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Fighting money laundering: rigorous compliance and regulation

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A tough stance against financial crime is necessary to protect Singapore's reputation as a clean and trusted financial centre.

Rigorous compliance and regulation

Singapore's standing as a global transportation hub and financial centre makes it susceptible to cross-border money laundering and terrorist financing activities. Internationally-oriented and cash-intensive sectors are especially prone to such criminal conduct. In combating transnational money laundering, Singapore has established an extensive international cooperation network for supervision and law enforcement. Singapore's Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) policies aim to detect, deter and prevent money laundering, associated predicated offences and terrorism financing. The aim is also to protect the integrity of its financial system from illegal activities and illicit fund flows. Singapore's central bank, the Monetary Authority of Singapore (MAS), is the body in charge of regulating financial institutions. Section 27 of the Monetary Authority of Singapore Act (MAS Act) gives the MAS the power to issues directions or to make regulations that govern the operations of financial institutions. Section 27B of the MAS Act specifically provides for directions or regulations to be issued for the prevention of money laundering or of financing terrorism.

Relying on this, the MAS has published a number of regulations and directions in what it terms Notices on the Prevention of Money Laundering and Countering the Financing of Terrorism (AML/CFT Notices). The Notices impose various controls on a wide range of financial institutions ranging from approved trustees and financial advisers, to money changers and remittance companies. The controls include customer due diligence, record keeping, ongoing transaction monitoring and rigorous supervision.

Section 27B(2) of the MAS Act also states that non-compliance with any of these regulations is an offence punishable with a fine of up to S$1 million and a further fine of S$100,000 for every day the offence continues after the conviction. These severe penalties were a result of the MAS Amendment Bill in 2007, which raised the penalties from the previous maximum fine of S$100,000. The Bill also introduced the new Section 28B of the MAS Act, which imposes liability on directors and officers where the contravention of the regulations is attributable to their consent, connivance or neglect.

Heightened penalties for criminal offences

Under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA), it is a criminal offence for an individual or a company to be involved in money laundering. The CDSA targets two main groups of money laundering offenders. The first group – Primary Money Launderers – represents those who hide the proceeds of their own criminal conduct. The second group – Secondary Money Launderers – encompasses those who assist the primary criminal to hide their criminal proceeds, or acquires those criminal proceeds.

PRIMARY MONEY LAUNDERING

The provisions in the CDSA essentially state that it is an offence for any person to:

- conceal or disguise any property (or its nature, source, location, disposition, movement or ownership) which is, in whole or in part, directly or indirectly, represents, his benefits from criminal conduct;
- covert or transfer that property or remove it from the jurisdiction;
- acquire, possess or use that property.

The above provisions also apply when the person knows, or has reasonable grounds to believe that the property is, in whole or in part, directly or indirectly, represents, another person's benefits from criminal conduct.

The provisions of Section 44 of the CDSA makes it an offence for a person to enter into an arrangement with another person where he knew or had reasonable grounds to believe that the other person is engaging in or has engaged in criminal conduct, or has benefited from criminal conduct, and where he knew or had reasonable grounds to believe that by the arrangement,

- The retention or control of that person's benefits of criminal conduct is facilitated (whether by concealment, removal from jurisdiction, transfer to nominees or otherwise); or
- That the other person's benefits from criminal conduct are used
    - To secure funds that are placed at that other person's disposal, directly or indirectly; or
    - For that other person's benefit to acquire property by way of investment or otherwise.

Primary and Secondary money launders convicted under any of the above sections face up to ten years jail and/or a fine of S$500,000. If the offender is a company, it faces a fine of up to S$1 million. As with the MAS Act, the CDSA was similarly amended in 2007 which increased the penalty for money laundering from seven years jail and/or S$200,000 fine to ten years jail and/or S$500,000 fine. The main impetus for the amendments seems to have been the increase in the transnational threat.

At the introduction of the amended bill, Assoc. Prof. Ho Peng Kee explained that 'Since 1999, when the Act was first introduced, the global security climate has undergone significant changes. There is an urgent need for us to address the increasingly complex challenges posed by the abuse of our financial systems by terrorists and money launderers. The devastating 9/11 attacks underscore the urgent need for governments around the world to implement measures to suppress terrorist financing as part of the global effort to combat terrorism. At the same time, law enforcement agencies worldwide are combating the financial aspects of crime which have also become more complex due to rapid advances in technology and the globalisation of the financial services industry.'

