Butterworths Money Laundering Law

Bulletin Editor
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UK NEWS

HM Treasury

Advisory notice on money laundering and terrorist financing in overseas jurisdictions

On 6 November 2012 HM Treasury issued the latest in a series of advisory notices regarding the risks posed by unsatisfactory money laundering controls in a number of foreign jurisdictions.

The advice replaces all previous advisory notices issued by HM Treasury on this subject.

The full text of the notice can be found here: http://hm-treasury.gov.uk/d/advisory_notice_moneylaundering_nov2012.pdf

Financial sanctions

A consolidated list of asset freeze targets designated by the United Nations, European Union and United Kingdom under legislation relating to current financial sanctions regimes was updated on 28 December 2012, it is available here: http://hm-treasury.gov.uk/fin_sanctions_index.htm

FSA

Financial Crime Newsletter

In October 2012 the Financial Services Authority (FSA) published issue 16 of its Financial Crime Newsletter.

The Newsletter summarises the work of the Financial Crime division during the year to date and highlights the substantial fines levied on firms for non-compliance.

In relation to on-going Thematic Work it is reported that the next round of reviews will focus on:

- money laundering, terrorist financing and sanctions risks in trade finance; and
- anti-money laundering and anti-bribery systems and controls in asset management firms.

The FSA expect to publish both reports by Q3 2013.

The full text of the Newsletter may be found here: http://www.fsa.gov.uk/static/pubs/newsletters/fc-newsletter16.pdf

Financial Crime Guide: PS 11l15

In this Policy Statement the FSA respond to feedback received on the Consultation Paper 11/12, Financial crime: a guide for firms. The FSA also publish the final text of its new regulatory guide, also entitled 'Financial crime: a guide for firms'.

The full text consisting of 168 pages may be found here: http://www.fsa.gov.uk/static/pubs/policy/ps11_15.pdf

HMRC

Changes to Money Laundering Regulations from 1 October 2012

Changes to the Money Laundering Regulations 2007 will come into force on 1 October.

There are several changes which will affect businesses supervised by HM Revenue & Customs (HMRC). The main ones are:

The fit and proper test

This test is part of the registration process for Money Service Businesses and Trust and Company Service Providers and it applies to particular individuals within these businesses. Under the changes the decision on whether an individual is fit and proper will now be based on the risk of money laundering or terrorist financing. HMRC will therefore be able to take into account a wider set of criteria when deciding whether a person is fit and proper. The changes also introduce a right of appeal for a person who has been deemed by HMRC not to be 'fit and proper' under the regulations.

Registration

A registration may now be cancelled where, after registration, the 'relevant person' is no longer able to meet the conditions for registration or where the relevant person has failed to provide HMRC with information it has requested by notice.

Relevant person

A relevant person is a person or business to whom the regulations apply. The definition has been widened to include those persons who HMRC believes or suspects to be a relevant person.

Penalties

A penalty can now be imposed for failure to provide information required by notice.

Disclosure

A legal gateway now exists between supervisory authorities which allows them to share information subject to certain conditions.

Changes to registration procedures for money transmitters

Businesses carrying out money transmission have to be registered with, or authorised by, the FSA to be able to provide any payment services including money transmission. The Payment Service Regulations (PSRs 2012) legislation which sets out this requirement has changed with effect from 1 October 2012.

The PSRs 2012 change the FSA registration requirements for:

- applicants seeking to become small payment institutions (small PIs);
- those with applications pending on that date; and
- those that are already registered as small PIs with the FSA.

From 1 October 2012, all new and existing applicants seeking to register as a small PI will be required to satisfy the FSA that they are 'fit and proper' to be registered as a small PI. Existing registered small PIs will also have to provide FSA with the required information for FSA to assess their 'fit and proper' status.

Small PIs will have until 30 September 2013 to provide this information to the FSA. Failure to submit this information or to satisfy the FSA that they are 'fit and proper' may result in their referral for enforcement action, and ultimately the cancellation of their registration under the PSRs 2009.

Money transmitters who are planning to register with both HMRC and FSA should now ensure they make these applications at the same time, since neither FSA nor HMRC will start processing an application to register unless they are sure that there has been an application made to both bodies.

In addition, if HMRC receives an application for registration under a number of sector types within the Money Service Businesses regime, it will withhold the element of money transmission from the MLR Certificate until the FSA can confirm that it has received an application to register.

Money Laundering Regulations – new guidance for Money Service Businesses

On 22 June 2012, HM Revenue & Customs (HMRC) announced that new information was being added to the anti-money laundering guide for Money Service Businesses (MSBs).

