



FINANCIAL CRIME NEWS

June 2009

Welcome to the June 2009 issue of FMLI's Financial Crime News. This is the first in a new series. It is intended to cover a recent key topic, a section focus on a particular financial crime type, a section focus on a particular jurisdiction, and a news round up, all in a maximum of four pages. If there is anything you would like to see covered please ask! The information in this newsletter is current as at 1 June 2009.

Impact of the Recession on Financial Crime Deterrence

At a breakfast meeting earlier this year, Mervyn King, Governor of the Bank of England, assessed the reasons for the recession and described fraud as the trigger. There is considerable discussion as to whether fraud becomes more prevalent during an economic downturn. In the early days of the credit crunch, the jury was out on this issue, many advocating that fraud numbers would rise as more paid attention to their financial statements and uncovered more past misdealings, rather than more fraud being committed, but later figures suggest fraud is very much on the rise. Corporate fraud is stated to be up fivefold, accounting fraud sixfold, internal fraud threefold, and then there are the multi billion Madoff and Stanford defalcations.

As the threat rises, so defences seem to be under strain, and not just from more active financial criminals, but from CFOs cost cutting unduly, in an attempt to improve figures. Regulators have stated that they will be tougher in the future, and worryingly, that "people should be very scared" of the FSA. Yet this is a time when the relationship between regulator and regulated should be more of active co-operation than normal. There is more pressure to onboard clients, compliance officers and MLROs are under greater pressure, even being threatened by senior management, and there is less internal pressure to update client profiles, procedures and training, all of which increase vulnerability. Yet those continuing compliance spend, such as Siemens, following its massive fines for bribery, are finding revenues are on the up. This is a hard time for compliance officers and MLROs. We offer a reminder of the return on investment for compliance in the conclusion below.

Focus on Bribery and Corruption

This month we focus on bribery and corruption. The UK's score on anti-corruption has shown the worst fall worldwide over the last year. Aon's fine of £5.25 million for making 63 bribes over a two year period, resulting in benefits to Aon of £7.5 million, has also highlighted the issue. Aon had no adequate controls against corruption, and it is clearly not alone in the City, but has not suffered debarment like others, and only two individuals are under criminal investigation. The Siemens fine at \$800m was over 20 times higher than the previous record. It was also fined €354m in Germany, following a fine of €201m the year before. All its senior management has since moved on, and professional costs were estimated at €850m.



Traditionally in the West, corruption is seen as an ‘African’ problem. In Africa, bribery is seen as a Western problem, and there has been little meeting of minds save for the Lesotho Highlands case, where Lesotho was only prepared to take action on corruption if the Canadians took action on bribery. A number of conventions have been introduced subsequently, and there is a new Bribery Bill before Parliament where the corporate criminal liability issue is highly charged. So what do you need to do to reduce your bribery and corruption risk? It is important to address the following:

- Build in bribery and corruption red flags into your alert system
- Review your contracts with, and monitoring of, vendors, intermediaries and IBs, particularly on representations, warranties and access (you may be liable for their corrupt acts). Build an anti-corruption risk matrix for this aspect
- Ensure you are up to speed on the risks you face in the jurisdictions concerned, communicate them and update training
- Carry out full enhanced due diligence (EDD), particularly on PEPs, and keep it updated. This means annually or sooner if transaction levels so indicate

It is important to retain proportionality and avoid the case in certain institutions where executives in charge of large multi million projects cannot even sign off on a lunch for \$50. In some countries, ‘facilitation payments’ are still allowed even under the US FCPA. Despite growing international action, however, you will still have to look after yourself, government resources remain low, and whistleblowers hounded.

Focus on India



Fundamental Data			Threat data		
	India	UK comparator		India	UK comparator
Capital:	New Delhi	London	Money Laundering	Major	Major
GMT +:	+5.5	N/A	Drugs	Transit, chemical	N/A
Intl Dial Code:	+91	+44	Terrorism history	Active	Inactive
www suffix:	.in	.uk	Terrorism risk	Severe	Elevated
Currency:	Rupee (INR)	Sterling (GBP)	Organised crime	Medium	Moderate
Approx ex rate:	78 INR = GBP 1	N/A	Regional risk	High	Moderate
Population	1129 m	60.7 m	Corruption index	3.5 (ten is high)	8.4
GNP	USD 724	USD 37,632	FATF blacklist	N/A	N/A
Area	2,973,190 km ²	241,590 km ²	OFAC list	N/A	N/A
			Political risk	Medium	Low

