2006, the expenditure of advertisement in Malaysia alone had reached a staggering amount of RM55 million as reported in the year of 2005.¹⁶⁵ As such, broadcasting in the world of football provided a great exposure for the businesses that willing to spend millions of pounds for advertising and due to great commercial potential in football industry, big businesses such as Carlsberg, Fly Emirates, AIG and Samsung found an even more effective place to advertise or promote their products.¹⁶⁶

Advertising does not end there, advertising goes further in that it negotiates commercial advertising agreements with the players, officials that include manager’s, umpires, linesmen etc.¹⁶⁷ In the past, advertisers have paid costly marketing fees to hire famous football players such as David Beckham, Cristiano Ronaldo and Lionel

¹⁶⁴ Malaysian Communications And Multimedia Commission, *Analysis of Adex Size and Trend in Malaysia* (Cyberjaya, 2006), 9.

¹⁶⁵ *Ibid.*, 19.

¹⁶⁶ *Ibid.*, 4.

¹⁶⁷ Duke University Soccer Politics, “The Money.”

Messi as their ambassadors.¹⁶⁸ The world famous football journalist, Eduardo Galeano once stated: “*Today, every soccer player is a playing advertisement.*”¹⁶⁹

The top three clubs in the world that generated the biggest commercial revenue for the 2011/2012 season were Bayern Munich of Germany, Real Madrid of Spain and FC Barcelona of Spain.¹⁷⁰ All three clubs collected revenues of more than one hundred million Euros respectively in just one football season. Please refer to table 2.2.

Table 2.2. Top 3 commercial revenue generating clubs for 2011/2012 Season

Rank	Club	Revenue (€m)	Money ranking	League
1	Bayern Munich	172.9	4	
2	Real Madrid	150.8	1	
3	FC Barcelona	122.2	2	

Source: Data adapted from “Deloitte: Captains of Industry - Football Money League” 2013.

Gate collections for football matches also play a big impact on revenue collection for a football club. In an analysis done by Deloitte Consulting in the UK, the top three clubs in the world that generated the biggest match day revenue for the 2011/2012 season were Real Madrid of Spain, Manchester United FC of England and Arsenal FC of England.¹⁷¹ All three clubs collected revenues of more than one hundred million Euros in just one football season. Please refer to table 2.3.

¹⁶⁸ Duke University Soccer Politics, “The Money.”

¹⁶⁹ Ibid.

¹⁷⁰ Deloitte, “Captains of industry,” 3.

¹⁷¹ Ibid., 5.

Table 2.3. Top 3 match day revenue generating clubs for 2011/2012 Season

Rank	Club	Revenue (€m)
1	Real Madrid	129.1
2	Manchester United	122.4
3	Arsenal	114.7

Source: Data adapted from “Deloitte: Captains of Industry - Football Money League” 2013.

Another big flow of money in the football industry is always closely related to the great amount of money spent in the transferring of players.¹⁷² Regarding the great transfer fees of the famous players, the highly funding team, Real Madrid had made lots of ludicrous transfers, for example, it spent GBP £45 million on Zinedine Zidane, GBP £56.1 million for Kaka from AC Milan and GBP £80 million for Cristiano Ronaldo.¹⁷³ The most recent transfer being the transfer of Gareth Bale from Tottenham Hotspur F.C. for the amount of GBP £85.3 million or EURO 100 Million.¹⁷⁴

This was further proven by the ‘Economic and Legal Aspects of Transfers of Players Report’ published by European Commission in January 2013, where the sport ministries and football associations agreed that the prominent problems related to the issue of transfer of players are the level of transfer fees.¹⁷⁵ In the year between 2010 to 2011, Italian football clubs have spent the highest transfer fees of about 382 million Euros while the second highest is the England which spent about 345 million Euros and the total of the transfer fees amounted to 1,375,501,000 Euros among the

¹⁷² Deloitte, “Captains of industry,” 16.

¹⁷³ Duke University Soccer Politics, “The Money.”

¹⁷⁴ ESPN Football News, “Gareth Bale couldn’t turn down transfer to Real Madrid from Tottenham,” Entertainment and Sports Programming Network, <http://www.espn.co.uk/football/sport/story/235917.html> (accessed April 2, 2013).

¹⁷⁵ European Commission, *The Economic and Legal Aspects of Transfers of Players*, (Brussels, 2013), 1.

Big 5 football which consists of Italy, England, Spain, Germany and France.¹⁷⁶

Please refer to table 2.4.

Table 2.4. The Spending of the Big-5 football industry.

	Country	Amounts of Clubs Highest Transfers (Euros)
1	Italy	382, 746, 000
2	England	354, 250, 000
3	Spain	303, 940, 000
4	Germany	193, 450, 000
5	France	141, 115, 000

Source: Data adapted from the “The Economic and Legal Aspects of Transfers of Players” 2013.

More transfer activities equate to more monies changing hands between a higher composition of parties.¹⁷⁷ The influx of big money has positive effects such as increase of sports facilities and their availability to a wider audience, yet this money could also bring negative effects.¹⁷⁸ Such negative effects could include more opportunities to get involved with illegal activities which result in ML from the different kinds of revenue collections that have been discussed above.¹⁷⁹

2.10 The Vital Components within the thriving Football Industry

There are 6 vital components that are developing the sport to become the most popular sport in the world today.¹⁸⁰ The 6 vital components are the owners, the

¹⁷⁶ Deloitte, “Captains of industry,” 4.

¹⁷⁷ European Commission, “The Economic and Legal Aspects of Transfers of Players.”

¹⁷⁸ *Ibid.*, 155.

¹⁷⁹ *Ibid.*

¹⁸⁰ David Lue, Sabreena Merchant, Jeffrey Nash, Ethan Settel., “The Football Industry in Contemporary Europe,” Duke University, <http://sites.duke.edu/wcwp/research-projects/mediamarketsfootball-in-contemporary-europe/> (accessed June 1, 2013).

clubs, the football players and officials, the agents, the high volumes of monies and the regulatory bodies.¹⁸¹

2.10.1 The Owners

The owner of LA Galaxy in the US is tycoon Philip Anschutz. In 2002, his telecommunication company, Qwest Inc. was investigated by the Securities and Exchange Commission and the Justice Department for suspicious accounting records.¹⁸² As a result, Anschutz was charged for fraudulent and illegal acts.¹⁸³ In 2010, Anschutz and his Anschutz Co. were sentenced to USD 144 million in back tax bills for 2000 and 2001.¹⁸⁴

One of the limelight examples of a possible ML that happened has involved a Politically Exposed Person¹⁸⁵ (PEP) is the prominent ousted Prime Minister of Thailand, Thaksin Shinawatra who is also famous for the allegation of corruption in his home country and fled to England after the coup d'état began in Thailand.¹⁸⁶ In England he then bought Manchester City football club for GBP £81.6million.¹⁸⁷

¹⁸¹ Lue, Merchant, Nash, Settel., "The Football Industry."

¹⁸² U.S. Securities and Exchange Commission v. Qwest Communications International Inc., 450 F.3d 1185 (D. Colo. 2004).

¹⁸³ Ibid., 1186.

¹⁸⁴ Ibid.

¹⁸⁵ Kim-Kwang Raymond Choo, "Politically exposed persons (PEPs): risks and mitigation," *Journal of Money Laundering Control* 11, no. 4 (2008): 371,

<http://www.emeraldinsight.com/10.1108/13685200810910439> (accessed June 10, 2013).

¹⁸⁶ Library of Congress, "Global Legal Monitor - Thailand Former Prime Minister Found Guilty," Law Library of Congress, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l20540749_text (accessed July 22, 2013).

¹⁸⁷ David Conn, "City blinded by money in race to bind Thais Football," *the guardian*, <http://www.guardian.co.uk/sport/blog/2007/may/23/cityblindedbymoneyinrace> (accessed July 3, 2013).

The English authorities started asking questions about his means in buying the Club where he decided to then sell it to an Arab billionaire and Mr Shinawatra made a tidy profit of GBP £21 million.¹⁸⁸ As such, one can infer with strong suspicion that the former prime minister may have been involved in corruption and swindling taxes paid by the Thais to amass such wealth.

To add to the funnel of ML in taking over clubs, the famous case of Roman Abramovich who currently owns Chelsea Football Club in London. The French authority had launched inquiry into Russian investments in France which included Abramovich in order to prosecute the Russian investor guilty of ML.¹⁸⁹

Then, Nickolay Gigov who is known involving the arm dealings in Bulgaria, owns Lokomotive Sofia of Bulgaria.¹⁹⁰ Vladimir Antonov, the owner of Portsmouth football club has been arrested over the ML investigation in Lithuania.¹⁹¹ In Pakistan, businessman-cum-spot fixer Mazhar Majeed suspected by British Custom officials to involved in ML with a huge amount of 20 million pounds through a non-league football club he owned. He and his wife Sheliza Manji and an unidentified

¹⁸⁸ Tariq Panja and Arif Sharif, "Manchester City Owner Agrees to Sell to Abu Dhabi (Update 2)," Bloomberg,

<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a1QqM9gkEXWQ&refer=uk> (accessed May 2, 2013).

¹⁸⁹ Ross Tieman, "Abramovich in police probe," London Evening Standard, <http://www.standard.co.uk/news/abramovich-in-police-probe-7214475.html> (accessed May 2, 2013).

¹⁹⁰ Novinite, "Bulgaria: soccer symbol of organised crime and corruption," Flare Network, http://www.flarenetwork.org/learn/europe/article/bulgaria_soccer_symbol_of_organised_crime_and_corruption.htm (accessed February 22, 2013).

¹⁹¹ Economic Crime Intelligence wordpress, "Vladimir Antonov - Lithuania suspends Snoras bank: Russian Saab candidate owner face prison," Economic Crime Intelligence, <http://economiccrimeintelligence.wordpress.com/tag/vladimir-antonov/> (accessed July 29, 2013).

man from Wembley have been arrested over ML allegations linked to the previously impoverished Ryman Premier Division Club.¹⁹²

2.10.2 The Clubs

In the 1830s and 1840s, standardized football teams were mostly represented by those who came from rich background.¹⁹³ However, due to the democratization of the football industry in 1870s till present, anyone that is good enough can play in any team of any standard.¹⁹⁴ By the 1880s, with the emergence of the professional football clubs, associations, competitions and leagues in England, larger crowds of spectators were being attracted and as a result, it improved the economy and the revenue of football clubs.¹⁹⁵

Consequently, players started to realise that they were able to earn a good wage from football and as a result, more individuals were being attracted to it and more football clubs were established with more revenues were being absorbed by the football clubs in the football industry.¹⁹⁶ With more clubs in the world, comes more choices for the football players to move around which would lead to more transfer activities happening in the football industry.¹⁹⁷

¹⁹² Richard Edward, "Pakistan match-fixing claims Mazhar Majeed arrested over 'money-laundering' claims," Telegraph, <http://www.telegraph.co.uk/sport/cricket/international/pakistan/7974031/Pakistan-match-fixing-claims-Mazhar-Majeed-arrested-over-money-laundering-claims.html> (accessed July 29, 2013).

¹⁹³ Duke University Soccer Politics, "The Money."

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Duke University Soccer Politics, "The Player."

¹⁹⁷ Ibid.

2.10.3 The Players and Officials

In the early days, once a player is owned by the club, he continues to be owned by the club until the club decides otherwise. Bill Murray, the author of the book – *The World's Game: A History of Soccer* 13 emphasized that:

“The player had little say in the matter. Worst of all, he was saddled with a “retain and transfer” system that gave the club virtually complete control over him. Once signed (for a maximum of GBP £10), the player became the property of the club and could not be transferred except with the club’s permission. As long as the club offered a player the same wages as the previous year’s, he had no grievance in the eyes of the League or the FA.”¹⁹⁸

But all that changed with the BOSMAN ruling.¹⁹⁹ In the Bosman case, it was held that a player is free to choose to ply his trade with any club he so desires provided his contractual term was up and the old club cannot interfere with the negotiations.²⁰⁰ The player could move freely to anywhere within Europe under the new European Union (EU) ruling that anyone who is a EU national may work in another EU country without the hassle of applying for a working visa.²⁰¹ Even in South America, approximately half of the Brazilian footballers are all playing in leagues all over the world.²⁰² Even officials which include managers, coaches, doctors, physiotherapists, referees, umpires, linesman etc. may move to other jurisdictions too.²⁰³

¹⁹⁸ Bill Murray, “The World’s Game: A History of Soccer,” *Journal of Sport History* 24, no. 2 (1996): 226, <http://library.la84.org/SportsLibrary/JSH/JSH1997/JSH2402/jsh2402o.pdf> (accessed May 2, 2012).

¹⁹⁹ *Union Royale Belge Des Socits de Football Association (ASBL) and Others v. Jean Marc Bosman*, 1 CMLR 645 (Court of Justice of the European Communities, 1995)

²⁰⁰ *Ibid.*, 646.

²⁰¹ Andrew L Lee, “The Bosman Case: Protecting Freedom of Movement in European Football,” *Fordham International Law Journal* 19, no. 3 (1995): 4, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1480&context=ilj> (accessed May 5, 2012).

²⁰² *Ibid.*, 5.

²⁰³ James Alder, “Football Officials and Their Duties,” About.com,

Prior to the early 20th century, the managers were the administrators instead of trainers and were often being labelled as Secretary Managers. The world famous football journalist, Eduardo Galeano once stated:

“In the old days there was a trainer and nobody paid him much heed. He died without a word when the game stopped being a game and professional soccer required a technocracy to keep people in line. Then the manager was born. His mission: to prevent improvisation, restrict freedom and maximize the productivity of players, who were now obliged to become disciplined athletes.”²⁰⁴

This concept changed with great managers such as Bill Nicholson, Chapman George Allison and Don Revie, great personas that inspired football teams they managed with their tactical expertise awareness and nous for the game.²⁰⁵ Owners of football teams in the football industry became increasingly concerned about the quality of their own team managers after seeing personas like the one mentioned above and it was at this point there about that manager’s became the next vital component element in football.²⁰⁶

Nowadays, managers of successful clubs are changing the managerial concept to a more evolved level and have become more like celebrities with ludicrous earnings.²⁰⁷

These managers have a lot of say in the running of the clubs financial matters which

http://football.about.com/cs/football101/a/bl_officials.htm (accessed June 3, 2013).

²⁰⁴ Duke University Soccer Politics, “The Manager”.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Dan Ripley, “Top 30 best-paid football managers in the world,” Mail Online, <http://www.dailymail.co.uk/sport/football/article-2239727/Top-30-best-paid-football-managers-world-Sir-Alex-Ferguson-England-boss-Roy-Hodgson-Jose-Mourinho-tops-list.html> (accessed May 22, 2013).

include player transfers, advertising arrangements, sponsorship arrangements etc.²⁰⁸

All these involve massive amounts of monies and a manager who is involved in such decisions could be tempted to get involved in illegal activities and ML.²⁰⁹

Further, the football industry can boast vast amounts of players and officials, there is a lot of money that will exchange hands for player transfers and salaries alone in just one season.²¹⁰ Please refer table 2.5 for latest figures of player and official count in the football industry.

Table 2.5. Approximate Figure Statistics in Football around the World, 2013

Total Players	265 million
Female Players a % of male world population	8 %
Registered Players	40 million
Referees and Officials	5 million
Number of Clubs	300,000
Top 20 countries with most registered players in 2013- by order of ranking	Germany, USA, Brazil, France, Italy, England, South Africa, Holland, Japan, Canada, Russia, China, Ukraine, Czech Republic, Poland, Spain, Austria, Sweden, Chile and Iran.

Source: Data adapted from “Big Count - FIFA.com” 2013.

Table 2.5 illustrates that football players make up a total of 265 million male and female players and in addition with five million referees as well as officials make it a total figure of 270 million people or if statistically 4 per cent of the world’s population.²¹¹ China has the highest number of players about 26 million, of which

²⁰⁸ Ripley, “Top 30 best-paid football managers in the world.”

²⁰⁹ Ibid.

²¹⁰ FIFA World Football, “Big Count,” Fédération Internationale de Football Association, <http://www.fifa.com/worldfootball/bigcount/allplayers.html> (accessed April 16, 2013).

²¹¹ FIFA, “Big Count.”

about 25 million remain, unregistered. Officially, Germany has the highest number of registered players which are about 6 million.²¹²

Table 2.6 provides the actual figures of players and officials of the targeted football countries chosen for this thesis.

Table 2.6. Statistics of the exact amount of all players, registered or unregistered players, clubs and officials in US, England and Malaysia.

Association	All Players	Registered players	Unregistered Players	Clubs	Officials
USA	24,472,778	4,186,778	20,286,000	9,000	796,300
England	4,164,110	1,485,910	2,678,200	42,490	168,186
Malaysia	585,730	9,930	575,800	110	11,810

Source: Data adapted from “Big Count - FIFA.com” 2013.

2.10.4 The Football Agents

Most player’s elect agent’s to represent them in their professional dealings of their lives and this includes transfers, wages, sponsorship agreements, etc.²¹³ The agent is one of the key persons for every professional footballer as the agent has a contractual duty to the player to ensure that the player’s interest in all professional aspects of the player’s involvement in the football industry is well protected.²¹⁴

The agent is often not transparent in his dealings as he has a ‘confidential duty not to disclose’ the apparent dealings between his client and other contracting parties.²¹⁵

As such, the public are not aware about relevant information pertaining to a transfer

²¹² FIFA, “Big Count.”

²¹³ David Conn, “Premier League Football is still afraid of mixing transfers and transparency,” *theguardian*, <http://www.guardian.co.uk/sport/blog/2009/feb/04/david-conn-transfer-window-player-agent-fees> (accessed May 26, 2013).

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

deal or any other commercial deal until everything is finalised and even then, it is the prerogative of the club and not the agent to disclose the contents of such deals. Names of agents are not usually exposed and the rates of commissions going to the agents are never declared to the public.²¹⁶

As such an agent could commit malpractices in transfer dealings as mentioned above due to the high levels of secrecy they often ply their trade in.²¹⁷ Other malpractices committed by agents include the trafficking of young players, deceiving interested parties by over inflating their representative prices, lack of transparency in player's actual capability or medical issues, corruption and being involved in other criminal activities are other concerning points.²¹⁸

According to a research report in 'Football Agents in the Biggest Five European Football Markets' by International Centre for Sports Studies (CIES) released in February 2012, the agents' fees are seldom being disclosed completely and the fees paid to them may be associated to illicit activities.²¹⁹ In the European Major Leagues collectively, agent's commission alone amounted to GBP 340 million in total just for one season.²²⁰ One agent got paid GBP 10 Million by Manchester City and is now officially the highest earner for the agent category.²²¹ As demonstrated, the dependency on agents regarding to matter of the players, clubs and other actors have

²¹⁶ Conn, "Premier League Football."

²¹⁷ Nick Harris Stein, "We'll take FIFA to court if agents are banned," Mail Online, <http://www.dailymail.co.uk/sport/article-2261430/Nick-Harris-Stein--Well-FIFA-court-agents-banned.html> (accessed May 26, 2013).

²¹⁸ Conn, "Premier League Football."

²¹⁹ CIES Football Observatory, *Football Agents In The Biggest Five European Football Markets - An Empirical Research Report*, prepared by Raffaele Poli and Glambattista Rossi, (London, 2012), 15.

²²⁰ Stein, "We'll take FIFA to court."

²²¹ Ibid.

led to an increase in power for the agents.²²²

2.11 The Main Regulatory Bodies in the Football Industries of The United States of America, England and Malaysia

The main regulatory body that is present in the world of football is FIFA.²²³ According to Art 20(1) of FIFA Statutes 2012²²⁴, members that belong to the same continent have formed the following Confederations, which are recognised by FIFA:

- (a) Confederation of North, Central American and Caribbean Association Football – CONCACAF
- (b) Union des associations européennes de football – UEFA
- (c) Asian Football Confederation – AFC
- (d) Confederación Sudamericana de Fútbol – CONMEBOL
- (e) Confédération Africaine de Football – CAF
- (f) Oceania Football Confederation – OFC

Art 20(3) empowers FIFA to have a major control on the 6 continents.²²⁵ The 6 continents would then have to monitor the clubs, players, officials in their own region. These 6 continents have to regulate its associates' members and would be

²²² Stein, "We'll take FIFA to court."

²²³ FIFA, "FIFA's Member Associations," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/associations.html> (accessed July 23, 2013).

²²⁴ Fédération Internationale de Football Association, *FIFA Statutes - July 2012 Edition* (Zurich, 2012), 1

²²⁵ Fédération Internationale de Football Association, *FIFA Statutes - July 2012 Edition*, 17.

directly responsible to FIFA and bound to report to FIFA.²²⁶

For the purpose of this study, only the first three confederation bodies will be put under scrutiny. CONCACAF control over the countries in North American Zone such as United States and Mexico, Central American Zone such as Belize and Costa Rica and Caribbean Zone Jamaica and Trinidad Tobago which both countries has made an appearance in the world cup finals 2006.²²⁷

UEFA controls over the countries which situated in Europe. These would include the big names such as country like England, France, Germany, Italy, Denmark, Portugal, and of course the 2006 and 2010 world cup champions, Italy and Spain respectively.²²⁸ AFC would have a direct control to the 46 countries which includes Malaysia which is in the Asian continent. It is divided into Central Asian Countries, South East Asian Countries, West Asian Countries and East Asian Countries.²²⁹

Art 20(3) of FIFA Statutes 2012²³⁰ stated that, each Confederation Body shall have the following rights and obligations:

- (a) to comply with and enforce compliance with the Statutes, regulations and decisions of FIFA;

²²⁶ Fédération Internationale de Football Association, *FIFA Statutes - July 2012 Edition*, 18-19.

²²⁷ CONCACAF Members, "Member Associations," Confederation of North, Central American and Caribbean Association Football, <http://www.concacaf.com/member-associations> (accessed April 17, 2013).

²²⁸ UEFA, "Member associations," Union of European Football Associations, <http://www.uefa.com/memberassociations/index.html> (accessed May 11, 2013).

²²⁹ AFC, "AFC Member Associations," Asian Football Confederation, <http://www.the-afc.com/en/about-afc/about-afc.html> (accessed May 22, 2013).

²³⁰ Fédération Internationale de Football Association, *FIFA Statutes - July 2012 Edition*, 17.

(b) to work closely with FIFA in every domain so as to achieve the objectives stipulated in Art. 2 and to organise international competitions;

(c) to organise its own interclub competitions, in compliance with the international match calendar;

In furtherance to the member confederations, each member state has their own regulatory body. The regulatory bodies for US, England and Malaysia are United States Soccer Federation (USSF), Football Association of England (FA) and Football Association of Malaysia (FAM) respectively.²³¹ The effectiveness of the regulatory bodies of the confederations and Associations mentioned above will be analysed in Chapter 5 of this thesis.

2.12 The FATF GAFI Report on Football 2009

The FATF GAFI Report on Football²³² is indicative that ML through the football sector ranges from simple cases of smuggling large amounts of cash that seem to be derived from illegal transactions to complex international ML cases. These ML activities were collected from the responses to the FATF questionnaire, cases presented at the 2008 FATF/MONEYVAL Typologies.²³³ The ML techniques²³⁴ vary from basic to complex techniques, including the use of cash, cross border transfers, tax havens, front companies, non-financial professionals and PEP's. In many cases, connections with other well-known ML typologies were identified such

²³¹ FIFA, "FIFA's Member."

²³² Financial Action Task Force, *Money Laundering through the Football Sector*, (Paris, 2009), 1.

²³³ Financial Action Task Force, *Money Laundering through the Football*, 1.

²³⁴ Financial Action Task Force, *Annual Report 2006-2007* (Paris: Financial Action Task Force, 2007), 7.

as trade based ML. This report will be analysed by assessing the various typologies of ML in Chapter 3.

2.13 Conclusion

The researcher states that although the literature does not highlight specifically ML instances in the football industries of the United States of America, England and Malaysia, nevertheless the literature reviewed helps give light and direction for the course of this study. Much literature has been written about ML, the Football Industry, the general AML laws and Football regulations as well as the International Initiatives to combat ML but the researcher states that there is no literature addressing ML prevalence in the football industries in the United States of America, England and Malaysia.

Neither is there any literature addressing the effectiveness of the general AML laws and Football Regulations in regulating the targeted football industries. In addition, there is also no literature of the Enforcement Mechanisms role and its effectiveness in the regulation of ML in the targeted football industries. Hence, the present study will attempt to fill in this grave hole in the literature. The corresponding Chapters of this study should provide answers and clarity to the above.

CHAPTER THREE
DETERMINATION OF ML PREVALENCE IN THE FOOTBALL
INDUSTRIES OF US, ENGLAND AND MALAYSIA

3.1 Typologies of Money Laundering in the Football Industry – An analysis of the FATF GAFI Report on Football.

In 2009, FATF issued the FATF GAFI Report in relation to Money Laundering in Football.²³⁵ The GAFI Report 2009 states that there are 4 ways in which ML can happen in the football industry²³⁶:

- a) Ownership of Football Clubs;
- b) Transfer Market and Ownership of Players;
- c) Image Rights, Sponsorship and Advertising Arrangements;
- d) Betting Activities

In the report, typologies in relation to ML in the football industry were presented and evidence of the said typologies happening in the football industry were gathered from various sources that included a literature survey, cases that were presented at the 2008 FATF/MONEYVAL exercise and responses from a questionnaire created by

²³⁵ Financial Action Task Force, *Money Laundering through the Football*, 3.

²³⁶ *Ibid.*, 17-24.

FATF.²³⁷ The cases in the subsequent sections represent the different typologies that exist in the football industry and in most of them, pure ML is evident whilst in others, there are predicate offences that bring about a potentially high risk of ML.²³⁸

3.1.1 Ownership of Football Clubs

People who are wealthy, or a company that has high turnovers year in and year out may choose to make investments into the football sector.²³⁹ As at the time of this Report, it was established that there are no checks to determine whether the integrated investment monies from the owner have been derived from illegal origins into the financial system.²⁴⁰

As such, due to the ease of pumping monies due to little or no regulation or standardised procedures to determine the origin of the monies being invested, it would appear that the football sector is a perfect vehicle for ML.²⁴¹ On the football scene or be it any thriving business, the presence of new or foreign investors are very welcomed.²⁴² The football club would be more than happy to have more investments since there are little or no regulations proposed for the football industry and hardly anyone would query whether the source of the money is legal or not.²⁴³

Another way wealthy owners may launder their monies is through purchasing of

²³⁷ Financial Action Task Force, *Money Laundering through the Football*, 6.

²³⁸ *Ibid.*, 17.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*, 18.

²⁴² *Ibid.*

²⁴³ *Ibid.*

tickets for a football game.²⁴⁴ Owners may purchase tickets that were not sold for the game and such purchases of non-sold seats would be recorded as legal funds for the owners to then reap profits that would be considered to be legal.²⁴⁵ It may be worthy to note that the report raised various typologies that relate to ML activities, but for the purposes of secrecy and not wanting to be involved in suit actions, names were omitted in the Report.²⁴⁶ Examples of actual cases purporting such ML typologies are discussed in the subsequent sections.

3.1.1.1 First Typology: Funding of A Non-Professional Football Club²⁴⁷

The accounts of an amateur football club usually appear to be regularly in debt and were only balanced at the end of the season by unusual payments from a businessman through a number of his companies. His investments looked suspicious because the funding was provided without negotiated compensation and the amounts spent in the club were extremely disproportionate to the companies' financial possibilities. Furthermore, the accounting information of some of the companies had not been properly registered as required by the law.

It was revealed by the FIU that, there were gaps between the accounting documents showing the breakout of various payments for funding the club and financial flows observed on the bank accounts of the businessman's different companies. The businessman, who was the football club's president, was abusing his companies'

²⁴⁴ Financial Action Task Force, *Money Laundering through the Football*, 19-20.

²⁴⁵ *Ibid.*, 20.

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*, 18.

assets by excessive withdrawal of funds from the revenues of its companies that could jeopardize the companies' financial balance.

As the typology suggests, amateur football clubs are attractive avenues for wealthy businessmen to launder their monies.

3.1.1.2 Second Typology: Investing in A Club That is Experiencing Financial Difficulties²⁴⁸

Club A was in financial difficulties. Looking for funds to avoid bankruptcy, a financial group in South America forwarded a financial proposal. Suspected to be of illegal origin, the bank inquired into the funds but the financial group withdrew from the negotiations. When a second financing proposal was brought up by a certain Mr. COX, the banks were suspicious again because the individual had suddenly suggested investing money from unknown source to Club A. Information has shown that this Mr. COX was known for various cases of frauds.

The researcher states that the example above is another attractive option for money launderer's are football clubs that are seriously in debt. Since the football clubs are desperate to stay afloat, more often than not, such football clubs will not conduct rigorous checks on the background of the investor.

²⁴⁸ Financial Action Task Force, *Money Laundering through the Football*, 18.

3.1.1.3 Third Typology: Drug trafficking and investment in a football club²⁴⁹

Mr. Heep returned to his small town as a wealthy man. He acquired a football team, which was then languishing. Despite the team being an unattractive investment but located in a major city, Mr. Heep moved the team to a smaller town with population less than 30,000 inhabitants. With little followers, the team could expect lower profitability. However, the salaries and infrastructure paid were well above the average of other teams in the same category. It is assumed that the payment of high salaries and such were aimed at increasing the franchise's value to legitimize its investors as important people in sports sector. The team rose to second division from third division in a year. Mr. Heep was then identified as the leader of a drug trafficking network.

The researcher states that the typology described above is when a new investor, usually from a criminal background, invests in a small club from the bottom divisions of the football leagues. Lower profitability is expected since it is a very small football club from a small town. Nevertheless, when the fraudulent investor takes over, all financial structures of the club are revised to higher amounts. In reality, this is just a smokescreen so that the investor can effectively launder his monies without suspicion.

3.1.1.4 Fourth Typology: Corruption and PEPs²⁵⁰

A businessman with an illegal track record acquired a team in the professional

²⁴⁹ Financial Action Task Force, *Money Laundering through the Football*, 18.

²⁵⁰ *Ibid.*, 19.

football league to attract politicians and officials. Thanks to his team and football matches, he had access to local officials with decision-making dominance over the state's public work and ensured that major public works were assigned to him.

The researcher states that the typology described above is about greedy businessmen who invest in football clubs to attract notable dignitaries and public officials to come and be affiliated with the club. By buying the club, and making sure the football team does well at the local football league, influential people like the ones stated above will naturally want to be a part of that success. This is where the unscrupulous businessman will begin corrupting those influential people to serve his best interests and such a situation allows for ML activities to take place.

3.1.1.5 Fifth Typology (Fictional): Securities Based Money Laundering²⁵¹

A has substantial funds from business enterprises, buys football club X, and recapitalises the team. The value of the club and the share equity rises because of A's involvement; he retains a majority shareholding and the loan is repaid from the new share equity. A was in negotiations through agents to buy players from a number of other clubs. In a secret transaction, secret payback fees are paid by the selling club to A's agent, which becomes the price of the players paid by A.

The commission paid to the agent is sent to a third party controlled by A, and this commission equals A's original investment. A now possess the majority shareholding

²⁵¹ Financial Action Task Force, *Money Laundering through the Football*, 19.

in a high value football club at no net cost to himself. He has also laundered the club's original purchase price. The money that flows through a series of transaction may represent the proceeds of crime. It may also represent the wages due from a company with a good track record to A and the transaction may simply be an attempt to dodge tax from foreign earnings.

The researcher states that this particular typology allows for wealthy businessmen to buy clubs and good players at virtually no cost due to illegal transactions which include laundering the football club and dealing with secret commissions concerning the buying and selling of the clubs football players. Due to the nature of such transactions, ML activities are very much a high possibility.

3.1.1.6 Sixth Typology (Fictional): Returns From Investment²⁵²

A is involved in the purchase of stolen metal. He uses the money from his legal businesses to buy a lower league football club. GBP 4 million is spent on the improvements of the new capital's ground. Funds are channelled from A's companies to an intermediary management company based offshore controlled by A.

He channels his 'dirty money' in stolen scrap into the club through gate receipts and the canteen, causing a noteworthy increase in the club's profits, which are then paid in dividends to the shareholders. Most of the dividend's payments go to the intermediary management company owned by A.

²⁵² Financial Action Task Force, *Money Laundering through the Football*, 19.

The researcher states that the typology described above concerns illegal monies being transferred into the companies under the guise of high gate collection receipts and the high profitability of the football club cafeteria business. In reality, gate collections are quite poor and hardly anyone buys food or drinks at the cafeteria. The illegal monies are then laundered through the legal business of gate collections and the cafeteria business and clean monies are then translated into dividends to shareholders and to an intermediary management company that is owned by the money launderer.

3.1.1.7 Seventh Typology : Ownership of a Football Club²⁵³

A well-known Italian football team had intention to purchase its shares on the capital market. After the purchase, the shares' value increased rapidly, leading to suspected threats to the club's President to sell the shares. There were rumours spread to a public announcement by a European pharmaceuticals firm of a EUR 24 million investment which was later denied. Evidence of the investigation showed that a Central Italy-based criminal association provided the money used to buy the shares. Furthermore, a part of that money was then diverted to another company to purchase real estate. It seemed that the criminal association was interested in purchasing the football team with the 'dirty money'.

The researcher states that this typology includes involvement of the mafia or criminal gangs who used their ill gotten wealth to buy over football clubs and employ ingenious methods to 'jack-up' the share prices of the football club and later sell

²⁵³ Financial Action Task Force, *Money Laundering through the Football*, 20.

them to the public to make decent profits that will be considered clean monies.

3.1.2 Transfer Market and Ownership of Players²⁵⁴

The increase in the international market for the purchase of football players has added to the vulnerability to ML in the football sector. This is because the vulnerabilities are related to a lack of transparency in relation to the funding for certain transfer transactions. Transfer funds are being paid offshore with limited disclosure requirements.

At the world cup of 2006 held in Germany, it was the first time in history that more than 50% of the players participating were actually playing for foreign football clubs outside of their countries of origin.²⁵⁵ Notably, Brazil had become a big exporter of footballers not only to Europe, but also to Asia, thus enhancing the mobility of football players. These players carry with them a very high financial value and are very valuable assets.

These values can exceed very large amounts and ML can exist by the extra transfer of monies to the players' accounts. So, money launderers usually misrepresent the price of the players and then subsequently transfer laundered monies into their accounts for the extra value and would then require the players to pay them back after settlement of tax and a compensation fee. Such audacious steps deter authorities on the detection of such crimes due to lack of evidence. The researcher

²⁵⁴ Financial Action Task Force, *Money Laundering through the Football*, 20.

²⁵⁵ Ibid.

states that examples of the illustrations above is provided in the corresponding sub-sections below.

3.1.2.1 Eighth Typology : Acquisition of players²⁵⁶

A football club located in country Z, was in big debt, and signed a contract with a collective investment fund, established in a tax haven, under which the fund pledges to allocate funds in order to cancel the society's debts and to share the results. The country-Z-based club then transferred the funds to an account that the selling clubs has in a third country when a player from another local football club (Argentina) was acquired for USD 20 million. However, the funds never reached Argentina.

This typology was characterised by the following stages:

- (I) Anonymous investors willing to allocate funds;
- (II) Collective investment funds constituted in tax heavens;
- (III) Acquisition by collective investment funds of the football club management with debts, and is in need of attracting investors;
- (IV) Allocation of funds for the purchase of football players;
- (V) Money transfers to the football club that buys the football player, to accounts located abroad²⁵⁷

²⁵⁶ Financial Action Task Force, *Money Laundering through the Football*, 22.

²⁵⁷ Catherine Bolgar, "Teams try to find their winning formulas through mergers, acquisitions, outsourcing," *The Wall Street Journal*, <http://online.wsj.com/ad/article/businessoffootball-acquisition.html> (accessed July 25, 2013).

3.1.2.2 Ninth Typology: Unlicensed Agents²⁵⁸

The financial activity of company A, along with the high amounts of different international wire transfers credited the bank account of individual X. Company A's director and his wife, all confirmed that X was a player's agent at European level. However, neither X nor company A had FIFA license required to negotiate players' transfers. Through further investigation, it was revealed that the wire transfers originated from company B and from another individual, Y. The wire transfers of A and X may characterize ML operations. Furthermore, X and Y were managers of company B, which was used as a vehicle for laundering the 'dirty money'. It is known that the proceeds derived from the illegal exercise of a regulated profession are considered illegal. Since X was involved in the management of company B, it may have been used as a way to camouflage the origin of the transferred funds.

The researcher states that this typology has mischief clearly written all over it even from the start. Neither the owner nor the agent are recognised licensees under FIFA but go about making representations to the world at large that they are. These fraudsters then have business dealings i.e player transfer dealings with other clubs with unsourced monies from other individuals or organisations and ML activities begin to take place. Illegal monies transfer hands and high valued players are received and later, these players are sold to other parties and the unlicensed owner and agent receive clean monies for the transactions.

²⁵⁸ Financial Action Task Force, *Money Laundering through the Football*, 23.

3.1.2.3 Tenth Typology: Talent pools²⁵⁹

A player is purchased by a club for EUR 10 million but is stated in official documents instead for EUR 5 million. The investors provide EUR 10 million instead of EUR 5 million for the purchase and another EUR 5 million for the books, which would be ‘dirty money’. The player will then be sold to another club for a transfer sum of EUR 15 million. Everyone involved in the deal will gain earnings from that sum. With the extra EUR 5 million, the club can purchase another player. And the player’s agent earns a good portion since his player is bought for EUR 10 million.

According to the researcher, this typology is very common in international player transfers where the actual price of the player coming from abroad has not been identified by the local authorities and allows for the money launderer’s to inflate the respective football player valuation. Illegal monies are laundered into the transaction when buying the player and subsequently when the player is sold to legitimate buyers these money launderer’s can enjoy the clean monies that are received.

3.1.3 Image Rights, Sponsorship and Advertising Arrangements²⁶⁰

The researcher states that certain players with excellent reputation enter into contracts which are commonly known as “Image Contracts” with companies that have registered offices outside the player’s country. The contracts take advantage of the “rights of the player’s image” and it is an excellent tool to exploit the personal appearances of the player as part of broad publicity campaigns which in turn allows

²⁵⁹ Financial Action Task Force, *Money Laundering through the Football*, 24.

²⁶⁰ *Ibid.*, 26.

for ML through tax evasion.²⁶¹ The players with powerful images may be enticed not to declare portion of the money received or be used as a “gatekeeper” for financial transactions in favour of a third party.

On the other hand of the spectrum, the researcher states that there is a risk of ML for players whose ‘image’ is not up to the mark. They could be used to launder money under the context of ‘Image Rights’ which strictly speaking has no relation whatsoever to their actual image and are made an accomplice in the ML transaction. The researcher further states that a player that has transferred his rights to a company to make use of his image exclusively on a worldwide basis in return for a fixed amount of shares from the company may ultimately find out that the club had not made use of his image in any way. After 2 years, the player seeks professional advice on his actual valuation, only to be told that his image had in fact no commercially exploitable value. However, the level of payments in both playing and image rights contracts continued to increase by the said company for the same player.

Despite that, the researcher states that another risk that involves ML is the stemming from sponsorship and advertising arrangements. The football club incomes may come from various sponsors and these sponsors may be involved with criminal organisations. This involvement may benefit a criminal organisation for the purpose of funding their legitimate business. Furthermore, the researcher states that with the liberalisation of the TV markets and the development of private TV chains in Europe with the potential for internationalisation of the players in the world market, there is

²⁶¹ Financial Action Task Force, *Money Laundering through the Football*, 26.

an increase of budgets of clubs, the salaries of players. Media spin offs play very substantial roles in this matter.

The researcher summarises that most of the above case examples that have been identified are pure ML. The researcher would like to outline other typologies in the subsequent sections that focus on other predicate offences linked to football and not necessarily pure ML.

3.1.4 Betting Activities

3.1.4.1 Eleventh Typology : Illegal Gambling Dens²⁶²

The codenames SOGA I and II were the operations organized and coordinated by the International Criminal Police Organization (Interpol) in 2007 and 2008 to catch criminals that were involved in the running of illegal gambling dens for bets on football in various parts of the world especially in Asia.²⁶³

In 2007, SOGA I operation resulted in 400 arrests, 272 illegal gambling dens and confiscated bets worth USD 680 million. In the SOGA II, Interpol announced that 1300 people were arrested under suspicion of illegal football gambling, and USD 16 million in cash were discovered during a SOGA II operation.²⁶⁴ Most of the 1088 gambling dens were associated with organised crime. It is estimated that these

²⁶² Financial Action Task Force, *Money Laundering through the Football*, 25.

²⁶³ BBC News Asia-Pacific, "Thousands in Asia held over World Cup bets," BBC News UK, <http://www.bbc.co.uk/news/world-asia-pacific-10660322> (accessed May 22, 2013).

²⁶⁴ Ibid.

gambling dens handled bets worth almost USD 1.5 billion.²⁶⁵

The researcher states that it is laudable for Interpol and the corresponding countries to launch operations as discussed above. The researcher further states that the staggering amounts in illegal gambling especially in Asia will only become more prevalent in the near future. Enforcement operations to halt such illegal activities from taking place should be conducted on a more consistent basis to deter these predicate offences related to ML from taking place regularly.

3.1.4.2 Twelfth Typology : Irregular Betting²⁶⁶

There was a case where a foreign individual in a suspected group under investigation on rigged matches was involved in purchasing online betting chips for a substantial amount in a European country. The foreigner was suspected of paying players off before certain matches with money deriving from other betting activities. An online betting company was established in a foreign country, with his aim to invest in different clubs to control and corrupt them to play matches that were rigged beforehand. He targeted clubs that were in financial crisis and were looking for sponsors. From the online betting company, the money was used to bribe players and chips that were used as payment had been derived from illegally laundered monies.

The researcher states that this typology is becoming increasingly popular due to the lax of cross border enforcement. It is very difficult and virtually impossible to deter

²⁶⁵ BBC News Asia-Pacific, "Thousands in Asia."

²⁶⁶ Financial Action Task Force, *Money Laundering through the Football*, 25.

someone who is operating outside of the jurisdiction i.e England for instance, who is operating in Hong Kong. Lack of international co-operation between countries allow such criminals to carry on their illegal trades indefinitely.

3.1.5 Related Illegal Activities

3.1.5.1 Thirteenth Typology: Trafficking of Players²⁶⁷

An international transfer took place from a Mr. LAN's bank account in Europe. Part of the money had been moved to an account belonging to Mr. SMO, a European citizen. Mr. SMO immediately took out two thirds of the given cash. It is revealed that Mr. LAN acted as an agent for international transfers of football players. However, he was not mentioned on any official list as a registered manager.

Police sources showed that he was known to be involved in illicit trafficking of football players with Mr. SMO as an accomplice. An amount of EUR 160 000 was involved in this particular case alone. The researcher states that this typology is quite difficult to detect as trafficking of players are done without any notice and trafficking occurs at random places and locations unknown to any persons.

3.1.5.2 Fourteenth Typology: Corruption and Match Fixing²⁶⁸

There was possible football corruption occurring in country B. This news concerned Mr. PINO and Mr. FLY. The former's assets worth EUR 1 million were being divided over various accounts with a bank in country B. In a few months, the

²⁶⁷ Financial Action Task Force, *Money Laundering through the Football*, 26.

