International Lawyer

Volume 46
Number 1 *International Legal Developments Year in Review: 2011*

Article 27

2012

International Anti-Money-Laundering

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I. Introduction

Although U.S. regulators' anti-money-laundering enforcement actions were consistent with past efforts, 2011 saw a number of firsts in the area: regulators held financial institution board members and executives accountable for an institution's failure to maintain adequate anti-money-laundering (AML) controls, and a bank official faced criminal charges for disclosing a suspicious activity report (SAR). In the international arena, a growing awareness of the link between money laundering, stolen assets, and corruption led to the issuance of guidance and white papers from the Financial Action Task Force (FATF), the Wolfsberg Group, and the World Bank, all offering advice on how to trace, recover, and combat laundering and the misappropriation of state assets. Enforcement also increased: 2011 saw a number of lawyers criminally convicted of money laundering for having used their firms to conduct laundering activities. The United States, Singapore, the United Kingdom, and Spain all obtained convictions against lawyers for laundering in 2011. These cases serve as reminders to legal practitioners that their role as gatekeepers means that they are subject to many of the same rules as those in the financial industry.

II. U.S. Developments

A. Company Enforcement Actions and Settlements

1. *Hasie Financial Group*

On February 9, 2011, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's grant of summary judgment in favor of the Office of the Comptroller of the Currency (OCC).[1] The issue on appeal before the court was whether the government's production of non-public SARs to criminal defendants rendered the information in

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1. Hasie v. Office of the Comptroller of the Currency of the United States, 633 F.3d 361 (5th Cir. 2011).

the SARs public, and, therefore, discoverable in subsequent civil litigation. The Fifth Circuit concluded that it did not.

The SARs filed with the OCC by State National Bank were produced by the U.S. Attorney's Office during the criminal prosecution of Hasie Financial Group (Hasie) for conspiracy, money laundering, bank fraud, and making false statements to a bank. After Hasie was acquitted on all twenty-two counts in the criminal trial, it filed suit against State National Bank asserting claims of malicious prosecution, abuse of legal process, negligence, intentional infliction of emotional distress, and tortious interference with business relations.

Hasie produced the SARs during discovery in the civil case, and State National Bank filed a motion to compel Hasie to return the SARs and notified the OCC. The OCC and the Financial Crimes Enforcement Network (FinCEN) concluded that the OCC did not waive its nondisclosure rights and that Hasie's use of the information would be contrary to the Bank Secrecy Act (BSA). Hasie returned the documents to the OCC and submitted a written request for limited disclosure of documents pursuant to the OCC's *Touhy* regulations.[2] The OCC denied Hasie's request for the SARs, concluding that the statutory safe harbor accorded to a bank that files a SAR negated Hasie's showing of relevance, that Hasie's need for the requested information did not outweigh the public interest in maintaining its confidentiality, that public policy prohibited disclosure, and that the OCC had not waived its privileges attached to the SARs. Hasie sought review of the OCC's decision in the district court, which granted summary judgment in favor of the OCC.

On appeal, the Fifth Circuit rejected Hasie's argument that the government's production of the SARs in the criminal prosecution waived their classification as "non-public information." The Fifth Circuit reasoned that the OCC's regulations classify SARs as "non-public information," which is defined as information that is not subject to disclosure under the Freedom of Information Act[3] and not yet published or made available pursuant to 12 U.S.C. § 1818(u).[4] Because a SAR's release cannot be required under the Freedom of Information Act and the OCC's disclosure of information in the Hasie prosecution was not pursuant to 12 U.S.C. § 1818(u), the court concluded that the SARs were "non-public information."[5]

2. *Zions First National Bank*

On February 11, 2011, FinCEN and the OCC each announced the issuance of concurrent consent orders for the assessment of $8 million in civil money penalties against Zions First National Bank in Utah (Zions) for violations of the BSA from 2006 to 2008.[6] FinCEN and the OCC determined that Zions failed to establish and implement an effec-

2. *See* United States *ex rel.* Touhy v. Ragen, 340 U.S. 462, 468 (1951) (approving federal agencies' use of regulations to govern administrative requests for production of agency documents and testimony); 12 C.F.R. § 4.31(a) (2011).

3. 5 U.S.C. § 552(b) (2009).

4. 12 C.F.R. § 4.32(b)(1) (2011).

5. *Hasie*, 633 U.S. at 366.

6. Press Release, Fin. Crimes Enforcement Network, Civil Money Penalty Assessed Against Zions First Nat'l Bank (Feb. 11, 2011), *available at* http://www.fincen.gov/news_room/nr/html/20110211.html; *see also* Zions First Nat'l Bank, No. AA-EC-11-04 (Dep't of Treasury Feb. 11, 2011), *available at* http://www.occ.treas.gov/news-issuances/news-releases/2011/nr-occ-2011-16a.pdf.

tive AML program with respect to its new remote-deposit-capture (RDC) product initiative and further violated BSA requirements by failing to establish and implement an effective AML program with respect to its foreign correspondent banking relationships with *casas de cambio*, other financial institutions, *casas de bolsa*, and foreign corporate customers, and by failing to file timely SARs.

