DLA PIPER

WINTER 2013

MONEY LAUNDERING BULLETIN

Regulatory News Update from DLA Piper

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Introduction

DLA Piper's Financial Services Regulatory team welcomes you to the winter 2013 edition of our Anti-Money Laundering Bulletin.

In this issue we look at the European Union's action plan to tackle organised crime, corruption and money laundering and the recent injunction temporarily preventing Barclays from dropping one of Somalia's biggest remittance providers as a client. We also provide updates of AML issues in the UK and internationally.

I hope that you find this update helpful. Your feedback is important to us so if you have any comments or would like further information, please contact one of our specialists detailed at the end of the bulletin.

UK

NEWS

BENEFICIAL OWNERSHIP TO BE ON A PUBLIC REGISTER

On 31 October 2013, David Cameron announced that the government will go ahead with plans to create a public central register detailing company ownership information. It is hoped that the register will encourage sound corporate behaviour, clamping down on shell companies which are capable of being used for tax avoidance and money laundering through complex structures. The register will assist money laundering reporting officers (MLROs) who are currently reliant on information obtained from the client and any self-conducted research. The register will provide details of any beneficial owners, i.e. those that hold more than 25 per cent of a company's shares or voting rights. Despite this, the Financial Action Task Force and the European Union have urged caution over the use of the register, stating that it should not be solely relied on for information.

Mr Cameron's key message is that an "open, inclusive economic system backed by open, political inclusive institutions" are the best guarantors of success. He went on to say that a public register would help companies identify businesses they are dealing with, shedding light on the use of shell companies and the secrecy that so often surrounds them. The Prime Minister stated that a lack of knowledge over who ultimately owns and controls companies actually facilitates illicit domestic and cross-border money laundering, corruption, tax evasion and other crimes.

In an attempt to strengthen transparency of company beneficial ownership, the UK is leading the way. However, in a letter to the President of the European Council on 15 November Mr Cameron emphasised that illicit finance is a global problem and that the need for collective action is paramount.

TR13/9 – ANTI-MONEY LAUNDERING AND ANTI-BRIBERY AND CORRUPTION SYSTEMS AND CONTROLS: ASSET MANAGEMENT AND PLATFORM FIRMS

In October 2013 the FCA issued the findings of a thematic review of anti-money laundering and anti-bribery and corruption systems and controls in asset management and platform firms. The FCA has previously focussed on the banking and insurance sectors but recognised that there were serious risks in other sectors. The thematic review assessed whether asset management and platform firms are taking adequate steps to mitigate money laundering, bribery and corruption risks.

Across the 22 firms that were reviewed there were some good practices observed, however there were also common weaknesses identified across the sample group. The FCA stated that they had expected the industry to have done more in ensuring they had suitable systems and controls in place given the previous communications the FCA has issued on anti-money laundering and bribery and corruption risk management. The FCA's findings are summarised below.

The positive findings were that most firms had relatively well-developed arrangements for the ownership of responsibility for managing money laundering and bribery and corruption risks as well as a comprehensive suite of anti-money laundering policies approved by senior management. In addition, most firms had well-established anti-money laundering and anti-bribery and corruption training initiatives in place setting out the relevant rules and regulations.

In contrast, the FCA found that anti-money laundering and anti-bribery and corruption issues were primarily misidentified as compliance matters rather than in line with proactive risk management. The FCA felt that this often leads to weaknesses in customer due diligence and monitoring. The FCA identified weaknesses in how firms act on the outcomes of risk assessments and most firms failed to demonstrate adequate systems and controls for assessing bribery and corruption risks in relation to dealing with and monitoring third party relationships, such as relationships with agents or introducers.

The FCA has provided feedback to the firms reviewed but they also expect all firms to consider their findings and make improvements to anti-money laundering and anti-bribery and corruption practices where necessary.

EU ACTION PLAN FOR 2014-2019 TO TACKLE ORGANISED CRIME, CORRUPTION AND MONEY LAUNDERING

In March 2012 the European Parliamentary Special Committee on Organised Crime, Corruption and Money Laundering was set up to assess the impact of "mafia-type activities" in the EU economy and society. Following their assessment, the Committee drafted the action plan which was adopted by the European Parliament at the end of October 2013. It is now up to Member States to follow up and bring forward the measures proposed.

The EU action plan sets out measures to crack down on organised crime, corruption and money laundering at international, European and national levels. Actions include cutting off sources of income to organised crime networks and seizing their financial assets. The European Parliament press release from its plenary session considering the action plan stated that Europol figures suggest there are 3,600 international criminal organisations operating in the EU in 2013, of which 70 per cent have members from different countries.

