

# MONEY LAUNDERING LAW

The regulatory news update from DLA Piper

# UK NEWS

## ANTI-MONEY LAUNDERING SUPERVISORS' FORUM PRODUCE DOCUMENT ON RISK-BASED APPROACH TO AML SUPERVISION

In March, the Anti-Money Laundering Supervisors' Forum ("AMLSF") and the FSA created a document entitled "A risk-based approach to anti-money laundering supervision in the UK" ("AML document"). The document was published on the FSA website on 14 April 2008.

### WHAT IS THE AMLSF?

The AMLSF was created by HM Treasury in 2007. The Forum is made up of UK bodies which, under the Money Laundering Regulations 2007, SI 2007/2157, have supervisory responsibilities. The number of bodies with such responsibilities has increased since the Regulations came into force and it was felt that the AML document was necessary to assist in the creation of a coherent and effective risk-based approach to AML supervision in the UK.

### CREATING A COHERENT RISK-BASED APPROACH TO AML SUPERVISION

The AML document:

- outlines the principles involved in applying the risk-based approach to AML supervision;
- establishes good practice in the design and implementation of an effective risk-based approach to AML supervision; and
- identifies the issues that supervisory authorities may wish to consider when applying a risk-based approach.

## REGISTRATION FOR PAID TRUSTEES DELAYED

HMRC has announced that it is still in the process of finalising its revised MLR9 registration guidance and that as a result a revised deadline will be set for the registration of paid pension trustees under AML legislation.

This deadline is likely to be four weeks after the revised guidance is published and HMRC has advised trustees they may wish to delay registering until this guidance is available.



## LIST OF NON-EEA COUNTRIES WITH EU-EQUIVALENT AML AND CFT LEGISLATION PUBLISHED

HM Treasury has published a list of non-EEA countries that the EU Committee on the Prevention of Money Laundering and Terrorist Financing has decided have legislation to combat money laundering/terrorist financing which is equivalent to the EU standard. The countries listed were: Argentina, Australia, Brazil, Canada, Hong Kong, Japan, Mexico, New Zealand, the Russian Federation, Singapore, Switzerland, South Africa and the USA.

Although the list is a voluntary and non-binding measure, it will be useful to firms in assessing the equivalence of a jurisdiction in respect of money laundering. More specifically, the list will be relevant when carrying out simplified customer due diligence exercises and when relying on other regulated firms having undertaken customer due diligence.

## FSA PUBLISHES CONSULTATION PAPER ON AMENDMENTS TO **ENFORCEMENT POLICY**

When the Decision Procedure and Penalties (“DEPP”) manual and Enforcement Guide (“EG”) were first published in July 2007, the FSA agreed they would be reviewed annually and any changes proposed would first be consulted on. The FSA has adhered to its commitment and published a Consultation Paper (“CP”) in order to obtain feedback on proposed amendments to DEPP and EG.

Amongst the key changes proposed to EG is the introduction of a new chapter which will detail enforcement powers the FSA has been granted under legislation other than the Financial Services and Markets Act 2000 (“FSMA 2000”), which will include statements of policy in relation to new AML legislation.

The text proposed by the FSA for this new chapter describes the powers the FSA has under the Money

Laundering Regulations 2007, SI 2007/2157 (“Regulations”) and confirms that the FSA’s remit has been widened so that they now monitor compliance with the Regulations of non-authorized firms, as well as authorized firms. The FSA’s sanctioning powers have also been extended to cover the ability to impose civil penalties for breaches of the Regulations, in addition to existing prosecution powers under FSMA 2000 and the Regulations.

The amended text re-affirms the FSA’s risk-based approach to enforcement of the Regulations. Where a course of action breaches both the Regulations and the FSA’s rules, the FSA will look at the surrounding circumstances in order to choose the best course of action, although in most cases, when regulatory action is required, it is foreseen that the FSA will continue to sanction authorized firms using FSMA 2000 powers.