International memberships			FIU Contact
	India	UK comparator	
FATF	FATF Observer APG Full member	Full member	Director FIU-IND Financial Intelligence Unit of India 6 th Floor, Hotel Samrat Kautilya Marg Chanakyaपुरी New Delhi 110021 India Tel: +91 11 2687 4473 Fax: +91 11 2687 4459 Email: query@fiuindia.gov.in Web: http://fiuindia.gov.in
UN Conventions	Member, drugs	Member	
Basel	No	Y	
IOSCO	Y	Y	
IAIS	Y	Y	
OGBS	N	N	
OGIS	N	N	
IMF	Y	Y	
Interpol	Y	Y	
Egmont FIU	Y	Y	
JMLSG ≡	No	N/A	

For the full guide to all 240 jurisdictions worldwide, see FMLI’s Global Risk Minimiser in client services on www.fml.co.uk.



India is the seventh largest country in the world, and the second most populous. It gained independence in 1947. Main industries include high technology, films, textiles, agriculture and precious gems. India is the world's third largest coal producer. Weaknesses include a large budget deficit, arising from a widespread system of subsidies. Poor communications, power shortages and allegations of links between Bollywood and the criminal underworld do not help. Tourism has not developed as it could both as a result of internal security issues, and extreme tensions with Pakistan (resulting in three wars, and a close scare in 2002). There is also a history of tension with China and Sri Lanka. In recent years, India has had the largest number of terrorist incidents worldwide (12 times Northern Ireland), corruption scandals continue to dog government, and Indian history is littered with assassination of premiers. Violent crime is increasing, especially in the cities. Gangs have made vast profits from smuggling, prostitution, narcotics, and protection and extortion rackets. Theft has risen as consumer spending increases. Dacoit gangs still operate in large areas of central India. The Indian economy is beginning to open up as years of protectionism give way to free market economics, but hawala banking is prevalent and 60-70% of the Indian economy is thought to be underground. Key export links are to the US (22%), UK (5%), Hong Kong (5%), Germany (4%) and China (4%).

Five prominent forms of crime have a significant impact upon India:

- human trafficking
- drug trafficking and dealing
- terrorism
- tax evasion and corruption
- counterfeiting

A full report on all the above is available from FMLI, but in summary India has severe problems in a number of key areas. Public databases do not exist in the same way as other jurisdictions and due diligence can be a challenge. It has the basic FATF AML/CFT Model, but this does not necessarily mean that it is being applied to the degree it should. For these reasons, India is graded as a jurisdiction of high risk.

News Round Up

Moneyval, the FTF style body consisting of Council of Europe members which are not FATF members, has issued a public statement on Azerbaijan. The Council of Europe Group of States against Corruption has issued its report on France, and the Council of Europe has separately begun the second phase of its cybercrime project. FATF has issued the executive summary of its mutual evaluation of South Africa.

In the UK, FSA has fined the director of an AIM company for market abuse and arrested several individuals in insider dealing investigations and boiler room scams. SOCA has issued its annual plan for 2009/10.



Conclusion

The effects of the recession make it more important than ever to address the cost/benefit of deterrence in a mature way, to avoid building up reputation risk for the future. You cannot cut your way to recovery. The fundamentals of return on compliance spend are set out below. All of our projects have been cash positive since they have paid for themselves, in some cases within six months or less.

Investment	Return
Risk system	Bad guys go elsewhere
Threat analysis	Better product ID
Vulnerability analysis	Use EDD for debt recovery, JVs, etc
Proper SDD/EDD	Treating customers better
Training ó TNA, LSA, KLPs	Increased competitiveness
Client monitoring ó humint!	Management time on business generation
FBM practice	Reduce staff costs
Latest techniques	Cut regulatory risk
Business Continuity Procedures	Avoid meltdown
	Increased profitability

FMLI has recently been involved in its first work as an expert witness. We cannot discuss the case, but the expert appointed by the other party stated 'I was very impressed by your brief (and your CV) and would like to stay in touch. It would be a privilege to work with you and your firm.'

FMLI has developed the following products to assist in financial crime deterrence, asset recovery and business expansion (please ask for more detail):

FMLI Bloodhound ó Standard Due Diligence and Enhanced Due Diligence products
 FMLI Global Risk Minimiser ó a web based subscription service covering sanctions, jurisdiction risk, financial crime awareness, etc.

FMLI Financial Crime Threat Seminar Series ó coming in autumn 2009

MLIO Secrets Course ó a course by email

MLIO Residential Course

Specialist AML Training

Essential Money Laundering Deterrence 2009 (the guide to UK ML deterrence)

This publication provides general information about legal, regulatory and commercial developments affecting financial crime deterrence. Further information on the above 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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