



JULY 2009

MONEY LAUNDERING LAW

The Regulatory News Update from DLA Piper

EVERYTHING MATTERS

UK NEWS

TRANSPARENCY INTERNATIONAL RELEASE REVIEW OF UK AML REGIME

Transparency International have published a report looking into the UK's anti-money laundering regime. Transparency International are an international non-governmental organisation that aims to reduce bribery and corruption.

Transparency International's review highlights several serious weaknesses in the UK's regime:

- Corrupt leaders of foreign countries are, it is said, too easily able to deposit dirty money in UK bank accounts. Also, UK financial institutions are too easily used as intermediaries enabling corrupt leaders to mingle their illegal funds
- The UK's overseas territories continue to provide corrupt foreign politicians with the ability to launder money
- The UK has a variety of different agencies overseeing the implementation of the anti-money laundering laws but none of them have overall responsibility. Accordingly, international coordination is sometimes hampered due to foreign governments being unable to access the appropriate UK authority for help with their investigations

The review makes some recommendations as to how the UK regime could be improved. In particular, Transparency International have called for a more coordinated proactive approach that would:

- Effectively utilise the existing anti-money laundering powers in the UK
- Improve anti-money laundering procedures in the UK's overseas territories
- Strengthen the identification procedures and monitoring of politically exposed persons
- Ensure that anti-money laundering obligations are implemented effectively and consistently across the different authorities involved
- Strengthen the asset recovery process
- Enable the UK authorities to respond faster to international requests for assistance

Transparency International have also called for a central database containing foreign nationals that are breaching their own nations' asset ownership regulations to aid the identification of those posing a money laundering risk.



INTERIM REPORT

ON BRITISH OFFSHORE FINANCIAL CENTRES PUBLISHED

In April, HM Treasury published a progress report on Michael Foot's¹ independent review of offshore financial centres.

The purpose of the review is to consider the short and long term challenges being faced by the UK's offshore financial centres (Jersey, Guernsey and the Isle of Man) and overseas territories (the Cayman Islands and the British Virgin Islands).

The interim report is a summary of the outcomes from initial discussions with the offshore financial centres. The interim report highlights the following areas of interest:

- The importance of understanding the inter-relationships and dependencies between the offshore financial centres and the UK.
- The regulatory regimes of the offshore financial centres which have generally received good reviews from the IMF in the past.

- The regulatory resources of the offshore financial centres which will be put under considerable stress in their effort to meet international standards.
- The offshore financial centres need to review and alter their regulatory infrastructure to ensure depositors have sufficient protection in case of events such as the failure of a financial institution.

The interim report also comments that whilst all of the offshore financial centres have committed to the OECD's standard on the exchange of tax information, they still have a way to go before they are compliant with that standard.

The full conclusions of the review are expected in the fourth quarter of 2009.

PROCEEDS OF CRIME ACT 2002 (REFERENCES TO FINANCIAL INVESTIGATORS) ORDER 2009

The Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2009 (the "Order") came into force on 12 May 2009. The Order lists the investigators of various public sector enforcement and investigation agencies who are able to exercise the powers set out in the Proceeds of Crime Act 2002 ("POCA") in relation to restraint orders, cash recovery and investigations (including money laundering investigations). The aim of the Order is to enable the enforcement and investigation agencies to operate more flexibly and independently of the police when carrying out their duties under POCA.

The Order includes, amongst others, financial investigators who are part of the Serious Fraud Office, the Gambling Commission and the Office of Fair Trading.

¹ Chair of the UK Office of the Promontory Financial Group

UK NEWS

MEP IN MONEY LAUNDERING ALLEGATIONS

Thomas Wise, MEP for the East of England, has been charged with money laundering and false accounting following investigations by Bedfordshire Police and the European Anti-Fraud Office. It is alleged that between 14 December 2004 and 24 December 2005, Mr Wise claimed around £36,000 in secretarial allowances but he instead used the money to pay off personal debts and purchase a car and fine wines. Wise denies the charges.

SCOTTISH ANTI-MONEY LAUNDERING POLICE TARGET PROFESSIONALS

The Scottish Crime and Drug Enforcement Agency ("SCDEA") are to target lawyers, accountants and other professionals that give a 'respectable face' to money laundering operations. The SCDEA estimate that around 250 professionals are currently assisting organised crime gangs to launder money. It is asserted that many professionals assist money launderers to hide the proceeds of illegal activities by various means including real estate transactions.

international round-up

The Wolfsburg Group, a group of international banks aiming to develop financial services industry standards for anti-money laundering and counter-terrorist financing, has released guidance on credit card issuing and merchant acquiring activities in relation to money laundering.

The group consider that both issuing and acquiring services generally carry a low risk of money laundering but that there are some risks present.

In particular, the group suggests that credit cards could be used to transfer the proceeds of criminal activity. The group recommends that card issuers should perform regular reviews of their systems to spot emerging risks and decide whether their anti-money laundering controls need to be tightened.

The group also suggest that merchant acquiring services represent a higher risk than card issuing services. It is recommended that firms should look closely at the

type of business being undertaken by a potential merchant to assess the level of due diligence to be performed before entering into a merchant acquiring contract.