HMRC wrote to all registered MSBs at the end of June to give a summary of the new guidance and instructed MSBs to review their anti-money laundering policies and procedures.

To address concerns about suggested thresholds for checking the source of funds, HMRC has since made some further changes to the new guidance and has revised the section on financial corridors to help make this clearer.

The new guidance explains:

- when to check where funds have come from in one-off transactions below €15,000;
- due diligence measures where your customer is another MSB;
- financial corridors;
- when to apply enhanced due diligence to high risk countries;
- whether to check the person who receives third party payments;
- what action is required on money transmissions into the UK from overseas; and
- what to do if your registration with the FSA does not match your registration with HMRC.

Scrap metal dealers considering registering as a cheque cashing business

The Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012 came into force on 3 December 2012 and makes it an offence for scrap metal dealers (SMDs) to pay cash to customers selling them scrap metal.

Some SMDs have been considering how they will restructure in light of the LASPO Act, including establishing cheque cashing businesses within SMDs. Any cheque cashing business must be registered with HM Revenue & Customs (HMRC) under the Money Laundering Regulations (MLR).

SMDs who wish to apply to act as cheque cashers should be aware of the following requirements:

- Any business which wishes to provide cheque cashing facilities must register with HMRC as a Money Service Business and those involved in running the business must also pass the 'fit and proper' test.
- Any business that wishes to provide a cheque cashing facility must also ensure that its bank authorises it to do so. Unless a cheque from a third

party is presented to a bank and processed by that bank, no cheque cashing will be deemed to have occurred.

- In order to qualify as cheque cashing, the cheque that is cashed must be from a third party. A cheque from A to B, which B then signs over to A in return for cash, only involves two parties and does not qualify. Banks are also unlikely to accept such cheques for processing.
- When HMRC considers that no cheque cashing is taking place and the payment (or linked payments) value is over €15,000 HMRC will consider the business to be trading as a High Value Dealer and as such they must register with HMRC. Not following the correct procedures could lead to the business being in breach of Legal Aid Sentencing and Punishment of Offenders Act (LASPO) 2012.
- If a SMD agrees to act as an agent for an existing cheque casher they will be expected to demonstrate to HMRC that they are fulfilling all their obligations under MLR.

HMRC considers there is a high risk associated with SMDs offering cheque cashing services and will carefully scrutinise all applications and monitor compliance with MLR by such businesses. If businesses applying to register with HMRC as cheque cashers do not meet any of the criteria above, HMRC will refuse to register them.

SFO

Stockbroker jailed for 'Ponzi' fraud

A City trader has been jailed for 13 years after admitting he defrauded investors. Losses are estimated to be over £32 million.

Former city stockbroker Nicholas David Andrew Levene of Barnet, Hertfordshire, was sentenced on 5 November 2012 at Southwark Crown Court after pleading guilty on 24 September 2012 to 12 counts of fraud, one count of false accounting and one count of obtaining a money transfer by deception. The offences took place between 2005 and 2009.

In passing sentence HHJ Beddoe QC stated:

> It was a fraud from the outset, where countless lies were told. It was rank dishonesty. There were separate acts of individual moments of betrayal.

Commenting on the investigation Jonathan Midgley the case manager stated:

> This was a complex and extensive fraud where Nicholas Levene used investors' monies to finance a lavish personal lifestyle.

Background

In pleading guilty Mr Levene admitted that between April 2005 and October 2009 he dishonestly accepted monies from investors. Levene told investors he had bought shares on their behalf when instead funds were diverted to his

own personal, business or gambling accounts. To maintain the fraud investors were often provided with false 'profits' – in fact, other people's money. This deceived investors into believing that he was a successful trader.

In total, between 1 January 2005 and 31 October 2009 Levene obtained over £250 million pounds from investors.

The fraud collapsed in 2009 following civil court action by a number of investors to recover their monies. Levene was subsequently made the subject of a bankruptcy order on 7 October 2009.

Benefit

Monies obtained from investors were used by Levene to finance a lavish lifestyle. Over £18 million of Investor monies were used to buy property in the UK and Israel, or spent on overseas travel, holidays and lifestyle expenses.

SFO investigation

The SFO commenced a criminal investigation in October 2009. Levene was charged on 4 March 2011. He initially entered not guilty pleas on 28 September 2011. A change of plea to guilty was entered on 24 September 2012 prior to trial commencing in October.

Confiscation

Confiscation proceedings are listed for 25 March 2013 at Southwark Crown Court.

Further to an application by the SFO a serious crime prevention order (SCPO) was also imposed by the court preventing Levene on release from prison promoting or advising on financial investments for a period of five years.

