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Newsletter 7 (September 2005)

Summary of recent financial services compliance and regulatory news September 2005

In this edition:

- 1. Anti-Money Laundering update & Nigerian Astronauts;**
- 2. Data Protection Commissioner wins prosecution; and**
- 3. Training dates for Money Laundering (18th October), Data Protection and Audit (26th October), The Role of the Compliance Officer (Insurance 3rd November).**

1. Anti-Money Laundering

(i) 3rd EU Money Laundering Directive

Summary: Third EU Money Laundering Directive: On 17 June 2005 the Council of the European Union released an informal consolidated version of the third money laundering directive incorporating the amendments adopted by the European Parliament on 26 May 2005. In response to calls from the regulated community, the European Commission released a working document on the Directive seeking comments by 21 October 2005 to 16 questions on customer due diligence.

The impact of the Directive on Irish designated bodies will be huge, both in terms of headcount and the implementation of technology. Ask any MLRO in Ireland (Europe and the US) what their biggest challenges will be over the next few years and two items will be at the top of their lists: (1) How do we to identify and monitor business relationships with PEPs and their associates; and (2) 'How do we adopt a risk based approach to AML', as required by the Directive.

Full Article:

Third EU Money Laundering Directive: On 17 June 2005 the Council of the European Union released an informal consolidated version of the third money laundering directive incorporating the amendments adopted by the European Parliament on 26 May 2005. The existing 1991 Directive, as amended in 2001, will be repealed and replaced by the 3rd Directive upon its effective entry. Although the wording of the Directive is not expected to change, readers are advised to note that the official version of the Directive will not be released until it is finalised by EU Commission's legal-linguistics experts. Member States have agreed to implement the Directive within two years after its publication in the European Union's Official Journal, which (according to the EU Commission's press release) will take place towards the end of 2005.

In general the Directive will prohibit money laundering as well as terrorist financing offences which some Member States, such as Ireland and the UK have already outlawed (in Ireland our latest response to prohibiting financing of terrorism was the Criminal Justice (Terrorist Offences) Act 2005). The Directive is applicable not just the financial sector but also to many non-financial professionals (e.g. lawyers, notaries, accountants, auditors, tax advisors, trust and company service providers, real estate agents and casinos, as well as all providers of goods to the extent payments are made in cash in excess of €15,000). Excluding trust and company service providers, the other non-financial professionals referred to above were captured under the 2nd EU

Money Laundering Directive which Ireland and the UK implemented in September 2003 and March 2004 respectively.

In short the 3rd Directive will require that credit institutions, financial institutions and other persons regulated for money laundering purposes must: (a) identify and verify the identity of their customer and of its beneficial owner and to monitor transactions with the customer, while taking into account a risk-based approach; (b) to report suspicions on money laundering and terrorist financing to their national authorities; and (c) to take supporting measures, such as record keeping, training of personnel and the establishment of internal policies and procedures. The Directive is completed with a section on supervision and monitoring by national authorities. Member States must establish appropriate penalties where those regulated for (anti) money laundering and (anti) financing of terrorism purposes fail to meet their obligations.

In response to calls from the regulated community, the European Commission released a working document on the Directive seeking comments by 21 October 2005 to 16 questions on customer due diligence (CDD). For example the EU Commission asks 'would the application of the risk based approach in connection with normal CDD procedures be in your view enough for institutions and persons covered by the directive to deal normally with the low risk situations' (see Question 1). The European Commission also asks a range of questions on the preferred approach to identifying business relationships with Politically Exposed Persons ('PEPs') and their family and associates. In particular readers are asked whether a close list of categories of persons should be established in helping the regulated community identify business relationships with PEPs (and their families and associates) (see Question 8).

You can download a copy of both the 3rd EU Money Laundering Directive and the Working Document at www.antimoneylaundering.ie (click on the 3rd ML Directive button). *NB – these two documents may not appear on www.antimoneylaundering.ie until 12 October 2005.*

Compliance Ireland urges all Irish designated bodies through their boards and MLROs to respond directly, or through their representative bodies, to the Working Document. The impact of the Directive on Irish designated bodies will be huge, both in terms of headcount and the implementation of technology. Ask any MLRO in Ireland (Europe and the US) what their biggest challenges will be over the next few years and two items will be at the top of their lists: (1) How do we to identify and monitor business relationships with PEPs and their associates; and (2) 'How do we adopt a risk based approach to AML', as required by the Directive.

