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MONEY LAUNDERING LAW

The Regulatory News Update from DLA Piper

EVERYTHING MATTERS

UK NEWS

HMRC MONEY SERVICE BUSINESS ACTION PLAN PUBLISHED

In its money service business action plan, published on 9 September 2008, HMRC outlined a strategy to combat money laundering and terrorist financing in the money services business ("MSB") sector. The MSB sector comprises businesses such as money transmitters, bureaux de change and third party cheque cashers.

The HMRC plan was drawn up in response to HM Treasury's February 2007 paper, "*The Financial Challenge to Crime and Terrorism*", which highlighted the risk of abuse within the sector. Significantly, one fifth of money laundering investigations and one third of terrorist financing investigations currently take place within the MSB sector. HMRC, therefore, has committed to increasing the security of MSB transactions through a risk-based strategy of deterrence, disruption and detection.

Together with the Serious Organised Crime Agency, HMRC will address non-compliance with money laundering legislation and regulations by educating businesses, as well as imposing sanctions where necessary. HMRC will also team up with private sector bodies such as the Money Service Business Forum and the Anti-Money Laundering Supervisors' Forum to increase compliance within the MSB sector.

HMRC REVISES MLR8 GUIDE

HMRC has updated its money laundering guidance MLR8, which explains the requirements of the Money Laundering Regulations 2007. The updated version aims to offer full guidance as to the implementation of legal requirements relating to money laundering and terrorist financing for relevant businesses supervised by HMRC. Specific guidance is included for high value dealers, bureaux de change and money transmission businesses.

The principal amendment in the updated guide is the removal of the section 4 requirement for all businesses to have policy statements setting out their risk profiles

and anti-money laundering ("AML") procedures. It should be noted, however, that section 5 still requires documentation recording a business's AML risk management policies and procedures, but the extent of such documentation will depend on the size and nature of the business.

Further amendments include additional guidance on identifying companies and their beneficial owners, amendments concerning financial restrictions and the addition of an appendix containing guidance for trust or company service providers.

Drug trafficking and money laundering network broken up

On Wednesday 6 August, Nottingham Crown Court handed out prison sentences totalling 27 years to two men in respect of money laundering and drug offences. Gavin Dawes, sentenced to 15 years, and Brian Peck, sentenced to 12 years, both pleaded guilty to several money laundering offences and to conspiracy to supply controlled drugs. Their criminal network was discovered when an investigation by SOCA and Nottinghamshire Police resulted in the seizure of drugs worth £13.6 million and cash totalling £570,000. Three other members of the network have also pleaded guilty to money laundering offences and will be sentenced at a later date.



INVESTMENT COMPANY DIRECTORS: REGISTRATION AS TRUST OR COMPANY SERVICE PROVIDERS ("TCSPs")

Guidance on the Money Laundering Regulations 2007 ("the Regulations") published by the Association of Investment Companies ("AIC") clarified that the majority of directors of investment companies are unlikely to need to register with HMRC as TCSPs. However, the AIC advised directors to keep their status under review and reminded them that the need to register may arise if they hold other directorships. The AIC publication also highlighted the need to read the HMRC guidance on the Regulations rather than relying on AIC guidance, and suggested that directors consider taking professional advice.

Law Society gives further guidance on money laundering

The Law Society has published guidance on two possible money laundering risks facing law firms as a result of the UK housing market downturn.

STAMP DUTY RELIEF FRAUD

As stamp duty relief applies only to property transactions worth up to £175,000, the Law Society has identified a risk that parties will arrange "off-contract payments" so that the transaction falls below the threshold. All parties involved in executing contracts with false values in order to fraudulently obtain tax relief, including their solicitors, risk committing the offence of entering into an arrangement to facilitate money laundering under section 328 of the Proceeds of Crime Act 2002.

FORECLOSURE RESCUE FRAUD

The Law Society considers that government proposals to implement a foreclosure rescue scheme for homeowners unable to meet mortgage repayments may expose the UK to a new fraud risk. The schemes offer to pay off homeowners' mortgages and rent the property back to them, giving them an option for its repurchase later on.

Fraudulent foreclosure rescue schemes have been identified in the USA, where an inflated loan is taken out against the property by the purchaser, often a criminal syndicate. The purchaser will then default on the loan, leaving the original homeowner to be evicted by the bank as a mere tenant. In order to minimise the risk of such fraud, the Law Society advises that firms consult their mortgage fraud practice note, follow the guidance in the Council of Mortgage Lenders' Handbook, research clients and foreclosure schemes thoroughly, and advise clients on the risks of foreclosure.

The Law Society is also continuing its project to assess the impact of the Money Laundering Regulations on solicitors by inviting further information from firms relating to clients lost as a result of compliance with the regulations, difficulties identifying a client to the standard required, or significant costs incurred in complying with the regulations.

MLROs URGED TO STAY VIGILANT DURING FINANCIAL CRISIS

At the FSA's 26th International Symposium on Economic Crime in September, the FSA reiterated that extra vigilance is needed while turbulent economic conditions continue. Philip Robinson, FSA Financial Crime & Intelligence Division Director, restated the FSA's January warning that "tighter economic conditions could increase the incidence or discovery of some types of financial crime, or lead to firms' resources being diverted away from tackling financial crime."