3. *Pacific National Bank*

On March 24, 2011, the OCC and FinCEN announced a $7 million civil money penalty against Pacific National Bank (Pacific National), a subsidiary of Ecuador's state-owned Banco del Pacifico S.A., for violations of a 2005 OCC Consent Order, the BSA, and the USA PATRIOT Act.[7] The OCC determined that the steps Pacific National took to improve its BSA compliance program fell short of what was required by the December 2005 Consent Order, which contained specific articles requiring enhancement to Pacific National's BSA compliance program. In addition, Pacific National specifically failed to: (1) adequately identify, monitor, and report suspicious activities; (2) adequately monitor its foreign correspondent bank accounts; (3) conduct sufficient due diligence; and (4) adequately audit its high-risk areas and the transactions conducted in those areas.

Concurrently, FinCEN determined that Pacific National was deficient in a number of critical AML controls and monitoring processes. Individual fines were levied against Pacific National's Chairman Andres Baquerizo, as well as three board members who served on the institution's BSA compliance committee and the bank's former chief executive officer. Baquerizo and the former CEO were each fined $12,500; the board members were fined $8,500 each. This is believed to be the first time that FinCEN has fined a financial institution's board members or senior executives for failing to address money-laundering control problems.[8]

4. *Lebanese Canadian Bank*

In February 2011, the U.S. Department of the Treasury (U.S. Treasury) designated the Lebanese Canadian Bank SAL and its subsidiaries (LCB) as a "primary money laundering concern" under section 311 of the USA PATRIOT Act. The designation occurred as a result of the bank's role in facilitating the money laundering activities of an international narcotics trafficking and money laundering network. The network, which moves illegal drugs from South America to Europe and the Middle East via West Africa, launders hundreds of millions of dollars each month through accounts held at LCB and through trade-based laundering. The U.S. Treasury stated that it has reason to believe that LCB managers were complicit in the network's money laundering activities. Simultaneously with the U.S. Treasury's designation, FinCEN filed a Notice of Proposed Rule Making (NPRM)

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7. *See* Pacific Nat'l Bank, No. 2011-5 (Dep't of Treasury Mar. 23, 2011), *available at* http://www.occ.gov/news-issuances/news-releases/2011/nr-ia-2011-32b.pdf; Press Release, Fin. Crimes Enforcement Network, OCC and FinCEN Assess Civil Money Penalties Against Pacific Nat'l Bank, Miami, Fla. (Mar. 24, 2011), *available at* http://www.fincen.gov/news_room/nr/html/20110323.html.

8. Brett Wolf, *U.S. Fines Bank Officials for Money-Laundering Lapses*, REUTERS, May 24, 2011, *available at* http://www.reuters.com/assets/print?aid=USTRE74N62S20110524.

that proposed prohibiting U.S. financial institutions from opening or maintaining correspondent or payable-through accounts for LCB.[9]

B. Individuals

1. *Jonathan S. Bristol*

A former partner at the law firm Winston & Strawn, Jonathan S. Bristol pled guilty on May 2, 2011, to one count of conspiracy to commit money laundering after laundering millions of dollars through his attorney escrow accounts for convicted financial advisor Kenneth Starr. Sentencing has not yet occurred. Starr filtered nearly $19 million of his clients' funds through Bristol's attorney-escrow accounts. At Bristol's plea hearing, Assistant U.S. Attorney Michael Bosworth stated, "Mr. Bristol [helped Starr] not to gain money directly for himself, but in order to maintain a book of business that he felt he needed to maintain in order to keep his position as a partner."[10]

2. *Tom DeLay*

On January 10, 2011, a Texas state judge sentenced former House Majority Leader Tom DeLay to three years in prison for conspiracy to launder money in connection with a plot to funnel corporate contributions to Texas legislative candidates. During the 2010 trial, DeLay was "accused of approving the transfer of $190,000 in corporate funds to the Republican National Committee's coffers in Washington and a return of the same amount in checks to state candidates."[11] The judge also sentenced DeLay to five years in prison on a separate felony conviction of money laundering but agreed to let him serve ten years of probation with community service instead of jail time.[12] DeLay filed an appeal on August 11, 2011.[13]

3. *Frank E. Mendoza*

On January 11, 2011—in what FinCEN believes to be the first time a bank official has been convicted of criminal charges for revealing the existence of a SAR—Frank E. Mendoza, a former official with Chase Bank, was found guilty of disclosing the existence of a SAR. Mendoza was also convicted of soliciting bribes from the subject of the SAR, a bank

9. Press Release, U.S. Dep't of Treasury, Treasury Identifies Lebanese Canadian Bank Sal as a "Primary Money Laundering Concern" (Feb. 10, 2011), *available at* http://www.treasury.gov/press-center/press-releases/Pages/tg1057.aspx.

