



Asian Anti Money Laundering Conference Notes

April, 2003

"Money Laundering & terrorist financing epitomizes the globalization of organised crime" – Prof Michael Levi, Cardiff

Conference key points:

- 1. Problems relating to the USA PATRIOT Act and offshore enforcement are being reviewed;**
- 2. FATF 40 recoms are being reviewed**
- 3. Regulators are still concerned about KYC; and**
- 4. Regulators are putting additional efforts into whether firms deal with PEPs**

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BACKGROUND ASIA recently attended the second Pacific Rim International Conference on Money Laundering and Financial Crime in Bangkok. The first was held in Vancouver in October 2000.

Ric Beggs reports as follows:

The conference was organised by Thailand's newly created AMLO (Anti-Money Laundering Office) and Chaired by Police Colonel Peeraphan Prempooti, Secretary General of AMLO.

Senior representatives from numerous international and Asian financial institutions, regulators together with international law enforcement authorities and experts attended and gave presentations on the fight against money laundering, financial crimes and terrorist financing.

Key issues arising from the conference relevant to our clients and their legal advisors are:

1. Regulators have advised that there are problems with the language contained within the USA PATRIOT Act in relation to non US Financial Institutions and, in particular, the enforcement of the Act against these firms. US authorities have begun a process of review.
2. The FATF forty recommendations that form the backbone of global anti money laundering standards are currently being reviewed.
3. Regulators and law enforcement emphasized the need for financial institutions, not just banks, to satisfy KYC procedures in particular those relating to verification of legal existence, structure, proof of incorporation and other key client identifiers. Brass plate banks are out.
4. International regulators said that a focus of investigative scrutiny would be on politically exposed personalities or PEPs.

USA PATRIOT Act

We sought out regulators to shed some light on comments, which have been of apparent concern to non-US financial institutions concerning the enforcement of the Act's provisions in jurisdictions outside the United States.

Foreign firms are not currently a major focus of enforcement of the act.

The forty recommendations are being reviewed and any changes are likely to have a significant effect on local laws and institutional practices.

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We had previously spoken with a variety of clients across Asia and found some to be almost indignant about being told to revamp their KYC procedures and that they ran the risk of assets being confiscated if in breach of the act. Interestingly regulators acknowledged that some of the language within the Act was not appropriate for those in non-US jurisdictions and a process of reviewing the act was underway.

We did not get an indication that foreign firms were a major focus of enforcement of the act.

In our view it should be remembered that this is a major piece of legislation that was pushed through Congress very hastily after 9/11.

We attended a presentation from a lawyer last year who described it as the "USA keep constitutional lawyers employed Act".

With sources now saying that the Justice Department is revisiting the extra territorial elements of the act we may see some changes in the future and a go softly approach on enforcement while the review takes place.

FATF Forty Recommendations

The fight against money laundering is reflected in the scope of the forty [FATF Recommendations](#). These measures have been the foundation of AML law and practice for many years. They drive country level changes to laws and, in some cases, constitutions. They drive changes at the institutional and corporate level often at significant bottom line cost.

We were told during the conference that FATF is in the midst of a review of the 40 Recommendations and 8 Special Recommendations to make certain that they adequately address, techniques, and trends as well as international developments such as the negotiation of the UN Transnational Organized Crime Convention and the Terrorist Financing Convention.

Additionally, the revised recommendations must take into account FATF's expanded mission to combat terrorist financing and ensure that its revised framework provides for measures to deny terrorists access to the international financial system.

We comment that this is an interesting development as just how FATF will be able to blend recommendations about traditional anti-money laundering (which is about taking dirty proceeds and making them clean) with terrorist financing (which can be either dirty to clean to dirty or just clean to dirty) and still be taken seriously by the international financial community will be no mean feat.

If you would like a copy of our brochure on anti-money laundering advice and consulting please contact Ric Beggs.

Regulators are continuing to focus on KYC and are worried about launderers using falsified and forged documents.

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FATF was given the role of addressing terrorist financing, as, in our view, it was the only body that had any similar multilateral mandate in the wake of 9/11. And while terrorist groups do from time to time supplement their income with criminal activity, they also tend to work with much smaller sums than drug kingpins and also have shown that they can tap registered charities and other legitimate bodies for funding.

By taking on terrorist financing FATF significantly expanded its mandate and in the process will need to be wary that it does not lose its current credibility with the governments that it has so far convinced to radically alter legal systems and financial institutions who have changed the way they do business and added significant operating costs to continue doing business.

At this time we are undecided as to whether FATF should continue to deal with both issues or should split itself to separately address each. This review of the forty recommendations will be interesting in measuring just how up to the task the current structure of FATF is.

KYC Focus on key client identifiers

Regulators and other speakers spoke about the need for greater identification of clients and their legal entities. This may sound old hat but we noted that regulators are of the view that not enough is being done by financial institutions to ensure that they are not being shown false or forged documents.

We were told that the diverse forms and methods used by launderers via real and fictitious businesses and ventures posed an ever-present challenge to regulators and financial institutions. Financial institutions must therefore ensure that every possible effort is taken to identify the criminals before they are allowed to enter the system. To do this all financial institutions (not just trading banks) need to:

- Verify the legal existence and structure of the customer by obtaining either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity.
- Verify that any person purporting to act on behalf of the customer is so authorised and identify that person.

It was evident however from the illustrations given during the conference, that only some financial institutions are fully equipped to deal with the diverse forms and methods employed by launderers to trick them into thinking that they are real entities.

PEPs and the role of their professional advisors are likely to come under more scrutiny from regulators.

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The concept – “Know Your Customer” has been much emphasized by regulatory authorities in banking and financial circles over many years as the cornerstone of AML practice. Numerous standards have been adopted in order to effectively address money laundering. Financial institutions are encouraged to review their existing Anti-Money Laundering policies so that they are comfortable that clients are providing real documentation when proving their identity.

In practical terms we believe that this means that regulators will be more focused on this aspect of AML practice during any reviews that they do and that financial institutions may want to make this a focus of training and review practices in the short term.

Regulatory focus on PEP's (aka Kleptocrats)

Mention was made of the requirement to conduct higher levels of scrutiny of Politically Exposed Persons ("PEPs"). This was especially relevant as those countries with which had been scheduled as being designated Non-Compliant Territories (NCCTs).

Various speakers were of the view that the use of professionals (gatekeepers), such as lawyers and accountants, to facilitate money laundering from PEPs is a significant problem. We were told that professionals provide access to financial systems and afford transactions that are otherwise suspicious, an appearance of legitimacy. They lend their skills and then invoke the shield of privilege to conceal money laundering and other criminal activity of their clients.

It is interesting to us that regulators are focusing on the relationship that PEPs have with professionals. Various law enforcement personnel have been telling us privately for some time that professionals are high up on their list of attractive targets for investigation, as they perceive them to be a part of the financial system that is not addressing suppression of money laundering seriously. The linkage with PEPs is a new development.

Dealing with the PEP issue is in itself something that is very delicate within financial institutions. Historically PEPs were the major, if not the only, source of funds for private banks in many developing countries. The conference indicates that this developing area is going to receive more regulatory scrutiny.

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