

MONEY LAUNDERING LAW

The regulatory news update from DLA Piper



UK NEWS

FIRST INDUSTRY-WIDE REVIEW SHOWS SMALL FIRMS FALLING BEHIND ON AML PERFORMANCE

The FSA has carried out an industry-wide review into firms' adaptation to the anti-money laundering rules set out in the Senior Management Arrangements, Systems and Controls Sourcebook ("**SYSC**"), which replaced the old Money Laundering Sourcebook, and to the revised Joint Money Laundering Steering Group's guidance notes on best practice. The review has revealed that small firms, which make up around 90 per cent of the firms monitored by the FSA for money laundering purposes, are falling behind in managing their money laundering risks.

LARGE FIRMS PRAISED BY THE FSA

For the most part, large firms were found to have responded well to anti-money laundering challenges. Proper money laundering risk assessments were in place and many firms had automated monitoring of customer transactions, albeit to varying sophistication levels. Many firms had made steps towards accepting a single piece of identification for prospective clients whilst improving due diligence with the use of automated screening systems.

SMALL FIRMS NEED TO IMPROVE

The review found that small firms needed to improve their anti-money laundering training and their review of policies. Many firms wrongly believed that if new business

was introduced through lawyers or accountants it was automatically low-risk. Firms were also failing to screen for politically exposed persons or to check whether a prospective client appeared on a sanction list. Given that the penalties associated with this failing are severe, this is a significant, and surprising, failure.

The review accepts that smaller firms have fewer resources available, a fact reflected in the finding that the larger a firm is, the more likely it is to have an automated system in place for monitoring customer transactions and a computer-based training programme. The FSA also acknowledged that it is generally accepted that smaller firms represent a much lower risk than larger firms and the review's findings are to be considered with this in mind.



ASSETS RECOVERY AGENCY HANDS OVER POWER TO THE SERIOUS ORGANISED CRIME AGENCY

The UK's Assets Recovery Agency ("**ARA**"), which was created six years ago as Britain's answer to the Irish Criminal Assets Bureau, has ceased to exist and its powers have been transferred to the Serious Organised Crime Agency ("**SOCA**").

The decision to abolish the ARA was made in 2007 after a National Audit Office examination revealed that the agency spent £65m recovering £23m from the proceeds of crime. SOCA will inherit cases worth £130m from the ARA and will now have criminal and civil powers to strengthen the fight against those who profit from organised crime.

HSBC LOSES CUSTOMER DATA

The HSBC banking group has admitted losing a computer disk containing 370,000 customers' details when the disk was sent by courier to offices in Southampton. The specific details contained on the disk are customers' names, dates of birth and levels of life insurance cover. Although in isolation this information would not assist fraudsters, the potential for money laundering is still present. One such example of how fraud could occur is by a manual

search of the electoral register (a public document) to match an address to a name and then searching that address to obtain bank details. As local authorities sell electoral data to a range of businesses, access to electoral data in electronic form would not be difficult.

In the past year both Nationwide Building Society and Norwich Union have paid significant fines and been publicly reprimanded for failure to safeguard customer information.

MONEY LAUNDERING TO RANK BEHIND FRAUD IN FSA'S PRIORITIES FOR 2008

Following a year during which there was an intense focus on money laundering policy, the FSA is set to concentrate on implementation and more specifically mortgage fraud in 2008.

Bob Ferguson, head of financial crime policy and intelligence at the FSA, explained at a recent conference that the focus on mortgage fraud is due to the link between mortgage fraud and money laundering. It can also be explained by an intention to make greater use of enforcement powers following the UK's "low-compliance" score in connection with punishments for non-compliance in the FATF's most recent evaluation.

The FSA's response has been to warn of plans to use enforcement powers for serious systems and controls failures connected to money laundering and for "mis-valuation" which is the over-valuation or under-valuation of assets in hedge funds and for mortgages.

A report by the Association of Chief Police Officers ("**ACPO**") blames a low risk of detection, and the chance to make large profits, for the appeal of mortgage fraud. Criminals can use the proceeds of crime to purchase property and with self-certification - a service which allows buyers to avoid providing personal information to lenders - vital information is not available to MLROs. In the current market, more fraudulent loans than ever before are expected to come to light pushing the ACPO's £700m annual fraud figure up even higher.