It is thought that suspicious transactions may be harder to spot in an uncertain market where large sums are commonly being moved at short notice. Money launderers could use this to their advantage, placing extra pressure on MLROs. On the other hand, however, some commentators consider that a slowdown in business caused by a shortage of credit will ultimately allow transactions to be more closely scrutinised.

JMLSG UPDATED GUIDANCE ON EQUIVALENCE

Firms now have the benefit of further guidance from the JMLSG as to the assessment of whether the requirements of other jurisdictions are equivalent to those of the Third Money Laundering Directive ("the 3MLD"). Such guidance is particularly useful given that firms are entitled to carry out a simplified due diligence process where the customer is a firm subject to equivalent requirements in another jurisdiction. Firms in equivalent jurisdictions may also be relied upon to carry out due diligence on behalf of firms subject to the 3MLD.

The key points emerging from the guidance are as follows.

- All countries in the European Economic Area are equivalent.
This includes the 27 EU member states, plus Norway, Iceland and Lichtenstein. Certain French, Dutch and UK dependencies and overseas territories are identified as equivalent, including Jersey, Guernsey and the Isle of Man.
- Equivalence only applies to customer identification.
Equivalence does not provide any exemption to other due diligence requirements such as the ongoing monitoring of business relationships.

- The vast majority of Financial Action Task Force ("FATF") members are equivalent.
Nearly all non-EU full members of the FATF are listed as equivalent. The only FATF States not identified as equivalent are China and Turkey.
- The Gulf Cooperation Council jurisdictions are not equivalent.
Despite the Gulf Cooperation Council being a full FATF member, its members consist entirely of non-FATF jurisdictions. Since these countries – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE – make few of their mutual evaluation reports public and have not for the most part enacted legislation equivalent to the 3MLD, they are not classed as equivalent jurisdictions.
- Factors for assessing equivalence of other jurisdictions.

The guidance specifies seven areas for firms to consider when making their decision on equivalence. These include "contextual factors" such as political stability, public criticism of a jurisdiction, implementation standards, the need for up-to-date assessment, and the incidence of trade with the jurisdiction.

JMLSG: PROPOSED CHANGES TO DECEMBER 2007 GUIDANCE

The Joint Money Laundering Steering Group ("the JMLSG") has proposed a number of changes to part I of its December 2007 Guidance to the Money Laundering Regulations.

There are two main groups of proposed amendments, which relate to chapter 6 of the guidance:

- 1 Changes reflecting the amended reporting and tipping off provisions of the Terrorism Act 2000 and the Proceeds of Crime Act 2002, which bring the UK into line with the Third Money Laundering Directive.
- 2 Changes to paragraphs on external reporting, which reflect the Home Office's decision not to set out a prescribed form for making reports.

The JMLSG is currently considering the responses it has received to these proposals.

international round-up

SWITZERLAND OFFERS MORE PROTECTION FOR MLROS

MAXIMUM FINE FOR SWEDISH BANK

The Swedish financial regulator has imposed a fine of SEK 50 million (\$7.8 million) on Forex, a bank operating in Sweden, Denmark, Norway and Finland.

Forex was found to have grave AML deficiencies in all areas of its management, and the fine handed down was therefore the largest the regulator could impose. A comparable fine has never been imposed for AML procedural failings by the UK's FSA: the greatest such financial penalty to date was Abbey National's £2.32 million (\$4.1 million) fine in 2003. The Swedish regulator maintains, however, that the level of the fine will not cause Forex any liquidity problems.

Following a routine on-site inspection, the bank's customer ID verification procedures, potentially suspicious transaction scrutiny and reporting processes were found to be grossly inadequate. This was despite the bank receiving four weeks' advance notice of the regulator's visit. Forex has now put into place an action plan to remedy the issues, and will continue to be closely monitored.

Meanwhile, at the other extreme of AML compliance, another Swedish bank, SEB, has introduced a computerised AML compliance system allowing it to monitor potential money laundering activity across 17 countries. Whilst SEB operates in 20 countries worldwide, the system will be used to target the most challenging markets for money laundering activity such as Russia and Ukraine.

In line with FATF recommendations, new Swiss reporting legislation will remove the current requirement to include on suspicious transaction reports ("STRs") the name of the person making the report. Swiss regulated entities will, however, be obliged to name the financial intermediaries who initiated the suspicious transactions.

In offering such protection, Switzerland goes against the grain of international practice, as few other countries allow reporters to conceal their identity. Under British legislation, reporters must be identified on STRs, with the only route to anonymity, therefore, being an illegible signature.

Turkey targets money laundering laws

Turkey's quest for EU entry continues with the issue of a draft bill aimed at harmonising its regulatory code with EU requirements. A 2007 EC report stated that Turkey did not yet meet the necessary standards for free movement of capital, leading the Turkish government to focus on tightening its anti-money laundering laws. Under the draft bill, sanctions are to be linked to the value of the money laundered. It also provides that Turkish citizens may be tried in the jurisdiction where the alleged money laundering offences were committed.