LIBOR: three arrested

On 11 December 2012 the Serious Fraud Office, with the assistance of the City of London Police, executed search warrants at three residential premises in Surrey (1) and Essex (2). Three men have been arrested and taken to a London police station for interview in connection with the investigation into the manipulation of LIBOR. The men are all British nationals currently living in the United Kingdom.

Four charged in Nigerian corruption investigation

Three men and a woman have appeared on 17 December 2012 before Westminster Magistrates' Court charged with two offences of conspiracy to corrupt. This follows a two-year investigation into allegations of corruption in relation to the tax affairs of Swift Technical Energy Solutions Ltd, a Nigerian subsidiary of the Swift Group of companies. The value of the bribes alleged to have been paid is approximately £180,000.

The defendants, all British nationals, are:

- Paul Jacobs of Hertfordshire, the former Chief Financial Officer of Swift;
- Bharat Sodha of Middlesex, the former Tax Manager of Swift;
- Nidhi Vyas of Middlesex, the former Financial Controller of Swift; an
- Trevor Bruce of Northern Ireland, the former Area Director for Nigeria of Swift.

Outline

Swift is a provider of manpower for the oil and gas industry, employing over 3,000 contractors in over 35 countries. This prosecution has been brought following an investigation by the Serious Fraud Office in conjunction with the City of London Police into allegations that employees or agents of Swift had paid bribes to tax officials to avoid, reduce or delay paying tax on behalf of workers placed by Swift. The charges relate to payments said to have been made to agents of the Rivers State Board of Internal Revenue and the Lagos State Board of Internal Revenue, both in Nigeria. The payments were made in 2008 and 2009.

The case has been sent to Southwark Crown Court for a preliminary hearing on 22 February 2013. The defendants are on unconditional bail. The Swift Group has been co-operating with the SFO investigation and is not facing criminal charges.

SOCA

Suspicious Activity Reports Regime Annual Report 2012

The Suspicious Activity Reports (SARs) Annual Report 2012 was published on 18 December 2012. The Report represents the SARs Regime Committee's review of the operation and performance of the SARs Regime from October 2011 to September 2012.

The Report focuses on the performance of the UK Financial Intelligence Unit (UKFIU) against the third and final year of the three-year strategy for the SARs Regime set out in 2009.

This report is part of SOCA's on-going commitment to communicate regularly with reporters of SARs, end users and other stakeholders.

Key aspects of the SARs Annual Report 2012 include:

- Case studies demonstrating where SARs have been used by investigators to identify and tackle a wide range of crimes.
- The number of SARs received by SOCA continues to increase (up by over 30,000 from last year), a total of 278,665 reports.
- Restraint sums arising from refused consent requests have increased by 20%.
- In response to the Information Commissioner's review of the operation and use of the SARs database, the new policy on the retention and

deletion of SARs has been successfully implemented. Over 745,000 SARs have been deleted following implementation of the policy.

- There were no confirmed breaches of SARs confidentiality.

The report can be downloaded from the SOCA website: http://www.soca.gov.uk/news/498-sars-regime-annual-report-2012

Drug lord to hand over illicit profits

The mastermind of a conspiracy to supply huge quantities of heroin to communities throughout the UK has been ordered to pay back £1.8million.

His Honour Judge Peter Carr, in Birmingham Crown Court, granted SOCA the Confiscation Order against Akbar Bukhari who was jailed for 18 years last August. If he defaults on the order he will have to serve an additional ten years in prison while still being liable for the money owed.

Bukhari, of Small Heath, Birmingham, trafficked at least 420kg of heroin between January 2007 and May 2009. He had utilised the knowledge acquired during his time as a business student to keep a detailed ledger of his complex criminal enterprises.

Sarah Goodall, SOCA's Regional Head of Investigations, said:

> Our warning to other criminals in Birmingham and across the UK is clear: if you get involved in organised crime, expect SOCA to make you pay for it with your freedom and your finances.
>
> Our work does not stop here though because when criminals come onto SOCA's radar they stay on it. A Serious Crime Prevention Order has been granted which will make it more difficult for Bukhari to re-offend when he's eventually released from prison.
>
> The order will limit how much cash Bukhari can possess as well as restrict his use of cars, premises, computers and mobile phones. Breaches are punishable by up to five years imprisonment and an unlimited fine.

Another six members of Bukhari's crime group were also jailed last year and received sentences totalling over 100 years.

Bribery Act

Civil Settlement

The Scottish Civil Recovery Unit is to recover £5.6 million under Proceeds of Crime legislation after a Scottish drilling company accepted that it had benefited from unlawful conduct.

