

Butterworths Money Laundering Law

Bulletin Editor
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This Bulletin covers a selection of material available from 1 July to 30 September 2015.

UK NEWS

HM Treasury

Advisory Notice

On 3 July 2015 HM Treasury ('HMT') 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:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/444398/HMT_Advisory_Notice_June_2015.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 13 October 2015; it is available (together with any later updates) here:

www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets

FCA

The Financial Conduct Authority publishes new referral criteria for enforcement investigations

The Financial Conduct Authority (FCA) has updated the criteria and outlined the process it uses when deciding whether to refer a firm or individual to its enforcement division for a formal investigation.

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Where misconduct is proved, an enforcement investigation can lead to fines, bans and suspensions. But enforcement is only one of a range of tools available to the FCA. The process published will clarify how the FCA decides which regulatory tool is the most likely to fulfil its objectives in each individual case.

Georgina Philippou, acting director of enforcement and market oversight at the FCA, said:

‘Enforcement is not the only tool at our disposal where we see misconduct by firms or individuals, nor is it the most appropriate one to use in every case. Today’s publication will make our decision making process more transparent. Firms and the public will now have a clearer understanding of the questions we ask ourselves before we start a formal investigation.’

When deciding whether to investigate, the FCA considers the following three overarching questions:

1. Is an enforcement investigation likely to further the FCA’s aims and statutory objectives?
2. What is the strength of the evidence and is an enforcement investigation likely to be proportionate?
3. What purpose or goal would be served if the FCA were to take enforcement action in this case?

In December 2014, HMT published a review of the enforcement decision-making process at the FCA and Prudential Regulation Authority. As a result of that review, the FCA committed to publishing updated referral criteria and to set out more clearly the process by which decisions to refer cases to enforcement are taken.

The FCA will publish a consultation paper later this year setting out how we plan to implement other recommendations made in the review.

In addition to publishing the referral criteria for enforcement investigations, the FCA has also set out more detail about how it decides on which regulatory response is best suited to a case. This involves assessing whether a referral for an enforcement investigation is appropriate before a final decision is made by relevant senior staff.

The FCA has also made clear that by opening an investigation, it does not mean it has decided that a breach has been committed. Nor does it mean that it has decided what type of enforcement action to take, if any, should it turn out that there has been a breach.

The criteria may be found here:

www.fca.org.uk/firms/being-regulated/enforcement/how-we-enforce-the-law/referral-criteria

HMRC

Public access to money laundering regulations guidance used internally by HM Revenue and Customs (HMRC)

HMRC have published their internal guidance which currently covers:

- Money laundering penalties guidance;
- Money laundering registration guidance; and
- Money laundering regulations: compliance.

SFO

Arck LLP: Two sentenced to a total of 12 years and 10 months for £47.5m investment fraud

Two fraudsters were sentenced at Southwark Crown Court, having pleaded guilty to multi-million pound fraud and forgery charges. This follows a joint investigation by the Serious Fraud Office and Nottinghamshire Police.

Richard Aston Clay, 50, of Nottinghamshire was sentenced to ten years and ten months in prison, while his business partner Kathryn Joy Clark, 52, of Derbyshire was sentenced to two years in prison, suspended for two years, with 300 hours' unpaid work. Clay was also given a serious crime prevention order, to last for five years.

Clay and Clark were disqualified from being a director of a company by the Insolvency Service for 15 and 14 years respectively earlier this year.

Their elaborate scam, which involved both defendants operating joint control over Arck LLP and its accounts, defrauded investors of their money, in some cases their pension funds and life savings. It was only after civil proceedings were initiated that the fraud was uncovered and the defendants were arrested in March 2012 by Nottinghamshire Police.

Clay pleaded guilty to three counts of fraud in December last year, while Clark pleaded guilty in July and October last year to three counts of fraud and two counts of forgery. Their company created and marketed investment financial products including property development in Cape Verde.

In passing sentence, His Honour Judge Loraine-Smith said:

'I have concluded two things, that you [Clay] will blame anyone else for what you have done and that you have shown not a shred of remorse for the damage you have caused to other people.'

Director of the SFO, David Green CB QC commented:

'This was a pernicious fraud that robbed people of their life savings and pension funds.'