²⁶⁸ *Ibid.*, 27.

accounts received several hundred thousand euros more. Analysis showed that Mr. PINO was the chairman of a football club and was a subject of an investigation into corruption with respect to fixed matches. On the other hand, Mr. FLY was the club's lawyer. With several accounts in country B, both of them carried out numerous cash deposits totalling several hundred thousand euros. The transactions between different company accounts occurred in country B and the assets abroad have been linked to offences that are in ongoing investigations.

The researcher states that this typology is very common where the businessman and his advisor work hand in hand in the illegal activity. Common accomplices include lawyers and accountants and therefore a stricter law with increase fines and sanctions be introduced to deter these accomplices from aiding and abetting the fraudulent businessman.

3.1.5.3 Fifteenth Typology: Doping²⁶⁹

The company, DIET had an account over which Mr. LATE held power of attorney. The activity on DIET's account increased gradually with credit transactions amounting to almost EUR 2 million. International transfers also began to occur on this account, linking to a vet, Mr. HONY and represented invoice payments. It was realized that both Mr. LATE and Mr. HONY were known by the police for trafficking of hormonal substances as part of a doping investigation in cycling and football. The transactions on company DIET's account were related to hormone trafficking, an illegal activity by itself.

²⁶⁹ Financial Action Task Force, *Money Laundering through the Football*, 28.

The researcher states that doping is the most popular typology under this section. All sports are involved in the purchases of substances that can enhance an individual's performance. It is inevitable that predicate offences related to ML will take place. As such, enforcement and sports authorities should always be vigilant and alert when dealing with related cases such as the one discussed above.

3.1.5.4 Sixteenth Typology: Tax Evasion Through Football Agents²⁷⁰

A player revealed that his signing-on fee was disguised as part of a fee to a foreign agent, who then paid the player GBP 300,000 abroad and did not make known of this news to the England tax authorities. The club was aware that the payment to the agent included a signing-on fee for the player but such arrangement benefited the club as it could be exempt from paying out Social Security contributions worth GBP 38,000.

The researcher states that this typology has been in existence for a long time. It is only now that since tax evasion has been made a predicate offence, that authorities are on the especial look out for perpetrators of this crime. Every organisation is findings ways and means to avoid paying huge taxes, and therefore this typology will continue to exist.

3.2 Money Laundering Vulnerabilities in the Football Industry

The FATF GAFI REPORT on football categorically suggests that the football sector

²⁷⁰ Financial Action Task Force, *Money Laundering through the Football*, 28.

is especially vulnerable to ML. The vulnerabilities in the football industry were classified into three main categories namely the sector, finances and culture.²⁷¹

3.2.1 Vulnerabilities in relations to Sector²⁷²

The principal reason is that the market is easy to penetrate because of an absence of entry barriers of the sector. Thus, the opportunities for collusion seem extremely possible as football fans from all areas of society meet at the football stadium, in addition to other representatives from the government sector, corporate officials etc. Another main factor is the complicated network of stakeholders. The sector is complex with lots of different actors. International transfers that require voluminous sums of the money allow more people to get involved in the football sector such as owners, managers, agents, sponsors and even the body corporate of companies who own these players whether they are from the selling or the buying party.

Due to the complex range of stakeholders who deal with flow of money and the various transactions that are involved, the rise in fraudulent activity is encouraged, because of lack of enforcement of professionalism and good governance.²⁷³ The legal structure of football clubs vary from private limited companies to foundations.²⁷⁴ Note for example, the stadium activities are managed through different companies. Despite this, the players' funds (talent pools) are separate legal entities. There is lack of regulation or control over legal structures and ownership

²⁷¹ Financial Action Task Force, *Money Laundering through the Football*,14.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ibid., 15.

control over football clubs and this leads to the ease of buying and selling of a football club.

3.2.2 Vulnerabilities in relations to Finance²⁷⁵

The sums of money and cash involved in football are ‘bottomless pits’. This can be seen through large financial transactions involving transfers of players.²⁷⁶ The performance of the club on the field also determines its financial position, as financial circuits are multiple and global, the better the team is on the field, the better the prospects of international monies being poured into the club with no one having a clue whether such monies are coming from legitimate sources. Often the money flows in and out of tax havens, or else the money trail cannot be ascertained since the monies have passed through several countries.

When a team plays well, they will attract more fans, and as a result, gate collections at stadiums reach full capacity. Lots of monies are collected through gate receipts and these monies are not accountable for scrutiny purposes. Taking the scenario in England, for example, just to go and watch a match at Old Trafford, the home ground of Manchester United, will cost an average of 60 pounds per person and the stadium can accommodate up to 76,000 people.²⁷⁷ This equates to GBP £4,560,000 for every football match. There are 38 games in a season and half of those are played at the Home venue, and if Manchester United plays 19 games at home, then

²⁷⁵ Financial Action Task Force, *Money Laundering through the Football*, 15.

²⁷⁶ Ibid.

²⁷⁷ The Stadium Guide Manchester United, “Old Trafford,” The Stadium Guide, <http://www.stadiumguide.com/oldtrafford/> (accessed April 28, 2013).

in one season, this club can generate gate revenue collections amounting to about GBP £ 90 million in gate receipts just for the home games alone and these monies are unregulated and there is no transparency of the actual source from where such monies originated nor are all the games full house. The amount collected for away games and other Cup and European games have all not been taken into account and figures could easily reach between GBP £ 200 million to GBP £ 300 million on gate revenue collections alone for just one season, so the propensity to launder illegal gotten monies is evident.

Connected with this situation, the simple rule applies that, if the team plays and performs well, more sponsors will come in and generate and pump more funds into these football clubs. The bigger the club, the more the need to get finances to fund it, and this inevitably leads to finance vulnerabilities. The better players in the world cost tonnes of money in transfers and in their payment of weekly wages. Football typically is labelled a sport with the “winner-take-all-market”. The more money a club has, the better its chances of flexing its muscles and getting what it wants and this inevitably will lead to finance vulnerabilities.

In this kind of economic environment which has long been widespread, the super-rich create a monopoly in football business. The football markets have expanded through globalization, where there are lots of opportunities for the rich to become richer. The winner-takes-all market does not pay based on the total performance but on the individual performances that are comparative to one another. Just one game lost would result in huge financial consequences, be it for the income from sponsors

or because of the fall in attendances by fans at the stadiums.

The discussion raised above is about the finance vulnerabilities of clubs which are in the upper echelons of the football fabric; but the problem about vulnerabilities also appear for clubs that are not performing well on the field and are this being relegated to the lower leagues. Apart from not performing well in competitions, clubs may be faced with liquidation issues, due to bad financial management and many other errors associated with finance mismanagement that may have caused the club to take a downward spiral; note also clubs such as these are also a simple target for illicit money. These clubs could be forced into financial doping which could raise a stern challenge to the plan of fair play and to the concept of financial balance in the competitions.

3.2.3 Vulnerabilities in relations to Culture²⁷⁸

The diversity of culture is also giving rise to vulnerability in the football sector. Young players from all over the globe are moving into the prime leagues that are the most expensive, such as The Premier league in England, La Liga of Spain and The Serie A in Italy. These players may have been brought up in cultures with loose morals regarding monies and as a result, these players can be easily bought with laundered monies. Consequently, other players will also be influenced to follow in their footsteps and playing football in any league that pays well then becomes an attractive ML opportunity for criminals. Those players with top reputations and who are famous, and even those that are not famous will have the opportunity to enter into

²⁷⁸ Financial Action Task Force, *Money Laundering through the Football*, 16.

“Image Contracts” with any company be it regulated or not.

The researcher summarises that the evidence from the vulnerabilities presented in 3.2.1, 3.2.2 and 3.2.3 all indicate that there high degree of inference that there is a prevalence of ML and predicate offences related to ML, not just in the targeted football industries, but to all football industries globally.

3.3 An Analysis of the Framework of Actual Football Clubs in US, England and Malaysia

In this part of the thesis, the researcher will explore and reveal the brief history, the background of the club owner or president, the club’s financial standings, transfers and player salaries to further support the findings of the FATF GAFI Report on Football 2009 that was highlighted in the previous sections of this Chapter.

3.3.1 US

3.3.1.1 Los Angeles Galaxy Soccer Club

Los Angeles Galaxy Soccer Club commonly known as LA Galaxy, which was established in 1996, is an American professional football team which competes in Major League Soccer (MLS), the most affluent and most competitive league in the USA. It has won the MLS Cup for four times in 2002, 2005, 2011 and 2012.²⁷⁹ The owner of LA Galaxy is US tycoon Philip Anschutz. Anschutz is also the owner of

²⁷⁹ LA Galaxy Complete Champion League, “Concacaf Champions League History,” LA Galaxy Soccer Club, <http://www.lagalaxy.com/ccl/ccl-history> (accessed May 30, 2013).

the Anschutz Entertainment Group (AEG).²⁸⁰ Besides LA Galaxy, he also owns a professional basketball team, called the Los Angeles Lakers and a professional ice hockey team, the Los Angeles Kings. Furthermore, he operates dozens of the world's well-known concert venues, including the Staples Centre and Nokia Theatre in Los Angeles (L.A), London's O2, and Shanghai's Mercedes-Benz Arena.²⁸¹

In 2002, his telecommunication company, Qwest Inc. was investigated by the Securities and Exchange Commission and the Justice Department for suspicious accounting records.²⁸² As a result, Anschutz was charged for fraudulent and illegal acts.²⁸³ In 2010, Anschutz and his Anschutz Co. were sentenced to USD 144 million in back tax bills for 2000 and 2001.²⁸⁴ He has also been under suspicion with reference to the issue of tax evasion through the term highlighted as 'image right' of player which refers to the so-called "transferred fees" he paid for getting David Beckham and this reportedly consisted of 80% as image rights and 20% as playing wages.²⁸⁵ Anschutz was also involved in corruption charges under the Political Exposed Persons (PEPs).²⁸⁶ As such, Anschutz has been implicated in a number of predicate offences and ML scandals.²⁸⁷

In 2007, LA Galaxy had signed David Beckham for an enormous amount of USD

²⁸⁰ LA Galaxy Complete Champion League, "Concacaf Champions."

²⁸¹ Ibid.

²⁸² U.S. Securities and Exchange Commission Press Releases, "SEC Charges Qwest."

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Kader Mungly, "What footballers pay in terms of tax?," Business Magazine, <http://www.businessmag.mu/article/what-footballers-pay-terms-tax> (accessed May 10, 2013).

²⁸⁶ U.S. Securities and Exchange Commission Press Releases, "SEC Charges Qwest."

²⁸⁷ Ibid.

\$250 million,²⁸⁸ and most significantly, according to reporting by Forbes Sports Valuations, the operating revenue of LA Galaxy in 2007 was only USD \$36 million.²⁸⁹ Thus, the researcher is perplexed on how this club could manage to foot the mega deal bill with that petty amount of operating funds? The researcher can therefore make a reasonable inference that Anschutz being the owner of LA Galaxy had pumped in illegal or laundered monies to make such a deal happen.

By referring to Table 3.1, it was announced by MLS players association in 2012, that David Beckham had a base salary of USD \$3 million and guaranteed compensation of USD \$4 million, whilst Robbie Keane had a base salary and guaranteed compensation of approximately USD \$3 million and Landon Donovan, another LA Galaxy Star had gotten a pay of USD \$2.4 million for his base salary and guaranteed compensation.²⁹⁰

Table 3.1. LA Galaxy Players with High Salaries 2012

Player Name	Base Salary (\$)	Guaranteed Compensation (\$)
Chad Barrett	220,000.00	253,333.33
David Beckham	3,000,000.00	4,000,000.00
Andrew Boyens	62,500.00	65,783.33
Edson Buddle	255,000.00	255,000.00
Adam Cristman	75,000.00	75,000.00
A.J. DeLaGarza	90,000.00	112,500.00
Landon Donovan	2,400,000.00	2,400,000.00
Todd Dunivant	140,000.00	146,750.00
Sean Franklin	205,000.00	228,333.33

²⁸⁸ BBC Sport Football, "Beckham agrees to LA Galaxy move," BBC News UK, <http://news.bbc.co.uk/sport2/hi/football/6248835.stm> (accessed March 22, 2013).

²⁸⁹ Sarah Rudd, "The Deloitte Money League", onfooty, <http://onfooty.com/2011/02/the-deloitte-money-league.html> (accessed April 13, 2013).

²⁹⁰ Josie Becker, "2012 MLS Player Salaries Released David Beckham Still Galaxy's Top Earner Despite Massive Pay Cut," SB Nation Lag Confidential, <http://www.lagconfidential.com/2012/5/25/3043574/2012-mls-player-salaries-released-david-beckham-still-galaxys-top> (accessed May 6, 2013).

Rafael Garcia	33,750.00	33,750.00
Bill Gaudette	60,000.00	63,255.00
Brian Gaul	33,750.00	33,750.00
Omar Gonzalez	180,000.00	257,000.00
Hector Jimenez	44,000.00	44,000.00
Brian Jordan	55,000.00	55,000.00
Juninho	50,000.00	65,625.00
Robbie Keane	2,917,241.00	3,417,242.75

Sources: Data adapted from “MLS Player Salaries 2012: By Club” 2012.

Also, the MLS players association had published the salary information in 2013, where it was highlighted Robbie Keane got a pay rise and his base salary and guaranteed compensation were USD \$4 million and USD \$4.33 million respectively.²⁹¹ By referring to salary details in table 3.2, in 2013, the total of guaranteed salaries payment for the players of the whole club was more than USD \$200 million; however, in contrast even after Beckham’s arrival, which had attracted an inflow of money, the club’s revenues and operating income had only increased to around USD \$36 million and USD \$4 million respectively,²⁹² so once again the researcher states that the club could not have afforded to pay the huge amounts of wages of the players.

Table 3.2. LA Galaxy Players’ Salaries as at May 1, 2013.

Roster Spot	Last Name	First Name	Guaranteed Salary
1	Keane	Robbie	\$4,333,333.33
2	Donovan	Landon	\$2,500,000
3	Juninho		\$290,000
4	Gonzalez	Omar	\$282,000
5	Franklin	Sean	\$248,333.33

²⁹¹ Josie Becker, “LA Galaxy salaries released - Robbie Keane top earner,” SB Nation Lag Confidential, <http://www.lagconfidential.com/2013/5/6/4306100/la-galaxy-salaries-landon-donovan-robbie-keane-juninho> (accessed May 15, 2013).

²⁹² Inside Futbol USA, “USA MLS Clubs ’ Finances Paint Mixed Picture,” Inside Futbol, <http://www.insidefutbol.com/2010/01/23/mls-clubs-finances-paint-mixed-picture/16279/> (accessed May 11, 2013).

6	Magee	Mike	\$191,666.67
7	Sarvas	Marcelo	\$184,375
8	Zardes	Gyasi	\$173,000
9	Dunivant	Todd	\$156,750
10	Cudicini	Carlo	\$150,000
11	DeLaGarza	A.J.	\$142,500
12	Stephens	Michael	\$106,005
13	McBean	Jack	\$101,000
14	Hoffman	Chandler	\$97,500
15	Leonardo		\$95,000
16	Clark	Colin	\$80,000
17	Meyer	Tommy	\$61,050
18	Perk	Brian	\$58,125
19	Sorto	Oscar	\$48,375
20	Villarreal	Jose	\$48,375
21	Garcia	Rafael	\$46,500
22	Gaul	Bryan	\$46,500
23	Jimenez	Hector	\$46,500
24	Rowe	Brian	\$46,500
25	Walker	Kenney	\$46,500
26	Cochrane	Greg	\$35,125
27	Opare	Kofi	\$35,125
28	Rugg	Charlie	\$35,125

Source: Data adapted from “2013 MLS Player Salaries: By Club” 2013.

3.3.2 England

3.3.2.1 Chelsea FC

Chelsea FC was founded in 1905 as an English Association Football Team based in West London.²⁹³ In 2003, Russian billionaire Roman Abramovich took over as Chelsea FC Owner.²⁹⁴ It has been reported that Abramovich grew up in a quasi-mafia society and when he was serving in the Russian Army, he started selling stolen gasoline from commissioned officers in his unit. It was then reported that he was involved in the ‘aluminium wars’, in which 100 people are believed to have been

²⁹³ Chelsea Football Club Official Site, “Chelsea Football Club,” Chelsea Football Club, <http://www.chelseafc.com/> (accessed August 22, 2013).

²⁹⁴ Ibid.

killed in gangland feuds over control of the lucrative smelter, and numerous officials and executives are said to have lost their lives.²⁹⁵ Abramovich was also involved in corrupting PEPs by paying billions of dollars for political favours and protection fees to get his hands on the former Soviet Union's mineral wealth.²⁹⁶

Mr Abramovich's wealth in 2010 alone is massive where he has GBP £70 million in cash in 22 Russian bank accounts, GBP £3 million annually earned in interest on deposits in 2009, six apartments and one house in London, four homes in Russia, three homes in France (including two in its Caribbean colony of St Barts), and two US ski lodges in Colorado, Moscow real estate amounting to 155,369 sq metres, with a further 162,000 sq metres in the US, seven cars, including two BMWs, three Mercedes, a Range Rover and 100 per cent ownership of the companies such as Chelsea Limited, Lowndes Square Management and Croe France Chateau de la Croe and Eucla Investment.²⁹⁷

It shall be noted that, before the arrival of Abramovich, Chelsea had debts of GBP £80 million.²⁹⁸ However, this amount did not deter Abramovich and he still went ahead to buy Chelsea FC for that sum and spent a total of GBP £140m in six

²⁹⁵ Dominic Kennedy, "Roman Abramovich admits paying out billions on political favours," Red Ice Creations, <http://www.redicecreations.com/article.php?id=4292> (accessed June 16, 2013).

²⁹⁶ Kennedy, "Roman Abramovich."

²⁹⁷ Daily Mail Reporter, "Roman Abramovich's vast wealth revealed for first time," Mail Online, <http://www.dailymail.co.uk/news/article-1358004/Roman-Abramovichs-vast-wealth-revealed-time.html> (accessed May 19, 2013).

²⁹⁸ Mihir Bose, "It took only 10 minutes to do Chelsea deal with Roman Abramovich but I had to Google him first ... I wasn't sure if Jeremy Beadle was going to jump out'," London Evening Standard, <http://www.standard.co.uk/sport/interviews/it-took-only-10-minutes-to-do-chelsea-deal-with-roman-abramovich-but-i-had-to-google-him-first--i-wasnt-sure-if-jeremy-beadle-was-going-to-jump-out-8596796.html> (accessed May 22, 2013).

weeks.²⁹⁹ In transferring of players, by referring to Table 3.3, Chelsea FC, in season 12/13 had spent total GBP £92 million which included GBP £32 million for Eden Hazard and GBP £25 million for Júnior Oscar Dos Santos, while in season 11/12, total GBP £87.8 million were spent which included GBP £23.5 million on Juan Mata and in season 10/11, total GBP £92 million were spent which included GBP £50 million for Fernando Torres.³⁰⁰

Table 3.3. Chelsea FC Transfer of Players in Seasons 10/11, 11/12 and 12/13

Players Purchased	Fee (GBP)
Season 12/13	
Marko Marin	£6,500,000
Eden Hazard	£32,000,000
Thorgan Hazard	Undisclosed
Júnior Oscar Dos Santos	£25,000,000
César Azpilicueta	£7,000,000
Victor Moses	£9,000,000
Demba Ba	£7,500,000
Wallace	£5,000,000
Total	£92,000,000
Season 11/12	
Thibaut Courtois	£6,000,000
Oriol Romeu	£4,350,000
Romelu Lukaku	£20,000,000
Ulises Dávila Plascencia	£1,750,000
Juan Mata	£23,500,000
Raul Meireles	£12,000,000
Gary Cahil	£7,000,000
Kevin De Bruyne	£6,700,000
Patrick Bamford	£1,500,000
Lucas	£5,000,000
Total	£87,800,000
Season 10/11	
Yossi Benayoun	£5,000,000
Ramires	£18,300,000
Fernando Torres	£50,000,000
David Luiz	£26,000,000

²⁹⁹ Bose, “It took only 10 minutes.”

³⁰⁰ Premiership Transfers, “Chelsea Transfers,” Transfer League, <http://www.transferleague.co.uk/premiership-transfers/chelsea-transfers.html> (accessed May 22, 2013).

Total £92,000,000

Source: Data adapted from “Chelsea Transfers” 2013.

From the data above, the researcher can reasonably infer that Chelsea FC and its players are also susceptible in being used to launder monies via player’s image right agreements. It is no secret that Chelsea FC has been involved in tax evasion, a predicate offence related to ML, where the football stars faced potential tax bills of almost GBP £12 million after the club announced that the taxman is investigating their image rights contracts. The researcher states that the club is currently being investigated by HM Revenue and Customs for image rights contracts awarded to players between 2003 to 2004 and 2008 to 2009.³⁰¹ It was submitted that the players have two contracts with their clubs. They get a salary as a player and the other is for ‘image rights’ that is earned from shirts and others.³⁰² More significantly, the researcher would like to highlight that Chelsea announced losses of £70.9 million in the season of 2010/11 but surprisingly it still could spend another GBP £70 million on David Luiz and Fernando Torres in the following one.³⁰³

3.3.3 Malaysia

The researcher states that the situation in Malaysia is less intense as the stakes are lower from all avenues that were highlighted in the FATF GAFI Report on Football 2009. Nevertheless, the researcher can state that predicate offences that could

³⁰¹ Rob Draper, “Chelsea stars face £12m tax bill for image right deals,” Mail Online, <http://www.dailymail.co.uk/sport/football/article-1354116/Chelsea-stars-face-12m-tax-image-right-deals.html> (accessed May 23, 2013).

³⁰² Mail Online Sportsmail Reporter, “Top footballers like Wayne Rooney dodge millions in tax by cashing in on loophole,” Mail Online, <http://www.dailymail.co.uk/news/article-1347677/Top-footballers-like-Wayne-Rooney-dodge-millions-tax-cashing-loophole.html> (accessed May 23, 2013).

³⁰³ Draper, “Chelsea stars.”

facilitate ML are taking place.

3.3.3.1 Perlis FA

Perlis FA is a Malaysian football team which represent the state of Perlis. The team plays in second division in Malaysia Premier League.³⁰⁴ The Chairman of Perlis FA is Dato' Seri Shahidan Kassim a very influential politician in the State of Perlis and was the Chief Minister of Perlis from 1995 to 2002.³⁰⁵

The researcher provides an example of a predicate offence that facilitates ML in Perlis football where nine football players from Perlis FA admitted having contact with a bookmaker who offered them over RM100,000 each if they lost to a weak team. Only 1 player was charged and the remaining 8 players were found not guilty by MACC officials because of the lack of evidence.³⁰⁶

3.3.3.2 Terengganu FA

Terengganu FA is the football team that represents the state of Terengganu and it competes in the Malaysian Super League.³⁰⁷ The team chairman Che Mat Jusoh is a politician of the BN coalition.³⁰⁸

³⁰⁴ Bernama Northern Region News, "Shahidan Confident New MB Can Do It Well," Bernama, http://www.bernama.com.my/bernama/state_news/news.php?id=322424&cat=nt (accessed May 26, 2013).

³⁰⁵ Ibid.

³⁰⁶ Adib Povera, "Entire team under probe," New Straits Times, <http://www.nst.com.my/latest/entire-team-under-probe-1.36095> (accessed June 18, 2013).

³⁰⁷ Soccerway Info, "Terengganu Football Association," Soccerway, <http://my.soccerway.com/teams/malaysia/terengganu/> (accessed August 29, 2013).

³⁰⁸ Ibid.

The researcher provides another example of a predicate offence that facilitates ML in Terengganu football when the Terengganu FA's players were involved in a match-fixing scandal in the 2012 Malaysia Cup.³⁰⁹ The goalkeeper, Sharbinee Allawee was at the centre of the allegation after he seemed to have let in an easy goal to enable Kedah to equalise 1-1 in the crucial match.³¹⁰ The MACC has since dropped charges against Sharbinee due to lack of evidence.³¹¹

3.3.3.3 Perak FA

The Perak football team represents the State in the Malaysian Super league. The current president is Datuk Zainal Fadzi Paharuddin.³¹²

Again, the researcher provides an example of a predicate offence that facilitates ML in Perak football when the Perak FA has asked MACC and the police to investigate claims that the Perak football team and some officials were involved in sabotage, match fixing and corruption.³¹³ At the time of submission of this thesis, the authorities are still deciding on whether they have enough evidence to prosecute those that were accused.³¹⁴ A laudable thing that was done by the Perak FA, notably by the insistence of Datuk Zainal himself was to have all those accused suspended

³⁰⁹ New Straits Times Channels, "Che Mat meets MACC over match-fixing claim," New Straits Times, <http://www.nst.com.my/channels/you/che-mat-meets-macc-over-match-fixing-claim-1.137470> (accessed May 28, 2013).

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Goal Malaysia Teams, "Perak FA," Goal, http://www.goal.com/en-my/teams/malaysia/3193/perak-fa?ICID=CP_3193 (accessed August 6, 2013).

³¹³ Bernama Sports News, "MACC Start Investigations Into Allegations of Match-Fixing, Sabotage Involving Perak Super League Team," Bernama, <http://www.bernama.com.my/bernama/v7/sp/newssports.php?id=980224> (accessed October 1, 2013).

³¹⁴ Ibid.

for two full weeks. This latest incident on the inference of predicate offences that could facilitate ML was reported by Bernama on 24 September 2013.³¹⁵

3.4 Findings

The typologies that have been described at length as per the FATF GAFI Report on Football 2009 can be summarised as follows:

Funding of a non-professional football club; Investing in a club that is experiencing financial difficulties; Drug trafficking and investment in a football club; Corruption and PEPs; Securities based ML; Returns from investment; Ownership of a Football Club; Acquisition of players; Unlicensed agents; Talent pools; Image Rights; Sponsorship and Advertising Arrangements. ML was also discovered under betting activities from operations of SOGA I and II on the raiding of illegal gambling dens and in unusual and irregular betting modes. Typologies that were not ML based per se but related to illegal activities were also highlighted as Trafficking of Players, Corruption and match fixing, Doping and Tax evasion through football agents. The FATF GAFI Report on Football 2009 went on to highlight that the football industry is especially vulnerable to ML and classified such vulnerabilities in the three main categories being the football sector, football finances and culture.

In furtherance to the FATF GAFI Report, the researcher produced case studies of actual football clubs from US and England with relation to financial ownership, structures, players transfers and salaries. Information in the form of charts and tables

³¹⁵ Bernama Sports News, "MACC Start Investigations."

were all illustrated and pertinent points were raised by the researcher to indicate a high degree of inference of a high propensity of ML activities or predicate offences in the highlighted football clubs.

In conclusion, the researcher finds that ML is prevalent in US and England as the stakes are much higher due to the evolved vital components that form the football industry. In Malaysia, as stakes are much lower and due to the high degree of secrecy from the football clubs and enforcement agencies, it is difficult to determine the prevalence of ML in its football industry but the evidence of illegal related activities in the country as provided by the researcher in Sections 3.3.3 above, related to this sport provides an inference that ML activities in the sport may already be in existence happening on a big scale. As such, the researcher concludes by stating that there is a high degree of prevalence of ML activities taking place in the football industries of US, England and Malaysia.

To further supplement the above said findings, expert responses done vide interviews were compiled. When asked by the researcher whether there was prevalence of ML in football in their respective countries, the AML experts were not aware of the actual statistic but unanimously agreed that the levels could potentially be high. All the interviewee's also agreed that most of the typologies that were revealed in the FATF GAFI Report were quite prevalent in their respective countries. They unanimously concluded by stating that the football sector in the targeted countries are definitely vulnerable to predicate offences and could be also be vulnerable to ML.

CHAPTER FOUR

**THE EFFECTIVENESS OF LAWS/REGULATIONS IN THE
GOVERNANCE OF AML IN THE FOOTBALL INDUSTRIES OF US,
ENGLAND & MALAYSIA**

4.1 Conventions

4.1.1 European Convention on Mutual Assistance in Criminal Matters (1959)

This convention was passed on 13th December 1957 and it was enforced on 20th April 1959.³¹⁶ It is the first regulation that promotes mutual judicial assistance in criminal matters which most importantly also embrace the offence of ML between the Member States.³¹⁷ As such, all signatories are requested to co-operate from the viewpoint of their judiciaries towards any legal matters which would include ML or predicate offences that are committed within the jurisdiction.³¹⁸

4.1.2 The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("The Vienna Convention") (1990)

The FATF in 1989 prompted the proposal of this international convention.³¹⁹ This convention was passed on 20th December 1988 and it was enforced on 11th

³¹⁶ Council of Europe Treaty Office, "European Convention on Mutual Assistance in Criminal Matters," Council of Europe, <http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm> (accessed June 1, 2013).

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Antonello Biagioli, "Financial crime as a threat to the wealth of nations: A cost-effectiveness approach," *Journal of Money Laundering Control* 11, no. 1 (2008): 92, <http://www.emeraldinsight.com/journals.htm?articleid=1642128&> (accessed April 2, 2012).

November 1990.³²⁰ It was viewed as the first ever inter-governmental initiative to strictly criminalise the offence of ML (Art 3) and provide for the identification, tracing and confiscation of criminal proceeds (Art 5).³²¹ The signatories, which included the G7 (US, UK, France, Germany, Italy, Canada and Japan) and European Union countries, agreed to join together to combat the laundering of the proceeds of drug trafficking.³²² All the targeted countries, i.e. US, England and Malaysia are signatories to this convention and are committed in their cause to bring offenders to justice.

4.1.3 The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990)

This convention was signed on 8th November 1990 and it was enforced on 1st September 1993.³²³ The contracting parties such as UK and Belgium, which are come from the European Community; while the contracting states outside the Council of Europe are Albania, Armenia, Bosnia, Herzegovina and etc.³²⁴

³²⁰ United Nations Treaty Collection, "United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances," United Nations, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&lang=en#top (accessed July 22, 2013).

³²¹ Angela Veng Mei Leong, "Chasing dirty money: domestic and international measures against money laundering," *Journal of Money Laundering Control* 10, no. 2 (2007): 145, <http://www.emeraldinsight.com/journals.htm?articleid=1603661> (accessed July 3, 2013).

³²² Ibid.

³²³ Council of Europe Treaty Office, "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime," Council of Europe, <http://conventions.coe.int/Treaty/en/Treaties/Html/141.htm> (accessed June 3, 2013).

³²⁴ European Union Treaties Office Database, "Summary of Treaty," European Union, <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=526> (accessed May 7, 2013).

A few sections of this convention shall be highlighted. Art 6 provides for the offence of ML which is committed internationally.³²⁵ Art 7 paragraph 1 states that the Parties shall work together for the probes and proceedings targeting the confiscation of instrumentalities and proceeds.³²⁶ Also, Art 8 imposes obligation to assist every Party where the Parties shall provide each other, upon request, with mean of assistance to acknowledge and track the instrumentalities, proceeds as well as other articles which may be subject to confiscation.³²⁷ This convention is only applicable to England and not US or Malaysia.

4.1.4 United Nations Convention Against Transnational Organized Crime (The Palermo Convention) (2000)³²⁸

The Palermo Convention was signed on 15th November 2000 and it was enforced on 29th September 2003.³²⁹ It acts as an international tool with the aim to promote collaboration in fighting transnational organised crime in a more operative way.³³⁰ This is the first UN instrument which is legally binding.³³¹ The contracting parties are European Communities, Afghanistan, Bahrain, China, Egypt, Finland and etc.³³² There are few important sections, such as, Art 6 that criminalises the laundering of

³²⁵ Council of Europe, “Convention on Laundering.”

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ United Nations General Assembly, Fifty-fifth Session, Agenda Item 105, *United Nations Convention against Transnational Organized Crime*, in pursuance of UN General Assembly Resolution 55/25, A/RES/55/25, 2001.

³²⁹ United Nations Office on Drugs and Crime -Treaties, “United Nations Convention against Transnational Organized Crime and the Protocols Thereto,” United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/> (accessed July 16, 2013).

³³⁰ Ibid.

³³¹ United Nations Office on Drugs and Crime, *United nations convention against transnational organized crime and the protocols thereto*, (New York, 2004), 1.

³³² United Nations Treaty Collection, “United Nations Convention against Transnational Organized Crime,” United Nations, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12&chapter=18&lang=en (accessed May 4, 2012).

the proceeds of crime.³³³ Art 6 (1) obliges each State Party to adopt legislative and other requisite measures to create criminal offences and impose sanctions when the act of ML is committed deliberately.³³⁴

Besides, Art 7 lays out, specifically, the procedures to curb ML.³³⁵ For instance, Art 7 (3) states that States Parties are compelled to adopt the appropriate endeavours of regional, interregional and multilateral organisations against ML by structuring a domestic regulatory and supervisory regime.³³⁶ The Convention also provides for the criminalisation of corruption (one of the common ways of laundering money) under Art 8 and further provides the measures to be adopted against corruption under Art 9.³³⁷

4.1.5 United Nations Convention against Corruption (UNCAC) (2003)

UNCAC is considered as the most extensive anti-corruption tool that was adopted on 31st October 2003 and it was enforced on 14th December 2005.³³⁸ One of the classic examples of corruption is bribery and this often occurs in all sports sectors which would include the football industry. The Contracting States consist of 167 state

³³³ United Nations Office on Drugs and Crime, *Convention against transnational organized crime*, 8.

³³⁴ United Nations Office on Drugs and Crime, *United nations*.

³³⁵ *Ibid.*, 9.

³³⁶ United Nations Treaty Collection, “United Nations Convention against Transnational Organized Crime.”, 10.

³³⁷ *Ibid.*, 10-11.

³³⁸ United Nations Treaty Collection, “United Nations Convention against Corruption,” United Nations, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-14&chapter=18&lang=en (accessed August 5, 2013).

parties and 140 signatories that include US, UK, Malaysia, China, Australia and etc.³³⁹

ML has been criminalised by virtue of Art 23 of UNCAC.³⁴⁰ It indicates that Contracting States would bear such onus of legislation so as to criminalise ML and also criminalise bribery in the private sector under Art 21 within their own jurisdictions.³⁴¹

4.2 Treaties

4.2.1 MLAT: United States of America and The United Kingdom of Great Britain and Northern Ireland (1994)

US, UK and Northern Ireland signed this treaty on 6th January 1994 and it was enforced on 2nd December 1996.³⁴² It was seen as a great step forward between the countries to fight criminal matters. Apart from the commitment towards international co-operation, assistance is offered between the countries in relation to evidence gathering and sharing of intelligence between law enforcement bodies from the respective countries.³⁴³ Such a treaty ensures that criminals are tracked down and eventually brought to justice.

³³⁹ United Nations Treaty Collection, "United Nations Convention against Corruption Signature and Ratification Status as of 2 April 2014," United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (accessed April 5, 2014).

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² "Mutual Legal Assistance: Treaty Between The United States of America and The United Kingdom of Great Britain and Northern Ireland," January 6, 1994, *Treaties and Other International Acts Series* 96-1202, (1994): 1.

³⁴³ Ibid., 7.

4.2.2 MLAT: United States of America and Malaysia (2009)

There is also an enforcement treaty, MLAT signed between US and Malaysia.³⁴⁴ It was signed on 28th July 2006 and it came into force on 21st January 2009.³⁴⁵ It is a treaty which allows collaboration between the two countries in combating crimes that include money laundering to terrorism.³⁴⁶ These countries are now committed to give assistance to each other in gaining evidence, serving documentations, conducting searches and seizures, recognizing sites of crimes, freezing and confiscating properties.³⁴⁷ In Malaysia, the authorities involved in the framework are police officers, Immigration, customs and other parties like Central Bank and the Federal Bureau of Investigation.³⁴⁸

4.2.3 MLAT: United Kingdom of Great Britain and Northern Ireland and Malaysia (2011)

The treaty between the United Kingdom of Great Britain and Northern Ireland and Malaysia on Mutual Assistance in Criminal Matters was adopted on 21st July 2010 and presented to UK parliament on February 2011.³⁴⁹ However, this treaty has not been enforced.³⁵⁰ Such treaty only acts as an international structure for mutual legal assistance in criminal issues.³⁵¹

³⁴⁴ Embassy of the United States Kuala Lumpur, "US and Malaysia Sign Mutual Legal Assistance Treaty," Embassy of the United States Kuala Lumpur, Malaysia, http://malaysia.usembassy.gov/mlat_signed012109.html (accessed May 7, 2013).

³⁴⁵ Embassy of the United States Kuala Lumpur, "US and Malaysia."

³⁴⁶ Ibid.

³⁴⁷ "Mutual Legal Assistance: Treaty between The United States of America and Malaysia," July 28, 2006, *Treaties and Other International Acts Series* 9-121, (2006): 1-3.

³⁴⁸ Embassy of the United States Kuala Lumpur, "US and Malaysia."

³⁴⁹ "Treaty: Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government Malaysia on Mutual Assistance in Criminal Matters," July 21, 2010, no. 1 (2011): 1.

³⁵⁰ Ibid.

³⁵¹ Foreign and Commonwealth Office, "Guidance: UK Treaties," Government of United Kingdom,

ML is implicitly laid under Art 1 for definitions. Some of the crucial elements include the assistance given subjecting to the national law of Malaysia, in the form of search and seizure of documents or records; the production of evidence through video; and many others.³⁵² This treaty also provides that such assistance will be confidential.³⁵³

4.3 The Main Governing Body of Money Laundering – Financial Action Task Force (FATF)

Prior to 1990, there was no main governing body that monitored ML activities throughout the world.³⁵⁴ Then, in 1990, the main governing body of ML was formed and aptly named as the Financial Action Task Force (FATF).³⁵⁵

4.3.1 FATF 2001 Recommendations

At the time, the FATF issued 40 Recommendations in its efforts to curb ML activities. FATF revised the 40 Recommendations in 1996 when FATF noted progressively complex combinations of techniques, for instance, the extensive usage of the professionals such as lawyers and accountants to assist in covering the true ownership, manipulation of the illegitimate incomes, provision of advice and support in ‘cleaning’ criminal proceeds.³⁵⁶

<https://www.gov.uk/uk-treaties> (accessed April 2, 2014).

³⁵² Foreign and Commonwealth Office, “Guidance.”

³⁵³ Ibid.

³⁵⁴ FATF, “Who we are,” Financial Action Task Force, <http://www.fatf-gafi.org/pages/aboutus/> (accessed March 3, 2012).

³⁵⁵ Ibid.

³⁵⁶ Financial Action Task Force, *FATF 40 Recommendations*, (Paris, 2003), 2.

The FATF recommendations therefore set minimum standards of action for countries to be obligated with the ideas by observing their specific conditions and not violate their constitutional structures.³⁵⁷ The recommendations included all measures and national schemes that ought to be within the boundary of their criminal justice and regulatory systems; preventive measures to be taken by financial institutions, business dealings, professionals and universal co-operation.³⁵⁸

The 2001 FATF recommendations were again revised by adding in the 9 special recommendations due to the 9/11 terrorist attack of the Twin Towers in New York, USA so as to curb terrorist financing.³⁵⁹ Over 130 countries had recognized the 40+9 Recommendations and it portrays the international AML standard.³⁶⁰ A crucial component to the war against ML is the need of countries' systems to be monitored and evaluated.³⁶¹

With respect to this international standard, the mutual evaluation connected by FATF-style regional bodies (FSRBs), as well as the evaluation operated by the International Monetary Fund (IMF) and World Bank, are essential instruments to make sure all participating countries perform well in line with the FATF recommendations.³⁶² These recommendations consist of 4 categories namely, legal

³⁵⁷ Financial Action Task Force, *Money Laundering through the Football*, 6.

³⁵⁸ *Ibid.*, 2..

³⁵⁹ John W. Brooks and Roberta Vassallo, "Attorney Cathy's Continuing Quandary, Or, Can the Gatekeeper Initiative Be Reconciled with the Multi-Jurisdictional Practice of Law?," *The International Law* 41, no.1 (2007): 64-65, http://www.americanbar.org/content/dam/aba/publishing/rpte_ereport/AttorneyCathy.authcheckdam.pdf (accessed June 29, 2013).

³⁶⁰ Financial Action Task Force, *FATF 40*, 2.

³⁶¹ *Ibid.*

³⁶² Financial Action Task Force, *Money Laundering through the Football*, 6.

systems, preventive measures, institutional measures and international co-operation.³⁶³

The recommendations infer criminalising ML and offences related to it as predicate offences under their respective penal codes and further set up anti-ML legislations to govern ML issues within the respective jurisdictions.³⁶⁴ Further, countries should align the ML offence with the standard of United Nations, Vienna and Palermo Conventions.³⁶⁵ In addition, legislative measures of United Nations, Vienna and Palermo Conventions should be followed by the countries, without affecting the third parties who act in good faith, in order to ensure their relevant authorities forfeit properties that are derived from illegal proceeds and subsequently laundered.³⁶⁶ In 2012, the FATF recommendations were improvised upon again.

4.3.2 FATF 2012 Recommendations

The FATF 2012 Recommendations can be divided into various parts that include Anti-Money Laundering Act Policies and Co-ordination, Money Laundering and Confiscation, Terrorist Financing or Proliferation, Preventive Measures, Transparency and Beneficial Ownership of Legal Persons and Arrangements, Powers and Responsibilities of Competent Authorities and Institutional Measures and International Co-operations.³⁶⁷

³⁶³ Ibid., 2.

³⁶⁴ Ibid., 30.

³⁶⁵ Ibid.

³⁶⁶ Financial Action Task Force, *FATF 40 + 9 Special Recommendations on Money Laundering & Terrorist Financing*, (Paris, 2004), 1.

³⁶⁷ FATF Recommendations, "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations," Financial Action Task Force,

The FATF members adopted the new updated version of FATF recommendations which added the proliferation of financing of weapons of the mass destruction to FATF's areas of surveillance.³⁶⁸ The intention behind the new mandate is to deepen global surveillance of evolving criminal and terrorist threats, to build stronger, practical and on-going partnership with the private sector and support global efforts to raise standards, especially in low capacity countries.³⁶⁹ These measures allow the countries to strengthen the requirements for the higher risk situations and allow the countries to take a more focus approach to areas where high risks remain or where implementation could be improved.³⁷⁰

The risk-based approach encourages countries to identify, assess, and understand the risks they face of ML and terrorist financing so that they are able to adopt the appropriate measures to address those risks, and also to be more flexible in measuring the target resources in a more appropriate way.³⁷¹

The Recommendations 2012 increases prominence of the so-called "risk-based approach" to AML/CFT and the related move towards assessing countries' effectiveness in mitigating their ML and terrorist financing risks;³⁷² it includes tax crimes in the list of designated predicate offenses to ML where "smuggling" is

<http://www.fatf-gafi.org/topics/fatfrecommendations/documents/internationalstandardsoncombatingmoneylaunderingandthefinancingofterrorismproliferation-thefatfrecommendations.html> (accessed September 9, 2012).