10. Mark Hamblett, *Ex-Winston & Strawn Partner Pleads Guilty to Role in Swindling Celebrities*, N.Y. L.J., May 3, 2011, http://www.law.com/jsp/nylj/PubArticleFriendlyNY.jsp?id=1202492701096; Ross Todd, *Starr-struck*, AM. LAW., Nov. 1, 2011, *available at* http://www.law.com/jsp/tal/PubArticleFriendlyTAL.jsp?id=1202519695213.

11. R. Jeffrey Smith, *Tom DeLay, Former U.S. House Leader, Sentenced to 3 Years in Prison*, WASH. POST, Jan. 10, 2011, http://www.washingtonpost.com/wp-dyn/content/article/2011/01/10/AR2011011000557.html.

12. James C. McKinley, *DeLay Sentenced to 3 Years in Conspiracy and Money Laundering Case*, N.Y. TIMES, Jan. 10, 2011, http://www.nytimes.com/2011/01/11/us/politics/11delay.html.

13. Shern-Min Chow, *Delay Appeal May Keep Him out of Prison*, KHOU.COM, (Jan. 11, 2011, 7:03 PM), http://www.khou.com/news/politics/Delay-Appeal-May-Keep-Him-Out-of-Prison-113314489.html; *see also* James C. McKinley, Jr., *DeLay Sentenced to 3 Years in Conspiracy and Money Laundering Case*, N.Y. TIMES, Jan. 10, 2011, http://www.nytimes.com/2011/01/11/us/politics/11delay.html.

customer, in return for helping that customer address the possible criminal investigation related to the SAR. Mendoza was convicted of three counts of bank bribery and one count of unlawfully disclosing a SAR. Mendoza worked as a loss mitigation specialist for the bank and conducted investigations into delinquent mortgage loan borrowers. In this capacity, he reported to Chase that he suspected fraud in relation to one of the borrowers he was investigating, and the bank filed a SAR in 2008 with FinCEN.[14]

4. *Juthamas Siriwan and Jittsopa Siriwan*

In August 2011, former governor of the Tourism Authority of Thailand, Juthamas Siriwan, and her daughter, Jittsopa Siriwan, moved to dismiss indictments brought against them by the U.S. Department of Justice on the grounds that the government's charges used too broad an interpretation of "promotion of money laundering" under the Money Laundering Control Act. The Siriwans had been charged in January 2009 with laundering $1.8 million in bribes that Juthamas had allegedly received from Gerald and Patricia Green, both of whom were convicted in 2009 of violating the Foreign Corrupt Practices Act (FCPA). The government responded on September 9, 2011, by attempting to hold the alleged bribe recipient and her agent (daughter) liable under the money laundering laws, using FCPA violations, with which they cannot be directly charged,[15] as a predicate offense. Weeks after the Siriwans filed their motion to dismiss in the U.S. court based on the argument that they were not "foreign officials," the Thai National Anti-Corruption Commission formally ruled against the Siriwans, finding that Juthamas had committed criminal offences as a former state official in connection with the case, and forwarded the matter to Thai authorities for prosecution.[16]

5. *Meichun Cheng Huang*

In March 2011, Meichun Cheng Huang, an executive with Los Angeles-based Angel Toy Corp. (Angel Toys), pleaded guilty to conspiracy and money laundering nearly $9 million on behalf of drug cartels in Mexico and Colombia using a black market currency exchange.[17] According to the indictment, Colombian and Mexican cartel members would drop off cash at Angel Toys's offices or deposit it into corporate bank accounts. Executives with Angel Toys would then wire the funds to China to purchase toys that were shipped to Colombia and sold. The money from the toys' sale would then be paid to the drug cartels. The plea stemmed from a five-count indictment that charged five defendants, including Angel Toys, its three co-owners, and Jose Leonardo Cuevas Otalora, a

14. Press Release, Fed. Bureau of Investigation, L.A. Div., Former Chase Bank Official Convicted of Taking Bribes and Disclosing Existence of a Suspicious Activity Report (Jan. 11, 2011), *available at* http://losangeles.fbi.gov/dojpressrel/pressrel11/la011111.htm.

15. *See* United States v. Castle, 925 F.2d 831, 832 (5th Cir. 1991).

16. *Graft Agency Rules against Juthamas*, BANGKOK POST (Aug. 24, 2011, 5:37 AM), http://www.bangkokpost.com/news/local/253150/graft-agency-rules-against-juthamas; Joe Palazzolo, *Ex-Thai Official Tests Reach of Money Laundering Law in Corruption Case*, WALL ST. J. (Aug. 22, 2011, 3:14 PM), http://blogs.wsj.com/corruption-currents/2011/08/22/ex-thai-official-tests-reach-of-money-laundering-law-in-foreign-corruption-case/.