The action plan involves protecting EU finances by banning people convicted of organised crime, corruption or money laundering from running for public office or bidding for public procurement contracts within the EU. Members of the European parliament also hope to crack down on the assets of crime through the abolition of banking secrecy and EU tax havens. It is also hoped that EU countries can reach a mutual decision to legally define "mafia-type criminal activity" in order to co-ordinate their fight against organised crime. These actions will be implemented over the next legislative term.

BANKS FEAR NEW TRADE FINANCE RULES

In July 2013, the FCA issued proposed guidance which sets out examples of good and poor practice to help banks strengthen their financial crime systems and controls in trade finance. The guidance contains proposed rules to ensure banks gain details of their client's customers overseas. The FCA deadline for any responses to the guidance was 4 October 2013.

The British Bankers Association stated, in response, that the FCA's plans "could conflict with wider UK Government priorities around international trade and the competitiveness of our member banks". Matt Allen, director of the Association said that "the level of regulatory expectations for financial crime controls for trade finance appears to be set at such a high level that this would call into question the viability of some trade finance business conducted by BBA members, particularly in relation to smaller corporate and SME relationships". He urged the FCA to hold further talks, warning that the rigid approach has the possibility of actually providing opportunities for financial criminals.

UK COURT PROCEEDINGS AND ENFORCEMENT ACTION

MONEY LAUNDERERS JAILED

Two men have been jailed after they were found guilty at the Old Bailey of laundering millions of pounds. Amin Surani was caught handing over £50,000 to Surinder Rahela in May 2013. A further £110,000 was found in cash between the two men, along with a diary detailing many dealings. As a result of the investigation it was shown that £4.5 million had passed through the men's operation in the four months prior to their arrests. It is suspected that the money was linked to drug trafficking.

Amin Surani is an Indian national and following his two week trial at the Old Bailey he was convicted of two counts of money laundering and sentenced to six and a half years in prison. Surani will face deportation at the end of his sentence. Rahela was jailed for 18 months after being found guilty of one count of money laundering.

EFG PRIVATE BANK FINED £4.2M FOR FAILURES IN ITS ANTI MONEY LAUNDERING CONTROLS

In April 2013 the FCA fined EFG Private Bank £4.2 million for failing to take reasonable care to establish and maintain effective anti-money laundering controls for three years in relation to high risk customers. A UK private banking subsidiary, EFG provides private banking and wealth management services to high net worth individuals. At the end of 2011, following a Financial Services Authority ("**FSA**") investigation it was discovered that many customers presented a high risk of money laundering or bribery and corruption. The reasons for the risk ranged from the client operating from an overseas location to accounts that were held by politically exposed persons.

An initial review by the FSA, as part of their thematic review of how UK banks were managing money laundering risk in higher risk situations, raised concerns that led them to investigate further. It was discovered that EFG did not have an effective anti-money laundering policy in place. Although the bank had correctly identified customers who posed higher risks, there was insufficient evidence to show how the bank had mitigated those risks. The FSA reviewed 36 customer files and 17 of those highlighted serious risks including 13 with allegations of criminal activity and offences.

Tracey McDermott, FCA Director of enforcement and financial crime, said "Banks are the first line of defence to make sure that proceeds of crime do not find their way into the UK. In this case while EFG's policies looked good on paper, in practice it manifestly failed to ensure that it was addressing its AML risks. Its poor implementation of its agreed policies risked the bank handling the proceeds of crime. These failures merited a strong penalty from the FCA".

SOMALIS WIN UK COURT REPRIEVE ON BARCLAYS MONEY TRANSFERS

Dahabshiil, a Somalian money service provider won an injunction in the UK High Court which temporarily prevents Barclays from dropping it as a client. Somalia does not have an active banking system because of its on-going civil war. As a result money service providers are used by Somali's in the UK to send money home to family. Dahabshiil is one of Somalia's biggest remittance providers. Due to concerns over breaches of money laundering regulations, Barclays decided to immediately exit the business citing these concerns as the reason. Barclays shut down accounts to around 250 money-service businesses.

"We are very disappointed at today's decision and we will be appealing," said a spokesman for Barclay's, "Barclays made a legitimate decision to exit these businesses based upon the well-known risks of money-laundering and terrorist financing in the money service business sector. The risk of financial crime is an important regulatory concern and we take our responsibilities in relation to this very seriously." The decision to exit the business was in an attempt to de-risk its client roster based on regulatory concerns about money laundering.

The injunction was sought on the basis that as Barclays has a dominant position in the market its decision to drop the money remitter could breach competition law. Banks will now have to be careful about the reasons they give for exiting business relationships and many are appealing to the FCA for more guidance and help. Barclays are taking the case to the Court of Appeal.

EIGHT FRAUDSTERS SENTENCED FOR £700,000 BOILER ROOM SCAM

Between November 2009 and August 2010 a gang-led boiler room scam defrauded 73 people out of £700,000. Eight individuals operated a boiler room which offered stock market shares at discounted prices and sought after shares which were not actually available to buy by the general public. Using the names of genuine companies meant that the gang were able to trick investors into buying shares that did not actually exist. The money received from investors was subsequently laundered through UK bank accounts set up by the gang.

