



OVERVIEW OF U.S. ANTI-MONEY LAUNDERING LAWS[®]

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Money laundering is the process by which the proceeds of illegal activities are moved through legitimate businesses and the world banking system to remove or hide their illegal source. Criminals are most likely to succeed in money laundering when they avoid leaving a “paper trail” of transactions linking the money back to their crime, since law enforcement can follow such a trail created from reports and records of financial institutions. The United States has enacted a series of laws that outlaw financial transactions using such proceeds and impose certain reporting requirements and restrictions on specific types of money transfers.

The U.S. anti-money laundering laws are based primarily on two statutes: (1) the Money Laundering Control Act (“MLCA”); and (2) the Bank Secrecy Act (“BSA”). In October 2001, Title III of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (“USA PATRIOT”) Act of 2001 amended both the MLCA and the BSA.

A. CRIMINAL MONEY LAUNDERING LAWS

1. What is the Money Laundering Control Act?

The principal criminal anti-money laundering laws in the United States were enacted with the passage of the Money Laundering Control Act of 1986. The Act makes it a crime for any individual to conduct a monetary transaction knowing, or having reason to know, that the funds involved were derived from a “specified unlawful activity.”

2. What Crimes Are Considered “Specified Unlawful Activities”?

The crimes that satisfy the “specified unlawful activity” element are wide-ranging and encompass hundreds of U.S. federal felony crimes including: narcotics trafficking, wire fraud, Racketeer Influenced and Corrupt Organizations (“RICO”) Act crimes, copyright infringement, environmental offenses, conducting financial transactions with intent to engage in violations of the Internal Revenue Code, smuggling or export control violations involving items controlled under the EAR or the ITAR, and certain customs violations.

B. BANK SECRECY ACT

1. What is the Bank Secrecy Act?

The Bank Secrecy Act (“BSA”) was enacted by Congress in 1970 to fight money laundering and other financial crimes. The main purpose of the BSA is to provide law enforcement with access to information directly from financial institutions about suspicious financial activity, customer identity, and certain types of domestic and foreign transactions.



The BSA requires “financial institutions” and non-bank businesses (in certain circumstances) to create “paper trails” by keeping records and filing reports on certain transactions, and it imposes record-keeping, reporting, customer due diligence, and compliance program requirements on certain U.S. financial institutions. These reports are submitted to the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

2. What is a “Financial Institution”?

Under the BSA, Treasury is permitted to issue regulations that apply to “financial institutions,” which covers a broad group of entities, including: insured banks, commercial banks or trust companies, private bankers, agencies or branches of foreign banks in the United States, credit unions, thrift institutions, broker-dealers registered with the SEC, broker-dealers in securities or commodities, investment bankers or investment companies, currency exchanges, issuers, redeemers, or cashiers of travelers’ checks, checks, money orders, or similar instruments, operators of credit card systems, insurance companies, dealers in precious metals, stones, or jewels, pawnbrokers, loan or finance companies, travel agencies, licensed senders of money, telegraph companies, businesses engaged in vehicles sales (including automobile, airplane, and boat sales), persons involved in real estate closings and settlements, the United States Postal Service, casinos or gaming establishments with over \$1 million in annual gaming revenue (whether state-licensed or licensed by the Indian Gaming Regulatory Act).

3. What Reporting and Compliance Requirements Exist Under the BSA?

The BSA reporting and compliance obligations address four areas, namely, Currency Transaction Reports, Suspicious Activity Reports, Know Your Customer principles, and anti-money laundering compliance requirements, which are examined in detail below. Treasury has imposed reporting and recordkeeping requirements on some but not all “financial institutions,” however; it eventually may choose to extend the requirements to all such institutions. Private sector institutions can obtain additional information on the requisite compliance programs from industry associations, such as banking or insurance associations.

4. Reporting Requirements

Currency Transaction Report

The BSA and the Internal Revenue Code additionally require *non-bank* businesses to file a Currency Transaction Report (“CTR”) with respect to cash transactions in excess of \$10,000 or multiple related transactions if they exceed the \$10,000 limit over a one-year period. The law also requires the reporting of certain non-cash transactions from companies involved in consumer durables, collectibles, entertainment and travel. Finally, U.S. law requires individuals to report the physical transport of monetary instruments - cash, travelers’ checks, and other negotiable instruments - in excess of \$10,000 into and out of the United States.



Additional information on the CTR requirements can be found on FinCEN's site at www.fincen.gov/reg_ctrfiling.html. In addition, the CTR form provides additional details regarding filing. The forms are available at www.irs.gov/pub/irs-pdf/f4789.pdf and www.irs.gov/pub/irs-pdf/f4790.pdf.

Suspicious Activity Report

Currently, the following types of "financial institutions" are required to file SARs: banks, casinos, broker-dealers, futures commission merchants, introducing brokers in commodities, money transmitters, currency dealers or exchangers, money order issuers, sellers, or redeemers, traveler's check issuers, sellers, or redeemers, and the U.S. Postal Service. Treasury has proposed the following institutions also be subject to SAR reporting: insurance companies and mutual funds.

Suspicious Activity Reports ("SAR") must be filed after becoming aware of any suspicious transaction. In addition, the business must maintain a copy of the report and any supporting documents for five years from the time of filing the report.

Specific SAR reporting requirement details are available at www.fincen.gov.