17. *See* Plea Agreement for Defendant Angel Toy Corp. at 2, 7, United States v. Angel Toy Corp., (C.D. Cal. 2011) (No. 2:10-cr-00718-SJO-3), *available at* http://lib.law.virginia.edu/Garrett/plea_agreements/pdf/AngelToy.pdf.

Colombia-based businessman who allegedly oversaw the importation of the toys into his country. Including Huang, all three Angel Toys executives have pleaded guilty.[18]

C. Regulatory Developments

1. *FinCEN Implements Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010*

On October 11, 2011, FinCEN issued new regulations published in the Federal Register to implement section 104(e) of CISADA, which aims to prevent foreign correspondent accounts from being used for the benefit of certain Iranian entities connected to Iran's proliferation of weapons of mass destruction or support for international terrorism. Under the new rules, U.S. banks, upon request from FinCEN, would be required to inquire and report whether their foreign bank customers:

> (1) maintain a correspondent account for any Iranian-linked financial institution designated under the International Emergency Economic Powers Act;
> (2) have processed one or more transfers of funds within the preceding ninety calendar days, other than through a correspondent account, related to any such designated financial institution; or
> (3) have processed directly or indirectly one or more transfers of funds within the preceding ninety calendar days, other than through a correspondent account, for or on behalf of the Islamic Revolutionary Guard Corps.[19]

The Office of Foreign Assets Control (OFAC) has designated several financial institutions—such as Bank Melli, Bank Saderat, Bank Sepah, Europaeische-Iranische Handelsbank, and the Export Development Bank of Iran—as Iranian-linked financial institutions pursuant to its sanctions programs targeting international terrorism and proliferation of weapons of mass destruction.[20] The rule also imposes other requirements on U.S. banks, such as providing any information a bank has that is inconsistent with a foreign customer's response.[21] The requirements of the rule should be reviewed carefully by any U.S. bank providing a requested report to FinCEN. FinCEN will use the information gathered under this rule to "identify foreign financial institutions whose activities are sanctionable" under the Iranian Financial Sanctions Regulations (IFSR) published in 2010 by the U.S. Treasury.[22]

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18. *3rd Exec Pleads Guilty in 'Teddy Bear' Drug Money Conspiracy*, CBS Los Angeles (Mar. 4, 2011, 1:42 PM), http://losangeles.cbslocal.com/2011/03/04/3rd-exec-pleads-guilty-in-teddy-bear-drug-money-conspiracy/.

19. Press Release, Fin. Crimes Enforcement Network, Fact Sheet: FinCEN Implements Provision of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Oct. 5, 2011), *available at* http://www.fincen.gov/news_room/nr/html/20111005.html.

20. Press Release, Fin. Crimes Enforcement Network, Update on the Continuing Illicit Finance Threat Emanating from Iran (June 22, 2010), *available at* http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-a008.pdf.

21. *Certification for Purposes of Section 104(e) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and 31 CFR § 1060.300*, Financial Crimes Enforcement Network, http://www.fincen.gov/statutes_regs/frn/pdf/CISADA_Certification.pdf (last visited Jan. 10, 2012).

22. Fact Sheet: FinCEN Implements Provision of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, *supra* note 19.

2. *FinCEN Makes Sellers and Providers of Prepaid Access Subject to the BSA Reporting Requirements*

FinCEN announced a final rule, published on July 29, 2011, in the Federal Register, that includes the providers and sellers of prepaid access—such as gift cards and other prepaid cards—in the definition of "Money Services Businesses" (MSBs) that are subject to certain reporting and other requirements pursuant to FinCEN regulations. These requirements include: (1) establishing written AML programs that are reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities; (2) filing Currency Transaction Reports (CTRs) and SARs; and (3) maintaining specific records, including those relating to the purchase of certain monetary instruments involving currency and certain transmittals of funds. Most types of MSBs are required to register with FinCEN, and all are subject to examination for BSA compliance by the Internal Revenue Service (IRS).[23]

The rule was initially scheduled to take effect beginning September 27, 2011. But on September 9, 2011, FinCEN announced it would provide "administrative relief" that would give sellers of prepaid access until March 31, 2012, to comply with the new rule. FinCEN reacted to industry protests that implementation of the rule on September 27 could cause a substantial, negative impact on the use of gift cards for back-to-school and holiday shopping. Providers of prepaid access, which FinCEN concluded were not similarly constrained, were required to implement an effective AML program, file SARs as necessary, and maintain required records as of September 27, 2011, although they have until March 31, 2012, to comply with other aspects of the rule. FinCEN has pledged not to initiate any compliance matter or enforcement action pursuant to the new rule prior to March 31, 2012, nor assess any civil monetary penalties for violations of the rule that occur prior to that date.[24]

