

GUERNSEY

Anti-money laundering in Guernsey: ship shape and squeaky clean ahead of IMF visit

BY GARETH BELL AND MICHAEL ADKINS

In the next few months, IMF staff will visit Guernsey to conduct a detailed assessment of, amongst other things, Guernsey's Anti-Money Laundering (AML) legislation. This is a particularly interesting time for the IMF to visit the island. As Guernsey and the rest of the world awake from the economic downturn, investors are starting to make more positive decisions about what to do with their money. Whilst a robust AML regime may not be at the top of every potential client's 'must have' list when deciding upon a jurisdiction, more than ever, investors are aware of the need to have confidence in their chosen jurisdiction's regulatory framework more generally, so they can be sure that the risk of anything going wrong is minimised and that if anything does go wrong, effective remedies will be available.

Compliance with international standards in respect of AML generally means compliance with other internationally promoted aspects of financial regulation. The other interesting aspect of the timing of the IMF's visit is that it comes not long after Guernsey's inter-insular rival received the results of its assessment, which was less effusive in its praise of Jersey's AML efforts than may have been expected. Accordingly, we think it is probably time for a refresher as to what AML is all about, including: (i) the nature of money laundering; (ii) the IMF and other acronyms; (iii) the key obligations under Guernsey's existing AML legislation; and (iv) proposed changes to the current AML regime on Guernsey.

Money laundering – easy as P-L-I

The big problem with money is that it really only means anything to you when you spend it – it has no intrinsic value. This simple fact causes criminals who commit crime for financial gain some serious headaches. Whilst the crimes they commit may generate a lot of money, they cannot spend it freely because to do so would draw attention to themselves and eventually to their crimes as the source of the money. So they are left with three options: (i) enjoy their money without spending it (perhaps using it as wallpaper or extra stuffing for their duvets); (ii) spend it and risk getting caught for the crime they have just gotten away with (and perhaps many more previous crimes to boot); and (iii) obscure the source of the money so that they can then spend it freely without fear

of getting caught.

Those who choose the last option are engaging in money laundering. Typically, money is laundered in three stages:

Placement – First, in the 'placement' stage the launderer has to introduce the money into the economy in such a way as to preserve its value and retain control of it. This is the most dangerous stage for a money launderer as the money is directly connected to the criminal at the stage that he introduces it. To avoid suspicion the criminal might break large amounts into smaller amounts, change the form of the money (say from cash to shares, bonds or cheques), and distribute it in various geographic locations.

Layering – Unsurprisingly, the second stage in the process involves putting as much distance between the money and its source, whilst still maintaining control over it and maintaining, as nearly as possible, its original value. This is done by engaging in multiple transactions in which money shifts between bank accounts across the world, often changing currency many times and sometimes being mingled with other funds as it passes through. Sometimes, in order to provide a further 'layer' of distance between the criminal and his money, the transfer may be disguised as payments for goods or services which will never be provided. In this modern world of increased financial surveillance, it is not enough to just send the money through one or two accounts – this can in most cases easily be traced back to the criminal. Instead, before money can truly be considered 'clean', it is typically sent through numerous bank accounts in a variety of jurisdictions, at least some of which will not have IMF compliant AML regimes. Luckily for the dishonest, the speed of modern commerce assists this by enabling millions of pounds to be shifted to an account on the other side of the world in seconds.

Integration – Now that the money is 'clean', the criminal can then spend the money as they wish. In particular, if they invest the money any profits generated will themselves be clean, legitimate funds.

FATF, AML, IMF

Secure cross-border transactions are crucial to any successful money launderer. Unsurprisingly, therefore, in order to combat money

laundering it was necessary for global co-operation to ensure that these cross-border transactions were recorded, that the information in relation to such transactions was shared and that assistance would be provided in the enforcement and prosecution of another State's domestic criminal laws.

Accordingly, in 1989, the Financial Action Task Force (FATF) was established by participating nations to develop a series of 'recommendations' to national governments in relation to the domestic legislation that it should enact in order to help create an effective AML network. These initial recommendations (later supplemented by a further nine 'special recommendations') became the foundation of participating nations' AML laws and the measuring stick against which those laws were assessed.

However, Guernsey, and many other international (or offshore) financial centres (IFCs) are not members of the FATF, and accordingly are not directly subject to review against the FATF recommendations. Instead, Guernsey and many other IFCs participated in a voluntary program conducted jointly by the International Monetary Fund (IMF) and the World Bank, to allow the IMF to conduct an assessment of each jurisdiction's operations as a financial centre, and in particular in relation to its compliance with the FATF's money laundering recommendations.

As discussed in detail below, Guernsey has substantially implemented the '40+9' recommendations, and as such these have been specifically endorsed by the Guernsey Financial Services Commission (GFSC).

Guernesiate AML

Consequently, Guernsey has had AML legislation for some time now, although the overall rigour of the laws was substantially increased in 2007 following an earlier IMF assessment in 2003. In fact, there are now some 15 separate pieces of legislation that are, in whole or in part, reflective of Guernsey's enthusiastic adoption of AML principles.

Some of the more important legislation is concerned with (i) disclosure of information – providing for mandatory disclosure of specified information in certain circumstances and providing consequent protection from prosecution for 'whistleblowers'; (ii) proceeds of crime – creating certain offences for handling or con- ►

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cealing the proceeds of criminal conduct and providing authorities with necessary investigation powers; and (iii) transfer of funds – mandating record keeping requirement for Guernsey businesses receiving incoming payments.

In practice, the combination of this legislation means that Guernsey financial services businesses must, on an ongoing basis: (i) know (usually down to the level of natural persons) who their 'client' is (including the beneficiaries, settlors and protectors of a trust); (ii) know and record who is remitting money to accounts held by them; and (iii) report any suspicions to the authorities.

More changes

Whilst the Guernsey AML framework is generally regarded as robust, the GFSC are proposing a raft of further changes to close some remaining loopholes, adapt to changing criminal

practices and, it is understood, steal a march on Jersey by adopting some of the recommendations made by the IMF after its recent review of Jersey's AML laws. Amongst the more significant proposed changes are: (i) bringing postage stamp and gold bullion dealers into the AML reporting framework; (ii) bringing all accountants (including insolvency practitioners, auditors and tax advisers) within the AML reporting framework, to the extent that they were not already there, albeit subject to the less stringent obligations already imposed on lawyers, estate agents etc.; and (iii) making it easier to prosecute proceeds of crime offences, including 'tipping off' offences, by watering down the 'mental' element required to be proved by the authorities.

Final thoughts

As with any new legislation, it will be im-

portant for all regulated businesses (now including stamp dealers) to quickly get up to speed with the new and/or altered scope of their AML obligations. The GFSC has published a user friendly guide simplifying the AML legislation and regulated entities' obligations, for new entrants to the regulatory field.

However, it is also timely for currently regulated businesses to review their manuals and procedures, and particularly to make sure that they are actually being followed in practice. Not only should such reviews make sure the business is on target to comply with the new stuff, but also to make sure that they continue to comply with the old stuff – because with the spotlight of the IMF on the Bailiwick, the GFSC is sure to be taking no prisoners when it comes to making sure everything is ship shape and squeaky clean. ■



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