



SEPTEMBER 2008

MONEY LAUNDERING LAW

The Regulatory News Update from DLA Piper

EVERYTHING MATTERS

UK NEWS

LAW SOCIETY REVEALS IMPACT OF MONEY LAUNDERING ON SOLICITORS

A Law Society survey has revealed that solicitors have been quick to update their policies and procedures following the implementation of the new Anti-Money Laundering Regulations. Of those solicitors that responded to the survey:

- 95% had updated their policies and procedures within six months of the new regulations coming into force.
- 57% had encountered difficulties in identifying non-face-to-face clients.
- 72% did not act for so-called politically exposed persons.
- 64% found that the simplified due diligence provisions were useful in reducing some client due diligence requirements.
- 67% said they did not use the reliance provisions designed to ease the compliance burden.

The Law Society will be conducting another survey in September and is seeking to ascertain whether the actual compliance costs to solicitors were proportionate to the money laundering risks involved.

HMRC UPDATES MONEY LAUNDERING GUIDANCE

HMRC has updated its money laundering guidance, MLR 9, and has confirmed that pension trustees are not required to register with HMRC under the new regime. The updated guidance clarifies two points:

- Only trust or company service providers ('TCSPs') that are currently supervised by HMRC need to apply for registration. This does not include businesses already supervised by the FSA or other designated professional bodies such as the Law Society.
- Some trustees are not considered to be TCSPs, including trustees of occupational pension schemes.

Trustees that were in business before 15 December 2007 have until 30 September 2008 to register. The onus is on TCSPs to determine whether they fall within the regime, and it is expected that many may register on a precautionary basis.

RCPO secures three landmark Serious Crime Prevention Orders

The Revenue and Customs Prosecutions Office ('RCPO') has obtained its first ever Serious Crime Prevention Orders ('SCPOs') following an investigation by SOCA.

Loch Hakimzada, his wife Praveen Hakimzada and Kuljeet Grover received custodial sentences totalling 17 years for their part in laundering around £25m for organised crime networks over a period of two years. The SCPOs provide that these individuals will be at risk of an additional five years in prison if they carry out any activities relating to the possession and movement of money in the five years following their release from prison.

Following the ruling, Bill Hughes, Director General of SOCA, said: 'SCPOs are an excellent tool in the fight against organised crime...It is not enough to catch and convict, we need to make it our business to ensure that criminals are prevented from returning to their illegal activities...SOCA will continue to ensure all powers available are employed to make the UK an unattractive place to commit serious organised crime.'



What are SCPOs?

SCPOs were created through the Serious Crime Act 2007, and brought into force in April 2008. They allow SOCA and other law enforcement agencies to apply to a judge to place conditions, restrictions or requirements on those involved in serious crime. The purpose of such orders is to protect the public by preventing, restricting or deterring those involved in serious crime from continuing their involvement following the end of their sentence.

Breaches of SCPOs are punishable by up to five years' imprisonment and an unlimited fine. SCPOs can last for up to five years from their date of commencement.

Scottish solicitor fined £500

John Gerrard O'Donnell, who ran his own law practice in Glasgow, has been fined £500 for repeated breaches of the Money Laundering Regulations. The Law Society of Scotland carried out a number of inspections in 2005 and 2006 and found that anti-money laundering ("AML") procedures and systems at his firm were inadequate.

O'Donnell had been asked to produce identification for 11 of his clients. Some of the files were marked 'no need for identification', with O'Donnell explaining that they were clients referred to him by a mutual friend.

During a second inspection in February 2006, the Law Society found no evidence of client identification nor any justification for its absence. The firm also did not have records identifying the sources of various funds received by it, which included cheques of £28,000 and £35,000 from separate clients relating to property purchases. It

was also unclear whether an amount of £10,000 had been provided by a Lloyds TSB counter cheque or bank draft. Further inspections in 2006 unearthed continuing examples of funds coming in to the practice without explanation for the receipt or source of the funds in question.

For these and other conduct breaches, O'Donnell was fined £500 and will be subject to further inspections at nine-month intervals until the end of 2009.

CITI STOPS TAKING ON NEW ACCOUNTS TO FOCUS ON AML

Citibank's personal banking division stopped taking on new accounts whilst it reviewed and improved its anti-money laundering systems and controls. A Citi spokesperson said that an internal review had prompted the action, emphasising that no customers were affected by the decision.

Citi said: *'The business has grown 70% over the past 12 months and is taking a pause with regard to new accounts while we ensure adequate resources are in place.'*

The bank declined to say that the halt to new account take-ons had been inspired by any intervention by the FSA, and stressed this was purely an internal matter. The FSA expects all firms to have adequate systems and controls in place, and banks have a duty to determine how best to assess and address the risks posed by their customer bases.

