

Butterworths Money Laundering Law

Bulletin Editor
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This Bulletin covers material available from 1 September to 31 December 2013.

UK NEWS

HM Treasury

Advisory notice

On 5 November 2013 HM Treasury issued the latest in a series of advisory notices regarding the risks posed by unsatisfactory money laundering controls in a number of 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:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255118/Advisory_Notice_October_2013.pdf

Anti-money laundering and counter terrorist finance supervision report 2012–13

HM Treasury has updated the report first published in January 2013. The updated version may be found here:

<https://www.gov.uk/government/publications/anti-money-laundering-and-counter-terrorist-finance-supervision-reports/anti-money-laundering-and-counter-terrorist-finance-supervision-report-2012-13>

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 19 December 2013; it is available (together with any later updates) here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

FCA

FCA publishes AML and ABC thematic review of asset managers

The FCA has recently published the results of its Thematic Review (TR13/9) of anti-money laundering and anti-bribery and corruption systems and controls in 22 firms in the asset management and platform sector. They found that the quality of controls in this area varied considerably, that senior management needs to be more engaged in these areas and that most firms had some work to do to meet the required standards.

The report may be found here:

<http://www.fca.org.uk/static/documents/thematic-reviews/tr13-9.pdf>

HMRC

HMRC v Christine Houghton

MLR – penalty for failure to register – whether HMRC were precluded from issuing a penalty – whether the penalty structure is effective, proportionate and dissuasive – whether the penalty levied on the Appellant was appropriate – appeal dismissed and penalty confirmed (TC03096):

http://www.financeandtaxtribunals.gov.uk/judgmentfiles/j7499/TC03096.pdf?inf_contact_key=cb9e2f06c6cf00d274a85ad03213b10d08cb3e534309150cc2597695bc4d556a

Accountancy Service Providers and Money Laundering Supervision

Following a number of cases where HM Revenue & Customs (HMRC) has issued proceedings in respect of failure to register under the Money Laundering Regulations (MLR) the Supervisor issued a reminder of the requirements.

The Anti-Money Laundering Supervision (AMLS) team within HMRC is the supervisory body for Accountancy Service Providers (ASPs) under the 2007 MLR.

Anyone who falls within the remit of an ASP is required to be registered with either HMRC or one of the Accountancy Professional Bodies that provide MLR supervision and appear in Schedule 3 of the Regulations.

An ASP is anybody who, as a firm or sole practitioner, provides accountancy services, fills the role of statutory auditor, or provides tax advice to others. Also included in the definition of an ASP are the following:

- bookkeepers;
- payroll service providers.

For the purposes of the MLR, HMRC uses the term Accountancy Service Provider to describe:

- auditors who carry out statutory audit work;
- accountants who are in business to provide accountancy services to clients;
- tax advisers who are in business to provide advice to clients about their tax affairs.

Accountancy services cover recording, reviewing, analysing, calculating and reporting on financial information for other people. They include:

- professional bookkeeping services;
- accounts preparation and signing;
- tax advice.

Tax advice includes:

- helping with filling in and submitting tax returns or duty claims;
- advising on whether something is liable to a tax or duty;
- advising on the amount of tax or duty that is due.

ASPs follow the Consultative Committee of Accountancy Bodies (CCAB) guidance which provides full details of how ASPs should go about their MLR responsibilities. HMRC discharges its responsibilities as a supervisor through face-to-face and telephony interventions to ensure that ASPs are compliant with the MLRs.

Follow the link below for more information.

[Consultative Committee of Accountancy Bodies \(PDF 516K\)](#)

HMRC works with other professional bodies, including meeting with the other ASP supervisory bodies at the Accountancy Affinity Group to share knowledge, best practice and information. HMRC currently has over 13,000 ASP businesses on their register. If you are unsure whether you need to register with HMRC there is more detailed guidance to help you decide if you need to be registered in the leaflet MLR9 Registration Notice. You can follow the link below to download a guidance flowchart.

[Download the tax adviser guidance flowchart \(PDF 24K\)](#)

OFT

No news to report for this quarter

SFO

Arck LLP former partners: criminal charges

Two former partners of Arck LLP, Kathryn Joy Clark (51) from Nottingham and Richard Aston Clay (48) from Leicestershire, have been charged with fraud and forgery offences by the Serious Fraud Office (SFO) and Nottinghamshire Police.

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Between 2006 and 2012 Clark and Clay allegedly created and marketed various unregulated financial products which they made available to individual investors through regulated Independent Financial Advisers (IFAs). It is estimated that approximately £60m was invested in these products by individual investors and, in some cases, IFAs themselves.

The charges against Clay and Clark relate to fraud by misrepresentation and forgery offences. Both have been bailed to appear at Westminster Magistrates' Court on Friday, 29 November.

