

Anti-Money Laundering For the Non-Banking Entity

While many companies which operate under anti-bribery laws such as the UK Bribery Act or anti-corruption laws such as the US Foreign Corrupt Practices Act (FCPA), have compliance programs in place to review business relationships, I have found that one of the areas which most non-banking companies do not sufficiently focus on is anti-money laundering (AML). Money laundering is conduct designed to disguise the proceeds of criminal activity. These include making illegal or improper payments to Foreign Government Officials, the misappropriation, theft or embezzlement of public funds by any party as well as by or for the benefit of Government Officials, paying kickbacks to employees of private companies, creating a scheme to defraud third parties and, in the United States, misusing the mails (whether it is the US mail, private or commercial couriers) and the wires in interstate or international commerce. Money laundering can arise when there is an effort to evade reporting requirements by engaging in a series of funds transfers that individually are below the amount requiring disclosure. Funds may also be laundered by transfers among bank accounts or through the purchase of apparently legitimate assets. Even though they have been “laundered,” these funds still represent the proceeds of criminal activity, and knowingly receiving, transferring, transporting, retaining, using, or hiding such criminal proceeds is illegal.

Legitimate businesses may be targets for persons or entities who want to make the proceeds of criminal activity appear to be legitimate. For example, companies that offer to do business with a company may be “fronts” for money laundering or other criminal activity. Similarly, agents, customers or other parties may seek to have a company wire their fees to jurisdictions other than the ones in which they reside to avoid the laws and requirements of their home country. It is, therefore, essential for a company to “know” the parties with whom it conducts business and perform the due diligence required by the company Code with respect to all potential Business Partners, Representatives, Agents, Distributors and others in the sales chain. A company should also take care with its business relationships in the supply chain such as vendors that are viewed as high risk under the FCPA or UK Bribery Act.

So what are some of the ways a company can facilitate money-laundering? In an article in the Los Angeles Times (LAT) entitled “*Cartels use legitimate trade to launder money, US and Mexico say*” by Tracy Wilkinson and Ken Ellingwood, the authors described a process whereby teams of money launderers working for cartels use dollars to purchase a commodity from the US and then export the commodity to Mexico or Colombia. A key is that “Paperwork is generated that gives a patina of propriety” which means that drug money is given the appearance of legitimate proceeds from a legitimate commercial transaction. One Immigration and Customs official interviewed said, "It's such a great scheme. You could hide dirty money in so much legitimate business, and they do. You can audit their books all day long and all you see is goods being imported and exported."

The key is that the commodities being purchased are so innocuous that large bulk purchases will rarely, if ever, draw any official scrutiny. The goods purchased can be red tomatoes or bolts of cotton fabric. In either case, the commodity itself does not matter, as the simple fact of purchasing in the US, shipping into, and reselling in Mexico, allows the drug cartels to “transfer earnings back home to pay bills and buy new drug supplies while converting dollars to pesos in a transaction relatively easy to explain to authorities.”

There have been some interdictions in this system, however. In 2010, US authorities arrested several executives of Angel Toy company, who the government alleged were conspiring with Mexican drug cartels to launder drug money through a scheme to purchase Teddy Bears (of all things), for shipment back to and for resale in Mexico. The plan was straightforward, just under \$10K of cash for each shipment of Teddy Bears, which were then resold in Mexico.

However, now money launderers use even more sophisticated tactics such as “overvaluing and undervaluing invoices and customs declarations.” There is even a new term “trade-based money-laundering” which is being used to denominate the schemes. It was reported that in another recent operation, which was estimated to launder over \$1MM every three weeks, money launderers were exporting from the US to Mexico polypropylene pellets that are used to make plastic. However, the money-launderers inflated the value declared on the high-volume shipments and this eventually attracted suspicion of US bank investigators, “who shut down the export operation by discontinuing letters of credit that the suspected launderers were using.” One official noted, "You generate all this paperwork on both sides of the border showing that the product you're importing has this much value on it, when in reality you paid less for it. Now you've got paper earnings of a million dollars and the million dollars in my bank account -- it's legitimate. It came from this here, see?"