(ii) Removal of Nauru and Myanmar

Summary: Did you know that Statutory Instrument No. 175 of 2005 removed Myanmar and Nauru from the reporting requirements imposed under s57A of the Criminal Justice Act, 1994 (as amended)?

Full Article:

Did you know that Statutory Instrument No. 175 of 2005 removed Myanmar and Nauru from the reporting requirements imposed under s57A of the Criminal Justice Act, 1994 (as amended)?

Section 57A requires designated bodies (including any director, employee or officer thereof) to report to the Garda Síochána any transaction connected with a state or territorial unit that stands designated under subsection 57A (1). Myanmar's and Nauru's designated status was removed by S.I. 175 of 2005 signed 4 April 2005 (effective 4 April) which revoked S.I. No 101 of 2002 and S.I. No. 52 of 2004 (which, respectively, designated Nauru and Myanmar under section 57A).

(iii) New Guidance Notes for Accountants

Summary: The Institute of Chartered Accountants (ICAI) released an updated version of their guidance notes and a new technical statement on 15 September 2005.

Full Article:

The Institute of Chartered Accountants (ICAI) released an updated version of their guidance notes and a new technical statement on 15 September 2005.

These two documents can be downloaded from www.antimoneylaundering.ie (click the Guidance Notes button) or the ICAI's website (<http://www.icaei.ie/media/mr-details.cfm?ID=596>) . The "Miscellaneous Technical Statement 42 – Anti-Money Laundering Guidance, Republic of Ireland (M42)" and the 'Anti-Money Laundering Procedures, Republic of Ireland' supersede the ICAI's previous Briefing Paper (issued in August 2003) and the previous Anti-Money Laundering Procedures, Republic of Ireland (issued in March 2004). *NB – these two documents may not appear on www.antimoneylaundering.ie until 12 October 2005.*

(iv) New(ish) Guidance Notes for DFIA Members

Summary: The Dublin Funds Industry Association has released updated anti-money laundering guidance notes.

Full Article:

The Dublin Funds Industry Association has released updated anti-money laundering guidance notes (dated July 2005), incorporating guidance on the Criminal Justice (Terrorist Offences) Act 2005. These can be downloaded from www.antimoneylaundering.ie (click the Guidance Notes button) or DFIA's website (<http://www.dfia.ie/>)

(iv) Guidance Notes for Real Estate Agents

Summary: Guidance Notes for real Estate Agents and Auctioneers released.

Full Article:

Guidance Notes for real Estate Agents and Auctioneers released.

To their credit real estate representative bodies made quite a song and dance of the release of their guidance notes (dated March 2005). Listening to the radio and reading the press coverage a few months back (sometime after the guidance notes were released) one would have sworn that mid-2005 was the date on which real estate agents and auctioneers became designated bodies. Perhaps our fellow designated bodies overlooked the fact that September 2003 they have been required to verify the identity of their clients, retain records for the relevant 5 year periods, report suspicious transaction/activities and not tip-off (in addition to their 'offence of financing of terrorism' obligations). The message must have finally got through as yours truly was recently informed by a friend (with a swath of investment properties) that not one agent asked for his identification documents when he sold two investment properties in mid 2004, but now, as he continues his real estate portfolio reduction exercise (is there a hint here?) his agent (from a well know agency) 'is on his back' (to use his words) about passports and utility bills. For the sake of the integrity of the real estate profession let's hope the regulators (do they have any) don't do any AML inspections covering the period September 2003 to June 2005! *Ummm – so does anyone out there rely on letters of assurance/introduction certifications from real estate agents?* These can be downloaded from www.antimoneylaundering.ie or the IPAVI's website (<http://www.iavi.ie/>)

(v) Good-bye NCIS, hello SOCA

Summary: An overhaul of the UK government's drive against money laundering will see the replacement of the National Criminal Intelligence Service by the Serious and Organised Crime Agency.