Abbot Group Limited ('Abbot'), which is based in Aberdeen, admitted that it had benefited from corrupt payments made in connection with a contract entered into by one of its overseas subsidiaries and an overseas oil and gas company.

The contract was entered into in 2006 and the payments were made in 2007. The sum to be paid by Abbot represents the profit made by the company under the contract. Since then, the ownership and structure of Abbot has changed significantly.

The corrupt payments were brought to light in May 2011 following enquiries by an overseas tax authority which resulted in an investigation by a firm of solicitors and a firm of accountants instructed by Abbot itself. Abbot reported the results of the investigation to the Crown Office and Procurator Fiscal Service in July 2012 under the self-reporting initiative.

In view of any criminal investigation of others that may follow, it is not possible to provide any further details of the corrupt payments.

In accordance with the published guidance on self-reporting, the following criteria were considered in the decision to refer this case to the Civil Recovery Unit for an extra-judicial settlement:-

- the nature and seriousness of the offence and the extent of the harm caused;
- the extent of the wrongdoing within the business, including whether the conduct was authorised by, or connived in, by senior management, or restricted to a small number of lower-ranking individuals;
- whether it is clear that the business is taking action as soon as the matter comes to the attention of senior management (as opposed to taking no action until it becomes aware that there is a risk that the conduct is going to come to light);
- whether the business (or the individuals involved in the matter reported) has any previous record for this type of conduct. This would go beyond a previous criminal conviction, and would include any regulatory enforcement action or warning;
- whether the individuals involved in the wrongdoing have left the business and, where decisions were taken at Board level, whether there is a new Board in place, and in both cases the timing and reasons for the departure of these individuals;
- whether the business has honoured its commitment to engage with the Crown meaningfully and in particular to disclose the full extent of the wrongdoing;
- whether the business had in place adequate anti-bribery systems at the time of the criminal conduct and whether it has further addressed this following the conduct;
- whether there are particular considerations which may weigh against prosecution, such as the consequences of prosecution for the company's employees and stakeholders.

Abbot is the first company to enter into a civil settlement under the self-reporting initiative since it was introduced in 2011.

Speaking of the case, the Solicitor General, Lesley Thomson QC said:

> Bribery and corruption cause worldwide damage to business and economic development. The self-reporting initiative creates a mechanism for businesses to recognise their corporate responsibility and take a rigorous approach to the investigation and elimination of such practices. While consideration must first be given to prosecution of appropriate cases, I am pleased that the Crown Office and Procurator Fiscal Service and the Civil Recovery Unit are committed to taking effective steps to ensure that businesses face up to their responsibilities and relinquish any unlawfully obtained profits.

Ruaraidh Macniven, Head of the Civil Recovery Unit commented:

> Abbot is the first company to have met the strict criteria of the self-reporting initiative since it was introduced in 2011. That initiative enables responsible businesses to draw a line under previous conduct and, providing the criteria are met, affords the possibility of a civil settlement. Self-reporting is an important way to ensure that corruption is exposed and that companies put in place effective systems to prevent it. The funds which have been recovered will be remitted to the Scottish Consolidated Fund.

Justice Secretary Kenny MacAskill added:

> This significant recovery made through the excellent work of the Civil Recovery Unit will be invested in the Scottish Government's hugely successful Cash Back for Communities Programme which takes cash from the Proceeds of Crime and invests it in a range of sporting, cultural, community mentoring projects and sports facilities for the benefit of our young people and their communities.
>
> The £5.6m will be used to further expand the £46m Cash Back Programme by funding projects that will contribute towards delivering youth employability, healthy lifestyles and reducing re-offending for the young people of Scotland.

Other financial crime news

Michaud v France

Alison Matthews has written a report on this case.

The European Court of Human Rights held unanimously on 6 December 2012 that the obligation on lawyers to report suspicions in the context of the fight against money laundering does not interfere disproportionately with professional privilege.

The case was brought by a French member of the Paris Bar who argued that the obligation to report suspicions was incompatible with the principles of protection of lawyer-client relations and respect for professional confidentiality.

It is worth noting that this Chamber judgment is not final as any party may, in the three months after delivery, request that the case be referred to the Grand Chamber of the court.

Background to the case

The original application was lodged in January 2011 and there has been considerable interest in the case. The Council of Bars and Law Societies of Europe (CCBE), among others, were granted leave to submit written observations as third party interveners.

Although the case relates specifically to French lawyers, it is more broadly relevant as it stressed the importance of confidentiality and of legal professional privilege.