Detective Inspector Andy Baguley of Nottinghamshire Police said:

'Whilst we are pleased that those responsible for committing these crimes have been brought to justice, we must remember that fraud is not

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a victimless crime. For some, the damage caused by these crimes is irreversible, and the victims will have to live with the impact for many years.'

Clay was the directing force behind the financial schemes, which operated and financed the company. By marketing the respective financial instruments, which were sold on the basis of false and misleading information, money invested in these schemes amounted to approximately £47.5m.

Clark was able to assist Clay with the fraud by providing a veneer of credibility because she was authorised under the Financial Services Act. She helped create forged bank statements in order to offer comfort to investors who became anxious about their investments as time passed.

Following a plea and case management hearing in October 2014 Clark entered into a Serious and Organised Crime and Police Act (SOCPA) agreement which meant that she cooperated with the prosecution in the case against Clay.

A mention hearing to discuss confiscation proceedings is scheduled to take place on 1 March 2016.

NCA

Double time for Black Country drug trafficker

A Walsall man has received prison sentences totalling 17 years following two separate investigations into drug and money laundering offences.

Popinder Singh Kandola, aged 54, from Skip Lane, was jailed for ten years in January at Birmingham Crown Court after being found guilty of conspiracy to supply heroin and money laundering.

The NCA case can only now be reported as Kandola was involved in a second trial at Bristol Crown Court.

NCA officers assisted Avon and Somerset Police with an investigation into Kandola's role in a plot to set up a crystal meth production centre in the South West.

Kandola received a consecutive seven-year sentence earlier this week after being found guilty of conspiracy to produce MDMA and amphetamine.

Paul Risby, NCA Branch Commander, said: 'Kandola was at the centre of two organised crime groups determined to distribute large amounts of drugs throughout communities in West Midlands and the South West.

We believe he had been involved in the drug trade for many years and clearly thought he could operate above the law. Even while he was on bail for our offences he became involved in a separate plot to produce crystal meth.

Kandola has found out the hard way that the NCA and its partners won't stop pursuing drug traffickers. He will now have to spend even more time in prison.'

As part of the NCA investigation, officers evidenced Kandola overseeing a drug handover in the Balsall Heath area of Birmingham involving a number of his criminal associates. A bag containing 1.26kg of heroin was recovered.

During a meeting in the Coseley area, Kandola was observed by officers receiving a bag from another criminal associate which contained £50,000.

Over the last two years five of Kandola's accomplices have received jail sentences totalling 28 years.

Financial adviser who arranged fraudulent mortgages for a heroin dealer ordered to pay back more than £4m

Adeel Mirza, a 45-year-old financial adviser who pleaded guilty to ten counts of fraud and deception in 2013, has been ordered to pay £4,180,788.32. The confiscation order must be paid within 12 months, otherwise a six-year default sentence will be imposed.

Mirza made widespread use of fraudulent documents to assist him in arranging fraudulent mortgages for his clients, who included heroin dealer Riaz Mohammed and a corrupt solicitor. The financial investigation uncovered a tangled web of complex multi-million pound financial transactions involving fraudulent mortgages, bank accounts and properties being held in the names of unsuspecting members of Mirza's family, including one property purchased in the name of a deceased individual. The investigation also identified offshore bank accounts held in Switzerland and Jersey, and an offshore company based in Jersey that owned 15 rental properties. Mirza was sentenced to six years in 2013 and made subject to a Financial Reporting Order.

On 24 September 2015, the confiscation hearing at Southwark Crown Court found that Mirza's benefit from criminal conduct was £8,298,476.31, with the realisable amount in assets being £4,180,788.32. The assets include the luxury family home in Wanstead, Bentley Continental and Range Rover motor vehicles, watches and jewellery, 14 other rental properties in London, and cash held in UK and offshore bank accounts.

Bribery

Survey reveals SME awareness of Bribery Act 2010

The Bribery Act 2010 (BA 2010) is not having any widespread negative impact on the export activity of small and medium-sized enterprises (SMEs), a Ministry of Justice (MoJ) and Department for Business, Innovation and Skills (BIS) survey has revealed. Two-thirds of the SMEs which responded had either heard of BA 2010 or were aware of its corporate liability. However, only one-third had assessed the risk of being asked for bribes, and around four in ten said they had put bribery prevention procedures in place. The survey sought the views of 500 SMEs, 95% of which export goods.