Full Article:

An overhaul of the UK government's drive against money laundering will see the replacement of the National Criminal Intelligence Service (NCIS) by the Serious and Organised Crime Agency (SOCA). A recent conference in London, Sir Stephen Lander, SOCA chairman said: "We are not just going to be another National Criminal Intelligence Service. It is important that we are different ... and translate knowledge into action." SOCA will reportedly take over NCIS function from April 2006.

Several leading UK financial sector representatives told the conference, at which Sir Stephen

spoke, that since September 11 STRs/SARs (filed by the financial community) increased from 15,000 to almost 200,000 causing law enforcement agencies, led by NCIS, to struggle under the mound of information received.

(vi) Has anyone seen a Nigerian Astronaut walking around slightly bewildered by a world that passed him by?

Summary: Readers are asked to keep an eye out for Nigerian Astronaut, Air Force Major Abacha Tunde, who stuck on the secret Soviet military space station Salyut 8T in 1989.

Full Article:

Readers are asked to keep an eye out for Nigerian Astronaut, Air Force Major Abacha Tunde, who stuck on the secret Soviet military space station Salyut 8T in 1989.

As the 419 email I received last month reads (my comments in italics), Major Abacha Tunde “was stranded there (*in deep dark space*) in 1990 when the Soviet Union was dissolved. His other Soviet crew members (*I thought he was Nigerian?*) returned to earth on the Soyuz T-16Z, but his place was taken up by return cargo. There have been occasional Progrez supply flights to keep him going since that time. He is in good humor, but wants to come home (*understandably*). In the 14-years since he has been on the station, he has accumulated flight pay and interest amounting to almost \$ 15,000,000 American Dollars. This is held in a trust at the Lagos National Savings and Trust Association. If we can obtain access to this money, we can place a down payment with the Russian Space Authorities for a Soyuz return flight to bring him back to Earth. I am told this will cost \$ 3,000,000 American Dollars. In order to access the his [sic] trust fund we need your assistance”. *I’ll end it here – you all know where this is going! Yet another email scam, but this is one of the better (read humorous) ones of I have received of late. I actually received this same email about 10 months ago but deleted it. It is now safely saved on my hard drive. Let me know if anyone hears whether Major Tunde makes it back to Earth! (there could be a song in this for any aspiring David Bowies out there)*

2. Data Protection Commissioner wins SPAM prosecution

Summary: The Data Protection Commissioner has taken his first prosecution for an offence under Regulation 13 of Statutory Instrument 535 of 2003 (i.e. SPAMMING). Before the District Court the company Fours A Fortune Limited was convicted and ordered to pay a fine of €1,500. The company was also ordered to pay costs of €1,000.

Full Article:

The Data Protection Commissioner has taken his first prosecution for an offence under Regulation 13 of Statutory Instrument 535 of 2003 (i.e. SPAMMING). In his press release the Commissioner said that he is satisfied that this case has sent out a positive signal to the marketing community and to those that are targets of its promotions. The Commissioner said that he is not reluctant to pursue further prosecutions in the future.

Before the District Court the company *Fours A Fortune Limited* was convicted on five counts of contravening Regulation 13(1)(b). In short this means that the company sent marketing messages to five mobile phones without the consent of the subscribers. Although the maximum fine the company could have ‘copped’ was €3,000 per message sent (i.e. €15,000) the District Court imposed a fine €300 for each count per count (i.e. €1,500). The company was also ordered to pay costs of €1,000.

In his press release the Commissioner said that he is satisfied that this case has sent out a positive signal to the marketing community and to those that are targets of its promotions.

The Commissioner said that he is not reluctant to pursue further prosecutions in the future.

3. Training dates for, Money Laundering (18th October), Data Protection and Audit (26^h October), The Role of the Compliance Officer (Insurance: 3rd November) – click here for more details <http://www.complianceireland.com/Training.html>.

Compliance Ireland is available to assist Irish and UK financial services firms (and other

designated bodies) meet their regulatory and anti-money laundering requirements. We also assist non-financial firms with data protection compliance and corporate governance matters.

If you would like to discuss our consultancy and training services, please contact Peter Oakes on +353 (0) 87 273 1434 or email peter@complianceireland.com. **Go to the following link to read about our range of services** (<http://www.complianceireland.com>)

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