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Undermined by gold - Peru

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White powder to precious metal – cocaine to gold, criminality, and so laundering, is evolving in Peru but the authorities are on the case, finds James Bargent.



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Crime share

Peru has taken major steps towards establishing a robust anti-money

laundering (AML) regime, but with thriving and evolving criminal black markets, deep-rooted corruption and a large informal business sector, serious challenges remain. According to the US State Department's 2015 International Narcotics Control Strategy Report (INCSR), criminal funds make up around 3.5% of the country's GDP –

which would amount to US\$7 billion. Peru's attorney general's office released an assessment in 2013 that US\$10 billion of illicit profits are laundered in Peru every year. Between 2007 and March 2016, Peru's financial intelligence unit (FIU) (Unidad de Inteligencia Financiera - UIF) estimated suspicious transactions it identified totalled US\$12.9 billion, with US\$1.6 billion in 2015 alone.

In transition underground

In the last five years, there has been a marked shift in the money laundering patterns traced by UIF. Between 2007 and 2011, drug trafficking was believed to be the predicate crime in 82% of the UIF's suspicious transaction reports (STR). Since then, it has accounted for just under 9% of cases. However, this is no indication of a decline in drug trafficking – Peru could recently claim to be the world's leading cocaine producer; instead it marks a new criminal trend – illegal gold mining.

In 2011, mining was not tracked at all by the UIF. In 2012, the body traced more than US\$1 billion of suspect transactions linked to illicit gold mining and by March 2016, this had risen to US\$4.4 billion. Illicit gold mining is unique in that it is not only a predicate crime, but creates a good that can be used for laundering dirty money from whatever criminal source. While mining did not appear as a method for money laundering in 2011, it has accounted for 42% of reported activity since then, according to UIF documents.

In the early days of the mining boom, there was little oversight of the trade and gold was freely and easily laundered into the legal supply by export companies disguising its illicit origins with fraudulent paperwork. As a result, this lucrative trade and its money laundering opportunities soon became a point of criminal convergence, said Sergio Espinosa, UIF director. "There are activities connected to illegal mining that are also connected to drug trafficking and other forms of organised crimes; these organisations are not specifically dedicated to illegal mining," he told *MLB*.

Half at high risk

In 2012, new legislation gave investigators powers to go after money laundering in illegal mining and by 2014, half of the country's 120 gold exporters had been flagged as high risk by UIF, the Prosecutor's Office and the Peru's National Tax Administration (Superintendencia Nacional de Administración Tributaria – SUNAT), with 15 under investigation for money laundering.

In response, UIF believes the mining clans smuggled their gold instead into Bolivia and exported it from there, a change in method visible in UIF records: in 2014, the body traced US\$2.8 billion of suspect transactions from mining; in 2015, it traced just US\$87 million.

Banks and business

Outside of mining, there are also clear signs that the country's financial sector is being subverted by money laundering, according to UIF notes. Bank deposits and transfers and use of financial instruments, products or investments that cannot be justified by legitimate transactions together account for US\$3 billion of the suspicious transactions detected since 2007. Low-tech financial transactions, meanwhile, involving either 'smurfing' - moving large quantities of money using many people and small amounts to escape attention – or moving foreign currency into the country by 'mules' then changing it for Peruvian pesos at exchange houses, accounts for US\$1.2 billion.

The business sector, meanwhile, generates US\$2.7 billion of suspect activity through use of shell companies, frontmen and false paperwork, the country's 'company funds transfer system' (Sistema de las Empresas de Transferencias de Fondos), fictitious or overvalued imports and exports, paying off debts or capitalising companies, and real estate and construction investments and acquisitions, according to UIF.

In its reports on Peru, the US State Department has highlighted real estate sales, casinos, business investments, high-interest loans, construction, export businesses, hotels, and restaurants as the most common businesses and mechanisms used to launder money in the country after mining. According to UIF, construction and real estate is currently one of their main concerns, while the manipulation of credit cards is the latest trend they have identified.

Government strategy

While Peru's underworld economies remain formidable, the country has made a concerted effort to set up a system to trace the money they generate. The Peruvian government created UIF in 2002, accompanied by an Anti-Money Laundering Law two months later. In 2006, it launched an integrated Anti-Money Laundering and Terrorism Financing System (SILAFIT – Sistema Anti Lavado y contra el Financiamiento del Terrorismo en el Perú), including business sectors required to report suspicious transactions, the Public Ministry, the judiciary, the police, supervisory and control bodies and international partners. A year later, the government incorporated UIF into Peru's Superintendency of Banking and Insurance (Superintendencia de Banca y Seguros – SBS), granting it greater autonomy to operate free from political pressure.

External assessment

Peru's progress has been monitored by the Financial Action Task Force of Latin America (GAFILAT – previously GAFISUD) since 2003. In its last evaluation in 2008, the country was found to be compliant with 10 of the Financial Action Task Force's (FATF) 40 Recommendations, mostly compliant with 12, partially compliant with 17 and not compliant with one, namely imposing reporting requirements on foreign branches and subsidiaries.

