

# BACKGROUND ASIA

## FINANCIAL INSTITUTIONS – LEGAL AND COMPLIANCE ALERT

### Patriot Act – Possible Test Case

In September last year, Ric Beggs and I attended the [Cambridge Economic Crime Symposium](#) . A major topic of discussion was the **USA PATRIOT Act** and its implications for law enforcement and banking.

Since that time we have both noticed two divergent views on the Act. Law enforcement in the US is of the view that the act has global reach, as in essence it covers all USD transactions, that it applies to all types of terrorism and serious organised crime and that it establishes a form of negligence test when assessing whether financial institutions did their job in accepting business from someone committing one of the designated crimes.

Bankers on the other hand outside the US are generally of the view that they are not affected by the Act, that it deals with September 11 related terrorism and that they need not feel threatened by any of the new provisions on know your client. Most bankers outside the US feel that they are already regulated by local anti-money laundering provisions and need not bother with the PATRIOT Act.

Up until now both views have seemed somewhat academic as there have been very few examples of court cases that focus on terrorist financing.

### That may now change.

On Friday 21 February 2003, it was reported that the US had arrested and indicted a number of individuals alleged to be associated with Islamic Jihad in Palestine.

The case is interesting to Background Asia as the indictment refers to support for bombings in Israel well before 2001; the US Attorney General has said that the PATRIOT Act made it is easier to bring the indictments; the indictments also charge breaches of RICO statutes; and that covert wiretaps obtained on the grounds of national security are going to be used as evidence. One of the principal allegations is that a university professor in Florida was the key figure in soliciting funds for Islamic Jihad and then getting those funds to those carrying out the bombings. This is a case all about terrorist financing.

The [full indictment](#) (see Findlaw.com) alleges that those indicted had accounts at a number of US banks and securities firms and that funds had been wired to those accounts from foreign banks in US dollars and in turn those funds were

wired into Israel allegedly to fund the bombings. Some of the entities allegedly involved were registered US charities and one has connections with a well-known Republican Lobbyist.

The amounts involved are notable in that some are very small. The entire cost of one suicide bombing was alleged to have been US\$90,000 in which nine people were murdered.

The indictment does discuss larger sums in terms of the assets of the groups involved but the wire transfers are basically all under US\$100,000.

## What Does This Mean?

We recommend that legal and compliance officers from financial institutions look at the indictment and follow the case.

The indictment gives a good idea of a typology allegedly adopted by a Middle Eastern terrorist group and sets out the types of schemes that these people get involved in. It also shows some of the difficulties involved in detecting this type of activity using traditional KYC procedures. It also points out starkly that just because someone or something seems properly registered – ie a US charity, well connected – ie persons connected to the group get an invite to the White House, and above board - it may not.

Secondly the indictment also shows just how closely the US is monitoring these issues from an intelligence gathering standpoint.

Financial Institutions, in our view, need to realize that the US has an awesome intelligence gathering facility and that if this is applied to PATRIOT Act cases along with the new negligence standard of money laundering that commentators have said the Act introduces, some institutions could face trying times in having to prove why they did not know something, why they did not suspect it and just what they did to convince themselves that the person they are now seeing from transcripts is a terrorist, was not.

If the US is going to use its intelligence resources in prosecuting these types of cases then some of the evidence is likely to be very damning. In our view, and based on some informal discussions we have had with personnel in the Justice Department, prosecutors will then begin looking at those financial institutions involved and ask themselves questions about just what did that financial institution do to ensure that they were happy that the person was not a terrorist.

It will be very interesting to see if the US Attorney decides to investigate the financial institutions involved and attempts to sanction them in any way. Financial institutions may start to get a sense of how aggressive the US Attorney is going to be on these issues.

Several of the individuals named in the indictment were allegedly part of groups designated terrorist many years ago. Will any of those banks be questioned about their role in the activities of their account holders?

## What to do

Background Asia has been advising its clients and contacts in the financial industry that the PATRIOT Act is an important act to understand and adjust current anti-money laundering procedures accordingly. Very few firms have done this.

Historically most institutions have let their anti-money laundering efforts focus on basic training of staff, basic KYC procedures and limited suspicious activity reporting. Almost all programs are designed for local legislation with some also taking into account those regulations applicable to head office. If there is little connection to the US most firms ignore US legislation.

We believe the new act changes the focus and puts a lot more emphasis on financial institutions to ensure that their programs are as good as they can be at detecting abuse of their account facilities. Those programs will be different for each institution but in general we believe that they should be designed to answer an aggressive prosecutor who would want to know whether the firm did all it could have done.

In our view this means adding a more active risk based intelligence gathering on selected clients, industries and countries and also in dissemination of typologies and active criminal groups to their staff and, in particular, senior management.

If you would like to discuss anything to do with anti-money laundering or implications of the USA PATRIOT Act for firms operating in Asia please call either Ric or Alex. We note that a number of major US law firms have prepared some interesting papers on the act and we would be happy to direct you to these if you wish.

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