

# MONEY LAUNDERING LAW

A REGULATORY NEWS UPDATE FROM DLA PIPER



# POST-15 DECEMBER 2007: WHAT'S CHANGED?

On 15 December 2007, the Money Laundering Regulations 2007 came into force. These impose due diligence obligations on firms; require the use of risk-based monitoring and clarify the arrangements for the supervision of firms.

In addition, the following consequential changes have been effected:

- The Money Laundering (Amendment) Regulations. These regulations make minor changes to the Money Laundering Regulations 2007. Most notably, the International Association of Book-keepers is added to the list of supervisory authorities and there are a number of amendments relating to the treatment of prosecutions in Scotland.
  - The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 and the Terrorism Act 2000 (Business in the Regulated Sector and Supervisory Authorities) Order 2007 have come into force. The orders bring the relevant legislation into line with the Money Laundering Regulations 2007 and clarify which activities and institutions are covered.
  - HMRC's supervisory ambit has been extended to include accountancy service providers and trust or company service providers not already supervised by another authority or professional body listed in the Regulations.
  - For the first time, the FSA not only supervises the anti-money laundering compliance of authorised firms, but has also assumed competence for many other non-authorised, and even non-regulated, businesses, defined as "registered businesses".
  - The Office of Fair Trading has assumed supervisory competence for estate agents and consumer credit lenders who are not already supervised by the FSA. Monitoring and enforcement powers are shared with local authority Trading Standards Services.
  - Various pieces of guidance have also been published to assist with these developments:
- Joint Money Laundering Steering Group: Prevention of Money Laundering/Combating Terrorist Financing, Guidance for the UK Financial Sector
  - HMRC: Guide to the Prevention of Money Laundering and Terrorist Financing (MLR 8)
  - HMRC: Guide to Registration (MLR 9)
  - Consultative Committee of Accountancy Bodies: Anti-Money Laundering Guidance
  - Office of Fair Trading: Money Laundering Regulations 2007, Core Guidance
  - FSA: The FSA's New Role under the Money Laundering Regulations 2007, Our Approach
  - Law Society: Anti-Money Laundering Practice Note



# UK NEWS



## JMLSG GUIDANCE APPROVED BY TREASURY

On 18 December 2007, HM Treasury confirmed its approval of the revised 2007 version of the Joint Money Laundering Steering Group (JMLSG) Guidance, with effect from 15 December 2007.

The draft guidance was first published in June 2007 with amendments to reflect the upcoming Money Laundering Regulations 2007 ("the Regulations"). Following a consultation period and further revision, the JMLSG published its finalised guidance on 13 November 2007.

In the Treasury's letter of approval, Alistair Darling praised the work of the JMLSG: "I am grateful for the major contribution the JMLSG has made to ensure the UK has an effective and proportionate system for addressing money-laundering risks, and that financial services firms are helped in addressing risks to the financial system, including money laundering and terrorist financing."

## FSA RELAXES NOTIFICATION DEADLINE

With the coming into force of the Regulations on 15 December last year, firms authorised by the FSA assumed new notification responsibilities. These responsibilities were outlined in the FSA's "Dear Money Laundering Reporting Officer" letter, published on its website on 4 December. As such, an authorised firm was obliged to notify the FSA before 15 January 2008 if it:

- was a trust or service company provider ("TSCP");
- operated a currency exchange office (bureau de change);
- transmitted money (or any representations of money) by any means;
- cashed cheques that have been made payable to customers; and/or
- was subject to the EU Payments Regulation.

However, on 14 January, the FSA acknowledged that "in order to determine whether they are TSCPs or MSBs [money service businesses], some firms have needed to undertake some analysis of their business, or have decided to seek legal advice, and in some cases it may be difficult to resolve these issues by 15 January". Bearing this in mind, the FSA requested that those firms who would not be able to meet the 15 January deadline "send a brief note to the FSA setting out the steps [they] are taking to prepare [their] notification".

# Law Society Update

## AML PRACTICE NOTE UPDATED

On 17 December, the Law Society published an updated version of its practice note on anti-money laundering. The practice note applies to suspected money laundering occurring after 15 December 2007. In relation to suspected money laundering occurring before this date, reference should be made to the previous version of the note, published on 3 September 2007.

The practice note aims to assist compliance with the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007. It also outlines good practice. The note has been submitted to the Treasury and is currently awaiting approval.

## ADVICE ON MORTGAGE FRAUD

The Law Society has published advice on its website which addresses the increasing problem of mortgage fraud. The advice is aimed at solicitors and licensed conveyors, who run the risk of committing a money laundering offence if they complete a property transaction where the mortgage has been obtained by fraud.