All eight individuals were sentenced for money laundering offences in October 2013 at Southwark Crown Court. Detective Constable Abdun Noor stated that "the boiler room could not have operated without this group of people willingly laundering innocent victims money. The boiler room went to great lengths to make their victims believe that these companies were genuine so they could sell more shares. It is possible there are further victims of this fraud who have not yet been identified".

The convictions ranged from six years imprisonment for Levi Coyle who was found guilty of money laundering and conspiracy to defraud to an eight month suspended sentence for Andrew Sutton with 150 hours of unpaid work.

INTERNATIONAL

NEWS

G8 DIALOGUE ON ANTI-MONEY LAUNDERING AND COUNTERING TERRORIST FINANCE

At the beginning of September 2013, Namibia hosted the G8's Sub-Saharan Africa Public-Private Sector Dialogue (the "**Dialogue**"). The Dialogue acted as a platform, bringing together representatives of the public and private sectors from Africa and around the globe to discuss the challenges around effective regimes for anti-money laundering in sub-Saharan Africa, including how to combat the financing of terrorism. These issues are exemplified due to the rapidly developing economy in the region. The governments and the private sector have the same goal in that they are committed to preventing money laundering, while shedding light on any corrupt politicians who are hiding stolen public assets and thwarting terrorists. However, responsibilities between them vary which is why open communication in this Dialogue is so useful. Illicit finance flows out of the region at a greater rate than which Africa receives aid, hugely undermining the African economies. It is of paramount importance for the regions development that a more robust regime is developed.

Anti-money laundering and counter terrorist financing policies must be adapted to reflect new payment methods, many of which are rapidly diversifying due to the fast growing economies in sub-Sahara Africa. The many challenges faced formed the basis of the two day Dialogue, customer due diligence, high risk customers and correspondent banking issues were all discussed. The Dialogue also highlights the political importance of developing a robust regime in the region to create and allow sustainable growth and investment.

DEMOCRATS INTRODUCE BILLS TO DETER MONEY LAUNDERING AND HOLD EXECUTIVES RESPONSIBLE

Maxine Waters, a Democratic representative has introduced legislation to strengthen US anti money laundering laws and enhance the financial regulators powers to hold bank executives personally accountable for misconduct which takes place under their control. The legislation would strengthen the government's ability to go after individuals who violate the US Bank Secrecy Act as well as giving the regulators the power to remove or permanently ban individuals from the industry if they fall foul of the law.

The legislation is introduced in the wake of enforcement actions against banks which have revealed that some banks have systematically violated the Bank Secrecy Act in order to increase profits. However, despite heavy fines for the corporate entities involved, no individual has been held responsible. The Bill highlights increased scrutiny among policy makers on money laundering offences. Regulators are concerned about the relaxed approach many banks are taking to combat money laundering. Many believe this is as a result of the 2008 financial crisis which diverted bank executive's attention on to other things.

The Bill would raise the maximum prison sentence from five years to 20 years for anyone found to have wilfully evaded the Bank Secrecy Act. The Bill would also make the independent consultants, who are appointed to examine a bank's compliance program following regulatory issues, accountable for any wrong doing. The Financial Crimes Enforcement Network, a bureau of the Treasury Department would gain greater powers including the ability to litigate without other agencies assistance as well as its own whistle blower program.

THE USE OF THE FATF RECOMMENDATIONS TO COMBAT CORRUPTION – REPORT

The recent Financial Action Task Force ("**FATF**") paper provides guidance and best practices to policy makers on how to combat money laundering and terrorist financing in the fight against corruption. FATF reported that a substantial amount of criminal proceeds are generated from corruption offences such as bribery and embezzlement. However, the FATF noted that despite anti-money laundering and counter terrorist financing policies being mutually reinforced by anti-corruption policies, it is often the case that they are not deployed together effectively.

The objectives of the FATF are "to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing and other related threats to the integrity of the international financial system". Their recently revised Recommendations, developed to achieve these objectives, are recognised as an international standard for combating money laundering and terrorist financing.

The paper was created with direct input from the G20 anti-corruption working group, building on existing work done by the FATF. The report details that countries should have in place national co-ordination and co-operation mechanisms to engage anti-corruption authorities for anti-money laundering and counter terrorist financing purposes. The report also details that there should be a "reliable paper trail of business relationships, transactions" that "discloses the true ownership and movement of assets" to increase the transparency of the financial system, preventing individuals laundering money through financial entities. Coupled with this is the emphasis on customer due diligence to maintain a clear understanding of customers and allow risks to be identified and managed.