At the same time, the court considered the obligation to report suspicions was necessary in pursuit of the legitimate aim of prevention of disorder or crime, since it was intended to combat money laundering and related criminal offences.

The court gave careful consideration to the European money laundering directives, article 8 of the European Convention on Human Rights and the importance of the confidentiality of lawyer-client relations and of legal professional privilege.

The court's decision

The court held that the obligation to report, as implemented in France, did not interfere disproportionately with legal professional privilege since lawyers were not subject to the requirement when defending litigants and there is a filter put in place by the legislation ensuring that the lawyers submit their reports to the president of their Bar Association and not to the authorities.

The regimes are not identical, as the UK legislation goes further than the French legislation, but the decision is of interest as it maintains the status quo, and reinforces that lawyers are gatekeepers who must report in certain circumstances.

However, subject to those obligations, confidentiality and legal professional privilege remain fundamental principles on which the administration of justice in a democratic society is based.

Internet cafe owner jailed for £1.3 million laundering scam

An internet cafe owner who also worked as a Western Union money transfer agent carried out over £1.3 million worth of transfers from his premises in Gravesend. The man created phantom customers using fake identification documents and forwarded the cash electronically to other countries. The money was transferred into the UK from the USA, Canada, Australia and Europe and usually sent on to Africa. The man was jailed for six years for transferring criminal property.

Brothel managers convicted for money laundering

Three people have been found guilty of money laundering offences related to their involvement in running a brothel in Hitchin. One man was sentenced to six months' imprisonment for money laundering and 12 months' for managing a brothel. A second man and a woman were also convicted of money laundering and each given a 12 month community order and 200 hours' community service.

FATF

FATF Public Statements

The latest FATF statements on high-risk and non-cooperative jurisdictions/ Improving Global AML/CFT Compliance: on-going process, were issued on 19 October 2012. This led to the subsequent HMT Advisory Notice referred to above.

INTERNATIONAL ROUND-UP

HSBC Holdings Plc and HSBC Bank USA NA admit to anti-money laundering and sanctions violations, forfeit $1.256 Billion in deferred prosecution agreement

HSBC Holdings plc (HSBC Group) – a United Kingdom corporation headquartered in London – and HSBC Bank USA NA (HSBC Bank USA) (together, HSBC) – a federally chartered banking corporation headquartered in McLean, Va – have agreed to forfeit $1.256 billion and enter into a deferred prosecution agreement with the Justice Department for HSBC's violations of the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). According to court documents, HSBC Bank USA violated the BSA by failing to maintain an effective anti-money laundering program and to conduct appropriate due diligence on its foreign correspondent account holders. The HSBC Group violated IEEPA and TWEA by illegally conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma – all countries that were subject to sanctions enforced by the Office of Foreign Assets Control (OFAC) at the time of the transactions.

The announcement was made by Lanny A. Breuer, Assistant Attorney General of the Justice Department's Criminal Division; Loretta Lynch, US Attorney for the Eastern District of New York; and John Morton, Director of US Immigration and Customs Enforcement (ICE); along with numerous law enforcement and regulatory partners. The New York County District Attorney's Office worked with the Justice Department on the sanctions portion of the investigation. Treasury Under Secretary David S. Cohen and Comptroller of the Currency Thomas J. Curry also joined in today's announcement.

A four-count felony criminal information was filed today in federal court in the Eastern District of New York charging HSBC with wilfully failing to maintain an effective AML program, wilfully failing to conduct due diligence

on its foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC has waived federal indictment, agreed to the filing of the information, and has accepted responsibility for its criminal conduct and that of its employees. Assistant Attorney General Breuer said:

> HSBC is being held accountable for stunning failures of oversight – and worse – that led the bank to permit narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries
>
> The record of dysfunction that prevailed at HSBC for many years was astonishing. Today, HSBC is paying a heavy price for its conduct, and, under the terms of today's agreement, if the bank fails to comply with the agreement in any way, we reserve the right to fully prosecute it.

US Attorney Lynch stated:

> Today we announce the filing of criminal charges against HSBC, one of the largest financial institutions in the world
>
> HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least $881 million in drug proceeds through the U.S. financial system. HSBC's wilful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in OFAC-prohibited transactions. Today's historic agreement, which imposes the largest penalty in any BSA prosecution to date, makes it clear that all corporate citizens, no matter how large, must be held accountable for their actions.