The advice sets out several questions to ask before completing property transactions, the answers to which may alert a solicitor to mortgage fraud. These include:

- has the property been owned by its current owner for less than six months;

- has the value of the property increased significantly in a short period of time; and
- is the deposit being paid by someone other than the purchaser?

Where warning signs exist, the advice reminds solicitors to apply anti-money laundering procedures such as due diligence, investigating any other professionals involved and making a disclosure to the Serious Organised Crime Agency.

## TERRORISM ACT 2000 AND PROCEEDS OF CRIME ACT 2002 (AMENDMENT) REGULATIONS 2007



On 26 December 2007, the Terrorism Act 2000 and Proceeds of Crime Act 2002 (Amendment) Regulations 2007 came into force, amending the tipping-off offence. However, the regulations have developed substantially since they were originally proposed, following fierce lobbying from the Law Society.

The Home Office had sought to remove the "prejudice exception" to the tipping-off offence, which enables solicitors to inform clients when a suspicious activity report (SAR) has been made about them, provided the disclosure will not be likely to prejudice an investigation. However, the new regulations retain the exception, after

the Law Society raised concerns that an "absolute" tipping-off offence would constrain solicitors and potentially limit access to justice.

In addition, the Law Society successfully persuaded the government to amend the tipping-off offence so that it no longer applies to those carrying out non-regulated activities. As such, since 26 December the offence only applies to lawyers undertaking regulated activities such as finance transactions and tax advice.

# GUIDANCE FOR INSOLVENCY PRACTITIONERS

In recognition of the changes introduced on 15 December, the Insolvency Service has issued guidance for Insolvency Practitioners (IPs). The document provides good practice guidance but does not constitute legal advice. As such, non-compliance with the guidance will not necessarily result in a breach of the Regulations.

The guidance outlines the main responsibilities of an IP, which include:

- the establishment of procedures to identify customers and maintain records of identification;
- the appointment of a money laundering reporting officer;
- the establishment of internal procedures, policies and controls to prevent money laundering; and
- the provision of anti-money laundering training for relevant employees.

## CAROUSEL CRIME SYNDICATE SMASHED IN DAWN RAIDS

In the culmination of a two-year investigation codenamed "Operation Vaulter", HMRC have arrested six people suspected of carousel fraud. The arrests took place during dawn raids in December and follow the arrest of 17 people in North West England last September as part of the same investigation.

The suspects are all thought to be involved in an organised crime syndicate which runs a network of companies to effect VAT fraud involving mobile phones and other low volume, high-value goods. The companies buy goods VAT-free in the European Union and sell them on in the United Kingdom, inclusive of VAT, yet without paying the tax due. The latest arrests are thought to involve a more complicated "carousel" version of this fraud.

Chris Harrison, Director of Operations, Criminal Investigations, for HM Revenue and Customs commented on the December arrests: "Tackling missing trader fraud is HMRC's top priority. We have a duty to protect the revenue given the scale and nature of the attacks we are seeing... This is not victimless crime, it's organised crime that causes real harm".



# NORWICH UNION LIFE FINED £1.26 MILLION FOR BREACHES OF PRINCIPLE 3

Following an investigation which revealed identity frauds totalling £3.3 million, the FSA has imposed a Final Notice on Norwich Union Life in respect of breaches of Principle 3 of the FSA's Principles for Businesses. The Final Notice imposes a financial penalty of £1.26 million, reduced from £1.8 million in recognition of Norwich Union Life's early cooperation with the investigation.

## GROUNDINGS OF BREACH

Principle 3 of the FSA's Principles for Businesses prescribes: "A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems".

Norwich Union Life was found to have breached this Principle in the following respects:

- the company had failed to undertake an adequate assessment of its financial crime risk-exposure and had failed to assess whether or not its existing controls were adequate to address any risks; and
- Norwich Union Life had failed to establish and maintain adequate and effective controls to counter the risk of financial crime or enable it to respond to fraud in an appropriate and timely manner.

As a result, the FSA found that Norwich Union Life had increased the risk of its business being used as a vehicle for financial crime and had exposed its customers to the risk of being victims of financial crimes such as identity theft.

## ACTUAL AND POTENTIAL FRAUDS REVEALED

The defects identified by the FSA in Norwich Union Life's systems and controls manifested themselves in a series of actual and potential organised frauds against the company and its customers in 2006.