This consultation will end on 29 August 2008, following which the FSA will publish feedback on responses received. The final amended texts are due to be published in December 2008.

# SOCA PUBLISHES SECOND ANNUAL REPORT

The Serious Organised Crime Agency (“SOCA”) published its second annual report on 15 May 2008. SOCA was created to target serious organised criminals. The report highlights SOCA’s achievements in its second year in operation, including:

- in the fight against drugs: the seizure of almost 90 tonnes of class A drugs, 30 tonnes of cannabis and 60 tonnes of chemicals which could have produced 190 tonnes of cocaine;
- the deployment of new tools and powers: 53 disclosure notices issued requiring individuals to co-operate in investigations and 10 ancillary orders including travel restrictions and director disqualifications;
- 46 warnings on crime threats issued to over 2,500 private sector organisations in the UK — as a result of one warning given to a bank, it is understood that a potential loss of £500,000 was averted;
- improved intelligence: 2,000 serious organised criminals subject to SOCA operational activity; and
- cutting off criminal cash flows: over £46m criminal assets restrained by the domestic courts.

## FATF NEWS

### MONEY LAUNDERING AND TERRORIST FINANCING THROUGH THE REAL ESTATE SECTOR

The Financial Action Task Force (“FATF”) has published a report examining money laundering and terrorist financing committed through the real estate sector.

The FATF is concerned that the real estate sector has a number of characteristics which make it attractive to money launderers or terrorist financiers. The report, therefore, aims to promote an awareness and understanding of the ways in which real estate activity can be used as a tool for money laundering or terrorist financing.

Specifically, the report identifies some common basic methods of real estate sector misuse, including:

- use of mortgage schemes; and
- use of investment schemes and financial institutions.

The report goes on to list risk indicators that the FATF has developed related to each of the methods. It is hoped that these indicators will be a useful tool when carrying out customer due diligence and risk analysis on clients.

## The FATF’s mandate is revised

**At a meeting of FATF Ministers on 12 April 2008, the work of the FATF was discussed and a revised mandate endorsed.**

It was agreed that the FATF is at the centre of international efforts to combat financial crime by denying criminals and terrorists access to the financial system. The new mandate determines the FATF’s direction, defines its priorities for 2008-2012 and equips the FATF to be more responsive, strategic and outward-looking in its efforts to protect the international financial system from abuse. In brief, the new mandate:

- improves global surveillance of evolving criminal and terrorist threats through regular FATF reporting;
- responds to new threats that affect the integrity of the financial system;
- builds a stronger, more practical and ongoing partnership with the private sector which is at the front line of the global fight against money launderers and terrorist financiers; and
- supports global efforts to raise standards, especially in low capacity countries.

## THE IMF CONTINUES TO STRENGTHEN ITS BATTLE AGAINST MONEY LAUNDERING AND *TERRORIST FINANCING*

Since September 11 2001, the IMF has intensified its activities in the money laundering arena and extended them to combating the financing of terrorism (“CFT”). The international community as a whole has prioritised the prevention of money laundering and terrorist financing and hopes as a consequence to protect the integrity of the international financial system and cut off the resources available to terrorists.

### **PROTECTING THE STABILITY AND INTEGRITY OF FINANCIAL INSTITUTIONS**

Of paramount concern to the IMF is the possible effect of money laundering on its members’ economies which could threaten the integrity and stability of financial institutions and systems and increase the volatility of international capital flows. As money launderers exploit the differences between national AML laws, preferring jurisdictions with weak or ineffective controls, it is crucial that countries adequately address money laundering issues to prevent the entrenchment of crime and the deterrence of foreign investment.

### **ADDRESSING THE THREAT**

The IMF is one of several international organisations that work closely with the FATF in developing a worldwide standard for AML and CTF. The FATF originally issued a list of 40 recommendations to guide national governments in implementing effective AML programmes. This list was substantially updated in 2003. Following the extension of its mandate in 2001, the FATF issued nine special recommendations on terrorist financing to supplement the 40 already in existence.