3. *FinCEN Clarifies Definition of Money Services Business (MSB) and Includes Foreign MSBs Doing Business in the United States*

On July 18, 2011, FinCEN released a final rule that more clearly defines what constitutes an MSB subject to anti-money-laundering rules under the BSA. The new rule, which became effective on September 19, 2011, potentially expands coverage of U.S. anti-money-laundering requirements to many companies operating outside the United States that provide internet-based money transmission services in the United States. The new rule specifies that an entity qualifies as an MSB based on its activity within the United States regardless of whether it is physically located in the United States. FinCEN is targeting the internet and other technological advances that "make it increasingly possible for persons to offer MSB services in the United States from foreign locations."[25] Additionally, the new rule eliminates the $1,000-per-person daily transaction threshold, which

23. Press Release, Fin. Crimes Enforcement Network, FinCEN Notice 2011-3 Admin. Relief for Sellers and Providers of Prepaid Access (Sept. 9, 2011), *available at* http://fincen.gov/whatsnew/html/20110909.html?utm_source=Feedblitz&utm_medium=FeedBlitzEmail&utm_content=591767&utm_campaign=0.

24. Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, 76 Fed. Reg. 43,585, 43,585 (July 21, 2011) (to be codified at 31 C.F.R. pts. 1010, 1021, 1022).

25. Press Release, Fin. Crimes Enforcement Network, FinCEN Clarifies Money Serv. Bus. Definitions (July 18, 2011), *available at* http://www.fincen.gov/news_room/nr/pdf/20110715.pdf.

an MSB previously had to meet to trigger the anti-money-laundering rules under the BSA. Under the new rule, transmitters of money in any amount are subject to the BSA rules.[26]

4. *Department of Defense*

On September 13, 2011, the Joint Chiefs of Staff of the U.S. Department of Defense issued the *Commander's Handbook for Counter Threat Finance, Version 1.0*. The *Handbook* includes a chapter on the roles and responsibilities of specific units assigned to investigate threat finance and establish cooperation guidelines with other U.S. government agencies.[27]

III. International Developments

A. ENFORCEMENT ACTIONS

1. *Israel*

On December 30, 2010, Israel's Banking Corporations Sanctions Committee imposed a $2.1 million financial sanction on Bank Hapoalim, Ltd. for failing to follow the Prohibition on Money Laundering Law. The sanctions were a result of a 2004 inspection and a 2007 to 2008 examination by the Banking Supervision Department. The inspection exposed reporting requirement violations and found Bank Hapoalim deficient in reporting unusual activity to the Israel Money Laundering Prohibition Authority. Bank Hapoalim's main infringements, as noted in the examination, were its failures to maintain accurate beneficiary ownership information, freeze non-compliant accounts, and report suspicious activity.[28]

2. *Singapore*

In February 2011, the Singapore Court of Three Judges found Mustaffa Abu Bakar guilty for failing to comply with Singapore's anti-money-laundering laws, particularly the Singapore Legal Profession Professional Conduct (Amendment) Rules of 2007 (LPR 2007). The LPR 2007 requires law firms to allow the inspection of their financial records by the Singapore Law Society in order to meet international AML regulations.[29] The LPR 2007 is supplementary to the AML provisions under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) of Singapore.[30]

26. *Id.*

27. JOINT STAFF, J-7, JOINT AND COALITION, COMMANDER'S HANDBOOK FOR COUNTER THREAT FINANCE II-1-20 (Version 1.0 2011).

28. Press Release, Bank of Israel, The Banking Corps. Sanctions Comm. Decision Regarding Infringements by Bank Hapoalim Ltd. of Regulations under the Prohibition on Money Laundering Law (Feb. 1, 2011), *available at* http://www.bankisrael.gov.il/press/eng/110103/110103z.htm.

29. *See, e.g.*, K.C. Vijayan, *Lawyer Guilty of Serious Misconduct*, STRAITS TIMES (Sing.), Mar. 2, 2011, 2011 WLNR 40092.

30. Andy Yeo, *Singapore Lawyers as Gatekeepers*, THE ANTI-FRAUD NETWORK, http://www.antifraudnetwork.com/Singaporelwyersasgatekeepers.htm (last visited Jan. 10, 2012).