The St. Petersburg G20 Summit held in September 2013 highlighted that anti-money laundering and counter terrorist financing measures to fight corruption will remain a significant area of growing co-operation between anti-corruption experts of the G20 and the FATF.

INTERNATIONAL ENFORCEMENT ACTION

SWISS REFINER ARGOR ACCUSED OF LAUNDERING DRC GOLD

Argor-Heraeus, one of the world's four largest gold refiners has come under investigation by the Swiss authorities for suspected money laundering in connection with war crimes. On 1 November a complaint from Geneva based NGO, Trial, was made accusing Argor of processing almost three tonnes of gold that had been sourced from an armed group in the Democratic Republic of Congo ("**DRC**"). The Federal Prosecutor's Office has now opened a criminal investigation into refining between 2005 and 2006. It is thought the gold was mined by an armed group in the DRC before being shipped to Switzerland, via Uganda. Trial allege that they have evidence which proves Argor knew, or should have known that the raw material was the proceeds of pillage.

Argor issued a statement that they have already been cleared under similar investigations by the United Nations, the Swiss economics ministry and the Swiss financial markets regulator, FINMA. Expert reports were addressed to the UN Security Council in both July 2005 and January 2006. The reports names Argor as the refiner of pillaged gold however the sanctions committee left Argor and other European countries who were accused of buying similarly refined gold without sanction while imposing heaving sanctions on African businesses. Argor claim that they stopped refining gold from Uganda as soon as they became aware of problems. The charge, "aggravated laundering" of assets could result in prison sentences for any individual found guilty of laundering money and the company could face a fine of up to $5.49 million.

FOUNDER OF LIBERTY RESERVE ADMITS GUILT AND FACES 75 YEARS IN PRISON

Vladimir Kats, the co-founder of Liberty Reserve, what was once the world's most widely used digital currency service, has pleaded guilty to money laundering. Liberty Reserve was shut down in May 2013 due to suspicions that proceeds of crime worth $6 billion had been laundered over 55 million transactions. The service allowed account holders to send and receive payments from anywhere in the world without the need for any kind of formal identification process.

Liberty Reserve's business operated through a complex chain of "exchangers" in order to add layers of anonymity to the process. Rather than customers directly depositing money with Liberty Reserve, they would pay an exchange for a specified amount of Liberty Reserves which would be deposited into the customer's online account.

From 2006 to 2013 financial transactions stemming from crimes, including credit card fraud, identity theft, investment fraud, computer hacking, child pornography, and narcotics trafficking were carried out. Kats has pleaded guilty to several offences, including conspiracy to commit money laundering, conspiracy to operate an unlicensed money transmitting business, and operating an unlicensed money transmitting business. Although sentencing has not yet taken place, the crimes Kats has pleaded guilty to each come with maximum prison sentences ranging from 5 to 40 years.

SAUDI ARABIA OFFERS REWARDS FOR TERRORIST FINANCING INFORMATION

On 4 November 2013 it was announced that the Saudi government intend to provide cash rewards in exchange for information about money laundering or terrorist financing operations. A cabinet statement revealed that those providing information to the government would receive a reward equal to 5 per cent of the amount of money confiscated under a court order. In the case of multiple informants the reward would be divided to reflect the efforts made on the informants part. Any reward is subject to the information provided as being credible information on criminal financing operations. In addition, the informer should not work for any financial institution.

SUPREME COURT WILL HEAR GOVERNMENT'S APPEAL OVER TERROR FINANCING LAW

On 10 October 2013 Canada's high court granted the government leave to appeal the British Columbia Court of Appeal's decision over its terror financing law. The Court of Appeal had upheld the trial court's decision which effectively exempt legal counsel and law firms from complying with specific sections of the Canadian Proceeds of Crime (Money Laundering) and Terrorist Financing Act and other relevant legislation.

The federal government want to enforce legislation which orders lawyers and financial institutions to keep records of money transactions to prevent terrorist financing and money laundering. Canada has 14 law societies and all 14 have resisted these statutory obligations.

On 4 April 2013 the Court of Appeal ruled that the regulation of lawyers by the Canadian law societies provide an effective and constitutional way to fight money laundering and terrorist financing. The initial hearing in September 2011 outlined three principles of fundamental justice that would be affected if the Act was to be complied with: solicitor-client privilege, the lawyer's duty of undivided loyalty to the client and the independence of the Bar. The Court of Appeal agreed with these principles, the challenge continues.

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FINANCIAL SERVICES TEAM

DLA Piper's dedicated Financial Services team offers specialist legal expertise and practical advice on a wide range of contentious and advisory issues. The team has an experienced advisory practice which gives practical advice on all aspects of financial services regulation and anti-money laundering. The team can also assist clients on contentious legal matters including: internal and regulatory investigations, enforcement actions and court proceedings in the financial services sector.

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