### **WHAT IS THE ROLE OF THE IMF?**

As a collaborative institution with near universal membership, the IMF is the ideal forum for information sharing, the development of common approaches and the promotion of desirable policies and standards. These steps are all essential in order to successfully tackle money laundering and terrorist financing. In addition to this, the IMF has been able to use its experience in conducting financial sector assessments, providing technical assistance in the financial sector and reviewing members’ economic systems to assist in the evaluation of compliance with the international standard and in addressing shortcomings.

## **Updated FAQs on PEPs published**

The Wolfsberg Group, which brings together international banks with the aim of developing financial services industry standards for AML and CTF policies, has published updated FAQs on politically exposed persons (“PEPs”). The purpose of the FAQs is to update the original version published in 2003 in order to assist firms in meeting their continuing regulatory obligations, following continued regulatory focus on the risks associated with PEPs.

### **WHAT IS A PEP?**

In essence, a PEP is someone with a prominent public function who, as a result, is vulnerable to corruption. In order to mitigate this vulnerability, under AML requirements, firms must conduct enhanced due diligence when a third party with whom they are doing business is a PEP.

The new FAQs have extended the scope of the 2003 FAQs, which were focused on private banking and wealth management sectors, to cover other financial services sectors and reflect the current UK and EU risk-based approach to AML compliance. Any firms that deal with PEPs are advised to read the FAQs and consider if improvements to their current PEP identification and risk management procedures are required.

# international round-up

## EU FINANCIAL INTELLIGENCE UNITS' PLATFORM PUBLISHES REPORTS

The EU Financial Intelligence Units' Platform ("FIUP") has published two reports, the first into confidentiality and data protection in respect of the activities of Financial Intelligence Units of EU member states ("FIU Report") and the second into feedback on money laundering and terrorist financing cases and trends ("Feedback Report").

### WHAT IS THE FIUP?

The FIUP is an informal group, created by the European Commission in 2006 and tasked with facilitating the co-ordination and exchange of information among FIUs in order to identify problems and good practices in the implementation of the Third Money Laundering Directive, 2005/60/EC.

### Albania passes law on money laundering and terror funding

The Albanian Assembly has passed in principle a draft Law on Prevention of Money Laundering and Funding Terrorism.

The law will apply to merchant banks, non-banking financial institutions and postal services that carry out payment services as well as anyone who issues or manages financial transactions. In addition, the law will apply to state authorities in charge of the sale of public property and anyone involved in the sale or lease of state property.

### THE FIU REPORT

The FIU Report looks at the links between money laundering and terrorist financing legislation, which requires the processing of personal data by FIUs, and data protection legislation, which serves to protect data subjects. The report identifies points of convergence and inconsistencies which could cause problems for FIUs striving to comply with the legislation. In particular, the report looks at:

- information processing by FIUs;
- use and exchange of data by FIUs; and
- information sharing within a group or network by an institution or person reporting a suspicious transaction.

### THE FEEDBACK REPORT

The report (entitled "Feedback on money laundering and terrorist financing cases and typologies") had two main objectives:

- to consider the existing methods and procedures by which FIUs feed back on money laundering and terrorist financing to their reporting sectors; and
- to identify good practices to improve the quality and effectiveness of the feedback.

Under the Third Money Laundering Directive, 2005/60/EC, FIUs are obliged to have appropriate mechanisms in place to enable them to provide information on suspicious transaction reports made by reporting entities and money laundering and terrorist financing practices in general.

### South Africa disbands special anti-corruption unit

International anti-corruption organisations have expressed concern at the news that the Directorate of Special Operations, South Africa's specialised unit dedicated to tackling corruption and organised crime, has been disbanded following an African National Congress ('ANC') party and National Executive Council ('NEC') meeting resolution issued in December. The Directorate of Special Operations, known as the Scorpions, was in the process of investigating certain NEC members and this disbandment casts serious doubt on the integrity of the ruling ANC party and the government of South Africa.