ICE Director Morton added:

> Cartels and criminal organization are fueled by money and profits, without their illicit proceeds used to fund criminal activities, the lifeblood of their operations is disrupted. Thanks to the work of Homeland Security Investigations and our El Dorado Task Force, this financial institution is being held accountable for turning a blind eye to money laundering that was occurring right before their very eyes. HSI will continue to aggressively target financial institutions whose inactions are contributing in no small way to the devastation wrought by the international drug trade. There will be also a high price to pay for enabling dangerous criminal enterprises.

In addition to forfeiting $1.256 billion as part of its deferred prosecution agreement (DPA) with the Department of Justice, HSBC has also agreed to pay $665 million in civil penalties – $500 million to the Office of the Comptroller of the Currency (OCC) and $165 million to the Federal Reserve – for its AML program violations. The OCC penalty also satisfies a $500 million civil penalty of the Financial Crimes Enforcement Network (FinCEN). The bank's $375 million settlement agreement with OFAC is satisfied by the forfeiture to the Department of Justice. The United Kingdom's Financial Services Authority (FSA) is pursuing a separate action.

As required by the DPA, HSBC also has committed to undertake enhanced AML and other compliance obligations and structural changes within its entire global operations to prevent a repeat of the conduct that led to this prosecution. HSBC has replaced almost all of its senior management, 'clawed back' deferred compensation bonuses given to its most senior AML and compliance officers, and has agreed to partially defer bonus compensation for its most senior executives – its group general managers and group managing directors – during the period of the five-year DPA. In addition to these measures, HSBC has made significant changes in its management structure and AML compliance functions that increase the accountability of its most senior executives for AML compliance failures.

The AML Investigation

According to court documents, from 2006 to 2010, HSBC Bank USA severely understaffed its AML compliance function and failed to implement an anti-money laundering program capable of adequately monitoring suspicious transactions and activities from HSBC Group Affilliates, particularly HSBC Mexico, one of HSBC Bank USA's largest Mexican customers. This included a failure to monitor billions of dollars in purchases of physical US dollars, or 'banknotes', from these affiliates. Despite evidence of serious money laundering risks associated with doing business in Mexico, from at least 2006 to 2009, HSBC Bank USA rated Mexico as 'standard' risk, its lowest AML risk category. As a result, HSBC Bank USA failed to monitor over $670 billion in wire transfers and over $9.4 billion in purchases of physical US dollars from HSBC Mexico during this period, when HSBC Mexico's own lax AML controls caused it to be the preferred financial institution for drug cartels and money launderers.

A significant portion of the laundered drug trafficking proceeds were involved in the Black Market Peso Exchange (BMPE), a complex money laundering system that is designed to move the proceeds from the sale of illegal drugs in the United States to drug cartels outside of the United States, often in Colombia. According to court documents, beginning in 2008, an investigation conducted by ICE Homeland Security Investigation's (HSI's) El Dorado Task Force, in conjunction with the U.S. Attorney's Office for the Eastern District of New York, identified multiple HSBC Mexico accounts associated with BMPE activity and revealed that drug traffickers were depositing hundreds of thousands of dollars in bulk US currency each day into HSBC Mexico accounts. Since 2009, the investigation has resulted in the arrest, extradition, and conviction of numerous individuals illegally using HSBC Mexico accounts in furtherance of BMPE activity.

As a result of HSBC Bank USA's AML failures, at least $881 million in drug trafficking proceeds – including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia – were laundered through HSBC Bank USA. HSBC Group admitted it did not inform HSBC Bank USA of significant AML deficiencies at HSBC Mexico, despite knowing of these problems and their effect on the potential flow of illicit funds through HSBC Bank USA.

The Sanctions Investigation

According to court documents, from the mid-1990s through September 2006, HSBC Group allowed approximately $660 million in OFAC-prohibited transactions to be processed through US financial institutions, including HSBC Bank USA. HSBC Group followed instructions from sanctioned entities such as Iran, Cuba, Sudan, Libya and Burma, to omit their names from US dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States. The bank also removed information identifying the countries from US dollar payment messages; deliberately used less-transparent payment messages, known as cover payments; and worked with at least one sanctioned entity to format payment messages, which prevented the bank's filters from blocking prohibited payments.

Specifically, beginning in the 1990s, HSBC Group affiliates worked with sanctioned entities to insert cautionary notes in payment messages including 'care sanctioned country', 'do not mention our name in NY,' or 'do not mention Iran'. HSBC Group became aware of this improper practice in 2000. In 2003, HSBC Group's head of compliance acknowledged that amending payment messages 'could provide the basis for an action against [HSBC] Group for breach of sanctions'. Notwithstanding instructions from HSBC Group Compliance to terminate this practice, HSBC Group affiliates were permitted to engage in the practice for an additional three years through the granting of dispensations to HSBC Group policy.