FSA'S ANNUAL REPORT 2007-2008

The FSA's Annual Report emphasised the increased attention paid by the regulator to AML issues in the past year. The FSA has imposed financial penalties of over £1.6m in the past year for breaches of money laundering provisions. The regulator also confirmed that it had used its Section 166 powers to generate skilled persons reports in the area of money laundering systems and controls on a number of occasions in the past year.

FATF NEWS

The Financial Action Task Force ('FATF') has been very active over the summer, issuing a number of reports and guidance. The highlights of the FATF's publications include:

BEST PRACTICES PAPER ON TRADE-BASED MONEY LAUNDERING

The FATF has outlined a number of best practice measures designed to improve the ability of competent authorities to detect and investigate money laundering and terrorist financing through the trade system. Misuse of the trade system is recognised as one of the main methods by which criminal organisations and financiers move money by disguising its origins and integrating it into economies.

The FATF considers that abuse of the international trade system by criminals will become increasingly common, as other FATF AML and counter-terrorist financing standards become more effective.

Trade-based money laundering refers to the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise the illegal origins of finance activities. Ways in which trade based money laundering is carried out include falsely describing the price, quantity or quality of imports and exports, often through the use of fictitious trade documents carried out by front companies. The most basic schemes identified involve fraudulent multiple invoicing of goods and services, illicit trafficking of stolen goods and piracy of products.

MONEY LAUNDERING AND TERRORIST FINANCING RISK ASSESSMENT STRATEGIES (ML/TF)

Encouraging the development of national ML/TF risk assessment strategies is essential if competent authorities are to understand and implement effective controls, according to the FATF.

National risk assessments should be considered as 'fundamental background information' for the development and updating of anti-money laundering and counter-terrorist financing controls.

Information that competent authorities should gather include:

- The frequency, nature and scale of ML/TF crimes.
- The weaknesses in AML and Counter-Terrorist Financing ('CTF') systems and controls.
- Particular jurisdictional features that might make it more attractive to criminals.

This information should be periodically reviewed and filtered through to assist those enforcing the control regime, from supervisors on the ground to national intelligence units and institutions. Such national risk assessments would enable reviews and reassessment of existing safeguards, and allow proactive targeting to counter new threats. Carrying out assessments should also benefit competent authorities from an international

perspective, assisting cooperation across borders and allowing more focused, prioritised and collaborative enforcement efforts.

VULNERABILITIES OF COMMERCIAL WEBSITES AND INTERNET PAYMENT SYSTEMS

The FATF has also published a study analysing the risks associated with commercial websites and payment systems. Their work focused on mediated websites, meaning websites through which private individuals can sell to each other via an online marketplace, like eBay and its variants.

Such sites are regarded as particularly susceptible to criminal misuse because of their popularity, ease of use and public international access. Relatively easy high-volume cross-border trading in this way is seen as a boom area for money launderers and terrorist financiers. Ten countries, including the UK, as well as representatives from eBay and PayPal, contributed to the FATF study. The study is aimed at raising awareness in this area, and includes case studies illustrating previous incidents where such websites and payment systems have been exploited.

FATF evaluation of *Hong Kong* and *Russia*

The FATF has reported on the AML and CTF measures implemented by Hong Kong and Russia. The reports describe and analyse the actions taken by these jurisdictions, and provide recommendations to each on how certain aspects of their control systems could be strengthened.

HONG KONG – ON TRACK

Hong Kong is recognised as having a good legal structure to combat money laundering, and is mostly compliant with the FATF recommendations.

Despite being an international finance centre with over 200 banking institutions, the local authorities were not able to determine the volume of money laundering through Hong Kong. The primary domestic sources of laundered funds are illegal gambling, fraud and financial crime, loan sharking and vice.

Investigations have found no evidence of terrorist financing moving through the province. The availability of corporate services and the ease of acquiring shell companies do, however, contribute to the risk of Hong Kong being used for structuring the proceeds of crime.

RUSSIA – WORK TO BE DONE

Russia is said to have come a long way in a short space of time in implementing and enhancing AML and CTF systems. Many schemes involve the misuse of foreign legal entities and financial institutions, with laundered money often invested in real estate and securities, or used to buy luxury goods. The FATF recognised that the high level of public and private sector corruption impacted upon the efforts being made to combat laundering and terrorism financing activities. A number of recommendations were made. These include:

- Improving customer due diligence.
- The need to implement without delay suggested changes brought about by policy reviews and risk assessments carried out by Rosfin monitoring.
- Reviewing and updating all supervisory laws and practices – none of the relevant authorities is seen to have adequate sanctioning powers, and criminal ownership of financial institutions is not specifically prohibited.
- Implementing systems to improve transparency around beneficial ownership and control of legal persons.
- More effective mechanisms for freezing and confiscating terrorist assets, and for unfreezing assets where funds have been inadvertently affected.
- Improving systems around AML requirements for money and value transfer services.
- Implementing more effective cross-border declaration and disclosure systems.

