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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

On 29 October 2008 the FSA imposed a fine of £49,000 on Sindicatum Holdings Limited ("SHL"), a small corporate advisory firm whose clients are predominantly small and medium-sized companies based overseas. For the first time, the FSA also imposed a penalty against a firm's Money Laundering Reporting Officer ("MLRO"), fining SHL's MLRO Michael Whitehouse £17,500.

The fines were imposed as a result of the firm's inadequate money laundering systems and controls, particularly in relation to the verification and recording of clients' identities. Specifically, SHL's inadequacies included failing to obtain identification from new clients promptly. In one case, SHL did not obtain a certified copy of a passport for three years after accepting instructions from a client.

The FSA evaluated SHL's compliance with its own internal procedures, prepared by external consultants, over a period of four years. It is not clear whether the external consultants, who also reviewed the operation of the procedures on a quarterly basis, raised any concerns with SHL as to its compliance. Whether or not they did so, this final warning highlights the risks of simply

delegating responsibility for compliance to external consultants, as the FSA discovered that the firm had failed to implement the procedures it had commissioned.

In determining the level of the fine, the FSA took into account SHL's limited resources and ability to pay. The FSA indicated that the severity of the failings would have justified a larger fine had it not been for the firm's financial circumstances.

The FSA clearly hopes that the sanction will alert other firms to the need for compliance. The head of retail enforcement at the FSA, William Amos, said: "This fine is a warning to firms and individuals about the importance of complying with our rules in this area and we will not hesitate to clamp down on failures, where necessary."

### ***Confiscation order against Scottish criminal mastermind***

The Edinburgh High Court has imposed a confiscation order for £747,000 on James Stevenson from Burnside, Lanarkshire. Stevenson, known as "The Iceman", was jailed last year for 12 years and nine months for money laundering. The offence was thought to relate to the proceeds of drug trafficking. The Scottish Crime and Drug Enforcement Agency launched an investigation, as a result of which Stevenson admitted to laundering £1 million. The confiscation order, issued by Lord Uist on 24 October 2008, reflected the value of Stevenson's identifiable criminal assets, minus the £200,000 confiscated from him on his arrest.



# HM TREASURY GUIDANCE TO FIRMS ON RESTRICTIVE MEASURES AGAINST IRAN

On 11 November 2008 the Treasury issued guidance to firms on the implementation of EU Regulation 437/2007 ("the Regulation"), as amended by EU Regulation 1110/2008, which came into force on 12 November 2008.

The amended Regulation implements in the EU the United Nations Security Council Resolution 1803 ("the UN Resolution") which requires all states to exercise vigilance over any financial institution's activities in their jurisdiction which relate to banks domiciled in Iran or their branches and subsidiaries. States are informed that vigilance will be required over all activity involving Bank Melli and Bank Saderat in particular. The aim of the UN Resolution is to prevent such activities contributing to proliferation-sensitive nuclear activity or the development of nuclear weapon delivery systems.

Under the amended Regulation, all credit and financial institutions subject to the Money Laundering Regulations 2007 must exercise vigilance over credit and financial institutions domiciled in Iran, their branches and subsidiaries overseas, and entities controlled by them. A current list of the institutions to which the Regulation applies can be found at Annex IV of Council Regulation 423/2007 and will be updated by the EU as necessary.

Article 11(a) of the Regulation provides that, in relation to the relevant institutions, firms must:

- A** Exercise continuous vigilance over account activity by means of, inter alia, customer due diligence programmes and anti-money laundering and terrorist financing obligations
- B** Require the completion of all mandatory information on payment instructions relating to the originator and beneficiary of the transaction, and refuse transactions

where such information is not supplied. This requirement applies only to the payment-remitting financial institution and the paying financial institution. It does not apply to intermediary financial institutions

- C** Maintain records of transactions for five years and make them available to the authorities on request
- D** Promptly submit a proliferation finance report to the Serious Organised Crime Agency ("SOCA") using the Suspicious Activity Report ("SAR") format and process if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing

The guidance advises that, if a firm suspects that a transaction may be related to proliferation, it should exercise the vigilance required by the Regulation. If further investigation does not allay the suspicion, firms should refuse the transaction and submit a proliferation financing report ("PF report") via SOCA's SAR mechanism. Annex I of the guidance contains information on submitting a PF report. Guidance on identifying suspicious activity is contained at Annex II.

The changes brought in by the Regulation enhance the existing measures in place relating to Iran and do not affect other financial sanctions regimes. Neither do the changes contained in the Regulation affect the existing requirement for firms to submit SARs in relation to suspected money laundering, including cases where this relates to proliferation.

# FATF NEWS

## FATF GUIDANCE FOR DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

### FATF welcomes new observer organisation BCBS

In the Chairman's summary of the FATF's Plenary session held in Rio de Janeiro from 15 to 17 October 2008, the FATF welcomed the Basel Committee on Banking Supervision ("BCBS") as a new observer association.