Court documents show that as early as July 2001, HSBC Bank USA's chief compliance officer confronted HSBC Group's Head of Compliance on the issue of amending payments and was assured that *'Group Compliance would not support blatant attempts to avoid sanctions, or actions which would place [HSBC Bank USA] in a potentially compromising position*'. As early as July 2001, HSBC Bank USA told HSBC Group's head of compliance that it was concerned that the use of cover payments prevented HSBC Bank USA from confirming whether the underlying transactions met OFAC requirements. From 2001 through 2006, HSBC Bank USA repeatedly told senior compliance officers at HSBC Group that it would not be able to properly screen sanctioned entity payments if payments were being sent using the cover method. These protests were ignored.

'Today HSBC is being held accountable for illegal transactions made through the US financial system on behalf of entities subject to US economic sanctions', said Debra Smith, Acting Assistant Director in Charge of the FBI's Washington Field Office. *'The FBI works closely with partner law enforcement agencies and federal regulators to ensure compliance with federal banking laws to promote integrity across financial institutions worldwide.'*

Richard Weber, Chief, Internal Revenue Service-Criminal Investigation (IRS-CI) observed:

> Banks are the first layer of defense against money launderers and other criminal enterprises who choose to utilize our nation's financial institutions to further their criminal activity.

> When a bank disregards the Bank Secrecy Act's reporting requirements, it compromises that layer of defense, making it more difficult to identify, detect and deter criminal activity. In this case, HSBC became a conduit to money laundering. The IRS is proud to partner with the other law enforcement agencies and share its world-renowned financial investigative expertise in this and other complex financial investigations.

Manhattan District Attorney Cyrus R. Vance Jr, said:

> New York is a center of international finance, and those who use our banks as a vehicle for international crime will not be tolerated. My office has entered into Deferred Prosecution Agreements with two different banks in just the past two days, and with six banks over the past four years. Sanctions enforcement is of vital importance to our national security and the integrity of our financial system. The fight against money laundering and terror financing requires global cooperation, and our joint investigations in this and other related cases highlight the importance of coordination in the enforcement of US sanctions. I thank our federal counterparts for their on-going partnership.

Queens County District Attorney Richard A. Brown added:

> No corporate entity should ever think itself too large to escape the consequences of assisting international drug cartels. In particular, banks have a special responsibility to use appropriate due diligence in monitoring the cash transactions flowing through their financial system and identifying the sources of that money in order not to assist in criminal activity. By allowing such illicit transactions to occur, HSBC failed in its global responsibility to us all. Hopefully, as a result of this historical settlement, we have gained the attention of not only HSBC but that of every other major financial institution so that they cannot turn a blind eye to the crime of money laundering.

The decision to fine, rather than issue criminal proceedings, has attracted much criticism.

Standard Chartered Bank Agrees to Forfeit $227 Million for Illegal Transactions with Iran, Sudan, Libya, and Burma

Standard Chartered Bank (SCB), a financial institution headquartered in London, has agreed to forfeit $227 million to the Justice Department for conspiring to violate the International Emergency Economic Powers Act (IEEPA). The bank has agreed to the forfeiture as part of a deferred prosecution agreement with the Justice Department and a deferred prosecution agreement with the New York County District Attorney's Office for violating New York state laws by illegally moving millions of dollars through the US financial system on behalf of sanctioned Iranian, Sudanese, Libyan and Burmese entities. The bank has also entered into settlement agreements

with the Treasury Department's Office of Foreign Assets Control (OFAC) and the Board of Governors of the Federal Reserve System.

The announcement was made by Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division; Ronald C. Machen Jr., US Attorney for the District of Columbia; New York County District Attorney Cyrus R. Vance Jr.; George Venizelos, Assistant Director in Charge of the FBI New York Field Office; and IRS Criminal Investigation (IRS-CI) Chief Richard Weber.

A criminal information was filed today in federal court in the District of Columbia charging Standard Chartered Bank with one count of knowingly and wilfully conspiring to violate IEEPA. Standard Chartered Bank has waived the federal indictment, agreed to the filing of the information and has accepted responsibility for its criminal conduct and that of its employees. Assistant Attorney General Breuer said:

> For years, Standard Chartered Bank deliberately violated U.S. laws governing transactions involving Sudan, Iran, and other countries subject to U.S. sanctions. The United States expects a minimum standard of behavior from all financial institutions that enjoy the benefits of the US financial system. Standard Chartered's conduct was flagrant and unacceptable. Together with the Treasury Department and our state and local partners, we will continue our unrelenting efforts to hold accountable financial institutions that intentionally mislead regulators to do business with sanctioned countries.