Generally, not all authorities in Russia were seen to keep quality statistics, and dedicated AML and CTF staffing was under-resourced. Overall, whilst great strides had been made, there remains work to be done in order for the Russian Federation to be fully compliant with FATF standards and recommendations.

Guidance on adopting a risk-based approach for *TCSPs, accountants and dealers in precious stones and metals*

Risk-based approach guidance was published by the FATF to assist TCSPs, accountants and dealers in precious metals and stones to tackle money laundering activity more effectively in their respective sectors.

The guidance is aimed at developing a common understanding of what the risk-based approach involves, and outlines high-level principles for its application. Examples of good practice in the public and private sectors in relation to the design and implementation of effective risk-based approach systems are also included.

The international diamond industry in particular has welcomed the guidance. The FATF recognised that diamonds, jewels and precious metals are a specific concern in the money laundering arena as they allow significant value to be transferred across borders in very small quantities. Recommended measures include tighter inspection of diamonds at import and export offices, and the use of payment systems through specialist and recognised banks.

international round-up

EUROPEAN COMMISSION TAKES ACTION AGAINST 15 MEMBER STATES

The Commission is pursuing infringement procedures against 15 Member States for failure to implement the Third Money Laundering Directive (2005/60/EC).

Formal requests are on their way to Belgium, Czech Republic, Germany, Greece, Finland, France, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Spain and Sweden. The Directive should have been implemented by 15 December 2007.

Each Member State has two months to reply to the reasoned opinions, which set out the Commission's position regarding the infringements. The Commission will refer these matters to the European Court of Justice in the absence of satisfactory replies.

Charlie McCreevy, European Commissioner for Internal Market and Services, has also written to the offending states threatening legal action for their failures to implement the Directive. McCreevy said: 'The fight against money laundering and the financing of terrorism is a European priority', and that the Commission had no other choice but to take legal action 'and to do so in the most timely fashion possible.'

The Czech Republic, Portugal and the Netherlands have all since introduced bills seeking to transpose the Directive into their respective national laws.

OLAF reports increased activity in 2007

The European Anti-Fraud Office ("OLAF") has announced that, at the end of 2007, it was investigating a total of 408 cases. OLAF works inside and outside the EU in conjunction with Member States, other countries and international organisations in order to protect the EU's financial interests against fraud and corruption. Franz-Hermann Bruner, OLAF Director General, said: 'The figures and cases in the report show clearly how seriously irregularities, fraud and corruption are being taken by OLAF and by the European Institutions in general.'

Their activity report also states that OLAF is internally investigating a number of European institutions and agencies – 70 out of the 408 reported cases in 2007, or 17% of OLAF's workload, related to internal irregularities.

Australia and India sign MoU

Australia and India have signed a memorandum of understanding to combat money laundering and terrorist financing. The two countries are now expected to conduct regular talks aimed at sharing information and increasing cooperation in the fight against money laundering and terrorist financing.

India to join the FATF

India is expecting to win membership of the FATF after completing all but one of the required prerequisites to join the task force. The remaining requirement, to include crimes such as insider trading and human trafficking in the schedule of offences to their Prevention of Money Laundering Act, 2002 ('PMLA 2002'), will, according to a government official, be in place shortly.

The move comes at a time when the US were denying branch licences to Indian banks such as ICICI and the Bank of Baroda because India was not an FATF member. India had retaliated by withholding branch permissions for US entities like Citibank, leading to the US granting a temporary reprieve.

Isle of Man warns its financial services industry

The Isle of Man's financial services regulator, the Financial Services Commission ("FSC"), has announced that its newly finalised anti-money laundering regulations should be complied with from 1 August 2008. The regulations, which form part of the island's Financial Services Act 2008 which has received royal assent, are supplemented with an AML handbook. An FSC spokeswoman said the handbook was analogous to, but not identical to, the UK's Joint Money Laundering Steering Group Guidance Notes. Isle of Man firms have until 1 January 2009 to comply with the non-AML provisions contained in the Act.

Bermuda passes bills to fight money laundering

Bermuda has strengthened its AML and CTF powers by passing two new bills. The bills will allow the courts to confiscate items connected with money laundering crimes, and introduce a tipping-off offence where an investigation is in progress.