3. *Spain*

In April 2011, Spain-based Chilean lawyer Fernando del Valle was convicted of money laundering, sentenced to six years in prison, and ordered to pay €3.4 million in fines for his part in laundering nearly €250 million through his law firm's accounts. Under his scheme, "Ballena Blanca," del Valle used an international web of companies with connections to Turkey, Algeria, Finland, Sweden, Iran, France, and Morocco to avoid paying tax in Spain. Mr. del Valle controlled a series of several hundred shell corporations through his law firm and laundered the funds through these shell companies. Most of the shell companies were incorporated in Delaware; the rest were constituted in financial havens such as Gibraltar, Isle of Man, Panama, and the Virgin Islands. In a joint effort with Canada, the United States, and Germany, Spanish authorities seized more than €72 million from accounts in twenty-eight banks around the world. Of the fifty people arrested and the nineteen indicted, del Valle is one of only five found guilty.[31]

4. *United Kingdom*

On July 22, 2011, the UK High Court ordered Macmillan Publishers Limited to pay in excess of £11 million in recognition of funds generated through unlawful conduct under Part 5 of the Proceeds of Crime Act. The fines stemmed from a 2010 corruption matter. Macmillan self-reported allegations of bribery and corruption to the Serious Fraud Office (SFO) in March 2010. The SFO determined that the public tender processes under which the contracts were acquired were susceptible to improper relationships and corruption and that Macmillan had benefited from revenue deriving from unlawful conduct.[32]

On February 16, 2011, KBR, Inc. announced that its wholly-owned subsidiary, M.W. Kellogg Limited (MWKL), had reached a civil settlement with the SFO. The agreement, which was granted by the High Court under the Proceeds of Crime Act 2002, stemmed from KBR's violations under the U.S. Foreign Corrupt Practices Act (FCPA) occurring between 1994 and 2004. MWKL self-reported to the SFO under the agency's self-referral scheme and cooperated with the subsequent investigation. The SFO recognized that while the company did benefit from funds acquired as a result of unlawful conduct, MWKL took no part in criminal activity. Under the terms of the civil settlement agreement, MWKL will pay approximately £7,000,000, the amount equal to the share of dividends payable from profits generated by contracts obtained for work on the Bonny Island Project in Nigeria where the corrupt activity took place.[33]

In March 2011, a Welsh solicitor with the firm W Parry & Co was sentenced to four years and eight months in prison for money laundering on behalf of a drug dealer. Benja-

31. *Ballena Blanca Money Laundering Case Reaches Conclusion*, THE RESIDENT PLUS (Spain), Apr. 3, 2011, http://issuu.com/elduque/docs/resident_plus_april_2011; *Judicial Decision for Del Valle and the Other in Ballena Blanca Marbella*, PROPERTY MARBELLA APARTMENTS AND VILLAS (Apr. 4, 2011), http://www.propertymarbellaapartments.com/blog/2011/04/04/judicial-decision-for-del-valle-and-the-other-in-ballena-blanca-marbella/.

32. Press Release, Serious Fraud Office, Action on Macmillan Publishers Limited (July 22, 2011), *available at* http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx.

33. Press Release, KBR, Inc., KBR Subsidiary Finalizes Civil Settlement with UK Serious Fraud Office (Feb. 16, 2011), *available at* http://investors.kbr.com/phoenix.zhtml?c=198137&p=irol-newsArticle_print&ID=1529674&highlight=.

min Cornelius acted as a conveyance solicitor in the purchase of properties and committed more than £650,000 worth of fraudulent mortgage transactions by using the proceeds of drug sales to purchase the properties on behalf of his client.[34]

B. New Legislation and Initiatives

1. *China*

In May 2011, the Chinese State Council announced a new regulation aimed at curbing money laundering, bribery, and other financial malfeasance via gift cards. The regulation will require issuers of gift cards to register the identities of customers who buy at least $1500 (in U.S. dollars) in cards, or, alternately, to mark the cards with the names of the people who will use them. Anonymous cards with a face value over $154 cannot be sold, while cards bearing the names of the users are not to exceed a value of $770. China's central bank, the People's Bank of China, and the Ministry of Commerce are expected to launch a nationwide inspection of all stored value cards in circulation before year's end.[35]

2. *India*

In July 2011, India's Supreme Court constituted a Special Investigation Team (SIT) to take action to reclaim unaccounted-for monies transiting through Indian banks. More than just an attempt to corral "black money" and unpaid taxes, the Court referenced several recent criminal cases and ordered the government to cooperate with investigations into sources of monies being used for unlawful activities, terrorist financing, and other acts against the state.[36]

3. *Mexico*

In April 2011, the Mexican government announced a money-laundering whistleblower program. The program will allow individuals who report suspected money laundering to receive up to one-quarter of any illicit funds or property seized. Excluded from the whistleblower program are those who are already obligated to report financial transactions that are suspect, such as government employees, law enforcement officials, and employees of banks.[37]

In June 2011, the Mexican government instituted new limits on money transactions in U.S. dollars. The new regulation imposes a limit of $1500 per month in monetary transactions for both tourists and residents who do not hold accounts at Mexican banks.[38]

34. *Greedy Solicitor Gets Four Years for Laundering Drugs Money*, WALESONLINE.CO.UK (Mar. 19, 2011), http://www.walesonline.co.uk/news/wales-news/2011/03/19/greedy-solicitor-gets-four-years-for-laundering-drugs-money-91466-28366028/.