According to the FATF's policy on observers, the role of an observer includes enhancing the FATF's global reach and making a contribution to the work of the FATF. In the case of the BCBS, the FATF considers that "closer cooperation between the FATF and the [BCBS] will build on existing synergies and will strengthen the global impact of the FATF network".

During October 2008 the FATF published two pieces of guidance for designated non-financial businesses and professions ("DNFBPs"). These publications form part of guidance specifically tailored for those DNFBPs covered by the FATF Recommendations.

The guidance in this series will follow the same format as the FATF's July 2007 guidance for public authorities and financial institutions on adopting a risk-based approach ("RBA") to anti-money laundering and terrorist financing procedures.

The purpose of the guidance is stated to be threefold:

- 1 To support the development of a common understanding of what the RBA involves
- 2 To outline high-level principles involved in applying the RBA
- 3 To indicate good practice for governments and legal professionals in the design

and implementation of an effective RBA

#### Risk-based approach for casinos

On 23 October the FATF published its RBA Guidance for Casinos. The FATF developed the guidance in close consultation with representatives from the casinos sector including the European Casino Association. Casinos themselves, including internet casinos, are the primary target of the guidance.

#### Risk-based approach for legal professionals

On 28 October 2008, the FATF published its RBA guidance for the legal profession.

The guidance seeks to aid sole practitioners, partners and lawyers within professional firms to assess the risk of money laundering. It also contains recommendations as to how law firms can implement effective monitoring processes and training programmes.

The guidance does not apply to in-house lawyers or lawyers working for government agencies.

# FATF MUTUAL EVALUATION OF JAPAN

On 17 October 2007 the FATF published its report on the anti-money laundering and counter-terrorist financing measures of Japan and accompanying assessment of Japan's compliance with FATF standards.

Japanese laws to combat money laundering and terrorist financing were found not to reach the standard of full compliance in over half of the 49 international standards set by the FATF. Japan was found to be non-compliant with 10 of the recommendations, including customer due diligence, unusual transactions, and internal controls, compliance and audit. Partial compliance was found in relation to 15 recommendations, including the scope of the money laundering offence, record keeping and suspicious transaction reporting.

Despite these findings, the FATF concluded that Japan has, overall, "a good legal structure to combat money laundering and terrorist financing". However, the number of prosecutions were found to be low compared to the levels of drug consumption and organised crime in Japan. The FATF also found that the implementation of certain regimes, such as that for the confiscation, freezing and seizure of the proceeds of crime, was less than effective.

## *FATF statement on elevated financial crime risk*

The FATF published a statement on 16 October 2008 in which it warned of the increased risk of money laundering in six jurisdictions.

In Iran, Uzbekistan, Turkmenistan, Pakistan, Sao Tome and Northern Cyprus, the FATF has identified inadequacies in systems for the detection and prevention of money laundering and terrorist financing.

Following the FATF's statement, HM Treasury confirmed on 20 October that it agreed with the assessment of the six jurisdictions. It advised FSA-authorized firms to consider the warning when assessing their systems and controls and to respond to the risk by taking appropriate action in relation to transactions involving the six jurisdictions.

# FATF STATEMENT ON IRAN

The FATF issued a statement on 16 October in which it applauded the "initial steps" taken by the Iranian government to combat money laundering, whilst urging it not to stop developing its preventive measures in the area.

The FATF expressed concern in its statement that "the lack of corresponding effort by Iran to address the risk of terrorist financing continues to pose a serious threat to the integrity of the international financial system". It added that "urgent action to address this vulnerability is necessary".

The FATF called on its members and all jurisdictions to bolster their preventive measures for the protection of their financial sectors.

Following the FATF's statement, the US Treasury issued a far more emphatic announcement in which it underlined that it "has repeatedly expressed its deep concerns about Iran's financial and material support to deadly terrorist groups". Although the announcement contained a promise of "additional actions to target the risk of terrorist financing emanating from Iran", and encouraged other countries to follow the US's lead, no information was provided as to what such measures might entail.

# international round-up

## **Clarification of EU requirements on payer information for electronic transfers of funds**

A joint paper was published on 16 October 2008 by the Committee of European Securities Regulators ("CESR"), the Committee of European Banking Supervisors ("CEBS") and the Committee of European Insurance and Occupational Pensions Supervisors ("CEIOPS") ("the Level 3 Committees") setting out their common understanding of the Regulation on information on the payer accompanying transfers of funds (Regulation 1781/2006/EC: "the Regulation"). The Regulation, which came into force in January 2007, was designed to enable European Authorities to monitor money flows more easily in order to detect and prevent money laundering and terrorist financing. Under the Regulation, payment services providers such as banks and wire transfer offices are required to accompany electronic transfers of funds with full information about the payer. They must also check the information attached to incoming payments. There have been concerns, however, over large numbers of incomplete information accompanying incoming transfers, particularly from non-EU countries.