At the time, Norwich Union Life's caller identification procedure consisted of asking callers to provide several pieces of information: their surname, first and middle names, the first line of their address, their date of birth and their policy number. If an individual was unable to pass this test, call centre staff could request information selected from a list which included the caller's postcode. Thus, fraudsters were able to pass the caller identification procedure without providing a relevant policy number, simply by quoting a range of information which could be obtained from publicly available sources.

The fraudsters were then able to request and obtain detailed information about the customer they were impersonating including the policy number, the value of the policy or their bank details. Moreover, callers were able to amend details such as the customer's address and bank account details. Notification of a change of address would then be sent to the new address only, precluding the genuine customer from being alerted.

When a call handler became suspicious of a caller, Norwich Union's procedure involved him emailing a report to the Norwich Union Life fraud team. However, whilst the report would normally be acted on within 24 hours, no record of the report would be placed on the customer's electronic record in the meantime, allowing further frauds to take place without any alarm being raised.

As a result, 632 policies were targeted by the fraudsters. Seventy four of these were fraudulently surrendered, amounting to a total fraud of £3.3 million.

## LESSONS FOR THE FUTURE

The decision highlights the serious and ever-increasing problem of identity fraud in the modern world. In order to avoid repetition elsewhere, it is essential that companies:

- undertake detailed risk assessments;
- review their existing systems and controls; and
- amend and update these controls where necessary.

# INTERNATIONAL ROUND-UP

## FATF NEWS

### UK PRESIDENCY: STRATEGIC OBJECTIVES AND FUTURE STEPS

Having taken over from Canada in July 2007, the UK is currently serving a 12-month term in the Presidency of the Financial Action Task Force (FATF). As President of the FATF for this period, Sir James Sassoon, set out some of the strategic objectives of the UK in a speech to ESAAMLG Council of Ministers in August last year. As the Presidency enters its second half, it is an appropriate time to review those objectives:

- supporting the monitoring of members' progress through the mutual evaluation process;
- enhancing the capability of the FATF to undertake more strategic surveillance of emerging trends and threats;

- building on FATF's efforts to develop continued and close engagement with the private sector;
- furthering the FATF's risk-based approach to enable more effective and efficient use of resources; and
- enhancing the accountability of the FATF to ministers.

The UK has already gone a long way to fulfilling these objectives. The last few months have seen a mutual evaluation report adopted for Finland; collaborations with the private sector; and a joint meeting with the Asia/Pacific Group on Money Laundering (APG) on money laundering and terrorist financing typologies.



### KEY EVENTS FOR THE REMAINDER OF THE PRESIDENCY

**25 - 29 FEBRUARY**

FATF plenary meeting, Paris, France

**6 - 21 MARCH**

Onsite visit for the mutual evaluation of Japan, Tokyo, Japan

**MARCH**

OGBS meeting, London, United Kingdom

**31 MARCH - 4 APRIL**

Moneyval plenary meeting, Strasbourg, France

**APRIL**

FATF Ministerial meeting, Washington DC, USA

**MAY**

CFATF plenary meeting, Haiti

**JUNE**

FATF plenary meeting, London, United Kingdom

# EU NEWS

## RESEARCH INTO TRADE-BASED MONEY LAUNDERING

A new project to track trade-based money laundering has been set up by the Joint Research Centre (Institute for the Protection and Security of the Citizen) of the European Commission. Throughout 2008, the Centre will be conducting a research project which aims to analyse trade transactions data in order to detect transactions that may be examples of trade-based money laundering.

## FINANCIAL SERVICES ACTION PLAN: EVALUATION

In the context of the economic evaluation of the Financial Services Action Plan ("FSAP"), the European Commission has launched two studies:

1. "Evaluation of the economic impact of the FSAP"

This evaluation aims to provide an economic assessment of the impact of the FSAP on the EU financial services sector. The study includes a review of the impact of the Anti-Money Laundering Directive. Work on the project commenced in December and is due for completion in early 2009.

2. "Survey on the cost of compliance with selected FSAP measures"

The survey will focus on a sample of companies representing both a broad spectrum of the financial services industry and the geographical variety of the EU. It aims to obtain subjective estimates as to the cost of compliance with the FSAP. The study is due for completion by the end of 2008.

## LEGISLATION UPDATE

The Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market) was published on 5 December 2007. Member States have until 1 November 2009 to bring into force compliant legislation.

On 1 January, the Transfer of Funds Regulation (Regulation (EC) No. 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds) was adopted. The Regulation aims to address money laundering and terrorist financing by obliging payment service providers to ensure that electronic transfers of funds are accompanied by payee information such as their name, address and account number.