The MoJ and BIS survey aimed to examine the awareness of BA 2010 among SMEs which export, or plan to export goods and/or services. It also explored:

- their use of guidance and advice on bribery prevention procedures – including who supplied the advice and how much it cost;
- the extent to which SMEs had put in place anti-bribery procedures and how much they cost;
- how BA 2010 had affected their exports and operational behaviour overseas; and
- any specific concerns or problems they had experienced as a result of the Act or MoJ guidance.

Findings

Awareness of BA 2010

Overall, the survey found 66% of the SMEs surveyed had either heard of BA 2010 or were aware of its corporate liability for failure to prevent bribery. Awareness was greater among SMEs exporting to regions which are less developed, including the Middle East, Asia, Africa and South and Central America. In addition:

- around eight in ten SMEs had heard of BA 2010 were also aware it has extraterritorial reach; and
- of all SMEs which were aware of BA 2010, almost three-quarters (72%) perceived their company had sufficient knowledge and understanding to be able to implement adequate anti-bribery procedures.

MoJ guidance

The survey found 74% of SMEs were aware of BA 2010 were not aware of the MoJ guidance published in March 2011 to help commercial organisations understand the procedures they can put in place to prevent persons associated with them from bribing.

Of those SMEs which were aware of the MoJ guidance, 75% had read the guidance and 89% reported they found the guidance useful.

Other guidance and associated costs

The survey found 33% of SMEs aware of BA 2010 or its corporate liability for failure to prevent bribery provisions reported they had used some form of guidance other than or in addition to the MoJ guidance:

- 21% of those using other guidance reported guidance from lawyers or solicitors;
- 15% used guidance from other business consultants; and
- 14% used guidance from trade or professional bodies.

SMEs were also asked if they had sought any professional advice about BA 2010 or bribery prevention.

Around a quarter of SMEs who were aware of BA 2010 or its corporate failure to prevent provisions had sought professional advice about the Act or about bribery prevention. Almost all (96%) of SMEs which had sought professional advice found the advice they received useful.

The mean cost to SMEs of professional advice was around £3,740. The median cost was £1,000.

Bribery prevention procedures

A third of SMEs had assessed the risk of being asked for bribes. SMEs exporting to the less developed export regions (36%) and in particular to China (52%) were more likely to have assessed the risk of being asked for bribes.

Around four in ten SMEs (42%) said they had put bribery prevention procedures in place. These were defined as anything they thought helped prevent bribery. Among SMEs which did have procedures in place, these procedures were most typically financial and commercial controls such as:

- bookkeeping;
- auditing;
- approval of expenditure; and
- a top level commitment which the company does not win business through bribery.

Of those which had bribery prevention procedures in place which incurred some cost, the mean spend so far on these was around £2,730. The median spend was £1,000.

Small scale solicitation

Among the SMEs which exported, only 6% reported employees of their company or agents acting on the company's behalf had ever been asked for cash payments, gifts, donations or goods in kind (such as cigarettes or alcohol) which could possibly be described as a bribe. The most commonly mentioned country where this has been experienced was China, followed by Russia and Saudi Arabia.

Impact on exports

The majority of SMEs aware of BA 2010 (89%) felt the Act had had no impact at all on their ability or plans to export. Nine in ten (90%) reported they had no specific concerns or problems relating to BA 2010.

Conclusion

The MoJ and BIS have concluded BA 2010 is not having any widespread negative impact on SMEs exports, with the majority (90% of those aware of the Act) reporting it had no impact at all.

The government also believes the findings suggest in general the concept of proportionality is likely to be applied in practice, with larger companies and those exporting to riskier markets tending to dedicate more resources to bribery prevention.

The Survey may be found here:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/440661/insight-into-awareness-and-impact-of-the-bribery-act-2010.pdf

New NCA unit will tackle international corruption and bribery

A new unit of the National Crime Agency (NCA) will help the UK step up its work investigating cases of international corruption affecting developing countries. The International Corruption Unit (ICU) will tackle serious bribery, corruption and money laundering around the world.