The SFO and Nottinghamshire Police have worked jointly on this investigation since May 2012.

Property developer sentenced to additional ten years

Saghir Ahmed Afzal has been sentenced at Westminster Magistrates' Court to ten years' imprisonment for failure to pay a confiscation order.

Saghir Afzal of Birmingham was originally sentenced in June 2011 to 13 years' imprisonment for a £49m mortgage fraud. The offences, committed between 1 April 2004 and 15 January 2006, involved two counts of conspiracy to obtain money transfers by deception and four counts of obtaining a money transfer by deception. In August of that same year he was ordered to pay £29,276,565 confiscation within six months or incur a default sentence of ten years' imprisonment.

The default sentence will be served after the original sentence unless the confiscation order plus accrued interest is paid in full.

NCA

SARs Annual Report

In December 2013 the NCA published the Suspicious Activity Reports (SARs) Annual Report 2013.

Key statistics for the SARs Regime

Key statistics Oct 12 to Sept 13

Total SARs 316,527, (278,665)

Consent SARs 14,103, (2,915)

Percentage submitted electronically 99.25, (98.87%)

Analysis of SARs reporting by sector

As in previous years, the largest reporter of SARs has remained to be the banking sector. The sector made up 79.40% of all SARs. It is believed that this is possibly in response to regulatory actions within the global financial sector. As with last year, money service businesses (MSBs) were the second largest reporting sector (6.74% for 2012/13, compared to 8.40% of last year) – a more comprehensive breakdown can be found in Annex C of the report.

SARs submitted by sector

Oct 12 to Sept 13

Volumes and % of Total:

Accountants 5,428 (.71%)

Banks 251,336 (79.40%)

Building Societies 10,844 (3.43%)

Estate Agents 215 (0.07%)

Financial Services 13,359 (4.22%)

Gambling 1,062 (0.34%)

Government 3,338 (1.05%)

High Value Dealer 383 (0.12%)

Legal 3,935 (1.24%)

Money Service Businesses (MSBs) 21,343 (6.74%)

Stocks & Shares 1,224 (0.39%)

Other 4,060 (1.28%)

Total 316,527 (100%)

HMRC increasing the use of SARs

HMRC continued to seek opportunities to drive up its performance and maximise intervention opportunities afforded by the Proceeds of Crime Act 2002 (POCA) and the SARs Regime.

HMRC utilises a system called CONNECT, a data matching tool that enables the organisation to cross match HMRC and third-party data items to highlight patterns in HMRC's body of taxpayer data. CONNECT allows HMRC to identify anomalies between factors such as bank interest, property income, other lifestyle indicators, and a customer's stated tax liability.

In 2010 an 'in principle' agreement was reached between the UKFIU and HMRC to facilitate the sharing of SARs intelligence to reference against HMRC's CONNECT system. A trial proof-of-concept exercise concluded with the identification of nine cases for criminal investigation from a sample population of 100 cases. Development work has concluded and a full matching of data took place in October 2013.

HMRC's ability to use SARs data matching against bespoke profiles will produce increased intervention opportunities across the full range of taxes, duties and entitlements administered by HMRC, generating yield and cases suitable for prosecution.

As HMRC becomes more effective in utilising this important intelligence facility, efficiency savings made will be recycled into case production and enhancement of the intelligence risk picture to inform future strategic direction.

The use of SARs is integral in supporting HMRC's Affluent Strategy (which targets those attempting to avoid or evade taxes). As part of intelligence-led research, SARs facilitate discovery of UK and non-UK-based assets and financial transactions, leading to the identification of untaxed sources of income in the UK and the assets that generate that income.

HMRC continued to make improvements in the handling of consent SARs. In the financial year of April 2012 to March 2013 the HMRC Banking Liaison and Consent Team handled 2,921 requests for consent. The team repatriated £1,611,516 back to HMRC from 696 consents. HMRC prevented estimated revenue losses of £16,230,012 from 2,155 additional consent requests.

The HMRC Consent Team handled 70 requests for consent presented as a result of the Liechtenstein Disclosure Facility (LDF) which was created following a Memorandum of Understanding between the Government of Liechtenstein and HMRC. This relates to cooperation in tax matters; by making a disclosure under the LDF, UK taxpayers with undeclared liabilities can get their tax affairs in order, while taking advantage of special terms. The 70 consents prevented revenue losses of £42,985,800.

The full report may be found here:

<http://www.nationalcrimeagency.gov.uk/publications/94-sars-annual-report-2013/file>

Bribery

Printing Company Corruption Charges

A UK-based printing company specialising in security documents such as ballot papers, as well as four individuals, has appeared in court on corruption charges.