The Scorpions, which boasted conviction rates of up to 93 per cent, will now be rolled into the South African Police Services.

### Australia produces 'interpretations' of AML/CTF laws

Australia's AML regulator is to publish a collection of 'interpretations' of the country's AML laws to provide clarification in response to people's concerns about the complexity of the new regime. The guidance, which will not have any legal status or effect, will cover wide-ranging topics from the registration of "alternative remittance providers" to a list of the institutions and people who have to submit reports.

Five interpretations will be issued this year with consultation on a list of topics for 2009 already under discussion.

Sceptics of the scheme say the regulators will interpret the law in order to promote government policy.

## SIX SOUTH EASTERN EUROPEAN COUNTRIES SIGN MOU

Six south-eastern European countries have signed a memorandum of understanding to combat money laundering and terrorist financing. It is recognised that the countries have made significant improvements in tackling the two criminal activities but that there was still more to be done for which money must be set aside.

The countries' representatives are to meet once a year to discuss progress.

### Macau blocks new casinos to improve money laundering reputation

It is believed that strong competition between casinos in Macau is partly to blame for its lax AML standards. In recent years gambling in Macau has mushroomed to such an extent that it has surpassed Las Vegas to become the world's biggest gambling haven by revenue last year. In an effort, however, to reduce this competition and thereby bolster the area's anti-money laundering efforts, the government of Macau will prevent the entry of any new casinos to the market.

### UAE AND RUSSIA MOU

The UAE and Russia have signed up to a memorandum of understanding to combat money laundering and terrorist financing. Both countries will co-operate in the fight against organised crime by exchanging information and through the creation of a joint taskforce.

## Barclays France denies allegations of money laundering

In proceedings in France, four Barclays France directors have denied knowledge of money laundering. The French branch of Barclays and the four directors in question are facing charges of laundering €9m between 1997 and 2001 through the acceptance of deposits from a fraudulent source into accounts opened by Jewish cultural associations connected to the education foundation *Fondation communautaire pour l'enseignement et l'éducation* ("FCEE").

It is alleged that the FCEE funded multiple associations with small loans which were written off as subsidies and later withdrawn and paid to the FCEE directors. Barclays France denies that its AML controls allowed the laundered money to pass through the bank's financial systems and has asserted its ongoing commitment to satisfying its AML obligations.

## Bermuda defends AML record

Following the charges of a UK MP that Bermuda's record of tackling money laundering was "appalling", Bermuda ministers have defended the island's commitment to improving the national system.

Concerns were raised that, despite hiring more regulators since 2000, some public bodies in Bermuda had accounts which were up to six years in arrears. In addition, the country was found to be materially non-compliant with money laundering measures in 22 per cent of cases with material non-observance in 44 per cent of cases in the insurance sector.

A UK report, written by an influential committee of British MPs, which contained a number of criticisms, recognised that whilst overseas territories such as Bermuda had evolved into tax havens as a means of diversifying their economies, Britain needed to manage the situation to avoid liability for lax standards of financial regulation.

## EUROPE OVERTAKES US AS GLOBAL LAUNDERING CAPITAL

UK-based economist Loretta Napoleoni has told a conference in Sydney that, as a result of tightening US regulations, Europe has become the "global washhouse" for proceeds of crime and terrorist finance.

Napoleoni claims that the Patriot Act succeeded in blocking the entry of terror money into the US but did not curb organised crime abroad; this simply shifted to Europe where a newly unified European currency offered organised criminals unexpected opportunities for growth.

Prior to the introduction of the Euro, tourist money exchanges were the medium of choice for integrating various currencies into the financial system. This was done at a significant cost and risk of exposure to the criminals concerned. With the introduction of the Euro and the lack of EU regulation requiring the reporting of cash movements between member countries, this cost and risk were substantially reduced. This has led international laundering syndicates to conduct much of their business through Europe.

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

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