The ICU will be primarily funded by the Department for International Development (DFID) and brings together existing investigation and intelligence teams from the Metropolitan Police Service, City of London Police and the NCA.

The ICU will receive £21m from DFID for the five years until 2020 and the new approach should provide a greater focus on preventative action and a more strategic approach to identifying and investigating corruption in DFID priority countries.

International Corruption Unit

Since 2006, DFID-police units have investigated more than 150 cases of overseas bribery, recovering around £200m of stolen assets and successfully prosecuting 27 individuals and one company in the process.

The new unit will focus on:

- investigating grand corruption and recovering and returning money stolen from developing countries and laundered through the UK;
- investigating the minority of UK nationals and companies who engage in bribery or other corrupt practices in developing countries; and
- ensuring those responsible are brought to justice.

SFO opens investigation into Soma Oil & Gas

The SFO has opened a criminal investigation into Soma Oil & Gas Holdings Ltd, Soma Oil & Gas Exploration Limited, Soma Management Limited and others in relation to allegations of corruption in Somalia.

Other Financial Crime News

Ex-UKIP MEP Ashley Mote convicted of 11 counts of false accounting, fraud and related offences

Ashley Mote was convicted of four counts of obtaining a money transfer by deception, three counts of false accounting, two counts of fraud and two

counts of money laundering. These offences, which involved over £400,000 worth of false claims to the European Parliament, occurred between 2004 and 2009 while Mr Mote was an independent MEP for South East of England. He was sentenced to five years.

Zoë Martin, specialist prosecutor at the Crown Prosecution Service said, 'Ashley Mote purported to expose fraud and promote accountability within the European Parliament. However, these values were not applied to his own blatantly dishonest actions as an MEP.

Over a period of five years, Mr Mote misused his allowances as a member of the European Parliament to fund his personal expenses. This included paying off part of a bridging loan and the mortgage on his home. He also used the European Parliament funds to pay his legal bills in connection with his previous fraud trial and a related civil action.'

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FATF

Report: Money laundering and terrorist financing risks and vulnerabilities associated with gold

Gold provides an alternative means for criminals to store or move their assets as regulators implement stronger anti-money laundering and counter terrorist financing measures to protect the formal financial sector from abuse.

The joint FATF-Asia/Pacific Group on Money Laundering report, money laundering/terrorist financing vulnerabilities associated with gold, identifies the many features that make gold attractive to criminals to use as a vehicle for money laundering: it has a stable value, it is anonymous and easily transformable and interchangeable. The highly lucrative gold market also presents proceed-generating opportunities for criminals at each stage, from mining to retailing.

Understanding what makes gold – like other precious metals and stones, such as diamonds – attractive to criminals to legitimise their assets and to generate profits is essential in identifying this sector's money laundering and terrorist financing risks.

This report provides a series of case studies and red flag indicators to raise awareness of the key vulnerabilities of gold and the gold market, particularly with anti-money laundering/ countering the financing of terrorism practitioners, and companies involved in the gold industry.

The full report may be found here:

www.fatf-gafi.org/media/fatf/documents/reports/ML-TF-risks-vulnerabilities-associated-with-gold.pdf

Mutual Evaluation of Malaysia

Malaysia's measures to combat money laundering and terrorist financing

Overall, Malaysia has a robust legal AML/CFT framework with generally well-developed and implemented policies. Malaysia is an observer to FATF and is working with the FATF to meet the criteria for membership. In line with these criteria, Malaysia must bring its level of compliance up to a satisfactory level. To strengthen its AML/CFT framework, it needs to take a number of actions, such as further risk assessments of terrorist financing and foreign sources threats, a greater focus on obtaining convictions and confiscation and better use of financial intelligence by law enforcement agencies.

Other International News

Banamex USA Fined \$140m for AML Violations

The Federal Deposit Insurance Corporation has imposed a civil penalty of \$140m against Banamex USA for violations of the Bank Secrecy Act and anti-money laundering laws and regulations. The penalty was imposed the same day that Citigroup, which purchased Mexico-based Banamex in 2001, said it would be shutting down the Banamex USA unit this year.