US Attorney Machen:

> When banks dodge US sanctions laws, they imperil our financial system and our national security. Today's agreement holds Standard Chartered Bank accountable for intentionally manipulating transactions to remove references to Iran, Sudan, and other sanctioned entities, and then further concealing these transactions through misrepresentations to U.S. regulators. This $227 million forfeiture should make clear that trying to skirt U.S. sanctions is bad for business.

District Attorney Vance:

> Investigations of financial institutions, businesses, and individuals who violate U.S. sanctions by misusing banks in New York are vitally important to national security and the integrity of our banking system. Banks occupy positions of trust. It is a bedrock principle that they must deal honestly with their regulators. I will accept nothing less; too much is at stake for the people of New York and this country.
>
> These cases give teeth to sanctions enforcement, send a strong message about the need for transparency in international banking, and ultimately contribute to the fight against money laundering and terror financing. I thank our federal partners for their cooperation and assistance in pursuing this investigation.

Assistant Director in Charge Venizelos:

> Standard Chartered Bank regularly engaged in prohibited banking practices, took steps to conceal the illegal conduct, and misled regulators about the pattern of illegality. New York is a world financial capital and an international banking hub, and you have to play by the rules to conduct business here.

IRS-CI Chief Weber:

> To protect and uphold the integrity of the American financial system, it is essential that we ensure global banking institutions obey US laws, including sanctions against other countries.
>
> Criminal Investigation, the world's preeminent financial investigative agency, was proud to be part of this law enforcement team working collaboratively with our federal and local partners to hold Standard Chartered Bank accountable for their criminal actions. When we work together, it's a force multiplier and it is government working smart. It's what taxpayers expect of us.

Standard Chartered Bank (SCB) operates a branch in New York ('SCB New York') that provides wholesale banking services, primarily US dollar clearing for international wire payments. SCB New York also provides U.S.-dollar correspondent banking services for SCB's branches in London and Dubai. According to court documents, from 2001 through 2007, SCB violated US and New York state laws by moving millions of dollars illegally through the U.S. financial system on behalf of Iranian, Sudanese, Libyan and Burmese entities subject to US economic sanctions. SCB knowingly and wilfully engaged in this criminal conduct, which caused SCB's branch in New York and unaffiliated US financial institutions to process over $200 million in transactions that otherwise should have been rejected, blocked or stopped for investigation under Office of Foreign Assets Control regulations relating to transactions involving sanctioned countries and parties.

According to court documents, SCB engaged in this criminal conduct by, among other things, instructing a customer in a sanctioned country to represent itself using SCB London's unique banking code in payment messages, replacing references to sanctioned entities in payment messages with special characters and deleting payment data that would have revealed the involvement of sanctioned entities and countries using wire payment methods that masked their involvement. This conduct occurred in various business units within SCB in locations around the world, primarily SCB London and SCB Dubai, with the knowledge and approval of senior corporate managers and the legal and compliance departments of SCB.

In addition to evading US economic sanctions, SCB made misleading statements to regulators to further conceal its business with sanctioned countries. In August 2003, SCB wrote in a letter to OFAC that the use of cover payments for transactions related to sanctioned countries was contrary to SCB's global instructions. In fact, SCB used the cover payment method to effect billions of dollars in payments, lawful and unlawful, through SCB New

York originating from or for the benefit of customers in Iran, Libya, Burma and Sudan – all US sanctioned countries – and continued to do so after the letter was sent.

During an extensive examination of all transactions at, by, or through SCB New York to detect suspicious activity, SCB failed to disclose to the Federal Reserve Bank of New York and New York Department of Financial Services that it was processing billions of dollars of non-transparent payments for customers in sanctioned countries. As a result of SCB's failure to disclose these transactions, the regulators were misled about the nature and extent of SCB's business with sanctioned countries.

SCB's agreement to forfeit $227 million will settle forfeiture claims by the Department of Justice and New York State. In light of the bank's remedial actions to date and its willingness to acknowledge responsibility for its actions, the Justice Department will recommend the dismissal of the information in 24 months, provided the bank fully cooperates with, and abides by, the terms of the deferred prosecution agreement.

Under the terms of its settlement agreement with SCB, OFAC's penalty of $132 million will be satisfied by $227 million forfeited in connection with the bank's resolution with the Justice Department. OFAC's settlement agreement further requires the bank to conduct a review of its policies and procedures and their implementation, taking a risk-based sampling of U.S. dollar payments to ensure that its OFAC compliance program is functioning effectively to detect, correct and report apparent sanctions violations to OFAC.

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