Mutual Evaluation *Canada*

The FATF has published the findings of its assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CTF) standards in Canada. Highlights of the report include:

- a new set of preventive measures implementing the FATF standards will come into force in June and December 2008 and will significantly strengthen the AML/CFT system;
- whilst Canada's offences and powers to confiscate and freeze are comprehensive, more action is required to increase effective implementation;
- the Canadian FIU, FINTRAC, has wide powers but there remain serious concerns relating to its effectiveness;
- the preventive system requirements are variable and do not apply to the full range of financial institutions or designated non-financial businesses and professions as defined by the FATF. Whilst record-keeping, suspicious transaction reporting and internal controls are acceptable, more stringent due diligence requirements are needed; and
- Canada is broadly in line with international standards of co-operation.

FATF WARNS DEFICIENT REGIMES WILL LEAD TO **INCREASED RISK OF MONEY LAUNDERING & TERRORIST FINANCING**

The FATF has issued a warning of the heightened risks of money laundering and terrorist financing created by deficiencies in systems in Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe, and the north of Cyprus.

The warning follows a study carried out by the FATF into the means used by terrorists to raise and move funds. The study identifies four strategies that could help combat the threats:

- action to address jurisdictional issues, including safe havens and failed states;
- outreach to the private sector to ensure access to the information necessary to detect terrorist financing;
- building a better understanding of terrorist financing across the public and private sectors; and
- using financial investigation, enhanced by financial intelligence.

Mutual Evaluation *Singapore*

The FATF has also completed its assessment on the implementation of AML/CFT standards in Singapore. Some of the points highlighted in the assessment include:

- Singapore's financial intelligence unit, the Suspicious Transaction Reporting Office ("**STRO**"), is, on the whole, well structured, staffed and funded but is asked to focus more on the identification of money laundering from foreign predicate offences;
- AML/CFT Notices containing the obligations on financial institutions are issued by the Monetary Authority of Singapore ("**MAS**") and generally cover the full range of methods required by the FATF recommendations;
- The MAS adopts a risk-based approach to its supervision and has a wide range of powers to monitor compliance; and
- Singapore has a comprehensive regime to provide international cooperation and the STRO engages in effective co-operation with foreign counterparts.

Guidance issued

on implementation of the FATF standards within low capacity countries

In order to promote the global implementation of FATF standards, the FATF has adopted guidance to support the full and effective implementation of the standards in low capacity countries (“LCC”).

WHAT IS AN LCC?

LCCs are low income countries experiencing the following types of difficulties:

- competing priorities for scarce government resources;
- severe lack of resources and skilled workforce to implement government programmes;
- weak legal institutions;
- dominant informal sector and cash-based economy;
- poor documentation and data retention systems; and
- small financial sector.

These structural characteristics often make implementation of the FATF standards more challenging than for other countries. The guidance therefore focuses on “core” recommendations that should be a priority for implementation such as co-operation, engagement, prioritisation and planning. Beyond these “core” recommendations, the structural weaknesses of LCCs must be taken into account when setting out a sequence for implementation.



NUMBER OF AML INVESTIGATIONS IN SWITZERLAND FALLING AS FATF RECOMMENDATIONS ACCEPTED

The Swiss Anti-Money Laundering Control Authority (“**AMLCA**”) opened 37 per cent fewer money laundering investigations in 2007 than in 2006, according to the AMLCA’s annual report. The Authority has also reported a fall in the number of intermediaries operating illegally in Swiss financial markets. It is thought that this is down to an increase in anti-money laundering knowledge of clients which has resulted in clients wanting to know if a company is authorised before they invest in them.

The report comes at the same time as the Swiss council of ministers accepts FATF’s 2005 recommendations to improve its anti-money laundering and terrorist finance regime. The recommendations resulted from FATF’s “mutual evaluation” exercise in 2005 which praised Switzerland’s tough approach to politically exposed persons but criticised its reluctance to introduce new rules on correspondent banking and terrorist financing. The current law will be amended to

prevent terrorists moving funds through the Swiss financial system and discussions are to be held on measures to standardise due diligence requirements. In the 2005 evaluation the FATF said most money laundering cases in Switzerland had involved predicate crimes committed in other jurisdictions. Switzerland has therefore decided to introduce predicate crimes into the current law and hopes to simplify rules that cover the exchange of information with other countries.

ARGENTINA

Argentina is to have new controls on financial activities designed to prevent money laundering in an effort to turn around the current law which has not seen a single legal sanction issued since the financial intelligence unit, Unidad de Informacion Financiera, was established in 2003. Further signs of progress come in the form of a bill currently under review by the government which would regulate property deals and trusts. The bill would also regulate gambling and mutual and co-operative funds which are currently unregulated and advantageous to money launderers.