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ James K Jackson, "The Organization for Economic Cooperation and Development," *Congressional Research Service* (October 2013): 14, <http://www.fas.org/sgp/crs/misc/RS21128.pdf> (accessed June 1, 2013).

³⁷¹ Ibid., 15.

³⁷² International Monetary Fund, *Revisions to the Financial Action Task Force (FATF) Standard—Information Note to the Executive Board* (Washington, DC, 2012), 3.

included because it is recognised that smuggling of goods and the consequential evasion of customs and excise taxes are serious offenses that generated significant criminal proceeds.³⁷³ It also expands on the standard to cover targeted financial sanctions pursuant to the United Nations Security Council Resolutions (UNSCRs) on the prevention, suppression, and disruption of proliferation of weapons of mass destruction (WMD),³⁷⁴ and it strengthens on action against corruption.³⁷⁵

Besides, new recommendation 10³⁷⁶ has improved the 2003 recommendation 5. These recommendations deal with Customer Due Diligence (CDD) measures where a more specific measure was added to establish the beneficial ownership and control of legal persons and arrangements, and specific measures were defined in relation to beneficiaries of life insurance policies and trusts; and the risk-based approach to CDD was clarified.

New recommendation 25³⁷⁷ has improved the 2003 recommendation 33. These two recommendations deal with transparency of legal persons and arrangements. The provisions relating to beneficial ownership and control of legal persons and arrangements were strengthened by requiring that there be reliable information available about the beneficial ownership and control of companies, trusts, and other legal persons or legal arrangements.

³⁷³ FATF Recommendations, “International Standards.”

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ FATF Recommendations, “International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations.”

³⁷⁷ Ibid.

New recommendation 38³⁷⁸ has improved the 2003 recommendation 38. These recommendations deal with international cooperation. According to recommendation 38, “this authority should include being able to respond to requests made on the basis of non-conviction-based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law. Provisions were included to strengthen cooperation between competent authorities. Countries should also have effective mechanisms for managing such property, instrumentalities or property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets”.

The FATF under their recommendations have listed out the financial bodies that must be reporting institutions.³⁷⁹ Most financial organisations, i.e. body corporate that deals with high amount of monies have been listed but football related organisations are not in the list.³⁸⁰

4.4 Regulations of the Football Associations

4.4.1 FIFA

4.4.1.1 FIFA Statute

The latest FIFA Statutes³⁸¹ provide the basic laws for the world of football. The Statutes have undergone several thorough revisions during FIFA's history, giving FIFA a modern and comprehensive legal framework for its increasingly important

³⁷⁸ FATF Recommendations, “International Standards.”

³⁷⁹ Ibid.

³⁸⁰ Ibid.

³⁸¹ Fédération Internationale de Football Association, *FIFA Statutes - July 2012 Edition*, 1.

work. There are 87 articles in total covering matters such as FIFA congress, committees, judicial body competitions, transfers and finance.³⁸²

Art 2³⁸³ laid down the objectives of FIFA as to improve the game of football constantly and it promotes globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes; to organise its own international competitions; to draw up regulations and provisions and ensure their enforcement; to control every type of Association Football by taking appropriate steps to prevent infringements of the statutes, regulations or decisions of FIFA or of the Laws of the Game; to prevent all methods or practices which might jeopardise the integrity of matches or competitions or give rise to abuse of football.

In addition, Art 13 and 14 of the statute also clearly laid down that all member associates are to follow and obey all regulations, aims and statute of FIFA, that non-compliance may lead to the expulsion or suspension.³⁸⁴ The FIFA Statute has stipulated law relating to financial matters under Part 5 of the statute. The Act provides that “the financial period of FIFA shall be four years and shall begin on each 1st January in the year following the final competition of the FIFA World Cup”.³⁸⁵ Moving on, Art 73 states that “The revenue and expenditure of FIFA shall be managed so that they balance out over the financial period.”³⁸⁶ FIFA’s major duties in the future shall be guaranteed through the creation of reserves”. Besides,

³⁸² Ibid., 2.

³⁸³ Ibid., 6.

³⁸⁴ Ibid., 12-13.

³⁸⁵ Fédération Internationale de Football Association, *FIFA Statutes.*, 54.

³⁸⁶ Ibid.

the General Secretary is responsible for drawing up the annual consolidated accounts of FIFA with its subsidiaries as at 31 December.³⁸⁷

This means that, under Art 73, for every FIFA World Cup played, the 1st of January in the year that follows will commence the financial period for FIFA for the process of balancing out the expenditure of the federation.³⁸⁸ During this time, checks will be performed thoroughly throughout the entire football sector and any irregularities found during this time will be investigated. This process is overseen by the General Secretary of FIFA and he is also responsible for drawing up the annual consolidated accounts for the federation.³⁸⁹

Art 74³⁹⁰ expressly provides that “the auditors shall audit the accounts approved by the Finance Committee and present a report to the Congress. The auditors shall be appointed for a period of four years. This mandate may be renewed”. This Article provides for the smooth and trustworthy transactions in funds relating to FIFA as the auditors are required to present a report to the Congress. This ensures transparency in handling huge amount of funds within the federation. Also this Article provides that the auditors shall be appointed for a period of four years, as this is to ensure that no abuse of power will occur amongst the auditors themselves to further increase the transactions of funds in the federation.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

4.4.1.2 Disciplinary Code

The FIFA Disciplinary Code³⁹¹ not only governs the players but the associations, members of associations, in particular, the clubs, officials, match officials, licensed match and players' agents; anyone with an authorisation from FIFA, in particular with regard to a match, competition or other event organised by FIFA and even the spectators.

The Disciplinary Code that was introduced by FIFA in 2011 has taken a strong stance against match-fixing.³⁹² When the researcher started out on this research, this area was still without regulation and not even made official by FIFA yet. So the researcher commends FIFA for moving in the right direction on tackling the problem of match fixing, which is long overdue. It is stated in s 10³⁹³ that anyone who conspires to influence the result of a match in a manner contrary to sporting ethics shall be sanctioned with a match suspension or a ban on taking part in any football-related activity as well as a fine of at least CHF 15,000. In serious cases, a lifetime ban on taking part in any football related activity shall be imposed. In the case of a player or official unlawfully influencing the result of a match, the club or association to which the player or official belongs may be fined. Serious offences may be sanctioned with expulsion from a competition, relegation to a lower division, point deduction and the return of awards.

³⁹¹ Fédération Internationale de Football Association, *FIFA Disciplinary Code: 2011 Edition*, (Zurich, 2011), 1.

³⁹² *Ibid.*

³⁹³ *Ibid.*, 41.

Besides, Art 60 of Section 4 of the code also sought to prevent duress or coercion towards the match official to prevent fake or a pre-decided match.³⁹⁴ It is stated that anyone who intimidates a match official with serious threats, or uses violence to pressure a match official into taking certain action or to hinder him from acting fairly and freely will be sanctioned with a fine of at least CHF 3,000 and a match suspension.³⁹⁵

Art 62 of the section 6³⁹⁶ of the Code has stated the laws governing corruption. It is stated that anyone who offers, promises or grants an unjustified advantage to a body of FIFA, a match official, a player or an official on behalf of himself or a third party in an attempt to incite or encourage him to violate the regulations of FIFA will be sanctioned as follows: with a fine of at least CHF 10,000, with a ban on taking part in any football-related activity, and with a ban on entering any stadium. In addition, passive corruption such as soliciting, being promised or accepting an unjustified advantage will also be sanctioned in the same manner. In serious cases and in the case of repetition, the sanction of a ban on taking part in any football-related activity may be pronounced for life. In addition, FIFA will order the confiscation of the assets involved in committing the infringement. These assets will be used for football development programmes.

³⁹⁴ Fédération Internationale de Football Association, *FIFA Disciplinary Code*, 35.

³⁹⁵ Ibid.

³⁹⁶ Ibid., 36.

4.4.1.3 Code of Ethics

This Code³⁹⁷ applies to improper conduct that damages the integrity and reputation of football and in particular applies to illegal, immoral and unethical behaviour. Thus it is applicable to all officials and players as well as match and players' agents. Subsection 2³⁹⁸ stipulates on undue advantages. Persons acting under FIFA are under duty to disclose, or to prevent any form of conflict of interest. In addition, it was stated that persons bound by the Code may only offer or accept gifts, which have a symbolic value; and to exclude any influence for the execution or omission of an act that is related to their official activities or falls within their discretion; are not contrary to their duties; do not create any undue pecuniary or other advantage and do not create conflict of interest.³⁹⁹

Besides, they are not allowed to offer to or accept from anyone within or outside FIFA, cash in any amount or form.⁴⁰⁰ They may not be reimbursed by FIFA for the costs associated with family members or associates accompanying them to official events, unless expressly permitted to do so by the appropriate organisation.⁴⁰¹

FIFA Code of Ethics also has provision against corruption and bribery.⁴⁰² Offering, promising, giving or accepting any personal and improper advantage are prohibited. Besides, misappropriating FIFA assets is also forbidden.⁴⁰³ Persons bound by the

³⁹⁷ Fédération Internationale de Football Association, *FIFA Code of Ethics: 2012 Edition*, (Zurich 2012), 6.

³⁹⁸ *Ibid.*, 17.

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.*, 18.

⁴⁰¹ *Ibid.*

⁴⁰² Fédération Internationale de Football Association, *FIFA Code of Ethics*, 19.

⁴⁰³ *Ibid.*

Code must also refrain from any activity or behaviour that might give rise to the suspicion of improper conduct.⁴⁰⁴ The receipt of commission or promises of commission while performing duties is prohibited as well under the Code, unless there is express permission to do so.⁴⁰⁵

Art 25⁴⁰⁶ states the rules governing integrity of matches and competitions. Persons bound by the Code shall be forbidden from taking part in, either directly or indirectly, with betting, gambling, lotteries and similar events or transactions connected with football matches. They are forbidden from having stakes in companies, concerns, organisations that promote, broker, arrange or conduct such events.

4.4.1.4 Regulation on Club Licensing

This regulation is drafted based on the UEFA Club Licensing manual. The principles were approved by the 57th FIFA Congress in May 2007.⁴⁰⁷ The main objectives of the club licensing system includes safeguarding the integrity of club competitions; improving the level of professionalism within the football family; promoting sporting values in accordance with the principles of fair play as well as secure match environments; and promoting transparency in the finances, ownership and control of clubs. This club licensing regulation expressly mentioned that it should be applied in confederation and national level as well.

⁴⁰⁴ Ibid.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid., 21.

⁴⁰⁷ Financial Action Task Force, *Money Laundering through the Football*, 32.

4.4.1.5 Regulations on the Status and Transfer of Players⁴⁰⁸

These regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.

It sets out the basic rule that a player may only be registered with one club at a time. Besides, it covers general matters such as the procedure in transferring, and the sanctions in cases of contravention. For example, Art 11⁴⁰⁹ stated that any player not registered at an association who appears for a club in any official match shall be considered to have played illegitimately. Sanctions may be imposed on the player or the club. In addition, Art 18bis⁴¹⁰ states that no club shall enter into a contract which enables any third party to acquire the ability to influence in employment and transfer-related matters undermining its independence, its policies or the performance of its teams.

4.4.1.6 Newly Proposed Anti-Corruption Code

In 2012, FIFA has ‘tried’ to launch a new Anti-Corruption Code of Conduct upon all the football players and officials of the 209 football nations.⁴¹¹ The main aim of this code is to curb bribery and corruption and rescue the integrity of the football

⁴⁰⁸ Fédération Internationale de Football Association, *Regulations on the Status and Transfer of Players*, (Zurich, 2012), 1.

⁴⁰⁹ *Ibid.*, 13.

⁴¹⁰ *Ibid.*, 19.

⁴¹¹ ESPN Soccer, “FIFA sets new anti-corruption code,” Entertainment and Sports Programming Network, http://espn.go.com/sports/soccer/story/_/id/7857348/fifa-publishes-new-anti-corruption-code-conduct (accessed June 22, 2013).

industry.⁴¹² FIFA hired Transparency International, a non-governmental organisation which monitors corruption in international development to prepare a report to show that FIFA was on the right track on the launching of such a Code.⁴¹³ The results were alarming and scandalous.⁴¹⁴ The researcher submits that The ‘Code’ was just a cloak that was designed deliberately to get the world of FIFA’s back in the quest for transparency. As such the Code has been withdrawn.

4.4.2 CONCACAF

CONCACAF is regulated by its statutes.⁴¹⁵ The Statutes must conform to those of FIFA, and of CONCACAF which is one of six continental confederations. In turn, each member association of CONCACAF must have its own statutes, which must conform with and be approved by CONCACAF and FIFA.⁴¹⁶

Each tournament conducted by CONCACAF and its sub-regional affiliates are governed by regulations approved by the Executive Committee.⁴¹⁷ The regulations stipulate the frequency, objectives and rules of the tournaments, requirements for all national or club teams which participate, and specify financial arrangements, format of the event and methods of determining disputes.⁴¹⁸

⁴¹² Ibid.

⁴¹³ Transparency International Secretariat, “Transparency International disappointed that FIFA gives no strong signal for change,” Transparency International, http://www.transparency.org/news/pressrelease/20120330_FIFA_no_strong_signal (accessed August 5, 2013).

⁴¹⁴ Ibid.

⁴¹⁵ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Statutes 2006* (New York, 2006), 2.

⁴¹⁶ Ibid., 6.

⁴¹⁷ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Statutes*, 7.

⁴¹⁸ Ibid., 2-29.

4.4.2.1 CONCACAF Statutes

Art 2⁴¹⁹ sets out the CONCACAF's objectives as follows: to promote football, to propitiate the friendly relationship among the Associations, promoting the organization of competitions, to organize and oversee association football in North America, Central America and the Caribbean; to enforce CONCACAF's Statutes and Regulations, as well as of the Laws of the Game published by the International Board, and, further, to prevent the introduction of irregular methods of practices in this sport, as well as the abuses of these practices. It also ensures that the bodies and Officials of CONCACAF and its Members observe the Statutes, regulations, directives, decisions and Code of Ethics of FIFA in their activities.⁴²⁰

Besides, Art 3 provides for the CONCACAF's duties regarding member Associations, inter alia, respect and see that the Statutes and Regulations of FIFA and CONCACAF are respected.⁴²¹ Therefore, it can be seen from here that all the rules lay down by FIFA providing against match-fixing, misconducts, corruption and etc. are to be followed and observed by the CONCACAF and its associates.⁴²²

Next, Art 28⁴²³ stipulated the functions of the Executive Committee as being observed and to see to it that all Statutes and Regulations of CONCACAF, the resolutions adopted by the Congresses and those emanating from the Committee itself are carried out, as provided in FIFA's Statutes. Besides, it also serves to

⁴¹⁹ Ibid., 4.

⁴²⁰ Ibid., 2.

⁴²¹ Ibid., 5.

⁴²² Confederation of North, Central American and Caribbean Association Football, *CONCACAF Statutes*, 5.

⁴²³ Ibid., 17.

administer CONCACAF and in its administering, it has the power to suspend member Associations for violation of regulations or statutes and for lack of payment of their financial obligations.⁴²⁴ It also has the power to suspend the members of the Executive Committee or other authorities of member Associations for violation of FIFA's or CONCACAF's regulations or statute provisions;⁴²⁵

Financial matters are also provided under this Statute. Art 39⁴²⁶ sets out that attending CONCACAF's financial matters are inter alia the responsibilities of the Secretary General. In addition, it clearly listed down CONCACAF's income under Art 42⁴²⁷. Examples given are annual dues assigned to member Associations, which should be paid on April 30 of every year at the latest, percentages from competitions organised, fines imposed in accordance with these Statutes and Regulations, donations, inheritances, bequests which it may receive, and other incomes not specified.⁴²⁸

There are no similar codes of conduct or disciplinary code as in FIFA. CONCACAF only provides competition specific regulations, namely the CONCACAF Champions League Regulations⁴²⁹, World Cup Regulations⁴³⁰, CONCACAF Gold Cup⁴³¹ and

⁴²⁴ Ibid., 18.

⁴²⁵ Ibid.

⁴²⁶ Ibid., 22.

⁴²⁷ Ibid., 24.

⁴²⁸ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Statutes*, 24.

⁴²⁹ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Champions League Regulations*, (Miami, 2013), 1.

⁴³⁰ Fédération Internationale de Football Association, *2014 FIFA World Cup Brazil Regulations*, (Zurich, 2014), 1.

⁴³¹ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Gold Cup 2013*, (Miami, 2013), 1.

etc. For example, the World Cup 2014 Regulations contains provisions that stipulate generally that the players in such competitions are to respect the spirit of fair play, non-violence; in addition, member associates are to adhere to the FIFA Statutes, Code of Ethics and Disciplinary Code, especially on matters relating to match-fixing and racism.⁴³²

4.4.3 USSF

4.4.3.1 Laws of the Game

This piece of legislation covers majorly on technical playing rules in a game of football, including the size of the field, weight and material of the ball, width between the goalposts and height of the crossbar from the ground, duration of the periods of play, substitutions and others.⁴³³ There is no mention of ML or financial matters.⁴³⁴ In addition, there are even no rules governing corruption, or match-fixing matters which are essential in indirectly curbing ML.⁴³⁵

4.4.3.2 Code of Ethics

This code of ethics punishing misconduct is merely restricted to the referee. Nevertheless, it can be seen as an effort in preventing match-fixing.⁴³⁶

⁴³² Fédération Internationale de Football Association, *2014 FIFA*, 18.

⁴³³ Law of the Game Overview, "Laws of the Game," US Soccer, <http://www.ussoccer.com/referees/Laws-of-the-Game> (accessed September 3, 2013).

⁴³⁴ Law of the Game Overview, "Laws of the Game."

⁴³⁵ Ibid.

⁴³⁶ United States Soccer Federation, *United States Soccer Federation Code of Ethics for Referees*, (Chicago, 2013), 1.

4.4.3.3 Regulation on Players' Agent

In January 2008, FIFA issued a new set of regulations laying out the requirements for obtaining a players' agent license. These regulations require that individual national associations (including the U.S. Soccer Federation) oversee the licensing program.⁴³⁷

The researcher contends that respective national associations are in charge of setting up their own rules based on the FIFA guidelines.⁴³⁸

In accordance with FIFA regulations, U.S. Soccer has developed an application procedure for those interested in obtaining a player's agent license.⁴³⁹ The license is issued by U.S. Soccer Federation, and certifies that the holder has complied with the applicable FIFA players' agents regulations.⁴⁴⁰ Apart from listing out the application procedure, the researcher submits that not much has been done by USSF in their legal statutory framework concerning this.

4.4.3.4 Financial matters

A worth noting effort is that USSF made tax statement available for public review.⁴⁴¹ This is a great step to financial transparency. As a tax-exempt, non-profit organization, the USSF is also required to release its financial statement annually. Besides, audits of the financial condition of USSF are conducted by McGladrey & Pullen, LLP in accordance with the auditing standards generally accepted in the

⁴³⁷ USSF, "Player Agents - United States Soccer Federation," United States Soccer Federation, <http://www.ussoccer.com/About/Federation-Services/Player-Agents.aspx> (accessed August 26, 2013).

⁴³⁸ USSF, "Player Agents."

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Steven Goff, "Bob Bradley's salary and USSF finances," Soccer Insider, http://voices.washingtonpost.com/soccerinsider/2010/04/bob_bradleys_salary_and_ussf_f.html (accessed July 6, 2013).

US.⁴⁴² Those standards are to obtain rational guarantee about whether the financial statements are free of material misstatement.⁴⁴³ An audit includes examining evidence supporting the amounts and disclosures in the financial statements.⁴⁴⁴ An audit also includes assessing the accounting principles used and significant estimates made by management as well as evaluating the overall financial statement presentation.⁴⁴⁵

4.4.4 UEFA

4.4.4.1 UEFA Main Statute⁴⁴⁶

Art 42⁴⁴⁷ states that UEFA's revenue shall consist of the following contributions, levies and additional revenue as given below: an annual contribution of EUR 200 payable by each Member Association on 1 January each year; competition entry fees in accordance with the UEFA competition regulations; ticket sales, television and advertising revenues and levies from UEFA competitions, in accordance with the financial provisions contained in UEFA competition regulations; levies from FIFA competition matches, in accordance with the financial provisions in FIFA competition regulations; levies from senior national representative team matches, in accordance with special implementing regulations; and revenues from the exploitation of rights of any kind. This article provides explanation on the kinds of revenues that is expected by UEFA.

⁴⁴² USSF, "Financial reports," US Soccer Foundation, <http://www.ussoccerfoundation.org/about-us/financial-reports?print=true> (accessed July 4, 2013).

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

⁴⁴⁶ Union of European Football Associations, *UEFA Statutes: Edition 2012* (Geneva, 2012), 1.

⁴⁴⁷ Ibid., 19.

Art 43⁴⁴⁸ concerns the budget and closing of accounts. It is stated that a budget of income and expenditure shall be prepared for each financial year by the General Secretary. Extraordinary expenditure not included in the budget shall be authorised by the Executive Committee by way of supplementary credits. Besides, books of accounts need to be kept well and accounts are to be closed annually.

Art 44⁴⁴⁹ states that the UEFA financial year shall begin on 1 July and end on 30 June of the following year. Besides, Art 45⁴⁵⁰ stipulates that the internal auditors shall periodically examine different financial matters. The Executive Committee is responsible to set up the corresponding regulation and elect two internal auditors from different Member Associations. Both auditors shall be elected for four years, with one being replaced every two years. The internal auditors shall report to the Executive Committee in writing on every audit, copying each such report to the General Secretary.

Next, Art 46⁴⁵¹ stated that the Auditing Body shall be an auditing company which is independent of UEFA. It shall be elected by the Ordinary Congress for the financial year immediately following the Congress. It shall be eligible for re-election. The Auditing Body shall audit the accounts and submit a written report to the Ordinary Congress. Art 53 relates to disciplinary measures against member associations and clubs and Art 54 against individuals are quite exhaustive.

⁴⁴⁸ Ibid., 20.

⁴⁴⁹ Ibid.

⁴⁵⁰ Union of European Football Associations, *UEFA Statutes*.

⁴⁵¹ Ibid., 21.

4.4.4.2 UEFA Club Licensing Regulations⁴⁵²

Club Licensing follows the FIFA version to the letter. Please refer to the FIFA Club Licensing rules above.

4.4.4.3 UEFA Financial Fair Play (FFP) Regulations 2012⁴⁵³

The UEFA FFP Regulations are only applicable to those clubs that are competing in Europe's two top premier competitions namely The Champion's League and The Europa League. In an attempt to curb 'sugar daddies' from continuously pumping unsourced monies into the club and system, a revised FFP Regulations has been drawn up into the 2012 edition.

From the 2012/2013 season onwards, Football Clubs competing in the top two elite European competitions will be subjected to break even tests to determine whether they have suffered financial losses for the season. The permitted Break Even deficit is set at a fairly high level (€45m) for the first Monitoring Period, and is then reduced in future Periods. The permitted loss falls to EUR €30m for the three year period that covers 2013/14, 2014/15, 2015/16 (that works out to an average loss of EUR €10m or GBP £8m a season). If it is found that they have indeed suffered financial losses UEFA can impose any of the following sanctions from 2014 onwards.

⁴⁵² Club Licensing Financial Fair Play, *UEFA Club Licensing and Financial Fair Play Regulations Edition 2010*, (Nyon, 2010), 1.

⁴⁵³ Union of European Football Associations, *UEFA Club Licensing and Financial Fair Play Regulations Edition 2012*, (Nyon, 2012), 1.

An independent panel outside UEFA namely the Club Financial Control Board (CFCB) will assess if any of the interested clubs have indeed broken the FFP rules which includes the Break Even rules mentioned above. Their assessment will begin between December 2013 and April 2014 on the relevant clubs and will subsequently advise all the clubs on their assessment and punishments. The punishments will be meted out to the relevant clubs from August 2014 onwards with an indefinite ban on participating in Europe's top two elite competitions being the most serious. The CFCB can issue any of the following punishments listed in the Diagram below but reports from UEFA suggest that items 5, 6 and 7 in the Diagram could even begin as early as August 2013.

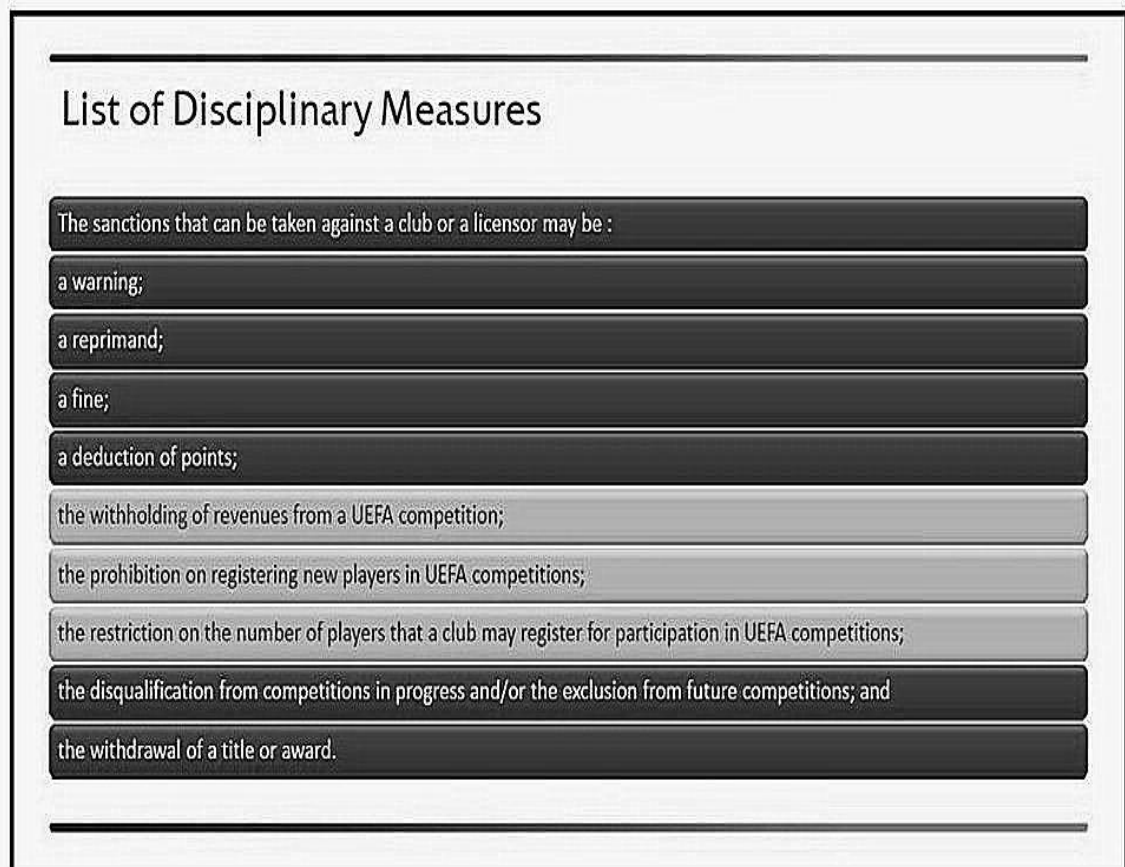


Figure 4.1. Understanding Financial Fair Play (FFP) – 9 available punishments under FFP

Source: Understanding Financial Fair Play” 2013.

4.4.4.4 UEFA Disciplinary Regulations 2013

At the time of completion of this thesis in 2013, UEFA has just passed this set of regulations.⁴⁵⁴ Basically, one article is quite relevant. Art 12 covers integrity of matches and competitions and match-fixing.⁴⁵⁵ The article states that all persons bound by UEFA’s rules and regulations are disallowed from betting directly and/or indirectly on matches that they have an interest in.⁴⁵⁶ All persons bound must

⁴⁵⁴ Union of European Football Associations Congress, *UEFA Disciplinary Regulations: Edition 2013*, (Nyon: 2013), 1.

⁴⁵⁵ *Ibid.*, 6.

⁴⁵⁶ Union of European Football Associations Congress, *UEFA Disciplinary Regulations*, 6.

refrain from behaviour that will damage the integrity of the game and must cooperate with UEFA at all material times to combat this occurrence.⁴⁵⁷ Such persons are also not allowed to disclose insider information for anyone's benefit.⁴⁵⁸ The researcher contends that this article focuses specifically on betting and matches fixing but still UEFA has overall not emphasised in any of its statutes combating the menace of ML.⁴⁵⁹

4.4.5 FA

4.4.5.1 Laws of the Game⁴⁶⁰

This piece of legislation covers on mainly technical playing rules in a game of football, including the size of the field, weight and material of the ball, width between the goalposts and height of the crossbar from the ground, duration of the periods of play, substitutions and other details but there is no specific provision forbidding corruption or even ML matters.

4.4.5.2 FA Handbook⁴⁶¹

FA handbook covers a wide range of areas. Agents have to go through a strict application process to get authorised. Unauthorised agents are not recognised by the FA and clubs or players dealing with them could be sanctioned by the FA. There is a requirement to inform the FA of the identity and role of an agent, and details of the

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid.

⁴⁶⁰ Football Association, UK, *Rules of The Association and Laws of the Game: Season 2010-2011*, (London, 2011), 3-4.

⁴⁶¹ Football Association, UK, *Rules and Regulations of The Association Season 2012-2013*, (London, 2013), 3-4.

remuneration. It also dealt with the duty and responsibilities of authorised agents. As such, dealings with agents are strictly regulated by the FA.

Next, it also deals with Third Party Investment on player transfers. Third parties are forbidden by the FA to enter into deals with the clubs about players unless such deal has been permitted by the FA. The FA has also clearly stated how payments should be made and deals structured in the transfer and registration of new players. All other forms of payment that have not been approved by the FA are prohibited.

4.4.5.3 FA Betting Rules⁴⁶²

The rules cover three main areas, namely betting, the use of inside information and match fixing. It governs all players, managers, coaches, club medical staff and other participants.

Betting includes the backing and laying of the outcomes of matches and competitions. It covers a wide range of bets, including in-play betting and spread betting. Persons governed by such rules are not allowed to place any bet on a game involving their own club. They are also not allowed to place a bet on a game or competition in which they have any direct or indirect influence. Any under 18 matches betting is prohibited. They are also not allowed to ask or instruct anyone to place any of the bets above on their behalf.

⁴⁶² Football Association, UK, *A short guide to the FA Betting rules*, (London, 2012), 1-8.

Inside information is information that one becomes aware of through his involvement at club which is not publicly available. They are not allowed to use inside information to place a bet or to instruct someone else to place a bet on their behalf or pass inside information on to someone else. Passing of information would not just be by word of mouth, it can be in any other form. The rule applies equally to emails or social networking sites, such as Facebook and twitter.

Persons governed under this rule are not allowed to accept from or offer to anyone any bribes, gifts or rewards of any nature in relation to seeking to influence the outcome of a match. They are also under an obligation to immediately report to the FA any offer of a bribe, gift or reward made to them or other persons related to match-fixing.

4.4.5.4 Financial Regulation

There are no specific financial regulations by the FA at the time of writing this thesis. However, it is interesting to note that some football clubs in England choose to follow the optional UEFA FFP and the FA are already in the process of issuing out their own FAFFP Regulations in the coming future.

4.4.5.5 The FA Financial Fair Play (FAFFP) ⁴⁶³ Regulations 2011-2015

However, the FA is currently drawing up the FAFFP regulations that would mirror the UEFA one. Currently, the FFP of UEFA only applies to clubs which will be

⁴⁶³ Financial Fair Play, "Financial Fair Play - Explained" Financial Fair Play, UK, <http://www.financialfairplay.co.uk/financial-fair-play-explained.php> (accessed June 2, 2013).

competing in the two top tier European competitions which are The Champions League and The Europa League. As such the FFP rules do not apply to any other association and are not binding. Associations may choose to follow but it is not mandatory. As such, it is not binding on the English Premier League but clubs in the lower English divisions have opted to follow the FFP by a majority consensus. The researcher states that the FA is taking great strides to offer an equal playing field to all teams within the FA which is highly commendable. Also, ‘sugar daddies’ with lots of unsourced monies will have to be very careful once the FA approves and pass their own FFP Regulations.

4.4.6 AFC

4.4.6.1 AFC Statute⁴⁶⁴

This statute is also modelled on FIFA. Art 2 laid down the objectives, which includes improving the game of Football constantly and promoting, regulating and controlling it in the territory of Asia to foster friendly relationships between and amongst National Associations, confederations, FIFA and other organisation, to control all types of Football, ensure compliance and prevent infringements of the Statutes, Codes, Rules, Regulations, Standing Orders, directives and decisions of FIFA, AFC and Laws of the Game, to draw up regulations and provisions and ensure their enforcement, to prevent the introduction of improper methods and practices which might jeopardise the integrity of matches or competitions, or give rise to the abuse of

⁴⁶⁴ AFC, “AFC Statute 2013,” Asian Football Confederation, <http://www.the-afc.com/en/about-afc/about-afc.html> (accessed December 22, 2013).

Football, to institute strong measures and campaigns against bribery, corruption, drugs and racism in Football.⁴⁶⁵

Arts 62-68 deal with financial matters and mirror those of FIFA.⁴⁶⁶ The researcher contends that the AFC Statute is akin to the FIFA main statute.

4.4.6.2 Laws of the Game

This piece of legislation covers majorly on technical playing rules in a game of football, including the size of the field, weight and material of the ball, width between the goalposts and height of the crossbar from the ground, duration of the periods of play, substitutions and others.⁴⁶⁷ There is no mention of ML or financial matters. In addition, there are even no rules governing corruption and match-fixing matters.⁴⁶⁸

4.4.6.3 AFC Disciplinary Code

Under Chapter I of the Code, Section 1 laid down the conditions of sanctions.⁴⁶⁹ Next, Section 2 listed down various sanctions including warning, reprimand, fine, return of awards, expulsion, match suspension, stadium ban, transfer ban and etc. s 3 to s 5 are concerned with the authorities, committees and their duties.⁴⁷⁰

⁴⁶⁵ AFC, "AFC Statute."

⁴⁶⁶ Ibid.

⁴⁶⁷ AFC, "Laws of the Game 2012/2013," Asian Football Confederation, <http://www.the-afc.com/en/component/jdownloads/finish/56/28.html> (accessed November 15, 2013).

⁴⁶⁸ Ibid.

⁴⁶⁹ AFC, "AFC Disciplinary Code: 2013 Edition," Asian Football Confederation, <http://www.the-afc.com/en/component/jdownloads/finish/43/7> (accessed November 22, 2013).

⁴⁷⁰ Ibid.

Under Chapter II: Special Part, it deals with the offences punishable under this Code. It includes offences such as disorderliness during a match or competitions⁴⁷¹, offensive and racist behaviour⁴⁷², Infringements of personal freedom through threat or coercion⁴⁷³, forgery and falsification⁴⁷⁴ and corruption⁴⁷⁵. These are the offences which may be used to facilitate the occurrence of ML. Responsibilities of clubs and associations are stated under s 9 of the Code deals with organisational matters and procedures.⁴⁷⁶

4.4.6.4 AFC Club Licensing Regulation

S 2 stated about procedures that are similar with the FIFA licensing regulation. Hence the researcher does not need to reiterate the laws once again.⁴⁷⁷

4.4.7 Football Association of Malaysia (FAM)

4.4.7.1 Sports Development Act 1997

The Sports Development Act 1997 governs all sports in Malaysia.⁴⁷⁸ Sports Development Act 1997 merely covers general matters for all sports such as sport development, the Olympics Council, appointment of Commissioner and its power to register sports bodies and to require disclosure of information.⁴⁷⁹ It also covers

⁴⁷¹ AFC, "AFC Disciplinary Code."

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

⁴⁷⁷ AFC, "AFC Club Licensing Regulation," Asian Football Confederation, <http://www.the-afc.com/en/component/jdownloads/finish/54/23.html> (accessed June 3, 2013).

⁴⁷⁸ Sports Development Act, 1997, 23-24.

⁴⁷⁹ Ibid, 8-14.

registration and supervision of sports bodies.⁴⁸⁰ It is to be noted that the registration of various sports bodies, including hockey, football, swimming and etc. are to be made under the Societies Act 1966.⁴⁸¹ In addition, the Societies Act not only governs sports bodies but other “local society” means any society organised and established in Malaysia or having its headquarters or chief place of business in Malaysia; “political party”⁴⁸² as well as “mutual benefit society”⁴⁸³.

4.4.7.2 FAM Main Statute

Malaysia is obliged to have their own statute in football to be in line with FIFA requirements.⁴⁸⁴ It is a basic statute that outlines the set-up of Malaysian football, the composition of FAM and their unfettered powers, the functions and duties of certain members within the association and members within the respective clubs.⁴⁸⁵ There are no provisions to deter ML in the industry.⁴⁸⁶

4.4.7.3 The Disciplinary code

Besides the Sports Development Act 1997 and The FAM Statute, FAM passed its own "Discipline Code" which came into force in 2011.⁴⁸⁷ It is made punishable under this Act for any persons, player, club or official to offend the law of the game set out,

⁴⁸⁰ Sports Development Act, 1997, 13.

⁴⁸¹ Societies Act, 1966.

⁴⁸² Ibid., 36.

⁴⁸³ Ibid.

⁴⁸⁴ Fédération Internationale de Football Association, *Laws of the Game 2012/2013*, (Zurich, 2013), 3.

⁴⁸⁵ Ibid.

⁴⁸⁶ Ibid.

⁴⁸⁷ Malaysian Digest Sports, “FAM Annuar Musa Can Be Sacked If Terms of Suspension Not Adhered,” MalaysianDigest.com, <http://www.malaysiandigest.com/top-news/44294-fam-annuar-musa-can-be-sacked-if-terms-of-suspension-not-adhered-.html> (accessed July 2, 2013).

contravene any club rules, make betting on any competition, to provide or attempting to provide advantages in order to affect the results of a match.⁴⁸⁸ Among punishments that can be imposed are suspension of clubs, fine, expulsion from a competition, relegation to a lower division, recording of offence, return of awards and etc.⁴⁸⁹

There is no specific mention of corruption, match fixing or anti-ML anywhere in the Code. In fact the statutes have been widely criticised to be draconian in nature and many provisions are against FIFA's international standards.⁴⁹⁰ An example of how draconian the FAM statute is can be demonstrated in Art 88 which states,

“Except for routine releases to the press by the President or the General Secretary, no official, coaches of FAM or referee or any Member or Associate Member, or player registered or employed with any Member or Associate Member, unless sanctioned by the Congress, shall contribute any article on the management of affairs of FAM, vent grievances, supposed or real, or write criticisms hostile to FAM (Member or Associate Member)”.

In fact, FAM has slapped sanctions on numerous persons for voicing out against them. In 2012, a distinguished person from the Kelantan FA was slapped with a 30 month ban in contravention of Art 88.⁴⁹¹ He was not allowed to carry any post in football at state or national levels as the terms of his suspension.⁴⁹² In early 2013, the

⁴⁸⁸ Malaysian Digest Sports, “FAM Annuar Musa.”

⁴⁸⁹ Ibid.

⁴⁹⁰ Daily Express Sports, “FAM must change if Article 88 goes against FIFA regulations,” Daily Express, <http://www.dailyexpress.com.my/news.cfm?NewsID=84448> (accessed August 2, 2013).

⁴⁹¹ Haresh Deol, “A bad law is still law, unfortunately,” The Malay Mail, <http://www.mmail.com.my/story/bad-law-still-law-unfortunately> (accessed May 30, 2013).

⁴⁹² Ibid.

ex-Perlis FA President was also slapped with a 30 month ban and a RM 39,000 fine for raising his concerns about match fixing in a Malaysian football game.⁴⁹³

The FAM statutes are in a need of serious revamp and even the current FAM Deputy President is in support of this but unfortunately, the current FAM President does not share the same view.⁴⁹⁴ After much criticism of Art 88 in the recent past, The FAM Exco has drafted changes to Art 88, and it would be interesting to note such changes.⁴⁹⁵ It is anticipated that the changes will be met with a huge resistance from certain quarters of the FAM and even if accepted, there will be conditions in fine print that must be adhered to.⁴⁹⁶ At the time of submission of this thesis, the draconian law of Art 88 still stands.

4.4.8 Regulations Pertaining to Online Betting

Online betting is permitted in US and England but it is still prohibited in Malaysia. However this may soon change in Malaysia as there are calls to legalize this method of gambling. The researcher submits that laws governing this area are quite adequate only that the enforcement mechanisms are frail. As such, the researcher will aptly suggest proper enforcement mechanisms that should be implemented to oversee this industry in the subsequent Chapter.

⁴⁹³ Daily Express Sports, "FAM must change."

⁴⁹⁴ Haresh Deol, "Call to review statute", The Malay Mail, <http://www.mmail.com.my/story/call-review-statute> (accessed May 30, 2013).

⁴⁹⁵ Vijhay Vick, "FAM Exco draft changes to Article 88," SPORTS247, <http://www.sports247.my/2013/04/fam-exco-draft-changes-to-article-88/> (accessed May 2, 2013).

⁴⁹⁶ Ibid.

4.5 AML Regulations Implemented by US, England and Malaysia

4.5.1 Money Laundering is a Predicate Offence

US is the first jurisdiction which discovered the term ‘money laundering’⁴⁹⁷ and US is also influential in the usage of the term ‘predicate offence’⁴⁹⁸ where predicate offence is defined as the fundamental criminal offence generating the illegal proceeds which are the subject of a ML offence.⁴⁹⁹

4.5.1.1 US Primary AML Regulations

4.5.1.1.1 Bank Secrecy Act 1970 (BSA)

In an effort to shore up efforts to investigate, prosecute and convict criminals, the US Congress in 1970 passed the Currency and Foreign Transactions Reporting Act, also known as the Bank Secrecy Act (BSA) of 1970.⁵⁰⁰ The BSA is one of the most important tools in the fight against ML. Since then, numerous other laws such as USA Patriot Act and MLCA have enhanced and amended the BSA to provide law enforcement and regulatory agencies with the most effective tools to combat ML.⁵⁰¹

The BSA consists of two parts, namely, statute and regulations.⁵⁰² Under s 1818(s) of the BSA Statute, it established requirements for record-keeping and reporting by

⁴⁹⁷ United States v. \$4,255,625.39, 762 F.2d 895, 903 (11th Cir.1985).

⁴⁹⁸ R E Bell, “Abolishing the Concept of ‘Predicate Offence,’” *Journal of Money Laundering Control* 6, no. 2 (2002): 137, <http://www.emeraldinsight.com/journals.htm?articleid=1537499&> (accessed July 5, 2012).

⁴⁹⁹ Ibid.

⁵⁰⁰ FDIC, “Section 8.1 - Bank Secrecy Act, Anti-Money Laundering and Office of Foreign Assets Control,” Federal Deposit Insurance Corporation, <http://www.fdic.gov/regulations/safety/manual/section8-1.html> (accessed April 22, 2013).

⁵⁰¹ Ibid.

