



FINANCIAL CRIME NEWS

Autumn 2011

Welcome to the Autumn 2011 issue of FMLI's Financial Crime News. The information in this newsletter is current as at 30 November 2011.

Myths and realities of the Bribery Act

The Ministry of Justice released its guidance on the Bribery Act after much debate, the government's aim being to allay the concerns which had arisen. On the other hand, the SFO has indicated its intention to enforce the Act strongly. Here we focus on correction of misperceptions and some key practical steps, but please feel free to contact us for our detailed briefing note on the Bribery Act:

- Some countries are more advanced in terms of enforcement than the UK. In 2009-2010, China (ironically slated by the UK for being lax) punished 245,000 government officials for corruption, and executed a number of them
- Those practising bribery are changing their techniques and becoming far more subtle and sophisticated in terms of transferring payments and advantage. A quarter of bribes are now thought to be non-financial in nature. Watch out for 'jobs for the boys' or 'work experience' for children
- Gifts and hospitality are not unlawful. Those lovers of football, cricket and rugby can still keep their boxes, you can still take guests to Henley, Wimbledon, Grand Prix, shooting, send out Christmas gifts, etc. Some institutions are being more restrictive in their interpretation but this is a matter of personal choice. There is considerable evidence of life at work becoming depressingly boring for many, and even those in charge of multi million budgets are now fettered to the extent they find it hard to go out for a coffee
- The Transparency International Corruption Perceptions Index is based on a number of surveys, all based on perception rather than reality. You can still experience attempted corruption in even the top listed countries. The UK's position may have fallen as a result of the BAE case, but it is still rated cleaner than the US which claims to have the stiffest laws in the shape of the Foreign Corrupt Practices Act (FCPA). There are some surprises, such as Nigeria being about a third up from the bottom of the table, and 'cleaner' than Russia
- The Bribery Act does not just apply in relation to foreign governmental officials as the FCPA does, but also to commercial bribery
- Other countries, including western European ones, are still funding family holidays and lavish entertainment (this is definitely not allowed under the Act)
- If you are using agents or introducing brokers you will need to run proper due diligence checks on them if you have not already done so. You should update these checks annually or if suspicions are aroused. Many readers will know we have been running such checks for years, and we now cover 110 jurisdictions worldwide, mainly the key financial jurisdictions, but also more exotic locations from Mali to Mongolia



- Enforcement risk has an odd profile. SFO has had its budget reduced from £53m to £35m (SFO spent £21m on Maxwell), and all cases are to be signed off by the DPP or director of the SFO. The government is only budgeting for 1.3 cases a year on average, one by the SFO, and 0.3 by the CPS, yet SFO takes 15 months to bring a charge and the CPS has just concluded its first case (of a court clerk who took a £500 bribe and received a six year sentence). SFO is trying to encourage a US style system where companies will confess, and 20 have so far. SFO Confidential has 2000 website hits and 500 calls a month. On the other hand, regulatory action is much more likely by FSA, as shown of late. The main driver, however, is likely to be reputation risk and the possibility of a PR disaster, so spending time on procedures, training and due diligence is highly important, not just to reduce risk but to increase profits
- There is considerable tension between Ministry of Justice, SFO and the courts, which will take time to resolve, particularly over the planned introduction of plea bargaining. The guidance is intended to soften the impact of the Act, but the courts are the ultimate custodian of the rule of law.

Remember that having an adequate compliance system in place is the only defence, and that compliance with US FCPA provisions will not be adequate since the Bribery Act is broader in scope.

New twists on jurisdiction risk

FATF has released a number of new lists relating to money laundering risks. The first of these is of jurisdictions where countermeasures are to be applied due to the AML/CFT risks involved (major money laundering countries are asterisked below).

- Iran*
- North Korea

Many UK institutions have difficulties in dealing with Iran in particular, though downtown Tehran is full of US institutions having been granted permission by the American authorities, so governments can clearly get over the political hurdles if the will is there. We have been assisting a number of institutions in their relations with Iran, and others in relation to funds flowing to and from North Korea through nearby jurisdictions such as Vietnam and China.