The main issues raised by the GAFILAT were UIF's lack of access due to banking and tax secrecy regulations, the high levels of informality in the economy, the absence of a coordinated inter-institutional national AML plan, lack of control over cross-border money transfers, and non-supervision of some sectors, notably notaries.

Law and regulation acceleration

In response, the Peruvian state brought in numerous measures, most of which were introduced in decrees in 2012 and 2013. In this regard, Peru has been a regional pioneer in creating and implementing a national anti-money laundering plan, the first of which was launched in 2011 with the objectives of strengthening the legal and regulatory framework for reporting suspicious transactions, improving detection by granting greater access to information, strengthening AML analytical capacity and improving the capacity to prosecute transgressors. It has implemented a risk based approach (RBA) to supervision for 'designated non-financial businesses and professions' (DNFBPs), cooperatives and notaries, who must make suspicious transaction reports to the FIU. And it has significantly extended the number of sectors that must monitor their transactions, which, critically, now includes mining, exchange houses and wire transfer companies.

New specialist money laundering units of the National Police and Prosecutor's Office have been established, together with a national commission for seizing assets – the Comisión Nacional de Bienes Incautados (CONABI).

The government has also introduced a new US\$30,000 absolute limit on cross-border cash movements (the declaration threshold is US\$10,000), and ended the requirement for a proven predicate crime for money laundering prosecutions. The measures have won the praise of the Organisation of American States (OAS), which has provided training and logistical support for many of the initiatives. "We have seen sustained growth of the system and there are some entities that have grown from a technical point of view and achieved major advances," said Paulina Duarte, the OAS' security secretary.

Duarte singled out the strengthening of UIF as one of Peru's major achievements: "The UIF has consolidated itself as a technical organism that has the capacity to confront many challenges in the Peruvian environment; access to information, coordination with other agencies in the system and, above all, carrying out emblematic and complex financial investigation," she said.

Kori Silva, senior advisory manager at auditors KPMG, which advises Peruvian companies on complying with money laundering regulations, agrees the reforms have left Peru with a firm foundation. However, she said, the system needs adapting to take into account the different requirements and dynamics of newly incorporated sectors that lie outside of the worlds of finance and banking, especially those involving small businesses.

“There should be specific directives about how to treat systems for detecting money laundering according to the sector, because each sector has a different reality,” she said. And Silva highlights two other, more deep rooted issues that are the main obstacles to Peru’s AML efforts: informality and corruption.

Off the record

According to the US State Department, up to 70% of Peru’s GDP comes from the informal sector, which covers everything from illegal gold mining run by criminal clans to peasant farmers selling potatoes. For UIF, every step of the informal sector represents potential for money laundering.

“There is a lot of informality, and so there is a lot of cash moving around and this is ideal to use to hide illegal money,” said Daniel Linares, head of UIF’s operational analysis department.

Illegal mining remains a key problem here: after four years of floundering, a government’s formalisation programme focused on the sector has come in for much criticism and yielded few positive results.

Who you know

While informality conceals money laundering, Peru’s other main curse, corruption, protects it. Recent high profile investigations have exposed the extent money laundering networks rely on corruption, with judges, prosecutors, police, public officials and notaries all accused of protecting laundering networks. [1]

In addition, corrupt elites have become major money laundering targets themselves, with two former presidents, the current first lady and the closely defeated candidate Keiko Fujimori all recently investigated for money laundering.

These cases have revealed the challenges investigators face in penetrating networks of corruption and patronage, with the most money laundering accusations levelled at First Lady Nadine Heredia, an inquiry that cost the job of the widely respected head of the money laundering unit at the Prosecutor’s Office, Julia Principe.

In mid-2015, following political pressure to drop the case, Principe told Peru’s media: “Currently, the conditions that guarantee my operational autonomy do not exist, which has created a situation that is not conducive to my convictions.” By October, she had been removed from the post in a highly controversial decision, which she labelled “unjust and arbitrary”.

Set fair

Despite these obstacles, there are numerous signs Peru continues to make progress in fighting money laundering.

In 2016, the US State Department removed Peru from its list of countries of primary concern, while in the latest annual Anti-Money Laundering Index published by the Basel Institute on Governance, Peru scored better than any other Latin American country, albeit ranking 135 out of a list of 152 countries in ascending order of risk of money laundering.

The clearest measure yet of Peru's progress will come in 2017 with its final GAFILAT evaluation. To meet GAFILAT's previous recommendations, UIF says legislation granting investigators better access to banking and tax information is now its main priority, and it hopes to push through a new law before next year. In addition, the body is pushing for stronger legislation against bribery and corruption, tougher controls and a registry for stock and share transfers, and a maximum threshold for cash transactions.

Whether the items on UIF's wish list are completed before GAFILAT returns or not, the body is feeling optimistic about the evaluation and positive that Peru has laid the groundwork that will enable it to take the fight to the money launderers, said Linares. "We feel we are moving in the right direction and that we will pass their evaluation," he added.

Notes

1. For instance, the case of Rodolfo Orellana, an alleged money laundering kingpin whom prosecutors accuse of maintaining a network of corruption that included judges, prosecutors, police, public officials and notaries – more details - <http://peru21.pe/politica/rodolfo-orellana-sur-red-gastaba-us50-mil-diarios-pago-coimas-2218496>