⁵⁰² Ibid.

private individuals, banks, and financial institutions.⁵⁰³ The BSA is designed to help identify the source, amount, and movement of currency and other monetary instruments that are transported or transmitted into or out of the US or any deposit made in any of their financial institutions.⁵⁰⁴ S 1786 (q) requires National Credit Union Administration (NCUA) Board to establish and enforce BSA's requirements and monitor the credit unions' compliance to the BSA's recording and reporting requirements.⁵⁰⁵

Under the BSA Regulations, s 103.18 requires banks to file STRs which involving USD \$ 5,000 or more.⁵⁰⁶ S 103.19 requires brokers or dealers in securities to file STRs for transactions more than USD \$ 5,000 to the Financial Crimes Enforcement Network (FinCEN).⁵⁰⁷ S 103.22 requires the financial institutions to report currency transactions that exceed USD \$ 10,000.⁵⁰⁸ S 103.24 obliges the holders of foreign financial accounts to report to the Commissioner of the Internal Revenue annually regarding the information of such accounts.⁵⁰⁹ In the case of transactions exceeding USD \$ 10,000, s 103.28 requires the financial institutions to verify the identity of the person who carried out such transactions.⁵¹⁰

⁵⁰³ FDIC, "Section 8.1."

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ Ibid.

⁵⁰⁷ Ibid.

⁵⁰⁸ Money and Finance: Treasury - 31 CFR B Chapter 1, "Part 103—Financial Recordkeeping and Reporting Of Currency and Foreign Transactions," Federal Financial Institutions Examination Council, http://www.ffiec.gov/bsa_aml_infobase/pages_manual/regulations/31cfr103.htm (accessed May 30, 2013).

⁵⁰⁹ Ibid.

⁵¹⁰ Bank Secrecy Act Anti-Money Laundering Examination Manual, "Appendix A: BSA Laws and Regulations," Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering InfoBase, http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_101.htm (accessed May 26, 2013).

The BSA obliges several normal and high-risk businesses as reporting institutions to file Customer Transaction Reports (CTR) for any transaction exceeding USD \$10,000.⁵¹¹ S 103.11 lists out the normal reporting institutions which include amongst others the Public and Private Banks, Credit unions, Insurance agencies, Casinos, money-changer, broker and dealer in securities, Card Club, Foreign Financial agency, Funds Transfer, Investment Security, check casher, US Postal Service, Futures Commission Merchant, Introducing Broker-Commodities and etc.⁵¹² While the high-risk business reporting institutions include amongst others, the telegraph company and money changer which involved in the currency exchange, check casher, or issuer of monetary instruments in an amount greater than USD \$1,000 to any person in one day.⁵¹³

All the CTR's from the respective institutions are reported to the supervisory authority which is the Internal Revenue Service (IRS) who will then conduct the necessary investigations.⁵¹⁴ Individuals and Body corporates who are consistently flagged within the banking system for monies that they cannot account for will be sanctioned as per the provisions within the Act.⁵¹⁵

⁵¹¹ FDIC, "Section 8.1."

⁵¹² Federal Financial Institutions Examination Council, *Bank Secrecy Act, Anti-Money Laundering, and Office of Foreign Assets Control*, (Washington, D.C, 1998), 1.

⁵¹³ *Ibid.*, 3.

⁵¹⁴ Midwest Independent Bank BSA Policy, "Bank Secrecy Act/Anti-Money Laundering/OFAC USA Patriot Act Compliance Policy," Midwest Independent Bank, https://www.mibanc.com/files/BSA_Policy_2012-04-04.pdf (accessed September 26, 2012).

⁵¹⁵ *Ibid.*

For sanctions under the BSA, it is divided into two parts, civil and criminal penalties.⁵¹⁶ BSA imposes fines on those who do not comply with the requirements of record-keeping and reporting.⁵¹⁷ For civil penalties, according to USC, title 31, s 5321, the fines can range from USD \$ 500, USD \$ 1000 and USD \$ 10,000 per occurrence.⁵¹⁸ For Criminal penalties, according to USC, title 31, s 5322, it ranges from USD \$10,000 and 5 years of imprisonment to USD \$500,000 and 10 years imprisonment per occurrence.⁵¹⁹

4.5.1.1.2 PATRIOT Act 2001 (USA PATRIOT Act)

In response to the September 11, 2001, terrorist attacks, US Congress passed the Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act).⁵²⁰

After all, USA PATRIOT Act has become the most significant anti-money laundering law that US Congress has enacted since the Bank Secrecy Act 1970 (BSA) itself but most importantly, it is the primary Act that deals with countering terrorist financing which does not fall within the ambit of this thesis.⁵²¹

⁵¹⁶ Midwest Independent Bank BSA Policy, "Bank Secrecy Act."

⁵¹⁷ Ibid.

⁵¹⁸ Ibid.

⁵¹⁹ Ibid.

⁵²⁰ Iyandra Smith, "The USA – no longer a haven for the foreign bank," *Journal of Money Laundering Control* 11, no. 3 (2008): 200, <http://www.emeraldinsight.com/10.1108/13685200810889362> (accessed May 28, 2013).

⁵²¹ Courtney J Linn, "What asset forfeiture teaches us about providing restitution in fraud cases," *Journal of Money Laundering Control* 10, no. 3 (2007): 22, http://ruby.fgcu.edu/courses/cpacini/courses/common/CourtneyLynn_article.pdf (accessed March 4, 2012).

The only relevant section appears to be s 315 of the Patriot Act which governs bribery and smuggling offences, amends the Section 1956(c) (7) of title 18 of the US Code by inserting foreign corruption offences as one of the predicate offences of ML.⁵²² The US Patriot Act amends the BSA in 2000, 2003 and 2006 where it obliges several financial institutions as reporting institutions to file Suspicious Activity Reports (SARs) to the law enforcement authorities.⁵²³ The reporting institutions include futures commission merchants (FCMs), introducing brokers (IBs), commodity pool operators (CPOs), commodity trading advisors (CTAs), broker or dealer in securities or mutual fund, casino, bank and etc.⁵²⁴

4.5.1.1.3 Money Laundering Control Act 1986 (MLCA)

MLCA was passed in 1986 where it establishes ML as a federal crime, prohibits structuring transactions to escape Currency Transaction Report (CTR) filings, introduced civil and criminal forfeiture for BSA violations and directed banks to establish and maintain procedures to ensure and monitor compliance with the reporting and recordkeeping requirements of the BSA.⁵²⁵ S 981 of MLCA provides civil and criminal forfeiture of any real or personal property which involved or attempted to be involved in the transaction.⁵²⁶ S 985 grants power to civil forfeiture

⁵²² *USA Patriot Act*, § 315.

⁵²³ Linn, "What asset," 19.

⁵²⁴ *Ibid.*

⁵²⁵ Jimmy Gurule, "The Money Laundering Control Act of 1986 creating a new federal offense or merely affording federal prosecutors an alternative means of punishing specified unlawful activity," *American Criminal Law Review*, <http://law-journals-books.vlex.com/vid/merely-affording-punishing-specified-53495995> (accessed June 1, 2013).

⁵²⁶ Legal Information Institute, "18 USC § 981 - Civil forfeiture," Cornell University Law School, <http://www.law.cornell.edu/uscode/text/18/981> (accessed June 1, 2013).

of real property by the relevant authority such as government agencies to file a notice of forfeiture to the suspects.⁵²⁷

MLCA amplifies the BSA's effectiveness by adding the interrelated ss 8(s) and 21 to the Federal Deposit Insurance Act 1950 (FDIA) and s 206(q) of the Federal Credit Union Act 1934 (FCUA).⁵²⁸ MLCA precludes circumvention of the BSA requirements by imposing criminal liability on a person or financial institution that knowingly assists in the laundering of money, or that structures transactions to avoid reporting them.⁵²⁹

As a result, on January 27, 1987, all federal banking agencies issued essentially similar regulations requiring banks to develop programs for BSA compliance. Most important, it criminalised ML.⁵³⁰ Again, the researcher would like to add that the football industry has not been listed as a reporting institution under this Act.

4.5.1.2 US's Corresponding AML Regulations

4.5.1.2.1 Anti-Drug Abuse Act 1988 (ADAA)

Moving on, in 1988, ADAA augments the s 341, definition of financial institution to include businesses of car dealers and real estate agents and obliges filing of reports

⁵²⁷ Legal Information Institute, "18 USC § 981."

⁵²⁸ Ibid.

⁵²⁹ Ibid.

⁵³⁰ Ibid.

on huge currency transactions and it also obliges the verification of purchasers' identity who engage in more than USD \$3,000.⁵³¹

S 981 of ADAA grants the power of civil forfeiture of any property which involve or attempt to be involved in any transaction relating to ML, illegal activities related to ML and unlicensed money changer business.⁵³² S 981 (B) (ii) provides the punishment of death or imprisonment exceeding 1 year.⁵³³

4.5.1.2.2 Annunzio-Wylie Anti-Money Laundering Act 1992 (AWAMLA)

Then coming to 1992, AWAMLA strengthened the sanctions for BSA violations, required SARs and eliminated previously used Criminal Referral Forms, required verification and recordkeeping for wire transfers and it also established the Bank Secrecy Act Advisory Group (BSAAG).⁵³⁴

AWAMLA also provides enforcement sections for appointment of conservator, cancellation of license, termination of insurance and etc.⁵³⁵ As such, it is an Act designed for enforcement mechanisms, and thus its enforcement sections will be discussed in Chapter 5.

⁵³¹ *Anti-Drug Abuse Act of 1986*, Public Law 99-570, H.R 5484, (October 27, 1986), § 341.

⁵³² Legal Information Institute, "18 USC § 1084 - Transmission of wagering information; penalties Title 18 - Crimes and Criminal Procedure," Cornell University Law School, <http://www.law.cornell.edu/uscode/text/18/1084> (accessed June 14, 2013).

⁵³³ *Ibid.*

⁵³⁴ FinCEN, "History of Anti-Money Laundering Laws," Financial Crimes Enforcement Network, http://www.fincen.gov/news_room/aml_history.html (accessed June 1, 2013).

⁵³⁵ U.S. Board of Governors of the Federal Reserve System Division of Banking Supervision and Regulation, "Amendments to Money Laundering Laws and Related Legislation and Federal Reserve 1992 Report to Congress Regarding Administrative Enforcement and Criminal Investigatory and Prosecutorial Activities", U.S. Board of Governors of the Federal Reserve System, <http://www.federalreserve.gov/boarddocs/srletters/1993/SR9351.HTM> (accessed May 19, 2013).

4.5.1.2.3 Money Laundering Suppression Act of 1994 (MLSA)

This Act requires banking agencies to review and enhance training, and develops AML examination procedures, requires each Money Services Business (MSB) to be registered by an owner or controlling person of the MSB and every MSB to maintain a list of businesses authorised to act as agents in connection with the financial services offered by the MSB.⁵³⁶ It further states that operating an unregistered MSB is considered as a federal crime.⁵³⁷ As such the researcher contends that it is not relevant for this thesis.

4.5.1.2.4 Money Laundering and Financial Crimes Strategy Act 1998 (MLFCS)

In 1998, US congress passes MLFCS. This Act requires banking agencies to develop anti-money laundering training for examiners, obliges the Department of the Treasury and other agencies to develop a National Money Laundering Strategy and created the High Intensity Money Laundering and Related Financial Crime Area (HIFCA) Task Forces to concentrate law enforcement efforts at the federal, state and local levels in zones where ML is prevalent.⁵³⁸

Likewise, as MLFCS is solely for enforcement mechanism, its enforcement sections, and application on cases occurring in other industries in general and the football industry in specific will be discussed in Chapter 5.

⁵³⁶ Legal Information Institute, “31 U.S. Code § 5330 - Registration of money transmitting businesses,” Cornell University Law School, http://www.law.cornell.edu/uscode/text/31/5330?qt-us_code_tabs=0#qt-us_code_tabs (accessed May 27, 2013).

⁵³⁷ Ibid.

⁵³⁸ *Money Laundering and Financial Crimes Strategy Act of 1998*, Public Law 105-310, 105th Cong., (October 30, 1998), 1.

4.5.1.2.5 Intelligence Reform & Terrorism Prevention Act of 2004

Next, the latest Act which was introduced by US government in governing the ML crime is the Intelligence Reform & Terrorism Prevention Act of 2004.⁵³⁹ It amended the BSA to require the Secretary of the Treasury to prescribe regulations requiring certain financial institutions to report cross-border electronic transmittals of funds, if the Secretary determines that such reporting is "reasonably necessary" to aid in the fight against ML and terrorist financing.⁵⁴⁰ As such the researcher contends that it is not relevant for this thesis.

4.5.1.3 England's Primary AML Legislations

4.5.1.3.1 Proceeds of Crime Act 2002 (POCA)

POCA is England's primary anti-money laundering Act that came into force in 2003.⁵⁴¹ The introduction of POCA provides significant and positive impact on England's ability to restrain, confiscate and recover proceeds of crime.

Under s 327, it is a ML offence for the act of concealing or hiding or transforming or transferring the criminal property or removing a criminal property from the place it was originally located.⁵⁴² S 328 indicates that, if a person is involved or attempts to be involved in an arrangement which he knows or suspects to assist in the acquisition, keep, use or control of criminal property on behalf of another person, he

⁵³⁹ Financial Crimes Enforcement Network, "History of Anti-Money Laundering".

⁵⁴⁰ Ibid.

⁵⁴¹ Bell, "Abolishing the Concept," 139.

⁵⁴² Proceeds of Crime Act, 2002, sec. 327.

has committed an offence.⁵⁴³ S 329 states that, it is an offence if the person attains or uses or owns any criminal property.⁵⁴⁴ S 334 of the Act prescribes penalties for ML offence under the three sections mentioned above to be a maximum 14 years imprisonment or a fine or both.⁵⁴⁵

S 340 (3) interprets ‘criminal property’ as a property which is obtained by a person, who knows or is suspected to be involved in criminal conduct or by a person, who knows or is suspected to assist in laundering such property obtained from criminal conduct.⁵⁴⁶

S 304 states that where property was obtained through unlawful conduct, then it is recoverable property but if property obtained through unlawful conduct has been disposed of (since it was so obtained), it is recoverable property only if it is held by a person into whose hands it may be followed. Further, recoverable property obtained through unlawful conduct may be followed into the hands of a person obtaining it on a disposal by the person who through the conduct obtained the property, or a person into whose hands it may (by virtue of this subsection) be followed.⁵⁴⁷

S 75 indicates that a person practices a criminal lifestyle if his criminal conduct is satisfying one of these three tests, namely, it is a predicate offence specified in Schedule 2, abetting in the course of criminal conduct, committing and benefitting

⁵⁴³ Proceeds of Crime Act, 2002, sec. 328.

⁵⁴⁴ *Ibid.*, sec. 329.

⁵⁴⁵ *Ibid.*, sec. 334.

⁵⁴⁶ *Ibid.*, sec. 340 (3).

⁵⁴⁷ *Ibid.*, sec. 304.

from an offence which is conducted after a period of at least six months.⁵⁴⁸ Schedule 2 essentially includes ML as one of the predicate offences and it also includes illegal activities related to ML (which is discussed in Chapter 2) such as drug trafficking, human trafficking, arms dealings, forgery and counterfeiting, terrorism directing, infringement of copyrights, prostitutions, blackmail and any related offences as predicate offences.⁵⁴⁹

Besides, for the ability to confiscate and recover; s 6 provides that the court can issue a confiscation order to recover the criminal proceeds from the person being convicted of being involved in or benefiting from the criminal conducts.⁵⁵⁰ S 338⁵⁵¹ provides authorised disclosures where it is not an offence if the person has reasonable excuse for not making such disclosure, for example, the legal profession, which has a duty of confidentiality

Schedule 9 provides a list of the regulated sector and supervisory authorities. The regulated sectors are the industries that are obliged by the Act to report any suspicious ML activities.⁵⁵² The regulated sectors are, for instance, National Savings Bank, credit union, money changer, insurance business, investment business and etc. Whereas, the supervisory authorities which supervise the reporting obligation of the

⁵⁴⁸ Proceeds of Crime Act, 2002, sec. 75.

⁵⁴⁹ Ibid., sch. 2.

⁵⁵⁰ Ibid., pt. II.

⁵⁵¹ Ibid., sec. 338.

⁵⁵² Ibid., sch. 9.

regulated sectors are Bank of England, Financial Services Authority, the Council of Lloyd's and etc.⁵⁵³

4.5.1.3.2 Money Laundering Regulations 2007 (MLRs)

MLRs 2003 was replaced by MLRs 2007 which came into effect on 15 December 2007.⁵⁵⁴ Basically, MLRs is an Act that mainly provides anti-money laundering enforcement controls to curb ML activities.⁵⁵⁵

According to s 3 (1), such enforcement controls of MLRs are only applicable to persons who carry out businesses of institutions of credit and finance, audit, insolvency professionals, external accountants, tax advisers, independent legal practitioners, trust or company service providers, estate agents, high value dealers and casinos.⁵⁵⁶ These persons are referring to 'relevant persons' in the Act.⁵⁵⁷

The relevant persons have four main duties for enforcement controls i.e. performance of Customer Due Diligence (CDD), Record-Keeping, establishing and maintaining the proper Policies and Procedure in conduct of the enforcement controls and training its employees regarding such enforcement controls.⁵⁵⁸

⁵⁵³ Proceeds of Crime Act, 2002, sch. 9.

⁵⁵⁴ ICEAW Library and Information Service, "UK legislation and regulations Money laundering," ICEAW, <https://www.icaew.com/en/library/subject-gateways/law/money-laundering/uk-legislation-and-regulations> (accessed April 22, 2013).

⁵⁵⁵ Ibid.

⁵⁵⁶ The Money Laundering Regulations, 2007, sec. 3(1)

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

S 5 obliges the relevant persons to conduct CDD measures by examining the relevant information received from reliable sources to identify and verify the identity of the new customer and also the beneficial owner.⁵⁵⁹ S 5(b) states a beneficial owner may not be the customer who is directly dealing with the relevant persons, but however, he is the owner of a title in dealings between the customer and the relevant persons.⁵⁶⁰ S 11 obliges relevant persons to terminate transaction if they are unable to conduct CDD on the suspicious customer and they must prevent themselves from assisting the customer who performs occasional transaction.⁵⁶¹

S 14(5) emphasizes the needs of performing CDD measures and on-going monitoring by relevant persons upon the politically exposed person (PEP).⁵⁶² This section is essential as PEP is considered as one of the most susceptible entities that get involved in ML, no matter in general or specifically in football industry.⁵⁶³

The MLRs' applicability in the football industry is probably impossible as this Act is only enforced and applied by the relevant persons and supervisory authorities stated in the s 3(1) and s 23 respectively.⁵⁶⁴ The researcher suggests that the football industry be included in the lists of relevant persons and supervisory authorities. This would undoubtedly make the FA and all football clubs perform CDD measures which would detect potential money launderers into the football industry the minute they intend to launder their illegal proceeds. For instance, s 5 will identify and

⁵⁵⁹ Proceeds of Crime Act, 2002, sec. 5.

⁵⁶⁰ Ibid., sec. 5 (b).

⁵⁶¹ Ibid., sec. 11.

⁵⁶² Ibid., sec. 14 (5).

⁵⁶³ Ibid., sec. 14 (5).

⁵⁶⁴ Ibid., sec. 3 (1); sec. 23.

investigate the background of the subsequent potential owner of the club before the ownership contract is concluded.

4.5.1.4 England's Corresponding Legislations

4.5.1.4.1 Drug Trafficking Act 1994 (DTA)

Historically, there were two types of ML offences in England's legislation, namely, laundering the proceeds of drug trafficking and laundering of proceeds of other crimes.⁵⁶⁵ In England, the first statute that categorizes ML as a criminal offence is the Drug Trafficking Offences Act 1986 (DTOA).⁵⁶⁶ DTOA only covers the offence of laundering the proceeds of drug trafficking.⁵⁶⁷

In 1994, DTA replaced and repealed the DTOA through ss 49, 50 and 51.⁵⁶⁸ The three sections are similar to the sections of POCA where s 49 provides that a person is guilty if he conceals or transforms or transfers the drug proceeds,⁵⁶⁹ while s 50 states that a person is guilty if he assists another person to keep the drug proceeds⁵⁷⁰ and s 51 indicates a person is guilty if he acquires, possesses or uses the drug proceeds.⁵⁷¹ DTA is applicable in the football industry as long as the matter is drugs related.

⁵⁶⁵ Bell, "Abolishing the Concept," 139.

⁵⁶⁶ Ibid.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.

⁵⁶⁹ Drug Trafficking Act, 1994, sec. 49.

⁵⁷⁰ Ibid., sec. 50.

⁵⁷¹ Ibid., sec. 51.

4.5.1.4.2 Criminal Justice Act 1993 (CJA93)

CJA93 is the Act which creates the modern offence of ML i.e. the laundering of proceeds of other crimes.⁵⁷² CJA93 amended ss 93A, 93B and 93C of the Criminal Justice Act 1988 (CJA88) and it consists of sections similar to POCA where s 29 states that it is an offence if a person assists another to keep the proceeds of criminal conduct.⁵⁷³ While s 30 indicates a person is guilty if he obtains, possesses or uses the proceeds of criminal conduct⁵⁷⁴ and s 31 provides that it is an offence to conceal or transfer proceeds of criminal conduct.⁵⁷⁵

4.5.1.5 Malaysia's Primary AML Regulation

4.5.1.5.1 Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA)

Before the revised AMLATFA which incorporated relevant requirements in the area of terrorism financing and came into operation on 6th March 2007, the first Act that was enacted to counter ML was the Anti-Money Laundering Act 2001 (AMLA), which came into force on 15 January 2002.⁵⁷⁶ Prior to the enactment of AMLA 2001, the only provisions that related to ML are section 3 and 4 of the Dangerous Drugs (Forfeiture of Property) Act 1988⁵⁷⁷ and section 18 of the Anti-Corruption Act 1997.⁵⁷⁸ Now, AMLATFA is the main piece of legislation that regulates ML offences in Malaysia.⁵⁷⁹

⁵⁷² Drug Trafficking Act, 1994, pt. II.

⁵⁷³ Criminal Justice Act, 1993, sec. 29.

⁵⁷⁴ *Ibid.*, sec. 30.

⁵⁷⁵ *Ibid.*, sec. 31.

⁵⁷⁶ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001.

⁵⁷⁷ Dangerous Drugs (Forfeiture Of Property) Act, 1988, sec. 3; sec. 4.

⁵⁷⁸ Anti-Corruption Act, 1997, sec. 18.

⁵⁷⁹ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001.

S 4 of AMLATFA states that any person who involves in or attempts to involve in or assist in the commission of ML is guilty of an offence of ML and liable to a fine maximum of 5 million ringgit or to imprisonment for a maximum term of 5 years or both.⁵⁸⁰ S 3 defines “ML” into three limbs of separate offences.⁵⁸¹ First limb, it is an offence if a person directly or indirectly involves in a transaction of proceeds of the unlawful activity.⁵⁸² Second limb, a person obtains, accepts, keeps, hides, transfers, transforms, exchanges, transmits, arranges, uses, eliminates from or brings into Malaysia the proceeds of unlawful activity.⁵⁸³ Third limb, a person encumbers the establishment of the true identities of proceeds of the unlawful activity.⁵⁸⁴

Also, s 3, sub-paragraph (aa) which states that, it is an offence where the person knows or believes the property is the proceeds of unlawful activity, or sub-paragraph (bb) which states that, the person without reasonable excuse fails to conduct due diligence to determine the property is proceeds of unlawful activity or not.⁵⁸⁵ “Proceeds of an unlawful activity” is defined as any property, directly or indirectly, acquired by a person from any unlawful activity.⁵⁸⁶

⁵⁸⁰ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001, sec. 4.

⁵⁸¹ Guru Dhillon, Rusniah Ahmad, Aspalela Rahman, Ng Yih Miin., “The viability of enforcement mechanisms under money laundering and anti-terrorism offences in Malaysia: An overview,” *Journal of Money Laundering Control* 16, no. 2 (2013): 182, <http://www.emeraldinsight.com/10.1108/13685201311318511> (accessed May 28, 2013).

⁵⁸² Anti-Money Laundering and Anti-Terrorism Financing Act, 2001, sec. 3.

⁵⁸³ Ibid.

⁵⁸⁴ Ibid.

⁵⁸⁵ Ibid.

⁵⁸⁶ Dhillon, Ahmad, Rahman, Miin., “The viability of enforcement mechanisms,” 187.

“Unlawful activity” means the activity which, directly or indirectly is related to any serious offence or foreign serious offence.⁵⁸⁷ “Serious offence” means an attempt to commit or assist to commit the offences indicated in Second Schedule.⁵⁸⁸ While “foreign serious offence” means the offence contravenes the law of a foreign jurisdiction and such commission is considered as serious offence if it occurs in Malaysia.⁵⁸⁹

AMLATFA criminalises ML and lifted bank secrecy provisions for criminal investigations involving more than 180 predicate offenses in the Second Schedule.⁵⁹⁰ The Second Schedule of AMLATFA includes ML as the first predicate offence and is followed by the illegal activities related to ML such as bribery and corruption, human trafficking, arm dealings, drugs trafficking, unlicensed banking and financing, illegal betting, kidnapping, unlicensed foreign companies, illegal smuggling, unlicensed money-changing, relevant penal code offences and etc.⁵⁹¹

Part 3 of AMLATFA provides enforcement mechanism of financial intelligence where s 7(1) states that the Minister of Finance may appoint any person to act as the competent authority.⁵⁹² S 8(3) compels such competent authority to gather relevant statistics and records, supervising reporting institutions as listed in the First Schedule to report the suspicious transaction, provide recommendations to the reports

⁵⁸⁷ Dhillon, Ahmad, Rahman, Miin., “The viability of enforcement mechanisms,” 187.

⁵⁸⁸ Ibid., 188.

⁵⁸⁹ Ibid.

⁵⁹⁰ Aspaella a. Rahman, “The impact of reporting suspicious transactions regime on banks: Malaysian experience,” *Journal of Money Laundering Control* 16, no. 2 (2013): 168, <http://www.emeraldinsight.com/10.1108/13685201311318502> (accessed May 28, 2013).

⁵⁹¹ Anti-Money Laundering and Anti- Terrorism Financing Act, 2001, sch. 2.

⁵⁹² Ibid., sec. 7.

submitted by relevant supervisory authority or enforcement body or reporting institutions and organise training to the reporting institutions regarding the proper way of reporting and record-keeping obligations.⁵⁹³

Part 4 of AMLATFA focus on the enforcement mechanism of freezing, seizure and forfeiture. S 44 states if the officer enforcement bodies have reasonable ground to suspect a person is involved in any suspicious ML or terrorist financing activity, he or she can issue an order of freezing of the person's property.⁵⁹⁴ S 45 grants discretion to the investigating officer in seizing any movable property of the suspicious person.⁵⁹⁵ S 55 states that the court may issue order to forfeit any property of the convicted offender which is obtained from or used for the committed offences.⁵⁹⁶

There are 33 reporting institutions listed in First Schedule of the AMLATFA.⁵⁹⁷ The reporting institutions are banking business, Insurance business, money changer, Legal and Accounting firms, Estate agency business and etc.⁵⁹⁸ The researcher once again states that the football industry is not one of them. However, it is noteworthy, that, the Act was first successfully applied in general for the case of Dr Hamimah Idruss⁵⁹⁹, Dr Hamimah was the first person being convicted under s 4 (1) of the AMLA 2001 as she was found accepted RM 41.33 Million illicit

⁵⁹³ Anti-Money Laundering and Anti- Terrorism Financing Act, 2001, sec. 8.

⁵⁹⁴ Ibid., sec. 44.

⁵⁹⁵ Ibid., sec. 45.

⁵⁹⁶ Ibid., sec. 55.

⁵⁹⁷ Ibid., sch. 1.

⁵⁹⁸ Ibid.

⁵⁹⁹ *Danaharta Urus Sdn Bhd v. Safri Nawawi & Anor*, 1 LNS 1173 (H.C.K.L. 2004).

proceeds in 2003.⁶⁰⁰ Sessions Court Judge Asmadi Hussin sentenced punishment of 38 years of the imprisonment and a fine of RM 6.39 Million.⁶⁰¹ Another application of AMLATFA is in the case of Abd Khalid Bin Abd Hamid v. Public Prosecutor.⁶⁰²

4.5.1.6 Malaysia's Corresponding AML Regulation

4.5.1.6.1 Anti-Corruption Act 1997 (ACA)

The implementation of ACA is to prevent the offence of corruption and bribery. ACA also establishes the Anti-Corruption Agency to enforce its provisions.⁶⁰³ Several sections in Part three of ACA regarding offences of corruption and bribery, such as s 10, 11, 12 and etc. are incorporated as predicate offences which are indicated in the Second Schedule of AMLATFA.⁶⁰⁴

4.5.1.6.2 Malaysian Anti-Corruption Commission Act 2009 (MACCA)

Implementation of MACCA aims to uphold the anti-corruption body's integrity and accountability, regardless of whether it is established in the public or private sector.⁶⁰⁵ S 16(a) of MACCA indicates the offence of accepting gratification i.e. corruption where a person is guilty of an offence if he assists in accepting, or agrees to accept or accepts the bribes.⁶⁰⁶ S 16 (b) stipulates a person has committed an offence if he corruptly offers bribes to anyone, regardless of whether he gains the

⁶⁰⁰ Danaharta Urus Sdn Bhd v. Safri Nawawi & Anor.

⁶⁰¹ Ibid.

⁶⁰² Abd Khalid Bin Abd Hamid v. Public Prosecutor, 1 MLJ 692 (H.C.K.L. 1995).

⁶⁰³ Anti-Corruption Act, 1997.

⁶⁰⁴ Ibid., pt. III.

⁶⁰⁵ Malaysian Anti-Corruption Commission Act, 2009, sec. 2.

⁶⁰⁶ Ibid., sec. 16 (a).

benefit from such act.⁶⁰⁷ S 21 specifies the offence of bribing the public body's officer and the officer who accepts the bribes.⁶⁰⁸ For the punishment against the offences mentioned in the sections above, s 24 imposes the penalties of imprisonment for a term less than twenty years and a fine of maximum RM 10,000 or more than five times the amount of the bribes, depending on whichever is the higher.⁶⁰⁹

S 25(1) compels duty on any person to report the person who has given, promised or offered the bribes.⁶¹⁰ s 25 (2) states the person who fails to report such bribery activity will be imposed a fine less than RM100, 000 or imprisonment for less than ten years or both.⁶¹¹

4.6 Findings

The researcher states that there is a consensus from authorities worldwide to cooperate in the fight against illegal related activities and ML through the ratification of Conventions and Treaties. A deep level of co-operation in the sharing of information, knowledge and knowhow to assist member States has been established. Evidence gathering and co-operative law enforcement between the countries are also established through mutual legal assistance.

⁶⁰⁷ Malaysian Anti-Corruption Commission Act, 2009, sec. 16 (b).

⁶⁰⁸ Ibid., sec. 21.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid., sec. 25 (1).

⁶¹¹ Ibid., sec. 25 (2).

The FATF being the main body in the fight against ML issued 40 + 9 Recommendations in 2001 to provide recommendations to member states in the fight against ML. Over 130 countries had recognized the 40+9 Recommendations and it portrays the international AML standard.⁶¹² A crucial component to the war against ML is the need of countries' systems to be monitored and evaluated.⁶¹³ With respect to this international standard, the mutual evaluation connected by FATF-style regional bodies (FSRBs), as well as the evaluation operated by the International Monetary Fund (IMF) and World Bank, are essential instruments to make sure all participating countries perform well in line with the FATF recommendations.⁶¹⁴

FATF 2012 Recommendations brought further improvements by adding in the proliferation of financing of weapons of mass destruction to FATF's areas of surveillance.⁶¹⁵ The intention behind the new mandate is to deepen global surveillance of evolving criminal and terrorist threats, to build stronger, practical and on-going partnership with the private sector and support global efforts to raise standards, especially in low capacity countries.⁶¹⁶ It also includes tax crimes in the list of designated predicate offenses to ML where "smuggling" was included because it was recognized that smuggling of goods and the consequential evasion of customs and excise taxes was a serious offense that generated significant criminal proceeds.⁶¹⁷ It further strengthens on action against corruption.⁶¹⁸

⁶¹² Financial Action Task Force, *FATF 40*, 2.

⁶¹³ Ibid.

⁶¹⁴ Financial Action Task Force, *Money Laundering through the Football.*, 6.

⁶¹⁵ FATF Recommendations, "International Standards."

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

⁶¹⁸ Ibid.

It further lists down reporting financial institutions that must report to the authorities in relation to suspicion transaction reporting (STR) but has not included sports industries as one of the reporting institutions although it has covered other institutions like Real estate agencies and casinos.⁶¹⁹ In categories of non-financial businesses and professions means, it also does not covers individual which directly connected to football such as football agents.⁶²⁰

Upon scrutiny of the football regulations, the researcher noted the following anomalies. In Art 2 of the FIFA Statutes, the researcher states that although the words ‘prevent all methods or practice that might jeopardise the integrity of matches or competitions or give rise to abuse of Football’ have been used, neither the Statute nor Art 2 highlight the offence of ML nor does it explain the various methods and practices of ML. The researcher suggests that Art 2 needs to be written in more descriptive terms. The researcher contends that punishment for non-compliance of this Art is too light for serious offences and should therefore be amended to include heavier fines and/or other sanctions.

In relation to Art 27 of the FIFA Statutes, the researcher contends that any irregularities happening within the federation can only be checked, verified and endorsed by FIFA under the current set-up. This is not a good practice as FIFA may not have the resources to thoroughly investigate wrongdoings within the federation. The researcher contends that an independent Body or Commission should be set up to oversee the wrongdoings committed within the federation and this Body may also

⁶¹⁹ FATF Recommendations, “International Standards.”

⁶²⁰ Ibid.

investigate all the persons involved in regulating FIFA so as to promote the utmost transparency beginning with the President and the Board of directors of FIFA itself.

With reference to Art 74 of the FIFA Statutes, the researcher contends that there should be an independent body overseeing the approvals done by the Finance Committee. The independent Body must be able to check daily revenues and expenditures of FIFA and be witness as to whether the Finance Committee has been transparent in all the financial dealings that have happened in FIFA or its Associate Bodies throughout the whole 4-year period. Currently, only the Finance Committee is privy to all the information, and this can give rise to an abuse in the accurate representation of accounts by the Finance Committee.

As for the FIFA Disciplinary Code, the researcher contends that there are anomalies that require addressing and have been stated as follows:

The researcher contends that for conspiring to influence the result of a match in a manner contrary to sporting ethics⁶²¹, the one match suspension ban is too light. The punishment should commensurate with the degree of the offence committed. It is interesting to note that a lifetime ban may be imposed, but then the Commission did not clarify what amounts to falling within the serious offence category and what does not. This raises much ambiguity and raises the possibility of an incoherent issuance of punishments that will be meted out to individuals coming from different jurisdictions in the football world. The researcher further states that the fine sanction

⁶²¹ Fédération Internationale de Football Association, *FIFA Disciplinary Code*, 43.

is also unclear. It is stated that CHF 15,000 is the minimum fine but the maximum fine is not stated and no formulas were provided in the determination of the maximum fine amount.

For the offence of duress or coercion towards a match official to influence the outcome of the game,⁶²² the researcher contends once again that the punishment is too light. A fine of at least CHF 3,000 will not suffice and again the maximum fine has not been specified or clarified. To reiterate, the seriousness of the offence has not been clarified and a one match suspension is simply not enough to deter these incidents from happening. Match bans or expulsions should be considered by the degree of the offence committed. For instance, if this sort of offence occurred in a Friendly match as compared to a World Cup Final, the punishment meted out should be relative to the event itself, yet these issues have not been addressed under this section.

For Art 62 of the FIFA Disciplinary Code, the researcher contends that this step done by the FIFA is highly commendable but further adds that such sanctions for the offences committed have not been thoroughly thought through. The researcher states that a consistent formula should be set up to determine the issue of the fine depending on the seriousness of the offence to avoid inconsistent and unfair decisions. By merely stating the minimum amount, FIFA is encouraging abuse of process in the administering of fine punishments. The sanctions provided are fair but

⁶²² Fédération Internationale de Football Association, *FIFA Disciplinary Code*, 35.

there is too much room for the disciplinary Committees to be flexible about and will inevitably cause chaos in the administering of consistent decisions.

In furtherance to this, corruption is a criminal offence, as such, the researcher contends that such persons found guilty of these kinds of offences should also be charged as criminals and therefore FIFA should be allowed to have a FIFA crimes Court, in which when found guilty, the criminal could be imprisoned in the jurisdictions the crime was committed. Please refer Chapter 5 where these models have already been adopted by the Cricket industry. As an alternative measure, such offenders should be deemed as criminals and FIFA must present such offenders to the respective judicial bodies to be adjudicated upon, and then provided imprisonment sentences. The researcher contends that the procedure must be mandatory and not subject to the discretion of FIFA which is now the current practice.

So, although FIFA is taking strides in the right direction to curb match fixing and corruption, both major activities that lead to ML, there are still lots of anomalies and these anomalies have yet to be addressed appropriately. The researcher invites FIFA to sit down with respective judicial authorities as well as legislators to work on a more effective model to ensure a more comprehensive workable legislative structure for the Disciplinary Code.

For the FIFA Code of Ethics, the researcher contends that this move by FIFA is commendable, but for the final provision, "... unless expressly permitted to do so by

the appropriate organisation.”⁶²³ The researcher contends that the term appropriate organization should be replaced with the names of the appropriate organizations that have been allowed to do so. The researcher opines that such provision opens floodgates to abuse of process as any organisation that is connected with FIFA may be appropriate.

The researcher would like to point out that Art 25 of the FIFA Code of Ethics is impossible to enforce if the provision applies to the world at large. It is impossible to stop someone who is not connected to the football industry to bet on behalf of someone who is connected to the football industry. As such, the researcher contends that this section was possibly intended to mainly deter those connected directly with the club or association only and not those beyond that. In furtherance to this, although rules stipulate that persons connected are forbidden to bet, there are still many persons under this category betting on the outcome of matches they are playing in or connected to, yet no person connected to the football industry has been prosecuted.

For FIFA Regulations on Club Licensing, the researcher contends that this set of regulations is also relevant for the purposes of this thesis. Firstly, the regulations state very clearly that no individual or corporate entity may own more than one football club in the same domestic or confederation competition. This is very important so as to eradicate potential corruption and match-fixing problems or any

⁶²³ Fédération Internationale de Football Association, *FIFA Code of Ethics*, 18.

matters that result in ML.⁶²⁴ Full background checks are to be carried out by the enforcement bodies to check the status of the owners of the respective clubs.

Furthermore, the clubs are expected to prepare and present their annual accounts to the Licensor for their annual licences to be renewed. This ensures that the transparency of money flows of the club is maintained at all times. In a nutshell, the researcher submits that this set of regulations do help to at least promote some form of transparency with regard to the money flows of the club and help ensure the registered legal owners of the club. Having said that, it is to be noted that, lower league clubs and amateur clubs who unwilling to comply with these sets of regulations are still exist and may still participate in competitions worldwide. So these sets of regulations only regulate clubs which wish to be bound by them and want to compete at the highest levels.

The lower level clubs who choose not to qualify for a licence may play in certain competitions and if they are successful in some of these competitions, may be requested to play against bigger league sides that are regulated, and the issue then is raised whether such clubs should be allowed to participate since they can do so with special permission.⁶²⁵ The researcher contends that this should not be allowed as the club is not regulated and any activity relating to the club in the matches played with regulated clubs will not be reported, and may go unnoticed and may lead to and help breed illegal activities as well as ML.

⁶²⁴ Fédération Internationale de Football Association, *Club Licensing Regulations*, (Zurich, 2004), 9.

⁶²⁵ *Ibid.*, 9.

For the FIFA Regulations on the Status & Transfer of Players, the researcher states that, on paper, this is seen to be an indirect prevention of ML as it prohibits influence by third party on football clubs. However, in reality, clubs usually rely on agents or intermediaries in effect of transfers of their players that are incoming or outgoing, so agents or intermediaries can still conduct malpractices in relation to transfers and ownership of players as is demonstrated in the world markets, so this Act is really not effective at all unless sanctions are imposed on the respective individuals and clubs who are in contravention of this article.

The researcher would like to state categorically that the curbing of ML activities have not been expressly mentioned in any of the FIFA statutes or regulations and this is alarming, considering the various instances of ML activities that are happening in the global football industries. FIFA need to include anti-money laundering provisions at the soonest to stop this menace if the organisation is determined to cut out all financial malpractices within the industry. The lack of regulation over legal structures and the ownership of football clubs mean that they are easy to acquire for unlawful activity of ML. Moreover, the increasing internationalisation of the market for football players has added to the vulnerability to ML.

With relation to CONCACAF statute, the researcher states that it does not provide any of its own legal regulatory frameworks to curb financial illegal activities or ML activities within the region. As an overview, CONCACAF regulations primarily deal with technical matters focussing on the particular competition including the objectives and rules of the tournaments, requirements for the teams which

participate, and specify financial arrangements, format of the event and methods of determining disputes.⁶²⁶

The researcher submits that for the USSF statute, financial regulation and offences against bribery, corruption and ML are not evident. It is submitted that their Code of Ethics does have a provision against referees for match fixing but that is all.⁶²⁷ Further, USSF has developed an application procedure for those interested in obtaining a player's agent license.⁶²⁸ The license is issued by USSF, and certifies that the holder has complied with the applicable FIFA players' agents regulations.⁶²⁹ Apart from listing out the application procedure, the researcher submits that not much has been done by USSF in their legal statutory framework concerning this. Also, the USSF has made tax statements available for public review.⁶³⁰ This is a great step to financial transparency.

As a tax-exempt, non-profit organization, the USSF is also required to release its financial statement annually. Besides, audits of the financial condition of USSF are conducted by McGladrey & Pullen, LLP in accordance with the auditing standards generally accepted in the US.⁶³¹ It is pertinent to note that two models have been proposed in Chapter 6 of this thesis and it is the researcher's sincere intention that US adopt such models to fight illegal activities and ML in the sport.

⁶²⁶ Confederation of North, Central American and Caribbean Association Football , *CONCACAF Gold Cup*. ; "Confederation of North, Central American and Caribbean Association Football , *CONCACAF Champions*.; Fédération Internationale de Football Association, *2014 FIFA World Cup*.

⁶²⁷ United States Soccer Federation, *Code of Ethics for Referees*.

⁶²⁸ USSF, "Player Agents."

⁶²⁹ Ibid.

⁶³⁰ Goff, "Bob Bradley."

⁶³¹ USSF, "Financial reports."

With reference to the UEFA Statutes, Art 42 is ambiguous. The researcher is concerned about ‘revenues from the exploitation of rights of any kind’. A further investigation into Art 47.1 states that UEFA may exploit its own rights and shares with third parties concerning all kinds of video or audio visual generation of the sport of football in the whole confederation. There is an indication of non-transparency here which is counter-productive to the objective of financial integrity within the game.

The researcher suggests that this issue be clarified and that all revenues be presented as an exhaustive list so as to monitor the exact movement of finances that are moving around within the system. In furtherance to this, it is also stated in Art 47.2 that UEFA alone or with third parties may form or operate other companies in relation to 47.1. The researcher contends that there is no monitoring body that UEFA must report to and all forms of financial malpractice may arise here with the inclusion of third parties or even by themselves. The researcher suggests that Art 47 be amended to include reporting to an independent body outside UEFA of such activities.