Case study: Lessons to be drawn from Ang Jeanette v Public Prosecutor [2011]

In this case, the Commercial Affairs Department (CAD) received information that funds had been fraudulently transferred from the United States of America into various Singapore bank accounts. The offender, Jeanette, received a call from her brother saying he was 'in trouble'. He also informed her that one 'Mike' would contact her and asked her to follow his instructions.
Following instructions from Mike, Jeanette met up with one 'Aloysius' on various occasions and remitted the monies which she had received from him. Consequently, she was charged with five counts under Section 44(1)(a) of the CDSA for secondary money laundering.

At the trial, the Prosecution led evidence from one 'Michael Nail', a Special Agent with the United States Federal Bureau of Investigation (FBI), who was the lead investigator in an FBI investigation concerning several fraudulent money transfers from various bank accounts in the US to several accounts in Singapore. His testimony, which was unchallenged, provided a compelling narrative detailing how a few manipulative individuals carried out an audacious banking scam and then moved the proceeds of their crimes across the globe in a bid to disguise the origin of the money. The offender was convicted on all charges and sentenced to nine months' imprisonment.

Two points are worth noting. First, the Judge stated that the Prosecution was required to prove that the monies were in fact benefits of criminal conduct. However, he also stated that they could do this simply by adducing some evidence linking the monies in question with some act that might constitute one or other offences under the Second Schedule to the CDSA. Circumstances could also arise where the only logical inference to any reasonable person was that the monies involved in the arrangement were criminal property.

Most importantly, the Prosecution did not have to satisfy the court beyond a reasonable doubt that all the constituent elements of a specific offence had been met. The Judge reasoned that 'the objective of all money laundering transactions is to mask the predicate offences from which the monies are derived. Often the most difficult aspect for prosecutors is proving that the property concerned had a criminal origin. To insist on strict proof of all the requirements necessary to establish such predicate offences would turn the CDSA into a charter for rogues'.

Second, this was a case where it was not proven that Jeanette had known that the monies were tainted by some predicate offence. Rather, it was found that the suspicious nature of having been asked to transfer S$2 million would have made it abundantly clear to her as well as any reasonable observer that the monies were tainted. Despite this, she did not attempt to seek an explanation from either Mike or Aloysius. It bears noting that this lowered threshold of requiring the offender to only have had 'reasonable grounds to believe' goes far beyond legislative baselines mandated by the international conventions, to which Singapore had formally acceded to.

Tightening the reins on money laundering

Recently, the MAS ordered the shutdown of the Singapore branch of BSI Bank after a 'more intrusive' third inspection revealed that there were multiple breaches of anti-money laundering regulations and a 'pervasive pattern of non-compliance' with the regulations. BSI Bank was also fined S$13.3 million for 41 breaches of antimoney laundering regulations. It is also understood that six members of BSI Bank's senior management were referred by the MAS to the public prosecutor for possible prosecution.

Subsequently on 13 June 2016, the MAS announced that it would be setting up two new departments and a dedicated supervisory team. The AML Department will 'streamline the existing responsibilities for regulatory policies relating to money laundering and other illicit financing risks'. The Supervisory Team will monitor these risks and carry out onsite supervision of how financial institutions manage the above risks, and the Enforcement Department will bring together and strengthen MAS' existing enforcement functions. The new department will work with the CAD to investigate capital markets misconduct offences. It will also be responsible for enforcement actions arising from regulatory breaches of MAS banking, insurance and capital markets regulations.

The creation of these specialist departments clearly demonstrates that the MAS intends to tighten the reins on monetary transactions. A strong enforcement capability will allow for greater supervision and compliance with the MAS regulations, and allow the authorities to take swift action against those who breach said regulations. Coupled with the increased penalties and the lower threshold requirements for prosecution, it is apparent that Singapore intends to spare no effort in combating money laundering activities.

Whilst it is too early to tell if these changes will lead to more intrusive supervision, the changes are certainly a welcome step ahead for Singapore, which has two casinos and continues to see a steady influx of high net worth individuals. Given that Singapore is ever reliant on foreign investments, a tough stance against financial crime is necessary to protect her reputation as a clean and trusted financial centre.

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