5. Due Diligence and Compliance Requirements

Know Your Customer Principles

The Know Your Customer ("KYC") principles help protect companies against doing business with entities and individuals conducting monetary transactions with funds derived from unlawful activity. A company should be alert to the money flow in every transaction and to question any payment methodology outside the norm. All such transactions should be screened for any of the following "red flags" including: large cash transactions, loans secured by obligations to offshore banks, and established financial relationships with tax haven countries. Additional information on red flags is available at: www.ustreas.gov/fincen/pubstitle (FinCEN advisories) and on the Financial Action Task Force site at www1.oecd.org/fatf/pdf/PR-20010622_en.pdf.

Moreover, the BSA, as amended by the PATRIOT Act, requires certain financial institutions to take reasonable efforts to be reasonably certain of the identity of their customers and the beneficial owners of the accounts. The regulations impose a duty on banks, savings associations, credit unions, mutual funds, certain non-federally regulated banks, securities brokers and dealers, futures commission merchants, and introducing brokers to implement customer identification programs ("CIPs") that go beyond previous KYC requirements. The expanded KYC principles add a number of mandatory elements, such as screening prospective customers against U.S. government lists of known terrorists. For example, covered financial institutions are now required to ascertain the identity of the nominal and beneficial owners of, and source of funds deposited into, all private banking accounts held by non-U.S. persons, to guard against money laundering and report any suspicious transactions.



Anti-Money Laundering Compliance Requirements

The BSA, as amended by the PATRIOT Act, requires financial institutions to implement anti-money laundering compliance programs that must at a minimum: (1) include internal policies, procedures, and controls; (2) designate a compliance officer; (3) provide employee training; and (4) include an independent audit. The Treasury Department has issued regulations requiring the following financial institutions to implement such compliance programs: banks, registered broker-dealers, credit unions, savings associations, money services businesses, casinos, mutual funds/unregistered investment companies, future commission merchants/introducing brokers, and credit card system operators. Treasury has also proposed requiring anti-money laundering compliance programs from: investment advisers, commodity trading advisers, real estate brokers and agents, travel agencies, businesses engaged in vehicle sales, dealers in precious metals, stones, or jewels, certain insurance companies, and unregistered investment companies. Finally, Treasury is currently assessing whether to extend the requirement of implementing a compliance program to the remaining types of financial institutions.

C. USA PATRIOT ACT

Congress passed the PATRIOT Act on October 26, 2001, following the 9/11 attacks, after discovering that the hijackers had made extensive use of the U.S. financial system to fund their activities in the United States. The Act included substantial revisions to both the BSA and the MLCA.

The PATRIOT Act requires Treasury to expand the application of the BSA's reporting, recordkeeping, and compliance program requirements to cover additional types of financial institutions. The Act expands key domestic anti-money laundering laws and expands suspicious activity reporting requirements, among many other things. In addition, the money laundering laws are increasingly being used in conjunction with other export and international trade restrictions, including export laws, sanctions, anti-corruption laws, and customs laws. Due to this expansion of U.S. money laundering laws to reach a broader range of U.S. financial institutions, the majority of companies should review their programs to ensure that they meet the requirements of Title III (the money laundering chapter) of the USA PATRIOT Act and otherwise comply with U.S. laws.

1. How Did the PATRIOT Act Amend the Money Laundering Control Act?

The USA PATRIOT Act recently added several crimes to the domestic and foreign lists of "specified unlawful activities," mentioned above. The Act also added a provision criminalizing the giving of material support or resources to an organization designated by the Secretary of State as a "foreign terrorist organization."

In addition, the Act amended its penalty provisions to provide for long-arm jurisdiction over foreign persons, including foreign banks, with respect to civil actions brought to enforce criminal judgments.



2. How Did the PATRIOT Act Amend the Bank Secrecy Act?

The Treasury Department and other relevant agencies have issued numerous regulations in the year following the passage of the PATRIOT Act, substantially modifying the BSA by expanding reporting, customer identification, and compliance program requirements for most covered financial institutions.

Most existing BSA regulations address the activities of banks; however, the PATRIOT Act expands the application of the BSA regulations to other financial institutions (as discussed above) including broker-dealers in securities or commodities, futures commission merchants, commodity trading advisors, or commodity pool operators, insurance companies, mutual funds, and informal money transfer businesses.

D. PENALTIES AND ENFORCEMENT

1. What Penalties Exist Under the MLCA?

The criminal penalty for a violation of the MLCA provision that criminalizes knowingly conducting a monetary transaction with funds that were derived from a “specified unlawful activity” is a maximum fine of \$500,000 or twice the value of the property involved in the transaction (whichever is greater) or a maximum term of imprisonment of twenty years, or both. Further, the property involved in a violation of the MLCA is subject to seizure or forfeiture.

In addition, violations of the remaining MLCA provisions are subject to a civil penalty in an amount not to exceed the greater of: (1) the value of the property involved in the transaction, or (2) \$10,000 per violation. Civil penalties are imposed on a strict liability basis.

2. What Penalties Exist Under the BSA?

FinCEN can bring an enforcement action for violations of the reporting, recordkeeping, or other requirements of the BSA. Enforcement matters may result in a variety of penalties, including the assessment of civil monetary penalties up to \$1,000,000 per violation, and are imposed on a strict liability basis.

Violations of the BSA can also result in criminal penalties and fines up to \$1,000,000 and/or imprisonment up to ten years.

3. How Can I Protect Myself from Money Laundering Penalties?

First, determine if your company qualifies as a “financial institution” subject to the BSA. Next, take steps to ensure your company complies with BSA regulations targeting non-banks, such as currency reporting. A company can also insulate itself from the severe penalties that may arise from even inadvertent violations of the anti-money laundering criminal legislation by diligently screening and monitoring customers and counterparts (particularly resellers and distributors).