35. *China Regulates Gift Cards to Prevent Corruption*, PEOPLE'S DAILY ONLINE (May 26, 2011, 4:59 PM), http://english.peopledaily.com.cn/90001/90776/90785/7392310.html.

36. J. Venkatesan, *Supreme Court forms SIT on Black Money*, THE HINDU (July 4, 2011), http://www.thehindu.com/news/national/article2158229.ece.

37. *Mexico Sets Rewards for Reporting Money Laundering*, BORDERLAND BEAT (Apr. 5, 2011), http://www.borderlandbeat.com/2011/04/mexico-sets-rewards-for-reporting-money.html.

38. *Id.*

4. *New Zealand*

The Ministry of Justice published a commencement order for the remaining provisions of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 on June 30, 2011. All reporting agencies are required to meet their AML and Countering Financing of Terrorism (CFT) obligations by June 30, 2013. In addition to appointing an AML/CFT compliance officer and conducting risk assessments, financial institutions are tasked with designing and implementing an AML/CFT compliance program. An effective AML/CFT program must: (1) include procedures, policies, and controls to train AML/CFT program managers and staff; (2) perform on-going customer due diligence and account monitoring; (3) report suspicious activity; and (4) maintain record keeping. The New Zealand Reserve Bank will supervise the AML/CFT obligations along with the Financial Markets Authority and the Department of Internal Affairs. Codes of practice, developed by the three AML/CFT supervisors, will be available as guidance and methods of compliance to the Act.[39]

5. *Nigeria*

In June 2011, Nigeria enacted the new Terrorism (Prevention) Act 2011 (Terrorism Act) that establishes measures for the prevention, prohibition, and combating of acts of terrorism and financing of terrorism. The Terrorism Act also implements the Convention on the Prevention and Combating of Terrorism and the Convention on the Suppression of Financing of Terrorism.[40] Nigeria also passed the Money Laundering (Prohibition) Act 2011 (2011 Act), which repeals the Money Laundering Act of 2004. The 2011 Act contains comprehensive provisions prohibiting the financing of terrorism and the laundering of the proceeds of crime. The 2011 Act also expands the scope of supervisory and regulatory authorities to address the challenges faced in the implementation of the anti-money laundering regime in Nigeria.[41]

In May 2011, the Central Bank of Nigeria (CBN) announced a new policy that limits the amount of daily cash withdrawals and lodgments by any individual or corporate body to N150,000 (± US$940) and N1,000,000, respectively. The goal of the new law is to curb money laundering, terrorist financing, and other financial crimes. The CBN stated that it hoped the policy would push the country to adopt a cashless approach to financial transactions. The policy will become effective June 1, 2012.[42]

6. *Sri Lanka*

In September 2011, Sri Lanka's parliament amended their country's law governing money laundering and preventing the financing of terrorism. The new legislation is designed to bring the country's laws into compliance with international standards, including

39. *About the AML/CFT Act*, NEW ZEALAND MINISTRY OF JUSTICE, http://www.justice.govt.nz/policy/criminal-justice/aml-cft/aml-cft-act (last visited Jan. 15, 2012).

40. Daniel Idonor, *Jonathan Signs Terrorism, Money Laundering Bills Into Law*, VANGUARD (June 6, 2011), http://www.vanguardngr.com/2011/06/jonathan-signs-terrorism-money-laundering-bills-into-law/.

41. *See id.*

42. Obinna Chima, *CBN Cash Limits to Check Money Laundering-Report*, THIS DAY LIVE (May 11, 2011), http://www.thisdaylive.com/articles/cbn-cash-limits-to-check-money-laundering-report/91150/.

FATF's AML/CFT recommendations. Under the new law, police can now freeze funds and assets of those suspected of links to terrorist groups. While the amendments to the money laundering statute reduced the sentence for offenses, they expanded its reach and scope, broadening the activities that fall under it. The law applies to both Sri Lankans and non-citizens and covers any offenses committed within the country.[43]

7. *The Holy See*

On April 1, 2011, the Holy See's anti-money-laundering and anti-terrorist-financing regulations, promulgated in 2010, went into effect. Simultaneously, the Vatican issued a new rule requiring anyone bringing €10,000 or more into Vatican City to declare it in an effort to bring the Holy See into international anti-money-laundering compliance. As Vatican City lacks prisons, anyone convicted of laundering money or financing terrorism will be incarcerated in Italian jail.[44]

8. *United Kingdom*

In November 2011, pursuant to the Prevention of Nuclear Proliferation, Terrorist Financing and Money Laundering—Financial Restrictions (Iran) Order 2011—the UK government announced that it would be imposing new financial restrictions against Iran. The new rules require all UK credit and financial institutions to cease transactions and business relationships (including correspondent banking) with all Iranian banks, including the Central Bank of Iran. Any relationships with Iran contemplated by UK financial institutions can now only occur under special license issued by Her Majesty's Treasury. The Order is in response to a FATF advisory regarding Iran and the risk of terrorist financing, money laundering, or both.[45]