In a concurrent action, the California Department of Business Oversight (CDBO) assessed a civil money penalty of \$40m. The FDIC's penalty of \$140m will be satisfied in part by the CDBO's penalty.

Basel AML Index 2015 Report

This is the fourth edition of the Basel Anti-Money Laundering (AML) Index report developed by the Basel Institute on Governance. The Basel Institute published the Basel AML Index for the first time in 2012 and has since then been the only non-profit organisation to rank countries according to their risk of money laundering and terrorist financing.

This year covering 152 countries, the Basel AML Index provides an annual risk rating of money laundering and terrorist financing. It is based on the assessment of the quality of countries' anti-money laundering and countering the financing of terrorism (AML/CFT) frameworks and related factors such as financial sector standards and public transparency. The 2015 version includes a slightly adjusted methodology to take into account changes in the Financial Action Task Force (FATF) evaluations, which is one of the key components used to calculate the Basel AML Index. The new results and key findings are presented in chapter 4.

The Basel AML Index overall score is derived from 14 indicators based on publicly available sources such as the FATF, Transparency International, the World Bank and the World Economic Forum. The scores are aggregated as a composite index using a qualitative and expert-based assessment. The Basel Institute has conducted extensive research in calculating the final results following academic best practices. However, because some level of subjectivity may not always be entirely avoided in the process of creating a composite

index, the highest level of transparency in relation to our assessment methodology has been adopted, and we stress that it is essential to understand the approach before interpreting the results. Our methodology section in chapter 5 describes in detail the steps conducted in calculating the overall score of the Basel AML Index.

As an additional measure, and further to an internal cross-check of data, the Basel AML Index is also reviewed each year by a panel of external experts to validate the methodology and ensure that the rating is valid, plausible and continues to capture the latest developments in the area of AML/CFT risks. Following this year's annual expert review meeting, some methodological changes were adopted. A key adjustment for this 2015 edition was to take into consideration the modifications brought to the evaluation mechanism of the FATF Mutual Evaluation Reports, which for the first time include an effectiveness assessment in addition to the assessment of legal compliance with the FATF standard. Chapter 6 provides further details and summarises the decisions made after the annual review.

Each year the Basel AML Index is issued in two versions, the Public Edition and the Expert Edition. The Expert Edition provides for a more comprehensive data set and allows for a selection of individual sub-indicator of the Index. The Expert Edition is also periodically updated, covers some 50 additional countries and includes sanctions lists. It therefore serves as a sophisticated country risk assessment tool for regulatory purposes, particularly for compliance officers, and caters for users' diverse needs in view of different compliance and regulatory requirements. The subscription-based Expert Edition is offered free of charge for public and academic institutions and non-profit organisations; commercially oriented enterprises are charged an annual fee of CHF 2000 or more, depending on user intensity. Further details concerning the Expert Edition are described in chapter 7.

The Basel Institute continues to actively facilitate the exchange of knowledge on the challenges of AML/CFT risk rating. We therefore encourage comments and feedback on the Basel AML Index as we strive to advance the use of AML country risk ratings for both research and compliance purposes.

The report may be found here:

https://index2015.baselgovernance.org/sites/default/files/aml-index/Basel_AML_Index_Report_2015.pdf

FinCEN Fines Ripple Labs Inc in First Civil Enforcement Action Against a Virtual Currency Exchanger

The Financial Crimes Enforcement Network (FinCEN), working in coordination with the US Attorney's Office for the Northern District of California (USAO-NDCA), assessed a \$700,000 civil money penalty against Ripple Labs Inc and its wholly-owned subsidiary, XRP II, LLC (formerly known as XRP Fund II, LLC). Ripple Labs wilfully violated several requirements of the Bank Secrecy Act (BSA) by acting as a money services business (MSB) and selling its virtual currency, known as XRP, without registering with

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FinCEN, and by failing to implement and maintain an adequate anti-money laundering (AML) program designed to protect its products from use by money launderers or terrorist financiers. XRP II later assumed Ripple Labs' functions of selling virtual currency and acting as an MSB; however, like its parent company, XRP II wilfully violated the BSA by failing to implement an effective AML program, and by failing to report suspicious activity related to several financial transactions.

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