IRAN

Following the FATF’s call in January for Iran to “address its deficiencies urgently”, Iran’s President has ordered the implementation of the country’s first anti-money laundering law. A committee, headed by the

economy minister - the *High Council for Combating Money Laundering* - has been established to oversee that all legal entities are implementing the new regulations.

SOUTH AFRICA

The South African government has drafted an amendment bill to close current loopholes in the law which do not require cash investments in residential property to be reported. The bill has been approved by cabinet and will be laid before Parliament on 12 May.

MEXICO

The Finance Secretariat has laid out a plan to strengthen measures and prevent money laundering in the Mexican financial system. The new regulations will require more detailed monitoring of operations carried out by non-customers of an institution particularly for transactions over \$10,000. The plan also contains a mechanism for the exchange of information between institutions.

It is estimated that \$24bn is laundered annually in Mexico which explains the need for increased efforts to fight money laundering.

QATAR

Qatar’s anti-money laundering laws are being amended to reduce the risk that Qatar will be used as a conduit for dirty money. Amongst

Malaysia investigates

banks in suspected money laundering case

Malaysia's central bank is investigating Mercantile Point Sdn Bhd and Sunshine Empire Sdn Bhd for suspected illegal deposit intakes and money laundering.

the changes is a requirement that a firm's MLRO must consider making suspicious transaction reports if customers fail to satisfy the due diligence requirements and a requirement that monitoring be applied evenly and rigorously at all levels and branches.

The chief executive of the Qatar Financial Centre Regulatory Authority has explained the reasoning behind the reform is not because Qatar is a target for money laundering but because there has been rapid growth in the number of banks and financial institutions in the state and there is a need to avoid complacency.

FINLAND AND IRELAND

Both the Finnish and Irish governments are intending to pass the European Union's Third Money Laundering Directive into law by July. Only the UK and Denmark successfully met the EU's stated deadline for transposition which was 15 December 2007.

INDIA AND VIETNAM

India and Vietnam have signed a memorandum of understanding to fight money laundering and terrorist financing.

UK named a "major money laundering country" by United States

A report presented to the US Congress has praised the UK anti-money laundering regime but highlights the need for change, citing the estimated £15bn of ill-gotten gains laundered in the UK each year. Specifically, the US government is calling for changes to the Gambling Act 2005 to introduce checks against criminal proceeds being laundered through gaming and for new rules to monitor transactions made by politically exposed persons with links to foreign regimes.

LEBANESE AUTHORITIES LIFT BANK SECRECY FOR 54 INVESTIGATIONS

Following receipt of alerts in relation to 300 potential terrorist financiers in 2007, the Special Investigation Commission investigated 234 cases in 2007 - 54 cases resulted in charges of money laundering, 43 are still pending and the remainder are related to offences outside the commission's remit. The financial authorities have lifted bank secrecy from 54 of these cases, 47 of which were brought to the commission's attention via international organisations and foreign governments.

LARGE LOOPHOLE IN GLOBAL AML NET FACILITATES LAUNDERING OF EUROS

A complaint filed by the US Department of Justice has exposed a gaping hole in the global anti-money laundering net that is making it easy for Colombian cocaine traffickers to launder their dirty euros.

How is the money laundered?

Huge amounts of cocaine are shipped from Columbia to Spain. The euros generated from its sale in Europe (at twice the price it would sell for in the United States) are smuggled to Columbia where "smurfs" pump them into *casas de cambio*. The *casas de cambio* then arrange for transportation of the euros to Miami where the funds are delivered to Intertransfers which is a Miami based money exchange business with affiliate offices in Columbia. Intertransfers repackages the euros and sends them to London where they are delivered to TTT Moneycorp Ltd, a licensed money remitter, which exchanges the euros for US dollars and returns the funds to Intertransfers. The final stage involves a transfer by Intertransfers to the Columbian *casas de cambio* and the dollars are realised as pesos, thereby completing the 'cleansing' process.

A need to tighten the due diligence processes

The complaint states that the reason for this "circuitous" route is to evade Europe's anti-money laundering controls. According to the complaint, TTT Moneycorp will not accept euros from any South American country unless the exchanger has a face-to-face meeting with the firm and following that provides the firm with detailed documentation to prove their, and the euros', identity and legitimacy. On the other hand, no such restrictions are imposed by TTT Moneycorp on financial institutions based in the United States. By taking the route outlined above, the euros appear to originate in the United States and due diligence is therefore minimal.

It is estimated that the scheme described above generated €1bn a year. With such huge sums at stake, European money exchange businesses need to consider implementing tighter due diligence processes at all times, including when doing business with US counterparts, and not letting the apparent country of origin dictate the strictness of the procedures in place.

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

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