Turkey has also signed a memorandum of understanding with Syria to combat money laundering and terrorist financing through the sharing of relevant information.

Malta at risk from intermediate money laundering

Malta's Financial Intelligence Analysis Unit has reported that the risk of Malta being used to launder the proceeds of crime is still high. 51 Percent of STRs lodged in 2007 related to foreign nationals or foreign organisations only and a further 5 percent involved both domestic and foreign parties. However, there was an overall decline of 20 percent in the number of reports recorded compared to the previous year.

It is also hoped that the implementation of the 3MLD, which was passed into Maltese national law with effect from 31 July, will see the incidence of money laundering activity on the island decline even further.

international round-up

SIX MACEDONIAN BANKS CENSURED FOR ANTI-MONEY LAUNDERING FAILINGS

Six Macedonian banks have been censured by the country's financial intelligence unit for deficiencies in their anti-money laundering procedures. However, information on the nature of the failings or whether any unlawful activity by the banks was suspected was not released. In recent years Macedonia has been receiving money from the EU amounting to several hundred thousand euros to help it fight terrorism, organised crime and money laundering.

NETHERLANDS: 3MLD *transposed into national law*

This August saw the passing of the 3MLD into Dutch national law. The move followed a letter from the EU to those member states which had still to transpose the Directive into national legislation. Although the Dutch authorities are reported to expect those affected to comply

with the new law as quickly as possible, there will be a grace period until January 2009. However, no delay at all is permitted in respect of client identification provisions or the requirements for enhanced due diligence on politically exposed persons.

MEXICO CALLS FOR EXTENDED AML PROVISIONS

The Mexican financial ministry has called for an extension of the country's anti-money laundering provisions to cover not only banks but also other financial services, including stock markets, investment firms, money changers and credit organisations. It also proposed that the sale and usage of travellers' cheques should be regulated in order that the government can monitor who buys them.

ARGENTINA PUTS NEW AML LAW BEFORE PARLIAMENT

As a member of the FATF, the prospect of potential sanctions for failing to meet international AML standards has resulted in the Argentine government considering a set of modifications to its national laws. Argentina is due to report to the FATF in 2009 on its progress in the AML area, and accordingly the financial intelligence unit and ministry of justice have proposed a bill containing several amendments to current legislation.

The country's current legislation on money laundering came into force in 2000, but as yet there have been no convictions resulting from it. The addition of a "self-laundering" clause is now proposed, to cover those who launder their own money without the involvement of a third party. Controversially, however, the bill limits the predicate crimes leading to a money laundering investigation, and excludes tax evasion from the list altogether. This has been attacked by commentators who consider that it sends the wrong message to the market.

CHINA INCREASES CHECKS ON MONEY FLOWS

Anti-money laundering officials in Chinese banks have welcomed new rules imposing increased reporting requirements on financial institutions in order to monitor more closely money inflows and outflows.

Unauthorised money transfers and illegal currency exchanges are suspected to be a growing problem, with foreign money inflows growing at a year-on-year rate of 45 percent whilst foreign investment in new projects actually dropped by 22 percent. Some such inflows could be made for the purpose of money laundering; evidence also suggests that corruption money may be leaving the country through other routes such as Macau casinos.

Whilst the Chinese government has indicated over the past six months that hot money inflows are a significant issue, it was not obvious to banks which checks they were expected to perform. Now a clear mechanism has been put in place to deal with the issue, and those involved in such transactions face severe fines of up to 30 percent of the unauthorised transaction, with higher penalties possible in the worst cases.

Nicaraguan government demands re-registration of charities

Charities in Nicaragua have attacked the government for requiring all charities to re-register with the Ministry of Governance to ensure they are not involved in money laundering or terrorist funding activity. Several charities have faced government accusations of money laundering, but argue that the government is using the legislation to persecute them.

Montenegro and Europol sign MoU

Montenegro and Europol have signed a memorandum of understanding to combat money laundering and other crimes such as drug trafficking and illegal immigration. The agreement will come into force once Europol receives notice that it has been ratified by Montenegro. By signing the memorandum with Europol, Montenegro aims to demonstrate its suitability for EU membership.

Poland increases money laundering prevention measures

Under proposed amendments to Polish law, all financial institutions would be required to register transactions over €15,000 and to report them to the General Financial Information Inspectorate. The finance ministry considers that this would bring Polish law into line with EU directives and FATF recommendations, following Poland's application for FATF membership.

INDIA PROPOSES STRINGENT STANDARDS FOR MONEY CHANGING BUSINESSES

The central bank of India has drafted guidelines which seek to prevent companies with net funds below certain thresholds from changing money.

The guidelines, if given the force of law, would require authorised money changers to appoint money laundering reporting officers. These officers would bear the responsibility for reporting all suspicious transactions involving the buying or selling of foreign currency, and for ensuring compliance with the central bank's regulations.

However the guidelines fall below best practice in respect of the required record-keeping period for transactions between \$200 and \$2,000. Client details for such transactions need only be kept for one year, rather than the five years required by many jurisdictions.

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

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