The researcher would like to highlight that Art 53(c) and Art 54(c) of the UEFA Statutes on fines should be elaborated to include a formula for the imposition of fines relating to the seriousness of the contravention. Further, a min and max limit should be stated to promote consistency within the confederation. This law⁶³² acts as subsidiary to the main statute. It is stated that member associations and clubs, as well as their players, officials and members, shall conduct themselves according to the

⁶³² Union Des Associations Européennes de Football (UEFA) Congress, *Regulations of the UEFA Europa League 2011/2012*, (Nyon, 2011), 1.

principles of loyalty, integrity and sportsmanship. The conduct prohibited includes, inter alia engaging in active or passive bribery, violating the basic rules of decent conduct, and behaving in an unsporting manner to gain an advantage.

The researcher states that the President and the General Secretary are given excessive powers here and the researcher suggest that such powers be curtailed by monitoring provisions that are non-existent within the current statute. There are no provisions in the main statute governing illegally related offences as discussed in Chapter 3 of this thesis, nor are there any provisions governing ML activities within the industry.

For the UEFA Financial Fair Play Regulations 2012, the researcher anticipates that sugar daddy's will still find ways and means to pump in monies from other sources to try to rescue their clubs but UEFA and CFCB are well aware that they may do so, and if found out, the clubs as well as the individuals concerned will be sanctioned. The researcher suggests that the sanctions should be made more severe than the ones to be listed especially if the offence is committed by the individual because presently a fine where a limit has not been specified seems too lenient for the sugar daddies.

However, sugar daddies are still permitted to pump in monies but it has been specified by UEFA that such monies are to be treated as a loss and can never be claimed back by them. The researcher contends that this allowance by UEFA actually defeats the intention of financial fair play regulations, i.e. to weed out

financial malpractices and to provide an equal playing field to all competitors within the competitions. In a nutshell, after analysing all the relevant statutes, the researcher contends that there is no specific regulation within all the FIFA statutes expressly forbidding ML activities within the confederation.

Under the FA of England, in particular the FA Handbook, dealings with agents are strictly regulated and the researcher commends this move. Further with regards to third party investments, the FA strictly forbids the third parties to enter into deals with players unless expressly permitted by the FA. The researcher also commends this move as third party monies that are unsourced cannot enter the system undetected. Further, the researcher states that such laws drawn up by the FA is limiting monies movement into the system which benefits clubs from being the target of laundering activities. On the FA betting rules, the researcher commends these moves but stresses that individual or body corporate owners and anyone related to these persons or the categorised persons in the list should be included.

The researcher contends that almost all the football regulations in AFC mirror that of FIFA and the loopholes and gaps have been raised under the FIFA findings as such there is no need to repeat them here. To conclude on AFC Statutes, the researcher states that there are no specific laws or regulations that govern ML activities within any of the AFC statutes⁶³³ nor are there any attempts by AFC to form them at the time of completing this thesis.

⁶³³ “AFC, “AFC Club Licensing.”

As for the Malaysia Sports Development Act 1997, the researcher opines that since the Act covers so many different types of bodies, it is not focused and specific on football clubs. There are no AML provisions and will therefore give rise to loopholes and lack of proper supervision.⁶³⁴ In relation to the Malaysia FAM Statutes, in particular Art 88 is draconian in nature. No one who is connected either directly or indirectly to FAM is allowed to state anything about FAM's affairs or dealings about anything.

The researcher states that Art 88 is oppressive and against the principles of current FIFA and FATF standards. The researcher states that Malaysia has still a long way to go to raise transparency and introduce new laws that will promote transparency and high integrity levels in FAM and its Associate bodies. As such, the researcher contends that the insertion of anti-money laundering provisions in any Malaysian football statute is a long way off. The researcher states that a huge overhaul in the current FAM statute and its accompanying regulations are in dire need to stop the current rot in the industry.

To conclude on the effectiveness of football regulations, the current laws may merely punish the minor actors who are controlled and manipulated by the mastermind behind the scene to achieve the ultimate goal of ML.⁶³⁵ By punishing them, the problem cannot be curbed, as the masterminds can always find other "tools" to

⁶³⁴ Societies Act, 1966.

⁶³⁵ Jeffrey Simser, "Tax evasion and avoidance typologies," *Journal of Money Laundering Control* 11, no. 2 (2008): 126, <https://emeraldinsight.com/journals.htm?issn=1368-5201&volume=11&issue=2&articleid=1724237&show=html&nolog=459885&PHPSESSID=a3mk9d1v1uk6uphjcj58d190g5&&nolog=143036> (accessed May 5, 2012).

manipulate if the ones used were detected and punished by law.⁶³⁶ Only by removing the mastermind, ML activities can be effectively eliminated. It can be seen that the current laws on ethics, fair play, corruption are very limited, hence it is only able to catch the “small fishes” but ironically leave those “big sharks” free from the governance of laws.⁶³⁷ As such, the researcher contends that AML provisions be inserted within the statutes that have been raised.

The researcher also notes that when laws are being drawn up be it within FIFA, the Confederations or even at the national levels of US, UK and Malaysia, these laws are very difficult to be passed as there appears to be many factions which disagree with one another on many issues pertaining to the laws that need to be set. In addition, the judicial and enforcement bodies are often taken up by officials who are also undertaking other positions in the organisation itself.⁶³⁸ This may lead to unjust situations during investigations or implementation of the laws.

Last but not least, the researcher states that although some steps have been taken by the regulatory bodies in football to curb corruption, bribery and match fixing there is not even a single AML provision in any of the statutes that have been discussed above. This is very alarming and the result is that the football regulations of the US, England and Malaysia are highly ineffective in the governance of ML.

⁶³⁶ Ibid., 127.

⁶³⁷ John Walker, “How Big is Global Money Laundering,” *Journal of Money Laundering Control* 3, no. 1 (1999): 26–27, <http://www.emeraldinsight.com/journals.htm?articleid=1648417> (accessed May 5, 2012).

⁶³⁸ Simser, “Tax evasion,” 127.

Such being the case, it is essential to analyse general AML legislation in the targeted countries. In the US, the researcher contends that the BSA 1970 reporting sections as discussed are very significant in the war against ML to detect immediately the attempt to launder money. However, the researcher contends that there is a glaring loophole in the BSA 1970 as civil penalties imposed against the financial institutions that do not comply with the reporting requirements are too light. Knowingly, though the civil offences are less serious than criminal offences on the surface, but the proceeds involved in civil offences may be greater than the proceeds of criminal offences.

For instance, the illegal proceeds derived from a civil offence of falsifying documents to deceive an international company may be more than the illegal proceeds derived from a small gang robbery at a convenience store. Thus, the researcher contends that the civil penalties imposed should be fines for at least double the amount of the illegal proceeds obtained and also include imprisonment for a term more than 10 years and above. Apart from this anomaly, the BSA provides very tight regulation against ML activities. At present, under the BSA, the football industry is not a reporting institution. The researcher proposes that the football industry be made one of the reporting institutions within the Act. When the football industry becomes one of the reporting institutions that are obliged to report all forms of transactions happening within the football associations and clubs, only then will supervisory authorities be able to monitor fully the financial going-on of the respective associations and clubs.

For the US Patriot Act, the researcher contends that s 315 is a very helpful provision to deal with monies that originate from corruptive influences outside the US jurisdiction which is then brought into US to be laundered. This is because evidence has shown in the past where errant prospective owners of football clubs usually commit crimes outside the jurisdiction before deciding to purchase in another country. So the researcher welcomes the US Patriot Act for this aforethought.

However, the researcher contends that the football industry has not been indicated as one of the reporting institution under the Patriot Act which should eventually be done for tighter monitoring on the football industry., and this should be done as presently, enforcement authorities are not required to monitor the financial on-goings in football since the Act has not included football clubs or football associations as one of the reporting institutions within the Act. If the football association i.e. the USSF is made a reporting institution, then the USSF and all the football clubs in US will be obliged to file SARs which will allow the authorities to carefully monitor financial activities happening within the industry.

The glaring loopholes discovered in the Patriot Act's regulatory sections are basically related to the severity of punishment. In s 363, though the title of this section is 'increase in civil and criminal penalties for ML', but it seems that such improvement of the severity of punishment is unsatisfactory, especially in the football industry, where it states that, for the financial institution or agency who commits international civil and criminal ML offence, the punishment imposed shall

not be less than two times of the amount of transaction involved in the offence and in any case such an amount shall not exceed USD \$ 1 million.

The researcher contends that the severity of punishment in this section is unreasonably light as more often than not, the amount of transactions involved in the football industry is much higher than the USD \$1 million imposed as a fine. As such, money launderers see the football industry as a 'potential earning business'. Why this is so is that if they get caught, prosecuted and convicted for laundering money to the amount of USD \$5 Million, for example, they only need to pay a fine of the USD \$1 million and the remaining USD \$4 million has been cleaned, is legal and can now be legitimate money for other legal uses. As such, the researcher states that the fines provision within the Act be addressed.

The researcher commends the Money Laundering Control Act 1986 with its tight regulations but reiterates that the football associations should be made reporting institutions under the Act. The researcher submits that the US Anti-Drug Abuse Act 1988 is an act which may apply if money launderers come from drug dealing backgrounds only. If any entities in the football industry have previous drug dealings and are laundering monies in the football industry, then s 981 could be used against them. Till date, this Act has not been used to prosecute anyone in the US Football Industry.

In England, the main statute that is referred to is the POCA 2002. The researcher states that there are a few anomalies that require addressing. In s 75 of POCA⁶³⁹, it provides that a person who has a criminal lifestyle or if his act satisfies any of the three tests, namely, it is a predicate offence specified in the Second Schedule or it is a conduct relating to criminal activity or he commits an offence over a period of at least six months. The researcher states that the phrase ‘commits the offence over a period of at least six months’ is unreasonable. A time frame should not be set as a criterion. As such, the researcher suggests that the 6 months’ rule be withdrawn.

Also, s 75 (3) (a) and (b)⁶⁴⁰ state that a person is guilty of an offence if he has benefited from the conduct. The phrase ‘benefited from the conduct’ is irrational. This is because some criminals may not have benefited but nevertheless tried to launder the monies and before benefiting, got found out and caught. With reliance on this section, the criminal will have a defence as in he did not benefit from his conduct and therefore may have to be let off. The researcher states that this provision should be amended to ‘regardless of whether the offender has benefited from the conduct’.

S 75 (4)⁶⁴¹ provides that if the person benefited from his criminal conduct of more than GBP £5000, then he is guilty of an offence. Although s 75 (8) specifies that the Secretary of State may alter such amount of GBP £5000 indicated in s 75 (4) during any time if necessary. This creates an ambiguity and may lead to an abuse of process. The Loophole in s 75 (4) can be fixed by not limiting the value of benefits of the

⁶³⁹ Proceeds of Crime Act, 2002, sec. 75.

⁶⁴⁰ Ibid.

⁶⁴¹ Ibid.

criminal conduct. Under s 338 of POCA, the researcher contends that this is a very grey area and more measures need to be introduced to determine the degrees of confidentiality rather than stating outright that one has a duty of confidentiality.

To conclude on POCA, the researcher contends that the football industry has not been listed as one of the industries that should be regulated under Schedule 9 of this Act. As such, the regulatory authorities cannot monitor nor are they supplied with any information as to the financial goings-on within the industry and this would make it extremely difficult for the authorities to enforce POCA rules on anyone within the industry, although the law does cover the industry generally, albeit not specifically.

In Malaysia, the main statute that is referred to is the AMLATFA 2001. The researcher states that there are a few anomalies that require addressing. S 4 of AMLATFA states that those who engage or attempt to engage in or assist in the commission of ML shall be convicted to a fine less than RM 5 million or to imprisonment of less than 5 years or to both. This punishment seems too light as ML often involves much bigger sums that amount to more than RM 5 million. For instance, if someone was to launder 10 million into the football industry and gets caught, then, he is only liable to pay up 5 million which is the max and get to launder the further 5 million in other legal activities. Even the punishment of 5 years appears to be light because 5 years jail is nothing if one can come out 5 years later with 5 million of laundered monies to spend.

Furthermore since the word 'or' has been used in the legislation, it appears that a first time offender in ML may only need to pay a fine and escape the prison sentence altogether which makes such an opportunity to get rich legally all the more enticing. The researcher submits that the punishment should be amended to fines involving twice the amount of the alleged monies being laundered with no ceiling amount.

This will definitely put off any potential money launderers and the higher the monies laundered within the football industry, the higher the prison sentence should be. Leaving the issuance of sentencing purely to the discretion of the judge provided such sentence can be deemed as reasonable. The researcher suggests that both the types of punishment be given to the offender, thereby removing the word 'or' with 'and' to provide a concrete deterrent for any possible money launderers.

Up to now, there is no record of the AMLATFA being used against any offender from the football industry. As mentioned in Chapter 3 of this thesis, some Malaysian football players have been involved in alleged corruption for the purpose of match-fixing, yet till date, not even one of them has been charged under AMLATFA. The researcher therefore surmises that since the football industry has not been made one of the reporting institutions, the authorities may be choosing to ignore this industry altogether.

To further supplement the above said findings, expert responses done vide interviews were compiled. When asked by the researcher whether the general AML laws were effective in the regulation of money laundering in their respective countries, all the interviewees stated that such laws are very effective. Such laws are applicable to all industries including the football industry. When asked whether the Football Regulations of their respective countries were effective, their unanimous response was that there were no specific AML provisions within the football regulations of their countries so the Football Regulations could be deemed to be ineffective and more could be done towards improving them.

CHAPTER FIVE

**THE EFFECTIVENESS OF ENFORCEMENT MECHANISMS IN THE
GOVERNANCE OF AML IN THE FOOTBALL INDUSTRIES OF US,
ENGLAND & MALAYSIA**

5.1 The FATF Recommendations

The principal provision in enforcement stems from the FATF Recommendations. Section B⁶⁴² of the FATF states that countries must make sure that their financial institutions' secrecy laws allow enactment of the FATF recommendations. Financial institutions should reveal unidentified accounts or accounts placed under perceptibly fictional names and they ought to take on CDD measures, plus detect and confirm the customer's real identity. The enforcement authorities must be aware that ML threats often begin in the new developing era and they have to take steps to prohibit their use in ML arrangements.⁶⁴³

The 40+9 FATF recommends the establishment of FIU under its Section C where it states that every country ought to establish the FIU to be the national centre for information receiving, analysing the information received, dissemination of STR and other information of the potential ML activities.⁶⁴⁴ Also, it urges that the reporting institutions shall report to FIU immediately if they have found any suspicious occurrence of criminal and/or terrorist activity.⁶⁴⁵

⁶⁴² Financial Action Task Force, *FATF 40 + 9 Special Recommendations*, 2.

⁶⁴³ Ibid.

⁶⁴⁴ Ibid.

⁶⁴⁵ Financial Action Task Force and Groupe d'action financière, *FATF 40 + 9*, 3.

5.2 FIFA Enforcement Bodies

For the football industry, FIFA is acknowledged as the supreme enforcement body as any enforcement measures, policies or decisions made by FIFA are influential and highly recommended to the other football associations.

Under Art 73 of the FIFA Disciplinary Code, any case contravening the FIFA statutes is brought before the Judicial Bodies of FIFA which include the Disciplinary Committee, Appeals Committee and Ethics Committee.⁶⁴⁶ Under Art 74 of the code, certain decisions passed by the Disciplinary and Appeal Committees may be appealed against before the Court of Arbitration for Sport (CAS).⁶⁴⁷ These judicial bodies are not empowered by the FIFA Statutes or the FIFA Disciplinary Code to hear cases on ML, as such for the purpose of this thesis; these judicial bodies are ineffective and irrelevant enforcement mechanisms.

In 2005, FIFA decided to get tough on the game and established a special Task Force named “For the Good of The Game.”⁶⁴⁸ The Task Force was formed to investigate and combat dangerous threats to football.⁶⁴⁹ There are three separate branches under the Task Force, the first branch monitors competitions; the second oversees political or administrative matters and the third branch deals with financial matters.⁶⁵⁰

⁶⁴⁶ Fédération Internationale de Football Association, *FIFA Disciplinary Code*, 43.

⁶⁴⁷ *Ibid.*

⁶⁴⁸ Financial Action Task Force, *Money Laundering through the Football*, 24.

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *Ibid.*

These branches' main duties are to discuss and propose possible solutions to problems involving corruption, ownership of football club by individual or organisation, betting on football, ML and the flow of money during player transfers, developments in the transfer market and players' agents.⁶⁵¹ Through intense dialogues, discussions and conferring with many parties amongst the confederation and national associations, an efficient system was established for transfer of players and ownership of clubs, namely the Transfer Matching System (TMS).⁶⁵² Another system was also introduced where agents' backgrounds were subject to intense background checks before their applications could be approved.⁶⁵³ Apart from these two enforcement mechanisms to deter ML activities, there was nothing else that this Task Force achieved.

In 2011, for the aim of reformation and enhancement of transparency, FIFA suggested the formation the Independent Governance Committee and four new Task Forces namely the Task Force Revision of Statutes, Task Force Transparency and Compliance, the Task Force FIFA Ethics Committee and Task Force Football which will be formed in 2014.⁶⁵⁴ At the time of writing this thesis, such Task Forces are still in the process of formative stages and are conducting discussions between FIFA and its six continental confederations through a consultation, assessment and review process.⁶⁵⁵

⁶⁵¹ Financial Action Task Force, *Money Laundering through the Football*, 31.

⁶⁵² Ibid.

⁶⁵³ Ibid., 32.

⁶⁵⁴ FIFA, "Governance Bodies," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/bodies/governancebodies/index.html> (accessed June 3, 2013).

⁶⁵⁵ FIFA Congress, "FIFA Congress fully backs reform process, appoints first woman to Executive; welcomes South Sudan as 209th FIFA member," Fédération Internationale de Football Association,

FIFA has suggested that the Independent Governance Committee will be a superior body outside FIFA, as the name suggests, and will oversee the operation and enforcement of the four Task Forces.⁶⁵⁶ Due to intense global pressure, Sepp Blatter, the President of FIFA announced that the Committee will comprise of respectable persons from the legal fraternity.⁶⁵⁷ Many respectable notable persons from the legal fraternity have been invited to join, for example, University of Switzerland Law Professor, Dr. Mark Pieth as Chairman, the distinguished Peter Goldsmith who is a former UK Attorney General, James Klotz who is a legal practitioner, Alexandra Wrage the Chairlady of TRACE anti-corruption non-profit organization etc.⁶⁵⁸

For the Task Force Revision of Statutes, the Chairperson appointed is the former President of the German Football Association, Theo Zwanziger and he is assisted by general secretaries and legal directors from FIFA's six confederations mentioned above. The role of this Task Force is revising current FIFA statutes in relation to several issues, which include the FIFA Congress' confirmation of the FIFA Executive Committee members; a clearer Structure of the FIFA Executive Committee; a FIFA President Election and the terms of office; limitation of age of the FIFA officials; stronger interest groups' representation in FIFA; enhanced bidding procedures and decision on venue of FIFA World Cup; establishment of the

<http://www.fifa.com/aboutfifa/organisation/bodies/congress/news/newsid=1639773/> (accessed April 8, 2013).

⁶⁵⁶ Ibid.

⁶⁵⁷ Ibid.

⁶⁵⁸ FIFA, "Independent Governance Committee," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/bodies/governancebodies/committee=1933904.html> (accessed June 3, 2013).

International Football Association Board (IFAB) etc.⁶⁵⁹ There is no mention, that statutes will be amended to include governance on ML issues at the time of submitting this thesis.

For the Task Force FIFA Ethics Committee, there will be two bodies headed by a Chairman respectively, which was announced at a FIFA EGM in 2012. The first body is a professional and independent investigatory body headed by Michael J Garcia from U.S and the second body, an adjudicatory body, will be headed by Hans Joachim-Eckert from Germany.⁶⁶⁰ They will also be assisted by the 6 confederation members respectively.⁶⁶¹ For the first time in football history, there is an actual investigatory and adjudicatory body that will investigate and adjudicate all matters that happen within FIFA.⁶⁶² In the past, the judge, jury and executioner was solely the FIFA executive committee headed by the President and heavily influenced by him.⁶⁶³

At the time of submission of this thesis, there has been no news on how the 2 FIFA Ethics bodies are performing. It is understood that they are still in the investigatory mode and as such have not decided to prosecute anyone before the adjudicatory body, but that only offences of corruption and bribery will be investigated into. FIFA have also declared that offences of bribery and corruption will have no time

⁶⁵⁹ FIFA, "Reform process continues as working group meets to analyse revision of FIFA Statutes," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/news/newsid=1889281/index.html> (accessed June 4, 2013).

⁶⁶⁰ FIFA, "Governance Bodies."

⁶⁶¹ Ibid.

⁶⁶² Ibid.

⁶⁶³ Ibid.

limit set. Unfortunately, there is no development on how money launderers will be investigated or prosecuted in the football industry.

The Task Force Transparency and Compliance is headed by a Chairman namely Frank Van Hattum from New Zealand and assisted by 4 others from the Confederations.⁶⁶⁴ They will be looking at creating a code of conduct, the screening of committee members; will conduct reviews of external and internal compliance and governance whilst reviewing the role of the Audit committee.⁶⁶⁵ Its other roles are to focus on the resolution for conflict of interest; enhancing internal control measures; improving the transparency of FIFA development activities, the commercialisation of FIFA's rights and confidential reporting procedures.⁶⁶⁶

Lastly, the Task Force Football 2014 is headed by Franz Beckenbauer from Germany and assisted by many others which include the Pele and Cafu from Brazil, Hierro from Spain, Albertini from Italy and Hagi from Romania, all great football players during their time.⁶⁶⁷ This Task Force's objective will be to study proposals on how to improve match control and in making the game look more attractive at the world cup levels, improve the Laws of the Game statute, improvise competition regulations and refereeing standards, enhance women's football, advise on medical

⁶⁶⁴ FIFA, "Transparency and Compliance Task Force," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/bodies/standingcommittees/committee=1933896.html> (accessed June 3, 2013).

⁶⁶⁵ FIFA, "Transparency and Compliance."

⁶⁶⁶ Independent Governance Committee of FIFA, *Second Report by the Independent Governance Committee to the Executive Committee of FIFA*, (Basel, 2013), 4.

⁶⁶⁷ FIFA, "Task Force Football 2014," Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/bodies/standingcommittees/committee=1931304.html> (accessed June 1, 2013).

issues and fair play generally.⁶⁶⁸ This Task Force is generally assigned to look at the sport ‘on the pitch’ and has been drawn up for the purpose of improving the game in all aspects.⁶⁶⁹

However, the researcher understands that FIFA does not make it mandatory for the six continental confederations and their member associations to comply with the policies and reformations resulting from the Task Forces, and as such is non-binding.

5.3 FIFA Transfer Matching System (TMS)

The Transfer Matching System (TMS) launched by FIFA in 2008.⁶⁷⁰ FIFA claims that this method can serve to put a stop to criminal offenders from laundering money via the football sector.⁶⁷¹ The FIFA TMS is an online system that makes international transfers of players between clubs more efficient, convenient and more transparent. TMS is now used for all international football transfers in all of the 209 FIFA member associations and by over 3,633 clubs worldwide.⁶⁷² FIFA President, Sepp Blatter added on that, this system would be beneficial in the sense that, it increases the transparency of international transfer of players and also to fight issues of ML.⁶⁷³

⁶⁶⁸ FIFA, “Task Force.”

⁶⁶⁹ Independent Governance Committee, “Second Report.”

⁶⁷⁰ FIFA, “Revolutionary moment in football Transfer Matching System becomes mandatory,” Fédération Internationale de Football Association, <http://www.fifa.com/aboutfifa/organisation/news/newsid=1309827/index.html> (accessed June 4, 2013).

⁶⁷¹ Ibid.

⁶⁷² Ibid.

⁶⁷³ FIFA, “Revolutionary moment.”

With the TMS, FIFA requires both clubs in a player's move to enter verified details of the payments and parties involved online.⁶⁷⁴ FIFA would provide passwords for each football club to enter into the TMS system.⁶⁷⁵ Although TMS is quite a simple online system, it does create a tremendous impact if the club does not use or comply with it properly.⁶⁷⁶ For instance, if a club failed to key in the relevant information as required, then the national associations will definitely not be able to furnish the required official documents in handling a contract or transaction.⁶⁷⁷

More than 30 pieces of information are needed, which would include amongst others, the complete details of the player, the clubs that are involved, the bank accounts, and any payments which were made to any previous club before current transaction, agreed wages, tenure of contract, any agents that are involved; all information must be supplied for each shift to take place.⁶⁷⁸

TMS has effectively detected transfer anomalies that can be linked to illegally related activities as has been demonstrated by the suspension of six football clubs of the Indian Football Association (IFA).⁶⁷⁹ In India, due to the culture, registered football club's names are always changed overnight due to the wishes of the new franchisee partners.⁶⁸⁰ Upon changing of the name, the club tried to register a new

⁶⁷⁴ BBC Sport Football, "Fifa expand Transfer Matching System to fight crime," BBC News UK, <http://news.bbc.co.uk/sport2/hi/football/9046275.stm> (accessed July 6, 2012).

⁶⁷⁵ Ibid.

⁶⁷⁶ FIFA, "Revolutionary moment."

⁶⁷⁷ Ibid.

⁶⁷⁸ Ibid.

⁶⁷⁹ The Telegraph Sport, "A setback for PLS, courtesy the AIFF," The Telegraph, http://www.telegraphindia.com/1120210/jsp/sports/story_15117060.jsp#.UKIM3ngWFII (accessed May 22, 2012).

⁶⁸⁰ The Telegraph, "A setback for PLS."

player and FIFA TMS revoked the information keyed in and this set off a trigger for FIFA to react by slapping suspensions on the said clubs.⁶⁸¹

5.4 CONCACAF Enforcement Bodies

CONCACAF establishes two committees that may be relevant to AML enforcement. These are The Statutes and Regulations Committee and The Committee for Security and Fair Play.⁶⁸² The Statutes and Regulations Committee, upon request by its Executive Committee, revises or updates the current laws which govern CONCACAF and its members.⁶⁸³ The Committee for Security and Fair Play observes the compliance of the members toward the fair play rules and monitors the conduct of every entity involved in the football industry within the CONCACAF region.⁶⁸⁴

In 2011, there was an exposure of the bribery and corruption scandal involving former CONCACAF leaders, Jack Warner and Chuck Blazer, who ironically were in charge of enforcement.⁶⁸⁵ As such, in 2012, the CONCACAF Executive Committees and other confederations' members have requested that the newly appointed President of CONCACAF Jeffrey Webb, establish the Independent Integrity Committee (ICC) to spearhead CONCACAF's transparency and accountability as well as to reform and preserve the integrity of the football

⁶⁸¹ Ibid.

⁶⁸² CONCACAF, "CONCACAF Committees," Confederation of North, Central American and Caribbean Association Football, <http://www.concacaf.com/concacaf/other-committees> (accessed June 4, 2013).

⁶⁸³ Ibid.

⁶⁸⁴ Ibid.

⁶⁸⁵ Confederation of North, Central American and Caribbean Association Football, *CONCACAF Integrity Committee - Report of Investigation*, (New York, 2013), 1.

industry.⁶⁸⁶ Besides establishing the ICC, Webb also announced the establishment of other Committees such as the Audit and Compliance Committee, the Statutes and Regulations Committee and the Finance Committee.⁶⁸⁷

The ICC comprises three experts with great experience in law and accounting: Sir David C. Simmons as the Chairman; Judge Ricardo Urbina who has 31 years of experience in the judicial arm; and Ernesto Hempe who was a retired accountant. They are fully independent in their conduct and free from interference by the administration of football associations.⁶⁸⁸ The ICC's main duty was to oversee investigations of the incidents of any misconduct, to analyse the facts of such incidents and makes appropriate conclusions on how to resolve such incidents.⁶⁸⁹

The CONCACAF executive committee authorised the ICC to supervise the investigation in several issues; the foremost assignment was to investigate allegations of corruption involving high-profile officials like Warner and Blazer in their ownership scandal of the football academic for Children, the Centre of Excellence (COE)⁶⁹⁰; others include the CONCACAF's tax evasion scandal; the accuracy and transparency of financial statements and audits over the past five years, etc.⁶⁹¹ To assist the ICC, CONCACAF engaged a US law firm, Sidley Austin

⁶⁸⁶ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity Committee - Report of Investigation*, 1.

⁶⁸⁷ *Ibid.*, 12.

⁶⁸⁸ *Ibid.*

⁶⁸⁹ *Ibid.*

⁶⁹⁰ BBC Sport Football, "Jack Warner and Chuck Blazer criticised by Concacaf," BBC News UK, <http://www.bbc.co.uk/sport/0/football/22226531> (accessed June 4, 2013).

⁶⁹¹ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity Committee*, 107.

LLP in investigation, legal advice, forensic accounting services and protection of evidence gained.⁶⁹²

In addition, CONCACAF cooperates with CAF to exchange information for the improvement in club licensing, women's football, managers' licenses, business management and event organization. This agreement calls for an exchange of specialists, staff and referees; the sharing of best practices; and participation in workshops and talks.⁶⁹³

CONCACAF General Secretary Enrique Sanz stated,

“The football family must certainly be an intrinsic part of the battle against match-fixing through education, surveillance and sanction. However, we must not forget to work in partnership with all other affected sports, governments, media, fans and society as a whole...”⁶⁹⁴

As part of their regulatory reform and enforcement measures, CONCACAF continues to arrange conferences with the International Police (Interpol) to brainstorm ways and means in tackling match fixing and corruption within the Confederation.⁶⁹⁵ At the time of submission of this thesis, there have been 2 such conferences, the first was held in Guatemala City in Honduras in August 2012 and

⁶⁹² Ibid.

⁶⁹³ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity Committee*, 107.

⁶⁹⁴ INTERPOL, “CONCACAF hosts INTERPOL-FIFA Integrity in Sport workshop,” International Police Organization (INTERPOL), <http://www.interpol.int/News-and-media/News/2013/N20130125> (accessed August 3, 2013).

⁶⁹⁵ INTERPOL, “CONCACAF hosts.”

recently in January 2013 in New York City.⁶⁹⁶ The key theme for such conferences was to increase understanding as well as awareness of the issues circumventing match fixing and to discover the different sorts of characteristics that are associated with football.⁶⁹⁷ Enforcement mechanisms against ML practices are not on the agenda yet.

5.5 USSF Enforcement Bodies

The researcher contends that the USSF is only a basic organizational board which is supported by an Executive committee that has been established so far.⁶⁹⁸ The Board has neither implemented any serious enforcement measures nor established any specific enforcement body to tackle illegal activities related to ML.⁶⁹⁹

5.6 UEFA Enforcement Bodies

UEFA has established two divisions, namely, the Finance Division and the Legal Affairs Division. The Finance Division is responsible for all the matters related to accounting treasury and budget. It plays an important role in mitigating the financial loss of UEFA.⁷⁰⁰ The Legal Affairs Division handles commercial legal matters such as media rights, marketing etc. It is involved in the UEFA's supervisory control on persons covered under the UEFA Statute, co-ordinates the implementation of regulations and acts as the Disciplinary Body and Appeals Body.⁷⁰¹

⁶⁹⁶ INTERPOL, "CONCACAF hosts."

⁶⁹⁷ Ibid.

⁶⁹⁸ United States Soccer Federation, "United States Soccer Federation, USSF Directory," Soccer Times, <http://www.soccertimes.com/directory/ussf.htm> (accessed June 1, 2013).

⁶⁹⁹ Ibid.

⁷⁰⁰ UEFA, "Finance," Union of European Football Associations, <http://www.uefa.org/about-uefa/news/newsid=943450.html> (accessed March 2, 2014).

⁷⁰¹ UEFA, "Governance & Legal Affairs," Union of European Football Associations,

The UEFA Club Financial Control Body (CFCB) is a new enforcement body that has been recently set up to monitor whether licensors fulfil their obligations and meet the licensing criteria, whether licensees fulfil club monitoring requirements.⁷⁰² Further, they are mandated to impose disciplinary measures to parties who fall in violation of the UEFA Club Licensing and Financial Fair Play Regulations and decide on cases relating to club eligibility for UEFA club competitions.⁷⁰³

Since 2011, 2 specific enforcement bodies have been set up to conduct disciplinary proceedings for the persons bound by UEFA rules.⁷⁰⁴ They are the Control and Disciplinary Body (CDB) and the Appeals Body.⁷⁰⁵ The Control and Disciplinary Body has the authority to rule on all disciplinary issues and all other matters that are included within any of the UEFA statutes and regulations.⁷⁰⁶ This same body can also intervene into a member association's matters if that member association fails to act or is itself in violation of any of the UEFA statutes and regulations.⁷⁰⁷ The Appeals Body has the authority to listen to appeals from the CDB. As there are no AML provisions in the UEFA Statutes, no disciplinary hearings have been commenced against money launderers.⁷⁰⁸

<http://www.uefa.org/about-uefa/news/newsid=943202.html> (accessed June 3, 2013).

⁷⁰² Union of European Football Associations, *Procedural rules governing the UEFA Club Financial Control Body*, (Nyon, 2012), 1.

⁷⁰³ Union of European Football Associations, *Procedural rules*.

⁷⁰⁴ UEFA, "Disciplinary," Union of European Football Associations, <http://www.uefa.org/disciplinary/disciplinary-cases/index.html> (accessed June 1, 2013).

⁷⁰⁵ *Ibid.*

⁷⁰⁶ Union of European Football Associations Congress, *UEFA Disciplinary Regulations*, 12.

⁷⁰⁷ *Ibid.*

⁷⁰⁸ Union of European Football Associations Congress, *UEFA Disciplinary Regulations*, 12.

5.7 Fraud Detection System (FDS)

In 2009, UEFA ran a Europe-wide Fraud Detection System (FDS)⁷⁰⁹ to combat match fixing by monitoring all aspects of football matches that spanned to about 29,000 matches across Europe which included the UEFA Champions League; Europa League; first and second divisions as well as national cup matches.⁷¹⁰

FDS is a unique system that not only detects, but also prevents the match-fixing and other related unlawful activities i.e. corruption and illegal betting in sport.⁷¹¹ It maintains the database of the matches that may have a high degree of suspicion to fraud or manipulation. Most importantly, it works closely with the law enforcement authorities and police forces across Europe.⁷¹² For surveillance of global betting market, FDS cooperates with more than 350 bookmakers from Asia and Europe; Betting Exchanges and State Lotteries. FDS team consists of 25 Trading Analyst experts and with the support of more than 1,500 investigators and 150 freelance journalists worldwide who use their experience to watch over the suspicious betting patterns.⁷¹³ FDS detects the suspicious activities in three stages i.e. prior, in playing and after the matches.⁷¹⁴

In addition, FDS can conclude a comprehensive report regarding the suspicious illegal activity in 48 hours and send it to the appropriate enforcement agency for

⁷⁰⁹ Mark Chaplin, "UEFA determined to fight match-fixing," Union of European Football Associations, <http://www.uefa.org/news/newsid=933877.html> (accessed June 3, 2013).

⁷¹⁰ Ibid.

⁷¹¹ City of London Police, "£2 million confiscated from jailed self-styled 'lawyer'," City of London Police, <http://www.cityoflondon.police.uk/news-and-appeals/Pages/240314-selfstyledlawyerjailed.aspx> (accessed April 1, 2014).

⁷¹² Ibid.

⁷¹³ City of London Police, "£2 million."

⁷¹⁴ Ibid.

further investigations.⁷¹⁵ The report will include the confidential allegations from the players or managers that accuse particular individuals who are possibly subject to match-fixing. FDS has assisted in the investigations of many well-known match-fixing scandals, for instance the Italian football scandal in 2011.⁷¹⁶

5.8 FA Enforcement Bodies

Currently there are no specific enforcement bodies that monitor financial irregularities within the FA set up.⁷¹⁷ On paper, there are numerous committees, and very recently, on the recommendation of the Culture, Media and Sports Committee of England that called for the setting up of an enforcement body, the FA have in 2013 established a new enforcement body called Football Regulatory Authority (FRA) to govern and enforce rules that are set out by the English FA.⁷¹⁸

FRA is an independent regulatory and enforcement authority.⁷¹⁹ Some of its responsibilities are to conduct due diligence in monitoring the football club ultimate owners and directors as well as their financial backgrounds.⁷²⁰ As a result, from now on, all the ultimate owners of the FA's English football clubs i.e. the English

⁷¹⁵ Ibid.

⁷¹⁶ Ibid.

⁷¹⁷ House of Commons, "Football Governance Follow-Up", *Sessional Papers, 2012-13*, January 29, 2013, p. 3.

⁷¹⁸ Ibid.

⁷¹⁹ The Football Regulatory Authority, "Terms of Reference for the Composition and Operation of the Football Regulatory Authority," The Football Association, UK, <http://www.thefa.com/~media/Files/TheFAPortal/governance-docs/rules-of-the-association/football-regulatory-authority.ashx> (accessed June 4, 2013).

⁷²⁰ The Football Regulatory Authority, "Terms of Reference."

Premier League and the Football League are now mandatorily obliged to disclose and reveal their true identities and their percentage of ownership in the clubs.⁷²¹

FRA also governs the disciplinary processes of the matches in order to make sure the punishments imposed are appropriate and of high standard.⁷²² FRA analyses and oversees the complaints, disputes and other relevant matters that relate to the violation of FA rules and regulations.⁷²³

5.9 AFC Enforcement Bodies

AFC also has its own standing committees which have similar responsibilities to the committees of UEFA and CONCACAF mentioned above, such as financial, legal affairs, marketing and disciplinary.⁷²⁴ Although so far, there have been no enforcement matters to report about in the corridors of AFC, the researcher would also like to state that there is no establishment of specific AML enforcement mechanisms by AFC.⁷²⁵ However, the researcher contends that in early 2013, a joint INTERPOL/FIFA Training, Education and Prevention initiative, co-organized by AFC and the Malaysian Anti-Corruption Commission (MACC) was organized to tackle matters in relation to match-fixing, corruption and illegal betting

⁷²¹ Ibid.

⁷²² the Choice Premier League, "Independent body to monitor game," the Choice, <https://www.thechoice.my/premier-league/30321-independent-body-to-monitor-game> (accessed June 3, 2013).

⁷²³ Ibid.

⁷²⁴ AFC, "AFC Standing Committees," Asian Football Confederation, <http://www.the-afc.com/en/about-afc/afc-committees/afc-standing-committees.html> (accessed June 4, 2013).

⁷²⁵ AFC, "AFC Standing."

in the Asian football industry, similar to the one discussed about in the CONCACAF section above.⁷²⁶

This Joint INTERPOL/FIFA Training, Education and Prevention initiative stated in the preceding paragraph entitled “Interpol’s International Conference of Match-Fixing: The Ugly Side of the Beautiful Game” was held in Kuala Lumpur, Malaysia with the sole objective of trying to fight corruption, match fixing and illegal betting within the confederation.⁷²⁷ Participants were required to brainstorm ways of maintaining good practice and governance and how important it was to protect the players. It was decided that more training and education be made available so as to prevent such malpractices from becoming rampant and that an investigatory as well as an enforcement body be set up.⁷²⁸

5.10 FAM Enforcement Bodies

Prior to the Joint INTERPOL/FIFA Training, Education and Prevention initiative discussed above, Malaysia did not have an enforcement body addressing illegally related activities in football nor did they ever address any matter related to ML within the football industry. All matters were referred to the Executive Committee and they decided whether a matter would be prosecuted or not. As such, the

⁷²⁶ China.org.cn Soccer, “AFC vows to fight match fixing,” China.org.cn, http://www.china.org.cn/sports/2013-02/20/content_28016227.htm (accessed June 4, 2013).

⁷²⁷ INTERPOL, “Match Fixing: The ugly side of the beautiful game (Asia),” International Police Organization (INTERPOL), <http://www.interpol.int/News-and-media/Events/2013/Match-Fixing-The-ugly-side-of-the-beautiful-game-Malaysia/Match-Fixing-The-ugly-side-of-the-beautiful-game-Asia> (accessed July 2, 2013).

⁷²⁸ Ibid.

researcher contends that enforcement in such areas were negligible and more often than not, non-existent.

However, post the Joint INTERPOL/FIFA Training, Education and Prevention initiative, FAM has realised that it needs help from local enforcement agencies in their fight against such financial malpractices.⁷²⁹ The Deputy President Tengku Abdullah Sultan Ahmad Shah organized a special official meeting to discuss necessary measures required with the FIFA Head of Security Chris Eaton, the representative from MACC and also a representative from the Anti-Vice, Gambling and Secret Societies Police Division of PDRM (D7 Unit).⁷³⁰ Most importantly, what transpired from the meeting was the implementation of the 3E concepts to combat the war of match-fixing, i.e. enforcement, engagement and education.⁷³¹

As such a new enforcement body to tackle illegal related activities has just been set up and is aptly named The Vetting, Monitoring and Transparency Committee of FAM lead by Tan Sri Aseh Che Mat and he is assisted by members from the D7 unit and MACC.⁷³² For the time being, only match fixing is on the agenda list.⁷³³ ML issues are still wrapped away in the deepest recesses. The researcher states that only time will tell if this enforcement body is effective or not. At the time of

⁷²⁹ Vijhay Vick, "FAM Work with us to eradicate match-fixing," SPORTS 247, <http://www.sports247.my/2013/02/fam-work-with-us-to-eradicate-match-fixing/> (accessed June 4, 2013).

⁷³⁰ FAM, "3E Concept to Fight Match Fixing," Football Association of Malaysia, http://www.fam.org.my/index.php?option=com_content&view=article&id=410%3A3e-concept-to-fight-match-fixing&catid=54%3Alatest-news&Itemid=143&lang=en (accessed June 4, 2013).

⁷³¹ Ibid.

⁷³² Football Association of Malaysia News and Articles, "3E Concept."

⁷³³ Ibid.

submission of this thesis, the researcher submits that an enforcement body to tackle match fixing has been newly formed.

5.11 Enforcement on Online Betting

Another area with a strong relationship with the football industry is online betting. The Online Gaming Commissions are responsible in enforcing the online betting laws in all the jurisdictions in this thesis.⁷³⁴ Enforcement is targeted usually to companies that operate these kinds of activities. Online betting enforcement measures are still below the desired levels.⁷³⁵ As such, a suggestive model on enforcement with relation to online betting is discussed in the subsequent Chapter.

5.12 Illegal Activity Cases Handled by the Football Enforcement Bodies

Most high profile members from the respective organisations in the football industry have been linked to illegal activities and some of them have been prosecuted by football enforcement bodies. In this section, the researcher will highlight that the world of football has been shamed many times due to such scandals and will highlight the enforcement bodies that have tried to bring them to justice.

For the purposes of this thesis, only FIFA, CONCACAF, UEFA and AFC will be highlighted to show that those leading the regulatory and enforcement structures were most often the ones that were committing the most illegal activities within the

⁷³⁴ U.K. Gambling Commission, *Who we are and what we do: An introduction to the Gambling Commission*, (Birmingham, 2011), 2.