In an article in the Wall Street Journal (WSJ), entitled *Sands Probed in Money Moves*”, reporters Kate O’Keefe, Justin Scheck, Alexandra Berzon and James Grimaldi, reported that US authorities are investigating Las Vegas Sands Corp. and several of its executives regarding allegations of violations of US money-laundering laws by failing to alert authorities to millions of dollars transferred to its casinos by two Las Vegas high rollers. The specific allegations involve an examination of the Sand’s “handling of money received several years ago from a Chinese-born Mexican national, Zhenli Ye Gon, later accused of drug trafficking and Ausaf Umar Siddiqui a former California executive subsequently convicted of taking illegal kickbacks.

Regarding Mr. Ye Gon, the WSJ reported that in 2006, Ye Gon “made tens of millions of dollars in transfers to Sands accounts from Mexican "casas de cambio," which are currency-exchange firms that have been the focus of several recent money-laundering probes in the U.S., several people involved in the case said he transferred a total of around \$85 million to casinos owned by Sands and other operators, court filings indicate. Prosecutors have told lawyers representing Sands employees that Mr. Ye Gon's use of Mexican exchange houses to handle such huge transfers was a red flag.” Regarding Mr. Siddiqui, the WSJ reported that Sands received more than \$100 million from Mr. Siddiqui, while he had an annual salary of \$200,000 with Fry Electronics.

Transactional based due diligence and internal controls are mandatory components of a FCPA minimum best practices compliance program. In addition to due diligence on agents, distributors or others in the sales distribution chain, companies need to perform due diligence on those to whom they sell. If someone from Mexico suddenly comes to your business and wants to buy widgets with cash, this needs to send up a huge Red Flag. It would seem just as unlikely if a customer with a relatively low net worth would come to you and seek to purchase a high cost product with cash. If such an eventuality happened this should also raise a very large Red Flag.

What Should You Look For-Red Flags

Red flags are circumstances that should alert a reasonable person that illegal or improper conduct is substantially likely to occur and, therefore, further inquiry is necessary. Red flags reflecting possible violations of anti-money laundering laws and regulations include:

1. Legitimacy of the party and/or assets are undeterminable through due diligence or independent verification;

2. The party proffers false, misleading or substantially incorrect information and documentation;
3. The party suggests transactions involving cash or insists on dealing only in cash equivalents;
4. The party refuses to disclose or to provide documentation concerning identity, nature of business, or nature and source of assets;
5. The party refuses to identify a principal or beneficial owner;
6. The party appears to be acting as an agent for an undisclosed principal or beneficial owner, but is reluctant to provide information, or is otherwise evasive, regarding the identity of the principal or beneficial owner;
7. The party is a shell company and refuses to disclose the identity of the party's beneficial owner;
8. The party has assets that are well beyond its known income or resources;
9. The party requests that funds be transferred to an unrelated third party and is unable to provide sufficient legitimate and independently verifiable justification for such request;
10. The party requests a wire transfer to a jurisdiction other than the one in which the party is located and is unable to provide sufficient legitimate and independently verifiable justification for such request, particularly if located in an "off shore" bank secrecy or tax haven;
11. The party engages in transactions that appear to have been structured so as to avoid government reporting requirements, especially if the cash or monetary instruments are in an amount just below reporting or recording thresholds;
12. The party exhibits unusual concern about compliance with government reporting requirements;
13. The party exhibits a lack of concern regarding risks or other transaction costs;
14. The party wishes to engage in a transaction that lacks business sense, economic substance or apparent investment strategy;
15. The party lacks general knowledge of its industry or lacks adequate facilities or qualified staff to perform the required tasks or work;
16. The party requests that a transaction be processed in a manner that circumvents a company procedure or avoids company documentation requirements;
17. The party is included on list of Specially Designated Nationals, or similar lists, maintained by the US Government and the United Nations or is associated with such individuals and entities;
18. The party is located or has accounts or financial dealings in countries either identified as being non-cooperative with international efforts against money laundering by the Financial Action Task Force, or against whom the US Treasury Department has issued an advisory;
19. The party, or any person associated with the party, is or has been the subject of any formal or informal allegations (including in the reputable media) regarding possible criminal, civil or regulatory violations or infractions; and
20. The independent due diligence conducted by a company uncovers allegations that raise concerns regarding the party's integrity.

In this age of cross-border criminal activity and cross-border enforcement, companies should be aware of these techniques used to launder money. Company compliance programs need to incorporate transactional

due diligence into an overall anti-corruption compliance program. You may not see multi-millions of dollars in cash come into your company as Sands did from Mr. Ye Gon and Mr. Siddiqui but you should run the basic checks as suggested by the list of Red Flags.

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