# AUSTRALIAN ANTI-MONEY LAUNDERING LEGISLATION TAKES EFFECT

After four years of reviews and amendments, the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 came into force on 12 December 2007. The reforms aim to bring Australia into line with international standards, focusing in particular on those laid down by the FATF.

## BACKGROUND TO THE LEGISLATION

In 2003 the Australian Government announced the commencement of a review of Australia's anti-money laundering and counter-terrorist financing system. A range of consultations with stakeholders and industry representatives ensued, resulting in the promise in October 2005 of a package of reforms to enhance Australia's legislation in this field. Shortly after, the FATF published a Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, which complemented the work done by the consultation groups by evaluating the anti-money laundering and counter terrorist financing controls in Australia.

On 16 December 2005, the Australian Government released a draft Anti-Money Laundering and Counter-Terrorism Financing Bill. Following various consultations and reviews, this draft was revised and amended before being passed by Parliament on 7 December 2006 and receiving Royal Assent on 12 December.

## THE NEW ANTI-MONEY LAUNDERING REGIME

The legislation encompasses the financial sector, gambling sector, bullion dealing and any other professionals or businesses that provide particular "designated services". Obligations imposed include customer due diligence, reporting, record keeping and the maintenance of an effective anti-money laundering and counter terrorist financing system. Similar to much of the emerging legislation in this field, the new act adopts a risk-based approach, giving businesses the responsibility of determining the means of meeting their obligations based on careful risk-assessment.

At first, it was anticipated that firms should have their AML systems and controls in place by 12 December 2007. However, in recognition of the financial cost entailed by compliance, the Government announced a 15-month initial phasing-in period. During this term, the regulator may choose to waive civil penalties for those in breach, with full immunity being offered where entities have made "demonstrable" efforts to implement an anti-money laundering and counter-terrorist financing programme. However, criminal penalties will still be imposed without relief.

In the new regime, the Australian Transaction Reports and Analysis Centre's (AUSTRAC) role as Australia's financial intelligence unit has also been expanded. It now functions as the national anti-money laundering and counter-terrorist financing regulator, with competence for supervision, monitoring and enforcement.





## JAPAN ENHANCES AML LAWS

On 29 January, the Japanese Government announced that it would be extending its anti-money laundering regime to encompass businesses such as real estate agents, jewellery dealers and credit card companies. The legislation, which currently applies to financial institutions, obliges business to implement and maintain money laundering prevention measures including the verification of customer identities, the maintenance of identification records and the reporting of suspicious transactions to the authorities.

The legislative expansion, due to take place on March 1 2008, comes as Japan prepares for a joint on-site visit from the FATF and Asia/Pacific Group on Money Laundering (APG). The visit is designed to evaluate Japan's anti-money laundering and counter terrorist financing regime and will occur between 10 and 21 March.

## SIGUE FORFEITS \$15 MILLION AFTER AML SYSTEM FAILS

Sigue Corporation and Sigue LLC ("Sigue") have entered into a deferred prosecution agreement and agreed to forfeit \$15 million following criminal information which charged Sigue with one count of failing to maintain an effective anti-money laundering programme.

The charges arose out of a federal investigation, "Operation High Wire", in which undercover officers approached Sigue's authorised agents and requested help with transmitting funds represented to be the proceeds of drug trafficking. The officers successfully conducted 84 illegal transactions, with some agents structuring the transactions into smaller amounts to avoid detection. Whilst some suspicious activity reports were filed, Sigue's inadequate systems and controls precluded it from identifying the more systematic unlawful activity.

The penalty is the largest ever Bank Secrecy Act fine imposed on a money service business. The company has further

committed to spending \$9.7 million on improving its anti-money laundering compliance programme. Bearing in mind Sigue's readiness to accept responsibility for its breaches, the US Government has undertaken to recommend the dismissal of the charge in 12 month's time, provided the company fully implements the required remedial measures and complies with the deferred prosecution agreement. However, the Financial Crimes Enforcement Network also assessed a \$12 million civil money penalty against Sigue, which will be satisfied by the \$15 million forfeiture.

Michele Leonhart, Acting Administrator of the US Drug Enforcement Administration (DEA) commented on the penalty: "By failing to fulfil the requirements of anti-money laundering regulations, companies like Sigue facilitate drug traffickers and their harmful activities. The penalties exacted today are a reminder to financial institutions to be diligent in upholding their responsibilities."

## Panama and Peru call for AML agreement with Mexico

Representatives from the Panamanian and Peruvian embassies have spoken of the need for an anti-money laundering agreement with the Mexican Government in order to improve the prevention and detection of cartels and organised crime. The ambassadors emphasised the current lack of coordination between the governments and called for "constant exchange".

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

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