⁷³⁵ Dhillon, Jeyakumar, Ridzwan, Miin., "Online Betting," 1.

industry. It must be noted that because football regulations have no express provision on ML, the enforcement bodies did not prosecute for this offence.

5.12.1 FIFA

The former president who led FIFA for almost two decades and with the title of ‘Honorary President’, Joao Havelange was forced to step down due to the charge of corruption between 1974 and 1998.⁷³⁶ The two-chamber Ethics Committee of FIFA which acted as the enforcement authority in this case agreed with the FIFA Investigatory Chamber and confirmed that Havelange and others did accept bribes from International Sports Limited (ISL).⁷³⁷

After Havelange resigned in 1998, Sepp Blatter was elected as president of FIFA.⁷³⁸ In 2004, it was found out by the FIFA Ethics Committee that he had intentionally deposited the ISL bribe payment back in 1998 that amounted to 1.5 million Swiss francs to Havelange’s account.⁷³⁹ Ironically, in concluding investigations about Blatter, the Committee’s Chairperson, Hans-Joachim Eckert stated that Blatter was ‘clumsy’ in his conduct of returning money to Havelange, without knowing the real identity of such proceeds.⁷⁴⁰

⁷³⁶ Owen Gibson, “João Havelange resigns as Fifa honorary president over ‘bribes’ Football,” *theguardian*, <http://www.guardian.co.uk/football/2013/apr/30/joao-havelange-resigns-fifa> (accessed June 4, 2013).

⁷³⁷ *Ibid.*

⁷³⁸ *Ibid.*

⁷³⁹ *Ibid.*

⁷⁴⁰ *Ibid.*

In 2010, FIFA organized the World Cup bid and announced Russia and Qatar as the host countries for 2018 and 2022 FIFA World Cup respectively.⁷⁴¹ However, the result came about as a very surprising one as FIFA's inspection team claimed that Russia has major infrastructure problems while Qatar encounters high temperature in the summer where it is risky to the health of players, officials and spectators.⁷⁴² Later on, FIFA African executive officers, Issa Hayatou and Jacques Anouma were accused by an undercover journalist of Sunday Times newspaper for receiving around USD \$ 1.5 million as a bribe to vote for Qatar as the host of 2022 World Cup.⁷⁴³

In addition, Lord Triesman as the Chairman of England's Unsuccessful 2018 World Cup Bid Committee alleged that Teixeira and Leoz were again involved in the corruption scandal as they were found to be agreeable to sell their votes for the bid.⁷⁴⁴ The researcher contends that all these allegations were not investigated by FIFA as a supreme body of the sport and the persons involved have not been brought to justice hence creating a very dark cloud over the present FIFA enforcement bodies and structures.

⁷⁴¹ Mail Online Sportsmail Reporter, "Qatar World Cup 2022 bid slams bribery allegations," Mail Online, <http://www.dailymail.co.uk/sport/football/article-1389969/Qatar-World-Cup-2022-bid-slams-bribery-allegations.html> (accessed June 3, 2013).

⁷⁴² Brian Phillips, "Corruption, Murder, and the Beautiful Game On FIFA's scandalous history," Grantland, http://www.grantland.com/story/_/id/6861161/corruption-murder-beautiful-game (accessed May 30, 2013).

⁷⁴³ Mail Online Sportsmail Reporter, "Qatar World Cup 2022 bid slams bribery allegations."

⁷⁴⁴ Robbie Blakeley, "Teixeira Implicated in 2018 Bid Bribes," The Rio Times, <http://riotimesonline.com/brazil-news/rio-politics/teixeira-implicated-in-2018-bid-bribes/> (accessed June 1, 2013).

5.12.2 UEFA

Just few days after the undercover reporter's revelation of the FIFA bid rigging scandal mentioned above, it was UEFA's turn to be accused of corruption in the 2010 bidding event of UEFA European Football Championship 2012 (Euro 2012).⁷⁴⁵ The former treasurer of Cyprus football association, Spyros Marangos, accused UEFA officials of accepting bribes offered by someone from Poland and Ukraine football associations that helped these two countries secure the successful bid as the venues of the 2012 tournament.⁷⁴⁶

Marangos also claimed that there were about EUR €11 million bribes circulated in the Euro 2012 selection process where one of the UEFA Executive Committee has received over EUR €5 million in cash that was disguised in a big teddy bear.⁷⁴⁷

Marangos stated that he was in possession of all the relevant documents and was ready to submit it to the police authority.⁷⁴⁸ Surprisingly, there was no initiation of an internal investigation by any UEFA Enforcement Body nor was there any enforcement measures taken against the perpetrators.⁷⁴⁹

⁷⁴⁵ Michael Anderson, "Another scandal rocks the world of Football UEFA accused of corruption in the run up to Euro 2012," The Bettor Blog, <http://blogs.bettor.com/Another-scandal-rocks-the-world-of-Football-UEFA-accused-of-corruption-in-the-run-up-to-Euro-2012-a36490> (accessed June 2, 2013).

⁷⁴⁶ Ibid.

⁷⁴⁷ Chris Reiko, "Spyros Marangos vs UEFA in EURO 2012 corruption scandal – 11 million EUROS inside big teddy bear," Soccer with Chris, <http://www.soccerchris.com/2010/10/30/big-teddy-bear-in-marangos-vs-uefa-euro-2012-corruption-scandal/> (accessed June 2, 2013).

⁷⁴⁸ The Malaysian Insider Sports, "Marangos set to hand over Euro 2012 'bribery' proof," The Malaysian Insider, <http://www.themalaysianinsider.com/sports/article/marangos-set-to-hand-over-euro-2012-bribery-proof> (accessed June 3, 2013).

⁷⁴⁹ Ibid.

5.12.3 CONCACAF

The newly established ICC within CONCACAF has recently publicized a Report of Investigation in April 2013.⁷⁵⁰ The report is enclosed with the details of investigation on the CONCACAF's former president, Jack Warner and the former Secretary-General, Chuck Blazer.⁷⁵¹ The ICC claimed that Warner and Blazer were not cooperative at all throughout the investigations.⁷⁵² The ICC reported that it was unable to obtain the exact amount of CONCACAF funds that were being unlawfully spent on the COE due to the reasons that all the financial records related to COE were in Warner's possession whereby he refused to reveal such records to the ICC.⁷⁵³

The ICC then requested that the CONCACAF former auditor as well as COE accountant co-operate to provide vital information but they too declined to co-operate.⁷⁵⁴ Numerous allegations related to possible ML offences were directed at Warner and Blazer in the ICC report. The ICC found that Warner had committed misappropriation of funds as he failed to disclose the spending of CONCACAF's funds and FIFA loans on the construction of Centre of Excellence (COE) which amounted to more than USD \$ 25.9 million, on the land that he acquired, also by misusing such funds.⁷⁵⁵

⁷⁵⁰ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity Committee, I*.

⁷⁵¹ "COCACAF Integrity Committee - Report of Investigation.", v-vii.

⁷⁵² *Ibid.*, 15.

⁷⁵³ *Ibid.*, 16.

⁷⁵⁴ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity Committee*, 16.

⁷⁵⁵ *Ibid.*, 26.

For Blazer, the ICC reported that he had fraudulently misused the CONCACAF funds of USD \$ 17 million which included amongst others, the unauthorized renting of a New York Trump Tower Apartment costing USD \$ 18,000 per month; the purchase of an apartment at Miami costing USD \$ 810,000 and another at Bahamas costing USD \$ 4.55 million; the misusing of Umbro International sponsorship contract's funds, tax evasion, etc.⁷⁵⁶

The US Federal Bureau of Investigation (FBI) also inquired into the ML allegations reported by ICC.⁷⁵⁷ Such inquiry was triggered as during the course of investigation by ICC, Blazer revealed that Warner and Mohammed bin Hammam, the former AFC president had been involved in a bribery matter as Hammam wanted to be elected as the next President of FIFA.⁷⁵⁸ Due to such allegations, Warner then resigned from his position as vice-president of FIFA, president of CONCACAF and president of the Caribbean Football Union. Blazer was also questioned by the FBI regarding how he had hidden a million dollars in an offshore account.⁷⁵⁹ The FIFA Ethics Committee had merely barred Blazer from being involved in activities relating to football at national and international levels for a maximum of 90 days only.⁷⁶⁰ Warner has resigned and no further sanctions have been imposed on any of these perpetrators.

⁷⁵⁶ Confederation of North, Central American and Caribbean Association Football, *COCACAF Integrity*, 58.

⁷⁵⁷ Asha Javeed Asha, "FBI Probes Warner," Trinidad Express Newspaper News, http://www.trinidadexpress.com/news/FBI_PROBES__WARNER-180785241.html (accessed June 2, 2013).

⁷⁵⁸ Asha, "FBI Probes Warner."

⁷⁵⁹ Ibid.

⁷⁶⁰ Stuart Franklin, "Chuck Blazer provisionally banned from FIFA Executive Committee," Goal, <http://www.goal.com/en-us/news/1786/fifa/2013/05/07/3961148/chuck-blazer-provisionally-banned-from-fifa-executive> (accessed June 3, 2013).

5.12.4 AFC

Mohamed bin Hammam, the previous President of AFC was accused by a whistleblower who reported to FIFA, that he had bribed 40 voters, with an amount of USD \$40,000 each in the FIFA 2011 presidential election.⁷⁶¹ The AFC Disciplinary Committee conducted initial investigations on him and only enforced upon him a 30 days provisional suspension for the offence but subsequently, the FIFA Ethics Committee issued him a lifetime ban from any activities related to football.⁷⁶²

He then resigned from his post of AFC president. In furtherance to this, the AFC Audit Committee revealed that he also committed offences of tampering with AFC's funds and of contracts forgery.⁷⁶³ However, Hammam succeeded in his appeal against the FIFA ban in the Court of Arbitration for Sport (CAS).⁷⁶⁴ The CAS annulled the ban with the reason forwarded that the FIFA Ethics Committee had not provided sufficient evidence to prove the said allegations.⁷⁶⁵

5.13 AML Enforcement Bodies and Controlling Mechanisms for the General Industries of US

The enforcement bodies and its accompanying mechanisms are highly ineffective as was illustrated in the preceding sections. As such, the researcher proposes to state the general enforcement bodies in the targeted countries to determine their level of

⁷⁶¹ USA Today Soccer, "FIFA bans bin Hammam for life for role in bribery scandal," USA TODAY, http://usatoday30.usatoday.com/sports/soccer/2011-07-23-fifa-Mohamed-bin-Hammam_n.htm (accessed June 2, 2013).

⁷⁶² Sapa, "Bin Hammam in fresh bribery scandal," Soccer IOL, <http://www.iol.co.za/sport/soccer/bin-hammam-in-fresh-bribery-scandal-1.1342542#.UbtMTfk3ASN> (accessed June 2, 2013).

⁷⁶³ Ibid.

⁷⁶⁴ Conn, "Mohamed bin Hammam."

⁷⁶⁵ Ibid.

effectiveness in bringing money launderers to justice in the United States of America, England and Malaysia. The researcher will then discuss the two most applicable enforcement mechanisms in US, England and Malaysia which are systematic records and reports of transactions and forfeiture and determine if these enforcement mechanisms have been used in any football cases from the targeted countries.

5.13.1 AML Enforcement Agencies in the US, England and Malaysia

5.13.1.1 US

The FIU of US is housed in The United States Department of Treasury⁷⁶⁶ and has been given the abbreviation FINCEN which means Financial Crimes Enforcement Network.⁷⁶⁷ FINCEN garners the information and also plays an extra analytical role of breaking down the information that it obtains before it is served to the various regulatory agencies and enforcement bodies. In this model, a strong interactive relationship exists between the FINCEN and the enforcement agencies. This is a plus point as discourse can occur to determine the best course of action available.⁷⁶⁸

In addition, FINCEN is granted wide powers by the US Patriot Act to perform several AML measures, for instance, gather, analyse and protect the data submitted by the reporting institutions; facilitate law enforcement investigations and

⁷⁶⁶ Conn, "Mohamed bin Hamman."

⁷⁶⁷ Financial Crimes Enforcement Network Law Enforcement, "Support to Law Enforcement," Financial Crimes Enforcement Network, http://www.fincen.gov/law_enforcement/les/ (accessed June 4, 2013).

⁷⁶⁸ Mohammad Al-Rashdan, "An analytical study of the financial intelligence units' enforcement mechanisms," *Journal of Money Laundering Control* 15, no. 4 (2012): 490, <http://www.emeraldinsight.com/journals.htm?articleid=17054964> (accessed March 2, 2013).

prosecutions; share information and cooperates with the foreign FIU etc.⁷⁶⁹ Other main enforcement agencies will include the Police, The Judiciary, The Department of the Treasury, The Department of Justice, the Department of Homeland Security, the Board of Governors of The Federal Reserve System, The United States Postal Service and The United States Postal Inspection Service.⁷⁷⁰

5.13.1.2 England

FIU of England is a law enforcement model which has been explained in great lengths in Broome's Study.⁷⁷¹ This model is currently applied in the England as well as New Zealand.⁷⁷² The England's FIU is under the jurisdiction of the police force; in particular it is housed in the Serious Organised Crime Agency (SOCA) which has the added benefit of accessing larger sources of information.⁷⁷³ Any form of intel that reaches any law enforcement body or any other regulatory body would be easily accessible to this FIU and its powers range from investigations to prosecutions.⁷⁷⁴ Other main enforcement agencies include the HM Revenue and Customs, Financial Service Authority, Office of Fair Trading and the Judiciary.

⁷⁶⁹ FinCEN, "What We Do," Financial Crimes Enforcement Network, http://www.fincen.gov/about_fincen/wwd/index.html (accessed June 3, 2013).

⁷⁷⁰ Ibid.

⁷⁷¹ J. Broome, *Anti-Money Laundering International Practice and Policies* (New York: Sweet and Maxwell, 2005), 214 .

⁷⁷² Ibid., 215.

⁷⁷³ SOCA UK, "What is the UK Financial Intelligence Unit (UKFIU)," Serious Organised Crime Association., <http://www.soca.gov.uk/about-soca/the-uk-financial-intelligence-unit> (accessed June 3, 2013).

⁷⁷⁴ Ibid.

5.13.1.3 Malaysia

The FIU of Malaysia is under the jurisdiction of Bank Negara Malaysia (BNM) or The Central Bank which has the responsibility to receive, analyse and share financial intelligence with the appropriate enforcement agencies for further investigations.⁷⁷⁵ BNM is the competent authority to provide intelligence and this was nominated by Ministry of Finance.⁷⁷⁶ Thus, BNM conducts its role through the FIU which was formed and shoulders the responsibility to receive, analyse and share financial intelligence with the appropriate enforcement agencies for further investigations.⁷⁷⁷ Other main enforcement agencies include the Royal Malaysian Customs, Malaysia Anti-Corruption Commission (MACC), Securities Commission, The Judiciary and the Police.

5.14 An Analysis of Reports and Records of Financial Transactions

5.14.1 US

Between 1970 and 1995, US had regulated a series of laws to curb ML activity. In 1970, Congress enacted the Currency and Foreign Transactions Reporting Act as Title II of the BSA. This Act requires US financial institutions to assist government agencies to detect and prevent ML and also to report cash transactions in excess of \$10,000 using the CTR and requires individuals to report the transportation of currency in excess of USD \$ 10,000 into or out of the US.

⁷⁷⁵ Anti-Money Laundering and Anti- Terrorism Financing Act, 2001, sec. 7.

⁷⁷⁶ Ibid.

⁷⁷⁷ Ibid.

Title III, subtitle B of the Patriot Act amends, improves and incorporates the enforcement mechanisms imposed by the fundamental US AML Act, namely the BSA.⁷⁷⁸ For enforcement measures, the Patriot Act predominantly focuses on obliging US financial institutions who maintain a correspondent account in the US for a foreign bank, to perform Enhanced Due Diligence (EDD) policies for AML purpose.⁷⁷⁹

Further, the Money Laundering Suppression Act 1994 (MLSA) in s 402 directs the Secretary to perform submission to the US Congress of an annual status report about the overall number of CTRs after filtering; filters CTRs to eliminate irrelevant information before passing it to the law enforcement agencies; establishes a division to receive and manage the STRs filings; and submit an annual status report regarding the total number of CTRs filing to the US Congress.⁷⁸⁰

In addition, s 404 obliges the Federal Banking Agency to enhance the training and examination procedures to improve the AML tracking schemes that involve depository institutions; and also improve the procedures for referring relevant cases to the appropriate law enforcement bodies.⁷⁸¹ Note that even the BSA enforcement provisions give clear emphasis on the importance of filing CTR's and STR's.

⁷⁷⁸ Robert J Graves and Jones Day, "Extraterritorial Application of the USA PATRIOT Act," Jones Day, <http://www.jonesday.com/files/News/2df0b605-1cc3-4729-ae61-a0305551bbe5/Presentation/NewsAttachment/742ac421-2ea3-4f3f-b275-a25219eb8eee/Foreign Bank Compliance with PATRIOTAct.pdf> (accessed July 5, 2013).

⁷⁷⁹ Ibid.

⁷⁸⁰ Money Laundering Suppression Act of 1994, § 402.

⁷⁸¹ Ibid., § 404.

5.14.2 England

In the United Kingdom, the laws that call for the recording of various transactions are governed under POCA 2002.⁷⁸² STR's are made to the law enforcement or to the Money Laundering Reporting Officer (MLRO).⁷⁸³ Once the report is launched to MLRO, the officer shall have the authority and responsibility to decide on whether to report it to the specific law enforcement authorities.⁷⁸⁴ Some statutes which consist of ML offences, for example, The Criminal Justice Act 1988, Drug Trafficking Act 1994, Terrorism Act 2000, requires a person to make a STR if such person has knowledge or suspect certain organisations are involved, or is about to be involved in ML activities.

Professionals like lawyers or accountants, if they feel suspicious or are asked to progress transactions for their clients, for which the money origin was uncertain and illegal, are required to submit a STR and gain special consent from specific authorities before the transactions. Failure to do so, the professionals in such professions will be guilty of a ML offence.⁷⁸⁵

SAR is similar to the STR. It provides information to alert the law enforcement that there are certain customer activities which are suspicious and might be involved in ML.⁷⁸⁶ These reports are sent to National Criminal Intelligence Service (NCIS) for

⁷⁸² Proceeds of Crime Act, 2002.

⁷⁸³ HM Revenue & Customs, "Appointing a nominated officer and training your employees," HM Revenue & Customs, <http://www.hmrc.gov.uk/mlr/your-role/nominated-officer.htm> (accessed July 2, 2013).

⁷⁸⁴ Ibid.

⁷⁸⁵ HM Revenue & Customs, "How to report a suspicious transaction or activity," HM Revenue & Customs, <http://www.hmrc.gov.uk/mlr/your-role/suspicious-transaction.htm> (accessed June 4, 2013).

⁷⁸⁶ Ibid.

investigation and will proceed to specific law enforcement for further actions and prosecutions.⁷⁸⁷

In the England, a large chunk of the enforcement mechanisms are derived from the Money Laundering Regulations 2007 (MLRs).⁷⁸⁸ Part 3 of the Act in particular focuses on the mechanism of record keeping and also the policies and procedures that come with it.⁷⁸⁹ This mechanism is further enhanced by ss 25 to 35 of the MLRs where it is mandatory for the ‘relevant persons’ as listed in s 3 (1) of the Act to act as reporting institutions to keep records of high value dealers, businesses or companies.⁷⁹⁰ The record-keeping procedures are significant as it allows law enforcement and regulatory agencies to carry out investigations of financial crimes and provide evidence useful in prosecuting the illegal activities related to ML or financial crimes.⁷⁹¹

S 19 provides that the relevant persons must keep the records which are produced from CDD measures, for five years, where such records relate to the identity of customer, the business relationship and occasional transaction.⁷⁹² While s 20 requires the relevant persons to be proper and risk-sensitive in carrying out policies and procedures which are related to CDD, record-keeping, internal control and risk

⁷⁸⁷ Ibid.

⁷⁸⁸ The Money Laundering Regulations, 2007.

⁷⁸⁹ Ibid.

⁷⁹⁰ Ibid.

⁷⁹¹ Money and Finance: Treasury - 31 CFR B Chapter 1.”

⁷⁹² The Money Laundering Regulations, 2007, Part. 3.

assessment.⁷⁹³ Lastly, s 21 obliges the relevant persons to train its employee on identifying and dealing with the suspicious transactions related to ML.⁷⁹⁴

Furthermore, in the main AML Act, POCA, part 8 of the Act enables the enforcement authorities to attain discretionary investigation orders such as production order, disclosure order and so on, from the court in the investigation process. The enforcement authorities for investigation are the ‘appropriate officers’ as listed in the part 8, i.e. a director, financial observer, a police officer or a customs officer.⁷⁹⁵

After the offence of ML was redefined under the POCA and MLRs, the regime of the SAR was legislatively modified for a few times. The broader definition of the ML offence included a broader range of activities to be regulated under the sector. The number of reports received by NCIS in 2002 was 56,000; around 95,000 in 2003 and exceeded 154,000 in the year of 2004. Submission of the SAR can be through a secure online system provided by the Serious Organised Crime Agency (SOCA).⁷⁹⁶

In order to protect people who submitted STR from being threatened, the action of ‘tipping off’ was made a criminal offence. It is an offence for a person to acknowledge the suspects or parties who might get involved in investigations after

⁷⁹³ Ibid.

⁷⁹⁴ Ibid.

⁷⁹⁵ The Money Laundering Regulations, 2007, Interpretation.

⁷⁹⁶ U.K. Financial Intelligence Unit, “Submitting a Suspicious Activity Report (SAR) within the Regulated Sector,” Serious Organised Crime Agency, <http://www.soca.gov.uk/about-soca/library/doc.../465-submitting-a-sar> (accessed July 7, 2013).

the STR is made.⁷⁹⁷ This is to ensure all evidence required by such investigations remained original and to enhance the investigation's neutrality and avoid any prejudices.

5.14.3 Malaysia

The enforcement mechanism of reporting and recording of suspicious transactions are governed by AMLATFA 2001. S 14 states that a bank has to promptly report to the FIU about any transactions exceeding RM 50,000 and any telegraphic transfers exceeding RM 3000.⁷⁹⁸ Even when the condition of the amount of money is not fulfilled, reports have to be made if there is a situation where the customer acts outside of their usual activity according to customer profiling.⁷⁹⁹ The officer has to play a role in informing his branch compliance officer who in turn has to lodge a STR with the said bank's compliance officer.⁸⁰⁰

The compliance officer then has to decide whether there is a need to forward the report to the FIU of the BNM. If he decides to do so, the FIU would commence investigations. S 13 of the AMLATFA states that the bank has to record all transactions exceeding the specified amount and such records must be maintained for at least 6 years from the date of transaction.⁸⁰¹ S 16 further states that records

⁷⁹⁷ Proceeds of Crime Act, 2002, sec. 333.

⁷⁹⁸ Zakiah Muhammaddun Mohamed, "Investigation and prosecution of money laundering cases in Malaysia," *Journal of Money Laundering Control* 15, no. 4 (2012): 425, <http://www.emeraldinsight.com/10.1108/13685201211266006> (accessed May 28, 2013).

⁷⁹⁹ Ibid.

⁸⁰⁰ Mohamed, "Investigation and prosecution," 427.

⁸⁰¹ Anti-Money Laundering and Anti-Terrorism Financing Act, 2001, sec. 13.

must include the identity and address of the beneficiary of the transaction such as their identity card number or their passport number.⁸⁰²

5.15 Forfeiture of Property

5.15.1 US

The main enforcement mechanism in the US lies in the power of criminal and civil forfeiture of property that is unlawfully or illegally obtained.⁸⁰³ This means that the government has the power to take ownership over the said property without the need to compensate the individual in question.⁸⁰⁴ This mechanism has seen great flexibility as prosecutors have the choice to start a criminal proceeding or a civil proceeding, each requiring different levels of proof and ultimately leading to varying levels of results. Each one should be analysed in depth for clearer understanding.⁸⁰⁵

A civil forfeiture is achieved through a proceeding against the property itself and is independent of any criminal charges against the owner of the property.⁸⁰⁶ The term can be defined as an irrevocable and unconditional appropriation by the state of property acquired directly or indirectly through criminal or illegal activity, by virtue of a judgement passed by a civil court or an order issued by other competent

⁸⁰² Ibid., sec. 16.

⁸⁰³ Nikolay Nikolov, "General characteristics of civil forfeiture," *Journal of Money Laundering Control* 14, no. 1 (2011): 17, <http://www.emeraldinsight.com/journals.htm?articleid=1897046> (accessed July 11, 2013)

⁸⁰⁴ Ibid.

⁸⁰⁵ Nikolov, "General characteristics," 17.

⁸⁰⁶ John L. Evans and Daniel C. Préfontaine, "International Money Laundering : International Money Laundering : Enforcement Challenges and Opportunities," *Journal of Law and Trade in the Americas* 3, no. 1 (1996): 4, http://www.icclr.law.ubc.ca/Publications/Reports/Enforcement_Challenges.pdf (accessed June 4, 2012)

authorities, but not by virtue of a verdict passed by a criminal court on filed charges and on the grounds of the conviction.⁸⁰⁷ The in rem proceeding depends on the legal fiction that the property is guilty of the offense of being used illegally.⁸⁰⁸

In terms of ML, this refers to the property in which the source of the dirty money is obtained.⁸⁰⁹ These are properties where illegal activities took place such as drug trafficking or even kidnapping. The owner of the property may not be involved in the criminal activity per se, but if it is found that the building is being used for a legally wrongful purpose, it may be forfeited. A criminal forfeiture is basically the forfeiture of property attached to a criminal charge.⁸¹⁰ The person who is detained for a criminal offence would have his assets and property seized by the government as part of the retribution process.⁸¹¹

Among the various laws that are existent in the US to facilitate this process are the MLCA as the main statute for ML, it provides for both criminal and civil forfeiture, Racketeer Influenced and Corrupt Organizations Act (RICO) and the Controlled Substances Act and Continuing Criminal Enterprise Offense (CCE).

⁸⁰⁷ Nikolov, "General characteristics," 18.

⁸⁰⁸ Evans and Préfontaine, "International Money Laundering," 4.

⁸⁰⁹ Stefan D Cassella, "The case for civil forfeiture: Why in Rem proceedings are an essential tool for recovering the proceeds of crime," *Journal of Money Laundering Control* 11, no. 1 (2008): 9, <http://www.emeraldinsight.com/journals.htm?articleid=1642150&show=pdf> (accessed July 2, 2012)

⁸¹⁰ Guy Stessens, *Money Laundering A New International Law Enforcement Model* in the Library of Congress, 4, <http://catdir.loc.gov/catdir/samples/cam032/99056427.pdf> (accessed May 3, 2012).

⁸¹¹ *Ibid.*, 4.

5.15.2 England

The laws for the seizure of property in England are mainly governed by Part 2 and Part 5 of the POCA.⁸¹² These two parts cover the operation of confiscation and also civil recovery of the said proceeds. Part 2 of the said act provides for the transfer of power to make confiscation from the Magistrate Court and the High Court to the Crown Court. In short, only the Crown Court has the tangible power to order such confiscation of assets and property. Part 5 of the Act which covers s 36 to s 47⁸¹³ spell out the most crucial roles of the AML regime enforcement. It provides for the powers to search, seize and freeze and also the punitive element that is involved if one is successfully charged.

It is not explicitly stated whether or otherwise such “assets” cover both tangible and intangible assets. It is quite common nowadays those illegal proceeds are even laundered through the buying of extremely expensive patents and intellectual property. In such situations, prices are so subjective that it is almost impossible to distinguish a legitimate businessman from a non-legitimate one.

Before an order for seizure is handed out by the courts, a series of steps have to be adhered to under the Act. There are two main requirements that have to be followed. Firstly, the accused must fall within the prism of one of the offences set out in s 6 (2) and also s 6(3) of the Act. Secondly, the prosecutor or the director general and

⁸¹² R.E. Bell, “The seizure, detention and forfeiture of cash in the UK,” *Journal of Financial Crime* 11, no. 2 (2003): 136-137, <http://www.emeraldinsight.com/journals.htm?articleid=1537287&show=html> (accessed June 22, 2012).

⁸¹³ The Money Laundering Regulations, 2007, sec. 36 - sec. 47.

the court must both agree that the trial at hand shall proceed under this provision prior to the delivery of the confiscation order against the accused.⁸¹⁴

Once both the conditions are fulfilled, the court will then look at the various perspectives before handing out the order.⁸¹⁵ They have to take into consideration facts such as the lifestyle of the accused and decide whether or not such an individual has benefited from the proceeds and whether or not he has a legitimate lifestyle.⁸¹⁶ The burden of proof that has to be fulfilled is more general under the British law, allowing more leeway for the judge to decide.⁸¹⁷ Only when both the requirements set out in s 4 (2) (b) and s 4 (2) (c) have been met, then such an order is given. The extra length that the POCA takes is that the court may determine a sum of money that is “recoverable” from the accused.⁸¹⁸ The amount of money is directly proportionate to the amount of benefit received by the accused himself. If there is a situation where the amount of benefit acquired is zero, a nominal amount still can be charged from the accounts of the accused.⁸¹⁹

Another unique aspect of the POCA is that this Act enables the law enforcers to recover money and properties obtained through unlawful conduct.⁸²⁰ The usage of the words “recover money” is given due consideration here. Unlike the US laws, the

⁸¹⁴ The Crown Prosecution Service Legal Guidance, “Proceeds of Crime Guidance: Confiscation and Ancillary Orders - post POCA 2002,” The Crown Prosecution Service, http://www.cps.gov.uk/legal/p_to_r/confiscation_and_ancillary_orders_post_poca/ (accessed May 6, 2012).

⁸¹⁵ Ibid.

⁸¹⁶ Ibid.

⁸¹⁷ Ibid.

⁸¹⁸ Ibid.

⁸¹⁹ The Crown Prosecution Service Legal Guidance, “Proceeds of Crime Guidance.”

⁸²⁰ Proceeds of Crime Act, 2002, sec. 204.

English laws allow for the recovery of money from the crimes. This simply means that money that is not physically found can also be claimed from the accused as long as it is proven that he has benefited from it. However, before deciding on what constitutes unlawful conducts, many external factors have to be considered. Among them is whether or not such money, goods or services were provided to put or coerce the person in question in a position to carry out the conduct.⁸²¹ However, it is sufficient to prove that such proceeds are obtained illegally; the state of mind may merely play a mitigating role, but not an ultimate defence.

Also as an enforcement procedure, this Act allows any customs officer or constable who is lawfully on any premise, alongside reasonable grounds for suspecting a suspect is in possession of recoverable property⁸²² may require the suspect to allow the officer to search his body or any materials in his possession.⁸²³ This is to give the officer the power to check on whether the suspects are in possession of any material items that are crucial in the investigation of a case in ML. The Act also allows a law enforcer to seize cash if he has reasonable grounds for suspecting that the cash was used in unlawful property.⁸²⁴

Moving on to the detention of seized cash, the period of detention of the funds can be up to 48 hours provided that the officer has reasonable grounds to suspect that the funds in question are involved in ML.⁸²⁵ This is to ensure that the funds in

⁸²¹ Proceeds of Crime Act, 2002, sec . 242 (2) (b).

⁸²² Ibid., sec. 289 (2).

⁸²³ Ibid., sec. 289 (3).

⁸²⁴ Ibid., sec. 294.

⁸²⁵ Ibid., sec. 295.

question will be properly investigated, such as tracing the origin and relating transactions in order to determine whether the funds involved are involved in unlawful conduct. In essence, properties obtained from unlawful conducts can constitute what is known as recoverable properties.⁸²⁶ This includes any material items or funds which originated from any unlawful conduct.

5.15.3 Malaysia

In Malaysia, there are also laws that regulate the freezing, seizure and forfeiture of property. Let us take a look at the procedures involved. First of all, freezing of property⁸²⁷ takes place. Where there is a reasonable suspicion that the property comes from illegal proceeds, assets are frozen to prevent it from being siphoned off to other avenues overseas. Then, after the investigating officer successfully obtains an approval from a senior investigating officer, he is authorized to seize any movable property where he has reasonable grounds to suspect such objects to be the evidence relating to the offence.⁸²⁸ There is also a further provision connecting to seizure of immovable property.⁸²⁹

To enforce this regulation, there are laws that compel advocates and solicitors to disclose information for the purpose of any pending proceedings.⁸³⁰ This is because advocates and solicitors are more often than not involved in the contract of

⁸²⁶ Proceeds of Crime Act, 2002, sec. 304.

⁸²⁷ Anti-Money Laundering Act, 2001, sec. 44.

⁸²⁸ Ibid., 45.

⁸²⁹ Ibid., sec. 46.

⁸³⁰ Ibid., sec. 47.

purchases of assets and properties.⁸³¹ They owe a duty to the public in general and the courts to not only inform the authorities of suspicious transactions, but also to inform the true valuation of assets that are available, at least to the extent of their knowledge. Also, the public prosecutor has the power to authorise the investigating officer to exercise investigation in relation to financial institutions.⁸³² Besides, the public prosecutor has the authority to gain information through deeper investigation.⁸³³ The public prosecutor can seize movable property in a financial institution,⁸³⁴ seize immovable property⁸³⁵ and prohibited property outside Malaysia⁸³⁶ if they have reasonable grounds to believe that by such action an offence will be committed. Last but not least, the attempts of dealing with seized property are null and void.⁸³⁷ This situation rarely occurs as the assets are usually frozen in the very first place.

Forfeiture of property can be done upon prosecution for an offence⁸³⁸ and forfeiture of property can take place even where there is no prosecution made.⁸³⁹ This mirrors the similar principle of criminal and civil forfeiture spelled out in the US laws. Malaysia has recognised the importance to allow such forfeiture to be independent of criminal charges due to the higher burden of proof in criminal cases. Pecuniary

⁸³¹ Anti-Money Laundering Act, 2001., sec. 47.

⁸³² *Ibid.*, sec. 48.

⁸³³ *Ibid.*, sec. 49.

⁸³⁴ *Ibid.*, sec. 50.

⁸³⁵ *Ibid.*, sec. 51.

⁸³⁶ *Ibid.*, sec. 53.

⁸³⁷ *Ibid.*, sec. 54.

⁸³⁸ *Ibid.*, sec. 55.

⁸³⁹ *Ibid.*, sec. 56.

penalty orders can be made against persons who had his property forfeited from the commission of an offence.⁸⁴⁰

If a person is lawfully entitled to the property, the release of property seized⁸⁴¹ will be done. This is one important measure that is incorporated into the Malaysia law. The law has recognised the harshness and bluntness of this law.⁸⁴² Therefore, such a provision is put into place so that officers and relevant authorities are not reluctant to enforce the law simply on the basis of fear that such forfeiture may be proven to be wrong. Such a provision implicitly provides immunity for the officer from being prosecuted in court. It is inevitable that the interests of the authorised officers need to be protected before such mechanisms can be properly enforced.⁸⁴³

However, there are exceptions to this rule. The rule does not apply to persons who have absconded.⁸⁴⁴ In the event of disposition of forfeited property, the property that is not harmful to the public is not required to be destroyed.⁸⁴⁵ This clearly excludes harmful properties like drugs. If there is an effect of death on proceedings, such proceeding will be continued against the personal representatives of the deceased defendant.⁸⁴⁶ Documents will be served on absconders who cannot be found and did not appear before the court, and the proceedings will still go on without his presence until the final conclusion.⁸⁴⁷

⁸⁴⁰ Anti-Money Laundering Act, 2001, sec. 59.

⁸⁴¹ *Ibid.*, sec. 60.

⁸⁴² *Ibid.*, sec. 61.

⁸⁴³ *Ibid.*

⁸⁴⁴ *Ibid.*, sec. 63 (1).

⁸⁴⁵ *Ibid.*, sec. 62.

⁸⁴⁶ *Ibid.*, sec. 65 (3).

⁸⁴⁷ *Ibid.*, sec. 66.

5.16 Football Related Cases Initiated by General AML Enforcement Bodies and the Use of General Enforcement Mechanisms

5.16.1 US

It is quite distressing to note that after careful research on the enforcement bodies and enforcement mechanism methods the researcher has provided in the preceding sections, the researcher contends that there are no records of any persons/body corporates related to the football industry being charged by any enforcement body for failing to report proper transactions or have had any of their properties forfeited for ML offences that could have been committed in the US football industry.

5.16.2 England

In 2012, in the case of *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)*⁸⁴⁸ the HM Revenue & Customs charged Harry Redknapp and others with tax evasion by using POCA 2002 invoking s 340(5).⁸⁴⁹ Harry Redknapp was the manager of Tottenham Hotspur Football Club at the material time when the prosecution proceeded with the hearing. S 340(5) states that a person is considered as benefitting from the conduct if he acquires the property that derives from or is associated with the conduct.⁸⁵⁰

848 *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)*, 172 JP 388 (Q.B.D 2008).

⁸⁴⁹ *Redknapp v. Commissioner of the City of London Police and City of London Magistrates' Court (William McKay, Peter Storrie, Milan Mandaric and Amdy Faye, Interested Parties)*.

⁸⁵⁰ *Ibid.*

The prosecution told the court that Mr Redknapp had flown abroad to set up a secret account to receive bung.⁸⁵¹ He named the offshore account after his pet dog ‘Rosie’ but failed to declare the existence of the account for six years even while undergoing a separate inquiry over a similar payment from his former club, West Ham, over the sale of the player Rio Ferdinand.⁸⁵² However, prosecution of the trial failed to address the matter beyond reasonable doubt. Therefore, he was acquitted.⁸⁵³

In 2011, also in England, the Russian owner of Portsmouth Football Club, Vladimir Antonov and his Lithuanian business partner, Raimondas Baranauskas were charged in the London County Court after being arrested by the City of London police over a ML allegation of more than GBP £ 200 million.⁸⁵⁴ Antonov, was held in London on an extradition warrant issued by the Lithuanian authorities in connection with alleged fraud at the Snoras Bank he controls.⁸⁵⁵ According to the prosecutor general, they are recognized as suspects with regard to misappropriation of property and forgery of documents, fraudulent accounting, abuse of authority, ML and etc.⁸⁵⁶ However, Antonov and Baranauskas were not convicted by the court due to lack of evidence.⁸⁵⁷

⁸⁵¹ The Sun News Staff Reporter, “Harry Redknapp Verdict Not guilty of tax evasion,” The Sun News, <http://www.thesun.co.uk/sol/homepage/news/4116374/Harry-Redknapp-Verdict-Not-guilty-of-tax-evasion-The-Sun.html> (accessed March 3, 2013).

⁸⁵² Ibid.

⁸⁵³ Ibid.

⁸⁵⁴ Heart South Coast Local News, “Portsmouth Owner In Court,” Heart South Coast News, <http://www.heart.co.uk/southcoast/news/local/portsmouth-owner-court/> (accessed June 3, 2013).

⁸⁵⁵ theguardian Press Association, “Portsmouth owner appears in court over allegations of fraud Football,” theguardian, <http://www.theguardian.com/football/2011/nov/25/portsmouth-owner-vladimir-antonov-arrested> (accessed August 2, 2013).

⁸⁵⁶ Lidija Liegis, “Life in the fast lane ends for Antonov,” The Baltic Times (London: baltictimes.com), <http://www.baltictimes.com/news/articles/31407/> (accessed August 18, 2013).

⁸⁵⁷ Ibid.

5.16.3 Malaysia

It is quite distressing to note that after careful research on the enforcement mechanisms in Malaysia, the researcher contends that there are no records of any persons/body corporates related to the football industry being charged by any enforcement body for failing to report proper transactions or have had any of their properties forfeited for ML offences that could have been committed in the Malaysia football industry.

5.17 Findings

With relation to enforcement by FIFA, the researcher states that although FIFA have appointed an Independent Governance Committee, the Task Force Revision of Statutes, The Task Force Transparency and Compliance, The Task Force FIFA Ethics Committee and The Task Force Football during the construction of this thesis, there are no concrete results how this enforcement bodies will fare. The researcher hopes that the Committees will work very diligently to firstly revise the FIFA laws to include ML offences and then propose effective enforcement mechanisms to combat them.

The researcher contends that any further discussion on this enforcement committees are irrelevant as the Committees have not been conferred any powers to investigate nor refer cases on ML to the respective judicial bodies mentioned in the FIFA Disciplinary Code 2011. As such, the researcher contends that the current enforcement bodies set up by FIFA to regulate ML in the football industry are toothless and ineffective. The FIFA TMS Matching system and the strict agents' background checks are the only viable enforcement mechanism set up by FIFA thus

far to combat ML in the football industry.

The researcher contends that the AML agenda is not high on the FIFA priority list. FIFA is actually still concentrating its efforts in combating bribery and corruption. The researcher would like to state that bribery and corruption ought to be declared criminal offences within the FIFA statutes, and such a model of how it should be done will be explained in Chapter 6.

Moving on to CONCACAF, the researcher concludes that CONCACAF has only just initialized the first stage of their fight against corruption and match fixing. The only enforcement that has taken place in relation to illegal activities happening in the sport in this region was the prosecution of Warner and Blazer. The researcher concludes that CONCACAF is very much in the infancy stages of combating illegal activities related to ML. ML per say is not on the agenda at the time of submission of this thesis.

The researcher notes however that UEFA is serious, committed and determined to have enforcement bodies set up but that their powers are very limited. Only issues like match fixing and bribery have been addressed, and even then sanctions are too light, only to a maximum of 25,000 Euros which is pittance if one is involved in a match fixing or bribery operation that costs millions. However, there is a provision within the main FIFA statute that states that fines can be imposed of up to a maximum of 1,000,000 Euros to associations and only up to a maximum of 100,000

for individuals⁸⁵⁸ but even then the researcher reiterates that the authorities have not been willing to even award up till 100,000 in any of the prosecuted cases. As such enforcement of the fine sanction is still low and should be increased. Also, the fine punishment of 100,000 for individuals and 1,000,000 for associations or clubs should be increased by a formula depending on the severity of the offence and the amount of money that is involved.

The researcher further states that although enforcement bodies have been set up, enforcement of the laws itself by the enforcement bodies are very poor and UEFA should be more aggressive in this area. The researcher commends that UEFA is taking the right steps to combat illegal activities but contends that FDS is the only enforcement system engaged by UEFA to detect and prevent match fixing at the time of submission of this thesis. More effort and use of other enforcement mechanisms are to be encouraged.

In relation to England, the English FA have in 2013 set up the FRA, an enforcement body, which monitors football club ultimate owners and directors as well as their financial backgrounds.⁸⁵⁹ FRA also governs the disciplinary processes of the matches in order to make sure the punishments imposed are appropriate and of high standard. FRA analyses and oversees the complaints, disputes and other relevant matters that relate to the violation of FA rules and regulations.⁸⁶⁰ The English FA

⁸⁵⁸ UEFA Congress, *UEFA Disciplinary Regulations*, 3.

⁸⁵⁹ The Football Regulatory Authority, "Terms of Reference."

⁸⁶⁰ The Choice Premier League, "Independent body."

are only very recently making the right moves in the enforcement arena but there is still a lot that needs to be done in the area.