GREECE SCRAPS ITS NATIONAL AML BODY

Greece's interior ministry has abolished the existing independent body that combats money laundering and terrorist financing, and removed the body's leader. Giorgos Zorbas, former head of the replaced authority, has repeatedly clashed with the Greek government in recent months, with his investigations apparently cut short or frozen where internal ministry officials and political parties have allegedly been implicated. This also follows in the wake of a protracted scandal regarding alleged bribes paid to Greek politicians by Siemens. Zorbas' supporters claim the moves are politically motivated.

A new finance industry committee aimed at tackling economic crime and money laundering has been set up, supervised by the Greek finance minister, George Alogoskoufis.

Inconsistencies in Israeli AML standards

The Council of Europe has reported that there are wide differences in the strategies displayed by Israel's financial institutions to tackle money laundering. The study says there is a lack of a common standard between banks and other organisations. The lack of uniformity was down to different areas of the industry being overseen by different regulators, such as the Bank of Israel, the Israeli Securities Authority and other ministries.

CHINESE DEATH SENTENCE FOR LAUNDERER

Yan Dabin, a former director and municipality official of the Wushan County transportation bureau, has been sentenced to death following the country's first successful prosecution for 'corrupted money laundering'.

Yan's assets have also been seized. His wife, Fu Shangfang, has been sentenced to three years' imprisonment and a 500,000 yuan (\$73,100) fine.

According to a statement, Yan received 22.26m yuan (\$3.25m) in bribes. Fu used 9.43m yuan (\$1.38m) to buy houses and financial products. The bribes were equal to more than 20% of the county government's annual legal income. The bribes were reportedly paid by local construction firms that were bidding for local projects.

The investigation came about when an apartment owner complained to the police about a water leak from her ceiling. When police inspected the vacant apartment upstairs, they found boxes containing more than 9m yuan. Yan was discovered to be the owner of the apartment.

The hard line being taken by the Chinese authorities is further proof of China's willingness to impose the harshest of penalties for a wide range of offences, including financial crimes.

Philippines seeks to strengthen AML laws

The Philippines has responded to the FATF's reports that money launderers are broadening their strategies to other investment areas such as the buying and selling of real estate, precious stones and metals and casinos. In order to face these new challenges and keep pace with international standards, legislators are looking to amend existing AML laws to ensure that such non-financial businesses and professions, and any professional advisers working on and carrying out relevant transactions, are captured.

Prospero Nograles, Speaker of the House of Representatives, Congress of the Philippines, said: *'this will not only increase investors' confidence but also ensure that the Philippines is not used as a site to launder proceeds of unlawful activities.'*

TURKEY TO REQUIRE FIRMS TO DEVELOP RISK-BASED AML

Turkey's financial intelligence unit, the FIU, has finalised a directive which will require banks and other financial institutions to introduce risk-based AML and CTF policies. Adopting the model of the EU's Third Money Laundering Directive, firms will be expected to develop internal AML policies, carry out monitoring of relationships and transactions, and appoint and train suitable staff in AML matters. All of these measures are to be underpinned by effective risk management.

These moves are seen as part of Turkey's attempt to align and harmonise their practices with those of the EU, as it strives to become a full member of the EU.

FOR FURTHER INFORMATION PLEASE CONTACT:

Daren Allen

Partner

London Office

T 020 7796 6824

F 020 7153 7710

daren.allen@dlapiper.com

This publication is a general overview and discussion of the subjects dealt with and is up to date as at the end of July 2008. It should not be used as a substitute for taking legal advice in any specific situation. DLA Piper UK LLP and DLA Piper Scotland LLP accept no responsibility for any actions taken or not taken in reliance on it.

Where references or links (which may not be active links) are made to external publications or websites, the views expressed are those of the authors of those publications or websites which are not necessarily those of DLA Piper UK LLP or DLA Piper Scotland LLP and DLA Piper UK LLP and DLA Piper Scotland LLP accept no responsibility for the contents or accuracy of those publications or websites.

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

This material was originally published by LexisNexis UK in September 2008.

www.dlapiper.com

DLA Piper UK LLP¹ and DLA Piper SCOTLAND LLP² are part of DLA Piper, a global legal services organization, the members of which are separate and distinct legal entities. For further information please refer to www.dlapiper.com/structure

A list of offices can be found at www.dlapiper.com

Regulated by (1) the Solicitors Regulation Authority, (2) the Law Society of Scotland

UK switchboard +44 (0) 8700 111 111

Copyright © 2008. DLA Piper. All rights reserved. 2866/AUG08/PF