



FINANCIAL CRIME NEWS

Spring 2010

Welcome to the Spring 2010 issue of FMLI's Financial Crime News. If there is anything you would like to see covered in future issues please ask! The information in this newsletter is current as at 31 May 2010.

The UK's Anti-Fraud Strategy

As mentioned in the last issue, there is now a National Fraud Authority (NFA), National Fraud Reporting Centre (NFRC) and National Fraud Intelligence Bureau (NFIB). The NFA has been operational for around six months or so. Its role is to collate data and set policy. The NFRC (also known as Action Fraud, on 0300 123 2040 www.actionfraud.org.uk) is to receive reports of fraud, and the NFIB provides intelligence input. NFIB is overseen by the City of London Police, which also acts as the UK's lead force. Traditionally, fraud has received low priority in the UK, with fraud officer numbers having halved in recent years. There are serious difficulties criminologically in compiling numbers, but NFA has produced what it regards as the first comprehensive survey into fraud, putting the figure at £30.5 billion in 2008. Seeing as others put fraud in the NHS alone conservatively at £5 billion, the overall NFA figure is likely to be on the low side. NFA has set four main priorities:

- Build and share knowledge about fraud
- Tackle the most serious and harmful fraud threats
- Disrupt and punish more fraudsters and improve support for their victims
- Improve the nation's long term capability to prevent fraud

Fraud risk is on the rise in any event, and boosted by the current economic climate. This is all the more of a concern since in a recent survey, 64% of financial institutions reported that their budgets in this area had been cut, 24% by more than a third. FSA has stated it is on the lookout for those institutions which are not committing proper resources to financial crime deterrence.

Focus on Bribery

Following up on the article on corruption in the previous issue, we focus on bribery. Bribery has for a long time been ignored and less developed than the response to corruption. Compare the coverage of Transparency International's Corruption Perceptions Index with the Bribe Payers Index. In the West, corruption is often seen as a developing world problem, but in the developing world, the reverse holds true. Given this background, there was bound to be an international clash, which materialised in the shape of the Lesotho Highlands water project where the local judiciary refused to take action against those accused of corruption unless action was also taken in Canada against those paying the bribes. Since then a more balanced approach has ensued, though it is far from perfect.



The Bribery Act 2010 was one of the last Acts of Parliament to be made before adjourning for the election. It is to be introduced by order at an as yet unspecified date, though there are noises for guidance notes to be produced by July for implementation in October. There are a number of carve outs. Just as the US Foreign Corrupt Practices Act allows “facilitation payments” in certain circumstances, the UK exempts a wide range of government bodies from its application. It is not just HMRC, intelligence agencies, military on active service or the Borders Agency who are exempted, but environmental health officers and local authorities, if they can prove, on a balance of probabilities, that it is necessary for the prevention, investigation or detection of “serious” crime. Allied with the interpretation of the Politically Exposed Person rules to exempt UK PEPs from the remit, one may be forgiven for concluding there is one rule for the public sector and another for the private sector. The US exemptions allow payments to prevent damage to an important commercial interest of a company or risk to its employees, which may include payments to speed up work papers, clear goods through customs, obtain police protection, phone lines or power. Why should these not be seen in the interest of UK PLC too? Much is made of the US approach to prosecution with a leniency for those who “admit” offences. However, much of this makes the process more of a commercial decision for financial institutions and less to do with what may be the position of justice in the scenario, which will adversely impact the compliance position of all concerned. For US readers used to the FCPA, the UK law is much broader, so compliance with FCPA will not ensure compliance with the Bribery Act. Contact FMLI for a detailed briefing note.

Bribery is defined mechanistically in terms of a number of “cases”. No prosecution may take place without the consent of certain people, and given statements by those responsible, it is likely that smaller cases will not be taken up by the authorities. From the practical perspective of compliance there are a number of issues. There is one statutory defence, that of having an adequate compliance system in place, whatever that may be. Guidelines are awaited. There is also no body charged with monitoring the system, unlike other financial crime, such as money laundering. Accordingly there is no requirement to put anti-bribery systems in place, no requirement to keep records or report, no requirement to undertake training, though for the financial sector this element will fall within the ambit of money laundering compliance, bribery and corruption being a predicate offence. Compliance procedures and training will therefore need to be updated for October this year.