The researcher states that for Asia, there are no specific enforcement bodies set up by AFC to combat ML but AFC have co-operated with MACC to organize an INTERPOL/FIFA Training, Education and Prevention initiative with the sole objective of trying to fight corruption, match fixing and illegal betting within the confederation. Participants were required to brainstorm ways of maintaining good practice and governance and how important it was to protect the players.

It was decided by AFC that more training and education be made available so as to prevent such malpractices from becoming rampant and that an investigatory as well as an enforcement body be set up. The researcher contends that more co-ordinated efforts from other regulatory agencies like the Police and the FIU's be conducted to create awareness to the public and to brainstorm further ideas to create an effective enforcement agency to tackle illegal related issues which would include ML⁸⁶¹

For Malaysia, a new enforcement body namely The Vetting, Monitoring and Transparency Committee of FAM was set up to tackle illegal related activities. It is being led by Tan Sri Aseh Che Mat and he is assisted by members from the D7 unit and MACC.⁸⁶² For the time being, only match fixing is on the agenda list.⁸⁶³ ML issues are still not on the agenda.

⁸⁶¹ China.org.cn Soccer, "AFC vows."

⁸⁶² FAM, "3E Concept."

⁸⁶³ Ibid.

Another anomaly observed by the researcher is the haphazard reporting under FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM. Financial reporting and matters must be in order and be systematic in order to prevent the ML from occurring. Nevertheless, financial reporting of the football governing bodies is seen to be weak. It has been said that FIFA has no systematic controls related to the corruption risk. Failing to get the trust of the insiders causes reporting to be difficult, thus wasting precious time.⁸⁶⁴

The main loophole here is that financial reporting does not include all fields of activity of FIFA and it does not include the member associations and confederations, since they are not under the control of FIFA. This means that even though FIFA could be observed as a supreme body, it does not have substantial power to oversee the financial conditions of the organisations below it. This system is ineffective as it leads to a condition whereby the personnel within organisations can easily cover up any anomalies in the financial transactions, as they do not have to report to any superior body.

In addition, FIFA financial reporting itself has also been criticised in some reports, claiming that it lacks details on some areas of financial report and merely includes several transactions under a general heading, which raise suspicion of plausible laundering of money or corruption. In addition, FIFA's reluctance to disclose details

⁸⁶⁴ FAM, "3E Concept."

on the earning of its key officials also has been criticised as obstacles towards achieving high level of transparency.⁸⁶⁵

Besides, confederations and national associations often do not lay down details or standard procedures of financial reporting. They usually only state the personnel responsible on financial matters. This is also a great loophole that may be used by money launderers to cover up the trace of unlawful transactions. The weakness of this system is evidenced through the evasion of tax by the CONCACAF President, Warner and secretary general, Blazer for a period of at least 4 years.⁸⁶⁶

They are not backed up by any law enforcement authorities and FIFA as a supreme football body does not take any serious action upon such incidents. FIFA does not gather solid evidence and it does not take any action and worse, it even refuses to report such matters to the police force. The only enforcement sanctions carried out usually range from being barred for a certain period of time or suspension from some matches or at the very worst, the imposition of minimal fines which do not correspond with the seriousness of the offence. The same can also be said with CONCACAF, USSF, UEFA, FA, AFC and FAM as has been described in the preceding sections.

The researcher would like to conclude by stating that most high profile members from the respective organisations in the football industry have been linked to illegal

⁸⁶⁵ Financial Fair Play, "Financial Fair Play - the future of football," Financial Fair Play UK, <http://www.financialfairplay.co.uk/> (accessed May 2, 2013).

⁸⁶⁶ Andrew Warshaw, "Blatter calls on Brazilians to stop using football to make their demands," Inside World Football, <http://www.insideworldfootball.com/index.php> (accessed June 2, 2013).

activities and some of them have been prosecuted by football enforcement agencies like FIFA, CONCACAF, UEFA and AFC but have escaped with very light sentences. Such high profile persons who have lead the charge in the setting up of regulatory and enforcement bodies were the ones who were actually committing grave offences in the world of football.

It is no wonder that that enforcement bodies and mechanisms set up by the football bodies are acknowledged as weak and ineffective. Last but not least, the researcher states that there are no anti ML prosecutions thus far by any of the football enforcement bodies in FIFA, CONCACAF, UEFA, AFC, USSF, FA or FAM.

It is therefore imperative to move on to the general AML Bodies and enforcement mechanisms to determine the level of effectiveness in bringing money launderers to justice within the targeted football countries of US, UK and Malaysia.

As explained earlier, there are two very important enforcement mechanisms that are used to detect and punish money launderers. First is the tracking of money trails and second is the forfeiture of assets. The biggest excuse or problem that AML warriors use is the fact that it is impossible to track down financial records and it is impossible to find a money trail. This argument is flawed on the most fundamental level. If that line of logic is true, then there should never be a case of ML that is brought up to court for trial.

The FATF has established the rule that each country has to make a choice between the subjective test of reporting and the objective test of reporting. The subjective test is applied when the person actually suspects that the funds involve a criminal activity. The objective test on the other hand states that reasonable grounds to suspect supported by circumstantial evidence are enough to form basis for reports.⁸⁶⁷

If anything, this is the most important part of the anti-money laundering mechanism that has to be drafted out specifically for the football industry, especially where the love for football is the norm instead of the exception. The fact that there are more than 38 million registered footballers and 5 million referees gives a picture of just how enormous the industry is. The sum of money that flows into the football sector through very basic transactions such as ticket sales alone is by the billions and is not regulated in any manner. This does not include other forms of money flow such as from the buying and selling of players, the transfer of ownership of clubs and even more money from betting, be it legal or otherwise. Internet betting on football matches, often linked with match fixing, is another excellent example of free flow of hot money.

As the football industry is not made a reporting institution at the time of submission of this thesis, this enforcement measure has not been made mandatory for the FIFA and the United States of America, England and Malaysia. In fact, such records and

⁸⁶⁷ David Chaikin, "How effective are suspicious transaction reporting systems," *Journal of Money Laundering Control* 12, no. 3 (2009): 240, <http://www.emeraldinsight.com/journals.htm?articleid=1805600> (accessed February 22, 2013).

reports are virtually non-existent, and even if there are records, the reports are not made available to the enforcement authorities. The researcher submits that reports and records kept should be also mandatory on all football associations and clubs and that football bodies be listed as reporting institutions within the Act to see cases bring brought to courts.

Moving on to forfeiture of assets, in essence, allows for any property be it real or virtual to be seized and confiscated as soon as it can be proven that it was acquired through the proceeds of some form of criminal activity. The lists of crimes that are in question are not exhaustive. The domino effect basically explains forfeiture as an enforcement mechanism.⁸⁶⁸ Take for example a drug case. Anything that has been used to seal the deal or is in any way involved in the drug trail can be confiscated. More importantly, all forms of negotiable instruments, cash or cheques that were used or intended to be used for a crime can also be seized by the authorities.

More often than not, proceeds or assets which are used for criminal purposes would help expose a trail of previous crimes. For example, a drug dealer buying a luxury holiday home for planting weed in the estate shows an obvious link between the crime and the proceeds. Therefore, the lawyer simply needs to show that the criminal has not declared enough income to purchase the said home through legitimate means. However, this is definitely easier said than done. With the

⁸⁶⁸ R. E. Bell, "The confiscation, forfeiture and disruption of terrorist finances," *Journal of Money Laundering Control* 7, no. 2 (2003): 110, <http://www.emeraldinsight.com/journals.htm?articleid=1537533&show=html> (accessed June 3, 2012).

advancement of technology and the slyness of these criminals, paper trails are difficult to obtain.⁸⁶⁹

A prosecutor's job becomes easier as a criminal burden of proof is not mandatory; seizures can be done through civil litigations as well.⁸⁷⁰ In an everyday civil forfeiture case, the prosecutor only needs to exercise minimal effort to succeed. All the prosecutor needs to show is that on the balance of probabilities, the property was in some way linked to the crime. Unfortunately for the criminal, the burden of proof upon his shoulder is not as simple.⁸⁷¹ He has to prove his innocent status by convincing the court that he did not have any knowledge of any sort of illegality in the usage and the ownership of his property. His or her testimony must pass the test of admissibility and reliability.

This is where ML in the football industry fits into the picture. On a prima facie level, a sport is not a crime. Therefore, any attempt to money launder through this industry should be able to be combated through civil means especially since ML here is mostly done through buying and selling of players and clubs which are usually governed by contracts. Even the criminal part of it which refers to illegal

⁸⁶⁹ Ricardo Azevedo Araujo, "Assessing the efficiency of the anti-money laundering regulation an incentive-based approach," *Journal of Money Laundering Control* 11, no. 1 (2008): 74, http://www.emeraldinsight.com/journals.htm/journals.htm?articleid=1642126&show=html&WT_mc_id=alsoread&PHPSESSID=9ud6cjrnb4c1ca4ttmpm4s4u14&&nolog=831093 (accessed December 21, 2012).

⁸⁷⁰ L. Blakeney and M Blakeney, "Counterfeiting and piracy – removing the incentives through confiscation," *European Intellectual Property Review* 30, no. 9 (2008): 348, <http://lawlib.wlu.edu/CLJC/index.aspx?mainid=775&issuedate=2008-09-04&homepage=no> (accessed December 21, 2012).

⁸⁷¹ Barry A.K. Rider, "Recovering the proceeds of corruption," *Journal of Money Laundering Control* 10, no. 1 (2007): 11-12, <http://www.emeraldinsight.com/journals.htm?issn=1368-5201&volume=10&issue=1&articleid=1589118&show=abstract> (accessed December 22, 2012).

bookies and online or underground betting, and bribery of players to ensure that bets are true, is covered by forfeiture of illegal proceeds. To truly combat illegal activities and ML in the football industries of US, England and Malaysia the researcher contends that forfeiture provisions should be added as within the FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM Statutes and Regulations, so as to enable enforcement authorities within the football industry the means to punish those who continue to commit financial malpractices within the industry.

The researcher has categorically demonstrated in Chapter 3 the very high levels of ML that exists and has been happening in the industries relevant to this thesis. In spite of this, the findings in this section point out that enforcement bodies and their mechanisms are ineffective as there are very little or even no prosecutions in the football industries of the targeted countries. The researcher contends that something is very wrong with the current system of enforcement be it from the football bodies or general enforcement.

To further supplement the above said findings, expert responses done vide interviews were compiled. The US Expert stated that there is no dialogue or co-operation between enforcement agencies from the general AML sector and the football sector in the exchange of vital information concerning money launderers in the football industry. The England and Malaysia experts stated that FIFA, the Confederations and the national football associations and clubs have not been designated as Reporting institutions, so they are not subject to the stringent tests and enforcement mechanisms afforded under the AML statutes, and due to this anomaly,

the AML enforcement agencies turn a blind eye and instead focus their efforts on designated reporting institutions. The England and Malaysia experts further added that the current general AML enforcement agencies are overburdened with works over the designated reporting institutions that they simply cannot cope monitoring the football industry.

CHAPTER SIX

SUGGESTIONS AND RECOMMENDATIONS

6.1 Interviews with AML Experts from the US, England and Malaysia

All the AML experts that were interviewed were not aware of the prevalence of ML in the targeted football industries but unanimously agreed that the levels could potentially be high. All the interviewee's also agreed that most of the typologies that were revealed in the FATF GAFI Report were quite prevalent in their respective countries. They unanimously concluded by stating that more needs to be done in the football sector. The AML experts unanimously suggested that public awareness campaigns should be conducted to alert the public as well as all the authorities concerned on the perils of ML in the targeted football industries.

The England AML expert and the Malaysia AML expert were of the opinion that the football bodies should be listed as reporting institutions. Their reasoning is that enforcement matters could be monitored and that would curb ML activities within the football industry. Currently, this is not the practice. Enforcement agencies will have more vital information concerning the improprieties that happen within the football industry and with more evidence being presented to them on a regular basis by the reporting institutions in the football industry; this would result in more prosecutions against the perpetrators.

When asked whether enforcement agencies are effectively bringing money launderer's to justice in the football industry, the unanimous response from all three

AML experts was that it was poor and ineffective and a lot more can be done to stop ML activities in the industry. The US AML Expert suggested that some countries lack the resources to investigate organized criminal syndicates; some lack laws against gambling and/or match-fixing, etc. She further stated that many of the crimes emanating from this sport with illegal proceeds being laundered are committed in cross-border situations, as such, there is difficulty in effectively investigating and determining where prosecution should be i.e. the proper venue; coordinating between different agencies in multiple countries and obtaining the budgets to pay for what can become protracted proceedings can be too great an obstacle, so she suggested that more international co-operation is required to effectively fight ML.

The England AML expert stated that there should be a dedicated enforcement body solely focusing on the football industry and the said body should be firm and robust in their enforcement methods, he maintains that it is the enforcement mechanism in the football that needs to be improved drastically. He further stated that FIFA and all the respective football associations should unite in this fight and create enforcement bodies that will match up to the task of fighting these money launderer's.

This recommendation was echoed by the Malaysia AML Expert and he added that the current enforcement bodies simply cannot cope with the current workload that is expected of them, hence more often than not, they ignore enforcement matters required for the football industry. Further, the Malaysia AML expert stated that the football associations and/or public do not make the required reports of suspected ML

activities and therefore calls for more co-operations from the associations and the public in coming forward to play their part.

The researcher is very thankful and appreciative for the interview responses from the three AML experts and calls on the football industries of The United States of America, England and Malaysia to implement the AML experts' suggestions into their respective regulatory frameworks.

6.2 Researcher's Suggested Reforms for Effective ML Laws and Regulations

6.2.1 Make the Football Industry a Reporting Institution

In this section, the researcher would like to suggest other possible reforms to effectively curb the problem of ML in the football industries of US, England and Malaysia. The most essential reform to be made is that the football industry be made a reporting institution by FATF, so it will filter down into national general AML legislation and the FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM Statutes.

Once this is done, then the standard procedures on reporting and records of transactions will be systematically conducted at all levels in the football industry and proper sanctions could be drawn up for violators. CTR's and STR's could then be registered and monitored by the proper enforcement bodies.⁸⁷² Currently, the various departments in the football industry are not obliged to report their financial

⁸⁷² He Ping, "The suspicious transactions reporting system," *Journal of Money Laundering Control* 8, no. 3 (2005): 252, <http://www.emeraldinsight.com/journals.htm?articleid=1533936> (accessed August 2, 2013).

periodically. They are only required to report their financial statement to government units for taxation purposes. Basically, the financial statement that is handed in has to be in a standard form format.

As such, the researcher suggests that if made a reporting institution, all transactions of money are supposed to be clearly stated. It is the elephant in the room that figures can be manipulated and “creative accounting” takes place more often than we would like to admit. Therefore, it is suggested that all sport organizations submit their finance reports to internationally recognized firms such as Price Waterhouse Coopers for constant audit, especially when the particular football association is organizing a big sport event that involves huge amount of money. In addition, the financial conditions of all football governing bodies must be improved.

The annual financial report must contain more detailed information. The consolidating several transactions under a single general heading must be prevented. It is also urged that all the remuneration of officials must be laid down clearly. The financial report of these governing bodies should revolve on two main key principles, understandable and complete. To achieve standardisations, it is also urged that FIFA create a piece of regulation on standard and procedures on financial reporting. Most importantly, is to include sanctions in case of breach. This regulation may be then applied in the organisations below FIFA.

Following a compulsory submission of financial report, a detailed rules and regulation for reporting obligations need to be laid down. An excellent model would

be the provisions of reporting obligations that is provided in Part III of The UK Money Laundering Regulations 2007 and Part IV of the Malaysia Anti-Money Laundering Act 2001. These two Acts have given a detailed and clear guideline about the reporting obligations. These guidelines include financial record keeping, identification and verification of account holder, powers to enforce compliance and so on. It is also strongly suggested that the sport agencies report directly to that official finance institution without a middleman to ensure smaller chances of the tampering of facts and figures.

Here is one example of the proposed modification for Malaysia. In AMLATFA, the guidelines require identification and verification of the account holders. The term 'account holder' should be changed to "sponsors" under the new part in the Sports Development Act 1997. In organizing sporting events, especially international sports events, the club or the sport agency companies may need sponsorship. Thus, the particular agency needs to identify and verify the profile of sponsors and clearly know the source of funds. This is to ensure there is no ML in the side-lines. Malaysia has a strict "know your customer" rule under the AMLATFA so the researcher would like to add: have a strict 'know your source of funding' rule as well for combating this issue.

Then, as mentioned above, all sport agencies and sport clubs need to submit their finance reports to the official finance institution for constant audit, when unusual or suspicious transactions are found, a more comprehensive framework has to be implemented to review whether it compliance with the law. The suspicious

transaction can be transferred to some higher expertise unit for further examination, like the financial intelligent unit (FIU). The financial intelligent unit is a unit that has expertise in investigating ML, which is also recognized by the FATF. The role of an FIU is to receive and analyse financial intelligence from the financial institutions and then share the information with the law enforcement agencies for further investigations. Focus should also be placed upon the taxation of these players as evasion of tax is also another means of ML.⁸⁷³

6.2.2 Money Laundering in Football Should Not Be Reliant on the Establishment of a Predicate Offence

This is an important point to note for the anti ML regime in general. The prosecutor for a ML offence has the burden of proving a two tiered burden. Firstly, he needs to prove that the proceeds were illegal by nature.⁸⁷⁴ However, English case laws have set the precedence of proving a second level of evidence: the actual knowledge that such proceeds were criminal. In the landmark case of *R v. Geary*⁸⁷⁵, it was proven beyond reasonable doubt that the money in question was illegal. However, the charges were dropped due to the failure of proving that there was knowledge on the part of the offender.

The precedence that was set after this case was that the money is only illegal if it had been illegally obtained and the offender had accepted it with knowledge of

⁸⁷³ Y. Gideon, "Tax evasion under differential taxation, the economics of income source misreporting," *Journal of Public Economics* 43, no. 2 (1990): 327, <http://socio.net.ru/publication.xml?h=repec:eee:pubeco:v:43:y:1990:i:3:p:327-337&l=en> (accessed July 28, 2013).

⁸⁷⁴ Bell, "Abolishing the Concept," 139.

⁸⁷⁵ *R v. Geary*, EWCA Crim 1925, (U.K.CO.A. 2010)

such illegality. The impression that these abnormally high standards of proof seem to emit is as if there is reluctance for these laws to actually have a practical usage and application. This approach is extremely troubling and proposals of reforms are in line. In status quo, the concept of ML is too strongly associated with the concept of predicate offences.⁸⁷⁶ It seems to be the rule of thumb that the crime of ML cannot be judged independently of the scheduled offence. What many fail to realize is that it is precisely this close link that prevents maturity and development of ML. Confining use of the ML provisions of POCA 2002 to “truck and trailer” type cases where the ML offence serves as an optional extra to the “principal” offence does not reflect either the intention or the ambition of the legislation when it was drafted.⁸⁷⁷

It is proposed that laws define ML as the process of knowledge management. It is the art of managing the knowledge of what the money actually represents. The sole intention of any money launderer is to break every possible link between the illegal proceeds and the evidence of knowledge of its illegality.⁸⁷⁸ Somewhere along the process, an element of deceit would be injected, and this is the act that should be criminalized. As of today, there is no adequate means to translate the fact of the inherent deception into an offence which adequately reflects the reason it was committed and this is something that should be given grave consideration.

⁸⁷⁶ Walker, “How Big,” 28.

⁸⁷⁷ Kenneth Murray, “A suitable case for treatment money laundering and knowledge,” *Journal of Money Laundering Control* 15, no. 2 (2012): 192, <http://www.emeraldinsight.com/journals.htm?articleid=17031335> (accessed November 5, 2013).

⁸⁷⁸ Norhashimah Mohd Yasin, “Precedents Relating to Money-Laundering,” *Current Law Journal* 3 (2004): i, <http://www.cljlaw.com.proxyvlib.mmu.edu.my/Members/DisplayArticle.aspx?ArticleId=131334156&SearchId=3mmu1> (accessed June 19, 2012).

This reform is especially important in the football sector because of the multitude of stakeholders involved. With the vast amount of individuals involved in the flow of cash, it is very easy to deny knowledge and feign ignorance of the criminality of the money. Therefore, it is more logical to criminalize the act of active deceit which truly forms the core of ML and lowers the impossible burden of proof.⁸⁷⁹ Technicalities of the wording of legislatures should never be an excuse to miscarriage of justice.

6.2.3 Increase Fines and Sanctions

Whenever a criminal law is enforced, one must often bear in mind the 3 tangents of criminal law that is retribution, rehabilitation and deterrence. In the case of ML in sports, one must first draw attention to the first and third tangent. The punishment for these criminal in Malaysia for instance is a fine not exceeding 5 million ringgit or a term of imprisonment not exceeding 5 years or both.

It is reasonable to believe that a sum of RM 5 million does little to no damage to the amount of wealth that the criminal already has. The researcher proposes a stricter rule, of declaring the convicted criminal bankrupt and to seize all property that is suspected to be bought with the illegal proceeds. Where necessary, the researcher also proposes that the beneficiary of the accused be suspended from all the assets and

⁸⁷⁹ Mohd Yasin, "Precedents Relating to Money Laundering," i.

valuable.⁸⁸⁰ It is further proposed that this person be suspended and stripped of all his or her powers of authority be it in a private or public company.

The researcher further proposes that if the team or player is part of the scheme, the team or player should be suspended from major tournaments or leagues of a suitable period of time as prescribed by the judge. Then only, it is believed, that it would act as a sufficient deterrence and provide an acceptable form of retribution towards the damage that they have done towards the society and those individuals who are directly affected. On the issue of rehabilitation, the researcher believes that the money and property that is seized under these offences be used for donation purposes.

6.2.4 Suspicious Transaction Reporting Thresholds Should be Decreased

Another main problem with the existing ML laws is the fact that there is a very specific amount which would trigger the ML alarm. For example, in the case of Malaysia, only transfers which exceed RM 50,000 would be investigated.⁸⁸¹ In the US, the amount is USD 10,000.⁸⁸² Whilst in the UK, the amount is GBP 9,000.⁸⁸³ The problem is that these technicalities produce a false sense of positive security, where money launderers can easily breakdown transactions into multiple parts to

⁸⁸⁰ A. De Nicola and A. McCallister, "Existing experiences of risk assessment," *Journal of Money Laundering Control* 12, no. 3/4 (2006): 175, <http://www.emeraldinsight.com/journals.htm?issn=1368-5201&volume=14&issue=2&articleid=1923942&show=ref&PHPSESSID=4eel6ckormuc79k5fpl13f7227> (accessed June 10, 2013).

⁸⁸¹ Anti-Money Laundering and Financial Terrorism Act, 2001, sec. 14.

⁸⁸² Financial Crimes Enforcement Network, *FinCEN Educational Pamphlet on the Currency Transaction Reporting Requirement*, (New York, 2013).

⁸⁸³ Finance and Insurance, "What Is the Maximum Cash Deposit Allowed?," Ask.com, <http://www.ask.com/question/what-is-the-maximum-cash-deposit-allowed> (accessed May 25, 2012).

escape scrutiny from the eyes of the law.⁸⁸⁴ The second wave of ML laws had tried to combat this problem by adding additional measures such as client behaviour analysis. However, this system has in turn created another problem of information overload.⁸⁸⁵

Therefore, what can the solution to this problem be? The answer is to have a multiple layered anti ML detector. This model has been propagated by a recent study⁸⁸⁶, and it has the potential to greatly benefit the anti-money laundering regime of the United States of America, England and Malaysia. The proposed model comprises of several levels of detection which includes data classification and transaction classification.

However, the most important part of the model is that it propagates the idea that ML detection cannot be solely premised on transfers of large amount. There has to be a balance between keeping track of large amounts and also detection on usual activity. Perhaps it is wiser to also keep track of suspicious transactions where customers which are usually idle suddenly have many transactions, although the amount may be small. This is especially true in the football field where smarter money launders are more likely to break down their transfer of cash into smaller amounts. However, the catch would always be the fact that money launderers are greedy and usually lack patience. Thus, although they may have the discipline of breaking down the

⁸⁸⁴ A. Canhoto and J. Backhouse, "Anti Money Laundering Reporting and Investigation - Sorting the Wheat from the Chaff," Springer

http://www.researchgate.net/researcher/69799949_Ana_Isabel_Canhoto/ (accessed May 2, 2013).

⁸⁸⁵ S. Ross and M Hannan, "Money laundering regulation and risk-based decision-making," *Journal of Money Laundering Control* 10, no. 1 (2007): 107,

<http://www.emeraldinsight.com/journals.htm?articleid=1589123> (accessed June 10, 2013).

⁸⁸⁶ Shenggang Yang Lai Wei, "Detecting money laundering using filtering techniques: a multiple-criteria index," *Journal of Economic Policy Reform* 13, no. 2 (2010): 162,

http://econpapers.repec.org/article/tafjecprf/v_3a13_3ay_3a2010_3ai_3a2_3ap_3a159-178.htm (accessed April 22, 2013).

transactions into tiny bits, they would lack the control to give time period breaks between the transactions.

6.2.5 The Customisation of ML Laws in Football

To promote standardisation in law, FIFA should make it compulsory for all confederations and associations to adopt, develop and customise such laws, modelled based on FIFA laws.⁸⁸⁷ This is to suit the varying conditions and culture of different regions in order to achieve the best effects in application of such laws. Sanctions under the Disciplinary Codes should mirror those of the general AML legislation. The researcher contends that the sanctions are too light currently and will not deter money launderers. Additional Codes of Conduct governing illegal activities related to ML should be introduced by the football industries as it is often through these illegal activities that ML takes place.

6.2.6 A Review of the Code of Ethics under FIFA and Its Associate Member's

It is proposed to follow the recommendation of Transparency International to review the Code of Ethics.⁸⁸⁸ FIFA should set up a committee of insiders and outsiders to review its code of ethics for the organisation and its officials. To be effective, the code must state how officials are expected to act in identified high-risk areas.⁸⁸⁹ The

⁸⁸⁷ Stessens, *Money Laundering*,” 22.

⁸⁸⁸ Transparency International Sport Publication, “Safe Hands Building Integrity and Transparency at FIFA,” Transparency International, http://www.transparency.org/whatwedo/pub/safe_hands_building_integrity_and_transparency_at_fifa (accessed April 22, 2013).

⁸⁸⁹ Jackie Harvey, “The search for crime money – debunking the myth facts versus imagery,” *Journal of Money Laundering Control* 12, no. 2 (2009): 99, <http://www.emeraldinsight.com/journals.htm?articleid=1789640> (accessed January 11, 2012).

new code must include clear conflict of interest policy with a transparent interests register. In addition, clear guidelines for giving and receiving gifts at all levels of football governing bodies. Laundering money in football sector often need the helping hands within the organisation. Thus, with high integrity and respectable ethics within governing bodies of football, the chances ML taking place will be largely reduced.

6.3 Researcher's Suggested Reforms for Effective Enforcement Mechanisms

6.3.1 Setting up of a Specific Enforcement Body

It has been stated time and again that one of the major reasons why the sports industry is so vulnerable to abuse of ML is due to its extensive network of stakeholders and thus complicating the investigation process. Thus, the researcher proposes to solve this problem by appointing a special body to govern investigation matters regarding ML in sports law in particular.⁸⁹⁰ It is a known fact that the banks and other related authorities such as the police have more than enough on their plates. Thus, this Committee shall be in charge of “patrolling” the sports bodies and organizations to scoop around for suspicious dealings.

This Committee would relay the information to the Financial Intelligence Unit into the Central Bank for further actions. This is to ensure that the FIU authorities do not need to go on wild goose chases. This Committee is also the body where all sports organisations need to register with before they can legally function. If they fail to

⁸⁹⁰ Lucia Dalla Pellegrina and Donato Masciandaro, “The Risk Based Approach in the New European Anti-Money Laundering Legislation: A Law and Economics View,” *Review of Law and Economics*, <http://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=F834E956-A423-4448-972D-204D03BBDDFC>. (accessed May 5, 2013).

comply with the registration procedure, they place themselves in the danger of being dissolved or disallowed from participating in any leagues. This step helps the authorities to easily identify and track existing clubs and organisations and thus keeping an eye on the buying and selling of clubs and their players.

Alternatively, a specific enforcement body of ML should be set up to regulate the laws and monitor the implementation and enforcement procedures. It is proposed that two Integrity officers to be appointed in each confederation. The purpose of appointing two officers is to ensure that there is check and balance function and prevent abuse of power.⁸⁹¹ Besides, National associations should also appoint their own Integrity Officers to coordinate with the confederation level Integrity Officers. All these Integrity Officers will be held accountable to the Supreme Integrity Officer in FIFA.

The main responsibility of such Integrity Officers is to trace and detect all suspicious transactions that happen within their jurisdiction and ensure just and proper enforcement of laws. It is also proposed that under such integrity officers, an independent Financial Intelligence Unit to be established, so that all transactions can be scrutinised in detail and ML activities can be curbed.⁸⁹² With a proper enforcement structure in place, there will be undoubtedly many prosecutions and

⁸⁹¹Donato Masciandaro, "Money Laundering the Economics of Regulation," *European Journal of Law & Economics* 7, no. 3 (1999): 233, <http://link.springer.com/article/10.1023/A:1008776629651#page-1> (accessed May 28, 2013).

⁸⁹² Donato Masciandaro, "Financial supervisory unification and financial intelligence units," *Journal of Money Laundering Control* 8, no. 4 (2005): 358-359, <http://www.emeraldinsight.com/journals.htm?articleid=1533947&show=html> (accessed May 16, 2013).

convictions. Another action that can be taken is to publicise all anti-ML actions organised in the confederation or national level.⁸⁹³ This serves as a deterrence to all money launderers by showing that the authority pay serious attention on this matter.

6.3.2 An International Money Laundering Court to deal with Cross Border Money Laundering

The activity of disguising black money under the cloak of international trade has been an extremely popular choice with regards to the more lax scrutiny over international transfer of money. ML activities are usually carried on an international sphere and exploit cross-country differences in laws.⁸⁹⁴

ML operations in sports usually cross borders as sporting events that involve large sums of cash are normally organized in international dimensions like the Olympics. When there is an international sport event, huge amount of money flows between the countries for sponsorship or sales of ticket purposes. For the money launderers, this is a golden opportunity to launder their dirty cash. With goods, it is usually the under-pricing or over-pricing of goods in the invoice in order to reduce the amount taxable for the products.

⁸⁹³ G Merlonghi, "Fighting financial crime in the age of electronic money opportunities and limitations," *Journal of Money Laundering Control* 13, no. 3 (2010): 205, <http://www.emeraldinsight.com/journals.htm?articleid=1876040> (accessed August 19, 2013).

⁸⁹⁴ Mahendhiran Nair Santha Vaithilingam, "Factors affecting money laundering lesson for developing countries," *Journal of Money Laundering Control* 10, no. 3 (2007): 353, <http://www.emeraldinsight.com/journals.htm?articleid=1621465> (accessed January 24, 2013).

This has significant impact on the economy and is a convenient shield for extra sums of cash to be transferred over without raising suspicion.⁸⁹⁵ In football however, the international transfer of money comes with the transfer of players and the buying and selling of clubs. The internationalisation of ML definitely causes great difficulties for these activities to be detected and has brought on fatal consequences with regard to the effectiveness of anti-money laundering measures. Furthermore, the person who launders the money and the location of the laundering may vary. Hence, problems arise with regards as to where the offence should be tried.

It is suggested that jurisdiction and power of governing international offence are best to be vested in International Crime Court.⁸⁹⁶ The International Criminal Court's official seat is in The Hague, Netherlands, but its proceedings may take place anywhere and 114 states are members of the court. Perhaps a Commercial Crimes division can be enacted under the ICC. In other words, if the money launderer is caught, he can be brought to International Criminal Court and be tried there regardless of his nationality. In short, the problems as mentioned above have been solved.

⁸⁹⁵ M.E. de Boyrie, S.J. Pak, and J.S. Zdanowicz, "Money laundering and income tax evasion the determination of optimal audits and inspections to detect abnormal prices in international trade," *Journal of Financial Crime* 12, no. 2 (2004): 125, <http://www.emeraldinsight.com/journals.htm?articleid=1533891&show=pdf> (accessed January 12, 2013).

⁸⁹⁶ J. Rietrae, *The 3rd EU Anti-money Laundering Directive: main issues and intriguing details in Van Duyne, P.C. et al. (Eds), Crime Business and Crime Money in Europe: The dirty linen of illicit enterprise* (Nijmegen: Wolf Legal Publishers, 2007), 21.

6.3.3 International Pooling of Costs to upgrade Enforcement mechanisms

It has been arguable that it has been more difficult for poorer nations to set up proper anti-money laundering regimes that actually comply with international standards. Some even claim that it is a luxury good not known to many nations⁸⁹⁷. There have been numerous studies on the best way to formulate regulations in order to devise mechanisms at the institutional level to monitor and deter the use of financial intermediaries in the recycling of illegal profits.⁸⁹⁸ It is undeniable that funding is a big element of ensuring that ML regimes are at par.

Anti-money laundering regimes are expensive because the workforce in the system needs to be legally educated. This is so that they can efficiently go through the piles of suspicious transactions at optimum speed to produce optimum results. As the number of countries that are anti-money laundering compliant increases, the amount needed to run an efficient regime is expected to increase as well. KPMG reports that international banks expect compliance costs to increase by “only” another 34% to 2010.⁸⁹⁹

Unfortunately, the efficiencies of the systems have not increased with the costs. According to studies, even the most advanced regimes have only a handful of

⁸⁹⁷ Peter Reuter and Edwin M. Truman: *Chasing Dirty Money: The Fight against Money Laundering* (Washington, DC: International Institute for Economics, 2004), 52 .

⁸⁹⁸ K Alexander, “The International Anti-Money-Laundering Regime The Role of the Financial Action Task Force,” *Journal of Money Laundering Control* 4, no. 3 (2002): 233, <http://www.emeraldinsight.com/journals.htm?articleid=1648485> (accessed May 28, 2013).

⁸⁹⁹ KPMG International Cooperative, *Global Anti-Money Laundering Survey 2011 - How banks are facing up to the challenge*, (Beijing, 2011), 8.

prosecutions.⁹⁰⁰ Therefore, it has been seen that there was an increasing reluctance of countries to implement regimes that yield little benefits. The researcher suggests that there be a pooling of resources between nations in similar confederation zones, in that a percentage be paid into a kitty that deals specifically with enforcement mechanisms, where the funds should be monitored by an independent body outside the football industry altogether.

6.3.4 A New Role for Profit Actors

All this while, the only parties that were in charge of combating ML issues have been the governmental bodies and authorities. Perhaps it is time for a new insight and time for a new key player to play an active role. It should be kept in mind that ML offences are not only a war that is affecting the government.⁹⁰¹ It is usually the ordinary man on the road, and the richer business holders which suffered the short end of the stick. Since the role of private and public actors have shifted through the years and have become more porous with each passing day, it is time their role be reconsidered.⁹⁰²

One excellent example of private entities playing a role would be in reference to private banks. The Wolfsberg Group is an organization comprising 12 different

⁹⁰⁰ Barry A.K. Rider, *Law. The War on Terror and Crime and the Offshore Centres: The 'New' Perspective*, (Aldershot, UK: Ashgate, 2004), 8.

⁹⁰¹ Kim-Kwang Raymond Choo, "Politically exposed persons (PEPs): risks and mitigation," *Journal of Money Laundering Control* 11, no. 4 (2008): 372, <http://www.emeraldinsight.com/10.1108/13685200810910439> (accessed June 10, 2013).

⁹⁰² Ulrika Mörth, *The Market Turn in EU Governance – The Emergence of Public-Private Collaboration*, in the Mannheim Centre for European Social Research (MZES) Projects, 186, http://www.mzes.uni-mannheim.de/projekte/typo3/site/fileadmin/BookSeries/Volume_eight/Chapter7.pdf (accessed July 30, 2013).

global banks. In their own effort to combat ML activities which were hurting them, they have implemented stricter know your customers policies and specific anti ML guidelines. They have also placed great emphasis on the need for governmental and non-governmental bodies to work in close proximity. They came up with the Wolfsberg Anti-Money Laundering Principles for Correspondent Banking in November 2002.⁹⁰³ This set of regulations represent a risk-based management which should result in a more precise, focused and practice-based set of regulations.⁹⁰⁴

The idea of this model is simple. It is merely an incentive based approach. By making the private actors aware of the potential losses ML may bring to their respective organization would be a natural incentive for them to ensure that they are part of the regime. It is a simple sugar and ant theory. However, it ought to be noted that football bodies on the national level are left to set up their own necessary procedures for this public–private collaboration to work, and this promotes diversity rather than strict standardisation.⁹⁰⁵

This is because even the FATF acknowledges that it is impossible to fully standardize AML regimes across the globe, due to the different nature of countries’

⁹⁰³ Mark Pieth and Gemma Aiolfi, The Private Sector becomes active : The Wolfsberg Process, in the Wolfsberg Group, 7, <http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Process.pdf> (accessed July 1, 2012).

⁹⁰⁴ Andrew Haynes, “The Wolfsberg Principles - an analysis,” *Journal of Money Laundering Control* 7, no. 3 (2004): 207–208, <http://www.emeraldinsight.com/journals.htm?articleid=1537543> (accessed August 14, 2013).

⁹⁰⁵ Karin Svedberg Helgesson Maria Bergström and Ulrika Mörth, “A New Role for For-Profit Actors The Case of Anti-Money Laundering and Risk Management,” *Journal of Common Market Studies* 49, no. 5 (2011): 1044, http://econpapers.repec.org/article/blajcmkts/v_3a49_3ay_3a2011_3ai_3a5_3ap_3a1043-1064.htm (accessed May 12, 2013).

financial and legal systems.⁹⁰⁶ Often such “white collar” crimes are extremely difficult to prosecute⁹⁰⁷. Making football organizations more aware of the harms that are inflicted upon their sport by ML activities would generally make them more incentivised to make changes.

6.3.5 Stamp out Unlicensed Agents from the Industry

Besides intertwined illegal activities and vast network of stakeholders, one great obstacle in combating ML in sports are the unlicensed agents. These unlicensed agents are almost impossible to detect as they are not registered and therefore “invisible”. However, it is this invisible force which actually accelerates the happening of ML in the dark. This problem is definitely a tricky one.

It is a common phenomenon to have unlicensed individuals tampering with various sectors, and sports arena is just another small piece of the big iceberg. Thus, the only way is deterrence through severe punishment to keep people away from laundering in this “black market”. It is upon the government’s shoulders under the social contract that they take on the responsibility of combating these black markets. Enforce stricter laws and put them down in black and white. Persecute these offenders and publicize them so that it plants the seed of fear in future offenders.

⁹⁰⁶ Sabrina Fiona Preller, “Comparing AML legislation of the UK, Switzerland and Germany,” *Journal of Money Laundering Control* 11, no. 3 (2008): 235, <http://www.emeraldinsight.com/journals.htm?articleid=1740237> (accessed May 13, 2013).

⁹⁰⁷ Umut Türksen, Ismail Ufuk Misirlioglu, and Osman Yükseltürk, “Anti-money laundering law of Turkey and the EU an example of convergence,” *Journal of Money Laundering Control* 14, no. 3 (2011): 280, <http://www.emeraldinsight.com/journals.htm?articleid=1939575> (accessed June 1, 2013).

6.3.6 Stepping up Lawyer's and Accountant's Role in Profiling Customers

Especially when it comes to ML in the football industry, it can be safely inferred that the role of lawyers when it comes to detecting problematic transactions is extremely important. In the entire three legislatures, it can be seen that the oath to secrecy can be overridden when it comes to these specific situations.⁹⁰⁸ However, this method is still failing to reach its optimum level unless the solicitors take an effort to understand the true nature of his or her customer's dealings.⁹⁰⁹ In the United Kingdom, if a client is an individual who is or has been entrusted with prominent public functions include the following the person acting for them in the UK must be satisfied that the funds have an honest source.⁹¹⁰ The same principle can and should be applied to football. Persons of higher authority in the football hierarchy or players themselves should be more tightly monitored since they are the easy way out for unaccounted cash.

6.4 Proposal of Models

In the next few sections, the researcher will propose 3 models namely, the Indian Cricket Anti-Corruption Code, Argentina's AML Laws on Football and Stricter Enforcement Mechanisms for Online Betting. For the first model, the Indian Cricket Corruption Code was chosen to introduce a comprehensive set of laws that have

⁹⁰⁸ Jan Komárek, "Case Comment Legal Professional Privilege and the EU's Fight against Money Laundering," *Civil Justice Quarterly* 2001, no. June 1991 (2008): 2-3, <http://storage.globalcitizen.net/data/topic/knowledge/uploads/20100325145315790.pdf> (accessed August 23, 2013).

⁹⁰⁹ Andrew Haynes, "Money laundering from failure to absurdity," *Journal of Money Laundering Control* 11, no. 4 (2008): 304-305, <http://www.emeraldinsight.com/journals.htm?articleid=1752269> (accessed May 18, 2013).

⁹¹⁰ K. Alexander, "The International Anti-Money-Laundering Regime The Role of the Financial Action Task Force," 235.

successfully tackled corruption in the cricket industry and should therefore be adopted by the United States of America, England and Malaysia. For the second model, Argentina's AML Laws on Football was chosen as it is the first and only country in the world that has inserted provisions of football AML into their general AML legislation. This model is proposed as it is a very workable model and has effectively curbed ML activities within Argentina's football industry.

Last but not least, the third model on Stricter Enforcement Mechanisms for Online Betting that is being suggested is the works of the researcher himself that was published in The Current Law Journal. The researcher has suggested these 3 models to be considered by regulatory and enforcement bodies of the United States of America, England and Malaysia and all parties that may be relevant to curb ML activities in the United States of America, England and Malaysia due to the fact that such models have been proven to be workable.

6.4.1 First Proposed Model – The Anti-Corruption Code

Although FIFA has recently proposed launching the Anti-Corruption Code, it has recently been shot down by Transparency International, and this has been discussed at great length in Chapter 4 of this thesis. Nowhere has the contents of the proposed FIFA Anti-Corruption Code been published so the researcher has not been able to analyse it, but the feedback from Transparency International seems to suggest that it is very weak and failed in reaching FIFA's objectives to reform. Nevertheless, the researcher has studied the Cricket Anti-Corruption Code and found that it is an effective model which may be used to improve the proposed FIFA one.

It must be noted that The International Cricket Council (ICC) had issued out the order that all member states in the cricket federation adopt and implement an anti-corruption code to ensure good governance and ethics to maintain the integrity of the sport. The Cricket federation member states include Australia, England, New Zealand, Pakistan, South Africa, Sri Lanka, West Indies and India. All the member states are using this Code and it is deemed to be effective in dealing with financial malpractices that are happening within the industry. The researcher states that all the Codes mirror each other, so the researcher has chosen the Indian Code as a model.