Smith & Ouzman Ltd, two of its directors, an employee and one agent have been charged by the SFO with offences of corruptly agreeing to make payments totalling nearly half a million pounds, contrary to section 1 Prevention of Corruption Act 1906. It is alleged that these payments were used to influence the award of business contracts to the company.

The individuals, all British nationals, are:

- Chris Smith (age 70), of East Sussex, the former Chairman of Smith & Ouzman Ltd
- Nick Smith (age 42), of East Sussex, the Sales and Marketing Director of Smith & Ouzman Ltd
- Tim Forrester (age 45), of East Sussex, the International Sales Manager for Smith & Ouzman Ltd

- Abdirahman Omar (age 37), of London, an agent for Smith & Ouzman Ltd

The alleged offences are said to have taken place between November 2006 and December 2010 and relate to transactions in Mauritania, Ghana, Somaliland and Kenya.

SFO Statement – Rolls Royce

The SFO confirmed that the Director has opened a criminal investigation into allegations of bribery and corruption at Rolls Royce.

Firm fined £1.8m for ‘unacceptable’ approach to bribery and corruption risks from overseas payments

The FCA has fined JLT Specialty Limited (JLTSL) over £1.8m for failing to have in place appropriate checks and controls to guard against the risk of bribery or corruption when making payments to overseas third parties.

JLTSL, which provides insurance broking and risk management services, was found to have failed to conduct proper due diligence before entering into a relationship with partners in other countries who helped JLTSL secure new business, known as overseas introducers. JLTSL also did not adequately assess the potential risk of new insurance business secured through its existing overseas introducers.

Tracey McDermott, the FCA’s director of enforcement and financial crime said:

“These failings are unacceptable given JLTSL actually had the checks in place to manage risk, but didn’t use them effectively, despite being warned by the FCA that they needed to up their game. Businesses can be profitable but firms must ensure that they take the necessary steps to control the risks in that business.

Bribery and corruption from overseas payments is an issue we expect all firms to do everything they can to tackle. Firms cannot be complacent about their controls – when we take enforcement action we expect the industry to sit up and take notice.”

JLTSL’s failure to manage the risks created by overseas payments, which occurred between 19 February 2009 and 9 May 2012, breached the FCA’s principle on management and control.

During this period, JLTSL received almost £20.7m in gross commission from business provided by overseas introducers, and paid them over £11.7m in return.

Inadequate systems around these payments created an unacceptable risk that overseas introducers could use the payments made by JLTSL for corrupt purposes, including paying bribes to people connected with the insured clients and/or public officials.

At the FCA's request, JLTSL also varied its permissions until such time as the FCA was satisfied that JLTSL could adequately mitigate the risk of making payments to overseas third parties.

JLTSL's penalty was increased because of its failure to respond adequately either to the numerous warnings the FCA had given to the industry generally or to JLTSL specifically. The fine of £1,876,000 follows JLTSL's agreement to settle at an early stage of the investigation. As a result, it qualified for a 30% reduction on the original penalty of £2,684,013.

Other Financial Crime News

Law Society Practice Note

The Law Society Practice Note dealing with AML for solicitors was updated on 18 October 2013. The revised guidance may be found here:

<http://www.lawsociety.org.uk/advice/practice-notes/aml/>

Manchester loan shark trio imprisoned

S Ian Parsons was sentenced to 32 months in prison, Christopher Weaver was sentenced to 18 months in prison while Mark Weaver was sentenced to three months in prison. The investigation and prosecution was led by the England Illegal Money Lending Team as part of Operation Challenger, a multi-agency crackdown in partnership with Manchester City Council and Greater Manchester Police.

The investigation identified 62 borrowers and the trio were lending predominantly, but not exclusively, to young women with young children. The clients were similar in age, mainly unemployed or on low income wages. They all tended to be financially excluded in some respect. At least 134 borrowers were recorded with an annual turnover estimated at £110,000. 100% interest was added so a loan for £100 would be paid back at £20 each week for ten weeks. The prosecution described this as grossly excessive. Charges were included for late payment, which included adding the value of the missed payment onto the outstanding balance.

In May 2013, following evidence which showed the trio continued to operate the illegal business following their arrests, further warrants were executed. Parsons and Christopher Weaver were then charged and remanded in custody.

Court orders Barclays to reverse decision on closing Somali account

Financial Times, 6 November 2013: An injunction to stop Barclays closing its account has been won by Dahabshiil, Africa's biggest money transfer company. A High Court decision ordered Barclays to preserve the company's account until the conclusion of a full trial, expected in 2014. Concerns over not meeting regulatory requirements and risking money laundering and terrorist financing in the money transfer business led to Barclay's decision to close Dahabshiil's accounts. However, it had not been accused of wrongdoing or given the chance to make any changes.