Focus on the Czech Republic



Fundamental Data			Threat data		
	Czech Republic	UK comparator		Czech Rep.	UK comparator
Capital:	Prague	London	Money Laundering	Concern	Major
GMT +:	+1	N/A	Drugs	N/A	N/A
Intl Dial Code:	+420	+44	Terrorism history	N/A	Active
www suffix:	.cz	.uk	Terrorism risk	Low	Elevated
Currency:	Czech Koruna (CZK)	Sterling (GBP)	Organised crime	Medium	Moderate
Approx ex rate:	CZK 3050= GBP 100	N/A	Regional risk	Medium	Moderate
Population	10.2 m	60.7 m	Corruption index	4.9	7.7
GNP	USD 10,674	USD 37,632	FATF blacklist	N/A	N/A
Area	77,276 km ²	241,590 km ²	OFAC list	N/A	N/A
			OECD tax status		Substantial
			Political risk	Low	Low



International memberships			FIU Contact
	Czech Republic	UK comparator	
FATF	N/A Moneyval	Full member	Financial Analytical Unit (Financi Analytický útvar FAU-CR) Ministry of Finance Letenska 15 118 10 Prague 1 Czech Republic Tel: +420 25704 2719 Fax: +420 25704 2242 Web: www.mfcr.cz/cps/rde/xchg
UN Conventions	Member, drugs	Member	
Basel	N	Y	
IOSCO	Y	Y	
IAIS	Y	Y	
OGBS	N	N	
OGIS	N	N	
IMF	Y	Y	
Interpol	Y	Y	
Egmont FIU	Y	Y	
JMLSG ≡	Y	N/A	

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Following the collapse of the Soviet Union in 1989, Vaclav Havel became the father of the new Czech Republic (“the Velvet Revolution”). Over 100,000 state owned small businesses were sold off and 70,000 properties legally restored to the pre-communist era owners. In January 1993, the Czech and Slovak Republics became separate nations (the “Velvet Divorce”), both Republics joining the EU in 2004.

The Czech economy has had to undergo significant structural change, financial markets had almost ground to a halt, organised crime had started operating, and fraud was endemic. After 2000, financial markets were remodelled along UK lines. Economic growth was supported by exports to the EU, primarily to Germany, of motor vehicles, machinery, steel and consumer goods. The domestic economy remains predominantly cash based, and long term unemployment persists.

The main crime problems are organised crime and corruption, drug trafficking, human trafficking and high value vehicle crime. We focus on the first two of these.

Corruption is endemic within the Czech Republic. As the local saying goes, “if you are not cheating your company, you are cheating your family”. Matters are improving with the rise of a new middle class, but the Czech Republic is generally seen as the most difficult place in the region in which to do business outside Russia.

The most celebrated case is that of Viktor Kozeny and the Harvard Funds. Kozeny, “the Pirate of Prague”, bought up vast numbers of privatisation vouchers at next to no cost, but enabling him to sell off large amounts of Czech industry at vast profit. Confidence in Czech capital markets crashed, the stock exchange grinding to a halt.

In May 2006, the head of the Czech Police Organised Crime Unit (OUZ), Jan Kubice, presented a classified report outlining details of ongoing investigations into links between organised crime and the civil service. Later indications came to light of a conspiracy including a former chief of staff to two prime ministers, to murder Kubice. Police investigations proceeded, but were halted due to lack of evidence. Kubice requested a transfer and in 2008 was replaced as head of the OUZ. At the same time, the head of the Czech Police anti corruption unit was replaced. The Intelligence Service warned that Russian organised crime groups remained active, and that they were better organised and strengthened both in numbers and in placed individuals. A



new law has encouraged many police officers to pursue early retirement, leading to major understaffing and an influx of younger and less experienced police officers.

The Czech Republic has traditionally been a transit country for heroin trafficking as part of the “Balkan Route” into the EU. Albanian criminal groups traffic heroin throughout Europe and established markets and heroin distribution points in the Usti na Labem, Liberec and Prague areas. In 2007, seizures were up over 800% more than 2006. The main drug used locally is marijuana, imported from the Netherlands. Ecstasy and methamphetamine use is amongst the highest in Europe. Manufacture of methamphetamines is increasing. In 2000, police raided 19 “cooking” facilities. By 2007, the number had grown to 416.

In summary, the Czech Republic is still relatively new as a functional market economy and vulnerable to money laundering. Law enforcement efforts have been hampered by departure of experienced police officers and the specialist Financial Police Department, established in 2002, has been disbanded, with no alternative being established as yet. There have been no successful prosecutions for money laundering or successful asset recovery. CFT regulation remains a vulnerability. A full report is available from FMLI. The Czech Republic is graded as a jurisdiction of medium risk.

FMLI

FMLI products assist financial crime deterrence, asset recovery, counter industrial espionage, and business expansion:

- FMLI Bloodhound – Standard Due Diligence and Enhanced Due Diligence products
- FMLI Global Risk Minimiser – a web based subscription service covering sanctions, jurisdiction risk, financial crime awareness, etc.
- FMLI Financial Crime Threat Seminar Series
- MLIO Secrets Course – a course by email
- MLIO Residential Course
- Specialist AML Training
- Essential Money Laundering Deterrence 2010 (the guide to UK ML 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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