C. International Treaties and International Organizations

1. *FATF*

In June 2011, the FATF issued a non-binding guidance paper on the goal of increasing financial inclusion and the potential challenges to AML/CFT requirements with an effort to attain a high degree of inclusion and ways of finding complementary and proportionate approaches. The primary objective for advocating financial inclusion is the reduction of a country's financial service risk exposure. By having greater inclusion in the financial sector, a higher degree of certainty to overall money laundering and terrorist financing risk can be achieved.[46] Current estimates indicate that more than half of the world's popula-

43. Samuel Rubenfeld, *Sri Lanka Amends Money Laundering, Terrorism Finance Laws*, WALL STR. J. (Sept. 23, 2011, 3:14 PM), http://blogs.wsj.com/corruption-currents/2011/09/23/sri-lanka-amends-money-laundering-terrorism-finance-laws/.

44. Nicole Winfield, *Vatican Anti-money Laundering Law Goes into Effect; People Bringing $14k inside Must Declare* (Apr. 1, 2011, 9:46 AM), http://www.1310news.com/news/world/article/206242—vatican-anti-money-laundering-law-goes-into-effect-people-bringing-14k-inside-must-declare.

45. Press Release, U.K. HM Treasury, Chancellor Announces New Financial Restrictions Against Iran (Nov. 21, 2011), *available at* http://www.hm-treasury.gov.uk/press_131_11.htm.

46. FIN. ACTION TASK FORCE, FATF GUIDANCE: ANTI-MONEY LAUNDERING AND FINANCING MEASURES 8 (2011).

tion lacks formal financial services such as savings accounts, credit, and insurance. The guidance paper highlights the various reasons behind the large numbers of unbanked individuals, including poverty, access, lack of trust of mainstream financial systems, cultural obstacles, language barriers, and costs. FATF acknowledges, through the paper, the importance of inclusion in maintaining a stable financial environment globally.

2. *Wolfsberg Anti-Corruption Guidance*

In August 2011, Wolfsberg Group published revised anti-corruption guidance to assist institutions with establishing appropriate anti-corruption programs and preventing bribery.[47] The guidance paper notes that financial institutions must be prepared to counteract misuse of the financial system as a conduit for illegitimate gains: "Transactions involving the proceeds of corruption often follow patterns of behavior common to money laundering associated with other criminal activities."[48] The guidance paper highlights strategic initiatives that should be considered as an effective deterrent, including: establishment of an internal whistleblowing system that will confidentially accept and review matters that raise ethical concerns, independent auditing of the institution's program, demonstration of executive commitment and involvement, and setting the "tone from the top" by periodic reporting to executive board and board of directors.[49] The guidance suggests that "leveraging anti-money[-]laundering processes to address bribery risks should be considered when developing an effective approach to monitoring for bribery."[50]

3. *Wolfsberg Guidance on Prepaid and Stored Value Cards*[51]

In October 2011, the Wolfsberg Group released its guidance on the "vulnerabilities" and money laundering risks of physical prepaid and stored value cards.[52] As the use of prepaid and stored valued cards has increased exponentially, so has the concern of potential risks. The guidance paper highlights some of these risks: the ability to transfer global funds rapidly, a lack of face-to-face meetings, and the ability to withdraw cash. Wolfsberg points out that not all prepaid and stored value programs present high risk and that "a generalized view of the risk cannot be taken."[53] As part of a comprehensive AML/CFT assessment, financial services companies must consider the structural components of individual prepaid or stored-value programs: the use and purpose of the cards, specific features of the card, operations, the geographical base of potential clients, and any other unique factors. Wolfsberg provides a number of prominent factors that could decrease AML risk,

47. Wolfsberg Group, Wolfsberg Anti-Corruption Guidance 1 (2011), *available at* http://www.wolfsberg-principles.com/pdf/Wolfsberg%20Anti%20Corruption%20Guidance%20Paper%20August%2018-2011%20(Published).pdf.

48. *Id.* at 3.

49. *Id.* at 13.

50. *Id.* at 14.

51. Wolfsberg Group, Wolfsberg Guidance on Prepaid and Stored Value Cards 1 (2011), *available at* http://www.wolfsberg-principles.com/pdf/Wolfsberg_Guidance_on_Prepaid_and_Stored_Value_Cards_Oct_14,_2011.pdf.

52. *Id.* at 2.

53. *Id.* at 14.

including restricting who can access cards via a PIN, embossing the cardholder's name, limiting the number of merchants authorized to accept a card, or disabling use of the prepaid card for activities designated as higher risk.[54]

54. *Id.* at 6.