The second FATF list is of jurisdictions with strategic AML/CFT deficiencies which are not considered to have made sufficient progress:

Bolivia*	Nigeria*
Cuba	Sao Tome and Principe
Ethiopia	Sri Lanka
Kenya*	Syria
Myanmar*	Turkey*



Most of these jurisdictions are having a difficult time economically and are not on the radar screen for the usual western financial institution, but there are exceptions. The UK government has been particularly keen to encourage trade with Turkey, for example, and trade with Turkey increased 40% in the first half of this year alone. Nigeria is not quite so favoured in UK trade circles, but is nonetheless seen as one of the most important jurisdictions in Africa and was the subject of a mission by the Lord Mayor of the City of London earlier this year. Kenya is also seen as having potential for the future, and the M PESA experience is being closely looked at as a potential global role model for mobile banking. FMLI has specific experience of Kenya, Nigeria and Turkey in relation to a number of matters, and indeed has a team member on the ground in Nigeria.

The third list is of jurisdictions which have strategic AML/CFT deficiencies

Algeria	Brunei	Mongolia	Paraguay*	Turkmenistan
Angola	Cambodia*	Morocco	Philippines*	Venezuela*
Antigua*	Ecuador	Namibia	Sudan	Vietnam
Argentina	Honduras	Nepal	Tajikistan	Yemen
Bangladesh	Kyrgyzstan	Nicaragua	Trinidad	Zimbabwe*

Again, most of these are not on the usual trail, but there are a number of significant exceptions, such as Vietnam. The UK is now the largest foreign investor in Vietnam and Vietnam is growing at considerable speed while the West stagnates. It is dynamic and was visited by FMLI earlier this year, along with Hong Kong and Singapore. Argentina and the Philippines are also on the target list of many, and others are waiting anxiously for Mongolia's mineral wealth to open up. Angola was also the subject of a Lord Mayor mission earlier this year.

Ghana	Pakistan*	Thailand*
Indonesia*	Tanzania	Ukraine*

Of the above, Indonesia is in the second tier of the UK's fast track countries (along with Vietnam), Ghana is booming after its oil discovery, and Thailand has also attracted interest.

This gives rise to a number of challenges since the FATF lists are to some extent in conflict with UK trade expansion. The UK has only just realised that the position where trade is greater with Ireland than Brazil, Russia, India and China combined is not good for growth, and has been targeting certain countries of higher growth for greater trade links. The UK is now the largest foreign investor in certain more unusual places such as Azerbaijan and Vietnam. FMLI has been visiting these countries, along with Russia, Hong Kong, Singapore, UAE, Macau and Jordan as part of UK government financial services trade delegation visits. Please let us know if you would like to know more. There are great opportunities to be had.

The UK has refocused on certain jurisdictions as key first level targets. These are Brazil, Russia, India and China. The UK and Russia, for example, have signed an



agreement for the development of Moscow as a financial services centre and have six working streams on their list (though ignoring financial crime for the moment). The UK's secondary targets include Indonesia, South Africa, Turkey and Vietnam.

These are of course important for the future, but that does not mean that other developed jurisdictions should be ignored, and we have been helping our clients expand into Singapore, China, Hong Kong, the US, Russia and CIS, Germany, Italy and Poland, as well as recover assets from a wide variety of offshore jurisdictions.

There is also a distinct difference between the FATF lists and the work of the US on what should be regarded as major money laundering countries (asterisked above). Most of the world's dirty money is laundered through more developed jurisdictions than those on the new FATF lists (the majority of which are FATF full members) as launderers do not want to pass it through countries which have no financial centre to speak of, or where the transfer will attract attention. Nonetheless, the vulnerability of jurisdictions will change as the emerging economies of ten years ago become the only centres of current global economic growth. For that reason, we have been bolstering links to high growth countries to enable real due diligence to be carried out in such markets for a variety of reasons, as well as assisting in developing financial market structures in such countries and helping bring their financial institutions to London.

For all 241 jurisdictions (including the world's most recently created jurisdiction of South Sudan), see FMLI's Global Risk Minimiser in client services on www.fmli.co.uk. Request a trial.

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Essential Money Laundering Deterrence 2012 (the guide to money laundering deterrence)

This publication provides general information about legal, regulatory and commercial developments affecting financial crime deterrence. Further information can be provided on request. Since the information provided is of a general nature it cannot be used as a substitute for legal advice focused on a specific scenario. If you would like analysis of any particular issue, please do not hesitate to contact us.

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