INTERNATIONAL NEWS

FATF***Mutual Evaluation of New Zealand: 2nd Follow-up Report***

The report may be found here:

<http://www.fatf-gafi.org/documents/documents/fur-new-zealand-2013.html>

Mutual Evaluation of the Russian Federation: 6th Follow-up Report

The report may be found here:

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/FUR-Russian-2013.pdf>

Terrorist Financing in West Africa

A report was published in October 2013; it may be found here:

<http://www.fatf-gafi.org/media/fatf/documents/reports/TF-in-West-Africa.pdf>

CFATF decides to call for counter measures against Belize and Guyana

The publication of this CFATF statement on the FATF website does not constitute an official endorsement by the FATF. However, this public statement contains relevant information that countries and the private sector, as part of their implementation of the risk-based approach, should be aware of:

<http://www.fatf-gafi.org/documents/documents/cfatf-ps-nov2013.html>

The role of Hawala and other similar service providers in money laundering and terrorist financing

Hawalas and other similar service providers (HOSSPs) arrange for transfer and receipt of funds or equivalent value and settle through trade, cash, and net settlement over a long period of time. What makes them distinct from other money transmitters is their use of non-bank settlement methods. This typology seeks to provide a facts-based review of the extent of their vulnerability to money laundering and terrorist financing.

This typology reviews three major types of HOSSPs:

- pure traditional (legitimate);
- hybrid traditional (often unwitting); and
- criminal (complicit).

Distinct money laundering/terrorist financing risks apply to each and there are several reasons why HOSSPs continue to pose money laundering and terrorist financing vulnerability. These include:

- a lack of supervisory will or resources;

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- settlement across multiple jurisdictions through value or cash outside of the banking system in some cases;
- the use of businesses that are not regulated financial institutions;
- the use of net settlement and the commingling of licit and illicit proceeds.

While the settlement through value or trade that masks the individual fund transfers is a source of vulnerability, the most significant reason for concern is lack of supervisory resources and commitment to effective regulation.

The report may be found here:

<http://www.fatf-gafi.org/media/fatf/documents/reports/Role-of-hawala-and-similar-in-ml-tf.pdf>

Best Practices Paper: The Use of the FATF Recommendations to Combat Corruption

The paper may be found here:

<http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Use-of-FATF-Recs-Corruption.pdf>

FATF Public Statement, 18 October 2013

The latest FATF statements on high-risk and non-cooperative jurisdictions/ Improving Global AML/CFT Compliance: on-going process, were issued on 18 October 2013 and can be found here:

<http://www.fatf-gafi.org/media/fatf/documents/statements/18-October-2013.pdf>

<http://www.fatf-gafi.org/media/fatf/documents/statements/Compliance-18-October-2013.pdf>

Catholic Church closes Vatican bank's foreign diplomatic bank accounts

The Times, 2 October 2013: Following concerns about significant cash transactions by bank officials from Iran, Iraq and Indonesia, the Roman Catholic Church is closing down all the foreign diplomatic accounts at the Vatican bank.

This move is part of a wider clean-up of the bank by the Church which is expected to result in 900 of the bank's customers being purged because of failing to meet tightened standards.

Switzerland: Authorities launch investigation into Congo gold purchases

Financial Times, 5 November 2013: One of Switzerland's biggest gold refiners, Argor-Heraeus, is under criminal investigation of Swiss authorities to determine whether it committed war crimes by knowingly buying gold from a militia group in eastern Congo. The war crimes charge of 'pillage',

stealing and illegally removing natural resources in the context of war, have not been deployed since WWII. A nine-year investigation conducted by Trial, a Swiss non-profit organisation, claims Argor-Heraeus knowingly bought three tonnes of gold sold by an armed group in eastern Congo via traders in neighbouring Uganda in 2005 prompted the decision. Argor-Heraeus has denied the claim.

SUMMARY

According to UN investigators, FNI, a militia in eastern Congo, illegally mined gold in the country's Ituri province to finance its operations and buy weapons in breach of a UN arms embargo, selling it via traders in Uganda and to Switzerland. Although initial reporting of the case was documented naming Commerzbank, which is part owner of the refinery, and recommending it for sanctions in 2006 by UN investigators, it was not prosecuted. Its name was deleted from the UN's main report published in 2005. However, Trial's investigators have uncovered new evidence warranting a criminal case.

Bern's public prosecutor has initiated criminal proceedings against the company for suspected money laundering in connection with a war crime, and for complicity in war crimes. Argor-Heraeus claims an earlier investigation had cleared it of similar allegations in 2005. The move comes as an effort of the Swiss government to deflect some criticism levelled at its commodities sector.

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