The publication of the common understanding is intended to clarify rather than extend the Regulation, by advising payment service providers on how to deal with payments which are not accompanied by all the required information. The joint paper contains practical advice as well as setting out the expectations of the relevant supervisory bodies. The Level 3 Committees have also published feedback on, and a summary of, the comments received in response to their informal consultation on the Regulation.

## **Turkey: proposed law opens door to money launderers**

The Turkish government, to the consternation of its opposition, has drafted a new law permitting the transfer of funds into local financial institutions without scrutiny. It is estimated that Turkish citizens hold a total of \$100-\$150 billion in foreign bank accounts. The government wishes to prevent funds leaving the Turkish economy in this way by making Turkish banks more attractive. Opposing political parties are resisting the proposal by claiming that, if passed, the law would result in an increase in money laundering.

## **EC ACTION AGAINST BELGIUM, IRELAND, SPAIN AND SWEDEN**

The European Commission is commencing an action in the European Court of Justice ("ECJ") against Belgium, Ireland, Spain and Sweden for failing to implement the Third Money Laundering Directive ("3MLD") into their national laws. The ECJ will decide what sanction to impose on the four countries.

Despite the fact that nearly a year has passed since the final implementation date for the 3MLD on 15 December 2007, the EC's action is considered to be a tough stance. Considering that it took France five years to fully implement the previous Money Laundering Directive, it does indeed appear that the EC has a much greater sense of urgency with regard to Member States' implementation of the 3MLD than for previous anti-money laundering legislation. The decision to take legal proceedings followed the EC's announcements earlier this year that it planned to pursue infringement proceedings against 15 countries, including the four listed above, and that it would take legal action for continued failure to implement the 3MLD.

## **Colombia: money laundering ring discovered**

Nineteen people have been arrested in Colombia in connection with a large money laundering ring. The gang were using the "smurfing" technique, where large amounts of money are broken down into smaller sums in order to be laundered within the financial system. Criminals adopt this technique because, unlike the UK, some countries do not require banks to scrutinise transactions below a certain threshold.

Detectives suspect that the gang, arrested in Bogota and three other cities, brought €39 million into Colombia from Spain and other European countries. Spanish detectives noticed the unusual volume of money transfers and notified the Colombian authorities, which analysed the recipients' profiles and discovered no explanation for the transfers.

## GHANA: NEW POWERS TO COMBAT MONEY LAUNDERING

As of 15 October 2008, Ghana has set \$10,000 or its equivalent as the maximum sum which an individual can carry into or out of the country without declaring it to the country's authorities. It is advised that sums above this amount should be transferred using a bank or authorised dealer. Contravention of the new provision may result in confiscation or criminal prosecution.

The Ghanaian press suggested that the decision was influenced by reports that sums of up to \$13 million per week were being brought into the country. The official position, however, is that the limit will hinder bulk cash smuggling by money launderers and boost Ghana's reputation in relation to its anti-money laundering stance.

## PYRAMID LAUNDERING SCHEMES IN ECUADOR

The proceeds of drug trafficking are being laundered in Ecuador by Colombian traffickers who are setting up pyramid schemes across the border and then retransferring the money back to Colombia.

## SPAIN: ACQUITTAL FOR SUSPECT WHO REFUSED PLEA BARGAIN

A man was acquitted of money laundering charges by the provincial court in the Spanish territory of La Ceuta. Despite the prosecutors' attempts to persuade the Spanish suspect to accept a plea bargain of three years in jail in exchange for admitting guilt, he consistently denied the offence, thus risking the maximum sentence of 10 years in jail on a guilty verdict.

The suspect was accused of involvement with a network of "straw men", dismantled in 2002 with the arrest of its ring of front men. The criminals posed as legitimate businessmen and used the purchase of speedboats to conceal the movement of drugs and money from North Africa to Spain. Although one of the speedboats was registered in the suspect's name, he claimed that it had been bought without his knowledge, and the court found no proof that he was guilty of money laundering.

The proceeds of drug trafficking are being laundered in Ecuador by Colombian traffickers who are setting up pyramid schemes across the border and then retransferring the money back to Colombia. Pyramid schemes offer their investors high returns for enrolling other participants in the scheme, yet in fact only the person who set up the scheme takes the benefit of it, by receiving all the funds invested further down the pyramid.

It is reported by the Colombian authorities that so many new deposit-taking firms have been set up on the country's border with Ecuador that it amounts to a new industry. Farmers in the region have abandoned the production of the illegal coca crop, which provides little return, in order to invest in the schemes.

According to the US government, Ecuador has not yet fully implemented its money laundering legislation. Since Ecuador adopted the US dollar as its currency in 2000, it has become a hub for South American traffickers wishing to launder money.

**FOR FURTHER INFORMATION PLEASE CONTACT:**

**Daren Allen**

Partner

London Office

**T** 020 7796 6824

**F** 020 7153 7710

daren.allen@dlapiper.com

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

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UK switchboard +44 (0) 8700 111 111

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