The group commented that although the risks posed were lower than for other financial services products, a robust system of controls should be implemented to assess card issuing and merchant acquiring activities as part of a wider anti-money laundering and transaction monitoring programme.

POLAND STRENGTHEN ANTI-MONEY LAUNDERING POWERS

The Polish parliament, the Sejm, is expected to bring in new anti-money laundering legislation towards the end of June to implement the EU's Third Money Laundering Directive.

The legislation aims to increase cash-flow transparency within the Polish system by extending the range of institutions that must report suspicious transactions. It also introduces sanctions for non-compliance with the new legislation, increasing the penal provisions covering money laundering.

The legislation strengthens customer diligence requirements. Clients will be subject to more stringent tests taking into account the type of client, the nature of its commercial relationships and the type of transactions the client enters into. Institutions will also have to perform risk analyses of existing clients within 12 months of the legislation being passed.

Institutions will also have to name individuals who are responsible for compliance with the legislation. The person responsible may be a senior manager appointed by the management board. In the case of a foreign bank or credit institution, the responsible person will be the head of that branch in Poland.

The amendments introduce harsher penalties for non-compliance with the legislation. Fines of up to PLN750,000 (approximately €200,000) can be imposed on institutions that do not comply. Imprisonment for a maximum of 3 years is possible for those institutions failing to implement the new diligence procedures or to name the responsible person.

The legislation amends the Polish Penal Code to extend it to give greater coverage of money laundering and the financing of terrorism. In particular, it extends existing legislation to cover those persons who act for the benefit or on behalf of institutions that fail to comply with the new law.

The new legislation represents a move forward in the anti-money laundering law of Poland. Previously, institutions only needed to attempt to verify the identity of the directors of the client company.

international round-up

US DEPARTMENT OF JUSTICE TO APPEAL DISMISSAL OF MONEY LAUNDERING LAWSUITS

The US Department of Justice ("DoJ") has announced that it will appeal the dismissal of its money laundering lawsuits against Lloyds TSB Bank and Bank of Cyprus.

The DoJ had taken action against the two banks under Title 18, US Code, Section 1956(b) of the Money Laundering Control Act 1986 following the banks allegedly assisting Lycourgos Kyprianou, the founder of AremisSoft, launder nearly \$300m worth of "pump and dump" proceeds. In order to return funds to victims of the fraud, the DoJ is seeking \$130m from Lloyds and \$162m from the Bank of Cyprus.

Judge Charles Haight Jr ruled that the US District Court for the Southern District of New York lacked jurisdiction over the matter in the cases. He relied on the fact that the two banks did not conspire to defraud AremisSoft shareholders and that the alleged money laundering transaction occurred outside of the US.

This is an important decision in that it casts doubt on the extraterritorial powers of US money laundering law. It is good news for foreign financial institutions worried about the aggressive reach of the US in asserting jurisdiction over all cases involving the electronic movement of US currency.

The DoJ have stated that it intends to seek to amend the claims to attempt to link the banks to both the money laundering and the actual securities fraud underlying it. It has made it clear that it will seek to appeal Judge Haight's dismissal of the claims should the application to amend the complaint not be granted.

LAWYERS FACING MONEY LAUNDERING CHARGES IN MARBELLA RELEASED

Five lawyers arrested for their part in a suspected money laundering network extending to Gibraltar, the British Virgin Islands and London have been released from custody. Whilst they all still face charges, only one had to post bail. Only referred to as JJGC, the lawyer had to pay €60,000 to make bail. The nationalities of the lawyers have not been confirmed but the authorities have confirmed that the case was originally opened in 2006 and all of the lawyers are linked to the Marbella office of another solicitor who has relocated to London since the investigation began.

UAE'S BIGGEST MONEY LAUNDERING CASE

The UAE's largest money laundering case is about to go to court in Dubai. The case involves six companies and four individuals participating in transactions worth £150m linked to accounts in the UK, UAE and the Netherlands. Those alleged to be involved include a Briton, an Emirati, an Indian and a Pakistani.

The claim alleges that goods were shipped from the UK to other EU countries where they were sold under false contracts. The goods were then imported back to the UK, where the 17.5% VAT was claimed from the HMRC.

It is also alleged that those involved submitted false documents to the UAE Central Bank to cover the amount of money going into their accounts and that the names of the companies used were frequently changed to avoid detection.

115 YEARS IN A ZAMBIAN JAIL FOR MONEY LAUNDERING

A Zambian court has sentenced Bonaventure Chembe to 115 years imprisonment for money laundering and embezzlement. Chembe was in charge of paying salaries at Zambia's ministry of home affairs and it is alleged he stole 1.6 billion Kwacha (£204,159) that was intended to pay civil servants' housing allowances.

The Zambian High Court said that a deterrent punishment was required given the amount of money stolen. Seven others were convicted for their part in the scheme, receiving sentences of between 10 and 15 years.

SWITZERLAND MONEY LAUNDERING REPORTS REACH RECORD HIGH

The number of reports of suspected money laundering in Switzerland rose sharply last year. The Federal Department of Justice and Police report that the value of assets covered by suspicious activity reports doubled in 2008 to reach a record high of €1.65bn. In total, there were 851 suspicious activity reports relating to money laundering last year, compared to 795 in 2007. Around 70% of the reports were made by banks.

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If you would like further advice, please contact Daren Allen.

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