6.4.1.1 The Indian Cricket – Anti-Corruption Code

One of the first steps the Indian premier league has done in combating illegal activities that include corruption and bribery that will inevitably lead to ML in the league is the introduction of the Anti-Corruption Code which came into full force and effect from 1st October 2012 adopted by The Regulating Body for Cricket in India, The Board of Control for Cricket in India, hereinafter referred to as BCCI.

The Indian Premier League should be applauded for the efforts in coming up with a specific Anti-Corruption Code⁹¹¹ to combat corruption in the league. An effort to regulate the Indian cricket industry from the ever increasing influences of corruption, betting, misuse of inside information, the failure to report such instances etc. It should be noted that any violation of the code amounts to a criminal offence and if a

⁹¹¹ IPL, “Anti Corruption Code,” Indian Premier League, <http://www.iplt20.com/about/2012/anti-corruption-policy/85/sanctions> (accessed August 22, 2012).

nexus can be shown that monies were derived from a criminal offence or of illegal proceeds, then one can also be prosecuted for a ML offence.

6.4.1.1.1 Introduction, Scope and Application of the Indian Anti-Corruption Code

In the introduction to the rules, it has been clearly stated that this policy has been implemented in view of two overriding objectives, namely the utmost endeavour to provide a level playing field for the game of cricket and the highest level of protection towards the integrity and authenticity of the league. The unique part of this Anti-Corruption Code is the fact that it explicitly spelled out the dangers of betting and acknowledged the increasing difficulty in controlling the amount of corruption, one of the core activities related to ML through that means. It stated that the advancement of technology has proven to be a barrier towards the total cleansing of corruption, but efforts need to be taken in that direction nonetheless.

An ingenious statement is found in Art 1.2 which states any issue that undermines the fundamental sporting imperatives stated in the preceding paragraph may be subject to disciplinary proceedings and sanctions under this Code, as such ML activities are included in this Code albeit not expressly stated and thus the Anti-corruption Code should, in theory, effectively combat ML activities in this Industry. Art 1.3⁹¹² clearly stipulates that participants comprising of players and officials regardless of their ranks would be tied and bound to follow the rules that are stipulated in this code. The total erasing of any form of ambiguity and making a

⁹¹² IPL, “Anti Corruption.”

group of stakeholders accountable for their errant actions is a very positive step and should be echoed by the football industries of U.S, U.K and Malaysia.

Art 1.3.1 requires all individuals highlighted in Art 1.3 to make a full and frank disclosure of their activities including providing the use of any personal information that has been agreed under the Code. The researcher contends that this is a step up as greater transparency is now the requirement as withholding of any information will also amount to a violation of the Code. Art 1.3.2⁹¹³ applies the ancient rule of law where ignorance of the law is no defence or excuse. It mandates that every participant governed by the Code take an active step towards familiarizing themselves with the ins and outs of the code and its implications.

Art 1.5⁹¹⁴ also states that the National Cricket Federations are the main body in charge of propagating the importance of anti-corruption and is to undertake the task of educating the various parties involved in the league of the significance of this code. Although it would be unfair for only one party to undertake such a heavy responsibility, it is extremely ingenious that the Code did pick out an influential body to the job. The fact that the Federation is mandated to spread the word; they would be incentivized to let as many people as possible to hear the word. This would be based on the simple logic that they would not want their own image to be marred in any way. It is also an implied burden for them to minimize the rate of corruption for anything in the contrary would mean that they have failed the task that has been delegated to them.

⁹¹³ IPL, "Anti Corruption."

⁹¹⁴ Ibid.

Art 1.6⁹¹⁵ states that this code is not only applicable for the IPL matches but apply to all other domestic matches. This art also states that any participant from any National Cricket Federation will be bound by this Code and can be liable if found to be in breach of this Code. Art 1.7⁹¹⁶ is one of the slyest moves that the Code has made. It has officially made any acts of violation of this code a criminal offence. Not only would money launderers or its cronies be reluctant to bring a criminal record upon themselves, it would also mean that whatever charges under this code would involve the government officials. This would mean that they have the power of the law enforcers backing them up, and it would also mean that their burden to trying and investigating these cases would be shared with governmental bodies.

6.4.1.1.2 Offences under the Anti-Corruption Code⁹¹⁷

The structure of this part of the anti-corruption code is the epitome of simplicity at its best. It lays out 4 very clear areas that would amount to the breach of the code.

6.4.1.1.3 Act of Corruption

Art 2.1 focuses on corruption.⁹¹⁸ Art 2.1.1 states that any act whatsoever done by the participant to influence the outcome of the match will be guilty. This is irrespective if the influence was not actuated in the game and so influenced it. Art 2.1.2 criminalizes the act of bribery before the actual outcome of the game.⁹¹⁹ This is to

⁹¹⁵ IPL, "Anti Corruption."

⁹¹⁶ IPL, "Indian Premier League - Anti Corruption Policy," Indian Premier League, <http://www.iplt20.com/about/2013/anti-corruption-policy/85/sanctions> (accessed June 1, 2013).

⁹¹⁷ Ibid.

⁹¹⁸ Ibid.

⁹¹⁹ IPL, "Indian Premier League."

say, the act of receiving the bribe or any amount of wrongful gain would be penalized under this code without the need for the act to be actualized. It actually reiterates the concept of strict liability. Art 2.1.3⁹²⁰ punishes those whom fail to perform their ability at a match in exchange for a reward. Art 2.1.4⁹²¹ penalizes all forms or attempts to make corruption happen.

6.4.1.1.4 Act of Betting

Art 2.2 focuses on betting. Art 2.2.1 forbids any participant to bet with any betting party to bet on any game in the league itself. This may be for the best seeing the fact that it takes away the incentive for any participant in the league itself to tilt the outcome of the game, irrespective of whether the participant is directly involved in the said match. This would ensure some semblance of neutrality and fairness throughout the whole period of the Indian Premier League.⁹²²

Art 2.2.2 forbids the participant from getting into an agreement to ask another by any means to engage in betting on the participant's behalf. The researcher would like to point out that this is very difficult to prove in the absence of witnesses but it is still better to have as a deterrent in a theoretical sense.⁹²³ Art 2.2.3 forbids the participant to ensure any events that have been betted by others in the exchange of a reward. Once again, the researcher would like to point out that this section is very difficult to prove as certain events are absolutely out of the control of the participant but

⁹²⁰ IPL, "Indian Premier League."

⁹²¹ Ibid.

⁹²² Ibid.

⁹²³ Ibid.

nevertheless this section acts more of deterrence in a theoretical sense.⁹²⁴ For example, a bet is placed for the participant to be bowled out in the first half hour of the match, it could be that the participant did not intend to be bowled out, but due to the expertness of the bowler, the participant did get bowled out.⁹²⁵ Now under the circumstances, how do we proof the intention of the participant?

6.4.1.1.5 Misuse of Inside Information

The third area under part 2 is certainly unique and shows that the framers of this code are one step ahead of money launderers. Art 2.3.1 deals with the misuse of inside information.⁹²⁶ It can be equated to have a code of secrecy for lawyers and doctors. The framers of this code could foresee that even if the participants of the league were neutral and did not attempt to tamper with the results of the game, insight on the players performance and abilities could be transmitted to an outsider by an inside mole.⁹²⁷ Although it would not be a hundred per cent accurate, it would still swing the odds in their favour in an unfair manner.⁹²⁸

Art2.3.2⁹²⁹ makes the leakage of inside information an offence regardless of whether or not one receives any form of reward in exchange for the juicy information. This is very good as it reminds participants that even though they had not intended to benefit from what they said, they had better be careful of whatever statements they make, as

⁹²⁴ IPL, "Indian Premier League."

⁹²⁵ Ibid.

⁹²⁶ Ibid.

⁹²⁷ Ibid.

⁹²⁸ Ibid.

⁹²⁹ Ibid.

such statements could be used against them if proven to be true and used for the benefit of others.

6.4.1.1.6 Fails to Report without Unreasonable Delay

The fourth area of this part of the code deals with general provisions. In Art 2.4.2, the participant is expected to furnish information to the authorities if he is approached or invited by others to do specific acts that are in violation of the Code.⁹³⁰ A look at Art 2.4.3⁹³¹ is called for. This article also punishes any person whom fails to report without unreasonable delay full details of any incident, fact, or matter that comes to the attention of the participant that may evidence an offence under the Anti-Corruption Code by a third party, including (without limitation) approaches or invitations that have been received by any other party to engage in conduct that would amount to a breach of the Anti-Corruption Code.⁹³²

In Art 2.4.3⁹³³ the participant is expected to co-operate at all material times with the authorities, failing which the participant will be in breach of the Code. Art 2.5.2⁹³⁴ has very serious implications on the participant in that as long as someone who the participant is found to be in relations with and has committed an offence under the code, the participant may be found liable as committing those Acts even where the participant was not part of the alleged offence. The researcher contends that this may

⁹³⁰ IPL, “Anti Corruption.”

⁹³¹ Ibid.

⁹³² Ibid.

⁹³³ Ibid.

⁹³⁴ Ibid.

amount to being unfair as the participant really has no control over the actions of others.

Last but not least, the researcher contends that Art 2.7 is flawed because participants may invoke this section as a defence and if the authorities cannot prove otherwise; then the offending participant may be let off the hook by committing a serious offence under the Code.

6.4.1.1.7 Standards of Proof

Unlike any other sporting rule book, this particular code has even included the very important element of burden of proof.⁹³⁵ It is held that the burden of proof would mainly be shouldered by the person who seeks to prove such allegations, namely the Indian Premier League itself. The degree that an occurrence has taken place can be as minimal as the balance of probabilities to the maximum level of proving a situation beyond reasonable doubt.⁹³⁶ The variance in the degree of proof depends mainly on the seriousness of the crime in question. However, the rules show its flexible side when it comes to admission of evidence. Realizing that the rigidity of the rule of evidence undertaken by the court of law may hamper the progress of trials of this nature, they have put the importance of time efficiency before the need to appear as legally structured as possible.

⁹³⁵ IPL, "Anti Corruption."

⁹³⁶ Ibid.

The Commission hearing the case has the discretion to accept any evidence that is admitted solely based on the virtue of their discretion, unless the player in question can prove that the natural laws of justice has been grossly violated.⁹³⁷ The commission also has the right to make a decision against the favour of the player or person involved if the said individual fails or refuses to appear at a hearing whether physically or through a telephone conversation. This is only applied if the failure to appear before the commission has exceeded what is deemed to be reasonably acceptable.

6.4.1.1.8 Investigation and Notice of Charge

Art 4⁹³⁸ of the code provides for the procedures that are involved in the investigation of a particular charge. Any charges filed under this code shall be referred to the Anti-Corruption and Security Unit (ACSU) General Manager for investigation and he would be in charge of proceeding with the investigations. It should be noted that he has the power to instigate investigations even without the need for a third party to file a claim.

The General Manager has the power to compel a person who is suspected of violating the code to furnish him with relevant explanations or detailed information as requested.⁹³⁹ All information attained under this section is strictly confidential unless the General Manager himself is satisfied that it is absolutely necessary to

⁹³⁷ IPL, “Anti Corruption.”

⁹³⁸ IPL, “Article 4 - Investigations and Disciplinary Proceedings,” Indian Premier League, <http://www.iplt20.com/about/2014/anti-corruption-policy/83/investigations-and-disciplinary-proceedings> (accessed March 22, 2013).

⁹³⁹ Ibid.

disclosure such information to aid the progress of the hearing by the commission or when it is compelled to be released by virtue of any other piece of legislature.⁹⁴⁰

Following an investigation, the ACSU General Manager shall pass the file to the IPL Chairman and IPL shall determine if there is a case to answer under Art 2. When the chairman decides that there is a prima facie case, a formal notice of charge would then be sent to the individual concerned. This seems to be clause to ensure that the powers of the Commission and the code are not violated. With the necessity to send out such a notice, it would mean that the investigation has been done in accordance with all the procedure. But more importantly, it gives the individual concerned prior notice and a chance to state their defence and to attend a fair hearing.⁹⁴¹

The principles of natural justice are strictly adhered to under this code. Any player of personnel can be placed under provisional suspension when they are served with a notice or breach of the code.⁹⁴² This is a simple yet powerful clause. Since the ability to play in a game is equivalent to the ability for a player to earn his keep, it would be the biggest deterrent factor to ensure that players are aware of the severity of breaking the code. This, in turn, would hopefully reduce the number of attempts to indulge in ML or bribery of any form.

⁹⁴⁰ IPL, "Article 4."

⁹⁴¹ Ibid.

⁹⁴² Ibid.

6.4.1.1.9 The Disciplinary Procedure

Part 5⁹⁴³ of the code lays out the detailed procedure of the hearing of the charge for a violation of the anti-corruption code. It is provided that a preliminary hearing is in order so that superficial details can be settled before the real hearing takes place.⁹⁴⁴ It is also for the Commission to set up a date where the hearing would actually take place. Any objections to the charges as a whole must also be brought up during the preliminary hearing. If the accused is able to successfully convince the Commission that the charge would not hold any water, the Chairman of the Commission has all the discretion to set the case aside.

Art 5.1.11 is rather interesting. It states that where two or more Players or Team Officials are alleged to have committed offences under the Anti-Corruption Code, they may both be dealt with at the same hearing where the proceedings arise out of the same incident or set of facts, or where there is a clear link between separate incidents. This is an extremely smart clause that saves time and ensures that there is consistency in the verdicts that are produced by the Commission. Impliedly, this would ensure that the good name of the ability of the commission to produce fair and just outcomes is not tarnished.

This section also provides that the decision of the Commission must be filed in writing.⁹⁴⁵ This clause also provides that there must be reasons accompanying the verdict that is dished out. These two provisions are important to ensure that there are

⁹⁴³ IPL, "Article 5 - Sanctions," Indian Premier League, <http://www.iplt20.com/about/2014/anti-corruption-policy/84/sanctions-> (accessed May 22, 2013).

⁹⁴⁴ Ibid.

⁹⁴⁵ Ibid.

black and white records, but more importantly to ensure that the Commission would not take the task of making decisions lightly. This is because there would be black and white proof and the members of the Commission would be held accountable for every decision and every reason behind the decision that they decide to make. Art 5.2.3 provides that the Commission has the right to impose fines for anyone receiving rewards. This is a double safeguard to ensure that it is never in the best interest of the players to violate the code of corruption. Not only would their rice bowl be severely affected, they would also have to fork out an amount of compensation from their own funds.

6.4.1.1.10 Sanctions

Part 6 of the Anti-Corruption Code provides that the Commission has the right to dish out penalties that are stated under this article.⁹⁴⁶

Table 6.1. Penalties under the Anti-Corruption Code.

Anti-corruption code offence	Range of permissible period of ineligibility	Additional discretion to impose a fine
Articles 2.1.1, 2.1.2, 2.1.3 and 2.1.4 (Corruption)	A minimum of five (5) years and a maximum of a lifetime.	And, in all cases: the Commission shall have the discretion to impose a fine on the Player or Team Official up to a maximum of the value of any Reward received or anticipated to be received by the Player or Team Official directly or indirectly, out of, or in relation to, the offence committed under the Anti-Corruption Code.
Articles 2.2.1, 2.2.2 and 2.2.3 (Betting)	A minimum of two (2) years and a maximum of five (5) years.	
Articles 2.3.1 and 2.3.3 (as it relates to an offence under Article 2.3.1) (Misuse of inside	A minimum of two (2) years and a maximum of five (5) years.	

⁹⁴⁶ IPL, "Article 6 - Public Disclosure and Confidentiality," Indian Premier League, <http://www.iplt20.com/about/2014/anti-corruption-policy/85/public-disclosure-and-confidentiality-> (accessed May 22, 2013).

information)	
Articles 2.3.2 and 2.3.3 (as it relates to an offence under Article 2.3.2) (Misuse of inside information)	A minimum of six (6) months and a maximum of five (5) years.
Articles 2.4.1 and 2.4.2 (General)	A minimum of one (1) year and a maximum of five (5) years).
Articles 2.4.3 and 2.4.4 (General)	A minimum of six (6) months and a maximum of two (2) years.

Source: Anti-Corruption Code, Part 6, Art 6.2” 2013

The interesting safeguard is stated under Art 6.3 of the code. To ensure that there are no mala fide intentions when prosecuting an individual under the code, the Commission has no rights whatsoever to reverse or adjust any result of any game in the league. This is in line with the principle that laws in general cannot be retrospective in nature. Art 6.3.2⁹⁴⁷ further bans the idea of double jeopardy. Whenever a person is tried for more than one act of violation, any sentence given to him should be served concurrently and not cumulatively. This is to ensure that whatever sentences that are dished out are not unreasonable. There is also a provision to lessen the amount of fine that has to be shouldered by the convicted person based on the grounds of financial hardship.

Besides, the players have to bear in mind that they would still be subjected to the Anti-Corruption code even if they are placed under a period of ineligibility.⁹⁴⁸ Art 6.7 stated if the player decides to violate the code again during his suspension period,

⁹⁴⁷ IPL, “Article 6.”

⁹⁴⁸ Ibid.

he could be tried for a separate offence. However, after everything is said and done, a player would automatically be reverted to his original status before the suspension has been served upon him. This right is generally unconditional.⁹⁴⁹

6.4.1.1.11 Appeals

The framers of the Anti-Corruption code should really be applauded for their efforts to ensure every possible basic right in terms of trials is awarded to potential violators. Part 7 of the code⁹⁵⁰ gives the convicted person the right to appeal the decision. At the appeal level, the Commission may decide to do one of these four things: to impose a provisional suspension, to dismiss the charge of breach, to declare that such an offence was not committed or a decision to not impose the sanction by virtue of inappropriateness of such a sanction.⁹⁵¹ A grace period of 21 days is given for a person to file their application for appeal and it is to be kept in mind that the decision of the first hearing remains valid throughout the pending verdict of the appeal.

6.4.1.1.12 Recognition of Decision

Art 8.1⁹⁵² basically mandates all players, managers and even the franchisees of the Indian Premier League to be strictly bounded by whatever decision that is being made. They would be legally compelled to adhere to the verdict and the sanctions that are imposed by the Commission. Art 8.2 stated if there are other judicial bodies

⁹⁴⁹ IPL, "Article 6."

⁹⁵⁰ IPL, "Article 7 - Recognition of Decisions," Indian Premier League, <http://www.iplt20.com/about/2014/anti-corruption-policy/87/recognition-of-decisions> (accessed May 23, 2013).

⁹⁵¹ Ibid.

⁹⁵² IPL, "Anti Corruption."

that have reached a decision by the virtue of the Anti-Corruption Code, the Indian Premier League would be more than pleased to accept and consider itself bound by the decisions without the need to go through further processes of formalities.⁹⁵³

6.4.1.2 Loop-Holes in the suggested Anti-Corruption Code

The researcher states that this Code may be applied to the football industry subject to some tweaking. To even out a level playing field and to display utmost levels of authenticity and integrity in the sport, the following issues need to be addressed in the Code:-

- 1) The term participant currently only includes the player, the player support personnel, the umpire/match referee and the umpire/match referee support personnel. The term participant is defined in the definitions of the Code.⁹⁵⁴
A Player is “Any cricketer who is selected (or who has been selected in the preceding twelve (12) months) in any playing or touring team or squad that is chosen to represent the BCCI or any of its affiliate and associate bodies in any International Match or Domestic Match”. Player support personnel is “Any coach, trainer, manager, selector, team official, doctor, physiotherapist or any other person employed by, representing or otherwise affiliated to a playing/touring team or squad that is chosen to represent a National Cricket Federation in any Domestic Match or International Match or series of such Matches”.

⁹⁵³ IPL, “Indian Premier League.”

⁹⁵⁴ Ibid.

Umpire/Match Referee is “Any umpire (including any on-field umpire, television umpire, third or fourth umpire) appointed (by the BCCI or any other relevant party) to officiate in any Domestic Match or International Match”. Umpire/Match Referee Support personnel is “Any technical officials (for example, and without limitation, any official with responsibility for operating the communication equipment for Umpires and Match Referees during a Domestic Match or International Match) or umpire coaches appointed (by the BCCI or any other relevant party) to support the Umpires and/or Match Referees”.⁹⁵⁵

The researcher contends that for the Anti-Corruption Code to be truly effective, the term participant should address a bigger composition of personnel that would not only include the players, player’s support personnel, umpire’s or umpire support personnel’s but should also include companies and individuals that own cricket clubs, agents of players and any stakeholder associated with the club, any corporate body or individual that has an association with any cricket club in India.

- 2) The researcher contends that fans should be excluded from the Code because that would be impossible to monitor so the BCCI has done the right thing not to include the club’s supporters, fan base or the ordinary person that goes to watch a game of cricket. This would give the BCCI broad powers to

⁹⁵⁵ IPL, “Indian Premier League.”

prosecute a bigger group of personnel that have direct association with the sport that is found to be in violation of the Code.

- 3) The researcher further contends that Art 2.1.3 can be slightly controversial as it would be extremely difficult to prove that a player has done it intentionally. Perhaps with the testimonial from teammates and coaches, this section could be proven. Otherwise, the usage of this section would be shrugged off with a simple “I had a bad day” excuse by the player himself.
- 4) Art 2.5.2 should be done away with as the participant really cannot exercise control over the actions of others.
- 5) Under the Sanctions section, the current ineligibility period is too lenient and should be increased. Conversely, fines imposed should be more than the rewards received rather than just the equal amount and where the reward had not been received, fines imposed should be less or equal based on the participants level or earnings, etc.

This is the researcher’s analysis of the Code and it is provided as one of the models that can be used by the football industry.

6.5 Second Proposed Model – The Decentralisation of FIU’s and the Insertion of The Football Industry as Reporting Institution under Anti-Money Laundering Laws of Argentina

The second proposed model will begin by showing that FIU’s need to be broken up and begin specialising in different industries. The current FIU set up in England and Malaysia is too restrictive and overburdening. There is the single FIU mandated to overlook all the industries. Only the US FIU is seemingly opening up to have more agencies within it, but even then the researcher states that, on a closer inspection, it is still based on the conservative model of a solitary FIU but assisted by various agencies. Secondly, the researcher states that is very commendable that Argentina FIU has included the football industry as one of the reporting institutions within their general AML legislation.

What this means now, is that all football bodies in Argentina are subject to the reporting provisions as well as sanctions within the main Act. This is the first country in the world to have done so. In furtherance to this, Argentina has also decided to ban all forms of Third Party Ownership (TPO) in relation to players as well as football clubs with the researcher demonstrating that Argentina, have within their general AML legislation a specific provision to curb ML activities in their football industry.

6.5.1 Argentina New Anti-Money Laundering Laws

6.5.1.1 Argentina's FIU or UIF

The government of Argentina has case-hardened all kinds of reporting rules in recent period, simply hoping to remove themselves from the Financial Action Task Force's "grey name list" of countries in which their financial transactions are very suspicious of criminal offences.⁹⁵⁶ The government of Argentina proclaimed some new laws to extinguish ML in football industry, in which it calls for complete detailed reports on any transaction within the football industry.⁹⁵⁷

Argentina's main enforcement body, i.e. the Argentine Financial Information Unit (*Unidad de Información Financiera* or UIF) has now been assigned to be the main enforcement body to monitor and curb ML activities in the football industry of Argentina. There are four types of Argentinean UIF that incorporating with each other in curbing ML. First of all, the Administrative UIF is under supervision of the other compliance bodies or judicial authorities. Administrative UIF is aimed to set a "muffler" between the parties who made the reports and the law enforcement agencies that are engaging in investigating and prosecuting financial crimes.⁹⁵⁸

Secondly, the Police UIF which in its operation, it works closely with the other enforcement bodies such as financial crime units, and would benefit from its experience and informative sources. As a result, the exchange of information occurs

⁹⁵⁶ FATF, "High-risk and non-cooperative jurisdictions," Financial Action Task Force, <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/> (accessed June 2, 2013).

⁹⁵⁷ Michael Warren, "Argentina targets money laundering in football," Daily Star, <http://www.dailystar.com.lb/Sports/Football/2012/Feb-15/163377-argentina-targets-money-laundering-in-football.ashx#axzz2gtTNmxZr> (accessed July 2, 2013).

⁹⁵⁸ UIF, "Institutional / Types of FIU," La Unidad de Información Financiera (UIF) Argentina, http://www.uif.gov.ar:8080/eng/institucional_tipos_de_UIFs.html (accessed June 5, 2013).

as such enforcement bodies could easily access to the information received by Police UIF and the information may be used in any investigation.⁹⁵⁹ Next, the Judicial or Prosecuting UIF that created within the province of the Judiciary and more often than not, within the prosecutor's jurisdiction.

As Argentina is a jurisdiction with continental judicial tradition where the prosecutors are part of the judicial system and they have authority on investigative agencies, the Judicial or Prosecuting UIF could be more effective as the prosecutors are allowed to conduct and supervise criminal investigations which related to ML.⁹⁶⁰ Lastly, the Mixed or Hybrid UIF that consist of different types and structures of UIFs. At least two or more UIFs may be combined for the purpose to improve the efficacy in curbing the ML activities.⁹⁶¹

Argentinean Financial Intelligence Unit (*Unidad de Información Financiera* or UIF) circulated its laws due to the continuous pressure it received from the global FATF. The UIF implemented Resolution No. 196/2012 that amends the rules related to periodic reports that the obliged persons must file with the UIF and expands the reporting requirements of the Argentine Football Association.⁹⁶² As such, the UIF has included their football industry as one of their reporting institutions and obliged

⁹⁵⁹ UIF, "Institutional / Types."

⁹⁶⁰ Ibid.

⁹⁶¹ Ibid.

⁹⁶² Marval News Publication, "New Regulation from the Financial Information Unit Regarding Professional Football," Marval News, <http://www.marval.com.ar/Publicaciones/MarvalNews/ArticuloMN/tabid/96/language/en-US/Default.aspx?ItemID=2347> (accessed June 3, 2013).

persons and must comply with the requirements under s 20 of Money Laundering Regulations Act of Argentina.

S 20 requires the reporting institution to perform customer identification, record keeping, and reporting suspicious transactions by all financial entities and businesses supervised by the Central Bank, the Securities and Exchange Commission (*Comisión Nacional de Valores*, CNV), and the National Insurance Superintendence (*Superintendencia de Seguros de la Nación*, SSN). It also establishes confidentiality duties for institutions when filing suspicious transaction reports to the UIF. In the event UIF decides whether investigation is needed, the case should be forwarded to the Attorney General's Office.⁹⁶³

On November 2, 2012, the UIF issued Resolution No. 196/2012 (Resolution 196) that amends Resolution No. 70/2011 (the Resolution 70) and 32/2012 (Resolution 32). Resolution 70 (which, as far as professional football is concerned, has been amended by Resolution No. 93/2012 of the UIF) states down a complete set of rules related to the periodic reports (*reportes sistemáticos*) that the obliged persons under the anti-money laundering regulations must file with the UIF.⁹⁶⁴

6.5.1.2 Resolution No. 196/2012 (Resolution 196)

As to the periodic reports (*reportes sistemáticos*), Resolution 196 states that, as from

⁹⁶³ Guillermo Plate, "Argentina: Overview On Argentina Anti Money Laundering (AML) And Combating Terrorist Financing (CFT) Situation," Mondaq, <http://www.mondaq.com/x/62582/Money+Laundering/Overview+On+Argentina+Anti+Money+Laundering+AML+And+Combating+Terrorist+Financing+CFT+Situation> (accessed June 1, 2013).

⁹⁶⁴ Marval News Publication, "New Regulation."

July 1, 2012, the Participating Clubs mentioned in Resolution 32, up to the 15th day of each month, must report to the UIF, the following transactions:

- (a) transfers or assignments of federative rights;
- (b) transfers or assignments of economic rights derived from federative rights; and
- (c) Loans received in amounts higher than AR\$100,000, or its equivalent in other currencies, in one or in several acts within the preceding 30 days. Before this amendment the AFA was also obliged to make such reports.⁹⁶⁵

Resolution 196 expands the reporting requirements of the AFA at three levels.⁹⁶⁶ The first obliges the issuing of periodic reports (*reportes sistemáticos*) to the UIF regarding:

- (a) the transfer or assignment of federative rights;
- (b) ownership of all economic rights, derived from the federative ones, of all of the professional football players of the Participating Clubs (for which the AFA should ask such relevant information);
- (c) funds borrowed by the amounts and other characteristics

Such reports should be issued monthly and should cover the following periods:

- (i) September 1 of one year to the last day of February of the following

⁹⁶⁵ Marval News Publication, "New Regulation."

⁹⁶⁶ Ibid.

year, inclusive, and

(ii) From 1 March to 31 August, inclusive.

(iii) The report must be made by the 15th day of the month following the end of each semester.⁹⁶⁷

The second level of reporting related to the status of the Participating Clubs. Within 30 days of their ups and downs AFA must report to the UIF which Participating Clubs have reached the Second Category and which have gone to a lower one.⁹⁶⁸ Finally, the third level of report is only applicable for the period until December 31, 2012 the AFA must report to the UIF the ownership of all economic rights, derived from the federative ones, of all professional football players of the Participating Clubs, and must request such relevant information from same.⁹⁶⁹

Additionally, Resolution 196 also provides that, for purposes of the formation of such files and to enable the AFA to determine the customer profile, the Participating Clubs must send to it the information detailed in Arts 12 to 16 of Resolution 32. It also states that such is the only action that the AFA and the Participating Clubs can share in order to accomplish the obligations that each has in their capacity as obliged persons under Resolution 32.⁹⁷⁰

⁹⁶⁷ Marval News Publication, "New Regulation."

⁹⁶⁸ Ibid.

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid.

6.5.1.3 Resolution 32/2012 (Resolution 32)

Resolution 32 sets forth the obligations that the Argentine Football Association (*Asociación del Fútbol Argentino* or AFA) and the clubs whose teams participate in the First Division and Second Division of the football tournaments that the AFA organizes are subject to.⁹⁷¹

As for the amendments to Resolution 32 by Resolution 196, UIF refers to the client file preparation and reporting of suspicious transactions. Regarding the reporting of suspicious transactions, Resolution 196 amended Resolution 32 regarding the path to be especially evaluated by the AFA to determine whether a transaction should be reported to the UIF as suspicious in those cases where the Participating Clubs refuse to provide the information and/or documents necessary to conform to the customer file and determine their profile.⁹⁷²

6.5.1.4 Report on Payroll

Moreover, UIF is also associated with AFA in complying with the recommendation of FATF and thus, AFA and each club in the utmost two divisions have to prepare reports on everybody on the payroll who earns around 60,000 pesos (USD \$13,800) per year, and those who conduct their business with too. Such people includes not only league officials, players, owners and staffs, but also extended to corporate sponsors, media figures, investors in players and team property, agents and government officials. They must report their income beyond the amount of salaries,

⁹⁷¹ Marval News Publication, "New Regulation."

⁹⁷² Ibid.

and also bonuses, prizes, loans, deals for image rights that they earned, even in-kind payments like housing, cars, and financial deals which involved family and relative members.⁹⁷³

On punishment, failing to adhere to these rules would be fined up to 100,000 pesos (\$23,000) or even 10 times the quantity of money pertained, whichever is greater as the court thinks fit⁹⁷⁴. Due to these rules, it resulted in many Argentina clubs are deeply in debt regardless of the large sums of money that run through the football industry of that country.

6.5.1.5 Banning of the Third Party Ownership (TPO)

Furthermore, in 2013, Argentinean government has implemented a tax law that effectively prohibits Third Party Ownership (TPO) of football players.⁹⁷⁵ In the football industry, TPO is where a football club does not own, or is not entitled to, 100% of the future transfer value of a player that is registered to play for that team. There are various models for agreements of the third party player but the basic premise is that companies, businesses and/or individuals provide football clubs or players with money in return for owning a percentage of a player's future transfer value.⁹⁷⁶ This transfer value is usually referred to as economic rights of the player.

⁹⁷³ SoccerexPro Daily, "Argentine government launches money laundering crackdown," Soccerex, <http://www.soccerex.com/industry-news/argentine-government-launches-money-laundering-crackdown/> (accessed April 4, 2013).

⁹⁷⁴ Warren, "Argentina targets."

⁹⁷⁵ Daniel Geey, "Has Third Party Ownership of Players been Banned in Argentina?" Daniel Geey, <http://www.danielgeey.com/has-third-party-ownership-of-players-been-banned-in-argentina/> (accessed June 2, 2013).

⁹⁷⁶ Marval News Publication, "New Regulation."

There are examples where individuals will act as investors by purchasing a percentage share in a player directly from a club in return for an amount that the club can then use as it desires.⁹⁷⁷

Argentina has banned TPO in recent years. This is because the TPO owners in Argentina have been traditionally difficult to detect and more often than not, use off shore companies. In some cases, monies made were not taxed properly. As such the government passed in 2012 and in the beginning of 2013 a series of new regulations, which basically:

- (i) oblige all clubs and the Argentinean Football Federation to disclose and regularly notify and update the authorities in relation to the TPO agreements clubs enter into with its registered players,
- (ii) imposes tougher obligations and more expensive rates in cases of transfers involving so called “straw-man clubs” including a list of “sporting fiscal paradises” (mainly Uruguayan and Chilean clubs that according to the taxman are regularly used for hiding the final destination of a player and therefore the real value of the transfer),
- (iii) states any transfer payment for a player, even in controversial cases like the direct payment to a player for his own economic rights as a free agent, he must go to the former club and only afterwards (after a withholding of income tax ranging from 17.5% to 35% is applied) the TPO owner will get his share provided by the club. If the TPO is

⁹⁷⁷ Geey, “Has Third Party.”

prompt with his payment the withholding rate will be 17.5% rather than 35%.⁹⁷⁸

These regulations are intended to eliminate the differentiation between federative i.e. the club registration of a player and economic rights which would purport to re-establish the balance between the bargaining power of clubs and private third party investors. This implies that only clubs will be permitted in the future to own player rights. However, in a practical sense, it is unlikely this will happen as TPO is the main financial source for football clubs in Argentina. It is therefore believed that this statement is more geared towards demonstrating to the public, that that the government is willing to implement laws to fight against non-declaration of taxable income rather than actually outlawing TPO.⁹⁷⁹

As such, the researcher would like to propose that the Argentina model on curbing ML activities within their football industry be implemented on the nations focussed on this thesis, and in fact globally, as these set of laws represent a very sound move in curbing ML in football. It is hoped that FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM will also introduce and supplement their existing laws in their statutes and regulations so as to mirror these above mentioned laws.

⁹⁷⁸ Marval News Publication, "New Regulation."

⁹⁷⁹ Geey, "Has Third Party."

6.6 Third Proposed Model – Suggestions of a Stricter Enforcement Mechanisms in Online Betting in Football and Sport Generally

The researcher published a paper in the Current Law Journal on the reforms that are required to effectively curb ML in online betting.⁹⁸⁰ An effective enforcement mechanism was proposed in the paper and is hereby provided as one of the models in this thesis.

6.6.1 Transparency of Government Agency

First and foremost, it is important for the government agency to limit the number of licensees of online betting. There should be a specialised agency in dealing with the online gambling issues and only those with proper licensing can be allowed access. The legal online gambling providers will have to comply with a list of restrictive order by the agency before being permitted to operate. There should be transparent information of the clients to the government agency, so that authorities are able to detect any possible ML activities from the list sharing of information by other financial institution and international authorities such as the Anti-money Laundering bodies (AML).

6.6.2 Customer Due Diligence

Only those customers that have valid accounts are able to gamble and service providers must continuously monitor this. When a new customer wants to register to gamble, it should be filled out by way of an application form for record purpose. All

⁹⁸⁰ Dhillon, Jeyakumar, Ridzwan, Miin., "Online Betting," 1.

necessary information will have to be provided to the government agency for analysis. The due diligence conducted by the internet providers should be by identifying deposit/trades analysis, player behaviour or patterns abnormalities and cybercrimes arrest policy.

6.6.3 Payment Controls

The service providers must always maintain consistency of payments and pay-outs. They must exercise control over credit card numbers to match the corresponding gamblers.

6.6.4 Operational Controls

Age verification and other lists that can help identify terrorist persons and politically exposed persons (PEPs) should be made available to internet gambling providers. Examples of such lists can be World Check⁹⁸¹ and European Sports Security Association's (ESSA) list.⁹⁸² All the procedures in relation to transactions and activities should be adhered to. The gambling providers must submit Suspicious Activity Report (SAR) to the FIU on at least a weekly basis.

i) Enforcement and related matters

Concerns that are usually raised are that consumer has access to illegal transnational markets due to the lack of enforcement. As such, it is vital that effective

⁹⁸¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions*, (Strasbourg, 2012), 92.

⁹⁸² Ibid.

enforcement be carried out in line with the government bill of gambling policy to protect the public interest. Joint organisational structures are encouraged when carrying out regulations, licences and supervision on online gambling.

Control should be exercised on the number of licensees which should only be issued to eligible applicants. Strict entrance examinations should be conducted to enforce control over the number of licensees. All necessary and vital information are to be provided by the licensees before they can be issued the license. If in breach of any of the guidelines, the authorities must exercise their right to revoke or suspend their licenses immediately.

All service providers are required to be transparent to the government agency as well as regulatory authorities. Agencies and regulatory bodies should disseminate and share information about fraudulent operators' players and licensees. Awareness campaigns should also be conducted to inform the public on the negative effects that gambling may cause.

ii) Control of ISP and Payment

Payment and communication providers provide the impetus and lifeline for online gambling services to thrive. Therefore, following measures should be taken:

a) Domain Name System (DNS) filters

Those illegal pre-listed websites or being directed to another website can be avoided by the use of a Filtering DNS. As such, customers are protected from going to cautioned websites.

b) Internet Protocol (IP) blocking

All licensed holders will have a hostname and it's very own identification which is known as an IP address. With such a blockage, there is no way a gambler can link to other IP addresses which may have more than one IP address.

To conclude, the researcher states that there is a lot to be done to combat ML in the football industries of The United States of America, England and Malaysia but strongly recommend that FIFA and the governments of the nations that are the focus of this thesis to implement all the suggestions stated in this Chapter.

CHAPTER SEVEN

CONCLUSION

7.1 Conclusion

The researcher has successfully answered all the Research Questions and has therefore met all the Research Objectives set for this study. In answering Research Question 1, the researcher states that it is proven by the FATF GAFI Report on football and sections discussed in Chapter 3 that ML activities in the football industries of US and England are at considerably high levels as the stakes are much higher due to the evolved vital components that form the football industry. In Malaysia, the stakes are much lower and due to the high degree of secrecy from the football clubs and enforcement agencies, it is difficult to determine the actual level of ML but the evidence of illegal related activities like corruption, match fixing and bribery provide an inference that ML activities in the sport may already be in existence.

In determining the outcome of the above that ML levels in US, England and Malaysia are considerably high, it was then vital to answer Research Question 2 on the regulations aspect in curbing ML in the football industry. The researcher states that after analysing all the laws and regulations of FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM, the researcher concludes that there is not even a single statute or regulation within the whole football industry that focuses on any specific anti-

money laundering matter. The researcher then examined if general AML regulations were effective in curbing ML activities within the industry.

The researcher can state that the general AML laws are effective in the targeted countries but for some minor tweaking that was suggested. The general AML laws are very much applicable to the football industries as it is for all industries. However, the researcher submits that for the laws to become even more effective, the football bodies which include FIFA, CONCACAF, UEFA, AFC, USSF, FA and FAM should be listed as reporting institutions under any of the general AML legislations of the US, England and Malaysia and the FATF.

This leads the researcher in answering Research Question 3. If the football bodies are listed as reporting institutions, then Enforcement bodies within football as well as general enforcement agencies will have strict control over monitoring all the financial transactions that happen within the football industry, and when found in breach can lead to successful prosecutions. Currently though, this is not the case, the researcher contends that since the laws have been established to be very inadequate in curbing ML activities in the football industries targeted in this thesis, it as such, it is inevitable that the current enforcement bodies and mechanisms are deemed to be highly ineffective with relation to the targeted countries.

It was further discovered in Chapter 5 of this thesis, that the previous standing committees within the football industries were so ineffective that not even a single money launderer was ever called up for questioning or charged for a disciplinary

misconduct. There was not even a single specific enforcement body set up within FIFA or its confederations to monitor ML activities within the industry. It is only very recently that FIFA have established specific Task Forces, four to be exact, to advise, monitor, legislate and enforce various issues within the industry. Since the establishments are all still very recent, the researcher contends that there are no concrete results delivered to measure the effectiveness of these Task Forces at the time of submission of this thesis. Yet, the researcher contends that unless the football regulations are amended to mirror the general AML legislations in the targeted countries, the latest enforcement measures discussed above will still be ineffective and doomed to fail.

For proper AML laws to be set up within the football industry, the attitude of FIFA toward reform should change. The people high up in the rungs of FIFA are still refusing to do so for fear of being caught out for the wrongs they have done in the past. They are still acting like an old gentlemen club with habits that die hard. Perhaps an agreement should be drawn up that such persons that have committed financial malpractices in the past be exonerated when the new laws come into force. A compromise if you like for FIFA to commence moving in the right direction, that laws be made prospective and not retrospective, so everyone gets the chance to begin on a clean slate, for the beauty and the integrity of the game which is only growing bigger and bigger by the day.

In Chapter 6 of this thesis, feedback was attained by AML experts and reforms were suggested by the researcher. To conclude, 3 models were proposed to improve the

current conditions in the football industry relating to ML laws, regulations and enforcement. To sum up, the researcher would like to point out that Rome was not built in a day, and similarly the football industry is not going to be rid of ML activities any time soon, but to deal with a problem of this magnitude will require a two tier approach namely the short term and long term approach. The longer term approach to combat ML in the football industry has been suggested at length in Chapter 6, whilst the short term approach, i.e. what should be done now for the United States of America, England and Malaysia are summarised below.

7.1.1 Building a Better Awareness

On a *prima facie* level, the general public are not even conscious on the legal issues circumventing ML and its nexus or lack of it, and it's considerably high occurrence in the football sector. More often than not, even some key players in the industry are not even conscious or aware that ML is a very genuine threat in the football industry and such threat is growing bigger by the day. In view of this, the regulatory and enforcement agencies, as well as the football institutions should provide platforms of information, sharing about this menace to the public at large. It is only then, would a new consciousness arise to perceive that this threat is real and is destroying the industry.

7.1.2 International Co-operation and the Sharing of Information

Some obstacles must be taken into account in the process to detect and prosecute the crimes of ML via the football sector, first is the existence of tax havens, another is the harshness in exchanging information internationally. Two elements, which are

international co-operation and the sharing of information is extremely important in combating ML, more often due to the international dimension of the football sector. Nations have to be flexible at a certain level while working cooperatively, so that the objective to identify and extinguish the misuse of football sector as a bed for ML may be accomplished as soon as possible.

7.1.3 Dialogues and Discussions

It is only when consciousness has arisen in the general public and through international agreement and co-operation, can there be dialogues and discussions of new laws be drafted so as to meet the standards of transparency in financial matters, accurate foreign or proper external accounts, appropriate financial or monetary administration, and an enforceable and efficient regulatory mechanism. The researcher proposes that there be an establishment of closer working relationships between INTERPOL, FIFA, Sports Betting monitoring companies, Transparency International, Football Confederations and the National Associations to establish, expand and coordinate communication channels in curbing ML.

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